

CLB Interview: Rachel Launders

Ashleigh Fehrenbach, Senior Associate at MinterEllison and co-editor, interviews **Rachel Launders**, General Counsel and Company Secretary at Nine to discuss working in-house at a major Australian news organisation and the effect of the ACCC's digital platform's inquiry. Prior to her current role, Rachel was a partner at Gilbert + Tobin.

FEHRENBACH: As General Counsel and Company Secretary of Nine Entertainment Co. Holding Ltd, what does your role in the organisation involve?

LAUNDERS: Like most in-house roles, lots of variety on a daily basis. Over the last year, a large part of my role has been around our merger with Fairfax Media Limited – the due diligence and negotiations on the deal, all the work required to get the deal done (including extensive dealings with the ACCC which was interesting given they were deep into the Digital Platforms Inquiry and the merger raised some relevant issues), bringing the two businesses together, and now looking to divest the regional publishing, New Zealand and events businesses. As Company Secretary, I'm also the primary point of contact for the Board, ASIC and ASX.

I'm fortunate to work with a great team who manage our pre-publication and post-publication risks and dealings with the ACMA, and work with the business on acquiring content and rights to iconic events like the Australian Open, making shows such as *The Block*, putting together joint ventures, monetising rights to content, dealing with the technology issues needed to launch and expand our AVOD service 9Now and the amazing products we're developing to make buying advertising from Nine easier, and generally managing our risks on a myriad of other issues.

Over the last 12 months, I've also been involved in our response to the Digital Platforms Inquiry, which was largely driven by the Regulatory Affairs and legal teams working closely with the business, with our CEO very engaged in the direction of our submissions.



FEHRENBACH: Rachel, you spent a number of years at Gilbert +Tobin as a partner, what led you to your current role at Nine?

LAUNDERS: Spending a number of years at Gilbert + Tobin! I went on secondment to Nine twice when the previous GC had maternity leave and from that experience, I spent an increasing amount of my time on Nine work, primarily corporate work but also some sports rights and other commercial work. In late 2014, when the previous GC was moving into a mainly commercial role, Nine asked me whether I'd like to join the team. The time was right for me to make a move and it was a very easy transition after 16 years at Gilbert + Tobin given I'd worked so closely with the Nine business over many years, so here I am.

FEHRENBACH: On 10 December 2018, the ACCC released its preliminary report on the Digital Platforms Inquiry, outlining a range of findings and recommendations that will impact business, the media and consumer privacy rights. The report included 11 preliminary recommendations and identified eight areas for further analysis. Having worked in both private practice and now as in-house counsel for a major news organisation, do you think that the Report has come at the right time for Australian media organisations?

LAUNDERS: In some ways, it would have been an excellent thing for the ACCC to do that study five or more years ago. Perhaps it would have saved media organisations from

some of the experiences that we've gone through in adapting to the new world in which digital platforms play such a pivotal role in terms of access to professionally produced content and monetisation of that content. But given the pace of change, the results would have looked very different five years ago so perhaps we'd still have a system that doesn't quite work for us. I'm hoping that the need for sensible regulatory reform in this area may compel the Government to act quickly in response to the recommendations which they'll receive from the ACCC in June.

The various facets of operation of the digital platforms are now highly evolved. We have a situation with a small number of global players, controlling a number of the most popular platforms (eg Facebook and Instagram under common ownership, Google and YouTube similarly). By conducting the inquiry when it did, the ACCC was able to see the ways in which the digital platforms have set unfavourable prices and terms and conditions for premium content and can preference some businesses over others, given their presence across the advertising supply chain. This sets a solid basis for the ACCC to form the views in its Preliminary Report that each of Facebook and Google has market power and they are unavoidable business partners. So perhaps the time is right – certainly better now than never.

FEHRENBACH: Nine is faced with the complex circumstance of having both Facebook and Google being suppliers, competitors and distributors to Nine, all at the same time. Do you think that the recommendations made in the Inquiry propose to make this arrangement any less challenging for Nine?

LAUNDERS: The multi-dimensional relationship Nine has with the platforms is complex. On the one hand they are a valuable business partner to our metro publishing business and on the other they are strong competitors for audiences and

advertisers. Meaningful regulatory reform from the Digital Platforms Inquiry will hopefully deliver a more level playing field, such as through the access framework which FreeTV has proposed to the ACCC or other measures which support content creators having greater control of how content is used and monetised, or through ensuring the way in which algorithms operate to surface content are fair and transparent. While that will not necessarily make the negotiations we have with the digital platforms simple, it should help to reset the rules of engagement, so media organisations and other content creators can proceed with more confidence that their content is going to be treated fairly and rewarded appropriately (or in ways they have more control over setting).

The situation will remain complex and challenging, given the multiple roles which Facebook and Google play and the different benefits which their platforms offer to us and to consumers of our content. This dynamic will continue to evolve as business models and consumer habits and preferences for content consumption change, so the relationships are never likely to be static.

FEHRENBACH: In its recent submission to the Inquiry, Nine raises that neither Google nor Facebook are required to meet the same standards of trust or care as a regulated platform such as Nine. How do you see the ACCC's recommendation for a regulator to be responsible for monitoring, investigating and reporting on the ranking of news and journalistic content by digital platforms working in a practical sense?

LAUNDERS: Nine supports regulation of ranking of news and journalistic content, and the other recommendations made by the ACCC about tax offsets for news production and tax deductibility for news subscriptions, all of which will support the continued production of great Australian news content.

However, I don't believe we need for a new regulator to take on this role.

There may be challenges in defining which news sources qualify for priority or badging so it will be important that any codes or other instruments which give effect to the ACCC's recommendations take a clear approach to that issue. It also needs to be platform agnostic – the world of television, radio and newspapers being the source of news is long gone, but some of our industry regulation is still based around those platforms only.

FEHRENBACH: Throughout your career, you would have seen the shift from print news move into the digital space. In Nine's submission to the Inquiry, it is raised that a growing proportion of Nine's audience are also choosing to view online rather than linear television, and that digital platforms control the gateway to the internet. What kind of challenges does this create for Nine?

LAUNDERS: The challenges are multi-faceted. Viewers want to watch quality, professionally made content (not all the time – cat videos on YouTube will always have a special place). With the proliferation of content sources as alternatives to linear television, we need to help viewers find our quality content and continue making it available when and where viewers want. We're not expecting that everyone will sit down at 7.30pm to watch *Married at First Sight* on the television – we know it's being watched at different times and on different platforms and we have to make that easy for consumers to do.

We also need to educate advertisers to help them see the value of advertising on television (that is, advertising with high quality, professionally made content) and the value that can flow from being more than an advertiser. Finding creative ways to be an integral part of our content rather than advertising around the content can be incredibly effective for the advertiser (and not skippable). This includes important issues such as knowing your product

and advertising is going to be placed with brand safe content – our content is classified and regulated so an advertiser knows what they are going to be associated with. Television's viewer numbers are measured by a third party with a respected history and credibility too, which allows for more certain return on investment than other platforms might offer.

The AVOD platforms that linear broadcasters offer (9Now in our case) are part of the response to the challenge of viewers moving to online – that offers the combination of data driven advertising together with the same quality, regulated content as seen on FTA television, and measurement of those viewers, so advertisers can get the real picture about how many people are seeing their advertising. Our investment in Stan is also part of our response – recognising that advertising supported content isn't the only way to generate revenue from content.

There's also the challenge of having to work with the digital platforms as we recognise that they are a key way in which audience can discover our content. We need to make sure that audience then sticks with Nine's platforms, rather than defaulting back to the other platforms. That brings us back to the quality of our content. The challenge, and one of the issues which the Digital Platforms Inquiry has shone a light on, is to be able to monetise the content that we've invested in, rather than having the digital platforms monetise our content, from which we get no or little return.

FEHRENBACH: How do you see the landscape of Australian digital media changing over the next 5 years?

LAUNDERS: That's just too long a period to make predictions – the landscape is changing so quickly.

I think we're likely to see more regulation after the Digital Platforms Enquiry final report, and then a period of adjusting to whatever that new regime may be.

AI will get smarter than it is now, so we'll be seeing content and advertising which is even more personalised and targeted than now. That's a mixed blessing – it offers great opportunities to engage with an audience in a very direct way, with the greater ability to generate premium returns from that. However, the more "Big Brother" (the Nineteen Eighty-Four one, not the one that made Chrissie Swan famous) that becomes, the greater the concerns around privacy and data security. So, I think data and privacy will continue to be a focus in the coming years with potentially more regulation around those issues to protect consumers.

FEHRENBACH: Any final thoughts about the Inquiry?

LAUNDERS: This has been a very thorough and detailed process with many preliminary recommendations. It's important that the regulator prioritises the recommendations that will make material changes for the sustainability of public interest journalism and Australian content.

Nine sees these priorities as fair access to the platforms on fair and reasonable terms, the industry support measures and addressing copyright issues.

I'm confident that the work and recommendations from the ACCC's report will resonate with the Government (regardless of the result on 18 May) because both sides of politics recognise the importance journalism plays in our democracy and the contribution which Australian content makes to our sense of identity.

It's been an incredibly important study for the ACCC to undertake, given the influence of the digital platforms on news and media in so many different ways. This is clearly not just an Australian issue, so I'm very proud that our regulator has been the one to undertake this study ahead of many other countries who will no doubt benefit from the work the ACCC has done.

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