

2 September 2021

Mr. Rod Sims
Chairman
Australian Competition and Consumer Commission
23 Marcus Clarke Street,
Canberra ACT 2601

Subject: Asia Internet Coalition (AIC) Comments on the Issues Paper for the Australian Competition and Consumer Commission's (ACCC's) General Inquiry into General Online Retail Marketplace (Inquiry)

Dear Mr. Chairman,

The [Asia Internet Coalition \(AIC\)](#) and its members wishes to express our sincere gratitude to the Australian Competition and Consumer Commission (ACCC) for the opportunity to submit comments on the [Issues Paper for the General Inquiry into General Online Retail Marketplace \(Inquiry\)](#).

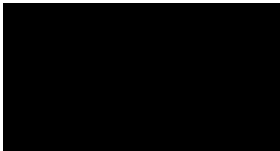
The AIC is an industry association of leading Internet and technology companies. AIC seeks to promote the understanding and resolution of Internet and ICT policy issues in the Asia Pacific region. Our member companies would like to assure the ACCC that they will continue to actively contribute to the security of digital platforms, products and services in support of the digital economy goals of Australia. Our members are Airbnb, Amazon, Apple, Expedia Group, Facebook, Google, Grab, LinkedIn, LINE, Rakuten, Twitter and Yahoo (Verizon Media), and Booking.com. For your information, the AIC has submitted several policy positions to the ACCC in the recent year including the Digital Advertising Services Inquiry and the Media Bargaining Code.

First and foremost, we commend the ACCC for their efforts on drafting the issues paper to ensure competition and consumer issues are upheld in the online retail market place. While we support the ACCC's intention, we would also like to express our views on a number of issues including the coverage of inquiry, issues related to competition, relationship between sellers and operators of online marketplaces as well as consumer protection. While the issues paper discusses a number of the issues above, the AIC also notes that the paper does not include an outline of the possible outcomes from the Inquiry, which departs from previous practice in the Digital Platform Services Inquiry. AIC welcomes and strongly supports this as it suggests the ACCC intends to use this Inquiry to build an understanding of this sector before returning to recommendations. As such, please find appended to this letter with detailed comments which we would like the ACCC to consider when preparing the final report.

We are also grateful to the ACCC for upholding a transparent, multi-stakeholder approach in developing future recommendations. We further welcome the opportunity to offer our inputs and insights, directly through meetings and participating in official consultations.

Should you have any questions or need clarification on any of the recommendations, please do not hesitate to contact me directly at Secretariat@aicasia.org or [REDACTED]. Thank you for your time and consideration.

Sincerely,



Jeff Paine
Managing Director
Asia Internet Coalition (AIC)

Detailed Comments and Recommendations

This submission addresses four main areas relating to the Inquiry:

- purpose and coverage of the Inquiry
- competition issues
- the relationship between sellers and operators of online marketplaces and
- consumer protection.

There are a large number of issues that may emerge during the Inquiry and AIC would gladly contribute further to the Inquiry if required.

1. The purpose of the Inquiry

AIC appreciates that the complexity of issues raised in digital markets requires some limits to be placed on sector reviews such as this Inquiry. We note that the Australian Government has funded a specialist team and the Digital Platforms Services Inquiry

(DPSI) over five years with the purpose of addressing a wide range of issues. This provides a valuable opportunity for the ACCC to examine the issues surrounding online commerce in a careful and measured way and with appropriate scope.

AIC considers the purpose of the inquiry should be for the ACCC to inform itself of industry dynamics, and assess developments in the industry without rushing to reach a 'view' on what is its first substantive inquiry into marketplaces. Indeed, any recommendations should be reserved until the ACCC has either considered similar issues as they apply to other business models and understood all the industry dynamics.

2. The coverage of the Inquiry

Consumers and retail businesses looking to buy and sell retail products are not limited themselves to the "general online retail marketplaces" that define the coverage of this Inquiry. Consumers have a multitude of options, including physical ("bricks-and-mortar") retailers, multi- and omni-channel sellers, online marketplaces, single seller stores and even social media-based trading sites. Switching is easy. A consumer can buy a kitchen appliance at a major physical department store in the morning, clothes on an online fashion marketplace on a mobile phone that afternoon, headphones from an audio specialist's online store in the evening and order groceries from a supermarket's online store, to be collected at a physical store the next day. The consumer could also make many of those purchases on an online marketplace, or through some combination of different retailers, all without having to deal exclusively with any of them. There are few sectors in the economy that offer as many competing alternatives or are as competitive as the retail sector. It is particularly important to note that of the four marketplaces specifically referred to in the ACCC issues paper, three of those have been operating in Australia for less than 10 years.

Equally, sellers can use multiple online and offline distribution and sales channels to reach consumers, supplying department stores or supermarkets as wholesalers, operating their own online store or selling through an online marketplace. Increasingly, sellers can supply simultaneously on multiple marketplaces and their own online store using e-commerce software.

The limited coverage of the ACCC's Inquiry can be contrasted to the market dynamics described and risks providing an incomplete view of the significance of online marketplaces and their role in the retail sector. The consequence of which may include the formulation of recommendations that would impose barriers to marketplaces fairly competing with established retail operators. The AIC has observed similar outcomes in other jurisdictions, both in Asia and more broadly and respectfully calls on the ACCC to consider the full extent of the competition in the retail market but also the possibilities

that are already available to consumers online, including online and physical retail channels and international competition. The AIC respectfully calls on the ACCC to exercise caution in moving from a narrow examination of a handful of participants to recommendations, when the Inquiry excludes many other key participants in this sector.

3. Competition

As the Issues Paper observes, “[g]eneral online retail marketplaces are multi-sided platforms and compete against each other, as well as other online and bricks and mortar businesses, in attracting both sellers and consumers”.¹ The AIC agrees and, as discussed above, considers the Australian retail sector particularly diverse and competitive. To the extent that any competitors may have market power, it is likely to be incumbent, bricks-and-mortar retailers that have entrenched supply arrangements, established brand recognition and extensive physical presence.

Competition in Australian retail has been significantly enhanced by the entry of online marketplaces.² Online marketplaces often supply across multiple product categories and even supply non-retail products and services, which further enhances competition. The AIC has previously commented on the significance of economies of scope. In relation to recent reforms proposed in Singapore, we said:

What constitutes “consumption synergies” (“convenience, savings in transaction costs and time”) and “economies of scope” (“cheaper for a single supplier to produce the multiple products or services compared to having one supplier producing each of the product or service”) translates directly into consumer benefits and are the most basic benefits of procompetitive market entry. Competition authorities should not put their “thumb on the scale” of “small” producers versus “conglomerate” producers. The existing tools of product market definition and theories of tying/bundling already address competition harms that may arise from companies expanding into new markets.³

The competitive dynamic in the sector has been further intensified by the availability of e-commerce software and services that mean barriers to entry are lower than ever. It is now exceptionally easy for an independent seller to launch an online store and host it

¹ Issues Paper, p 11.

² This has been noted by the ACCC itself: <https://www.smh.com.au/business/companies/i-wont-save-you-from-amazon-acc-boss-rod-sims-tells-retailers-20171129-gzv74u.html>

³ AIC, “Industry Submission on Public Consultation on Proposed Changes to Competition Guidelines and the Issued Guidelines on Price Transparency”, 8 October 2021, p 6. Available at: <https://aicasia.org/wp-content/uploads/2020/10/Industry-Submission-on-Public-Consultation-on-Proposed-Changes-to-Competition-Guidelines-and-the-Issued-Guidelines-on-Price-Transparency.pdf>

on cloud services, advertise cheaply, arrange payments, and manage inventory and fulfilment. These services also make scaling an online store easy and they largely eliminate the need for retailers to engage in “lumpy” investments as they grow.

Given these developments, the AIC would urge the ACCC to apply a skeptical eye to claims that a lack of competition justifies any significant intervention in relation to online marketplaces. Applying a traditional competition test in relation to these concerns, if a general online retail marketplace were to increase the price of products offered on its site, consumers would have many alternatives and could seek out these alternatives simply by using a search engine to find a better deal. As discussed above, consumers can easily compare prices on a product-by-product basis and make purchasing decisions accordingly.

Applying more recent theories of competition that emphasise non-price factors such as quality of service, terms and conditions or even the extent of data collection by a marketplace, will lead to similar conclusions: if consumers do not receive the products or services they want, or are uncomfortable with the terms, they can and do move quickly to alternate sellers. To assist them in that search, there are multiple review sites that provide information not only on individual products and deals, but the service and quality of the online marketplaces themselves. In Australia, sites like ozbargain.com.au, and whirlpool.net.au have dedicated forums that provide continuous commentary on the performance of online marketplaces.

Overall, the rapid growth and success of online marketplaces in Australia that the ACCC quotes in the Issues Paper,⁴ has taken place in the face of competition from incumbent retailers and many competing forms of online and physical distribution. The success to date of some marketplaces is evidence that they are satisfying the demands of both customers and sellers. It is however to note that, despite that growth, online marketplaces continue to make up a very small percentage of Australia’s overall retail market with some estimates putting it at approximately 5%.⁵

4. Relationships between general online retail marketplaces and third-party sellers

The Issues Paper raises several points on the operation of online marketplaces with regard to sellers, including the listing and display (ranking) of products available on a

⁴ Issues Paper, p 3.

⁵ See https://auspost.com.au/content/dam/auspost_corp/media/documents/ecommerce-industry-report-2021.pdf. The Australia Post report estimates online commerce to be approximately 16.3% of retail trade and “variety stores” at 33% of that share. We note that “variety stores” does not correspond exactly with “general online retail marketplace” as defined in the Issues Paper, and is likely to include online stores in addition to marketplaces.

marketplace, the collection of data and “seller satisfaction” and the experience of third-party sellers.

Commercial terms: The AIC is not in a position to provide detailed input on commercial relationships between individual online marketplaces and sellers in Australia but, as described at the outset of these submissions, sellers have multiple options to reach consumers. In the absence of a channel being a “must have” or unavoidable partner, there should be a strong presumption against intervening in the commercial arrangement that emerge in markets that include multiple options. Direct regulatory intervention (as opposed to enforcement of general competition rules) should be reserved for cases of market failure, or where it is commercially impracticable to duplicate a service.

Display and promotion: The choices online marketplaces make about listing and display of goods are the digital equivalent of choices made every day by physical retailers about the stocking and in-store promotion of goods in their stores. Indeed, many physical retailers have their own brands which compete with the products supplied by other manufacturers. Department stores increasingly operate concession models, where ‘brands’ compete in store with the department store itself. Online marketplaces face similar incentives to bricks-and-mortar retailers face to deliver variety, choice and competition within the store. Third-party sellers can choose between many different channels to market (including building their own channel using e-commerce software), online marketplaces have no incentive to damage third-party sellers, which over time would lead only to a poor reputation, less choice, reduced customer traffic and falling revenue.

Examining how these online marketplace sectors operate and understanding their incentives given the vital role sellers play in marketplaces (expanding consumer choice, product options, price competition) strongly suggests that the ACCC should be slow to find the relationships between general online retail marketplaces and third-party sellers is such as to justify intervention.

5. Consumer Protection

AIC submits that there is no reason to apply consumer protection principles differently to online commerce as opposed to physical retail. As the ACCC notes in the Issues Paper, “[t]hough there are benefits to consumers from being easily able to access such large numbers of products, there is also risk of harm to consumers, including from products that are unsuitable or of low quality, or from scams or products that may cause harm.”⁶

⁶ Issues Paper, p 15.

However, the fact that a transaction occurs through an online marketplace does not in itself increase the risk of consumer harm. An increase in quantity of goods available, and in particular the increased availability of imported goods, may create a larger pool of goods but that may occur in either physical or online channels.

The AIC acknowledges that there are some practical difference between online sales and physical sales, including the fact that consumers may not have the opportunity to inspect goods purchased online, where they may have that chance in physical purchases. However, that difference is addressed in Australia (and many other countries) by applying consumer guarantee rights that allow customers to return goods that are not of “acceptable quality “or do not comply with descriptions or are unsafe. As long as consumers must not incur additional expense to exercise these rights when purchasing online, the treatment should be similar.

Further, the AIC notes that online marketplaces will often provide additional guarantees and safety outcomes that are superior to those offered by bricks and mortar sellers to provide online consumers. This makes commercial sense, as online marketplaces face a stronger incentive to create a reputation for reliability and supplying suitable and safe goods in order to compensate for the fact that consumers cannot physically inspect goods. Online marketplaces will often make compliance with mandatory standards a condition of selling on the store. As discussed in the Issues Paper, several leading marketplaces in Australia have signed a “Product Safety Pledge” that implements checks and reporting that lifts compliance at least to the level of physical retailers. It is important to note that the same concern to preserve and enhance marketplaces’ reputation that led to the Product Safety Pledge also influences the approach to providing consumer protection and resolving consumer complaints.

6. Inquiry outcomes

The AIC notes that the Issues Paper does not include an outline of the possible outcomes from the Inquiry, which departs from previous practice in the Digital Platform Services Inquiry. AIC welcomes and strongly supports this as it suggests the ACCC intends to use this Inquiry to build an understanding of this sector before returning to recommendations. We note that, in some other markets, regulators or expert panels have shifted from an exploratory phase to recommending highly interventionist reforms without adequately testing their findings or exploring alternative approaches. The ACCC should avoid that error.

In general, and as noted in our submission on the ACCC's Interim Report on Digital Advertising Services,⁷ if, after taking the time to consider all the dimensions of the sector, the ACCC considers reforms are required, AIC encourages the ACCC to work with industry to find solutions to its concerns. This would provide sufficient opportunity for consultation, which is critical to avoiding unintended consequences and ensuring any solutions enhance competition, provide a level playing field for market participants and promote the interests of consumers.

⁷ AIC, "Comments on Interim Report for Digital Advertising Services Inquiry to ACCC", 22 March 2021, available at: <https://www.accc.gov.au/system/files/Asia%20Internet%20Coalition%20%28March%202021%29.pdf>