



# Australian Competition and Consumer Commission (ACCC) Digital Platforms Inquiry: Preliminary Report

## Submission from the Outdoor Media Association

### 01 THE AUSTRALIAN OUT OF HOME INDUSTRY

Outdoor Media Association (OMA) members advertise third party products on digital and traditional signs across a variety of Out of Home (OOH) formats and locations, including airports, bicycle stations, billboards, buses, bus stations, cafés, doctors' surgeries, medical centres, office buildings and lifts, pedestrian bridges, railway stations, shopping centres, taxis, trains, trams, universities and street furniture.

OMA members make significant economic contributions to government and the community. Each year, OOH contributes close to \$647 million to Australia's GDP and supports 3,100 jobs. Most OMA members are Australian owned and operated, with profits going back to the Australian economy. Two OMA members are ASX listed, with one in the Top 200. The industry provides a revenue stream to government, returning \$1 in every \$2 of revenue in rent and taxes.<sup>1</sup> In 2017, OMA members donated \$36 million in media services and advertising placement to over 220 community groups and charities.

The industry delivers essential services and savings to government, building and maintaining \$352 million of public infrastructure. The 17,664 pieces of public infrastructure delivered by OOH make our cities more user-friendly and the industry continues to extend its investment in digital innovation to increase utility via Wi-Fi, wayfinding and other technology-focussed solutions and services within the public realm. OOH is one of the most trusted channels to broadcast government and community awareness messages, including road safety, public health and community service campaigns.

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<sup>1</sup> Deloitte Access Economics (2016). "Out of Home Adds Value: Out of Home Advertising in the Australian Economy," Outdoor Media Association.

## 02 THE OUTDOOR MEDIA ASSOCIATION

The OMA is the national peak industry body that represents 80% of Australia's traditional and digital OOH media display companies and production facilities. Part of the role of the OMA is to help develop policy and regulation for outdoor advertising that is fair and equitable to governments, the community and the industry. The industry's aim is to deliver high quality, well-designed and innovative signs that provide economic and utility benefits to a range of stakeholders including citizens, governments and other commercial partners.

The OMA welcomes the opportunity to respond to the ACCC's Digital Platforms Inquiry Preliminary Report (the *Report*) and acknowledges the work and resources that have been invested into its creation. The OMA seeks to ensure that the ACCC recognises the role of the OOH advertising industry in the broader media advertising landscape and that it is not immune to the effects of market dominance from digital platform players such as Facebook and Google, facts we do not believe have been adequately addressed by the Report.

The OMA reiterates its ongoing concern regarding potential market distortions in mergers and acquisitions, regulatory standards, and big data. As such, we have responded to Preliminary Recommendations 1, 2, 4 and 6 below. The OMA is keen to ensure that our members' concerns are incorporated into the ACCC's ongoing investigations and final recommendations.

## 03 OMA RESPONSE TO PRELIMINARY REPORT RECOMMENDATIONS

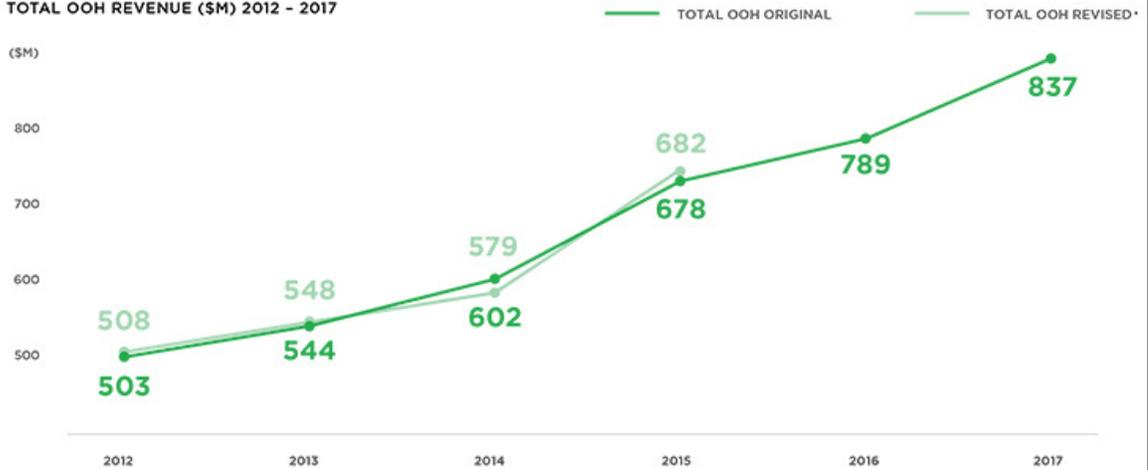
### 3.1 The role of OOH in the broader media advertising landscape

The OMA was disappointed to see that any reference to the industry's contribution to the GDP was grouped with Cinema advertising. The OMA generates performance reporting for the OOH industry through the compilation of revenue results and share of advertising spend for its members, which comprises approximately 80% of the revenue generated by the channel.

OOH experienced its ninth year of consecutive revenue growth in 2018, posting a 10.8% increase on net revenue year-on-year, taking the industry's revenue to an all-time high of \$927 million, up from \$837 million in 2017. The demand for immediacy and flexibility continued to drive Digital Out of Home (DOOH) net media revenue upwards in 2018, representing 52.3% of total OOH revenue, up from 47.3% for the same period in 2017, 40.2% in 2016 and 28.4% in 2015 (Figures 1 and 2 overleaf).

## REVENUE RESULTS

TOTAL OOH REVENUE (\$M) 2012 - 2017



\*Numbers were revised to reflect changes in OMA membership, allowing direct comparison in revenue year-on-year.

Figure One: Total OOH revenue (\$M) 2012 – 2017.

Source: <http://www.oma.org.au/facts-and-figures/industry-performance>

DOOH AS A PERCENTAGE OF TOTAL OOH REVENUE 2012 - 2017

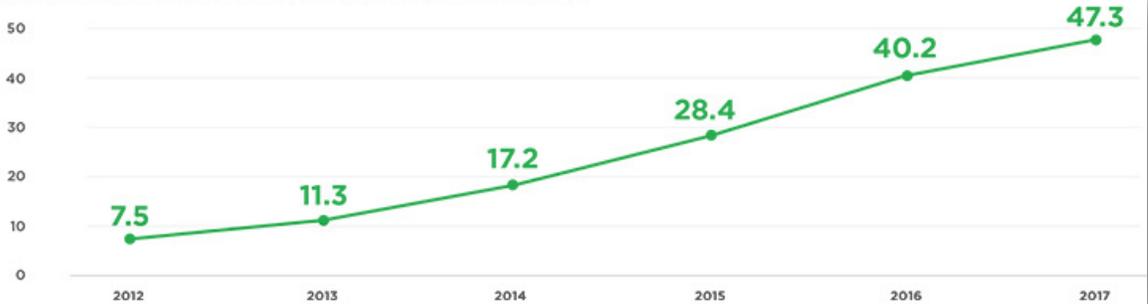


Figure Two: Digital OOH (DOOH) as a percentage of total OOH revenue 2012 – 2017.

Source: <http://www.oma.org.au/facts-and-figures/industry-performance>

Figures 3 and 4 below clearly demonstrate the significant revenue difference between the OOH industry and Cinema, and the difference in share of advertising spend. The disparity is noteworthy, and the OMA believes that the OOH industry is deserving of independent recognition in the ACCC's Final Report.

Category	2016 Total Revenue '000s*	% Change (2016 on 2015)	Category	2017 Total Revenue '000s*	% Change (2017 on 2016)
Online	6,096,600	24.9%	Cinema	129,640	6.7%
Outdoor	789,181	16.4%	Outdoor	836,947	6.1%
Cinema	121,310	5.5%	Online	6,419,000	5.3%
Radio	1,144,631	3.3%	Radio	1,149,993	0.5%
Television	3,797,421	-2.8%	Television	3,720,690	-2.0%
Print	1,790,626	-13.8%	Print	1,865,889	-7.1%
Total	13,739,769	7.7%	Total	14,121,979	2.8%

\*Total Revenue excludes Newspaper and Magazine revenue received for Classifieds and Directories, and Online revenue received for Classifieds.  
 Source: CEASA 2016 annual report

\*Total Revenue and Online excludes revenue received for Online Classifieds.  
 Print is compared to the total print result for 2016 and includes print classifieds. Print has changed reporting in 2016 to include digital in the total.  
 Source: CEASA 2017 annual report

Figure 3: Total revenue by media type in 2016 and 2017.  
 Source: Commercial Economic Advisory Service of Australia (CEASA) 2016 & 2017 Annual Report.

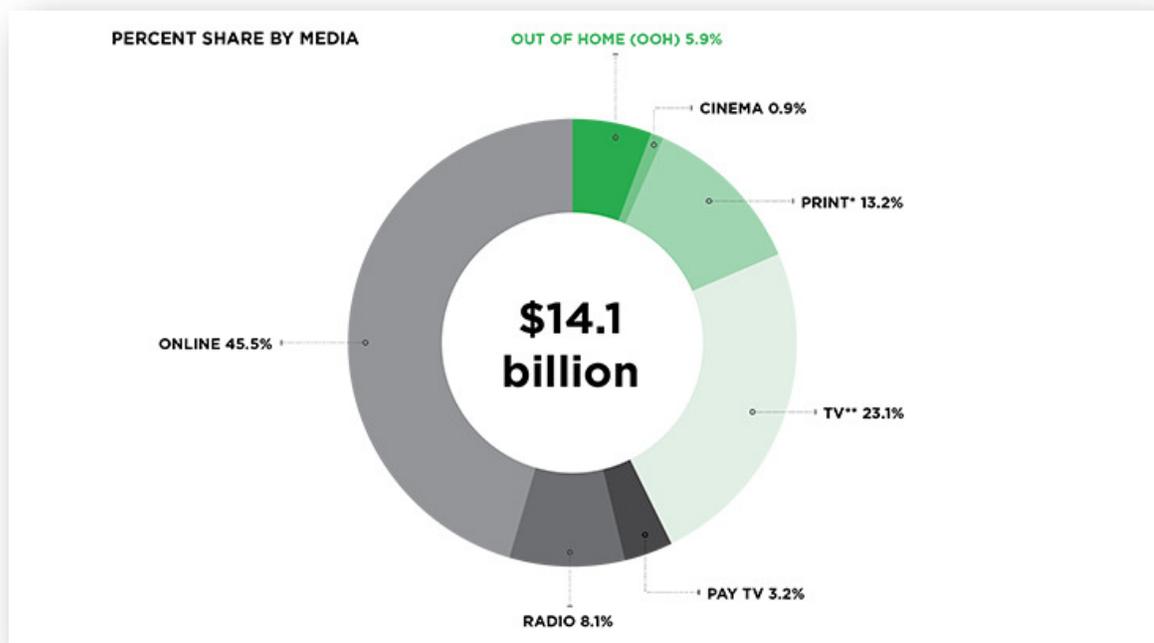


Figure 4: Advertising spend 2017, percent share by media.  
 Source: <http://www.oma.org.au/facts-and-figures/industry-performance>

**The OMA recommends that the ACCC separate revenue figures in the Final Report to recognise the unique contribution of the OOH industry.**

### **3.2 ACCC Preliminary Recommendation 1: Merger law & ACCC Preliminary Recommendation 2: Prior notice of acquisitions**

The OMA supports the expansion of section 50(3) of the Competition and Consumer Act 2010 (the *CCA*) to incorporate the following into an assessment of the likely competitive effects of a merger or acquisition:

- a) the likelihood that an acquisition would result in the removal of a potential competitor, and
- b) the amount and nature of data which the acquirer would likely have access to as a result of the acquisition.

If the duopolistic practices of the major digital platform players are permitted to continue unchecked, then the Australian OOH industry is likely to experience the ill-effects of a distorted market when those players enter the OOH market directly, or when they acquire an existing OOH advertising company.

In addition to potential market distortions, the OMA is also concerned that digital platform providers may use their proprietary access to big data sets of consumer and supplier information to further enhance their market power across advertising sectors.

While advances in OOH technology benefit advertisers, consumers and the community, the control and ownership of consumer and business data can provide certain players with a significant competitive advantage. Large digital platform providers with data-driven economies of scale can have access to greater information about consumers' preferences and movements; platform-related applications can track home and work locations, current location and current activities as well as purchase preferences, likes and dislikes, for instance.

In an economy where these data insights are so valued, digital platform providers such as Facebook monopolise the market by harvesting personal information that is dynamic, continuous and updated in real-time. Currently, Facebook is able to do this through its own social media platform, as well as through the Facebook Partners Program, enabling them to extend their extensive data collection to Third-party partners' sources – something that will not change even in light of the recent announcement to limit access to the platform.<sup>2</sup>

The OMA is concerned by the risk of growing encroachment by digital platform providers into the OOH advertising market; their potential to use big data to effectively prevent competitors from offering similar services and/or fail to share or supply that data on competitive terms could facilitate an abuse of market power. Last year, digital streaming company, Netflix, acquired several OOH sites in the United States. In 2015, Alphabet Inc (the parent company of Google) acquired Titan Outdoor to form Intersection. Through acquisitions like these, digital platforms can amass data from pre-existing consumers in the public domain via their smartphones and nearby OOH infrastructure which they can leverage.<sup>3</sup> The proprietary information accrued, including

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<sup>2</sup> Wagner, K., 2018. "Facebook will stop sharing as much of your personal data with people outside of Facebook," Recode, 4 April. <https://www.recode.net/2018/4/4/17199354/facebook-stop-sharing-data-outside-app>

<sup>3</sup> Stock News, 2017. "Alphabet Inc (GOOGL) In Hot Water After Gathering Android Location Data

data about individuals' locations and their movements, goes beyond the level of engagement that most Australian OOH advertising has with its customers, and beyond a reasonable consumer's expectation of privacy.

The additional scrutiny that amendments to the CCA would bring would assist in alleviating some of the industry's concerns over this very real threat.

The OMA supports, in principle, the ACCC requesting that large digital platforms provide advance notice of the acquisition of any business with activities in Australia and that they provide sufficient time to enable a thorough review of the likely competitive effects of the proposed acquisition. We believe, however, that the investigative process must be transparent and key industries such as OOH must have the opportunity to provide input. Without these two conditions, there is simply too great a risk that the interests of the OOH industry will be overlooked.

**The OMA recommends that section 50(3) of the Competition and Consumer Act 2010 (the CCA) incorporate the following into an assessment of the likely competitive effects of a merger or acquisition:**

- a) the likelihood that an acquisition would result in the removal of a potential competitor, and**
- b) the amount and nature of data which the acquirer would likely have access to as a result of the acquisition.**

**The OMA recommends that the ACCC investigate the market impacts of digital platform providers with access to big data and whether this could lead to distortions in the advertising market – especially if these providers already have market power.**

**The OMA recommends that the details of all investigations pertaining to advance notice of acquisition be made public and relevant parties are able to submit evidence of impact on their business practices.**

### **3.3 ACCC Preliminary Recommendation 4—advertising and related business oversight**

The OMA supports the establishment of an independent regulatory authority to monitor, investigate and report on whether digital platforms, which are vertically integrated and meet the relevant threshold, are engaging in discriminatory conduct by favouring their own business interests above those of advertisers or potentially competing businesses.

In particular, the OMA supports the recommendation that the relevant digital platforms would be obliged to provide information and documents to the regulatory authority on a regular basis, and the regulatory authority would be vested with appropriate investigative powers.

As with Preliminary Recommendation 2, the OMA strongly suggests that the

investigative process be transparent, with the relevant information and documents collected by the regulatory body made public, along with a provision for the OOH industry to provide both relevant supplementary information and general comment.

Additionally, the OMA recommends that relevant industries are consulted as to the makeup of the new regulatory body and argues that membership be drawn from those that are directly impacted by the duopolistic practices of the major digital platform players.

**The OMA recommends that an independent regulatory body be established to monitor the business practices of the major digital platform players and that the membership of the body include representatives from the OOH industry.**

### **3.4 Preliminary Recommendation 6—review of media regulatory frameworks**

The OOH industry works closely with Ad Standards to ensure that OOH advertising meets prevailing community standards and attitudes. The industry also partners with the Australian Association of National Advertisers, The Communications Council, The Australian Food & Grocery Council, and the ABAC Responsible Alcohol Marketing Scheme to ensure that all advertisements are appropriate in relation to the applicable self-regulatory codes.

The industry also works closely with State and Local Government regulators to ensure that planning and roadside controls promote safe, high-quality signage and advertising, particularly in the context of new and emerging technologies.

The OMA notes that dealing with advertising regulations at the local, state and federal levels places a significant cost on the OOH industry and also directly impacts OOH advertising revenue. Examples include restrictions on outdoor gambling advertising by the Victorian Government and bans on outdoor/transport alcohol advertising by the South Australian and Western Australian Governments.

The OMA is concerned that digital platform providers do not face the same level of regulatory obligations and as such are able to use this advantage to attract a greater share of the overall industry advertising budgets. When new bans are implemented, clients do not reduce their advertising spend – it is simply shifted to the relatively unregulated digital space. The OOH industry is facing an onslaught of bans across a number of products and categories including alcohol, gambling and (in all likelihood) certain food and beverage advertising. Any market asymmetry in relation to the application of regulatory and/or industry standards can unfairly favour digital platform providers and increase costs for the OOH market players.

**The OMA believes that the ACCC should ensure that digital platform providers face the same level of regulatory and standards compliance in the Australian advertising market and ensure that there is a level playing field.**

## **04 SUMMARY**

The OMA reiterates its concern that the market power of digital platform providers such as Google and Facebook could allow them to further increase their advertising market share to the detriment of other advertising segments including the OOH advertising market.

In addition, if these platform providers were to enter the OOH market then their overall advertising market power will be significantly extended and outweigh that of remaining OOH providers.

As such, the OMA believes the ACCC should:

- Separate revenue figures in the Final Report to recognise the unique contribution of the OOH industry
- Amend section 50(3) of the Competition and Consumer Act 2010 to address the likely competitive effects of a merger or acquisition
- Investigate the market impacts of digital platform providers with access to big data and whether this could lead to distortions in the advertising market – especially if these providers already have market power
- Ensure that the details of all investigations pertaining to advance notice of acquisition be made public and relevant parties are able to submit evidence of potential impact on their business practices
- Establish an independent regulatory body to monitor the business practices of the major digital platform players and that the membership of the body includes representatives from the OOH industry
- Ensure that digital platform providers face the same level of regulatory and standards compliance in the Australian advertising market and ensure that there is a level playing field