



Digital Platforms: Government consultation on ACCC's regulatory reform recommendations

Consultation Paper

December 2022

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Consultation Process

Request for feedback and comments

Interested stakeholders are invited to comment on the issues raised in this paper by **15 February 2023**.

Submissions may be lodged electronically or by post, however electronic lodgement is preferred via email to **digitalcompetition@treasury.gov.au**. For accessibility reasons, please submit responses via email in a Word, RTF or PDF format.

Submissions will be shared with other Commonwealth agencies where necessary for the purposes of this review. All information (including name and address details) contained in submissions may be made publicly available on the Australian Treasury website unless you indicate that you would like all or part of your submission to remain in confidence. Automatically generated confidentiality statements in emails are not sufficient for this purpose.

If you would like only part of your submission to remain confidential, please provide this information clearly marked as such in a separate attachment. Legal requirements, such as those imposed by the *Freedom of Information Act 1982*, may affect the confidentiality of your submission.

Closing date for submissions: 15 February 2023

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The principles outlined in this paper have not received Government approval and are not yet law. As a consequence, this paper is merely a guide as to how the principles might operate.

Digital Platforms: Government consultation on ACCC's regulatory reform recommendations

Introduction

The past three decades have seen significant changes across the economy as consumer, business and social interactions have increasingly become digitised. Australians are at the forefront in the adoption and innovation of technology, resulting in increasing integration of digital goods and services into our economy and everyday lives.

The largest and most prominent companies in the latest wave of digital development are providers of digital platform services which play a central role in facilitating the interactions between consumers and businesses. These developments have provided significant benefits for consumer and businesses, reducing the costs of a variety of transactions and providing new services, often at low or no direct costs. However, the dynamic nature and rapid growth of this sector has raised questions about the adequacy of the current regulatory settings on how consumers and businesses interact with digital platform services.

In several overseas jurisdictions, governments have concluded that existing economy-wide competition and consumer protection regimes which typically rely on ex-post enforcement of general competition and consumer protection obligations, are inadequate. In particular, the European Union and United Kingdom are implementing competition and consumer protection frameworks that will impose specific ex-ante obligations on certain digital platforms. Nonetheless, the approaches to digital platforms around the world vary, including in the focus and underlying objectives, and architecture, often reflecting jurisdictional characteristics.

No platform specific regulatory approach has been established for a significantly long enough period to provide a proven regulatory template to draw on. This highlights the importance of consultation to ensure an effective policy framework is developed for the Australian context. A summary of current international developments can be found at [Appendix A](#).

Digital Platform Services Inquiry

On 10 February 2020, the ACCC was directed to conduct an inquiry into the market for the supply of digital platform services. The Digital Platform Services Inquiry (the Inquiry) aims to examine consumer and competition issues related to digital platforms, and whether Australia's current competition and consumer protection laws are sufficient to address identified issues.

Digital platform services covered by the Inquiry include internet search engine services, social media services, online private messaging services, digital content aggregation platform services, media referral services and electronic marketplace services. The Inquiry also covers digital advertising services supplied by digital platform service providers and the data practices of both digital platform service providers and data brokers.

Since 2020, the ACCC has released interim reports every six months, with a total of five having been released to date. The first four reports focused on specific services including private messaging services, the distribution of mobile applications (apps), web browsers and general search services (including the effectiveness of choice screens in this space), and general online retail marketplaces.

The fifth report, published on 11 November 2022, serves as a mid-point for the Inquiry. The report, which focuses on regulatory reform, has considered and provided recommendations on competition and consumer issues identified by the Inquiry to date, as well as related matters in the Digital Advertising Services Inquiry¹ and Digital Platforms Inquiry 2017-2019.²

The ACCC's fifth report recommends:

1. Economy-wide consumer measures, including a prohibition against unfair trading practices and unfair contract terms.
2. Consumer measures specific to digital platforms, including mandating internal and external dispute resolution processes and obligations on platforms to prevent and remove scams, harmful apps and fake reviews.
3. A new competition framework which would subject 'designated' digital platforms to mandatory codes applying to the services they provide.
4. Targeted competition obligations for designated digital platforms to be included in the proposed new framework and codes, to address harms such as anti-competitive self-preferencing.

Purpose of Consultation

The ACCC's fifth interim report finds the current regulatory settings in Australia are inadequate at addressing specific competition and consumer issues and recommends a new regulatory framework. While stakeholders were engaged in the preparation of the fifth interim report, they are yet to have an opportunity to comment on the ACCC's specific recommendations and analysis. Treasury is seeking stakeholder views to ensure they are taken into account when advising the Government on its response to the ACCC recommendations.

Before considering the questions below, it is recommended you read the ACCC report, which can be found on the ACCC website.³ Views gathered from this process will be considered by the Government in developing its response to the report and ensuring Australia has the right regulations in place to be a leading digital economy.

While the questions below are a guide for your submission, you are not required to address all questions. You can also comment on issues you consider relevant that have not been covered by the questions. It is requested that in your response, you provide reasons and evidence to support your reply.

¹ In 2020, the Government directed the ACCC to conduct an inquiry into markets for the supply of digital advertising technology services and digital advertising agency services. The final report was published on 28 September 2021.

² In 2017, the Government directed the ACCC to conduct an inquiry into digital platforms. The final report was published on 26 July 2019.

³ Australian Competition and Consumer Commission, *Digital platform services inquiry, Interim report No. 5 – Regulatory reform*, September 2022.

Consultation Questions

The case for a new regime and its objectives

Section 2 of the *Competition and Consumer Act 2010* articulates the objective of the Act: “The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading and provision for consumer protection.” Treasury considers this an appropriate objective for any policies governing the competition and consumer issues relating to the conduct of digital platforms.

To address the issues identified throughout its Inquiry, the ACCC has recommended the adoption of a new regulatory framework for consumer protection and to improve competition. As noted, regimes to address similar identified harms are in the process of being implemented in some jurisdictions, however, their effectiveness at this stage is unknown. Other jurisdictions are currently relying on existing laws to regulate digital platforms.

The ACCC has articulated the potential advantages of a customised regulatory approach for digital platforms. However, the adoption of a new customised approach might also come with some risks and involve significant implementation challenges, which could compromise the potential benefits, while introducing additional regulatory complexity and uncertainty.

A threshold question for this consultation is the extent to which some or all of the benefits of the proposed new measures could be achieved through existing general consumer and competition regulatory protections. More broadly, all policy alternatives need to be assessed, including voluntary or self-regulatory approaches.

Treasury seeks your views on the need for a new competition and consumer protection regulatory framework in Australia, as recommended by the ACCC or an alternative that you would recommend. Treasury is particularly interested in comment and evidence on the likely effectiveness and efficiency of the proposed policy response, including:

- Whether it is likely to address the identified harm to consumers or businesses, how well it would target the source of the problem, the enforceability of any regulatory requirements and whether the policy approach would be durable into the future.
- Whether it minimises compliance costs for industry and consumers and administration costs for government, including the costs of red tape and regulatory uncertainty.
- How it would affect the incentives of digital platforms and businesses that rely on platforms to innovate, reduce costs and improve service quality for Australian consumers.

Questions

1. Do you agree with the ACCC’s conclusion that relying only on existing regulatory frameworks would lead to adverse outcomes for Australian consumers and businesses? What are the likely benefits and risks of relying primarily on existing regulatory frameworks?
2. Can existing regulatory frameworks be improved or better utilised?
3. Are there alternative regulatory or non-regulatory options that may be better suited?

Coordination with other Government policies and processes

The recommendations of the Inquiry need to be examined within a broader context of Government policy affecting digital platforms. Several competition and consumer policy reforms have been introduced recently, including the passing of legislation prohibiting unfair contract terms, the introduction of the Consumer Data Right, and funding for the development of a National Anti-Scam Centre. Other ongoing policy processes include a review of the *Privacy Act 1988* focused on consumer privacy and data in the digital era, and consultation on reforming Australia's payments system. Commonwealth, State and Territory Ministers for consumer affairs have also agreed to consult on proposed reforms to address unfair trading practices.

Some of these processes interact directly with the ACCC recommendations and it is important to ensure that objectives are aligned. For example, regulating competitors' access to user data held by a platform might generate trade-offs between competition and privacy objectives. Conversely, some of these processes might have complementary elements that could be progressed together. For example, any requirement to allow interoperability placed on a digital platform may be applicable to reforms to digital payments using near-field communication (NFC) chips.

Treasury seeks your views on how these proposed recommendations align with other Government processes, and whether reforming competition and consumer law is the most appropriate way to address the harms outlined in the Inquiry.

Questions

4. Do you see any conflicts between the recommendations?
5. Do you see any conflicts between any of the recommendations and existing Government policy?
6. What is the best way to ensure coherence between Government policies relating to digital platforms? Are any of the recommendations better addressed through other Government reforms or processes?

Consumer Recommendations

As part of its Inquiry, the ACCC identified considerable consumer harms attributed to digital platforms, and across the digital ecosystem more broadly. This includes unfair trading and unfair contracts, as well as inadequate processes for dealing with scams, disputes and complaints. The ACCC considers the current consumer laws to have gaps which prevent these issues from being appropriately addressed.

Recommendation 1: Economy-wide consumer measures

The ACCC continues to recommend the introduction of new and expanded economy-wide consumer measures, including an economy-wide prohibition against unfair trading practices and strengthening of the unfair contract terms laws.

These reforms, alongside targeted digital platform specific obligations, would assist in addressing some of the consumer protection concerns identified for digital platform services.

Recommendation 1 will be progressed as part of other initiatives, with Parliament having passed legislation to prohibit unfair contract terms, and Commonwealth, State and Territory consumer Ministers to undertake further consultation on unfair trading practices.⁴

⁴ Parliament of Australia, *Treasury Laws Amendment (More Competition, Better Prices) Act 2022*.

Scams, harmful apps and fake reviews

The ACCC found there has been a significant and sustained increase in scams on digital platforms, which provide an effective and low-cost means to access consumers and their information. Related activity includes harmful apps, which despite existing processes, continue to be made available on platforms; and fake reviews, which mislead consumers, distort competition, reduce trust in platforms, and harm businesses.

The ACCC observed that these issues are heightened by inadequate verification of digital platform users and content, enabling effective means for scammers to target and access victims. The ACCC considers that absent targeted measures, these trends are likely to continue as consumers spend more time online and digital platform services grow. It is for these reasons the ACCC recommends reform to existing laws.

In relation to scams, the Government has already committed to introducing new codes for platforms to clearly define responsibilities for protecting consumers and businesses from scams.

Dispute resolution

The ACCC highlighted a lack of avenues for impacted consumers to raise concerns with digital platform services. The ACCC has found that consumers and small businesses seeking to enforce their existing rights against digital platforms face significant obstacles, including that dispute resolution processes are often unclear, costly and uncertain. The ACCC concluded that measures are required to make it easier for consumers and small businesses to seek redress from digital platforms and that these measures should apply to all digital platforms.

Treasury is seeking views on the findings and recommendations relating to consumer protection, in particular Recommendation 2, which focuses specifically on digital platform conduct.

Recommendation 2: Digital platform specific consumer measures

The ACCC recommends additional targeted measures to protect users of digital platforms, which should apply to all relevant digital platform services, including:

- Mandatory processes to prevent and remove scams, harmful apps and fake reviews including:
 - a notice-and-action mechanism;
 - verification of certain business users;
 - additional verification of advertisers of financial services and products;
 - improved review verification disclosures; and
 - public reporting on mitigation efforts.
- Mandatory internal dispute resolution standards that ensure accessibility, timeliness, accountability, the ability to escalate to a human representative and transparency.
- Ensuring consumers and small business have access to an independent external ombuds scheme.

Questions

7. Do you agree with the evidence presented by the ACCC regarding the prevalence and nature of harms to consumers resulting from the conduct of digital platforms?
8. Do you agree with the ACCC recommendation to introduce targeted measures on digital platforms to prevent and remove scams, harmful apps and fake reviews? Are there any other harms that should be covered by targeted consumer measures, for example, consumer harms related to the online ticket reselling market for live events?
 - 8.1 Is the notice and action mechanism proposed by the ACCC for these consumer measures appropriate? Are there any alternative or additional mechanisms that should be considered?
9. What digital platform services should be captured in the ACCC's recommendation?
10. Is a new independent external ombuds scheme to resolve consumer disputes with platforms warranted? Can any or all of the functions proposed for the new body be performed by an existing body and, if so, which one would be most appropriate?
11. The ACCC recommends these requirements to apply to all digital platforms, do you support this? If not, which requirements should apply to all platforms, and which should be targeted to certain entities?
12. If the above processes are introduced, is the Australian Consumer Law the appropriate legislation to be used and what should the penalty for non-compliance be?

Competition Recommendations

The ACCC concluded there are unique competition concerns in a range of digital platform services. The Inquiry found digital platforms use their market position in ways that decrease competition and deliver a less fruitful and innovative digital ecosystem for Australians.

The ACCC noted the enforcement of the *Competition and Consumer Act 2010* can take considerable time, which can lead to substantial and irreversible harm before enforcement cases can be concluded. The ACCC argued that it is difficult to address systematic competition issues in these fast-moving markets through the current case-by-case enforcement approach.

The ACCC has therefore recommended the Government develop a new competition framework to apply to large digital platforms that hold a 'critical position in the Australian economy and that have the ability and incentive to harm competition.' These 'designated' digital platforms would be subject to mandatory codes which regulate their actions on specific digital services, *ex-ante*.⁵ The approach has some similarities to the digital platform competition regime currently being developed in the United Kingdom (see [Appendix A](#)).

Recommendation 3: Additional competition measures for digital platforms

The ACCC recommends the introduction of additional competition measures to protect and promote competition in markets for digital platform services. These should be implemented through a new power to make mandatory codes of conduct for 'designated' digital platforms based on principles set out in legislation.

Each code would be for a single type of digital platform service (i.e. service-specific codes) and contain targeted obligations based on the legislated principles. This would allow flexibility to tailor the obligations to the specific competition issues relevant to that service as these change over time.

These codes would only apply to 'designated' digital platforms that meet clear criteria relevant to their incentive and ability to harm competition.

⁵ Rules in place, *prior* to actions occurring in the future.

Recommendation 4: Targeted competition obligations

The framework for mandatory service-specific codes for Designated Digital Platforms (proposed under Recommendation 3) should support targeted obligations based on legislated principles to address, as required:

- anti-competitive self-preferencing
- anti-competitive tying
- exclusive pre-installation and default agreements that hinder competition
- impediments to consumer switching
- impediments to interoperability
- data-related barriers to entry and expansion, where privacy impacts can be managed
- a lack of transparency
- unfair dealings with business users
- exclusivity and price parity clauses in contracts with business users.

The codes should be drafted so that compliance with their obligations can be assessed clearly and objectively. Obligations should be developed in consultation with industry and other stakeholders and targeted at the specific competition issues relevant to the type of service to which the code will apply. The drafting of obligations should consider any justifiable reasons for the conduct (such as necessary and proportionate privacy or security justifications).

The key elements of the proposed regime need to be carefully examined both to assess their merits against alternative approaches and to maximise their effectiveness and efficiency if the broad approach proposed by the ACCC is adopted.

For example, in considering an ex-ante regime there would be a trade-off between clear outright specification of conduct obligations and prohibitions and allowing some flexibility in administration and enforcement (including judicial and merits review of decisions) to avoid unintended consequences. Similarly, the proposed approach of specifying conduct obligations and prohibitions in codes might involve both advantages and risks.

The process and criteria for designation can also have a significant bearing on the costs and effectiveness of any new regime. An important risk to manage is how to achieve sufficient regulatory certainty and timeliness of the designation process (which might suggest prescriptive quantitative designation criteria) while retaining the flexibility to accurately target the right entities (which would require some qualitative assessment and discretion by the decision maker).⁶

There are several existing regimes that involve using designation and codes to remedy potential competition issues (Box 1).

⁶ For example, between 2015 and 2021, two applications were made to bring the Port of Newcastle within the National Access Regime, that is, to have it 'declared'. The applications, particularly the first one in 2015, resulted in extensive litigation, including one case before the High Court.

Box 1

Existing Australian codes and designation processes

Part IVB of the *Competition and Consumer Act 2010*

- Industry codes of conduct (codes) are a form of sector-specific regulation made under Part IVB of the CCA which regulates the conduct of industry participants towards each other (or consumers).
 - While codes vary, they typically require parties to act in good faith towards each other, have written agreements to cover key commercial matters and utilise agreed dispute resolution mechanisms.
 - There are currently nine prescribed codes in operation (eight mandatory and one voluntary) covering sectors including franchising, food and grocery, dairy and horticulture.
 - Each code specifies avenues for dispute resolution, including mediation and arbitration.
- The code framework provides for the Treasurer (or their delegate) to play a gatekeeper role for the introduction of new codes. The Treasurer can authorise other Ministers to make codes that fall within their policy responsibilities, while maintaining oversight.
- The ACCC is responsible for enforcing the CCA codes.

News Media and Digital Platforms Mandatory Bargaining Code

- The News Media Bargaining Code governs commercial relationships between Australian news businesses and ‘designated’ digital platforms who benefit from a significant bargaining power imbalance.
- The Minister may designate a digital platform and make them subject to the Code, after considering whether there is a significant bargaining power imbalance between the platform and Australian news businesses; and whether the platform has made a significant contribution to the sustainability of the Australian news industry through commercial agreements with news businesses.
- While the Minister has not designated any digital platforms or services to date, following the introduction of the Code, Google and Facebook (now Meta) have reached voluntary commercial agreements with a significant number of news media organisations.

The National Access Regime (NAR)

- The NAR uses a declaration process to allow businesses to access nationally significant infrastructure if certain criteria are met.
 - The process for the declaration of infrastructure involves a business applying to the National Competition Council (NCC), who provide a recommendation to the Treasurer who acts as a decision maker.
 - Any decision can be appealed by either party to a tribunal or to courts on administrative law grounds.
- Once designated, parties have the opportunity to come to an agreement over the terms and conditions of access, with the ACCC arbitrating any disputes that arise.

Treasury seeks views on the ACCC competition recommendations, specifically on the proposed competition framework, the overall merits of a designation and mandatory code approach and any potential alternative approaches that could be taken.

Questions

13. Do you agree with the designation and code of conduct model proposed by the ACCC for the new competition regime? What would be the main implementation challenges for such a regime?
14. Do you agree with the proposed framework of prescribing general obligations in legislation, and specific requirements in codes?
15. Do you agree with the proposed principles for designating platforms for the regime?
16. Do you agree that the focus of any new regulation should be on the competition issues identified by the ACCC in Recommendation 4? Should any issues be removed or added?
17. What services should be prioritised when developing a code? What harms should they be targeted on preventing?
 - 17.1 Should codes be targeted at individual companies, a specific service, or all digital platform services?
18. Should codes be mandatory or voluntary?

Governance

Appropriate governance arrangements are critical to any new regulatory framework. At a high level, it is important that the responsibilities are allocated to the right entities, taking into account their expertise and accountabilities, and that the various aspects of the regulatory process are subject to appropriate oversight.

For its proposed competition framework, the ACCC has recommended the appropriate regulator develop digital service specific codes in consultation with the policy agency, and the same regulator to be responsible for enforcement. ACCC also observed that designation decisions could be made by the appropriate regulator or a Government Minister. As noted in Box 1, a range of approaches have been adopted in other Australian competition regimes involving a code or a designation process.

Each model might have its own advantages or challenges. For example, it might be appropriate that some decisions are made by a Minister, who is accountable to Parliament, while others are made by a regulator due to an operational connection to the performance of its regulatory functions. It might also be appropriate that some responsibilities are allocated to a policy advisory body which would bring a particular policy perspective to decisions, as is the case with the National Competition Council in Australia's National Access Regime.

It would also be important to consider what role industry and other stakeholders should play in informing the development and administration of the regime and what procedural structures need to be introduced to ensure that stakeholder input is appropriately incorporated.

Additionally, the ACCC has raised the limitations of its information gathering powers in regard to multi-national companies. This is relevant both in the context of this Inquiry and the News Media and Digital Platforms Mandatory Bargaining Code, given much of the relevant data is held by foreign-owned entities. To enable effective enforcement, consideration should be given to the effectiveness of current information gathering powers and whether they need to be enhanced or updated to enable the success of a potential regulatory regime. Any additional information gathering powers would need to be balanced against compliance costs, the privacy of users of any digital platform and proper oversight of their use.

Treasury seeks your views on the appropriate governance approach to potential regulation of digital competition and consumer protection. Treasury is also seeking views on the overall effectiveness of current information gathering powers to enable effective enforcement of any new regulatory arrangements governing digital platforms.

Questions

19. Who should be responsible for the design of the proposed codes of conduct and obligations?
20. Who should be responsible for selecting or designating platforms to be covered by particular regulatory requirements?
21. Who should enforce any potential codes and obligations?
22. What checks and balances should be in place on decision makers and across the various stages of the policy (e.g. code making, designation process, code enforcement)?
23. What avenues of dispute or review should exist with regards to designation or decisions under any potential code? How can this best be implemented to ensure timely outcomes to allow for effective regulation in a fast-changing market?
24. Do information gathering powers for the relevant regulator need to be enhanced to better facilitate information gathering from multi-national companies? What balance should a potential regime strike between compliance costs, user privacy and the regulators information needs?

Priority and alignment with international developments

Given the international nature of digital markets and the current global developments in regulating them, any Australian response to the recommendations in the ACCC's fifth interim report will need to take careful account of international developments. In a regulatory regime based around codes for specific digital services, consideration would need to be given to where the issues with the greatest impact are occurring and thus which services to prioritise in the code making process. If a different approach was taken (for example, codes that prohibit a particular type of conduct across services), similar ordering of priorities for new competition regulation would need to be considered.

As referenced in [Appendix A](#), there is a significant amount of work being progressed internationally, as different jurisdictions make decisions on updating their consumer and competition regulation to suit the current and future digital environment.

In the global context, Australia is a smaller market than many of the jurisdictions at the forefront of digital platform regulation and will need to consider the most effective way for it to manage digital competition. One approach could see Australia seek to be a global leader in digital regulation, which might allow it to influence global norms and address the problems identified in digital markets quickly. An alternative approach would be to leverage international regulatory approaches and industry undertakings overseas as they are developed, better aligning Australia with larger markets and benefiting from the rules implemented in other jurisdictions.

Treasury seeks views on the timing of potential reforms in Australia, particularly in reference to the developments occurring internationally.



Questions

25. Should Australia seek to largely align with an existing or proposed international regime? If so, which is the most appropriate?
26. What are the benefits and downsides of Australia acting in advance of other countries or waiting and seeking to align with other jurisdictions?
27. Are there any particular aspects of the ACCC's proposed regime that would benefit from quick action or specific alignment with other jurisdictions?

Appendix A: International Developments

European Union (EU)

The EU has recently introduced a new regulatory regime covering a broad range of digital platform services and their practices. The Digital Markets Act (DMA), which came into force on 1 November 2022, outlines specific obligations for ‘gatekeepers’, platforms that have significant market power and presence that make them challenging for consumers to avoid using, to ensure a fair and competitive environment.⁷ Gatekeepers will have an obligation to allow third-party interoperability and access to data in certain circumstances. Gatekeepers will also be prohibited from self-preferencing their products or service, using personal data for targeted advertising and preventing users from uninstalling non-essential pre-loaded software of apps.

Although there remains significant work to be done relating to how the DMA will be implemented and administered, the rules will begin to apply in May 2023, and the designation of gatekeepers by September 2023. Once designated, gatekeepers will have to comply with the obligations under the DMA within six months (approximately March 2024).

Concurrently the Digital Services Act (DSA), which came into force on 16 November 2022, focuses on online safety, illegal content and protecting users. Similar to the DMA, service providers are required to adhere to obligations proportionate to their influence and size.⁸

United Kingdom (UK)

The current UK Government has established the Digital Markets Unit (DMU) within the Competition and Markets Authority (CMA). The DMU’s purpose is to be the centre of expertise for digital markets, have capabilities to understand the business models of digital firms and the incentives driving how these firms operate.¹ This will involve the DMU having oversight and enforcement capabilities over the proposed regime, and discretion to designate firms with strategic market status (SMS) for particular services.

SMS will be based on thresholds such as revenue, as well as evidence of market power and strategic position and scope of digital activities.⁹ The passage of the Markets, Competition and Consumer Bill will provide the DMU with these oversight responsibilities and allow them to subject firms with SMS to specific conduct requirements. These requirements would be tailored to each firm but would be subject to the overarching objectives of fair trading, open choices, and trust and transparency. These conduct requirements are to be developed during the SMS designation process, with the DMU envisioning the firm and other stakeholders being involved in the process of developing these requirements.

The UK Government has also introduced the Online Safety Bill, legislation comparable to the EU DSA, which establishes a new regime to address illegal content, content that is harmful to children and harmful content to adults.¹⁰ The Bill is expected to pass in early 2023, with the Office of Communications having oversight and enforcement capabilities.

⁷ European Commission, *Digital Markets Act: Rules for digital gatekeepers to ensure open markets enter into force*, 31 October 2022.

⁸ European Commission, *Digital Services Act: EU’s landmark rules for online platforms enter into force*, 16 November 2022.

⁹ Competition & Markets Authority, *A new pro-competition regime for digital markets – government response to consultation*, 6 May 2022.

¹⁰ House of Commons Library, *Analysis of the Online Safety Bill*, 8 April 2022.

Box 2

Notable enforcement actions

- On 18 October 2022, the **United Kingdom** CMA ordered Meta to divest from GIPHY to remedy the harm the merger would cause to competition in both the display advertising and social media markets.¹¹ The evidence concluded that the merger would result in substantial lessening of competition in advertising, due to horizontal unilateral effects in the form of a loss of dynamic competition; and in social media services as a result of vertical effects on competition arising from input foreclosure.
- On 2 May 2022, the **European Commission** viewed Apple's dominant position in the market for mobile wallets as exclusionary due to third-party restrictions to its near-field communication (NFC) technology.¹² Apple's conduct may infringe on Article 102 of the Treaty on the Functioning of the European Union, which prohibits the abuse of a dominant position.
- On 10 November 2021, the General Court of the **European Union** found Google abused its dominant position in online general search services by self-preferencing its shopping services, in 13 European countries. This investigation began in 2017 and has resulted in Google paying an approximate 2.4 billion EUR fine.¹³

United States (US)

In June 2021, the US House Antitrust Subcommittee introduced several bipartisan bills directed at countering the anti-competitive practices of large digital platforms including the American Choice and Innovation Online Act and Open App Markets Act.¹⁴ A number of these bills enable the US Federal Trade Commission (FTC) to designate a platform as a 'covered digital platform' based on the size of its US consumer or business user bases, net annual sales or market capitalisation, and position as a critical trading partner. However, these and other bills are yet to progress to the floor of either house for a vote, and their passage remains uncertain.

Despite a lack of progress in sector specific regulation, the Department of Justice and the FTC have been active in enforcing antitrust laws on technology companies and digital services, with the FTC in particular taking a forward-looking approach to new technology when examining potential issues with mergers.

Some action on digital regulation has been taken at a state level, with California passing the *California Consumer Privacy Act*, which took effect in 2020.¹⁵ This allows users to request the deletion of their data and obliges companies to disclose data collection and to provide equal pricing and service.

¹¹ Competition and Markets Authority, *Facebook Inc (now Meta Platforms, Inc)/Giphy, Inc Merger Inquiry*, 18 October 2022.

¹² European Commission, *Antitrust: Commission sends Statement of Objections to Apple over practices regarding Apple Pay*, 2 May 2022.

¹³ General Court of the European Union, *Press Release No 197/21*, 10 November 2021.

¹⁴ House Committee on the Judiciary, *House Lawmakers Release Anti-Monopoly Agenda for "A Stronger Online Economy: Opportunity, Innovation, Choice,"* 11 June 2021.

¹⁵ State of California Department of Justice, *CCPA Regulations*, 2021.

South Korea

In August 2021, South Korea amended its *Telecommunications Business Act* to require major app store operators such as Apple and Google to unbundle the use of their proprietary in-app payment systems from the use of app distribution services.¹⁶

Germany

Germany's antitrust laws are governed by the German Act against Restraints of Competition (ARC). In early 2021, amendments were made to these laws, the most significant being the ability for the Federal Cartel Office (Bundeskartellamt), to intervene early in instances where competition is threatened by large digital companies, and the ability to prohibit certain conduct, such as self-preferencing of services and manipulating data to impede new entrants into the market.¹⁷

Other amendments include more specific provisions for control of abusive conduct, with the inclusion of internet-specific criteria, the requirement to take into account the inclusion of access to data and intermediary power when assessing market power, companies being subject to merger control if they meet higher turnover thresholds and shortening the legal process by taking proceedings directly to the Federal Court of Justice for any appeals against decisions by the Federal Cartel Office.

Japan

The Act of Improving Transparency and Fairness of Digital Platforms came into effect in early 2021. It requires platforms defined by certain characteristics ('specified digital platforms') to disclose contract terms and make efforts to voluntarily adhere to procedures and systems based on the guidelines by the Minister of Economy, Trade and Industry.¹⁸ The Act requires the Minister to conduct a yearly review and publish the results on the disclosure of the designated platforms. Under the Act, the Minister can request the Japan Fair Trade Commission to take action against cases where they are in violation of the *Antimonopoly Act*.

In April 2021, platforms that facilitate online shopping (Amazon, Rakuten Group and Yahoo Japan) and operate app stores (Apple and Google) were designated. Following a report into Evaluation of Competition in the Digital Advertising Market, a Cabinet decision in July 2022 resulted in the designation of certain media-integrated and ad intermediary platforms.¹⁹

Singapore

In February 2022 The Competition and Consumer Commission of Singapore updated its guidelines to the *Competition Act 2004*.²⁰ The changes clarify issues related to market definition, market power and potential abusive conduct to reflect the developments in the digital era.

¹⁶ Korea Communications Commission, *National Assembly Passes Amendment to Telecommunications Business Act, Prohibits App Markets From Forcing Certain Payment Systems*, August 31 2021.

¹⁷ Bundeskartellamt, *Amendment of the German Act against Restraints of Competition*, 19 January 2021.

¹⁸ Ministry of Economy, Trade and Industry, *Key Points on the Act of Improving Transparency and Fairness of Digital Platforms*, 16 April, 2021.

¹⁹ Ministry of Economy, Trade and Industry, *Cabinet Decision*, 5 July 2022.

²⁰ Competition and Consumer Commission Singapore, *CCCS Revises Competition Guidelines for Greater Clarity and Guidance*, 31 December 2021.