

August 7, 2023

Matthew Boswell
Commissioner of Competition
Competition Bureau
Place du Portage I
50 Victoria Street, Suite C-114
Gatineau, Quebec K1A 0C9

Urgent application for an inquiry into the blocking of news content by Meta

Dear Commissioner Boswell,

We, the Canadian Association of Broadcasters / Association Canadienne des Radiodiffuseurs (“**CAB/ACR**”),¹ News Media Canada / Médias d’Info Canada (“**NMC/MIC**”)² as well as the Canadian Broadcasting Corporation (“**CBC/Radio-Canada**”),³ are writing to you with an urgent request to commence an inquiry pursuant to sections 9 and 79 of the *Competition Act* into the decision and announcement by Meta Platforms Inc. and its subsidiaries Instagram LLC and Facebook Canada Ltd. (collectively, “**Meta**”) to block news content on the digital platforms it controls. The challenges that the omnipresence of web giants like Meta pose to the news industry in Canada and their stranglehold on access to news and online advertising has been well documented. Now, Meta’s decision to cut off Canadian news organizations from a large part of their audience threatens the industry and, by extension, creates a major challenge to our democracy.

Meta’s decision is in response to the passage of the *Online News Act*,⁴ also known as Bill C-18, on June 22, 2023. Bill C-18 now requires Meta and other web giants (defined by Bill C-18 as “operators”) to negotiate compensation agreements with Canadian news organizations for the reproduction of news content on the operators’ digital platforms (defined in Bill C-18 as “digital news intermediaries”). Instead of working with the Canadian government and news organizations to further the objectives of Bill C-18, Meta has chosen to actively inflict harm to news organizations, threatening the viability and sustainability of the industry in Canada.

¹ CAB/ACR is an association of Canada’s private broadcasters, representing the majority of Canadian programming services, including private radio and television stations, networks, specialty, pay and pay-per-view services. For more information about the CAB / ACR, please visit <https://www.cab-acr.ca/>.

² NMC/MIC is an association of Canada’s print and digital news media industry, representing hundreds of titles across in every province and territories. For more information about NMC/MIC, please visit <https://nmc-mic.ca/>.

³ CBC/Radio-Canada is Canada’s national public broadcaster. For more information about the CBC / Radio Canada, please visit <https://cbc-radio-canada.ca/>.

⁴ *Online News Act*, SC 2003, c 23 also known as Bill C-18.

Prior to the passage of Bill C-18, in an obvious attempt to exert pressure on the Government of Canada, in both public statements⁵ and parliamentary testimony,⁶ Meta threatened to end the availability of news content in Canada. On June 1, 2023, Meta announced that it would begin tests with a view to blocking news content on Facebook and Instagram. Since the passage of Bill C-18, Meta further confirmed that “news availability will be ended on Facebook and Instagram for all users in Canada prior to the Online News Act (Bill C-18) taking effect”⁷ and indicated that it will not negotiate with Canadian news organizations for access to news content on its digital platforms.⁸ On August 1, 2023, Meta announced that it has begun the process of ending news availability in Canada.⁹

Through its decision to block news content from its digital platforms, Meta seeks to impair Canadian news organizations’ ability to compete effectively in the news publishing and online advertising markets. Its exclusionary and disciplinary conduct is aimed at preventing or severely limiting Canadian news organizations’ access to a significant portion of their audiences and significantly reducing visits to their news websites and applications. Through the loss of this critical distribution channel, Canadian news organizations’ ability to earn online advertising revenue from their websites and applications, as well as from their readers, becomes significantly diminished. This will impact the viability of these organizations and diminish the quality and quantity of news that they produce. If Meta is allowed to proceed unchecked, it could inflict significant damage to Canadian news organizations’ ability to offer quality news services to Canadians, which is critical to the functioning of a free and democratic society.

Meta’s conduct is in obvious violation of the abuse of dominance provision in section 79 of the *Competition Act*.

It is imperative that the Competition Bureau take all the necessary measures to require that Meta immediately cease its anti-competitive conduct in blocking news content from its platforms in Canada, thereby enabling Canadian news organizations to negotiate with Meta for fair compensation for their content under the framework provided by Bill C-18.

This application for a formal inquiry is urgent and must be dealt with by the Competition Bureau as a matter of priority. In accordance with section 9 of the *Competition Act*, this application is accompanied by six statutory declarations signed by representatives of CAB/ACR, NMC/MIC and CBC/Radio-Canada. All signatories are prepared to cooperate fully with the Bureau, including by providing

⁵ Reuters, “Meta to end news access for Canadians if Online News Act becomes law”, March 13, 2023, accessible at <https://www.reuters.com/technology/meta-end-news-access-canadians-if-online-news-act-becomes-law-2023-03-11/>.

⁶ Canada, Parliament, House of Commons, Standing Committee on Canadian Heritage, Minutes of Proceedings and Evidence, 44th Parl, 1st Sess, No 079 (8 May 2023), accessible at <https://www.ourcommons.ca/DocumentViewer/en/44-1/CHPC/meeting-79/evidence>.

⁷ Meta, “Changes to News Availability on Our Platforms in Canada”, June 1, 2023 and updated June 22, 2023, accessible at <https://about.fb.com/news/2023/06/changes-to-news-availability-on-our-platforms-in-canada/>.

⁸ National Post, “Meta says it is not negotiating with government over Online News Act”, June 27, 2023, accessible at <https://nationalpost.com/news/politics/meta-says-it-is-not-negotiating-with-federal-government-over-online-news-act>.

⁹ Globe and Mail, “Meta begins to end news access for Canadians on Facebook, Instagram”, August 1, 2023, accessible at <https://www.theglobeandmail.com/business/technology/article-meta-begins-process-to-end-news-access-on-facebook-instagram-for-users/>.

information on the actual and anticipated impact that Meta’s conduct will have on Canadian news organizations and the news industry.

A. Application of Section 79 of the Competition Act

Meta’s blocking of news content from its digital platforms in Canada is an abuse of dominance under section 79 of the *Competition Act*.

1) Meta’s Substantial Control of a Market

First, it is incontrovertible that Meta “*substantially or completely controls a class or species of businesses across Canada,*” namely the social media market and a large part of the online advertising market. News consumers increasingly turn to social media platforms as their gateway to news.¹⁰ Social media platforms have effectively become a significant input or channel through which news media reach their audiences. By controlling two of the largest social media platforms, Facebook and Instagram, which together account for over 70% of the online social media market in Canada,¹¹ Meta effectively has substantial control over access to Canadian news and also, more generally, on the news industry in Canada.¹²

Moreover, Meta is also individually or jointly dominant in the online advertising market, through its own significant position in that market,¹³ as well as by being the source of a significant portion of the visits to the websites and applications of Canadian news organizations who compete with Meta in offering advertising on those websites and applications.

2) Practice of Anti-Competitive Acts

Meta’s conduct is clearly “*a practice of anti-competitive acts*”. Meta’s public statements demonstrate its intention to exclude and limit Canadian news organizations from reaching their audiences online, which is also a reasonably foreseeable consequence of the company’s decision to block content. Social media platforms like Facebook and Instagram are significant channels through which Canadian news consumers access Canadian news media and their content and visit their websites and applications.

By refusing to negotiate with Canadian news organizations in good faith for the access of Canadian news content on Meta’s platforms, and by blocking the news content on the platforms, Meta is

¹⁰ Pew Research Centre, “News Consumption Across Social Media in 2021”, September 20, 2021, accessible at <https://www.pewresearch.org/journalism/2021/09/20/news-consumption-across-social-media-in-2021/>; Oxford Reuters Institute, “2022 Digital News Report – Canada – Sources of News 2016 - 2022” <https://reutersinstitute.politics.ox.ac.uk/digital-news-report/2022/canada>.

¹¹ Statcounter Global Stats, Social Media Stats Canada, June 2022 - June 2023, accessible at <https://gs.statcounter.com/social-media-stats/all/canada>.

¹² Competition Bureau, Abuse of Dominance Enforcement Guidelines, March 7, 2019, para 42: “A firm that does not compete in a particular market may nonetheless control it, for example, through control of a significant input to competitors in a market”.

¹³ Canadian Media Concentration Research Project, “Media and Internet Concentration in Canada, 1984-2019” page 52, Figure 16, accessible at <http://www.cmcrcp.org/wp-content/uploads/2021/01/Media-and-Internet-Concentration-in-Canada-1984%E2%80%932019-07012021.pdf>.

denying Canadian news organizations fair compensation for their content, leaving them with limited resources to compete effectively in the news publishing market.

By cutting off an important channel through which Canadians access and consume news content, denying fair compensation for news content and causing reduced advertising revenues for Canadian news organizations, the only reasonably foreseeable consequence of Meta's conduct is that Canadians will have less access to quality Canadian news and Canadian news organizations (the ones that survive) will be forced to reduce the quality and quantity of the news content they produce.

Meta cannot claim any legitimate business justification for blocking news content from its digital platforms. Meta does not have any "credible efficiency or pro-competitive rationale"¹⁴ for blocking of news content. Quite the opposite is occurring. Meta's conduct directly degrades the quality of its social media platforms. As the former chair of the Australian Competition and Consumer Commission Rod Sims observed, "news media content is essential for the full service needed to keep you on these [social media] platforms so they can advertise to you, which is how they make their enormous profits."¹⁵ Taking such content away from its own social media platforms simply "makes no reasonably foreseeable economic sense but for an anti-competitive effect".¹⁶

The nature of the Meta's anti-competitive conduct in blocking the news content from its digital platforms in Canada is made more egregious by the fact that this conduct is specifically in response to the passage of Bill C-18. Parliament expressly intended for Bill C-18 to be a response against the market failure resulting from the dominant power web giants like Meta already possess in the social media and online advertising markets, namely the lack of fair compensation for the sharing of news content on the dominant digital platforms. Bill C-18 would restore certain balance in the bargaining power between Canadian news organizations and the web giants like Meta, thereby giving Canadian news organizations a lifeline through fair compensation for their content. Instead of working with the Canadian government and news organizations to further the objectives of Bill C-18, Meta has chosen to block news content on Facebook and Instagram. In doing so, Meta seeks to entrench its existing dominant market power and actively inflict further harm to Canadian news media and further impair viability and sustainability of Canadian news organizations.

3) Anti-Competitive Effects

Meta's conduct "*is likely to have the effect of substantially preventing or lessening competition in a market.*" The viability and sustainability of the Canadian news industry has already been undermined by the overwhelming dominance of the web giants like Meta. Having positioned itself as an unavoidable intermediary or gatekeeper between news organizations and their audiences, Meta's blocking of news content removes a critical channel through which Canadian news organizations distributes their news content. This will inevitably diminish Canadian news consumers' exposure to news content and the volume of traffic to Canadian news organizations'

¹⁴ Competition Bureau, Abuse of Dominance Enforcement Guidelines, at para 80.

¹⁵ Toronto Star, "News media content is essential for Google and Meta", July 11, 2023, accessible at https://www.thestar.com/opinion/contributors/news-media-content-is-essential-for-meta-and-google-platforms/article_fffdc747-2e18-506c-aae2-e8a27a03a464.html.

¹⁶ Competition Bureau, Abuse of Dominance Enforcement Guidelines, at para 84.

websites and applications, thereby impairing their ability to compete for revenue from online advertising and from their readers. Deprived of necessary resources, Canadian news organizations will be unable to maintain a news offering of comparable diversity, quality and quantity.

Parliament passed Bill C-18 as a remedial measure to support the sustainability and viability of Canadian news media for the important role they play in our democracy and society. Yet, Meta has chosen to entrench its dominant position by further depriving Canadian news organizations of access to a significant portion of their audience and resources. This is not merely an anti-competitive conduct that harms the Canadian news publishing and online advertising markets. Ultimately, it is the Canadian democracy and society that will pay the price for this anti-competitive conduct.

B. International Context

Canada is not the first country where web giants like Meta have attempted to leverage their dominant positions through the blocking strategy Meta is employing in Canada. This type of blocking strategy or other means to unilaterally dictate the rules of the game are widespread and can be seen on a global scale.

France first passed a law in 2019, which created a “neighbouring right” for news agencies and publishers and established balanced negotiations between digital platforms owned and controlled by web giants and publishers and news agencies. Under the pretext of complying with the law, Google unilaterally stopped distributing news content on these platforms, forcing publishers to accept licences without remuneration to allow their content to be distributed. It took the intervention of the French Competition Authority to get Google to negotiate fair agreements with news publishers in good faith.¹⁷ Acknowledging a situation of abuse of a dominant position, the French Competition Authority ordered Google to negotiate with publishers and news agencies the remuneration due to them under the law on neighbouring rights for the reproduction and distribution of their content. Facebook subsequently followed suit and negotiated similar agreements with French news publishers.¹⁸ Without the intervention of the French Competition Authority, Google (and likely Facebook) would have continued its anti-competitive behaviour.

A similar situation then arose in Australia in 2021, following the adoption of a law with a similar objective to the French law (and Bill C-18). In the Australian case, after threats of blocking, Meta and other web giants eventually chose to negotiate with the news companies and a solution was found.¹⁹ California also recently proposed *AB-886 California Journalism Preservation Act*, which

¹⁷ Autorité de la concurrence, “Related rights: the Autorité has granted requests for urgent interim measures presented by press publishers and the news agency AFP (Agence France Presse)”, April 9, 2020, accessible at <https://www.autoritedelaconcurrence.fr/en/communiqués-de-presse/related-rights-autorite-has-granted-requests-urgent-interim-measures>.

¹⁸ Euronews, “Facebook agrees to pay French media outlets for their content after months of copyright talks”, October 21, 2021, accessible at <https://www.euronews.com/next/2021/10/21/facebook-agrees-to-pay-french-media-outlets-for-their-content-after-months-of-copyright-ta>.

¹⁹ Columbia Journalism Review, “Australia pressured Google and Facebook to pay for journalism. Is America next?”, March 9, 2022, accessible online: https://www.cjr.org/business_of_news/australia-pressured-google-and-facebook-to-pay-for-journalism-is-america-next.php.

would effectively tax the advertising profits digital platforms earn from distributing news articles. In response, Meta has threatened to block all news content from its platforms in California.²⁰

C. Remedial Measures

Considering the foregoing, CAB-ACR and NMC/MIC on behalf of their members and CBC/Radio-Canada urgently request that the Bureau commence an inquiry under section 79 of the *Competition Act* into Meta's refusal to comply with Bill C-18 and its blocking of news content. It may also be open to the Bureau to commence an inquiry under section 75 of the *Competition Act* for Meta's refusal to deal with Canadian news organizations regarding news content on its platforms.

In our respectful view, the following corrective measures are the minimum of what is required to cease the devastating harm that Meta's conduct is inflicting on the Canadian news industry:

- Prohibit Meta from blocking access to news content on its digital platforms accessible in Canada; and
- Prohibit Meta from discriminating in any way, by algorithm or by any other means, against the content of Canadian news organizations on its digital platforms accessible in Canada.

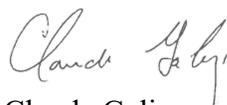
If Meta refuses to cease its anti-competitive conduct voluntarily, CAB-ACR, NMC/MIC and CBC/Radio-Canada urge the Bureau to file an application before the Competition Tribunal for an order regarding the above corrective measures.

As noted above, in accordance with section 9 of the *Competition Act*, this application is supported by statutory declarations from six persons residing in Canada who are at least 18 years of age. CAB/ACR, NMC/MIC and CBC/Radio-Canada offer their full cooperation to the Competition Bureau in relation to this inquiry. We are prepared to meet with you to discuss the matter as soon as possible.

Yours very truly,


Kevin Desjardins


Paul Deegan


Claude Galipeau

c. Jeanne Pratt and Mike Hollingworth, Competition Bureau

²⁰ NPR, "Facebook and Instagram owner Meta threatens to cut off news in California", May 31, 2023, accessible at: <https://www.npr.org/2023/05/31/1179184256/news-facebook-california-journalism-preservation-act>.