



Submission in response to the
Digital advertising services inquiry interim report,
December 2020

Australian Competition & Consumer Commission

March 2021

The Association for Data-driven Marketing and Advertising
Level 27
100 Barangaroo Road
Sydney NSW 2000
ABN: 53 156 305 487

This page intentionally left blank

Introduction

The Association for Data-driven Marketing and Advertising (**ADMA**) welcomes the opportunity to make a submission to the Australian Competition & Consumer Commission (**ACCC**) in relation to the Digital advertising services inquiry Interim report (**Interim Report**).

Despite the impact of COVID-19¹, the digital advertising market in Australia remains significant with the industry earning AU\$9.1 billion in the 2019-20 financial year. This figure alone signifies just how critical the digital economy is to the economy.

COVID-19 saw Australia's economy constrained by various restrictions, that amongst other things reduced capacity of foot traffic and required businesses to pivot their core operating models in order to survive. For many, that involved relying on their e-commerce platforms and digital presence/acumen or in instances where this didn't exist, in establishing one with speed to market so as to reach a customer base and keep business afloat. The circumstances called for businesses of all sizes to upskill and/or consider tools or options that made their advertising opportunities easily accessible and efficient.

Nearly a year into this global pandemic the Australian digital advertising services industry has proven itself more integral to everyday life than it was before. The digital advertising services industry continues to offer innovative solutions to problems, provide 'free' access to services and content, open up advertising opportunities, create paths to new consumers and ultimately continue to be a stimulus to an economy that has seen better times.

The continuous growth and importance of this industry is why ADMA, in its earlier submission in response to the Ad Tech Inquiry Issues Paper ("**Issues Paper**"), advocated for an inquiry to evaluate the levels of accountability and transparency in the ad tech industry. ADMA believes that such will help further develop and future-proof the industry, facilitate continued growth and encourage participation of responsible actors.

Accountability and transparency are key to helping marketers further develop their digital marketing supply chain and practices efficiently and effectively. ADMA, as the principal industry body for data-driven marketing and advertising, supports a competitive, transparent, efficient, healthy and sustainable digital advertising economy and believes the opportunity to once again contribute to this inquiry looking at the development of this sector is important as the findings will only further enhance the industry's contribution to Australia's economy.

¹ ACCC (2020), *Digital Advertising Services Inquiry Interim report*, page 9

ABOUT ADMA

ADMA represents the full 360 degrees of Australia's media, marketing and advertising ecosystem. ADMA itself is the principal industry body for data-driven marketing and advertising in Australia, representing over 350 organisations from a broad spectrum of Australian industries. Together these organisations employ about 28,000 marketing professionals, many of whom are on the cutting edge of the data revolution. Members range in size from SMEs to multinational corporations. They include banks, telecommunication companies, global tech companies, advertising agencies, specialist suppliers of marketing services, statutory corporations, retailers, specialist industries such as travel, hospitality and automotive and educational institutions.

Data-driven marketing and advertising is platform-neutral and includes any marketing communication which uses data-insights, including personal information, to engage with a consumer with a view to producing a tangible and measurable response.

ADMA's primary objective is to help companies achieve better results, efficiencies and compliance when engaging with the enlightened use of data-driven insights. ADMA serves its members interests by protecting, supporting and championing excellence in data-driven marketing & advertising in Australia and where appropriate, internationally. As a nearly 50 year young industry body, ADMA has been a critical contributor to the development and education of the data-driven regulatory framework. Its broad remit encompasses privacy, SPAM, Do Not Call Register, digital, data, security, communications, media and convergence within those areas.

The responsible use of data in marketing and advertising is whole-heartedly supported by ADMA. A combination of technological innovation, advances in data collection and analysis, increased expertise in this area together with a shift in customer behavioural patterns (and expectations) have propelled data-driven marketing into a new era, offering organisations of all sizes the opportunity to better connect and engage with their target consumer.

ADMA represents responsible players in the data-driven marketing industry and actively advocates and guides its members in building, managing and maintaining dependable ecosystems that are used appropriately for the benefit of consumers.

Coming from all key areas of private enterprise and the public sector in Australia, all ADMA members have one thing in common: they are focused on harnessing data in a responsible and innovative way to better achieve their business and marketing goals and give the end consumer a trusted valuable user experience.

ADMA acknowledges our members may have an interest in individual questions raised in the Interim Report, however in this submission we focus on key issues as they pertain to the data-

driven marketing and advertising industry. Individual members of ADMA may provide separate submissions to the Australian Competition & Consumer Commission

General Comments

The ACCC's Interim Report presents 6 proposals for consideration and response by the industry. Each proposal is clear in its individual objective and purpose.

1. Measures aimed at increasing data portability and interoperability;
2. Data separation mechanisms;
3. Rules to manage conflicts of interest and self preferencing;
4. A voluntary industry standard to enable full independent verification of DSP services;
5. Implementation of a common transaction ID; and
6. A common user ID to allow tracking of attribution activity (with privacy compliance).

The proposals, when considered collectively, reflect some key goals the ACCC aims to achieve for the digital advertising industry. These are as follows:

- Increase consumers ability to control how their data is handled and used in digital advertising;
- Shift the obvious incumbent power from the tech giants to both lower barriers to entry and increase overall competition in the industry;
- Ensure that consumers are aware of exactly how their data is used, increasing both the transparency of digital marketing practices and the accountability of the actors involved;
- Reduce the barriers to entry in the marketplace, allowing for a more even playing field;
- Secure data collection and protect the privacy of the consumer in a way that still allows for good actors to partake in the digital economy ethically;

The ACCC's six proposals put forward some specific solutions. It is ADMA's opinion that while these solutions, in theory, appear to be a positive move towards achieving the stated goals, consideration must still be given to the practicality of implementing each recommendation.

There are contributing factors that could impact each proposal and these must also be taken into account. A failure to do so would create a very real danger that instead of improving competitiveness, the outcome will instead be a compounding of power to the incumbents in a way that strangleholds innovation and efficiency within the ad-tech industry.

Key to the implementation of the ACCC's proposals operationally, is the Review of the Privacy Act currently being undertaken by the Attorney-Generals Department's² ("**Privacy Review**"). It is ADMA's opinion that the recommendations of the Interim Report must not be considered in isolation of the Privacy Review as the way in which the digital advertising industry will grow, hinges on the development of Privacy laws in Australia.

Another important consideration that has the potential to impact the industry substantially is Google's deprecation of third-party cookies in its Chrome web-browser. While third party cookies have already been removed from Apple's Safari browser and 'containered' by Firefox browsers, the move by Google to deprecate cookies too will have an impact on the industry the way in which the introduction of real time bidding did many years ago. This is because Chrome accounts for approximately 65% of the remaining browser usage.

Therefore, it is expected that this change by Google will effectively end the use of third-party cookies. The third party cookie has been core reliance for digital marketers, so this change will have far reaching implications in the digital advertising supply chain. Google has further reinforced the direction it has chosen to take in its announcement by Alphabet Inc, where it confirmed that Google won't be providing or using alternatives that uniquely identify people as they move across the internet.

While Google has outlined some proposed tools and methods it intends on introducing to facilitate some level of re-targeting, in place of third party cookies (namely FLoC³ and Fledge⁴) - there is little evidence yet to confirm whether this will be their long term offering/ approach and how that will influence marketers in connecting their first party data to the new world order.

ADMA recommendation: The changes in Privacy laws and the deprecation of third party cookies will in itself be a reimagination for how digital advertising will work and how consumer rights, choices and ethics will need to be considered. ADMA recommends that the ACCC does not consider the Interim Report proposals in isolation (or even in advance of these developments) as it could create issues or implementations that require 'unravelling' at a later date.

² Attorney General's Department's review of the *Privacy Act* (October 2020)

³ FLoC stands for "Federated Learning of Cohorts" and will enable targeting ads to groups of people with similar characteristics

⁴ Another of Google's proposed tools and methods to enable some level of retargeting – sending an ad to someone who previously interacted with a brand's website

The importance of Privacy

At the very core of Privacy is the concept that individuals ought to be able to exercise control over the way in which information about them is collected, used, managed and disclosed. This is a universal goal of data protection and privacy laws. However, in the current state of the digital economy it is difficult for data subjects to exercise any real control within the digital advertising ecosystem. While partly due to the complex and opaque nature of the digital advertising supply chain, there is also a sense that this position is somewhat deliberate and led by the larger data holders who benefit from protecting this commercially sensitive information.

Quite often (globally) Privacy laws are used as the excuse for mature data holders to close down discussions about the kind of data held and the ways in which it has been derived, shared or made available to others. 'Privacy laws' also becomes the all-encompassing excuse that sophisticated data holders use to keep both personal information and other digital service data sets to themselves. This is particularly the case when data holders sit as both media publishers and data asset owners (e.g. YouTube)

Publishers, advertisers and consumers, each to varying degrees, seek access to all the data held, believing that it is the consumer who owns the data and therefore should be able to control it. But whether that is always true is debatable.

In a recent article⁵, privacy expert Peter Leonard argues how digital data sets is *data about the consumer*, but it should not be seen by default as "*the consumers' data*". This is because the data sets may have been derived at significant cost by an entity to enable a compelling digital service to be provided to the consumer by that entity and just because the entity is a big business and the data they collect is about a consumer, shouldn't necessarily cause that data to be made available as a free gift to either that consumer or that entity's competitors. As Leonard says, "It isn't good economics, well not without good legal justification anyhow".

While the argument around who owns or has a right to individual data about a consumer may go the way of *which came first the chicken or the egg (i.e. never really come to a definitive answer)*, there are other equally relevant considerations taking place around privacy and data in digital markets.

In its Digital Platforms Inquiry, the ACCC noted the 'considerable legal uncertainty around whether technical data collected in relation to individuals is within the scope of the definition of personal information'.... and "In light of the advancements in data analytics technologies and

⁵ Peter Leonard, *Digital advertising people are much better than data privacy people....* (IAB Australia Bulletin- February 2021)

the volume of technical data that is collected, used and shared in digital markets, the ACCC considered it important to clarify whether technical data relating to an identified individual is considered personal information within the scope of the Act”⁶.

These musings led to the Privacy Review Issues Paper⁷ calling for submissions to consider “*what information should be included in the definition of personal information*”. It made special reference to ‘technical information’ in the scope of the issue. An understanding on how Australia will move forward in defining ‘personal information’ - a term that is so crucial to privacy laws - will no doubt impact the way in which the data holders protect their intel, how the ad tech industry values the data, the scope regulators have to create governing frameworks and how consumers respond to it all.

Recommendation: It is with reference to these points that ADMA reiterates its belief that the ACCC must re-adjust its Interim Report timetable to allow for tandem reference to the Privacy Review findings.

Proposal one: Data portability and interoperability

The ACCC’s recommendation to increase users’ ability to take control of their personal information by allowing them to request their data from platforms is at the surface, logical. It seems so rational that one could be forgiven for thinking it is not already the standard.

In some ways it is.. and this is where the overlap of personal information and data about an individual can become confusing. Under the Privacy laws of Australia, an individual has a ‘right to access’ the personal information held about them, how far that extends to the data held about them, remains undefined. Therefore it will be interesting (and fundamental) to understand how the privacy definitions evolve to better reflect digital data sets and usage. .

When a business is small or doesn’t have a sophisticated data collection platform or structure, the data they have on their users is often predictable (especially to the user). Predictability brings with it a level of control. In the case of larger more sophisticated data players, in particular the Tech giants, it is expected that the dataset held would be greater and contain more intrinsic details collected over a range of time, activities and collection points. In essence – data worth knowing and potentially passing on to a third party for use for the consumers benefit in other (sometimes competing) digital environments.

⁶ ACCC, *Digital Platforms Inquiry* (n1) 460

⁷ Attorney-General’s Department’s review of the Privacy Act 1988 – Issues Paper (October 2020)

Both Google and Facebook are obviously in the category of larger sophisticated data holders, and they do already offer data portability options for consumers. However the issue is that the data that is available to be extracted by a user in response to a request is often considered to be superficial and data that is obviously already known (i.e. websites visited, comments shared and photographs uploaded). Furthermore, putting aside the value of the data actually shared, there isn't necessarily a simple and direct way to share that information with a third party.

Currently, as things stand, lack of portability only entrenches the data advantage the mature data players and big platforms have established. Data interoperability and portability has the potential to unlock substantial competition benefits for the advertiser, but at the same time it raises significant risks of intrusion on consumer privacy rights. To manage those risks, the final recommendations stemming from the Interim Report must consider privacy regulations developments and also complement existing frameworks such as the Consumer Data Right.

The primary aim of the ACCC's Proposal 1 is to address barriers to entry with the subset being to give the data subject increased control over their personal information. Therefore, any requirement to introduce measures that improve data portability and operability must not be too restrictive or burdensome on a business and the standard of duty must be relative to the maturity and expected capabilities of the business holding the data.

"Portability of data could knock down some of the biggest barriers in advertising, enabling advertisers to use their datasets to buy within and across walled gardens"⁸, says Joshua Lowcock UM Chief Digital Officer "A lot of people that consolidate data also operate media so introducing pricing transparency about the value of media and data will create a world where you are paying for data with a price that is set by the marketplace"

The ACCC's recommendation around data portability and interoperability goes beyond giving users the ability to request their data, in order to find out what a major data holder knows about the user. Proposal one outlines the need to increase a consumer's ability to control data held about them.

Clarity will only come from first understanding what data a customer has the *right* to know and what data is the result of a business investing in better servicing a customer's experience on their own platform/ ecosystem. Consideration must be put towards understanding where the business data becomes the consumer's data. This may involve some contemplation of the investment made by mature data holders (who will not in every case always be one of the Tech giants) when

⁸ 'Forget the Facebook sideshow: Six ACCC Proposals that could yet change digital advertising as we know it', Mi3 (Blog post, 22 February 2021 (<https://www.mi-3.com.au/23-02-2021/forget-facebook-sideshow-six-proposals-could-soon-change-digital-advertising-we-know-it>))

determining how data can be valued in an exchange between parties. Especially where that data is identifiable to an individual, whether or not the individual chooses to control its use.

Once those lines have been clearly established in a way that respects both the individual and the responsible players there is another question to be considered. Where these businesses are asked to shared that curated data with a competitor, even when that request is with permission of the individual, would giving a form of reasonable compensation for the curation of that data being handed over, be either viable or necessary to motivate the responsible actors to be innovative etc. This concept would need to be thought through carefully though as the intention is to protect the competitiveness of mature data players, not just further compound uncompetitive control in the hands of the rich few. It is a slippery slope but one that shouldn't be disregarded without proper consideration.

Once the boundaries around these datasets have been defined to protect the individual and promote both commercial and competitiveness amongst data holders, then ADMA supports a data portability framework where that framework enhances the data subjects ability to exercise meaningful control of their data.

This is not to put in place a cumbersome pricing structure that would just as quickly drive out competitors, but rather to ensure that data portability operates within reasonable thresholds. The question needs to be considered, if data is not to be given value, be it in the form of barter or commission or some other reasonable measure, would the system be too open to misuse and under-valuation? And furthermore - would such lead to misuse amongst bad actors and ultimately loss of consumer trust?

'Data portability measures', is defined in the Interim Report as "tools that increase data mobility between firms with a significant data advantage to provide consumers with an easy (but secure) interface in which to move or share their data from that firm to a third-party at the consumers request".

Data portability and operability measures must be carefully designed to protect consumers privacy, including managing any risks that de-identified data may be able to become re-identified. Unless data is being shared with the protection similar to the Service Provider exemption contemplated under CCPA⁹ (where some transfers are OK in the course of doing business), then data should also not be able to be transferred between firms without a request or permission from the data subject. Once such a request is made or permission granted,

⁹ California Consumer Privacy Act (2018)

consumer data should be made available to port and/or delete efficiently and securely (within the requirements of the law).

Effective mechanisms for individuals to control the processing of personal data in line with their own privacy and data security preferences would be better facilitated with consumer-led tools, giving the consumer controls to easily move their own data from one provider to another as they choose. If such consumer-led tools are easy to operate and secure it would minimise privacy concerns of individuals. From a business perspective, any such tool/ interface would need to be competitively priced for businesses to be able to afford to implement, maintain and properly control such an offering.

Along with the ability to port their data from one party to another, there should be consideration given as to whether giving consumers the ability to ask for a 'clean-slate' (i.e. the request for online platforms to delete all collected information on request) in the event that a consumer either can't or doesn't want to download their accumulated information from one vendor and upload the said data to another.

The way in which this would be implemented would need to also consider requirements of the law where data must be retained for legal purposes. The working precedent to consider would be the GDPR's 'right to erasure' or 'right to be forgotten' clause.

Recommendation: ADMA recommends boundaries around the datasets be defined to protect the individual and promote both commercial and competitiveness amongst data holders. Once that is done, then ADMA also advocates for a data portability and interoperability framework that both enhances the data subjects ability to exercise meaningful control of their data and allows data holders to extract and share such data in a way that is of value to their own digital environments. Such a framework would improve competitiveness and the customer experience and be conducive to the continued growth of the digital advertising services industry.

Some consideration must also be given to the investment and incentive data holders have in curating datasets that are ultimately available to other competitors. Smaller less mature data holders would need to be able to have competitive access, but larger more mature data businesses (all of whom are not global tech giants), would also need to understand the value in sharing datasets that they have invested in various ways to obtain and curate. Not considering this upfront could ultimately lead to new and intrusive opaqueness (or a wielding of power) that would not be constructive in coming to an agreeable standpoint.

Proposal two: Data separation mechanisms

The ACCC's consideration in proposal two is an important one. The extent to which data separation mechanisms, such as data silos or purpose limitation requirements may be effective in levelling the playing field between large platforms with a significant data advantage and rival ad tech providers, is (paradoxically) a simple yet complex consideration.

The ACCC is currently contemplating whether regulatory measures that ban companies from using data collected in one area to fuel other services, is beneficial in facilitating competition, or is it just a burden on businesses. While governments in countries like the UK favour the approach, the choice is not a clear one.

In forming an opinion in this area, consideration needs to be given as to the reasonable expectation that a consumer may have in relation to how their data is used. Purpose limitations make sense provided they are transparent, clearly and concisely framed and allows meaningful consumer control over the collection, use and disclosure of information about them.

On paper this is clear, but in practice the plethora of options, circumstances and examples muddies that clarity. In determining the practical application of this what is a "reasonable expectation" has to be clarified, so that the line a business should follow is clearly drawn, leaving no ambiguity. It is in the ambiguity that exposure and issues will arise.

Data separation should also not be anti-competitive to business. The long term solutions may be competitive, but initial unravelling of data could be burdensome to the data holder and may in essence introduce inefficiencies that result in a reduced quality customer experience. Specific examples that come to mind are in wide ranging, yet clear loyalty programs.

Establishing boundary lines will assist in maintaining and improving the value proposition to the customer. When a customer can trust that the data holder is both transparent and accountable in their data practices, the experience and rewards they can obtain in a digital environment can be worth more to them than the knowledge that their data is siloed. However, for such trust to both be earned and maintained, there would need to be strict rules around ensuring that data is not used in a discriminatory way. This may require having some formalized reasonable test or limits on use (e.g. unless anonymised, sensitive information cannot be used against other behavioural targeting etc)

When sensitive information is included in a data set, it is reasonable that data silos exist both with regards to access and potential use and disclosure of that information. It protects the customer and reduces the risk of exposure for the business.

Recommendation: ADMA supports purpose limitations where strict rules of use and boundary lines have first been provided and the criteria has been met. Once that is established, purpose limitation must be transparently, clearly and concisely framed, provide data subjects with the opportunity to exercise meaningful control over the collection, use and disclosure of information about them while at the same time does not become too burdensome to the data players. Given all this requires optimum conditions of the digital ecosystem, which is rarely available, it is ADMA's view that deciding where and how to apply purpose limitations may be the key in determining where practical application is most suitable.

Proposal three: Rules to manage conflicts of interest and self preferencing

This proposal is the ACCC's attempt to get under the hood of the programmatic supply chain and look closer at vertical integration in order to recommend measures that prevent large players like Google from favouring its own services within an advertising ecosystem that it largely controls. While there is a clear incentive for Google to do this the ACCC makes no mention of any evidence submitted to back up that the theory has been actioned.

But the incentive is there and that in itself warrants the deeper dive and close consideration of conflict of interest.

Having said that, it is ADMA's opinion that no automatic assumption should be made that all self-preferencing is pure evil, there is also an alternative view that perhaps there are some efficiencies in using systems that fit together easily (whether within the same ecosystem, or being amiable across ecosystems/ platforms/ ad-tech vendors). Therefore, it would make sense to not eradicate the option to self-preference but rather to curb conflicts of interest.

A move to require increased transparency across the entire programmatic supply chain would "probably be a big win for advertisers but be a big challenge for a lot of the programmatic operators and key platforms that have, if you look at other regulatory markets, been called out for preferencing their own adtech stack " says UM's Joshua Lowcock¹⁰.

It is ADMA's belief that as the industry matures, there will be a natural tendency for self-preferencing practices to be diluted. It may be, that regulatory (self or imposed) frameworks nudge the responsible players to break up any self-preferencing activities before they become classified within the realms of law to be anti-trust activities. But this is something that other big

¹⁰ Forget the Facebook sideshow (Mi3 blog) – 22 February 2021

industries that preceded Big Tech have already demonstrated necessary... whether it be the oil industry, telecommunications industry or computing – when the industry was clearly led by two players, there was an (eventual) natural inclination to introduce self-imposed controls.

A blatant attempt to avoid it, will ultimately be a bigger risk than it will a tenable way forward. There is one exception that must be included in consideration of this proposal, if players in the market resist or ignore a natural inclination to introduce self-imposed controls, then regulators will need to step in to stop self-preferencing turning into anti-trust, monopoly or anti-competitive concerns that impact the whole industry.

Recommendation: ADMA advocates for a reduction in any self-preferencing that opens doors to more players in the market and in turn reduces barriers to entry and creates a constructive and dynamic competitive environment. However self-preferencing must be first established as not being a choice for efficiency in a market where there are many competitive players and options nor can it be at the other end of the scale, where self-preferencing is likely to lead to anti-competitive, anti-trust or monopoly concerns.

Proposal four: A voluntary standard to enable full independent verification of DSP services

The “unattributable delta of 15% of any given campaign spend” that most submissions raised in their response to the Ad Tech Inquiries Issues Paper¹¹, has been identified as existing between the DSP to the exchange (not the exchange to the publisher).

The purpose of having data all the way down to the exchange and publisher (i.e. system logs) doesn’t serve the marketer any real purpose. The marketer can get the information on what Publisher website, channel or app their advertisement was served . This gives them the indicative information about that part of the supply chain. You can use that automated process to pull DSP macros that can look at what exchange and what seller id you get.

So the “unknown delta” refers to the inability to track a dollar spent in a DSP to whatever amount goes to the actual exchanges. If a 20% overall fee (i.e. they expect 80c to show up at the exchange but there was 15% that they couldn’t track) then one *guess* would be that the unknown delta is additional fees that weren’t tracked in the actual logs in terms of an automated fee for data in the bid stream, but was taken off after the fact or as an additional exchange fee specifically between that bidding partner and the exchange. This is essentially additional data

¹¹ ACCC Digital advertising services inquiry – Ad tech inquiry Issues Paper – 10 March 2020

fees that were omitted from logs. The fact that this is still a (albeit likely accurate) guess, means that there is a level of opacity in this supply chain that needs to be made clear.

If the industry were to come up with a way to enable an audit across the demand-side supply chain – then the ACCC is basically saying that if the industry can sort this out themselves, they will avoid other headaches that come with opacity.

There is no technical reason why things can't be transparent. The industry, and by that ADMA means, the individual parties along the digital advertising services supply chain, need to work together for change. It is a landscape issue.

End to end transparency goes beyond the technical elements and includes the willingness of all parties (Publisher, Marketer, ad-tech vendors, agencies) to put agreements in place that address both privacy concerns and commercial sensitivities and allow them to start the respective conversations that foster good relationships and clear understandings of what is valuable and expected by each party in the supply chain. This clarity will then improve transparency while also educating the industry in the process.

In the USA, the New York Interactive Advertising Exchange (NYIAX) provides an electronic marketplace for publishers, advertisers and media buyers to buy and sell future advertising inventory using blockchain technology. This may be a good place for the digital advertising industry to look as it considers how it will set a voluntary standard that enables independent verification as required.

Recommendation: ADMA recommends that the Digital advertising services industry work together to self-regulate in order to avoid any mandatory clauses being imposed on the industry. The Australian regulators have proven¹² that they are not afraid to set the boundaries for an industry if that industry is unable to come to a viable understanding on their own. The more transparent parties are with each other (under the protection of the right legal agreements), the better the outcome. Visibility often allows for better conversations, which leads to more ethical practices. Improvements in industry comes not just from regulatory or legislative change, it often comes from change in practices and a change in understanding of all parties.

Sorting this out at an industry level promotes transparency and would help avoid regulations that without the necessary transparency would anyway fail to eradicate the problems

¹² Australian government introduced The News Media Bargaining Code (or News Media and Digital Platforms Mandatory Bargaining Code). A law designed to have large technology platforms that operate in Australia pay local news publishers for the news content made available or linked on their platforms.

Proposal five : Implementation of a common transaction ID

The ACCC wants industry to create a privacy- compliant identifier that can be attached to each transaction and traced along the digital ad supply chain from end-to end. This would allow providers along the ad supply chain, as well as advertisers and publishers, to follow individual ad impressions across the supply chain and better observe the performance of their ad tech services. A common transaction ID could be fundamental to much of what the ACCC wants to achieve more broadly through this Inquiry.

UM's Joshua Lowcock describes the introduction of a common transaction ID as an "enabler of transparency"¹³. It facilitates using data more portably, between different platforms and services and it breaks down some of the siloed walls of buying in one environment and then another. Interoperability will be key to success in an open marketplace. That should be the key to implementing a common transaction ID.

When there is a lack of transparency in who makes what, or who owns what, or who sets what pricing in digital advertising – it becomes difficult to understand the level of self-preferencing that is going on or whether in fact the system is actually operating fairly.

A common transaction ID that would work across walled gardens would change competition entirely. ADMA recommends the ACCC look to the New York Interactive Advertising Exchange (NYIAX) for inspiration (not necessarily replication – but rather as an example) of how to establish a similar environment for advertising inventory in Australia.

Recommendation: ADMA recommends that the digital advertising industry look to implement a common transaction ID that will help address the issues around the transparency of auctions, fees or take rates across the supply chain. If transparency is a key goal of the industry and if in fact a common transaction ID is an "enabler of transparency", then it would make sense to introduce it and allow for an easier auditing of advertiser spend across the supply chain – improving transparency will also improve accountability and build trust along the supply chain and in the digital marketing industry as a whole.

¹³ Forget the Facebook sideshow (Mi3 blog) – 22 February 2021

Proposal six: A common user ID to allow tracking of attribution activity (with privacy compliance)

A common user ID is different to a transaction ID in that it allows the tracking of a user (subject to privacy protection) rather than the bids for a particular advertising impression. Attribution is complex, even if you are looking at a single client

The ACCC in its Interim Report states that “multi-touch attribution can be difficult if DSPs use different user IDs. If users were instead assigned common IDs accessible to all third party attribution providers, they would be able to track all ads seen by a user, regardless of the DSP that served each ad.

As with the common transaction ID, a common user ID that works across walled gardens and 1st party data targeting would ultimately change competition. As exposure to an advertisement is not private information, the introduction of a common user ID shouldn't negatively impact the current landscape. There would however be some change if the ACCC was to follow the lead of the USA where certain categories of data driven advertising are defined (e.g. health, employment, access to credit). Where the category of data is defined it is also well protected by clear and strict rules on how the data can be used). The introduction of a common transaction ID would still be able to operate in such circumstances, but the fluidity of it would be restricted in relation to certain categories of information. That would be reasonable both in protecting the individual consumer and in minimising risk for the business.

A common user ID means that it should be easier to be agile and move money to different media companies. Without the introduction of a common user ID, there is a presumption that advertisers will always be relying on the scale and 1st party audience of the two big Tech companies (who sit on data) with very little competition elsewhere. A common user ID that moves across all platforms properly anonymized would be good in shifting from that automatic presumption.

The big challenge with a common user ID is whether it would be aligned to, or in counter to, Google FLoC and Apple iOS14. The other challenge is whether Australia has the scale and influence to drive such a change in only one market. It will be hard, but recent moves by the Australian regulators has proven that hard does not mean impossible.

Another key consideration for a privacy compliant common user ID is that the ACCC final report into the Digital Advertising services Inquiry is due in August which means it is not likely able to be considered alongside the overhaul of the Australian Privacy laws.

Recommendation: It is ADMA's recommendation that the digital advertising industry could benefit from the introduction of a common user ID that works across walled gardens and 1st party data targeting. Any such ID would need to be Privacy compliant and therefore ADMA recommends once again that the ACCC extend its final report into this Inquiry to allow for consideration alongside the Privacy Review.

Conclusion

The ACCC's Interim Report is looking at implementing important and specific changes to the digital advertising services industry. This industry is an important contributor to the Australian economy. Any proposals and recommendations for change should not be rushed without being viewed through the changing lens of other key regulatory and commercial developments (such as the Privacy Review and the deprecation of third party cookies by Google). Both of these changes will have a huge impact on the industry and any recommendations would be best delayed to ensure confluence where it is required.

ADMA prides itself in championing excellence in responsible marketing and actively empowers its members through education, representation and advocacy of fair, transparent and responsible data-driven marketing. As the ACCC considers its proposals, ADMA would welcome involvement to better educate and empower its members and the data-driven marketing and advertising industry as required.