Digital Platform Services Inquiry

Digital Platform Services Inquiry – March 2023 Report on Social Media Services

Submission by the Australian Communications Consumer Action Network (ACCAN) to the Australian Competition and Consumer Commission (ACCC)

9 September 2022

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards communications services that are trusted, inclusive and available for all.

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1. Introduction

The Australian Communications Consumer Action Network (ACCAN) thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to provide feedback to the Issues Paper for *Digital Platform Services Inquiry – March 2023 Report on social media services.*

As Australia's national communications consumer advocacy organisation, we are following the scope of the ACCC's Digital Platforms inquiries to better understand the potential positive and negative implications for consumers. The increased convergence of digital technologies with telecommunications and media can provide significant benefits for both individuals and the broader community when the appropriate competition and consumer protections are in place. We are supportive of competitive and efficient digital platform markets that provide consumers choice and confidence.

The issues paper explores a range of topics related to competition, advertising and consumer harms. We have restricted our comments to those questions that touch upon matters directly relevant to consumers. In this submission we:

1. Call for a funded consumer voice in the digital platforms space
2. Support mechanisms that reduce harms to consumers from scams on social media
3. Support the introduction of a prohibition on unfair trading practices into Australian Consumer Law
4. Support requirements for social media platforms to provide fair menus and interfaces overseen by a well-resourced and capable regulator
5. Support measures to provide consumers with transparency mechanisms in effective and accessible ways
6. Support the development of Internal Dispute Resolution standards for social media platforms
7. Support the establishment of an independent digital platforms ombudsman scheme
8. Support consumer choice through obligations on digital platforms to foster meaningful interoperability and data portability
9. Support equitable access to social media through both apps and web browsers
10. Support consultation with remote Aboriginal communities to provide safety controls for social media platforms.

The following pages respond to select questions in the issues paper and elaborate on these points.

1.1 List of recommendations

Recommendation 1: ACCAN recommends that consumer representation be adequately funded to ensure that the consumer voice is appropriately resourced to participate in the ongoing discussions regarding digital platform services and consumer protections and safeguards.

Recommendation 2: ACCAN supports the different mechanisms previously suggested by the ACCC to reduce the harms to consumers from scams on social media platforms. We agree that operators should be required to implement systems and processes to protect their users. This requirement needs to be supervised by a well-resourced and capable regulator. There also needs to be effective consumer education materials made widely available, including on the platforms themselves.

Recommendation 3: ACCAN recommends the introduction of a prohibition on unfair trading practices into Australian Consumer Law

Recommendation 4: ACCAN supports the ACCC's recommendations that large digital platforms be required to ensure that interfaces and menus give consumers every opportunity to navigate services in their best interests, free from blatant and unreasonable design. This obligation should be overseen by a well-resourced and capable regulator.

Recommendation 5: ACCAN supports measures that increase the transparency of digital platform decisions to consumers in effective and accessible ways. We also encourage the development of a best interest duty for data holders.

Recommendation 6: ACCAN supports the development of Internal Dispute Resolution standards for social media platforms to be overseen by the ACMA.

Recommendation 7: ACCAN supports the establishment of an independent digital platforms ombudsman scheme. We also urge the ACCC to consider the need for a clearing house to make it easier for consumers to find the right regulatory body with their complaint.

Recommendation 8: ACCAN supports measures to impose obligations on large digital platforms to provide meaningful tools that facilitate interoperability and data portability. These measures would empower users to switch services and have more control of their data.

Recommendation 9: Users should be able to equitably access social media through both apps and web browsers.

Recommendation 10: Social media platforms should be encouraged to develop and provide remote Aboriginal communities with safety tools to reduce cyber-safety risks.

2. The need for consumer representation

Social media platforms are a popular means for Australians to communicate with each other.[1] In previous submissions to the ACCC Digital Platform Services Inquiry[2] and Media Reform Green Paper,[3] ACCAN has raised concerns that there is no dedicated Australian consumer organisation representing the interests of consumers in the ever-expanding digital platform environment. We believe that a properly resourced consumer voice is needed to ensure that all Australian consumers can use digital platforms confidently and safely. This consumer body should be funded by government and industry to properly engage with the plethora of emerging issues facing Australian consumers on digital platforms.

> **Recommendation 1:**   ACCAN recommends that consumer representation be adequately funded to ensure that the consumer voice is appropriately resourced to participate in the ongoing discussions regarding digital platform services and consumer protections and safeguards.

3. Responses to select questions

3.1 Consumer Harms from Social Media Platform Services in Australia

Responding to question:

> 27) Has the development of social networking features and related services by social media platforms led to new consumer harms, and/or exacerbated existing consumer harms?

Broadly, this question asks about harms not specific to advertising on social media platforms. While the list of new and exacerbated harms is wide ranging, we detail some continuing areas of concern

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[1] We Are Social 2022. *DIGITAL 2022 AUSTRALIA: ONLINE LIKE NEVER BEFORE*. Available at: https://wearesocial.com/au/blog/2022/02/digital-2022-australia-online-like-never-before/

[2] ACCAN 2021a, *Submission to ACCC Digital Platforms Inquiry Report on market dynamics and consumer choice screens in search services and web browsers*, available: https://accan.org.au/accans-work/submissions/1847-accc-consumer-choice-screens

[3] ACCAN 2021b, *Submission to Media Reform Green Paper: Modernising television regulation in Australia,* available: https://accan.org.au/our-work/submissions/1854-media-reform-green-paper

below. We support measures that allow consumers to safely and confidently use social media platforms to communicate with each other and participate in the digital economy.

Scams

Our view is that there needs to be more proactive monitoring of scams by digital platforms. Furthermore, there must be more proactive reporting to, and independent investigation by, relevant regulators, alongside the standardisation of terms and conditions and provision of effective consumer education. Scams are of major concern to our members and the broader Australian public. In a recent representative survey of the Australian public, 76% of respondents agreed that "Digital platforms are not doing enough to prevent people from being scammed online".[4] As the ACCC reports, Australians are losing record breaking amounts to scammers.[5] As Australians increasingly use social media platforms to communicate, the risk that they will be targeted with scams grows. For example, the ACMA recently issued a warning of scammers using WhatsApp and SMS to impersonate family members.[6] Fighting scams requires both preventative measures and more effective consumer education. Examples of regulators and service providers working together to reduce scams could draw on examples on telecommunications[7], especially where the regulator levies fines for non-compliance.[8]

We support the ACCC's suggestions in a previous issues paper that digital platforms should be required to:

- improve their existing processes to more effectively monitor, block and remove online scams and malicious apps from being displayed to their users and to manage the harms associated with the prevalence of fake online reviews on their platforms
- notify and/or provide redress to their users who have been exposed to harmful content identified on their platforms
- implement systems and processes that proactively prevent the distribution of online scams and malicious apps to their users, such verification requirements for advertisers and labelling that clearly distinguishes the advertisements of unverified advertisers, and

[4] ACCAN 2022 (Forthcoming) Consumer Check-in: Expectations in 2022. Available at: https://accan.org.au/accans-work/research/2003-consumer-expectations-2022

[5] ACCC 2021, *Scammers capitalise on pandemic as Australians lose record $851 million to scams*, available: https://www.accc.gov.au/media-release/scammers-capitalise-on-pandemic-as-australians-lose-record-851-million-to-scams

[6] ACMA 2022. *Consumer warning: Lost phone/new number scams*. Available at: https://www.acma.gov.au/articles/2022-08/consumer-warning-lost-phonenew-number-scams

[7] ACMA 2022. *New rules to fight SMS scams*. Available at: https://www.acma.gov.au/articles/2022-07/new-rules-fight-sms-scams

[8] See https://www.acma.gov.au/articles/2022-08/anti-scam-breaches-cost-circleslife-over-300k-penalties-and-compensation

    − report regularly to relevant regulators and law enforcement agencies.[9]

We support the empowerment of a well-resourced body that can meaningfully investigate social media platforms to identify scams. This body should be resourced to conduct regular investigations using different means of research including data science and qualitative research.

Preventative measures should be the primary means of preventing consumer harm from malicious apps and scams. Consumer education can also play an important role in helping consumers protect themselves. We recommend that the ACCC continue to create effective consumer education materials and ensure that they are readily available to consumers, both from government websites and hosted on the platforms themselves. These education materials need to be provided in a range of accessible formats and diverse community languages.

> **Recommendation 2:** ACCAN supports the different mechanisms previously suggested by the ACCC to reduce the harms to consumers from scams on social media platforms. We agree that operators should be required to implement systems and processes to protect their users. This requirement needs to be supervised by a well-resourced and capable regulator. There also needs to be effective consumer education materials made widely available, including on the platforms themselves.

Fair Interface Design, Transparency and Dark Patterns

ACCAN supports measures that require social media platforms to provide fair user interfaces and choice architecture. Social media interfaces should be designed fairly and not undermine consumer choice or nudge consumers towards a certain outcome that benefits the platform, such as revealing personal information. Recent research by the CPRC found that dark patterns led one in four Australians to sharing more personal information than they wanted to.[10] We are concerned that many consumers are time poor or may lack digital literacy skills to change privacy defaults in the social media platforms that they use. In recent research ACCAN found that factors such as income, age and geography impact whether people find it easy to change default privacy and safety settings on websites and apps.[11] Consumers should be given every opportunity to make decisions in their best interests and should be protected from blatant or unreasonable design of menus and interfaces on social media.

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[9] ACCC 2022, *September 2022 interim report Discussion paper*, available: https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025/september-2022-interim-report

[10] CPRC 2022. *Duped by design – Manipulative online design: Dark patterns in Australia.* Available at: https://cprc.org.au/dupedbydesign/

[11] ACCAN 2022 (Forthcoming) Consumer Check-in: Expectations in 2022. Available at: https://accan.org.au/accans-work/research/2003-consumer-expectations-2022

ACCAN supports recommendations that the ACCC introduce a prohibition on unfair trading into the ACL. [12] According to Paterson and Bant (2020), one benefit of a general prohibition on unfair trading would be that it may prompt "courts to move beyond a narrower notion of unconscionability in addressing exploitative or manipulative business systems that offend community standards."[13] This is important as proving unconscionability in court can be a difficult task that does not always recognise the impact of the conduct on consumers.

A prohibition on unfair trading practices would cover the use of deceptive (also known as dark) patterns online. This prohibition would address certain practices that are arguably oppressive, exploitative, or contrary to consumer expectations of fairness in the market. From a regulatory perspective, the introduction of an unfair trading practices prohibition would remove or avoid the need for industry or sector specific regulation and can be broadly applied to the market.

ACCAN supports an unfair trading practices prohibition that is flexible, proactive and considers a mix of moral and economic factors in determining whether a business practice is unfair. The EU prohibition is a good model for this, where an unfair practice is contrary to the requirements of professional diligence and materially distorts the economic behaviour of consumers by impairing their ability to make an informed decision. This definition includes both a moral element that refers to community expectations, and an objective impact on consumers. The unfair trading practices prohibition would provide a baseline safeguard for consumers using digital platform services, and more generally in the market.

> **Recommendation 3:** ACCAN recommends the introduction of a prohibition on unfair trading practices into Australian Consumer Law

As discussed in relation to scams, we support the empowerment of a regulatory body to scrutinise the prevalence and characteristics of unfair interface design and dark patterns on social media platforms. This regulatory body could oversee the ACCC's previous suggestions that large digital platforms should be required to:

- Provide equal prominence between options to change default settings.
- Respect user choices of their settings and only use notifications reasonably.
- Make services as simple as possible to cancel.

We support regulatory scrutiny and oversight of dark patterns. Voluntary standards should not be used in place of regulatory oversight. Additionally, voluntary standards should only extend consumer protections beyond existing Australian consumer protection laws.

> **Recommendation 4:** ACCAN supports the ACCC's recommendations that large digital platforms be required to ensure that interfaces and menus give consumers every opportunity to navigate services in their best interests, free from blatant

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[12] Consumers Federation of Australia 2022, *Consumer Policy Agenda 2022*, available: http://consumersfederation.org.au/wp-content/uploads/2020/08/20220223_CFA_Consumer-Policy-Agenda-2022.pdf

[13] Paterson, JM & Bant, E, 2020, p.10, 'Should Australia Introduce a Prohibition on Unfair Trading? Responding to Exploitative Business Systems in Person and Online', *Journal of Consumer Policy*, vol. 44, no. 1, pp. 1–19

Due to the opaque nature of digital platforms operating models, there is a strong information asymmetry between users of the platforms (both consumers and businesses) and the digital platforms themselves. We recognise that the House of Representatives Select Committee on Social Media and Online Safety's report[14] has made a number of recommendations regarding establishing reviews of the use of algorithms in digital platforms and potential proposals for mandating platform transparency. We are supportive of measures that would increase transparency for both consumers and small businesses, as this would likely go some way in addressing issues with information asymmetry.

Key terms of service for digital platforms should outline the data that is being gathered about the user and should clearly explain how this data will be used.

Attention must also be paid to how information regarding complex topics such as contractual terms and privacy policies is presented to consumers. A recent analysis of 75 privacy policies across top e-commerce websites, banking apps and government service QR code check-in apps by CHOICE found that they average 4000 words and take 16 minutes to read.[15] Of the privacy policies analysed, a third would require university-level reading skills to easily read and understand the information enclosed. This means that only 1.2% of Australians[16] would have the literacy skills necessary to give informed consent when agreeing to the privacy policies of most digital platforms.

We recommend that all key documents relating to the use of digital platforms, such as terms of service and privacy policies, be made available in plain English and comply with the latest Web Content Accessibility Guidelines. Additionally, these documents can be made more legible by:

− Displaying key terms as frequently asked questions
− Using icons to illustrate key terms (noting these must have appropriate alt-text for accessibility)
− Showing users terms within a scrollable text box instead of requiring a click to view them
− Providing information in short chunks at the right time[17]

While transparency is important, ACCAN would also like to see increased consumer protections regarding consumer data. We recommend the introduction of an obligation for businesses to act in the interests of people whose data they hold and use. This could take the form of a best interest duty, as is being explored by some jurisdictions in the United States, or a broader obligation to act in the collective interests of a large group, similar to obligations that apply to superannuation fund

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[14] Commonwealth of Australia 2022, Social Media and Online Safety, available: https://parlinfo.aph.gov.au/parlInfo/download/committees/reportrep/024877/toc_pdf/SocialMediaandOnlineSafety.pdf;fileType=application%2Fpdf

[15] CHOICE 2022, *Privacy policy comparison reveals half have poor readability*, available: https://www.choice.com.au/consumers-and-data/protecting-your-data/data-laws-and-regulation/articles/privacy-policy-comparison

[16] For further information, see: https://www.stylemanual.gov.au/accessible-and-inclusive-content/literacy-and-access

[17] UK Government 2019, *Improving consumer understanding of contractual terms and privacy policies: evidence-based actions for businesses*, available: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/831400/improving-consumer-understanding-contractual-terms-privacy-policies.pdf

trustees. This would allow for a norm shift in which businesses consider first and foremost the user of the product and service and assess potential risks from that perspective.

> **Recommendation 5:** ACCAN supports measures that increase the transparency of digital platform decisions to consumers in effective and accessible ways. We also encourage the development of a best interest duty for data holders.

Internal Dispute resolution standards

ACCAN supports effective and easily accessible ways for consumers to resolve disputes with digital platforms. Having access to fair, effective, transparent, and impartial mechanisms for dispute resolution is a vital part of ensuring consumers are adequately protected in all markets,[18] including those related to social media platforms. ACCAN's recent research has found that almost three in four Australians agree that it needs to be easier to make a complaint and to get their issues resolved when dealing with digital platforms such as Facebook, WhatsApp, eBay, and Service NSW.[19] Additionally, ACCAN's research found that 78% of Australians think that it needs to be easier for people to get their issues resolved, and 60% feel like there's not much they can do when something goes wrong online. This research indicates that existing dispute resolution options present on digital platforms are not adequately serving consumers.

We support the recommendation in the ACCC's DPI Final Report[20], that digital platforms must develop appropriate internal dispute resolution processes to facilitate the effective resolution of consumer complaints. This could be readily achieved through the development of an ACMA industry standard. Recent research from University of Technology Sydney recommended that attention should be paid to "Recommendation 22 of the DPI Final Report that proposed the ACMA develop standards for effective IDR" to provide more equitable channels for disputes between users. In the researchers' view, "there is a strong public policy argument for encouraging social media providers to fund easily accessible and no-cost dispute mechanisms".[21] Internal dispute resolution services should also allow users to escalate their complaint quickly and easily to a dispute resolution body, such as a digital platforms ombudsman, as discussed in the next section.

> **Recommendation 6:** ACCAN supports the development of Internal Dispute Resolution standards for social media platforms to be overseen by the ACMA.

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[18] UNCTAD 2016, United Nations Guidelines for Consumer Protection, available: https://unctad.org/system/files/official-document/ditccplpmisc2016d1_en.pdf

[19] ACCAN 2021, *New research finds nearly three-quarters of Australians want better complaints handling from digital platforms*, available: https://accan.org.au/media-centre/media-releases/1942-new-research-finds-nearly-three-quarters-of-australians-want-better-complaints-handling-from-digital-platforms?highlight=WyJ0cnVzdCIsInRydXN0JyJd

[20] ACCAN 2019, *Treasury consultation on ACCC Digital Platforms Inquiry Final Report*, available: https://accan.org.au/our-work/submissions/1672-treasury-consultation-accc-dpi-final-report

[21] Holly Raiche, Derek Wilding, Karen Lee & Anita Stuhmcke 2022, p.50-1. *Digital Platform Complaint Handling: Options for an External Dispute Resolution Scheme.* Available at: https://www.uts.edu.au/sites/default/files/2022-08/CMT%20DPCH%20Report%20-%20electronic%20version.pdf

External Dispute Resolution Body

ACCAN maintains our support for an independent digital platforms ombudsman scheme as proposed in the DPI Final Report in 2019. This ombudsman would review decisions made by large digital platforms and ensure that consumers receive fair treatment.

Recent research by the Centre for Media Transition at University of Technology Sydney found that rather than setting up an entirely new body for digital platforms, existing bodies such as the Telecommunications Industry Ombudsman (TIO) could be expanded to take on parts of the role. The researchers noted that because "the TIO currently administers a resolution scheme based on consumer complaints about telecommunications service providers" therefore "complaints about digital platforms are a natural fit for an expanded TIO".[22] The researchers concluded that "that the TIO is the only existing body that merits serious consideration as the platform ombudsman".[23] The research also explores the idea of a "clearing house" for complaints that would then direct complainants to the relevant body. This clearing house would be funded by industry but operate independently, perhaps with oversight from either the TIO, ACMA or Office of the eSafety Commissioner.

ACCAN also supports pro-consumer measures that prohibit restrictive dispute resolution clauses in terms of use policies, such as requirements for claims to be made in jurisdictions outside of Australia and limitations on class actions.

> ***Recommendation 7:*** ACCAN supports the establishment of an independent digital platforms ombudsman scheme. We also urge the ACCC to consider the need for a clearing house to make it easier for consumers to find the right regulatory body with their complaint.

3.2 Harms relating to display advertising on social media

Responding to questions:

> 28) What impact has advertising on social media had on consumer engagement on social media? Has advertising on social media led to any specific consumer harms?
>
> 29) Are consumers faced with potentially misleading and/or deceptive claims through advertising on social media (including sponsored advertising or posts featuring influencers)? If so, has the incidence of potentially misleading and/or deceptive claims increased or decreased over time?

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[22] Holly Raiche, Derek Wilding, Karen Lee & Anita Stuhmcke, 2022, p.5. *Digital Platform Complaint Handling: Options for an External Dispute Resolution Scheme*. Available at: https://www.uts.edu.au/sites/default/files/2022-08/CMT%20DPCH%20Report%20-%20electronic%20version.pdf

[23] Holly Raiche, Derek Wilding, Karen Lee & Anita Stuhmcke, 2022, p.42. *Digital Platform Complaint Handling: Options for an External Dispute Resolution Scheme*. Available at: https://www.uts.edu.au/sites/default/files/2022-08/CMT%20DPCH%20Report%20-%20electronic%20version.pdf

> 30)Are businesses impacted by potentially misleading and/or deceptive claims through display advertising, including sponsored advertising or posts featuring influencers?
>
> 31)What is the process for consumers and business users to report potentially misleading and/or deceptive claims in advertising on social media, and what role do social media platforms play in these processes? How effective are these processes?

Broadly, these questions refer to harms from digital advertising and consumer protections and redress on social media platforms.

As discussed earlier in relation to fair interface design, ACCAN supports the introduction of a prohibition on unfair trading into the ACL. Digital marketing practices, especially those employed through digital platforms such as Meta and Google, have become increasingly complex since the ACL was introduced in 2011. As a result, general prohibitions against unconscionable conduct may no longer adequately address the primary concerns over new digital marketing techniques.[24] As Paterson and Bant note, a concern with digital advertising is that[25]

> they persuade consumers towards certain purchasing choices, while closing off others through not making different kinds of opportunities visible in consumers' online interactions.

We are concerned that the collection and use of data to micro target consumers could lead to significant detriment for vulnerable consumers, who may be targeted with inappropriate products or services that they would not ordinarily seek out. For example, advocates have noted that social media platforms are popular for alcohol marketing and could contribute to harmful behaviours.[26] Microtargeted advertising can also be used by scammers to target and mislead consumers, such as with cryptocurrencies and financial scams.[27] Data collection activities could also result in vulnerable consumers being discriminated against or excluded from markets.[28]

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[24] Paterson, JM & Bant, E, 2020, 'Should Australia Introduce a Prohibition on Unfair Trading? Responding to Exploitative Business Systems in Person and Online', *Journal of Consumer Policy*, vol. 44, no. 1, pp. 1–19

[25] Paterson, JM & Bant, E, 2020, p.14, 'Should Australia Introduce a Prohibition on Unfair Trading? Responding to Exploitative Business Systems in Person and Online', *Journal of Consumer Policy*, vol. 44, no. 1, pp. 1–19

[26] Foundation for Alcohol Research & Education, Cancer Council WA. (2020) An alcohol ad every 35 seconds. A snapshot of how the alcohol industry is using a global pandemic as a marketing opportunity. ACT, Australia: FARE. Available at: An alcohol ad every 35 seconds. A snapshot of how the alcohol industry is using a global pandemic as a marketing opportunity. - Drugs and Alcohol

[27] Kemp, K 2022. *The ACCC is suing Meta for celebrity crypto scam ads on Facebook. Here's why the tech giant could be found liable*. Available at: https://theconversation.com/the-accc-is-suing-meta-for-celebrity-crypto-scam-ads-on-facebook-heres-why-the-tech-giant-could-be-found-liable-179655

[28] CPRC 2021, *Unfair Trading Practices in Digital Markets*, available: https://cprc.org.au/wp-content/uploads/2021/11/Unfair-Trading-Practices-in-Digital-Markets.pdf

We support calls from the Consumers' Federation of Australia (CFA)[29] for a prohibition on unfair trading that would focus on consumer outcomes of products, services and business practices, including:

- marketing that manipulates or restricts the freedom of choice of a consumer
- product design so that commercial returns to a firm arise predominantly from consumer outcomes that are consistent with the product's purpose
- ensuring consumers experiencing vulnerability do not experience worse outcomes than other consumers

While reforms to general consumer law to prohibit unfair trading across the economy are important, we reiterate that proactive monitoring and intervention by a digital platforms ombudsman would provide an integral external dispute resolution channel for social media platforms.

3.3 Barriers to switching and interoperability

Responding to questions:

> 6) To what extent do users use more than one social media service? Are there any barriers to users switching or using more than one social media service?

The issues paper notes that barriers to switching and interoperability may harm competition.

> The size of switching costs between platforms and the ability and willingness of users to multi-home (the practice of using more than one platform for the same type of service) may also influence the intensity of competition between social media platforms. Where switching costs are high, or where users are unable to effectively multi-home, competition is likely to be weaker between platforms.[30]

ACCAN supports measures that give consumers security, control over, and benefit from their data. Secure interoperability and data portability should be prioritised to remove barriers to switching and give consumers meaningful choice of which social media platforms they choose to use.

Interoperability

Interoperability is an important measure to foster competition and innovation in digital platforms. Telecommunications, the internet and the web were built on open standards that continue to underpin fundamental communications, like email, today. However, as the ACCC identifies, digital

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[29] Consumers Federation of Australia 2022, Consumer Policy Agenda 2022, available: http://consumersfederation.org.au/wp-content/uploads/2020/08/20220223_CFA_Consumer-Policy-Agenda-2022.pdf

[30] ACCC 2022, p.9. *Digital Platform Services Inquiry – March 2023 Report on social media services.* Available at: https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March%202023%20report%20-%20Issues%20paper_0.pdf

platforms benefit from single side network effects that lock consumers into services in order to maintain access to their social networks.

For example, online private messaging services remain far less interoperable than they should be. There have been some recent developments in interoperability, such as between Meta owned apps[31] and between Google's message app and Apple's iMessage.[32] However, the limited nature of these recent developments illustrates the inadequate interoperability offered to consumers. The lack of established standards and interoperability between popular messaging apps including Facebook Messenger, WhatsApp, Telegram or Snapchat forces users to choose which platforms they use based on their broader social networks instead of each app's merits.

Platforms often cite privacy and security as excuses for the lack of initiative in interoperability, but their lack of progress in finalising standards leads some critics to find this argument unconvincing.[33] For example, the open-source Signal protocol already underpins many messaging apps and could serve as a preliminary cryptographic standard.[34]

The lack of messaging interoperability risks making communications worse for Australian consumers. SMS is a fundamental means of communication for many Australians. As Australians expect more from their messaging services, such as multimedia and reactions, standards will need to evolve to meet those expectations. However, Apple's iMessage, one of the most popular apps for SMS and messaging, limits interoperability with other apps.[35] According to court documents, the lack of interoperability may be intentional to protect Apple's market share.[36] Critics have pointed out that newer standards like Rich Communication Services (RCS) are more secure than SMS and support encryption.[37]

Messaging provides a clear example that the principles of fostering open, secure standards should be developed and applied across the digital platform sector. Experts at MIT in the US argue that "tech platforms have solved engineering challenges a hundred times harder" than becoming more interoperable.[38] Organisations such as the Electronic Frontiers Federation have argued for years that

[31] TechCrunch 2020, *Facebook introduces cross-app communication between Messenger and Instagram, plus other features,* available: https://techcrunch.com/2020/09/30/facebook-introduces-cross-app-communication-between-messenger-and-instagram-plus-other-features/

[32] TechCrunch 2022, *Google's Messages app can now handle iMessage reactions, challenges Apple with new features,* available: https://techcrunch.com/2022/03/10/googles-message-app-can-now-handle-imessage-reactions-challenges-apple-with-new-features/

[33] Electronic Frontier Foundation 2018, *Facing Facebook: Data Portability and Interoperability Are Anti-Monopoly Medicine,* available: https://www.eff.org/deeplinks/2018/07/facing-facebook-data-portability-and-interoperability-are-anti-monopoly-medicine

[34] For further information, see: https://en.wikipedia.org/wiki/Signal_Protocol

[35] Android Police 2022, *Google's RCS drama with Apple, explained: More than bubble envy, less than noble*, available: https://www.androidpolice.com/googles-rcs-drama-with-apple-explained/

[36] Wall Street Journal 2022, *Why Apple's iMessage Is Winning: Teens Dread the Green Text Bubble*, available https://www.wsj.com/articles/why-apples-imessage-is-winning-teens-dread-the-green-text-bubble-11641618009

[37] Android Police 2022, Google's RCS drama with Apple, explained: More than bubble envy, less than noble, available: https://www.androidpolice.com/googles-rcs-drama-with-apple-explained/

[38] Fast Company 2021, *How interoperability could end Facebook's death grip on social media*, available: https://www.fastcompany.com/90609208/social-networking-interoperability-facebook-antitrust

greater effort is required to facilitate interoperability between different social media services.[39] We urge the ACCC to consider instruments that foster greater interoperability across and within digital platforms and offer consumers meaningful choice about the services they use.

Data portability

An issue related to interoperability is data portability. Data portability recognises that consumers own their data, and they should reasonably be able to transfer it between comparable services as they choose. Data portability can contribute to a more competitive digital platform market by allowing users to switch services more easily. For example, consumers could keep their music playlist data when switching between music streaming services or move their photos between different photo apps.

The large digital platforms are aware that consumers want greater choice with the services they use and desire the removal of barriers to switching services or leaving a platform. As Google wrote recently, people "want the freedom to be able to use different online services without worrying about losing their photos, contacts, emails and other data if they close an account or switch to a new company".[40] Meta also recently outlined its attempts to give "people more control and choice over their data".[41] These observations were both accompanied by announcements of further efforts to foster data portability between digital platforms. Both organisations have participated in efforts such as the Data Transfer Project (DTP) for several years.[42]

However, progress to offer consumers data portability on social media has been slow. Although some of the most valuable and technologically advanced companies in the world are members of the Data Transfer Project, the product is "still in development".[43] In its recent post on data portability, Meta argues that "the ecosystem we are building to support data portability will not come to fruition without regulation that clarifies which data should be made portable and who is responsible for protecting data once it has been transferred".[44]

ACCAN supports regulatory efforts to encourage the prompt development and implementation of data portability regimes that are fit for purpose. ACCAN supports the consideration of a scheme such as the Consumer Data Right (CDR) in the digital platforms sector and particularly the focus on users as owning their own data, and digital platforms acting as data holders. We support penalties for digital platform services that fail to reasonably deliver effective data portability instruments and restrict consumer's choice and autonomy over their data. While the CDR regime provides one example of possible reform, it may take some years to implement. We encourage stakeholders to act now to implement fit for purpose data portability measures to give users control over their data

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[39] EFF 2018, *Facing Facebook: Data Portability and Interoperability Are Anti-Monopoly Medicine*, available: https://www.eff.org/deeplinks/2018/07/facing-facebook-data-portability-and-interoperability-are-anti-monopoly-medicine

[40] Google 2022, *Building data portability to help consumers choose*, available: https://blog.google/outreach-initiatives/public-policy/building-data-portability-help-consumers-choose/

[41] Meta 2021, Transfer Your Facebook Posts and Notes With Our Expanded Data Portability Tool, available: https://about.fb.com/news/2021/04/transfer-your-facebook-posts-and-notes-with-our-expanded-data-portability-tool/

[42] For further information, see: https://datatransferproject.dev/

[43] For further information, see: https://datatransferproject.dev/documentation

[44] Meta 2021, Transfer Your Facebook Posts and Notes With Our Expanded Data Portability Tool, available: https://about.fb.com/news/2021/04/transfer-your-facebook-posts-and-notes-with-our-expanded-data-portability-tool/

as soon as possible. We urge the ACCC to develop obligations for digital platforms to offer their users accessible and easy to use data portability tools.

> **Recommendation 8:** ACCAN supports measures to impose obligations on large digital platforms to provide meaningful tools that facilitate interoperability and data portability. These measures would empower users to switch services and have more control of their data.

3.4 Equity of access to social media

Responding to questions:

> 2) Why is it important for users to have access to social media services?
>
> 12) To what extent do users engage with social media services through apps, as opposed to mobile or desktop web browsers? How important is it for social media platforms to offer their services through apps, web browsers, and both?

These questions both enquire about why access to social media platforms is important. While this is a broad question, ACCAN would like to address two key areas related to digital inclusion.

Policy considerations should apply to both apps and web browsers

Policy considerations of access to social media should account for the diverse needs of people with disabilities in both mobile and desktop access. Access to social media is important for everyone but "for consumers with disabilities, the benefits are even more profound due to the opportunities for participation".[45] Although social media can present barriers to people with a disability,

> users have often found ways around the accessibility barriers such as alternative website portals, mobile apps, additional keyboard navigation shortcuts and online support groups. This is a rich source of expertise, and social media users with disability continue to find creative ways to access the most popular platforms.[46]

While social media platforms have taken steps towards providing accessibility support for their platforms, it is important that regulatory interventions consider the needs of people with disabilities. Research shows that a range of access methods to social media are required to meet people's needs.[47] Social media apps provide useful accessibility tools for many, but some people might require software or hardware that relies on a web browser to access social media. It is important that policy considerations provide for both mobile and web browser versions of social media platforms.

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[45] MAA 2012. *Sociability*. Available at: https://accan.org.au/grants/grants-projects/395-social-media-accessibility-resources-supporting-consumers-with-disability

[46] MAA 2012. *Sociability*. Available at: https://accan.org.au/grants/grants-projects/395-social-media-accessibility-resources-supporting-consumers-with-disability

[47] Ellis, K. and Goggin, G., 2015. Disability media participation: Opportunities, obstacles and politics. Media International Australia, 154(1), pp.78-88.

> **Recommendation 9:** Users should be able to equitably access social media through both apps and web browsers.

Social media access for remote first nations communities must be consultative.

Social media is an important means of communication in remote Indigenous communities, but it requires consultation and management with communities to reduce its chances of doing harm. Social media can be a useful low-cost, mobile friendly way of staying in touch across large distances. As one report notes, "Facebook and other social media platforms are used extensively where there is internet access, whereas email is rarely used for personal communications"[48]. However, there are also concerns about the effect of social media and some "communities and homelands have chosen not to accept mobile or Wi-Fi infrastructure due to concerns about the cyber-safety risks and social impact (e.g. young people accessing inappropriate content, online bullying, sexting, fight videos etc)". To reduce the harm from social media platforms, some remote Aboriginal communities have instigated filtered Wi-Fi hotspots that give the community the ability to turn off access to social media platforms where a fight may be escalating.[49] The question of access in these remote communities requires careful consultation with the communities involved. Policy makers need to consider ways to empower the community and provide them with more control so that they can be used equitably and safely.

> **Recommendation 10:** Social media platforms should be encouraged to develop and provide remote Aboriginal communities with safety tools to reduce cyber-safety risks.

4. Conclusion

Thank you for the opportunity to provide feedback on the issues paper. We look forward to further consultations as the inquiry progresses. Should you wish to discuss this submission further, please do not hesitate to get in contact.

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[48] Featherstone D, 2020, p.56. *Remote Indigenous Communications Review: Telecommunications Programs and Current Needs for Remote Indigenous Communities*, Australian Communications Consumer Action Network, Sydney. Available at: https://accan.org.au/our-work/research/1821-remote-indigenous-communications-review-telecommunications-programs-and-current-needs-for-remote-indigenous-communities

[49] CAYLUS 2018, CAYLUS Submission to The Regional Telecommunications Review 2018. Available at: https://www.infrastructure.gov.au/sites/default/files/submissions/central_australian_youth_link-up_service.pdf