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The ACCC's Ongoing Digital Platforms Services Inquiry: Social Media Services

By Jacqueline Downes, Melissa Camp, & Dominic Page | Allens



Edited by Barbora Jedlickova

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I. Introduction

In its latest report in the ACCC's ongoing *Digital Platforms Services Inquiry 2020-2025 (DPSI)*,² the Australian regulator has found that Meta has significant market power in the supply of social media services and faces weak competitive constraints from other platforms. The ACCC also made findings about the advertising revenue of social media platforms and the growing significance of influencer marketing, reiterating its earlier recommendations for regulatory reform for digital platforms.

This piece builds on our previous articles³ covering the DPSI. 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 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 discussed the ACCC's findings in its fifth DPSI interim report regarding regulatory reform for digital platforms (*Ex-ante Regulatory Reform Report*).⁸ Our earlier work discussed the ACCC's fourth DPSI interim report covering online retail marketplaces,⁹ third DPSI interim report covering choice screens in

¹ Jacqueline Downes: Partner at Allens. Melissa Camp: Lawyer at Allens. Dominic Page: 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 ACCC, "Digital Platform Services Inquiry 2020—2025". Available at <https://www.accc.gov.au/focus-areas/inquiries-ongoing/digital-platform-services-inquiry-2020-2025>.

³ See our previous articles published: Jacqueline Downes, Bella Cameron, and Jaime Hick, 'The ACCC's Ongoing Digital Platforms Services Inquiry: Regulatory Reform' (February 2023). Available at <https://www.competitionpolicyinternational.com/the-acccs-ongoing-digital-platforms-services-inquiry-regulatory-reform/>; 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=10bc6cacdc-EMAIL_CAMPAIGN_2022_01_24_10_27&utm_medium=email&utm_term=0_0ea61134a5-10bc6cacdc-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/>.

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. 5 – Regulatory Reform (published 11 November 2022). Available at <https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20September%202022%20interim%20report.pdf> (*Ex-ante Regulatory Reform Report*).

⁹ 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-%202031%20March%202022.pdf>.

search services and default browsers,¹⁰ and second DPSI interim report on app stores.¹¹

This article provides a comprehensive overview of the sixth DPSI interim report covering competition and consumer law issues associated with social media services in Australia (the **Social Media Report**).¹² First, this article summarises the key concerns identified in the ACCC's Issues Paper for the sixth DPSI interim report published on 16 August 2022 (**Issues Paper**).¹³ It then sets out the findings released by the ACCC in the Social Media Report published on 28 April 2023.

The Social Media Report recommended the same measures to Treasury for reform to competition and consumer laws in respect of social media platforms that the ACCC had recommended in its Ex-ante Regulatory Reform Report for all digital platform services.

II. Issues Paper

The ACCC previously examined competition and consumer law issues associated with social media services in Australia in its Digital Platform Inquiry (**DPI**). The ACCC's final report from its DPI was released in June 2019 (**DPI Final Report**). In the DPI Final Report, the ACCC concluded that Facebook (now known as Meta) had substantial market power in the supply of social media services in Australia, and that barriers to entry and expansion for social media services were high.

The ACCC noted in the Issues Paper that it had previously examined competition and consumer law issues associated with social media services in Australia in the DPI Final Report. However, the ACCC also noted that there had been new platforms enter the social media

services market since the DPI Final Report was released. This change to the competitive landscape for social media services in Australia prompted the ACCC to revisit its earlier findings in the DPI Final Report and update its analysis, focusing on the current state of competition and the impact of new entry on the provision of social media services in Australia.

To inform the Social Media Report, the ACCC released the Issues Paper seeking stakeholder views on the following topics:¹⁴

- supply of social media services to users;
- supply of advertising on social media platforms to advertisers;
- market structure and competitive conditions applicable to the supply of social media services in Australia, in particular barriers to entry and expansion;
- trends in product ecosystems of social media platforms, and increased integration between social media platforms and third-party digital platforms; and
- experiences of consumers and businesses when dealing with social media platforms, including consumer harms, the prevalence of scams and risks of misleading or deceptive content.

The ACCC received over 30 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, including from key social media companies such

¹⁰ 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>.

¹¹ 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>.

¹² ACCC, "Digital platform services inquiry – Interim Report 6: Report on social media services" (published 28 April 2023). Available at: https://www.accc.gov.au/system/files/Digital%20platforms%20services%20inquiry%20-%20Interim%20report%206%20-%20Report%20on%20social%20media%20services_0.pdf.

¹³ ACCC, Issues Paper for Interim Report No. 6: Report on social media services (published August 2022). Available at: https://www.accc.gov.au/system/files/Digital%20platform%20services%20inquiry%20-%20March%202023%20report%20-%20Issues%20paper_0.pdf (**Issues Paper**).

¹⁴ Issues Paper, p 11-15.

as Meta, Pinterest, Twitter, Google and TikTok.¹⁵

III. Social Media Report

The ACCC's Social Media Report became publicly available on 28 April 2023. In the report, the ACCC examined competition and consumer issues associated with businesses, advertisers, influencers, and consumers using social media services (including Facebook, Instagram, Twitter, Snapchat YouTube and TikTok) in Australia. Among other issues, the report focused on:

- the importance of regulating display advertising, which is a key revenue source for social media platforms and on which a high proportion of Australian businesses rely for promoting their goods and services;
- emerging issues from an exponentially expanding influencer marketing industry, such as the ACCC's view on the lack of disclosure requirements for sponsored social media posts, online harassment and potential exploitation of underage users; and
- a variety of potential harms arising from a lack of competition in social media services, as well as other consumer harms such as scams, no effective dispute resolution mechanisms and practices of collection, use and disclosure of data by platforms that in the ACCC's view does not align with consumer preferences.

The ACCC found that Meta is the most significant supplier of social media services in Australia, and that it has significant market power and faces weak competitive constraints from other social media platforms.¹⁶ Meta was also found to capture the vast majority of advertising spent on social media platforms in Australia, with the combined Australian advertising revenue of YouTube, TikTok, Twitter

and Snapchat being significantly less than Meta's.¹⁷

However, the Social Media Report did not recommend any new measures for reform. The ACCC considered that its recommendations from the Ex-ante Regulatory Reform Report can address many of the harms identified in respect of social media services. In this way, social media services appear to be viewed by the Australian competition regulator as one of the specific services to which the ACCC's recommended mandatory codes will apply, considering them 'designated' digital platforms. Our interpretation of the Social Media report is that the ACCC has implicitly identified Meta as a company that could be 'designated' under the ACCC's proposed ex-ante regulatory framework.

We set out the ACCC's findings from the Social Media Report in more detail below.

A. The ACCC's Findings

Social media data and trends

The ACCC noted in the Social Media Report that there have been numerous changes in the use of social media platforms by Australian consumers, and especially younger Australian consumers, since the ACCC last considered this market in the DPI.

The ACCC found that overall use of social media in Australia is growing, with 81% of the total Australian population actively using social media platforms as of January 2023.¹⁸ Contributing to this growth was the entry of social media platform, TikTok. The ACCC included data in the Social Media Report which shows that TikTok grew by 8 million monthly active users from 2 million to 10 million between 2019 and 2022.¹⁹ Despite this growth, the data also showed that Meta continued to have the most Australian users and time spent on its social media services on mobile apps, and that people had been spending more time on Meta's platforms between 2020 and 2022. Facebook's

¹⁵ All submissions available at: <https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25/march-2023-interim-report>.

¹⁶ Social Media Report, p 12-13.

¹⁷ Social Media Report, p 10.

¹⁸ Social Media Report, p 24.

¹⁹ Social Media Report, p 31.

Australian active user numbers were found to have also grown, exceeding 21 million monthly active users in 2022. In particular, the ACCC identified that as Australian consumers get older, the proportion of the population that use social media tend to use fewer platforms and predominantly use Facebook,²⁰ which is demonstrated by a low level of switching between Facebook and TikTok by consumers over the age of 25.²¹ For this reason, the ACCC concluded that Meta continues to have market power.

Another trend identified by the ACCC in the Social Media Report was the growing popularity of influencers on social media who make content that further attracts users to, and increases engagement on, social media platforms.²² The potential competition and consumer issues associated with influencer generated content on social media services was not previously considered by the ACCC in its DPI.

The ACCC also found that social media platforms have tended to expand their features and services in order to attract new users, improve user engagement and reduce the likelihood of users switching to competitors. Expansion of social media ecosystems may also provide platforms with more opportunities for targeted advertising and new opportunities to collect user data, increasing their ability to earn advertising revenue.²³ Examples of this include TikTok's popularization of the short form video format and Facebook's introduction of its Marketplace service in 2016.²⁴

We consider each of these trends in further detail below.

The ACCC's Competition Assessment – Meta's significant market power

The ACCC assessed the level and strength of competition for social media services in Australia, finding that Meta has a significant degree of market power and faces weak competitive constraints from other social media platforms.²⁵ This power is likely to remain in the short- to medium-term, and is especially the case for social media users aged 25 and above, who are less likely to use TikTok.²⁶

Although TikTok, Twitter and Snapchat are Meta's closest competitors, the ACCC found that these platforms are weak competitive restraints on Meta.²⁷ Due to differentiation between social media platforms in their function, use, demographics, and size of user base, they are weak demand side substitutes for Meta's Facebook and Instagram services.²⁸ For example, TikTok and Snapchat do not provide services that connect groups of users with common interests, such as Facebook's Groups feature, or that allow businesses to connect with users.²⁹ YouTube similarly lacks features that allow users to join social groups or send personal messages to other users.³⁰ Other social media platforms were also found to be unlikely to constrain Meta,³¹ and the ACCC considered that other private messaging services such as iMessage were not close demand-side substitutes for the services provided on Facebook and Instagram.³²

The ACCC also found that the following has contributed to Meta's market power:

- the size of Facebook and Instagram's active user base has enabled Meta to offer Australian users a service for connecting

²⁰ Social Media Report, p 24.

²¹ Social Media Report, p 109.

²² Social Media Report, p 30.

²³ Social Media Report, p 69.

²⁴ Social Media Report, p 70.

²⁵ Social Media Report, p 121.

²⁶ Social Media Report, p 89.

²⁷ Social Media Report, p 89.

²⁸ Social Media Report, p 94.

²⁹ Social Media Report, p 99.

³⁰ Social Media Report, p 100.

³¹ Social Media Report, p 106.

³² Social Media Report, p 101.

and keeping in touch with family, friends, and people with similar interests that is unmatched by other platforms.³³ It also enables Meta to provide advertisers with greater audience reach and collect a greater quantity of user data for targeted advertising;³⁴

- Facebook and Instagram have captured the key demographic group of users aged over 25, and TikTok and Snapchat are far less popular in that age group;³⁵
- since TikTok's entry and expansion in Australia in 2020, the Cambridge Analytica scandal in 2018, and leaks of Facebook documents by Frances Haugen in 2021, the total amount of user time spent on Meta's services has not significantly changed, which could reflect a lack of switching by users;³⁶
- barriers to entry and expansion of social media services remain high. The recent entry of TikTok which demonstrated the significant investment necessary to drive new entry and acquire users, and the need to enter with a differentiated service;³⁷
- same-side network effects pose a high switching cost and barrier to entry for new players. Platforms are likely to be more valuable to individual users if more of their social groups are already on that platform. As a result:
 - new or smaller platforms that compete directly with an incumbent may find it difficult to establish and grow a user base;³⁸ and
 - users may also lose access to personal and shared information held on social

media platforms if they switch to an alternative (this cost increases over time as volume of personal and shared information a user has on the platform grows);³⁹ and

- behaviors observed by the ACCC of Meta and other incumbent social media platforms that seek to imitate new features or limit interoperability between platforms can further raise barriers to entry and expansion.⁴⁰

The ACCC did, however, note that its conclusion regarding Meta's significant degree of market power does not preclude other platforms from having market power in relation to social media services.⁴¹

Interestingly, the ACCC did not use the phrase "substantial market power" in its Social Media Report findings, which is a threshold requirement for establishing whether a company has contravened Australia's prohibition on misuses of market power.⁴² It is unclear why the ACCC avoided engaging the language of the statutory prohibition in its findings here, given that it had adopted that language in its earlier work in its DPI Final Report which, in 2019, found that Facebook has substantial market power in the supply of social media services in Australia.⁴³

Harms arising from a lack of competition in social media services

Without effective competitive restraints, the ACCC considered there to be an increased risk that social media platforms have the ability and incentive to engage in exclusionary or exploitative conduct, such as:⁴⁴

- anti-competitive self-preferencing;

³³ Social Media Report, p 107.

³⁴ Social Media Report, p 118.

³⁵ Social Media Report, p 108-109.

³⁶ Social Media Report, p 111, 123, 124.

³⁷ Social Media Report, p 113.

³⁸ Social Media Report, p 115.

³⁹ Social Media Report, p 116.

⁴⁰ Social Media Report, p 119-121.

⁴¹ Social Media Report, p 121-122.

⁴² See s 46, *Competition and Consumer Act 2010* (Cth).

⁴³ DPI Final Report, p 58.

⁴⁴ Social Media Report, p 127.

- making access to a service conditional on using another service;
- creating barriers to switching and multi-homing, which can be particularly problematic where there are strong network effects;
- restricting third-party access to data; and
- not providing sufficient information to market participants.

The ACCC found that this kind of behavior can entrench market power and lead to consumer harms such as reduced choice, higher prices, or inferior services.⁴⁵ It can also lead to loss of privacy and autonomy for consumers from excessive data collection and use because they may feel compelled to use a service because their social and work networks are entrenched within them.⁴⁶ Accordingly, the ACCC continued to support its recommendation from the Ex-ante Regulatory Reform Report for the introduction of additional competition measures to empower it to make mandatory codes of conduct for 'designated' digital platforms.⁴⁷

Other harms to consumers and small businesses that were of concern to the ACCC in the report included:

- **scams, misleading or fake reviews, and fake accounts:** the high volume of user activity and relative speed and ease of publishing fake content increases the degree of harm posed.⁴⁸ While it acknowledged the existing efforts of social media platforms to detect and remove fake accounts, the ACCC found that further work may be required to improve detection efforts due to their prevalence;⁴⁹

- **unfair trading practices, including excessive data collection, the use of dark patterns and algorithms, and the creation of 'echo chambers':**⁵⁰ this can expose consumers to reduced privacy and security, increased profiling which can be used to manipulate or nudge people to act against their best interests (especially vulnerable consumer and children), increased risk of discrimination and exclusion, and reduced choice and quality of services;⁵¹
- **harms arising from targeted advertising, lack of transparency and advertising of age-restricted products:** the ACCC considered that some advertisements on social media are often only visible to their intended targets for a moment, and no one except the platform is aware of how, when, where or why they appear.⁵² Further, it found that more needs to be done to ensure underage people are not exposed to advertising for age-restricted products,⁵³ and noted work underway across government concerning age verification issues;⁵⁴ and
- **lack of effective dispute resolution mechanisms for consumer complaints:** the ACCC continued to support its recommendations from the Ex-ante Regulatory Reform Report on this issue, noting that consumers and small businesses need more effective and easily accessible ways to resolve disputes with social media platforms.⁵⁵

Each of the harms identified by the ACCC in its Social Media Report mirror findings made in its DPI Final Report in 2019. Since the DPI Final Report was published, the ACCC has continued to push for regulatory reform in a variety of areas to address these harms, including the

⁴⁵ Social Media Report, p 127.

⁴⁶ Social Media Report, p 128.

⁴⁷ Social Media Report, p 17.

⁴⁸ Social Media Report, p 141.

⁴⁹ Social Media Report, p 142.

⁵⁰ Social Media Report, p 137.

⁵¹ Social Media Report, p 143.

⁵² Social Media Report, p 151.

⁵³ Social Media Report, p 151.

⁵⁴ Social Media Report, p 154.

⁵⁵ Social Media Report, p 155.

introduction of an unfair trading practice prohibition,⁵⁶ establishment of a new National Anti-Scam Centre,⁵⁷ introduction of internal dispute resolution standards and a Digital Ombuds Scheme,⁵⁸ and reform of the Australian Privacy Act,⁵⁹ among other actions.

Influencers and inadequate disclosure

The ACCC found that, as the influencer marketing industry is growing significantly, there is a need for influencers to disclose payment, or free products or services, received from a brand. Further, the ACCC is concerned about the potential harm caused to influencers by:⁶⁰

- uneven remuneration from social media platforms who can considerably impact their ability to earn revenue;
- online harassment and bullying; and
- the potential exploitation of child influencers.

Social media platforms actively attract influencers to monetise their activities through content creator programs, bonus funds and tools for branding.⁶¹ This criticism was also levelled at social media platforms that take a percentage of rewards that users pay to their favourite influences. For example, when rewards are purchased in-app on iOS or Android devices, Apple and Google typically receive 30% of the revenue through their in-app purchase fees.⁶²

The ACCC argued that an influencer's relationship with a brand's products or services should be made 'clear, obvious and upfront' to users.⁶³ Without stronger regulations, consumers may be misled or prevented from making informed choices when purchasing products.

The ACCC conducted a sweep of influencer posts over January-February 2023 to identify posts by social media influencers that contained potentially misleading reviews or endorsements. It monitored 118 influencers over seven sectors where influencer marketing is widespread: fashion, beauty and cosmetics, food and beverage, travel and lifestyle, health fitness and wellbeing, and gaming and technology.⁶⁴ The ACCC identified a total of 81% of influencer posts as concerning and in need of follow-up action, relating to lack of disclosure or where disclosure was not clear or prominent.⁶⁵

The potential competition and consumer issues associated with influencer generated content on social media services were not previously considered by the ACCC in its 2019 DPI Final Report. As such, the ACCC indicated in the Social Media report that a short public report will be issued this year containing further detail on the results of the influencer sweep.⁶⁶ It also stated it intends to commence various education, compliance and potential enforcement activities based on the issues identified. This will focus not only on individual influencers, but also include industry engagement with brands, advertisers and social media platforms who may be facilitating influencer misconduct.⁶⁷

Advertising on social media platforms

The ACCC found that social media platforms earn significant advertising revenue in Australia, with Meta's platforms earning the highest revenue (4.7-5.1 billion from July 2021 to June 2022, with the next highest being YouTube with

⁵⁶ Social Media Report, p 15-17.

⁵⁷ Social Media Report, p 14, 16, 137, 140.

⁵⁸ Social Media Report, p 14, 16, 155.

⁵⁹ Social Media Report, p 181.

⁶⁰ Social Media Report, p 159.

⁶¹ Social Media Report, p 161.

⁶² Social Media Report, p 163.

⁶³ Social Media Report, p 165.

⁶⁴ Social Media Report, p 167.

⁶⁵ Social Media Report, p 169.

⁶⁶ Social Media Report, p 168.

⁶⁷ Social Media Report, p 168.

only 430-470 million during the same period).⁶⁸ Large businesses use a large portion of their advertising budgets on social media, particularly on Meta's services.⁶⁹ From July 2022 to January 2023, Australia's 20 highest spending advertisers allocated 90% of their spend across Facebook, Instagram, TikTok and Snapchat to Meta's services.⁷⁰

The ACCC also conducted an analysis of ad load (more advertising relative to organic content) on selected social media platforms. By comparing the number of advertising impressions shown to users compared to total time spent on the platform, the ACCC found that Meta's offerings have higher ad load compared to TikTok and Snapchat.⁷¹

The report found that Meta has considerable advantages over other platforms in terms of the size of its audience, the number of active users, the time spent on its platforms and the data that it collects on users.⁷² Submissions to the report indicated that Facebook is an enduring 'must have' service for advertisers, including both small and large businesses.⁷³

The report raised specific concerns held by the ACCC around advertising on social media platforms:

- **Advertising performance claims are hard to substantiate due to lack of transparency:** The ACCC considered that advertisers have difficulty verifying the accuracy of advertising performance claims and metrics provided by social media platforms.⁷⁴ Third-party verification tools do not overcome these transparency issues.⁷⁵
- **Dispute resolution mechanisms are needed:** If advertisers do not have access to timely and effective customer support and dispute resolution mechanisms, the ACCC

found that power imbalances may be exacerbated, and advertisers may suffer significant harms. Accordingly, it continued to support the recommendation from the Ex-ante Regulatory Reform Report that digital platforms comply with mandatory dispute resolution standards and the establishment of a Digital Ombuds Scheme.⁷⁶

B. The ACCC's Recommendations

As canvassed above in this article, the ACCC identified a range of competition and consumer issues from its analysis of social media services. These included, by way of summary:⁷⁷

- the significant market power of Meta;
- potentially harmful data collection and use practices by social media platforms;
- a lack of effective dispute resolution mechanisms for social media users;
- harm to Australian users caused by scams or fake ratings/reviews;
- a general lack of advertising transparency across social media platforms; and
- inadequate disclosures of brand and advertising activity by influencers.

The ACCC noted that many of the harms identified in the Social Media report could be addressed by the measures it recommended in its Ex-ante Regulatory Reform Report.⁷⁸ It did not propose any new recommendations, instead reiterating the need for an economy-wide prohibition against unfair trading practices, mandatory processes to prevent and remove scams, internal dispute resolution standards and access to an independent external Digital Ombuds Scheme, and the introduction of

⁶⁸ Social Media Report, p 77.

⁶⁹ Social Media Report, p 81.

⁷⁰ Social Media Report, p 83.

⁷¹ Social Media Report, p 125.

⁷² Social Media Report, p 130.

⁷³ Social Media Report, p 131-132.

⁷⁴ Social Media Report, p 86.

⁷⁵ Social Media Report, p 87.

⁷⁶ Social Media Report, p 87-88.

⁷⁷ Social Media Report, p 6.

⁷⁸ Social Media Report, p 16.

targeted competition obligations on 'designated' platforms.⁷⁹

For detailed analysis of the recommendations from the ACCC's Ex-ante Regulatory Reform Report, please refer to our previous article which considered that report.⁸⁰ The Social Media Report condensed these measures into four key regulatory reform recommendations.⁸¹ These are set out in turn below.

Economy-wide consumer measures

The ACCC continued to push for economy-wide consumer measures, including a prohibition against unfair trading practices and strengthening unfair contract terms legislation.⁸² The ACCC has been advocating for these regulatory reforms since its DPI Final Report where it argued that many of the user harms identified in digital markets fall outside of the Australian Consumer Law.⁸³ In its Social Media Report, the ACCC noted that, if introduced, the unfair trading practices prohibition may capture conduct identified by the ACCC as causing harm to users, such as excessive data collection, the use of dark patterns and algorithms, and the creation of 'echo chambers'.⁸⁴ The ACCC is concerned that social media platforms require users to agree to onerous contract terms may leave them vulnerable to such harms, and envisages that an unfair trading prohibition combined with strengthened unfair contract terms laws would address problematic conduct arising from this power imbalance.⁸⁵

Digital platform specific consumer measures

The ACCC recommended additional targeted measures applicable to all digital platforms including:

- mandatory processes to prevent and remove scams, harmful apps, and fake reviews such as:

- a notice-and-action mechanism;
- verification of certain business users;
- additional verification of advertisers of financial services and products;
- improved review verification disclosures; and
- public reporting on mitigation efforts.
- mandatory internal dispute resolution standards to ensure accessibility, accountability, transparency, timeliness, and the ability to contact a human representative; and
- establishing an independent external Digital Ombuds Scheme to which consumers and small business have access.

Additional competition measures for digital platforms

The ACCC recommended a new power to implement mandatory codes of conduct tailored to 'designated' digital platforms (ie, service-specific codes), which would contain targeted obligations.

Targeted competition obligations

The framework for mandatory service-specific codes proposed above should be developed in consultation with industry and other stakeholders, and support targeted competition obligations on 'designated' platforms to address harms such as:

- anti-competitive self-preferencing;
- anti-competitive tying;
- exclusive pre-installation and default agreements that hinder competition;
- impediments to consumer switching;
- impediments to interoperability;

⁷⁹ Social Media Report, p 16.

⁸⁰ See Section III, Part B of Jacqueline Downes, Bella Cameron, and Jaime Hick, 'The ACCC's Ongoing Digital Platforms Services Inquiry: Regulatory Reform' (February 2023). Available at <https://www.competitionpolicyinternational.com/the-acccs-ongoing-digital-platforms-services-inquiry-regulatory-reform/>.

⁸¹ Social Media Report, p 17.

⁸² Social Media Report, p 17.

⁸³ DPI Final Report, p 498-500. Available at <https://www.accc.gov.au/publications/digital-platforms-inquiry-final-report>.

⁸⁴ Social Media Report, p 143 and 137.

⁸⁵ Social Media Report, p 143.

- data-related barriers to entry and expansion, where privacy impacts can be managed;
- a lack of transparency;
- unfair dealings with business users; and
- exclusivity and price parity clauses in contracts with business users.

C. Next steps

Treasury has now completed a consultation process on the ACCC's recommendations and proposed regulatory model in its Ex-ante Regulatory Reform Report, which were reiterated in the Social Media Report. The results of this consultation will inform Treasury's advice to the Government regarding its response to the recommendations.⁸⁶

The ACCC's next interim report will consider potential competition and consumer issues and benefits from the expanding ecosystems of digital platform providers in Australia.⁸⁷ It will focus on smart home devices and consumer cloud storage solutions as examples of this, however, is also accepting submissions on artificial intelligence, virtual and augmented reality, education technology, health devices

and services, financial technology, gaming, media streaming and others. The seventh interim report is due to be provided to Treasury by 30 September 2023, and will consider the following issues:

- the expansion strategies of digital platform providers and the role of data in their ecosystems;
- strategies used by digital platforms to lock consumers into a single ecosystem and the level of interrelatedness of products and services within ecosystems;
- potential competition issues, such as bundling and tying, self-preferencing and pre-installation arrangements and default settings; and
- potential consumer harms, such as conduct associated with the use of consumer data, dark patterns or other unfair or misleading behaviours.

The ACCC released an issues paper on 8 March 2023 seeking views on these matters from interested stakeholders, and the deadline for submissions has now closed.⁸⁸

⁸⁶ See Treasury's consultation paper, "Digital Platforms – Consultation on Regulatory Reform" (20 December 2022). Available at: <https://treasury.gov.au/consultation/c2022-341745>.

⁸⁷ Social Media Report, p 16.

⁸⁸ ACCC, "Digital Platform Services Inquiry - September 2023 report – Issues Paper" (March 2023). Available at: <https://www.accc.gov.au/inquiries-and-consultations/digital-platform-services-inquiry-2020-25/september-2023-interim-report>.