

17 April 2024

Ms. Gina Cass-Gottlieb
Chair
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

RE: *Comments of ACT | The App Association to the Australian Treasury on Digital Platforms for a Consultation on Regulatory Reform*

Dear Chair Cass-Gottlieb:

ACT | The App Association appreciates the opportunity to provide input to the Australian Competition and Consumer Commission (ACCC) in response to its request for comments on competition and consumer issues in relation to general search services in Australia.¹

The App Association represents thousands of small business application developers and connected device companies, located both within Australia and across the globe. These companies drive a global app economy worth more than AUD 2.3 trillion, and this economy continues to grow. App Association members leverage the connectivity of smart devices to create innovative solutions that introduce new efficiencies across consumer and enterprise use cases and rely on a predictable and fair approach to platform regulation to grow their businesses and create new jobs; therefore, the Australian government's inquiry into digital platforms is directly relevant to us, and we urge for the careful consideration of our views.

The App Association encourages ACCC and other competition policymakers and enforcers to craft flexible, industry-agnostic approaches to promote a harmonised and predictable legal and business environment. Such approaches will be more able to keep pace with changes to the marketplace brought on by technological advancements that cannot be anticipated. The concept of a 'digital platform' and 'digital market' is constantly changing as new services and products are introduced to the public. Differences in terminology between how phrases are used in commerce and how phrases are used in static industry-specific merger guidance will inevitably diverge, leading to an inconsistent application of antitrust law that would deter beneficial mergers and acquisitions.

¹ <https://www.accc.gov.au/system/files/dpsi-september-2024-report-issues-paper.pdf>

The App Association has provided extensive comments to ACCC and the Australian Treasury which we incorporate and build on here. Generally, the App Association presents the following considerations:

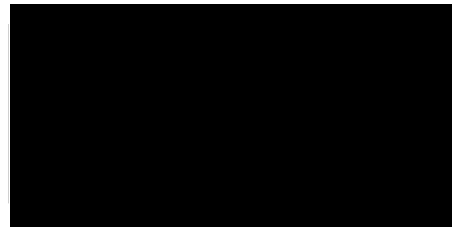
- Small businesses operating within and across the digital economy rely on a reliable, industry-agnostic approach to competition policy and enforcement. A predictable legal and business environment allows for innovators to better navigate changes to the marketplace brought on by technological advancements that cannot be anticipated.
- Rigorous economic analysis is a cornerstone of any review or enforcement and must be continued in the Australian review process as it provides a transparent and objective method of evaluation in enforcements and allows businesses to predict when their actions may or may not create antitrust enforcement concerns. Reducing the role of or removing economic analysis from Australian competition decision-making processes would create uncertainty for businesses, disrupting legal and business certainties and limiting the ability of the innovative companies we represent to succeed.
- Objective data-driven evidence showing systemic harms should be used to inform any changes made to competition reviews/enforcements, rather than edge use cases and hypotheticals. Specifically, vertical integrations should not be viewed as inherently anticompetitive or as innately having a negative effect on competition and consumers, as such assumptions stand in stark contrast to both objective evidence and the experiences of our members. We urge the Australian government to conclude that where vertical integration or self-preferencing can lead to greater efficiency, better quality, or lower costs for consumers, there are minimal antitrust issues when users can easily switch to another search service.

The App Association also reiterates its call for ACCC, the Treasury, and other policymakers to refrain from taking significant action before carefully studying the impacts of mirroring the European Union's Digital Markets Act (DMA) approach to digital platforms, particularly in the context of Australian trade priorities and goals. We urge Australian policymakers to appropriately avoid the DMA's one-size-fits-all approach to digital platform practices. The DMA is antithetical to the free and fair trade principles and conditions that have enabled digital economy success and growth, and the potential of its replication in other important markets like Australia is a threat to innovation and job creation. Digital economy use cases, including search services, should be evaluated on a case-by-case basis and addressed through a scaled approach to mitigating demonstrated harms. The DMA's implementation, which is ongoing, continues to illuminate how blanket bans across diverse markets in the digital economy are intensely difficult to operationalise and comply with, and calls into question how the DMA's provisions will accomplish European policymakers' goals. Rather than build a regulation around technology- and modality-neutral goals, the DMA has put rules into place responding to rare and hypothetical use cases and is applying those rules to the entire digital economy. Australia's approach has not, and should not, shift to mirror the

approach to digital platform regulation in the DMA; at most, Australia should observe the impacts of the DMA's implementation before considering adopting similar approaches.

The App Association shares the Australian government's goals of advancing competition and innovation in digital platforms. We are committed to working with the ACCC and others across the Australian government to bring the benefits of the dynamic app economy to all Australian consumers and businesses through the development of balanced consumer protection and competition policies.

Sincerely,



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