

Digital Platforms Inquiry – Preliminary Report

Submission to the Australian Consumer and Competition
Commission
February 2019

Introduction

The Australian Chamber of Commerce and Industry (Australian Chamber) welcomes the opportunity to make a submission to the Australian Competition & Consumer Commission (ACCC) in response to its preliminary report for the Digital Platforms Inquiry.

The Australian Chamber is a strong advocate for business, particularly small businesses, becoming more involved in the digital age to enhance their presence in the community and help promote the ease of doing business.

We also support the ACCC's efforts to safeguard consumers and protect their privacy and data. In providing that protection, it is important that the regulations are not too onerous for business or hamper the customers' digital experience.

Business in the Digital World

The Australian Chamber acknowledges the ACCC's concerns surrounding the substantial market power of firms such as Google and Facebook in the digital platform space and their impact on Australian news media and advertising.

The digital age does appear to have developed dominant 'winners' even though competition as the market was forming was largely uninhibited. This recognises that in a digital environment, common platforms have positive efficiency and effectiveness benefits as well as downside risks of monopolies and unequal market power. Microsoft, for example, has a substantial market share through Microsoft Office and its other applications which can be used across different operating systems, such as PCs and Apple products, because consumers and business want compatibility. This improves business productivity as information is exchanged freely in a common environment, but comes with downside risk of prices and conditions being negatively impacted by monopolistic practices.

The ACCC's inquiry comes at a time when the Federal Government, through the Department of Industry, is urging small business to "Go Digital". A report to government by the Small Business Digital

Taskforce¹ chaired by entrepreneur Mark Bouris found just two in five small businesses have a digital footprint.

This report quotes Deloitte Access Economics assessment that 50 per cent of SMEs who take on greater digital engagement are more likely to be growing revenue and 60 per cent are more likely to have more revenue per employee than businesses with basic levels of digital engagement.

The Bouris report also found productivity enhancements associated with adopting digital technologies contributed over \$104 billion to Australia's GDP over the decade to 2014.

The NSW Business Chamber's survey² quoted in its submission to this Digital Platform inquiry found 71 per cent of respondents utilised digital platforms to advertise with almost two thirds saying it had increased customers. However, almost half indicated they would reduce their spending on digital advertising if there was reduced flexibility.

Customer Awareness

While the Australian Chamber shares the ACCC's concerns for consumers' privacy in terms of the digital environment, and for businesses for that matter, we are not convinced users are fully aware of what they can do to protect themselves.

A telling finding in a Roy Morgan survey³ of consumer behaviour commissioned for the ACCC's inquiry was that only a third of users indicated that they had adjusted the settings on their online accounts to reduce the number of targeted ads being received. That is despite around three-quarters of users indicating that they did not like receiving or having platforms deliver targeted advertising to them.

Furthermore, less than one in five users indicated that they read privacy policies for internet sites or apps most or every time, with three in five indicating that they rarely or never did so.

The Australian Chamber questions whether consumers and small businesses are up to date with developments in the digital world and how they can best protect themselves if they feel their privacy is being threatened. Most people using the internet would have heard of cookies, but do they really know what they are?

In two of the reports referred to in our submission – the Small Business Digital Taskforce report and Roy Morgan's consumer behaviour survey – concerns are expressed over cyber security and the privacy of data.

On the one hand this is preventing some businesses from entering the digital age and, importantly, consumers are worried about how their data is being used. Yet it would appear the latter have either misconceptions how to protect themselves or do nothing about it at all.

¹ <https://www.industry.gov.au/data-and-publications/small-business-digital-taskforce-report-to-government>

² <https://www.accc.gov.au/system/files/NSW%20Business%20Chamber%20%28April%202018%29.pdf>

³ <https://www.accc.gov.au/system/files/ACCC%20consumer%20survey%20-%20Consumer%20views%20and%20behaviours%20on%20digital%20platforms%2C%20Roy%20Morgan%20Research.pdf>

Use and collection of personal information

An important recommendation in the ACCC preliminary report is proposed Recommendation 8 - use and collection of personal information, which in summary recommends:

- a proposed amendment of the Privacy Act which would require express notification and consent for data collection
- mandatory third-party audits of business practices to the collection of personal information
- a direct right of action for individuals to pursue companies for breaches of their privacy

Although the intention of privacy protection is well meant, there is a concern that the breadth of the proposals would create significant red tape for businesses designing websites. This is likely to have the undesirable effect that some small businesses may be put off and never pursue the benefits of the digital age.

This recommendation also conjures up a minefield of pop-ups for consumers as they trawl websites, to the extent of deterring a potential buyer from engaging with a business, which would leave both parties dissatisfied.

It is also a concern what this particular recommendation would mean for Australia's competitiveness in the international internet space. It goes beyond the standards recently adopted in Europe – General Data Protection Regulation (GDPR) - and a range of other countries. With Australian Business wanting on-line access to both domestic and international consumers, it is critically important that the on-line experience is not more onerous for customers or business than in competing countries. As indicated by the ACCC's own surveys, consumers do not necessarily appreciate the data protection values over the convenience ones. We need to keep both objectives in mind.

Unfair Contract Terms

The introduction of laws address unfair contract terms for consumers has been in place since 2010 and between businesses with unequal market power only since November 2016. The Australian Chamber supported the changes to pick up protections for small business, but recognises that these were strongly contested. In this period where there has been only a few years since change was enacted, particularly for B2B contracts, should be a time to consolidate the change. In that context, it is felt too soon to introduce significant additional change as proposed in recommendation 11 – unfair contract term':

"The ACCC proposes to recommend that unfair contract terms should be illegal (not just voidable) under the Australian Consumer Law, and that civil pecuniary penalties should apply to their use, to more effectively deter digital platforms, as well as other businesses, from leveraging their bargaining power over consumers by using unfair contract terms in their terms of use or privacy policies."

There needs to be a much stronger body of evidence to demonstrate that the existing laws are not sufficient protection. The Australian Chamber is open to consideration of evidence of the experience, however, at this stage cannot see that change is demonstrably needed given the increased legal requirements and punitive nature of the change.

Awareness is First Step

More needs to be done to alert consumers to the options available to control their privacy through the use of settings. Large global platform businesses have been under significant and consistent

international pressure to improve the protection of consumer data. In response, they offer consumers a customised settings for their privacy. These companies need to be encouraged to do more to make their users aware of these settings, and governments and other stakeholders can assist in this awareness raising.

The digital economy is an ever-evolving environment and we would agree with the comments made by the NSW Business Chamber in their submission that a “cautious, non-interventionist approach is preferred” with a view towards working with platforms before targeted interventions are made.

There should also be more consultation with the business community more broadly before the final report is handed down.

Ombudsman

There may be merit in the ACCC’s consideration of the establishment of an ombudsman to deal with complaints about digital platforms from consumers, advertisers, media companies, and other business users of digital platforms. This complaint channel may go some way to addressing concerns about privacy and unfair contracts as an alternative to more regulation. Before implementation, there should be broader consultation.

Summary

Consumer privacy and their data is critically important. However, instead of taking regulatory steps that would put Australia out of step with international trends and potentially put off both customers and business, it is recommended that as a first step an intensive, informative, federal government funded awareness campaign as to how consumers and business can best protect themselves using existing available privacy settings.

The Australian Cyber Security Centre www.acsc.gov.au also provides information on how to help protect data of both businesses and individuals.

The Australian Chamber is concerned that a more heavy-handed approach would be detrimental to both business and consumers.



About the Australian Chamber

The Australian Chamber of Commerce and Industry speaks on behalf of Australian Businesses at home and abroad.

We represent more than 300,000 businesses of all sizes, across all industries and all parts of the country, making us Australia’s most representative business organisation.

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