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BULLETIN

Taxation of Digital Content: the Case of Facebook in Australia

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Under the influence of a strong lobby of traditional media—television and press—the Australian government attempted to adopt what it called a "link tax", which is a fee on external content available through digital platforms. Although Facebook responded with a kind of extortion—blocking links to certain sites for users in Australia—the law on the tax was passed on 24 February, albeit in a softer version. The law resulted from a split in the negotiating front of the main platforms, Google and Facebook, numerous lawsuits and scandals involving them, as well as the public's increasingly unfavourable sentiment towards the tech giants. The Australian example may serve as a catalyst for regulations around the world on the activities of large technology companies (i.e., Big Tech), not only in the area of media.

Digital Platforms and Media. The relationship between digital platforms and traditional media is a symbiosis in which both sectors are closely dependent on each other. The platforms are the main venue of internet user activity thanks to the content created by press and television, which in turn depend on the traffic coming from the platforms. However, the conflict between the sectors is caused by the asymmetry of advertising revenues, which are the main source of income for both (e.g., in Australia as much as 81% of advertising spending goes to two companies: 53% to Google and 28% to Facebook). A similar asymmetry also applies to obligations and standards. While traditional media are subject to regulators, the responsibility of digital platforms for the content shared on their sites remains low and is not always enforced. In the view of traditional media, this is particularly appalling, because it is social media that now play a key role in shaping public opinion, with more than half of internet users in developed countries pointing to these platforms as a source of information. An example of this influence was the Cambridge Analytica scandal of 2016 when the data of tens of millions of internet users—inadequately secured by Facebook—was used to, among other things, distribute on social media personalised content supporting Donald Trump's presidential election campaign and supporters of Britain's exit from the EU. The incident proved how manipulation of public opinion can affect voting behaviour.

The Course of the Regulatory Process in Australia. As in other countries, traditional media in Australia have been losing advertising revenues to digital platforms. They turned to a long-term lobbying campaign for the introduction of the "link tax". The campaign was led by the Australian global media magnate Rupert Murdoch, the owner of Fox News and News Corp, which controls 70% of the Australian press market and publishes *The Wall Street Journal*, *The Daily Telegraph*, and other newspapers. The pressure led to a bill forcing digital platforms to reach a settlement with creators over fees for sharing the content they create. If no agreement was reached, the price was to be set by the regulator, the Australian Competition and Consumer Commission (ACCC). In addition, media outlets were to be given the right to negotiate changes to content display algorithms. For every violation, platforms were to face fines of up to AUD 10 million or up to 10% of the revenue generated in the country. In response to these proposals, Facebook and Google threatened to shut down their services. During the negotiations with the government, however, Google began to make deals with creators, and another technology giant, Microsoft, declared itself in favour of the tax. As a result, only Facebook remained a party to the dispute, already struggling with serious image problems due to proceedings against it, including an antitrust case brought in December 2020 in the U.S. In an effort to force change, Facebook disabled—

without prior notice—the ability for users in Australia to view and share copyrighted content. The exclusion also applied to government health agency pages, making it difficult for citizens to reach important announcements related to the fight against the COVID-19 pandemic. This step was unanimously criticised, and its consequences highlighted the extent of Facebook's influence on the lives of Australians, thus strengthening the argument of supporters of regulation. Despite the criticism and the public's generally negative attitude towards Facebook, there was simultaneously growing pressure from internet users for the government to bring about an agreement to restore the services. The result was the passage of a softer version of the legislation by the Australian parliament on 24 February. The most significant change was the provision to recognise the platform's past contribution to the media sector. This means that the regulator will be able to exempt platforms selected on this basis from the new rules. Such an exemption is hoped for by Google and Facebook, which have pledged to invest $1 billion each over the next three years for content creators. In addition, a two-month moratorium was put in place to reach agreements with creators. Facebook began the negotiation process by signing agreements with Australia's largest media outlets (the "Big Three"): News Corp, Seven West Media, and Nine Entertainment.

Previous Attempts at Regulation. Attempts to regulate the relationship between creators and Big Tech have previously taken place in the European Union. Germany introduced its version of a "link tax" in 2013, and Spain in 2015. In the case of Germany, Google only responded by removing introductions to German articles, while in the case of Spain, it shut down access to Google News altogether. As a result of these decisions, German publishers saw a 40% drop in traffic to their sites, causing them to enter into settlements under which they provide content without charge. The Spanish version of the tax, on the other hand, did not allow for such an agreement, and Google News services remain unavailable in that country to date. In both cases, local media did not gain additional revenue, instead losing a significant amount of internet traffic, valued at tens of millions of euros. The answer to the asymmetry of power between a given Member State and these digital platforms, for which a single market is responsible for a fraction of revenues, is to be provided by an EU-wide regulation, the Directive on Copyright in the Digital Single Market, which took effect on 7 June 2019. It introduced, among other things, an EU version of a "link tax", requires digital platforms to moderate content shared by users, and allows no-fee settlements between creators and platforms. France was the first country to implement the directive, to which Google and Facebook responded by threatening to cut off local media from their services. In a court case that lasted several months, Google and an organisation of some French media outlets came to an agreement, the details of which were not disclosed. Most other EU members have not yet implemented the directive due to the pandemic and have until June this year to do so.

Perspectives. The Australian case is the first, moderate success of systemic regulation of the relationship between Big Tech and traditional media. In previous attempts, governments eventually succumbed to the digital platforms. The Australian regulation has been closely watched by countries planning similar legislation, most notably the UK, Canada, and members of the European Union, and the Australian precedent may accelerate their efforts, including implementation of the EU's "link tax" directive. Facebook's actions have meant that much more comprehensive plans for regulation will become more common in the public debate. Their effectiveness will depend on, among other things, whether digital platforms will negotiate with governments alone or together, whether Google and Facebook will be exempt from regulation, how platforms will negotiate with smaller content providers, how much abuse there will be, and how high the prices and penalties will be. Countries with relatively small and fragmented media sectors, like Poland, that try to act on their own will probably share the fate of Spain and Germany. From Poland's perspective, it is therefore beneficial to regulate these issues at the EU level, and desirable to pursue them at the OECD forum. Much depends, however, on the approach of the Biden administration in the United States, where the headquarters of the largest technology companies are located and which is their largest market. The case of Australia may also contribute to the resumption of work on the implementation of the EU "link tax" directive.