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15 February 2023

Dear Sirs and Madams,

**Digital Platforms: Government consultation on ACCC’s regulatory reform recommendations
Consultation Paper, December 2022**

DuckDuckGo is a privacy technology company that helps consumers stay more private online. With one download of our free all-in-one app, we offer seamless protection to our users, including Web and App Tracking Protection, Smarter Encryption, Private Search, Email Protection, and more. DuckDuckGo has been competing in the Australian search engine market for over a decade, where it is the third largest search engine behind Google and Bing.¹

We wish to voice our support for the ACCC’s proposals in its fifth interim report of its digital platform services inquiry. We believe that ACCC has a deep understanding of the search engine and browser markets, of digital ecosystems more widely, and the competitive imbalances that characterize them.² We encourage the Australian authorities to drive their work forward as quickly as possible.

The fundamental problem: search competition is skewed

The ACCC’s third interim report rightly highlighted that Google Search has an overwhelming market share in Australia and is the default search engine on most browsers and operating systems. Google has a strong incentive to invest in products that generate traffic for Google Search. In a similar vein, Apple and original equipment manufacturers (“OEMs”) using Android, as well as web browser developers, all have a strong incentive to agree to revenue shares with Google Search in return for default positions. As the ACCC knows, many of the competitive imbalances that exist within digital ecosystems stem from the market power of Google

¹ [Search engine referral report for Q4 2022](#), Cloudflare Radar

² We provide further explanations on search engine defaults and broader market considerations in our [White Paper on the Search Engine Market](#).



Search and Google's incentives to protect that market power. We cannot expect Google to act against its own commercial incentives without the intervention of strong new regulations that force it to do so.

A competing search engine like DuckDuckGo relies on browsers and operating systems to a very great extent in order to reach end users, and we rely on those end users having a free and informed choice regarding which products to use. At present, Google has an insurmountable advantage because its search engine holds the default position on most browsers and operating systems, and users can't easily switch.³ As a result, consumers do not have a free and informed choice. As the ACCC says in its third interim report:

"Given the critical role search engines perform in the online economy, the ACCC is particularly concerned with the low levels of contestability and competition in the supply of search engine services and the subsequent harms to businesses and consumers." (Executive Summary, page 10)

The solution: mandate fair and effective choice and switching architecture

We agree with the ACCC that search engines are critically important and we therefore believe this area should be prioritized in the new regime. We strongly support the ACCC's position that search engine choice screens should:

- be **free of charge**;
- be **surfaced on legacy as well as new devices**;
- **change the search defaults across multiple search access points**; and
- be subject to **thorough user testing and third party consultation**, and we would welcome the opportunity to collaborate with the ACCC on the same.

However, in order to have maximum impact, we also recommend that the choice screen:

- **applies to all operating systems (OS) and browsers with material market power and/or strategic position** as defined by the ACCC;
- is **designed in a user centric way that avoids dark patterns and default bias**;
- is be **presented periodically to users**, for example on major OS updates.
- is **available to users at all times in the device settings menu**. The assurance given to users that they will easily be able to later switch to another search engine will encourage users to try alternatives in the first place.

Further, we strongly support the ACCC's proposal to consider further measures to improve competition and consumer choice. We recommend that those further measures include:

³ [Dear Google: We Agree Search Competition Should Be "Only 1 Click Away" – So Why Is It 15+ on Android?](#), DuckDuckGo's SpreadPrivacy blog, Oct 14, 2020.



- **mandating a choice screen for browsers** (as well as search engines) so that the primary ways to search the web are covered. The browser choice screen should follow the same principles as the search engine choice screen (as set out above);
- **provisions enabling consumers to easily switch their search and browser default settings (e.g. one click switching)**. This could be achieved using a ‘switch screen’ surfaced at app download or when visiting a search engine website, and this choice needs to apply to all preset search access points (just like for the choice screen). It is a critical weakness of the existing EU Android remedy that users still have to go through 15+ clicks to switch the device’s default search engine when they download a new search app.

For further details of DuckDuckGo and other challenger search engine’s views on choice and switching, please refer to the [10 Principles for Fair Choice Screens and Effective Switching Mechanisms](#).

These issues have now been thoroughly investigated by many leading authorities such as the UK’s Competition and Markets Authority, the European Commission, and the US Department of Justice. They have all arrived at the same conclusions as the ACCC.

The need for a new regulatory regime

Existing competition law has been proven not to be fit for purpose when dealing with these relatively novel issues facing the digital sector. Competition law can only be utilized **after** a situation has arisen and harmful effects have occurred, at which point the investigation takes several years and is then normally subject to appeals for several more years, at the end of which the remedy process is unsatisfactory for imposing and revising effective measures that would improve outcomes for businesses and consumers. The European Commission’s high-profile cases against Google over the last decade have shown this to be true.

We believe the ACCC’s proposals, which are similar to the UK’s Digital Markets Unit proposals, are well designed. We have been involved throughout the UK process and are therefore very familiar with the UK’s framework and the reasoning behind it.⁴ We believe it represents a sophisticated, new style of regulation that will encourage innovation and investment in situations where it is currently discouraged due to gatekeeper power.

The ACCC’s designation process is wisely designed so that the regime does not unintentionally catch companies that do not need to be regulated. The Australian regulator can also prioritize the most obvious sources of competitive harm in the early years of the regime, leaving more marginal cases for later if it wishes to do so. However, given that the case for including certain companies within the remit of the regime is so obvious and well-established, we would encourage the drafters of the Australian regime to consider ways to short-cut the designation process for those companies so that the regime can start benefiting Australian society

⁴ See [DuckDuckGo’s submission to the CMA’s market study on mobile ecosystems](#) (March 2022) and, attached, our response to the UK government consultation on new pro-competition regime for digital markets.



as soon as possible. A quantitative threshold based on revenues and/or numbers of users would be an obvious way to do this, leaving the more detailed qualitative assessments for more marginal companies or activities.

The advantage of the ACCC's approach to rulemaking is that the rules can be tailored to specific situations, and they can evolve in step with the fast-moving nature of digital markets. New measures can be tested so that any aspects that do not work in practice, or distort competition, can be improved or abandoned. The regulator will be knowledgeable enough to make any difficult trade-offs between competing objectives and can ensure that its rules do not hinder innovation, all within the bounds set by the legislation.

The issues listed by the ACCC in Recommendation 4 are helpful and we agree they should be the initial focus of the regime. They are well grounded in the evidence from the ACCC's interim reports, and they encompass all of the main issues arising from DuckDuckGo's experience in digital markets. For example, rules made under the "exclusive pre-installation and default agreements" heading can address the way in which Google Search is the pre-installed default on most devices. Rules made under the "impediments to consumer switching" can help customers to switch easily between search engines and browsers, for example through the use of choice screens.

In order to be effective, the rules will need to be mandatory and supported by significant sanctions for non-compliance – not just the ability to fine companies, but also the ability to order conduct such as the development of new consumer interfaces. We believe the ACCC is the best entity to enforce the new regime, or alternatively a new body that includes many of those ACCC staff who understand digital markets so well. While we believe judicial oversight is always important for a fair regulatory regime, it is important that court processes do not hinder the regulator's ability to intervene swiftly in situations before small companies are pushed out of business or consumers are ripped off. The regulator will obviously need the explicit ability to gather data and documents that are held outside the jurisdiction, otherwise it will not be able to interrogate the algorithms, and investigate the conduct, of tech companies that are usually based abroad.

Time is of the essence

While we applaud the depth of the analysis being undertaken, we are disappointed about how long the process is taking. Businesses and consumers are currently harmed by the state of competition and consumer protection in the digital sector, and those harms will only be mitigated when the new digital markets regulations are in force.

The ACCC has been among the agencies that are leading the global discussion on these issues, and we believe the quality of the discussion will be increased if it retains that position. The European Union already has its Digital Markets Act in place, and the UK Parliament is expected to pass its Digital Markets, Competition and Consumer Bill during this calendar year. The Australian regime should therefore be pushed forward as quickly as possible to keep pace. The implementation of these new regimes will be more successful if the major market economies move forwards together to address these global issues.



We are grateful for the opportunity to give our views on the proposals and we wish you all the best for the next stage.

Yours faithfully,

A handwritten signature in black ink, appearing to read "Aurélien Mähl".

Aurélien Mähl
Senior Public Policy Manager