

Economic power and news content

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One of the digital economy's collateral effects has been to put an end to one of news publishers' main sources of revenue: classified ads, which have increasingly migrated to specialized websites. Access to information is also broader, thanks to search engine indexing and sharing on social networks, but as a result newspaper subscription have declined – users now demand free content and seem to be satisfied with reading the headline rather than the whole article. These changes have sparked debate over whether digital platforms have the right to display news content without paying for it, and have led to requests for intervention by competition authorities. France and Australia have been the stage of important developments in the contest between digital platforms and news publications.

In 2019, France internalized a European Union directive on neighbouring copyrights¹ which provides that news content may not be displayed without financial compensation. In response, Google ceased to display any news content without express authorization to display it free of charge. News publishers and agencies filed a complaint with the *Autorité de la concurrence*, claiming that Google's decision constituted abuse of economic power, since they depended on Google for their “existence on the internet”.

The French competition authority issued a preliminary decision against Google, finding that it was probable that Google held a dominant position and that its practices constituted an abuse of that position, by imposing unfair conditions for negotiation, evading the provisions of the law, and discriminating against different players by treating them all in the same manner (i.e. refusing to negotiating with all of them, without taking into consideration their differing economic situations)². In January 2021, after its appeal against the decision was dismissed, Google entered into an agreement³ to begin paying publishers for their content.

The competition investigation is still underway.

In Australia, developments took a different direction: on February 25, 2021, Parliament passed the News Media and Digital Platforms Mandatory Bargaining Code⁴, which requires digital platforms to negotiate directly with news businesses over the display of news content.

The code was developed in conjunction with the Australian Competition and Consumer Commission (ACCC) to establish rules on mandatory conduct by digital platforms in order to remedy a perceived imbalance in bargaining power between the platforms and news publishers. When the code was adopted, Facebook initially restricted the availability of news content in Australia, but later backed down; Google announced a licensing program for

news content⁵.

What these different approaches have in common is legislation creating broader copyright protection, with copyright legislation developing side by side with concerns on economic power. In Brazil, the debate is before CADE, the local competition authority, which is investigating Google's practices in the news sector. The national newspaper association, *Associação Nacional de Jornais*, is pressing for measures similar to France's and Australia's⁶, but to date there is no legislation on how compensation for displaying news content should be paid.

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NOTES:

1. Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019; French law 775/2019.

2. AUTORITE DE LA CONCURRENCE. Press release: "Droits voisins : l'Autorité fait droit aux demandes de mesures conservatoires présentées par les éditeurs de presse et l'AFP", April 9, 2020. Available at: . Accessed March 25, 2021.

3. FRANCE, Press release by the Ministère de la Culture, "Accord entre l'Alliance de la presse d'information générale et Google", January 22, 2021. Available at: . Accessed March 25, 2021.

4. Available at ; see also ; .

5. TILT, "Lei que força Facebook e Google a pagar imprensa é aprovada na Austrália", UOL, February 25, 2021. Available at: . ESTADÃO CONTEÚDO, "Disputa de Facebook por pagamento de notícias deve seguir com acordo na Austrália", IstoÉ Dinheiro, February 23, 2021. Available at: ; "Parlamento da Austrália aprova lei que cobra Facebook e Google por uso de notícias", G1, February 24, 2021. Available at: ; BBC, "A briga da Austrália com o Facebook que provocou 'apagão' de notícias na rede social", BBC Brasil. Available at: . Accessed March 28, 2021.

6. ESTADÃO CONTEÚDO, "ANJ quer que Google remunere conteúdo jornalístico", UOL, March 4, 2021. Available at: ; SNAPE, Jack, "The media bargaining code has passed Parliament, but don't rule out another Facebook news ban yet", ABC News, February 24, 2021. Available at: . Accessed March 28, 2021. Some information was made available on the specialized website MLex Market Insight.

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