



Twitter's response to the Australian Competition and Consumer Commission's Digital Advertising Services Inquiry

1 Summary

Twitter, Inc. (**Twitter**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission's (**ACCC**) interim report for the Digital Advertising Services Inquiry (the **Inquiry**) (the **Interim Report**).

The Interim Report canvasses and seeks stakeholders' views on a range of significant issues which affect competition and innovation in digital advertising services supply chains. This response does not address all the matters raised in the Interim Report or comment on each of the ACCC's specific proposals. We have limited our comments to those issues where we believe Twitter is uniquely placed to contribute to the ongoing development of a pro-competitive Australian regulatory response that promotes the principles of open internet, drives innovation, and is harmonised with global approaches to competition in markets for digital advertising or ad tech services.

Throughout the Interim Report, the ACCC has recognised that regulatory intervention in markets for ad tech services should be carefully designed to minimise unnecessary burdens and ensure that there are effective mechanisms to manage risks and mitigate potential harm in the supply chain. Twitter shares that concern. Any regulatory responses must guard against unintended consequences that limit competition or innovation in fast-moving online markets, and entrench dominant players. Noting that the proposals made in the Interim Report contemplate new rules, codes or enforcement activities across the ad tech services supply chain, we encourage the ACCC to resist 'over intervention' that risks stifling innovation and competition to the detriment of advertisers, publishers, and consumers.

In general, we consider that each of the ACCC's proposed interventions should be targeted only to those market participants whose dominant position in the supply chain undermines competitive tension, creates or entrenches barriers to

entry or expansion, or gives rise to consumer harm. Regulation should not be a one-size-fits-all approach. For example, regulatory reform or data portability requirements that apply to all firms regardless of their market position and power may inhibit new entrants and smaller market participants from competing effectively and devising and promoting new, competitive business models. Rules or requirements introduced to manage self-preferencing, conflicts of interest and/or interoperability should be directed and only applicable to firms which the ACCC considers to have a market dominance or power and that engage in problematic or anticompetitive conduct.

We also urge the ACCC to ensure that any enforceable rules or requirements are not so prescriptive as to inhibit innovation as online markets rapidly change and develop, and not so wide or general as to capture pro-competitive or innovative market behaviour. The proposed regulation should be informed by open internet principles, but tailored to address specific conduct by dominant players.

Finally, we are encouraged that the ACCC has considered a range of international approaches to ad tech services market regulation throughout the Interim Report and in its specific proposals. Given the global nature of markets for ad tech services, we consider that any regulatory reform pursued in Australia will only be effective if it is consistent and harmonised with international approaches to similar issues in international jurisdictions.

We elaborate on these issues below, in the context of particular interventions identified in the Report.

2 Conflicts of interest and self-preferencing

The Interim Report raises a range of concerns about conflicts of interest and self-preferencing that the ACCC is concerned may amount to misuse of market power or otherwise distort competition in ad tech supply chains. We understand that the ACCC is considering whether rules should be introduced that would aim to prevent and manage competition issues that can arise from vertical integration.

In canvassing options for the development, implementation and application of any such rules, the ACCC has considered proposals put forward by the European Commission and the Competition and Markets Authority (**CMA**) in the United Kingdom and seeks feedback on whether these models, or other rules, may be necessary, appropriate and effective in Australia. Twitter supports the ACCC's efforts to harmonise any Australian regulatory reform with aspects of current international proposals that may affect suppliers in Australian markets for digital advertising services. We consider that a globally-informed and consistent approach will promote compliance and deliver the most benefit for Australian businesses and consumer users of digital advertising services.

We understand that the ACCC is seeking feedback in relation to the necessity of rules to manage the risks of vertical integration. If the ACCC ultimately recommends enforceable rules designed to reduce vertically integrated providers' ability and incentive to engage in self-preferencing, Twitter believes they should not apply to all market participants. The application of such rules across the board risks making it more difficult for smaller firms to compete and may prevent new entry to ad tech services altogether. Any action to reduce vertical integration – which often is supported by procompetitive justifications such as innovation, product synergies, and overall market efficiencies – should be limited to remedies meant to address specific market behavior by specific firms.

Again, we support the ACCC's goal of increasing transparency in the supply chain, however we would caution against any additional regulatory barriers that would increase costs for new entrants and challengers to established market operators. Such barriers and the strictures of regulation may lead to entrenching the incumbents' market position and result in less choice for consumers and Australian advertisers if all ad tech suppliers were required to abide by enforceable rules or code of conduct.

The fact that the proposed interventions need not, and should not, apply to all market participants is supported by the ACCC's approach to regulation of markets for social media, general search and advertising markets, and digital display advertising as recommended by the ACCC in the Digital Platforms Inquiry. In circumstances where the ACCC has identified a clear market leader, or firms whose market position results in anticompetitive behaviour and/or consumer harm, it is appropriate that regulatory responses be specifically directed towards preventing such problematic conduct. It would be unnecessary, disproportionate and counter-productive for enforceable rules to apply to services providers whose market position does not give rise to the risks of anticompetitive conduct or broader consumer harm.

3 Data portability and interoperability

Twitter is committed to open internet principles. We consider that a values-driven open internet increases access to information and services, protects consumer choice and guards against the entrenchment of the dominant market players by promoting innovation and competition in a fast-moving digital economy.

In December 2019, we announced a new initiative called @bluesky where we funded a small independent team of up to five open source architects, engineers and designers to develop an open and decentralized standard for social media.¹ Project @bluesky, which operates independently of Twitter, is

¹ <https://twitter.com/bluesky?lang=en>

evidence of our deep commitment to a decentralised, shared standard that allows users of different digital platform services to communicate.

Twitter considers that requiring dominant firms to offer interoperability features could bring significant competition benefits in markets for digital advertising services markets by increasing data mobility at the request of consumers or advertisers. However, we caution that industry-wide interoperability requirements may harm competition by imposing significant design, implementation and compliance costs on smaller competitors, disincentivising new entrants or stifling the innovation that drives competing business models and services in digital markets.

We agree with the ACCC that any measure to increase data mobility should be carefully designed to ensure that there are effective mechanisms to manage risks. However, we consider that these risks extend beyond concerns for privacy (data identification) and consumer controls expressed in the Interim Report. In addition, interoperability requirements must be carefully designed and implemented to minimise the risk that data portability will stymie innovation, increase barriers to competition, transfer data from smaller firms (with unique customers) to large market participants, and further concentrate the power of dominant firms.

4 Conclusion

The Interim Report raises a number of important issues affecting innovation, competition and dynamism of markets for digital advertising services in Australia. Our views can be summarised as follows:

- Regulatory interventions should be designed to prevent unintended consequences (such as high barriers to entry and expansion and diminished incentives for innovation) and be targeted only to those firms whose market position and practices create competitive or consumer harm.
- Interoperability is important to promote competition, but mutual interoperability may be counter-productive where it imposes significant design, implementation and compliance costs, disincentivising new entrants or stifling innovation.
- The ACCC should continue to ensure that any changes to the Australian regulatory environment are consistent and harmonised with approaches to the same market participants, services, and concerns in international jurisdictions.