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RE: Digital Platforms: Government consultation on ACCC's regulatory reform recommendations Consultation Paper – AIIA Response

About the AIIA

The Australian Information Industry Association (AIIA) is Australia's peak representative body and advocacy group for those in the digital ecosystem. We are a not-for-profit organisation to benefit members. Since 1978, the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity.

We do this by delivering outstanding member value by:

- providing a strong voice of influence
- building a sense of community through events and education
- enabling a network for collaboration and inspiration; and
- developing compelling content and relevant and interesting information.

We are unique in that we represent the diversity of the tech ecosystem from small and medium businesses, start-ups, universities and digital incubators through to large Australian companies, multinational software and hardware companies, data centres, telecommunications companies and technology consulting companies.

Introduction

The AIIA appreciates the opportunity to respond to the Government consultation on ACCC's regulatory reform recommendations Consultation Paper.

As digital platforms assume a greater role in the lives of Australians, with significant market presence, and immense benefits yielded for consumers with increases in connectivity, convenience and expression, it is appropriate that government consider how large online platforms should best be regulated in the interests of consumers and businesses. It is important that regulation and legislation be fit for the twenty-first century. As global moves in the area of competition and consumer regulation of large digital platforms gather pace and lessons are learnt, it is incumbent on government in Australia to observe and act prudently. This way, Australian businesses and consumers alike may benefit from an evidence-based, coordinated and industry-supported approach to the way in which significant digital platforms operate and engage with both consumers and regulators.

Proliferation of regulation; importance of learning from international developments

In Australia, the technology sector is already grappling with new laws and regulatory programs in the fields of privacy, cybersecurity, eSafety, disinformation and content moderation, defamation, copyright and competition, amongst others. Without adequate domestic and international coordination of reforms, there is risk of overlapping and inconsistent regulatory outcomes.

Regulation needs to be thoughtful and proportionate to risk. The regulatory settings applying to tech companies need to be correct and clear. Policymakers should consider their impact on the tech sector's growth and health over the coming decades. If Australia does enact new laws they should be internationally coordinated, creating the ideal conditions for local companies to expand overseas and reducing regulatory duplication and inconsistency.

However, international alignment does not mean reproducing overseas laws in Australia regardless of their appropriateness in a domestic setting or regulatory outcomes. The *Digital Markets Act* is proving difficult to administer and overly broad in approach, with inflexible and ineffective outcomes that Australia would do well to avert. Learning from that experience, Australian policymakers should avoid the same highly interventionist approach and instead seek out greater industry collaboration to reduce compliance and enforcement costs.

In addition, staffing requirements and industry-accommodating timelines are other central factors to consider.

Issues affecting more than just digital platforms

Some of the issues introduced in the Discussion Paper do not exclusively pertain to digital platforms. Indeed, competition issues, data privacy, and contract term issues largely apply across the economy. As such, a strategic and coordinated approach from all of government on these nuanced matters is preferable rather than seeing these matters through a digital-platform-specific lens.

As a broader issue, inefficient and overlapping reporting requirements are emerging from multiple Agencies and authorities within government. Government needs to ensure such requirements are targeted, justified, directed towards those with the demonstrated capacity to respond, and aligned to global reporting timeframes where practicable. The cost of entering a regulatory space without evidence or a proportionate, prudent approach would be high, especially where regulation is responding to fast-moving technology without precedent or where larger overseas jurisdictions are learning initial lessons.

Scope of reforms

It is important that government take a proportionate, stepped approach to obligations on digital platforms. Some of the consumer-directed measures proposed by the ACCC are intended to apply to all digital platforms regardless of size, which the AIIA would put is not a proportionate outcome. This departs from international examples such as the *Digital Services Act* in the EU, which features stepped obligation with smaller platforms practically exempt. The strictest obligations in that legislation are reserved for the largest online entities owing to a risk-proportionate and capacity-proportionate approach.

In addition, rather than designating individual companies by name, a broader, principles-based approach that is considered and coordinated is preferable to industry. The AIIA would put that identifying individual companies, rather than traits or market thresholds, for regulation is not a sustainable or equitable approach to policy in this area. The designation

process should also be accompanied by clear and transparent review mechanisms, including judicial review.

Options for regulation and the question of codes

The AIIA believes that a sustainable approach to technology policy in respect of digital platforms is to look at ways to better utilise existing legislative features such as the *Competition and Consumer Act*, which provides for sector-specific codes with separate responsibilities for code-creation and enforcement, which is preferable and best practice policy, as opposed to a single Agency (in this case the ACCC) having code-creating and enforcing powers. Industry is best-placed to draft codes that are workable, sensitive to technical requirements and have buy-in from those responsible for the operation, consumer engagement and management of large digital platforms. If government wishes to move to a codes model for improving the competition and consumer landscape, such codes should be voluntary, with government and industry engaging in co-design processes in good faith.

If government moves to a mandatory code model, then baking in procedural fairness, periodic reviews, merits review and appeal processes, appropriate limits on rule-making authorities, and a division of responsibility between rule-makers and rule-enforcers will be best practice for government.

Importance of government digital education

Government education on digital platforms and spaces and the underlying processes is crucial as one cannot effectively regulate what one does not fully know. The AIIA would be pleased, as it has offered in the past, to coordinate industry and Departmental heads and officials in short, sharp tech fundamentals education.

Scams

When it comes to scams, the incentives relating to industry and government are aligned. That is, as no company wants to be known for the scams peddled on its platforms, industry is as motivated as Government to prevent scammers from exploiting their services to harm their users. The National Anti-Scam Centre is a new reform and it is important that government has reasonable time to assess its functioning and regulatory impact before turning on additional regulations or adding to the functions of the Centre in a piecemeal or reactionary manner. Further, the collaboration of the Centre with the existing *Scamwatch* initiative should be assessed. Government needs to clear roadblocks to effective data-sharing by platforms with financial institutions, for example, ideally in a way that is coordinated with the ongoing privacy reforms. Platforms are investing heavily in countering scams, exercising due diligence in respect of sophisticated scams, keeping in mind that it is of high self-interest for platforms to counter scams on behalf of consumers.

Conclusion

Thank you once again for the opportunity to make a response on these important regulatory decisions. If you have any questions about the content of this submission, please contact rachel@aiia.com.au.

Yours sincerely





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AIIA