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Submission to Senate Standing Committee on Economics – Inquiry into the influence of international digital platforms

28 February 2023

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Introduction and the role of the ACCC

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to provide a submission to the Senate Economics References Committee's *Inquiry into the influence of international digital platforms*.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (CCA), regulate national infrastructure and undertake market studies.

This submission approaches the issues the Committee is considering through a competition and consumer lens and does not provide an ACCC perspective on issues that are likely to be addressed by other members of the Digital Platform Regulators Forum (DP-REG), or other Government departments and agencies with relevant regulatory or policy responsibilities.

The importance of digital platform services

As major drivers of productivity growth, digital platforms are critical to the Australian economy and the services they provide are vitally important to both businesses and consumers.

Because of this significance, ensuring effective competition in the supply of digital platform services is crucial to achieving continued innovation and choice, and the future prosperity of Australians. The potential for harm to be caused in digital platform markets is also considerably higher than in many other sectors of the economy, due to digital platforms' positions as important intermediaries between consumers and businesses, their presence across multiple services, the market power some platforms possess, and their access to financial and data-based resources.

The ACCC's work on digital platform issues

ACCC analysis in recent years has identified significant consumer and competition harms across a range of digital platform services. These include financial losses to scams and unresolved disputes, reduced choice and an inability to make informed choices, reduced innovation and quality, and higher (monetary and non-monetary) prices. The conduct causing these harms is widespread, entrenched, and systemic. However, enforcement of existing laws, while important, has proven insufficient in Australia and overseas to address such conduct quickly or effectively, further increasing the risk and magnitude of harm.

The ACCC has examined several of the specific issues the Committee is currently considering, including through:

- the [Digital Platforms Inquiry](#) (2017-2019), which looked at the effect of digital platforms on competition in media and advertising services, in particular on the supply of news and journalistic content and the implications of this for media content creators, advertisers and consumer
- the [Digital Advertising Services Inquiry](#) (2020-2021), which considered competition in the supply of digital advertising technology services and digital advertising agency services, including the concentration of market power and the impacts on market participants, such as advertisers and publishers

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- the [Digital Platforms Services Inquiry \(DPSI\) 2020-2025](#), an ongoing 5-year inquiry into competition and consumer issues related to digital platform services, for which the ACCC has to date published 5 interim reports,¹ and
- our involvement in the development of the [News Media and Digital Platforms Mandatory Bargaining Code](#) (enabling legislation enacted in 2021), which is designed to address the significant bargaining power imbalances in commercial relationships between Australian news businesses and certain digital platforms.

The ACCC has been examining some of the issues identified by the Committee since 2017.

The fifth interim report of the Digital Platform Services Inquiry

On 11 November 2022, the ACCC released the [fifth interim report](#) of the DPSI (**the Regulatory Reform Report**). This report identifies a range of systemic harms associated with the provision of digital platform services, and shows that current consumer and competition laws are not by themselves sufficient to address these issues. On this basis, the report makes a number of significant new recommendations for measures to address these harms, and reiterates the ACCC’s previous recommendations for economy-wide reforms to consumer law.

This submission provides an overview of the Regulatory Reform Report, as it addresses a range of matters highly relevant to the terms of reference for the Committee’s Inquiry, including those set out in the table below. The report is also **attached** to this submission for the Committee’s reference.

Inquiry terms of reference (TOR)	Matters addressed in ACCC’s Regulatory Reform Report ²
Market shares of digital platforms (TOR a)	<ul style="list-style-type: none"> • The economic and commercial characteristics of digital platforms that have allowed several platforms to build and retain market power, including network effects; economies of scale; expansive ecosystems and advantages of scope; consumer inertia, switching costs and defaults; and access to high-quality data (section 1.4) • The ACCC’s previous findings on the market power and market shares of large digital platforms including Google, Apple and Meta (section 1.5 and Appendix A)
Vertical integration and integration of services (TOR b)	<ul style="list-style-type: none"> • The nature, extent and consequences of the vertical integration and platform ecosystems of large digital platforms, and the implications for consumers and business users (section 1.4.4 and chapter 6) • The challenges involved in adequately addressing the effects on competition of serial strategic acquisitions by digital platforms (see section 2.4.4)³

¹ These previous reports considered online private messaging services and search and social media services ([First interim report](#) – 2020); app marketplaces ([Second interim report](#) – 2021); web browsers and general search services ([Third interim report](#) – 2021); general online retail marketplaces ([Fourth interim report](#) – 2022), and; recommended a range of new measures to address harms from digital platforms to consumers, small businesses and competition ([Fifth interim report](#) – 2022).

² References to section and chapter numbers are to sections and chapters in the Regulatory Reform Report.

³ While the Regulatory Reform Report does not make specific recommendations for merger reform, it notes that any future economy-wide reforms to Australia’s merger laws should consider this issue.

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Impact of algorithms on consumers and markets (TOR c)	<ul style="list-style-type: none"> Regulatory challenges posed by the use of algorithms which can reduce transparency (section 2.3, chapter 6 including section 6.7) The use of algorithms to allow anti-competitive self-preferencing, to the detriment of consumers and competition (section 6.1)
Collection and processing of children’s data (TOR d)	<ul style="list-style-type: none"> Harms associated with excessive collection and use of consumer data by digital platforms (e.g. section 1.6.4, section 1.7.1, section 2.4.3 and section 3.1)
Adequacy and effectiveness of recent attempts to regulate digital platforms (TOR e)	<ul style="list-style-type: none"> Recent economy-wide regulatory developments in Australia relevant to digital platform issues of concern (Chapter 3) Increased regulation of digital platforms overseas (section 2.5)
Broader impacts of concentration of market power (TOR f)	<ul style="list-style-type: none"> The reach and economic importance of digital platforms in the Australian economy (section 1.3) The risks and harms to consumers and competition posed by the conduct of large digital platforms (throughout the report and Executive Summary)

The need for new regulation

While Australia has robust competition and consumer laws capable of addressing many forms of harmful conduct across the economy, they are not well-suited to addressing the range and scale of consumer and competition harms identified in digital platform markets.

There are a few key reasons for this. Enforcement of the *Competition and Consumer Act 2010* and the Australian Consumer Law (ACL), particularly through the courts, can take considerable time. Enforcement of these laws is also necessarily retrospective, addressing particular instances of conduct on a case-by-case basis after harms have already occurred.

Because of the fast-moving, opaque and complex nature of digital platform markets, and the economic characteristics that make them prone to high concentration (as discussed in this submission), anti-competitive conduct in these markets can be systemic and widespread, causing significant harm. Even when enforcement of existing laws is successful, the available remedies may not be able to adequately address this harm, particularly where digital platforms change their conduct to achieve a similar outcome by a different means.

The ACCC therefore considers there is a need for new up-front (ex ante) competition measures for digital platforms.

Consumers and small businesses seeking to enforce their existing rights against digital platforms under the ACL face obstacles such as unclear and costly dispute resolution processes, as well as informational and power disadvantages.

Trust and confidence are necessary for markets to function effectively. Negative experiences online, like those discussed in the following section of this submission, can erode trust in digital businesses and online services generally. For consumers and small businesses to trust digital platforms and other online providers, they must feel confident that they will be treated fairly, that providers will adhere to their obligations, and that problems will be

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addressed if they arise. Yet key gaps in consumer law previously identified by the ACCC remain, leaving consumers and small businesses exposed to unacceptable risks online.

This is why the ACCC continues to advocate for strengthened economy-wide consumer protections, in addition to new measures specific to digital platforms.

Domestic and international reforms

The ACCC notes the importance of thinking about broader domestic reforms when considering new obligations for digital platforms. The ACCC works closely with other regulators as part of DP-REG, as well as with other relevant Australian Government agencies to ensure our recommendations are well-informed by concurrent government processes.

There has also been extensive international scrutiny of digital platforms in recent years. This has led to a broad consensus across many jurisdictions that reforms of existing laws, particularly competition laws, are needed to effectively address the proliferation of harmful conduct.

While Australia's legal system is not directly comparable to those of other jurisdictions, Australia can learn from the experiences of overseas jurisdictions that have adopted (or are adopting) digital platform-specific regulatory reforms. Due to the global nature of the largest digital platforms, it is also important to consider how any new regulation in Australia would facilitate cooperation with other relevant regulators globally.

Australia is well-placed to learn from first movers overseas, including in the European Union and the United Kingdom, and also from our Pacific neighbours, including Japan. Summaries of key reforms addressing competition and consumer harms in the supply of digital platform services in overseas jurisdictions can be found in [section 2.5](#) of the Regulatory Reform Report. The ACCC would be pleased to provide updated information on international regulatory developments relevant to digital platforms.

The ACCC's recommendations for regulatory reform

The recommendations of the Regulatory Reform Report are summarised below, along with the types of harms they are intended to address, given their relevance to the Terms of Reference for this Inquiry.

New measures to protect consumers and promote trust and confidence

Recommendation 1: Economy-wide consumer measures

The ACCC continues to recommend the introduction of new and expanded economy-wide consumer measures, including an economy-wide prohibition against unfair trading practices and strengthening of the unfair contract terms laws.

These reforms, alongside targeted digital platform specific obligations, would assist in addressing some of the consumer protection concerns identified for digital platform services.

The ACCC has observed a range of harms to consumers and small businesses which occur on digital platforms irrespective of their market power. The ability of digital platforms to reach users at scale and at low cost raises particular challenges relative to other industries.

As set out in the Regulatory Reform Report, we remain concerned by the extent of unfair trading practices used by digital platforms. These include 'dark patterns', which are potentially harmful interface design choices that exploit behavioural biases and frustrate

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consumer choice. For example, the ACCC has previously expressed concerns about dark patterns in apps, such as the practice of some app developers offering trials for ‘free’ or at introductory prices, and then making those subscriptions very difficult to cancel, effectively trapping consumers into paying for services they don’t want.

The excessive collection and use of personal data by digital platforms can also harm consumers, reducing their privacy and exposing them to greater amounts of advertising. Significant power imbalances between digital platforms and their consumer and small business users can lead to digital platforms offering contract terms that may be unfair, further impacting the ability of those users to make informed choices and leading to poor outcomes such as reduced trust in firms online. Practices such as platforms changing the terms on which products or services are provided, without reasonable notice or the ability for consumers or small businesses to consider the new terms, remain a problem.

While this harmful conduct is widespread, entrenched and systemic online, it is also a feature across the whole economy, both online and offline. Hence, the ACCC has recommended economy-wide legislative reforms to better protect consumers and small businesses, including by promoting trust and confidence in the digital economy (see [Chapter 3](#) of the report). These reforms would address some of these harms observed in the context of digital platform services.

Consumers also continue to experience harms from increasing numbers of scams and harmful apps on digital platforms, with the quantum of losses growing. Losses reported to Scamwatch from scams conducted via social networking and mobile apps almost doubled between 2020 (\$49 million) and 2021 (\$92 million). Actual losses are likely much higher, given most victims don’t report their losses to Scamwatch.⁴ These cause serious financial and emotional harm to affected individuals and businesses. The prevalence of fake reviews on digital platforms can also undermine consumer choice and confidence in the digital economy.⁵ Fake reviews can also distort competition, and result in financial losses for small business owners if, for example, unscrupulous actors target their product listings on an online marketplace.

Recommendation 2: Digital platform-specific consumer measures

The ACCC recommends additional targeted measures to protect users of digital platforms, which should apply to all relevant digital platform services, including:

- Mandatory processes to prevent and remove scams, harmful apps and fake reviews including:
 - a notice-and-action mechanism
 - verification of certain business users
 - additional verification of advertisers of financial services and products
 - improved review verification disclosures
 - public reporting on mitigation efforts.
- Mandatory internal dispute resolution standards that ensure accessibility, timeliness, accountability, the ability to escalate to a human representative and transparency.

⁴ ACCC, [Regulatory Reform Report](#), September 2022, p 9.

⁵ For example, a survey of 1,000 Australian consumers commissioned by Reviews.org reported that 52% of respondents believed they had fallen for fake reviews and 28% did not trust online reviews. See ACCC, [Regulatory Reform Report](#), September 2022, p 77.

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- Ensuring consumers and small business have access to an independent external ombuds scheme.

In addition to economy-wide consumer measures, the ACCC has recommended new targeted requirements on a broad range of digital platforms to better protect consumers (see [Chapter 4](#) of the Regulatory Reform Report).⁶ These requirements would address ongoing failures by digital platforms to provide adequate dispute resolution avenues, which might assist consumers affected by these harms.

A notice-and-action mechanism would enable users to report a scam or harmful app, and require the platform receiving the report to take appropriate actions in response. Verification of advertisers, app developers and merchants would reduce the prevalence of scams and harmful apps, better protecting would-be victims from monetary losses and psychological impacts, and additional verification of advertisers of financial services and products would better protect consumers from predatory parties.

The failure of digital platforms to provide adequate dispute resolution processes to users when problems arise is another significant problem. Mandatory internal dispute resolution standards would ensure platforms meet minimum standards of accessibility, timeliness, accountability and transparency, and could enhance the integrity of all users that operate on digital platforms.

An independent external ombuds scheme, including the potential for binding decisions on digital platforms and investigations of systemic conduct, is also important for ensuring the effectiveness of internal dispute resolution measures. In the ACCC's view, existing bodies lack the resources to deal with the range, volume and complexity of disputes occurring on digital platforms, and may not be capable of delivering sufficient remedies.

New measures required to address competition harms

The ACCC shares the Committee's concerns about concentration in the supply of digital platform services. These platforms are a critical part of our economy and central to the way many consumers and businesses engage with each other. The Regulatory Reform Report discusses the unique strength and combination of economic and commercial characteristics that have supported this concentration, and led to large platforms facing limited competitive constraints from actual or potential rivals.

These characteristics, which create a real likelihood of digital platform markets 'tipping' in favour of one or two firms, include:

- **Strong network effects:** where the value of a service depends on the number of users with whom other users can interact. In markets with strong positive network effects, users will be drawn to the platform with the largest number of users.
- **Significant economies of scale and sunk costs:** where the average cost of providing services decreases with increased use. In markets where these dynamics are present, larger platforms have a cost advantage, while high fixed costs of entering can dissuade new entry and put smaller rivals at a cost disadvantage.
- **Advantages of scope and expansive ecosystems:** where supplying multiple related services advantages a large platform through the ability to share and combine data, the

⁶ This includes digital platforms that provide search, social media, online private messaging, app store, online retail marketplace and digital advertising services.

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ability to leverage existing user-bases across services, or lower average costs. This can raise barriers to entry and expansion, which may be reinforced when platforms make their services incompatible with other services outside their ecosystem.

- **Barriers to switching:** where consumer inertia, switching costs and a platform's interface design can increase consumer lock-in, often to the incumbent's advantage.
- **Access to high-quality user data:** where vast amounts of individual-level data are required to train algorithms and offer higher-quality and personalised services (including targeted advertising). Access to such data provides a considerable competitive advantage to established digital platforms.

These characteristics also provide large incumbent digital platforms with the ability and incentive to engage in strategic conduct to entrench and expand their market power.

The Regulatory Reform Report also sets out previous analysis by the ACCC on the concentration in several digital platform services markets dominated by one or two large providers. This includes our findings that:⁷

- Google is the largest supplier of general search services in Australia, providing services in relation to around 94% of search queries in 2021. This dominance in search services underpins Google's dominance in the supply of search advertising services
- Google is also the largest supplier of ad tech services in Australia, with an estimate exceeding 90% of ad impressions traded via the ad tech supply chain passing through at least one Google service in 2020. Online advertising is vital to the operation of today's internet; digital advertising funds much of the creation and expansion of online services offered to consumers and businesses today.
- In 2021, Apple iOS and Google Android accounted for close to 100% of users of mobile operating systems in Australia. The Google Play Store is by far the largest mobile app distribution platform on Android OS, and the Apple App Store is the only mobile app distribution platform on Apple iOS. App stores are critical for both businesses and consumers, as consumers increasingly use mobile devices.
- In 2019, Meta (then Facebook) had substantial market power in the supply of social media services in Australia, through Instagram and Facebook, and this strength in social media services contributed to Meta's substantial market power in the supply of display advertising services in Australia. These findings are being revisited as part of the upcoming [sixth interim report](#) of the DPSI.

To address the harms associated with high levels of market concentration in digital platform markets, the ACCC has recommended the introduction of additional competition measures for digital platforms, which would work alongside continued enforcement of Australia's existing competition laws to promote competition in digital platform services (see [Chapter 5](#)).

Recommendation 3: Additional competition measures for digital platforms

The ACCC recommends the introduction of additional competition measures to protect and promote competition in markets for digital platform services. These should be implemented through a new power to make mandatory codes of conduct for 'designated' digital platforms based on principles set out in legislation.

Each code would be for a single type of digital platform service (i.e. service-specific codes) and contain targeted obligations based on the legislated principles. This would allow flexibility to tailor the obligations to the specific competition issues relevant to that service as these change over time.

⁷ ACCC, [Digital Platform Services Inquiry Regulatory Reform Report](#), 28 April 2021, p 37.

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These codes would only apply to ‘designated’ digital platforms that meet clear criteria relevant to their incentive and ability to harm competition.

The most powerful digital platforms engage in a range of conduct that is interfering with the process of competition in markets for digital platform services. The need to prevent and deter such conduct where it reduces competition is a major focus of the Regulatory Reform Report. These issues have a range of negative consequences for the economy and Australian consumers, including diminished innovation and quality of services, potentially higher prices for some services and reduced choice for consumers and small businesses.

The ACCC has also observed a lack of transparency by some digital platforms, including with respect to the functioning of algorithms, and is concerned about the ability of digital platforms with market power to unilaterally impose and degrade the terms on which they provide digital platform services to business users that are highly reliant on these services.

The report sets out the types of conduct that a new regime to promote competition in digital platform services should be able to address. It also provides indicative examples of the kinds of obligations that new service-specific codes of conduct could potentially include (see [Chapter 6](#)).

Recommendation 4: Targeted obligations

The framework for mandatory service-specific codes for Designated Digital Platforms should support targeted obligations based on legislated principles to address, as required:

- anti-competitive self-preferencing
- anti-competitive tying
- exclusive pre-installation and default agreements that hinder competition
- impediments to consumer switching
- unnecessary impediments to interoperability
- data-related barriers to entry and expansion, where privacy impacts can be managed
- a lack of transparency
- unfair dealings with business users
- exclusivity and price parity clauses in contracts with business users.

The codes should be drafted so that compliance with their obligations can be assessed clearly and objectively. Obligations should be developed in consultation with industry and other stakeholders and targeted at the specific competition issues relevant to the type of service to which the code will apply. The drafting of obligations should consider any justifiable reasons for the conduct (such as necessary and proportionate privacy or security justifications).

Anti-competitive self-preferencing and tying by digital platforms

The Issues Paper released by the Committee discusses the ACCC’s concerns, raised in its second DPSI interim report, about the potential for Apple and Google to anti-competitively self-preference their first-party mobile apps through their control of their app stores, and potential measures to address this identified in that report. It also covers the ACCC’s analysis in the second DPSI interim report of commissions charged by Apple and Google on in-app payments made through their app stores. It may assist the Committee to consider our

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recent recommendations set out in the Regulatory Reform Report to address anti-competitive self-preferencing and anti-competitive tying by digital platforms, including the tying of the supply of app store services to the use of in-app payment services,⁸ which build on and supersede the potential measures previously identified by the ACCC.

Consideration of merger laws

The ACCC's Regulatory Reform Report notes a pattern of digital platforms acquiring businesses that may develop to become potential competitors. Such acquisitions strengthen the acquirer's position of market power and extend their presence and influence across numerous related services. While the report does not make specific recommendations for merger reforms, it suggests that any future economy-wide reforms to Australia's merger laws should consider the challenges involved in adequately addressing the competition effects of serial strategic acquisitions by digital platforms.

The ACCC has been actively considering possible reforms to Australia's merger regime, including to address acquisitions of nascent competitors that prevent the emergence of new rivals in existing and emerging markets, and is well-placed to assist the Government and Treasury on this issue. The ACCC's view remains that the current regime presents real challenges and is not fit for purpose.

Other comments in response to the Issues Paper

Misinformation and disinformation

While issues around misinformation and disinformation are not covered by the terms of reference of the Digital Platform Services Inquiry, we note the Committee's consideration of the role digital platforms have in influencing public debate. The ACCC previously considered these issues as part of the 2019 Digital Platforms Inquiry, which found that consumers accessing news through digital platforms risk exposure to misinformation and disinformation. The final report of this inquiry recommended a new code to counter disinformation. This work has been taken forward by the Australian Communications and Media Authority.

The metaverse

The ACCC has not previously considered the nature or extent of competition and consumer issues present in metaverse services. However, the ACCC recognises that issues present in other services supplied by digital platforms may be present in the supply of those services, and we await the Committee's findings with interest.

Ongoing ACCC work on digital platforms issues

Through our work on the DPSI, the ACCC is continuing to consider competition and consumer harms related to digital platform services.

The sixth report of the Digital Platform Services Inquiry, due to the Treasurer by 31 March 2023, will consider potential competition and consumer issues in the provision of social media services to consumers and businesses in Australia by social media platforms. An [Issues Paper](#) seeking feedback from interested stakeholders was released on 16 August 2022.

⁸ See [section 6.1.2](#) of the Regulatory Reform Report regarding anti-competitive self-preferencing and [section 6.4](#) regarding tying of the supply of app store services to the use of in-app payment services.

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This report may also be of interest to the Committee, as it will examine:

- The degree of competition between social media services
- Trends in mergers and acquisitions by social media platforms and the effect of these activities on competition for social media services
- The role of advertising services, including display advertising, sponsored posts and influencer advertising, offered by social media platforms and the effects of these services on competition for social media services, and
- The use and abuse of social media services for scams and misleading or deceptive content.

Conclusion

The ACCC thanks the Committee for the opportunity to make a submission. Given the diversity of digital platforms, the complexity of the services they provide, and the range of Government processes underway that intersect with digital platform issues, we welcome the Committee's holistic approach to understanding a wide range of the concerning issues that can arise within digital platform services, often to the significant detriment of large numbers of Australian consumers and businesses.

Given the interest the ACCC shares with the Committee in ensuring Australia actively participates in considering and developing best practice approaches to many of the issues being examined by the Committee, to the benefit of Australians and the Australian economy, we are happy to provide more detail or otherwise assist on any areas of interest for the Committee.