Australian Information
Industry Association

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Submission on

Digital Platforms – a Proposed New Digital Competition Regime

Introduction

The Australian Information Industry Association ('AIIA') appreciates the opportunity to provide feedback to the Department of the Treasury on the proposed new digital competition regime. While fostering fair competition, transparency, and consumer protection is important, any new regulatory framework must be grounded in clear evidence, proportional to identified anti-competition risks, and designed to support Australia's digital growth. It is essential that regulatory interventions are not counterproductive to its intent by creating unnecessary barriers to innovation or investment, particularly when existing competition tools may already be sufficient to address identified concerns. Our submission seeks to highlight these considerations, advocating for a balanced, evidence-based approach that aligns with Australia's economic and digital transformation objectives.

Assessment of Proposed Framework

The Treasury's proposal does not establish a compelling case for a broad ex-ante competition regime for digital platforms. Hypothetical consumer benefits presented in support of the proposal fail to clearly offset the significant risks, costs, and potential chilling effects on investment and innovation. This uncertainty could discourage businesses from investing in Australia's digital landscape, ultimately reducing the potential for innovation-driven consumer benefits.

Furthermore, the proposal appears misaligned with the Government's digital transformation and productivity objectives, which aim to leverage digital adoption for economic growth. Introducing restrictive reforms without clear evidence of a regulatory gap risks undermining these objectives.

International Comparisons and Risks

The proposal draws heavily from the EU's Digital Markets Act (DMA) and the UK's Digital Markets, Competition and Consumers (DMCC) Bill. However, these frameworks were designed in response to specific European enforcement cases and may not be suitable for Australia's unique market conditions. Historically, Australian competition law has evolved based on domestic economic considerations rather than wholesale adoption of foreign regulatory models. Australia risks becoming a "fast follower" of the DMA without fully understanding its long-term impacts. The DMA was implemented in November 2022, and the DMCC only came into effect in January 2025. There is currently no conclusive evidence that these regimes will successfully foster fairer and more competitive digital markets in the EU and UK. Rather than replicating unproven models, Australia should carefully assess their outcomes before proceeding.

Sufficiency of Existing Competition Tools

Existing competition laws in Australia are sufficient to address most market competition concerns. Introducing a broad ex-ante framework is unnecessary unless there is clear

evidence of a regulatory gap. Ex-ante regulation should be reserved for situations where there is undeniable and persistent market power concentration, as supported by Treasury's 2023 consultation[1], which emphasised the need to demonstrate consumer harm. Moreover, the proposal introduces a complex regulatory structure alongside other major legislative reforms, such as changes to merger laws[2]. This overlap creates regulatory uncertainty and increases compliance costs without clear benefits for consumers or the economy. A more effective approach would be to optimise existing legal frameworks rather than adopting an unproven regulatory model.

Scope of the Proposed Framework

If an ex-ante regime is adopted, it is critical to ensure that its scope is precisely defined. The ACCC conducted a detailed five-year investigation through the Digital Platform Services Inquiry and only found evidence of competition harms in three areas: online search, ad tech and app marketplaces. Notwithstanding this, the Proposal Paper lists 13 digital platform services that could be regulated under the regimes. This list-based definition of 'digital platform services' risks inadvertently capturing a broad range of technology providers that supply infrastructure, software, or enterprise solutions to businesses, even where these providers do not function as market intermediaries or directly facilitate transactions between consumers and third-party vendors. This overly broad approach could introduce unintended regulatory burdens, compliance costs, and operational constraints on businesses that do not pose competition concerns or hold significant market power in consumer-facing digital markets.

Rather than relying on an exhaustive list-based approach, the framework could define a digital platform service based on its actual market role and competitive impact. A functional definition would help differentiate between platforms that facilitate market transactions and those that merely provide underlying infrastructure or enterprise software.

Additionally, the regime could explicitly exclude services that are primarily designed to support business operations, such as cloud computing, enterprise resource planning (ERP) systems, cybersecurity solutions, and internal productivity tools. These services enable digital transformation but do not control access to consumers or function as intermediaries in the digital economy. Without clear exclusions, enterprise technology providers may face unnecessary compliance obligations, increasing costs without delivering consumer benefits. By refining the scope, this framework can avoid imposing disproportionate compliance costs on business-facing technology providers, ensuring that regulation remains focused on addressing genuine competition concerns in consumer-facing markets.

[1] Australian Government. (2023). *Government response to ACCC Digital Platform Services Inquiry*. Department of the Treasury. Retrieved from [link]
[2] *Treasury Laws Amendment (Mergers and Acquisitions Reform) Bill 2024* (Cth).

In addition, Australia's ex-ante proposal appears to disproportionately target US companies and potentially violate international trade agreements and strain the trade relationship with the US. By establishing quantitative thresholds that seemingly apply only to US firms, the proposal grants Australian regulatory agencies the discretion to target companies based on subjective criteria. This approach mirrors controversial features of the EU DMA and various digital service taxes which have been heavily criticised for their apparent bias against US companies. Perception of unfair treatment risks impacting the way entire jurisdictions are viewed in the US.

Quantitative Threshold

The proposal outlines a framework intended to target "digital platforms with a critical position in the Australian economy." However, relying solely on quantitative thresholds is insufficient to make this determination. The defining factor of a platform's critical position in the economy is its market power, not just its size or revenue. Quantitative thresholds, such as service-specific revenues in Australia, should function as an initial significance filter—helping to identify entities that warrant further scrutiny. Falling below this threshold should indicate that a service does not hold a critical market position. Conversely, exceeding the threshold should not automatically trigger regulatory obligations; rather, it should prompt a deeper assessment where market power becomes the central focus of the analysis. This approach ensures that designation decisions are driven by the platform's actual competitive influence within its specific market context, rather than arbitrary financial metrics.

Qualitative Factors

In determining whether a platform should be designated under the proposed regime, it is important to apply qualitative factors that reflect the platform's actual influence within the digital economy. A key consideration should be whether the platform holds an important intermediary position for business users to reach end users. In making this determination it is essential to focus on the platform's role as an intermediary in consumer markets. Services offered by business users to their own customers, where no intermediary role is played by a platform with significant market power, should fall outside the scope of regulation. The regime should target platforms that actively control or influence the relationship between businesses and end users, rather than those that simply provide tools or infrastructure enabling businesses to operate independently.

Entities that offer platforms or software to other businesses, which those businesses then use to create their own digital marketplaces, should be explicitly excluded from designation. These entities do not mediate access between consumers and third-party vendors and do not exercise control over downstream competitive conditions. Instead, they serve as facilitators of business operations, with no direct involvement in the consumer relationship or the dynamics of competition in the markets their clients operate

within. By focusing regulatory attention on platforms with genuine intermediary power, the framework can more effectively address competition concerns without imposing unnecessary compliance obligations on services that do not shape consumer access or influence competitive outcomes.

Targeted Obligations to Address Specific Harms

While the Proposal Paper outlines both broad and service-specific obligations, it is essential that regulatory interventions remain narrowly tailored to the specific competitive harms they seek to remedy, rather than applying blanket requirements across all designated platforms. A targeted, harm-based approach ensures that regulation is proportionate, effective, and does not stifle innovation by imposing unnecessary burdens on businesses that do not contribute to the competition concerns at hand.

If broad obligations are to be retained, they must be clearly scoped and precisely defined to avoid regulatory overreach. For example, app marketplace obligations will only apply to platforms with app marketplaces rather than the entire digital platform. Overly expansive rules risk capturing digital services that do not function as market intermediaries, leading to compliance costs that could hinder investment, increase operational complexity, and create unintended barriers to competition. While high-level competition principles may have merit in guiding regulatory intent, they should not translate into prescriptive, one-size-fits-all compliance mandates that impose unnecessary obligations on platforms that do not engage in anti-competitive conduct or control consumer access. A regulatory framework that prioritises targeted, harm-specific interventions will better promote competition, consumer protection, and market efficiency while ensuring that obligations are proportionate to the risks they aim to mitigate.

Transparency

Transparency is a cornerstone of effective regulatory frameworks, fostering confidence among stakeholders and ensuring accountability in decision-making processes. The AIIA supports the Proposal Paper's suggestion to require the ACCC to publish summaries of its investigation findings. This measure will promote transparency, providing stakeholders with a clearer understanding of the designation process, the ACCC's approach, and the reasoning behind regulatory decisions. Such transparency is particularly crucial as the new regime is introduced, enabling businesses and their advisers to navigate the evolving regulatory landscape with greater certainty. By clearly outlining how designation decisions are made, this approach will enhance both the effectiveness and efficiency of the regime, reducing compliance ambiguity and supporting informed business decisions.

Decision Review Rights

We support the inclusion of a robust review process to ensure transparency, accountability, and procedural fairness. The ability to seek independent review of decisions is essential in maintaining confidence in the regulatory framework, preventing arbitrary determinations, and ensuring that all relevant factors are properly considered. The AIIA emphasises that review rights are especially important given the evaluative nature of the qualitative factors considered in designation decisions, such as market position, degree of market power, and intermediary status, which involve discretionary analysis and judgment. These determinations often rely on complex assessments that could significantly affect business operations and market dynamics. Ensuring that affected parties have access to a robust review process is critical to upholding fairness, reducing regulatory uncertainty, and maintaining confidence in the decision-making process.

Additionally, the AIIA cautions that the proposed 5-year designation time period is too long given the rapidly evolving nature of digital markets. By comparison, the Competition and Consumer (Industry Codes - Food and Grocery) Regulation 2015 requires that the Minister must cause 2 reviews to be undertaken in relation to the operation of the Food and Grocery Code of Conduct 2 to 3 years after commencement, to assess the impact of the code in improving commercial relations between grocery retailers, wholesalers and suppliers. We recommend that the designation decision time period be shortened to 3 years to ensure the decisions remain both relevant and accurate, in line with the EU's DMA.[3]

Information Gathering Powers

It is proposed that the powers under s155 of the Competition and Consumer Act (CCA) would be made available under the new digital competition regime. The AIIA welcomes and endorses Treasury's comments that "information gathering powers will require appropriate safeguards to ensure that they are used appropriately and proportionately, given such powers can impose burden and compliance costs on affected parties".

When exercising its s155 and 95ZK information gathering powers the ACCC may, but is not required to, consult with parties and/or provide a draft notice for comment before issuing in final form. The AIIA considers that, in the interests of limiting the burden and compliance costs on affected parties, and to ensure investigations are completed and decisions made in a timely manner, consultation on draft notices should be mandated as standard practice under any new digital competition regime.

As explained in the ACCC's Guidelines on the use of s155 powers, consulting with affected parties has a number of efficiencies – affected parties can raise queries and provide clarifications, and the scope of the notice can be adjusted to limit burden and/or

[3] *EU Digital Markets Act*, Article 53.

unnecessary duplication. In line with its existing powers under s155(1), the ACCC should not be permitted to issue a notice unless the ACCC, its Chair or Deputy Chair has "reason to believe" that the recipient is capable of furnishing relevant information, producing relevant documents or giving relevant evidence that relates to the subject matter of the notice.

Penalties

As the Proposal Paper notes, the maximum penalties under the Competition and Consumer Act[4] ('CCA') were increased following the passage of the Treasury Laws Amendment[5]. According to the Explanatory Memorandum, these revised penalties were designed to provide an appropriate deterrent effect. Notably, the current maximum penalties under the CCA now exceed those in many other major jurisdictions. For instance, one of the penalty thresholds under the CCA is set at 30% of turnover, significantly higher than the 10% thresholds applied in both the European Union and the United Kingdom. Given the already substantial deterrent effect of these penalties, there is no justification for further increasing the maximum penalties solely to support a new digital competition regime. Similarly, the scope of non-monetary penalties should not extend beyond the existing powers of the ACCC and the courts under the CCA. Any proposals to expand these powers would require clear evidence demonstrating that the current enforcement tools are inadequate. Such proposals should also be subject to further consultation to ensure proportionality and necessity.

Conclusion

The AIIA supports the goal of fostering a competitive, transparent, and innovative digital economy. However, any new regulatory framework must be evidence-based, proportionate, and aligned with Australia's broader economic objectives. The proposed digital competition regime introduces significant risks of regulatory overreach, perception of biasness, duplication, and unintended consequences that could stifle innovation, deter investment, and impose unnecessary burdens on businesses that do not pose competition concerns, especially in consumer-facing platforms.

Rather than adopting unproven international models, Australia should focus on optimising existing competition tools, ensuring they are effectively enforced and adaptable to evolving digital markets. Where new interventions are considered, they should be narrowly targeted to address clearly identified harms, supported by robust evidence, and designed to preserve the dynamism of the digital economy.

A risk-based, flexible, and outcomes-focused approach—grounded in Australia's unique market conditions—will better support competition, consumer welfare, and digital

[4] *Competition and Consumer Act 2010* (Cth).
[5] *Treasury Laws Amendment (More Competition, Better Prices) Act 2022* (Cth).

growth. The AIIA looks forward to continued engagement with the Treasury to help shape a balanced and effective regulatory framework that strengthens Australia's position in the global digital economy.

Should you require further information, please contact Ms Siew Lee Seow, General Manager, Policy and Media, at siewlee@aiia.com.au or 0435 620 406, or Mr David Makaryan, Advisor, Policy and Media, at david@aiia.com.au.

Thank you for considering our submission.

Yours sincerely
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CEO, AIIA

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About the AIIA

The AIIA is Australia's peak representative body and advocacy group for those in the digital ecosystem. Since 1978, the AIIA has pursued activities to stimulate and grow the digital ecosystem, to create a favourable business environment for our members and to contribute to Australia's economic prosperity. We are a not-for-profit organisation to benefit members, which represents around 90% of the over one million employed in the technology sector in Australia. We are unique in that we represent the diversity of the technology ecosystem from small and medium businesses, start-ups, universities, and digital incubators through to large Australian companies, multinational software and hardware companies, data centres, telecommunications companies and technology consulting companies.