**NUJ briefing - Digital Markets, Competition and Consumer Bill**

**October 2023**

The NUJ welcomes action by government through draft legislation to address current inequalities between digital platforms and firms via the Competition and Markets Authority (CMA). The union has long called for the enforcement of levies on tech giants who unfairly consume editorial content without contribution to its production. Draft legislation through this Bill considers an alternative mechanism that will ensure publishers receive fair reward and as legislation is long overdue, it must be implemented without further delay or weakening of conditions.

Under the Digital markets, competition, and consumer bill, the Digital Markets Unit (DMU) with oversight of the CMA will regulate firms and use its statutory powers to designate digital companies including tech giants, with Strategic Market Status (SMS). SMS platforms will need to adhere to conduct rules on expected standards and face considerable financial penalties if they breach guidance. Designation will focus on the most powerful firms found to have ‘substantial and entrenched market power’ in at least one digital activity. Government has outlined that for a firm to be designated SMS its turnover must be more than £1bn annually in the UK, or if part of a group, a global turnover of that group exceeding £25bn in the same period.

Tech giants including Google, Meta, Twitter, Microsoft, and Amazon have dominated markets at the expense of smaller publishers in unchallenged conditions, damaging competition within digital markets. As the way in which people consume news content changes, digital platforms have capitalised on shifts in behaviour, frequently using editorial content produced by journalists on their sites without fair compensation.

The NUJ has long called for fair and transparent structures enabling journalists and publishers to be rewarded for their material used to educate and inform the public. At present, the imbalance between platforms and publishers has resulted in large companies generating advertising revenue and attracting users without providing a share of profits back to publishers. This is despite the important role news content plays in upholding democracy.

The CMA will have power to impose conduct requirements on companies based on at least one of three objectives focused on users being treated fairly; users able to choose freely and easily between services and content; users making informed decisions using information provided by firms that is transparent in nature.

Conduct requirements can also be issued to prevent designated firms applying discriminatory terms and conditions to users or potential users, to prevent data being used unfairly and to stop firms carrying on activities other than the relevant digital activity in a way that increases its market power or bolsters strategic significance of its position. Penalties can be applied up to ten per cent of the total turnover of the firm or if part of a group, ten per cent of the turnover of the group.

The bill will require platforms to engage meaningfully with publishers to reach agreement on payment for content and should commercial negotiations fail, a final offer arbitration mechanism will take effect.

The NUJ emphasises that large companies with legal and financial resources must be monitored to ensure deals made are transparent and not to the detriment of journalists as tech platforms wield their power. Here, the DMU’s role facilitating information exchange between publishers especially those smaller in size, will be crucial.

The union believes scope for content and where it appears online should be wide, including google ad search and Facebook’s news feed too. This will lessen the risk of editorial content being overlooked and excluded from payment settlements.

As part of the DMU’s remit, it will be able to interrogate algorithms’ impact on competition and request compliance reports from companies. This is welcomed by the NUJ, as too often publishers are excluded from insights on why content may be underperforming and revenue impacted, when changes have been made by tech platforms. Understanding decisions by SMS platforms should lead to a more accurate understanding of how best to use data to reach audiences and boost income.

**Opposition to the Bill**

The NUJ is concerned tech platforms will consider ceasing publication of news content in response to the bill. This stance was adopted briefly by Facebook in Australia, after the country’s government introduced a News Media and Digital Platforms Mandatory Bargaining Code, requiring digital platforms to pay to feature news content from publishers.

Since August 2023, news links and content posted by news publishers and broadcasters have not been available to people In Canada accessing Facebook and Instagram. The decision by Meta, follows the company’s opposition to the Online News Act requiring it to pay publishers for news content on its sites.

In the United States, the Journalism Competition and Preservation Act has been met with opposition from groups including Meta, who stated in December 2022 they may be forced to consider removing news from the platform, instead of adhering to rules under legislation. NUJ sister union The NewsGuild-CWA expressed concern over this position and urged Congress to adopt transparent processes as well as include non-profit startups in scope.

A must-carry provision for UK news preventing its substitution with international news is not included in the Bill, and lobbying from technology platforms is likely to be extensive in efforts to avoid firms being held accountable.

Opponents of the DMU and its powers suggest there will be stifled innovation and a chilling effect, as platforms fear being penalised if in breach of codes they must adhere to. The NUJ considers this a mere delaying tactic. Journalism informs and educates the public, and firms should not be afforded room to continue avoiding fair payment.

In July 2023, the House of Lords Communications and Digital Committee wrote to Kemi Badenoch, Secretary of State for Business and Trade, stressing timely implementation of the bill is crucial, and that government should “resist pressure to weaken some of the Bill’s measures.” This position is welcome by the NUJ, alongside the committee’s call for the judicial review standard to remain for appeals against CMA regulatory decisions.

Under proposals in the Bill, firms accused of breaching rules have a defence under the countervailing benefits exemption if they can show actions provided a significant consumer benefit. The committee recommends that the threshold for application of the exemption must remain high to avoid its regular use, including as a loophole by tech firms avoiding rules. Again, members recommended government must resists proposals to lower the threshold.

**Engagement**

The DMU will work closely with stakeholders including Ofcom when designating companies. [Joint advice](https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/1073411/Platforms_publishers_advice._A.pdf) by the CMA and Ofcom on how a code of conduct should be applied to SMS companies was published in November 2021. It includes concerns raised by publishers on limited control they have on the branding and presentation of content on platforms. The DMU will put publishers back in control over branding, helping readers recognise the original source of news.

Existing organisations including the Authors’ Licensing and Collecting Society (ALCS) who ensure writers receive money they are entitled to when work is used, should be engaged with by the unit. Many NUJ members have found the service a useful way to receive payment for their newsgathering.

The NUJ welcomes engagement with the unit on the best way to ensure transparency remains at the core of the process and a level playing field is achieved, ensuring journalists including freelances receive fair reward.

**We urge MPs to:**

* Emphasise the role of journalism in upholding democracy, and that payment to publishers from tech giants is long overdue and has been called for by the NUJ including in its News Recovery Plan.
* Welcome efforts by the Bill to provide publishers with data that allows for better understanding of how content performs on platforms.
* Condemn efforts by tech giants lobbying against the bill to prevent payment, highlighting the considerable disparity between advertising revenue obtained.
* Stress the need for the Bill to progress through parliament at pace to ensure publishers are fairly compensated.