

Amazon Australia Submission to Treasury

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

8 March 2023

Amazon Commercial Services Pty Ltd (**Amazon Australia**) welcomes the opportunity to respond to Treasury's paper on "*Digital Platforms: Government consultation on ACCC's regulatory reform recommendations*" (**Treasury Consultation Paper**).¹

INTRODUCTION AND OVERVIEW

Amazon Australia serves customers in Australia through the Amazon.com.au store (**Australian Store**) and our customer-centric focus means we work hard to provide customers with the widest possible selection of products at competitive prices with a convenient delivery experience. Our business is centred on the sale and delivery of physical products to customers, which relies on warehousing and physical logistics operations across Australia. We have made significant investments, contributing to the Government's plans for the future digital economy and providing high quality jobs to Australians.

Since Amazon Australia's entry into Australia in December 2017, we have enhanced competition in the retail sector, evident in the investments from incumbent retailers to deliver an improved customer experience through their own new general merchandise retail offerings. We face significant competition from local retailers of all sizes and across all channels, from eBay and Catch to retailers like Bunnings, Woolworths and others, which are rapidly increasing their online presence and combining physical and digital capabilities into "omnichannel" offerings.

In Amazon Australia's view, it is critically important to put the ACCC's recommendations in its DPSI 5th Report in context.

- The ACCC's DPSI "Interim report No. 4 – Online Retail Marketplaces" (**DPSI 4th Report**) found Amazon Australia is one of many retailers in the retail sector, and that no online marketplace holds a dominant position in Australia.²
- Digital service providers are highly differentiated from each other, and operate in very different sectors of the Australian economy from communications to tourism to retail. The dynamics of the retail sector are such that an undifferentiated one-size-fits-all regulatory approach is likely to result in unintended consequences and costs for consumers.

Amazon Australia considers there is insufficient evidence of consumer harm in the retail sector to justify a new regulatory framework.

¹ Those recommendation were set out the ACCC's Digital Platform Services Inquiry, Interim report No. 5 – Regulatory reform (**DPSI 5th Report**).

² See DSPI 4th Report, page 11, see also p 12 with regard to breakdown of online sales ("... *eBay Australia's share of overall online sales in Australia is currently approximately 10% while Amazon Australia's share is approximately 2.5%.*") and 19-21 on market shares in retail generally ("*the major online marketplaces had much lower sales compared to major retailers, whereas eBay's annual sales were higher than Big W, David Jones, Myer, Officeworks, and Target.*"). The ACCC noted that growth of online sales was higher compared to major retailers. However, it should be noted that the period for which the ACCC collected data was atypical, as it ended at the height of the COVID-19 pandemic, during which there was a spike in growth of online sales, which reverted to trend during 2022.

However, if Treasury considers there are problems in the sector, Amazon Australia agrees with Treasury's observation that "the threshold question" is whether there are alternatives to a new ex-ante regulatory framework. With respect to the retail sector, Amazon Australia considers there are industry-wide alternatives and looks forward to having an opportunity to discuss these with Government. Focussing on the available alternatives better utilises existing legal frameworks which avoids the need to import a wholly new and untested legislative framework into Australia.

THRESHOLD QUESTION

Amazon Australia shares the Treasury's view that the "*threshold question*" is whether there is a case for a digital-specific regulatory framework for the retail sector in Australia or whether there are alternatives that will deliver the policy outcomes sought while avoiding the complexity and uncertainty that can arise when new regulatory frameworks are introduced.³ Indeed, the first principle of the Australian Government's March 2023 "Guide to Policy Impact Analysis" provides that "[p]olicy makers should clearly demonstrate a public policy problem necessitating Australian Government intervention, and should examine a range of genuine and viable options, including non-regulatory options, to address the problem".⁴ In addressing that threshold issue, we agree Treasury should consider whether the proposed regulatory framework is appropriate in the retail sector by evaluating whether it:

- addresses specific identified harms in the relevant sector, and if so, how well it would target the source of those harms;
- would be durable (i.e. limited need for future amendment);
- would minimise compliance and administration costs for businesses and regulators; and
- avoids unintended consequences a new regulatory framework could create that harm consumers and competition, including reduced innovation, entry, investment, service quality, and increased prices.

Amazon Australia agrees with Treasury's focus on testing whether a new regulatory framework in the retail sector is supported by clearly defined consumer harms that have been the subject of detailed inquiry and investigation, with clear evidence that the costs of regulation do not outweigh the perceived benefits.⁵ Treasury's questions align with the Office of Impact Analysis (OIA) guidelines⁶ highlighting the importance of clearly identifying: (i) the problem that needs to be solved, and (ii) the costs and benefits (including the economic, social and environmental costs and benefits) when considering any new regulatory framework, as discussed further below.

In considering this threshold question, it is important to appreciate the economic characteristics most often attributed to digital businesses are not present for online retail stores. For instance, customers make retail purchases on a transaction-by-transaction basis with many alternatives and enjoy the benefit of online retail without needing to subscribe or build an online profile or presence. Given the availability of product and pricing information and ability to locate alternative retailers, the addition of more customers or sellers to a retail store does not mean alternatives are not equally attractive. Barriers to switching across retailers are relatively insignificant: the fact that a customer buys a pair of headphones on Amazon's Australian Store today does not mean they are locked-in when shopping for jeans tomorrow. Furthermore, Amazon Australia earns revenue through the sale of physical goods and services to customers and Selling Partners. We use data about shopping trends in our store to promote products that we believe customers will want and to highlight offers through best-seller lists, recommendations and to protect against fraud. We also share Australian Store data with Selling Partners to help them increase sales, manage inventory, process payments, track shipments,

³ Treasury Consultation Paper, p 6.

⁴ Available at: <https://oia.pmc.gov.au/sites/default/files/2023-02/oia-impact-analysis-guide-nov-22.pdf>

⁵ Treasury Consultation Paper, p 6 – "*Treasury is particularly interested in comment and evidence on the likely effectiveness and efficiency of the proposed policy response, including ... Whether it minimises compliance costs for industry and consumers and administration costs for government, including the costs of red tape and regulatory uncertainty.*"

⁶ Available at: <https://oia.pmc.gov.au/resources/guidance-impact-analysis/7-impact-analysis-questions>.

create reports etc.⁷ While the ACCC's DSPI 5th Report refers to taking into account "*relevant market conditions, business models and practices of platforms providing those services*"⁸ that exercise has not been undertaken properly, resulting in recommendations applicable for all platforms when there are material differences between platforms.

AMAZON AUSTRALIA AND THE RETAIL SECTOR

Amazon's mission is to be Earth's most customer-centric company and best employer. Our corporate philosophy is to work backwards from what customers want, and to continuously innovate to provide them with better service and more selection. We apply this approach across all of our businesses, premised on the belief that if customers have good experiences, they will choose to return to Amazon among the many choices they have.

Customers on the Australian Store have many retail options and shop every day across many other stores, so we have strong incentives to create a trusted shopping experience. If customers see benefits in shopping with Amazon Australia, they will choose to return. We know that trust is something that takes a long time to earn, but can be lost with one bad experience. Two examples of our commitment to customer trust are our zero tolerance for the sale of counterfeit or unsafe products in the Australian Store and Amazon Australia's participation as a founding signatory to the ACCC's Product Safety Pledge. The Pledge was acknowledged in the DPSI 4th Report as an important example of online retailers working with the regulator to voluntarily improve consumer protection outcomes.⁹

Amazon's customer-centric approach first led Amazon.com to invite Selling Partners onto its store in 1999, driven by our desire to provide customers with greater selection and choice. Today, Selling Partners are integral to delivering our customers the wide selection they enjoy. Globally, our Selling Partners have been adding significantly more products to our store's selection than Amazon itself, and the sales of Selling Partners now represent more than half of sales in the store.¹⁰ Selling Partners are crucial to our success in Australia as well. We have powerful economic and commercial incentives to help them grow their business in the Australian Store and invest heavily to support them to ensure that they are successful. For example, we develop tools, such as APIs, and continually build new resources to support them because when our Selling Partners succeed, it creates a great shopping experience for customers.¹¹ It is estimated that there are now more than 14,000 Australian businesses selling on Amazon globally, and those businesses have created more than 20,000 jobs in Australia to support their Amazon-related business activities.

It is in Amazon Australia's interest to continuously enhance the value, competitiveness and customer experience of the Australian Store as a whole, which benefits Amazon Australia, Selling Partners, and consumers alike. All stakeholders benefit from our focus on customer trust and the many improvements we bring to customers through the Australian Store.

As with many other retailers, Amazon Australia's business is centred on the sale and delivery of physical products to customers, which relies on warehousing and physical logistics operations across Australia. Amazon Australia's fulfilment network provides significant and growing employment opportunities and economic investments in Australia. Our local fulfilment network spans five Fulfilment Centres (**FCs**) in Brisbane, Perth, Sydney and Melbourne, with a robotics FC in Kemp's Creek, completed in late 2021. We also employ thousands of people directly in a variety of roles, from highly skilled and specialist positions to entry level jobs.

⁷ We have a longstanding commitment to privacy and data security, and we are not in the business of selling personal data. Amazon's privacy notice (www.amazon.com.au/privacy) describes what information Amazon collects and how that information is used

⁸ See DSPI 4th Report, p 110.

⁹ See DPSI 4th Report, p 49.

¹⁰ Globally, third party units represented 59% of units sold in Q4 2022, the highest percentage ever. Third party sellers have been growing twice as fast as Amazon's own retail sales in Amazon's stores.

¹¹ For example, over 1000 Apps from more than 1000 different developers are available from Amazon Australia's Selling Partner Appstore to help third party sellers grow and automate their business using Amazon supplied free APIs.

Retail is intensely competitive

Amazon Australia operates in an intensely competitive retail sector.¹² Retail has been the 10th fastest growing sector over the past five years comprising over 156,000 retailers.¹³ Generally low margins is further evidence of the competitiveness of the retail sector.¹⁴

The opening of our Australian Store has substantially contributed to competition in the retail sector by giving consumers an additional retail option in addition to the numerous options they already had and our innovation and focus on providing a great customer experience has incentivized many existing incumbent retailers to invest in and deliver an improved customer experience. Many of our competitors (including Wesfarmers and Woolworths) are among the largest corporations in Australia. Over the five years since our entry, they have expanded their retail operations by developing their own online and marketplace stores (eg the Myer, Woolworths, and Bunnings marketplaces). We are also seeing new retailers constantly entering the sector.

The ACCC confirmed the competitiveness of Australia's retail sector in the DPSI 4th Report, with findings including:

- “[C]onsumers have a number of options” and that there is a high degree of multi-homing by consumers in retail;¹⁵
- retail transactions are generally one-off decisions, and given the range of choice customers have, they will generally only return to a retail store if they have had a good experience;
- Selling Partners multi-home of the top 100 sellers on Amazon, Catch, eBay Australia and Kogan that the ACCC examined, “43 operate on two or more online marketplaces”;¹⁶
- even if one only examines online retail sales, the majority (64%) of online purchases in late 2021 were made through the website of bricks and mortar retailers;¹⁷
- Amazon Australia's sales accounted for a very small proportion of online sales (less than 2.5%);¹⁸ and
- based on data collected from retail industry participants, sales by physical retailers such as Bunnings or BigW were multiples larger than Amazon Australia's sales during 2020-21.¹⁹

Accordingly, across the whole Australian retail sector, Amazon Australia accounts for a fraction of all retail sales.²⁰

The ACCC's findings align with analysis from Houston Kemp, an economic consultant engaged by Amazon Australia. Their report on *Competition in the Retail Sector* (**Houston Kemp Report**) found that there are several enduring factors that drive the intensity of retail competition in Australia (now and into the future):

- consumers can easily access information on available products, compare offers and purchase the product they prefer;

¹² DSPI 4th Report, p 2; Houston Kemp, *Competition in the Retail Sector*, 2022, pp i - ii (Report commissioned by Amazon Australia) (**Houston Kemp Report**). Houston Kemp's Report was provided to the ACCC and is available at [https://www.accc.gov.au/system/files/Digital Platform Services Inquiry - General Online Retail Marketplaces Submission - Amazon Australia - Public - 24 November 2022.pdf](https://www.accc.gov.au/system/files/Digital%20Platform%20Services%20Inquiry%20-%20General%20Online%20Retail%20Marketplaces%20Submission%20-%20Amazon%20Australia%20-%20Public%20-%2024%20November%202022.pdf).

¹³ Australian Bureau of Statistics (ABS), “Counts of Australian Businesses, series 8165.0, June 2018-June 2022” (available at: <https://www.abs.gov.au/statistics/economy/business-indicators/counts-australian-businesses-including-entries-and-exits/latest-release>). The ‘entry rate’ of new retailers into the retail sector is also higher than the average for the economy. - see Houston Kemp Report, p 20.

¹⁴ Retail net and gross margins declined for retailers between 2006 and 2018 - Reserve Bank of Australia, Carter, M, *Competition and profit margins in the retail trade sector*, June 2019, pp 115-116.

¹⁵ DPSI 4th Report, p 78.

¹⁶ DPSI 4th Report, p 80.

¹⁷ DPSI 4th Report, p 19.

¹⁸ DPSI 4th Report, p 12.

¹⁹ DPSI 4th Report, pp 19-21.

²⁰ ABS data supports the finding: online sales accounts for approximately only 10% of the total (food and non-food) retail sector (see ABS, Retail Trade, Australia, “Proportion of industry group turnover online” available at: <https://www.abs.gov.au/statistics/industry/retail-and-wholesale-trade/retail-trade-australia/latest-release>).

- there are a large number of retailers of various types and sizes, with overlapping or comparable product ranges operating across various retail channels;
- manufacturers, brand owners and third-party sellers have a large number of retailers and channels to choose from and/or can sell their products directly to consumers; and
- entry and expansion for retailers is relatively easy, particularly given the low costs of entry associated with online channels, leading to many new retailers launching businesses and channels each year.²¹

The Houston Kemp Report found that online retailing has brought new opportunities for business and increased options and improved prices for consumers without diminishing the benefits customers still seek out from bricks-and-mortar shopping experiences. Further, it found the rise in “omnichannel” retailing, where existing bricks-and-mortar retailers combine their significant physical presence with online retailing, has further increased retail competition.²² As illustrated in the Houston Kemp Report, all stages of retail operations - from accounting and inventory management, through promotion, to payment and logistics - are served by multiple providers.

Australian retail data also supports a view that the sector is highly competitive, characterised by a large number of participants who are able to easily and rapidly enter the sector. The Australian Bureau of Statistics reported there were around 145,000 Australian retailers operating in June 2021, and this number grew to just over 156,000 by June 2022.²³ There are good reasons for this continued growth. Barriers to entry and expansion are low and falling, particularly in relation to online retailing.²⁴ Where once it may have been challenging for a small business to build an online presence or digitise its operations, businesses in the 2020s can choose from many off-the-shelf and custom options.

The Australian Store is just one of a growing number of alternative retail options available to Australian consumers and sellers, including an increasing number of online stores and multichannel retailers such as Wesfarmers, JB-HiFi, The Good Guys, Myer, David Jones and Woolworths.

The DPSI 4th Report found that no retailer has a position of market power. Further, the digitisation of our economy has and will continue to reduce any distinction between online and offline shopping further driving the competitiveness of the retail sector, and Amazon Australia welcomes this competition and the benefits it will bring to Australian consumers.

Amazon Australia and small business

Amazon helped pioneer a retail model where SMBs can sell alongside Amazon. Since launching our Australian Store in 2017, we have provided SMBs with an opportunity to reach new customers to grow and expand, driving greater competition, greater selection and competitive pricing for customers across Australia. Amazon Australia has programs designed specifically to help SMBs grow and compete in ways that would otherwise only be possible for much larger businesses. For example, our Launchpad program, started in 2019, gives innovative Australian SMBs grants, business advice, marketing and global selling opportunities.²⁵ Several Launchpad recipients have gone on to create internationally successful businesses, such as Lyre’s Non-Alcoholic Spirit Company, which has since opened production facilities in the US. The benefits from this success are felt across the economy, from increased exports and jobs.

²¹ Houston Kemp Report, p i and pp 15-16.

²² Houston Kemp Report, pp 15-16.

²³ ABS, “Counts of Australian Businesses” (see above, note 13).

²⁴ Houston Kemp Report, pp 17-18.

²⁵ See: <https://sell.amazon.com.au/launchpad>.

Amazon Australia has brought innovation and contributes to Australia's digital capability through investment

Amazon Australia makes significant investments in Australia and is a significant enabler of the Government's plans for the future digital economy.²⁶ Since Amazon opened its first business in Australia in 2011, we have invested over \$8.4bn in physical facilities, employees and related investments. Amongst other things, these investments ensure we can manage inventory in our FCs and deliver the goods customers have purchased to their homes in as fast and efficient way as possible.

THE TASK AHEAD AND AUSTRALIA'S REGULATORY TOOLBOX

Treasury's Consultation Paper seeks stakeholders' views on whether the Government should endorse the ACCC's recommendation to introduce a new competition and consumer protection regulatory framework.²⁷ Before making any such recommendation, Treasury should examine whether there is a problem that requires legislative intervention, in line with the Regulatory Impact Statement (RIS) process.

The OIA and the RIS process

Australia's well-established RIS process, overseen by the Office of Impact Analysis (OIA) (formerly the Office of Better Regulation) establishes sound principles for legislative reform. Specifically, the "Australian Government Guide to Policy Impact Analysis" (Impact Analysis Guide) sets out the following principles (emphasis in original):²⁸

1. Policymakers should *clearly demonstrate a public policy problem necessitating Australian Government intervention*, and should examine a range of genuine and viable options, including non-regulatory options, to address the problem.
2. *Each proposal must include a clear set of objectives* – these are used to select the best option and to shape evaluation.
3. *Regulation should not be the default option*: the policy option offering the greatest net benefit for Australia — regulatory or non-regulatory — should always be the recommended option.
4. Policymakers should *consult in a genuine and timely way with affected businesses, community organisations and individuals*, as well as other stakeholders, to ensure proposed changes deliver the best possible outcomes for Australia.
5. *The information upon which policy makers base their decisions must be published at the earliest opportunity*.
6. *The most significant policy proposals must undergo a post-implementation review* reflecting on the extent to which the stated objectives have been achieved to ensure settings remain focused on delivering the best possible outcomes for Australia.

The OIA, in addition to these principles requires any proposal to be accompanied by an "Impact Analysis", and sets out seven Impact Analysis questions.²⁹ Amazon Australia considers there are significant elements of the Impact Analysis framework that are not evident in the DPSI 5th Report or the Treasury Consultation Paper, and should be considered in a retail context. These include (using OIA numbering): (Q1) identifying the problem in the retail sector that requires some intervention³⁰, (Q3) the alternative options available to Treasury to solve that problem;³¹ and (Q4) the relative costs and benefits of the proposed regulation policy options on

²⁶ AusTrade " Amazon Web Services - digitech", (available at: <https://www.globalaustralia.gov.au/success-stories/amazon-web-services-digitech#:~:text=Helping%20customers%20transform%20through%20technology,people%20across%20all%20major%20cities.>)

²⁷ Treasury Consultation Paper, p 6.

²⁸ March 2023. See: <https://oia.pmc.gov.au/sites/default/files/2023-02/oia-impact-analysis-guide-nov-22.pdf>.

²⁹ See <https://oia.pmc.gov.au/sites/default/files/2023-02/oia-impact-analysis-guide-nov-22.pdf>, page 9.

³⁰ Impact Analysis Guide, p 14-16. Page 14 provides: "Are you addressing an imbalance of market power generating inefficient outcomes? Are you trying to improve the availability or quality of market information, goods or services? Is there undesirable or avoidable market instability or inequality? How serious is it? Can you be sure the market is unlikely to come up with a solution by itself?"

³¹ Impact Analysis Guide, p 20-23. Page 21 directs: "Above all, keep in mind, presenting one option as a fait accompli is not acceptable."

customers, sellers (SMBs) and other retailers.³² The need to precisely define the problem is also a key requirement of the Australian Government Best Practice Regulation Handbook, which provides that: “*direct government regulation should be considered when, among other things: the problem is high-risk, of high impact or significance; the community requires the certainty provided by legal sanctions; or there is a systemic compliance problem with a history of intractable disputes and repeated or flagrant breaches of fair trading principles, with no possibility of effective sanctions*”.³³

As Treasury’s Consultation Paper observes “*consideration would need to be given to where the issues with the greatest impact are occurring*”.³⁴ The ACCC’s DPSI has examined a number of digital services to date and it is important to note the sector-specific nature of the DPSI reports. In respect of the retail sector, there is no evidence of a problem that necessitates a new regulatory framework. The ACCC, as part of the DPSI, examined online retail between July 2021 and April 2022 and its DPSI 4th Report concluded that “*none of the online marketplaces has reached a dominant position in Australia, unlike in other countries*” and “*Amazon Australia’s sales remains significantly lower than eBay Australia’s and also well below the sales of many large Australian online retailers such as Big W, David Jones, Kmart, Myer or Target*”³⁵. The DPSI 4th Report also found no evidence of systemic compliance problems under existing competition and consumer laws.³⁶ Further, to the extent there are consumer law concerns in relation to the retail sector, the Government has already introduced reforms (e.g. the unfair contracts amendments) and the Government has accepted the ACCC’s previous recommendation to introduce an unfair practices prohibition. We note this is in addition to the already-extensive enforcement powers the ACCC can exercise under existing consumer protection laws.

In short, there is insufficient evidence of consumer harm in the retail sector to support a new regulatory framework. The evidence, to the contrary, points to a very high degree of competition with all attendant benefits for Australian consumers. Even if there were grounded concerns, the RIS framework requires a cost benefit analysis of the impact a new regulatory framework would have on Australian consumers. This is an essential input to any consideration of whether to endorse a wholly new and experimental regulatory framework.

Additional considerations to those raised by the OIA

If, despite the lack of evidence of harms and lack of a cost benefit analysis of the ACCC’s proposals, Treasury was minded to recommend a new regulatory framework which could apply to the retail sector, the following factors should also be considered:

1. **Regulation should not undermine competition in the retail sector:** As indicated above, the ACCC has raised some concerns, but there is no finding that consumers in the retail sector are being harmed (aside from the issue of scams, as we discuss further below).³⁷ Introducing new digital-specific regulation for the retail sector would therefore be likely to distort competition by imposing an unnecessary regulatory burden on one type of business within the sector. That approach would have a detrimental impact on innovation, increase legal uncertainty, and ultimately result in consumers losing out.
2. **Regulation has risks and costs, particularly in a changing regulatory environment:** As the OIA questions point out, the costs of regulation must be considered in any reform. Where there are multiple reforms underway, there is an increased risk that the costs will outweigh sought after benefits. Issues such as privacy, online safety, unfair practices, payments reform, merger proposals and some aspects of cultural policy are being considered by a number of regulators and/or the Government. There is the potential for

³² Impact Analysis Guide, p 24-30. Page 25 sets out a range of relevant factors to consider, including “*Market intervention. Restrictions on competition, market entry or access can have implications for supply and demand with detrimental impact on prices, choice, quality and availability.*”

³³ Australian Government, Best Practice Regulation Handbook (2010), 34–35.

³⁴ Treasury Consultation Paper, p 13.

³⁵ DPSI 4th Report, p 11; see also ACCC, <https://www.accc.gov.au/media-release/concerning-issues-for-consumers-and-sellers-on-online-marketplaces>.

³⁶ DPSI 4th Report, p 13 - “*... the ACCC has not identified the same competition concerns with online marketplaces as it has with other digital platform services*”.

³⁷ DPSI 4th Report, p 13.

some of the ACCC's recommendations (such as rules regulating access to data) to conflict with reforms already underway or those being proposed. Sufficient time should be allowed for the complexity of the reforms underway to be assessed and so that the risk of overlapping and potentially contradictory reforms leading to unintended consequences.

3. **Consumer harms are not digital only:** Scams, fake reviews, and unfair practices are prevalent throughout the economy so reforms that only address "digital" businesses would not achieve their objectives and would create sectoral distortions.
4. **Competition concerns fail to take account of different competitive dynamics across different industry sectors:** A broad-brush approach to regulating "digital" activities in an increasingly digitised economy risks ignoring fundamental differences. In the retail sector in particular, the interchangeability between online and offline channels, and the prevalence of omnichannel retailers means all retailers should be subject to the same regulatory requirements and costs to avoid tilting the playing field and reducing the benefits competition brings to the sector. Treasury's Consultation Paper observed that the adoption of a new regulatory framework might come with risks and involve significant implementation challenges which could compromise the potential benefits, while introducing additional regulatory complexity and uncertainty.³⁸ Treasury's concerns do arise in the retail sector and given there are alternatives that Treasury could explore, the retail sector should be exempt from any new proposed regulatory framework.

ALTERNATIVES

Amazon Australia appreciates the significance of this consultation and we welcome the opportunity to work with Treasury on concerns specific to the retail industry, including to identify whether there are alternatives that could address those concerns. It is fundamental to Amazon Australia's customer obsession that we innovate and deliver on our promises to build trust with our customers and business partners. We believe working in a constructive manner with Treasury will enable us to continue to deliver benefits to Australian consumers.

ACCC DPSI 5th Report competition recommendations

As discussed, the retail sector is highly competitive and there is no single large dominant retailer. Rather, the sector is highly fragmented and it is unlikely that any retail operator could achieve an enduring incumbency advantage.³⁹ In line with the Impact Analysis framework described above, to the extent Government has concerns regarding the retail sector, Amazon Australia looks forward to engaging with Treasury to understand the particular problem Treasury is trying to solve in the retail sector and to provide additional information where helpful. In its Consultation Paper, Treasury asks "*Are there alternative regulatory or non-regulatory options that may be better suited?*"⁴⁰ For the retail sector, we believe that there are alternatives (as proven by the success of the voluntary Food and Grocery Code of Conduct) and welcome the opportunity to engage with Treasury on potential solutions to identified problems, including through the existing CCA framework.

Accordingly, Treasury should defer endorsing the ACCC's recommendations for a new regulatory framework that could apply to the retail sector while it works with retail stakeholders, including Amazon Australia, to understand the available alternatives.

ACCC DPSI 5th Report consumer recommendations

Treasury notes that the ACCC's first consumer law recommendation with regard to an economy-wide prohibition on "unfair practices" is the subject of other policy processes. To the extent the Government supports such a wide-ranging prohibition, time should be allowed for this reform to take effect before considering whether digital-specific reforms are needed.

³⁸ Treasury Consultation, p 6.

³⁹ DPSI 4th Report, pp 2 and 11; Houston Kemp Report, pp i - ii.

⁴⁰ Treasury Consultation, p 6.

Reviews abuse and scams

Treasury has raised concerns regarding reviews abuse and scams in respect of digital businesses. Globally, Amazon has invested heavily in measures to protect consumers and our Selling Partners from reviews abuse and scams. Globally, in 2021 we employed more than 12,000 professionals to address fraud and abuse, including fake reviews. Amazon Australia has a clear interest in ensuring that information our customers receive in our Australian Store is trustworthy. Among other things, we use machine learning tools and human intervention to identify problems and have taken legal action to shut down fake review brokers. We also work with social media and other online sites to report sources of fake reviews.

In relation to scams, we are working closely with the ACCC's Scamwatch team and other regulators in Australia and around the world. This includes engaging with the ACCC in the establishment of the National Anti-Scam Centre – a very welcome Government initiative. We believe that any responsible businesses should commit to a similar cooperative approach, as scams bring no benefit and impose significant costs directly on their business and indirectly to their customers. We urge the Government to build on these approaches by establishing mechanisms to develop practical solutions to educate consumers, prevent and disrupt scams, and to share information on achieving redress for scam victims. We have experience with similar collaborative approaches that have worked well in other countries, such as a recent project addressing impersonation scams with the Better Business Bureau in the US.⁴¹

We also note that scams (particularly impersonation scams) do not rely on the services operated by digital businesses and are not specific to any one sector. Rather, while scammers misuse trademarks, use spoofing, and take advantage of consumers, their conduct occurs off-site. As Scamwatch reported in 2022, for example, scams involving false billing and phishing scams via text or phone imposed greater losses than online shopping scams.⁴² Moreover, scams often involve a combination of telecommunications services (phone calls and texts), online communications (emails), financial institutions (for the transfer of funds) and even delivery or other physical elements (false billing for goods). The cross-sectoral nature of scams and fake reviews further underlines the need for an economy wide solution, as opposed to a digital-only solution. By way of example, in 2022 over 239,000 scams were reported to the ACCC, including in relation to investment, dating and romance, identity theft, jobs and employment and others.⁴³

Dispute resolution

Amazon Australia focuses on responsive and constructive engagement with customers to resolve any issues or concerns they may encounter through their shopping experience. We offer customers a range of options in addition to their ACL rights to address any problems with their purchases in the Australian Store, whether from Amazon Australia or a Selling Partner. Customers can return most new, unopened items fulfilled by Amazon Australia within 30 days of receipt of delivery for a full refund of the price, including for change of mind. Where there is a problem with a product fulfilled by Amazon Australia, the customer can contact Amazon Australia customer service outside the return window for an appropriate remedy. Products can also be returned under the 90-day A-to-z Guarantee if the customer purchased a product sold and fulfilled by a Selling Partner and did not receive the product or if they have another problem. We also focus on responsive communications with our Selling Partners. With this in mind, we provide Selling Partners with chat and email support so they can share feedback, troubleshoot, or raise concerns.

The DPSI 5th Report recommended an external ombuds scheme specific to digital businesses. In line with the RIS guidance described above, Treasury should consider the available alternatives. In the retail sector, there are already many regulatory and other bodies that assist consumers and small businesses resolve disputes (including State Fair Trading bodies, the Small Business Ombudsman and the Small Business Commission).

⁴¹ See <https://www.bbb.org/all/bbbi/impersonation-scams>.

⁴² Scamwatch statistics for 2022 from: <https://www.scamwatch.gov.au/scam-statistics?scamid=31&date=2022> (Phishing scams via text and phone (\$17.3M) and false billing (\$25.3M) v online shopping scams totalling \$9.3M.)

⁴³ Scamwatch Statistics for 2022. See <https://www.scamwatch.gov.au/scam-statistics?scamid=all&date=2022>.

There is strong case for assessing and streamlining these existing mechanisms to reduce duplication and improve consistency and predictability. Industry participants should be given the opportunity to design an industry-led solution before the additional cost and burden of an externally managed scheme is imposed on industry and the Government arising from the need to create and fund one or more new ombuds.

CONCLUSION

As identified by the OIA⁴⁴ and Treasury in its Consultation Paper,⁴⁵ before endorsing a new regulatory framework, Treasury should consider whether there is a specified harm that requires a legislative solution or whether there are alternatives. The retail sector, within which Amazon Australia operates, involves the sale of physical products that many suppliers provide and customers shop for across many physical and online stores. There is also evidence that many existing retail participants operate across all retail channels, physical, online or both. Customers shop omnichannel and sellers list on multiple marketplaces and across various retail channels, and in many cases those same sellers sell their products through their own retail stores.⁴⁶ This is reflected in the findings of the ACCC's DPSI 4th Report. Accordingly, there is no clear evidence of a retail problem that supports a wholly new regulatory framework.

The threshold question identified by Treasury of whether there is a case for a digital-specific regulatory framework should be addressed by considering: (i) the problem that needs to be solved, (ii) the costs and benefits of any new regulatory framework, and (iii) alternatives to the ACCC's recommendations.⁴⁷ For the retail sector Amazon Australia considers there are indeed existing mechanisms under the CCA for industry-wide alternatives that should be considered before recommending any new, costly regulatory frameworks. For example, voluntary industry-led codes and mandatory prescribed codes under the CCA have proven an effective solution across a range of industries where the ACCC has previously identified and raised concerns (including the electricity, dairy, and sugar, and wheat sectors).

Amazon Australia recommends that a low cost, low impact alternative to the regulatory frameworks recommended by the ACCC could be voluntary industry-led codes developed for the retail industry. The overwhelming interest businesses have in addressing concerns raised by Government means that such industry-led codes are more likely than mandatory regimes to achieve deep commitment and broad adoption.⁴⁸

⁴⁴ OIA, "7 Impact Analysis Questions", available at <https://oia.pmc.gov.au/resources>.

⁴⁵ Treasury Consultation Paper, p 6.

⁴⁶ For example, 91% of Australian consumers interact with brands via two or more channels (Think with Google, *Aussies and Kiwis are omnichannel shoppers: show up wherever they research and buy*, August 2021); 77% of people think the act of shopping means going into a physical store and 83% said a brand should have an online presence (Shopify's "This is a store" survey (available at: <https://insideretail.com.au/business/most-australians-still-see-shopping-as-in-store-not-online-shopify-202109>)).

⁴⁷ Treasury Consultation Paper, p 6.

⁴⁸ ACCC, "ACCC Voluntary Code Guidelines", July 2011, Page 4 (available at: https://www.accc.gov.au/system/files/Guidelines_for_developing_effective_voluntary_industry_codes_of_conduct.pdf); Independent Review of the Food and Grocery Code of Conduct – 2018 (Food and Grocery Code Review), p 5 (available at: <https://treasury.gov.au/sites/default/files/2019-03/ReviewoftheFranchisingCodeofConduct.docx>).