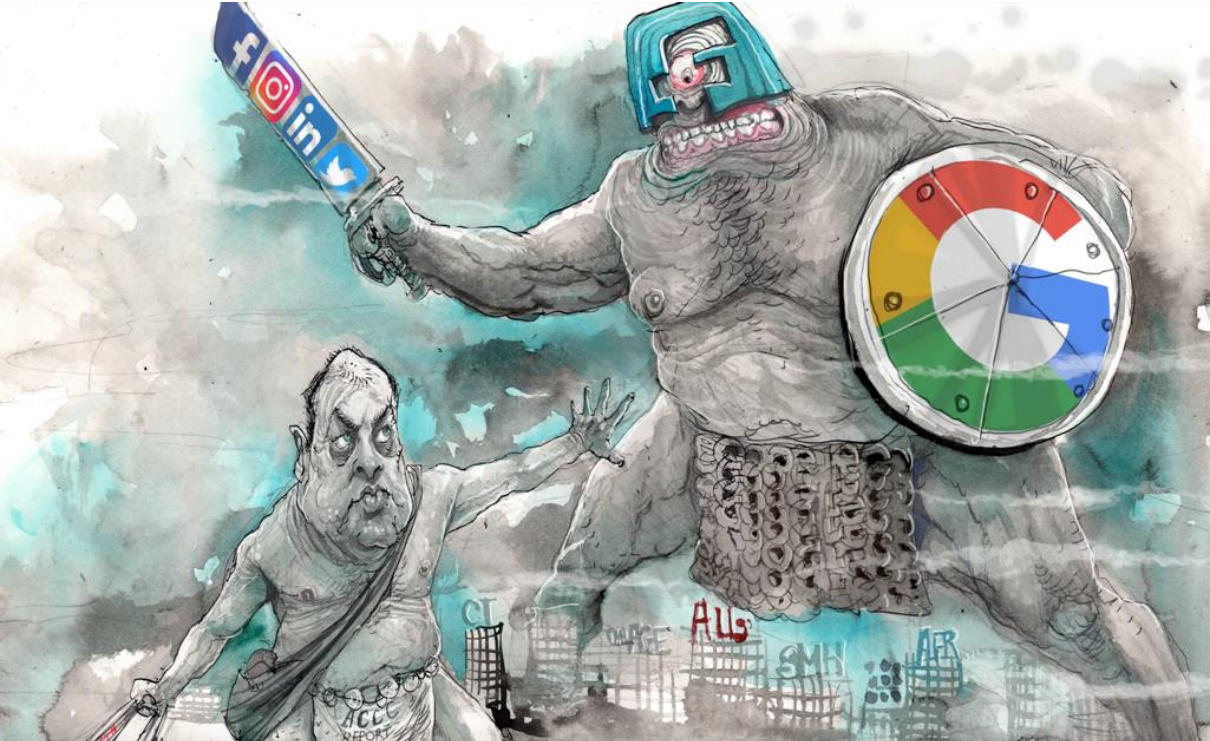


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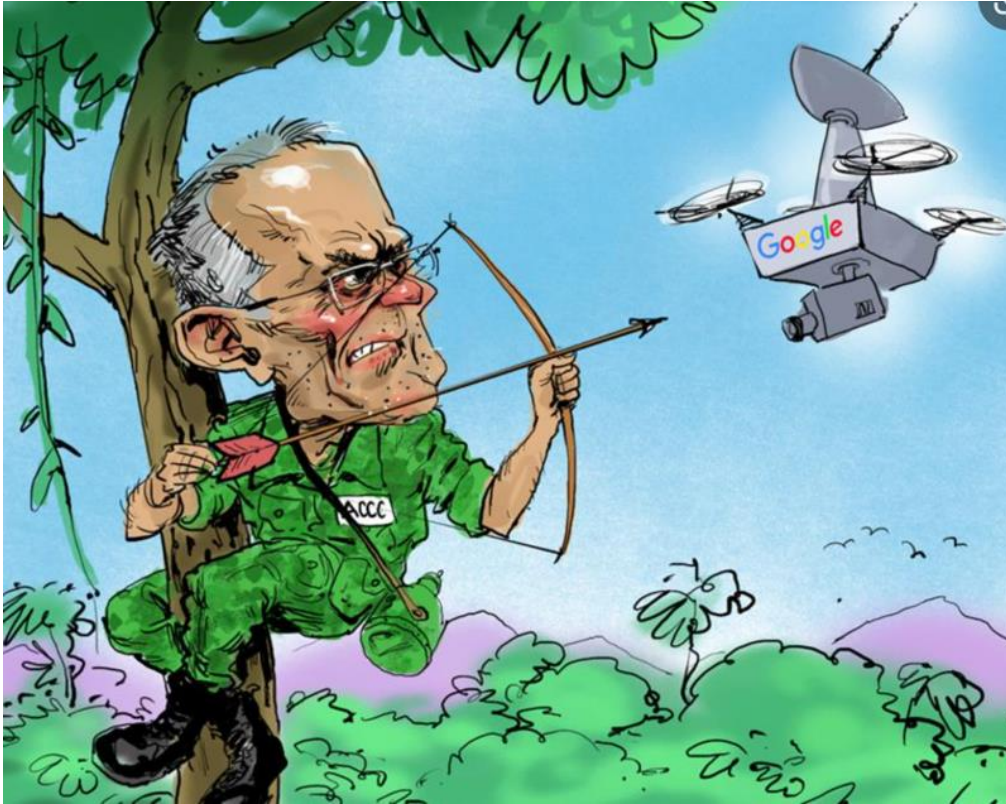
Regulation of digital platforms in Australia: The state of play and some economic arguments

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July, 2019: ACCC Digital Platform Inquiry (DPI) Report



(1) Enforcement: competition and consumer law



(2) Regulatory reform for Digital Platforms

September, 2022, Interim Report of DPSI, 2020-25

- Following DPI Report of 2019, government directed the ACCC to conduct the “Digital Platform Services Inquiry (DPSI) 2020-25”
- this involves the ACCC producing a bunch of smaller reports
- one such report is due in September of this year on the following question:
 - are the competition and consumer issues identified to date by the ACCC are addressed by existing competition and consumer law, “and, if reforms are needed to supplement existing laws, the options for regulatory reform”?*
- ACCC released a discussion paper regarding this report in February this year
- This document provides a flavour of the range of regulatory reforms that they are considering

(2) Regulatory reform for Digital Platforms

February Discussion Paper: Options for regulation include...

- (1) Prohibitions and obligations contained in legislation
 - e.g. EC's proposed Digital Markets Act
- (2) Codes of practice
 - e.g. UK government's pro-competition regime
- (3) Measures to promote competition after finding of harm
 - e.g. UK government's pro-competition regime

(3) News media bargaining code



(3) News media bargaining code

March 2021, Australian federal government legislation

(1) Formal description

- The Treasurer can designate a digital platform
- Once designated, a platform must negotiate in good faith with media businesses
- Negotiation may relate to a range of issues (e.g. data, changes of algorithm) but the most important is payment by digital platforms to media businesses for news that appears on their platforms
- If negotiations fail to produce an agreement, then “baseball arbitration” – each party puts forward its “final offer” and an arbitrator picks one of them

(2) In practice, legislation is just a threat (so far)

- No platforms have been designated (but Sims has recently argued FB should be)
- To avoid designation, Facebook and Google entered into voluntary agreements with many media businesses – reported payments of \$200 mn to date.

(3) News media bargaining code

What market failures might justify government intervention?

(a) Market failure from public good

- With a public good, the benefit to society exceeds that of the consumer, so in a free market, the good is undersupplied
- news content (especially investigative journalism) is a public good because it strengthens democratic institutions and reduces corruption

(b) Market failure from excessive bargaining power

- It leads to economic inefficiency akin to the effects of market power
- Arguably, Google and FB have greater bargaining power than media businesses in negotiations over the terms of news content being used by Google and FB

These are two possible justifications.

Let's flesh out the arguments and see if they survive close scrutiny.

(3) News media bargaining code

(a) a public good argument

- As news content is a public good, it is at risk of being undersupplied in a free-market
- The rise of digital platforms has reduced substantially the revenue earned from advertising by media businesses
- The effect has been a substantial reduction by news media businesses on expenditure on journalism
- So any problem with the undersupply of news content has been aggravated by the rise of digital platforms
- Conclusion: *Government intervention to support news media is justified by the undersupply of news content, aggravated by the rise of digital platforms*

Is this a good argument?

(3) News media bargaining code

(b) a bargaining power argument

Without government intervention

- digital platforms (DPs) have not paid media businesses for the content they use, even though the content is very valuable to the DPs
- in negotiations, DPs have more bargaining power than media businesses
- this bargaining power imbalance explains why (1) the DPs are able to avoid paying for content even though (2) the content is very valuable to DPs
- this bargaining power imbalance gives rise to economic efficiencies akin to market power
- Conclusion: *Government intervention to increase the bargaining power of news media businesses is justified*

Is this a good argument?

(3) News media bargaining code

(b) bargaining power argument: revised

- digital platforms (DPs) do not pay media businesses for content even though the content is very valuable to the DPs
- media businesses do not pay DPs for the referrals they get, even though the referrals are very valuable to the media businesses
- this is a mutually beneficial arrangement – it gives rise to a “pie” they each get a share of
- but surely DPs have more bargaining power than media businesses
- and surely this imbalance affects the parties’ “shares of the pie” in the absence of government intervention (i.e. where neither parties pay for the benefits they receive)
- Conclusion: *Government intervention to increase bargaining power of media businesses is justified.*

Is this a good argument?

Difference from last argument: Failure to pay for content is not evidence of bargaining power imbalance – we need independent justification of such an imbalance



Thanks for your attention