



Government Response to ACCC Digital Platform Services Inquiry

ACCC 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.

The Government **supports in principle** this recommendation.

The Government is committed to protecting Australian consumers. The Government has already introduced legislation that strengthens our unfair contract terms law, as part of the *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* in November 2022. These laws:

- amend the *Competition and Consumer Act 2010* to increase the maximum penalty applicable for anti-competitive behaviour and certain breaches of competition consumer law;
- amend the *Competition and Consumer Act 2010* and *Australian Securities and Investments Commission Act 2001* to establish a civil penalty regime prohibiting the use of, and reliance on, unfair contract terms in standard form contracts; and
- expand the class of contracts that are covered by the unfair contract terms.

Additionally, the Government has released a Consultation Regulation Impact Statement (Consultation RIS) on options to address unfair trading practices. The Consultation RIS seeks further evidence on the nature of unfair trading practices and the extent of any consumer and small business harm arising from potential gaps in the Australian Consumer Law.

The Government is committed to ensuring Australian consumers are treated fairly and can conduct business successfully.

ACCC 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 of additional verification of advertisers of financial services and products
 - improved review verification disclosures of 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.


The Government **supports in principle** this recommendation.

The Government is committed to combatting scams and online fraud, and provided \$86.5 million in the 2023-24 Budget for anti-scam measures, including the establishment of a new National Anti-Scam Centre. The Centre, launched on 1 July 2023, will bring together the private sector, regulators, and law enforcement in the fight against scams. The Government is exploring the development of industry codes to outline the responsibilities of the private sector, including digital platforms, in relation to scam activity.

The Government will also do more work to identify and classify the issues arising from harmful apps to ensure they are addressed. Further specific obligations on platforms to address concerns relating to harmful apps could be part of an App Marketplaces code under any new competition regime.

Online reviews are a valuable source of information for consumers and it is important that such information is genuine and reliable. Fake reviews can mislead consumers and result in significant harms for Australian businesses. The Government will consider appropriate and balanced solutions that take account of potential compliance burden and practical implications for both the digital platforms and those that rely on online reviews. This will include considering whether disputes over fake reviews could be effectively managed through proposed dispute resolution processes as well as potentially utilising misinformation and disinformation and scams regulation.

The Government accepts the ACCC's findings that digital platforms do not have adequate processes for consumers to raise issues and concerns experienced online. A lack of effective dispute resolution processes can reduce trust and confidence in digital platform services and



prevent Australians from taking full advantage of the benefits provided by digital platforms. The Government will undertake further work to develop internal and external dispute resolution requirements by calling on industry to develop voluntary internal dispute resolution standards by July 2024.

The Government is committed to ensuring that Australian consumers have access to appropriate pathways to voice their concerns and resolve issues they face online.

ACCC 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.

ACCC 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.
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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 Government **supports in principle** recommendations 3 and 4.

The ACCC presented a strong case for the development of a new ex ante digital competition regime that addresses anti-competitive behaviours of certain digital platforms.

Under a new regime, some digital platforms could be designated to service-specific codes, which could include imposing targeted obligations and prohibitions relating to specific types of anti-competitive conduct.

The evolution of digital platforms has provided significant benefits for consumers and businesses, reducing the costs of a variety of transactions and providing new services, often at low or no direct costs. However, the Government agrees that due to the unique nature of the digital economy, some platforms play a gatekeeper role for consumers and businesses and have entrenched market power in particular services. This has resulted in anti-competitive practices, such as self-preferencing products and services and the creation of other barriers to competition, which have affected consumer choice and bargaining power.

The introduction of any new ex ante regime would be a significant undertaking and it would be critical to develop a framework that ensures Australians continue to enjoy the benefits of the best technology in the world. Part of designing the new framework would include considering the broader allocation of powers for the regulator to enforce the regime and undertake roles under other reforms. This will include considering providing the ACCC with information-gathering powers to assist with preparing periodic reports to the Government under the News Media and Digital Platforms Mandatory Bargaining Code.

The Government will task Treasury to commence work on the design and form of a possible legislative framework which could enable the creation of service-specific codes. The outcomes of this work would be informed by extensive consultation on an appropriate framework and governance model. In line with the evidence presented by the ACCC, the Government would take a harms-based approach to prioritising this work.

The Government is closely monitoring international developments and will work with our international counterparts to ensure any Australian framework is consistent and cohesive with overseas approaches. International experience has demonstrated the complexities in achieving the appropriate and effective regulatory approach, and we call on digital platforms to work with government in good faith.