



Summary of Small Business and Franchising Consultative Committee Meeting

On 22 February 2019, the ACCC held a meeting by video and telephone conference in Sydney, Melbourne, Canberra, Brisbane, Adelaide and Perth with a number of members of the Small Business and Franchising Consultative Committee (SBFCC). The purpose of the meeting was to explore key issues of interest in relation to small business identified in the ACCC's Digital Platforms Inquiry.

The meeting was chaired by Deputy ACCC Chair Mick Keogh. Also in attendance were Deputy Chair Delia Rickard, Commissioner Roger Featherston and staff of the ACCC.

The following is a summary of the issues discussed at the meeting.

Experience of small businesses with digital platforms' advertising services

Increased use of digital platforms in small business advertising

Stakeholders considered that small businesses are increasingly making use of digital platforms (specifically Google and Facebook) as marketing channels. It was generally agreed amongst stakeholders that small businesses, including traditional 'bricks and mortar' businesses, are having to increase their online presence and increase their online advertising in order to remain competitive. Various stakeholders discussed the benefits of digital advertising, including that:

- digital platforms provide small businesses with the ability to reach more customers online.
- businesses can penetrate specific markets and the cost of doing so is low. For example, Amazon has been a boon for businesses and doesn't require businesses to have warehousing or distribution systems.
- a benefit of advertising online is that you can target advertising and talk directly to potential clients. With traditional forms of advertising, like print and TV, you talk to many people who are unlikely to be your clients.

Market power and substitutability of digital platforms

It was generally agreed that for many businesses who are using Google, the use of Google Ad Words was not substitutable for other types of advertising and is a 'must have'. This was because appearing on the second page of a Google search would be highly damaging to businesses.

A number of stakeholders considered that advertising on digital platforms, notably Google and Facebook, was viewed as a 'must have.' One stakeholder expressed the view that small businesses are becoming increasingly vulnerable to the 'duopoly' of Google and Facebook that currently operates in the market. The vertical integration of Facebook, more specifically its ownership of Instagram, was highlighted as something that contributes to this market power, with both business customers and consumers identified as actively using and switching between these platforms.

One stakeholder expressed the view that the extent to which Google AdWords is critical depends on the region the business is located. For example, word of mouth is still very important in regional areas with many businesses in regional Victoria not even present online. However, another stakeholder noted that digital platform had enabled small rural based businesses to reach a broader market. One stakeholder took the view that the use of Google Ad Words allows businesses to provide exceedingly targeted advertising that would be more precise than traditional forms of advertising such as flyers or local newspapers.

Some stakeholders expressed the view that other digital platforms were better at targeting different audiences than Facebook, with some businesses turning to platforms such as LinkedIn and Amazon to source key demographics. Some expressed the view that Google and Facebook were alternatives to each other, in terms of advertising, but noted that Google is the more sophisticated digital platform to utilise once a target market had been established.

Verification of advertising on digital platforms

Some stakeholders expressed frustration that as many businesses do not understand how advertising on Google and Facebook operates and do not know whether advertising on these platforms actually reaches the desired target audience. It was generally agreed amongst stakeholders that Facebook was a more user-friendly platform than Google.

However, there were different views as to the satisfaction with the information Facebook and Google provide to business users. One stakeholder noted that as a small business running a campaign, you have no idea whether Google or Facebook actually serves advertisements to your target audience.

Some stakeholders expressed the view that monitoring the chat room and discussion functions on Facebook can allow small businesses to engage directly with potential customers. This is in contrast to Google, who some stakeholders considered did not provide its users with any capacity to monitor their advertising.

Stakeholders wanted both Google and Facebook to provide more information to small businesses. Some stakeholders suggested that they are unsure what they were paying for, with many expressing concerns about the lack of education that digital platforms provide for those who use their advertising services, especially for regional businesses. It was submitted by stakeholders that without this information, small businesses are unable to accurately break down their advertising spend to make informed business decisions.

The role of online reviews

A number of stakeholders were concerned that issues related to online reviews were missing from the scope of the inquiry. It was generally agreed that consumers are heavily reliant on both descriptions and reviews when buying online, making such reviews a powerful form of advertising. Some stakeholders felt that websites acting as 'business aggregators' or reviewers, which collate information to form business directories, were charging small businesses a membership fee to respond to negative reviews. Some stakeholders raised the role of 'influencers' on Instagram who review various products and services to sometimes millions of followers, noting that 'influencers' maintain an increasingly high reputation amongst consumers and are a valuable advertising platform in the digital space. Some stakeholders considered that the role of influencers should be examined in the Final Report.

Some stakeholders considered that the ability of consumers to post genuine reviews on digital platforms and social media sites better enables the operation of a free market. However, other stakeholders expressed frustration that platforms such as Facebook can be subject to scams, where negative views are deliberately posted to Facebook from fake

profiles and small businesses are not alerted of such conduct before their profiles are blocked by Facebook.

Experience of small businesses with digital platforms' complaints and dispute resolution process

Issues faced by small businesses in resolving disputes with digital platforms

A number of stakeholders were frustrated with their experiences in resolving disputes with Google, finding them difficult to contact and frequently not getting more than an automated response. In some cases, stakeholders contacted their state/territory small business commissioners in an attempt to find a solution. Many stakeholders identified delays as an issue with both Facebook and Google in resolving disputes and complaints. Whilst one stakeholder noted Facebook did have an online chat available to resolve disputes, it was often difficult to find the correct link and the responses received were largely unsatisfactory. It was noted by some stakeholders that when dispute resolution bodies interfered on their behalf, they received more of a response, but were left disillusioned when told to contact overseas headquarters, such as Google in the United States. One stakeholder suggested that it would be easier if Google has representatives in each state/territory of Australia, so business users could contact them to resolve issues.

Some stakeholders said that as mediation offered by small business commissioners is a voluntary dispute resolution process, Google was inconsistent with their handling of complaints, with some stakeholders having to deal with different representatives and receiving different responses and outcomes at every stage of the resolution process. One stakeholder expressed the view that Google often refused to attend mediation, often suggesting that small businesses themselves are to blame in disputes.

Stakeholders generally agreed that the existing mechanisms to resolve disputes were not satisfactory.

Several stakeholders were of the view that an overwhelmingly majority of complaints related to Google. One stakeholder stated that Facebook could provide a report that a complaint had been resolved, whereas resolving complaints with Google would often require small businesses to work with a third party who could liaise with Google on their behalf, which they found to be a time-consuming and difficult process.

Common complaints regarding digital platforms

A common issue raised by a number of stakeholders was dissatisfaction with Google and Facebook's resolution of defamatory comments and fake reviews, which are often posted anonymously. Whilst one stakeholder noted that having such content removed is possible if the content breaches the user policy of the platform, this is a time-consuming process. The same stakeholder noted that it was easier to remove content from Facebook and Twitter than from Google.

One stakeholder maintained that a large proportion of complaints to digital platforms related to small businesses paying more than what they had thought they should for advertising services, and more general accounting issues. Other stakeholders highlighted several common complaints to digital platforms, ranging from lack of control over personal information, technology issues, and unsolicited accounts being set up without the consent of the business, citing Google AdWords as an example.

A complaint amongst stakeholders was in relation to Google's review function. Specifically, one stakeholder expressed concern about the lack of transparency in the criteria used to determine when to take negative reviews down, alleging Google simply encouraging customers to flag negative reviews as inappropriate. Several stakeholders expressed

frustration that the Google Reviews function simply appeared on many small business accounts without their knowledge or consent, with this lack of communication leading to their withdrawal from digital advertising entirely. It was submitted that digital platforms need to improve their communications with customers and obtain their consent prior to adding new functions to their accounts.

Digital Platforms Ombudsman (DPO)

There were a mix of views as to the need for a specific ombudsman for digital platforms and the scope of issues it would focus on, with most stakeholders supportive of the proposal. Some stakeholders considered that a DPO would require proper enforcement powers to be useful. Other stakeholders noted that there already exist a number of bodies that could overlap with the DPO, in terms of functions. One stakeholder submitted that it may be more useful to enhance the powers of existing regulatory bodies, rather than creating a new ombudsman.

Scope of the DPO's powers and functions

Stakeholders expressed the view that a DPO would be effective if it could bring multinational companies, such as Google, to the table to resolve disputes. Another stakeholder expressed the view that the DPO would need to have compulsory powers which would assist in identifying anonymous parties who post defamatory material, as well as the ability to issue warrants to obtain information and documents. Other stakeholders agreed that the DPO should have the power to order that problematic posts (such as racial vilification) be taken down.

One stakeholder expressed the view that more detail was required as to how the proposed DPO would operate, specifically if its enforcement mechanism was sufficiently robust, and whether the proposed DPO or the ACCC would be responsible for producing and enforcing a code of practice for the acceptable use of digital platforms.

One stakeholder proposed that the DPO be vested with specialist powers including ordering the compulsory membership of digital platforms, a predetermined escalation process, as well as ordering the cost of the investigation to be placed on the company rather than the individual complainant.

One stakeholder proposed that as digital platforms tend to rely heavily on standard form contracts, establishing a DPO may provide the opportunity to examine whether unfair contract laws apply to digital platforms. One stakeholder noted that unfair contract laws have little application in a business-to-business setting, although this could change in the future. Some stakeholders expressed the view that there was a lack of legal protections for small businesses who were subject to unfair contract terms and that a DPO may address the need to rely on legal processes, and the associated costs and delays to achieve resolutions.

One concern was raised as to the role of a DPO would play in the event of breaches of cyber-security, as cyber security measures continue to be an issue for small regional businesses.

Stakeholders raised concerns about the breadth of actions available for those who are posting dishonest negative online reviews, as defamation laws do not apply in the consumer law space. One proposal in response was to vest the DPO with compulsory powers such as that of ASIC's to provide 'show cause' notices to digital platforms, then they must be compelled to take such content down.