

Re: ACCC Digital Platforms inquiry

ACCAN thanks the Treasury for the opportunity to comment on its consultation concerning the implementation of the Australian Competition and Consumer Commission's Inquiry into Digital Platforms.

ACCAN is the peak body for all consumers on communications issues and provides a strong unified voice to industry and government to ensure communications services are trusted, inclusive and available for all in Australia.

ACCAN is supportive of the substantive work undertaken by the ACCC in the course of its inquiry and believes that the inquiry has provided a timely opportunity to examine the appropriateness of existing regulatory settings in a rapidly evolving market landscape. As elements of the report do not fall within ACCAN's area of policy expertise our comments will be constrained to those recommendations that touch upon matters directly relevant to ACCAN's work.

Noting that the focus of this consultation process is concerned with any barriers to implementation and on progressing the recommendations of the review, ACCAN's comments will focus on how the recommendations can be progressed. ACCAN would like to take the opportunity to express support for the submission put forward by the Consumer Policy Research Centre and their substantial policy contributions to this consultation and the Digital Platforms Inquiry.

Competitive digital markets

Recommendation 1: Changes to merger law

ACCAN is supportive of competitive and efficient markets. Thus, the *Competition and Consumer Act 2010* (Cth) should be drafted to promote innovation and competition to the strongest extent possible. ACCAN concurs with the ACCC that the current drafting of s. 50 of the *Competition and Consumer Act 2010* (Cth) fails to adequately account for the potential of innovative technologies to be a source of competitive tension. We agree that excessive acquisition and consolidation may undermine potential competition.

ACCAN does not foresee that there are any material barriers to progressing the recommendations made by the ACCC with respect to the revision of s. 50 of the *Competition and Consumer Act 2010* (Cth), noting that an appropriate consultation process should be undertaken to examine the appropriate drafting of these changes.

Recommendation 2: Advance notice of acquisitions

ACCAN does not foresee any immediate barriers for the formalisation of advance notification processes for acquisitions by large digital platforms. Only a handful of platforms fall within this category and similar arrangements exist in comparable jurisdictions, meaning that the creation of the proposed mechanism is feasible in a relatively short period. In the event that notice arrangements cannot be negotiated within a time-frame of 12 months, ACCAN considers that regulation should be introduced.

Recommendation 3: Changes to search engine and internet browser defaults

ACCAN supports the ACCC's recommendation to facilitate consumer choice through the changes to default search engine and internet browser arrangements. Noting that the proposed arrangements have already been implemented in Europe we consider that there are limited barriers to implementing this recommendation in the immediate future.

The next step in implementing this recommendation should involve public consultation on the technical requirements and implications associated with changing these defaults. Any consultation held to this effect must consider the implications of system changes on the accessibility of services used by people with disability, noting Australia's obligations as a signatory to the *Convention on the Rights of Persons with Disabilities*.¹

Recommendation 4: Proactive investigation, monitoring and enforcement of issues in markets in which digital platforms operate

ACCAN supports the establishment of a dedicated unit within the ACCC to focus on investigation, monitoring and enforcement of competition and consumer laws in digital platform markets. ACCAN believes that this unit can and should be established as soon as practicable, noting that there are no substantive legal changes required for the Minister to issue a direction to undertake an extended public inquiry into the sector.

¹. *United Nations Convention on the Rights of Persons with Disabilities, Art. 9(2)(g)*; 'State Parties shall also take appropriate measures: To promote access for persons with disabilities to new information and communications technologies and systems including the Internet'.

ACCAN does not foresee that there are any material barriers to facilitating the establishment of such a unit within the ACCC beyond budgetary considerations. The ACCC should be resourced to establish such a unit in the immediate future, and at the latest via a provision in the forthcoming 2020-2021 federal budget.

Recommendation 5: Inquiry into ad tech services and advertising agencies

ACCAN supports the commencement of an inquiry into ad tech services and advertising agencies. As the peak body for communications consumers and small businesses, ACCAN believes that there are sufficient grounds for examining the terms and conditions on which small businesses are able to access digital services including advertising services.

Although ACCAN does not have a fixed view on the competitiveness of the existing advertising market or ad tech services, an inquiry by the ACCC would provide greater insight and better transparency surrounding these markets. The use of consumer data for profiling and targeted advertising should be examined in detail as part of an inquiry into the advertising sector.

Digital literacy

Recommendation 12: Improving digital media literacy in the community

ACCAN has long advocated for measures to improve digital literacy. We support the recommendation and do not foresee any substantial barriers to its progressing beyond budgetary constraints. The expansion of these programs should be considered and progressed as soon as practicable, especially in the context of the forthcoming pre-budget considerations that will commence in the second half of this financial year.

Appropriate funding and consideration must be allocated to ensure that digital media literacy programs are equitable and accessible for all consumers. This end can be achieved through thorough and considered community consultation. ACCAN believes that the allocation of funding for programs for people with disability is essential to ensuring equitable access.

In seeking to expand programs ACCAN believes that a brief consultation process concerning the targeting of funding to priority groups, including those with limited levels of digital literacy is merited in order to ensure the efficacy of programs.

ACCAN also believes that there is scope for further consideration of the role of public funding to facilitate digital literacy training for small businesses in order to aid their transition in the digital economy. ACCAN notes there are existing proposals as part of the

Regional Connectivity Package, but there is the potential for economy wide training and resources being made available.

Recommendation 13: Digital media literacy in schools

ACCAN supports the recommendation of the ACCC that the forthcoming review of the Australian Curriculum should include ways to improve digital media literacy education in schools. ACCAN believes that the review will provide for an opportunity to consider the role of the formal education sector in supporting e-safety and better digital literacy among Australians.

ACCAN does not believe that there are any impediments to progressing this recommendation and the inclusion digital media literacy in the terms of reference of the Australian Curriculum Review. We encourage cross-agency collaboration in this area, especially considering recent work conducted by the Office of the eSafety Commissioner.²

Privacy

Recommendation 16: Strengthen protections in the Privacy Act

ACCAN supports the recommendations put forward by the ACCC to reform privacy protections in the *Privacy Act 1988* (Cth). Implementing these reforms must be pursued as a priority due to the inadequacy of existing protections. Arrangements should be put in place to commence the drafting of the requisite legislative changes so that the draft legislation may be put before the house prior to the end of the 2020 parliamentary sittings.

Recommendation 17: Broader reform of Australian privacy law

ACCAN supports a root-and-branch review of Australia's existing privacy protections as there is considerable scope to update the current framework to reflect international best-practice and community expectations. ACCAN is concerned that consumer confidence in digital platforms and businesses more generally will be undermined by the absence of genuine reform to existing privacy arrangements and the creation of stronger protections for consumers.

ACCAN considers that a consultation process for the broader reform of Australian privacy law should be commenced as a high priority in the first quarter of 2020, and an end date for providing substantive recommendations by the third quarter of 2020. This should be

² <https://www.esafety.gov.au/education-resources>

followed by a subsequent public consultation concerning the drafting of any legislative reforms.

Recommendation 18: OAIC privacy code for digital platforms

ACCAN supports the creation of a privacy code for digital platforms. We agree with the ACCC's assessment that the efficiencies of scale and scope possessed by digital platforms allow for poor data practices. The legislative basis for the creation of a digital platforms privacy code may entail revision of the *Privacy Act 1988* (Cth). To progress this recommendation, an immediate review of the existing legislative basis is necessary so that the code may be developed by the OAIC. Following the completion of this review, a public consultation process should commence focussed on any required revisions to the *Privacy Act 1988* (Cth) and the intended approach for progressing the development of the Code.

In the event that existing legislative provisions provide a sufficient legal basis for the development of a code or interim code ACCAN considers that consultation concerning the first iteration of the code should occur in the immediate future. The code should be accompanied by a comprehensive compliance and enforcement strategy to ensure that the code functions as an effective instrument for protecting the privacy of consumers.

Recommendation 19: Statutory tort for serious invasions of privacy

ACCAN supports the introduction of a statutory tort for serious invasions of privacy. In light of the material work undertaken by the Australian Law Reform Commission, progressing this reform could be undertaken through a targeted and timely consultation on the drafting of the statutory right to be concluded by the second quarter of 2020,³ with draft legislation to be put before the house prior to the conclusion of the 2020 parliamentary sittings.

Unfair practices

Recommendation 20: Prohibition against unfair contract terms

ACCAN supports the recommendation that the existing protections set out within the Australian Consumer Law are revised to prohibit unfair contract terms. Consumers face many impediments that preclude them from seeking redress when faced with unfair contract terms. As a consequence, they are often unable to take advantage of the existing protections in the Australian Consumer Law which provide for the voiding of unfair contract terms.

³ Australian Law Reform Commission, *Serious Invasions of Privacy in the Digital Era: Summary Report* (Australian Law Reform Commission, 2014).

ACCAN believes that the prohibition of unfair contract terms and the empowerment of the ACCC to seek penalties for breaching the prohibition would deliver effective consumers protections.

The reform of these provisions should form part of a broader examination of how fit-for-purpose existing consumer law provisions are with respect to the delivery of services. A consultation period concerning these reforms should be scheduled to commence in the first quarter of 2020 with a view to developing draft legislation by the third quarter of 2020.

Recommendation 21: Prohibition against certain unfair trading practices

The proposed amendment to the *Competition and Consumer Act 2010* (Cth) is supported by ACCAN. Progressing this recommendation should be undertaken through the existing CAANZ process in order to avoid duplication of work that has already been undertaken. In progressing the proposal through the CAANZ process, ACCAN supports the publication of a detailed timeline outlining the intended schedule for progressing this recommendation.

Dispute resolution processes

Recommendation 22: Digital platforms to comply with internal dispute resolution requirements

ACCAN supports the recommendation that digital platforms must develop appropriate internal dispute resolution processes to facilitate the effective resolution of consumer complaints. In accordance with the position of the ACCC, this can be readily achieved through the development of an ACMA industry standard.

The development of an Internal Dispute Resolution standard could be progressed by the ACMA in a timely manner, with consultation processes being commenced in the final quarter of 2019 and finalised by the second quarter of 2020.

In seeking to implement this recommendation, any IDR standard should be set to require compliance with the AS/NZS 10002: 2014 Customer Satisfaction – Guidelines for complaint handling in organisations standard.⁴

⁴. <https://www.saiglobal.com/pdftemp/previews/osh/as/as10000/10000/10002-2006.pdf>

Recommendation 23: Establishment of an ombudsman scheme to resolve complaints and disputes with digital platform providers

ACCAN supports the creation of an ombudsman scheme to resolve complaints and disputes with digital platform providers. Although the substantive reform component of the recommendation would require modifications to existing legal arrangements, an examination should be undertaken of the feasibility and appropriateness of the Telecommunications Industry Ombudsman assuming these responsibilities. As part of any consultation process ACCAN believes it is important that consideration be given to whether the existing investigative and enforcement powers of the TIO could be strengthened to support any expanded role.

ACCAN does not foresee any barriers to the commencement of a consultation process into the appropriate dispute resolution mechanism beyond any internal resourcing constraints of the ACMA. Accordingly, we consider that this consultation process could be actioned in the first quarter of 2020, subject to any constraints of which ACMA may advise the Treasury.

In developing an ombudsman scheme, ACCAN believes that the arrangements should be established in accordance with the principles set out in the AS/NZS 10002: 2014 Customer Satisfaction – Guidelines for complaint handling in organisations standard.⁵

In seeking to set up an ombudsman scheme ACCAN believes that there must be careful consideration of the minimum baseline resourcing required in order to ensure that the scheme is effective in resolving complaints. In addition, the scheme should provide for sufficient resourcing to allow for the identification and reporting on of any systemic issues that may emerge.

Thank you for considering ACCAN's position on these important reforms. Should you wish to discuss this submission further please do not hesitate to get in contact.

Yours sincerely,

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⁵. <https://www.saiglobal.com/pdftemp/previews/osh/as/as10000/10000/10002-2006.pdf>