December 19, 2025

Competition Policy Unit
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Re: News Bargaining Incentive, Consultation Paper, November 2025

The National Foreign Trade Council (the "NFTC") appreciates the opportunity to submit comments to the consultation proposing a *News Bargaining Incentive ("the incentive")* for Australia. As set out below in NFTC's response to the consultation questions, the proposal raises several fundamental concerns relating to its conceptual framing and design, as well as its consistency with Australian law and Australia's international trade commitments.

The proposed incentive program equates to the imposition of a digital services tax on certain large digital platforms unless they enter into and maintain commercial agreements with Australian news businesses. It does so by creating a payment floor for negotiations or, alternatively, requiring payment into a proposed fund, mandating a minimum threshold of revenue subsidization of news outlets. Applying the levy regardless of whether a platform carries news content or derives any commercial value from it establishes a pay-to-play framework that raises serious concerns and appears legally dubious. While framed as an incentive, the proposal constitutes a discriminatory retroactive digital services tax (DST) that intentionally targets a narrow group of predominantly American companies.

Given this, NFTC urges the Australian Government not to move forward with this policy proposal and to pursue alternate pathways to address local news media and journalistic funding shortfalls that do not target American digital service providers.

The NFTC, organized in 1914, is an association of U.S. business enterprises engaged in all aspects of international trade and investment. Our membership covers the full spectrum of industrial, commercial, financial, and service activities. We value work that focuses on establishing and maintaining international tax and transfer pricing norms that provide certainty to enterprises conducting cross-border operations.

I. General Comments

The proposed News Bargaining Incentive would require "large" digital platforms operating "significant" social media or search services to either maintain commercial agreements with Australian news businesses at a prescribed minimum value or pay a 2.25 percent tax on Australian-sourced revenue. The proposal raises questions around how to define a "large" platform and proposes a threshold whereby a company or corporate group with at least AU$250 million in gross revenue attributable to Australia is in scope. While the consultation paper suggests this framework is intended to support journalism, its design reveals a measure that is discriminatory, unprincipled, and disconnected from commercial reality.

At the outset, the use of gross Australian revenue as both the threshold for determining "significance" and the basis for the charge illustrates the arbitrary nature of the proposal. Revenue is an imprecise and poorly justified proxy for market power, societal harm, or relevance to the news ecosystem. Under this framework, scale alone becomes the trigger for taxation, regardless of a platform's business model or its relationship to news content, with the practical effect that the majority of Australian digital providers are excluded, while a narrow set of predominantly U.S.-headquartered multinational firms are captured, two of which are explicitly identified in the consultation paper.

The definitions of "social media" and "search services" raise further concerns. Treasury has indicated that these definitions are intended to be sufficiently flexible to capture future market developments. While adaptability may be appropriate in some regulatory contexts, this approach, as articulated, creates significant regulatory uncertainty. Future platforms that innovate and scale their services would be penalized simply for growing. Creating disincentives to invest, expand, or launch new products in Australia, particularly those that do not host any news content and would nevertheless be saddled with a levy without deriving any corresponding commercial benefit. This approach undermines legal certainty and exposes firms to open-ended regulatory risk, discouraging innovation and investment in new digital services in the Australian market.

The proposal also imposes substantial administrative and commercial burdens. Platforms would be required not only to enter into qualifying agreements, but to maintain them on an ongoing basis, effectively in perpetuity. The introduction of a minimum expenditure floor distorts negotiations by replacing commercial judgment with regulatory compulsion. This undermines voluntary, good-faith agreements and commercial decisions, transforming them into compliance exercises driven by tax avoidance rather than mutual benefit.

News outlets that engage in negotiations at the outset will know the threshold a platform must meet. This transfers leverage to the largest outlets, which will seek outsized compensation agreements. This could lead to meeting the threshold with fewer agreements at the expense of a broader array of news organizations of all sizes. The second-order effects on smaller news organizations are likely to undermine the very objectives the framework seeks to address.

Compounding these issues is the absence of any clear mechanism for how tax revenues would be distributed or how accountability would be ensured. The proposal does not specify how collected funds would support journalism, nor does it provide safeguards to ensure resources are directed toward public-interest reporting. Similar to the negotiation risks, there is a significant risk that the policy would primarily benefit large, incumbent Australian media groups, further entrenching their market position while disadvantaging independent, regional, and emerging publishers. Caps or proportional limits on individual deals would not address this structural problem, as the underlying subsidy mechanism remains poorly targeted and distortive.

These design flaws are particularly problematic given the existence of extensive, good-faith commercial arrangements already in place. Of the two digital services named in the consultation, both entered into a number of commercial agreements. Such arrangements must be, by their nature, commercially driven and based on mutual benefit. Removing the choice of whether to provide news as a service offering by compelling revenue-based payments effectively converts the framework from regulation to taxation.

The proposal is framed on the premise that a decision by platforms not to provide news services would result in a shortfall in funding for Australian journalism. Placing the onus for the commercial viability of Australian journalism on a handful of companies due to evolving media consumption patterns is a flawed premise.

The framework penalizes lawful business decisions. While regulation may properly attach obligations to participation in a regulated activity, it is administratively unreasonable to impose liability that persists even where a firm elects not to engage in that activity. Australian law requires regulatory burdens to bear a rational relationship to the conduct being regulated. Applying a tax irrespective of whether a platform makes a market-driven decision to carry news content breaks that nexus, rendering the measure arbitrary. The tax, therefore, risks operating not as a regulation but as a penalty for lawful non-participation.

The proposal also appears inconsistent with Australia’s international trade commitments, including obligations under the Australia–United States Free Trade Agreement. Legal analysis suggests potential inconsistencies with provisions relating to cross-border trade in services, investment, and electronic commerce, particularly where measures have the effect of disproportionately burdening foreign digital service suppliers without a clear nexus to regulated conduct. In practice, the tax would fall overwhelmingly on a small number of U.S.-headquartered firms, raising concerns regarding discriminatory effect. In respect of the United States’ longstanding opposition to unilateral DSTs, this approach risks becoming a significant and avoidable irritant in the bilateral trade relationship at a time when cooperation on digital trade and technology policy should be deepening.

Finally, the broader economic implications of the proposal cannot be overlooked. By penalizing scale, growth, and innovation, the tax sends a negative signal to global investors considering Australia as a destination for digital infrastructure and technology investment. At a time when Australia faces productivity challenges and seeks to attract capital to support digital transformation, this policy introduces unnecessary risk and sets a troubling global precedent.

II. Conclusion

The proposed News Bargaining Incentive is fundamentally flawed in its design and objectives. The compulsory design, irrespective of a platform's decision to host news services, creates an arbitrary and discriminatory DST, and is inconsistent with sound economic policy and Australia's international trade commitments. Rather than supporting sustainable journalism, it risks undermining existing commercial agreements, chilling investment, and entrenching market concentration within the media sector.

Australia should abandon this proposal and pursue alternative approaches that address the structural challenges facing journalism without imposing punitive taxes on a narrow set of companies or distorting commercial markets. A principled, transparent, and trade-consistent policy framework is essential to supporting both a vibrant news ecosystem and a competitive digital economy.