

**ACCC DIGITAL ADVERTISING SERVICES INQUIRY
GOOGLE'S RESPONSE TO THE INTERIM REPORT**

12 MARCH 2021

PART I: INTRODUCTION

1. Overview

1. This paper provides Google's comments on the Interim Report in the Digital Advertising Services Inquiry (the "**Inquiry**") by the Australian Competition and Consumer Commission ("**ACCC**") published on 28 January 2021 (the "**Interim Report**").
2. We welcome the opportunity to provide further input to the Inquiry as the ACCC continues to refine its analysis and proposals. We appreciate the ACCC's detailed examination of this multi-faceted ecosystem, particularly if it enables a deeper understanding of how advertising technology services ("**ad tech**") work and helps find solutions for key industry challenges. We are grateful for the constructive engagement with the ACCC and look forward to further discussion on these issues for the remainder of the Inquiry.
3. **We welcome the Interim Report's recognition of the value of the ad tech industry.** Digital advertising plays a major role in sustaining the free and open web. Ads underwrite the great content and services that consumers get for free. Ads also support a universe of creators and publishers, and enable different businesses to connect with people interested in what they have to offer. Ad tech has expanded the opportunities for businesses (particularly small and medium businesses) to connect with customers, helping to facilitate competition and innovation.
4. We believe, however, that **the Interim Report presents an incomplete view of the digital advertising industry.** Focussing only on web-based open display advertising results in a misleading view of industry dynamics. For example, in our experience, advertisers will continually compare return on investment ("**ROI**") from Google ad tech products with ROI from many types of digital advertising, such as directly sold inventory like Facebook. Advertisers will then shift spend accordingly. Similarly, advertisers do not buy web inventory in isolation from the choices available on mobile and connected TV (fast-growing segments) and other offline media.
5. We understand the importance of effective competition in ad tech. However, the Interim Report does **not present evidence that competition in ad tech is ineffective.** Third-party industry reports suggest that competition in ad tech has

caused declining ad tech fees.¹ This competition has also spurred innovation and given advertisers and publishers a wide range of options.² We believe that further study of observed market outcomes (such as take rates) will demonstrate that we face strong competition that is not fully reflected in the Interim Report. It is important that the ACCC's findings and proposals are based on an accurate view of this dynamic industry and the constraints faced by ad tech providers. Otherwise, there is a real risk that any proposals will not serve the interests of consumers, advertisers and publishers in this multi-faceted ecosystem.

6. Any **regulatory intervention must not reduce the innovation and competition that has driven so many benefits**. In particular, vertical integration brings proven benefits for advertisers and publishers. Interventions that reduce those benefits ought to be evaluated very carefully and only implemented if there is clear evidence of competitive harm, which cannot be appropriately mitigated by the ordinary application of competition law. We are concerned that some of the Interim Report's proposals carry a high risk of reducing product quality (to the detriment of advertisers and publishers) without achieving tangible benefits. For example:

- An "equal access" obligation will make it much slower and more difficult to bring product improvements to market. The proposal is unlikely to result in any real benefits for market participants because, in order to provide third parties with equal access to products and features at the same time, the industry would need to move at the pace of the slowest player.
- Intra-company "data silos" will reduce the quality of service that we can offer to advertisers, publishers and consumers. The interconnected nature of the ad tech ecosystem means that products need to share information to function properly. Certain features require technical integration between different products.³ Many features of our consumer-facing services also depend on data combination. It is not clear what benefits data silos will provide to third parties. There is a risk that data silos will result in a real and immediate loss of product quality - without any certainty of providing compensating benefits.

¹ For example, eMarketer reports that in the US, fees as a share of the total non-social programmatic display spending decreased between 2019 and 2020 and are expected to remain stable or slightly decrease in 2021 and 2022. See "US Programmatic Digital Display Ad Fees, 2019-2022, eMarketer" (1 October 2020), available at <https://chart-na1.emarketer.com/243004/us-programmatic-digital-display-ad-fees-2019-2022-billions-change-of-nonsocial-programmatic-digital-display-ad-spending>. For eMarketer's previous estimates, see Google's Submission in Response to the ACCC's Issues Paper (defined in footnote 2).

² See Google's "Submission in Response to the ACCC's Issues Paper" (1 May 2020), ("**Google's Submission in Response to the ACCC's Issues Paper**"), pp. 4 and 12. The submission is available here: <https://www.accc.gov.au/system/files/Google%20%281%20May%202020%29.pdf>.

³ See for example paras 69 and 123 below.

7. We welcome the Interim Report’s recognition that **there are often tensions between the interests of different stakeholders in the ad tech industry**. This means that intervention in favour of one group can cause unintended harm to another group. This is particularly true where requests for greater data disclosure from publishers or advertisers conflict with consumers’ privacy. We believe that it would be productive to have more specific discussions of these issues in the next stage of the Inquiry. It is crucial that any intervention takes full account of the relevant trade-offs and avoids unintended harms.
8. The Australian Government is currently conducting a review of the *Privacy Act 1988* (“**Privacy Act Review**”).⁴ We urge the ACCC to **work closely with the Attorney-General’s Department, the Office of the Australian Information Commissioner (“OAIC”), and other relevant stakeholders** for the remainder of the Inquiry to consider the privacy implications of the ACCC’s proposals. It is important to ensure any recommendations do not harm consumers and will not be inconsistent with the outcome of the ongoing legislative review. If the ACCC intends to recommend any proposals that might materially impact consumer privacy at the conclusion of the Inquiry, we encourage the ACCC to either:
 - Consider whether these issues might be more effectively addressed through the economy-wide review of the Privacy Act; or
 - Task the OAIC with considering the relevant privacy issues as part of a more detailed assessment or implementation of the proposals, following the ACCC’s final report.
9. Businesses will otherwise be at risk of implementing changes in line with the ACCC’s proposals that are harmful to users or need to be unwound at the conclusion of the Privacy Act Review. It would be inefficient to require firms to implement wholesale changes to their businesses that might be made redundant (or worse still, illegal) under an updated privacy regime.
10. Although we disagree with important elements of the Interim Report’s characterisation of the Australian ad tech industry, **we support many of the ACCC’s objectives**, including increasing transparency in digital advertising. We also agree with the ACCC’s suggestions for industry-led initiatives. This allows companies and industry bodies with the best insights into the complexities of ad tech products, and the costs and benefits of different approaches, to develop appropriate solutions. We also agree with the ACCC that the success of any proposed interventions is likely to be enhanced if the

⁴ See “*Review of the Privacy Act 1988*” available here: <https://www.ag.gov.au/integrity/consultations/review-privacy-act-1988>.

ACCC takes into account developments outside Australia, due to the global nature of ad tech platforms.

11. At the outset of this paper, we highlight the benefits and dynamic nature of the ad tech ecosystem. **Part 2** of this paper then sets out our comments on the ACCC's proposals. **Part 3** provides our comments on some of the ACCC's preliminary findings to date.⁵ We look forward to further engagement with the ACCC on these important issues.

⁵ There are a number of preliminary findings throughout the Interim Report that we do not necessarily agree with, but we have not sought to respond to each of them in this submission. Failure to address a particular issue should not be taken as a concession or general agreement.

2. The ad tech ecosystem has driven many benefits

12. We welcome the ACCC's recognition of the importance of digital advertising and ad tech services to the economy. The Interim Report notes that ad tech services are "critical to the digital economy" and "enable the near-instantaneous delivery of \$3.4 billion in display advertising opportunities in Australia each year."⁶ The ACCC's Digital Platforms Inquiry ("DPI") also noted that "[o]nline advertising has also dramatically changed the way advertising works as the use of data has opened up the opportunity for advertisers to engage in a higher level of ad targeting and new ways of targeting that were previously not possible."⁷ The UK's Competition and Markets Authority ("CMA") has similarly pointed out that "[p]latforms such as Google and Facebook have made it substantially easier for businesses to reach and serve adverts to consumers all around the world, in a way that was only previously possible for large companies."⁸
13. Ad tech products provide a number of value enhancing features to various market participants, including:
 - Helping advertisers and publishers effectively participate in the buying and selling of advertising with minimal upfront outlay. This saves some of the costs, resources and expertise associated with other advertising sales channels (including through digital and traditional mediums). This may be particularly helpful for small and medium businesses, enabling them to maximise their ROI and compete more effectively with larger players in their industry.
 - Helping advertisers reach their desired audience across the internet and optimise return on their ad spend.⁹ Ad tech services can also aggregate and

⁶ Interim Report, p. 9.

⁷ See the DPI Digital Report (June 2019) (the "DPI Final Report"), p. 121. The DPI Final Report is available here: <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>.

⁸ See the CMA's market study final report into online platforms and digital advertising (1 July 2020) (the "CMA Final Report"), para. 2.9. The CMA Final Report is available here: https://assets.publishing.service.gov.uk/media/5fa557668fa8f5788db46efc/Final_report_Digital_ALT_TEXT.pdf.

⁹ In the DPI Final Report, the ACCC said, "[...] one of the most significant advantages of advertising using the services of digital platforms is the ability to more specifically target consumers, resulting in a potentially higher return on ad spend". See DPI Final Report, p. 131. The CMA Final Report noted that "[t]he targeted nature of digital advertising can add value to both advertisers and consumers. For consumers, targeted adverts will be more relevant to them, which can make them less irritating and more likely to provide genuinely useful information about products and services they may be interested in. For advertisers, improved targeting should deliver a greater return on their investment as their adverts will be viewed more often by their intended audience." See CMA Final Report, para. 2.8.

represent “remnant” ad space for multiple publishers without advertisers having to negotiate with individual publishers.

- Helping publishers increase competition for their ad space and maximise associated revenues without compromising user experience.¹⁰ It can also help simplify a publisher’s administration if it has many sales relationships.
- Providing protections and controls for advertisers and publishers on issues like ad fraud and brand safety. Our services have ad fraud defences built into them.¹¹ We also offer a number of controls to protect the brands of advertisers and publishers.¹²
- Providing controls for advertisers and publishers to improve user experience online. For example:

¹⁰ For example, user experience could be compromised by ad fraud or ads that the publisher considers would compromise their brand. We provide protections and controls on these issues (see footnotes 11 and 12 below).

¹¹ We use a combination of real time (pre-bid) and after-the-fact (post-serve) automated filters and manual analysis to protect advertisers. Our automated real time filters are often able to prevent buyers from being charged for invalid traffic. See “*How does Google prevent invalid activity?*”, available here: <https://www.google.com/ads/adtrafficquality/how-we-prevent-it/>.

We also publish resources to help publishers and advertisers prevent invalid activity. See here “*How can you help prevent invalid traffic?*”, available here: <https://www.google.com/ads/adtrafficquality/what-you-can-do/>.

Google has also been a leader in industry-wide efforts to tackle ad fraud. For example, Google co-authored and led industry adoption of the Interactive Advertising Bureau’s ads.txt and app-ads.txt specifications. These are aimed at increasing trust and transparency in programmatic advertising by allowing publishers to designate authorised sellers of their inventory. See the IAB Tech Lab’s “*Ads.txt - Authorized Digital Sellers*”, available here: <https://iabtechlab.com/ads-txt/>. See also “*IAB Tech Lab Ads.txt Specification Version 1.0.1*” (September 2017), available here: https://iabtechlab.com/wp-content/uploads/2017/09/IABOpenRTB_Ads.txt_Public_Spec_V1-0-1.pdf

¹² Google Ads offers content exclusion tools to allow brands to customise how their ads are targeted. See “*About content exclusions and site category options*”, available here: <https://support.google.com/google-ads/answer/3306596?hl=en-GB>.

DV360 offers brand safety targeting tools and a “Brand Controls” resource that centralises the various brand safety controls available. See “*Brand safety targeting*”, available here: <https://support.google.com/displayvideo/answer/3032915?hl=en> and “*View and edit brand controls for your advertiser*”, available here: <https://support.google.com/displayvideo/answer/9179543?hl=en>.

We also provide publishers with tools to opt-in and opt-out of the types of advertising content they wish to show on their properties. See “*Protections overview*”, available here: <https://support.google.com/admanager/answer/2913553>.

We have also partnered with third-party vendors to provide brand safety measurements for advertisers that require their brand safety to be verified.

- Many ad tech products (including Google Ads, Display and Video 360 (“DV360”), Ad Manager and AdMob) offer frequency capping controls. This allows the advertiser or publisher to limit the number of times ads appear to the same person, which improves user experience of ads.
 - Latency contributes to poor user experience. Ad Manager provides publishers with ad speed reports that can help them identify the factors contributing to fast or slow load time and help them find ways to improve latency.
 - Ad Manager provides tools and settings that facilitate privacy controls that publishers may offer consumers. Publishers using Ad Manager can configure ads personalisation settings. For example, Ad Manager allows publishers to serve some users personalised ads, and other users non-personalised ads, which may be useful for publishers who wish to give their users this choice. Ad Manager also supports techniques that allow publishers to load their page but wait for the user to interact with a request for consent before displaying ads.¹³ Ad Manager also provides line item controls that allow publishers to choose whether they allow serving of child-directed ad requests.
 - Enabling consumers to access a wide range of content (often for free), because publishers are able to generate revenue through advertising spend. The ACCC noted that “[d]isplay advertising revenue enables many online publishers to provide consumers with access to content for free or at a lower cost”.¹⁴
14. We look forward to further discussions with the ACCC, to ensure any interventions do not harm publishers, advertisers and consumers by reducing the value enhancing features of ad tech products.

¹³ See “Ads personalization settings in Google’s publisher ad tags”, available here: <https://support.google.com/admanager/answer/7678538>.

¹⁴ Interim Report, p. 78.

3. The ad tech ecosystem is innovative and multi-faceted

15. Ad tech has been marked by constant innovation, driven by the evolving needs of advertisers, publishers and consumers. This constant innovation substantially changes the ad tech landscape every two to three years. For example, in the past decade, substantial changes have been driven by the shift towards mobile, adoption of video ads, new connected TV experiences, introduction of header bidding, general adoption of programmatic transactions, introduction of programmatic deals and changes to privacy laws and user expectations. Publisher ad servers, supply-side platforms (“SSPs”) and ad exchanges, ad networks, demand-side platforms (“DSPs”) and advertiser ad servers historically emerged as distinct services, but the distinctions between them have become increasingly blurred. Ad tech services continue to evolve to adjust to changes in the wider digital advertising landscape. In particular, industry participants face new constraints due to an increased awareness of, and focus on, consumer privacy and data security. Ad tech services have also become increasingly vertically integrated. This has had a number of benefits including lowering prices and creating technical efficiencies.
16. Advertisers and publishers now also use multiple pathways to transact with each other that may involve multi-homing or mixing-and-matching one or more ad tech products. This contributes to a multi-faceted and dynamic ecosystem. The ACCC recognised this in the Interim Report and stated that: “[t]he ad tech supply chain is complex and there are a number of ad tech providers in Australia. Some ad tech providers are vertically integrated and operate at multiple levels of the ad tech supply chain, while others specialise in particular ad tech services.”¹⁵
17. The multiple layers and pathways in ad tech mean that different ad tech products need to work together and certain features need technical integration.¹⁶ Any interventions need to be carefully thought through to ensure they do not cause unintended breaks in the chain. Likewise, any interventions should take into account the interests of all ad tech participants, including smaller publishers and advertisers.
18. Participants in the ad tech ecosystem also have different interests:
 - **Advertisers** are fundamentally interested in connecting with their target audience. They will consider a campaign’s goals and the relative effectiveness of different media in terms of ROI.¹⁷

¹⁵ Interim Report, p. 85.

¹⁶ See paras 69 and 124 below.

¹⁷ See footnote 9 above.

- **Publishers** seek to maximise and optimise the revenue they can obtain from selling advertising space on their websites and applications (“**apps**”) across different channels (including direct-sold ads¹⁸ and programmatic channels), without compromising user experience.
 - **Consumers** are interested in being able to access a large range of content and services, often for free. In many cases, these consumer-facing services are subsidised by the supply of advertising.¹⁹ However, consumers are also demanding greater privacy - including control over how their data is used.
19. The dynamism of the ad tech ecosystem combined with these differing interests means that it will be extremely difficult to predict all of the consequences of any intervention. In the face of these issues, regulation is likely to create unanticipated disadvantages and disruptions. It is for this reason that any regulatory intervention needs to fully consider the impact on differing interests and is best achieved through voluntary industry-led approaches. This allows companies and industry bodies with the best insight into the complexities of ad tech products, and the costs and benefits of different approaches, to develop appropriate solutions.

¹⁸ Direct-sold ads are directly negotiated between a publisher and advertiser.

¹⁹ DPI Final Report, p. 374.

PART II: THE ACCC'S PROPOSALS

20. In the sections below, we address: (i) the general principles that should be applied and some factors that should be considered when designing any reform proposals (Section 1); and (ii) our comments on each of the possible proposals that the ACCC is considering (Section 2).

1. General principles

1.1. Principles for the design of reform proposals

Summary: We agree with the ACCC's conclusions that the costs and benefits of the proposals need to be carefully weighed.²⁰ Misjudged interventions risk harming advertisers, publishers and consumers. We also agree that the ACCC's proposals could be implemented through industry arrangements. Any intervention should be industry-wide to provide an effective and fair solution. It should be flexible, principle-based and developed incrementally with the industry. While the ACCC must focus any proposals on ad tech competition in Australia, it should also take into account developments outside Australia. Ad tech providers operate globally and harmonisation of approach is needed to effectively address these issues.

21. We believe the following principles should be applied when designing any reform proposals. This will ensure that the proposals are effective in solving the relevant problem and mitigate the risk of negative effects:

- **Any intervention needs to carefully weigh the costs and benefits** - especially when the legitimate interests of different parties are not always aligned. For example, measures that increase transparency for one group may conflict with the protection of consumer privacy. We agree with the ACCC that it is critical to ensure any measures safeguard the privacy of consumers and are consistent with privacy law.²¹ Conversely, new restrictions on use of consumer data could impact publishers' ad revenue and reduce innovation. Any

²⁰ For example:

- The ACCC noted that it would need to be satisfied that the disadvantages of any data separation mechanisms would need to be outweighed by the longer-term benefits to smaller firms and new entrants. See Interim Report, p. 21.
- With respect to the implementation of a common user ID, the ACCC noted it is considering whether the remedy could be instituted in a way that could still protect consumer privacy. See Interim Report, p. 24.

²¹ Interim Report, p. 19.

intervention needs to recognise these interconnections between different objectives and take full account of everyone's legitimate interests.

- **The ACCC should collaborate and align with developments in the ad tech space worldwide.** We agree with the ACCC that *“the success of any proposed interventions in this industry is likely to be enhanced, and the regulatory costs minimised, if policymakers collaborate and coordinate policy solutions across national borders”*.²² Ad tech suppliers and many publishers and advertisers operate globally. Ad tech products use the same technology and offer the same features and functionality globally. Demand for ad tech products is for global coverage. This means that, while the ACCC must focus any proposals on ad tech competition in Australia, it should also take into account developments outside Australia.
- **Any intervention should be voluntary, industry-led and industry-wide.** We agree with the ACCC that *“many of these proposals could be implemented through industry arrangements”*.²³ Any proposals will need to be industry-wide to provide an effective and fair solution that avoids distorting competition.

The digital advertising sector involves many companies working together in an interconnected ecosystem. The ad tech ecosystem is dynamic and technical. A voluntary industry-led approach allows solutions to be developed by the companies and industry bodies with the best insight into the operation of ad tech products. The ACCC will retain the ability to make further recommendations if industry participants are unable to reach agreed industry solutions.²⁴

- **Any intervention should be flexible, principle-based and developed incrementally.** The ad tech ecosystem is multi-faceted and fast-moving, so rigid rules will be ineffective. Rules that are too detailed risk becoming obsolete quickly.

At the same time, broad principles may allow for wide-ranging and unpredictable interventions. Rather than promoting innovation and enhancing certainty, such regulation could delay or deter new product launches in Australia.

²² Interim Report, p. 10.

²³ Interim Report, p. 19.

²⁴ Interim Report, p. 19.

Any principles ought therefore to be developed incrementally in an industry-led process. Any mandatory regulatory intervention should be evidence-based and use transparent processes.

- **The option for existing enforcement for alleged anti-competitive conduct already exists.** As the ACCC notes, legislation already exists that prohibits firms with substantial market power from damaging the competitive process by preventing or deterring rivals, or potential rivals, from competing on their merits.²⁵ The ACCC should consider carefully whether additional regulation or rules are needed. Additional regulation may prove unnecessary because - as the Interim Report acknowledges - the existing competition law framework is clearly applicable to digital markets.²⁶ We note the ACCC's concerns with relying on enforcement action under the *Competition and Consumer Act 2010 (Cth)* ("**CCA**"), including because of the time and information required to assess conduct, often in reliance on specific complaints. However, it is not clear from the Interim Report that any new regulation, which attempts to resolve complex issues *ex ante*, will be more effective than the ACCC's current compliance, investigatory and enforcement powers. This is particularly the case following the 2016 amendments to s46 of the CCA²⁷ and the introduction of a significant 'Digital Platforms Branch' within the ACCC tasked in part with ensuring ongoing compliance with competition and consumer protection laws.

22. The following sections provide our views on some more specific factors that should be considered when designing any reform proposals.

²⁵ Interim Report, p. 143.

²⁶ Interim Report, p. 143.

²⁷ These amendments are commonly referred to as the Harper Amendments. Prior to these amendments, Section 46 required the ACCC to show that a company had "taken advantage of" its market power. The amendments removed this "take advantage" requirements and implemented an effects test in place of a purpose test. These amendments strengthened the prohibition on misuse of market power to better target anticompetitive unilateral conduct, including potentially in relation to a company's vertical integration. As the ACCC Chair, Rod Sims, stated in 2018: "[w]e are, of course, aware of arguments in relation to dominant platforms and their entry into various 'vertical' businesses. [...] The EC's case against Google Shopping is one example. [...] The ACCC is turning its mind to such issues. The Harper changes now give us the tools to do so, which we did not have before." See "Address to the Law Council of Australia Annual General Meeting" (3 August, 2018), available here: <https://www.accc.gov.au/speech/address-to-the-law-council-of-australia-annual-general-meeting>.

1.2. Implications for consumer privacy should be considered when designing proposals

Summary: We welcome the ACCC’s recognition of the potential for tension between consumer privacy and transparency, and the need to ensure proposals sufficiently safeguard consumer privacy. It is important that any reforms do not harm consumers and are not inconsistent with the outcomes of the Privacy Act Review. The ACCC should consult with the Attorney-General’s Department, the OAIC and other relevant stakeholders for the remainder of the Inquiry to ensure privacy considerations are taken into account. If the ACCC intends to recommend any proposals that might materially impact consumer privacy at the conclusion of the Inquiry, we encourage the ACCC to: (i) consider whether these issues might be more effectively addressed through the Privacy Act Review; or (ii) task the OAIC with considering the relevant privacy issues as part of a more detailed assessment or implementation of the proposals, following the ACCC’s final report.

23. We welcome the ACCC’s recognition of the “*recurring theme*” in the ad tech ecosystem; that is, the potential tension that exists between consumer privacy and transparency.²⁸ We also welcome the ACCC’s recognition that before the adoption of any of its proposals, “*careful scrutiny [should be] undertaken to ensure those measures could be implemented in a way that sufficiently safeguards the privacy of consumers.*”²⁹
24. The potential for tension between consumer privacy and greater transparency has been recognised by the Consumer Policy Research Centre (“**CPRC**”), which has noted in its submissions to the ACCC that “*consumer policy issues such as fairness, safety and privacy should be a key consideration when assessing how competition and efficiency in these markets satisfies the interests of all participants*” and that “[t]his aligns with views in the UK, Europe and the USA where competition in digital markets and regulation that seeks to prevent consumer harms (concerning fairness, safety and privacy) have been seen as complementary policy areas that can be considered together”.³⁰ Ad tech providers are also cognisant of these two sets of priorities. For example, Criteo (a leading DSP) has said in a press release regarding Privacy Sandbox that it supports initiatives that: “[...] include research around ways to adapt the technical

²⁸ Interim Report, p. 18.

²⁹ Interim Report, p. 19. When considering the proposal for a common user ID, the ACCC noted that it needs to consider whether this can be done in a way that protects consumer privacy. See Interim Report, p. 24.

³⁰ See the CPRC’s Submission to the ACCC Ad-Tech Inquiry – Issues Paper (21 April 2020), pp. 1 and 2, available here: <https://www.accc.gov.au/system/files/Consumer%20Policy%20Research%20Centre%20%28CPRC%29%20%2822%20April%202020%29.pdf>.

workflow, aimed at evolving the web with architecture that better protects user choices regarding their data, while continuing to support a free and open ecosystem."³¹

25. The challenge of striking an appropriate balance between transparency and consumer privacy is increased by the following factors:
- Ads markets (and products) are often global, while privacy law and consumer expectations can vary by jurisdiction;
 - Consumer expectations vary from person to person; and
 - Privacy law and consumer expectations are continually changing, and products are changing accordingly.
26. Consumers are demanding greater privacy, including control over how their data is used. In its Issues Paper for the Privacy Act Review, the Attorney-General's Department found that data privacy was a priority when choosing a digital service.³² According to a survey done by Deloitte in Australia, 66% of respondents confirmed that they had backed out of purchasing or using a service or closed an account completely due to privacy concerns.³³ We recognise that the web ecosystem needs to evolve to meet these increasing demands.
27. In line with these concerns, there has been a growing trend toward greater protection of user privacy and user data.³⁴ Likewise, protecting consumer privacy is very important to us. For example:

³¹ See "Update on Google Chrome announcement", available here: <https://criteo.investorroom.com/Update-on-recent-Google-Chrome-announcement>.

³² Data privacy ranked ahead of reliability, convenience and price. See the "Privacy Act Review Issues Paper" (October 2020) (the "**Privacy Act Review Issues Paper**"), p. 14, available here: <https://www.ag.gov.au/system/files/2020-10/privacy-act-review--issues-paper-october-2020.pdf>.

³³ See "Deloitte Australian Privacy Index 2020: Opting-in to meaningful consent" p 17 ("**Opting-in to meaningful consent**"), available here: <https://www2.deloitte.com/content/dam/Deloitte/au/Documents/risk/deloitte-au-risk-australian-privacy-index-2020.pdf>.

³⁴ For example, Apple recently announced that its next beta update, App Tracking Transparency will require apps to get the user's permission before tracking their data across apps or websites owned by other companies. See "Data Privacy Day at Apple: Improving transparency and empowering users" (27 January 2021), available here: <https://www.apple.com/newsroom/2021/01/data-privacy-day-at-apple-improving-transparency-and-empowering-users/>.

- When a consumer uses a Google service, they are not compelled to let Google use their data for ad targeting. We provide consumers with the ability to stop seeing personalised ads and to control the data that we use to personalise ads.³⁵
- We do not provide personal information acquired from consumers to third parties without obtaining consent, absent specific circumstances described in our privacy policy, such as in response to a valid legal process or to protect against fraud and abuse. To the extent such data is made available to third parties, it is always in accordance with the applicable privacy laws.
- Consumers can access relevant privacy settings and controls directly from each of our consumer services and within the “Google Account” website. We periodically remind consumers that they can undertake a Privacy Checkup; we do this through in-product prompts and links from the Google homepage in Australia (e.g. during Privacy Awareness Week each year). The CMA has found that our “Privacy Reminder” is prominent and provides information in short summaries with links to further detail - an example of “better practice”.³⁶
- Once third-party cookies are phased out, we will not build alternate identifiers to track individuals as they browse across the web, nor will we use them in our products. We realise this means other providers may offer a level of user identity for ad tracking across the web that we will not — like personally identifiable information graphs based on people’s email addresses. We don’t believe these solutions will meet rising consumer expectations for privacy, nor will they stand up to rapidly evolving regulatory restrictions, and therefore aren’t a sustainable long term investment. Instead, our web products will be powered by privacy-preserving APIs which prevent individual tracking while still delivering results for advertisers and publishers.³⁷

28. The clear trend in global privacy law is to confer greater control to consumers over the handling of their personal information and to limit data processing and data sharing to what is reasonably necessary, such as under the GDPR. This has already been reflected in Australia through the introduction of the Consumer Data Right regime in Part IVD of the CCA. The ACCC has noted that closer alignment of Australian privacy regulations with the GDPR’s higher standards of protection could significantly increase the effectiveness of Australian privacy law and increase the accountability of entities

³⁵ See “Ads that respect your privacy”, available here: <https://safety.google/privacy/ads-and-data/>.

³⁶ CMA Final Report, para. 4.214.

³⁷ See David Temkin, “Charting a course towards a more privacy-first web” (3 March 2021), available here: <https://blog.google/products/ads-commerce/a-more-privacy-first-web/>.

processing the personal information of Australian consumers.³⁸ Data protection regulators around the world are also grappling with how best to protect consumer privacy in the ad tech ecosystem. For example:

- The UK’s Information Commissioner’s Office (“**ICO**”) is conducting a review of real time bidding (“**RTB**”);³⁹
- Ireland’s Data Protection Commission opened a statutory inquiry into Google’s RTB product to assess whether the processing of personal data it carries out is in compliance with the relevant provisions of the GDPR;⁴⁰ and
- The Federal Trade Commission (“**FTC**”) in the US has been put under pressure to investigate RTB and the privacy implications thereof.⁴¹

29. Any intervention should reflect this global trend to limit data sharing and use, and to empower consumers to control their own personal information. The introduction of regimes enabling, or potentially enabling, the collection, use and disclosure of the personal information of individuals, particularly without their consent in order to address perceived issues in the ad tech ecosystem runs counter to these trends.
30. Several of the ACCC’s proposals will impact consumer privacy. This extends beyond data portability and interoperability measures (which the ACCC has recognised will depend on the underlying privacy regulatory framework currently under review)⁴² and also include the following:

³⁸ DPI Final Report, p. 439.

³⁹ The review was launched in February 2019 and resumed in January 2021, following a Covid-related pause in May 2020. Its “*Update report into adtech and real time bidding*”, (20 June 2019) (the “**ICO Report**”) offers the ICO’s view on whether the ad tech industry is complying with the GDPR (and PECR - EU specific privacy legislation) in the context of real time bidding. Among other things, it explores the significant challenges of applying modern privacy laws to complex ad tech ecosystems. See ICO Report, available here: <https://ico.org.uk/media/about-the-ico/documents/2615156/adtech-real-time-bidding-report-201906-dl191220.pdf>. Further information is available here: <https://ico.org.uk/about-the-ico/what-we-do/our-work-on-adtech/>.

⁴⁰ See “*Data Protection Commission open statutory inquiry into Google Ireland Limited*” (22 May 2019), available here: <https://www.dataprotection.ie/en/news-media/press-releases/data-protection-commission-opens-statutory-inquiry-google-ireland-limited>.

⁴¹ See Letter to the FTC (31 July 2020), available here: <https://www.wyden.senate.gov/imo/media/doc/073120%20Wyden%20Cassidy%20Led%20FTC%20Investigation%20letter.pdf>.

⁴² Interim Report, p. 81.

- The ACCC's proposals around data separation measures (such as data silos or purpose limitation requirements) may overlap with the issues being considered in the Privacy Act Review. This review is separately considering what measures could be used to ensure individuals receive adequate notice of how an entity is collecting and handling an individual's personal information without subjecting that individual to information overload (see para. 54). As a result, there is a risk that any data separation measures are made redundant by proposals from the Privacy Act Review on the same issue.
 - The ACCC's proposals to increase transparency and address issues of supply chain opacity may conflict with the privacy issues being considered in the Privacy Act Review (see para. 76 and Part II, Section 2.3.2). We are particularly concerned that the proposals relating to common transaction and common user IDs are likely to give rise to material consumer privacy detriments.
31. We therefore think it is critical that the ACCC consult with the Attorney-General's Department, the OAIC and other relevant stakeholders (including privacy advocacy groups such as the Australian Privacy Foundation) for the remainder of the Inquiry to consider the privacy implications of the ACCC's proposals. This will be important both in deciding whether potential recommendations should be pursued at all, as well as in the detailed formulation and implementation of any proposals that may be pursued. It is important to ensure any recommendations do not harm consumers and are both advisable and legal from a privacy perspective.
32. We recognise that considerable regulatory time and resources is required to properly resolve the complexities in how privacy rules apply to ad tech. The substantial and lengthy review of RTB being undertaken by the ICO is indicative of the investment required to properly identify and work through the myriad of issues and challenges (see para. 28). If the ACCC intends to recommend any proposals that might materially impact consumer privacy at the conclusion of the Inquiry, we encourage the ACCC to either:
- Consider whether these issues might be more effectively addressed through the economy-wide review of the Privacy Act; or
 - Task the OAIC with considering the relevant privacy issues as part of a more detailed assessment or implementation of the proposals, following the ACCC's final report.
33. This will help to ensure that such proposals are not designed in a way that proves to be inconsistent with the outcomes of the Privacy Act Review or alternatively, that two approaches are adopted which, while not technically incompatible, would result in inefficient and overlapping regulatory frameworks. This could ultimately harm

publishers and advertisers, who would have to expend resources adjusting to new changes and then re-adjusting to any roll-back or additional changes following the Privacy Act Review.

34. This concern is shared by other industry stakeholders. Guardian Australian Managing Director Dan Stinton has called for the Interim Report to “*be viewed at the same time as the Attorney-General’s review of Australia’s privacy laws*”. Similarly, IAB Australia chief executive, Gai Le Roy has warned against introducing new reforms while the Privacy Act Review is underway to avoid putting “*things in place that then will have to be untangled down the track.*”⁴³
35. In Section 2 below, we provide our views on areas where the ACCC’s proposals have consumer privacy risks. We also provide our suggestions on how the ACCC could achieve its objectives in a privacy-safe manner. We are open to further discussions around developing well-formulated and privacy-safe industry-led solutions to address the issues raised by the ACCC.

⁴³ See Brendan Coyne “*Media execs: ACCC risks strengthening big tech’s dominance without first tackling privacy*” (3 February 2021), available here: <https://www.mi-3.com.au/17-02-2021/media-execs-accr-risks-strengthening-big-techs-dominance-without-first-tackling-privacy>.

1.3. The benefits of vertical integration should be considered when designing proposals

Summary: Vertical integration benefits publishers, advertisers and consumers. We urge the ACCC to engage with industry and avoid intervention that harms Australian publishers and advertisers by reducing the quality and efficiency of digital ads, or the facilitation of rapid innovation achieved by vertical integration.

36. We welcome the ACCC's recognition that vertical integration has benefits. For example, its finding that "*vertical integration can lead to cost savings, efficiencies and technological benefits such as reduced latency*" and "*can also improve competition*".⁴⁴

37. Vertical integration benefits publishers, advertisers and consumers:

- It can make products easier to use, which reduces the time and effort customers need to spend to achieve their desired outcomes. For example, the integration of our ad server and SSP tools can benefit publishers by improving reporting capabilities and reducing publishers' operational overheads.⁴⁵ Vertical integration also enables us to offer more comprehensive troubleshooting support to advertisers and publishers, and maintain a higher standard of user experience by reducing the number of error rates, reporting discrepancies and latency issues.

These efficiencies have been recognised by customers such as Chris Janz, the Managing Director of Fairfax Australia, who said that: "*Google's complete and integrated ad platform has helped accelerate revenue growth while freeing our team to focus on important relationships with our advertising partners and users.*"⁴⁶ In addition, the benefits of vertical integration are also recognised in submissions to the ACCC:

- The Special Broadcasting Service Corporation ("**SBS**") recognises the operational benefits for publishers and advertisers from vertical integration "*in terms of streamlined buying and selling of advertising; reporting; and troubleshooting*".⁴⁷

⁴⁴ Interim Report, p. 121.

⁴⁵ CMA Final Report, para. 5.234.

⁴⁶ See "*Introducing Google Ad Manager*" (27 June 2018) available at: <https://www.blog.google/products/admanager/introducing-google-ad-manager/>.

⁴⁷ See Special Broadcasting Service's public response to the ACCC digital advertising services inquiry (May 2020), p. 7, available here:

- The Asia Internet Coalition highlights that *“a vertically integrated offering in the ad tech stack helps reduce problems of latency, which degrades user experience and can result in loss of publisher revenue if the impression is lost due to a delay in serving an ad”*.⁴⁸
- Omnicom Media Group lists efficiency benefits including more accurate performance based reporting and higher response and win rates on non-guaranteed inventory. Omnicom Media Group also lists benefits including flow of audience segments and easier workflow for campaign set-up and implementation from working across an integrated ad server.⁴⁹
- WPP AUNZ states that vertical integration in the industry has *“sought to improve the competitive position of industry participants by providing scale and product offerings”*.⁵⁰ Verizon states that the *“efficiencies gained from vertical integration are what enables any competition”* by enabling smaller competing firms to compete effectively.⁵¹
- Guardian highlights that *“The more recent integration of AdX with GAM on the server side, means that...it is much easier to set up and run programmatic guaranteed campaigns, which can otherwise be a very manual and time-consuming process”*.⁵²

<https://www.accc.gov.au/system/files/Special%20Broadcasting%20Service%20%28SBS%29%20%2811%20May%202020%29.pdf>.

⁴⁸ See Asia Internet Coalition’s public response to the ACCC digital advertising services inquiry (May 2020), p. 4, available here: <https://www.accc.gov.au/system/files/Asia%20Internet%20Coalition%20%28AIC%29%20%2811%20May%202020%29.pdf>.

⁴⁹ See Omnicom Media Group’s public response to the ACCC digital advertising services inquiry (May 2020), pp. 27 - 28, available here: <https://www.accc.gov.au/system/files/Omnicom%20Media%20Group%20%2822%20May%202020%29.pdf>.

⁵⁰ See WPP AUNZ public response to the ACCC digital advertising services inquiry (May 2020), p. 3, available here: <https://www.accc.gov.au/system/files/WPP%20AUNZ%20%2812%20May%202020%29.pdf>.

⁵¹ See Verizon Media’s public response to the ACCC digital advertising services inquiry (April 2020), p. 4, available here: <https://www.accc.gov.au/system/files/Verizon%20Media%20%2828%20April%202020%29.pdf>.

⁵² See GNM Australia Pty Ltd’s public response to the ACCC digital advertising services inquiry (June 2020), p. 7, available here: <https://www.accc.gov.au/system/files/Guardian%20News%20%26%20Media%20Australia%20Pty%20Ltd%20%2810%20June%202020%29.pdf>.

- Vertical integration enables and incentivises businesses to reduce their supply and distribution costs and pass those savings on to users.⁵³
- Vertical integration is beneficial for consumer privacy. Sharing consumer information with multiple third parties across a range of different ad tech products has privacy implications. Ensuring third party compliance with evolving privacy rules in a global ecosystem, including via audits and contract, is complex, costly and error prone. These challenges were recognised in the ICO Report, which states: *“In essence, once data is out of the hands of one party, essentially that party has no way to guarantee that the data will remain subject to appropriate protection and controls.”*⁵⁴

Controlling data access increases the ability to protect the privacy of consumer information and reduces the risk of it being leaked to potentially malicious actors (for more information see para. 85 below). It also means that consumers can be better informed about what may happen to their data. By contrast, where data is shared with a large number of third parties in the ad tech ecosystem, it is not always possible to provide individuals with an appropriate picture of what happens to their data. This is recognised in the ICO report.⁵⁵

- As a vertically integrated ad tech provider, we are incentivised to balance the interests of consumers, publishers, and advertisers. We are able to solve for externalities that threaten the long-term viability of the system. If publishers fill their inventory with bad or annoying ads in order to pursue a higher revenue, consumers may adopt ad blockers which harm both advertisers and publishers. Due to our relationship with advertisers, we are incentivised to combat ad fraud and bad ads, even if it is not in the short-term interests of some publishers.⁵⁶

⁵³ The ACCC also highlights benefits of vertical integration in its Merger Guidelines noting that “it is often the case that vertical mergers will promote efficiency by combining complementary assets/services which may benefit consumers”. See, ACCC *“Merger Guidelines”* (November 2018), para 5.19, available here: <https://www.accc.gov.au/system/files/Merger%20guidelines%20-%20Final.PDF>. See also, for example, European Commission, *“Guidelines on the assessment of non-horizontal mergers under the Council Regulation on the control of concentrations between undertakings”*, (2008) para. 13, available here: [https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC1018\(03\)&from=EN](https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52008XC1018(03)&from=EN); CC and OFT *“Merger Assessment Guidelines”* (September 2010), para. 5.7.10, available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/284449/OFT1254.pdf; Department of Justice and FTC, *“Vertical Merger Guidelines”*, (30 June 2020), p. 11, available here: https://www.ftc.gov/system/files/documents/reports/us-department-justice-federal-trade-commission-vertical-merger-guidelines/vertical_merger_guidelines_6-30-20.pdf.

⁵⁴ ICO Report, pp. 20-21.

⁵⁵ ICO Report, pp. 19-20.

⁵⁶ See Bitton and Lewis, *“Clearing Up Misconceptions about Google’s Ad Tech Business”* (5 May 2020), pp. 13 and 43-44 (the **“Google Report by Bitton and Lewis”**). The report is available here:

38. Importantly, vertical integration does not require advertisers and publishers to utilise the services of a single provider. Most ad tech providers (including us) enable advertisers and publishers to use their products in conjunction with products offered by third parties. Many advertisers and publishers therefore benefit from the different innovative features offered by various ad tech providers, including those which are vertically integrated.⁵⁷
39. Some of the ACCC’s proposals risk affecting the benefits provided by vertical integration. In particular, proposals that are efficiency destroying (that aim to “level down” rather than “level up” competition) risk reducing the quality and efficiency of ad tech services and the ability for ad tech providers to continually innovate to meet the evolving needs of advertisers, publishers, and consumers. We encourage the ACCC to engage with the industry and carefully consider these risks when designing reform proposals.

<https://www.accc.gov.au/system/files/Google%20-%20Report%20from%20Daniel%20Bitton%20and%20Stephen%20Lewis%20%285%20May%202020%29.pdf>.

⁵⁷ Google’s Submission in Response to the ACCC’s Issues Paper, p. 15.

For example: (i) Ad Manager’s ad server functionality works with any exchange and supports hundreds of ad networks and ad exchanges; (ii) Ad Manager supports over 500 DSPs and 250 ad networks and enables publishers to solicit real time bids through more than 20 different third party exchanges; and (iii) DV360 enables bidding on more than 80 third party exchanges.

2. Google's comments on the ACCC's Proposals

2.1. Proposals to reduce data-related barriers to entry

2.1.1. *Measures to improve data portability and interoperability should safeguard consumer privacy (Proposal 1)*

Summary: We believe the ACCC's objectives are best achieved by data portability measures that are industry-led and industry-wide and where the user is in control. To safeguard consumer privacy and promote participation and competition, such measures should only apply to data controlled by the user.

Data interoperability measures have significant risks that do not exist for data portability measures. This includes risks to consumer privacy, confidentiality obligations, incentives to invest and innovate, and intellectual property rights.

40. The ACCC is considering measures to improve data portability and interoperability. Such measures would be subject to safeguards to ensure consumers have sufficient control over the sharing and processing of their data.⁵⁸

ACCC's objectives are best achieved by data portability measures

41. We believe the ACCC's objective to ensure there is sufficient "*breadth and depth of data available*" to new entrants while also safeguarding consumer privacy is best achieved by data portability measures (i.e. tools that would increase data mobility at the request of a consumer or advertiser regarding data they control⁵⁹).

Benefits of data portability measures

42. We believe in giving users⁶⁰ control over their data where that is technically feasible and doing so can promote competition. For example:
- For consumers, since 2011, we have offered a "Download Your Data" portability tool for content in a consumer's Google Account.⁶¹ This allows consumers to export data from many of our services, either to their own computer, or to storage services like OneDrive, Dropbox and Box.

⁵⁸ Interim Report, pp. 80 - 81.

⁵⁹ Interim Report, p. 20.

⁶⁰ In this section on data portability measures, unless otherwise stated, references to users mean consumers or advertisers.

⁶¹ See "Google Takeout", available here: <https://takeout.google.com/settings/takeout?pli=1>.

- For advertisers, customers of DV360 and Campaign Manager control all data derived from their use of these services and can export a significant amount of reporting and analysis which they can choose to provide to anyone, without restriction.
43. Data portability measures that are supported and adopted by industry have the potential to promote competition and access to data. Such measures leave users in control of the sharing and processing of their data without sacrificing innovation or variety. Specifically, a data portability framework that enables users to request that a company transfers and shares a machine-readable copy of their data between services can promote competition. It can reduce barriers to switching and facilitate multi-homing.

Design features for data portability measures

44. Data portability measures should only apply to data that a user creates, imports, approves for collection or has control over. For example:
- Consumer data portability measures should apply to data that the consumer creates on, or imports to, the relevant consumer service or observed data provided by the consumer by virtue of the use of the service (e.g. search history).
 - Advertiser data portability measures should only apply to data that the advertiser provides to the advertiser-facing service (i.e. DSP or advertiser ad server), such as data uploaded to the service or data about a consumer's activity on the advertiser's own website or app.
45. Data portability regimes most effectively facilitate user switching, multi-homing and innovation when the maximum number of platforms take part. Such measures should therefore apply on an industry-wide basis and be led by industry. This approach was also recognised by the UK Digital Competition Expert Panel: "*A purely government-led approach to setting mandatory standards is likely to be inflexible and ill-equipped to deal with market developments or changes in technology. Industry involvement in the design and implementation of standards will therefore be key to the success of encouraging greater data mobility.*"⁶² It is also important to ensure that any data portability measures are technically feasible. Industry-led solutions will help ensure this and will drive participation.

⁶² See "*Unlocking Digital Competition: Report of the Digital Competition Expert Panel*", (March 2019), para. 4.47, available here: https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/785547/unlocking_digital_competition_furman_review_web.pdf.

46. Industry-led data portability measures could be developed as part of a voluntary industry standard with the support and involvement of the ACCC. The standard could address matters such as:

- Adopting an agreed method for porting data between industry participants.
- Verifying that businesses wanting to participate in the project meet necessary security requirements.
- Working with companies to overcome any obstacles to achieving reciprocity (i.e. offering import and export functionality).⁶³ This may involve providing guidance or assurances about the types of data companies will have to transmit or receive.
- Helping develop criteria for assessing possible new use cases that consumers want and mediating where participants disagree (e.g. on the data types within scope).
- Encouraging individual users and businesses to take part in the project by offering incentives, technical support, practical guidance, and accreditation for participating companies.

47. The Data Transfer Project is an example of an industry-led data portability initiative that could be supported. The Data Transfer Project was launched in 2018 to create an open-source, service-to-service data portability platform. It enables consumers to direct one service to share their data with another service, without having to download and upload data themselves. This enables consumers to easily move their data between online service providers. The Data Transfer Project is open to all online service providers and is easy to join. Current partners include Google, Apple, Facebook, Microsoft and Twitter, with more than two dozen contributors from a combination of partners and the open source community.⁶⁴

What data portability measures should not apply to

48. Data portability measures should not apply to data that the user does not control. For example: advertiser data portability measures could allow advertisers to transfer data

⁶³ All participating companies should be willing both to receive incoming data and to transmit data to other services at a user's direction. In other words, they should build both 'import' and 'export' functionalities. This is essential to establish user control over their data and to ensure the long-run viability of a data mobility system. A network of companies that are willing only to receive but not transmit data (or vice versa) is unlikely to achieve data mobility or to be sustainable in the long run.

⁶⁴ See "Data Transfer Project", available here: <https://datatransferproject.dev/>. See also "Our work to move data portability forward" available here: <https://blog.google/technology/safety-security/data-portability/>.

they control from one ad tech product to another at their request. However, advertisers do not control the data about a consumer's activity on websites where the ads are displayed. Advertiser data portability measures should not allow advertisers to transfer such data, as it is not controlled or provided by the advertiser. This is necessary to safeguard consumer privacy.

49. Data portability measures should also not extend to data that a service provider creates using a consumer's data (i.e. inferred data), such as a user profile created by analysis of the data collected. These include data generated to improve system performance or train proprietary algorithms. This is consistent with the position under the GDPR right to data portability which excludes such inferred data.⁶⁵ By way of analogy, under the instrument designating Authorised Deposit-Taking Institutions for the Consumer Data Right, materially enhanced information was excluded from the class of information designated.⁶⁶ Similarly, the UK Open Banking regime allows authorised third-party providers to see a consumer's financial information. It does not require banks to share, for example, proprietary data on how consumers interact with their websites or the effectiveness of different marketing strategies. Separately, concerns have been raised about whether sharing inferred data might increase market transparency and thereby undermine competition.⁶⁷

Data interoperability measures have significant risks

50. Data interoperability measures would be a significant intervention that requires caution and a detailed analysis of the risks. They have significant risks that do not exist for data portability measures:
- **Consumer privacy:** We agree with the ACCC that data interoperability measures "*are likely to result in greater sharing of data without the consumer controls*".⁶⁸ Unlike data portability measures, data interoperability involves the transfer of data between firms without a request from a consumer or advertiser. There are significant privacy risks associated with transferring consumer data without their informed consent or control. As explained in para. 28, the clear trend in global privacy related law is to empower consumers to control their own personal information and limit data processing and sharing to what is reasonably

⁶⁵ See "Guidelines on the right to data portability", p.10, available here: https://ec.europa.eu/newsroom/article29/item-detail.cfm?item_id=611233.

⁶⁶ Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019, section 10.

⁶⁷ The European Commission Special Advisers' report observed that "*a data pool may discourage competitors from differentiating and improving their own data collection.*" See "*Competition policy for the digital era*", p.97, available at: <https://ec.europa.eu/competition/publications/reports/kd0419345enn.pdf>.

⁶⁸ Interim Report, p. 81.

necessary. Data interoperability measures that enable the collection, use and disclosure of the personal information of individuals without their consent to address perceived issues in the ad tech ecosystem is also antithetical to the stated policy goals of intended privacy law reform in Australia.

Given the concerns consumers have expressed about the handling of their personal information online as identified by the ACCC⁶⁹ and the benefits from aligning Australian privacy law with overseas regimes, careful consideration must be given to whether a regime mandating the sharing of personal information (or of information which is at risk of being identified as personal information) is privacy protecting for consumers. The embedding of legally binding data sharing regimes in ad tech regulation which could further erode consumers' trust in the handling of information online should be avoided.

The ACCC refers to the need for any data interoperability measures to be *“accompanied by adequate safeguards to ensure that the data shared is effectively aggregated or anonymised and to manage the risks associated with the re-identification of anonymised data through the combining of separate datasets”*.⁷⁰ Anonymisation is an important technique to protect user privacy. Google uses strict anonymisation protocols internally, and we have even published open source libraries of our differential privacy protocols to support uses by other companies.⁷¹ However, successful strategies to anonymise personal information in large-scale datasets are context-dependent and require particular care when the data will be used outside of the original organisation. For example, Google Search Trends⁷² shares anonymous information about search activity with the public, and the COVID-19 Community Mobility Reports show another example of how to share anonymous data.⁷³ However, if careful protocols are not followed, there can be significant risks that the anonymised data allows the consumer to be re-identified through combining separate

⁶⁹ Interim Report, p. 79

⁷⁰ Interim Report, p. 81.

⁷¹ See, Google Developers Blog, *“Enabling developers and organizations to use differential privacy”* (5 September 2019), available here: <https://developers.googleblog.com/2019/09/enabling-developers-and-organizations.html>; and, Google Open Source Blog, *“Expanding our Differential Privacy Library”* (24 June 2020), available here: <https://opensource.googleblog.com/2020/06/expanding-our-differential-privacy.html>.

⁷² See, *“Google Trends”*, available here: <https://trends.google.com/trends/?geo=US>.

⁷³ See, *“Covid-19 Community Mobility Reports”*, available here: <https://www.google.com/covid19/mobility/>. See, also, *“Google COVID-19 Community Mobility Reports: Anonymization Process Description (version 1.1)”* (8 April 2020), available here: <https://arxiv.org/abs/2004.04145>.

datasets. It is challenging to safeguard against this risk effectively when third parties have direct access to datasets, as compared to accessing the same information through an interface like in the examples described immediately above⁷⁴.

- **Confidentiality:** Ad tech providers may also have confidentiality obligations relating to the data of users of their platform. Any data interoperability measures should have adequate safeguards to ensure that such confidentiality obligations are respected.
- **Impact on competition and incentives for investment and innovation:** Any assessment of data interoperability measures should take account of the varying significance of different types of data. This should consider both: (i) enhancing the competitive abilities of data recipients, and (ii) any negative consequences of data access on competition and investment.

Depending on the data, data interoperability measures could dampen investment in gathering useful data, reduce product diversity and reduce incentives to invest in product improvements. For example, some datasets could reveal or allow reverse engineering of aspects of proprietary algorithms. This encourages third parties to replicate results rather than innovate and improve algorithms. This could lead to less choice and lower quality services by reducing incentives to innovate.

Data interoperability measures could also reduce competition by revealing to competitors the types of data that a provider views as competitively significant. For example, businesses compete to derive the most accurate or meaningful inferences from consumer data to cater for the demands of individual consumers. Sharing data that has been inferred from consumer inputs or interactions could undermine this parameter of competition and, ultimately, future product improvements.

- **Intellectual property risks:** Where the data involves intellectual property rights, data interoperability measures could breach intellectual property rights.

⁷⁴

The ACCC acknowledged this risk in the Interim Report, p. 49. See also e.g., L. Rocher, J. Hendrickx, and Y. de Montjoye, “Estimating the success of re-identifications in incomplete datasets using generative models”, *Nature*, (23 July 2019), “numerous supposedly anonymous datasets have recently been released and re-identified. In 2016, journalists re-identified politicians in an anonymized browsing history dataset of 3 million German citizens, uncovering their medical information and their sexual preferences. A few months before, the Australian Department of Health publicly released de-identified medical records for 10% of the population only for researchers to re-identify them 6 weeks later. Before that, studies had shown that de-identified hospital discharge data could be re-identified using basic demographic attributes and that diagnostic codes, year of birth, gender, and ethnicity could uniquely identify patients in genomic studies data. Finally, researchers were able to uniquely identify individuals in anonymized taxi trajectories in NYC, bike sharing trips in London, subway data in Riga, and mobile phone and credit card datasets”.

51. Consequently, we believe the ACCC’s objectives would be more effectively pursued through other means, such as data portability measures. If the ACCC were to pursue data interoperability measures, these significant risks mean that such measures should be industry led, to identify specific use cases where data access or interoperability would promote innovation. Industry could then co-operate on ways to facilitate data sharing in those use cases without jeopardising privacy or incentives to invest.

2.1.2. Data separation mechanisms would require a detailed analysis of the potential risks (Proposal 2)

Summary: Intra-company data separation measures are not warranted. The potential gains from such measures are speculative as compared to the significant risks of real and immediate costs to publishers, advertisers and consumers. Such measures are likely to lead to reduced efficiency, innovation, competition and consumer benefits, and potential consent fatigue for consumers. We urge the ACCC to gather evidence on the potential negative impacts that data silos could have on efficiency and innovation.

52. There is a tension between the Interim Report’s Proposal 1 to mandate more data sharing *between companies* and this Proposal 2 to limit data sharing *within a company*. We believe that a pro-consumer agenda would involve a consistent approach to these data issues to promote innovation and high quality services. This means:
- Avoiding data interoperability obligations between companies that reduce incentives to innovate by requiring innovators to share data with other companies;
 - Promoting incentives to innovate and attract users by facilitating data portability that helps users to share data with companies where it benefits the user to do so; and
 - Avoiding intra-company data separation measures that directly harm product quality and reduce innovation without providing any benefits.
53. Advertisers and publishers should be able to receive the benefits of data sharing that is made possible by vertical integration to the extent that it is legally permissible and technically possible (see Part II, Section 1.3 above). We therefore welcome the ACCC’s recognition of the large efficiency costs of intra-company data restrictions, including the “*potential reduction in efficiency that would likely result from introducing constraints on the internal handling of data within businesses*”.⁷⁵ The ACCC is

⁷⁵ Interim Report, p. 21.

nonetheless considering measures directed at mandating data separation (such as data silos or purpose limitation requirements) within companies in limited circumstances.⁷⁶ Such restrictions are different from other proposals because they are purely efficiency destroying measures: they aim to “level down” rather than “level up” competition.

54. Data separation measures would be a significant intervention that requires caution and a detailed analysis of the risks:

- **Harm to advertisers and publishers from reduced efficiency and innovation:** We agree that it is important to consider the efficiency benefits from increased access to data.⁷⁷ However, there is no evidence that data separation measures will lead to any benefits to competition, publishers, or advertisers. Indeed, these measures have significant risks of real and immediate costs to publishers and advertisers. The interconnected nature of the ad tech ecosystem means that products need to share information to function properly. Certain features require technical integration between different products (see Part II Section 2.2.2 below). Putting additional barriers in place will make it more difficult for us to provide high quality products and services to our customers. This is likely to result in less revenue for publishers, lower quality (e.g. less targeted) ads for advertisers, and a reduced consumer experience (see bullet point below).
- **Harm to consumers from reduced efficiency and innovation:** In addition to harming advertisers and publishers, data separation measures could also reduce efficiency and innovation and harm consumers. This is because firms often combine data from different services operating at different levels of the supply chain to innovate, improve services and develop new services that benefit consumers and improve the user experience. For example:
 - We use the information we collect from consumers to customise our services for the benefit of the consumer. This includes providing recommendations, personalised content, and, depending on the consumer’s settings, showing personalised ads based on their interests. For example, our Security Checkup provides security tips adapted to how the consumer uses our products.
 - Data can be combined across services to improve functionality. For example, enabling consumers to receive an event invitation via Gmail and add it seamlessly to their Google Calendar is useful.

⁷⁶ Interim Report, pp. 81 - 82.

⁷⁷ Interim Report, p. 82.

- Understanding which search terms are most frequently misspelled helps us improve spell-check features used across our services.
 - Understanding how people organised their photos in Picasa, our first photos app, helped us design and launch Google Photos.
- **Regulatory burden on affected businesses:** We also agree with the ACCC that data separation measures within the ad tech ecosystem would impose a significant regulatory burden on affected products and businesses. Such measures would require the implementation of technical measures to demonstrate compliance to the ACCC clearly. Compliance would also come with ongoing costs and inefficiencies due to the constraints on internal data handling.⁷⁸ As noted above, this would be a purely efficiency destroying measure aiming to “level down” rather than “level up” competition.
- **Impact on competition if unevenly applied:** Imposing data separation measures only on specific companies distorts competition. It means that only a subset of firms are disadvantaged in their ability to innovate and improve the quality of their services. Attempting to “level the playing field” by restricting certain firms’ ability to effectively innovate and compete does not benefit the ad tech ecosystem or any third parties (beyond handicapping a competitor).

The Interim Report indicates that a data separation requirement might be appropriate if the shorter-term reduction in the efficiency is likely to be offset by a longer-term gain in dynamic efficiency from smaller competitors.⁷⁹ The efficiency reductions described above are not “short-term” and will have long-term impacts on dynamic competition and innovation. For example, any prohibition on us combining data across our services would prevent the examples of beneficial data combinations described above. This will persist for the duration of the prohibition. It will also prevent innovative features reliant on data combination across services that would have otherwise been developed in the longer-term. Any potential longer-term gain in dynamic efficiency is speculative and is unlikely to outweigh these significant costs and efficiency losses.

- **Impact on business models reliant on data-driven ads:** The examples of data separation mechanisms given by the ACCC relate to restricting the use of data

⁷⁸ The ACCC recognises this constraint on pp. 20 and 21 of the Interim Report.

⁷⁹ Interim Report, p. 82.

for ad targeting purposes.⁸⁰ This could also disadvantage firms whose business models rely (in part) on data-driven ads. This would reduce the amount of high-quality free content available to consumers.

- **Potential consent fatigue and harming user experience:** We agree with the ACCC that purpose limitation requirements like a requirement for firms to provide a consumer with more granular consumer controls over their data “*is likely to create consent or choice fatigue for the consumer*”.⁸¹ We believe that consumers need enough information to understand their options at the most relevant times when they interact with the product in question. But consumers do not need so much information that they are overwhelmed. In other words, there is a risk that a requirement to give more frequent consents leads to less consumer engagement with their consent options.⁸²

A study by Deloitte found that in Australia, 50% of consumers interviewed stated that they had given consent (when previously they had refused) because they were tired of being asked continually by the same service. Additionally, 64% of consumers agreed that they felt overburdened by requests for consent, and 80% of consumers stated that feeling overburdened makes them less likely to read privacy policies and terms and conditions before giving consent.⁸³ Requiring individuals to control every aspect of data processing can create a

⁸⁰ Interim Report, pp. 81 - 82. The ACCC's example of a data silo is: “*This could involve rules prohibiting the combining of certain types of datasets or rules prohibiting the use of certain types of data (e.g. data relating to health or medical conditions) for ad targeting purposes.*” The ACCC's example of purpose limitation requirements is “*to provide a consumer with controls over whether the data collected from their use of a digital platform's service (such as online browsing, online searches, or email) may be internally shared and used for that company's ad targeting or attribution functions.*”

⁸¹ Interim Report, p. 82.

⁸² In the CMA Final Report, the CMA acknowledged that giving effective control to consumers needs to be balanced against the possibility of creating a situation of consent fatigue. See, CMA Final Report, para. 4.167. This was echoed by the ACCC in the DPI Final Report which stated that: “*[I]t may also be appropriate for the consent requirements to be implemented along with measures to minimise consent fatigue, such as not requiring consent when personal information is processed in accordance with a contract to which the consumer is a party, or using standardised icons or phrases to refer to certain categories of consents to facilitate consumers' comprehension and decision-making*”. See DPI Final Report, p. 464.

A 2019 article from CNBC noted that “consent fatigue” had been an unfortunate adverse side effect of the EU's General Data Protection Regulation. See “*Europe's sweeping privacy rule was supposed to change the internet, but so far it's mostly created frustration for users, companies, and regulators*” (05 May 2019) available here: <https://www.cnbc.com/2019/05/04/gdpr-has-frustrated-users-and-regulators.html>.

⁸³ Opting-in to meaningful consent, pp. 7 and 12.

burdensome and complex experience that diverts attention from the most important controls without corresponding benefits.⁸⁴

We already provide consumers with many controls over data, including whether data can be used for ad targeting. User research should be conducted before making any proposals on purpose limitation requirements like more granular consumer controls.

- **Potential to contradict or overlap with the current Privacy Act Review:** As noted above, the Attorney-General Department's ongoing Privacy Act Review is separately considering what measures could be used to ensure individuals receive adequate notice of how an entity is collecting and handling an individual's personal information without subjecting that individual to information overload.⁸⁵ We encourage the ACCC to consult with the Attorney-General's Department, the OAIC and other relevant stakeholders involved in the Privacy Act Review to ensure any purpose limitation proposals are not inconsistent with the outcomes of the Privacy Act Review or result in inefficient and overlapping regulatory frameworks (see para. 30-34).

55. Data separation measures would only be warranted where there is a real need and where the gains would outweigh these significant risks. We do not believe the ACCC has justified the need for data separation measures with respect to Google.
56. We urge the ACCC to gather evidence on the potential negative impacts that data separation mechanisms could have on efficiency and innovation. The claimed potential longer-term gain in dynamic efficiency from additional restrictions on the use of data is speculative. It should not outweigh these significant costs and efficiency losses.
57. These risks instead favour providing consumers with readily comprehensible controls over their privacy, security, and data-sharing settings. Such initiatives could be led by industry (in conjunction with the Privacy Act Review), drawing on examples such as the Best Practice Guideline for Online Behavioural Advertising.⁸⁶

⁸⁴ See Google's submission to the Attorney-General's Department in response to the Privacy Act Review Issues Paper (29 November 2020) ("**Google's Privacy Submission**"), p.6. Google's Privacy Submission is available here: <https://www.ag.gov.au/sites/default/files/2021-01/google.PDF>.

⁸⁵ Privacy Act Review Issues Paper, pp. 9 and 39.

⁸⁶ See "*Australian Best Practice Guideline for Online Behavioural Advertising*", (24 April 2012) available here: <https://iabaaustralia.com.au/guideline/australian-best-practice-guideline-for-online-behavioural-advertising/>.

2.2. Proposals to address concerns around conflicts of interest and self-preferencing

2.2.1. *Introducing rules to manage conflicts of interest and self-preferencing would be unnecessary (Proposal 3)*

Summary: We believe the current provisions of the CCA are sufficient to address any concerns that arise from vertical integration. We have not engaged in any anti-competitive self-preferencing, nor do we believe we have a conflict of interest. To the extent the ACCC is minded to introduce rules, we agree with the ACCC these should be developed and implemented by industry. Any rules need to be carefully designed, with consideration given to the risks to efficiency and innovation and the need to protect consumer privacy, confidentiality, ad fraud measures and intellectual property rights. We are eager to engage with the ACCC to the extent that it moves forward with any of these interventions.

Existing laws are sufficient to address any concerns about conflicts of interest or self-preferencing

58. We believe the current CCA provisions are sufficient to address potential competition and other concerns that arise from vertical integration in the ad tech chain.
59. The Interim Report raises two preliminary concerns with respect to Google’s vertical integration:
- Because of our presence across the ad tech supply chain, we are likely to have the ability and incentive to favour our own related business interests (“self-preferencing”);⁸⁷ and
 - Conflicts of interest can arise because we supply ad tech services to both advertisers and publishers for the same transaction.⁸⁸
60. On the first issue, we have not engaged in any anti-competitive self-preferencing. The CCA already deals with issues of anti-competitive self-preferencing through the prohibition on misuse of market power. There is a real risk to product quality if vertical efficiencies are prohibited by regulation. Improving product performance for publishers or advertisers through integration of products alone cannot amount to problematic self-preferencing.

⁸⁷ Interim Report, p. 15.

⁸⁸ Interim Report, p. 15.

61. On the second issue, the Interim Report finds nothing more than the *potential* for conflicts of interest to arise, and does not make any findings of examples of ad tech products (including Google) not acting in the best interests of their customers. In particular:

- The ACCC indicates that our introduction of Unified Pricing Rules may illustrate the potential implications of conflicts of interest.⁸⁹ This is a misguided conclusion. Any auction operator must balance the interests of publishers and ad buyers to attract both and remain viable. The Unified Pricing Rules mean any pricing floors that are set apply uniformly to all buyers.⁹⁰ This is a non-discriminatory approach that means all auction buyers compete based on the same price floor. Allowing different floors means a buyer with a higher valuation could lose to a buyer with a lower valuation because it faces a higher floor. This can give rise to an allocative inefficiency. Publishers could use discriminatory floors to take advantage of buyer self-competition to inflate bids. This behaviour could undermine ad buyer trust and reduce ad buyers' participation or lead them to bid lower in an attempt to thwart such practices. The new rules now create a level playing-field that improves ad buyer trust in programmatic advertising. This leads to higher levels of spend that benefits publishers. There were many publishers and ad buyers that welcomed this change.⁹¹ An independent third-party survey found that 30% of publishers

⁸⁹ Interim Report, p. 139.

⁹⁰ In this context, buyers mean the DSPs, ad networks, trading desks and SSPs that use Ad Manager.

⁹¹ See Google, "An update on first price auctions for Google Ad Manager", (10 May 2019), available here: <https://www.blog.google/products/admanager/update-first-price-auctions-google-ad-manager>. This includes positive feedback on the change:
"Google's move to first-price auctions and unified pricing is an opportunity to improve transparency throughout the ecosystem, including improved visibility of their own actions and practices, which I believe should benefit everyone." -- Richard Caccappolo, Chief Operating Officer, MailOnline.
"We welcome Google's move to first price auctions and unified pricing rules. These changes will help us simplify how we implement our most advanced pricing strategies between our header bidding partners, Ad Manager and Exchange Bidders. We believe this will help create a level playing field for non-guaranteed transactions and help us review the performance of our demand partners." -- Alex Payne, VP of Global Programmatic Solutions, VICE Media.
"Brands and agencies are demanding a scaled, open, and unified approach to the modern marketing platform. MediaMath supports Google's effort to simplify the programmatic supply chain and provide more transparency in the media buying and selling process. These updates should help reduce friction between advertisers, publishers, and the broader tech ecosystem." -- Jeremy Steinberg, Global Head of Ecosystem, MediaMath.
"We've built our technology to work with Ad Manager through Prebid and Exchange Bidding to help publishers monetize their inventory however they choose. We're glad to see Google shifting toward a more transparent and simplified approach to auctions, and we look forward to collaborating with them to ensure these changes are executed in a way that works for publishers and buyers alike." -- Tom Kershaw, Chief Technical Officer, Rubicon Project.

found the Unified Pricing Rules changes appealing and experienced growth. Only 4% of publishers expressed negative sentiments. The remainder felt the change would not affect their business.⁹²

- The ACCC indicates that it is considering whether contractual confidentiality obligations to buyers would arise for non-vertically integrated providers. The ACCC indicates that if such contractual obligations limit what an integrated provider is able to share with publishers, it is an example of an integrated operator being unable to act in the interests of both its advertiser and publisher customers.⁹³ This is not an issue with vertical integration. All SSPs (whether vertically integrated or non-vertically integrated) have both ad buyers and publishers as customers. Any confidentiality obligations a non-vertically integrated SSP has to their ad buyers will limit that SSP's ability to disclose the relevant information to their publishers.

62. It is therefore doubtful and unproven that vertical integration causes any harm. The need to balance publisher and advertiser interests is not a problem unique to Google arising from our vertical integration. Rather, this is a fundamental part of this multi-sided ecosystem.

63. Consequently, we do not believe it is necessary to introduce new rules to manage perceived conflicts of interest and self-preferencing in ad tech.

2.2.2. Principles for the design of any rules to manage conflicts of interest and self-preferencing (Proposal 3)

64. If the ACCC is minded to introduce rules, however, we agree that any rules should be developed and implemented by industry.⁹⁴ This will ensure that they are tailored to the complexities of the ad tech industry.

65. The Interim Report mentions that some third parties have advocated for use of regulation similar to that used in financial markets.⁹⁵ Rules need to be tailored to the specificities of the ad tech ecosystem and not transplanted from a different industry for a different product. Many of the tensions and risks we describe below will not be applicable to stock exchanges. Stock exchanges do not transform and add value to the

⁹² See Adscholars, "Advertiser Perception Survey: Publishers Positive About Policy Changes", available at: <https://adscholars.com/blog/advertisers-perception-survey-publishers-positive-about-policy-changes/>.

⁹³ Interim Report, p. 169.

⁹⁴ Interim Report, p. 146.

⁹⁵ Interim Report, p. 143.

assets traded⁹⁶ and do not need to be technically integrated with other products to offer certain features.⁹⁷ Stocks do not have the same issues around consumer privacy risks. Stocks are also not affected by the same negative externalities as ads.⁹⁸

66. We believe the principles we outline in Part II Section 1.1 should be applied when designing any rules to manage conflicts of interest and self-preferencing. Any rules need to be carefully designed. Misjudged interventions would harm publishers, advertisers and consumers. Unintended side-effects are especially likely in the digital ads space where the interests of consumers, advertisers and publishers are interrelated but not always aligned. Measures to satisfy one constituency (e.g. more data disclosure to publishers) can easily harm another constituency (e.g. less privacy for consumers).
67. The Interim Report outlines three types of high-level obligations that could be considered.⁹⁹ We outline our high-level observations on these proposals in the following sections. We stand ready to discuss any further detail on the rules envisaged by the ACCC.

ACCC Proposal 3A: Requirements to prevent sharing of information or best interests obligations

68. The ACCC notes that the potential for conflicts of interest could be avoided through the imposition of certain rules, including requirements to prevent the sharing of information.¹⁰⁰ There is already material operational separation between Google's DSP and SSP operations. This has been recognised by the CMA.¹⁰¹ Any further restrictions on sharing information within a company risk reducing efficiency, innovation and

⁹⁶ Each share of a company is identical to each other share of that company. By contrast, in online advertising, every ad impression opportunity has different properties and value. This is more similar to illiquid non-identical assets like real estate. For such assets, it is more difficult to match the buyer and the seller and the intermediary has the potential to generate far more value.

⁹⁷ Conversely, historical distinctions between services such as SSPs and ad exchanges have become blurred over time as ad tech services evolve to adjust to changes in the wider digital advertising landscape. See Google's Submission in Response to the ACCC's Issues Paper, p.2. Most providers of publisher-side ad servers "offer both ad serving and real-time auction capabilities as part of their sell-side offering. Few offer publisher-side ad serving capabilities without auction functionality." See Google Report by Bitton and Lewis, p. 9.

⁹⁸ For example, publishers may have the incentive to increase the number of ads on their page even if this leads to increased latency. This can generate more revenue for the publisher, but can frustrate consumers and, if those consumers use ad blockers, can harm advertisers. Another example is ad fraud and other invalid traffic activity. For more detail please refer to para. 72 below.

⁹⁹ Interim Report, p. 146.

¹⁰⁰ Interim Report, p. 146.

¹⁰¹ CMA Final Report, para. 8.202.

consumer benefits (see Part II Section 2.1.2 above for an overview of harms that may arise because of these restrictions).

69. The interconnected nature of the ad tech ecosystem means that products cannot function properly if there is a complete ban on the sharing of information. For example, DSPs need to exchange information with SSPs when bidding for impressions. Some features also require different ad tech products to be technically integrated and exchange information. For example, Programmatic Guaranteed deals require a closer technical integration between the DSP and SSP than traditional 'Open Auction' buying. Interventions that make products in the ad tech chain work less effectively together risk lower revenue for publishers and less effective marketing for advertisers.
70. The second example the ACCC provides is “*best interests obligations*”.¹⁰² Such obligations are difficult to apply to two-sided platforms like the ad tech ecosystem. For example, the customers of SSPs are both ad buyers and publishers. SSPs must balance the interests of publishers and ad buyers to attract both and remain viable.
71. Best interest obligations also need to recognise that some changes are beneficial to the majority of (but not all) customers. For example, the ACCC refers to the Unified Pricing rules as illustrating potential implications of conflicts of interest. This is a misguided conclusion for the reasons explained in para. 61 above.
72. Strict best interest obligations also prevent operators from making long-term ecosystem-level optimisations that address negative externalities. This would be detrimental to the long-term viability of the ecosystem. Any best interest obligations should allow operators to take these considerations into account when making decisions. For example:
 - A publisher may have a short-term financial interest to have more ads on their page. A publisher may also be less concerned about latency than revenue. But consumers can be frustrated by ad-filled pages that may take longer to load and run down phone batteries. The more that publishers increase the ads on their pages or use technologies that slow down their pages, the more that consumers will use ad blockers. This harms advertisers and ultimately harms other publishers. Operators should be allowed to consider this when making decisions. For example, we support the Better Ad Standard’s guidelines¹⁰³ even though some publishers may not consider adherence to be in their short-term financial interest.

¹⁰² Interim Report, p. 146.

¹⁰³ See “*Improving user experience with the Better Ads Standards*”, available here: <https://admanager.google.com/home/resources/feature-brief-better-ads-standards/>.

- Measures to address ad fraud practices and other invalid activity may not be in the short-term interests of some publishers and advertisers. For example, publisher-facing services may combat practices like “click fraud”, even though this could reduce a publisher’s ad revenue. Such practices harm advertisers and trust in the ad tech ecosystem. Similarly, advertiser-facing services may block and remove fraudulent and scam ads, even though this may not be in the interests of certain advertisers. But this is in the interests of publishers and consumers. Addressing ad fraud is critical to maintaining trust in and the long-term viability of the ad tech ecosystem.

ACCC Proposal 3B: Requirements to provide equal access to ad tech services

73. While we strive to make our services interoperable, we are concerned that over-broad principles requiring equal access to ad tech services could damage investment and innovation. We have to make prioritisation decisions about where we invest our resources in our ad tech products. Some innovative ad tech features require costly and difficult integrations and are extremely time-consuming to integrate. We may test customer demand for a new feature on our ad tech products first before launching it more broadly. Requiring features or products to work equally well with all third-parties from day one would significantly hinder new ad tech product features and would mean that innovation could only move at the pace of the slowest player. This is because we would need to work simultaneously with other industry players to ensure interoperability with potentially every ad tech product development or optimisation. This would reduce the speed of innovation and improvement of ad tech products and ultimately harm publishers and advertisers.

ACCC Proposal 3C: Requirements to increase transparency

74. We appreciate the ACCC’s concerns around transparency in the ad tech supply chain and recognise that there is an ongoing challenge to reassure stakeholders about transparency in the multi-faceted ads ecosystem.
75. We seek to provide publishers and advertisers with sufficient information for them to make properly informed choices about how they allocate their ad spend or sell their inventory. For example:
- Publishers can generate highly customisable reports on Ad Manager, and can select an extensive array of dimensions to include in their reports.¹⁰⁴ Ad Manager also offers publishers report files that provide non-aggregated,

¹⁰⁴ See “Overview of Ad Manager reporting”, available here: https://support.google.com/admanager/answer/2671992?hl=en&ref_topic=7578772&visit_id=637486828775010245-1190174222&rd=1.

event-level data from their ad campaigns, including on ad requests, responses, impressions and bids.¹⁰⁵

- For advertisers, Google Ads and DV360 report a large number of performance metrics, including clicks, click rate, impressions and cost (CPM, CPC etc.). Advertisers can customise metrics in reporting.

76. We are open to working with our partners to increase transparency but any requirements to increase transparency should not conflict with:

- **Consumer privacy protection** (see Part II Section 1.2): we again urge the ACCC to work closely with the Attorney-General's Department (and to consult with the OAIC and other relevant stakeholders), in developing any specific proposals on requirements to increase transparency.
- **Confidentiality obligations:** Contractual arrangements with advertisers for advertiser-facing products typically prevent the disclosure of confidential information subject to that agreement (such as fees). This is also typically the case for contractual arrangements with publishers for publisher-facing products. This is not a function of vertical integration - it is a function of the ad tech supply chain consisting of multiple separate products. The same issue will arise for non-vertically integrated products. For example, Ad Manager does not know the buy-side fees paid by a given advertiser to the DSP that wins the Ad Manager auction (regardless of whether it is a third-party DSP or DV360) so cannot pass this information on to publishers.

Advertisers may have sound reasons for not wanting confidential information about the buy side fees they've paid being disclosed to third parties, including publishers. Such information may be competitively sensitive to advertisers in their dealings with industry participants (e.g. when negotiating direct-sold ads with publishers).¹⁰⁶

- **Ad fraud measures:** Certain disclosures related to ad fraud risk exposing ad fraud detection mechanisms and increasing ad fraud; or
- **Intellectual property rights.**

77. An important question for the remainder of the Inquiry will be to determine which specific information ought to be provided, to whom, and why it is important to address

¹⁰⁵ See "Ad Manager Data Transfer reports", available here: <https://support.google.com/admanager/answer/1733124?hl=en>.

¹⁰⁶ Similarly, publishers may also have sound reasons for not wanting confidential information about the sell side fees they've paid being disclosed to third parties, including advertisers.

concerns around conflicts of interest and self-preferencing. We would benefit from a more granular discussion of the types of information the ACCC would expect providers to disclose (or commit to continuing to disclose on an ongoing basis).

2.2.3. Any structural separation would reduce efficiencies and be a disproportionate response

78. The ACCC has invited views on whether structural separation measures would be an effective and proportionate response to the issues identified.¹⁰⁷
79. Any mandated structural separation of Google’s businesses within the ad tech supply chain would be disproportionate and result in a loss of efficiency and benefits to market participants (see Part II Section 1.3 above). In the DPI Final Report, the ACCC did not recommend divestiture due to the accompanying significant risks.¹⁰⁸ The reasons for this finding also apply to the ad tech industry. Market structure is best left to competitive forces that drive efficient outcomes for consumers. As the ACCC recognised, divestitures “*may reduce incentives for investment and efforts to improve productivity*” and may “*result in the loss of economies of scale and/or scope*”.¹⁰⁹ This can lead to increased prices or lower quality products, harming consumers.
80. We believe that any of the ACCC’s concerns that remain after further investigation can be addressed through less efficiency-destructive means. This includes working with our partners to increase transparency or - as the Interim Report suggests - appropriate industry-led principles to manage conflicts of interest and self-preferencing.¹¹⁰ Principles like this, when appropriately drafted (see Part II Section 2.2.2 above), can achieve the same effect but are less likely to have negative, unpredictable consequences for our partners and the ecosystem. We would be eager to engage with the ACCC on any of these issues.

¹⁰⁷ Interim Report, p. 147.

¹⁰⁸ DPI Final Report, pp. 116 - 117.

¹⁰⁹ DPI Final Report, p. 117.

¹¹⁰ Interim Report, pp. 145 - 146.

2.3. Proposals to address issues of supply chain opacity

2.3.1. *Google supports a voluntary industry standard to enable full, independent verification of DSP services, which safeguards consumer privacy (Proposal 4)*

Summary: We support a proposal for a voluntary industry-led standard to enable full, independent verification of DSP services that safeguards consumer privacy.

81. We agree with the ACCC that this should be a voluntary industry-led solution.¹¹¹ The solution needs to be industry-wide to be effective and developing a solution requires agreement from multiple ad tech participants. We agree with the ACCC's proposal that the voluntary industry standard should set out the minimum requirements and the categories of data to enable third parties to provide full and independent viewability, fraud and brand safety verification services.
82. We agree with the ACCC that the solution needs to be carefully considered in order to protect consumers' privacy.¹¹² It is also important that the solution contains adequate safeguards for the security of the data. The voluntary industry standard should design the principles to achieve the dual objectives of enabling independent verification and protecting consumer privacy. We believe that privacy-safe technologies that do not require individual user-level data granularity are the best way to balance these dual objectives.

2.3.2. *Implementation of a common transaction ID and common user ID would raise significant privacy concerns (Proposals 5 and 6)*

Summary: Imposing common transaction IDs or user IDs raises significant privacy concerns. We believe a better approach would be for industry-led solutions that address the specific issues the ACCC is attempting to address with these proposals. This should be done in a way that safeguards consumer privacy. For example, this could build on the work of the UK ISBA¹¹³ on evaluating a privacy-friendly way for publishers and advertisers to confirm the absence of any "hidden fees" in digital advertising. The objective of the common user ID could be addressed by the above proposal for a voluntary industry-led standard to enable full, independent verification of DSP services that safeguards consumer privacy.

¹¹¹ Interim Report, pp. 182 - 183.

¹¹² Interim Report, p. 182.

¹¹³ The UK ISBA refers to the Incorporated Society of British Advertisers. Details about its Programmatic Supply Chain Transparency Study is available here: <https://www.isba.org.uk/knowledge/programmatic-supply-chain-transparency-study>.

83. The ACCC is considering proposals to introduce a common transaction ID and a common user ID.¹¹⁴
84. In Part II Section 1.2 above we highlighted the need to closely consider implications for consumer privacy in designing proposals. We are particularly concerned that proposals to introduce common transaction IDs or user IDs give rise to significant risk of material consumer privacy detriments. They would allow various market participants along the intermediation chain to ‘pool’ consumer data without consumer consent. This could also allow advertisers, publishers and ad tech intermediaries to join secure bid data with other information in a way that would allow individual consumers to be identified or readily re-identified. A consumer’s personal information could then be made available to hundreds of companies without the consumer having consented or being able to exercise any control.
85. Once data has been shared with another ad tech participant, it is extremely challenging to effectively ensure that the third party uses the data in accordance with the user’s preferences or contractual obligations. Audits have technical and financial limitations so audit programs tend to be annual and cover a small fraction of partners, which means that non-compliance might never be detected or be detected late. The UK ICO has stated: *“In many cases there is a reliance on contractual agreements to protect how bid request data is shared, secured and deleted. This does not seem appropriate given the type of personal data sharing and the number of intermediaries involved.”*¹¹⁵ (see also para. 37 above).
86. In the Privacy Act Review Issues Paper, the Attorney-General’s Department mentions a bill that was introduced to Parliament in 2016 that sought to impose criminal and civil penalties relating to the re-identification of de-identified information released by Commonwealth entities.¹¹⁶ While the bill ultimately lapsed in 2019, this nonetheless illustrates that common transaction IDs and common user IDs may not be in keeping with the direction of travel in Australian privacy law.
87. Indeed, such proposals may also not be in line with the current Australian Privacy Principles (“**APP**”).¹¹⁷ The OAIC has warned of the privacy risks that may still be associated with information that is de-identified in one context, but could be

¹¹⁴ Interim Report, pp. 183 - 185.

¹¹⁵ ICO Report, p. 6.

¹¹⁶ The Privacy Act Review Issues Paper, p. 20.

¹¹⁷ For an overview of the APP, see the OAIC’s “*Australian Privacy Principles quick reference*”, available here: <https://www.oaic.gov.au/privacy/australian-privacy-principles/australian-privacy-principles-quick-reference/>.

re-identified in another. If information is re-identified, that information will constitute personal information and become subject to the APPs, including:

- **APP 6** which provides that an entity can only use or disclose personal information for a purpose for which it was collected (known as the 'primary purpose'), for a secondary purpose which is reasonably related to the primary purpose of collection or where the individual has consented to a secondary use or disclosure;
- **APP 8** which provides that where an entity discloses personal information to an overseas recipient, the entity must take reasonable steps to ensure that the overseas recipient does not breach the APPs in relation to that information. In circumstances where APP 8.1 applies, then under Section 16C of the Privacy Act the acts and practices of the overseas recipient is taken to be the act or practice of the entity and, if the overseas entities would be in breach of the APPs then the entity is taken to have committed that breach; and
- **APP 11** which provides that entities must take reasonable steps to protect personal information from 'misuse, interference and loss', and 'unauthorised access, modification or disclosure'.¹¹⁸

88. To manage such risks, the OAIC recommends “[...] entities take a risk-management approach when handling de-identified data which acknowledges that while the APPs may not apply to data that is de-identified in one specific context, the same data could become personal information in a different context.”¹¹⁹

89. Ensuring compliance with each of the above APPs would be impossible in circumstances where:

- It is not clear if the disclosure of common transaction or user IDs would be for a purpose which would be within the reasonable expectations of the individual concerned;
- All parties involved may not be known to each other and therefore obtaining meaningful consent from an individual may not be possible; and

¹¹⁸ See the OAIC’s “De-Identification and the Privacy Act” (March 2018) (“**De-Identification and the Privacy Act**”), pp. 14 to 15, available here: https://web.archive.org/awa/20190509034623mp_/https://www.oaic.gov.au/resources/agencies-and-organisations/guides/de-identification-and-the-privacy-act.pdf. The OAIC has also published the “*Australian Privacy Principles Guidelines*” (July 2019), available here: <https://www.oaic.gov.au/assets/privacy/app-guidelines/app-guidelines-july-2019.pdf>.

¹¹⁹ See De-Identification and the Privacy Act, p. 15.

- Parties may not all be located in the same jurisdiction, and so there is a risk of a party assuming liability for breaches of the APPs by an overseas recipient.
90. In the event the Privacy Act is amended to require consent from an individual in these circumstances to the handling of personal information, it would also be impossible to require publishers to get consent to pass personal information to every ad tech participant and their respective downstream users (including many thousands of advertisers) for the purpose of facilitating the implementation of common transaction IDs or user IDs.
91. Given these significant concerns, we urge the ACCC to consult with the Attorney-General's Department, the OAIC and other relevant stakeholders (including privacy advocacy groups) for the remainder of the Inquiry to consider the privacy implications of the common ID proposals (see para. 30-34).
92. We also encourage the ACCC to consult on the various industry initiatives that the Interim Report has referred to¹²⁰ before making any conclusions that it may be possible for such proposals to be implemented in a way that also addresses privacy concerns. In addition to the concerns outlined above about common user IDs:
- Some of the initiatives mentioned by the ACCC propose to use IP addresses and fingerprinting¹²¹ as the basis for their targeting outside of the EEA. This is not a transparent method and does not give users choice, transparency or control over how their data is used. For example, fingerprinting often happens in the background of apps and websites which makes it difficult to combat and block. Additionally, unlike cookies, users cannot see or delete their fingerprint, which subverts consumer choice.¹²²

¹²⁰ Interim Report, pp. 184-185.

¹²¹ Fingerprinting is the use of unique or probabilistically unique combinations of device, network, or app/browser attributes (e.g., user agent, IP address, installed fonts or plug-ins) to identify a device, app, or browser across distinct transactions.

¹²² See Brian X Chen, "'Fingerprinting' to Track Us Online Is on the Rise. Here's What to Do", (3 July 2019) available here: <https://www.nytimes.com/2019/07/03/technology/personaltech/fingerprinting-track-devices-what-to-do.html>. See also Justin Shuh, "Building a more private web", (22 August 2019) available here: <https://www.blog.google/products/chrome/building-a-more-private-web/>. The Digital Platform Services Inquiry also noted that "[w]hile tools for blocking trackers do exist, these are not 100 per cent effective, particularly against some of the less common tracking methods such as canvas fingerprinting". See the Digital Platform Services Inquiry, "Interim Report" (September 2020) ("**September Interim Report**"), p.47 (footnote 209), available here: <https://www.accc.gov.au/system/files/ACCC%20Digital%20Platforms%20Service%20Inquiry%20-%20September%202020%20interim%20report.pdf>. In the ICO Report, the UK ICO stated in relation to fingerprinting: "These new online tracking capabilities are becoming more common and pose much greater risks in terms of systematic monitoring and tracking of individuals, including online behavioural

- Consent is important and means offering real controls and choices for an individual to change their mind or modify their decision. We have serious reservations about whether this is achievable in a context where the common ID extends beyond first party relationships with an advertiser or a publisher and would likely be shared with hundreds of parties whom the individual has no direct connection with, nor is even aware of.¹²³
93. We do not believe these industry initiatives on common user IDs will meet rising consumer expectations for privacy, nor will they stand up to rapidly evolving regulatory restrictions. We believe a better approach would be for industry-led solutions that address the specific transparency issues the ACCC is attempting to solve, in a way that safeguards consumer privacy.
94. On the transparency issues that the common transaction ID is intended to address:
- The first issue is to allow publishers to understand better how their inventory was sold in an auction, by allowing them to match different types of transaction information provided by ad tech providers such as bid and impression level data. This issue would be better addressed by identifying the use cases that would benefit from such matching and addressing those use cases in a privacy-safe way.
 - The second issue is to allow for easier auditing of advertiser spend across the supply chain. The UK ISBA is evaluating a privacy-friendly way for publishers and advertisers to confirm the absence of any “hidden fees”. This work is ongoing and could form the basis for Australian industry-led solutions on this issue. We would be happy to discuss this work further with the ACCC.
 - The third issue is to allow advertisers and publishers to engage with each other directly to decide how they buy and sell ad inventory, and how they will use the ad tech supply chain. Advertisers and publishers can already do this. The ACCC gives the example of advertisers and publishers being able to determine how much ad spend was being retained in the supply chain overall. This is the same as the second issue above and the work of the UK ISBA in this area could form

advertising. The intrusive nature of the technologies in combination drives the case for this to be a priority area.”. See ICO Report, p. 10.

¹²³ By way of example, the European Court of Justice has found that consent must be “active” rather than “passive”. A preselected box which the user must deselect to reduce his or her consent is not valid consent for the purposes of e-Privacy Directive and Directive 95/46/EC because “consent given in the form of a preselected tick in a checkbox does not imply active behaviour on the part of a website user.” See the *Bundesverband der Verbraucherzentralen und Verbraucherverbände v Planet49 GmbH* (Case C-673/17), para 52, available here: <http://curia.europa.eu/juris/document/document.jsf?jsessionid=22F13847B213D4D13C0CE95E1399C54E?text=&docid=218462&pageIndex=0&doclang=en&mode=lst&dir=&occ=first&part=1&cid=1973172>.

the basis for Australian industry-led solutions. Such solutions should not compromise the confidential nature of revenue share and fee negotiations between ad tech suppliers and their customers (publishers and advertisers).

95. The Interim Report indicates that the objective of the common user ID is to improve the ability of third parties to provide independent attribution services. Such an objective could be achieved by the proposal for a voluntary industry-led standard to enable full, independent verification of DSP services that safeguards consumer privacy (see Part II Section 2.3.1 above).

PART III: COMMENTS ON SUBSTANTIVE PRELIMINARY FINDINGS

96. In the sections below, we outline our comments on some of the ACCC’s preliminary findings in the Interim Report.
97. It is important that the ACCC’s findings and proposals are based on an accurate view of the dynamic ad tech industry and the constraints faced by ad tech providers. There is a real risk that reform proposals that are developed without properly assessing the broader competitive dynamics and trends may not be fit for purpose and may fail appropriately to balance the interests of consumers, advertisers and publishers in this multi-faceted ecosystem. This is particularly the case where intervention will come with both costs and benefits.

1. The Interim Report omits key competition dynamics that constrain Google’s ad tech business

Summary: The narrow focus of the Interim Report means it does not provide a holistic view of the ad tech industry, including the competitive constraint exercised by direct sales, dynamic trends (such as connected TV) and multi-homing. We encourage the ACCC to carefully consider the focus of the Inquiry to allow a full consideration of the competitive constraints faced by open display advertising.

98. Although the terms of reference for the Inquiry require the ACCC to broadly consider digital display advertising services and digital advertising technology services, the Interim Report focuses on ad tech services that are used to deliver display advertising via web browsers on mobile and desktop devices. For example, the ACCC fails to examine direct-sold ads (such as by Facebook and other publishers),¹²⁴ as well as display advertising on mobile apps and other devices (e.g. connected TV).¹²⁵
99. The chart below demonstrates the narrow focus of the Interim Report when compared to either total online advertising or total online display advertising.¹²⁶ In particular, it shows that the Interim Report likely focusses on less than 17% of the \$9.5bn online advertising industry.¹²⁷

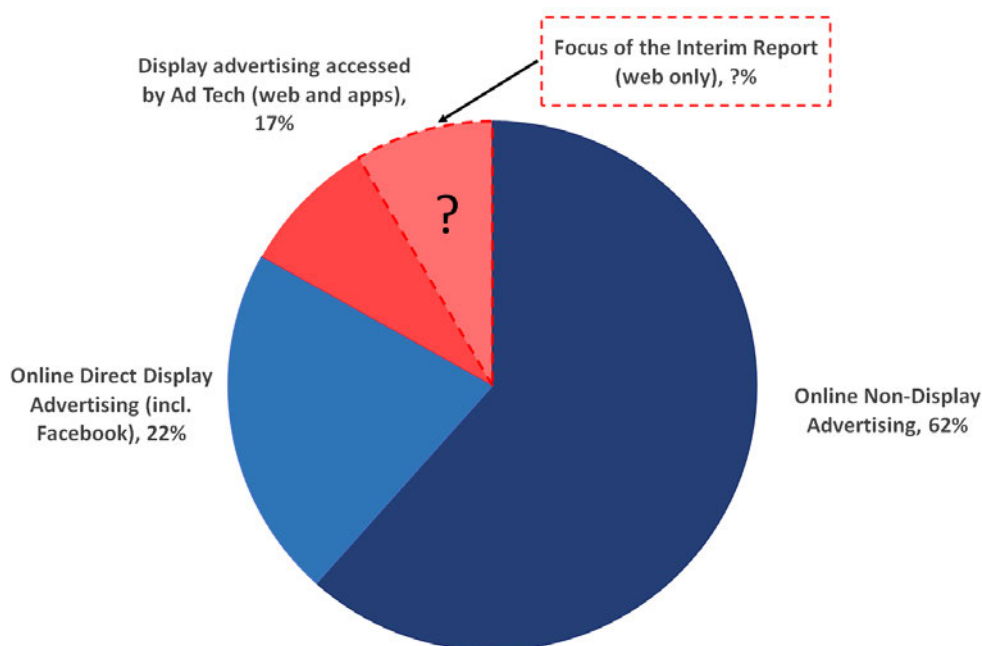
¹²⁴ Interim Report, p. 34 and p. 37 (Figure 1.6).

¹²⁵ Interim Report, p. 9 (footnote 2), p. 31 (Figure 1.3) and p. 34.

¹²⁶ The chart does not account for offline advertising which also imposes a strong competitive constraint on Google.

¹²⁷ The ACCC notes that “*Digital advertising expenditure reached \$9.1 billion in the 2019-20 financial year*” . See Interim Report, p. 29 (referencing IAB Australia). The IAB Australia Online Advertising Expenditure Report for the calendar year and quarter ended 31 December 2020 indicates that total online advertising expenditure was \$9.5bn in the 2020 calendar year. See IAB Australia, “*Online Advertising Expenditure*

Online advertising expenditure in Australia, according to IAB and ACCC's analysis, 2020



Source: IAB and ACCC analysis¹²⁸

Report - Quarter Ended December 2020", ("IAB Online Advertising Expenditure Report") available here: <https://iabastralia.com.au/resource/online-advertising-expenditure-report-quarter-ended-december-2020/>.

¹²⁸

The chart is based on data on online advertising and display advertising in Australia published by IAB Australia for the 2020 calendar year. See IAB Online Advertising Expenditure Report. The chart only accounts for online advertising, and therefore does not show the portion of advertising accounted for by offline channels that is also not part of the interim reports' focus. According to the IAB data, display advertising accounted for 38.4% of online advertising expenditure (\$3,655 million out of \$9,519 million). The IAB data also indicates that direct-sold ads ("Agency (via IO)" and "Direct") accounted for 56% of online display advertising expenditure in the 2020 calendar year. This is the same proportion that IAB calculated for the 2019-2020 financial year and which is referred to in the Interim Report. See Interim Report, p. 40. Advertising spend accounted for by the direct channel is estimated by applying this proportion to the proportion of online advertising expenditure that is display advertising (i.e. 56% of 38.4%, which is 21.5%). Note the ACCC elsewhere estimates that Facebook alone accounts for 62% of display advertising. See footnote 137 below for a discussion of this discrepancy. For the purpose of the chart, a conservative approach has been taken (using 56% as opposed to 62%).

This leaves 16.9%, which is the proportion of display advertising revenue that is accessed by ad tech. Importantly, the 17% (rounded) of online advertising shown in the chart above includes advertising expenditure on mobile apps, which is not a focus area of the Interim Report. Advertising expenditure on mobile apps is likely to comprise a significant proportion of the 17%. In the 2020 financial year, mobile display advertising accounted for 68% of display advertising revenue in Australia. See Interim Report, p.34 (Figure 1.5). Within mobile display advertising, data from the US indicates that over 80% of expenditure on advertising that appeared on mobile phone and tablet devices was spent in-app (as opposed to on the mobile web) in 2018 and 2019. See "US Mobile Ad Spending, In-App vs Mobile WEB, 2015-2019" (1 October 2018), available here:

100. The Interim Report’s findings do not reflect the realities of the competitive constraints that our ad tech products face in Australia, nor do they reflect the dynamic nature of digital advertising and account for emerging trends. The findings are based on an incomplete and static view that does not sufficiently take into account constraints that are increasing and will likely become even more significant in the future.

1.1. Exclusion of direct-sold display advertising omits important competitive constraints

101. The Inquiry “focuses on the ad tech services that are used to deliver advertisements on the websites and apps that do not operate their own integrated ad-tech services, rather than companies which sell their own ad inventory to advertisers entirely through their own ad tech services (such as Facebook)”.¹²⁹ This excludes, as effectively irrelevant, the constraint posed by display advertising sold directly by publishers. This is in spite of the ACCC’s finding that “it is common” for large publishers and advertisers to use different channels to buy and sell advertising,¹³⁰ and that 56% of display advertising was bought directly in 2019-20.¹³¹ This competitive pressure was also acknowledged by the CMA which noted that, “[o]ne source of competitive pressure for intermediaries such as DSPs is the possibility of publishers signing direct deals with advertisers.”¹³²

102. The ACCC’s approach does not reflect the manner in which advertisers and publishers assess their options and performance. As the Interim Report recognises, the ad tech supply chain can be bypassed by direct sales, programmatic direct, and self-service interfaces offered by some large publishers.¹³³ Advertisers and publishers shift between direct-sold ads and ads sold programmatically:

<https://chart-na2.emarketer.com/224464/us-mobile-ad-spending-in-app-vs-mobile-web-2015-2019>. In Australia, a 2020 Nielsen Digital Landscape Report indicates that Australians spend over 11 times more time on mobile apps than on mobile web browsers. See “Nielsen Digital Landscape Report”, (November 2020), available here: [file:///C:/Users/muw/Downloads/Nielsen%20Digital%20Landscape%20Report%20-%20November%202020%20\(1\).pdf](file:///C:/Users/muw/Downloads/Nielsen%20Digital%20Landscape%20Report%20-%20November%202020%20(1).pdf). This suggests that, like the US, mobile apps are likely to attract the majority of mobile display advertising expenditure. As such, the Interim Report likely focuses on significantly less than 17% of online advertising.

¹²⁹ Interim Report, p. 9 (footnote 2).

¹³⁰ The ACCC also found that “[i]n Australia, a significant proportion of the expenditure by advertisers on display advertising is through direct deals and programmatic direct with publishers.” See Interim Report, p. 115.

¹³¹ Interim Report, p. 40 (referencing IAB Australia, “Australian Digital Advertising Market Experiences Double Digit Decline In Q2 2020 Due To Impact Of COVID-19”, (23 August 2020)).

¹³² CMA Final Report, para 5.335.

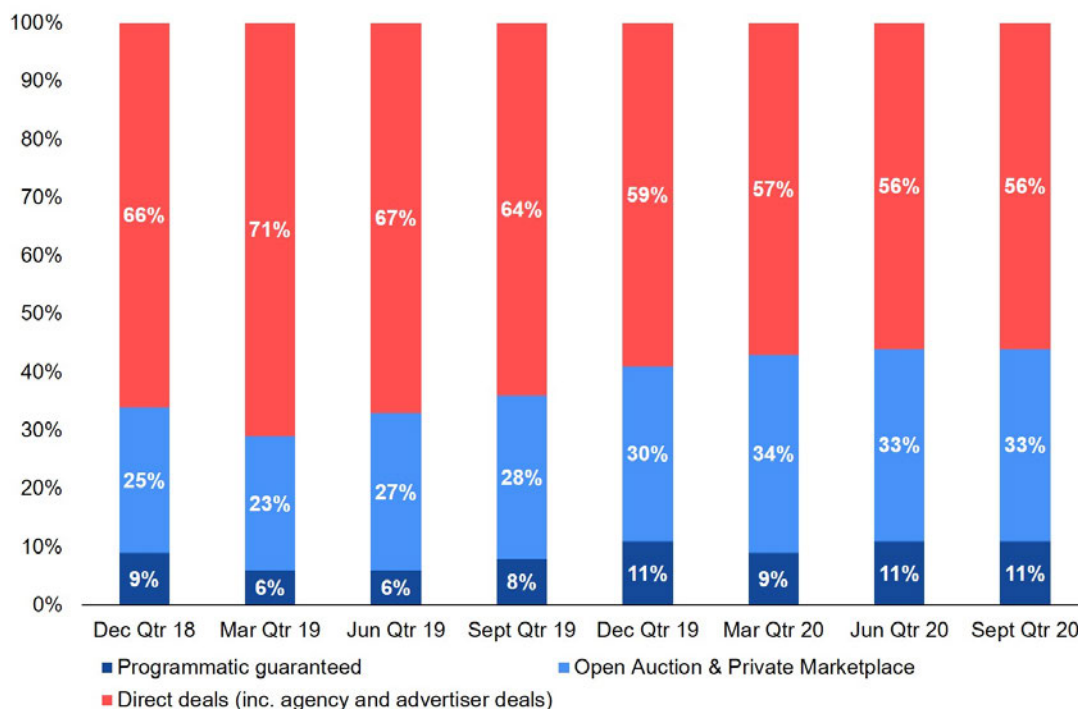
¹³³ Interim Report, pp. 115 - 116.

- Publishers seek to maximise yield across their inventory, whether it is sold directly or programmatically. Direct-sold ads compete with ads sold programmatically because the purpose of both channels is the same - to sell advertising space.
 - Advertisers shift their spend between direct-sold ads and ads sold programmatically. All media and channels compete for advertising spend and constrain one another. Advertisers, when planning their campaigns, focus on their ROI and shift their spending as needed to optimise ROI across channels.
103. If ad tech fees increase, this would make direct-sold ads more attractive as compared to ads sold programmatically. Publishers and advertisers would shift some of their inventory and spend from programmatic to direct-sold ads to compensate for the ad tech fee increase. Which customer group is affected first would depend on which ad tech charge has increased (i.e. the price for an advertiser-facing product or a publisher-facing product). This would ultimately reduce the demand for ad tech from both advertisers and publishers. Direct-sold ads, therefore, constrain the prices of ad tech services.
104. The Interim Report Figure 1.10 shows that the proportion of display advertising purchased through ad tech services has increased compared to direct-sold ads.¹³⁴ This is consistent with the view that there is switching from direct-sold ads to ads sold through ad tech services. This is also consistent with the view that the relevant competitive dynamics are broader than just ad tech services.¹³⁵

¹³⁴ Interim Report, p. 41.

¹³⁵ As discussed in Part III Section 2.3 below, this is also inconsistent with a view that advertisers and publishers are being overcharged for ad tech services.

Interim Report Figure 1.10; Proportion of display advertising by inventory buying method for select publishers' websites



Source: Interim Report¹³⁶

105. The constraint from direct-sold ads is particularly strong on vertical integrated ad tech providers that provide services to both advertisers and publishers. This is because such providers will take into account that any loss of demand caused by an increase in its price would reduce volumes for both its advertiser-facing and publisher-facing products.
106. Technological developments have also increased the substitutability between direct-sold ads and ads sold via ad tech services. These include:
- Innovations like Ad Manager’s Enhanced Dynamic Allocation that allows ad tech demand sources to compete in real-time with direct-sold ads. Competition occurs on an impression-by-impression basis and does not compromise delivery or revenue of direct-sold ads.
 - New formats like Programmatic Guaranteed and Preferred Deals have blurred the distinction between direct-sold and intermediated ads. Programmatic Guaranteed deals are direct-sold ads because they are directly agreed between advertisers and publishers and are reserved (guaranteed) for that buyer.

¹³⁶ Interim Report, p. 41. The Interim Report cites IAB Australia and the ACCC analysis as its source.

Preferred Deals are also directly agreed between advertisers and publishers but are for inventory that the buyer can optionally bid on.

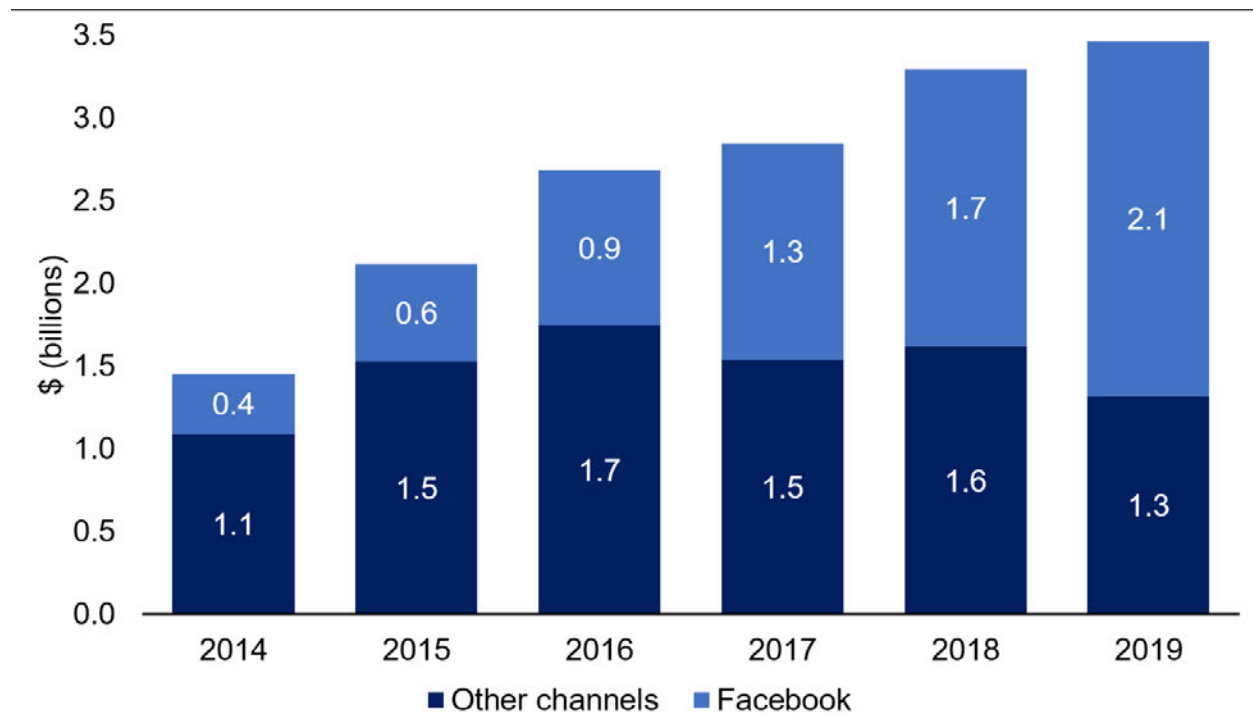
1.2. Facebook is a particularly close competitor

107. Facebook is a particularly close competitor for advertiser spend. Indeed, Facebook accounts for the majority of display advertising revenue in Australia and has been growing its share of display advertising revenue in recent years. Facebook accounted for 62% of display advertising revenue in Australia in 2019, up from 25% in 2014.¹³⁷
108. Analyses prepared by the ACCC suggest that growth in display advertising in Australia since 2015 has largely been driven by growth in advertising expenditure on Facebook, with expenditure on non-Facebook channels appearing to be relatively flat and declining in 2019. This can be seen in the figure below. This indicates that display advertising on Facebook is an attractive option available to advertisers.

¹³⁷ Interim Report, p. 36 (referencing September Interim Report, p. B11).

It is unclear what drives the difference in proportion of display advertising accounted for by direct display advertising (56% for the 2019-2020 financial year, as calculated by IAB Australia. See Interim Report, p.40 (footnote 43)) and Facebook (62% in 2019, as calculated by the ACCC. See September Interim Report, p. B11 (figure B.4)), respectively. In other words, it is unclear from the respective IAB Australia and ACCC reports why the proportion accounted for by Facebook (which should be a subset of direct display advertising) is higher than the proportion accounted for by total direct display advertising. It is potentially due to the IAB relying on estimates for Facebook, while the ACCC has used actual Facebook data in its analysis. Nonetheless, the analyses show that Facebook and direct advertising in general account for substantial portions of display advertising sales that have been omitted from the Interim Report's assessment.

Display advertising expenditure in Australia



Source: IAB and ACCC analyses¹³⁸

109. From an advertiser's perspective, display advertising on Facebook is a strong alternative to display advertising purchased through advertiser-facing ad tech suppliers. In this regard, the high-level goals/objectives available to advertisers when purchasing display advertising on each of Facebook Ads and other open display buying tools largely mirror one another. Specifically, both channels typically include advertiser goals/objectives of increasing brand awareness and reach, traffic, lead generation and conversions (including sales).

¹³⁸ Figure 1.6 in the Interim Report provides Facebook's share of display advertising revenue from 2014 to 2019. See Interim Report, p.37 (Figure 1.6). The IAB Online Advertising Expenditure Report provides estimates for total display advertising expenditure from 2014 to 2020. See IAB Online Advertising Expenditure Report, p.9.

The methodology for the figures in the chart is as follows:

Using 2019 as an example, according to the IAB data, display advertising expenditure in Australia was \$3,466.6 million. According to the ACCC's analysis (Interim Report, p. 37 (Figure 1.6)), Facebook accounted for 62% of display advertising revenue in 2019, suggesting that it accounted for approximately \$2.1 billion of the display advertising expenditure, and other channels accounted for the remaining approximately \$1.3 billion.

110. Strong competition from Facebook influences the amount advertisers are willing to bid on our ad auctions. This is because advertisers are concerned with maximising ROI so will shift to Facebook ads if Facebook ads have a higher ROI. As explained above, this means that any increase in fees for advertiser-facing ad tech products would likely lead to advertisers moving more spend to Facebook.
111. Facebook’s suitability as an alternative for advertisers, and the growth in Facebook relative to ad tech, is consistent with the view that it constrains ad tech prices. By excluding Facebook and other directly sold inventory from its assessment, the Interim Report has failed to account for key competitive dynamics in the ad tech industry.

1.3. Exclusion of other types of digital advertising prevents a holistic view

112. The Interim Report focuses on the supply of ad tech products with respect to web browsers on mobile and desktop devices only. This also dismisses the constraint from other types of digital display advertising, namely apps and connected TV, despite the ACCC noting that:

“[i]ncreasingly, devices for the delivery of display advertising are expanding to include other devices such as connected TVs, voice assistants, wearable devices (such as smart watches), and digital-out-of-home billboards.”¹³⁹

113. These constraints are increasing and will likely become even more significant in the future. For example, connected TV has been growing in Australia.¹⁴⁰ In the case of apps, the Interim Report notes that *“display advertising on mobile devices is a particularly fast-growing area of display advertising”*.¹⁴¹ The ACCC’s own analysis shows that mobile’s share of display advertising expenditure almost doubled from 34% in 2015 to 68% in 2020.¹⁴² Notably and as explained in footnote 128 above, mobile apps are likely to attract the majority of mobile display advertising expenditure. It follows that growth in

¹³⁹ Interim Report, p. 34.

¹⁴⁰ A recent IAB report found that Connected TV, as a proportion of video display advertising in Australia, rose from 35% in 2019 to 45% in 2020. The remainder of video display advertising is accounted for by advertising on desktop and mobile devices, according to the report. The IAB report relates to ‘content publishers’ only, noting that the analysis *“cannot be extrapolated across total general display expenditure.”* See IAB Online Advertising Expenditure Report. It is unclear from the report which publishers qualify as content publishers, but the analysis suggests that Connected TV is becoming an increasingly important device for display video advertising in Australia. In other countries Connected TV is expected to become increasingly more important, with eMarketer forecasting advertising expenditure on connected TV in the US to increase from USD 8.11 billion in 2020 to USD 18.29 billion in 2024. See *“US Connected TV Advertising 2020”* (10 November 2020), available at: <https://www.emarketer.com/content/us-connected-tv-advertising-2020>.

¹⁴¹ Interim Report, p. 33.

¹⁴² Interim Report, p.34 (Figure 1.5).

advertising expenditure on mobile apps is likely to be an important part of the growth in expenditure on mobile display advertising.

114. The exclusion of display advertising that is not sold on mobile and desktop web browsers will prevent the ACCC from getting a holistic view of the ad tech industry and the associated competitive dynamics. We encourage the ACCC to examine these dynamics further, to ensure any reform proposals are based on a forward looking, not static, view of this dynamic ecosystem.

1.4. The Interim Report does not properly take into account the levels of multi-homing in the ad tech ecosystem

115. The Interim Report states that our market position seems to be underpinned by the limits of multi-homing and switching costs.¹⁴³ We think this is an inaccurate reflection of industry dynamics. Multi-homing of ad tech products is a reality, and the ACCC itself recognises this elsewhere in the Interim Report:

- The ACCC found that larger advertisers and ad agencies may use more than one DSP to increase their access to different types of ad inventory and audiences, although a single DSP is usually used for each campaign.¹⁴⁴ Similarly, the CMA Final Report found that multi-homing in DSPs is “*common*”.¹⁴⁵
- The ACCC also found that multi-homing of SSPs by publishers is “*prevalent*” because it may increase the pool of advertisers available to bid on the publisher’s ad inventory.¹⁴⁶
- The ACCC found that advertisers may use different advertiser ad servers to manage their ads (although they generally designate a primary ad server for ad measurement purposes).¹⁴⁷

116. According to an independent survey, 46% of respondents interviewed had used Amazon’s DSP in the last 12 months, 43% had used a Google DSP, and 37% had used

¹⁴³ Interim Report, pp. 98, 104, 110, 112, and 131.

¹⁴⁴ Interim Report, p. 43.

¹⁴⁵ See CMA Final Report, Appendix M, para 186, available here: https://assets.publishing.service.gov.uk/media/5fe495c28fa8f56afaf406d4/Appendix_M_-_intermediation_in_open_display_advertising_WEB.pdf.

¹⁴⁶ Interim Report, pp. 110 and 45.

¹⁴⁷ Interim Report, p. 43.

Trade Desk's DSP.¹⁴⁸ In the US, based on data provided to eMarketer, the average number of DSPs used by the 100 largest advertisers on the Pathmatics platform in April 2018 was 4.2.¹⁴⁹ Similarly, the average number of SSPs used by the 500 largest publishers in the US in June 2018 was 5.7.¹⁵⁰ A more recent Advertiser Perceptions Report also found that publishers worked with an average of 6 SSPs.¹⁵¹ These statistics also reflect our experience of the Australian industry. We generally see that:

- Larger publishers use up to four SSPs while small/medium sized publishers might use two or three at once;
- Publishers can also use header bidding or open bidding to set up competition across multiple sources of demand;
- Our large Australian agency and advertiser partners use at least two DSPs; and
- Larger apps might use four to six ad exchanges.

117. As such, multi-homing is common in the ad tech sector, and imposes a significant constraint. If we increase the prices of our ad tech services, or fail to deliver high-quality products to our customers, publishers and advertisers can and will use third parties (as they are already doing).

¹⁴⁸ See "Amazon Reclaims Top Spot For DSP In Latest Advertiser Perceptions Report" (18 December 2020) available here: <https://www.adexchanger.com/research/amazon-reclaims-top-spot-for-dsp-in-latest-advertiser-perceptions-report/>.

¹⁴⁹ See "Average Number of DSPs used by US Advertisers, Jan 2016 to April 2018" (15 May 2018) available here: <https://www.emarketer.com/chart/219189/average-number-of-dsps-used-by-us-advertisers-jan-2016-april-2018-among-largest-100-advertisers-on-pathmatics-platform>.

¹⁵⁰ Google Report by Bitton and Lewis, p. 43.

¹⁵¹ See "Google Ad Manager Maintains Lead In Latest Advertiser Perceptions SSP Report" (14 January 2021) available here: https://www.adexchanger.com/online-advertising/google-ad-manager-maintains-lead-in-latest-advertiser-perceptions-ssp-report/?oly_enc_id=4457J8932923J3I.

2. The ad tech ecosystem provides significant value for the fees charged

Summary: The Interim Report’s conclusions on industry average take rates don’t recognise the value that ad tech provides in return for the take rates charged, and don’t account for the costs involved in providing these services. Take rates are not profit margins. In light of the value provided and the associated costs, a 28% industry average take rate is not excessive. We do not make excess profits, either by charging “hidden fees” or fees that are not in line with our competitors or the value we provide.

118. The Interim Report addresses two main issues with respect to ad tech fees:
- Whether ad tech providers have the potential to retain an undisclosed portion of advertiser expenditure (“undisclosed” or “hidden” fees);¹⁵² and
 - The proportion of advertiser expenditure retained by ad tech providers (the take rate).¹⁵³
119. Google does not charge hidden fees and we welcome the ACCC’s finding that there is no evidence we are charging hidden fees or retaining an undisclosed portion of advertiser expenditure.¹⁵⁴ This assessment is in line with the findings of the CMA.¹⁵⁵ We also welcome the ACCC’s findings that the take rates being retained by us do not differ materially from the industry average.¹⁵⁶ The CMA likewise noted that our take rates are largely in line with those of our competitors.¹⁵⁷

¹⁵² Interim Report, pp. 155 - 159.

¹⁵³ Interim Report, pp. 150 - 155.

¹⁵⁴ Interim Report, p. 155.

¹⁵⁵ The CMA noted that “[o]verall this evidence does not indicate that Google is currently extracting significant hidden fees.” See CMA Final Report, para. 5.242.

¹⁵⁶ On Google Ads, the Interim Report states that the “margin” retained by Google Ads does not significantly differ from the industry averages for DSPs. See Interim Report, p. 159. “Margin” here refers to the amount we retain from an advertiser (i.e. the take rate) for the service provided by Google Ads. It is not the profit margin because it does not account for any costs incurred by us for delivering and improving Google Ads.

¹⁵⁷ The CMA found that our take rates were similar to our competitors with respect to DSP services, Google Ad Manager operating as an SSP, AdSense, and AdMob. See CMA Final Report, Appendix R, para. 11, available here: [https://assets.publishing.service.gov.uk/media/5fe49625e90e071207e10eff/Appendix R - fees in the ad tech stack WEB.pdf](https://assets.publishing.service.gov.uk/media/5fe49625e90e071207e10eff/Appendix_R_-_fees_in_the_ad_tech_stack_WEB.pdf).

120. On the second issue, the Interim Report found that four key ad tech services account for an estimated average of 28% of advertising spend in Australia in 2019.¹⁵⁸ The Interim Report characterised this as a “*significant*” amount.¹⁵⁹ However, the ACCC fails to analyse the value or the costs of providing ad tech services. Ad tech fees in Australia cannot be considered excessive when properly viewed against the associated costs and value provided.

2.1. An assessment of take rates needs to consider the costs of providing ad tech services

121. When assessing ad tech fees, the ACCC needs to consider the costs of developing and providing the services. **Take rates are not profit margins.** They represent the proportion of advertiser spend that is retained by ad tech providers (with the remainder being retained by publishers). They do not account for any costs incurred by ad tech providers for delivering and improving these services.

122. A large proportion of the revenue we keep from our display advertising products goes to the costs of running a complex and evolving business. The costs include building and maintaining data centers, investing in research to identify the most useful and relevant ads, and enabling innovations that increase publisher revenue, maximise advertiser return on investment, and keep the web free and open for consumers.¹⁶⁰

123. Our products are popular because we invest heavily to ensure they provide the best experience and value for customers. The Interim Report recognises that one of the factors contributing to our strong position in ad tech is the performance, quality and price of our services.¹⁶¹ This is supported by third party submissions to the ACCC. For example, Havas Media, Australia, noted that part of our success is attributable to our “*high-quality products*”.¹⁶² Stakeholders told the ACCC that our products work “*straight out of the box*” because of their existing integrations with a large number of Google

¹⁵⁸ The four key ad tech services are advertiser and publisher ad servers, DSPs, and SSPs. See Interim Report, p. 154.

¹⁵⁹ Interim Report, p. 16.

¹⁶⁰ See “*How our display buying platforms share revenue with publishers*” available here: <https://blog.google/products/admanager/display-buying-share-revenue-publishers/>.

¹⁶¹ Interim Report, p. 13. The ACCC also notes that “ease of use” is likely to be a contributing factor to the market share held by Google Ads because of its “[...] *relatively simple self-service interface that is easy to use, and has a lack of minimum spend/monthly fee platform requirements.*” See Interim Report, p. 102.

¹⁶² Submission on behalf of Havas Media, Australia to the ACCC Ad Tech Inquiry Issues Paper, p. 4, available here: <https://www.accc.gov.au/system/files/Havas%20Media%20Australia%20%285%20May%202020%29.pdf>.

and non-Google ad tech services.¹⁶³ A number of our partners have also spoken about the positive experience they have had as Google customers¹⁶⁴

2.2. The ad tech ecosystem provides value

124. When assessing ad tech fees, the ACCC also needs to consider the value that ad tech products bring to publishers, advertisers and consumers. The value enhancing features provided by ad tech products to various market participants are described in Part I Section 2 above.
125. The features made available through ad tech products elevate their value to customers beyond the simple transacting of ads. This means that it is challenging to make comparisons of fees across different industries, such as financial markets. For example, this was recognised by the CMA when considering whether ad tech fees are larger than financial trading costs.¹⁶⁵ The CMA found that ad tech intermediaries - especially DSPs - *“typically offer a much wider range of services than basic trade execution -*

¹⁶³ Interim Report, p. 95.

¹⁶⁴ See “Google Partner’s Testimonials”, available here: [https://partnertestimonials.withgoogle.com/#q\[19\]](https://partnertestimonials.withgoogle.com/#q[19]).. For example:

- Ryan Nathanson of SHE Media said: *“We use multiple products and demand partners to drive the kind of revenue needed to keep our content free for users. We’ve found Google’s tools highly compatible with other third party demand partners and advertisers.”*
- Jason McCarthy of GORUCK stated that: *“[w]e were a pre-digital company when we began, but transitioned into a digital-first business. We use YouTube and Google Ads to speak directly with our customers and share our message - and Google Ads generates 11% of our web traffic and roughly 15% of our sales revenue. It’s an \$11 return for every dollar spent, which is huge for a small business, and it has helped us to serve more than 55,000 customers. Our investment in technology, in particular Google tools, has been hugely helpful, and we also view it as a means to get people more active and involved in their communities.”*
- Ryan McFarland from Strider Bikes said that: *“[r]eaching customers all across the globe is no easy task, but we’ve used digital tools to find customers from South Dakota to South Korea. Since founding Strider in 2007, we have sold 2.5 million bikes in 78 countries. We’ve been a Google Ads customer for over 7 years, both in the U.S. and to help us reach our international customers, and it has fueled 30% of our online traffic. We’ve developed such confidence in these tools that it’s allowed us to take bold and confident new steps with our company, which is really a testament to how well they’ve worked for us and how important they are to our business.”*

¹⁶⁵ The CMA interpreted trading costs to be trading execution costs i.e. *“costs related to the completion of a buy or sell order for a security”*. See CMA Final Report, Appendix R, para. 50 (footnote 28).

including some like targeting which are potentially value adding – and this is likely to be reflected in the average fees charged.”¹⁶⁶

2.3. Industry dynamics illustrate that ad tech fees are not excessive

126. Industry dynamics are also not consistent with a conclusion that the average 28% take rate is excessive. Advertisers and publishers consider the value they obtain from ad tech services compared to alternatives. If the fees charged by ad tech providers exceeded the comparative value provided, advertisers and publishers would use alternatives like direct-sold ads. However, as highlighted in Part III Section 1.1 above, the Interim Report shows that the proportion of display advertising purchased through ad tech services has in fact increased compared to direct-sold ads.¹⁶⁷ Ultimately, ad tech services would not be widely and increasingly used if their fees were excessive.
127. Third-party industry reports also indicate that competition in ad tech has caused declining ad tech fees.¹⁶⁸ This was reiterated by the Daily Mail Australia who submitted to the Inquiry that *“ad tech providers are increasingly competing for new clients based on price, which has led to some downward pressure on fees.”¹⁶⁹*

¹⁶⁶ CMA Final Report, Appendix R, paras. 49 and 50.

The CMA also found that on a “per trade” basis, ad tech fees appear to be lower than financial trading execution costs. This is because ad tech trades are much higher in volume and lower in value than financial trades. Based on a third party submission that the average value of a financial trade is 100 times the value of an ad tech trade, and the average ad tech take is 35%, ad tech fees per trade costs are roughly one third of per trade financial trading cost (assuming a 1% fee rate for trading financial securities). See the CMA Final Report, Appendix R, para. 50.

¹⁶⁷ Interim Report, p.41 (Figure 1.10). The proportion of digital advertising accounted for by direct-sold ads has decreased from 66% in Dec 18 to 56% in Sept 20.

¹⁶⁸ See footnote 1 above.

¹⁶⁹ Interim Report, p. 96.

3. Findings about Google’s “data advantage” are based on errors

Summary: The Interim Report’s assessment of our “data advantage” is incorrect and based on fundamental misconceptions. Google Ads and DV360 primarily use third-party data¹⁷⁰ to target ads on third-party websites and apps. These products generally do not use an individual’s first-party data¹⁷¹ for advertising to that consumer on third-party websites and apps. Third-party data is non-rivalrous and collected by many ad tech participants. Additionally, every ad tech provider has its own unique identifiers used to identify and link a consumer - this is not specific to Google. An accurate factual understanding is important to inform the ACCC’s consideration of data-related proposals, some of which reduce efficiency, innovation and consumer benefits. We are eager to engage with the ACCC on these issues and clear up any misconceptions about our use of data and the associated benefits.

128. The Interim Report states the “[...] ACCC’s preliminary view is that Google has unparalleled access to data and that this data advantage assists Google’s for ad targeting and attribution services.”¹⁷² The ACCC finds that there are three key factors underpinning our alleged data advantage: (i) our first-party data; (ii) our network of trackers on third-party websites and apps; and (iii) our access to unique identifiers. These conclusions are based on factual and fundamental misconceptions about our use of data.

3.1. Google makes limited use of an individual’s first-party data for advertising to that consumer on third-party websites and apps

129. The first key factor underpinning our alleged data advantage is our “ability to collect reliable first-party data from a wide range of consumer-facing services”.¹⁷³ This does not accurately reflect how we use the data.

130. The ACCC is incorrect in stating that “[m]any of Google’s services require consumers to log-in to their Google account”.¹⁷⁴ In fact, most of Google’s services do not require consumers to log-in to their Google account. The only exceptions are services where

¹⁷⁰ Third-party data refers to data collected from users of non-Google websites and mobile apps.

¹⁷¹ An individual’s first-party data refers to individual consumer data collected when a consumer interacts with our owned and operated properties. Our owned and operated properties are our consumer-facing services (including for example Search). This includes logged-in Google user data.

¹⁷² Interim Report, p. 65.

¹⁷³ Interim Report, pp. 56 and 64.

¹⁷⁴ Interim Report, p. 64.

being logged in is necessary for the service to function (e.g. Gmail). Even if a consumer chooses to log-in to a given Google service, the consumer can still use other Google services on a non-logged-in basis. Barring exceptional circumstances, such as a court order or to combat fraud or abuse, we do not combine logged-out activity with logged-in activity. This enables users to choose to prevent certain (i.e. logged-out) activity being linked with their Google Account, which records only logged-in activity.

131. In any event, our use of first-party data from individual consumers when bidding for or targeting ads on third party display inventory is extremely limited:

- On the sell-side, our publisher-facing ad tech services (Ad Manager, AdSense and AdMob) do not use Google individual first-party data to target ads served on third-party websites and apps. When targeting ads, our publisher-facing services use the data that are provided when publishers send ad requests. Ad requests may be sent to our publisher-facing services, or to any third-party SSPs or ad networks that the publisher chooses to use in combination with or instead of our publisher-facing service.
- On the buy-side, Google Ads and DV360 generally do not use individual consumer data collected when a consumer interacts with our properties such as Google Search¹⁷⁵ for advertising to that consumer on third-party websites and apps. Instead, Google Ads and DV360 primarily use third-party data to target ads on these third-party websites and apps.

The Interim Report states *“Users of Google’s DSPs are able to make use of Google Search data by selecting certain audience categories to target via ‘Inmarket Audiences’ and ‘Affinity Audiences’ which advertisers can access and target from Google’s DSPs.”*¹⁷⁶ This statement is not correct in relation to targeting ads on third-party websites and apps. Google audience categories work differently as between targeting ads on Google’s own products (such as YouTube) and targeting on third-party websites and apps. For example, Google Search data is used to inform Google audience categories for targeting on Google’s products, but it is not used to inform Google audience categories for targeting on third-party websites and apps.

132. Consequently, our wide range of consumer-facing services and our access to first-party data does not give us any insurmountable competitive advantage in ad tech.

¹⁷⁵ For completeness, we do use aggregated (non-individual) data from Search to inform our understanding of web content. But this data is not used to gain insights into individual consumers for the purposes of ad targeting on third-party websites and apps.

¹⁷⁶ Interim Report, p.101.

3.2. Third-party data is non-rivalrous and collected by many ad tech participants

133. The ACCC finds that the second key factor underpinning our alleged data advantage is having “*the widest network of trackers on third-party websites and apps in Australia*”.¹⁷⁷
134. The ACCC bases its finding on its analysis that our third-party scripts are on over 80% of the top 1,000 websites sampled.¹⁷⁸ While the ACCC does not disclose its underlying analysis, it is likely that many of these scripts were Google Analytics scripts. Google Analytics is a popular tool used by website owners to track site activity such as session, duration, pages per session and bounce rate of individuals visiting the site, along with information on the source of the traffic. However, Google Analytics’ customers, not Google, own the data collected by Google Analytics on their properties. The Google Analytics terms of service do not allow Google Analytics customers to send personally identifiable data to Google when using the service. Google Analytics customers can elect to share their data with us to help us improve our products, conduct benchmarking analysis, or allow sales and support representatives access to the data. We do not use or share the data collected by Google Analytics except as directed by the Google Analytics customer, as necessary to maintain and protect the Google Analytics service (i.e. for the detection and prevention of misuse, abuse, spam, malware etc.), or as required by legal process.
135. In any event, third-party data is non-rivalrous and is not exclusive to any company. The collection and use of consumer data by one ad tech provider does not detract from the collection and use by others.¹⁷⁹ Publishers control what trackers they use on their website/app. They can choose to use multiple trackers from multiple ad tech providers. Publishers multi-home so we would expect each website or app to provide third-party consumer data to multiple third-parties. That is, where we have a tracker on a third-party website or app, one or more other ad tech providers may also have a tracker collecting the same or similar information.
136. Criteo, for example, claims that it has built “*the world’s largest open shopper data set*” covering “*72% of online shoppers globally*”.¹⁸⁰ In an interview, the CEO of Xandr (then

¹⁷⁷ Interim Report, pp. 56 and 64.

¹⁷⁸ Interim Report, pp. 64 - 65.

¹⁷⁹ See Andrew V. Lerner, “*The Economies of Network Effects and User Data in the Provision of Search, Search Advertising, and Display Advertising Intermediation*” (15 May 2019) (commissioned by Google) submitted to the ACCC as part of the DPI (“**Lerner Submission**”). The Lerner Submission is available here: <https://www.accc.gov.au/system/files/Google%20Submission%203%20%28May%202019%29.pdf>.

¹⁸⁰ Lerner Submission, p. 48.

AppNexus) said, “We have more unique supply than AdX does in most markets. We have major publishers like LinkedIn and Microsoft and Axel Springer and Schibsted...”¹⁸¹

137. Consequently, our access to a wide network of third-party data is not unique and does not give us any competitive advantage in ad tech.
138. In addition, the digital advertising landscape is evolving to meet the growing concerns consumers have about their privacy. This is why Chrome has announced its intention to remove support for third-party cookies, and why we’ve been working with the broader industry on the Privacy Sandbox to build innovations that protect anonymity while still delivering results for advertisers and publishers. Industry publication B&T has recognised the effectiveness of privacy-focused alternatives to tracking, reporting that “[w]ith FLoC [Federated Learning of Cohorts]¹⁸² advertising currently promising 95 percent of what cookies have offered, advertisers will be able to make up the difference (and more) with consented customer data that allows them to have direct conversations.”¹⁸³ Once third-party cookies are phased out, we will not build alternate identifiers to track individuals as they browse across the web, nor will we use them in our products.¹⁸⁴ Jakub Otrzasek, head of data analytics, Asia Pacific at MightyHive, has described this as “... the best long-term decision as Google is coming out on the side of consumers and will not use “alternate identifiers” in the Google ecosystem.”¹⁸⁵

3.3. Unique identifiers are not specific to Google

139. The ACCC finds that the third key factor underpinning our alleged data advantage is that we have “access to a range of unique identifiers that it can use to identify and link a user across different devices and browsing sessions, including exclusive access to its DoubleClick IDs”.¹⁸⁶
140. The ACCC’s concerns are based on some misconceptions:

¹⁸¹ See AdExchanger, “AppNexus CEO Brian O’Kelley On Waging A Price War”, (9 November 2017), available here: <https://www.adexchanger.com/platforms/appnexus-ceo-brian-okelley-waging-price-war/>.

¹⁸² Federated Learning of Cohorts (FLoC) proposes a new way for businesses to reach people with relevant content and ads by clustering large groups of people with similar interests. This approach effectively hides individuals “in the crowd” and uses on-device processing to keep a person’s web history private on the browser.

¹⁸³ See “What the FLoC? Google vows to stop tracking users for ads”, (4 March 2021), available here: <https://www.bandt.com.au/what-the-floc-google-vows-to-stop-tracking-users-for-ads/>.

¹⁸⁴ See “Charting a course towards a more privacy-first web”, (3 March 2021), available here: <https://blog.google/products/ads-commerce/a-more-privacy-first-web>.

¹⁸⁵ See “Google commits to removing identifiers from Chrome – for good”, (4 March 2021), available here: <https://mumbrella.com.au/google-commits-to-removing-identifiers-from-chrome-for-good-671855>.

¹⁸⁶ Interim Report, p. 64.

- For web inventory, ad tech providers have their own unique identifiers used to identify and link a user, which they have exclusive access to. This is not specific to Google and it does not give us a specific advantage.
- In relation to Google’s DoubleClick IDs, other than a narrow use case where some users have permitted Google to use their YouTube watch history to help personalise the ads for that user, we do not use the DoubleClick ID to track consumers’ use of our consumer-facing services or from our consumer-facing services to third-party sites that use our ad tech services (as the ACCC has stated¹⁸⁷). We keep Google user ID data separate from pseudonymous data IDs set in our advertising cookies (e.g. DoubleClick IDs), except in rare cases e.g. to protect against ad fraud, or for panellists that are compensated and have consented to additional terms with us or panel companies.¹⁸⁸
- The ACCC alleges that Google’s access to DoubleClick IDs means it can quickly match a user across both sides of the ad tech supply chain and is less likely to have to engage in cookie syncing.¹⁸⁹ This is not an advantage unique to Google. Vertically integrated ad tech providers can use their unique identifiers to match a user across both sides of the ad tech supply chain and will have a 100% cookie match rate on their own platforms. All DSPs (including Google DSPs) need to engage in cookie syncing when bidding on third party SSPs. Our access to DoubleClick IDs does not enable us to avoid doing this or make us more successful at doing this. As mentioned above, when asked in an interview whether Google has better cookie matching, the CEO of Xandr (then AppNexus) said, “We have 95% or 100% cookie sync. We don’t see it.”¹⁹⁰ Ad Manager also offers cookie matching services to third-party buyers and Open Bidders, which provide the information that a buyer needs to maintain an association between the buyer cookie and the Google advertising cookie.

141. In addition, as explained in para. 138 above, once third-party cookies are phased out, we will not build alternate identifiers to track individuals as they browse across the web, nor will we use them in our products.¹⁹¹

¹⁸⁷ Interim Report, p. 64.

¹⁸⁸ See “Google Panel Privacy Policy”, Google Support, available here: https://support.google.com/audiencemeasurement/usreach/answer/7567389?hl=en&ref_topic=7678070.

¹⁸⁹ Interim Report, p. 64.

¹⁹⁰ See AdExchanger, “AppNexus CEO Brian O’Kelley On Waging A Price War”, (9 November 2017), available here: <https://www.adexchanger.com/platforms/appnexus-ceo-brian-okelley-waging-price-war/>.

¹⁹¹ See “Charting a course towards a more privacy-first web”, (3 March 2021), available here: <https://blog.google/products/ads-commerce/a-more-privacy-first-web>.

4. Alleged anti-competitive conduct

Summary: We deny any suggestions of anti-competitive conduct and look forward to fully engaging with the ACCC with respect to any concerns.

142. The Interim Report references a number of suggestions of anti-competitive conduct and states that the ACCC “*will continue to consider these issues during this Inquiry, including whether enforcement proceedings under the Competition and Consumer Act 2010 (Cth) (CCA) are required*”.¹⁹²

143. Our view is that we compete on merit in the ad tech sector, and that competition in the market is working well. As noted by Thinkerbell’s general manager Ben Shephard in an interview about the Interim Report, this is not a ‘*nefarious anti-competitive conspiracy*’, but rather:

*“[Google] has been better than the local competitors at understanding what both users and its SME and enterprise customers want, and has built products that adapt to that. Most of the competitors are still following the same business model that has been the norm for 30-50 years ago – selling ads or ad related services to a handful of large businesses. Google executes better than the competition and are being punished, those who haven’t adapted as quickly are seemingly being rewarded.”*¹⁹³

144. We deny any suggestions of anti-competitive conduct, and are happy to engage with the ACCC fully with respect to any concerns that have not yet been fully addressed as part of the Inquiry.

* * *

145. We appreciate the ACCC’s work so far in evaluating competition in digital advertising services. We welcome the ACCC’s willingness to engage on the issues raised in the Interim Report. We object to some aspects of the proposals in the Interim Report, as some would cause real harm to consumers and businesses in Australia. But we welcome other aspects of the proposals and look forward to further discussions with the ACCC.

¹⁹² Interim Report, p. 10.

¹⁹³ See Brittney Rigby, “*Google, media buyers and publishers react to interim ACCC report: Not a ‘nefarious anti-competitive conspiracy’*” (29 January 2020) available here: <https://mumbrella.com.au/google-media-buyers-and-publishers-react-to-interim-accr-report-not-a-nefarious-anti-competitive-conspiracy-666208>.