

## Testimony at the Competition Commission's Media and Digital Platforms Market Inquiry

Anton Harber  
14 March 2024

These hearings are extremely important, as the fate of our journalism and our news industry may lie in your hands. If we do not find a way of addressing the market failures, then we could see the continued decline of our news media and its partial or even full collapse.

You might ask why a freedom of expression activist is concerned at the need to regulate social and online media? They have, after all, contributed significantly to the sharing of information, building of communities and democratisation of discourse. They can – and some do – a fair amount of good. But – unregulated and exercising enormous power without accountability – they can – and some do – significant harm as well. To put it bluntly: if market conditions are destroying our news media and our journalism, then free expression is hollowed out; we might be free to express ourselves, but we don't have the means to do so. If our free expression is drowned out by misinformation, hate speech and violently dangerous messaging, then our free expression will exist only on paper.

We are awed by the power of these platforms. They have become the gatekeeper to most of our information, deciding what is important and what is not; what news to elevate and what to brush aside; which voices should be promoted and which should be demoted; what is acceptable speech and what it not. We have built up over many years systems of regulation and self-regulation for other media – like traditional print and broadcast - which seek the right balance between free expression and the prevention of hate speech, disinformation and other social threats and harms. But the tech platforms have been unaccountable for the enormous powers they wield. We know that some of them have – under pressure – taken steps to manage these problems, but these have been consistently inconsistent and inadequate. Only now are there attempts, in places like Europe and Canada, to make them account for themselves. So when we consider these matters, we are joining a global movement to manage this situation, but hopefully do so that also respects the good they do, and their right also to free expression.

The state of our news media is dire the crisis is existential, much more than is realised because publishers do not want to say that they are facing failure. But the facts are that all of our major news groups have shrunk to a fraction of their size whether you look at the number of journalists, the audiences, the advertising levels, the number of pages ... by all measures the industry is no more than 20% of the size that it was at its peak in the early 1990s. We have had the closure already of some major titles, and this is the year I think it will accelerate. I am hearing of major media

companies that cannot pay their bills. All are retrenching. The aim is no longer profit, but just survival.

Whole areas of our daily life that were previously covered by multiple newsrooms – such as the courts, town councils – are now only sporadically covered. We have always had news deserts, but we are seeing these creep from the fringe to the centre. It is a wave of information desertification.

One particular news desert is in hyper-local news, much of which came from the community media sector. This is the sector hardest hit, with literally dozens of titles and stations ceasing or downgrading their operations in the last few years. We have always struggled to know what is going on in our small towns and rural areas; I would say that now we know less than ever.

In the discussions of solutions, there is a real danger that the small, local, vernacular outlets are forgotten in a deal with the bigger national media. But this is one news eco-system. If the hyper-locals go, then the nationals also lose that news. It is important to consider the full ecosystem.

We have heard a lot this week about what this means for democracy, so I am not going to bang on about that. What I would add, though, is that one needs to also see other ways in which the decline of our news industry impacts on our society:

1. It hurts the working of our economy. Without trustworthy journalism, there is poorer governance, there is more corruption, there is blockages to the economy which we would know less about or nothing at all. Individual businesses also rely for their decision-making on the flows of news. Some business leaders have recognised this in their support for the news media in recent years, as their support has been crucial to keeping our news sector alive.
2. Good journalism also has a tangible impact on the quality of life of ordinary citizens, whether it is to report that their grants are late or to explain to people their rights and how to exercise them, it is a critical role. When news media retrenches journalists, it is the crooks, the thieves, the corrupt, the state capturers and the demagogues who celebrate. It is citizens who feel the pain.
3. Independent journalism depends on the foundation of financial security. Without that security, an outlet has to be more careful, take fewer risks, be cautious of who they criticise, worry about legal action or the withdrawal of advertising. In the days when newspapers were making lots of money, they could better withstand threats to their independence.

I don't want to suggest that the big tech platforms are wholly responsible for the problems in our market. There have also been management and editorial failures, for example.

I listened carefully to the evidence given this week by some of the platforms and their portrayal of a mutually symbiotic relationship with the news industry, in sharp contrast to how they are portrayed by the publishers and editors. I would say that this relationship is one of *potential* symbiosis – that it could serve both parties well, but is falling short. The tech platforms can – and some do – play an important role in the sharing of information, building of communities and democratisation of discourse. But they can – and some do – also tremendous harm if left to their own devices, ie if we leave them without the sort of regulation that oversees other media.

I want to deal with two issues that have been disputed in the course of these hearings:

1. The issue of fair compensation. There is no question that to have a fair negotiation around fair compensation for the use of news material, the publishers and broadcasters need more relevant information. Without it, it is like playing a game of rugby where only one side knows the rules. I hear the concern from the platforms that there is a limit to the information they can provide, but there are a number of ways to deal with this. The Commission – yourselves – can be given the information confidentially and you can determine a value. Or a third party expert could, also under conditions of confidentiality. I urge you to use your powers and authority to ensure that both sides know the rules. Google told us they release a lot of information, but this is only at a certain level, most of it dealing with the publishers' own sites and audiences; not at a wider or country level. In our letter of request and PAIA application to Google, you will see our view of what questions need to be asked. There is also a good guideline to the data needed for a fair exchange in the research document, *Data Sharing to Foster Information as a Public Good*, published by Unesco.
2. The publishers complain that the platforms arbitrarily and silently tweak their algorithms in ways that affect their audience – causing huge fluctuations that leave them bewildered and helpless. As the gatekeeper to our news, the people who can decide what to promote and what to demote on our news agenda, the platforms have a special social responsibility. At the peak of the newspaper industry, the newspaper distributors were semi-co-operatives. As publishers, we would meet with them weekly, discuss what and where our papers were selling and how to reach our readers better. Now it is in the hands of ... well we don't know who or why the algorithm might be tweaked to the benefit of some publishers and the detriment of others. This is an extraordinary power and for it to be exercised in secret is worrying, even dangerous. It is like changing the rules of rugby in the middle of a game. It could get even more confusing than it currently is. The platforms were exercising an extraordinary power that is easily misused or abused if they are not accountable.

I represent an organisation that fights for free expression. I am here to spotlight the biggest technical and structural challenge to free expression, one that is not readily apparent, but is shaping our information, knowledge and public discourse.