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Digital Platforms Inquiry
Australian Competition & Consumer Commission
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AANA: further submission to Digital Platforms Inquiry

On behalf of our advertiser members, the AANA welcomes the opportunity to provide this further submission to the ACCC Digital Platforms Inquiry. We do not propose to respond to each preliminary recommendation, rather we intend to provide an overarching response on particular themes identified in the ACCC's Preliminary Report.

General

We note the ACCC's preliminary view that a regulatory authority could be tasked to monitor, investigate and report on whether digital platforms are engaging in discriminatory conduct, with the power to monitor the pricing of intermediary services supplied to advertisers. The ACCC is giving consideration to whether an ombudsman should be created to deal with complaints about digital platforms.

Looking specifically at the behaviour of platforms and the pricing of intermediary services, the AANA believes it is premature to consider further regulation in this space. Phases of technology-led change will continue and, rather than introduce additional regulation, we should look to update existing competition and privacy frameworks to ensure fair competition and to protect consumers. The focus should be on ensuring these are fit for purpose, at particular points in time, before adding additional regulatory layers to those that already exist.

For the AANA, the key considerations in relation to this Inquiry are:

- **Consumer focus:** advertisers are committed to putting the consumer first in their marketing strategies and ensuring they are provided choice and transparency. The AANA supports mechanisms that assist advertisers in that goal, rather than reducing the ability to generate a positive consumer experience. The AANA supports the principle of informed consent - in the gathering and use of consumers' personal information – being a pre-requisite to allowing advertisers to serve up targeted advertising that is of more relevance to consumers.
- **Open Measurement:** major advertisers are increasingly taking ownership of the relationships that they enter into, challenging existing commercial arrangements, building in-house models, and seeking third party involvement in measurement and audits. Advertisers support mechanisms to create open and transparent measurement.
- **Level playing field:** the AANA supports mechanisms that would create a level playing field across all media providers, given that both 'traditional' and 'new' media platforms embrace digitisation. Advertisers no longer differentiate in terms of newspapers, television broadcasters or social media platforms; they are all media providers and increasingly all driven by digital, data and machine learning capability.

- Technological change: the rapid pace of technological development suggests that new waves of market-changing technology will occur in the future, many AI-driven. There needs to be a high degree of flexibility in any regulatory approach taken, otherwise the risk of swift obsolescence is high.
- Disproportional impact on small business: changing technology has provided small and medium businesses with greater scope for cost-effective marketing opportunities and growth. The AANA is concerned that increased regulation will not only increase compliance costs, but may also risk hindering the advancement of small to medium businesses.

Third party measurement of advertisements

The ACCC is seeking further feedback on the effectiveness of current mechanisms for verifying whether advertisements are served to their intended audience.

A key issue is that digital platforms do not facilitate a uniform measuring system. Some provide data to be assessed by the advertiser while others allow measuring tools to sit within their platforms. The result is that advertisers cannot compare like with like.

As advertisers have increased digital advertising investment, many have ensured additional checks are in place to verify that digital platforms:

1. deliver impressions/advertisements to the intended target audience;
2. deliver impressions to the agreed volume and/or buying method as indicated on the insertion order; and
3. do not inflate their results and subsequently, their performance.

Many advertisers use the services of an independent third party to guard against ad fraud and monitor viewability and brand risk. Control over the context in which a brand is seen online is of utmost importance. However, some digital platforms do not allow these third parties to fully integrate with their platforms. Some only allow brands to monitor fraud and viewability, but not brand risk. Nevertheless, many brands continue to use such digital platforms in their advertising campaigns due to their scale and targeting capabilities.

Essentially it has fallen on brands to either build in-house capability or engage third parties and be more responsible for their own brand safety, rather than merely relying on their media agencies or digital platforms.

Advertisers would like full transparency in relation to the placement of online advertisements and their effectiveness assessed by an independent third party. However in the current digital media landscape, this is not possible.

Similarly, while advertisers are keen to obtain greater transparency in relation to their financial outlay, particularly in relation to intermediary services and audience verification, we do not believe an additional or differently-empowered regulatory authority would deliver that transparency to advertisers. With each commercial arrangement, advertisers are required to make decisions based on the information they have. Increased information supplied to a regulatory authority will not affect this daily requirement, nor would annual reporting, as advertisers would not have access to timely information, relevant to their decision making.

Use and collection of personal information

As with free-to-air television, advertising funds digital services so that they can be enjoyed for free or at a reduced rate by consumers. Such services include free email, social media, video and music

content and search services. Many consumers actively choose these free services in exchange for advertisements, rather than pay a subscription for the 'ad free' delivery of such services.

The AANA supports the objective of enabling users to have transparency, choice and control over how their personal information is used. We believe that the notion of 'value exchange' goes hand in hand with the requirement for consent to be freely given, specific, informed and unambiguous.

It should be borne in mind that the primary objective for brands may not be to identify individuals, but to segment online users on the basis of their browsing habits, in order to serve marketing communication that is more relevant to those segments' inferred interests. Data anonymisation techniques are frequently used without compromising the value of the data, from an advertiser's perspective.

Many brands engage in opt-in targeted advertising via digital platforms, and they do so on the basis that the platform can clearly show that they:

- use data the provenance of which can be traced back to a quality source (i.e. the digital platform's first party data) and not an amalgamation of third-party data of which the provenance cannot be determined;
- data is collected with consent from the digital platform user, in compliance with the *Privacy Act* and with clear opportunities for the user to remove their data from the platform, if they so wish.

While it is 30 years since the *Privacy Act* was passed, we believe that the reforms established in 2014, including the OAIC's enhanced powers, set an appropriate standard for privacy protection. Conversely, the AANA believes that requiring express opt-in consent for targeted marketing will be a reversion to marketing as it was 30 years ago, undermining the benefits to consumers of data-driven marketing.

Targeted marketing helps improve the relevance of content to the consumer, tailoring ads depending on language, location, context, interest and other parameters. Key to brands' success is the ability to put the consumer first and drive a better consumer experience. This cannot be done if the advertiser does not have segmenting information, e.g. whether the viewer is male or female. Tailoring advertising provides a better experience, both in terms of context and to avoid repeatedly serving up the same advertisements to a particular audience.

In the context of consent, compare these two situations:

- When obtaining a quote for a medical insurance policy online, you will be asked for your name, date of birth, address and medical history, e.g. whether you suffered from heart disease, cancer or diabetes in the past five years.
- When browsing on Amazon for the latest novel you might like to buy, you may see some targeted advertisements for books that you might find interesting, based on your previous searches on the site.

There is no consumer benefit in requiring the same form of consent in both cases. Requiring users' to opt in for targeted advertising will result in more clutter for the consumer, less relevant content and less advertising revenue.

What may deliver greater consumer benefit is a level of community focussed education on the way digital and other media platforms operate, what data is needed, and how to take control over how personal information is used.

In conclusion, while increased regulatory monitoring of digital platforms may provide some benefit, the AANA believes the current mix of competition and privacy legislation is appropriate. It is difficult to see how additional regulation will provide a tangible solution to address the issues of transparency and measurability we highlighted in our first submission.

A focus on enforcement of existing regulation is to be preferred, both to punish offenders and to create incentives not to offend, with a particular focus on mobilising resources and applying sanctions that are commensurate to the seriousness of the potential risk, or of the damage caused.

We also support the submissions made by Ad Standards and ADMA to this Inquiry.

If you would like to discuss any aspect of this submission, please feel free to contact me.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'John Broome', written in a cursive style.

John Broome
CEO