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Dear Wesley,

Submission to “Digital Platforms: Government consultation on ACCC’s regulatory reform recommendations”

CBA welcomes the opportunity to respond to Treasury’s consultation on the ACCC’s ongoing Digital Platform Services Inquiry (DPSI) and related recommendations. CBA supports the inquiry’s objectives of ensuring digital platforms continue to deliver benefits for Australian consumers.

This submission builds on CBA’s previous responses to the DPSI’s interim reports and reiterates our view that reform is needed to regulate digital platforms. The ACCC inquiry has highlighted a range of issues in relation to digital platform services, a number of which are applicable to financial services. The resulting reform proposals are critical to ensure that as platforms continue to move into financial services, Australians benefit from increased competition without compromising financial stability or Australia’s national interest.

Digital platforms play an important role in the provision of services across a range of industries – including advertising, media, telecommunications and financial services. While these platforms enable innovation, they are also of growing systemic importance to the provision of several critical national services. As with other providers of critical services, it is in the national interest to ensure appropriate protections exist, to ensure good customer outcomes; efficiency, stability and sustainability of the system, and continued investment in underlying infrastructure. Creating an environment where digital platforms are able to avoid regulation could see a hollowing out of domestic industry, where legislated constraints, regulatory intervention and mandated infrastructure investment have traditionally been targeted.

Financial services regulation in Australia was not designed to deal with the business models of platforms. In particular, the risk of a large multi-national non-financial services corporation providing multiple bundled

offerings that include financial services was not contemplated by the “activity” based financial services regulation we have today. In its report, the ACCC points out that the enforcement of existing competition and consumer laws alone will not be sufficient to adequately protect Australian business users and consumers. CBA would argue that this observation is particularly relevant to financial services.

This point was emphasised by the Bank of International Settlements (“BIS”) where it stated that:

“Activities-based regulation is grounded on the principle of “same activity, same regulation”. In principle, the consistent application of activities-based licensing requirements ensures that innovations aimed at regulatory arbitrage and exploiting gaps in the regulatory framework can be minimised. Nevertheless, given the unique set of challenges that are thrown up by big techs’ entry into financial services, a purely activity-based framework for regulation is likely to fall short of an adequate response to these policy challenges.”¹

CBA is supportive of the ACCC’s recommendation of a new regulatory regime that governs digital platforms, requiring mandatory codes of conduct applying to designated platforms for specific services. In designing these codes, CBA believes that it will be possible to align these with “activity” based regulation that already exists today such as in financial services (and any reforms in the future such as to payments) to ensure the principles of “same activity, same regulation” applies which will ensure consistent consumer protections and preserve financial stability, while promoting competition.

1. Platforms and the provision of financial services

Some digital platforms are delivering benefits to consumers, businesses and the broader community through innovation in financial services. This is not happening just in Australia but also in many other countries. It is estimated that financial services activities of big tech accounts for 11 per cent of their revenues.² Given recent activities into financial services by platforms it is likely that this will only rise.

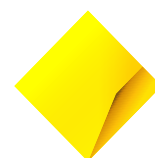
Some examples of financial services that platforms are involved in providing both in Australian and overseas include:

- Providing credit cards which includes the capacity to accrue points that can be used on the providing entities’ platform.
- Lending to both consumers and small businesses (the amount of lending for Big Tech grew by 40% in 2020 alone and was estimated to be US\$700 billion).³
- Utilising the NFC chip on a mobile phone to allow a consumer to make a payment by tapping their phone on a terminal.
- Offering digital wallets on mobile phones where payment details can be stored and used to facilitate payments both in-store and on-line.
- Facilitating payments through the use of QR codes.
- Allowing a customer to make payments and manage their finances through a digital platform without the need to interact directly with a regulated financial services entity.
- Providing terminals to allow merchants to receive payments which includes the potential to use a mobile phone as a terminal.
- Stored value facilities where platforms are able to store money on behalf of a customer.

¹ Carstens (2021) BIS Bulletin; Regulating big techs in finance

² Centre for Economic Policy Research , A Policy triangle for big techs in finance, 23 October 2021

³ Carstens (2021) Regulating big tech in the public interest



In both Australia and some overseas countries, many of these activities undertaken by platforms are not regulated the same way as are traditional financial services providers. Not only does this create additional risk to the financial system that regulators cannot monitor or respond to, it also means that consumers and businesses are exposed to a two-tiered system when it comes to their interaction with the financial system: one where they have certain rights and recourse when engaging with a regulated entity and while for many platforms, there are limited rights or recourse against those platforms.

Payments is an example of where this disparity exists. CBA supports the ACCC's suggestion that any competition measures should allow third parties with "reasonable and equivalent" access to the NFC functionality on mobile phones. However, CBA believes that this needs to go further with any regulation of NFC chips and mobile wallets also needing to ensure that consumers have the same rights against the mobile wallet provider that they have against regulated financial institutions that provide payment services. The Government's announcement that digital wallets would be part of any new payments regulatory framework was encouraging and could go a long way to achieve this outcome. However, these reforms need to be complemented with the ACCC's recommendations which can address anti-competitive self-preferencing, anti-competitive tying and unreasonably preventing consumer switching.

This position is consistent with the recommendations in the "Transforming Australia's Payments System" report. In this report, it is recommended that Government take an "ecosystem" approach when it comes to payments and the regulatory architecture should provide safety for consumers and businesses as they engage with all aspects of this payment's ecosystem. The recommendation of expanding the definition of payment services is consistent with this approach to ensure that all payment service providers are appropriately regulated. The Government's implementation of these recommendations will enable any future payments reforms to align with the recommendations made by the ACCC regarding the specific regulations of platforms.

In ensuring platforms that provide financial services in Australia are appropriately regulated, time is of the essence. Some services that platforms are providing are seeing very high adoption rates. For example, the use of mobile wallets to make payments both in-store and on-line has had significant growth in recent years. Based on industry data a much higher proportion of users are using mobile wallets in-store in Australia (25 per cent) when compared to the United States (1.7 per cent⁴), Germany (6.1 per cent⁵), France (4.4 per cent⁶) and the United Kingdom (4 per cent⁷). Based on CBA data, online mobile wallet transactions grew by around 53 per cent between February 2022 and February 2023⁸.

Utilising competitive advantages such as network effects and the large amounts of data they hold on Australian consumers, it is likely that the growth of platforms in financial services will continue at a rapid rate. While some growth should be encouraged as it will create more competition, the use of the anti-competitive techniques as observed by the ACCC may lead to adverse outcomes for the economy and financial stability. For example, some platforms appear to be already using self-preferencing activities, tying and placing restrictions in relation to payments, concepts that the ACCC stated could be anti-competitive. Therefore, any reform aiming to prevent anti-competitive behaviour by platforms should also apply to their provision of financial services.

Whether the speed with which some digital platforms are expanding into the provision of financial services will provide a net benefit to Australian consumers and the economy in the medium to long term will in part depend on how and when government responds. In some areas of financial services regulation, it is prudent

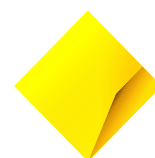
⁴ The Federal Reserve Payments Study; December 2021

⁵ European Central Bank, Study of the attitudes of consumers in the euro area, 2022

⁶ European Central Bank, Study of the attitudes of consumers in the euro area, 2022

⁷ Value of contactless payments, Barclays, 17 February 2023

⁸ Through CBA's MasterCard network



for Australia to be a “fast follower”. That is, we should understand how large countries with similar economies are going to regulate an emerging trend and then ensure that Australian laws are consistent. This does not apply to the regulation of platforms as the impact on the Australian financial system is more pronounced today compared to other similar economies. Therefore, as with media bargaining, Australia can and, given adoption rates, should lead in regulating platforms that choose to provide financial services to ensure that consumers are properly protected and financial stability is maintained.

2. *Scams and Fraud*

CBA shares the ACCC’s view that trust and confidence in the digital economy are essential. Consumers and businesses will only embrace digital opportunities if they are confident they can trust the technologies and the entities with which they interact online. Recent rapid growth in scams and fraud is undermining this confidence.

As noted by the ACCC, digital platforms play a role in enabling the proliferation of scam and fraud related crime. In 2021, the ACCC stated that Australians lost approximately \$2 billion on scams. CBA’s data shows this doubled in 2022.

Recent analysis from the Australian Financial Crimes Exchange shows that digital platforms, whether they be web or app based, account for close to half of scams exposures yet only approximately 20% of all scams origination. This data shows that the impact of scams on Australians that are originated from platforms is disproportionately higher than other channels.

The ACCC has rightfully identified that like telecommunication services, digital platform services relate to the start of the ‘scam chain of events’. CBA has introduced a range of initiatives designed to reduce the incidence and harm of scams, but it is evident that an ecosystem-approach is required, where all industry players are obliged to prevent and mitigate the harm caused by scams including banks and other payment providers, telecommunication entities and digital platforms. To this end, we support the DPSI’s recommendations, which would see obligations on digital platforms to take down scam-related material once it has been identified.

3. *Use of data by platforms*

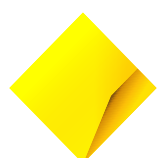
The ACCC rightly acknowledges the importance of data to platforms’ business models and how effectively they have been able to use this data obtained from various businesses lines they operate in to create a competitive advantage. This competitive advantage also applies to platforms operating in financial services. As the General Manager of the BIS, Agustin Carstens, recently stated in relation to Big Tech’s use and management of data:

“Data management is thus at the core of big tech activities, and the financial sector is all about managing information. Coupled with big tech’s relentless drive to expand, their growing and already substantial footprint in financial services should come as no surprise.”⁹

The ACCC’s concerns regarding the lack of access to relevant data held by the platforms being a substantial barrier to entry in the supply of some digital services is well-founded. However, we believe that this issue has a broader application than just the provision for search and ad tech services and has an impact on the markets that platforms are choosing to compete in including financial services.

Not only do platforms have a competitive advantage regarding the amount and use of data they hold, but this advantage is amplified in Australia by the way that the Consumer Data Right (“CDR”) is being rolled out. In

⁹ Carstens (2023) Big techs in finance: forging a new regulatory path



the sectors that the Government has designated to have to share data under CDR, the vast majority of companies that are captured are domestic Australian businesses with very few global companies being designated. In the context of digital platforms, the unintended consequences of this is that domestic companies would be required to share their data with many platforms today even though they are competing directly with them. This is further compounded by the lack of a broad definition of reciprocity. That is, under a broad definition, a party that becomes accredited to receive CDR data would also have an obligation share their data. The lack of a broad definition only adds to the competitive advantage that platforms have when it comes to Australians' data.

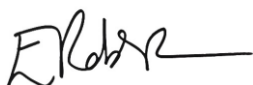
Requiring platforms to share their data under CDR will not only address the ACCC's concerns regarding barriers to entry but also help mitigate the risk of platforms being able to use their data advantage in an anti-competitive way in industries that are subject to CDR. Further, it will also contribute a significant amount of new data into the CDR that will allow Australians to share this in a safe way to drive innovation. Such reform is consistent with the key factors that Treasury has established regarding how the data sets will be expanded.¹⁰

4. Unfair trading practices prohibition

Acknowledging that the Commonwealth, State and Territory Ministers propose to undertake further consultation on unfair trading practices, we consider that there is no clear case for the introduction of an unfair trading prohibition. The misleading or deceptive conduct prohibitions have been effectively used across the Australian economy to regulate commercial norms and there has been a recent strengthening of the unfair contract terms laws. Unconscionable conduct prohibitions provide a further safety net against unacceptable business practices. We look forward to the opportunity for more detailed consultation on this matter – particularly in light of our learnings as financial services providers who, in addition to these economy-wide protections, are subject to the efficiently, honestly and fairly requirement under the Corporations Act.

In summary, CBA has long supported a scalable and appropriate regulatory framework that can move quickly to keep pace with technology and ensure better outcomes for the Australian economy. Digital platforms have brought considerable value to the Australian economy and the consumer experience and this continued innovation should be welcomed. However, it is important that as platforms expand their business models into areas such as financial services, the standards that consumers expect are upheld and overall financial stability is not put at risk. By adopting the ACCC's approach of mandatory codes which can be complemented by expanding existing financial service laws, CBA believes that Australia's financial system can continue to safely embrace new technology to deliver more value to both consumers and drive overall value to the economy.

Yours sincerely



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¹⁰ Statutory Review of the Consumer Data Right (2022), Appendix C

