



Digital Platform Services Inquiry – September 2023 Report on the expanding ecosystems of digital platform service providers

Thank you for providing this opportunity to Oracle Corporation to make a submission to the Australian Competition & Consumer Commission’s (ACCC) Issues Paper for the report on the expanding ecosystems of digital platform service providers (**Issues Paper**).

As in the case of the other inquiries into digital platform services that the ACCC has undertaken since its ground-breaking Digital Platforms Inquiry, the ACCC has the opportunity, in looking at digital platform ecosystems, to identify existing and potential future competition and consumer harms and to make recommendations to the Australian Government as to how these are to be appropriately addressed.

A. Scope of the Issues Paper and focus of this submission

1. The Issues Paper states that this inquiry will investigate only digital platform ecosystems for consumer facing services. A “digital platform ecosystem” is defined in the Issues Paper as the interrelated online consumer facing services offered by one company or the same corporate group.
2. While the ACCC has stated it intends to consider all types of consumer facing digital platform ecosystem services in this inquiry, the Issues Paper provides that the ACCC will focus on smart home devices and consumer cloud storage services. When considering the expansion of the ecosystems of the largest platforms, the ACCC will examine the resulting increases in anticompetitive behaviour and consumer harms in markets for digital platform services.
3. The areas of key concern outlined in the Issues Paper are:
 - (a) *anti-competitive expansion strategies*: these include the role of data as it is used through a platform’s ecosystem; and actions to lock in consumers such as bundling, tying, self-preferencing and pre-installation; and
 - (b) *consumer harms*: these arise from, for example, switching costs, less choice, problematic data practices (including excessive and undisclosed data collection) and dark patterns.
4. In light of the scope of the inquiry, and the issues that the ACCC is proposing to focus on, this submission provides information that relates to the corporate group with the largest digital platform ecosystem. This is the Alphabet group, the core member of which is Google. This submission discusses:
 - (a) the egregious data collection practices of Alphabet, evident across all of the services that it provides and how it uses the data it collects to create a formidable data advantage that others cannot compete against, not only in markets for consumer facing services but also for the digital advertising and advertising technology (known as ad tech) services it offers publishers and advertisers; and

- (b) Alphabet's anticompetitive practices, that are enabled by the dominant position that it holds across many digital service markets because of the vast quantities of consumer data that it has holds. These anticompetitive practices have detrimental outcomes for Australia's economy and have given rise to consumer harms.
5. The Australian Government is urged to move forward quickly with the digital platform specific regulation that the ACCC recommended and which The Treasury has recently consulted on. Implementing that ex ante regulation would assist in addressing the harms that have arisen through Alphabet's exercise of the market power that it has built on the basis of the vast quantities of consumer data that it holds. This will go some way towards addressing the problems identified in this submission, though other reforms, including the reform of Australia's Privacy Act 1988 (**Privacy Act**), are also required.

B. Why has Alphabet expanded its digital platform ecosystem?

1. The first issue that needs to be considered in the context of this inquiry is *why* Alphabet has chosen to expand its digital platform ecosystem to such a broad range of consumer facing digital platform services. The reason for this is that it needs to attract more and more consumers, and the attention of those consumers, to its services for the purposes of its core business. That core business is the provision of digital advertising and ad tech services - consumer data and attention are the key input to that business.
2. All of the data that Alphabet is able to collect through its digital platform ecosystem can be combined with the data it collects through its ad tech services to generate its business profits. That data is monetised through its advertising and ad tech services. Digital and mobile advertising account for most of Alphabet's revenues worldwide, driving its conduct in all of the markets in which it operates, including the markets for consumer facing digital platform services. Digital advertising constituted more than 79% of Alphabet's revenue in 2022,¹ and mobile advertising accounted for more than two thirds of Alphabet's net digital ad revenue in that year.² Alphabet's ad revenue totalled more than US\$224 billion in 2022.³
3. Industry analysis from eMarketer⁴ suggests that in 2023 Alphabet will generate US\$180 billion in digital ad revenues, which is estimated to be 50% more than its nearest competitor, Meta (which includes both Facebook and Instagram). If only mobile ad revenues are considered, it is estimated that in 2023 Google will generate just over US\$130 billion in ad revenues, some US\$15 billion more than Meta, which again is its nearest rival.
4. In short, the more real time and precise the consumer data that Alphabet accumulates, the more Alphabet can charge for advertising and ad tech services. The development of its consumer facing ecosystem needs to be considered in that context. While the ACCC's Issues Paper has highlighted concerns in relation to the anticompetitive conduct of Alphabet in connection with the provision of digital platform ecosystem services and the impacts that this may have in relation to competition in the market (or markets) for the provision of those consumer facing digital platform services, it is also necessary to consider, at least in the context of Alphabet, the broader implications of its expanding digital platform ecosystem, namely the impacts on the markets for digital advertising and ad tech services.

¹ Alphabet Inc., Annual Report (Form 10-K) for 2022, available here: https://abc.xyz/investor/static/pdf/20230203_alphabet_10K.pdf?cache=5ae4398.

² Rani Molla, *Google leads the world in digital and ad revenue*, Vox, 24 July 2017, see: <https://www.vox.com/2017/7/24/16020330/google-digital-mobile-ad-revenue-world-leader-facebook-growth>

³ Alphabet Inc., Annual Report (Form 10-K) at 33 (1 February 2022)

⁴ <https://www.insiderintelligence.com/>

C. Google's data collection practices and links to its anticompetitive conduct

Google's expanding consumer facing ecosystem of digital services allows it to collect ever increasing amounts of consumer data that it can use not only to continue to expand into other digital services markets but also to act in an anticompetitive manner in the markets in which it is already operating, as well as to limit choice for consumers and create consumer harms across the markets for those digital services.

1. Google, as the provider of digital platform ecosystem services, has a business model that is predicated on its ability to vacuum up ever-increasing volumes of data from consumers. Google's comprehensive collection and transmission of consumers' location, environmental and online activity data bears no relationship to the needs of the digital platform ecosystem services provided by Google that a consumer may use.
2. Google's privacy policy has substantially changed over time. Consumers could not plausibly have followed all of these changes, noting that most changes have been in one direction – increasing the amount and kind of data that Google may collect from individuals who use its services. Google's current privacy policy now enables it to collect vast quantities of consumer data. The policy⁵ states that the types of personal information Google may collect includes:
 - (a) "things you create or provide to us": this includes personal information provided when a Google account is created, content uploaded by consumers and the like;
 - (b) "information we collect as you use our services": this includes information about an individual's apps, browsers and devices; online activity such as search terms, videos watched, details of activities in third party websites that use Alphabet's ad tech services and more; and
 - (c) "your location information": Oracle has made many submissions over time to the ACCC in relation to Google's egregious location data collection and use practices.
3. Google's privacy policy also makes very clear that Google may use the vast quantities of data it collects across the myriad services it offers and in the development of new digital platform ecosystem services. For example, in the section of Google's privacy policy headed "Why Google collects data", it is stated that one of the purposes for which Google uses personal information collected through Google's existing services is to assist it to develop new services.
4. In the context of smart home devices, Google's privacy policy allows it to use the information gathered by voice commands, including in the case of some devices recordings that commence "a few seconds before the activation to catch the complete request",⁶ though potentially such voice information may not relate to the request. Audio may be saved if a device incorrectly detects an activation.⁷ All of this data may be used by Google under its privacy policy.⁸
5. Alphabet's anticompetitive practices in relation to key digital services that it offers, that is, ad tech services, including the links between those practices and the data that it holds, is comprehensively set out in the ACCC's Ad Tech Inquiry final report.⁹ This behaviour is also demonstrated by the proceedings commenced by the US Department of Justice (DOJ) earlier

⁵ Available here: <https://policies.google.com/privacy?hl=en-US#infocollect>

⁶ See: <https://www.sec.gov/ix?doc=/Archives/edgar/data/1652044/000165204422000019/goog-20211231.htm>

⁷ As above.

⁸ As above.

⁹ See: <https://www.accc.gov.au/inquiries-and-consultations/finalised-inquiries/digital-advertising-services-inquiry-2020-21>

this year.¹⁰ On 24 January 2023, the DOJ (supported by seven US States and the Commonwealth of Virginia) commenced proceedings against Google in relation to its anti-competitive conduct in the ad tech sector. As set out in the DOJ’s complaint (which reflects the position not only in the US, but globally):

- (a) Google controls the technology used by nearly every major website publisher to offer advertising space for sale;
 - (b) Google controls the leading tool used by advertisers to buy that advertising space; and
 - (c) Google controls the largest ad exchange that matches publishers and advertisers together each time that ad space is sold.
6. As the DOJ complaint describes in detail,¹¹ the impact of Google’s persistent and ongoing anti-competitive activities has destroyed competition in the ad tech sector. The DOJ complaint eloquently describes the “flywheel effects”¹² of Google’s behaviour – a term that describes the fact that the anti-competitive actions of Google have continued to have impacts many years after the conduct first occurred, and have also amplified the impacts of Google’s later anticompetitive conduct. The cumulative impact of this conduct has permanently stymied innovation, efficiency, customer choice and control in the markets for ad tech services.
7. The DOJ’s complaint lays bare the anti-competitive conduct of Google in the ad tech services markets, much of which involves the misuse of the vast volumes not only of personal information, but also other data, that Google holds. Google’s egregious conduct referred to in the DOJ complaint includes:¹³
- (a) Google’s restriction of Google Ads (the ad tech tool used by advertisers to purchase advertising space on publisher websites) advertiser demand exclusively to AdX (Google’s ad exchange platform, these platforms are used to bring publishers and advertisers together);
 - (b) Google’s restriction of effective real-time access to AdX exclusively to DFP (Google’s publisher ad server);
 - (c) Google’s actions to secretly and artificially manipulate DV360’s (Display & Video 360, Google’s demand side platform) advertiser bids on rival ad exchanges using header bidding in order to ensure transactions were won by AdX; and
 - (d) Google’s introduction of so-called “Unified Pricing Rules” that took away publishers’ power to transact with rival ad exchanges at certain prices.
8. Google’s anticompetitive use of data in the ad tech services sector indicates that the Alphabet group, of which Google is a part, is very likely to similarly use its vast quantities of consumer data to act in an anticompetitive manner in the markets for the provision of consumer facing online services. Indeed, the ACCC has already found that to be the case in its other inquiries undertaken under the umbrella of its 5-year Digital Platform Services Inquiry. For example, in relation to the ACCC’s other 6 months inquiries undertaken under that broad Inquiry:
- (a) The ACCC’s first inquiry, which looked at (amongst other issues) Google search, found that Google used its dominance in search markets (created by its unassailable data

¹⁰ Media release available here: <https://www.justice.gov/opa/speech/attorney-general-merrick-b-garland-delivers-remarks-lawsuit-against-google-monopolizing>

¹¹ Referred to in paragraph 37 of the DOJ complaint.

¹² Referred to in paragraph 264 of the DOJ complaint.

¹³ Summarised in paragraph 319 of the DOJ complaint.

advantages) to the disadvantage of consumers as well as businesses. For example, when Google search is used on mobile devices, consumers see an ad as the first item more often than when an equivalent search is done from a laptop or desktop, limiting the ability of consumers to find useful information. In addition, Google's contractual terms offered to small businesses seeking to advertise on Google's services place those businesses at a significant disadvantage.¹⁴

- (b) The ACCC's second inquiry looked at app stores, finding that Google imposed anticompetitive conditions on app developers, had the ability and incentive to promote its own apps and disadvantaged consumers in other ways, for example, by not taking sufficient action to remove malicious apps from its app store.¹⁵
- (c) The ACCC's third inquiry looked at Google's dominance in search engine services in even more detail and found that Google acted anticompetitively, through its payment of large sums of money to be the default search engine on Apple's Safari browser, as a result of its vertical integration arising from its ownership of Chrome and also through the pre-installation and default arrangements it has in place with competing browser suppliers and device manufacturers using Google's Android operating system. As then ACCC Chair Rod Sims commented at the time of the release of the ACCC's report from that inquiry, Google's actions were likely to have stifled innovation and reduced consumer choice.¹⁶

- 9. The cumulative harms that have arisen from Google's (and other large digital platforms) misuse of consumer data – across all of its services – resulted in the ACCC recommending a new ex ante regulatory regime to the Australian government under its fifth report under its 5-year Digital Platform Services Inquiry.

D. Regulatory reform is required

- 1. It is clear that regulatory reform to address the actions of the largest digital platforms is required.

Addressing the anticompetitive conduct of Alphabet, and the consumer harms created as a result of Alphabet's conduct, requires a new digital platforms specific regulatory regime.

Competition and consumer protection reforms

- 2. If a new ex ante regulatory regime, of the type recently recommended by the ACCC and consulted on by The Treasury, is adopted this will be able to address anticompetitive conduct and consumer harms across all digital services markets. The proposed regime would recognise the anticompetitive behaviour and consumer harms arising from Alphabet's business model, under which an expanding range of consumer facing services are offered in order to capture data and attention from consumers, for the purposes of monetising both through its advertising and ad tech services.
- 3. As set out in Oracle's submission to The Treasury's consultation, the data collection practices of dominant digital platforms, which also cause significant harm to Australians who lose

¹⁴ <https://www.accc.gov.au/media-release/surge-in-online-messaging-use-as-big-digital-platforms-continue-to-expand>

¹⁵ <https://www.accc.gov.au/media-release/dominance-of-apple-and-googles-app-stores-impacting-competition-and-consumers>

¹⁶ <https://www.accc.gov.au/media-release/benefits-from-more-competition-in-internet-search>

control of their own information, must be addressed in the proposed digital platforms regulation. Without addressing those practices, the new regime will not be fully effective.

4. Australia should adopt a regime that more closely reflects the EU's Digital Markets Act, whether such a regime or the ACCC's codes based approach is adopted, the following core obligations should be imposed on designated platforms:
 - (a) **Restrictions on the use of consumer data for purposes other than those for which it was collected:** This is a key requirement, as the protection of consumers should be the key priority of this new regulatory regime. Designated digital platforms, which operate across many different markets and have a multitude of consumer facing products, should be restricted from taking data derived from one service and using it, without a consumer's knowledge or approval, for another service.
 - (b) **A ban on self-preferencing:** Designated platforms must be prohibited from discriminating against businesses that need to use the services of those dominant platforms or that compete with those platforms.
 - (c) **Protections against tying and bundling:** Designated platforms should be prohibited from forcing companies using their services to buy products or services they do not need or want in order to gain access to other products or services vital to their business.
 - (d) **Requirements for greater transparency for advertisers:** Australia's new regulation should provide advertisers with rights to find out the actual cost to run an ad, what data was used, how many impressions the ad made and the amount the publisher of the ad received, as well as allow neutral third parties to analyse the effectiveness of ads.
 - (e) **Restrictions on the use of proprietary data:** Finally, designated platforms should be prohibited from using proprietary data of competitors using their platform services against those same competitors. To provide just one example, Amazon often takes pricing and other data it can see about third party sellers and uses it to undercut those sellers. That type of anti-competitive behaviour should be banned.

Data collection practices

5. New ex ante regulation is not the only reform that is required. In addition, amendments to the Australian Consumer Law and the Privacy Act are also required in relation to the data collection practices of the largest digital platforms. Oracle has made submissions on these issues to The Treasury consultation process and also to the Attorney-General's Department's consultation on the Privacy Act Review Report.
6. Key reforms in this area which are urgently needed include:
 - (a) **Privacy policies should be correctly labelled:** "Privacy policies" have the potential to play a crucial role in fostering transparency regarding the personal information handling practices of businesses. A first step towards truly promoting transparency would be to correctly label these policies to reflect their true nature. Accordingly, these policies should be renamed as **data collection policies**.
 - (b) **Unfair contract terms regime should apply to data collection policies:** Data collection policies are a contract between the consumer and a business. Consumers have a valid reliance interest in relation to the privacy policy that is in place when their personal data is first collected by a business. Therefore the unfair contract terms provisions of the Australian Consumer Law should be amended to expressly provide that unilateral changes to privacy policies, without any consent from consumers, are prohibited and

void. Consumers should be treated fairly and have a meaningful ability to grant or withhold consent, particularly where a large digital platform materially changes its personal information collection and management practices.

- (c) ***Make opt-in the default for large digital platforms:*** As the largest digital platforms are incentivised to collect as much personal information about their users as possible, the Privacy Act should be amended to provide that opt-ins should *always* be the default for those platforms, including in relation to tracking consumers across the internet and as they move about in the real world. In other words, the largest platforms – the same ones designated under the ex ante regulatory reforms considered above – should be required to provide meaningful consent rights to consumers. If personal information is not required to provide a particular digital service being used by a consumer at a particular time, the consumer should be able to refuse consent for that information to be collected or used and still be able to use the relevant service.

Thank you for this opportunity to make a submission.

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