



Australia Senate
Standing Committee on Economics
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January 14, 2021

Re: News Media and Digital Platforms Mandatory Bargaining Code

Dear Sir/Madam:

On behalf of the Software & Information Industry Association (SIIA), I would like to express our appreciation for the opportunity to comment on the “News Media and Digital Platforms Mandatory Bargaining Code.”

SIIA is the leading organization representing financial information, education technology, specialized content and publishing companies that in many cases make their content available behind a paywall, and health technology companies and associations. Our diverse members help learners of all ages prepare to succeed in their future, manage the global financial markets, develop software that solves today’s challenges through technology, provide critical information that helps inform global businesses large and small, and innovate for better health care and personal wellness outcomes.

SIIA was a strong supporter of the 2005 U.S.-Australia Free Trade Agreement and the Trans-Pacific Partnership. The United States did not accede to the TPP, but we are supporters of closer economic ties with the Trans-Pacific region, including Australia. The long-standing and successful diplomatic and commercial ties between the United States and Australia have inured to the societal benefit of both countries. Bedrock principles of those ties include non-discrimination and national treatment.

The News Media and Digital Platforms Bargaining Code raises trade concerns regarding the discriminatory treatment of U.S. firms because it effectively targets two U.S. companies. We note that roughly 50% of Australian website traffic is generated through local searches but is not subject to the same rules the Code imposes. The Code is justified on competition grounds, but the Australian Treasurer does not actually have to find that a competitive imbalance exists and substantiate the alleged imbalance, which lends credence to the discriminatory intent of the Code.

Moreover, modern trade agreements protect sensitive business information, algorithms, and source code due to their enormous value as intellectual property. Yet the Code requires U.S. firms to provide information on business operations, including information regarding planned changes in algorithms and the collection and availability of user data. In addition to being discriminatory, such requirements are impracticable: algorithms change organically over time, so it is not always possible to specify precisely what plans there are to change an algorithm.

The Code establishes an arbitration mechanism that is designed to favor “registered news businesses” by providing Australian regulators with powers to influence an arbitration panel’s decision-making. Perhaps the most serious aspect of the way arbitration would work is that if a platform company and a “registered news business” cannot agree on the choice of arbitrator or arbitrators, an Australian regulator will make the appointments. There is no possibility for appeal. Arguably, this breaches the minimum standard of treatment and transparency-related rules in the U.S.-Australia Free Trade Agreement.

For all of these reasons, SIIA requests that the Standing Committee on Economics reconsider the Code. Competition motivated regulation should be buttressed by evidence. Trade principles such as non-discrimination and national treatment should be upheld. All firms, including U.S. companies, should be afforded due process and the possibility of appeal. Intellectual property, including algorithms and source code, should be respected.

Again, we appreciate the ability to comment and are available to answer questions.

Sincerely,



Jeff Joseph
President and CEO
SIIA

