

Oceania

The ACCC's Ongoing Digital Platforms Services Inquiry: Regulatory Reform

By Jacqueline Downes, Bella Cameron and Jamie Hick | Allens



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I. Introduction

This piece builds on our previous articles and publications² covering the Australian Competition and Consumer Commission's (ACCC) examination of developments in digital platforms through its ongoing *Digital Platforms Services Inquiry 2020-2025 (DPSI)*.³ The DPSI follows the ACCC's original Digital Platforms Inquiry Final Report (*DPI Final Report*), released in July 2019.⁴ Under the terms of reference for the DPSI, the ACCC must provide the Treasurer with an interim report on the inquiry every six months until the inquiry concludes. A final report will be provided to the Treasurer by 31 March 2025.⁵ The services which the ACCC may hold inquiries in relation to include digital platform services, as well as digital advertising services and data services provided by digital platform service providers.⁶ The terms of reference define digital platform

services as search engines, social media, online private messaging services, digital content aggregation platforms, media referral services, and electronic marketplaces.⁷

Our previous article considered the ACCC's findings in its fourth DPSI interim report regarding general online retail marketplaces in Australia.⁸ Our earlier work considered the ACCC's third DPSI interim report covering choice screens in search services and default browsers⁹ and second DPSI interim report on app stores.¹⁰

This article provides a comprehensive overview of the fifth DPSI interim report covering the sufficiency of Australia's current competition and consumer protection laws to address the harms that have been identified in relation to digital platform services (the *Ex-ante*

¹ Jacqueline Downes: Partner at Allens. Bella Cameron: Associate at Allens. Jamie Hick: Lawyer at Allens. The views and opinions expressed in this article are the authors' and not those of Allens or any clients of Allens.

² See our previous articles published: Jacqueline Downes, Bella Cameron and Melissa Camp, "The ACCC's Ongoing Digital Platforms Inquiry: Online Retail Marketplaces" (June 2022). Available at <https://www.competitionpolicyinternational.com/wp-content/uploads/2022/06/Oceania-Column-June-2022-Full.pdf>; Jacqueline Downes and Melissa Camp, "The ACCC's Ongoing Digital Platforms Inquiry: Choice Screens and the ACCC's Plan for an Ex Ante Regime for Digital Platforms" (January 24, 2022). Available at https://www.competitionpolicyinternational.com/the-acccs-ongoing-digital-platforms-inquiry-choice-screens-online-retail-marketplaces-and-the-acccs-plan-for-an-ex-ante-regime-for-digital-platforms/?utm_source=CPI+Subscribers&utm_campaign=10bc6caccdc-EMAIL_CAMPAIGN_2022_01_24_10_27&utm_medium=email&utm_term=0_0ea61134a5-10bc6caccdc-236929961; Jacqueline Downes, Felicity McMahon, William Georgiou and Melissa Camp, "The ACCC's Continued Digital Inquiry: App Stores and Choice Screens" (August 22, 2021). Available at <https://www.competitionpolicyinternational.com/the-acccs-continued-digital-inquiry-app-stores-and-choice-screens/>; Felicity McMahon and William Georgiou, "The ACCC's Continued Digital Inquiry: Online Private Messaging and App Stores" (January 20, 2021). Available at <https://www.competitionpolicyinternational.com/the-acccs-continued-digital-inquiry-online-private-messaging-and-app-stores/>.

³ ACCC, "Digital Platform Services Inquiry 2020—2025". Available at <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025>.

⁴ ACCC, "Digital Platforms Inquiry Final Report," (July 26, 2019) (*DPI Final Report*). Available at <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.

⁵ Australian Federal Government Treasurer, 'Competition and Consumer (Price Inquiry – Digital Platforms) Direction 2020' (10 February 2020). Available at <https://www.accc.gov.au/system/files/Ministerial%20direction%20-%20Digital%20platform%20services%20inquiry.pdf>.

⁶ *Ibid*, s 5(2).

⁷ *Ibid*, s 4.

⁸ ACCC, "Digital platform services inquiry Interim report No. 4 – Report on general online retail marketplaces" (published 28 April 2022). Available at <https://www.accc.gov.au/system/files/DPB%20-%20DPSI%20-%20March%202022%20-%20Full%20interim%20report%20-%2031%20March%202022.pdf>.

⁹ ACCC, "Digital Platform Services Inquiry – September 2021 Report on market dynamics and consumer choice screens in search services and web browsers: Issues Paper March 2021" (March 11, 2021) (*Browser and Search Issues Paper*). Available at <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025/september-2021-interim-report>.

¹⁰ ACCC, "Digital platform services inquiry Interim report No. 2 – App marketplaces" (published April 28, 2021) Available at <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025/march-2021-interim-report>.

Regulatory Reform Report).¹¹ First, this article summaries the key concerns identified in the ACCC's discussion paper for the fifth DPSI Interim Report (**Ex-ante Discussion Paper**),¹² and the consultation process that followed the publication of the Ex-ante Discussion Paper. This article then sets out the findings released by the ACCC in the Ex-ante Regulatory Reform Report published on 11 November 2022, including recommendations to Treasury for a number of reforms to competition and consumer laws.¹³

II. The Fifth DPSI Interim Report Regarding Regulatory Reform

To inform the Ex-ante Regulatory Reform Report, the ACCC released a discussion paper seeking stakeholder views on the following topics:¹⁴

the competition and consumer harms arising from digital platform services;

the adequacy of competition and consumer protection law enforcement in Australia to address those harms;

possible regulatory tools to implement reform;

potential new rules and measures:

to address anti-competitive conduct and data advantages;

for improved consumer and small business protections and greater transparency; and

to ensure adequate scrutiny of acquisitions.

The ACCC received over 90 submissions from industry, consumer bodies, small business

representative bodies, academics and research groups, regulators and other interested stakeholders. The submissions contained a wide range of views on the relevant issues.¹⁵ The ACCC also held two stakeholder roundtables, one on competition issues and one on consumer protection issues, to facilitate discussion between key stakeholders on issues identified in the discussion paper.

The ACCC also engaged in discussions with a number of international agencies including the UK Competition and Markets Authority, the UK Department for Digital, Culture, Media and Sport, the US Department of Justice, the US Federal Trade Commission, the European Commission, the German Bundeskartellamt, the Japan Fair Trade Commission and the Korea Fair Trade Commission.

III. Fifth Interim Report Regarding Regulatory Reform

The ACCC's Ex-ante Regulatory Reform Report became publicly available on 11 November 2022.¹⁶ In the report, the ACCC recommended new targeted up-front (or ex-ante) competition obligations be implemented through mandatory service-specific codes applying to 'designated' digital platforms (**Designated Digital Platforms**) to complement enforcement of existing competition laws.

It is proposed that Designated Digital Platforms be those that meet designation criteria in respect of the specific digital services they supply,¹⁷ which would be based on a combination of qualitative and quantitative

¹¹ ACCC, 'Digital platform services inquiry – September 2022 interim report' (published November 11, 2022) (**Ex-ante Regulatory Reform Report**). Available at: <https://www.accc.gov.au/publications/serial-publications/digital-platform-services-inquiry-2020-2025/digital-platform-services-inquiry-september-2022-interim-report-regulatory-reform>.

¹² ACCC, Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services (published February 2022) (**Ex-ante Discussion Paper**). Available at: <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry.pdf>.

¹³ <https://www.accc.gov.au/publications/serial-publications/digital-platform-services-inquiry-2020-2025/digital-platform-services-inquiry-september-2022-interim-report-regulatory-reform>.

¹⁴ ACCC, Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services (published February 2022) (**Ex-ante Discussion Paper**). Available at: <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry.pdf>.

¹⁵ All submissions available at: <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/september-2022-interim-report>.

¹⁶ Ex-Ante Regulatory Reform Report. Available at: <https://www.accc.gov.au/publications/serial-publications/digital-platform-services-inquiry-2020-2025/digital-platform-services-inquiry-september-2022-interim-report-regulatory-reform>.

¹⁷ Ex-ante Regulatory Reform Report, p 114.

metrics such as the number of monthly active Australian users, Australian or global revenue, substantial market power and whether they operate multiple digital platform services.¹⁸

This recommendation follows the ACCC's findings that dominant digital platforms have engaged in a range of conduct that has had anti-competitive effects.¹⁹ The ACCC has therefore recommended targeted obligations be enshrined in these codes to limit the scope for such anti-competitive conduct and promote competition. We set out the identified harmful conduct and associated recommended target obligations below.

A. The ACCC's Findings

The fifth DPSI interim report made a number of findings and recommendations addressing the insufficiency of competition and consumer laws to address harms identified by the report including scams, harmful apps and fake reviews, inadequate dispute resolution, increased market concentration and instances of anti-competitive conduct.²⁰

Competition Law Harms

The report raised a number of competition law harms, including the following:

- **Anti-competitive self-preferencing:** The ACCC found that some powerful digital platforms provide favourable treatment to their own services over those of third-party providers. This conduct can have an anti-competitive effect if it hinders rivals from competing with the platform based on merits.²¹
- **Anti-competitive tying:** The ACCC found that dominant digital platforms can hinder their competitors by supplying one of their services on condition that the user purchase or use another service they supply, known as 'tying'. Tying can lead to a loss of

consumer choice and negatively impact the quality and functionality of apps and services that developers wish to provide, and can also harm competition in related markets.²²

- **Anti-competitive exclusive pre-installation and default agreements:** According to the ACCC, some digital platforms with market power are entering into exclusive pre-installation and default agreements that may result in anti-competitive effects. For example, the ACCC considers that exclusive pre-installation and defaults can restrict competition in respect of various services and benefit incumbent providers as consumers tend to stick with the default or pre-installed service. In particular, the ACCC believes these arrangements can heighten barriers to entry and expansion in search, app stores and downstream app markets.²³
- **Exclusive agreements and price parity clauses with business users:** The ACCC is concerned about the competitive harm that could arise if Designated Digital Platforms require business users to agree to exclusivity clauses (ie, requiring business users to only offer their products through the relevant platform) or price parity clauses (ie, prohibiting sellers from offering their products or services at lower prices on other platforms), especially if applied broadly. In particular, this concern arises where a Designated Digital Platform operates an intermediary service (eg, an app store or online marketplace). The ACCC acknowledged it has not identified widespread use of such clauses in any digital platform markets considered to date but considers that if such clauses were used by a Designated Digital Platform, it would likely have significant implications for competition in the relevant market.²⁴

¹⁸ Ex-ante Regulatory Reform Report, p 114-119.

¹⁹ Ex-ante Regulatory Reform Report, p 12.

²⁰ Despite the various options for digital platform-specific merger reform put forward in the discussion paper, the ACCC did not make any specific recommendations related to merger reform in the Ex-ante Regulatory Reform Report.

²¹ Ex-ante Regulatory Reform Report, p 124.

²² Ex-ante Regulatory Reform Report, p 133-137.

²³ Ex-ante Regulatory Reform Report, p 139-144.

²⁴ Ex-ante Regulatory Reform Report, p 14.

- **Impediments to consumer switching:** The ACCC is concerned that some digital platforms with market power are restricting or frustrating consumer switching, including by designing user interfaces that discourage users from switching services (eg, changing the default search service) and using contractual clauses to limit business users' ability to inform consumers about alternative payment options. It has found consumer inertia, switching costs and a platform's interface design can increase consumer lock-in, often to the incumbent's advantage.²⁵
- **Interoperability of services:** The ACCC observed that data interoperability can facilitate multi-homing, thereby reducing barriers to entry and providing smaller rivals access to data required to compete. However, the ACCC found a lack of interoperability of data between digital platforms' ecosystems and is particularly concerned about the effect of interoperability on third-party app developers, browser engines and app stores.
- **Addressing data advantages:** The ACCC observed that access to high-quality data can be a source of competitive advantage where data is a vital input and can increase barriers to entry where there is a lack of access to such data.²⁶ Measures that facilitate data transfer, such as exporting data from one service to another at a consumer's request, can lower switching costs and lessen lock-in effects, whereas a lack of access to data can create substantial barriers to entry and expansion. The ACCC found that data-related barriers limit competition in search and ad tech services.²⁷ The ACCC also found that some digital platforms also have significant data advantages and can engage in conduct to improve their competitive advantage by, for example, accessing sensitive data in relation to their rivals.
- **Insufficient transparency:** The ACCC found that a lack of transparency (in relation to the prices, terms of service, and key functions undertaken by digital platforms) means business users are likely to find it challenging to make optimal investment and purchasing decisions and may ultimately be deterred from entering the market or investing further in their businesses.²⁸ The ACCC found that greater transparency is needed about key decision-making algorithms and data processes and practices that digital platforms use to display content, rank search results and personalise services. The ACCC is concerned about a lack of transparency in ad tech, and the app review processes of app stores.²⁹
- **Improved fair trading protections for business users:** The ACCC found that where digital platforms that offer intermediary services hold market power and control access to a business user's target market, these business users may have no option other than to make their products or services available on that digital platform. As a result of this market power, the ACCC is concerned that business users may have no choice but to accept the platform's standard terms of service even if they are unfair, unreasonable or give rise to significant risks to profitability.³⁰

Unfair Practices

The ACCC found that consumers often transact with digital platforms in an environment where acute information asymmetries and power imbalances exist, or where their behavioural biases may be exploited. The ACCC observed practices that can exacerbate these issues and result in consumer harms, but are unlikely to

²⁵ Ex-ante Regulatory Reform Report, p 151-156.

²⁶ Ex-ante Regulatory Reform Report, p 166.

²⁷ Ex-ante Regulatory Reform Report, p 167.

²⁸ Ex-ante Regulatory Reform Report, p 175.

²⁹ Ex-ante Regulatory Reform Report, p 13.

³⁰ Ex-ante Regulatory Reform Report, p 181.

contravene the Australian Consumer Law (**ACL**),³¹ including the following:

- Providing users with a frictionless and easy means to sign up for a paid service, but introducing difficulties and high barriers to consumers who may wish to cancel them.³²
- Inducing consent or agreement by lengthy contracts, providing insufficient time to consider contracts or all-or-nothing 'clickwrap' consents. These practices are likely to prevent consumers from reading, or contribute to consumers' tendency to not read, online terms of service or privacy policies.³³
- Engaging in harmful and excessive tracking, collection and use of data which may result in excessive and unwanted collection of user data. This can result in profiling of customers, reduced privacy and security, and manipulation through unsolicited targeted advertising.³⁴
- Using dark patterns to create a lack of transparency about pricing and quality of alternative products, or other interface design strategies (such as prominence and framing) to actively undermine the ability of consumers and business users to compare alternatives and make informed choices (eg, through the use of popups promoting products affiliated with particular digital platforms).³⁵

Consumer Law Harms: Mandatory processes for scams, harmful apps and fake news

The ACCC has found that digital platform services of all sizes have engaged in conduct that has resulted in a wide range of harms to

consumer confidence, including through increased exposure to:

- online scams, including phishing, fraudulent webpages and fake social media accounts for businesses or individuals;³⁶
- malicious apps, including where apps target children but contain age-inappropriate content, or apps which present fraudulent representations to consumers;³⁷
- dark patterns, including choice frameworks that confuse, increase difficulty or manipulate choices made by consumers;³⁸
- fake reviews, including where reviews are written to be deliberately misleading, where they are purchased or incentivised without the knowledge of consumers, or where negative reviews are moderated and withheld from consumers;³⁹
- inadequate identity verification, often linked to the posting of fake reviews;⁴⁰ and
- online tracking, which has led to a reduction in consumer privacy and data security.⁴¹

The ACCC was particularly concerned with the lack of adequate processes of digital platforms to address, prevent or respond to these harms.

Consumer Law Harms: Mandatory internal dispute resolution processes & external ombuds scheme

The ACCC considers that robust dispute resolution processes are important to ensure digital platforms act responsibly and transparently in their dealings with users and for building consumer and small business trust in digital platforms.⁴² The ACCC identified

³¹ Ex-ante Regulatory Reform Report, p 64.

³² Ex-ante Regulatory Reform Report, p 64.

³³ Ex-ante Regulatory Reform Report, p 65.

³⁴ Ex-ante Regulatory Reform Report, p 43, 65.

³⁵ Ex-ante Regulatory Reform Report, p 42, 65.

³⁶ Ex-ante Regulatory Reform Report, p 74.

³⁷ Ex-ante Regulatory Reform Report, p 76.

³⁸ Ex-ante Regulatory Reform Report, p 9.

³⁹ Ex-ante Regulatory Reform Report, p 76.

⁴⁰ Ex-ante Regulatory Reform Report, p 79.

⁴¹ Ex-ante Regulatory Reform Report, p 44-46.

⁴² Ex-ante Regulatory Reform Report, p 89.

particular issues in the current dispute resolution processes, noting that:

- Australian consumers and small businesses often find it hard to achieve quick and easy resolution of complaints and disputes with digital platforms.⁴³
- While the ACL provides protection for consumers, the online environment presents challenges in enforcing consumer rights under the ACL. Digital platforms are not sufficiently accountable because of both the power imbalance between users and digital platforms, as well as the online nature of the service and lack of ability to contact a representative of the platform. Further, where disputes are largely low in individual value but high in volume and involve multiple jurisdictions, court enforcement at a state level is not practicable or cost effective.⁴⁴
- The following types of complaints and disputes arise on relevant digital platforms:
 - losses caused by harmful apps, low quality apps that fail to meet consumer guarantees, and unauthorised billing issues;
 - the supply of products on general online retail marketplaces that fail to meet the ACL consumer guarantees;
 - sellers have inadequate access to avenues for redress when they have disputes with an online retail marketplace; and
 - digital platforms often have an unqualified unilateral discretion regarding decisions to suspend or terminate a user's account or terminate a user's ad campaign for any reason and often do not adequately explain their reasons or allow for review of the decision.

- The inability of Australian consumers and business users to resolve disputes with digital platforms can result in distrust in digital platforms, which can have negative ramifications for the economy, as well as significant consumer harm such as financial loss, loss of time and effort, social exclusion, negative impacts on physical and mental health, and reputational damage.⁴⁵

Privacy and data concerns

The ACCC has noted the potential privacy risks for consumers arising from the large amounts of data held by digital platform providers, as well as potential risks relating to scams and business harms arising from fake reviews.⁴⁶

The ACCC identified that there is a lack of transparency for consumers in relation to how their data will be handled by digital platform providers. It noted there are few comparable alternative services and that consumers can be subject to social pressures to join these platforms and accept otherwise undesirable terms of use presented on a 'take-it-or-leave-it' basis.⁴⁷ The ACCC also noted that the use of dark patterns and other interface design strategies can affect transparency and discourage consumers from exercising their preferences in how their information is handled.⁴⁸

The ACCC also noted that digital platforms present an efficient opportunity for unscrupulous actors to target Australian consumers and businesses, including via scams and other fraudulent activity, using harmful apps or submitting fake reviews.⁴⁹

Further, the ACCC noted that digital platforms engage in a high degree of tracking of users (including the collection, use and disclosure of significant amounts of personal information of consumers) and are then able to leverage this data in various ways, including to display

⁴³ Ex-ante Regulatory Reform Report, p 88.

⁴⁴ Ex-ante Regulatory Reform Report, p 88.

⁴⁵ Ex-ante Regulatory Reform Report, p 93.

⁴⁶ Ex-ante Regulatory Reform Report, p 168.

⁴⁷ Ex-ante Regulatory Reform Report, p 43.

⁴⁸ Ex-ante Regulatory Reform Report, p 44.

⁴⁹ Ex-ante Regulatory Reform Report, p 45.

targeted advertisements to consumers.⁵⁰ While the ACCC noted that data-access rights for third parties could promote competition in the ad tech sector and remove barriers to entry, it considered that access to personal information as a result of such a data-access regime could raise significant privacy concerns.⁵¹

B. The ACCC's Recommendations

The ACCC found that the technical complexity of many digital platform services combined with low levels of transparency (both in terms of price and non-price elements of a service) can make it difficult to detect conduct that may contravene competition or consumer laws. Additionally, even where such conduct is detected and sufficient evidence is gathered against a digital platform, issues with the analytical tools used to prove anti-competitive conduct can create challenges in achieving effective enforcement outcomes. The ACCC identified the following issues:

- legal proceedings under Part IV of the CCA may be hindered by the nature of the legal tests within specific provisions, in particular the requirement to establish the counterfactual to the civil standard of proof which the ACCC considers is a high burden;
- market definition raises conceptual and analytical challenges for many digital platform services, for example, where a digital platform provides a range of interrelated services to different groups of users and the relevant conduct may affect competition across the platform's ecosystem and broader economy;

- the complex and fast-moving nature of markets for digital platform services mean that harms to competition affecting these markets can be novel and therefore more difficult for a court to assess;
- competition enforcement has traditionally focused on transactions based on monetary prices, however, many of the services digital platforms supply do not have a monetary price; and
- damaging conduct occurring on digital platform services may not be captured by the ACL, including platforms making it difficult to leave a subscription or opt out of a service and other interface design strategies that infringe on the autonomy of consumers.

Competition Law Reform: Mandatory sector-specific codes for 'designated' digital platforms with targeted obligations

The ACCC has therefore recommended that new mandatory service-specific codes applying to Designated Digital Platforms should include targeted obligations to address:

- anti-competitive self-preferencing;⁵²
- anti-competitive tying;⁵³
- exclusive pre-installation and default agreements;⁵⁴
- exclusivity or price parity clauses;⁵⁵
- conduct that impedes switching between services or providers;⁵⁶
- interoperability restrictions;⁵⁷

⁵⁰ Ex-ante Regulatory Reform Report, p 65.

⁵¹ Ex-ante Regulatory Reform Report, p 174.

⁵² Ex-ante Regulatory Reform Report, p 124. Eg, where a platform gives preferential treatment to its own products and services when they are in competition with products and services provided by third parties using the platform.

⁵³ Ex-ante Regulatory Reform Report, p 132. Eg, where the provision of one digital platform service is conditional on the provision of another service.

⁵⁴ Ex-ante Regulatory Reform Report, p 139. Eg, agreements made between digital platforms and original equipment manufacturers (*OEMs*) or browser providers, pursuant to which the OEM or browser provider agrees to exclusively pre-install the digital platform's app or service or to set the app or service as the default option for the relevant browser or device.

⁵⁵ Ex-ante Regulatory Reform Report, p 185. Exclusivity clauses imposed by an intermediary platform service provider require its business users to only offer their products or services through its platform. Price parity clauses generally limit the freedom of sellers by prohibiting sellers from offering their products or services at lower prices on other platforms.

⁵⁶ Ex-ante Regulatory Reform Report, p 153.

⁵⁷ Ex-ante Regulatory Reform Report, p 156. Interoperability restrictions are limitations that prevent different systems, devices, or software from being able to work together seamlessly.

- data-related barriers to entry;⁵⁸
- a lack of transparency;⁵⁹ and
- contractual terms, conditions or processes that unreasonably and unfairly disadvantage business users of a Designated Digital Platform's services.⁶⁰

The ACCC's view is that significant financial penalties must be available for breaches of a service-specific code, suggesting that the quantum of penalties should reflect the financial strength of the digital platforms likely to be subject to the relevant framework.

Economy-wide Unfair Practices Prohibition

The ACCC showed support for:

- the adoption of new and broader economy-wide prohibitions on unfair trading practices to address certain business practices that occur online and offline;⁶¹
- the unfair contract term prohibition and application of penalties for breaches that will come into effect on 10 November 2023;⁶² and
- creating voluntary standards to be developed (either at an industry-wide level or about specific issues) to address harmful behaviour that may not breach existing Australian consumer protection laws.⁶³

Consumer Law Reform: Mandatory processes for scams, harmful apps and fake news

The ACCC considers that the consumer harms and inadequate processes identified warrant new digital platform-specific regulation to reduce scams, harmful apps and fake reviews. It recommends digital platforms be required to implement mandatory processes to prevent and

remove scams, harmful apps, and fake reviews on the platforms' services, including:

- A notice-and-action mechanism whereby users can report scams, harmful apps, or suspected review manipulation and platforms must promptly respond and provide redress to users who have been harmed.⁶⁴
- Verification of certain business users, including advertisers, app developers and merchants. For example, a digital platform that hosts ads should be required to obtain identifying documentation and business details from prospective advertisers, and take steps to verify these documents, before hosting paid promotions.⁶⁵
- Additional verification of advertisers of financial services and products (including crypto-assets). At a minimum, this should require platforms to check that a prospective advertiser of financial products and services holds an appropriate licence from the Australian Securities and Investments Commission.⁶⁶
- Improved review verification disclosures where platforms show reviews and ratings of products or services, including information about what steps the digital platform takes to help ensure reviews are legitimate or clearly disclose where no such steps have been taken.⁶⁷
- Public and comprehensive reporting on mitigation efforts, including with the regular given powers to specify mandatory information for inclusion in public reports and be able to request that certain detailed information be provided confidentially.⁶⁸

⁵⁸ Ex-ante Regulatory Reform Report, p 165. Eg, lack of access to granular, high-quality, relevant data. This type of data can be a competitive advantage for digital platforms that provide services where data is an important input.

⁵⁹ Ex-ante Regulatory Reform Report, p 174.

⁶⁰ Ex-ante Regulatory Reform Report, p 13.

⁶¹ Ex-ante Regulatory Reform Report, p 64.

⁶² Ex-ante Regulatory Reform Report, p 64.

⁶³ Ex-ante Regulatory Reform Report, p 106.

⁶⁴ Ex-ante Regulatory Reform Report, p 72.

⁶⁵ Ex-ante Regulatory Reform Report, p 84.

⁶⁶ Ex-ante Regulatory Reform Report, p 85.

⁶⁷ Ex-ante Regulatory Reform Report, p 86.

⁶⁸ Ex-ante Regulatory Reform Report, p 86.

All firms providing the relevant platform services in Australia would be required to meet this minimum standard.⁶⁹ However, at the minimum, these mandatory processes would apply to:

- search, social media, online private messaging, app store, online retail marketplace and digital advertising services, in respect of scams;
- app stores in respect of harmful apps; and
- search, social media, app stores, online retail marketplace and digital advertising services, in respect of fake reviews.

New obligations for digital platforms would apply in addition to the existing (and any future) general provisions of the ACL and should be designed to address specific issues that are not efficiently and effectively addressed under existing economy-wide legislation.

Consumer Law Reform: Mandatory internal dispute resolution processes & external ombuds scheme

The ACCC has recommended the following to improve the process of dispute resolution between consumers, business users and digital platforms:

- Introduce positive obligations on digital platforms to meet mandatory minimum standards for internal dispute resolution processes to improve the accessibility, responsiveness, and accountability of platforms' resolution of complaints or disputes raised by consumers and business users.⁷⁰ The ACCC considers that such obligations should apply, at a minimum, to search, social media, online private messaging, app stores, online retail marketplaces and digital advertising services.⁷¹
- Legislate to create a new ombuds scheme for digital platforms to support internal

dispute resolution measures, and to provide consumer and business users of digital platforms with a pathway to escalate complaints and disputes which have not been resolved to the consumer or business user's satisfaction.⁷² The ACCC has acknowledged that any ombuds scheme would need to be subject to industry consultation and carefully designed with consideration of potential overlaps with other existing avenues for redress.⁷³

Data management and privacy

In response to concerns regarding the lack of transparency for consumers in relation to how their data is handled, the ACCC considered that additional disclosure measures for digital platform providers may be required. The ACCC identified various options for reform, including data portability rights to allow consumers access to their own data, and data-use limitations that could be imposed on digital platform providers.⁷⁴ Any such rights would need to be counterbalanced with appropriate privacy and security measures. The ACCC noted that any measures to safeguard consumers' privacy should not be considered for inclusion in any proposed code until after the introduction of any privacy law reforms that result from the review of the *Privacy Act* that is currently being undertaken by the Attorney-General's Department.⁷⁵

C. Next steps

Treasury, on behalf of the Government, is currently seeking views on the ACCC's recommendations and proposed regulatory model from the Ex-ante Regulatory Reform Report. It has released a consultation paper inviting submissions from interested stakeholders by 15 February 2023, the content of which will inform Treasury's advice to the

⁶⁹ Ex-ante Regulatory Reform Report, p 72.

⁷⁰ Ex-ante Regulatory Reform Report, p 89.

⁷¹ Ex-ante Regulatory Reform Report, p 105.

⁷² Ex-ante Regulatory Reform Report, p 98-100.

⁷³ Ex-ante Regulatory Reform Report, p 103.

⁷⁴ Ex-ante Regulatory Reform Report, p 170-171.

⁷⁵ Ex-ante Regulatory Reform Report, p 174; Attorney-General's Department, Review of the Privacy Act 1988. Available at: <https://www.ag.gov.au/integrity/consultations/review-privacy-act-1988>.

Government regarding its response to the ACCC recommendations.⁷⁶

The ACCC's next interim report will consider potential competition and consumer issues arising in the provision of social media services to consumers and businesses in Australia. The sixth interim report is due to be provided to Treasurer by 31 March 2023 and will consider the following issues:

- The level of competition between social media services.
- Trends arising in the mergers and acquisitions by social media platforms and

any effects of such activities on competition for social media services.

- The role and effect of social media platforms' advertising services on competition for social media services.
- Scams and misleading or deceptive content on social media services.

The ACCC has received a number of submissions in response to the issues paper released on 16 August 2022, including submissions from social media platforms Meta, Tik Tok and Twitter.⁷⁷

⁷⁶ Treasury, "Digital Platforms – Consultation on Regulatory Reform", 20 December 2022. Available at: <https://treasury.gov.au/consultation/c2022-341745>.

⁷⁷ ACCC, 'Digital platform services inquiry 2020-25, March 2023 interim report' <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-25/march-2023-interim-report>.