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Facebook And Google's Dangerous Position

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If you were to read the comments of Facebook and Google in response to the ACCC's digital platforms inquiry report, you would have to wonder why policy makers across the globe are worried. Facebook and Google say there is nothing to see here, that as Australian citizens and as local media businesses we have nothing to fear from the rise and rise of the most dominant companies the world has ever seen.

And then there's the kicker. If only we understood their businesses, we would know that everything is going to be ok. Every response of Google and Facebook has been laced with comments about how the Government needs to better understand or appreciate how they operate. In the normal course of events, it is law-abiding citizens and businesses who have to learn and appreciate the laws of the land. Not the other way around. Their response is as dangerous as it is telling of the globally dominant positions that these companies find themselves in.

So with that background, we come to what the ACCC actually found in its world-leading examination of the impact of Google and Facebook. But first, let's examine why the ACCC's inquiry was world-leading. Indeed, there have been similar reviews undertaken in the UK. When we say the inquiry was world leading, it's not a glib assertion. This is the first time a competition regulator has gone under the hood and examined the impact of the market dominance—from accumulation of enormous troves of data through to the choice of internet browser—and then determined what impact that has had on local media businesses and public interest journalism.

Other reviews have looked at aspects of this problem; for example, the Furman Review in the UK looked at the competition aspects of digital markets but did not get into detail on the impact on media businesses. Also in the UK, the Cairncross review looked at the impact of these platforms on the future sustainability of journalism, but it was explicitly not a competition review. The ACCC inquiry was holistic. Necessarily undertaken from a consumer perspective, it examined issues including competition, privacy, data, copyright and even quality (including measures to address fake news).

Simply put, the ACCC's final report is a close as anyone has come to nailing the problem. And it can't simply be wished away by dominant companies lamenting that an expert regulator should have put more time and effort into seeing it their way.

Far from Google and Facebook’s suggestions that everything is going to be fine, the ACCC found quite the opposite. The ACCC found that Google and Facebook enjoy substantial market power in their respective markets. It also found that they were critical and unavoidable partners for many Australian businesses. For Australians who rely on news and journalistic content, the key finding of the ACCC was that there was an imbalance of bargaining position between media businesses and Google and Facebook.

We are surprised that Facebook thinks this point is even arguable. Taken together, Google and Facebook are worth more than every company in the S&P/ASX 200 combined. Google and Facebook have substantial market power, are unavoidable trading partners and have the deepest pockets of almost any other company that isn’t Apple or Amazon. In fact, in describing the relationship between media companies and the digital platforms as being “unbalanced”, the ACCC drastically understated the issue.

It’s not just size that matters. The ACCC also highlighted that local media companies are competing on a very uneven regulatory playing field. For example, commercial TV broadcasters are doing their best to innovate and invest to give Australian consumers more of what they love. But we are doing that while encumbered with an archaic regulatory regime that imposes all manner of restrictions on us that do not apply to the digital platforms. From advertising restrictions to outdated content quotas, we are playing a do or die game with one hand tied.

The ACCC report did far more than define problems. It proposed solutions—well-crafted solutions that should be implemented by the Morrison Government.

Our suggested implementation plan would harmonise the regulatory framework. This includes modernising Australian content quotas and better aligning content classification, advertising restrictions and the compliance and enforcement regimes across platforms.

To address the significant imbalance in the bargaining position between media businesses and the digital platforms, we support the ACCC’s proposed commercial negotiation Code of Conduct. In our view, this is necessary to prevent the digital platforms from restricting the reasonable and sustainable monetisation of Australian news and media content on their platforms.

This isn’t a play for special treatment for commercial TV or any other local media business. The key outcomes we seek would simply create a level regulatory playing field and an ability to negotiate fairly and reasonably with the digital platforms.

The Morrison Government has the opportunity to lead the world in implementing these measures, for the benefit of all Australians who rely on local media businesses for their news and entertainment.