SUBMISSION TO DIGITAL PLATFORM SERVICES INQUIRY MARCH 2025 FINAL REPORT

1. Introduction

CRA is the peak industry body representing the interests of commercial radio broadcasters throughout Australia. CRA has 260 member stations and represents the entire Australian commercial radio industry.

Commercial radio, whether AM, FM or DAB, plays an essential role in ensuring that Australian communities have access to local news, Australian music, emergency information, community information and entertainment – all for free. No other platform offers such a range of live, local and Australian voices in such a diverse range of Australian communities.

CRA welcomes the opportunity to provide a submission to the Australian Competition and Consumer Commission's (**ACCC**) Issues Paper for the Digital Platform Services Inquiry – March 2025 – Final Report (**Issues Paper**).

CRA congratulates the ACCC on the ground-breaking work that it has completed in undertaking the five year Digital Platform Services Inquiry. Nonetheless, there is still much work to do in terms of promoting competition in digital platform services markets and providing appropriate consumer protections for Australians.

The ACCC has been a strong supporter of regulatory intervention to ensure that the Australian media sector continues to flourish. As far back as the 2019 Report from the Digital Platforms Inquiry, the ACCC recognised that:[1]

> *The profound impact of digital platforms on media markets requires careful consideration. News and journalism generate important benefits for society through the production and dissemination of knowledge, the exposure of corruption, and holding governments and other decision makers to account.*[. . .] *the Australian Competition and Consumer Commission (the ACCC) considers that commercial news media businesses perform a central role in providing journalism and contributing to media plurality.*

The Australian commercial radio industry is facing challenges on many fronts, due in part to digital platform dominance, with accompanying declining revenues and audience fragmentation. Urgent measures are required to address anti-competitive conduct and ensure the sustainability of the Australian radio industry.

[1] Page 1 of the Final Report, available here: https://www.accc.gov.au/inquiries-and-consultations/finalised-inquiries/digital-platforms-inquiry-2017-19/final-report-and-executive-summary

Recommendations

In looking at 'potential and emerging competition issues' and 'recent international legislative and regulatory developments', CRA urges the ACCC to focus on the following, both in its Final Report and in its subsequent reform priorities:

1. **the development of a prominence regime that can be implemented to ensure that commercial radio is freely, easily and reliably accessible to all Australians on connected devices, particularly in cars and smart speakers. Without such a regime, there is a risk that Australian radio content will become inaccessible to consumers, lost amongst content from multinational streaming platforms accessed through digital gatekeepers, such as Google, Amazon and Apple; and**

2. **a new competition framework for digital platforms built around ex-ante rules to correct the anti-competitive conduct that has been identified by the ACCC. CRA supports the ACCC's proposals that the *Competition and Consumer Act 2010* should be amended to allow the ACCC to make digital platform service-specific codes of conduct.**

2. Commercial radio and audio is a key part of the Australian media landscape

Commercial radio dominates commercial listening in Australia. The Infinite Dial 2024 Australia survey[2] found that:

- in any given week, 81% of the Australian population over the age of 12, comprising 18 million Australians, listened to radio, either broadcast or streaming services. This is an even higher percentage than the 77% of Australians that watch live free-to-air TV each week;
- listening to radio is popular across all Australian age groups, with audiences of 82% of Australians aged 18 to 34; 84% aged between 25 to 54 and 79% aged 55 or older.

The Deloitte Access Economics 2023 Connecting Communities Report[3] highlights the important economic and social contribution that commercial radio broadcasters make to Australia, through the provision of radio and audio services. Commercial radio broadcasters deliver trusted, local content to Australians all over the country.

As highlighted in the 2023 Connecting Communities Report, every year, commercial radio broadcasters:

- contribute $1 billion to GDP;
- provide a $320 million boost to regional Australia;
- produce 1.1 million hours of local content, across broadcast, streaming and podcasts;

[2] Available here: https://www.edisonresearch.com/wp-content/uploads/2024/08/Infinite-Dial-2024-Australia-Presentation.pdf

[3] Available here: https://www.commercialradio.com.au/RA/media/General/Documents/CRA-Deloitte-Connecting-Communities-2023-Report.pdf?ext=.pdf

- play 160,000 hours of Australian music, or 2.7 million Australian songs – providing an unrivalled platform for the promotion of Australian musicians;
- broadcast 42,000 hours of news and 2,200 hours of emergency service content; and
- provide 251,000 hours of locally significant content in regional communities.

Commercial radio broadcasters support 6,600 full time jobs – 38% of those roles are in regional Australia.

Commercial radio is important because:

- Commercial radio is local. Commercial radio broadcasters are subject to a comprehensive legislated Australian content framework, including 3 hours per day of hyper-local content for regional stations[4], and Australian music obligations for all stations.
- In regional and remote Australia, the local commercial radio station is often the only source of local news and content. For example, there are two commercial radio stations in Alice Springs – 8HA and Sun FM. Sun FM is located right in the middle of the country, which means that it is the only AM commercial station for around 1,200 kilometres.
- In emergencies, radio that is freely and easily accessible saves lives. When Australians face natural disasters, radio is often the last communication channel still working and is essential for providing emergency information.
- Radio is the only technology that may be used for emergency "break-in" announcements in road tunnels, which occur via the radio retransmission installations installed in such tunnels. This again demonstrates that radio is an important channel for the provision of information in emergencies.
- Under the Commercial Radio Code of Practice, commercial radio stations are obliged to play Australian music, up to 25% of total music content in some cases. Providing access to this content allows Australian artists to reach a broad audience who might not otherwise hear their music. At a time when many Australian musicians struggle to gain visibility on international music streaming services, the benefit provided by Australian radio to Australian musicians should not be underestimated.

3. A prominence regime is required for radio

The importance of the radio sector to Australians should not be ignored by the ACCC. By supporting a strong local radio sector, the proposed prominence framework will support Australians, particularly those in regional and remote Australia, to engage in social, economic and cultural life and participate in democratic processes.

It is vital that prompt action is taken to ensure that Australian radio can be easily and reliably accessed on connected devices – for free. Without a mandated framework, the bargaining imbalance between radio and dominant digital platforms means that access to local radio may become increasingly difficult, to the detriment of Australian communities.

[4] 30 minutes for stations serving populations of less than 30,000. Only 8 regional stations fall into this category.

Increasing use of connected technologies to access radio

The way that Australians are accessing radio is evolving in a changed media environment, with many more Australians accessing radio through smart speakers (that is, any devices that are able to be voice activated and which provide access to audio entertainment services) and connected car entertainment systems. These trends will inevitably continue:

- smart speaker ownership in the Australian population over the age of 12 has risen to 34% in 2024. Google Nest is the most popular smart speaker, followed by Amazon Alexa and Apple HomePod;
- 88% of Australians over the age of 18 listen to the radio in the car each week and there has been a 75% increase in the use of in-car streaming of radio in the past two years;
- streaming is becoming increasingly popular, with 15% of Australians 12 and older streaming radio in 2022 rising to 27% streaming in 2024 (with 31% of adults in the 25 to 54 age bracket streaming radio online weekly in 2024). [5]

Dominance of digital platform 'gatekeepers'

The unequal bargaining power between Australian radio broadcasters and international gatekeepers means that it is almost impossible for fair and reasonable deals to be done to provide for easy and free access by Australians to radio on smart speakers or connected car entertainment systems.

In Australia, the smart speaker market is dominated by three players – Amazon, Google and Apple.

New vehicles are increasingly connected to the internet, with connected car entertainment systems using either the Google and Apple operating systems (**OS**):

- 44% Australians have Android Auto/Apple CarPlay in their vehicles;
- 89% of Australians with Android Auto / Apple Car Play listen to radio in their cars.[6]

These key players have the power to filter and control the audio content that Australians may access, acting as gatekeepers to this content.

This is a power that manufacturers of traditional radio devices, with dedicated analogue or digital tuners, do not have. The power of these platforms (and manufacturers of smart speakers and connected vehicles) is not currently recognised in the Broadcasting Services Act 1992 (**BSA**).

The gatekeeper role played by these third parties creates the need for a radio prominence regime. Our concerns are:

- Google, Amazon, Apple and vehicle manufacturers may be incentivised to promote access to audio content providers that pay for that promotion (either through direct payment, access to data or through the platforms and manufacturers inserting advertising). In subscription models, a share of the payments may be provided to the gatekeeper entities.
- Commercial radio broadcasters are not in a financial position to compete for promotion with the likes of, for example, Spotify, or other international digital platforms.

[5] https://www.edisonresearch.com/wp-content/uploads/2024/08/Infinite-Dial-2024-Australia-Presentation.pdf
[6] Ibid.

- Google, Amazon and Apple have their own audio content services and are able to preference those to the disadvantage of Australian radio services (including potentially by not making Australian radio services available at all).

As an example of our concerns, we raise the outage of Google Assistant's radio integration which commenced on 6 April 2023, took eight days to resolve and caused disruption for more than one million listeners who at that time used Google Nest devices to listen to radio (and noting that number has increased since April 2023).[7]

What will happen without regulatory intervention?

Without regulatory intervention, Australia is likely to find itself in a position where connected devices predominantly offer services from international content providers.

These providers pay no regard to providing local information and content, such as news and emergency information, or content that supports our national identity and cultural diversity. Such an outcome would be to the detriment of all Australians.

The Australian radio sector is united in its view that a radio prominence regime, applicable to both smart speakers and in future connected car entertainment systems (with the potential to include other devices in future as well), is required to be legislated to provide the best opportunity for radio to have a sustainable future.

4. Proposed approach for a radio prominence regime

The proposed radio prominence regime is straight forward. The core requirements are that, at no cost to radio broadcasters, OS providers - predominantly the large digital platforms (Google, Apple and Amazon) - and manufacturers of the regulated devices should be required to ensure:

- access to Australian radio is available on smart speakers, connected car entertainment systems and potentially other devices in future (a "must carry" obligation);
- Australian radio is easily discoverable on these regulated devices, through the apps nominated by the radio broadcasters; and
- no advertising or other content may be added to Australian radio content except with broadcaster consent.

The Australian TV Prominence Act and the UK Media Act provide guidance

The BSA has recently been amended to incorporate a prominence regime for free-to-air television services – the Communications Legislation Amendment (Prominence and Anti-siphoning) Bill 2024 (**TV Prominence Act**).

The TV Prominence Act, together with the UK Media Act (which is discussed immediately below), provide guidance for a radio prominence regime.

International developments

The competition issues that give rise to the need for a prominence framework for radio have been recognised internationally.

[7] CRA's media release is available here: https://www.commercialradio.com.au/Industry-Resources/Media-Releases/2023/2023-04-14-Radio-services-back-on-air-on-Google-sp.

The United Kingdom's Media Act 2024 (**UK Media Act**) incorporates a radio prominence framework that would be a broadly appropriate model for Australian legislation.

As set out in the explanatory notes for the UK Media Act:[8]

> *With the rapid growth of listening via voice-activated connected audio devices over recent years, UK radio is increasingly operating within an environment which is occupied by larger platforms with competing services and the capability to drive audiences elsewhere. This Act ensures that UK radio stations are not charged by these platforms for the provision of their live services to listeners, that platforms cannot overlay content (such as advertising) over the top of those services, and that stations are reliably provided in response to listeners' voice commands. It also enables station providers to request a default route for their stations to be delivered to listeners.*

Importantly, while the UK Media Act initially applies only to smart speakers, it provides for the regime to be extended to connected cars and to other devices. This will allow the UK regime to respond to developments in technology and market changes.

Under the UK Media Act, the UK Secretary of State may make a new designation where the level of use of the relevant service (which would be defined as a device under the legislation proposed by CRA in this submission) is significant. To paraphrase the explanatory material for the UK Media Act,[9] this recognises that devices that are used by a significant number of listeners to access radio content should be designated.

Proposed regulatory framework

The proposed radio prominence regime should incorporate the following elements:

(i) Regulated radio services

CRA recommends that regulated radio services would encompass both:

- the radio broadcasting services provided by commercial radio broadcasters, the national broadcasters and community radio broadcasters; and
- audio content that is made available online on a free basis, whether directly by the broadcaster or through an aggregator app selected by the broadcaster (such as RadioApp, Listnr, Nova Player or iHeart).

The radio broadcaster should able to select the app (potentially being an aggregator app) through which its radio stations are provided, unless the listener nominates another app. This will ensure that charges or other restrictions cannot be imposed on radio broadcasters by gatekeepers, for example, by determining that particular aggregator apps must be used (as is currently the case with Google smart speakers).

(ii) Regulated audio devices

The key devices to be regulated for a radio prominence regime would initially be smart speakers, being any devices that are able to be voice activated and which provide access to audio

[8] Available here: https://www.legislation.gov.uk/ukpga/2024/15/notes/division/3/index.htm
[9] Available here: https://www.legislation.gov.uk/ukpga/2024/15/pdfs/ukpgaen_20240015_en.pdf, page 50.

entertainment services. However, the legislation should provide for connected car entertainment systems and other devices to be designated by the Minister as subject to the regime.

The primary criteria that the Minister should consider in making such as designation is the popularity of the use of the device by Australians for listening to radio using the internet.

(iii) Inclusion of cars and other devices

Connected car entertainment systems should be designated as subject to the framework not later than 12 months after the regime is first implemented.

Other connected devices could be designated in future, if significantly used by Australian radio users.

(iv) Regulated entities

CRA has described above both the nature of the radio services that should benefit from the proposed new regulation and the types of devices that should be subject to the regulation. There is also the question of which *class of entities* should be subject to obligations under the regime.

Under the TV Prominence Act it is the manufacturers of the regulated devices that are required to comply with the legislative framework. This compares to the UK Media Act, which provides that it is the provider of the radio selection service (that is, the provider of the OS that allows the radio service to be played) that is subject to obligations.

In some cases, the manufacturer and the provider of the OS will be the same, which would be more likely in the case of the products offered directly by the larger platforms, such as Google Nest. But this will not always be the case. For example, in the case of smart speakers, many third party manufacturers such as Sonos use the OS provided by one or more of the larger platforms. And when the framework is expanded beyond smart speakers to connected cars, the manufacturers and providers of the OS will almost always be different.

CRA's recommendation is that the new framework imposes obligations on both the manufacturers and the providers of the OS. Only by extending the obligations to both of these key entities will it be possible to ensure that the new radio prominence framework is complied with.

(v) Core obligation: "Must carry"

To be effective, the radio prominence regime should incorporate a "must carry" obligation.

This should be in a similar form to sections 130ZZN(1) to (3) of the BSA, which are part of the television prominence regime.

Applying those provisions to radio prominence would require that, at no cost to broadcasters, regulated entities (that is, both the manufacturers of regulated devices and the OS providers) must:

- ensure those devices are capable of complying with the radio prominence requirements; and
- impose a reasonable steps obligation on each regulated entity to ensure that the device continues to comply with those prominence requirements until:
    - updates of the software used in the device cease to be provided (whether by the manufacturer or the OS provider); or
    - the user takes action to disable the prominence requirements; or
    - regulated services are no longer provided by the relevant radio broadcaster.

(vi) Primary prominence requirement: easy to find

The primary prominence requirement for smart speakers is that regulated entities should ensure, on an ongoing basis, radio station content is easy to find and that no charge is imposed on broadcasters in relation to compliance with this requirement.

In the context of smart speakers, when the user of the device gives a spoken command asking for a regulated radio service to play, the device would comply with that command. The specific station should be provided through the app determined by the radio broadcaster, unless the user themselves specifies a different app. This reflects the UK Media Act.

This approach would not interfere with the rights of other audio content providers whose services may be available through a regulated device, which may be promoted to users when they do not make a specific request for a radio station.

Consumers retain their choice – only where the user specifically asks for the regulated radio service would it be played through the smart speaker.

(vii) Additional prominence requirement: no alterations

A key additional prominence requirement is that (other than for the purposes of identifying the relevant service immediately before it commences playing) regulated entities must ensure that no other content is provided before, or interrupts, the regulated radio service when it is provided through a regulated device.

This will stop additional advertising or other content being added to Australian radio content without the consent of the radio broadcaster.

(viii) A measured and staged approach

The prominence regime should be implemented in a measured manner. For this reason, CRA recommends a staged approach:

- the prominence requirements for smart speakers are clear and straightforward and should be incorporated directly in the new legislative regime;
- CRA supports additional minimum prominence requirements being implemented via separate regulation made by the Australian Communications and Media Authority (**ACMA**).

This would allow prominence to be extended to connected cars following appropriate consultation, which, as noted above, CRA recommends occurs within one year of commencement of the new regime.

It is important that the door is not shut on bringing other types of device within the scope of the regime. If other types of devices in future are used by Australians to listen to radio, there should be the potential to bring them within this regime.

This staged approach will ensure that the delay in implementing the prominence regime for smart speakers is minimised and will provide necessary flexibility, particularly in light of ongoing technology advances.

When the framework is applied to connected car entertainment systems (and potentially other devices), appropriate regulations will be able to be made to incorporate minimum prominence requirements for those devices.

5. New ex ante code powers for the ACCC: the recommendations from the Fifth Report

CRA continues to share the ACCC's concerns that led to the recommendations for reforms in the Fifth Report. There is no doubt that it remains the case that the entrenched dominance of key digital platforms continues to have a negative impact on commercial relationships and competition amongst businesses in Australia.

The Government has been slow to take steps to move forward with the ACCC's recommended reforms. CRA supports the ACCC in urging the Government to re-engage with the ACCC's recommendations.

Steps need to be taken to directly address the substantial competition and consumer harms that have been clearly identified in relation to digital platform services. This has been recognised internationally, for example, in the EU under its Digital Markets Act (and Digital Services Act).

CRA strongly supports the establishment of a new competition framework for digital platforms, built around ex-ante rules, to correct the anti-competitive conduct that has been identified by the ACCC.

As CRA set out in its earlier submission to the ACCC in relation to the reforms proposed by the ACCC in the Fifth Report, CRA supports the following regulatory reform, which will have :

- Mandatory codes applicable to digital platform products and services markets should be developed by the ACCC and registered under a new Part of the Competition and Consumer Act 2010 (**CCA**) (**Proposed CCA Codes**). The relevant digital platform product and service markets should include digital search, social media, aggregation platforms, advertising technology (**adtech**) services and app marketplaces.
- Google, Meta, Apple and Amazon should be registered under the Proposed CCA Codes as digital platforms that are dominant in their respective markets, including in the markets for smart speakers and voice assistants.
- The Proposed CCA Codes should be comprehensive. The codes should address self-preferencing and conflicts of interest; restrictions on the imposition of unfair contract terms; and the imposition of transparency requirements for adtech services, amongst other issues.

These reforms were urgently needed at the time of the release of the Fifth Report, now some two years ago. As CRA said at that time:

> ***If these harms are not addressed without further delay, there is a real risk that the digital platforms will continue to expand their influence, the damage suffered by news media businesses may become irreparable, and a regulatory solution will prove much harder to find.***

The urgent need for reform cannot be overstated. The significant benefit of introducing similar reforms is evident by looking at other jurisdictions, such as the EU. The changes that the large digital platforms have been forced to make to comply with the Digital Markets Act have had, and will continue to have, significant benefits for European businesses and consumers.

For example, as reported by The New York Times, the Digital Markets Act has resulted in changes being made by those platforms to how their products work to provide for more competition. To take just a few examples, those changes include:[10]

- Apple has been required to allow iPhone and iPad users access to rival app stores and payment systems (though the EU says those changes do not yet go far enough); and
- Google has been required to change how it displays certain search results.

International experience is therefore already demonstrating how beneficial reforms that are similar in nature to those proposed in the Fifth Report have been.

There is no ability for Australian businesses, including media businesses, or Australian consumers to benefit from the changes, such as those highlighted above, that the large digital platforms have been required to make to comply with the laws of other jurisdictions. Those changes are required to apply only in those other jurisdictions and are not required to be extended to the services offered by the large digital platforms in Australia. Without changes to our domestic laws, there will be no change to the Australian experience.

Thank you very much for considering this submission. CRA would be happy to discuss it further with the ACCC.

Commercial Radio & Audio

August 2024

[10] Article available here: https://www.nytimes.com/2024/03/04/technology/europe-apple-meta-google-microsoft.html