TikTok's Response to the ACCC's Digital Platform Services Inquiry, March 2025 Issues Paper

1 Introduction

TikTok is a global entertainment platform with a mission to inspire creativity and bring joy. Since our Australian launch in 2017, we have grown into a platform with more than 8.5 million Australian users and 350,000 local businesses.

By providing a vibrant alternative to incumbent platforms, TikTok has introduced fresh competition and injected dynamism into the digital space in Australia. The Australian Competition and Consumer Commission (***ACCC***) has previously acknowledged the disruptive competition that TikTok has provided.[1]

TikTok welcomes the opportunity to contribute to the ACCC's Digital Platform Services Inquiry and its Issues Paper of 25 July 2024 (***Issues Paper***). As a global platform, TikTok has a valuable and unique perspective on the international regulatory developments discussed. In addition to being a part of the digital landscape ourselves, and an important source of competition to entrenched platforms, we are also a leading app developer, a customer, and potential business user of the platforms commonly subject to these kinds of regulations around the world. We convey these perspectives in this submission.

2 The core principles behind digital platform regulation

TikTok supports the principles embodied in digital platform regulation. As a challenger, we agree that a handful of companies wield disproportionate power in the digital economy, and that traditional antitrust tools cannot always address the unique challenges that transcend any one product market.

The ACCC has pinpointed the specific issue such regulation is meant to address, with the ACCC Chair recently outlining how a "*handful of the large digital platforms*" are using their entrenched position and substantial market power to enact "*broader harms*".[2] These are not run of the mill antitrust issues or arising simply due to the fact that a platform has merely become 'big'. These thorny problems arise from the exploitation of network effects and lock-in consequences across a wide range of digital markets.

Globally, this has driven lawmaker and regulator concerns that existing competition frameworks are insufficient – that they take too long and don't address the unique challenges that digital platforms present.

The systemic nature of these concerns is key. Too much power has been concentrated in platforms that pervade the entire Australian economy across a variety of unavoidable and unchallenged services.

---

[1] ACCC, Digital Platform Services Inquiry, 'Interim Report 6: Social Media Services', March 2023. In particular, pages 113-115, discussing TikTok's entry through investment, and novel and differentiated offering.

[2] Gina Cass-Gottlieb, ACCC Chair, ACCC/AER Regulatory Conference opening address in Brisbane on Thursday 1 August 2024: https://www.accc.gov.au/about-us/news/speeches/acccaer-regulatory-conference-2024-opening-address

Regulators in other jurisdictions have expressed similar concerns. For example, the recitals to the European Union's Digital Markets Act are clear on identifying the problem of "*[a] small number of large undertakings… with considerable economic power that… leverage their advantages, such as their access to large amounts of data, from one area of activity to another… exercise control over whole platform ecosystems in the digital economy and are structurally extremely difficult to challenge or contest by existing or new market operators, irrespective of how innovative and efficient those market operators may be*".

The CMA has similarly recognised in its draft Digital Markets Competition and Consumer Act guidance that digital services can be particularly susceptible to these market breakdowns, which can manifest themselves in "*network effects, economies of scale and scope, high fixed costs, data advantages, [and] integration into wider ecosystems...*".

3 Considering different models of platform regulation

While regulators and stakeholders around the world seem aligned on the need for reform, there have been differing views on the approach. The proliferation of digital platform regulation means there are now competing models with important differences. The ACCC is in the unique position of being able to select and refine the more effective features and characteristics of the regimes already in place. The guiding principle when selecting among these models should be simple, i.e., which features are best suited to addressing the systemic problems that have emerged?

At TikTok, we have seen these regimes differ in two key aspects: (1) in the designation process; and (2) in the crafting of obligations placed on designated digital platforms. These issues may seem academic on the surface, but our experience shows that it is vital that regulators and legislators strike the right balance. Incorrect or overzealous designation and bluntly designed conduct obligations not only impact platforms directly, but can also cause harms and unintended consequences for the consumers and businesses these reforms are meant to serve, as well as the regulators themselves.

The potential harm to consumers and businesses of an overly inclusive and inflexible regime is clear: if a platform is incorrectly designated, or obligations are not purpose built, then consumers and business users will not see the benefits they should. On the contrary, consumers may be harmed if entrants are not able to launch products or challenge incumbents because they are over-burdened by regulation.

A flexible regime would provide the ACCC with discretion to pursue harms where it sees them and give it the tools to deal with the ever-changing nature of the digital space. In TikTok's experience, prescriptive models with rigid categories of services and a 'one size fits all' list of obligations have burdened regulators with more interpretative difficulty than clarity.

Regulators must carefully balance these issues to foster a dynamic and innovative Australian digital economy. From TikTok's perspective, we see these guiding principles better enshrined in the flexible and targeted nature of the UK's Digital Markets, Competition and Consumers Act (***DMCC***) rather than in the threshold-based model prescribed by the EU's Digital Markets Act (***DMA***). As explained further below, this is particularly informed by TikTok's experience as being designated a 'gatekeeper' under the EU's DMA, despite not exhibiting the qualitative features of a gatekeeper.

4 Designation process

Designation is the necessary first step in applying digital platform regulation, but it is important this process is carefully tailored. Otherwise, it can result in misplaced regulation, which in turn can distort competition and hamper innovation.

The DMA deploys a threshold-based model, and - on the surface - this would seem to be a clean and simple approach which would lead to predictability. However, the reality of its implementation has been very different. Many, including TikTok, have seen confusion and inconsistency from the European Commission (***EC***) about the type of evidence it could consider as part of the DMA designation process.[3] TikTok presented evidence regarding key policy considerations such as competitive pressure, profitability, levels of customer switching, network effects, data advantages, and integration into wider ecosystems, but these considerations were dismissed as 'irrelevant' to designation. Meanwhile, similar factors were relied on for granting rebuttals to services of similar or greater size.[4] Noting these inconsistencies, the European General Court has dismissed them merely

[3] For example, European Commission officials previously acknowledged "core questions" about the process under the DMA could be resolved by the courts: see MLex, 'ByteDance ruling could solve core questions on EU gatekeeper law, Kramler says', 20 June 2024: https://mlexmarketinsight.com/news/insight/bytedance-ruling-could-solve-core-questions-on-eu-gatekeeper-law-kramler-says

[4] For example, see European Commission decisions to grant rebuttals to Microsoft in relation to (i) Microsoft Bing: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C_202402709; (ii) Microsoft Edge: https://eur-lex.europa.eu/legal-

as "*some errors in [the European Commission's] assessment*".[5] We feel Australia would benefit from a more consistent and evidence-based approach.

In addition to the threshold-based model, the DMA's structure of designation includes pre-set 'core platform services'. By its own admission, the EC struggled to delineate among these categories.[6]

For example, TikTok was (and is) of the view that the TikTok platform is best characterised as a 'video sharing platform', as the ACCC has referred to it in this Issues Paper. TikTok notified the EC on this basis. However, the EC persisted in characterising TikTok as operating an online social network, despite 'video sharing' being listed in the DMA as a separate core platform service. This has led to the illogical result of YouTube and its Shorts product (which is generally considered to be an imitation of TikTok) as being designated under a separate core platform service category (video sharing), with different obligations under the DMA.

Relying on a pre-set list of categories creates inflexibility similar to the quantitative thresholds discussed above. This type of rigidity is particularly ill-equipped to regulate rapidly changing digital technologies. For example, there have already been questions about whether artificial intelligence technologies are covered by the DMA or require the creation of new core platform services.[7]

In contrast, other regimes have adopted a more targeted, flexible approach that can adapt in response to industry developments. The DMCC uses a single quantitative qualifying criteria for services to even be in scope, and designation follows an in-depth market investigation by the Competition and Markets Authority (***CMA***). This allows the CMA to properly evaluate whether specific and tailored intervention is really needed. This also means the CMA can focus its scarce resources on the problems it actually identifies, rather than being forced into investigations by pre-determined thresholds.

Additionally, the DMCC does not try to fit all digital services into categories in the same way as the DMA. Rather, it is based on the intentionally flexible and future-proof concept of 'digital activity' that can be adapted to each individual case; services can be grouped together or separated as the authority considers appropriate and necessary in the specific circumstance to achieve its objectives.

In its September 2022 interim report on potential regulatory reform for digital platforms (***Reform Report***), the ACCC suggested that designation could be based on consideration of either quantitative criteria, qualitative criteria or a combination of both. The ACCC stated that, while it considers that quantitative criteria should be sufficient to determine whether a platform should be designated in most cases, there may be circumstances where it is necessary to refer to qualitative criteria.

TikTok supports the ACCC taking a more tailored approach, based on qualitative features, that allows for more meaningful assessment of market realities in line with the DMCC. While there is always a trade-off between speed and accuracy, we think this approach strikes the right balance and protects against false positives. TikTok strongly believes such time is well spent as it enables the regulation to be more targeted and supports the overall effectiveness, consistency and legitimacy of such regimes.

---

content/EN/TXT/PDF/?uri=OJ:C_202402709; and (iii) Microsoft Advertising: https://eur-lex.europa.eu/legal-content/EN/TXT/HTML/?uri=OJ:C_202402709

[5] Court of Justice of the European Union, Press Release No 114/24, 'Digital Markets Act: The General Court dismisses the action brought by Bytedance (TikTok) against the decision of the Commission designating it as a gatekeeper', 17 July 2024: https://curia.europa.eu/jcms/upload/docs/application/pdf/2024-07/cp240114en.pdf

[6] MLex, 'Delineation of DMA gatekeepers' services turns out to need 'advanced' discussions, EU official says', 23 May 2023: https://mlexmarketinsight.com/news/insight/delineation-of-dma-gatekeepers-services-turns-out-to-need-advanced-discussions-eu-official-says

[7] Global Competition Review, 'AI covered by DMA, EU official says', 25 April 2024: https://globalcompetitionreview.com/article/ai-covered-dma-eu-official-says

5 Determining conduct requirements

TikTok thinks that a more tailored approach should similarly apply to any conduct requirements. The DMA imposes a uniform set of conduct requirements on all firms regardless of their business model. In practice, this means that many of the obligations have limited relevance across different gatekeepers. In contrast, the DMCC envisages tailored codes of conduct that will include obligations specifically designed to address the issues identified. We think this is the difference between a scalpel and an axe.

The ACCC in its Reform Report appears to be considering codes of conduct that will be "*targeted at the specific competition issues relevant to the type of service to which the code will apply*"[8] and will be flexible enough to *"account for the dynamic nature of… [digital] markets*".[9]

TikTok supports individual assessment of conduct requirements. Pre-set conduct requirements can be overly broad and backwards looking, and are necessarily drafted based upon perceived issues at the time of drafting rather than anticipating tomorrow's concerns. Not only might this miss emerging technologies, but it also means that rules drafted for historical incumbents have to be applied to new technologies and used to address harms they are not equipped to deal with. This can lead to a situation where either the rules do not fit or are wholly irrelevant (and therefore have no effect). This is precisely the problem the new regulations are supposed to fix.

TikTok has already experienced this in the EU. While other platforms are now subject to non-compliance investigations,[10] TikTok did not have to halt any conduct in response to the DMA. Instead, because TikTok operates in an intensely competitive environment, it already had every incentive to make its platform as attractive to its business users and end users as possible. Nevertheless, we were required to bear an extensive compliance burden to explain how rules based on past operating system and search engine cases, among others, do not make sense in the context of our business model.

For the above reasons, TikTok supports a bespoke and more targeted approach like that contemplated in the UK DMCC. We feel this is more likely to deliver the desired results.

6 Conclusion

TikTok agrees that digital platform regulation is important to promote competition between digital platform services, and to address ongoing concerns about platforms with entrenched positions and significant market power. These platforms have the potential to enact broad, systemic harms against consumers and businesses alike.

However, one size does not fit all. A blunt approach means less effective and meaningful interventions. It also results in an inefficient use of regulators' scarce resources and an inability to adapt to fast-moving technologies. This does not serve regulators or the challengers, consumers and business users that the reforms are meant to assist. Instead, it undermines one of the key rationales of these new digital regimes, which is to enable regulators to act quickly and before harm in an industry has occurred.

In TikTok's experience, the most effective digital regimes are those which are targeted, flexible and proportionate. When these characteristics are combined with clear processes, procedural safeguards and meaningful stakeholder engagement, they are capable of delivering tangible benefits to users of these platforms, and the wider economy.

[8] ACCC, Digital Platform Services Inquiry, 'Interim Report No. 5 – Regulatory Reform', September 2022 (the ***ACCC's Reform Report***), p.17
[9] ACCC's Reform Report, p.11
[10] European Commission, 'Commission opens non-compliance investigations against Alphabet, Apple and Meta under the Digital Markets Act', 25 March 2024: https://digital-markets-act.ec.europa.eu/commission-opens-non-compliance-investigations-against-alphabet-apple-and-meta-under-digital-markets-2024-03-25_en