




## Executive Minute for clearance

<b>Timing:</b> Urgent <input type="checkbox"/> Routine <input checked="" type="checkbox"/>	
<b>Project Officer (include phone extension):</b> s 22	<b>Through General Manager:</b> 
<b>Branch:</b> Digital Platforms Branch	<b>Executive General Manager consulted?</b> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> If yes, provide name: Tom Leuner
<b>Date:</b> XX May 2023	<b>Executive Office (EO) Director clearance</b>
<b>Subject:</b> Briefing on the ACCC's recommendations for new obligations to address competition and consumer issues in digital platform markets	<b>Approved by Chief Executive Officer:</b> <i>Note: all minutes require CEO clearance</i>
<b>Additional information / Special instructions:</b> Insert text here	<b>Approved by Chair:</b>
<b>Note:</b> Exec Office copies all minutes to Treasury, please let them know if you do not want your minute to be copied to Treasury. Also, please let Exec Office know if there are other departmental staff who you would like copied into the outgoing minute.	<b>Date:</b> <a href="#">Click here to enter a date.</a>

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# Australian Competition and Consumer Commission

## Executive minute

**Minute No** **XX/2023**

**To:** Minister for Communications

**Date:** [Click here to enter a date.](#)

**Subject:** Briefing on the ACCC's recommendations for new obligations to address competition and consumer issues in digital platform markets

**Timing:** Routine

### Recommendation:

That you note the ACCC's recommendations that:

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- the largest and most powerful digital platforms ('designated' digital platforms) be subject to service-specific codes of conduct with targeted obligations to protect and promote competition in digital platform services markets.

We invite you to meet with the ACCC to discuss these recommendations further.

**Noted:** \_\_\_\_\_

**Date:** \_\_\_\_\_

### Issue

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- c) A new competition regime with targeted obligations in service-specific codes of conduct to apply to a small number of designated digital platforms with the ability and incentive to engage in anti-competitive conduct (recommendation 3).
  - d) Those targeted obligations would address issues such as anti-competitive self-preferencing and tying, exclusive pre-installation and defaults, and impediments to switching and interoperability (recommendation 4).
3. These recommendations build on the ACCC's experience in examining competition and consumer issues in the supply of digital platform markets, which has been a major focus of the ACCC since 2017, with the production of over 8 significant reports to date.<sup>1</sup>
  4. The Government is currently considering the recommendations. The Treasury consultation process closed in February 2023, and submissions have not yet been published. The ACCC has been actively engaging with Treasury as part of its process of developing the Government's response.

2 pages have been removed from this document as irrelevant information under section 22 of the FOI Act.

### ***Competition issues and recommendations***

19. The ACCC is concerned that a range of conduct by the most powerful digital platforms is harming competition in digital platform markets, including:
- a) self-preferencing, for example, Google promoting its own services in search results on Google Search
  - b) tying, for example, access to Google's YouTube advertising being tied to the use of Google's ad tech services
  - c) exclusivity agreements, for example, Google pays billions of dollars worldwide each year to have Google Search set as the default search service on Apple mobile devices
  - d) raising barriers to switching and denying interoperability, for example, prohibiting app developers from communicating other ways to purchase an app or services in an app in Google or Apple's app stores
  - e) a lack of transparency, for example, in ad tech fees and ad verification data, and
  - f) withholding access to important hardware, software, and data inputs, such as Apple denying access to its Near-Field Communications technology to allow contactless mobile payment.
20. The ACCC recommends a new regulatory regime to address such conduct. Under this regime there would be service-specific codes of conduct with targeted obligations to address anti-competitive conduct and barriers to entry that prevent effective competition in digital platform markets. These obligations would only apply to the largest and most powerful digital platforms that meet designation criteria in respect of specific digital platform services they supply ('designated' digital platforms). The ACCC expects only a very small number of digital platforms would meet the designation criteria.

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<sup>5</sup> The Regulatory Reform Report (recommendation 1) 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.

21. As an example, most issues specific to Google's market power in the supply of search, app store, ad tech and mobile operating system services can be resolved through the proposed competition measures if Google were designated, and codes of conduct drafted in respect of these services. However, in relation to ad tech, there may still be a need for further industry-wide measures to address issues such as a lack of transparency.
22. The ACCC considers this approach balances certainty and flexibility. The principles and objectives underpinning the codes would be legislated to provide certainty, while the use of codes would provide the flexibility to address emerging issues or new forms of conduct as issues arise in these highly dynamic markets. Importantly, it would ensure that significant penalties under the *Competition and Consumer Act 2010* could apply to deter the largest global digital platform firms from engaging in harmful conduct.

## A. Relevant overseas competition measures and proposals

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European Union: [Digital Markets Act](#)

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**Obligations**

Requires platforms to:

- allow un-installation of apps, changes to default settings and sideloading of apps
- allow interoperability with hardware and software features
- ensure transparency on performance in ad intermediation
- provide access to data generated by business users
- provide third-party online search providers access to search data
- ensure data portability.

Prohibits:

- tying of core platform services
- self-preferencing in ranking and favourable terms compared with third party users
- restrictions on switching
- use of non-public data to compete with business users
- parity clauses
- anti-steering provisions
- usage restrictions
- requirements on business users to use certain ancillary services.

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**Penalties and enforcement**

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## B. ACCC Digital Platforms Recommendations and Potential Measures - May 2023

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Table 4: [Interim report #2](#) – app marketplaces (provided March 2021)

Potential measure		Status
1	Address inadequate payment option information and limitations on developers	In March 2022, <a href="#">Apple enabled</a> third party payment options for 'reader' apps as an alternative to the Apple in-app payment system.  In September 2022, Google <a href="#">launched</a> a pilot program in Australia and other countries allowing developers of non-gaming apps to offer alternative in-app payment options.
2	Increase transparency and address risk of self-preferencing in app marketplace discoverability and display	Considered further as part of the ACCC's <a href="#">Regulatory Reform Report</a> – see above (Table 1, recommendations 3 and 4, Regulatory Reform Report).
3	Provide an option for consumers to rate and review first-party apps	As of September 2021, Apple enabled review of its first-party apps on the App Store. This option is also available on the Google Play Store.
4	Provide for greater choice of default apps for consumers	Considered further as part of the ACCC's <a href="#">Regulatory Reform Report</a> – see above (Table 1, recommendations 3 and 4, Regulatory Reform Report).
5	Address the risks of malicious, exploitative or otherwise harmful apps	As of September 2021, Apple enabled 'report a scam or fraud' functionalities on each app on the App Store.  In January 2023, <a href="#">Google banned deceptive ads</a> that impersonate the user interface of other app features.
6	Address the risk of misuse of commercially sensitive information	Considered further as part of the ACCC's <a href="#">Regulatory Reform Report</a> – see above (Table 1, recommendations 3 and 4, Regulatory Reform Report).

## C. Industry-wide issues in advertising markets

The ACCC has identified a range of industry-wide issues with digital advertising markets. While the ACCC's recommendations for regulatory reform will address many issues in the ad tech supply chain, there are residual issues that would not be addressed by these recommendations as they do not relate to a particular digital platform that could be designated but rather, they are industry wide. This note outlines these issues.

In its Digital Advertising Services Inquiry (DPSI), the ACCC identified concerns with the lack of transparency for advertisers and publishers who depend on the ad tech supply chain to sell advertising space on their online properties (publishers) and to purchase advertising space to target potential customers (advertisers).

The ad tech supply chain is complex and opaque; advertisers and publishers often rely on their ad tech providers for information about the pricing and performance of their services.

The ACCC has identified two key industry-wide transparency issues:

- **Lack of transparency regarding prices and fees of ad tech services** – publishers and advertisers do not have visibility of fees across the whole ad tech supply chain, undermining confidence that the supply chain is providing value to advertisers and publishers. This lack of transparency limits the ability of publishers and advertisers to make informed decisions about the purchase and sale of ad inventory.
- **Performance of demand side services** – advertisers use verification and attribution services to assess the quality and price of the demand side platforms they use, and the ad inventory they purchase. There is concern about advertising being served on sites viewed largely by bots, mislabelling of websites and content inconsistent with advertiser branding. Misdirected advertising can unknowingly fund mis/disinformation campaigns. Google has restricted independent verification for advertisers on YouTube and similar issues are prevalent on social media platforms.

The ACCC has made recommendations to address these issues, including:


- **Industry should establish standards** to require ad tech providers to publish average fees and take rates for ad tech services, and to enable full independent verification of demand side services ([Recommendation 4](#)).
- If industry fails to establish standards, or these standards are ineffective, **a regulator should be given powers to develop and enforce rules to improve transparency of the price and performance of ad tech services**. The rules would apply across the advertising supply chain ([Recommendation 6](#)).

Advertisers have also raised concerns about the lack of independent verification of advertising on social media services, including in the context of the ACCC's DPSI's sixth interim report. Recently, the French Competition Authority ordered Meta to allow third party verification of advertising on its platforms, subject to certain access criteria. Industry standards or rules to improve transparency of the performance of advertising services should apply to the ad tech supply chain and social media advertising.

Lack of transparency in advertising harms advertisers, publishers and ultimately, consumers. It prevents advertisers and publishers from making informed decisions about how they buy and sell advertising. Without transparency, publishers are unable to maximise their advertising revenue, and advertisers are unable to maximise their advertising spend. This increases costs, which are ultimately passed on to consumers.



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<b>Subject:</b> Briefing on the ACCC's recommendations to address competition and consumer issues in digital platform markets	<b>Approved by Chief Executive Officer:</b> <i>Note: all minutes require CEO clearance</i>
<b>Additional information / Special instructions:</b>	<b>Approved by Chair:</b>
<b>Note:</b> Exec Office copies all minutes to Treasury, please let them know if you do not want your minute to be copied to Treasury. Also, please let Exec Office know if there are other departmental staff who you would like copied into the outgoing minute.	<b>Date:</b> <a href="#">Click here to enter a date.</a>

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# Australian Competition and Consumer Commission

## Executive minute

**Minute No** 20/2023

**To:** Attorney-General the Hon Mark Dreyfus KC MP

**Date:** [Click here to enter a date.](#)

**Subject:** Briefing on the ACCC's recommendations to address competition and consumer issues in digital platform markets

**Timing:** Routine

### Recommendation:

That you note the ACCC's recommendations that:

- the largest and most powerful digital platforms ('designated' digital platforms) be subject to service-specific codes of conduct with targeted obligations to promote competition in digital platform services markets
- all digital platforms be required to implement processes to protect against scams, harmful apps and fake reviews and to improve dispute resolution, and a new digital platforms ombuds scheme be formed to resolve disputes.

We invite you to meet with the ACCC to discuss these recommendations further.

**Noted:** \_\_\_\_\_

**Date:** \_\_\_\_\_

### Issue

- d) raising barriers to switching and denying interoperability, for example, prohibiting app developers from communicating other ways to purchase an app or services in an app in Google or Apple's app stores<sup>5</sup>

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**From:** s 22 @acc.gov.au>  
**Sent:** Friday, 5 May 2023 3:43 PM  
**To:** s 22  
**Cc:** s 22  
**Subject:** Meeting next week and meeting with the CMA on the Bill [SEC=OFFICIAL] [ACCC-ACCCANDAER.FID3327201]  
**Attachments:** a\_new\_pro-competition\_regime\_for\_digital\_markets-policy\_summary\_briefing.pdf

**OFFICIAL**

Hi s 22

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Best

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Department for  
Business & Trade



Department for  
Science, Innovation  
& Technology

# A new pro-competition regime for digital markets: policy summary briefing

Digital Markets, Competition and Consumers Bill

25 April 2023

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## Potential work of the new regime

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- Requiring SMS firms to allow users to access alternative app stores, subject to those app stores meeting reasonable conditions to ensure sufficient security for users.
- Promoting greater competition between app developers by addressing SMS firms' ability to influence users' choice of apps through pre-installation, defaults and the design of app stores.

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- Increasing the transparency of SMS firms' app store review processes to stop them from unreasonably favouring their own businesses, or in some cases distorting competition between third parties.

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