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## Regulating dependency: the political stakes of online platforms' deals with French publishers

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### Abstract

At a time when the news industry struggles to cope with the dominance of the advertising market by large platforms, along with recent crises like the Covid-19 pandemic, commercial deals and regulatory initiatives are becoming increasingly common. While there is ample space for regulatory interventions seeking to level the playing field between news industry's stakeholders and platforms, we are concerned these might further cement dependency of the former on the latter through co-regulatory frameworks that epitomize the capture of vital infrastructures by platforms. This article examines the three-year negotiation of French news publishers with Google and Meta, which concluded with four framework agreements being signed. For our analysis, we first look at the historical trajectory of how these deals were made possible using secondary sources, like leaks, press releases and the French Competition Authority's rulings, and we then discuss their details and implications. We trace Google's attempt to capture news media in France and discuss the asymmetrical power it has muscled over the news industry, and how the subsequent deals with Meta were affected. Finally, our case study shows that these frameworks are not sufficient to tackle systemic imbalances – even if they mean well - because they fail to challenge the concentration of power by a handful of oligopolistic private companies and, thus, effectively leave it up to them and the free market's idiosyncrasies to decide how they are implemented.

## Regulando dependencia: los riesgos políticos de los acuerdos de plataformas online con publicistas franceses

### Abstracto

En un momento en que la industria de las noticias lucha por hacer frente al dominio del espacio publicitario por parte de las grandes plataformas, junto con crisis recientes como la pandemia de Covid-19, los acuerdos comerciales y las iniciativas regulatorias se están volviendo cada vez más comunes. Si bien existe un amplio espacio para las intervenciones regulatorias que buscan nivelar el campo de juego entre las partes interesadas y las plataformas de la industria de las noticias, nos preocupa que puedan consolidar aún más la dependencia de las primeras de las segundas a través de marcos de co-regulación que epitomizan la captura de infraestructuras vitales por parte de las plataformas. Este artículo examina la negociación de tres años de los editores de noticias franceses con Google y Meta, que concluyó con la firma de varios acuerdos marco. Para nuestro análisis, analizamos la trayectoria histórica de cómo estos acuerdos fueron posibles utilizando fuentes secundarias, como filtraciones, comunicados de prensa y decisiones de la Autoridad francesa de Competencia, y discutimos sus interpretaciones por las partes negociadoras. Rastreamos el

intento de Google de capturar los medios de comunicación en Francia y discutimos el poder asimétrico que ha ejercido sobre la industria de las noticias, y cómo se vieron afectados los acuerdos posteriores con Meta. Finalmente, nuestro estudio de caso muestra que estos marcos no son suficientes para abordar los desequilibrios sistémicos, incluso si tienen buenas intenciones, porque no desafían la concentración de poder de un puñado de empresas privadas oligopólicas y, como tales, efectivamente dejan que sean ellas y las idiosincrasias del libre mercado las que decidan cómo se implementan.

## Keywords

Platformization, copyright, related rights, Google News, Facebook News, Facebook Journalism Project

## Introduction

During the past few years, the discussion around remuneration of news publishers from digital platforms, like search engines and social media, has reignited public interest. What was once seen as ineffective or even impossible is now gaining traction in several countries, with perhaps the most prominent examples being France and Australia. Currently, policymakers in many countries are drafting or passing legislation seeking to regulate the relationship between press publishers and, mainly US-based technological companies. This is primarily due to the news industry's need for new revenue streams, given the structural decline in traditional resources such as subscriptions and advertising. The digital platforms' gargantuan profits make them an ideal target for regulation that seeks to develop sustainable business models for journalism, especially since Google and Meta<sup>1</sup> have been already funneling money into the news media industry worldwide (Fanta and Dachwitz, 2020; Schiffrin, 2021).

This article examines the three-year negotiations of French news publishers with Google and Meta, which concluded with: one five-year deal struck in November 2021 between Google and Agence-France Presse (hereinafter AFP)<sup>2</sup>; a three-year deal signed in March 2022 between the *Alliance de la presse d'information générale* (hereinafter APIG) - the largest union of French daily newspapers - and Google, as well as APIG's deal with Meta in October 2021; and, last, another three-year deal between the *Syndicat des éditeurs de la presse magazine*<sup>3</sup> (hereinafter SEPM) and Google in March 2022 (Rosemain, 2021). For our analysis, we look at the historical trajectory of how these deals were made possible and study them to identify similarities and differences. In the following sections, we examine the deals' details by analyzing secondary sources, like leaks, press releases and rulings of the French competition authority (*Autorité de la Concurrence* hereinafter ADLC). It should be noted that we did not analyze the documents from a legal studies standpoint; that is, we did not delve into technical details, as we were mostly interested in their political-economic impact on the publishers-platforms' relationship.

We also show how France has served as the setting for many developments in regulating the publishers-platforms' relationship: from Agence-France Presse's lawsuit against Google in 2006 (Cozens, 2005) to the creation of Google's "Digital Innovation Fund" in 2013 and the French publishers' complaint to ADLC in 2021. Furthermore, we trace Google's attempt to capture news media in France and examine the asymmetrical power it has muscled over the news industry. We demonstrate how Google's stance and the ADLC's

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<sup>1</sup> Formerly known as Facebook.

<sup>2</sup> <https://www.afp.com/sites/default/files/afpcommuniqu/202111/pdf/cpafpgooglefr.pdf>.

<sup>3</sup> Association of magazine press publishers.

decisions affected the outcome of the negotiations, including the deals signed with Meta. In our article, we explain how the EU attempted to satisfy publishers through copyright regulation, that is by creating a right to remuneration for the reuse of their content by infomediaation platforms. However, this is but a part of a larger mosaic assembling the political economy of platform governance, alongside issues of competition, privacy, platform funding, lobbying, and others. With this case study, we wish to shed light on the undergoing transformation of the relationship between news organizations and online intermediaries, that organize, curate, distribute and, increasingly, fund news content. All these dimensions are essential to understanding the complex functioning of the contemporary digital public sphere and we aspire for our paper to contribute to this scholarly endeavor.

## Literature Review

Platforms have practically reconfigured the means of production and distribution of, as well as access to, cultural products, including news (Nieborg and Poell, 2018; Smyrnaiois and Rebillard, 2019). The concept of platform signifies a figurative bridging of two or more parties, thereby positioning itself as an intermediary. However, as several scholars have argued, this metaphor obscures liability for data and content circulation, as well as their agency that is exercised through algorithmic content curation (Gillespie, 2010; Bucher, 2018). The phenomenon of “infomediaation” (Siapera, 2013; Smyrnaiois and Rebillard, 2019) has enabled platforms to assume an authoritative role in defining, either directly or indirectly, the limits of freedom of expression and, consequently, how public discourse is constructed. As a result, it is crucial to critically discuss what this implies for the future of our public sphere, which predominantly exists online and is governed by private platforms (van Dijck and Poell, 2015; Napoli, 2019).

Furthermore, we also employ the concept of “infrastructural capture,” which was used by Nechushtai to describe “situations in which an organization tasked with scrutinizing another organization, institution, business, or industry is incapable of operating sustainably without the resources or services they provide” (Nechushtai, 2018, p. 1046). The concept of capture derives from the economic theory of “regulatory capture” (Stigler, 1971) which was effectively a way of claiming that regulation might be designed by or for industry stakeholders instead of prioritizing public interest. The related concept of “media capture” was subsequently used to frame an identical situation, where media actors are working to ensure the preservation of the status quo, often with potential benefits to governments or corporations (Schiffrin, 2014). The concept of infrastructural capture, then, is used to analyze the risk of media organizations’ dependency on platform infrastructure with clear perils for their independence and the way news is produced (Sebbah, Sire and Smyrnaiois, 2020).

Finally, we draw from the work of Smyrnaiois and Rebillard (2019) to understand how the French news industry has historically spearheaded negotiations with infomediaries, a process characterized by “[the] dominance of the infomediaries over publishers and, simultaneously, a collusion between these two types of actors that leads the latter to dilute their editorial autonomy while the former gain power over news production and distribution” (Smyrnaiois and Rebillard, 2019, p. 45).

## Methods, Corpus & Case Study Selection

Qualitative methods are widely preferred by researchers who are studying institutional processes of a given field and, largely, the political-economic implications of a regulatory development. More specifically, case studies are often best suited to delve into a particular story and examine it through a close reading, paying respect to its nuances and its unique sociopolitical context (Denzin and Lincoln, 2018, p. 557). We consider our paper to be a

“detailed examination of an aspect of a historical episode to develop or test historical explanations that may be generalizable to other events” (George and Bennett, 2005, p. 5).

Furthermore, our methodological and analytical approach for this paper is inspired by scholarly work done regarding the Australian New Media Bargaining Code (hereinafter NMBC) passed in 2021 and how it was developed (Flew and Wilding, 2021). Specifically, Flew and Wilding analyzed a report of the Australian Competition and Consumer Commission (hereinafter ACCC) that examined the dominance that Google and Meta hold over traditional news media publishers (Flew and Wilding, 2021, p. 51).

For this paper, we studied relevant document materials, namely ADLC’s decisions, a parliamentary report on the application and impact of related rights<sup>4</sup>, press releases of all involved negotiating parties and, last, numerous news articles containing information on the story’s development. We also conducted in-depth interviews with stakeholders, essentially with publishers<sup>5</sup>. More specifically, the two decisions of the Authority examined here are *20-MC-01* from 09/04/2020<sup>6</sup> and *21-D-17* from 12/07/2021<sup>7</sup>. The former refers to the decision made by ADLC to grant requests of press publishers, namely APIG, SEPM and AFP, who had lodged an official complaint with the Authority against Google’s implementation of the French law transposing the European Directive on Copyright and Related Rights in the Digital Single Market<sup>8</sup>, which introduced a related right for press publishers allowing them to demand remuneration for the (re)use of their content by intermediaries.

France has historically been at the epicenter of policymaking in relation to regulating the publishers-platforms’ relationship. For instance, in 2013, Google responded to the French government’s pressure by creating a €60-million fund “to support press publishers’ innovation projects, which was the blueprint for the DNI & the GNI<sup>9</sup>” (Fanta and Dachwitz, 2020, p. 89). Going even further in the past, the tumultuous launch of Google News in France in 2003 caused many French publishers, that participated in an association called *Groupement des éditeurs de services en ligne* (GESTE)<sup>10</sup>, to temporarily withdraw their content from Google News (Smyrnaio, 2021). More recently, France was the first country to transpose the new Copyright Directive in 2019, showing the political will to regulate the relationship of press publishers and platforms, well before the Australian NMBC became law. For all these reasons, the way that this story played out could set a precedent and, thus, impact the way that other countries attempt to regulate said relationship. It also serves as a prime example of the political-economic stakes of this relationship, with implications that go beyond the news industry.

## Findings & Discussion

In this section, we will unpack the key developments indicated in the timeline we created to help readers contextualize the discussion (Fig. 1).

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<sup>4</sup> “Neighbouring rights”, “ancillary rights” and “related rights” are synonymous terms. They describe the rights of a creative work not connected with the work’s actual author – in this case rights on content that are granted to publishers. We choose to use “related rights” as it is the term used in the European directive.

<sup>5</sup> This is because our efforts to contact Google and Meta proved unfruitful.

<sup>6</sup> <https://www.autoritedelaconurrence.fr/en/decision/requests-interim-measures-syndicat-des-editeurs-de-la-presse-magazine-alliance-de-la>.

<sup>7</sup> <https://www.autoritedelaconurrence.fr/en/press-release/remuneration-related-rights-press-publishers-and-agencies-autorite-fines-google-500>.

<sup>8</sup> <https://eur-lex.europa.eu/eli/dir/2019/790/oj>.

<sup>9</sup> DNI stands for Google’s Digital News Initiative fund, which later became Google News Initiative.

<sup>10</sup> Group of publishers of online services

## The Road to the Updated European Copyright Directive & Google's Role

France was the first State-member in the EU to transpose the revamped European Copyright Directive, which, among others, included Article 15 regarding the “Protection of press publications concerning online uses”<sup>11</sup>. This Article introduced a related right to copyright for press publishers opening, thus, the way for publishers to start receiving some sort of remuneration for the (re)use of their content – including indexing in search engines – by online intermediaries (Danbury, 2021). This right is set to expire two years after the appearance date of a press publication (Art 15(4)).

It ought to be reminded here that Germany had passed a similar law in 2013 in a bid to make Google pay for indexing news content<sup>12</sup>. However, due to the law's vague language, Google proceeded with listing only links of articles on its search engine and, thus, was able to avoid paying for the demanded license. As a result German publishers had to waive their right to remuneration as their incoming audience from Google plummeted (Nordemann and Jehle, 2019). Similarly, in 2014, the Spanish government passed a stricter law that essentially made it illegal to use snippets of content by online services without a payment to the Spanish Association of Newspaper Publishers (Smith, 2014).

Google retaliated by removing all Spanish media from the Spanish version of Google News for almost eight years, only for it to be re-activated after Spain complied with the new European copyright framework (Vincent, 2021). Another similar story of platform power asymmetry played out in Australia, when Meta blocked dozens of news pages on Facebook following the NMBC's approval, including those of governmental and health officials (Taylor, 2021). Recently, whistleblowers claimed that these pages were not affected by accident, as the company previously argued, but everything was part of Meta's deliberate strategy to improve its negotiating vantage point (Taylor, 2022).

Following a historical institutionalist approach, we can indeed infer that “different countries or societies can develop dramatically different institutional responses to the same macrosocial structures” (Bannerman and Haggart, 2015, p. 5). Interestingly, though, the response of platforms in all cited examples remains effectively the same: in addition to more traditional lobbying practices, they have been leveraging their power through censorship and media deplatformization to influence policymaking with little regard for the public interest.

## The Role of the French Competition Authority

As mentioned earlier, a couple of months after France implemented the European Directive as national law, Google unilaterally stopped showing news snippets to its French users<sup>13</sup>, unless it had first explicitly received permission from publishers, which would have amounted to waiving their right to remuneration. This reaction was what caused French publishers to come together and lodge a formal complaint to the ADLC against the way in which Google had interpreted and applied the copyright law, arguing it had “[abused] a dominant position” (ADLC, 2020, p. 3). The ADLC found Google's practices as “anti-competitive” (p. 4) and issued a decision in April 2020 (20-MC-01), ordering interim measures to be applied until the announcement of its final decision, namely:

- Publishers and news agencies had to enter negotiations “in good faith” with Google, within a period of three months after such a request had been made, to discuss both

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<sup>11</sup> <https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=CELEX:32019L0790&from=EN>.

<sup>12</sup> [https://www.gesetze-im-internet.de/englisch\\_urhg/index.html](https://www.gesetze-im-internet.de/englisch_urhg/index.html). This would later go on to serve as the foundation for Article 15 of the Copyright Directive.

<sup>13</sup> <https://france.googleblog.com/2019/09/comment-nous-respectons-le-droit-dauteur.html>.



the terms and conditions for the reuse and indexing of their content and the corresponding – retroactive – remuneration (Injunctions 4 & 5)

- Google had to provide sufficient information regarding the criteria and parameters of calculating remuneration fees (Injunction 2)
- During the period of negotiations, Google had to continue displaying snippets and audiovisual content in its search engine in a neutral way, i.e., without downgrading it (Injunctions 3, 5 & 6).
- Finally, Google had to send an initial report to the ADLC on its compliance with the obligations (Injunction 7).

ADLC based its decision on the fact that, at the time, Google “[was] likely to hold a dominant position on the French market for general search services” (ADLC, 2020, p. 3). Specifically, it argued that “Google may have abused its dominant position to circumvent the Law on Related Rights” for having forced the hand of publishers to waive their right to remuneration by granting free licenses to Google, for not having shared critical information regarding the way of determining the level of remuneration and, last, for having unilaterally blocked short extracts and other audiovisual content from its search engine (p. 4).

Another important point in the development of our case study was the decision of ADLC on 7 June 2021 (21-D-11) in relation to Google’s practices in the online advertising sector in France, which fined the company with €200 million for “having abused its dominant position in the market for ad servers for publishers of websites and mobile apps” (ADLC, 2021a, p. 3). This time, the case was brought to the Authority’s attention by *News Corp Inc.*, *Groupe Figaro* and *Groupe Rossel La Voix*, all of which are press publishers and important stakeholders of the news industry in France and beyond.

One month later, on 13 July 2021, ADLC issued its final decision (21-D-17) concerning the interim measures that had been announced with its previous decision of April 2020 (20-MC-01). The Authority fined Google with €500 million, primarily, for not having complied with injunctions 1, 2, 5 and 6; most importantly, the decision condemned Google’s attempt to connect the payment of publishers’ related rights to their use of the newly launched Google News Showcase<sup>14</sup>. The ADLC also took into consideration the decision of the Paris Court of Appeal from 8 October 2020, which dismissed Google’s argument that the company would jeopardize “improvements and innovations” of its services if it complied with all foreseen obligations (ADLC, 2021b, p. 3).

Subsequently, Google proposed eight commitments to the ADLC, applicable for five years, as remedies for the infringed injunctions (Allen & Overy, 2021), agreeing *inter alia* to negotiate a separate license for Google News Showcase. This was a concession from Google, which sought to, on the one hand, disengage itself from an on-going legal spar with the ADLC and the French news industry, especially shortly after Meta had announced a framework agreement with APIG and, on the other, to avoid further negative publicity (Cohen, 2021). Through a historical institutionalist lens, this illuminates an institutional change in platform regulation, which Google attempted to oppose but had to ultimately give in – albeit on its own conditions, as we will see.

### AFP and APIG, the platforms’ favorites

APIG was created in 2018 following the merge of four other unions. The organization brings together and represents nearly 300 political and general news titles both on a regional and

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<sup>14</sup> Google statement described Showcase as “a licensing program for news publishers that provides a customizable, curated space for news content in Google News and Discover. These are not payments for links, snippets, short extracts, or headlines.” <https://news.google.com/news-showcase/>.

local level, including the most prestigious Paris-based dailies like *Le Monde*, *Le Figaro* and *Libération*. Pierre Louette, the President of APIG and CEO of *Groupe Les Echos-Le Parisien* which is part of the powerful LVMH group, has supported the idea of remunerating the news industry based on related rights, arguing that: “it is the birth of a new category of stable income” (Valentini, 2021). It is also worth noting that Philippe Jannet, the first press executive in the world to formulate a collective demand for remuneration from Google on behalf of the GESTE in 2003 when Google News launched in France, was also CEO of *Les Echos* at the time. Thus, the same prominent players, mainly Parisian financial and political newspapers, were elaborating for years the arguments that were adopted by the French publishers involved in this litigation. APIG was the first among the three complainants to have struck an agreement with Google in January 2021, which, due to ADLC’s second decision in July 2021, became inoperable; finally, a new framework agreement was signed in March 2022.

Furthermore, APIG remains the only association to have signed an agreement with Meta regarding related rights. Specifically, the deal with Meta covers a period of three years, with the option of renewing it, and stipulates that every publisher participating in APIG will receive a minimum remuneration fee in a retroactive way, i.e., it will cover related rights’ fees owed to publishers since the law’s implementation in July 2019. Through our interviews we learned that there are three parameters that determine the amount of remuneration: (i) the number of Facebook followers, (ii) the number of interactions of publishers’ posts, and (iii) the numbers of visitors outside of Facebook as evaluated by ACPM<sup>15</sup>. So, we could assume that similar parameters exist for determining Google’s amount of remuneration.

Nevertheless, financial details concerning these framework agreements were not made publicly available neither for Google nor for Meta. A report from Reuters mentioned that the initial deal with Google involved approximately €67 million for three years (Rosemain, 2021); details regarding the second deal were not revealed. For instance, *Le Monde* would reportedly receive approximately €1,5 million, while a local outlet, *La Voix de la Haute Marne*, would receive only €12,500. Even though the initial deal is no longer effective, the fact that larger outlets would have received substantially more money than smaller ones is telling of two things: on the one hand that exist inequalities among industry players and, on the other, that even though collective negotiation made striking deals more likely, it did not necessarily help remedy imbalances.

As we mentioned earlier, the French news industry has been at the forefront of demanding remuneration for the reuse of their content by online platforms. A case in point is when AFP sued Google in 2005 for having “breached its copyright by reproducing its pictures and articles” in the Google News section (Cozens, 2005). The two parties settled the lawsuit two years later, with Google paying AFP an undisclosed sum of money to continue displaying content on its services, but more details were never made publicly available (Auchard, 2007; Smyrniotis and Rebillard, 2019, p. 40). This deal, alongside with a similar one made with Associate Press, are the first occasions in history where Google conceded sharing revenue with a publisher. Currently, AFP does not partake in any of the aforementioned associations. Nonetheless, it decided to collaborate with them in their bid against Google by lodging a complaint to the ADLC. AFP signed its own agreement with Google in November 2021 and, particularly, one that will last five years instead of the three-year deals signed by the other associations (France24, 2022).

Fabrice Fries, CEO of AFP, also attested in the parliamentary hearings that the international status and elevated prestige of the news agency helped secure a higher amount

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<sup>15</sup> <https://www.acpm.fr>.



of remuneration than the ones obtained by other publishers (Duby-Muller and Garcia, 2022, p. 65). As a result, we would be remiss not to mention here some of the other financial arrangements between AFP and the two largest private funders of journalism, Google and Meta. Specifically, AFP has become one of the most important fact-checking organizations worldwide, with the support of platforms and the French government. In December 2021, a month after signing the agreement on related rights, Google and AFP announced their collaboration on a fact-checking project related to the French presidential and legislative elections of 2022, called *Objectif Desinfox*<sup>16</sup>; this was seen as an expansion of their past work on election-related fact-checking from the last presidential elections in 2017. This time, the two parties created a coalition of 21 French news organizations, coordinated by AFP, aiming to share forces to combat disinformation, which put AFP at a rather privileged position within the media ecosystem. Also, AFP is currently the largest partner of Meta's Third-Party Fact-Checking Network (Goldshlager, 2019).

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<sup>16</sup> Objective: Combat Fake News: <https://www.afp.com/en/inside-afp/afp-google-team-fact-check-french-polls>.

Figure 1 - Case Study Timeline<sup>17</sup>



### Magazines and independent online publishers: the outsiders

SEPM is the leading association of magazine publishers for the general public in France; it was first formed in 1982 but was merged with the *Syndicat professionnel de la presse*

<sup>17</sup> A larger size can be accessed here: <https://prezi.com/i/view/1VcwBpaUCyRnTp6CTWUO>.

*magazine et d'opinion* (SPPMO) in 2012<sup>18</sup> and now represents 80 publishers and more than 400 magazines across France<sup>19</sup>. SEPM was the last association to sign an agreement with Google in April 2022, following another complaint lodged in 10 January 2022 (Cohen, 2022). This time, the complaint was filed solely by SEPM, as the other two associations had already signed different deals. SEPM argued that Google had not “respected” the injunctions announced by ADLC, indicating that the company had likely negotiated different terms with the other complainants. In any case, it seems that the pressure put on Google by that last complaint, along with its wish to conclude negotiations with the French news industry, opened the way for a framework agreement that will last three years, with Google distributing around €20 million per year to the association’s participants (OFFREMEDIA, 2022).

Moreover, it should be noted that one major point of contention between APIG and SEPM was that the latter did not accept Google’s framing of the related rights’ scope: Google wished for the definition to cover solely publications that fell under the umbrella term of “Political and General Information” with which APIG agreed<sup>20</sup>. As a matter of fact, ADLC’s 21-D-17 decision specifically condemned that framing, which would exclude numerous media from benefiting from related rights (ADLC, 2021b, p. 83).

Finally, in June 2021, SEPM joined forces with *la Fédération nationale de la presse d’information spécialisée* (FNPS) that represents “specialized and professional” press and *le Syndicat de la presse d’information indépendante en ligne* (Spiil) that represents independent online media, to launch a dedicated collective copyright management organization that will collect and distribute related rights’ remuneration among member publishers. As the Parliamentary Report about the application of the law on related rights in France claimed, such organizations “limit the [market] distortions without favoring the big publications and by allowing the smaller ones to defend themselves” (Duby-Muller and Garcia, 2022, p. 51). This happens through the method of *péréquation*, i.e., balancing costs or revenue among different parties to achieve a more just distribution than the one obtained through simple market mechanisms<sup>21</sup>. However, neither AFP nor APIG, who appear to be Google’s privileged contacts, have yet joined this organization, which significantly weakens its negotiating power. Therefore, one can observe that power asymmetries characterize not only the relationship between publishers and platforms, but also those between different news industry stakeholders themselves.

## Concluding Remarks

Meta and Google are among the largest benefactors of journalism worldwide (Fanta and Dachwitz, 2020; Jurno and D’Andréa, 2020) with their Meta Journalism Project (MJP) and Google News Initiative (GNI) respectively. Indeed, Meta and Google have claimed that they have so far invested more than \$900 million in the news industry and have pledged to spend close to \$1,5 billion combined (Scutari, 2022)<sup>22</sup>. These funding initiatives are distinct from the licensing programs they offer, like Google News Showcase or Facebook News or other commercial services, like Subscribe with Google. As a result, we are left in the dark

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<sup>18</sup> <https://archive.wikiwix.com/cache/index2.php?url=http%3A%2F%2Fwww.sppmo.org%2FLe-2-mai-dernier-le-SPPMO-est.html#federation=archive.wikiwix.com>.

<sup>19</sup> <http://www.lapressemagazine.fr/presentation>.

<sup>20</sup> In France, media publishers that meet the criteria of Article 1 of the decree of 29 October 2009 may be recognised as providing “political and general information” (IPG) which makes them eligible for public funding and tax breaks.

<sup>21</sup> In France, the newspaper distribution system is traditionally based on a collective mechanism of *péréquation*, i.e., the distribution of costs among publishers to assure diversity and pluralism.

<sup>22</sup> <https://www.facebook.com/journalismproject/introducing-facebook-journalism-project>.

regarding the figures of their funding for journalism programs and we lack exact information about the reach of these initiatives due to the opaqueness and complexity of their activities.

A case in point, which is also related to our case study, is when Google signed individual agreements with more than a dozen of French news organizations between the end of 2020 and beginning of 2021. (Duby-Muller and Garcia, 2022, p. 65). However, neither the content nor the amounts involved were disclosed. These agreements were based on related rights but were done outside the remits of the associations, even though some of these organizations, like *Le Monde*, partake in them; the selected publishers were also given privileged access to services such as Subscribe and Showcase. Consequently, we reckon that this “divide and conquer” strategy of monopolistic digital platforms contributes to further fragment the news ecosystem and weaken smaller publishers. The same applies to audiovisual media and, particularly, TV channels; we did not include them in our study because they do not participate in the negotiations sanctioned by the French public authorities. However, the most important ones, such as the TF1 group, have signed deals of mutual agreement, notably with Google, including favorable revenue sharing for content published on YouTube<sup>23</sup>.

Furthermore, while the ADLC played a positive role in limiting platforms’ leverage, we also ought to underline the political context which undermined its work in favor of monopolistic platforms. France, alongside Germany, has been among the frontrunners leading the regulatory race in the EU. We could argue, thus, that there existed a political willingness to regulate US based tech giants. French President Emmanuel Macron, though, did not renew the tenure of Isabelle de Silva, head of ADLC, because they did not see eye-to-eye regarding merger rules, with the former wanting softer rules that would allow for more concentration so that French and European technological companies could “better compete against the United States and China” (Leali and Kayali, 2021). However, the swift and unprecedented decisions of ADLC during de Silva’s tenure, condemning harmful practices of Google, makes the above reasoning questionable. We believe that, as with the agreement to create the DNI in 2013 by François Hollande and Google’s then-CEO Eric Schmidt, the French government demonstrates preference for the market to self-regulate, even if - or because - this means perpetuating power imbalances among stakeholders.

To summarize, this paper set out to discuss the political economy of regulation of the relationship between press publishers and online intermediaries. We examined the three-year negotiations between a large part of the French news industry and dominant technological companies, specifically Google and Meta and inferred the following:

- i. Collective bargaining is more effective for news publishers in their efforts to negotiate commercial deals with online platforms but also harder to organize because of market fragmentation and opposing interests.
- ii. There exists not only a power asymmetry between publishers and platforms but also among publishers themselves, e.g., with larger news organizations securing better deals, participating in separate platforms’ commercial arrangements, and refusing to join a collective management organization.
- iii. Independent judicial authorities can play a positive role in regulating platforms and their relationship with other governance stakeholders like press publishers if there is an enabling political and institutional environment.
- iv. Monopolistic platforms avoid sharing details of deals to ensure a fragmented negotiating front and from deterring smaller publishers to up their ante.

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<sup>23</sup> <https://www.reuters.com/article/ofrin-tf1-youtube-idFRKCN0IY27Q20141114>.

- v. They also unilaterally utilize their power, in cases where they cannot avoid regulation, to force their interpretation of regulatory frameworks and, thus, influence policymaking and policy-enforcing.

Concluding, our paper also highlights the existing risk of expanding the platformization of news (Nieborg and Poell, 2018) by attempting to force services like Google News Showcase onto the publishers. In a time when the news industry struggles to cope with the dominance of the advertising space by large platforms, along with recent crises like the Covid-19 pandemic, commercial deals and regulatory initiatives are bound to become increasingly common. While there is ample space for regulatory interventions seeking to level the playing field among news organizations and platforms, we are concerned these might further cement dependency of the former on the latter through co-regulatory frameworks (Ouakrat, 2020, pp. 51–52) that enable platforms to capture vital infrastructures (Nechushtai, 2018). We reckon that these frameworks are not sufficient to tackle systemic imbalances – even if they mean well - because they fail to challenge the concentration of power by a handful of oligopolistic private companies and, thus, give way to platforms and to the free market’s idiosyncrasies to decide how they are implemented. Similarly, the lack of political will to democratize access to this new source of revenue for all publishers, for instance through a collective management system of related rights, may contribute to further concentration of the media industry and thus limit pluralism of opinions in the public sphere. Future research should focus on studying the progressively contentious relationship between publishers and platforms concerning issues beyond funding as well.

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The authors report that there are no competing interests to declare.

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