



Australian Government



Australian
**Small Business and
Family Enterprise**
Ombudsman

15 February 2023

Market Conduct Division

Treasury

Langton Cres

Parkes ACT 2600

via email: digitalcompetition@treasury.gov.au

Dear Sir/Madam,

Digital platforms – consultation on regulatory reform

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the Australian Competition and Consumer Commission's (ACCC) recommendations to improve the bargaining power of small businesses dealing with digital platforms. We consider that further changes to competition and consumer laws are necessary to ensure that these interactions are equitable and beneficial to Australia's economy. We broadly support the ACCC's recommendations for further regulation of digital platforms, including addressing unfair trading practices, prohibiting unfair contract terms, and introducing a positive duty to improve internal dispute resolution processes.

Increasing consumer dependence on digital platforms has made presence on digital platforms essential for small businesses. However, digital platforms can dictate the terms and conditions of operating on their platform, with small businesses having to agree to these terms or risk losing access to their account. Further, digital platforms often own any data created on their platform. This can include important financial records, customer information, and other business documents. Losing access to this data may prevent a small business from operating. This means that effective internal dispute resolution processes can be integral to the survival of a fledgling business.

As part of our assistance function, we help small businesses to resolve disputes with digital platforms. The disputes cover a very broad range of substantive matters that include issues such as payment systems, advertising, and the practical application of community guidelines. However, a core problem that runs through these issues is an inability to raise the issue with the platform in a way that results in the platform meaningfully engaging and resolving the problem. This is due to:

1. Uncertainty regarding how to lodge a complaint (online, via app or otherwise) and how to provide account access. Often digital platforms require access to their platform to raise a dispute, which means de-platformed individuals have no ability to appeal their de-platforming.
2. When a complaint is lodged, the pathways can be unreliable and access to appeal channels may be absent or unclear. This is compounded by digital platforms often being reticent to reveal how they arrived at a decision, meaning that small business owners are then unable to make a reasonable argument on appeal.



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3. Where a case manager is available (and this tends to be rare), staff turnover is regular, leaving small businesses needing to continually re-explain issues to different representatives. This inconsistency leads to further confusion, frustration and delays in resolving disputes.

To address this core problem, our assistance team engages regularly with platforms so that we have a single contact point of contact with a real person who is accountable and navigates the platform's complex internal pathways. In addition to the need for platforms to provide clear complaint and appeal pathways, the way that we have resolved the core problem could help inform the Australian Government's approach with a requirement that platforms appoint a senior real person 'break out' point to assist small businesses navigate the opaque systems of the platform.

The ASBFEO's role in regulation

In addition to our usual assistance work and increased clarity and flexibility on the platform side, the Australian Government could consider implementing a 'super-complaints' mechanism that would allow the ASBFEO and other nominated agencies to refer cases to the ACCC for guaranteed investigation and, where necessary, enforcement action. Where the ACCC declines to investigate a case or enforce an outcome, it could be required to provide an explanation for doing so, which the ASBFEO could use to inform affected small businesses and work with them on alternative solutions. While some stakeholders highlighted the potential for the ASBFEO to be empowered and resourced to operate as a regulator, the ACCC is better-placed to ensure compliance with the law through its existing investigative powers and regulatory authority.

If you would like to discuss this further, please contact Mr Lachlan Bayliss on 02 5114 6131 or at Lachlan.Bayliss@asbfeo.gov.au.

Yours sincerely

The Hon. Bruce Billson

Australian Small Business and Family Enterprise Ombudsman