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KELKOO GROUP'S RESPONSE TO Digital Platforms; Consultation on Regulatory Reform

1.0 ABOUT KELKOO GROUP

Kelkoo Group is a comparison-shopping service (CSS) operating in 39 markets, including Australia. With 193 staff globally, Kelkoo Group consists of three brands (Kelkoo, LeGuide and Ciao) which, at their peak, were valued at around £1bn. As a hugely successful company and a market leader in shopping comparison, we helped a vast number of consumers across the world to make great shopping choices and helped online retailers to reach those consumers.

However, our business was taken to a cliff edge by Google's abusive behaviour in the Comparison-Shopping market. Using its overwhelming dominance in Search, Google promoted its own CSS and excluded competitors like Kelkoo from its general search results through multiple algorithmic changes. As a result, consumers could no longer find Kelkoo or services like ours. Competition in shopping comparison was decimated, leaving consumers poorer and Kelkoo and others struggling for survival.

In short, shopping comparison and search advertising are 'attention' markets which rely on the ability to provide useful information to compete for user attention. Google monopolises consumer attention through its abusive behaviour and makes it impossible for competitors to connect with consumers as they seek out the best shopping deals.

The pandemic and now the global cost of living crisis has brought Google's anti-competitive behaviour into sharp focus - many consumers are struggling to cope with rising living costs and would benefit from easily discoverable price comparison sites and greater competition on prices. In the meantime, Google ignores the negative impact it has on user choice. With over 90% market share on Search, Google has unparalleled power to affect the decisions of consumers and control the digital ecosystem. And in excluding rivals and favouring its own services, Google shows disdain for the very concept of the free choice it claims users make when using its service. ACCC has correctly identified Google's dominance and exclusionary conduct in Search in its September 2022 interim report. Australia should have been a key part of our global offering, but our growth was stunted by Google's abusive market behaviour.

We are a lead complainant in the European Commission's Google Shopping case and are also in regular dialogue with UK and US lawmakers, inputting into draft legislation and sharing our experiences and insights.

2.0 CONTACT DETAILS

Steve Thomas, General Counsel, Kelkoo Group
steve.thomas@kelkoogroup.com

We would be more than happy for the Treasury to follow-up with us and provide further insights if required.

3.0 OUR TOPLINE VIEW

For the purposes of this consultation and our response, our interest lies in ACCC's Competition Recommendations specifically – the context of which is outlined in 1.0. We are aligned with the core objective stated in Section 2 of the Competition and Consumer Act 2010 *“The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection”*. Additionally, we applaud the regulatory and legislative approach that ACCC is proposing regard to self-preferencing; akin to the UK's Digital Markets Unit, which we strongly support.

If small businesses like ours are given the opportunity to compete on equal terms, then Australian consumers will benefit from greater competition on prices in advertising, leading to lower prices for consumers. We agree with ACCC's Interim Report on Regulatory Reform (fifth report) recommendations:

- *Targeted competition obligations for designated digital platforms to be included in the proposed new framework and codes, to address harms such as anti-competitive self preferencing*
- *A competition framework which would subject 'designated' digital platforms to mandatory codes applying to the services they provide*

Based on how Google killed our price comparison business (and many competitors in this space around the world) we are encouraged by ACCC being *“concerned that some digital platforms with market power are engaging in self-preferencing conduct that may have anti-competitive impacts, including:*

- *Google promoting its own services in search results on Google Search...and*
- *Service-specific codes should include targeted obligations to address self-preferencing where relevant and appropriate. For example: • a code for search services could prohibit Designated Digital Platforms from providing favourable treatment to their own products and services in ranking, indexing, and crawling.*

We are supportive of ACCC's draft Competition recommendations, which capture many of the key points that could help regulators and competition enforcement agencies around the world hold dominant online platforms to account effectively. However, for the mandatory codes to be effective, the regulator itself must be effective and have adequate resourcing, flexibility, and powers to bare its teeth, when necessary, together with improved enforcement powers to allow faster and better interventions. That said, the Code must be not only be practical but enforceable in such a way that designated firms know that the regulator means business. We believe the forward-looking approach of providing ex ante principles up front and setting the rules should foster transparency and engender better behaviours that are in the interests of Australian consumers and promote innovation and competition. As ACCC rightly notes, the proposed designation and mandatory code would be in line with global trends.

4.0 Creating effective codes:

A tailored, enforceable code could be a gamechanger. The case-by-case approach to a designated firm is sensible and allows flexibility if needed. We welcome the prescriptive and tailored approach to principles and guidance for each designated firm - once again clarity is key for those firms to meet the behavioural standards and understand how the principles should be interpreted. Additionally, the proposal to ensure the mandatory codes are legally binding will be instrumental.

The key problem that we have seen with the European Commission's Google cases is that the compliance mechanisms do not match the harms and the competition issues ultimately go on unsolved. By taking this focussed and tailored approach, and imposing tailored, real-world obligations for each designated firm, there is real potential to transform the competitive landscape. That said, it should be noted that while a flexible approach has many benefits, it can also lengthen proceedings, a view borne out by former Competition Markets Authority Chairman Andrea Coscelli in a recent Euractiv podcast:

[A new chapter for tech regulation: the UK's competition reform – EURACTIV.com](#)

5.0 Multi-party dialogue:

We are encouraged by the proposal to draft codes in '*public consultation*' - with the industry and other stakeholders. By rooting them in fact and experience, the codes are more likely to be robust and withstand Big Tech's playbook of delay and obfuscation. ACCC's approach mirrors our long-held view that a multi-party dialogue is key in creating codes and obligations that will truly transform digital markets.

6.0 New participative antitrust:

The use of multi-party dialogue could also be highly valuable when applying the codes in practice. promoting greater understanding, collaboration, and a meaningful dialogue between all stakeholders in how to ensure competitive markets in the real world. Stakeholders in this process could include the designated firm, the affected firm, academics, Government, and regulators. As discussions evolve, so does the group, resulting in only the designated firm, the affected parties and the regulator involved in the final iteration of remedies.

Part of the process could include publicising the key points on the table that are not commercially sensitive; this could facilitate a more focused approach and minimise the risk of delaying tactics being deployed by the designated firm.

Affected businesses like ours and other relevant stakeholders will have clear and actionable insights on both issues and remedies and be well placed to identify appropriate solutions and remedies in support of the regulator's work in creating, implementing, and enforcing codes of conduct. As such, we believe affected parties should be involved in the decision-making process. Having representatives with technical and commercial expertise from all relevant parties in the room debating the feasibility and practicality of remedies would be a key turning point in remedy design and would give a far higher likelihood of successful resolution at remedy stage. The Australian news bargaining code is a good example of how this can work in practice.



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7.0 The enforcement challenge for regulators:

As one of the key complainants in the Google Shopping and Google AdSense cases, it is evident to us that competition enforcement in Europe hasn't yet yielded the necessary significant changes that would restore genuine competition and consumer choice. Google's self-designed remedies have simply reinforced its self-preferencing behaviour in the comparison-shopping market and failed wholly to deal with the tipped market in search ads intermediation. The principle set down in the European Commission's 2017 Google Shopping case is a strong one, but it fell short in its enforcement.

With so much happening globally and politically, we believe that cross border co-operation should be at the forefront of bringing behavioural change to those firms who are creating the most harm in Australia. Regulatory systems dating back to the 1990s simply cannot keep pace with digital business 20 years into the 21st century. And it's fair to say that very few regulators can match Google's digital and technical capabilities. Therefore, exchanging insights and experiences with fellow regulators provides an effective mechanism to ensure a consistent and balanced approach, taking advantage of the global body of knowledge now being built.

8.0 Future harms:

Google's self-preferencing and exclusionary practices are not limited to shopping comparison. Its abuse has spread to other verticals like local, flights and hotels and investments/banking. Google is following the same pattern in these verticals that it established in Shopping. Setting an effective precedent against this behaviour is vitally important for all verticals if we are to avoid restriction of consumer choice across the board in the future.

An example of this is Hotels. Online paid-search competition is intensifying, and it is getting more challenging to be visible in organic results for hotel category searches (e.g. hotels in New York). Brands are compelled to buy Hotel Ads to appear anywhere above the fold. Google Hotels offers similar functionality and tools to its competitors such as Kayak, Expedia and Booking.com, but now appears above the general search results and is given an unfair advantage over rivals who, ultimately, look to be suffering the same fate as CSSs did years earlier. In the long term, this will reduce choice for hotels and travel operators wishing to reach consumers, and as a result drive up consumer prices.

Google's power is likely to be strengthened in the years to come – unless it can be stopped in its tracks. Experience of the Covid-19 pandemic shows that consumers moved much of their shopping activity online and were forced to use the very limited choices available to make their shopping decisions.