Google's Response to Government Consultation on ACCC Report on Platform Regulation

28 February 2023

OVERVIEW

The technology sector, in Australia and globally, is dynamic and innovative. It has had a profound impact on Australian businesses and consumers. Innovation is, however, inherently unpredictable, which makes the impact of new processes or rules on the Australian tech sector and its users very hard to predict. Consequently, the cost for Australia of inadvertently chilling innovation is also potentially profound.

The technology sector is not unregulated. The sector and its dynamic innovation are subject to, among other laws, Australian competition, consumer, privacy, defamation, online safety, and intellectual property laws, which are world-class.

Treasury is consulting on recommendations that (a) there be additional consumer laws, including an economy-wide unfair trading practices prohibition and new rules targeting digital platforms, and (b) an additional competition law framework be established.

If new consumer rules or a new competition regulatory framework are to ensure that Australia remains a leading digital economy, rather than risking it falling behind other countries, the Government must be satisfied, on the evidence and by analysis, that:

- specific harms to consumers and competition are identified;
- those harms are substantial;
- the new regulations will effectively address those harms; and
- the new regulations will not cause other harms, ensuring a net benefit to Australian consumers and businesses.

Consumer rules

Australian consumers and businesses should be protected from harmful content and exploitative behaviour online (and offline). Google invests heavily in combatting scams, harmful apps, and fake reviews. It is critical to the integrity of our platforms and to our business to put the user first.

Google supports economy-wide consumer protection measures, including consultation on the introduction of an economy-wide unfair trading practices prohibition.

We are concerned, however, that many of the ACCC's proposed consumer measures are likely to result in unintended harm to consumers.

Notice and action: Google has robust processes to receive and respond to complaints. An obligation (or even incentive) to remove content of which platforms are notified would lead to the over-removal of content, to the detriment of consumers and legitimate businesses. Other opportunities for enhanced scam protection could be explored, such as empowering the ACCC to issue takedown notices for scams.

Verification: Google already requires verification of advertisers of financial services and products and would support others being required to implement similar processes. Requiring broader verification may be impractical. For example, requiring search engines to

verify the webmasters of all web pages in their indexes would be impossible.

Internal dispute resolution standards: Any obligations for internal standards should take into account scalability, proportionality to the potential consumer harm, the need for access to global expertise, the risks of unbounded disclosure, and potential for unintended consequences from rigid requirements.

External ombuds scheme: Australian consumers and businesses already have access to a range of government and industry dispute resolution mechanisms. In considering the appropriateness of any new ombuds scheme, it is important to take into account the breadth (and complexity) of disputes that may be raised with digital platforms. Many are not well suited to resolution by an ombuds scheme.

Competition regulatory framework

Actual, as opposed to speculative, harms to competition have not been established so far in this process. In order to design new regulations that are likely to be effective and not cause unintended costs, it is essential to establish actual harms to competition requiring regulation. To date, the recommendations are based on views that large digital platforms have the capacity to harm competition, or could or may have harmed competition, not evidence that they have harmed competition.

If the Government is satisfied, on the basis of further evidence and analysis, that actual harms to competition exist, the regulatory regime to address them should:

- be designed to enhance consumer welfare;
- be proportionate to the harms;
- provide for justifications or exceptions, so as to minimise the risk of prohibiting beneficial or benign conduct;
- be subject to protections and oversight, which would reflect the severity of any sanctions for non-compliance; and
- be developed by a body which is not the same body that will be responsible for enforcing the new regulations.

In designing a new regulatory regime at this time, the Government will not have the benefit of observing the effectiveness or appropriateness of regulatory initiatives in other countries to Australia's circumstances. Those initiatives are either as to their form, or their operation in practice, nascent. This may be different in 1-2 years.

It is widely accepted that additional regulation imposes costs (including the costs of the regulator, the costs of errors by the regulator, and the cost of inadvertently chilling innovation). Any proposed additional regulation should be subjected to a rigorous cost benefit analysis to ensure that the net benefit for Australians of imposing that additional regulation is greater than could be achieved with other policy responses, or the status quo.

Each of these issues is addressed below in the Introduction and, in more detail, in the responses to the questions in the Consultation Paper.

INTRODUCTION

1. Thank you for inviting views on the ACCC's regulatory reform recommendations.

2. The Consultation Paper endorses the existing objective of the *Competition and Consumer Act 2010* (Cth) (**CCA**), "*to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection*", as the basis for any competition and consumer reforms relating to digital platforms. We agree. Competition and consumer law frameworks should seek to promote Australian consumers' welfare, while promoting robust competition, economic efficiency, and innovation. Regulation that protects or promotes the welfare of producers or individual competitors would be a significant departure from the objectives of Parliament articulated in the CCA. Such regulation would risk reducing the dynamism of digital markets and undermining the benefits that digital platforms bring to consumers and the broader economy.

3. The Consultation Paper also recognises the benefits digital platforms provide to Australians. It explains that large digital platforms have "*provided significant benefits for consumers and businesses.*"[1] They "*reduce costs*"[2] of transactions, and provide new and innovative services "*often at low or no direct costs*."[3] Google's products and services create over $19.5 billion and $47 billion of annual economic value to Australian consumers and businesses, respectively.[4]

4. The ACCC and Consultation Paper identify three overriding characteristics of digital platform services: they are dynamic, innovative, and they expand output.[5] In the Consultation Paper's words, digital platform services are characterised by their "*dynamic nature and rapid growth*."[6]

5. This accords with our experience. Take search, for example. In just the last few months, new AI language models have brought the possibility for entirely new experiences for users to discover information, distinct from traditional search. Microsoft has announced that it's made a "*multibillion dollar investment*" in ChatGPT

[1] Australian Government, 'Digital Platforms: Government consultation on ACCC's regulatory reform recommendations, Consultation Paper', (December 2022) (**Consultation Paper**), p. 4.
[2] Consultation Paper, p. 6.
[3] Consultation Paper, p. 4.
[4] See AlphaBeta, 'Google's Economic Impact in Australia' (October 2022), p. 6. See **Annex 1** for further details.
[5] In the ACCC's words digital platforms "*provide consumers and businesses with significant benefits*"; they have "*facilitated new and efficient ways for Australian businesses to provide innovative services, promote their products and quickly and easily reach consumers.*" As Rod Sims has explained, digital platforms have been *"true innovators [...] they provide products that consumers and business users value hugely."* See Rod Sims' Speech at the Competition and Consumer Workshop 2021, 'Protecting and promoting competition in Australia', (27 August 2021).
[6] Consultation Paper, p. 4.

maker OpenAI, *"to accelerate AI breakthroughs"*,[7] and launched a new AI-powered Bing search engine.[8] Neeva (a subscription-based search engine) has launched NeevaAI, declaring that "*it's unlike anything we, or anyone, have built before*."[9] And in early February, Google unveiled its own plans to use generative AI language models in Search.[10]

6. Commentators have recognised that these AI language models will "*transform the way people find things on the internet*".[11] This is just one example — digital markets evolve quickly and unpredictably.[12] Disruptive new entrants reshape products and services, and push existing players to increase the pace of their innovation.

7. In addition to innovating with new technologies, we work continuously to improve user experience and safety on our services. This includes our work to detect and combat bad actors. Scams, harmful apps (and other harmful, malicious, or exploitative content), and fake reviews are detrimental for consumers and traders. Accordingly, we have strong incentives to take measures to stop these being present on our platforms, and we invest heavily in doing so (as described further below).

8. Proposals for additional regulation need to be considered against this background of innovation, rapid growth, zero or low costs for consumers and businesses, and existing incentives and investments to protect users.

9. Any additional targeted consumer protection measures for digital platforms should also take into account recent developments, including the Government's proposed code of conduct for social media services,[13] the development of the National Anti-Scam Centre, the ongoing work on an unfair trading practices prohibition, last year's five-fold increase in the penalties for contravention of the CCA, the extension of the unfair contract terms regime, and industry's voluntary measures.

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[7] Microsoft, 'Microsoft and OpenAI extend partnership', (23 January 2023).
[8] Microsoft, 'Reinventing search with a new AI-powered Microsoft Bing and Edge, your copilot for the web', (7 February 2023).
[9] Neeva touts its example to the query [kamut flour vs regular] as being answered by its own AI, *see* https://neeva.com/search?c=All&pid=srp_share&q=kamut+flour+vs+regular&src=shared_link.
[10] Google The Keyword, 'An important next step on our AI journey', (6 February 2023).
[11] The Economist, 'Is Google's 20-year dominance of search in peril?', (February 9, 2023).
[12] Benedict Evans reported that Amazon's advertising revenue increased from just over $4bn at the end of 2017 to $14bn by 2019. At the end of 2021, Amazon reported $31bn of advertising revenue. See Benedict Evans, 'TV, merchant media and the unbundling of advertising', (18 March 2022). Similarly, the Digital 2022 Global Overview Report reported that TikTok was the most-downloaded mobile app in 2021. Bytedance reported that TikTok's advertising reach increased by 60 million users in the past 90 days, taking worldwide advertising reach to roughly 885 million users by the start of 2022. See We are Social and Hootsuite, 'Digital 2022: Another Year of Bumper Growth', (26 January 2022). On 1 April 2022, Nine announced it had launched an exclusive partnership with ad-tech/martech platform AdGreetz to introduce new 'Dynamic Ads' technology. See Nine, 'Nine launches cutting edge advertising platform on 9Now', (1 April 2022).
[13] Statements made by The Hon Stephen Jones MP Assistant Treasurer and Minister for Financial Services: see The Hon Stephen Jones MP, 'National Consumer Congress Speech', (16 June 2022) and Australian Banking Association, 'Transcript: Assistant Treasurer launches National Anti-Scams Centre', (7 November 2022).

10. The ACCC's competition reform proposals involve complex, novel issues and intrusive interventions with the potential to undermine the benefits digital platforms bring. The Government should ensure that it has identified and evaluated the perceived harms it is trying to address, and costs / benefits of any proposed policy response, before concluding that a significant overhaul of the existing competition regulatory regime is required.

11. We expand on these issues in the remainder of this Introduction, and in response to the Consultation Paper's questions below. We look forward to working further with the Government on these important issues.

We support economy-wide consumer protections.

12. Consumer protection measures should apply economy-wide. Consumers should be protected from harm regardless of whether they are dealing with a large digital platform, a small digital platform, or any other business, and whether those dealings occur online or offline.

13. The Productivity Commission has recognised the merits of economy-wide consumer protection measures over industry-specific consumer protection regulation.[14] Relying on "generic" law has some important advantages including that it "*facilitates consistency in approach*", "*allows regulators to deal with emerging problems without the need for new features*" (noting this was "*an especially important feature given that many consumer markets are evolving rapidly*"), and "*imposes relatively few costs on … suppliers.*"[15]

14. The Consultation Paper confirms that Commonwealth, State, and Territory consumer Ministers will undertake further consultation on the introduction of an economy-wide prohibition on unfair trading practices. The ACCC suggested in its Discussion Paper that this prohibition may address harms arising from online scams, harmful apps, and fake reviews.[16] A best practice approach to regulation would first complete consultation on this economy-wide prohibition, and (if it is determined that such a prohibition ought to be introduced), design and implement it, and then consider if the facts support the need for additional sector-specific obligations. Introducing digital platform-specific obligations before an economy-wide unfair trading practices prohibition has been explored and introduced, may lead to duplication of rules, or rules

[14] In 2006, the Productivity Commission was directed to conduct an inquiry into Australia's consumer policy framework, and it issued a detailed report outlining its findings and recommendations on 30 April 2008. See Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008).
[15] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 84.
[16] ACCC, 'ACCC's Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services', February 2022 (**Discussion Paper**), pp. 95 and 97. This view is not repeated in the ACCC's Fifth Interim Report.

that are inconsistent or incompatible — including as between digital platforms and the rest of the economy.

If the Government considers additional targeted consumer protection rules are needed, they must be carefully crafted to avoid doing more harm than good.

15. Scams are a serious, global problem, that impact all aspects of Australian society. Estimates that Australians lost over $2 billion to scams in 2021 demonstrate the significant consumer harm brought about by scammers and the need to find solutions to address this harm. The ACCC's report 'Targeting Scams: Report of the ACCC on scams activity 2021' found that phone calls and text messages were the top contact methods employed by scammers (accounting for 73% of reported scams) and that social media was the second highest contact method in terms of loss (behind phone calls and text message).[17]

16. We acknowledge the serious harm caused by scams and that, in addition to existing and contemplated economy-wide consumer protections, there may be a role for more targeted regulations. Indeed, the Government has already committed to introducing a new code of conduct for social media services to address scams. This follows industry standards and a code introduced in the telecommunications sector, to address scam calls and text messages.

17. We invest significant resources to combat bad actors on our services. We strive to protect consumers from scams and malicious, harmful, and exploitative content and apps on our products. We work around the clock to protect our users in Australia and around the world from bad actors, with teams dedicated to fighting abuse. We do this through comprehensive policies and enforcement of those policies.[18]

18. Our policies are designed to protect users. They are often broader than the minimum legal requirements, and we are continuously looking for ways to improve our efforts to detect and combat bad actors. To take one example, in June 2022, we voluntarily updated our advertising policies for financial products and services to expand our verification program for financial services advertisers to Australia. We have worked closely with the Australian Securities and Investment Commission (**ASIC**) to implement our updated policy.[19]

19. As part of the updated verification process, the vast majority of financial services advertisers are required to complete Google's financial services verification program.[20]

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[17] ACCC, 'Targeting Scams: Report of the ACCC on scams activity 2021', (July 2022), p. 7.
[18] Our efforts to combat scams in respect of Search and Ads are described further in **Annex 5** and in respect of Play are described in **Annex 6**. We provide further details below in response to Question 7.
[19] Google, 'Australian Financial Services Advertisers Verification', (9 June 2022).
[20] Governmental entities, as well as a limited set of third party advertisers, are exempt.

Regulated financial services advertisers in Australia will need to demonstrate that they are licensed by ASIC and complete the verification program.[21] Advertisers have been able to apply for verification since the end of June 2022, and the policy went into effect on 30 August 2022.

20. Since we launched this policy in the UK, we've seen a pronounced decline in reports of ads promoting financial scams.[22] The success of this program in the UK showed us that it is an effective solution to safeguarding people online.

21. While we put every effort into staying one step ahead, detecting bad actors is not always straightforward. Bad actors try to evade systems and we need to innovate to effectively combat them. It is critical that new, rigid requirements do not prevent these efforts or cause other unintended harms.

22. The Government needs to consider carefully whether further targeted regulation for all digital platforms is necessary to supplement the ACL and the measures described above.[23] In particular, the Government should consider whether the ACCC's proposals can effectively address residual harms from scams, harmful apps, and fake reviews.

23. The ACCC proposes that digital platform-specific consumer measures apply to all of search, social media, online private messaging, app store, online retail marketplace, and digital advertising services. Unlike general economy-wide standards, the proposals do not seem to accommodate flexible implementation tailored to a service's circumstances. Nor are they service-specific. Instead, the proposed measures contain prescriptive requirements that do not distinguish between inherently different services, how victims of scams interact with those services, and what is likely to be effective in addressing scams on each type of service. They fail to take into account the real-life, practical challenges we and others face in identifying scams, harmful apps, and fake reviews.

24. We are concerned that the proposed measures may not be effective in addressing harms and would cause other unintended harms. First, the ACCC's notice-and-action measures assume that it is always possible to determine whether content is harmful, do not take into account the detriments (to legitimate traders and consumers) of likely

[21] We note that a stakeholder suggested that Google implement its UK approach in Australia via an industry co-designed Code of Practice, or that the ACCC impose a duty on digital platforms to prevent advertisement for financial scam products, including through an ASIC verification process. Google's voluntarily implemented initiative renders such measures unnecessary.
[22] It has been reported that UK bank TSB has had no account holder scammed as a result of advertisements on Google Search since Google introduced this policy in the UK, and that online investment fraud has shifted to other platforms. See The Times, 'Facebook and Instagram blamed for surge in scams', (1 July 2022).
[23] The Productivity Commission has stated that "application of robust regulatory assessment processes should help ensure that industry-specific consumer regulation is more judiciously and effectively used". See Productivity Commission, 'Review of Australia's Consumer Policy Framework', (30 April 2008), p. 91.

over-removal of content, are vulnerable to abuse by bad actors, and raise privacy issues. Second, the ACCC's verification measures cannot sensibly apply to all dealings online; for example, Google Search crawls trillions of web pages, the provenance of which would be impossible to verify. Third, the Government should consider whether an additional independent external ombuds scheme can provide a more effective, less costly, and time-efficient means of dispute resolution compared to existing options.

25. We are keen to work with Treasury and the ACCC on what can be usefully done in relation to scams. In addition to continued action against the entities and individuals perpetrating scams and harmful content, there appear to be opportunities for enhanced scam protection through empowering the ACCC to issue takedown notices in respect of scams, consolidating existing Government scam reporting tools, developing a searchable database of scams, greater education of consumers about scams, and improved collaboration between industry sectors and the public sector. The National Anti-Scam Centre (**NASC**) also presents an opportunity for greater education and collaboration between industry sectors and the public sector.

More evidence is needed to inform decision making on whether an additional competition regulatory regime is required, and will deliver net benefits for Australians.

26. The ACCC's competition proposals involve novel and complex additional regulation in a dynamic space. The ACCC Report rightly notes that "*intervention may result in unintended consequences*" such as "*capturing pro-competitive conduct or conduct that is otherwise in the best interest of consumers.*"[24] Preventing such conduct would risk hindering productivity, innovation and product quality, to the ultimate detriment of Australians.

27. A CMA review found that: "*countries with lower levels of product market regulation tend to have more competitive markets and enjoy higher rates of productivity and economic growth.*"[25] Consistent with this finding, the Government's principles for policy making stipulate that "*regulation should not be the default option for policymakers: the policy option offering the greatest net benefit should always be the recommended option.*"[26]

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[24] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 110, 194.
[25] CMA, 'Regulation and Competition: A Review of the Evidence', (January 2020), pp. 3-4.
[26] See Australian Government, 'The Australian Government Guide to Regulation', (2014), p. 2. As the UK Penrose Report cautions: "*upfront powers are a headily-addictive drug for regulators to use, but they come with a high cost because they add far more red tape costs and regulatory burdens than traditional competition and consumer powers too. As a result, upfront powers create a high risk of "regulatory creep" which adds red tape costs steadily over time.*" See John Penrose MP, 'Power To the People: Stronger Consumer Choice and Competition So Markets Work for People, Not The Other Way Around', (February 2021), p. 29. Likewise, as FTC Commissioner Christine Wilson has explained, previous attempts to ban vertical integration, impose broad non-discrimination rules, and require "*fair and just*" terms in the US proved complex to administer and disastrous to producers and consumers.

28. Against this backdrop, the evidence base for effective policy decision making needs to be developed, in line with the Government's best practice regulation guidelines. This includes the following steps:

    a. **Be clear about what you are regulating:** clearly identify and carefully evaluate the harms that need addressing;

    b. **Be clear about why you are regulating:** clearly identify the objectives of any Government action, and be satisfied that any proposed policy response will be effective in meeting those objectives and addressing those harms; and

    c. **Be satisfied that regulation will deliver net benefits:** undertake a thorough cost/benefit analysis, which includes considering whether the intended objective could be efficiently achieved through more effective enforcement of existing laws.[27]

29. We are not alone in thinking that further analysis is required to ensure that additional regulation will in fact deliver tangible benefits to Australian consumers, and increase not decrease innovation and productivity in the Australian economy. This imperative was echoed in submissions to the ACCC's Discussion Paper by a broad range of stakeholders.[28]

Be clear about what you are regulating: Identification and evaluation of harms

30. As a first step, it is necessary to identify and carefully evaluate the perceived harms that need addressing. Proper specification of the harms, will in turn assist in identifying appropriate policy responses to address those harms.[29]

31. While we acknowledge that there are areas where Australians are suffering actual harms, for example, losses incurred to consumers by scams, the ACCC's report does not establish clear actual *competitive* harms. Instead the focus is on speculative harms that "*may*" or "*could*" arise. For example:

    a. In relation to "self-preferencing", the ACCC states "*some digital platforms with market power are engaging in self-preferencing conduct that **may** have*

See Christine S. Wilson's Address at the British Institute of International and Comparative Law, London, 'Remembering Regulatory Misadventures: Taking a Page from Edmund Burke to Inform Our Approach to Big Tech', (28 June 2019), pp. 2-3.

[27] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 45, citing the Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007).

[28] See Law Council of Australia, the Business Council of Australia, Atlassian, DIGI, Amazon Australia, Meta, the Australian Investment Council, the Computer & Communications Industry Association, the Consumer Policy Research Centre, the Antitrust Law Section of the American Bar Association, and the Global Antitrust Institute of George Mason University. Submissions available here.

[29] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 45, citing the Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007).

anti-competitive effects".[30] The ACCC also acknowledges, "*not all forms of self-preferencing by digital platforms are problematic, and some may be benign or even pro-competitive*".[31] In the search context, the report acknowledges that **the ACCC** *"**has not, to date, examined whether Google has engaged in anti-competitive self preferencing** in the supply of general search services in Australia*".[32]

b. The ACCC states that exclusive pre-installation and defaults ***"can** restrict competition*", but it does not establish evidence of such competitive harm. Users can override defaults and pre-installations, and the evidence consistently shows that users do in fact do so.[33] Relevantly, the ACCC acknowledges that restricting pre-installation could have counterproductive consequences, such as "*broader competitive and economic impacts, including revenue impacts on third-party original equipment manufacturers.*"[34]

c. The ACCC states that interoperability restrictions on Android are "***likely to have** impacted competition.*"[35] But it provides no evidence that this is the case. In fact the ACCC's App Store Report acknowledged that the ACCC had not *"been informed of significant developer concerns about how Google provides access to Android and proprietary APIs*."[36] Android is open-source so is, by definition, fully interoperable.

d. The ACCC raises concerns that Google has "the ***ability and incentive*** to extract hidden fees" in its ad tech auctions, despite also acknowledging that "*a number of studies*" suggest this is unlikely.[37]

32. Further analysis is required to clearly specify the harms that need to be addressed, including their nature and magnitude. This is necessary to avoid ineffective solutions and regulation that prohibits conduct that may in fact be beneficial.[38] More generally, setting out to regulate speculative harms - rather than actual harms - risks a very broad and open-ended regime. If the regime is code-based, as proposed by the ACCC, this

[30] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 124.
[31] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 125.
[32] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), pp. 128-129.
[33] For example, Microsoft pre-installs its Edge browser that defaults to Bing on Windows. But Google's share of search on Windows is 91%, while Bing's is 7.5%. Australians override Microsoft's defaults and choose their preferred alternative: Google. The ACCC's own consumer survey also confirms that the majority of users know about alternative browsers and search engines, know how to change their defaults, and reported it to be "easy or very easy to do" (see **Annex 3**).
[34] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), pp. 145-146.
[35] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 159.
[36] ACCC, 'Interim Report No. 2 - App marketplaces', Digital platform services inquiry (March 2021), p. 62.
[37] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 176.
[38] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 43, citing the Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007).

will effectively transfer considerable policy making power over much of the digital economy to the code-making body.

Be clear about why you are regulating: Identifying the objectives and assessing the effectiveness of the policy response

33. While the ACCC Report identifies a general desire to promote competition and innovation in the provision of digital services, no detail is provided on *how* the ACCC's specific proposals will achieve this, or how 'success' will be measured. The Government should specify clear and measurable objectives for any new regulation - that is, how they will "*enhance the welfare of Australians.*"[39] Without such clarity, it is not possible to assess whether any new regime will be effective in practice - or even whether the desired outcomes are at all realistic.

34. For example, the ACCC proposes an obligation to require designated search services to share click-and-query data with rivals, which "*could promote competition in search*".[40] The prospects that such data sharing by Google Search would in practice help create a new search provider or help existing search providers grow should be closely tested. The ACCC's proposal to stimulate competition in search was based on search ranking algorithms – but the recent advancements (discussed at paragraphs 5-6 above) are instead the result of large language models and chat-style interfaces.

35. These and other recent developments arguably suggest that ex ante rules are not suited to address fast-moving sectors because innovations are unpredictable.[41]

Be satisfied that regulation will deliver net benefits: Undertaking a thorough cost/benefit analysis

36. As a final step in choosing an appropriate policy intervention, it is necessary to establish that the proposed response provides a net benefit for the community, and that the net benefit is higher than what could be achieved via alternative policy responses.[42] While the ACCC Report identifies a general benefit from increasing competition and innovation, no detail is provided on how these benefits will in fact flow from the ACCC's proposed measures, and it has not been shown that those benefits will outweigh the costs.

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[39] Consistent with the existing objective of the CCA.
[40] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 168.
[41] There is constant innovation, improvement and entry - from Microsoft and Netscape being overtaken in browsers, to the recent and rapid rise of TikTok, and to Amazon's advertising business is growing faster than Google and Meta's advertising businesses globally, with a threefold revenue increase in Australia alone. In just the last few months, the emergence of new AI language models have brought the possibility for entirely new experiences for users to discover information, different to traditional search that searches across websites and data corpuses.
[42] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 45, citing the Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007).

37. The costs in this context are not simply costs of compliance for digital platforms and the costs of administering new regulation — they include impacts on business and economic effects such as distortion of competition, reduced incentives or ability to innovate, and higher input or production costs. They also include resulting impacts on consumers such as higher prices and reduced utility (quality, choice etc) of products. Firms may be forced to roll out localised versions of platforms to Australia in order to comply with regulations, which may delay or deny Australians access to global advancements and updates associated with those platforms.[43] There may also be costs to the community such as lower economic growth.

38. It is also relevant to consider whether the intended objectives could be achieved through more effective enforcement of existing laws, or by existing or emerging market-based solutions.[44] In this regard:

    a. We believe Australia's current competition law framework is robust and capable of being used effectively to address harms to competition and consumers. The CCA already contains a broad and flexible prohibition on conduct that is likely to substantially lessen competition. The ACCC has not fully tested the existing laws - having only brought two cases since the prohibition was introduced in 2017, and neither of these was against a digital platform.

    b. Competition, product evolutions and voluntary measures should be further considered (discussed further in **Annex 7** with respect to Search, Play, and Ad Tech).

Developing the evidence base for effective regulation

39. The further analysis described above informs not only whether regulation is necessary and will secure net benefits for Australian consumers and the economy more generally, but also fundamental questions that address the scope of any such regulation. These include the identity of covered firms, products, and services; the precise content of any obligations; the formulation of any test that determines whether any given conduct is prohibited (*e.g.*, likely *versus* actual harm); and how consumer and business benefits should be assessed as part of the framework.

40. It is vital that the Government undertakes the work now to develop a strong evidence base for sound policy making, to ensure that any new regulatory regime would deliver net benefits to Australian consumers and the Australian economy. The urgency claimed

[43] In the response to Question 16, we give an example of an obligation proposed by the ACCC (to require designated search services to share click-and-query data from activities of its Australian users with rival search engines) which creates serious risks / costs (in addition to bringing questionable benefits - see paragraph 34).
[44] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), pp. 44-45, citing the Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007).

by certain third parties is no reason to override this best practice approach, or risk a new regulatory framework that ultimately impedes innovation, efficiency, and competition.

Necessary safeguards in any new regulatory framework

41. If the Government is satisfied, on the basis of further analysis, that substantial harms to competition are established, the regulatory regime to address them should contain the following elements[45] to ensure it promotes pro-consumer outcomes and does not dampen incentives to innovate and invest:

    a. **Enhancing consumer welfare:** Promoting competition and innovation, and enhancing the welfare of consumers, should be the ultimate objectives. The framework should not permit obligations that promote the interests of individual competitors.

    b. **Proportionate obligations:** Rules on conduct (and the consequences of non-compliance) should be necessary and proportionate to the seriousness of the anticipated harm and the likelihood of it occurring.

    c. **Safeguards and justifications:** Evidence-based justifications for conduct under scrutiny should be embedded in the overarching framework.

    d. **Appropriate legal rights:** Suitable protections and review mechanisms should be incorporated to ensure the integrity of a new regulatory framework. As under the CCA today, the Federal Court should be responsible for determining whether a breach of the regime has occurred. Full merits review by a Court should be available (where appropriate) for decisions that have legal consequences.

    e. **Separation of powers in the making of rules and enforcement of rules:** There should be a separation of powers between the bodies making rules (and if applicable, designation) and enforcing the rules.

42. Finally, the Consultation Paper notes that other countries are considering their own new regulatory regimes for digital platforms. It is important to recognise that they are adopting very different approaches, for example:

    a. Regulators taking action through existing frameworks (*e.g.*, the US DOJ)

    b. Legislation on specific areas of conduct (*e.g.*, Korea regulating app stores)

[45] Consistent with the six principles we outline in response to Question 13. See also our response to Questions 19-23 below.

c. Ex ante regimes enshrined in legislation (*e.g.*, EU's DMA)

d. Bespoke codes of conduct (*e.g.*, UK DMU).

43. It is yet to be seen which approach is better. Australia has an opportunity to monitor how new regulations are implemented in other jurisdictions, learn lessons, and avoid pitfalls.

44. If Australia proceeds with care and caution, the Government will have the opportunity to observe the impact of these approaches. It will then be in a better position to determine the right approach for Australian consumers and the wider economy.

45. We welcome the opportunity to contribute to this consultation. We stand ready to discuss these important issues with the Government.

RESPONSES TO THE CONSULTATION PAPER QUESTIONS

THE CASE FOR A NEW REGIME AND ITS OBJECTIVES

Question 1: Do you agree with the ACCC's conclusion that relying only on existing regulatory frameworks would lead to adverse outcomes for Australian consumers and businesses? What are the likely benefits and risks of relying primarily on existing regulatory frameworks?
Question 2: Can existing regulatory frameworks be improved or better utilised?
Question 3: Are there alternative regulatory or non-regulatory options that may be better suited?

Summary of Google's position:

Relying on existing consumer regulatory frameworks, when coupled with the reform programs recently implemented or announced by the Government, would not lead to adverse outcomes for Australian consumers and businesses. We support consideration of whether existing consumer protection frameworks can be improved or better utilised. We are concerned, however, that imposing the ACCC's proposed new consumer protection measures on all digital platforms would have unintended and adverse consequences.

More evidence is needed before concluding that an additional competition regime for digital platforms is required and would deliver net benefits to Australians. While we believe that existing competition laws are robust and working effectively for consumers and businesses, the Government could consider opportunities to improve the speed of investigations and litigation, including through a participative antitrust approach. As part of the cost / benefit analysis for any new regulation, the Government should also consider existing or emerging market-based solutions.

Proposed Consumer Measures

Australia already has one of the strictest consumer protection regimes in the world.[46] The ACL includes broad prohibitions on misleading or deceptive conduct, false representations, and unconscionable conduct — and its unfair contract terms regime has recently been bolstered and expanded.[47] The Federal Court has imposed more than $600 million in civil pecuniary penalties for breaches of the ACL.

[46] Rod Sims has stated *"the ACL is ahead of what most countries around the world have. I also suspect our ACL penalties are the highest available anywhere in the world."* See Rod Sims' speech at the Ruby Hutchison Memorial Lecture 2022, 'Continuing the ACL Journey', (15 March 2022).
[47] The *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*, passed in November 2022, introduced new unfair terms prohibitions, expanded the scope of "small business" contracts to which the unfair terms regime will apply and enabled significant penalties to be imposed for breaches. The amendments come into effect in November 2023.

Maximum penalties recently increased five-fold. The potential maximum penalties that may be awarded by a Court for contraventions of Australia's consumer and competition laws increased five-fold in November 2022.[48] The new maximum penalties are among the highest in the world. The increased maximum penalties will have widespread application across the most significant consumer and competition law prohibitions and reflect an ongoing effort by the ACCC to ensure that the penalties for breaches of consumer and competition laws effectively deter businesses and individuals from unfair activity and anti-competitive behaviour.

Broad ranging powers already available. Beyond enforcing Australia's competition and consumer laws through court litigation, the ACCC has broad investigative powers,[49] and can seek to resolve concerns via court-enforceable undertakings,[50] infringement notices, and public warning notices. Such broad powers already act as important compliance tools to influence and reshape the activities of market operators, including in fast-moving markets. These powers have been used extensively.

The ACCC's consumer law cases demonstrate the breadth and flexibility of current law, and application to a wide range of conduct. The ACCC has investigated and brought a number of cases against digital platforms, including Google, based on the Australian Consumer Law. The ACCC has used consumer laws to pursue review manipulation (for example, in successful cases against Meriton and HealthEngine), subscription traps (for example, in successful enforcement action against Fabletics and Scootprice,[51] Shaw Academy,[52] tutoring software suppliers)[53] and scams-related issues (for example, the ACCC has a pending action against Meta for publishing scam celebrity crypto ads on Facebook).[54] The ACCC was also recently successful in proceedings against Employsure for misleading representations in its online ads that it was affiliated with a government agency. The Full Federal Court imposed a $3 million penalty on Employsure, with the ACCC Chair observing that the penalty "*will help deter similar breaches in the future*".[55] Consumer law enforcement

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[48] The *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* increases the maximum civil and criminal penalties for corporations who have contravened the CCA and the ACL to the greatest of: (a) $50 million (increased from $10 million); (b) if the court can determine the value of the benefit obtained – three times the value of that benefit (no change); and (c) if the court cannot determine the value of the benefit obtained – 30% of the corporation's "adjusted turnover" during the "breach turnover period" for the act or omission (increased from 10% of body corporate's annual turnover in the 12 months prior to the act or omission). For individuals, the maximum civil penalties increased from $500,000 to $2.5 million. See ACCC, 'ACCC welcomes new penalties and expansion of the unfair contract terms laws', (1 November 2022).

[49] CCA, s.155.

[50] Section 87B of the CCA gives the ACCC the ability to accept written undertakings in the exercise of its powers under the CCA and for the enforcement of such undertakings in the Federal Court of Australia.

[51] ACCC, 'ACCC warns consumers to beware of subscription traps', (22 June 2016).

[52] ACCC, 'Shaw Academy to refund students over difficulty cancelling online courses', (12 November 2021).

[53] ACCC, 'Suppliers of CAMI and iTutor home tutoring software admit to using unfair contract terms', (30 November 2021).

[54] *Australian Competition and Consumer Commission & Anor v Meta Platforms, Inc. (Formerly Facebook, Inc.) & Anor* (NSD188/2022).

[55] ACCC, 'Employsure to pay $3m penalty for misleading Google ads after ACCC appeal', (8 February 2023).

actions are also commonly resolved informally, or via infringement notices or s.87B undertakings, none of which involves legal proceedings, and therefore offers scope for achieving faster outcomes.

Privacy, defamation, and e-safety laws complement consumer protection laws. Other policy frameworks, including privacy, defamation, and e-safety, work alongside the Australian Consumer Law to ensure Australian consumers' personal information is protected and that consumers are protected from online harms. Australian consumer law should take into account obligations which exist (or are forthcoming) in privacy, defamation, and e-safety laws, and not seek to duplicate them. Overlapping obligations increase regulatory and business costs, increase the risk of inconsistencies, reduce legal certainty for business, and may result in consumers being more confused about their rights.

- **Major reforms to Australia's privacy laws will enhance privacy protections for Australian consumers.** The *Privacy Act 1988* (Cth), enforced by the Office of the Australian Information Commissioner (**OAIC**), regulates how businesses handle personal information. The OAIC can accept court enforceable undertakings, or bring proceedings seeking penalties for breach, as it has done in recent action against Meta alleging that Facebook violated privacy laws. Significant privacy law reform to strengthen the Privacy Act is currently underway.[56] The *Privacy Legislation Amendment (Enforcement and Other Measures) Bill 2022* (Cth), passed in November 2022, significantly increases penalties and enhances enforcement measures. Further reform contemplates the creation of new binding online privacy codes for social media and other online platforms.

- **Amendments to State and Territory-based defamation laws will require internet intermediaries to have a simple complaints process for allegedly defamatory content.** The outcome of the Stage 2 Review of the Model Defamation Provisions is that, with effect from 1 January 2024, internet intermediaries will need to have a simple complaints process for allegedly defamatory content in order to be provided with a new innocent dissemination defence. There is some potential overlap between this development and the ACCC's proposed notice-and-takedown measures, particularly with respect to fake reviews.

- **Stricter standards for online safety and tougher penalties apply under the recently introduced Online Safety Act.** The *Online Safety Act 2021* (Cth), which came into effect in January 2022, introduced basic online safety expectations for online service providers, that apply to an array of services and all online safety issues including abusive conduct and harmful content, and expanded the powers of the

[56] The Attorney-General's Department is conducting an ongoing review into the *Privacy Act*, which proposes a number of significant amendments, many of which are based on overseas regulations such as the *European General Data Protection Regulation* and the *California Consumer Privacy Act*.

eSafety Commissioner. Harmful online content includes anything that is against the standards of morality, decency, and propriety (Class 1) and anything that would be classified as R18+ or X18+ (Class 2). The Act also provides for the development of industry codes that are approved and registered by the eSafety Commissioner. The codes are in the process of being developed, and will apply to providers of social media, messaging, search engine, and app distribution services, as well as internet and hosting service providers, manufacturers and suppliers of equipment used to access online services, and those that install and maintain the equipment.

- **Voluntary code protects Australian consumers against harm from online disinformation and misinformation.** On 22 February 2021, DIGI launched a new code of practice that commits a set of technology companies to reducing the risk of online misinformation in Australia. The Australian Code of Practice on Disinformation and Misinformation has been adopted by Google, Adobe, Apple, Facebook, Microsoft, Redbubble, TikTok, and Twitter. All signatories commit to safeguards to protect Australians against harm from online disinformation and misinformation, and to adopting a range of scalable measures that reduce its spread and visibility. Signatories also publish an annual compliance report detailing their efforts under the code.[57]

Economy-wide consumer protection measures have important advantages over industry-specific regulation. In 2006, the Productivity Commission was directed to conduct an inquiry into Australia's consumer policy framework, and it issued a detailed report outlining its findings and recommendations on 30 April 2008.[58] Relevantly, in comparing the merits of economy-wide consumer protection measures (now embodied in the Australian Consumer Law) and industry-specific consumer protection regulation, it stated:[59]

> *"While well-designed industry-specific regulation can enhance consumer wellbeing and provide greater certainty to suppliers of goods and services about their obligations, reliance on generic law alone has some important advantages. It:*
>
> - *facilitates consistency in approach across consumers and markets;*
> - *allows regulators to deal with emerging problems without the need for new statutes — an especially important feature given that many consumer markets are evolving rapidly; and*
> - *imposes relatively few costs on the overwhelming majority of suppliers who do the right thing by consumers.*

[57] Google, '[Annual Transparency Report]', (May 2022).
[58] Productivity Commission, '[Review of Australia's Consumer Policy Framework: Productivity Commission Inquiry Report Volume 2]', (30 April 2008).
[59] Productivity Commission, '[Review of Australia's Consumer Policy Framework: Productivity Commission Inquiry Report Volume 2]', (30 April 2008), p. 84.

Moreover, apart from typically higher compliance burdens, specific consumer regulation can also have indirect costs, including restricting the entry of new suppliers or products to a market, or impeding process innovation. In recognition of these costs, it is important that the need for specific consumer regulation is carefully established and its appropriateness assessed…such an assessment should include an evaluation of viable alternatives, including the scope to employ self-regulation or co-regulation…

Also, once a need for industry-specific regulation is established, it should conform to some fundamental design principles, including that:

- *the activities which are covered are clearly identified; and*
- *its requirements complement, rather than duplicate, generic provisions, and are sufficiently flexible to accommodate changes in the market concerned."*

We agree. **If there is a need to expand consumer protection (*e.g.*, by introducing an unfair trading practices prohibition) the starting point should be an economy-wide rule.** Concerns about lack of consumer protections apply economy-wide, independent of a company's size or the competitive dynamics in its sector. In our view, Australian consumers should benefit from robust consumer protections not just on a small number of digital platforms, but when dealing with all businesses, both online and offline.

In considering whether additional consumer protections are needed, measures that are already contemplated should be taken into account. The Government has already committed to consider an economy-wide unfair trading practices prohibition and to launch the NASC. The Government has also already committed to developing a code of conduct for social media services. These developments will augment / supplement the existing (consumer) framework and should deliver benefits for Australian consumers.

If the Government still considers additional targeted regulation of digital platforms is needed, it must be carefully crafted. Additional consumer rules applying to digital platforms may be appropriate if, following the introduction of currently contemplated measures:

- there remain unique, identified harms to consumers occurring only or predominantly on digital platforms;
- those harms cannot be adequately addressed by existing laws (including any targeted regulations already introduced);
- it is possible to design effective measures to address the harms; and
- the proposed regulation will result in a net benefit.

The appropriate point at which to assess whether there are adverse outcomes for Australian consumers and businesses that need to be addressed is after the already-contemplated developments outlined above have been implemented. We agree with the Productivity Commission that the "*application of robust regulatory assessment processes should help to ensure that industry-specific consumer regulation is more judiciously and effectively used*".[60]

As part of the assessment of the net benefit of additional targeted consumer protection measures for digital platforms, the Government should consider non-regulatory options. We describe below, in the response to Question 8.1, alternative non-regulatory options that may be employed to address harms from scams, including voluntary measures (such as our financial services ads verification policy), greater education, and cross-industry collaboration.

Proposed Competition Measures

We recognise that digital platforms' popularity has given rise to debate about how well competition law works in digital markets. However, there is insufficient evidence to support a conclusion that relying only on existing competition frameworks would lead to adverse outcomes for Australian consumers and businesses. The Consultation Paper asks about the risks of relying on existing regulatory frameworks, but the risks of introducing new frameworks are also an important consideration.

Novel, complex regulation needs to be carefully designed. The design of ex ante rules is complex because the rules must distinguish between conduct that is harmful and conduct that is neutral or beneficial for consumers. It needs to be carefully and thoughtfully approached, to minimise false positives (that is, condemning procompetitive activities) and unintended consequences, such as chilling innovation, higher costs, and degraded service quality for Australian consumers. The Productivity Commission has acknowledged that in rapidly developing digital markets, in particular, targeted rules could become quickly out-dated and stifle innovation. A standard element of a sound cost-benefit analysis of regulation is an evaluation of the regulation's expected error costs, through a proper assessment of costs/benefits including alternative options.

Consistent with best practice regulation guidelines, whenever a new policy initiative is contemplated, there should be:

- identification and careful evaluation of harms;
- identification of the appropriate policy response to address those harms, including the objectives of any Government action;
- an assessment of the effectiveness of the proposed policy response; and

[60] Productivity Commission, '[Review of Australia's Consumer Policy Framework: Productivity Commission Inquiry Report Volume 2](), (30 April 2008), p. 91.

- a thorough cost/benefit analysis, which includes a consideration of whether the intended objective could be efficiently achieved through more effective enforcement of existing laws.[61]

In the context of novel, complex regulation of dynamic, innovative markets it is important that the Government follows its best practice guidelines. That is, the Government should **be clear about what it is regulating, be clear about why it is regulating** and **be satisfied that regulation will deliver net benefits**, before introducing a new regulatory framework for digital platforms, as noted in the Introduction**.**

As outlined in the Introduction, we believe that more evidence is needed to inform decision making whether regulation is necessary and will secure net benefits for Australian consumers and the economy more generally, but also fundamental questions that address the scope of any such regulation. These include the identity of covered firms, products, and services; the precise content of any obligations; the formulation of any test that determines whether any given conduct is prohibited (*e.g.*, likely *versus* actual harm); and how consumer and business benefits should be assessed as part of the framework. An independent review body, with appropriate expertise, could be tasked with exploring these issues in more detail.[62]

As part of considering the effectiveness of any proposed reforms, the Government should consider whether existing laws can address the specific harms. We believe that Australia's existing competition law framework is robust and working effectively for consumers and businesses. While the ACCC's Fifth Interim Report suggests there are multiple policy gaps in the existing competition law framework, this overlooks the broad, flexible legislative tools and processes already available to address the types of issues it has raised.

- **CCA.** One of the defining features of competition law is its ability to adapt to new situations, based on the flexible consumer welfare standard. Competition law has been used to sanction all manner of different behaviours and business models — spanning the analogue to the digital era — with new theories of harm frequently emerging. For example, the ACCC's Fifth Interim Report discusses anti-competitive bundling that lacks justification as a potential prohibition under a new regulatory framework. But that is precisely the type of conduct that s.46 of the CCA is designed to address.[63]

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[61] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 45, citing the Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007).

[62] Major reform to Australia's competition laws has historically been undertaken by independent committees / review panels, including the Swanson Report (1976), The Green Paper (1984), Griffiths Report (1989), Cooney Report (1991), Hilmer Review (1993), Dawson Review (2003) and Harper Review (2015).

[63] The ACCC's Guidelines on misuse of market power (August 2018) list "*tying and bundling*" as a type of conduct that has "*great potential to contravene s.46*", para. 3.2. The guidelines also acknowledge that "*Tying and bundling are common commercial arrangements which usually do not harm competition and in many scenarios promote competition by offering consumers more compelling offers…*", para. 3.20, illustrating the dangers of outright prohibitions on such conduct.

The ACCC advocated for changes to s.46 of the CCA, including to address concerns with digital platforms. In 2018 Rod Sims stated "*[W]e are, of course, aware of arguments in relation to dominant platforms and their entry into various 'vertical' businesses … The ACCC is turning its mind to such issues. The Harper changes now give us the tools to do so, which we did not have before.*" Yet the ACCC has not fully tested its new powers under s.46,[64] having only brought two cases since the reforms were introduced. That is insufficient to establish that the law does not have important consequences or does not work. As Rod Sims also explained, "*the change in the law has changed behaviour*."[65] The ACCC has also established a relatively new Digital Platforms Unit with $27 million in funding and extensive investigative powers. The ACCC, through this new Digital Platforms Unit and with strengthened competition laws, should properly utilise these new powers before seeking to introduce a new regulatory framework.

- **Maximum penalties recently increased five-fold.** As noted above, the potential maximum penalties that may be awarded by a Court for contraventions of Australia's competition and consumer laws increased five-fold in November 2022 and are among the highest in the world.

- **Broad ranging powers already available.** As noted above, beyond enforcing Australia's competition and consumer laws through court litigation, the ACCC has broad investigative powers,[66] and can seek to resolve concerns via court-enforceable undertakings,[67] infringement notices, and public warning notices.

Complex competition law cases based on the substantial lessening of competition test may take longer to investigate and resolve than cases based on per se prohibitions, or cases that involve clearly harmful conduct. It is appropriate for complex or otherwise "grey" cases (where conduct is not clearly or obviously anti-competitive) to be thoroughly investigated and, if a resolution cannot be reached, determined by a Court. Conduct that is neutral or may in fact be pro-competitive should not be prohibited outright by ex ante rules for the sake of securing a faster outcome.

If the Government is nonetheless concerned about the speed of outcomes, it could consider opportunities to increase the speed of investigations and litigation. This could occur through increased focus on collaboration with industry with an emphasis on understanding business goals, emerging technology trends, competitive considerations, and in

[64] Rod Sims, '[Address to the Law Council of Australia Annual General Meeting]', (3 August 2018).
[65] Commonwealth of Australia House of Representatives Standing Committee on Economics, '[Official Hansard: ACCC annual report 2018]', (18 September 2019), p. 16. See also Commonwealth of Australia Senate Economics Legislation Committee, '[Proof Committee Hansard]', (17 February 2022), p. 20. See also Rod Sims' Speech to the National Press Club, '[An agenda to boost Australia's economic prosperity and fairness]', (23 February 2022).
[66] CCA, s.155.
[67] Section 87B of the CCA gives the ACCC the ability to accept written undertakings in the exercise of its powers under the CCA and for the enforcement of such undertakings in the Federal Court of Australia.

some cases, potential changes to business practices, rather than establishing fault. To realise this participative approach, the ACCC could pioneer new processes for facilitating the fast exchange of detailed information. This could include, for example, new types of procedures and mechanisms by which information is requested from involved parties and then discussed amongst technical experts, as well as co-design of experiments and testing "sandboxes" to examine the validity of concerns, and the effectiveness of potential alternative approaches. This process, however, must not sacrifice the need for detailed, evidence-based investigations that inform decisions, underpinned by the wide range of procedural and legal safeguards well established in current competition law.

Such an approach has been successfully deployed in the UK without any new enforcement powers. For example, through a collaborative and inclusive approach with the CMA, ICO (the UK's privacy regulator), industry and consumer advocates, Google made legally binding commitments to the CMA to address competition concerns over the Privacy Sandbox which govern how we are designing and implementing this initiative.[68] The process took just over 12 months.

There is also scope for process improvements to facilitate shorter timelines and faster outcomes in appropriate cases. Please see our responses to Questions 22 and 23.

As part of the cost-benefit analysis for any new regulation, the Government should consider existing or emerging market-based solutions. Where voluntary measures or product evolutions are already addressing potential concerns, there is no benefit in imposing additional regulation. Examples where recent voluntary measures are working to address the ACCC's concerns include:[69]

- **Industry initiatives to improve ad tech transparency and counter ad fraud** — for example Google co-authored and led industry adoption of the Interactive Advertising Bureau's ads.txt and app-ads.txt specifications, aimed at increasing trust and transparency in programmatic advertising.
- **Industry collaboration on voluntary ad tech fee and verification standards** — In accordance with the ACCC's Recommendation 4 of its Digital Advertising Services Inquiry, industry bodies and ad tech participants have been collaborating on the development of industry standards that, (a) require ad tech providers operating in Australia to publish average fees and take rates for their services (Fee Transparency Standard); and (b) enable advertisers to assess Demand Side Platform (DSP) services independently and fully (DSP Verification Standard).

[68] See CMA, 'CMA secures final privacy sandbox commitments from Google', (February 2022) and Google, 'The path forward with the Privacy Sandbox', (11 February 2022).
[69] See **Annex 7** for more details.

- **Options for additional billing systems on Google Play** — We announced a pilot program, starting with Spotify, to explore rolling out User Choice Billing,[70] and subsequently opened participation in the pilot to all developers of non-gaming apps. Pilot participants can offer an additional billing system alongside Google Play's billing system for their users in over 35 countries, including Australia. The goal of the pilot is to understand complexities involved in supporting user choice billing for developers and users in countries across the world, while maintaining a safe and positive user experience.[71]

Question 4: Do you see any conflicts between the recommendations?
Summary of Google's position: There are conflicts between some of the recommendations, which risk creating unintended consequences for Australian consumers and businesses. This underscores the need for further work to identify and evaluate the specific harms that should be addressed, the objectives of any proposed policy response and its effectiveness in addressing those harms, and whether the benefits will outweigh the costs.

There are some potential conflicts between the ACCC's proposed measures. It is likely that further conflicts will surface as details of the proposals are more fully articulated. Examples include:

- **The proposed notice-and-action consumer measures may be at odds with proposed rules for fairer dealings with business users.** The proposed notice-and-action consumer measures are likely to incentivise prompt removal of content or businesses, upon notice by users (or competitors), and lead to removal of some legitimate content and businesses, for the reasons explained in response to question 8.1. This will be to the detriment of the legitimate businesses concerned as well as consumers.

- **The proposed notice-and-action consumer measures and public reporting measures may also compromise digital platforms' ability to detect and combat scams**. By requiring digital platforms to "*provide advice*" about the basis on which content is permitted and "*processes and actions*" undertaken in response to a notice lodged by a user, the proposed measures could arm bad actors with information on how to circumvent platforms' systems, leading to more scams and harmful apps. There is a balance to be struck between the interests of providing transparency to the reporting user, and the risk that the increased transparency could be misused, leading

[70] Android Developers Blog, 'Exploring User Choice Billing With First Innovation Partner Spotify', (23 March 2022).
[71] See Android Developers Blog, 'Continuing our Commitment to User Choice Billing', (10 November 2022); Google Play Console Help, 'Enrolling in the user choice billing pilot', (2023).

to greater harm. The proposed requirement for platforms to publish reports on actions taken to prevent scams, harmful apps, and fake reviews, including "*actions taken by the platform*", depending on the level of detail required to be provided, could also give bad actors important insights into platforms' actions and how they might be circumvented. (We acknowledge that the ACCC proposes that specific information about processes to prevent scams, harmful apps, and fake reviews would not be published, but would be required to be provided to the ACCC on a confidential basis.)

- **Increased fairness for business users may be at odds with the interests of consumers.** The ACCC is concerned about business users of digital platform services being treated unfairly or having their access to legal rights limited by digital platforms. For example, the ACCC and stakeholders have criticised Google and Apple's app review processes for delaying or rejecting apps.[72] In assessing such claims and recommendations, it's important for the Government to consider the trade-offs in terms of user harm in introducing rules that prevent Google from acting swiftly to remove harmful apps or thoroughly reviewing apps to detect harmful apps.

  Relevantly, our robust app store process helps us to protect consumers from malicious, harmful, and exploitative content on Google Play. The ACCC has recognised these harms, and found that "*Apple and Google should take further measures to prevent and remove apps that harm consumers*".[73] It is to protect consumers that we have developed:

  - Extensive policies directed at preventing harmful apps and content[74] and robust app review processes to detect harmful apps, as described above;[75]
  - Troubleshooting tools to allow Google Play users to report or flag harmful apps;[76] and
  - Controls to protect consumers on Google Play, such as Google Play Protect that runs safety checks on installed apps.[77]

  We take seriously our responsibility to protect users from scammers — but to be able to act swiftly to prevent significant harm, we need to be able to suspend services quickly, and in some cases immediately, without notice. We also need to be able to

[72] Discussion Paper, p. 55.
[73] Discussion Paper, p. 51.
[74] We are constantly updating these policies to address new and emerging harmful business practices. As noted above, Google Play gives advance notice of upcoming changes to Play's policies.
[75] Google Play, 'How Google Play Works'.
[76] See Google Play Help, 'How to report an app on the Google Play Store' and Play Console Help, 'Report inappropriate apps'.
[77] Google Security Blog, 'How we fought bad apps and developers in 2021', (27 April 2022).

rapidly update our terms and policies to capture emerging forms of scams, fraud, and harmful practices.

The benefits of regulatory changes, when implemented to address the concerns of a few large developers, should also be balanced against the costs and risks to the majority of app developers and consumers who benefit from the current processes in place.

- **Forced data sharing may compromise consumer privacy and enable disinformation and manipulation.** The ACCC proposes the introduction of requirements for Designated Digital Platforms to share certain click-and-query data (and/or facilitate data portability in respect of that data). At the same time, the ACCC describes the harm arising from "*a lack of consumer awareness and control over the collection and use of their personal information*".[78] In mandating that a digital platform should share their data with third parties, the ACCC would intervene to give Australian consumers less control over their data, and less insight into how and by whom it is accessed, used, and shared. Consumers' click-and-query data can contain highly-sensitive information, such as searches of medical conditions, home addresses, financial details, and political or religious organisations.[79] Depending on the design, mandatory disclosure of click-and-query data to rival search engines could, for example, disclose Australians' sensitive information to third parties, including those influenced by certain states and autocratic regimes.[80]

  An obligation to disclose click-and-query data also risks enabling wide-scale manipulation of Google's search results.[81] Such manipulation would harm both users (who would see less relevant results) and legitimate businesses (who would be displaced in Google's ranking by low-quality or manipulative sites). Without appropriate safeguards, mandatory click-and-query data sharing could allow recipients to work out how Google uses user signals to rank results, and manipulate our results. Even if the data sharing obligation is ostensibly limited to third-party search engines, this would not protect against such risks. Untrustworthy search engine operators might disclose our search data to third parties. Also, nothing would prevent a bad actor from setting up a search engine just so it could receive our search data to enable manipulation.

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[78] Discussion Paper, p. 44.
[79] The CMA found "*the disclosure of users' click and query data has the potential to expose users to privacy breaches*"; and there are "*concerns from a privacy perspective arise if the disclosure of search data could lead to the identification of users*". See CMA, 'Online platforms and digital advertising: Market study final report, Appendix V', (1 July 2020), p. 21.
[80] The Guardian, 'Russian internet giant grants veto powers to Kremlin-linked body', (18 November 2019). See also The Guardian, 'Yahoo withdraws from China as Beijing's grip on tech firms tightens', (3 November 2021).
[81] There are millions of low-quality and spammy sites that try to game their way to the top of our ranking through manipulative techniques. These sites provide a poor user experience and can harm users. We write algorithms to identify such sites and lower their ranking in our results.

Similarly, state actors could use this information to gain insights into search habits of users and manipulate search results for disinformation and propaganda campaigns.

- **Prohibiting "self-preferencing" and cross-service uses of data may inhibit digital platforms' scam detection.** Our efforts to protect consumers from scams and harmful apps or content can involve the types of conduct that the ACCC has identified as potentially harmful and appropriate for prohibitions under service specific codes of conduct — such as "self-preferencing" and prohibiting a platform from combining certain data sets. For example, combining personal data across services enables Google to detect unusual behaviour. Imagine that a logged-in user who frequently uses Google Search in Sydney enters a query at 10am. At 10:15 am, Google detects an attempt to log into the user's Gmail account from Beijing. Sharing signals across Search and Gmail allows us to identify this login as suspicious and to alert the user. A ban on data combination would prevent us protecting the user in this way.

The potential conflicts described above highlight the potential for the proposed measures to result in unintended consequences. They underscore the need to identify and evaluate the specific harms sought to be addressed, the objectives of the proposed policy response and its effectiveness, and whether the benefits will outweigh the costs.

Question 5: Do you see any conflicts between any of the recommendations and existing Government policy?
Question 6: What is the best way to ensure coherence between Government policies relating to digital platforms? Are any of the recommendations better addressed through other Government reforms or processes?

Summary of Google's position:

There are some conflicts and overlaps between some of the ACCC's recommendations and ongoing law reform processes. Those existing processes should be completed before considering whether additional regulation is needed on these topics. Inconsistent or duplicative obligations on digital platforms should be avoided as this could lead to unnecessary complexity, confusion, and unintended non-compliance.

There are some conflicts and overlaps between some of the ACCC's recommendations and ongoing law reform processes. Rules should avoid creating overlapping obligations that are inconsistent with other regulatory frameworks. Inconsistent or duplicative obligations on digital platforms should be avoided as this could lead to unnecessary complexity, confusion, and unintended non-compliance.

Certain measures conflict with ongoing reform processes. For example:

- **Measures to address data advantages and consumer privacy law reform.** The ACCC recommends various data access, limitation, and interoperability measures to address perceived data advantages[82] but also acknowledges that sharing personal data has the potential to raise significant consumer privacy concerns.

  Given this tension, the ACCC quite rightly recommends that such measures should not be considered until after the introduction of any privacy law reforms that result from the review of the Privacy Act. It would be inefficient if proposals are designed in a way that proves to be inconsistent with the outcomes of the Privacy Act Review. In ad tech for example, this could ultimately harm publishers and advertisers, who would have to expend resources adjusting to new changes and then re-adjusting to any roll-back or additional changes following the Privacy Act Review. Further, it would be undesirable if new competition rules regarding data adopted a different approach to data privacy protection to that contemplated under the Privacy Act. The two approaches, while possibly technically compatible, would result in inefficient and overlapping regulatory frameworks.

- **Harms arising from online scams, harmful apps, and fake reviews may be addressed by an economy-wide prohibition on unfair trading practices, the proposed social media code, and the NASC.**

  The Government already proposes to consult on the need for an economy-wide prohibition on unfair trading practices, and the ACCC has acknowledged that this prohibition may address alleged harms arising from scams, harmful apps, and fake reviews.[83] A best practice approach to regulation would first complete consultation on this economy-wide prohibition before consideration of further digital platform specific measures. The social media scams code and NASC should be developed and launched before considering whether there remain harms from scams that need to be addressed.

  The Government has provided seed funding to the ACCC to establish the NASC. The ACCC is currently considering the functions and role of the NASC, and has consulted with telecommunications providers, banks, and digital platforms. Potential roles being explored include how the NASC can facilitate collaboration and coordination with stakeholders, improving scam education for vulnerable groups, and providing a one-stop shop for all scam related inquiries. We support the establishment of the NASC.

[82] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), pp. 167-173. See also ACCC, 'Digital Advertising Services Inquiry Final Report', (28 September 2021), p. 78.
[83] Discussion Paper, p. 95, 97.

The Consultation Paper notes that the Government has also committed to introducing a new code for platforms "*to clearly define responsibilities for protecting consumers and businesses from scams*". There is little publicly available information about the proposed code, but based on statements made by The Hon Stephen Jones MP Assistant Treasurer and Minister for Financial Services, it appears that the code is intended to address concerns that some social media platforms are not taking down content that they know is unlawful, and will cover banks, telecommunication companies, and social media platforms.[84]

The NASC and scams code to which the Government has committed appear to be aimed at addressing the same harms as the ACCC's proposed notice-and-action measures. These measures should be developed, and if appropriate, implemented and assessed for effectiveness, before any additional new measures such as the ACCC's proposed notice-and-action requirements.

- **Information sharing requirements that form part of the proposed notice-and-action measure and the Privacy Act**. To the extent the proposed notice-and-action measure would require platforms to share user data with other platforms, it could be at odds with the Privacy Act reforms, as well as company privacy policies that restrict the extent to which user data can be shared between companies and other third parties. The Privacy Act review should be completed before additional consumer regulations that require information sharing are introduced, and the scope of any such additional regulations should be carefully considered with privacy implications in mind.

The proposals may conflict with the Government's stated objective to ensure Australia has "*the right regulations in place to be a leading digital economy*."[85] There is an inherent tension between stimulating growth in the Australian digital economy while simultaneously increasing regulation. However, rigorously considered and thoughtfully implemented regulation that has the objective of promoting competition and innovation to the benefit of consumers (rather than shielding firms from competition) can minimise detriments from this tension. Digital markets are characterised by high levels of innovation, and in the Consultation Paper's words, have "*provided significant benefits for consumer[s] and businesses, reducing the costs of a variety of transactions and providing new services, often at low or no direct costs*", with their "*dynamic nature and rapid growth*".[86]

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[84] As part of Labour's Scambuster policy, Labour would "Introduce tough new mandatory industry codes to make social media companies, banks and telcos responsible for choking off scams" — see The Hon Stephen Jones MP, 'National Consumer Congress Speech', (16 June 2022). See also ABC News, 'Labor proposes anti-scam centre, calls for crackdown on social media companies profiting from fraud', (7 November 2021); and The Hon Stephen Jones MP, 'Transcript of interview with David Koch: Sunrise, Channel 7', (7 November 2022).

[85] Joint media release from The Hon Stephen Jones MP and The Hon Dr Andrew Leigh MP, ' ACCC report into digital platform services', (11 November 2022).

[86] Consultation Paper, p. 5.

Driven by this dynamism and growth, there is a constant trend of innovation, improvement and new entry — from Microsoft and Netscape being overtaken in browsers, to the recent rise of TikTok gaining a significant share of user attention[87] and Amazon's advertising business is growing faster than Google and Meta's advertising businesses globally,[88] with a threefold revenue increase in Australia alone.[89] As noted in the Introduction, in just the last few months, the emergence of new AI language models have brought the possibility for entirely new experiences for users to discover information, different to traditional search that searches across websites and data corpuses. Microsoft has announced that it's made a "*multibillion dollar investment*" in ChatGPT maker OpenAI, "*to accelerate AI breakthroughs*",[90] and launched a new AI-powered Bing search engine.[91] Neeva (a subscription-based search engine) has launched its own NeevaAI, arguing that "*it's unlike anything we, or anyone, have built before.*"[92] And in early February, Google unveiled its own plans to use generative AI language models in Search.[93] Commentators have recognised that these AI language models will "*transform the way people find things on the internet*".[94]

Any regulation should avoid creating an environment that constrains firms' ability to innovate and create new and better products or processes. This would hinder innovation-driven growth in the Australian digital economy, as opposed to stimulating it. Further, under such regulations, firms may be forced to roll out localised versions of platforms to Australia in order to comply, which may delay or deny Australians access to global advancements and updates associated with those platforms.

[87] The New York Times, 'TikTok Builds Itself Into an Ads Juggernaut', (14 November 2022).
[88] CNBC, 'Amazon is bucking the online ad trend and just beat out Google and Meta', (3 August 2022).
[89] Mi3, 'Amazon triples Australian ad revenues, media execs predict it will triple again in 2022 as juggernaut starts to roll', (22 February 2022).
[90] Microsoft, 'Microsoft and OpenAI extend partnership', (January 23, 2023).
[91] Microsoft, 'Reinventing search with a new AI-powered Microsoft Bing and Edge, your copilot for the web', (7 February 2023).
[92] Neeva touts its example to the query [kamut flour vs regular] as being answered by its own AI, see https://neeva.com/search?c=All&pid=srp_share&q=kamut+flour+vs+regular&src=shared_link.
[93] Google The Keyword, 'An important next step on our AI journey', (6 February 2023).
[94] The Economist, 'Is Google's 20-year dominance of search in peril?' (9 February 2023).

CONSUMER RECOMMENDATIONS

Question 7: Do you agree with the evidence presented by the ACCC regarding the prevalence and nature of harms to consumers resulting from the conduct of digital platforms?
Summary of Google's position: Many of the ACCC's findings regarding scams, harmful apps, and fake reviews relate to other digital platforms. To the extent the ACCC's finding that digital platforms have inadequate consumer and business user protection also relates to our services, we consider that the ACCC finding is not supported by evidence. We encourage the Government to consider all the processes and efforts already available and identify any specific gaps that may exist.

Many of the ACCC's findings regarding scams, harmful apps, and fake reviews relate to other digital platforms. We are not in a position to comment on the prevalence and nature of harms to consumers resulting from the conduct of other digital platforms, or whether those platforms are doing enough to combat bad actors.

To the extent the ACCC's finding that digital platforms have inadequate consumer and business user protection also relates to our services, we consider that the ACCC's finding is not supported by evidence. It may be counterproductive to impose regulation on platforms that are already addressing scams, harmful apps, and fake reviews voluntarily.

We take our responsibility to consumers extremely seriously. We combat scams, harmful content, and malicious and exploitative apps through comprehensive policies and enforcement of those policies. We continue to invest in tools, processes, automated detection technology, and teams that help us elevate trustworthy information and remove inappropriate content across our services in accordance with our policies. We also provide consumers with online tools for requesting removals and raising complaints (see *e.g.*, g.co/legal), and we have internal complaint handling processes involving a range of specialist teams. These processes enable us to respond to issues at scale in a timely and effective manner.

Google is continuously looking for ways to improve our efforts to detect and combat bad actors. To take just one area for example, as detailed in the introduction to these submissions, in June 2022 we voluntarily updated our advertising policies for financial products and services to expand our verification program for financial services advertisers to Australia.

We encourage the Government to consider all the processes and efforts already available and identify any specific gaps that may exist. The Government can then make an assessment

based on a more complete body of evidence in deciding whether to take forward the ACCC's proposed measures in relation to all digital platforms.

Scams

Scams are a serious, global problem, impacting all aspects of the Australian economy. We described our efforts to combat scams in our Discussion Paper Response[95] and provided further examples in our Discussion Paper Supplementary Submission.[96] Demonstrating the scope and scale of our efforts in respect of Ads, for example:[97]

- In 2021, we removed over 3.4 billion bad ads, restricted over 5.7 billion other ads, and suspended over 5.6 million advertiser accounts.
- We also blocked or restricted ads from serving on 1.7 billion publisher pages and took broader site-level enforcement action on approximately 63,000 publisher sites.
- Over 657,000 ad creatives were blocked from Australian advertisers for violating our misrepresentation ads policies (misleading, clickbait, unacceptable business practices, etc).[98]

To take another example, Google's Safe Browsing helps protect more than four billion devices from phishing, across the web — this scans websites at the browser level and we use it within our Chrome browser but also licence it for free to other browsers (Firefox and Safari for instance).

To recap, Google invests significant resources in proactively identifying and removing scams across a number of services and publishes regular reports that benchmark progress against these objectives.

There is no evidence in the ACCC's reports that there has been "*rapid and sustained*" growth in the number and quantum of losses to scams on our services,[99] or that these are more prevalent on our services than third party services. By contrast, evidence shows that scams are an economy-wide issue. As noted above, the ACCC's report 'Targeting Scams: Report of the ACCC on scams activity 2021' confirms that telephone and text message scams continue to account for the vast majority of reported scams, and that social media was the second

[95] See Discussion Paper Response, pp. 44-45.
[96] See Google, September 2022 Report on updating competition and consumer law for digital platform services: Google's supplementary submission to the ACCC, (3 August 2022) (**Discussion Paper Supplementary Submission**), pp. 23-26.
[97] Google, '2021 Ads Safety Report', (4 May 2022).
[98] Google, 'Annual Transparency Report', (May 2022).
[99] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 73.

highest contact method in terms of loss (behind phone calls and text message).[100]
We encourage Treasury to request more specific data from the ACCC identifying the specific services on which scams are prevalent (*e.g.,* which social media platforms, which services sit within the category of "Internet") to inform its response to the ACCC's recommendations.[101]

Harmful apps

On Google Play, we have a strong incentive to protect consumers from harmful and exploitative business practices, as well as harmful third-party apps. It is to protect consumers that we have developed:

- Extensive policies directed at preventing harmful apps and content[102] and robust app review processes to detect harmful apps;[103]
- Troubleshooting tools to allow Google Play users to report or flag harmful apps;[104] and
- Controls to protect consumers on Google Play, such as Google Play Protect that runs safety checks on installed apps.[105]

We described our efforts to combat harmful third-party apps in our Discussion Paper Response[106] and provided further examples in our Discussion Paper Supplementary Submission.[107] Demonstrating the scope and scale of our efforts in respect of **Play**:[108]

- We continue to enhance our machine learning systems and review processes, and in 2021 we blocked 1.2 million policy violating apps from being published on Google Play, preventing billions of harmful installations.
- We also continued in our efforts to combat malicious and spammy developers, banning 190,000 bad accounts in 2021.
- In addition, Google Play Protect continues to scan billions of installed apps each day across billions of devices to keep people safe from malware and unwanted software.

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[100] ACCC, 'Targeting Scams: Report of the ACCC on scams activity 2021', (July 2022) p. 7. And the Australian Bureau of Statistics (ABS) has recently found that people were most commonly exposed to a scam over the phone (48 per cent) or by text message (47 per cent), with exposure via text message doubling from 23 per cent in 2020-21 to 47 per cent in 2021-22. ABS, '13.2 million Australians exposed to scams' (22 February 2023).
[101] For example, there are references to Facebook, Instagram and WhatsApp in the ACCC's reports.
[102] We are constantly updating these policies to address new and emerging harmful business practices. Google Play gives advance notice of upcoming changes to Play's policies.
[103] Google Play, 'How Google Play Works'.
[104] See Google Play Help, 'How to report an app on the Google Play Store'; and Play Console Help, 'Report inappropriate apps'.
[105] Google Security Blog, 'How we fought bad apps and developers in 2021', (27 April 2022).
[106] See Discussion Paper Response, pp. 44-45.
[107] See Discussion Paper Supplementary Submission, pp. 23-24.
[108] Google Security Blog, 'How we fought bad apps and developers in 2021', (27 April 2022).

- Our data shows that 99% of apps with abusive or malicious content are rejected before anyone can install them.

The ACCC has acknowledged that our app review functions provide important protections for consumers, and recognised that in comparison to alternative sources of apps, apps downloaded from the Play Store (and the App Store) are far less likely to harm consumers or their devices.[109]

The ACCC's Digital Platform Services Inquiry Second Interim Report provided some examples of apps that were live on the Play Store that the ACCC regarded as harmful, malicious, or exploitative.[110] One of those was TikTok (on the basis that it may cause harm to children).[111] Another example (the only one repeated in the ACCC's Fifth Interim Report)[112] was an app that a user suggested contained malware, which Google has investigated as far as it can and not found evidence of malware.

One category of "harmful apps" that the ACCC identified was "subscription traps". We agree that subscription trap apps have the potential to harm consumers. In December 2021, we updated our subscriptions policy to state that subscriptions must provide sustained or recurring value to users throughout the life of the subscription and may not be used to offer what are effectively one-time benefits to users. We have also clarified our subscriptions policy to more explicitly prohibit apps that subject users to deceptive or manipulative purchase experiences (including certain in-app purchases or subscriptions). This is a further example of how Google takes voluntary action to respond to issues as they become apparent.

We are not aware of any evidence that shows that unlawful or otherwise harmful apps are prevalent on the Play Store, that we are failing to remove unlawful or harmful apps from Google Play, or that our efforts and processes are not robust.

Fake reviews

The ACCC has not presented evidence to show that fake reviews are prevalent on our services or that there are systemic issues in our process for tackling fake reviews.

As part of the fifth phase of the Digital Platform Services Inquiry, the ACCC conducted an online survey (described in the final report as a "questionnaire") of small businesses' dealings with digital platforms, which covered, among other things, fake reviews. We raised concerns with the ACCC about its survey methodology, including the self-selecting audience and leading nature of the questions. A sample size of 61 responses (with some responses

[109] ACCC, 'Interim Report No. 2 - App marketplaces', Digital platform services inquiry (March 2021), p. 11.
[110] ACCC, 'Interim Report No. 2 - App marketplaces', Digital platform services inquiry (March 2021), Boxes 6.1 - 6.4, pp. 112-119.
[111] ACCC, 'Interim Report No. 2 - App marketplaces', Digital platform services inquiry (March 2021), Box 6.4, p. 119.
[112] ACCC, 'Interim Report No. 2 - App marketplaces', Digital platform services inquiry (March 2021), Boxes 6.2, p. 114. See also ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 76.

incomplete) is not statistically significant nor representative. Of the 61 small businesses that responded to the survey, around half of this selective group raised concerns with fake reviews, including on the specified platforms, Google, Facebook / Instagram and Amazon, and other platforms like Yellow Pages, booking.com, and productreview.com.au. The survey also did not take into account consumers' perspectives.

Google's principal reviews product is Local Reviews — a type of user-generated content that Google users can submit to be displayed alongside results for businesses, places, and points of interest on a number of Google properties. Local Reviews help users to make better, more-informed decisions and to share their experiences with other users.

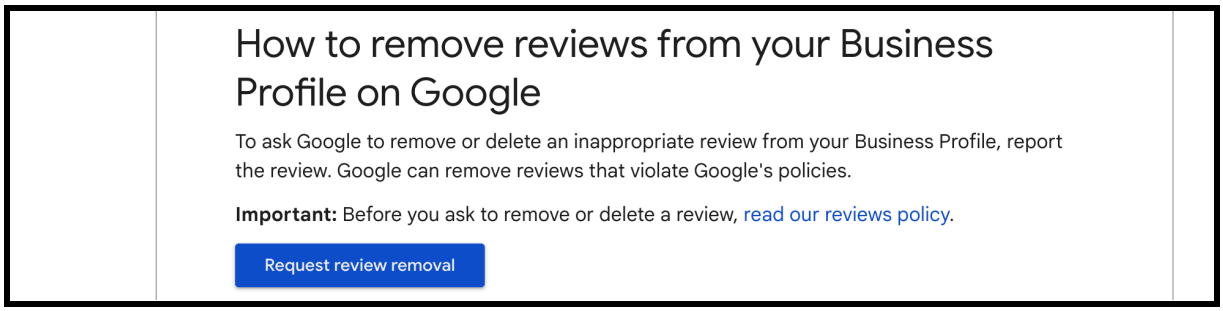
We recognise the impact fake negative Local Reviews can have, particularly on small businesses. We are also mindful of the risk of removing legitimate reviews, which may be harmful to consumers, and may also be harmful to competitor businesses.

It is important that the Government takes into account the considerable efforts already made to keep fake reviews off our platforms, and the real life complexities involved in doing so.

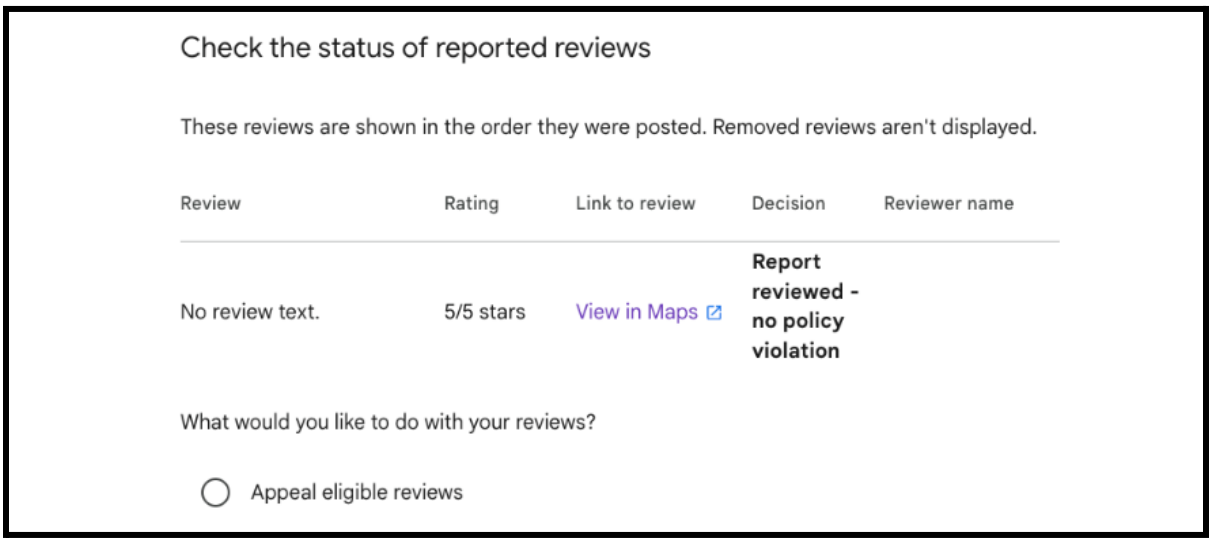
We invest significant resources in tackling fake Local Reviews.[113] We have strict content policies to attempt to make sure reviews are based on real-world experiences and to keep irrelevant and offensive comments off of Business Profiles on Google. As soon as someone posts a review, we send it to our moderation system to make sure the review doesn't violate any of our policies. On Google Maps, millions of reviews are posted every day from people around the world.[114] Given the volume of reviews we regularly receive, we need both the nuanced understanding that humans offer and the scale that machines provide to help us moderate contributed content. Our machines look at signals such as whether the Google account has a history of suspicious behaviour and whether there has been uncharacteristic activity. The vast majority of fake and fraudulent content is removed before anyone actually sees it.

If a business owner is concerned that a Local Review is fake, they can bring it to Google's attention, including for legal reasons via g.co/legal or otherwise via their account associated with their Business Profile:[115]

[113] See our blog post for more details: Google The Keyword, 'How reviews on Google Maps work', (2 February 2022).
[114] See Google, 'How reviews on Google Maps work', (2 February 2022) for more details.
[115] Google Business Profile Help, 'How to remove reviews from your Business Profile on Google'.



Businesses who submit a removal request using this process can check whether the relevant review was determined to be in breach of Google's policies, and Google offers the ability to appeal its initial determination:



Google has a rigorous process for assessing the complaints it receives via its reporting mechanisms. Our team of human operators works around the clock to review flagged content. When we find reviews that violate our policies, we remove them from Google and, in some cases, suspend the user account or even pursue litigation.

Fake reviews can be considered defamatory, and so there are legal options available to businesses who feel they have been the subject of fake reviews. We routinely receive and respond to legal complaints, and business owners might also be able to take action against the reviewers themselves. Businesses can also post a response to each review of their business from within the platform.

Question 8: Do you agree with the ACCC recommendation to introduce targeted measures on digital platforms to prevent and remove scams, harmful apps and fake reviews? Are there any other harms that should be covered by targeted consumer measures, for example, consumer harms related to the online ticket reselling market for live events?

Summary of Google's position:

We believe that the particular proposals advanced by the ACCC do not meet the requirements of a customised regulatory approach for digital platforms, are not workable, and are likely to result in unintended harms.

We acknowledge the threat posed by scams in particular, and have detailed the efforts to which Google goes to combat bad actors in this submission and in our submissions to the ACCC's Digital Platform Services Inquiry.

A customised regulatory approach for digital platforms, supplementing the provisions in the ACL, would be appropriate to the extent:

- there remain unique, identified harms to consumers occurring only or predominantly on digital platforms;
- those harms cannot be adequately addressed by existing laws (including any economy-wide unfair trading practices prohibition and targeted regulations already introduced);
- it is possible to design effective measures to address the harms; and
- the proposed regulation will result in a net benefit.

We believe that the particular proposals advanced by the ACCC do not meet these requirements, are not workable, and are likely to result in unintended harms, as outlined further in the response to Question 8.1.

Question 8.1: Is the notice and action mechanism proposed by the ACCC for these consumer measures appropriate? Are there any alternative or additional mechanisms that should be considered?

Summary of Google's position:

We do not think the notice-and-action mechanism could be workably applied to the range of digital platform services the ACCC proposes it should cover. The ACCC's proposed measures also do not take into account the real-life, practical challenges we and others face in identifying scams, harmful apps and fake reviews. We are concerned that the proposed measures may not be effective in addressing harms and would cause other unintended harms. If the Government were minded to increase investment and impact in relation to scams, there appear to be other opportunities for enhanced scam protection.

The ACCC proposes that digital platform consumer measures apply to search, social media, online private messaging, app store, online retail marketplace, and digital advertising services.

The proposed measures do not distinguish between these inherently different services, how victims of scams interact with those services, and what is likely to be effective in addressing scams on each type of service. They also do not take into account the real-life, practical challenges we and others face in identifying scams, harmful apps, and fake reviews. We are concerned that the proposed measures may not be effective in addressing harms and would cause other unintended harms.

Google already offers comprehensive solutions to enable users to flag content in its products for review as well as to submit legal complaints at g.co/legal. The ACCC proposes additional notice-and-action measures, where platforms must respond to notices of threats by removing suspected scam content, harmful apps, or fake reviews, and notify all potentially affected consumers. Our concerns with the notice-and-action mechanism include the following:

- **Difficulties with identifying harmful content and vulnerabilities to abuse by bad actors.** The ACCC's proposals don't provide guidance on what is "harmful" content and wrongly assume that a platform will always be able to determine whether a given app or website is a scam, or that a review is fake. For example, whether a review is "fake" or not is often an extremely difficult assessment. In many cases, it is not possible to conclusively ascertain whether a negative review is of a genuine experience and true, genuine and inaccurate (perhaps because a genuine customer has exaggerated their experience), or just fake. Determining whether a review is fake is not as simple as a notice and takedown mechanism. If it were that simple, businesses would complain about all of the negative reviews about them, even the genuine ones, just leaving the positive reviews (potentially including fake positive reviews). That would be a bad outcome for consumers, because it would make it harder to get a true picture of what a business is like. Put another way, mandating the removal of a review that is the subject of an allegation (or punishing a platform that leaves up content) would lead to a significant over-removal of content, potentially misleading consumers as to the true nature of a business. Bad actors could also abuse this process to force Google and other platform providers to remove content (for example, content of a business rival, or negative but genuine reviews) that may not in fact be harmful. Removal of legitimate content is harmful for the affected traders, their competitors, and consumers.

- **Arming bad actors with information.** The ACCC's proposals fail to consider the possibility of arming bad actors with information in a way that harms consumers. Requiring digital platforms to explain every removal (or non-removal) decision could arm bad actors with the information they need to achieve unjustified removals (or non-removals). It also increases the cost of content moderation and may have unintended consequences by diverting resources from conducting effective review and moderation in the first instance to defending those decisions to bad actors.

- **Privacy issues.** The ACCC proposes that these measures would require, for example, search engines, social media, and digital advertising services to notify any individual who sees content that is later removed. Google Search, for example, crawls trillions of webpages, and every day responds to billions of search queries from its users. It does not host or permit content. If we are notified of a scam web page and remove it from Search, we have no way to contact all potentially affected consumers. To build a system that was able to do so would require intrusive analysis of users' search history, and notifications about their past search activity that might cause undue alarm. Similar privacy concerns arise in respect of other services, such as app stores, social media, and especially private messaging.

We do not think that the notice-and-action mechanism could be workably applied to the range of digital platform services the ACCC proposes it should cover. For example, the proposed requirements make no distinction between services that host third party content, search engines that refer individuals to third party sources, messaging services, and platforms that are online marketplaces allowing consumers to conclude contracts with third party traders. These are important distinctions that exist for example in the EU Digital Services Act (**DSA**), which imposes different requirements for different types of intermediary services, reflecting the nature of those services. In particular, not all the services contemplated in the ACCC's proposals are required by the DSA to implement a notice-and-action mechanism.

One alternative might be to empower the ACCC to issue takedown notices with respect to protecting consumers from scams. Such a power would need to be accompanied by a clear definition of what is considered to be a "scam", and an appeal mechanism for the owners of content that is removed.

If the Government were minded to increase investment and impact in relation to scams, there also appear to be opportunities for enhanced scam protection through:

- **Consolidating existing Government scam reporting tools into one, and promoting it.** In addition to Scamwatch,[116] scams can be reported to the Australian Taxation Office,[117] ASIC,[118] Services Australia,[119] Australian Cyber Security Centre,[120] Australian

[116] ACCC Scamwatch, 'Where to get help'.
[117] ATO, 'Verify or report a scam | Australian Taxation Office'.
[118] ASIC, 'Scams targeting ASIC customers'.
[119] Services Australia, 'What to do if a scam has affected you - Managing your money - Services Australia'.
[120] Australian Cyber Security Centre, 'ReportCyber | Cyber.gov.au'.

Financial Security Authority,[121] IDCARE,[122] State and Territory fair trading bodies,[123] and police departments.

- **Developing a searchable database of scams that Australian consumers can use to verify the legitimacy of a request and promote it.**

- **Greater education of consumers about scams**, so they can take the necessary degree of caution when using platform services. Raising public awareness can help people avoid becoming victims. The ACCC's publication *The Little Black Book of Scams* is a very useful guide, which would benefit from greater publicity.[124]

  For example, in the UK, Google (and other tech companies, including Facebook, Instagram, Twitter, Amazon, Microsoft and TikTok) have supported Take Five to Stop Fraud, an anti-fraud campaign run by UK Finance.[125]

  Litigation can also perform an educative role. For example, last year, we took legal action in the US against a "puppy scammer" that used a network of fraudulent websites that claimed to sell basset hound puppies, with alluring photos and fake customer testimonials, in order to take advantage of people during the pandemic.[126]

- **Improved collaboration between industry sectors and the public sector.**

  Stop Scams UK — collaboration between banking, telecommunications and technology sectors

  Google is one of 17 members of Stop Scams UK (**SSUK**), a not-for-profit, industry-led collaboration between responsible businesses from across the banking, technology and telecoms sectors who have come together to help prevent the harm and loss caused by scams in the UK.[127] We have started engaging with SSUK in relation to its research into improved intelligence sharing across its members. SSUK's work is in its early stages but currently focuses on establishing:

  - what forms of intelligence sharing could be most useful in stopping scams;
  - whether that information exists in usable, shareable forms;

[121] Australian Financial Security Authority, 'Verify or report a scam | Australian Financial Security Authority'.
[122] IDCare, 'IDCare'.
[123] See, for example, ACT Fair Trading; NSW Fair Trading; Northern Territory Consumer Affairs; Queensland Government Office of Fair Trading; SA Consumer & Business Advice; Tasmanian Government Consumer, Building and Occupational Services; Consumer Affairs Victoria; and Western Australian Department of Mines, Industry Regulation and Safety.
[124] ACCC, 'The Little Black Book of Scams', (December 2021).
[125] UK Finance, 'Tech companies join banking industry to tackle fraud', (15 September 2021).
[126] See Google The Keyword , 'Hounding scammers with litigation', (11 April 2022) and The New York Times, 'In a First, Google Goes After Puppy Fraud in Court', (12 April 2022).
[127] SSUK, 'Membership' (as at February 2023).

- how that information could be shared, looking at both immediate quick wins as well as long-term solutions; and
- regulatory and legal considerations.

We understand SSUK hopes this work will lead not just to the development of data sharing pilots but also the production of guidance, advice, governance and process design, emphasising practical real-world solutions. We support this goal.

UK Online Fraud Steering Group — a public-private partnership

We see governments increasingly working with the private sector to combat cyberthreats (*e.g.,* the Australian Cyber Security Centre works with the private sector on enterprise level cyber attacks). Information sharing partnerships are an increasingly popular initiative enabling governments and firms to share cyber threat and vulnerability information to improve overall situation awareness.

In the UK, such public-private collaborative initiatives have proved successful. The Online Fraud Steering Group, co-chaired by the National Economic Crime Centre,[128] UK Finance and techUK, brings together the technology, banking and finance sectors, government and law enforcement, to work collectively to tackle online/cyber enabled-fraud in the UK.[129]

- The National Anti-Scam Centre presents an opportunity for greater education and collaboration between industry sectors and the public sector. We support the establishment of the National Anti-Scam Centre.

If the Government also considers that additional targeted digital platform regulations are required, over and above already contemplated measures, such regulations should:

- clearly define what is a scam, a "harmful" app, and a fake review;
- not require platforms to:
    - act within a certain time after being notified of a scam on the platform. Some notices and some issues will require more time to investigate than others. A strict time limit would disregard the variety and complexity of notices that can

[128] The creation of the NECC in February 2019 was widely welcomed as a way of dealing with what was seen as a 'fragmented approach' to tackling serious economic crime in the UK. The organisation brought together staff from the National Crime Agency, the Serious Fraud Office, the Financial Conduct Authority, Her Majesty's Revenue & Customs, the City of London Police, the Crown Prosecution Service and the Home Office to coordinate national responses to economic crime.

[129] For further details regarding the Online Fraud Steering Group, see National Crime Agency, 'National Economic Crime Centre'. See also TechUK, 'Online Fraud Steering Group: collaborative efforts to disrupt fraudsters', (1 October 2021).

be made, discourage thorough consideration, and encourage platforms to take the "low risk" option of removing content / businesses, and result in over-removal. The DSA, for example, requires services to provide a "timely" response.

    - "provide advice" about the basis on which content is permitted. This could arm bad actors with information on how to circumvent platforms' processes, and would be highly burdensome and non-scalable. There is no such requirement in the DSA. Rather, the DSA requires platforms to include information in their terms and conditions about any restrictions on content they impose on their service.

    - notify "potentially affected consumers". Such a requirement would require platforms to track users' activity as described above, and would be privacy-invasive. There is no such requirement in the DSA.

- accommodate scalable implementation and the use of scalable processes. We rely on a combination of machine learning, artificial intelligence and specialist review to protect consumers against bad actors. For example, Play offers more than two million apps and games to billions of people in 190 countries. Throughout 2021, our machine-learning detection capabilities and app review processes stopped over 1.2 million policy-violating apps from being published on Google Play. The ACCC has acknowledged that transparent and accountable automated decision-making should continue to play a role in effectively addressing large volumes of complaints and disputes.[130] Obligations that require digital platforms to take manual steps could introduce friction into existing processes and slow down efforts to combat bad actors.

<u>Other proposals</u>

The Consultation Paper does not explicitly ask whether the proposed "*verification of certain business users*", "*additional verification of advertisers of financial services and products*", "*improved review verification disclosures*", "*public reporting on mitigation efforts*", and "*mandatory internal dispute resolution standards*" requirements are appropriate. We set out some brief comments on these proposals, for completeness:

- "*Verification of certain business users*": The ACCC appears to contemplate the imposition of know your business customer requirements for advertisers, app developers, and merchants. We have concerns with this proposal based on the limited detail provided.

    - It is not clear whether the ACCC would intend for such requirements to apply to all of search, social media, app store, online private messaging, online retail marketplace, and digital advertising services. We don't consider businesses

[130] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 96.

whose websites appear in our organic Search results to be "business customers", and we assume the ACCC is not proposing that search engines verify webmasters. The DSA's "know your business customer" requirements, for example, apply only to online marketplaces and not the other categories of platforms contemplated by the ACCC.

- It is also not clear what type of identifying documentation and business details platforms would be required to obtain, and therefore how burdensome, workable, and effective such a requirement might be. For platforms that already have voluntarily implemented global verification processes, prescriptive requirements may require a significant overhaul of already effective processes.

  For example, in relation to ads, we have an advertiser verification program. To provide a safe and trustworthy ad ecosystem for users, Google leverages its Advertiser verification program,[131] which is Google's unified verification program that consolidates Advertiser Identity verification[132] and Business Operations verification[133] in a single flow to provide a simplified and improved advertiser experience. Under this program,[134] advertisers may be asked to initiate the verification process, which may comprise multiple steps, including verifying their identity, their business operations or both.

- "*Verification of advertisers of financial services and products*": As discussed above, we have voluntarily changed our ads policies to require verification of advertisers of financial services and products. We believe this change is capable of significantly reducing consumer harm from investment scams. We would be supportive of regulation that requires other platforms and advertising services to implement similar measures.

- "*Improved review verification disclosure*": One of the ACCC's recommended measures is a requirement to verify reviews, or notify consumers that reviews are not verified. Google Maps is not like a marketplace that can automatically verify that a reviewer has in fact interacted with a business. Before mandating a notice to consumers that reviews are not verified, the Government should gather evidence to understand whether consumers are appropriately sceptical of reviews in this context, and whether notifying a consumer that a platform cannot ensure that user reviews are authentic would be effective (as opposed to simply being a source of consent fatigue).
  We believe that consumers understand that platforms cannot verify reviews, and

[131] Google, 'About verification', Advertising Policies Help (2023).
[132] Google, 'About verification', Advertising Policies Help (2023).
[133] Google, 'About verification', Advertising Policies Help (2023).
[134] Google, 'Updates to Google's Advertiser Verification Program (March 2022)', Advertising Policies Help (January 2023).

accordingly we consider that a requirement to explicitly disclose that fact would be ineffective, while also being adverse to the user experience.

- "*Public reporting on mitigation efforts*": We already publish annual reports on our efforts to combat bad actors — for example, our Ads Safety Report,[135] "How we fought bad apps and developers" blog post[136] and "How we fought Search spam" blog post.[137] There are dangers with unbounded transparency. The DSA's public reporting requirements, for example, recognise this, and do not require digital platforms to publish granular information.

- "*Internal dispute resolution standards*": We agree that Australian business users and consumers should have access to effective processes for resolving disputes, though the requirements and processes should be proportional to the nature of the service and the potential consumer harm. When it comes to internal dispute resolution standards, each of Google's products has tailored policies, and enforcement and complaint handling processes, reflecting the nature of the product, its users, and the type of issues and complaints that may arise. These processes address the vast majority of issues before they result in a complaint or a dispute. If a consumer does have an issue, they can flag content in-product or submit a complaint at g.co/legal. We believe our dispute resolution processes enable us to resolve disputes at scale, in a timely and effective manner.

  We provided detailed submissions to consultants engaged by the Department of Communications in 2021 on the topic of internal dispute resolution standards and are happy to engage further with any specific proposals the Government may have.

  Any consideration of additional dispute resolution obligations should take into account:

  - Requirements should accommodate scalable implementation. We have 8 products each with at least one billion active users worldwide. Any internal dispute resolution standards need to be globally scalable and sufficiently flexible to deal with the breadth of issues that may arise. This includes being able to prioritise and respond urgently to issues that may cause broader harms, while allowing sufficient time to properly consider nuanced issues.

  - Requirements should be proportionate to the potential consumer harm. While we always endeavour to put the user first, not all disputes relate to material harms. The video on YouTube that has received the most complaints from users is a benign song by a popular music artist — it's flagged just because people dislike it. Broad and rigid requirements for internal appeals for any content

[135] Google, '2021 Ads Safety Report', (4 May 2022).
[136] Google Security Blog, 'How we fought bad apps and developers in 2021', (27 April 2021).
[137] Google Search Central Blog, 'How we fought Search spam on Google in 2021, (21 April 2022).

removal decision, for example, can be incredibly costly and disproportionate to the harm involved. The DSA, for instance, generally does not require complaint and recourse for all types of intermediary services, or user notification for certain types of content, like high-volume, deceptive commercial content.

- Requirements should enable platforms to leverage their global network and expertise.

  The ACCC's proposal that users must be provided with the opportunity to escalate their complaint or dispute to a human representative based in Australia is not workable. Our Trust & Safety teams are global by design given content creation and consumption is global. This helps our response times and enables us to provide 24-hour coverage with the right expertise for the trickiest decisions.

  For example, in response to the Christchurch massacre in 2019, Google had a response team from all over the world working on content removals around the clock. A telephone line during business hours would not enable Google to address these issues any more quickly or effectively, and indeed would create inefficiencies: the information Google needs to assess and rapidly handle a removal request is best provided in digital form.

  To our knowledge, no other industry is required to have a call centre or complaint handling staff in Australia, and real questions arise as to whether such a requirement would contravene, for example, Australia's free trade agreement with the US.

- Increased transparency in relation to platforms' enforcement decisions (*e.g.* detailed reasons for termination or suspension of accounts) can heighten risks that information can be used by bad actors to game systems, that commercially sensitive info is exposed, or that consumer privacy is affected.

- There are complexities to the complaints received by digital platforms that may not be experienced by others (see our answer to question 10, below).

- Rigid requirements could have unintended consequences. For example, rigid timelines for resolving disputes may lead to either over-removal of content or apps to the detriment of legitimate traders and consumer choice.

- A requirement to pause action (such as suspending an account) for a certain period or time, or pending an appeal, could cause unwanted delay in removing harmful apps or content, to the detriment of consumers. This also invites abuse by bad actors.

Question 9: What digital platform services should be captured in the ACCC's recommendation?

Summary of Google's position:

If the Government considers there is a need for additional consumer regulation, we believe it should apply to all digital platforms that provide the specified services, regardless of their size. Any regulations that do apply to "digital platforms" as an industry would need to be sufficiently flexible to take into account fundamental differences in the services provided by search, social media, online private messaging, app store, online retail marketplace, digital advertising services and any other digital platform services.

Consumers should be protected from harm regardless of whether they are dealing with a large digital platform, a small digital platform, or another business, and whether those dealings occur online or offline. There are clear benefits to consumer protection laws that apply economy-wide, and this should be the starting point.[138]

We acknowledge that there may be a role for targeted regulations that require the implementation of well-designed, effective measures, to lift the efforts of businesses that are not voluntarily doing enough to combat scams, harmful apps, and fake reviews. We understand that the Government is considering introducing a new social media code to clearly define responsibilities for protecting consumers and businesses from scams. Such a code may be appropriate to the extent there is evidence of consumer harm on social media platforms, and inaction by those platforms. Any new regulation, including a social media code, should be subject to consultation and a net benefit assessment.

Any regulations that do apply to "digital platforms" as an industry would need to be sufficiently flexible to take into account fundamental differences in the services provided by search, social media, online private messaging, app store, online retail marketplace, digital advertising services and any other relevant digital platform services, and how bad actors may interact with victims on those services, or otherwise contain differing targeted requirements for each specific service.

If the Government considers there is a need for such regulation, we believe it should apply to all digital platforms that provide the specified services, regardless of their size. Applying consumer protection regulations to only large firms would carry the following risks:

- **Providing consumers with a false sense of security:** Consumers may be led into a false sense of security about the protections they have when interacting with digital platforms (of all sizes) and other businesses. Consumers may expect the level of protection they get when interacting with firms subject to additional rules, and not

[138] Productivity Commission, 'Review of Australia's Consumer Policy Framework: Productivity Commission Inquiry Report Volume 2', (30 April 2008), p. 84.

appreciate that they do not benefit from that standard when interacting with other firms. They may be unwittingly exposed to harms on other platforms.

- **Distorting competition:** Imposing additional requirements only on certain firms would interfere with the competitive process, by limiting the activities (and raising the costs) of those firms relative to their rivals. This would put firms subject to the additional measures at an undue competitive disadvantage and be contrary to the objectives of promoting competition on the merits and fair trading.
- **Increasing regulatory complexity:** By creating a regulatory framework that is complex to administer.
- **Reducing incentives to grow:** If rules are applied based on a firm's size, this could reduce firms' incentives to grow beyond a certain size.

Question 10: Is a new independent external ombuds scheme to resolve consumer disputes with platforms warranted? Can any or all of the functions proposed for the new body be performed by an existing body and, if so, which one would be most appropriate?
Summary of Google's position: If the Government considers that an additional external ombuds scheme for digital platforms is required, the process and scope of that scheme needs to be very carefully designed. In considering the appropriateness of any new (or existing) ombuds scheme, it is important to take into account the breadth (and complexity) of disputes that may be raised with digital platforms.

Australian consumers and businesses already have access to a range of government and industry dispute resolution mechanisms. This includes (depending on the nature of the complaint): the Australian Small Business and Family Enterprise Ombudsman; the State and Territory Small Business Commissions; various Civil and Administrative Tribunals, such as ACAT, NCAT, VCAT, and QCAT; the State and Territory Offices of Fair Trading and the ACCC; the OAIC; the Australian Communications and Media Authority (**ACMA**); the eSafety Commissioner's Office; the AEC (in relation to election advertising), and the Australian Financial Complaints Authority (in relation to payment services).

If the Government considers that an additional external ombuds scheme for digital platforms is required, the process and scope of that scheme need to be very carefully designed to ensure that the cost and complexity of adjudicating complaints can be kept proportionate to their seriousness, including (where relevant) the amount of money at stake.

In considering the appropriateness of any new (or existing) ombuds scheme, it is important to take into account the breadth (and complexity) of disputes that may be raised with digital platforms. There are complexities to the complaints received by digital

platforms which may not be experienced by others. For example, telecommunications companies, banks, or utilities, typically receive complaints from their customers about the products they provide — these complaints can be categorised as "transactional". Disputes before the banking and telecommunications ombuds schemes are relatively straightforward. Take a banking customer's allegation that a particular transaction was fraudulent. The fact of the transaction is clear, and there should be clear signals available to the bank about the provenance of the transaction. The amount in dispute is also clear.

By contrast, any user of the web, from anywhere in the world, may make a complaint to Google about products like Search, YouTube, or Maps, or indeed about a Google Ad they see on the web. Many of the issues that consumers and businesses raise in relation to these products relate to third-party content that may be accessed via Google's products, but over which Google has limited or no control. Often Google is simply an intermediary between a content creator and the subject of the content creator's work, or between a third party website and the viewer of that website.

One example of a dispute faced by Google is that a review surfaced by Maps or Search is fake, and that a trader has lost business as a result. We do have extensive processes in place to deal with these kinds of allegations and in some cases the courts get involved. But these kinds of disputes are factually and legally complex. Was the review based on a real experience, did it go further than what actually happened, was it false and defamatory, what is the reviewer's perspective, how much business was actually lost as a result of the review? Disputes relating to defamation or truth of content are unsuitable for resolution by an ombuds scheme and should be adjudicated in the appropriate forum. Further, disputes between third parties are best managed between the parties involved, for example the content creator and the complainant. This is for a variety of reasons, including because only these parties know and understand the content the subject of the dispute, and because the content in issue may be accessible on more than one platform.

An ombuds scheme may be an efficient and effective means of resolving transactional disputes, and any ombuds scheme should be limited to such disputes. Transactional disputes are typically straightforward. Disputes that we would *not* consider transactional include those that involve an assessment of content. For example, an allegation that a review on Maps is defamatory, or that a YouTube video infringes an individual's copyright. Such disputes — indeed all disputes about content — are not well suited to resolution via an ombuds scheme.

The cost of any ombuds scheme for the Government, businesses, and consumers, would need to be proportionate to the outcomes it drives, over and above those already available through existing options. To the extent the Government is contemplating introducing an external ombuds scheme purely to enforce any new internal dispute resolution standards, as part of its analysis of such a proposal, the Government should consider the harm it is seeking

to address and the likely effectiveness of the proposed measure. It should satisfy itself, by reference to a solid evidence base, that the proposal would lead to net benefits. In doing so, the Government should consider whether the proposal would be disproportionate to the cost of the scheme, and whether the harm could be addressed via existing laws / avenues.

For example, a user might complain that a particular review is fake, and then complain about a platform's handling of its original complaint. If the platform has unreasonably delayed making a decision, or made the wrong decision, the user might have a defamation claim against the platform. If the platform has ultimately made the right decision under defamation law standards, it would not be proportionate nor efficient to enable the user still to bring the platform before an external ombuds scheme, in relation to one of potentially many reviews for the business.

To avoid consumer confusion and empower consumers when navigating complaints, any ombuds scheme should cover all firms that provide the relevant service online — not just the largest digital platforms.

We are not aware of effective international ombuds schemes for consumer and business disputes that could provide a useful precedent for Australia. For example, the European P2B regulation applies to business customers, rather than consumers. Some EU and UK regulations require alternative dispute resolution (*e.g.*, mediation) and online dispute resolution (*i.e.*, a platform), however they do not seem comparable to the ACCC's proposals and their effectiveness is yet to be seen.

Question 11: The ACCC recommends these requirements to apply to all digital platforms, do you support this? If not, which requirements should apply to all platforms, and which should be targeted to certain entities?
Summary of Google's position: In our view, Australian consumers should benefit from robust consumer protections consistently, not just with respect to their interactions on a handful of digital platforms, but in all dealings with businesses both online and offline. The harms arising from the issues and behaviours canvassed by the ACCC - and solutions to address those harms - ought to be considered on an economy-wide basis.

Please see our response to Questions 9 and 10. As noted above, Australian consumers should benefit from robust consumer protections consistently, not just with respect to their interactions on a handful of digital platforms, but in all dealings with businesses both online and offline. Many of the issues and behaviours canvassed by the ACCC, such as scams, are encountered in a wide range of sectors online and offline. The harms arising from them — and solutions to address those harms — ought to be considered on an economy-wide basis, as

previously submitted.[139] If an ombuds scheme were introduced, for example, it should cover all services of a particular type (not just the large players).

Question 12: If the above processes are introduced, is the Australian Consumer Law the appropriate legislation to be used and what should the penalty for non-compliance be?
Summary of Google's position: The starting point should be that consumer protection measures should apply economy-wide. In that context, the Australian Consumer Law would be the appropriate legislation to be used for any consumer measures that are found to be necessary to address identified harms that cannot be addressed by existing laws. However, it would be disproportionate for technical breaches of the obligations proposed by the ACCC to be subject to the significant penalties that apply to breaches of the Australian Consumer Law.

As noted above, the starting point should be that consumer protection measures should apply economy-wide. In that context, the Australian Consumer Law would be the appropriate legislation to be used for any consumer measures that are found to be necessary to address identified harms that cannot be addressed by existing laws.

However, if the Government is minded to pursue the ACCC's proposals in relation to, for example, notice-and-action mechanisms and business / review verification, it would be disproportionate for technical breaches of such obligations to be subject to the significant penalties that apply to breaches of the Australian Consumer Law.

[139] See Discussion Paper Response, pp. 34-35.

COMPETITION RECOMMENDATIONS

Question 13: Do you agree with the designation and code of conduct model proposed by the ACCC for the new competition regime? What would be the main implementation challenges for such a regime?

Summary of Google's position:

More evidence is needed to inform decision making on whether an additional competition regulatory regime is needed, and will deliver net benefits for Australians. If this stage is reached, it is important first to establish the overarching principles and objectives for any new regime, before turning to the best model to implement it. The ultimate objective of any new competition framework should be to promote competition and innovation to the benefit of consumers, not shield firms from competition.

More analysis is needed before concluding that an additional competition regime for digital platforms is required and that the proposed regime would deliver net benefits to Australian consumers and the Australian economy. It would be counterproductive if a new regulatory framework impeded innovation, efficiency and competition in Australia to the detriment of consumers, businesses, and the economy at large.

While we acknowledge that there are some areas where Australians are suffering actual harms, for example, losses incurred to consumers by scams, the ACCC's report does not identify any clear actual competitive harms. Instead the focus is on speculative harms that '*may*' or '*could*' arise. The Government should ensure that it has identified and evaluated the perceived harms that additional regulation is trying to address, and costs / benefits of the proposed policy response, before concluding that a significant overhaul of the existing competition regulatory regime is required. See our answer to questions 1-3 above.

If the Government's evidence base supports a new regulatory framework for digital platforms, we believe it is more important first to establish the overarching principles and objectives for any new regime, before turning to the best model to implement such a regime.

In its Review of Australia's Consumer Policy Framework report, 2008, the Productivity Commission stated:

> *"Clear objectives, with observable outcomes, also facilitate assessment of the effectiveness of the policy framework and the performance of regulators. And, in addition to providing guidance to regulators and others responsible for enforcement, clear objectives provide greater certainty to consumers and suppliers by identifying behaviours and circumstances which might trigger intervention."*[140]

[140] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 38.

Any new regulatory framework for digital platforms (whether the framework is implemented via a code of conduct and designation, or otherwise) should adhere to the following six core principles:

Principle One: Promoting competition and innovation, and enhancing the welfare of consumers, should be the ultimate objectives for any regulatory framework

- Promoting and protecting competition, efficiency and innovation for the benefit of consumers should be the essential elements of the design, objective, and enforcement of regulation. Regulation that shelters firms from robust competition risks chilling or deterring innovation and would be counterproductive.
- The benefit of a proposed intervention should be considered against the burden it would impose.[141] If that burden is greater than the benefit, rule-makers should look for alternatives (such as enforcement under existing competition, consumer, or privacy laws) or reconsider the need to intervene at all.

Principle Two: Preventing competitive harm and permitting evidence-based justifications should be embedded in the overarching framework

- Any new regulation should permit companies to justify business practices or product designs based on factors such as: system integrity, security, consumer safety, quality, functionality, performance and utility. Enacting rules without appropriate safeguards risks adversely affecting current forms or outlawing new forms of procompetitive conduct.[142]
- Penalties and remedial action should only be possible if conduct is shown to be likely to harm competition. Otherwise, the new rules may end up outlawing conduct that is, in reality, procompetitive or competitively benign.

Principle Three: The rules on conduct must be necessary and proportionate to the seriousness of anticipated harm and the likelihood of it occurring

- Rules on conduct (and the consequences of non-compliance) should be necessary and proportionate to the seriousness of the anticipated harm and the likelihood of it

[141] The Australian Government has committed to the use of a cost–benefit analysis to assess regulatory proposals in order to encourage better decision making. See, Department of Prime Minister and Cabinet, 'Cost-benefit Analysis Guidance Note', (March 2020), p. 1.

[142] For example, the CMA recognises that *"conduct which may in some circumstances be harmful, in others may be permissible or desirable as it produces sufficient countervailing benefits,"* and envisages taking this principle into account when it designs its Code of Conduct. See CMA, 'A new pro-competition regime for digital markets, Advice of the Digital Markets Taskforce', (December 2020), p. 37.

occurring, assessed based on objective evidence.[143] More intrusive and burdensome regulation is more likely to distort competition, reduce efficiency and deter innovation.

- The first step in determining the necessity and proportionality of any rule is an assessment of the adequacy of the existing law, effectively enforced, or whether the conduct is capable of being addressed via less intrusive means.
- Any novel regulation of a type which is unprecedented or very rare in Australia should only be implemented when it is established that it is the only effective way to prevent particularly serious harm.
- To achieve this aim, rules should be crafted after careful testing, and detailed research as to their appropriateness and proportionality.

Principle Four: **Suitable protections and review mechanisms should be incorporated to ensure the integrity of a new regulatory framework**

- The more intrusive and severe the regulation and sanctions associated with it are, the greater the protections and review mechanisms should be.
- Full merits review by a Court should be available where appropriate for decisions that have legal consequences for affected companies. Full rights of defence should also be available, including the right to review all evidence and comment on that evidence.
- The ACCC should publish reasoned decisions for actions taken under any new regulatory framework – both complaint rejections and infringement decisions. This is an essential procedural right. It is also important to create a body of precedent that helps digital platforms comply with their obligations.
- There should be a separation of powers between the bodies making rules (and if applicable, designation) and enforcing the rules. See our response to Questions 19-23 below.

Principle Five: Any changes to the rules should follow evidence and consultation; there should be clear conditions, not unfettered discretion, to change rules or introduce additional rules.

- The introduction of regulation and subsequent changes to regulation should be subject to a thorough consultation process. Any change to regulation should only be made when it is established on objective evidence that the change is necessary to address non-speculative harm.

[143] The Discussion Paper comments "*any new tools should be proportionate and targeted to minimise the risk of undue burden on market participants and any adverse outcomes on efficiency or innovation in relation to digital platform services*", p. 70.

- Affected businesses should be given a genuine opportunity to comment on the draft rules before they are implemented.
- Overarching limits on the power to make rules should be set in legislation.[144] See our answer to Question 14 below.
- Regulation should be periodically reviewed to test its ongoing relevance.

Principle Six: The rules should avoid creating overlapping obligations that are inconsistent with other regulatory frameworks.

- Inconsistent or duplicative obligations on digital platforms should be avoided. This could lead to unnecessary complexity, confusion, and unintended non-compliance. For example, concerns about privacy are properly addressed by the ongoing privacy reform process rather than a competition-based regulatory framework.[145] See our answers to Questions 4-6 above.

Question 14: Do you agree with the proposed framework of prescribing general obligations in legislation, and specific requirements in codes?
Summary of Google's position: Whether a new regulatory framework comprises general obligations in legislation, and specific requirements in codes, is less important than whether the framework is founded on principles (such as our 6 core principles) that promote competition and innovation for the benefit of consumers.

Please see our answer to question 13. In our view, whether a new regulatory framework comprises general obligations in legislation, and specific requirements in codes, is less important than whether the framework is founded on principles (such as our 6 core principles) that promote competition and innovation for the benefit of consumers.

If the Government is minded to pursue the proposed framework of prescribing general obligations in legislation, and specific requirements in codes:

- the general obligations (and the purpose of the legislation) should be clearly articulated and not vague or nebulous;

[144] This is consistent with typical practice. For example, in making binding rules of conduct relating to carriers or carriage service providers under Div 4A of Part XIC of the CCA (a power that is available where "*there is an urgent need*" to make rules), the ACCC must take into account the matters in s.152BDAA (such as whether the rules promote the long-term interests of end users) and must not make rules that would have the effects in s.152BDA; the rules must expire within 12 months and do not apply to the extent they are inconsistent with aspects of the telecommunications regulatory framework, for example access agreements.
[145] The Australian Government Guide to Regulation states: "Policy makers must consult with each other to avoid creating cumulative or overlapping regulatory burdens." See Department of Prime Minister and Cabinet, 'The Australian Government Guide to Regulation', (2014), p. 6.

- legislation should set out the objectives with which all code rules have to comply;
- the power to impose specific requirements in codes should not be unfettered; and, as part of this,
- legislation should clearly define the factors to be taken into account by the code-maker in formulating the content of codes and exhaustively set out the types of requirements (prohibiting or requiring specified conduct) that codes can in principle contain.

Please also see our responses to Questions 19-23 regarding the need for separation of powers, oversight, expertise and other safeguards in the code-development process.

Question 15: Do you agree with the proposed principles for designating platforms for the regime?
Summary of Google's position: It is premature to consider an appropriate designation framework without first having clarity on the harms that the regulation is seeking to address. Any designation criteria should be linked to the harm that the Government is seeking to prevent.

A regulatory framework that applies only to designated firms can have unintended consequences, including distorting competition in the relevant markets. Regulation that prevents large firms from engaging in conduct that may be beneficial to their users may reallocate market share but not advance consumer welfare.

If the Government is minded to pursue the proposed designation framework, the designation criteria need to be carefully set. As a first step, there needs to be clarity on the harms that the regulation is seeking to address. The designation criteria should be linked to the harm that the Government is seeking to prevent. If they are harms that are or may be inflicted by a participant of any size (for example, alleged opacity in ad tech pricing), the designation criteria may be different to harms that are or may be inflicted only by a firm with market power.

The designation decision-maker should be required to consider the impact of designation on competition and consumers, and be satisfied that designation of the platform will promote competition and enhance consumer welfare.

In addition, the designation criteria should factor in the extent to which the platform already complies with relevant obligations (*ie.* via voluntary measures). This is consistent with the Government's guide to regulatory best practice which states that voluntary measures should be explored as a way to achieve desired outcomes without administrative costs.

Question 16: Do you agree that the focus of any new regulation should be on the competition issues identified by the ACCC in Recommendation 4? Should any issues be removed or added?

Summary of Google's position:

The ACCC's report does not establish clear actual competitive harms. Instead the focus is on speculative harms that '*may*' or '*could*' arise. More evidence and analysis is needed to make sure any new regulation distinguishes between conduct that is harmful, and conduct that is neutral or may be beneficial. Introducing new regulation to prevent conduct that is not in fact harmful would risk hindering productivity, innovation and product quality, to the ultimate detriment of Australians.

While we acknowledge the desire to protect consumers and businesses from exploitative and abusive behaviour online, we believe there is a lack of evidence of harm to consumers and competition in respect of our services.[146] Recommendation 4 (targeted competition obligations) is largely underpinned by speculative harms that 'may' or 'could' arise. The ACCC's report states that the market power of large digital platforms "***risks** harms to Australian businesses and consumers*",[147] lists types of conduct that digital platforms "*have the **ability and incentive***" to engage in,[148] and describes in general terms harms that *could* arise.[149] For example, as noted in the Introduction:

- In relation to "self-preferencing", the ACCC states "*some digital platforms with market power are engaging in self-preferencing conduct that **may** have anti-competitive effects*".[150] The ACCC also acknowledges, "*not all forms of self-preferencing by digital platforms are problematic, and some may be benign or even pro-competitive*".[151] In the search context, the report acknowledges that **the ACCC *"has not, to date, examined whether Google has engaged in anti-competitive self preferencing** in the supply of general search services in Australia*".[152]
- The ACCC states that exclusive pre-installation and defaults "***can** restrict competition*",[153] but it does not establish evidence of such competitive harm. Users can override defaults and pre-installations, and the evidence consistently shows that users do in fact do so.[154] Relevantly, the ACCC acknowledges that restricting exclusive

[146] See paragraph 31 above and **Annex 3** for further discussion.
[147] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 40.
[148] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 41.
[149] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 40-44.
[150] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 124.
[151] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 125.
[152] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), pp. 128-129.
[153] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 140.
[154] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 140.

pre-installation could have counterproductive consequences, such as "*broader competitive and economic impacts, including revenue impacts on third-party original equipment manufacturers*."[155]

- The ACCC states that interoperability restrictions on Android are "***likely to have** impacted competition*."[156] But it provides no evidence that this is the case. In fact the ACCC's App Store Report acknowledged that the ACCC had not *"been informed of significant developer concerns about how Google provides access to Android and proprietary APIs*."[157] Android is open-source so is, by definition, fully interoperable.

- The ACCC raises concerns that Google has "*the **ability and incentive** to extract hidden fees*" in its ad tech auctions, despite also acknowledging that "*a number of studies*" suggest this is unlikely.[158]

Regulating platform activity based on speculative harms to consumers or competition makes the analysis about the costs and benefits of any intervention necessarily speculative, and risks chilling innovation by outlawing conduct that is in fact procompetitive and beneficial.

We encourage the Government to closely examine these issues before concluding they are all suited for a new regulatory framework and would welcome further discussion on these important points.[159] For example, in respect of Search, having regard to the types of harms the ACCC has stated "could" result from digital platforms' market power:

- **There is no evidence that Google is preventing or inhibiting rivals from competing with Google Search through alleged leveraging of power across services.** Allegations that Google Search's rivals are prevented from competing effectively as a result of, for example, Google's default and preinstallation arrangements are not supported. There is a consistent body of evidence demonstrating the ease of changing defaults and that users can and do override defaults and preinstallations. For example:

    - Google's share on Microsoft Windows desktops in Australia: Microsoft preinstalls its Edge browser that defaults to Bing on Windows. But Google's share of search on Windows is 91%, while Bing's is 7.5%. Australians override Microsoft's defaults and choose their preferred alternative: Google.

    - The ACCC's survey confirms that the majority of users know about alternative browsers and search engines, know how to change their default browser and search engine, and reported it to be "*easy or very easy to do*". This is consistent

[155] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), pp. 145-146.
[156] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), p. 159.
[157] ACCC, 'Interim Report No. 2 - App marketplaces', Digital platform services inquiry (March 2021), p. 62.
[158] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), pp. 176.
[159] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 43, citing Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007).

with other surveys.

- **There is no evidence that the quality and innovation of search services may be lower.** The ACCC itself has recognised the "*high quality*" of Google Search.[160] The ACCC Discussion Paper stresses that Google "*continually improve[s] the relevance of its search results*."[161] Objective evidence confirms that Google Search is tremendously high-quality, and that Google engages in relentless search innovation (see **Annex 2**).

- **There is no evidence that prices may be higher.** Google Search provides general search services free of charge.

- **There is no evidence that consumers may experience reduced privacy and autonomy from data collection and use**. Users have a number of ways to control and manage Google's processing of their data, including processing of data across services. These options include: (i) privacy settings and controls; (ii) switching between signed-in and signed-out status; (iv) using multiple accounts; (v) private browsing; (v) data deletion, (vi) Google Takeout, and (vii) the Data Transfer Project. We summarise these tools in **Annex 4**. In any event, these issues are more appropriately addressed through effective regulation of privacy and data collection.

If the Government's evidence base identifies harms from digital platform services generally or particular digital platform services, then the following questions should be answered to identify the types of conduct that might be suitable for platform-specific regulation to seek to address those harms:

- **Is the conduct covered by existing law, if the law is effectively enforced?** Before additional regulation may be required, it must be established that the current law, effectively enforced, is not capable of preventing the identified harm to competition. Anti-competitive self-preferencing, anti-competitive tying, exclusive agreements that hinder competition, exclusivity and price parity clauses in contracts with business users, and at least some unfair dealings with business users are all types of conduct that are capable of contravening existing provisions of the CCA (and ACL).

- **Is the conduct clearly identifiable?** The conduct must be capable of being identified in a clear manner. This will allow platforms to understand their obligations, consumers and businesses to understand their rights, and assist enforcement.

- **Is any conduct that is to be prohibited known to be unambiguously harmful to competition?** If the conduct is not of a type that is known to be unambiguously harmful to competition and consumers, based on evidence, it should either be subject to defences / justifications or not covered by the proposed regulations.

[160] ACCC, 'Digital Platforms Inquiry Final Report', Digital Platforms Inquiry (June 2019), p. 72.
[161] ACCC Discussion Paper, p. 41.

- **How intrusive is the proposed intervention?** The more intrusive the intervention, in terms of the conduct that is prohibited (or required), the higher the evidential bar should be to establish that it will bring benefits to consumers and the economy that outweigh its costs. If - applying this test - the evidence is insufficient for a given type of intervention, that type of intervention should not be capable of being imposed (for instance, as a requirement in a code) in the proposed regime.

  For example, the ACCC's proposal to require designated search services to share click-and-query data from activities of its Australian users with rival search engines is a very intrusive intervention. Yet, its benefits are questionable (see paragraph 34) and it creates serious risks.[162] By its nature, such an obligation risks:

  - jeopardising user privacy. As the Office of the Australian Information Commission (**OAIC**) has explained, click-and-query data "*has the potential to include highly sensitive information about an individual*."[163]
  - enabling disinformation and manipulation of Google's search results.[164] Such manipulation would harm both Australian users (who would see less relevant results) and legitimate Australian businesses (who would be displaced in Google's ranking by low-quality or manipulative sites).
  - reducing incentives to compete and innovate. Mandatory disclosure of click-and-query data would put rivals in a position simply to copy all our search results for every query. Because clicks correlate with rank (higher results get more clicks), in many cases the data would tell rivals nearly exactly what results Google shows and in what rank. Rivals could then copy our results for queries that Google discloses and mimic the behaviour of our algorithms via machine-learning systems for any other queries. This would not support independent competition or innovation. It would simply create approximate imitations of Google.

Question 17: What services should be prioritised when developing a code? What harms should they be targeted on preventing?

[162] The ACCC has acknowledged the need for safeguards, in light of (in particular risks to privacy) and has suggested that this measure should be considered after privacy reforms are implemented. ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), pp. 165, 173-174.
[163] OAIC, 'Digital Platform Services Inquiry – Discussion Paper for Interim Report No 5: Submission by the Office of the Australian Information Commissioner', (22 April 2022), para. 10.
[164] There are millions of low-quality and spammy sites that try to game their way to the top of our ranking through manipulative techniques. These sites provide a poor user experience and can harm users. We write algorithms to identify such sites and lower their ranking in our results. Without appropriate safeguards, mandatory click-and-query data sharing could allow recipients to work out how Google uses user signals to rank results. State actors could use this data to gain insights into search habits of users and manipulate search results for disinformation and propaganda campaigns.

Summary of Google's position:

If regulation were deemed necessary, we would encourage the Government to look beyond the platforms identified in the ACCC's prior market studies, which were conducted under limited terms of reference. The Government should more systematically examine which markets have the characteristics that merit intervention, including evidence of actual harm to competition or consumers, and what conduct causes unambiguous harm that is not covered by existing rules.

If regulation were deemed necessary, we would encourage the Government to look beyond the platforms identified in the ACCC's prior market studies, which were conducted under limited terms of reference. Relying on these prior studies is not a sufficient basis for a comprehensive analysis of potentially relevant digital platforms and associated *ex ante* rules.

Rather, the Government should more systematically examine which markets have the characteristics that merit intervention, including evidence of actual harm to competition or consumers. In particular, the Government should consider the four questions raised at the end of our answer to Question 16, together with the following two additional points.

First, any new regulatory framework should not apply to all of a company's products simply because a platform is designated because of its success in one particular area. Any new regulatory framework should apply only to a discrete set of products or services of the company determined by reference to a clearly defined threshold or test.

Second, the ACCC has identified four characteristics of digital markets that may give rise to concerns and might therefore warrant a new regulatory regime: economies of scale; network effects; vertical integration and multi-market activities; and data collection.[165] Many companies across the digital (and broader) economy enjoy economies of scale, exhibit network effects, have multi-market activities, and place importance on data, such as e-commerce platforms (like Amazon, eBay, Gumtree, Kogan), operating systems (Microsoft), mobile operating systems (Apple), cloud computing providers (Amazon, Microsoft, Oracle, Salesforce), delivery platforms (Uber, Menulog), streaming platforms (TikTok, Netflix, Spotify), social media services (Facebook, Twitter, Reddit), news publishers (like NewsCorp), and messaging services (WhatsApp, iMessage, Snapchat).

Microsoft, for example, is the most used operating system in Australia.[166] It has activities across multiple areas (cloud, gaming, OSs, hardware, productivity, search, assistants, jobs),[167]

[165] See Discussion Paper, pp. 26-36.
[166] The ACCC found that *"As at June 2021, Microsoft's Windows made up almost two thirds (63%) of all desktop operating systems in Australia."* See ACCC, 'Interim report No.3 - Search defaults and choice screens', (September 2021), p. 32.
[167] See Discussion Paper, pp. 31-32.

enjoys economies of scale, and has expanded through acquisitions[168] — it is currently planning one of the largest ever tech acquisitions with its $68.7 billion Activision deal. The ACCC did not, however, expressly call out Microsoft as a large digital platform suitable for digital platform regulation in sections 3.1.1-3.1.3 of its Discussion Paper or sections 1.5-1.6 of its Fifth Interim Report. That is the case despite the Discussion Paper later finding that Microsoft seeks to *"disabl[e] the choices affirmatively made by consumers"*[169] — an allegation that the Discussion Paper and Fifth Interim Report do not advance against Google.

Question 17.1: Should codes be targeted at individual companies, a specific service, or all digital platform services?
Summary of Google's position: If codes were deemed necessary, a service-specific approach would be most appropriate to enable a more effective assessment of market power, market dynamics and specific concerns to be addressed.

If codes were deemed necessary, we think service-specific codes would be most appropriate. Consistent with traditional competition enforcement, looking at specific services is an effective way to assess market power, market dynamics and any associated concerns.

Any new regulatory framework should not apply to all of a company's products simply because a platform is designated due to its success in one particular area. This may stifle innovation and competition, by targeting potential harm that is unlikely to arise. Rather, any new framework should apply only to a discrete set of products or services of the company determined by reference to a clearly defined threshold or test.

Question 18: Should codes be mandatory or voluntary?
Summary of Google's position: The ACCC's proposals involve novel and complex additional regulation in a highly dynamic space. If after further analysis the Government has identified clear harms that need to be addressed, as part of regulatory best practice, it should consider whether voluntary, self-regulatory or co-regulatory measures are capable of achieving its desired outcomes before introducing significant new regulation.

[168] See Discussion Paper, p. 21.
[169] See Discussion Paper, p. 46. A similar finding was made in the ACCC's Fifth Interim Report at p. 68.

As part of a proper cost/benefit assessment of any new regulatory framework, the Government should consider voluntary / self-regulatory measures and co-regulatory measures (such as industry-developed codes that are enforced by a regulator).[170]

Voluntary codes can sometimes provide for more immediate redress than formal regulatory provisions. Suppliers also have an incentive to ensure that self-regulatory arrangements minimise adverse impacts on market activity, unintended consequences and costs.

The ACCC Guidelines for Developing Effective Voluntary Industry Codes of Conduct recognise that voluntary codes can effectively achieve regulatory outcomes with comparatively less burden on signatories: "*Effective codes potentially deliver increased consumer protection and reduced regulatory burdens for business.*"[171]

For this reason, the Commonwealth Government's Best Practice Regulation Handbook requires that self-regulation be one of the first options considered in reviews of regulation and in Regulation Impact Statements.[172] Similarly, the ACMA recognises that policy frameworks should "*incorporate flexibility to adopt co-regulatory, self-regulatory and direct-regulation mechanisms as appropriate*".[173]

If, after further analysis, the Government has identified clear harms that need to be addressed, platforms should be given an opportunity to implement voluntary codes (whether their own individual code of practice, or an industry code) as a first step. If a platform fails to implement a voluntary code, or its voluntary code is determined to be ineffective at stemming harm or achieving the desired outcomes, a mandatory code could be imposed.

Any regulatory framework (but particularly, a mandatory code or co-regulatory model) should be founded on principles (such as our 6 core principles) that promote competition and innovation for the benefit of consumers.

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[170] See Department of Prime Minister and Cabinet, 'Australian Government Guide to Policy Impact Analysis', (March 2023) pp. 20-23. In particular, "*[e]very good Impact Analysis will canvass a range of viable options... Above all, keep in mind, presenting one option as a fait accompli is not acceptable. There must always be analysis of the no regulation or status quo option as a benchmark, unless your proposed policy approach...*".
[171] ACCC, 'Guidelines for Developing Effective Voluntary Industry Codes of Conduct', (2011), p. 1.
[172] Commonwealth Government, 'Best Practice Regulation Handbook', (2007), p. 97.
[173] ACMA, 'Optimal Conditions for Effective Self- and Co-regulatory Arrangements', (September 2011), p. 10.

GOVERNANCE

We have assumed that the questions in the Governance section of the Consultation Paper relate to the proposed competition measures.

Question 19: Who should be responsible for the design of the proposed codes of conduct and obligations? **Question 20:** Who should be responsible for selecting or designating platforms to be covered by particular regulatory requirements? **Question 21:** Who should enforce any potential codes and obligations?
Summary of Google's position: There should be a clear separation of powers and responsibilities in respect of (a) the design of the proposed codes of conduct and obligations; (b) the designation of platforms; (c) enforcement of obligations. There should be sufficient oversight of the decisions made by the relevant bodies, including full appeal rights to a Court for decisions that have legal consequences for affected companies. Each responsible body should possess or have access to considerable expertise and knowledge of technology markets in order to design and / or apply regulatory solutions that are evidence-based.

We encourage the Government to have regard to the following considerations in assessing who should be responsible for designing, designating and enforcing any potential new regulatory framework:

- **Separation of powers.** Regardless of which bodies are ultimately selected, there should be a clear separation of powers and responsibilities in respect of (a) the design of the proposed codes of conduct and obligations; (b) the designation of platforms; (c) enforcement of obligations - that is, investigations of complaints and potential breaches, using available enforcement tools and, if appropriate, bringing enforcement action. It would be inappropriate (and unconstitutional) for any of these bodies to have judicial power — that is, the power to make authoritative determinations, or resolve disputes about existing rights and duties. Courts should continue to be responsible for determining whether a breach of the law has occurred (and retain oversight of any administrative decisions, as described below). Such separation of powers should be built into any regulatory framework to avoid conflicts between effective regulatory decisions and short-term political pressures and to minimise the risk of actual or apprehended bias.

- **Oversight.** Further, as discussed below in response to Questions 22-23, there should be sufficient and effective oversight of the decisions made by the relevant bodies, including full appeal rights to a Court for decisions that have legal consequences for affected companies. Most fundamentally, effective review mechanisms address the

need for accountability in respect of such decisions and, to some extent, reflect core requirements of natural justice and procedural fairness.

- **Expertise**. Lastly, each responsible body should possess or have access to considerable expertise and knowledge of technology markets in order to design and / or apply regulatory solutions that are evidence-based.

Question 22: What checks and balances should be in place on decision makers and across the various stages of the policy (*e.g.* code making, designation process, code enforcement)? **Question 23:** What avenues of dispute or review should exist with regards to designation or decisions under any potential code? How can this best be implemented to ensure timely outcomes to allow for effective regulation in a fast-changing market?
Summary of Google's position: It is important that robust checks and balances apply to code making, designation and code enforcement to ensure that any new regulatory framework does not have unintended consequences.

Consistent with Principle 4 of our proposed overarching principles for regulatory reform, suitable and effective procedural protections and review mechanisms should be incorporated to ensure the integrity of any new regulatory framework.

Digital markets are highly dynamic. No one can predict what services will be created and by which platform, and whether consumers are going to switch to a new service that better meets their needs. Any regulation should avoid creating an environment that constrains firms' ability to create new and better products or processes. This would hinder innovation-driven growth in the Australian digital economy, as opposed to stimulating it. In this context, it is important that robust checks and balances apply to code making, designation and code enforcement.

In our view, the more intrusive and severe the regulation and sanctions associated with it are, the greater the procedural protections and review mechanisms must be. We propose that at least the following checks and balances should be in place, for any regulatory framework:

Primary legislation / framework

- Consistent with natural justice rights of procedural fairness, **any legislation should require there to be appropriate consultation with digital platforms or services** that may be covered by proposed rules.

- **Any legislation governing service specific codes should clearly set out the object which codes must seek to achieve**. For example, s.152AB of the CCA provides that Part XIC telecommunications access regime must "*promote the long-term interests of end-users*", and explains what that means. As previously submitted, promoting

competition and innovation, and enhancing the welfare of consumers, should be the ultimate objectives for any regulatory framework and this seems like an appropriate starting point for any object of service specific codes. If the Government is considering rules that have the objectives of protecting or promoting the welfare of producers, this should be made clear and subject to consultation, given that it would be a significant departure from the objectives of the CCA.[174]

- Any legislation governing service specific codes should contain **clear and narrow legislative design principles outlining how the relevant body can formulate a code.** In particular, as mentioned in response to Question 14, the factors to be taken into account by the code-maker in formulating the content of codes should be clearly defined and exhaustively set out the types of requirements (prohibiting or requiring specified conduct) that codes can in principle contain. Constraints like these are not uncommon for code-makers in other sectors (for example, s.152BDA of the CCA provides a list of restrictions on the ACCC's power to make rules of conduct in respect of telecommunications access regime under Part XIC) and are necessary to direct a code-maker towards achieving a legitimate objective in a reasonable, necessary and proportionate manner.

- **Preventing competitive harm and permitting evidence-based justifications should be embedded in the overarching framework.** The ACCC itself recognised that the drafting of any code obligations generally *"should consider any justifiable reasons for the conduct (such as necessary and proportionate privacy or security justifications)*."[175] We agree that any new regulation should permit companies to justify business practices or product designs that might otherwise breach a code rule based on factors such as: system integrity, security, consumer safety, quality, functionality, performance and utility. Enacting rules without appropriate safeguards risks adversely affecting current forms or outlawing new forms of procompetitive conduct. And these safeguards should help to incentivise the body responsible for making the codes to tailor code rules to actual competitive harms (to avoid the need for later argument as to whether conduct contrary to those rules can be justified as pro-competitive).

[174] The submission in response to the Discussion Paper by the Global Antitrust Institute, Antonin Scalia Law School of George Mason University discusses the risks of rules that 'rein in the competitive striving and performance improvements of large digital platforms so that smaller rivals will not fall too far behind' and 'focus on the interests of competitors, without adequate consideration of ultimate effects on consumers' (at 6). We agree that '[t]he antithesis of competition would be a stifling regulatory regime that restrains innovators in how they can use their innovations to benefit and thereby win customers, and whose incentives to innovate are impaired by requirements to share the use of their innovations with rivals' (at 5). See Antonin Scalia Law School, George Mason University, 'Comment on the ACCC Digital Platform Services Inquiry's Discussion Paper for Interim Report No. 5: Updating Competition and Consumer Law for Digital Platforms Services', (2022).

[175] ACCC, 'Interim Report No. 5 – Regulatory reform', Digital platform services inquiry (September 2022), pp. 17, 123.

Relevantly, the importance of defences and justifications is a common theme emerging from new competition regimes proposed internationally.[176]

- **Any legislation governing service specific codes should clearly set out the circumstances and application of applicable penalties**. Rather than a broad discretion to apply penalties, the legislation should specifically address the circumstances and limitations of imposing penalties. There should be no ability to impose structural remedies — such administrative powers would be extreme, and is not warranted in the circumstances.

Design and promulgation of code of conduct

- Any proposed codes should build in **statutory reviews and short sunset dates.** Periodic reviews should ensure that the expected benefits are outweighing costs in the practical operation of the regime, as well as ensuring that the regime "*continues to be appropriate as consumer and supplier behaviour adjusts and markets evolve*".[177] Such checks are particularly critical for fast-moving markets.

- There should be **appropriate separation of powers** between code making, the designation process, and code enforcement.

- Any code must be within the scope of primary legislation, and appropriate and proportionate to the legislative intention. Code-making should be subject to legal review.

Designation

- Consistent with the need for separation of powers referenced above, the designating authority should not be the party that designed the code.

- The criteria for designation should be clearly specified.

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[176] See Discussion Paper Supplementary Submission, pp. 3-4. See also, ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), pp. 164-165. See specifically: *"any interoperability obligations should allow Designated Digital Platforms to take necessary and proportionate measures (such as appropriate app review) to safeguard the integrity of their mobile OS, software and hardware" (at 164); and* "there may be *" legitimate justifications for some types of self-preferencing conduct, such as promoting efficiency, or addressing security or privacy concerns, which would need to be carefully considered in developing new obligations."*

[177] Productivity Commission, 'Review of Australia's Consumer Policy Framework', (April 2008), p. 45, citing the Office of Best Practice Regulation, 'Best Practice Regulation Handbook', (August 2007). See also Principle 6 of the Australian Government Guide to Policy Impact Analysis (2023), at p.6: *"The most significant policy proposals must undergo a post-implementation review reflecting on the extent to which the stated objectives have been achieved to ensure settings remain focused on delivering the best possible outcomes for Australia."*

- There should be consultation between the designating authority and potential designated entity prior to designation. Material taken into account for designation should be available to the designated entity.

- The designation decision should be subject to administrative law review.

Breach of code and enforcement

- **The regulator responsible for code enforcement should be required to establish breach in the Federal Court**, as is the case today for competition law breaches. Its decisions should be reviewable (subject to full merits review). There should be no derogation from procedural fairness protections.

- **The regulator responsible for code enforcement should publish reasoned decisions for actions taken under any new regulatory framework** — both complaint rejections and infringement decisions. This is an essential procedural right. It is also important to create a body of precedent that helps digital platforms comply with their obligations.

- **Full appeal rights to a Court** together with merits review, where appropriate, for example, to the AAT or Competition Tribunal, should be available for decisions that have legal consequences for affected companies. This includes code making, designation and code enforcement. Full rights of defence should also be available, including the right to review all evidence and test that evidence.

We recognise that timely outcomes are an objective of the ACCC's recommendations but timely outcomes should not come at the expense of procedural fairness and well informed and thoroughly considered decisions under any potential code (including in respect of designation). To ensure timely outcomes, the review body could be subject to a strict time frame to reach a decision but with the discretion to extend time in the interests of justice or if specific criteria are met. For example, under s.102 of the CCA, a person who is dissatisfied with an authorisation determination by the ACCC may apply to the Australian Competition Tribunal for a review of the determination, and the Tribunal may affirm, set aside or vary the authorisation within 90 or 120 days (as applicable). The ACCC or any other decision-making body should not be granted an exemption from the requirement to observe natural justice or apply the rules of evidence. In addition, if codes are suitably tailored to address actual competitive harms then (as noted above) proceedings will not need to be lengthened to accommodate arguments about whether the impugned conduct can be justified as pro-competitive.

Question 24: Do information gathering powers for the relevant regulator need to be enhanced to better facilitate information gathering from multi-national companies? What balance should a potential regime strike between compliance costs, user privacy and the regulator's information needs?

Summary of Google's position:

If the ACCC is the party responsible for enforcement of any code, the ACCC already has broad and robust powers to compel the production of information and documents, including from multi-national companies.

Beyond this, there should be a clear separation of powers and responsibilities between the design of codes and obligations, designation and code enforcement. The regulator responsible for code enforcement should not be empowered to compel information (or be involved in gathering information) to inform code obligations or the firms that should be designated.

For the purposes of responding to this question, we have assumed that the relevant regulator responsible for enforcement of any code will be the ACCC. In this context, we do not think that the ACCC's information gathering powers need to be enhanced to better facilitate information gathering from multinational companies.

- **The ACCC's powers to compel the production of information and documents are already very broad.** It can compel information where it has reason to believe a company has information or documents regarding a matter that may constitute a contravention of the CCA. In circumstances where the ACCC's proposed regulatory reforms are likely to become part of the CCA, the ACCC's information gathering powers could simply be extended to apply in respect of the proposed reforms.
- **Recent amendments to the CCA give the ACCC powers to serve a s.155 notice in Australia or outside Australia.**[178] Further, the CCA already applies to foreign entities to the extent they carry on business in Australia or engage in relevant conduct in Australia.

The separation of powers and responsibilities between the design of codes and obligations, designation and code enforcement is also relevant in this context.

The regulator responsible for code enforcement should not be empowered to compel information (or be involved in gathering information) to inform code obligations or the firms that should be designated.

[178] *Treasury Laws Amendment (Energy Price Relief Plan) Act 2022* (Cth).

If the Government were to empower the body responsible for code development or designation to compel the production of information / documents / evidence relating to whether a company should be designated or the types of obligations that should be included in a code, there should be express limitations on the purposes for which information gathering powers can be exercised, the use of such information and disclosure to other bodies.
For example, there should be a clear restriction on using information gathered to assist in formulating a code for enforcement.

PRIORITY AND ALIGNMENT WITH INTERNATIONAL DEVELOPMENTS

Question 25: Should Australia seek to largely align with an existing or proposed international regime? If so, which is the most appropriate?
Question 26: What are the benefits and downsides of Australia acting in advance of other countries or waiting and seeking to align with other jurisdictions?

Summary of Google's position:

The Government should assess the need for digital platform-specific consumer regulation by reference to whether there are harms to consumers that cannot be addressed by Australia's existing strong laws and already contemplated measures, not by reference to *emerging* regulation in other jurisdictions.

On the proposed competition measures, given overseas developments, the lack of concrete harms that may justify urgent reform, and the ACCC's acknowledged need to avoid unintended consequences — Australia has an opportunity to monitor how new competition regulations are implemented in other jurisdictions and avoid pitfalls.

Proposed Consumer Measures

As noted above, Australia already has one of the strictest consumer protection regimes in the world. The need for digital platform-specific consumer regulation should be assessed by reference to whether there are harms to consumers that cannot be addressed by existing Australian laws (and already contemplated measures), not by reference to emerging regulation in other jurisdictions.

If the evidence base demonstrates a need for additional targeted consumer measures for digital platforms, there is benefit in considering such reforms against *established* global standards. Local regulations that depart from or go beyond established global standards could impose a substantial compliance burden on digital platforms, and hinder efforts to protect consumers. For example, our existing measures for combating bad actors on our platforms (including our policies, automated detection processes, and review mechanisms) are predominantly globally designed and applied, which enables scalable effort and efficient and timely improvements to address emerging threats. If new regulations in Australia require the implementation of bespoke processes, we may not be able to effectively leverage our global capability and efforts, which may ultimately lead to product upgrades and launches being delayed or deferred in Australia.

The Consultation Paper references the EU DSA, which came into force in November 2022, and the upcoming UK Online Safety Bill, which is still being debated in the legislature. These are emerging regimes, not established global standards. Their effectiveness in enhancing consumer protection and impact on digital markets and the economies of those jurisdictions

will not be known for some time. The Government should monitor these developments closely, but it would not be appropriate at this stage to make decisions regarding the need for additional regulation in Australia or the content of such regulation by reference to those regimes.

To the extent that Australian proposals will require substantive changes to digital platforms' existing consumer protection processes and go beyond the requirements in emerging regimes, they are more likely to result in a significant compliance burden and unintended consequences. For example, we noted above that the ACCC's notice-and-action mechanism proposals seem to go beyond the requirements in the EU DSA, and we raised some of the likely unintended consequences. The Government should only introduce new regulation if there is an evidence base that demonstrates that such regulation would lead to net benefits.

Proposed Competition Measures

The Consultation Paper notes that other countries, such as the EU and UK, are considering their own new regulatory regimes for digital platforms. They are adopting very different approaches to ex ante regulation. It is yet to be seen which approach is better. As the Consultation Paper notes, there is no "*proven regulatory template to draw on*".

Given overseas developments, the lack of concrete harms that may justify urgent reform, and the ACCC's acknowledged need to avoid unintended consequences — Australia has an opportunity to monitor how new competition regulations are implemented in other jurisdictions and avoid pitfalls.

The Government should scrutinise stakeholder submissions that call for "urgent reform", and seek evidence of actual harms to Australian consumers and competition. We agree with other stakeholders that participated in the ACCC's Fifth Interim Report[179] that Australia should take the opportunity to learn from international experience. The DMA, for example, is a novel and untested piece of legislation. The impact of its provisions on consumer welfare, innovation, efficiency, and competition will only become apparent over time. Similarly, Australian policy makers could gain valuable insights from observing the outcomes of digital platform regulation in the UK, if and when that occurs, noting the different design and implementation approaches currently being explored in those jurisdictions.

An ancillary benefit of undertaking a thorough process of regulatory reform will be the ability to observe initiatives being implemented in other jurisdictions. In less than one year, the Government will have the opportunity to observe how the DMA is enforced in Europe, what impact on competition the new rules in Germany have had, and how the proposed rules in the UK have taken shape. In the near term, the impact of these regimes on product launches,

[179] See, for example, submissions in response to the Discussion Paper from the Law Council of Australia (2 May 2022), Amazon Australia (2022) and Gumtree (2022).

features and innovation will start to become apparent, yielding further valuable evidence. The Government should monitor these stages carefully before pursuing new rules in Australia. Otherwise, the ACCC and the Government risk implementing unworkable, costly regulations.

The Consultation Paper canvasses an alternative approach that "*could see Australia seek to be a global leader in digital regulation*". We believe that global leadership in digital regulation will be achieved by the countries that implement it "best" (that is, without risks to innovation, consumers and their economy), not necessarily the countries that do it first.

Labor has pledged that it "*will ensure that Australia is at the forefront of technological change to lift national productivity and competitiveness and improve the living standards of all Australians*".[180] Thoughtfully implemented regulation, underpinned by a sound evidence base, will help achieve this goal. Hastily implemented regulation risks unintended consequences.

[180] Australian Labor Party, '[ALP national platform as adopted at the 2021 Special Platform Conference]', (March 2021), p. 8.

Government Consultation on ACCC Report on Platform Regulation

Annexes to Google's Response

Annex 1: Innovation in Technology Markets

The ACCC's Fifth Interim Report speculates that "innovation of services ***may be lower***"[1], but the evidence points to the opposite conclusion.

- *ACCC's Fifth Interim Report*, ACCC, September 2022:
    - "*Digital platform services are now an indispensable part of the daily lives of Australians. They provide new and effective ways for Australians to interact, and for Australian businesses to reach consumers, creating value and contributing to economic growth.* "[2]
- *The economic contribution of Australia's tech sector*, Tech Council of Australia, 2021:
    - The report identifies that the tech sector's contribution to the Australian economy has grown by 79% since 2016: "*[t]he combination of these direct and indirect impacts mean that the tech sector contributed $167 billion to the Australian economy in FY2021, equivalent to 8.5% of GDP. ... If the sector was classified as its own industry, it would be equivalent to the third largest contributor to GDP in Australia ... The sector's economic contribution has increased 79% since 2016 and has outpaced average growth in the economy by more than four times.*"[3]
    - "*The tech ecosystem has been a key driver of growth and innovation in the Australian economy.*"[4]
- *How we're helping build a strong digital future - for all Australians,* Google - Australia blog, November 15, 2021:
    - "*Aussies are trailblazers in the field of technology. ... Today our 20-year commitment to Australia took another big step forward, with the launch of*

[1] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 42.
[2] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 26.
[3] Tech Council of Australia, 'The economic contribution of Australia's tech sector', (2021), p. 6.
[4] Tech Council of Australia, 'The economic contribution of Australia's tech sector', (2021), p. 17.

Google's Digital Future Initiative, a $1 billion investment over five years, in Australian infrastructure, research and partnerships."[5]

- "*Right now, Google is working with Australian organisations to apply new technology solutions to urgent challenges we face today – from bushfires to mental health and cancer diagnosis.*"[6]

- *Google's Economic Impact in Australia,* AlphaBeta, December 2020:
  - "*... the annual economic value presented by Google's applications and platforms are worth AU$39 billion for Australian businesses, and AU$14 billion for Australian consumers*".[7]
  - "*Google creates significant economic benefits for businesses in Australia. Such benefits come in the form of increased revenue and productivity. The total economic benefits presented by Google Search, Google Ads, AdSense, Google Maps, Google Play, and Ad Grants are estimated at AU$39 billion a year. These comprise AU$32.7 billion in revenue gains and advertising grants, and AU$6.3 billion in time savings (measured in equivalent wage terms).*"[8]
- *Australia tops international tech-readiness ranking*, Statista, June 27, 2018:
  - "*The Economist Intelligence Unit (EIU) has named Australia, Singapore and Sweden as the countries most prepared for technological change, and the most attractive places for tech companies to invest in the next five years [2018-2022]. 82 countries were assessed for the report across three key categories: access to the internet (including internet usage and mobile phone subscriptions), digital economy infrastructure (looking at e-commerce, e-government, and cyber-security) and openness to innovation (international patents, R&D spending, and research infrastructure).*"[9]
- *Protecting and promoting competition in Australia | ACCC* , Rod Sims, August 27, 2021:
  - Digital platforms have been "*true innovators* [...] *they provide products that consumers and business users value hugely*".[10]

[5] Google Australia Blog, 'How we're helping to build a strong digital future - for all Australians', (15 November 2021).
[6] Google Australia Blog, 'How we're helping to build a strong digital future - for all Australians', (15 November 2021).
[7] AlphaBeta, 'Google's Economic Impact in Australia', (December 2020), p. 5.
[8] AlphaBeta, 'Google's Economic Impact in Australia', (December 2020), p. 9.
[9] Statista, 'Australia tops international tech-readiness ranking', (27 June 2018).
[10] Rod Sims' Speech at the Competition and Consumer Workshop 2021, 'Protecting and promoting competition in Australia', (27 August 2021).

- *Australian Digital Innovation on the Rise,* Commonwealth of Australia represented by the Australian Trade and Investment Commission (Austrade) and the Australian Investment Council, October 22, 2020:
    - "*Australia's technology ecosystem is experiencing rapid growth and is undergoing an exciting period of expansion and innovation.*"[11]
- *Australia's Digital Pulse 2021,* Deloitte Access Economics, 2021:
    - "*Like many industries, the technology sector performed far better than expected at the beginning of the pandemic … Australia's better-than-expected economic performance over the past year was partly due to technology enabling businesses to adapt to a dramatically changing and uncertain environment.*"[12]
- *BEIS Research Paper Number: 2021/040*, David Deller *et al.,* April 2021:
    - "*GAFAM firms have delivered tremendous breakthrough and disruptive innovations delivering substantial benefits to society*".[13]
- *Tech Comes Out on Top. Can It Stay There?* BCG, March 10, 2022:
    - "*Tech giants continue to add value by offering new services and further expanding their business models and partnerships. In one example of the latter, Amazon's AWS subsidiary, Alphabet's Google Cloud Platform business, and Microsoft's Azure service - three hyperscalers that run data centers and cloud services that can rapidly expand to accommodate client demand - have partnered with telecommunications companies to explore opportunities in 5G and edge computing. To fuel innovation and expand beyond their core products, tech companies such as these routinely spend 20% or more of their revenue on R&D, and in some cases as much as 40% to 50%.*"[14]
    - "*A fact of life in the tech industry is the constant threat that young, innovative companies could upend the status quo of the industry's current value-creation leaders. From January 2020 to June 2021, companies in BCG's Growth Tech 100 cohort grew by 93%, more than three times the overall market's growth of 27%.*"[15]
- *Ensuring Innovation Through Participative Antitrust*, Oliver J Bethell, Gavin N Baird, Alexander M Waksman, August 16, 2019:

[11] Australian Trade and Investment Commission, 'Australian Digital Innovation on the Rise', (22 October 2020), p. 3.
[12] Deloitte Access Economics, 'Australia's Digital Pulse 2021', (2021), p. 3.
[13] David Deller et al, 'Competition and Innovation in Digital Markets', (April 2021), p. 13.
[14] BCG, 'Tech Comes Out on Top. Can It Stay There?', (10 March 2022).
[15] BCG, 'Tech Comes Out on Top. Can It Stay There?', (10 March 2022).

- "*The past decade has witnessed rapid and sometimes unpredictable innovation in the many and varied markets where digital platforms operate. … If a company like Google had limited itself to operating a general search 'platform', many popular products might never have seen the light of day: Chrome, whose open source technology also powers a range of rival browsers; the Play Store, which provides developers of more than two million apps with access to hundreds of millions of smartphone users; and experiments like Project Loon, which is helping restore Internet connectivity to areas struck by natural disasters.*"[16]

- "*The innovation that digital platforms produce and the unpredictable nature of future developments caution against seeking to re-design the market to a particular blueprint.*"[17]

- *Which Companies Spend the Most in Research and Development (R&D)?,* Nasdaq, June 21, 2021:

  - **Google**: "*It continues to allocate a significant part of its revenue towards its R&D initiatives. Alphabet spent $27.57 billion on R&D, which is equivalent to 15.1% of its revenue of $182.57 billion during the fiscal 2020. The company's R&D spending has more than doubled since the fiscal 2016.*"[18]

  - **Amazon:** "*Amazon is among the top R&D spenders even though its financial statements do not mention R&D as a separate line item. Amazon's SEC filing reveals a whopping expenditure of $42.74 billion in the fiscal 2020 (11.1% of net sales) on 'technology and content' as compared to $35.93 billion in the fiscal 2019.*"[19]

  - **Microsoft:** "*Microsoft is committed to R&D across a spectrum of technologies, tools, and platforms with a focus on three interconnected ambitions: Reinvent productivity and business processes; build an intelligent cloud platform; and to create more personal computing. The company has increased spending on R&D, with rising revenues, maintaining the overall allocation at 13% over the years. During the fiscal 2020, the company reported an R&D expenditure of $19.27 billion (Microsoft's fiscal year runs from July 1 to June 30). During the first nine months of the current fiscal (till March 2021), its R&D allocation had reached $15.03 billion.*"[20]

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[16] Oliver J Bethell, Gavin N Baird and Alexander M Waksman, 'Ensuring innovation through participative antitrust' (16 August 2019), p. 30.
[17] Oliver J Bethell, Gavin N Baird and Alexander M Waksman, 'Ensuring innovation through participative antitrust' (16 August 2019), p. 30.
[18] Nasdaq, 'Which Companies Spend the Most in Research and Development (R&D)?', (21 June 2021).
[19] Nasdaq, 'Which Companies Spend the Most in Research and Development (R&D)?', (21 June 2021).
[20] Nasdaq, 'Which Companies Spend the Most in Research and Development (R&D)?', (21 June 2021).

- **Apple:** "*During fiscal 2020 (Apple's fiscal year runs from October 1 to September 30), Apple spent $18.75 billion on R&D, equivalent to 7% of its net sales.*"[21]

- **Facebook**: "*According to Facebook, its "business is characterized by innovation, rapid change, and disruptive technologies." During the fiscal 2020, it allocated $18.45 billion equal to 21% of its revenue towards R&D spending.* "[22]

- *What the Top Innovators Get Right*, PwC, strategy+business, October 30, 2018:

  - "*For the second year in a row, Amazon led the top 20 [R&D spending] list, with spending of $22.6 billion — up a massive 40.6 percent from 2017. It was followed, as was also the case last year, by Alphabet, with R&D expenditures of $16.2 billion ... Facebook posted the biggest climb on the top 20 list, up six places from its 2017 position to number 14*."[23]

  - Microsoft was ranked sixth, and Apple seventh in R&D spending.[24]

- *Amazon's Great R&D Gift to the Nation*, Bloomberg, April 5, 2018:

  - "*Amazon passed Volkswagen AG in late 2016 to become the world's biggest corporate R&D spender, and its hold on the No. 1 spot has only grown more secure since.*"[25]

  - "*... the online retail, cloud computing and digital entertainment behemoth from Seattle is clearly spending tons of money developing and refining new technologies, and its spending is increasing at a faster pace than that of other corporations.*"[26]

- *Overcoming the Innovation Readiness Gap,* BCG, April 2021.

  - BCG ranked the 50 most innovative companies of 2021. Apple, followed by Alphabet, Amazon and Microsoft were ranked as the four most innovative, while Facebook was ranked fourteenth.[27]

  - "*The members of our pre-pandemic top 50 from 2020 have outperformed the index by a staggering 17 percentage points in the past year*".[28]

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[21] Nasdaq, 'Which Companies Spend the Most in Research and Development (R&D)?', (21 June 2021).
[22] Nasdaq, 'Which Companies Spend the Most in Research and Development (R&D)?', (21 June 2021).
[23] PwC strategy + business, 'What the top innovators get right', (30 October 2018).
[24] PwC strategy + business, 'What the top innovators get right', (30 October 2018).
[25] Bloomberg, 'Amazon's Great R&D Gift to the Nation', (5 April 2018).
[26] Bloomberg, 'Amazon's Great R&D Gift to the Nation', (5 April 2018).
[27] BCG, 'Overcoming the Innovation Readiness Gap', (April 2021), p. 5.
[28] BCG, 'Overcoming the Innovation Readiness Gap', (April 2021), p. 5.

Beyond these sector-wide studies, a deepdive into Google's innovation of Search shows no lack of innovation. To the contrary, Google relentlessly innovates Search, as discussed in more detail in **Annex 2.**

Annex 2: Innovation in Google Search

Evidence Attests to Google Search's High Quality

Objective evidence confirms that Google Search is tremendously high-quality. Contrary to speculation about reduced innovation, Australian consumers do not suffer from a lack of innovation when they use Google Search:

- **The ACCC confirms Search's quality.** The ACCC has recognised the "*high quality*" of Google Search.[29] The Discussion Paper finds that Google *"continually improve[s] the relevance of its search results."*[30] Other authorities have reached a similar conclusion.[31]

- **Surveys of Australians confirm Search's quality.** A survey of more than 400 Australian users finds that Australians identify Google to be their favourite search service. 89% of respondents say that Google is their favourite.[32]

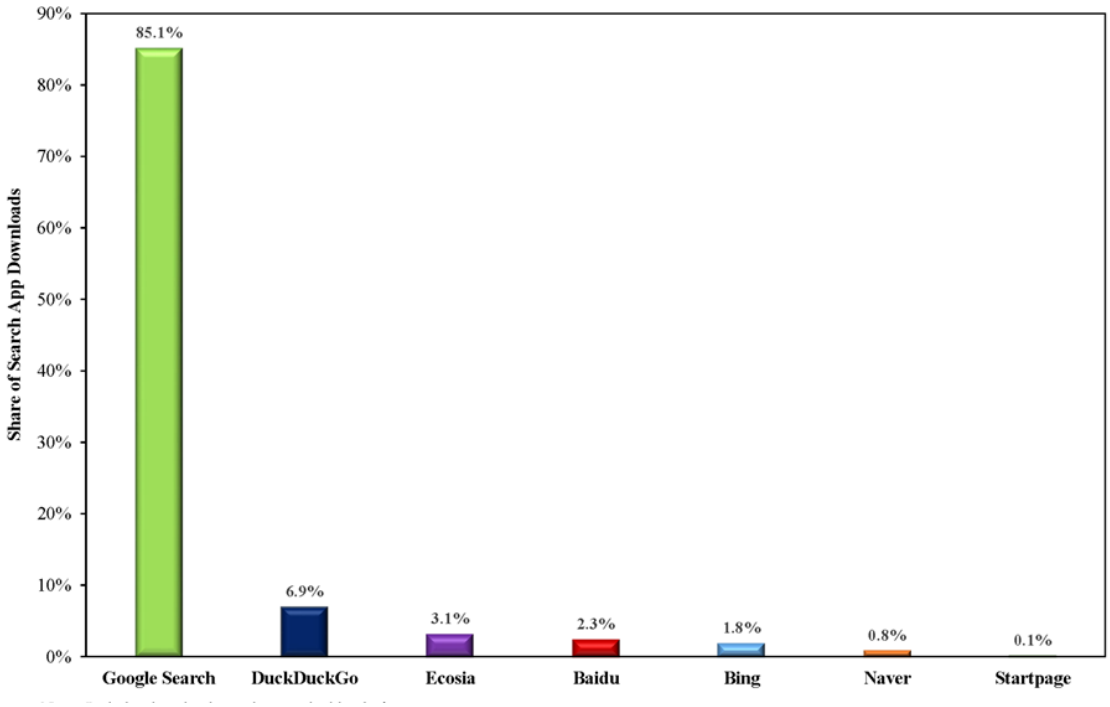
- **Google's share on Windows confirms Search's quality.** Google's share on Windows provides a natural experiment confirming that Google is preferred by Australian users. Microsoft preinstalls its Edge browser and sets it as default on Windows. Microsoft also sets Bing as the default search service on Edge and Windows. But Google's share of search queries on Windows desktops in Australia is around 91%, while Bing's share is just 7.5%.[33] In turn, Chrome's share of browsers on Windows is around 74% compared with Edge, with only 11%.[34] Australian users override Microsoft's defaults and choose their preferred alternative instead: Google.[35]

- **Search app downloads on iOS confirm Search's quality**. Google Search is by far the most downloaded search app on Apple iOS devices. In particular, 85% of search app downloads on iOS devices in Australia in 2020 were Google Search. DuckDuckGo was

[29] ACCC, 'Digital Platforms Inquiry Final Report', Digital Platforms Inquiry (June 2019), p. 72.
[30] Discussion Paper, 41.
[31] The *Android* decision (European Commission, Case AT.40099, 18 July 2018) confirmed in multiple places the superiority of Google Search. It noted that Google would win the vast majority of queries in side-by-side competition (paras. 1261(1) and 1234(1)-(2)). It found that users "*may use Google's general search service because of the perceived relevance of the results that service provides*" (paras. 675 and 726). It stressed that users *"trust in the relevance of search results provided by Google"* (paras. 712, 812, and fn.769). It observed that users *"favour Google's UI over [rivals]"* (fn. 770). And it found that Google invests substantially more than rivals in improving its service (para. 692 and Table 8).
[32] Google, 'September 2021 Report on market dynamics and consumer choice screens in search services and web browsers: Google's Response to ACCC Issues Paper', ACCC Digital Platforms Services Inquiry (7 May 2021), Survey One, Question 3.
[33] Netmarketshare, data from January 2020 to October 2020 (Netmarketshare's service was discontinued after that date).
[34] Netmarketshare, data from January 2020 to October 2020 (Netmarketshare's service was discontinued after that date).
[35] Microsoft requires Edge to be preinstalled on its Windows desktops, not Google. See The Verge, 'Microsoft is making it harder to switch default browsers in Windows 11', (18 August 2021); see also Windows Central, 'How to set any browser as new default on Windows 10', (16 January 2021).

second, with only 7% (based on data from App Annie). The search app download data indicates that Australians prefer Google Search over other search apps.

iOS Search App Download Shares (Australia, 2020)



- **Rater tests confirm Search's quality.** Data from rater tests find that Google outperforms Bing. Google tracks search performance by measuring 'information satisfaction' (**IS**) scores on a 100 point scale. IS is measured blind by Search Quality Raters who do not know whether they are testing Google or Bing. Based on IS score data, Google significantly outperforms Bing.[36] Academic studies reach similar conclusions about the relative quality of Google and Bing.[37]

- **Australian third-party reports confirm Search's quality.** Reports in Australia corroborate the superiority of Google Search to its rivals in Australia. They note rivals'

[36] The CMA reviewed IS data and also found that Google significantly outperformed Bing in IS scores. See CMA, 'CMA Online platforms and digital advertising market study, Appendix I: search quality and economies of scale', (1 July 2020), para. 6.

[37] A study by a professor of Yale Law School demonstrates Google's superiority relative to Bing. See Ian Ayres et al, 'A Randomized Experiment Assessing the Accuracy of Microsoft's "Bing it On" Challenge' (2013). Contrary to Microsoft's claim that "*people preferred Bing web search results nearly 2:1 over Google in blind comparison tests.*" See Microsoft Bing Blogs, 'Take the Bing It On Challenge!', (6 September 2012). The study "*strongly reject[s] the possibility that internet users would prefer Bing search results to Google search results at anywhere near a 2-to-1 ratio.*" It found that "*[s]ubjects who used popular search terms or self-selected search terms had a statistically significant preference for Google over Bing*."

inability to show good results for simple queries like "best beach Sydney";[38] they emphasise Google's focus on showing authoritative and credible sources, while rivals display low-quality content;[39] and they stress that Bing "*pales in comparison*" to Google.[40]

- **Microsoft's statements confirm Search's quality.** In the context of Australia's proposed media bargaining code, Microsoft President Brad Smith agreed that Microsoft would have to improve to be competitive in Australia.[41] He stated in an interview that Microsoft "*would need to invest*" because "*we readily recognise*" that Microsoft is not as high quality as Google in Australia.[42] Mr. Smith also stated that Bing's share in the US, Canada, and UK, where it has made efforts to localise its service, was 20%-30%, and he attributed Bing's lower share in Australia to Microsoft's failure to invest in this country.[43] Mr. Smith's comments demonstrate that search services' popularity in Australia turn on their relative quality, not defaults or preinstallation.

Google's innovations in Search

A review of evidence on Google's actual innovations confirms that Google relentlessly innovates Search. We list below some of Google's most significant innovations in these areas. These are simply some of the most notable changes to Google Search that can be publicly revealed. Much of Google's search quality also comes from the sum of many hundreds of incremental changes, each of which is rigorously tested. In 2018, Google deployed more than 2,400 distinct changes to the Search product, each of which improved it in some way, large or small.

Updates and improvements to Google's search algorithms

Google Search uses algorithms to sift through vast amounts of information and find the most relevant, useful results in a fraction of a second. Search algorithms "*look at many factors, including the words of your query, relevance and usability of pages, expertise of sources and*

[38] Bloomberg, 'Life Without Google: Australia Is Now Facing the Unthinkable', (11 February 2021). ("*Searching for 'best beach Sydney' shows the variance in performance among Google's competitors. DuckDuckGo's first result was an ad for a hotel more than 1,000 kilometers away in Queensland, with Sydney beach reviews listed below a second ad link. Search Encrypt, which touts its data-protection capability, said: 'It looks like there aren't any great matches.' Bing's initial suggestion was Bondi Beach Post Office. Only Google returned a real beach, Bondi, first up*").
[39] See The New Daily, "Easier to manipulate': Bing searches will drive disinformation, experts warn', (5 February 2021) ("*Google's program emphasises credible sources cited by authoritative websites whereas Bing is more likely to deliver results based on quantity of sources, which are often lower quality*").
[40] See ZDNet, 'If Bing is the answer then Australia is asking the wrong question', (7 February 2021). ("*In my view, Bing lags by quite a distance. For generalist or casual searching, it does the job, but the second you want to dive deep into a subject – or in my case seek out technical information -- it pales in comparison to Google*").
[41] See ABC News, 'Microsoft backs media bargaining code, suggests Bing can fill gap if Google and Facebook depart', (3 February 2021).
[42] ABC Radio, '"We believe": Microsoft President tells "PM" company backs news payment plan, but can it replace Google for search?', (3 February 2021).
[43] ABC Radio, '"We believe": Microsoft President tells "PM" company backs news payment plan, but can it replace Google for search?', (3 February 2021).

your location and settings" as well as freshness of content.[44] Google continuously improves its search algorithms. To give a few examples:

- **Freshness update (2011):** In 2011, Google improved its ranking algorithm to differentiate between searches and determine the level of freshness needed. For example, while results from a week ago about a TV show may be recent, week-old results for a breaking news story may be too old to be relevant.[45]

- **Panda (2011):** Google developed Panda to identify low-quality sites. This was in response to the widespread perception that its generic results were surfacing too many low-quality sites.[46] The launch of Panda was widely recognised as having markedly improved the quality of Google's search results.[47]

- **Exact Match Domain update (2012):** With this update, Google targeted sites that had exact match domain names but were "*poor quality sites with thin content*".[48]

- **Penguin (2012):** Google developed Penguin to identify websites that seek to appear more relevant than they are by relying on artificial links and anchor text (the visible text associated with a link that leads to another webpage).[49]

- **PageRank (1997 and updated regularly since then):** The authoritativeness of result pages is a central part of search quality, and Google relies on authoritativeness signals to combat the rise of misinformation on the web. PageRank uses links on the web to understand authoritativeness.[50] Google's ranking algorithms identify the most authoritative and trustworthy pages and elevate them above information that is less reliable. Such assessments are query-specific and may vary across webpages on the

[44] Google Search, 'How Search algorithms work', (2022).
[45] Google Inside Search Blog, 'Giving you fresher, more recent search results', (3 November 2011).
[46] See TechCrunch, 'The End of Hand Crafted Content', (14 December 2009); ReadWrite, 'Content Farms: Why Media, Blogs & Google Should Be Worried', (13 December 2009); Insider, 'The Anatomy Of A Bad Search Result', (20 December 2009); Good ROI Marketing, 'Why Google Allows Target.com to Spam Results', (10 December 2009); Slashdot, 'Technology: Target.com's Aggressive SEO Tactic Spams Google', (23 December 2009).
[47] The Atlantic, 'Testing Google's New Algorithm: It Really Is Better', (25 February 2011): "*And I have to say: Wow, the new algorithm yielded far superior results*". See also Sistrix, 'Google Farmer Update: Quest for Quality', (26 February 2011): "*A whole lot of low-quality domains lost significant visibility*". See also The Washington Post, 'Google and Bing fight off 'content farms' in effort to improve online searches', (19 December 2011): "*Survey finds improved search results after Google muffles content farms*". The New York Times, 'Google's War on Nonsense', (26 June 2011): "*Panda represents good cyber-governance. It has allowed Google to send untrustworthy, repetitive and unsatisfying content to the back of the class*". Search Engine Land, 'Google's Farmer Update Plants User Behavior Seeds', (4 March 2011): "*The new garden of fresh authentic content that ranks well now will be a welcome improvement*".
[48] Search Engine Journal, 'Your Guide to Google's Exact Match Domain Algorithm Update', (1 December 2017).
[49] Search Engine Journal, 'A Complete Guide to the Google Penguin Algorithm Update', (30 November 2017).
[50] Google, 'How Google Fights Disinformation', (February 2019), p. 12.

same website.[51] The PageRank algorithm was developed in 1997[52] and updated every 3-4 months until 2013.[53]

- **Payday Loan update (2013):** The Payday Loan algorithm update targeted queries often linked to spam, "*mostly associated with shady industries like super high interest loans and payday loans, porn, and other heavily spammed queries*".[54]

- **Hummingbird (2013):** Google launched the Hummingbird update to improve Google's ability to understand the meaning behind queries, notably "conversational" queries.[55] The ability to understand a query is an important prerequisite for a search service to deliver relevant and useful search results.

- **Pigeon (2014):** With the Pigeon update, Google was able to provide users with more useful, relevant, and accurate local search results by improving its distance and location ranking parameters.[56]

- **Mobile Friendly update (2015):** The Mobile Friendly Update introduced as a quality signal for searches on mobile devices whether a site has a mobile friendly design and loads quickly. The update did not affect desktop searches. Because mobile devices are comparatively less powerful than desktop computers and mobile data transmission is more costly for users, providing a mobile-friendly version of a site that limits data volumes and increases load speed provides a better experience for users on mobile devices.

- **RankBrain (2015):** Rankbrain is a machine learning system that learns to interpret queries and identify relevant results for those queries.[57] The system continuously adjusts by learning from past data in that way that enables Google to deliver more relevant results. RankBrain helps Google better relate pages to concepts and other words, which allows Google to better return relevant pages that do not contain the exact words used in a search query.[58] One reason that RankBrain is more effective for never-before-seen queries is that it can guess what words or phrases might have a similar meaning to a word or phrase it has not seen before.[59]

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[51] Google, 'How Google Fights Disinformation', (February 2019), p. 12.
[52] Sergey Brin and Lawrence Page, 'The Anatomy of a Large-Scale Hypertextual Web Search Engine' (1998), p. 107.
[53] Google Search Central, 'English Google Webmaster Central office-hours hangout', (6 October 2014); Search Engine Land, 'Google Toolbar PageRank Finally & Officially Dead?', (7 October 2014).
[54] Search Engine Journal, 'What You Need to Know About the Google Payday Loan Algorithm Update', (4 December 2017).
[55] Search Engine Journal, 'How the Google Hummingbird Update Changed Search', (6 December 2017).
[56] Search Engine Journal, 'How the Google Pigeon Update Changed Local Search Results', (8 December 2017).
[57] Wired, 'How Google is Remaking Itself as a "Machine Learning First" Company', *Wired* (22 June 2016).
[58] @searchliaison, "*We've had some questions about how neural matching differs from RankBrain. In short: RankBrain helps us better relate pages to concepts; Neural matching helps us better relate words to searches...*". See Google SearchLiaison, 'Google SearchLiaison thread', Twitter (21 March 2019).
[59] Bloomberg, 'Google Turning Its Lucrative Web Search Over to AI Machines', (26 October 2015); Search Engine Land, '#SMX Advanced keynote: Google's Gary Illyes talks RankBrain, Penguin update & more', (22 June 2016).

- **Possum (2016):** Google introduced Possum to improve its local search results. Possum improved local results' ranking by refining Google's use of proximity as a signal, filtering out duplicate entries, and enhancing the user's location as a signal.[60]

- **Mobile Speed (2018):** Mobile Speed introduced page speed as a ranking factor for mobile searches. Mobile Speed only affected "*pages that deliver the slowest experience to users and* [only] *a small percentage of queries. It applies the same standard to all pages, regardless of the technology used to build the page. The intent of the search query is still a very strong signal, so a slow page may still rank highly if it has great, relevant content.*"[61]

- **Bidirectional Encoder Representations from Transformers (BERT) (2018, 2019):** One of the biggest search quality improvements that Google has made over the last five years is the neural matching system, BERT, which was open-sourced in November 2018.[62] By December 2019, BERT was rolled out to 70 different languages worldwide for Search.[63] Google's neural matching works like a "super-synonym system" which primarily helps Google better understand how words in search queries might be related to concepts.[64] For example, the query "why does my tv look strange" will return pages about "the soap opera effect", which involves the use of motion smoothing technology on modern TVs.[65] In November 2019, Google started to use neural matching to generate local search results.[66]

- **Recent spam filter updates (2021):** In November 2021, Google confirmed that a further update to its spam filters was being implemented globally.[67] This was the fourth

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[60] Search Engine Land, 'Everything you need to know about Google's 'Possum' algorithm update', (21 September 2016).
[61] Google Search Central Blog, 'Using Page Speed In Mobile Search Ranking', (17 January 2018).
[62] Google AI Blog, 'Open Sourcing BERT: State-of-the-Art Pre-training for Natural Language Processing', (2 November 2018).
[63] @searchliaison, "*BERT, our new way for Google Search to better understand language, is now rolling out to over 70 languages worldwide. It initially launched in Oct. for US English. You can read more about BERT below & a full list of languages is in this thread....*". See Google SearchLiaison, 'Google SearchLiaison thread', Twitter (9 December 2019).
[64] @searchliaison, "*We've had some questions about how neural matching differs from RankBrain. In short: RankBrain helps us better relate pages to concepts; Neural matching helps us better relate words to searches...*". See Google SearchLiaison, 'Google SearchLiaison thread', Twitter (21 March 2019). A 2018 paper published by Google researchers explores several extensions of deep learning models used for document relevance ranking (*i.e.* "*the task of ranking documents from a large collection using the query and the text of each document only*"). Ion Androutsopoulos, George Brokos and Ryan McDonald, 'Deep Relevance Ranking Using Enhanced Document-Query Interactions', (2018). The models explored in this paper are interaction based models, which allow for "*direct modeling of exact- or near-matching terms (e.g., synonyms), which is crucial for relevance ranking*", p. 1850.
[65] @dannysullivan, "*Last few months, Google has been using neural matching, --AI method to better connect words to concepts. Super synonyms, in a way, and impacting 30% of queries. Don't know what "soap opera effect" is to search for it? We can better figure it out*." See Danny Sullivan, 'Danny Sullivan thread', Twitter (25 September 2018).
[66] @searchliaison, "*In early November, we began making use of neural matching as part of the process of generating local search results. Neural matching allows us to better understand how words are related to concepts, as explained more here*". See Google SearchLiaison, 'Google SearchLiaison thread', Twitter, (2 December 2019).
[67] @searchliaison, "*As part of our regular work to improve results, we've released a spam update to our systems. This November 2021 spam update should be fully rolled out within a week*." See Google SearchLiaison, 'Google

update Google made to its spam filters in 2021.[68] Google fights spam both with algorithms that automatically detect and remove spam, and with human analysts who provide manual penalties to pages exhibiting spammy behaviours.

- **Multitask Unified Model (MUM) (2021):** Google announced that it will be using artificial intelligence (**AI**) to improve Google Search through MUM technology. MUM uses *"the T5 text-to-text framework and is 1,000 times more powerful than BERT"*[69] (described above). Not only does it understand language, it can also generate it. A feature of MUM is "Things to know" which uses its understanding of how people explore certain topics to provide more relevant search results.[70] For example, if a person searches for "acrylic paint", MUM might suggest "Things to know" like how to paint with acrylic paint, or clean it off surfaces and brushes.[71]

- **"About this result" update (2021):** Google now provides "About this result" information for search results, which includes information about when the web page was first indexed, whether the user's connection to the site is secure, and the language of the web page.[72] This update is meant to help users determine what search results are most relevant to their query.

- **Local Search Update (2021):** In November 2021, Google rolled out updates to its local search algorithm.[73] The factors Google uses to rank local search results are relevance, distance and prominence.[74] The update involved a "rebalancing" of these factors.[75]

- **Page Experience update (2021, 2022):** Google's Page Experience algorithm update is expected to be fully rolled out to desktop search results by the end of March 2022.[76] This update is an extension of a mobile search update which took place in the summer of 2021.[77] These updates aim to highlight webpages that provide users with a great experience.[78]

SearchLiaison thread', Twitter, (3 November 2021). See also Google Search Central, 'A reminder on qualifying links and our link spam update', (26 July 2021).
[68] searchmetrics, 'Google Spam Update November 2021: How to Avoid a Drop in Rankings', (24 November 2021).
[69] Google: The Keyword Blog, 'MUM: A new AI milestone for understanding information', (18 May 2021).
[70] WordStream, '*The 8 Biggest Google Algorithm Updates of 2021 (+Optimization Tips)*', (6 February 2022); TechCrunch, 'Google is redesigning Search using AI technologies and new features', (29 September 2021).
[71] TechCrunch, 'Google is redesigning Search using AI technologies and new features', (29 September 2021).
[72] WordStream, '*The 8 Biggest Google Algorithm Updates of 2021 (+Optimization Tips)*', (6 February 2022).
[73] @googlesearchc *"Our November 2021 local search update has concluded"*. See Google Search Central, 'Google Search Central thread', Twitter (16 December 2021). Search Engine Journal, 'Google Confirms Update To Local Search Results', (16 December 2021).
[74] Google Business Profile Help, 'How to improve your local ranking on Google', (2022).
[75] @googlesearchc *"Our November 2021 local search update has concluded"*. See Google Search Central, 'Google Search Central thread', Twitter (16 December 2021).
[76] Search Engine Journal, 'Google Page Experience Update Starts Rolling Out On Desktop', (22 February 2022).
[77] Search Engine Journal, 'Google Page Experience Update Starts Rolling Out On Desktop', (22 February 2022).
[78] Google Search Central Blog, 'More time, tools, and details on the page experience update', (19 April 2021).

Updates and improvements to Google's web crawling technology

By 2008, there were already one trillion unique URLs on the web. There is no central registry for all of these webpages, and so Google constantly searches for new pages and updates to existing webpages in order to keep an up-to-date list of known pages. This process is known as "crawling". Google is continuously looking for ways to improve its crawling technology.

- **Sitemaps (2005):** Sitemaps are files provided by website owners which contain information that Google and other search engines can use to more intelligently crawl a site.[79] Specifically, sitemaps provide information about which pages are important, when a page was last updated, how often a page is changed, and alternate language versions of a page. Google introduced sitemaps in June 2005 to improve the coverage and freshness of its index.[80] By November 2006, sitemaps had become an open initiative with the additional support of Yahoo! and Microsoft.

- **Smartphone GoogleBot (2011):** Google introduced a version of Googlebot that identified itself as a smartphone to webpages, allowing it to "*discover content specifically optimized to be browsed on smartphones.*"[81]

- **Local-Aware Crawl configurations (2015):** Google introduced new configurations of its crawler, Googlebot, which allowed it to more completely index webpages that were locale-adaptive (*i.e.*, pages that change their content to reflect a user's language or location).[82]

- **Google Webmaster Tools and Search Console updates (2006-2018):** In August 2006, Google introduced Google Webmaster Tools, a set of tools that allowed owners of websites deeper insight into and control of how Google crawled and indexed their sites.[83] In May 2015, Google Webmaster Tools was rebranded as Google Search Console.[84] Over the years, Google has made many updates to the Webmaster Tools and Search Console, including a version that was "*rebuilt from the ground up*" in 2018.[85] The Search Console currently contains a couple dozen reports and tools.[86]

- **Nofollow update (2005, 2020) - affects crawling and indexing:** Google introduced the nofollow attribute in 2005 as a way to filter spam. It is also used as a way for webmasters to flag links to advertising or sponsored content. In 2020, Google introduced "*two new link attributes that provide webmasters with additional ways to*

[79] Google Search Central, 'Learn about sitemaps', (28 February 2022).
[80] Google Official Blog, 'Webmaster-friendly', (2 June 2005).
[81] Google Search Central Blog, 'Introducing smartphone Googlebot-Mobile', (15 December 2011).
[82] Google Search Central Blog, 'Crawling and indexing of locale-adaptive pages', (28 January 2015).
[83] Google Official Blog, 'We love you, webmasters', (24 August 2006).
[84] Google Search Central Blog, 'Announcing Google Search Console - the new Webmaster Tools', (20 May 2015).
[85] Google Search Central Blog, 'Introducing the new Search Console', (8 January 2018).
[86] Google Search Console Help, 'Reports at a glance', (2022).

identify to Google Search the nature of particular links".[87] Further, until 2020, Google excluded links marked as nofollow from being used as a signal in its search algorithms. With the update, nofollow and the new two link attributes are instead treated as hints. Google will use these hints "*as a way to better understand how to appropriately analyze and use links within our systems*".[88]

Updates and improvements to Google's indexing technology

In order for Google to return a webpage in its Search results, it must first have that webpage in its index. Google builds its index by using web crawling software to discover public webpages. Google's index covers hundreds of billions of webpages, is over 100,000,000 million gigabytes in size[89] and is continuously being updated.

- **Caffeine Index System (2010):** After at least a year of testing,[90] Google completed a new web indexing system called Caffeine.[91] The new Caffeine system allowed Google to serve fresher search results. Prior to Caffeine, there was a significant delay (2-3 days in the "base" index)[92] between when Google found a webpage with its web crawlers, and when that page was added to the index and made available in search results.[93] After Caffeine was put into production, content became searchable seconds after it had been crawled.[94] Caffeine allowed Google to provide 50% "fresher" results for web searches than before[95] (*i.e.*, the average age of a document returned in Search results dropped by 50%).[96] Caffeine also allowed Google to increase the size of its index, and was more flexible than the system it replaced.[97] Caffeine made it relatively easier for new types of information about webpages and other documents to be added to Google's index and included in search results.[98]

- **Android App Indexing (2014):** Google announced a new capability for Search called app indexing.[99] App indexing allows content in an Android app to be indexed by

[87] Google Search Central Blog, 'Evolving "nofollow" – new ways to identify the nature of links', (10 September 2019).
[88] Google Search Central Blog, 'Evolving "nofollow" – new ways to identify the nature of links', (10 September 2019).
[89] Google Search, 'How Search organizes information', (2022).
[90] Google Search Central Blog, 'Help test some next-generation infrastructure', (10 August 2009).
[91] Google Search Central Blog, 'Our new search index: Caffeine', (8 June 2010).
[92] Frank Dabek and Daniel Peng, 'Large-scale Incremental Processing Using Distributed Transactions and Notifications', (2010), p. 2.
[93] Google Search Central Blog, 'Our new search index: Caffeine', (8 June 2010).
[94] Search Engine Land, 'Google's New Indexing Infrastructure 'Caffeine' Now Live', (8 June 2010).
[95] Google Search Central Blog, 'Our new search index: Caffeine', (8 June 2010).
[96] Frank Dabek and Daniel Peng, 'Large-scale Incremental Processing Using Distributed Transactions and Notifications', (2010), p. 2.
[97] Frank Dabek and Daniel Peng, 'Large-scale Incremental Processing Using Distributed Transactions and Notifications', (2010), p. 9.
[98] Computerworld, 'Caffeine gives Google search a jolt', (10 June 2010); and Search Engine Land, 'Google's New Indexing Infrastructure 'Caffeine' Now Live', (8 June 2010).
[99] Google Search Central Blog, 'Indexing apps just like websites', (31 October 2013).

Google, and for links to content within an app to be returned in search results if users have that app installed. This functionality was launched fully in June 2014.

- **Indexing JavaScript Content (2014):** JavaScript is a popular programming language used to make websites interactive.[100] In May 2014 Google announced that it had increased the number of webpages for which its indexing system rendered JavaScript content.[101] At Google's 2018 I/O conference, Tom Greenaway from Google explained that pages with JavaScript go through two phases of indexing.[102] Indexing pages with JavaScript content that is rendered on the client-side, rather than the server-side, is a relatively more computationally intensive process than indexing pages without JavaScript.[103] Therefore, Google will perform an initial index of pages with JavaScript, and when more resources are available, Google will render the JavaScript portion of the page and update the index with the full version of this page.[104]

- **Indexing API (2018):** There are certain types of short-lived content for which it is important that the information kept in Google's index is fresh. In June 2018, Google introduced the Indexing API that allowed site owners to directly notify Google when a job posting was added or removed. In December 2018, this API was extended to video livestreams. When Google is directly notified when short-lived content such as a video livestream or job posting has changed, it can do a better job keeping its search results fresh.

- **Passage ranking update (2021):** This update allows Google to use AI to index passages of text from webpages. Snippets with text can then be displayed in Search, allowing users to find answers to their queries in less time than if they had to sift through the webpage themselves.[105]

- **Mobile-First Indexing (2018, 2022):** By November 2016, most people searching on Google were using a mobile device.[106] But prior to 2018, Google's crawling, indexing and rankings systems typically used the version of a webpage that would be served to a desktop user.[107] Beginning in March 2018, Google started to shift to using the mobile version of webpages for indexing and ranking.[108] Google planned to switch to

[100] Onely, 'The Ultimate Guide to JavaScript SEO (2020 Edition)', (11 March 2020).
[101] Google Search Central Blog, 'Understanding web pages better', (23 May 2014).
[102] The SEM Post, 'Google Indexes and Ranks JavaScript Pages in Two Waves Days Apart', (11 May 2018).
[103] The SEM Post, 'Google Indexes and Ranks JavaScript Pages in Two Waves Days Apart', (11 May 2018).
[104] The SEM Post, 'Google Indexes and Ranks JavaScript Pages in Two Waves Days Apart', (11 May 2018).
[105] WordStream, 'The 8 Biggest Google Algorithm Updates of 2021 (+Optimization Tips)', (6 February 2022).
[106] Google Search Central Blog, 'Mobile-first Indexing', (4 November 2016).
[107] Google Search Central Blog, 'Rolling out mobile-first indexing', (26 March 2018).
[108] Google Search Central Blog, 'Rolling out mobile-first indexing', (26 March 2018).

"mobile-first" indexing for all websites by March 2021, but the rollout has been delayed.[109]

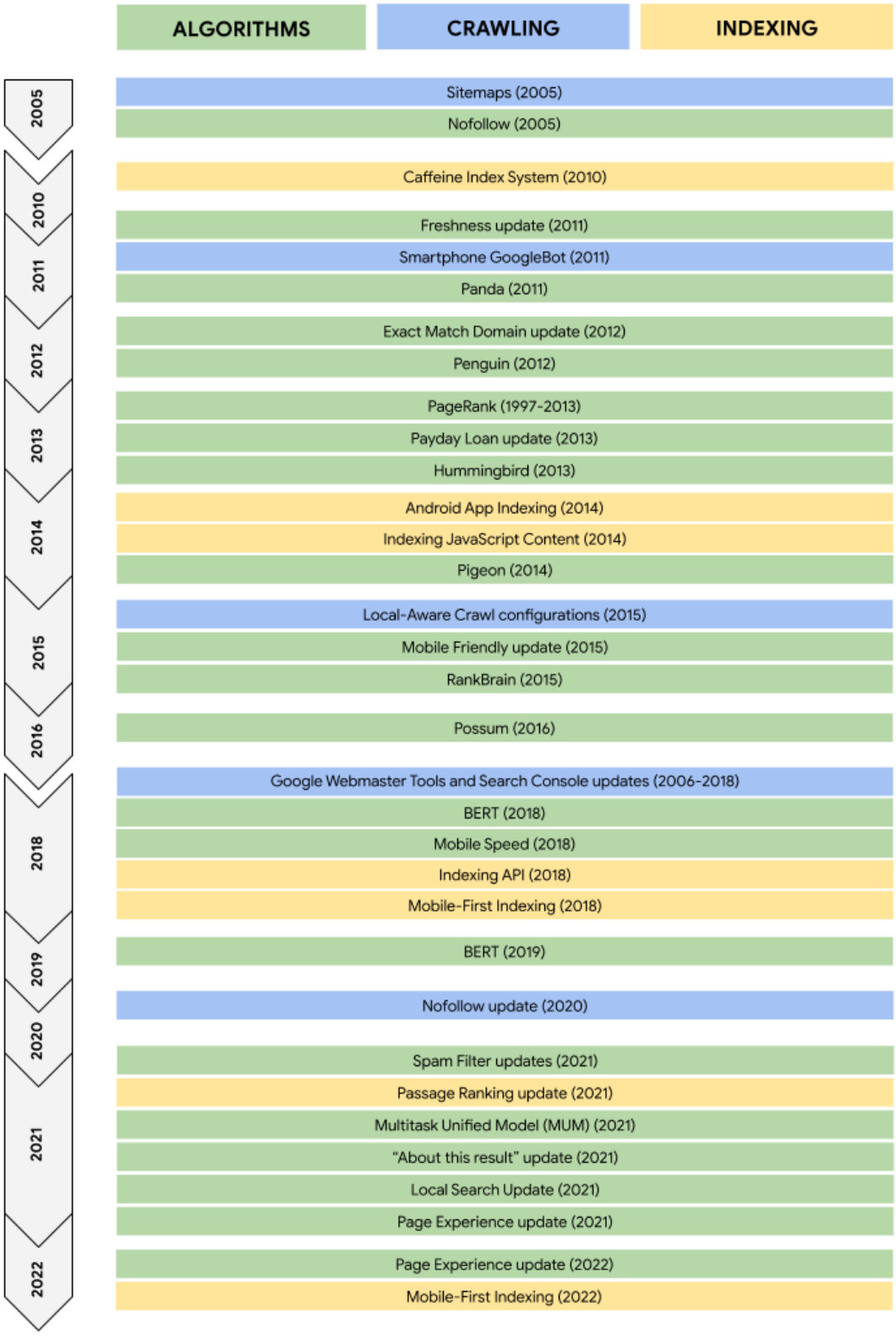
Google's controlled experiments

Google is typically running a large number of experiments simultaneously. Google disclosed in 2008 that at any given time, it was running anywhere from 50 to 200 experiments on Google sites around the world to test potential changes to search.[110] For years now, it has been possible for Google to layer experiments without losing effectiveness.[111]

In 2019, Google ran 17,523 live traffic experiments, where it enabled the feature in question for a small number of users, usually starting at 0.1% for each experiment.[112] The search traffic used by all of Google's "merge server" experiments (this is Google's main type of search rank experiment) that are running simultaneously at any one time is allocated across 0.6% of Google's search traffic. Data collected from the experiments is compared against a control group that did not have the feature enabled, by looking at various metrics such as click-through rates and the time taken to click on a webpage.[113] These results help determine whether the feature can meaningfully improve Google's search results.

[109] Google Search Central Blog, 'Prepare for mobile-first indexing (with a little extra time)', (21 July 2020); Search Engine Journal, 'Google's Mobile-First Indexing: Everything We Know (So Far)', (2 August 2021).
[110] Google Official Blog, 'Search experiments, large and small', (26 August 2008).
[111] Google, 'How Google Fights Disinformation', (February 2019), p. 12.
[112] Google Search, 'Rigorous testing – Live traffic experiments', (2022).
[113] Google Search, 'Rigorous testing – Live traffic experiments', (2022).

A Snapshot of Some Significant Innovations in Google Search



Annex 3: The ACCC's Discussion of Google Products Needs Correcting

The ACCC's Fifth Interim Report and Discussion Paper discuss a few of our products, including Search, some of our ads products and Play. In places, however, the ACCC mischaracterises how these products work and includes inaccuracies. We welcome the opportunity to address these inaccuracies and look forward to engaging with Treasury further on these points.

1. Google Search

There is a consistent body of evidence demonstrating that Google's popularity reflects its quality (due to Search's constant innovation), not default and preinstallation arrangements.[114]

Google's popularity reflects its quality

Evidence consistently confirms that Google is higher quality than its rivals:

- In a user survey, **89% of Australians identify Google as their favourite search service**.
- Data from rater tests, natural experiments and academic studies all corroborate Google's quality (**Annex 2**).
- The ACCC itself has recognised the ***"high quality"* of Google Search**.[115]
- The Discussion Paper stresses that Google ***"continually improve[s] the relevance of its search results."***[116]

In short, Google is the highest-quality search service in Australia. It is therefore unsurprising that Google is the preferred search service for Australians. That does not reflect or result from a market failure, but rather lawful competition on the merits, that is unrelated to any default settings or preinstallation.

Defaults and preinstallation do not restrict users from reaching alternative services

There is a consistent body of evidence demonstrating the ease of changing defaults and that users can and do override defaults and preinstallations:

- Google's share on Microsoft Windows desktops in Australia: Microsoft preinstalls its Edge browser that defaults to Bing on Windows. But Google's share of search on

[114] See Google, 'September 2021 Report on market dynamics and consumer choice screens in search services and web browsers: Google's Response to ACCC Issues Paper', ACCC Digital Platforms Services Inquiry (7 May 2021)
[115] ACCC, 'Final Report', Digital Platforms Inquiry (June 2019), p. 72.
[116] Discussion Paper, p. 41.

Windows is 91%, while Bing's is 7.5%.[117] **Australians override Microsoft's defaults and choose their preferred alternative: Google**.

- The ACCC's recently commissioned survey confirms that **the majority of users know about alternative browsers and search engines, know how to change their default browser and search engine, and reported it to be *"easy or very easy to do"***:
    - *"**Most consumers were confident that there was a wide choice of other browsers (80%) and search engines (77%)** than the browser and search engine provided on their devices if they were ever unhappy with the way they search the internet."*[118]
    - ***"Three in four consumers (78%) stated that they knew that it was possible to change the default search engine** set by their browser."*[119]
    - *"Among those who had changed the default browser or search engine on their device in the last 2 years, more than **four in five found this process to be easy or very easy**."*[120]
- Professor Pinar Akman from the University of Leeds released an independent study on user behaviour on online platforms such as search engines. Professor Akman conducted a large-scale study with over 11,000 consumers across ten countries, including Australia. She found that:
    - **72% of Australians had changed the initial search engine on at least one of their devices**.[121]
    - **73% of Australians changed the initial default internet browser on at least one of their devices**.[122]
- Google's survey of more than 350 Australian Android users found that **77% would switch to a different search engine if their device came with a default search**

[117] Netmarketshare, data from January 2020 to October 2020 (Netmarketshare's service was discontinued after that date).
[118] Roy Morgan, 'Consumer Views and Use of Web Browsers and Search Engine - Final Report', (September 2021), p. 9.
[119] Roy Morgan, 'Consumer Views and Use of Web Browsers and Search Engine - Final Report', (September 2021), p. 15.
[120] Roy Morgan, 'Consumer Views and Use of Web Browsers and Search Engine - Final Report', (September 2021), p. 16.
[121] Pinar Akman, 'A Web of Paradoxes: Empirical Evidence on Online Platform Users and Implications for Competition and Regulation in Digital Markets' (2022), figure 7, p. 17.
[122] Pinar Akman, 'A Web of Paradoxes: Empirical Evidence on Online Platform Users and Implications for Competition and Regulation in Digital Markets' (2022), figure 7, p. 17. Professor Akman finds the existence of a digital literacy deficiency (noting some consumers cannot tell a search engine apart from an internet browser) and recommends the remedy of this deficiency first, via dedication of governmental resources to digital education, before considering the need for additional interventions such as choice screens. See pp. 51-53.

engine they didn't like and 89% would use alternative browsers or search engines if their preloaded internet browser came with a default search service they didn't like.[123]

- Data from an EU Commission survey also found that "***nearly eight in ten internet users would probably change search engine*** *if the search results provided were not useful.*"[124]

- Mozilla entered into a deal in 2014 to set Yahoo! as the default on its browser. But **such a large share of users switched back to Google that Mozilla terminated the deal** in 2017, two years early.[125]

- Decisions from the Canadian Competition Bureau and Competition Commission of India found that users "***can and do change the default search engine on their desktop and mobile devices if they prefer a different one*** *to the pre-loaded default.*"[126]

2. Ad Tech

The ACCC's characterisation of Google's services and its assessment of the ad tech industry overlooks the following key points.

The digital advertising industry is dynamic and crowded - Google is not the only player in ad tech

The ACCC's findings fail to properly highlight or account for critical aspects of the ad tech industry. When market dynamics are properly understood, it is clear that Google's ad tech products face competitive constraints at every level. In particular, the ACCC's assessment of Google's position in ad tech:

- **Focusses on ad inventory sold on "open display" channels**. Yet according to the ACCC's own estimates, **open display represents only 17%** of total digital advertising in Australia.[127]

[123] Google, 'September 2021 Report on market dynamics and consumer choice screens in search services and web browsers: Google's Response to ACCC Issues Paper', ACCC Digital Platforms Services Inquiry, (7 May 2021), para. 21(iii).
[124] European Commission, 'Special Eurobarometer 447 Report', (June 2016), p. 16.
[125] Google, 'September 2021 Report on market dynamics and consumer choice screens in search services and web browsers: Google's Response to ACCC Issues Paper', ACCC Digital Platforms Services Inquiry, (7 May 2021), para. 21(iii).
[126] Government of Canada, 'Competition Bureau statement regarding its investigation into alleged anti-competitive conduct by Google', (19 April 2016); and Competition Commission of India, *Case No. 07 of 2012 with Case No. 30 of 2012* (8 February 2018).
[127] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 3 and p. 5.

- **Does not properly recognise important competitive constraints on Google's ad tech products including dynamic trends.** For instance, it does not properly account for:
    - The significance of **direct deals**. Within the **open display** channel, **~40% of advertiser expenditure is through deals directly negotiated** between the advertiser and publisher.[128] The ACCC recognises that **ad tech services do not play a large role** in facilitating these **direct deals**. [129]
    - The growing importance of **mobile apps** to advertisers compared to website advertising. Mobile app advertising **represented 44% of advertiser expenditure** for ads sold programmatically in 2020, where Google faces strong competitors, particularly Meta.[130]
    - The growing importance of **Connected TV**, where The Trade Desk is a strong competitor. For a sample of larger publishers, IAB estimates that Connected TV **increased from 23% to 50% in just two years** (Q4 2018 and Q4 2020).[131]
    - Increasing spend on **video display advertising**, which **grew by six times** from $276 million in 2014 to $1.9 billion in 2020. This spend includes on emerging channels such as broadcast video on demand.[132]
- **Does not include "closed channels" for buying display advertising in its share estimates.** This is despite platforms such as Meta acting as a significant competitive constraint on Google's ad tech products. According to the ACCC's own findings:
    - Spend on **closed channels represented ~57%** of display advertising.
    - **Meta is by far the largest provider of display ads in Australia**, accounting for **62% of revenue in 2019**.[133]
    - **Meta is a closer competitor with Google Ads** (one of Google's core ad buying platforms) than other Demand Side Platforms.[134]

[128] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 3.
[129] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 27.
[130] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 43.
[131] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 46. According to a report by PwC Australia (commissioned by Google Australia), expenditure on connected TV digital advertising rose to a high of $1.1 billion in FY21. See PwC Australia, 'Examination of the value created by the advertising technology industry in Australia', (September 2021).
[132] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 46.
[133] ACCC, 'Interim report', Digital advertising services inquiry (December 2020), B11.
[134] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 65.

- **Does not properly acknowledge the many vertically integrated and specialist participants** that have entered, expanded and thrived in ad tech in Australia.[135]
- **Does not account for recent dynamism where more and more companies are entering and investing in building their advertising businesses.** For example:
    - Last year, Microsoft acquired Xandr, a full ad tech stack that serves advertisers and publishers. This acquisition enabled Microsoft to sign a landmark deal to build Netflix's advertising business.[136]
    - Amazon's advertising business is now growing faster than Google and Meta's advertising businesses.[137]
    - Apple has a fast-growing advertising business, which is expected to reach over $30 billion in the next four years.[138] It's also been widely reported that Apple is building its own demand-side platform,[139] expanding its advertising footprint.[140]
    - Only five years after launching outside of mainland China, TikTok is reported to have nearly $10 billion in advertising revenue and continues to grow rapidly.[141]

Ad tech fees are not excessive and evidence indicates they have remained stable or decreased over recent years

The CMA and ACCC findings indicate that Google's fees are not excessive compared to other providers:

- According to the ACCC **ad tech prices have remained stable, or even fallen**, over the past four years. The Ad Tech Inquiry Final Report found that:

[135] For example, participants that are vertically integrated along multiple parts of the ad tech stack include Adobe, Amazon, AT&T/Xandr, and Verizon Media. Specialist players include, Adroll, Amobee, Big Mobile, Bonzai, Criteo, Flashtalking, Index Exchange, Innovid, ironSource, MediaMath, Playground XYZ, PubMatic, Publift, Taboola, Magnite, The Trade Desk, Triplelift, Triton, and specialist data management platform and analytics providers including Chartbeat, Oracle, SAS, Snowflake/Snowplow and Webtrends. The Trade Desk is a notably strong competitor. It is the "fastest growing demand-side platform in the industry," with revenue of US$661m for the year ended 31 December 2019. The Trade Desk continues its growth in Australia, focusing on connected TV ("CTV"), and strengthening partnerships with mobile video platform TikTok and analytics provider SambaTV. Playground XYZ is a locally based ad tech player with its own programmatic mobile marketplace, The Playground Private Exchange. It was named eighth in Deloitte's 2019 Technology Fast 50 winners report, which noted its rapid growth of 678%. Playground XYZ counts Woolworths, Telstra, and the Commonwealth Bank amongst its Australian advertiser client base.
[136] See The Wall Street Journal, 'Netflix Partners With Microsoft for New Advertising Backed Option', (13 July 2022).
[137] See CNBC, 'Amazon is bucking the online ad trend and just beat out Google and Meta', (3 August 2022).
[138] Financial Times, 'Apple Plans to double its digital advertising business workforce', (5 September 2022).
[139] Digiday, 'Apple is building a demand-side platform', (3 August 2022).
[140] CNBC, 'Apple is gaining on Facebook and Google in online ads after iOS privacy change, report shows', (6 September 2022).
[141] The New York Times, 'TikTok Builds Itself Into an Ads Juggernaut', (14 November 2022).

- Average fees for DSP services, and advertiser and publisher ad server services, changed little.
- Average fees for SSP services decreased by approximately 20%.[142]

- **Other reports also show that ad tech fees have declined** while **programmatic ad spend continues to see growth** as a result of competition.
  - According to eMarketer, US programmatic ad spending has been growing year-over-year by large double digit figures.[143] At the same time, fees as a proportion of the total non-social programmatic display spending decreased between 2019 and 2020 and are projected to continue to decrease over the next couple of years.[144]
  - In Australia, the proportion of display advertising purchased through ad tech services (open auction, private marketplace or programmatically) as compared to direct-sold ads increased from 34% to 44% between Q4 2018 and Q3 2020.[145] Ultimately, ad tech services would not be widely and increasingly used if fees were excessive.

- **Analysis has shown that Google's take rates across the ad tech stack are competitive.**
  - In 2020, the CMA found that Google's take rates are "*broadly in line with (or slightly lower than)*" the market-wide average take rates in the UK.[146]
  - In Australia, RBB Economics submitted a similar analysis to the Ad Tech Inquiry which showed that Google's take rates are in line with those published by the CMA.[147] It also showed that the take rate for Google's DSP is in line with the industry average estimated by the ACCC.[148]
  - The ACCC also found that the take rate retained by Google Ads does not differ materially from the industry average.[149]

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[142] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 50.
[143] Daniel S. Bitton and Stephen Lewis, 'Clearing-up Misconceptions About Google's Ad Tech Business', (5 May 2020), p. 36, citing Lauren Fisher. See eMarketer, 'US Programmatic Ad Spending Forecast 2019', (25 April 2019).
[144] eMarketer, 'US Programmatic Digital Display Ad Fees, 2019-2022', (1 October 2020).
[145] ACCC, 'Interim report', Digital advertising services inquiry (December 2020), p. 41.
[146] CMA, 'Appendix R to Final Report', Online platforms and digital advertising market study (1 July 2020), para. 11.
[147] RBB Economics, 'Google's ad tech takes rates: Analysis of Google auction level data sets', (20 October 2020), p. 2.
[148] RBB Economics, 'Google's ad tech takes rates: Analysis of Google auction level data sets', (20 October 2020), p. 2; see also ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 9.
[149] ACCC, 'Interim report', Digital advertising services inquiry (December 2020), p. 159.

Ultimately, ad tech providers compete on more than just price. Google also competes by offering high quality products and services.

Vertical integration has benefits and is common in ad tech

The ACCC mischaracterises the role of vertical integration in ad tech.

- There are **multiple other vertically integrated participants across the ad tech stack**, such as: AppNexus/Xandr, Verizon Media, Amazon, Adform, Innovid and MediaMath.[150] This suggests vertical integration in ad tech can deliver benefits that are not linked to market share / power.
- **Google's vertical integration in ad tech delivers significant benefits** to customers. Some of these are recognised in the Ad Tech Inquiry Final Report:[151]
    - Lower likelihood that bids from its DSP to its SSP will fail;
    - Interconnecting between ad tech services is easier;
    - The ability to provide more consistent measurements and metrics; and
    - The use of consistent user IDs means greater targeting capabilities.

Data advantage concerns are overstated

Claims about Google's supposed "data advantage" are overstated.

- **Third-party data is non-rivalrous** and is collected by many ad tech participants.
    - Criteo says it has built *"the world's largest open shopper data set"* covering *"72% of online shoppers globally."*[152]
    - CEO of Xandr (then AppNexus) stated: *"We have more unique supply than AdX does in most markets. We have major publishers like LinkedIn and Microsoft and Axel Spring and Schibsted."*[153]
- The Ad Tech Inquiry Final Report recognises that **Google makes extremely limited use of first-party data in its ad tech products** for targeting on third party properties.[154]

[150] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 53.
[151] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), pp. 88-89.
[152] Criteo, 'Explained: Data in the Criteo Engine: Introduction', (2022) cited in Andres V. Lerner, 'The Economics of Network Effects and User Data in the Provision of Search, Search Advertising, and Display Ad Intermediation', ACCC Digital Platform Inquiry (15 May 2019).
[153] adexchanger, 'AppNexus CEO Brian O'Kelley On Waging A Price War', (9 November 2017).
[154] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 82.

- Google has made **further commitments to limit its use of first-party data and third-party trackers**. In relation to the Privacy Sandbox initiative[155] and the upcoming deprecation of third-party cookies on Chrome:
    - Google has made legally binding commitments to the CMA (with global application) that it will not track users to target or measure digital advertising on inventory on third-party websites using either (i) personal data collected from Google's user-facing services; or (ii) personal data regarding users' activities on websites other than those of the relevant advertiser and publisher.[156]
    - Google will not build or user user-level identifiers to track users as they browse across the web.[157]

3. Play

In the ACCC's Fifth Interim Report the ACCC expresses concerns regarding the operation of Google's app marketplace, Play, due to Google's presupposed "gatekeeper" positions. The ACCC's characterisation overlooks the following key points.

Google's ecosystem is defined by choice and openness and does not "lock-in" users

The ACCC's Fifth Interim Report refers jointly to Apple and Google when raising concerns regarding the restrictive operation of their app marketplaces, as part of their mobile ecosystems.

However, by referring to Apple and Google together, the ACCC's Fifth Interim Report often fails to recognise important differences between Apple's closed model and the open Android ecosystem. Google's ecosystem has been deliberately designed to be different to enable greater choice and flexibility for device manufacturers, app developers and users.

- **Device manufacturers can obtain Android free of charge**, under an open-source licence.
    - Anyone can download and use (as well as modify) the Android source code, to create unique, differentiated products, without the need for any authorisation or consent from Google. Android device manufacturers include the likes of Amazon and Samsung.

[155] The Privacy Sandbox initiative aims to create technologies that both protect people's privacy online and give companies and developers tools to build thriving digital businesses. The Privacy Sandbox reduces cross-site and cross-app tracking while helping to keep online content and services free for all. See Google, 'Protecting your privacy online', (2022).
[156] CMA, *Decision to accept commitments offered by Google in relation to its Privacy Sandbox Proposals. Appendix 1A*, Case number 50972 (February 2022).
[157] Google Ads & Commerce Blog, 'Charting a course towards a more privacy-first web', (3 March 2021).

- **Device manufacturers can choose which and how many apps and app stores** (whether Play and/or other app stores) **they want to preinstall on their devices**.
    - Many OEMs choose to preinstall their own app stores and most Android devices ship with two or more app stores preloaded.
    - Android is available without any proprietary apps, including from Google. Google's own apps are licensed separately from Android and share "shelf space" on devices with non-Google apps.
- **App developers have access to Android functionality and need to write their apps only once for Android**. They can then be distributed and will work across the entire compatible Android ecosystem.
    - Google makes a substantial number of APIs available to all developers to enable them to build and improve their apps.[158] For Android 12, Google has developed a range of new features and APIs that are available to all developers.[159] For example:
        - Android already allows developer access to its NFC chip. On Android 12, apps can now enable NFC payments without the device screen turned on.
        - New platform APIs that provide support for ultra high-resolution camera sensors.
    - The ACCC's App Store Report acknowledged that they had not received complaints from developers about how Google provides access to Android and proprietary APIs.[160]
- **App developers can freely choose how they distribute their apps on Android.** Beyond Play, app developers can choose to distribute their apps through:
    - **Numerous other Android app stores and app subscription services** (such as the Samsung Galaxy Store and Amazon Appstore).
    - **Via direct downloads from their own (and third-party) websites**. For example, WhatsApp is available via WhatsApp's direct download page, or can be downloaded from Play. App repositories such as APK Mirror host thousands of apps to download.

[158] See Android for Developers, 'Android API Reference', (2022).
[159] See Android for Developers, 'Android 12 features and changes list', (2021).
[160] ACCC, 'Interim report No. 2 - App marketplaces', Digital platform services inquiry (28 April 2021), p. 61.

    - **Via negotiated preinstallation deals with device manufacturers** to preinstall their apps on devices so that users will have access to them out-of-the-box.
    - **Via web apps or app streaming services** (such as Nvidia).

- **App developers have flexibility to determine the in-app content of their apps on Play**:
    - Developers can make their apps on Play consumption-only (*i.e.* not offer in-app purchases of any sort, even if it is a paid service out of the app.)
    - Developers are also free to offer different SKUs within and outside of their apps. For a multiplatform service provider that sells content outside of the app, there is no requirement for content parity on Play.
- **Game streaming apps are welcome on Play.** Like music and video streaming apps, developers can distribute game streaming apps via Play as long as they adhere to Play's policies. Google does not require each game in the streaming service to be separately available on Play.
- **App developers own their relationship with their users.** Play not only allows but expects developers to support their users - for example, by providing refunds and other customer support.
- **App developers can talk to their users.** Developers, in any app, can refer users (*i.e.* via a linkout) to administrative information, such as an account management page, privacy policy or a help centre, provided the webpage does not eventually lead to an alternate payment method prohibited by the Payments policy.
- **Users are able to freely customise their devices.**
    - Users are able to **change default apps** for non-core phone features.
    - Users can **delete or deactivate** pre-installed apps.

Google's first party apps are subject to the same policies and principles as third party apps

The ACCC's Fifth Interim Report raises concerns that Google may be using its position as an app marketplace operator to preference or advantage its own first-party apps.[161]

[161] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), section 6.1.2, p. 127.

Play strives to treat all app developers fairly and equitably, whether big, small, third-party or first-party apps. It also seeks to be transparent about when certain features or functionality may not be available to all developers.[162]

- **All apps are subject to the same set of rules and policies**. Play's developer policies – including the requirement that apps use Play's billing system for in-app purchases of digital goods – apply to all apps on Play, including Google's own apps.
- **All apps are promoted in Play according to the same principles.**
    - **Google discloses the main factors used for app discovery and ranking on Play**, without allowing developers to "game" Play's algorithms.[163]
- **All apps in Play can be rated and reviewed by users**. This includes Google's first party apps.
- **Google has formal policies prohibiting the company-wide sharing of identifiable data about third-party apps gathered by Play.** This third-party data is not shared with Google's first party app developers to unfairly advantage them, or for purposes other than benefit across the Play and Android ecosystems.[164]

The service fee for paid apps and in-app payments reflects the value provided by Android and Play and supports Google ongoing investments

The ACCC's Fifth Interim Report repeats the ACCC's previous finding that the service fee paid by developers on in-app payments on Play is "*highly likely*" to be inflated by Google's market power.[165]

However, the ACCC does not substantiate this claim with any evidence. And this claim mischaracterises the nature of the service fee and fails to recognise the value it affords developers or the consistent price decreases over time.

- **The service fee funds major investments into the Android and Play ecosystem**. This includes investment in:[166]
    - **Android & the Play Store**: The free Android operating system enables hardware manufacturers to build a wide range of devices at different price points that gives users unprecedented choice. And the Play Store delivers the world's largest selection of apps and games, available in over 190 countries with personalised recommendations and easy discovery of high-quality apps.

[162] Google Play Console Help, 'Availability of Features and Services', (2022).
[163] Google Play Console Help, 'App Discovery and Ranking', (2022).
[164] Google The Keyword Blog, 'How to sustain a safe, thriving app and game ecosystem', (10 December 2021).
[165] ACCC, Interim Report No. 5 – Regulatory reform, Digital platform services inquiry (September 2022), p. 42.
[166] Google Play Console Help, 'Understanding Google Play's Service Fee', (2022).

- **New Android platforms**: We build platforms for new form factors such as Auto and TV to help developers increase their reach in new ways.
- **Security**: Consumers trust Android and Play because of its security, the reviews of apps to ensure they comply with policies around safety and privacy, and with automated security of Google Play Protect that scans over 100 billion apps per day.
- **App distribution**: Developers can instantly reach over three billion Android users with the ability to optimise delivery by device and functionality and provide ongoing updates.
- **Developer tools**: Developers can run experiments, beta test, optimise store listings, analyse performance, and more.
- **Billing system**: Users enjoy safe and trusted payments, while developers can easily transact with 700 million users using Play gift cards and locally relevant forms of payment.

- **The vast majority of developers do not pay a service fee.** The service fee is only charged when a developer chooses to charge users for their app or offer digital content for purchases within their app.
  - This means that **only 3% of developers are subject to the service fee**.
  - The **other 97%** can distribute their app on Play and utilise all the developer tools and services at no cost.
- **The service fee has never been raised - instead it has been subject to multiple reductions**. This has been as a result of competitive pressure (in particular from Apple).[167] Today, of the 3% of developers who are required to pay the service fee, **99% qualify for a fee of 15% or less**.

  Most recently it was announced that:
  - From 1 July 2021, the service fee was reduced from 30% to 15% for the first US$1 million of revenue every developer earns each year.[168]
  - From 1 January 2022, the service fee for all digital subscription payments on Play was reduced to 15%, starting from day one. Previously, the fee dropped from 30% to 15% after 12 months of a recurring subscription. It was also announced that

[167] For instance in November 2020, Apple announced its own App Store Small Business Program, under which it reduced its service fee to 15% for developers who earned up to US$1 million in the previous calendar year. See Apple Developer News and Updates, 'Announcing the App Store Small Business Program', (18 November 2020).
[168] Android Developers Blog, 'Boosting developer success on Google Play', (16 March 2021).

ebooks and on-demand music streaming services are eligible for a service fee as low as 10%.[169]

- **Charging a service fee is common practice and the level of the service fee has been found to be competitive with similar providers.**
    - The most prominent app stores and software distribution platforms, such as the Apple App Store, Samsung Galaxy Store, Amazon App Store and Microsoft Store, all have policies that require developers to pay fees, and use the platform's in-app payment system to purchase in-app digital products, with certain carve outs.[170]
    - Play's service fee has been found to be competitive with other stores.[171] In the CMA's Interim Report into Mobile Ecosystems, it found that Google's rates were similar to those set by other app stores.[172]

[169] Android Developers Blog, 'Evolving our business model to address developer needs', (21 October 2021).
[170] Analysis Group, 'Apple's App Store and Other Digital Marketplaces', (July 2020), p. 12.
[171] Vox Media, 'A guide to platform fees: Apple App Store, YouTube, Twitch, and more - The Verge', (24 August 2021).
[172] This was also acknowledged by the CMA. See CMA, 'Mobile ecosystems - Market study interim report', (14 December 2021), para. 4.226, 4.229, 4.232.

Annex 4: Overview of the controls Google makes available to users

Users have a number of ways to control and manage Google's processing of their data, including processing of data across services. These options include: (i) privacy settings and controls; (ii) switching between signed-in and signed-out status; (iii) using multiple accounts; (iv) private browsing; (v) data deletion, (vi) Google Takeout, and (vii) the Data Transfer Project.

Privacy settings and controls. Google provides a range of granular privacy settings and controls through which users can manage Google's processing of their data. These controls include options that provide users with the choice of enabling or disabling particular personalisation features or the recording of particular data types while retaining the ability to use the service in question.

To facilitate access to, and use of these tools, Google has centralised them in an easily accessible privacy hub. Centralisation of these controls enables users to set preferences across Google services from a single space. This increases engagement with the options available and the sense of control the options provide.

In general terms, Google provides a number of privacy options to all users, regardless of whether they are signed-in and a number of additional privacy controls for logged-in users to control what data gets associated with their account.

- Privacy controls that are available to all users include the ability to control search customisation, YouTube watch history and related personalisation, and ads personalisation. Android users can control access rights of individual apps, including whether an app can read location data, such as GPS and other sensor data, from their device.

- For signed-in users, Google additionally provides controls via the Google Account dashboard (accessible from the header of all core Google products) including Web & App Activity, YouTube watch history and related personalisation, Location History (which is off by default), and ads personalisation.

Through these settings, both signed-in and signed-out users have considerable control over the manner in which Google processes their data.

A user can revisit their privacy choices at any time. Google provides a range of powerful tools to modify the privacy settings of an existing account. For example:

- The **Web & App Activity** controls whether Google saves a user's activity on Google sites and apps in order to provide users better recommendations and more personalised experiences in Maps, Search, and other Google services. Users can turn this setting off entirely or they can maintain Web & App Activity on Google sites while excluding data being saved from Chrome history and third

party sites or from audio recordings. These controls are made easily accessible through a single panel in the My Activity account space.

- Google provides a detailed account page that provides additional explanations around the more granular options for users:
    - With the **YouTube History** control, users can prevent Google from saving in their account the history of what they search for on YouTube or what they watch.
    - Google also provides a range of **Ads personalisation** features, including granular controls over what information is used to show users ads. Google provides access to these controls in the same central location as the controls described above.
    - Certain products may also offer users additional controls that are tailored to the specific nature of the product in question. For instance, Chrome has an option that enables users to prevent Chrome "syncing" data to their Google Accounts, enabling them to use Chrome separately from the rest of their Google experience.

Switching between signed-in and signed out status. A user can use the same Google service or different Google services with varying log-in status. Users can use this flexibility to control data use, including cross-service data use. A user can, for example, be signed-in to YouTube but use Search without signing-in, which prevents the user's search history from being used for recommended video personalisation in YouTube.

Multiple accounts. Users can also maintain multiple accounts for use of different Google services. Users can block cross-service use of data while maintaining full signed-in status by using different accounts for different services.

Private browsing. Another option for users to control the recording and use of their data is to use private browsing settings on their browser. Chrome browser offers an "incognito mode" which prevents saving of browsing history, cookies, or information in forms. In addition, the iOS and Android apps for Google Maps, YouTube, and Google Search similarly offer an "incognito mode" that provides the same functionality within the apps.

Deleting data. Users who are signed-in can view their past activity in their account, delete all or specific items, or set up an auto delete to delete the activity on a rolling basis. Non-signed-in users can clear their browser cookies, which will "reset" their data.

Google Takeout. Google has developed Google Takeout specifically to allow users to easily download their data in commonly used, machine readable formats (allowing for the easy upload of such data to third-party service providers). Google Takeout can be used to transfer photos directly from Google Photos to Flickr and Microsoft OneDrive. Google Takeout is

available for multiple Google services including services which are available in connection with Google Assistant.

For example, where a user creates lists (including shopping lists) or notes using Google Assistant, the user can subsequently download such lists in CSV format via Google Takeout. Additionally, users can download records of their activity data (such as their search history, YouTube history, web and app activity, and location history) including where such activities have been collected via Google Assistant. Activity data can be downloaded in multiple formats: activity records can be downloaded in HTML and JSON, while images related to activity records are available in JPEG and audio attachments are available in MPEG formats.

Once the user has selected the data they wish to download and the format, the user can then choose whether to download the data as a .zip or .tgz file (both of which can be opened on almost any computer). The user may also be able to select from the following data-file-delivery methods: (i) download link sent via email, (ii) data added to the user's Google Drive, (iii) data uploaded to the user's Dropbox account, (iv) data uploaded to the user's Microsoft OneDrive account, or (v) data uploaded to the user's Box account.[173]

Data Transfer Project. The Data Transfer Project[174] (DTP) was launched in 2018 to create an open-source, service-to-service data portability platform to enable users across the web to easily move their data between online service providers whenever they want.

The DTP extends data portability beyond a user's ability to download a copy of their data from their service provider, to providing the user the ability to initiate a direct transfer of their data into and out of any participating provider (*e.g.*, transferring photos directly from Google Photos to Microsoft OneDrive).[175]

[173] Google Account Help, 'How to download your Google data', (2022).
[174] Data Transfer Project, 'About us', (2022).
[175] Likewise, customers of DV360 and Campaign Manager control all data derived from their use of these services and can export a significant amount of reporting and analysis which they can choose to provide to anyone, without restriction.

Annex 5: Google's approach to tackling harmful content

Core to Google's mission is a focus on the relevance and quality of the information we present to users. In different ways across our different platforms, we strive to connect people with "high-quality information"; the most useful, trustworthy, and helpful content at the moment a person needs it. At the same time, we work to prevent user and societal harm and limit the reach of "low-quality information"; content that strays furthest from those qualities.

Sorting "high-quality" from "low-quality" information is a large, dynamic challenge without a perfect answer. The breadth of information available online makes it impossible to give each piece of content an equal amount of attention, human review, and deliberation. Even if that were possible, reasonable people could disagree on appropriate outcomes. Similarly, no ranking system can be perfect, nor will everyone agree on the values for which they should optimise.

Each of the products and services we offer has a different purpose, and people have different expectations of what kind of content they will interact with on each. So, we tailor our approach to the content that should be available on each product and service carefully.

Our products and services fall on a spectrum, from most open to more protected.[176] Google Search serves as an index of pages available on the open web, where users expect to find every legal webpage pertaining to their query. Therefore, it is on the most open end of that spectrum. On the other end, our advertising products include more protections, as we do not want to profit from those who create harmful content or experiences. Other products fall elsewhere on the spectrum.

We rely on four complementary levers (remove, raise, reduce, reward) to support information quality and moderate content across many Google products and services:

- **Remove**: We set responsible rules for each of our products and services and take action against content and behaviours that infringe on them. We also comply with legal obligations requiring the removal of content.
- **Raise**: We elevate high-quality content and authoritative sources where it matters most.
- **Reduce**: We reduce the spread of potentially harmful information where we feature or recommend content.
- **Reward**: We set a high standard of quality and reliability for publishers and content creators who would like to monetise or advertise their content.[177]

[176] Google, 'Information quality and content moderation'.
[177] Google, 'Information quality and content moderation'.

These levers allow us to be consistent in our methodology, but tailor their implementation to suit the specific needs and uses of each product or service.

We employ a combination of manual and automatic tools to prevent issues before they are experienced by users, or result in complaints or disputes, as described below for Search and our ads products.

Tackling malicious actors and harmful content on Search

Google faces significant challenges in tackling malicious actors and harmful content on Search. Malicious actors continue to attempt to harm or deceive Search users through a wide range of actions, including tricking our systems in order to promote their own content (via a set of practices we refer to as "webspam"), propagating malware, and engaging in illegal acts online. The creators and purveyors of disinformation employ many of the same tactics.

Google is not in a position to assess objectively, and at scale, the veracity of every piece of content on the web or the intent of its creators:[178]

- There are trillions of webpages on the web, which are constantly being updated, all while new pages are being created.
- There are hundreds of billions of webpages in Google's index.
- There are billions of Search queries around the world every day, and 15% of the searches we see each day are searches we've never seen before.
- More than 19 million Australians actively use Google Search each month.[179]

Further, a considerable percentage of content contains information that cannot be objectively verified as fact. This is because it either lacks necessary context, because it is delivered through an ideological lens others may disagree with, or because it is constructed from contested datapoints.

To tackle harmful content and protect Search users from disinformation, Google Search takes a pragmatic approach:

- **Make Quality Count.** We use ranking algorithms to elevate authoritative, high-quality information in our products. For most searches that could potentially surface misleading information, there is high-quality information that our ranking algorithms can detect and elevate. When we succeed in surfacing high-quality results, lower quality or outright malicious results (such as disinformation or otherwise deceptive

[178] Google, 'How Google Fights Disinformation', (February 2019), p. 10.
[179] Nielsen Digital Panel, All demographics, PC, Smartphone and Tablet, Unique Audience, February 2019, cited in ACCC, 'Digital Platforms Inquiry Final Report', Digital Platforms Inquiry (June 2019), p. 43.

pages) are relegated to less visible positions in Search, letting users begin their journey by browsing more reliable sources. As noted above, our ranking system does not identify the intent or factual accuracy of any given piece of content. However, it is specifically designed to identify sites with high indicia of expertise, authority, and trustworthiness, like Wikipedia.

- **Counteract Malicious Actors.** We look for and take action against attempts to deceive our ranking systems or circumvent our policies. Our algorithms can detect the majority of spam and demote or remove it automatically. **In 2020, Google's systems identified 40 billion spam pages everyday**.[180] **In 2021, Google's systems identified nearly six times more spam sites than in 2020.** This resulted in a major reduction in hacked spam (70%), which was a spam type commonly observed in 2020, and gibberish spam on hosting platforms (75%).[181] In 2017, **we took action on 90,000 user reports of search spam and algorithmically detected many more times that number.**

- **Give Users More Context.** We provide users with tools to access the context and diversity of perspectives they need to form their own views.

- **Troubleshooting tools.** We provide users and webmasters with online tools for troubleshooting, requesting removals and raising complaints regarding content on Search. Please see the section on complaint handling at the end of this Annex for more details.

- **Content removal (in limited circumstances).** Google Search aims to make information from the web available to all our users - that is, to be a reflection of the web. That's why we do not remove content from results in Google Search, except in very limited circumstances. These include legal removals, manual actions against webspam under our Webmaster Guidelines,[182] or a request from the webmaster responsible for the page.

Tackling malicious and harmful ads

Our ads and monetisation products enable businesses of all sizes from around the world to promote a wide variety of products, services, applications, and websites on Google and across our partner sites and apps, making it possible for Internet users to discover more content they care about.

[180] Google Search Central, 'How we fought Search spam on Google in 2020', (29 April 2021); Google, 'How Google keeps you safe on Search', (27 January 2021).
[181] Google Search Central Blog, 'How we fought Search spam on Google in 2021', (21 April 2022).
[182] Google Search Central, 'Webmaster guidelines', (28 February 2022).

We understand that the content of both ads and publisher sites needs to be safe and provide a positive experience for users. To keep people safe and preserve trust in the ads ecosystems, we:

- **Develop policies and guidelines designed to catch bad behaviours.** We develop policies that govern the types of ads allowed on Google[183] and what content can and cannot be monetised, in order to protect people from inappropriate or harmful ads or content. Relevantly:
    - **Misrepresentation.** Our misrepresentation policy includes but is not limited to:
        - *unacceptable business practices* (such as impersonating brands or businesses by referencing or modifying the brand content in the ads, URL, destinations or misrepresenting yourself as the brand or business in user interactions; enticing users to part with money or information through a fictitious business that lacks the qualifications or capacity to provide the advertised products or services);
        - *misleading representations* (such as implying affiliation with or endorsement by, another individual, organisation, product, or service without their knowledge or consent);
        - *dishonest pricing practices* (such as failure to clearly and conspicuously disclose the payment model or full expense that a user will bear);
        - *clickbait ads*; and
        - *promoting unreliable claims* (such as making inaccurate claims or claims that entice the user with an improbable result (even if this result is possible) as the likely outcome a user can expect) or unavailable offers.[184]

      In 2020, we blocked or removed 101 million ads for violating our misrepresentation policies.[185]

      Our publisher policies[186] similarly prohibit misrepresentative content, including:

        - content that makes claims that are demonstrably false and could significantly undermine participation or trust in an electoral or democratic process; and

[183] Google Advertising Policies Help, 'Google Ads policies', (2022).
[184] Google Advertising Policies Help, 'Misrepresentation', (2022).
[185] Google Ads & Commerce Blog, 'Our annual Ads Safety Report', (17 March 2021).
[186] Google AdSense Help, 'Google Publisher Policies', (2022).

- content that deceives users through manipulated media related to politics, social issues, or matters of public concern.[187]

- **Inappropriate content.** We value diversity and respect for others, and we strive to avoid offending users, so we don't allow ads or destinations that display shocking content or promote hatred, intolerance, discrimination, or violence.[188] We also have long-standing policies to disallow monetisation of inappropriate content on our advertising platforms, the details of which are publicly available online.[189] This includes but is not limited to:

    - *dangerous or derogatory content* (including content that harasses, intimidates or bullies an individual, and content that seeks to exploit others, for example, extortion or blackmail);

    - *shocking content* (such as promotions containing violent language, gruesome or disgusting imagery graphic images or accounts of physical trauma, or promotions that suggest you may be in danger, be infected with a disease or be the victim of a conspiracy); and

    - *sensitive events* (including ads that potentially profit from or exploit a sensitive event with significant social, cultural, or political impact, such as civil emergencies, natural disasters, public health emergencies, terrorism and related activities, conflict, or mass acts of violence).

- **Abusing the ad network.**[190] We want ads across the Google Network to be useful, varied, relevant, and safe for users. We don't allow advertisers to run ads, content, or destinations that attempt to trick or circumvent our ad review processes. For example, this policy prohibits (among other things):

    - *cloaking* (showing different content to certain users, including Google, than to other users) that aims at or results in interference with Google's review systems, or hides or attempts to hide non-compliance with Google Ads policies;

    - *repeated policy violations* across any of the advertiser's accounts, including creating new domains or accounts to post ads that are similar to ads that have been disapproved (for this or any other Google Ads policy);

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[187] Google The Keyword Blog, 'An update on our political ads policy', (20 November 2019).
[188] Google Advertising Policies Help, 'Inappropriate content', (2022).
[189] Google Advertising Policies Help, 'Inappropriate content', (2022); Google AdSense Help, 'Google Publisher Policies', (2022), '*Dangerous or derogatory content*'; and Google AdSense Help, 'Google Publisher Policies', (2022), '*Shocking content*'.
[190] Google Advertising Policies Help, 'Abusing the ad network', (2022).

- *bypassing enforcement mechanisms and detection* by creating variations of ads, domains or content that have been disapproved (for this or any Google Ads policy);
- *manipulation of ad components* (text, image, videos, domain, or subdomains) in an attempt to bypass detection and / or enforcement action; and
- *submitting false information* as part of our verification programs.[191]

- **Review content on our advertising platforms and enforce our policies.** Our enforcement teams use a variety of robust methods to ensure content on our advertising platforms adheres to our policies, including machine learning, human review, and other technological methods.

  We have always relied on a combination of humans and technology to enforce our policies and will continue to do so. When we find policy violations we take action to enforce our policies. Depending on the policy violation, this can include blocking a particular ad from appearing and removing ads from a publisher page or site. In cases of repeated or egregious violations, we may disable an account altogether.[192]

  Our annual 'Ads Safety Report' outlines the scale of our work to enforce our advertising policies, including the number of ads that were removed, the number of pages that we stopped showing ads on, the number of advertiser and publisher accounts that were terminated throughout the year, and the number of updates we made to our policies over the course of the year.[193] Notably, in 2021:[194]

  - **We removed over 3.4 billion bad ads, restricted over 5.7 billion other ads and suspended over 5.6 million advertiser accounts.**
  - We also blocked or restricted ads from serving on 1.7 billion publisher pages, and took broader site-level enforcement action on approximately 63,000 publisher sites.
  - Over 657,000 ad creatives were blocked from Australian advertisers for violating our misrepresentation ads policies (misleading, clickbait, unacceptable business practices, etc).[195]

[191] Google Advertising Policies Help, 'Abusing the ad network', (2022).
[192] For more information regarding Google Ads enforcement, see: Google Advertising Policies Help, 'What happens if you violate our policies', (2022); and Google AdSense Help, 'Fix policy issues that affect ad serving', (2022).
[193] Google, '2021 Ads Safety Report' 4 May 2022.
[194] Google, '2021 Ads Safety Report' 4 May 2022.
[195] Google, 'Annual Transparency Report', (May 2022).

Our 'Ads Safety Report' also outlines the new policies/technology we have introduced to stay ahead of potential threats, including a multi-strike system for repeat policy violations and updates to over 30 policies or restrictions for advertisers and publishers, including a policy prohibiting claims that promote climate change denial.[196]

- **Detect and combat ad fraud.** Google has strong incentives to combat ad fraud. Ensuring a safe user experience, and maintaining advertisers' and publishers' trust in the online advertising ecosystem, and Google's offerings in particular, is critical to the continued success of Google products, and far outweighs whatever marginal, short-term benefits we could derive from tolerating fraud.

  We use a combination of automated detection technology and human review processes to tackle ad fraud and scams. Google's global fraud prevention team includes data scientists, engineers and researchers that have developed over 200 sophisticated filters (algorithms) to date and work with thousands of human reviewers.[197] If Google detects fraudulent activity, we will rectify the situation as soon as possible including via suspending suspected fraudulent accounts and refunding advertisers.[198]

- **Apply our Advertiser verification program.** The Advertiser verification program is Google's unified verification program that consolidates identity and business operations verification in a single flow. The program comprises a series of steps that advertisers may be required to follow and complete. Under this program, advertisers are asked to provide basic information about their business and identity. [199]

- **Increase transparency, choice and control for users**. We give users tools to find out more information about a particular ad, make a complaint about ads,[200] see how Google tailors ads for them, stop seeing ads from a specific company or opt out of personalised ads.

- **Supporting industry efforts.** In addition to the above, we support industry efforts like the Coalition for Better Ads to protect people from bad experiences across the web.[201]

Complaints handling systems

Google's measures described above address the vast majority of potential issues before they result in a complaint or a dispute.

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[196] Google, '2021 Ads Safety Report' (4 May 2022).
[197] Google Marketing Platform, 'Connect with high-quality publishers and broadcasters in Display & Video 360's Inventory module', (13 November 2018); Google Ads Traffic, 'How does Google prevent invalid activity?', (2022).
[198] Google Ads Traffic Quality, 'How does Google prevent invalid activity?', (2022).
[199] Google Advertising Policies Help, 'About verification', (2022).
[200] Google Ads Help, 'Report an ad/listing', (2022).
[201] Coalition for Better Ads, 'Coalition to Adopt Better Ads Standards Worldwide', (2018).

Where a complaint or dispute is raised, we use a combination of innovative tools to provide users with an effective and robust dispute resolution process. Each of Google's products has a specific complaints handling process which reflects the nature of the products, their users and the type of complaints that arise. Implementing product-specific complaint processes enables Google to provide effective and efficient dispute resolution for business users and consumers.

Our systems have the following common elements:

- **Online tools:** Google provides users and customers with user facing online tools to seek support and raise complaints about its products. These tools allow users to provide supporting material in substantiation of their complaints.
- **Global resources:** We operate globally and have significant product and technical expertise sitting outside Australia. We rely on internal resources (located across multiple regions) and third party vendors for user / customer support and complaints handling. This helps our response times and enables us to provide 24-hour coverage.
- **Timely resolution:** We endeavour to resolve complaints in a timely manner. We do not, however, have rigid timeframes for resolving complaints - again, reflecting the wide range of complaints that may arise. Some complaints are more critical than others (for example, a video of a terrorist attack, which contains abhorrent violent material), some complaints can be easily addressed, while others take longer to investigate.
- **Flexibility to triage and prioritise based on risk level and urgency:** Our systems are sufficiently flexible to allow us to take a risk-based approach to complaints handling, enabling us to respond more quickly to urgent issues where there is a high risk of broader harm, while allowing sufficient time to properly consider more nuanced issues.
- **Appropriate transparency:** Google also endeavours to provide complainants information about its decision. However, in doing so, we balance the desire to provide information to the complainant with the need to safeguard confidential and commercially sensitive information that could be used by bad actors to exploit or game our products and systems. We also strive to ensure that no user, website or customer receives access to information that may bias or influence the independence of Google's products. This means that in some cases, complainants are referred back to publicly available information.
- **Appeal processes:** In the case of account suspensions or terminations, internal appeal processes are available (except for enforcement actions like those taken recently in connection with the war in Ukraine). For example, if Google terminates a publisher's AdSense account, Google will email the publisher informing the publisher of the action taken, with a link to the appeal form.

- **Prompt review of appeals:** We endeavour to review appeals promptly, and inform the account holder of our decision. In reviewing appeals, it may be necessary for primary review teams to seek input from other teams and specialists.

Annex 6: Google's processes to protect against harmful apps

Google's interests in the app review process and in enforcing its policies are closely aligned with those of developers and users

Google is incentivised to ensure that consumers have access to as many high-quality apps as possible - so that they try, or keep using, Play. All of Google's policies are designed with users' and developers' interests in mind - they promote a safe and secure environment for all stakeholders.

Before apps are made available on Play, they are subject to our rigorous app review process to identify potentially harmful apps[202] that contain malware, as well as apps that otherwise violate Google's Play Developer Distribution Agreement (**DDA**)[203] and Developer Program Policies (**DPP**).[204]

The review criteria we use, as set out in the DPP, include:

- **Restricted content**: Google does not permit apps that contain certain restricted content, including child endangerment, deceptive or harmful financial products and services, and certain other inappropriate content such as hate speech, sexual content, and profanity.
- **Impersonation and Intellectual Property:** Google does not permit apps that:
    - use another app's or entity's brand, title, logo, or name in a manner that may mislead users;
    - infringe upon intellectual property rights (including trademark, copyright, patent, trade secret, and other proprietary rights); or
    - encourage or induce the infringement of intellectual property rights.
- **Privacy, deception and device abuse:** Google does not permit apps that are deceptive, malicious or intended to abuse or misuse any network, device or personal data. If an app collects user data, the developer must clearly disclose what data it collects and why, and include the developer's privacy policy in the store listing and the app.

[202] Google Play Protect, 'Potentially Harmful Applications (PHAs)', (12 November 2019).
[203] Google Play, 'Google Play Developer Distribution Agreement' (17 November 2020).
[204] See Google Play, 'Developer Policy Center', (2022). Our policies are generally updated quarterly and all developers are notified via email of any changes. Developers have at least 30 days to make any necessary updates to their apps, and longer if the updates are likely to be significant.

- **Store Listing and Promotion:** App developers must describe their app appropriately and accurately. Any misleading metadata or promotions that are harmful to users are not permitted.
- **Spam and Minimum Functionality:** At a minimum, apps should provide users with a basic degree of functionality and a respectful user experience. Therefore, Google does not allow apps that exhibit behaviour that is not consistent with a functional user experience, or that serve only to spam users or Play.

To ensure that apps are quickly and efficiently available for distribution through Play, the app review process involves automation as well as input from human reviewers. On average, new apps are uploaded within a few hours of their submission for review. In 2020, our automated detection capabilities and app review processes prevented over 962,000 policy-violating apps from getting published to Play. We also banned 119,000 malicious and spammy developer accounts.

Play provides a flexible and proportionate intervention and appeal process for non-compliant apps

Where Google finds an app is in breach of the DDA and/or DPP, Google acts in accordance with the enforcement process as outlined on the DPP Centre Page.[205] The level of enforcement is proportional to the seriousness of the violation and accounts for whether a developer's violations are habitual.

Developers can appeal all enforcement actions using an online form, which takes just a few minutes to fill out. Instructions for filing an appeal are included in each email informing a developer of enforcement action taken against their apps or account. Google typically responds to appeals within two to three days. If a developer's appeal of an app removal or app rejection is denied and the developer's Play Console account is still in good standing, the developer may upload a new, policy compliant version of its app.

Repeated or serious violations of our policies (such as malware, fraud, and apps that may cause user or device harm) or of the DDA may result in the termination of the developer's accounts.

User security is key to the Android ecosystem, including for Play

Android provides multiple layers of app protection for its users,[206] including:

- a range of security features (*e.g.*, Safe Browsing, Security Checkup, and 2-Step Verification) to protect users' accounts;

[205] Google Play, 'Developer Policy Center', (2022); Google Play Console Help, 'Enforcement process', (2022).
[206] Android, 'Android Enterprise Security Paper' (April 2021).

- Google Play Protect, a powerful threat detection service that, when enabled, monitors a device to protect it, its data, and apps from malware;[207]
- extensive policies, as described above, and enforcement of those policies, to protect users from malicious actors trying to distribute harmful apps; and
- Google's Advanced Protection Program, an account-level setting that allows users to operate at a higher level of security. For example, it can be of particular benefit to users who believe that they may be particularly vulnerable to malware and or malicious actors (*e.g.* journalists operating in hostile environments).[208]

User reporting

If a harmful app evades the policies and security measures described above, users of Play can easily flag it by completing and submitting a Report Inappropriate Apps Form,[209] which is available on the Google Play Help Centre.[210] Every submission of a form triggers a review of the app by Google, which involves an assessment of the app against the DPP. The category of inappropriate content reported as well as any explanation provided by the user may be used to help inform the review.

[207] If Google Play Protect identifies an app containing malware, it notifies the user. In 2019, Google Play Protect helped to prevent 1.9 billion malware installs. See Google Security Blog, 'Announcing our first GCP VRP Prize winner and updates to 2020 program', (11 March 2020).
[208] The Advanced Protection Program is an entirely optional, opt-in, feature, and users can choose whether or not they want to enrol. There are several methods by which users can enrol in the program. For example, they can register their Android phone's built-in security key (for Android 7.0+ phones), or use a physical key. For guidance as to how users' can enrol into the Advanced Protection Program, see: Google, 'Advanced Protection Program - Overview', (2022).
[209] Google Play Console Help, 'Report inappropriate apps', (2022).
[210] Google Play Help, 'How to report an app on the Google Play Store', (2022).

Annex 7: Google's position, existing practices and changes

Ad Tech

ACCC's concerns[211]	Actions Google is already taking
Data use	
Concerns about Google's use of data in ad tech, including: • Leveraging Google's "*extensive first-party data advantage*". • The extent of Google trackers on third party websites and apps. • The breadth of Google's terms and conditions relating to use of data, which allow it to use consumer's data for a wide range of purposes.	**Google has made public commitments to limit its use of first-party data and third-party trackers.** In relation to the Privacy Sandbox initiative and the deprecation of third-party cookies on Chrome: • Google has made legally binding commitments to the CMA (which Google will apply globally) that, after Chrome ends support for third party cookies it will not track users to target or measure digital advertising on inventory on third-party websites using either (i) personal data from Google's user-facing services; or (ii) personal data regarding users' activities on websites other than those of the relevant advertiser and publisher.[212] • Google has publicly announced that it will not build or use user-level identifiers to track users as they browse across the web.[213] In line with Recommendation 1 of the Ad Tech Inquiry Final Report, **Google has updated certain public-facing materials** to clarify that Google makes very

[211] We have sought to address what we have identified as the ACCC's core concerns. Failure to address a particular issue should not be taken as a concession or general agreement.
[212] See CMA, *Decision to accept commitments offered by Google in relation to its Privacy Sandbox Proposals*, *Appendix 1A* (February 2022).
[213] Google Ads & Commerce Blog, 'Charting a course towards a more privacy-first web', (3 March 2021).

ACCC's concerns[211]	Actions Google is already taking
	limited use of individual first-party data for ad targeting on third-party inventory.[214] **Google is constantly improving and developing tools for users to control how their data is used, including for advertising.** These form part of Google's industry leading privacy settings and controls. We summarise these settings and controls in **Annex 4**. • Further, Google recently announced the launch of 'My Ad Centre' later this year,[215] which will make it even easier for users to manage their ads privacy settings and whether to personalise their ads. My Ad Centre will give users greater control over the ads they see on YouTube, Search and on their Discover Feed. Users will also be able to choose the types of ads they see (*e.g.* fitness, vacation rentals) and learn more about the information Google uses to show these ads.
Transparency	
Concerns about transparency over ad tech service, including in relation to ad tech auctions, verification and attribution.	**Google provides publishers with a range of information about auctions on its ad server, Google Ad Manager** • Publishers can generate detailed and highly customisable reports on Ad Manager, enabling them to discover insights that are designed to help publishers capture advertising revenue more efficiently across their

[214] Google, 'Update on progress on ACCC recommendations in the Digital Advertising Services Inquiry', ACCC Digital Platform Services Inquiry (3 August 2022), p. 3.
[215] Google Australia Blog, 'How we make every day safer with Google', (12 May 2022).

ACCC's concerns[211]	Actions Google is already taking
	inventory. Publishers can select an extensive array of dimensions to include in their reports.[216] • Publishers can receive Data Transfer Files, which contain non-aggregated, event-level data from their ad campaigns. Data Transfer files contain event data that is accurate to the second, and publishers can choose to include other information in the files to see device, geography, and other information related to the event. • Google also provides publishers using Ad Manager with additional auction transparency via the Bid Data Transfer File, which enables publishers to create a full bid landscape including won and lost bids. **Google has introduced a new tool to provide additional information on the operation and outcome of the Google Ad Manager auction** • In line with Recommendation 5 of the Ad Tech Inquiry Final Report, Google has introduced a new version of Ads Data Hub for Google Ad Manager Publishers. This will enable publishers to compare bids received through header bidding with bids received from Google's SSP (via Authorised Buyers) and Open Bidding. While enabling publishers to access additional data, ADH for Publishers also includes robust privacy checks to protect end-user privacy.[217] **Google is actively involved in ongoing industry initiatives to improve**

[216] See Google Ad Manager Help, 'Report on performance: Create a new report', (2022); and Google Ad Manager Help, 'Ad Manager report dimensions', (2022).
[217] Google, 'Update on progress on ACCC recommendations in the Digital Advertising Services Inquiry', ACCC Digital Platform Services Inquiry (3 August 2022), p. 7.

ACCC's concerns[211]	Actions Google is already taking
	transparency and counter ad fraud. • Google worked with the Coalition for Better Ads to develop its Better Ads Standards for browsers to identify ad formats that significantly diminish user experience.[218] • Google also co-authored and led industry adoption of the Interactive Advertising Bureau's ads.txt and app-ads.txt specifications, which work together with industry initiatives sellers.json and SupplyChain object (discussed below). These initiatives were aimed at increasing trust and transparency in programmatic advertising by allowing publishers to designate authorised sellers of their inventory.[219] • Google supports seller.json across its sell-side products. Sellers.json is a standard for advertising platforms that enables programmatic buyers to identify entities behind inventory sellers. The standard arose following the launch of ads.txt standard to further increase security of the ad tech ecosystem and address ad fraud.[220] • Google also supports bid transparency with SupplyChain Object, which enables advertisers and intermediaries to see all parties who are selling or reselling inventory. It consists of 'nodes'. Each node represents a specific entity participating in the bid request, which includes all entities involved

[218] Google, 'Submission in Response to the ACCC's Issues Paper', ACCC Digital Advertising Services Inquiry (1 May 2020).
[219] Google, 'Submission in Response to the ACCC's Issues Paper', ACCC Digital Advertising Services Inquiry (1 May 2020), p. 7; IAB Tech Lab sources (1), (2) and (3).
[220] Google AdSense Help, 'Inventory management: Provide your seller information with sellers.json', (2022).

ACCC's concerns[211]	Actions Google is already taking
	in the direct flow of payment for inventory.[221] ● In line with Recommendation 4 of the Ad Tech Inquiry Final Report, Google is working with industry to implement a standard to enable independent verification of demand side platform services.[222] **Features of Google's products for advertisers provide significant transparency into the supply chain path.** Advertisers have access to: ● *Google Ads Data Hub (ADH) reports*. ADH now includes supply chain data from Sellers.json[223] and the SupplyChain Object to offer advertisers even more granular transparency into the supply ecosystem. ADH reports offer increased transparency into buying behaviours and allow advertisers to act on them for supply path optimisation processes. Insights available through ADH include average bid price by exchange, average path length by exchange, and delivery volume by exchange, domain, site ID. ● *DV360 reports*, which include a wide range of metrics about an advertiser's campaign, including: *"Invalid Traffic"* which is the estimated percentage of impressions filtered out pre-bid as invalid traffic, *"Available Requests"* which is the number of bid requests received before targeting was taken into consideration and *"Bid Responses"* which is the number of bid responses made to eligible bid requests.

[221] Google Ad Manager Help, 'Bid transparency with the SupplyChain object', (2022).
[222] Google, 'Update on progress on ACCC recommendations in the Digital Advertising Services Inquiry', ACCC Digital Platform Services Inquiry (3 August 2022), pp. 4-5.
[223] Sellers.json is a standard for advertising platforms that enables programmatic buyers to identify entities behind inventory sellers. See Google AdSense Help, 'Inventory management: Provide your seller information with sellers.json', (2022).

ACCC's concerns[211]	Actions Google is already taking
	• *Control over the supply chain using Bid Multipliers and Custom Supply Path (Alpha).* Bid Multipliers can be used to adjust the bid price per supply path. In this way, advertisers can include, exclude or adjust the bid price for certain supply paths based on performance and viewability concern. Custom Supply Path (currently in alpha mode) can also be used to bulk include or exclude a particular supply path. • *Frequency capping controls* (including on Google Ads, Display and Video 360) which allow advertisers to limit the number of times ads appear to the same person.[224] **Google also continues to build and refine its products to enhance transparency for publishers.** Publishers have access to: • *Ad Manager Data Transfer files, including granular impression data.* These files provide non-aggregated, event-level data from ads served on a publisher's site. Data Transfer reports include access to bidding information on a publisher's inventory, which gives publishers a way to identify buyers who may potentially qualify for premium inventory sold through Preferred Deals and Private Auctions.[225] • *Ad Manager Home Dashboards,* which provide daily snapshots of a publisher's Ad Manager and Ad Exchange revenue performance over time. Information about impressions, revenue, and eCPM can be filtered by inventory types and channels. Publishers can also use the "Top pricing rules" card to understand which bid amounts are winning auctions and

[224] Google, 'Google's Response to the Interim Report', ACCC Digital Advertising Services Inquiry (12 March 2021), p. 9.
[225] Google Ad Manager Help, 'Ad Manager Data Transfer reports: Access event-level data related to your Ad Manager network', (2022).

ACCC's concerns[211]	Actions Google is already taking
	how those winning values affect their earned revenue.[226] • *'Bid range' dimension (beta) and 'bid rejection reason' dimension in Ad Manager Reports*. The former shows the range within which the bid for the publisher's inventory falls (divided into $0.10 buckets). The latter is the reason the bid for the publisher's inventory lost or did not participate in the auction. [227] • *Frequency capping controls* including on Ad Manager and AdMob. **Google has developed its own effective measurement metrics for its advertisers that are independently verified.** • For instance, Google has obtained Media Ratings Council (**MRC**) accreditation for over 30 distinct measurement solutions, covering all of its billable metrics (such as clicks, impressions, and viewability) across search, video, and display for products including Google Ads, Google Marketing Platform, and Google Ad Manager.[228] • In 2021, YouTube became the first digital platform to receive content-level brand safety accreditation from the MRC. That accreditation was awarded again in May 2022, making YouTube the only platform to hold this distinction.[229]

[226] Google Ad Manager Help, 'Ad Manager Home dashboards', (2022); see also Google Ad Manager Help, 'Using your Overview Home dashboard', (2022).
[227] Google Ad Manager Help, 'Ad Manager report dimensions', (2022).
[228] See Media Rating Council Current Membership at Media Rating Council, 'Current Membership'. See also Google Partners Blog, 'Building trust and increasing transparency with MRC - accredited measurement', (21 February 2017). For a full list of Google's MRC accreditations, see Media Rating Council, 'Digital Metrics. Companies Accredited by MRC', (3 April 2022).
[229] See Google Ads & Commerce Blog, 'YouTube receives brand safety distinction for second year' (12 May 2022).

ACCC's concerns[211]	Actions Google is already taking
	Third-party verification providers are able to independently test Google's verification data. • Approved third party verification providers are given both the data and data-use permissions necessary to provide this independent verification in a privacy centric way. • Third party verification providers offer solutions that work across Google advertising products, including Google Marketing Platform, Google Ads, and YouTube. • Google allows these third parties to access ad log data, which can be exported through Ads Data Hub in aggregated form for privacy reasons.
Concerns about price transparency across the ad tech supply chain, including the ability for providers to retain hidden fees.	**Google is working with industry to implement an industry standard to help increase price transparency across the ad tech ecosystem (as recommended by the ACCC)** • Per Recommendation 4 of the Ad Tech Inquiry Final Report, Google is working with industry to implement a standard for ad tech providers to publish average fees and take rates for ad tech services.[230] **Google has developed a new feature so customers can ensure there are no hidden fees in the supply chain** • Google has developed a new feature, "Confirming Gross Revenues" (**CGR**), which will provide further transparency to ad buyers (*i.e.* agencies

[230] Google, 'Update on progress on ACCC recommendations in the Digital Advertising Services Inquiry', ACCC Digital Platform Services Inquiry (3 August 2022), pp. 4-5.

ACCC's concerns[211]	Actions Google is already taking
	and advertisers) and publishers regarding the prices paid for ad tech services.[231] ● CGR will enable buyers and publishers to compare aggregate gross revenue amounts in order to ensure there are no hidden fees in the supply chain.[232] **Google has taken additional measures to increase transparency over its fees across the supply chain.** ● Google's public submission, prepared by RBB Economics, in which it presents take rates for some of its main products based on a sample of one week's transactions in Australia.[233] ● A 2019 blog post, where Google stated that when ads were traded using Google's ad tech products, publishers kept 69% of the total amount paid to advertisers.[234] ● These analyses helped inform the ACCC's finding that there is no evidence that Google is charging hidden fees or retaining an undisclosed portion of advertising expenditure.[235] Similarly, the ACCC cites the UK CMA's finding that the take rate charged by Google Ads is similar to other

[231] Google Ad Manager, 'Advancing transparency for buyers and publishers', (27 July 2022).
[232] Google, 'Update on progress on ACCC recommendations in the Digital Advertising Services Inquiry', ACCC Digital Platform Services Inquiry (3 August 2022), pp. 5-6.
[233] RBB Economics, 'Google's ad tech take rates - Analysis of Google auction level data sets', submitted in the Digital advertising services inquiry (20 October 2020).
[234] Google Ad Manager, 'How our display buying platforms share revenue with publishers', (23 June 2020).
[235] ACCC, 'Interim report', Digital advertising services inquiry (December 2020), p. 155.

ACCC's concerns[211]	Actions Google is already taking
	DSPs.[236]
Self-preferencing and conflicts of interest	
Concerns about potential conflicts of interest and self-preferencing in ad tech.	**Google has appropriate controls in place to manage the potential for conflicts of interest** • The sharing of information between Google's ad tech products is limited by internal policies and controls, and contractual restrictions. **Google facilitates interoperability across products** • Google enables interoperability with a large number of competing platforms throughout the Google ad tech stack. For example: ○ On the buy-side, Google Campaign Manager is interoperable with any DSP, and Google DV360 supports over 80 ad exchanges. ○ On the sell-side, Google Ad Manager works with any ad exchange, not just Google's own exchange and supports 100s of ad networks and exchanges. Google Ad Manager also includes an ad exchange that is interoperable with any ad server on both the demand and supply side. **Google has made it easier for publishers to receive equal access to data and use our tools with other ad technologies.[237]**

[236] ACCC, 'Final Report', Digital advertising services inquiry (28 September 2021), p. 155.
[237] Google The Keyword Blog, 'Some changes to our ad technology', (7 June 2021).

Play

ACCC's concerns[238]	Actions Google is already taking
Exclusionary conduct, including anti-competitive self-preferencing and leveraging	
Concerns about app store operators controlling access to their app store, including: • Preventing developers from communicating with consumers, in particular with respect to alternate payment options. • Acting as "unavoidable business partners" and requiring developers to accept their terms to reach consumers.	**Developers distributing their apps on Play have numerous ways to reach out to users**. These are explained on Play's support page. • Developers can freely communicate with users outside their app, including about alternative purchase options.[239] They can use contact information obtained in-app to communicate via email marketing and other channels outside of the app. This can include subscription offers and even special pricing. • Within the app, developers have flexibility to communicate with their users. This includes communications about administrative information like an account management page, privacy policy, or to a help centre. Developers may provide a link to a webpage within their app, as long as the link does not lead to alternative payment options. • For apps that are consumption only (*i.e.* apps that do not enable users to purchase access to digital goods or services from within the app), developers may also communicate with users about purchasing options without direct links. **Developers also have multiple channels on Android through which they can distribute their apps, in addition to or instead of Play (*i.e.* Google is not an**

[238] We have sought to address what we have identified as the ACCC's core concerns. Failure to address a particular issue should not be taken as a concession or general agreement.
[239] Google Play Console Help, 'Understanding Google Play's Payments policy', (2022).

ACCC's concerns[238]	Actions Google is already taking
	"unavoidable business partner"). Developers can choose to distribute their apps through: • **Numerous other Android app stores and app subscription services** (such as the Samsung Galaxy Store and Amazon Appstore). Since the release of Android 12, Google implemented changes that make it even easier for people to use other app stores on their devices, while being careful not to compromise the safety measures Android has in place. • **Via direct downloads from their own (and third-party) websites**. For example, WhatsApp is available via WhatsApp's direct download page, or can be downloaded from Play. App repositories such as APK Mirror host thousands of apps to download.[240] • **Via negotiated preinstallation deals with device manufacturers** to preinstall their apps on devices so that users will have access to them out-of-the-box. • **Via web apps or app streaming services** (such as Nvidia and Amazon's Luna). • Developers only need to write their app once for it to be distributed across Android.
Concerns about app store operators monitoring downstream competitors and making use of developer data/information to	**Google has formal policies prohibiting the company-wide sharing of identifiable data about third-party apps gathered by Play.** This third-party data is not shared with Google's first party app developers to unfairly advantage

[240] See APK Mirror (2023).

ACCC's concerns[238]	Actions Google is already taking
develop or improve their own apps.	them, or for purposes other than benefit across the Play and Android ecosystems. [241]
Concerns about app store operators providing greater discoverability and ranking to their own first party apps and associated opacity around the operation of ranking algorithms.	**All apps are promoted in Play according to the same principles.** • Google discloses the main factors used for app discovery and ranking on Play, without allowing developers to 'game' Play's algorithms. (these disclosures comply with corresponding EU and Japanese P2B regulation).[242]

Concerns about withholding or limiting access of third party apps to device functionality.	**App developers have access to Android functionality**
	• Google makes a substantial number of APIs available to all developers to enable them to build and improve their apps.[243] For Android 12, Google has developed a range of new features and APIs that are available to all developers.[244] For example:
	  ○ Android already allows developer access to its NFC chip. On Android 12, apps can now enable NFC payments without the device screen turned on.
	  ○ New platform APIs that provide support for ultra high-resolution camera sensors.

[241] Google The Keyword Blog, 'How to sustain a safe, thriving app and game ecosystem', (10 December 2021).
[242] Google Play Console Help, 'App Discovery and Ranking', (2022).
[243] See Android for Developers, 'Android API Reference', (2022).
[244] See Android for Developers, 'Android 12 features and changes list', (2021).

ACCC's concerns[238]	Actions Google is already taking
	• The ACCC's App Store Report (at p 61) acknowledged that they had not received complaints from developers about how Google provides access to Android and proprietary APIs.[245] • Google also explains when certain features or functionality may not be available to all developers.[246]
Concerns about mobile operating system operators implementing and enforcing favourable pre-installation and default settings for their first party apps control over mobile operating systems implementing and enforcing favourable re-installation and default settings.	**Device manufacturers can choose which and how many apps and app stores (whether Play or other app stores) they want to preinstall on their devices.** • Many OEMs choose to preinstall their own app stores and most Android devices ship with two or more app stores preloaded. • Developers can negotiate with OEMs to have their apps preinstalled on Android devices. • Android is available without any proprietary apps, including from Google. Google's own apps are licensed separately from Android and share "shelf space" on devices with non-Google apps. **Users are able to freely customise their devices.** • Users are able to change all default apps on Android devices. • Users can delete or deactivate pre-installed apps.
Concerns about app store operators mandating use of their billing systems,	**Google has introduced a pilot program to explore the implementation of**

[245] See ACCC, Interim report No. 2 - App marketplaces, Digital platform services inquiry (March 2021), p. 61.
[246] See Google Play Console Help, 'Availability of Features and Services', (2022).

ACCC's concerns[238]	Actions Google is already taking
including the level of the service fee associated with use of those billing systems.	**user-choice billing**.[247] ● Participation in the pilot is open to all developers of non-gaming apps who can offer user-choice billing to users in over 35 countries, including Australia.[248] **The service fee has never been raised - instead it has been subject to multiple reductions**. These reductions have been made in consultation with developers and as a result of competitive pressure (in particular from Apple).[249] ● Today of the 3% of developers who are required to pay the service fee, 99% qualify for a fee of 15% or less. ● Most recently it was announced that: ○ From 1 July 2021, the service fee was reduced from 30% to 15% for the first US$1 million of revenue every developer earns each year.[250] ○ From 1 January 2022, the service fee for all digital subscription payments on Play was reduced to 15%, starting from day one.

[247] See Android Developers Blog, 'Exploring User Choice Billing With First Innovation Partner Spotify', (23 March 2022).
[248] See Android Developers Blog, 'Continuing our Commitment to User Choice Billing', (10 November 2022); Google Play Console Help, 'Enrolling in the user choice billing pilot', (2023).
[249] For instance in November 2020, Apple announced its own App Store Small Business Program, under which it reduced its service fee to 15% for developers who earned up to US$1 million in the previous calendar year. See Apple Developer News and Updates, 'Announcing the App Store Small Business Program', (18 November 2020).
[250] See Android Developers Blog, 'Boosting developer success on Google Play', (16 March 2021).

ACCC's concerns[238]	Actions Google is already taking
	Previously, the fee dropped from 30% to 15% after 12 months of a recurring subscription.[251] ○ As part of the Play Media Experience program, it was also announced that ebooks and on-demand music streaming services are eligible for a service fee as low as 10%.[252] **The service fee enables Google to maintain its investment in the Play and Android ecosystem, helps developers reach users and build sustainable businesses, and keeps the platform safe and secure.** In particular the fee funds major investments into: ● **Android & Play**: The free Android operating system enables hardware manufacturers to build a wide range of devices at different price points that gives users unprecedented choice. And Play delivers the world's largest selection of apps and games, available in over 190 countries with personalised recommendations and easy discovery of high-quality apps. ● **New Android platforms**: We build platforms for new form factors such as Auto and TV to help developers increase their reach in new ways. ● **Security**: Consumers trust Android and Play because of its security, the reviews of apps to ensure they comply with policies around safety and privacy, and with automated security of Play Protect that scans over 100 billion apps per day. ● **App distribution**: Developers can instantly reach over three billion

[251] See Android Developers Blog, 'Evolving our business model to address developer needs', (21 October 2021).
[252] See Google Play Console, 'Play Media Experience Program', (2022).

ACCC's concerns[238]	Actions Google is already taking
	Android users with the ability to optimise delivery by device and functionality and provide ongoing updates. • **Developer tools**: Developers can run experiments, beta test, optimise store listings, analyse performance, and more. • **Billing system**: Users enjoy safe and trusted payments, while developers can easily transact with 700 million users using Play gift cards and locally relevant forms of payment. **Through the end of June 2021, over USD$120 billion has been earned cumulatively by developers around the world from Google Play.**[253]

[253] See 'Alphabet Q2 2021 Earnings Call', (27 July 2021).

Search

ACCC's concerns[254]	Google's position and existing practices
Exclusionary conduct, including anti-competitive self-preferencing, bundling/tying and leveraging	
Concerns about Google foreclosing rivals' access to users and generating beneficial economies of scale and network effects (such as access to more click-and-query data than its rivals, which allows Google to continually improve the relevance of its search results, attracting more users, and entrenching Google's dominance) as a result of: ● its preinstallation and default arrangements; and ● the power of defaults and consumer inertia.	The statement in the ACCC's Fifth Interim Report that Google is able to generate beneficial economies of scale and continually improve its services through access to search data does not identify a competitive harm. To the contrary, it identifies the opposite: benefits to users from Google's innovation and improvement of Search. The ACCC's Fifth Interim Report's comments about preinstallation and defaults overlook that there is a consistent body of evidence demonstrating that Google's popularity reflects its quality (due to Search's constant innovation), not default and preinstallation arrangements (discussed further in **Annex 3**). In addition: ● **Defaults and preinstallation benefit users by creating a seamless experience.** Defaults and preinstallation mean that users can access a given service seamlessly upon initial activation of a device or first use of a platform. OEMs and developers set defaults and preinstall services to create a positive experience for users on their platforms, based on their view of what service will make their platforms more competitive. Accordingly, defaults and preinstallation benefit users by making it easier for them to use services quickly and easily.

[254] We have sought to address what we have identified as the ACCC's core concerns. Failure to address a particular issue should not be taken as a concession or general agreement.

ACCC's concerns[254]	Google's position and existing practices
	• **Defaults and preinstallation benefit OEMs and developers by allowing them to monetise distribution opportunities on devices.** Defaults and preinstallation also benefit OEMs and developers by providing an important source of revenue. Services compete for default and preinstallation opportunities based on their quality and by offering to remunerate OEMs and developers. OEMs and developers, in turn, use these revenues to reduce the cost of supplying devices and browsers, thereby benefiting consumers in the form of lower prices and higher-quality products
Entrenched market power leading to reduced incentives for investment and innovation	
Concerns that Google's entrenched market power has likely led to reduced incentives for investment and innovation, with likely implications for the quality and range of search engines available to consumers.	Google is continuously innovating and investing in research and development, and in particular in Google Search (see **Annex 2**). It is the most popular and highest quality search engine in Australia.
Significant competitive data advantage	
Concerns that the click-and-query data Google collects from its search engine allows it to improve its search algorithm, making Google Search more attractive to search	Google has invested extensively in mechanisms to share aggregated query data, including via: • Google Trends;[255] • Google Search Console;[256] and

[255] Google Trends, 'Explore what the world is searching', (2022). See also Google Trends Help, 'FAQ about Google Trends data', (2022).
[256] Google Search Console, 'Improve your performance on Google Search', (2022).

ACCC's concerns[254]	Google's position and existing practices
users.	• various reports available to webmasters (for example, the Links Report,[257] the Performance report[258] and the Core Web Vitals report).[259] In addition, we promote data portability in several ways, including through tools such as Google Takeout[260] and industry efforts such as the Data Transfer Project[261] (both discussed in **Annex 4**). By contrast, **access to Google's click and query data is unnecessary for rivals to compete**, as explained further in our response to **Q.8 of the ACCC's Discussion Paper**.[262]

[257] Google Search Console Help, 'Links report', (2022).
[258] Google Search Console Help, 'Performance report (Search)', (2022).
[259] Google Search Console Help, 'Core Web Vitals report', (2022).
[260] Google Account, 'Google Takeout', (2022).
[261] Data Transfer Project, 'About us', (2022).
[262] Discussion Paper Response, p. 22.