

**Asia Internet Coalition (AIC) Industry Submission: Consultation on Digital Platforms:
Government consultation on ACCC's regulatory reform recommendations**

28 February 2023

To
Director, Digital Competition Unit Market Conduct Division
The Treasury
Langton Crescent
PARKES ACT 2600

On behalf of the [Asia Internet Coalition](#) (AIC) and its members, I am writing to express our sincere gratitude to the Australian Competition and Consumer Commission (ACCC) for the opportunity to submit comments on the [Consultation on Digital Platforms: Government consultation on ACCC's regulatory reform recommendations](#). AIC is an industry association comprised of leading internet and technology companies in the Asia Pacific region with a mission to promote the understanding and resolution of Internet and ICT policy issues in the Asia region.

Firstly, we believe that consumer protection and competition issues need to be addressed separately. Regulation should promote and protect consumer choice and fair competition and therefore, any proposed reform should endeavor to maintain competitive neutrality¹. We have a shared responsibility to promote a culture of innovation and ensure that smaller players or new market entrants can compete alongside more established services. We encourage the ACCC to resist 'over intervention' that risks stifling innovation and competition to the detriment of advertisers, platforms, and consumers. In general, regulation should not be a one-size-fits-all approach. For example, regulatory reform that applies to all firms regardless of their market position and power may inhibit new entrants and smaller market participants from competing effectively and devising and promoting new, competitive business models. It is important that the reforms are focussed on gatekeeping behaviours to enable a level playing field for all organisations.

The Draft Consultation Paper is based on an understanding that there might be market features of digital platforms that may impede, distort or restrict competition. We strongly believe that for the Treasury to determine whether there is a need to address possible competition concerns in this area, it is important to understand the various business models behind Designated Digital Platforms and the industries in which they operate. As such, it is important for the Treasury to

¹ It is a fundamental principle of competition law and policy that firms should compete on the merits and should not benefit from undue advantages for example due to their ownership or nationality." OECD, Competitive Neutrality in Competition Policy, available at <https://www.oecd.org/competition/competitive-neutrality.htm>.

continue to assess the ACCC's positions detailed in the Draft to fully reflect the underlying business models of complex services, with a focus on firms with substantial market power versus the whole of the industry.

Secondly, the overly broad definition of "digital platforms" is problematic when it comes to designing regulatory interventions. This is the moment for the Government to introduce more specific definitions e.g.: social media and marketplaces (known elsewhere as "platforms") vs other digital services which have different characteristics. In particular, ad intermediaries should be treated separately given the open nature and complexity of the supply chain. Email and curated content should also be recognized as different from interactive digital services. This way the ACCC can be more precise in the approach it takes by targeting specific interventions to the correct services- social media, digital advertising, marketplaces, online services, etc. and avoid collateral impacts. With this in mind, the AIC would encourage the government to consider future proposals based on their ability to improve consumer outcomes. We would also encourage the government to continue consulting with industry on proposals that would directly impact them, to ensure they can be put into practice quickly and effectively.

Further, from the consumer protection point of view, we recommend that scams on social media/marketplaces and in paid-for advertising be treated separately. In the open-demand supply chain, demand-side standards are being adopted which will address malicious actors. Government should endorse these standards to drive adoption. Statutory regulation would be very harmful to this supply chain because of its complexity and the fact that intermediaries, unlike closed platforms, cannot act alone to combat fraudulent advertisers and requires a whole supply chain response.

Thirdly, the Draft underscores that "there is a significant amount of work being progressed internationally, as different jurisdictions make decisions on updating their consumer and competition regulation to suit the current and future digital environment." However, we would like to caution that rushing the regulations in this important area is not necessarily the best strategy for policymakers and legislators. We would like to stress that digital regulation must be a coordinated effort through multiple policy areas. In addition to the impact from a competition enforcement and policy perspective, regulatory proposals in the digital economy may have significant consequences in areas such as data privacy, national security, cybersecurity, and intellectual property that could lead to negative implications for consumers and businesses. It is vitally important for Australian policymakers to analyze the impact any proposed regulation may have on different policy areas.

In this regard, we are grateful to be able to present our **comments and recommendations in Appendix A** of this paper and would also like to re-state our continuous support and assistance to the Australian government in its efforts to bring about this transformational change in the regulatory reform targeting digital platforms. As such, please find appended to this letter detailed comments and recommendations, which we would like to respectfully request the Treasury and ACCC to consider.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or +65 8739 1490. Thank you for your time and consideration. Importantly, we would also be happy to offer our inputs and insights on industry best practices directly through meetings and discussions to help shape the dialogue for an effective digital platforms regulation in Australia.

Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Appendix A: Detailed Comments and Recommendations

The AIC shares the Australian Government's commitment to encouraging safe and positive experiences for Australian consumers, including when engaging with services online. The AIC's members have a range of policies in place to reduce the chance of harm on their services and support users to raise and resolve concerns. While approaches vary by service, these can include:

- Comprehensive policies on the type of content and behaviour that is allowed on their services.
- Clear reporting channels for users to refer content or users for review, as well as self-service channels to have transactional issues resolved.
- Tools and resources to raise awareness of online safety and security, and help manage their experience.

While our members continue to enhance their own proactive measures to protect consumers, we see benefit in a number of the regulatory proposals that have been put forward.

Scammers and bad actors present an ongoing challenge across industry - operating via phone, text message and email², as well as digital platforms. Given the continuous, evolving, and collective challenge that scams pose, the AIC believes that certain regulatory proposals could

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<https://www.accc.gov.au/system/files/Targeting%20scams%20-%20report%20of%20the%20ACCC%20on%20scams%20activity%202021.pdf>. Phone: 50%; Text message: 23%; Email: 14%; Internet: 4%; Social media: 4%.

help to give consumers and policymakers greater confidence in the pathways available for raising concerns.

With this in mind, the AIC would encourage the government to consider future proposals based on their ability to improve consumer outcomes. We would also encourage the government to continue consulting with industry on proposals that would directly impact them, to ensure they can be put into practice quickly and effectively.

In light of this, this submission outlines the AIC's positions on the three specific consumer protection proposals:

- The AIC supports the proposal for an independent ombudsman scheme for digital platforms. We believe that, if well designed, an Ombudsman scheme would help to strengthen consumer outcomes by providing support to consumers when they've experienced a scam, clear pathways to raise certain types of concerns, and acting as a single point of contact for consumers, so as to streamline current reporting pathways.
- The AIC encourages governments to reassess the proposal for a legislative 'notice and action' requirement, as there are a number of policy and practical implications which could inhibit the long term effectiveness of this approach.
- The AIC supports in principle, verification of advertisers is a beneficial measure to ensure the integrity of advertising. However, we would encourage government to consider how this can be practically implemented, given it is not possible for a digital platform to determine with confidence whether a financial services entity holds (or indeed is required to hold) an appropriate licence.

We make some constructive suggestions on the design of these recommendations in our submission. This submission does not explicitly intend to explore proposals in relation to competition reform.

1. Digital platforms ombudsman

The AIC supports the proposal for an ombudsman and internal dispute resolution requirements. We believe that, if well designed, an Ombudsman scheme would help to strengthen consumer outcomes by providing support to consumers when they've experienced a scam, clear pathways to raise certain types of concerns, and acting as a single point of contact for consumers, so as to streamline current reporting pathways.

We believe this proposal could also be implemented quickly, and industry has signalled its willingness to support design and implementation through industry co-regulation.

If approved by the Government, we would encourage consideration of the following areas for any digital platforms-specific ombudsman scheme.

- First, an ombudsman scheme should be designed to receive and respond to complaints from all participants in a market - it should not be reserved only for complaints in relation to digital platforms.

There are already a broad range of agencies that receive reports in relation to scams. In order to streamline reporting processes for consumers, and avoid distortions in markets, an ombudsman should be empowered to deal with complaints from all participants. For example, if digital advertising is considered within scope, all digital advertisers should be captured.

- Second, the ombudsman's scheme should have a clearly defined scope. The nature of digital platform complaints differs from those received by a telecommunications company or a bank. As well as transactional complaints around scams, misleading advertising, or transactions for example, digital platforms are also required to review and respond to complaints about content decisions, which raise questions about free expression, safety and harm.

For this reason, an ombudsman scheme should be designed to focus on 'transactional' complaints, that is, interactions between a consumer and a platform. Content complaints should remain out of scope, and be directed to digital platforms to be reviewed and managed through their existing support channels.

Third, we recommend that an ombudsman should not have powers to prescribe the format in which complaints must be received. Digital platforms have been leaders in innovative approaches to customer service such as self-service options and live chat. These channels are much better for consumers than old approaches to customer service that relied on call centres and are often bureaucratic and slow.

We anticipate digital platforms will continue to innovate in how they engage with consumers. For that reason, the priority should be to design processes that are clear, simple and efficient - in order to avoid chilling innovation in how digital platforms engage with consumers.

Finally, once an ombudsman is established, they may have incentives to entrench or expand their scope. The effectiveness of the ombudsman should be reviewed independently, at some point in the 2-3 years after establishment.

2. Notice and action obligation

The ACCC has proposed a "notice and action" obligation, which would make digital platforms liable for taking action in response to every communication from users, regardless of the quality or level of information provided.

We would encourage the government to reconsider this proposal, as there are a number of policy and practical implications which could inhibit the long term effectiveness of this approach.

- First, a notice and action scheme assumes that all reports received by digital platforms will include the information required for a digital platform to locate, review and take action on the report. However, the proposal fails to recognise the highly sophisticated and complex steps scammers take to avoid detection. It also assumes a certain level of quality and usefulness of user reports.

The AIC's members work with a number of government departments and agencies to receive and review scam reports from consumers. The ability to quickly and effectively review and enforce on a user-report is dependent on the quality of information provided.

Oftentimes, platforms will receive reports that lack key information such as the content and necessary identifiers, required for a platform to locate the alleged scammer and verify that fraud has occurred. This can be because (1) the user and scammer switch across different platforms to engage, or because there is some context (potentially offline) that is not visible to the platform, or (2) the agency referring the report to our platforms have not vetted and investigated the report to ensure all the necessary information required to take action has been included.

Consequently, a 'notice and action' obligation would cause great concern for digital platforms because it establishes potential liability for a scam via the notice, even when the platform cannot detect or identify the issue due to the sufficient information provided.

- Second, the 'notice and action' assumes that the most effective, scalable and long-term approach to combatting scams is a reactive rather than proactive approach.

It is important to note that digital platforms' first line of defence is prevention. Members focus the majority of their investment developing systems that identify suspicious behaviour and take action before an account can cause harm. These systems allow platforms to take action in a way that is scalable and applicable across global markets.

Indeed, at times user reports can play a helpful role in supplementing proactive detection and, when the right information is provided, they can also help platforms undertake additional investigations to remove scam networks operating at scale.

We recognise the importance of measures that regulate a level of responsiveness to complaints, and there are examples where this has been very effective. However, it is important that these measures are not considered the most effective method for combatting scams. Other proposals, such as the Ombudsman, would still ensure that digital platforms are responding to reports. And, if designed effectively, the ombudsman would help to ensure that the veracity of the report has been appropriately vetted and investigated before being referred to platforms for review.

If the government does plan to pursue the proposal for a notice and action scheme, we would encourage them to design it in consideration of those which have proved to be effective. The Online Safety Act is a good example of this, as it is managed by an expert regulator and a team who are empowered to conduct the necessary investigations before referring a report to a platform for action. This is critical to ensure a fast and effective final outcome.

3. Verification process obligations

The discussion paper specifically identifies three other potential new obligations that would relate specifically to the processes digital platforms take in relation to verifying advertisers and business users. These are:

- To verify certain business users
- To add additional verification of advertisers of financial services and products
- To improve review of verification disclosures.

In principle, verification of advertisers is a beneficial measure to ensure the integrity of advertising, and we have seen examples such as with the Financial Conduct Authority in the UK, where verification has helped to provide consumers and policymakers with confidence in the authenticity and authority of advertisers.

However, in order for this proposal to be effective it should be designed in consideration of two practicalities.

- First, a consolidated, public register should be developed against which digital platforms can confirm an advertiser's license. This public register does not currently exist and as such, platforms do not have the ability to confirm if a licence exists or, in some cases, if the advertiser has been granted an exemption from a licenced by the relevant regulator.
- Second, verification obligations should only apply to advertisers and paid content. It is not possible for these obligations to apply to 'organic', non-paid content without requiring large-scale verification of the identity of all users of digital platforms. The limitations of this approach have been well-examined in the context of the previous Government's proposal Anti-Trolling Bill, which did not proceed.

4. Assessing the potential impact

The Draft Paper questions if Australia should seek to largely align with an existing or proposed international regime. While it may be useful to study overseas developments, regulators should not assume that adopting these developments means making the best choice for consumers and the economy. In this regard, any *ex-ante* regulation should avoid relying on international regulatory proposals without analyzing the context, purpose, objective of the particular

regulation, alongside the potential impact on the economy, consumer welfare, and any unintended consequences.

Before proposing any new regulation, the Australian government should carefully evaluate if existing antitrust and consumer protection provisions and tools remain appropriate to combat potentially anticompetitive conduct that affect consumers.

4.1. Relevance of Costs and Benefits of a New Regulation

It is crucial that the Treasury and the Government play an active role in engaging with relevant stakeholders and market players. To ensure that the cost of any new regime does not outweigh its benefits, the rules should allow conduct that is clearly pro-competitive or completely benign and recognize justifications for legitimate protections. We encourage that the Treasury thoroughly assess whether the benefits of any proposed digital platform regulation would outweigh its potential negative impact for Australian consumers and the economy in general.

4.2. Evidence-based Approach

We encourage the Treasury to review evidence and past experience and focus the proposed regulatory framework on the types of conduct that are recognized to be demonstrably harmful for competition, rather than seeking to address theoretical or speculative harm, which would risk overregulation to the detriment of innovation. We recommend that prior to proposing a new platform regulation, the Australian policymakers gather evidence through extensive consultation to confirm and justify that there is in fact a need for the rules to be changed or for additional rules to be imposed on Designated Digital Platforms.

4.3. Consider Australian Government Office of Impact Analysis (OIA) Framework

Given the context above, we recommend considering the framework provided by the Australian Government Office of Impact Analysis (**OIA**) to guide the recommendations for legislative reform. The OIA framework (titled “*7 Regulation Impact Statement Questions*”) asks: (1) What is the policy problem you are trying to solve?; (2) Why is government action needed?; (3) What policy options are you considering? (4) What is the likely net benefit of each option? (5) Who will you consult and how will you consult them? (6) What is the best option from those you have considered? (7) How will you implement and evaluate your chosen option?

- The OIA framework starts with asking what the problem is. In that respect, the Treasury Consultation Paper relies on the ACCC’s various Digital Platform Inquiry Reports, in particular the most recent report, which generically refer to gaps in the law and the timeframe for enforcement action. However, given the

dynamism of digital services and the broad range of digital services in Australia, the ACCC has not sufficiently clearly identified whether gaps arise in each digital sector (or indeed whether a problem even exists or whether a problem that was thought to exist has been removed given new entry). Further, no consideration has been given to whether the timeframe for enforcement concern is a digital specific issues or indeed an issues across for enforcement generally across all sectors of the economy. Treasury should not make any recommendations until it has clarity there is a problem in each specific digital sector and service.

- The third question the OIA asks is whether alternatives to a new regulatory framework have been considered. Interestingly, Treasury's consultation Paper also asks this exact question. While the ACCC Digital Platform Inquiry Report #5, refers to alternatives such as industry-led codes and notes the existence of alternatives such as the Japanese transparency regime, these alternatives are not given any meaningful consideration. Respectfully, before Treasury can accept the ACCC's recommendations for a wholly new regulatory framework, Treasury should properly consider the alternatives and report on why the alternatives would not achieve the same outcome as a wholly new regulatory framework.
- The fourth question, raises the costs and benefits of any reforms. No cost benefit analysis has been undertaken by the ACCC in its Digital Platform Inquiry Reports. Absent any such analysis, Treasury is not in a position to recommend the ACCC reforms because it does not have a sufficiently robust basis to believe the perceived benefits will outweigh the costs. For example, will interoperability obligations or data sharing obligations on digital services providers outweigh the costs of designing, funding and then enforcing a wholly new and untested regulatory regime borrowed from overseas?

The OIA framework has been developed to ensure reforms are fit for purpose in Australia and before Treasury proceeds with any recommendation to adopt a ex-ante style framework borrowed from overseas (which would be the largest changes to Australia competition and consumer framework in decades), further work should be undertaken to report back to Treasury on whether the ACCC's recommendation satisfy the OIA framework.

We hope that these recommendations are helpful to the government as they consider the future design and implementation of these important proposals. We look forward to continuing to engage with the government as their plans progress.