

27 September 2024

Director  
National Competition Policy Unit  
Competition Taskforce Division  
The Treasury

By email: [nationalcompetitionpolicy@treasury.gov.au](mailto:nationalcompetitionpolicy@treasury.gov.au)

Dear Madam/Sir

### **Response to Revitalising National Competition Policy Consultation Paper**

Free TV Australia (**Free TV**) welcomes the opportunity to provide a submission in response to the *Revitalising National Competition Policy* Consultation Paper (**Consultation Paper**). Free TV is the peak industry body representing all of Australia's commercial television broadcasters who provide Australian, trusted and free content across broadcast and digital platforms.

Competitive media and advertising sectors are good for all Australians, driving innovation in the delivery of public goods and promoting economic activity. In the case of Free TV's members, these public goods include trusted news and current affairs programs that reliably support Australian audiences and support Australian democracy; Australian entertainment that reflects our local culture; and, free coverage of sport that drives grassroots participation and social cohesion. Free-to-air television platforms are also vital in connecting advertisers with mass audiences to drive consumption of goods and services, thereby underpinning economic activity.

However, a range of inquiries and public policy review processes undertaken by Treasury and the Australian Competition and Consumer Commission (**ACCC**) over recent years have proven the effects of the market power and dominance of major digital platforms like Google and Meta in Australia on the media and advertising sectors. These processes have shown a suite of competitive harms that have and continue to warrant public policy and regulatory responses.

For example, the News Media Bargaining Code (the **Code**) was introduced to help rectify the negative consequences of this digital platform market power on the provision of trusted and accountable local news and current affairs. Free TV now urges the Government to use the powers it has under the Code to designate Meta, in light of Meta's announcement that it will no longer strike commercial deals with local media providers for use of news content.

Free TV has also strongly recommended that the Government expedite implementation of a framework for imposing ex ante obligations on digital platforms to address systemic or structural obstacles to effective competition. As set out below, the first priority should be dealing with the power of the major digital platforms with respect to advertising technology.

Free TV acknowledges that the National Competition Policy is an economy-wide framework to enhance competition across the provision of a wide range of goods and services, and that this process is looking

at renewal of relevant competition principles. However, in the context of the issues set out above, this submission is focused on Reform theme 5 in the Consultation Paper, leveraging the economic opportunities of data and digital technology. It sets out a number of specific topics that should be considered as Government revitalises the National Competition Framework to ensure that it addresses contemporary economic and competition issues.

### **Generative AI**

#### *Recommendations*

- Regulation should require transparency about the materials ingested by AI
- Regulation should support remuneration being paid to local media businesses for the use of their content by AI
- Strong intellectual property protections should be maintained for both inputs to AI and outputs from AI models
- Intellectual property protections should not be weakened through exemptions that would entrench the market power of global digital businesses

As the Consultation Paper notes, digital technology is crucial to the productivity and growth of most Australian businesses. This includes media businesses and includes through the use of artificial intelligence (AI) to enhance productivity.

However, leveraging the economic opportunities of data and digital technology through the use of AI should be balanced with protecting competition—particularly between global digital firms and Australian businesses. In this regard, Free TV urges the Government to consider the adverse competitive impacts of AI on the local media sector if effective guardrails are not put in place.

In particular, regulation should be introduced as a matter of urgency to require transparency about the materials ingested by large language models (LLMs), protection by copyright of both inputs and outputs, and remuneration paid to local media businesses for the use of their content. Competition issues arising from the market advantages that immense data holdings confer on operators of AI systems, including in relation to generating advertising revenue, should also be considered.<sup>1</sup>

Free TV is an active participant in the Attorney General’s Department’s Copyright and AI Reference Group which is looking at matters such as transparency of inputs to AI systems. This will be a relevant forum in which to discuss the importance of maintaining strong intellectual property protections in Australia, and the competitive harms that may arise if these are weakened through, for example, data mining exemptions that would entrench the market power of global digital businesses.

These matters should be considered when assessing Objective 3 under Reform theme 5, which talks about improving data flows to boost innovation and lower barriers to entry in data-rich markets.

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<sup>1</sup> More detail is set out in Free TV’s submission to the Senate Select Committee on Adopting Artificial Intelligence – available at <https://www.freetv.com.au/wp-content/uploads/2024/05/Free-TV-Submission-Select-Committee-on-Adopting-Artificial-Intelligence-May-2024.pdf>.

### **Digital market risks that tend toward consolidating market power**

#### *Recommendations*

- A new ex-ante digital competition regime for obligations on digital platforms to address systemic or structural obstacles to effective competition should be introduced as a matter of urgency
- Once in place, an ex ante code of practice to regulate the supply of digital advertising technology services should be a priority
- The National Competition Policy should recognise and support the ongoing use of ex ante powers to address competition concerns

Free TV agrees that digital markets can preference incumbents and tend toward consolidating market power. As discussed, this was borne out by evidence gathered by the ACCC during its Digital Platforms Inquiry and subsequent related inquiries.

As such, Free TV was very pleased that, in December 2023, the Government undertook to consult on the development of a new ex-ante digital competition regime for obligations on digital platforms to address systemic or structural obstacles to effective competition. This framework would apply to digital platforms that meet designation criteria in respect of specific digital services they supply, in order to guide their future conduct, and would complement enforcement of existing competition laws.

Free TV strongly supports the use of this framework to address concerns with conduct by digital platforms, including that which amounts to self-preferencing, bundling and tying, conduct relating to data integration that benefits from a dominant market position, and restrictive terms of service. Once the powers are in place, Free TV advocates prioritisation of an ex ante code of practice to regulate the supply of digital advertising technology services, a market about which the ACCC has already gathered significant evidence.<sup>2</sup>

As set out in the September 2024 Department of Industry, Science and Resources proposals paper, *Safe and Responsible AI in Australia* (the **AI Paper**), ex ante powers are also under active consideration when it comes to mitigating harms arising from high-risk uses of AI across a range of sectors. As the AI Paper notes, such preventative measures have been used in other domains such as climate change, food safety, pharmaceuticals and chemicals regulation for many years to mitigate the risks of harm.<sup>3</sup>

Both of these examples suggest that any revitalisation of the National Competition Policy should recognise and support the ongoing use of ex ante powers to address competition concerns.

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<sup>2</sup> More detail is set out in Free TV's recent submission to response the ACCC's Issues Paper relating to its *Digital Platform Services Inquiry – March 2025 – Final Report* – available at <https://www.freetv.com.au/wp-content/uploads/2024/08/Free-TV-Submission-Digital-Platform-Services-Inquiry-%E2%80%93-March-2025-%E2%80%93-Final-Report-Issues-Paper-%E2%80%93-August-2024.pdf>.

<sup>3</sup> *Proposals Paper for Introducing Mandatory Guardrails for AI in High-Risk Settings*, Australian Government Department of Industry, Science and Resources, page 16, available at [https://storage.googleapis.com/converlens-au-industry/industry/p/prj2f6f02ebfe6a8190c7bdc/page/proposals\\_paper\\_for\\_introducing\\_mandatory\\_guardrails\\_for\\_ai\\_in\\_high\\_risk\\_settings.pdf](https://storage.googleapis.com/converlens-au-industry/industry/p/prj2f6f02ebfe6a8190c7bdc/page/proposals_paper_for_introducing_mandatory_guardrails_for_ai_in_high_risk_settings.pdf).



AUSTRALIA

Free TV would be pleased to provide further information about that matters set out in this submission.

Yours sincerely

A handwritten signature in black ink, appearing to read "Bridget Fair". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Bridget Fair  
Chief Executive Officer