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To: Australian Competition and Consumer Commission

By email: digitalmonitoring@accc.gov.au

INTRODUCTION

Thank you for the opportunity to express the Internet Association of Australia (IAA) perspective on the Discussion Paper for the Digital Platform Services Inquiry - September 2022 Report. IAA recognises the paramount importance of digital platforms, especially since the COVID-19 pandemic, as people increasingly spend time online for work and schooling, social interaction, and daily living. A large portion of Australia's social fabric relies on the digital landscape, and as a result, the risks and dangers people are exposed to are changing. To that end, IAA appreciates the in-depth research and reporting conducted by the coalition of regulators, headed by the ACCC into digital platform services.

Many of IAA's members are small to medium sized internet service providers (ISPs), as well as digital platform services and content providers. Overall, IAA and our members support the commitment to competition and consumer protection in the digital landscape. Many of the issues raised in the Discussion Paper are matters of interest for IAA and we are similarly committed to ensuring safety for consumers and their data, increasing competition in the sector, and reducing barriers to entry. Our response will be largely from the interest of the smaller entities we represent that the new framework will affect, as well as for the general public good of the internet.

While we generally agree that fostering competition, increasing the protection of consumers and their data in the industry will have positive benefits for both the industry and consumers, we note that in some cases, the objectives of protecting consumers and encouraging competition and entry for small businesses can introduce unintended risks. In that light, we emphasise that a new regulatory framework for specifically digital platforms is a complex area that will require careful navigation and comprehensive consideration of the various interplaying elements and factors to ensure the framework is fit for purpose. As a fundamental principle, however, IAA prefers that the law should apply equally to the online and offline circumstances.

SPECIFIC REGULATIONS FOR DIGITAL PLATFORMS

SHOULD LAW REFORM ADDRESS SPECIFIC HARMS SEQUENTIALLY AS THEY ARE IDENTIFIED AND ADDRESSED, OR ADOPT A BROADER FRAMEWORK?

In general, IAA supports broader principles-based regulation that is technology neutral and can have long lasting value. However, it is imperative that a balance is met so that it is not so broad

that it is ineffective in addressing the specific concerns raised by the sector, or that it is also too encompassing with unintended implications and consequences.

We believe that meaningful principles under which the framework could be developed include transparency, fair play, open access, and online safety. These values aptly address concerns of anti-competitive behaviour, dark patterns, and scams or other harmful content that are becoming an increasing issue for consumers and smaller businesses in this sector. If and where necessary, more specific industry-led codes or rules could be developed as supplementary to the broader framework.

In addition, we believe that the government should not only rely on regulations and prohibitions on the industry to address and combat the issues raised in the Discussion Paper. Greater efforts in awareness and education campaigns for both consumers and small businesses to improve security, as well increased support for small businesses to reduce the high barrier to entry.

TO WHAT EXTENT SHOULD A NEW FRAMEWORK IN AUSTRALIA ALIGN WITH OVERSEAS JURISDICTIONS?

IAA supports harmonisation between Australian law with its international counterparts where possible, and fundamentally, where it is good practice to do so. In today's ever-globalised world, the majority of the entities which would become subject to the new framework are international companies. Similarly, Australian consumers are also participants of the global world through the internet. Thus where possible, reasonable and practicable, regulation should align with those in overseas jurisdictions so that compliance for businesses, and experiences for consumers are harmonised.

DIGITAL PLATFORM SERVICES AS “ESSENTIAL FACILITIES”

In general, we recognise the need for sector specific competition and access regulations. However, we reiterate our stance that laws should be technology neutral and principles based so that they do not become irrelevant as technology rapidly evolves.

We also raise our concern about the possible classification of certain digital platform services as “essential facilities”. While we recognise that digital platforms are increasingly becoming vital in the way people conduct their every day living, and therefore open and safe access to such services should be prioritised, it is paramount that this doesn't give rise to burdensome obligations for industry which would resultantly stifle innovation. Regulations, if not crafted carefully, can result in greater burdens for smaller companies and platforms who are unable to manage and adhere to potential obligations that come along with being classified as “essential”. This would thereby obfuscate the objectives purported by the regulations to increase competition and lower the high barriers to entry for smaller businesses.

A clear set of metrics to define what criteria would also have to be met in order to be deemed “essential”. The creation and imposition of any rules that might determine platform uptime, service availability or affect the rights of service operators to impose mandatory terms of service would need to be clearly defined, and practical, taking into account the realities and complexities of operating these services at the technical level. Any such flow on obligations from being deemed “essential” must be negotiated carefully with industry before taking effect.

WHAT ARE THE BENEFITS AND RISKS OF IMPLEMENTING REGULATION TO PREVENT ANTI-COMPETITIVE CONDUCT?

Benefits

IAA recognises the benefits proposed in the Discussion Paper and consider them important principles which the industry should strive to achieve. We believe encouraging competition and improving the protection of consumer data can boost innovation, provide greater choice for consumers, better inform their online decision making and improve the trust between consumers and businesses.

Risks

However, it is also fundamental that regulations are reasonable and measured. If not drafted with a great amount of consideration and insight into the issues, regulations may conflate legitimate reasons for certain conduct with anti-competitive or otherwise harmful practices.

For example, there may be legitimate reasons for the algorithms in search engines to ensure reliable and relevant information is being prioritised for consumers. Or in the case of interoperable payment systems and portability of data, smaller and newer platforms may lack the resources to take drastic steps to ensure the safety of the services being provided, and apply heavy security on data that will be handled through the service. Digital platforms appear very quickly and benefit most from being relatively unregulated. Regulations or recourse for consumers who have suffered harm online as a result of use of digital platforms occurs retrospectively. The unfortunate reality is that smaller entities may not have had the resources or time to ensure the reliability of their services or the security measures in place to defend against cyber-attacks. It is crucial that smaller businesses do not become a honey-pot for cyber criminals to exploit because of excessive requirements to hold data or maintain certain levels of interoperability.

This does not mean that this should be a factor against regulations which prevent anti-competitive practices. Rather, this is noted to ensure that the government develop comprehensive support and guidance material and avenues to provide help for smaller businesses.

In addition, another risk that could arise as a result of sector specific regulations is the unintended consequences for smaller platforms. While the protection of consumers' data is a key concern for the industry, this is a matter which also affects smaller platforms that also use data for their business. It is important that an appropriate balance is struck between protecting consumers, as well as allowing entities to conduct business through use and trade of data, with an appropriate level of oversight and transparency being applied to the process.

It is important to note that the Discussion Paper for the Privacy Act review similarly recognised the difficulties posed to smaller entities in regard to the new laws concerning protection of consumers' data online. The Department of the Attorney-General recognised the need for a small business exemption so that smaller entities are not unfairly disadvantaged by obligations which would prove burdensome.

Furthermore, IAA also notes of the reforms being undertaken through review of the Privacy Act, specifically in relation to consumer data. We therefore recommend that regulations are harmonised with any amendments that are made to the privacy legislation. While we recognise that the review of the Privacy Act was cited as one the avenues through which the government proposed to improve competition and consumer protection in the ACCC's 2019 Final Report, we

request that any further regulatory framework for digital platforms be clarified so as to avoid any confusion and overlap. In general, these legislations are complex and difficult to unpack for businesses who have to comply with multiple sources of regulation applying to the same matter. The control over digital platforms and the way in which platforms access and use data seems to be one clear and live example where entities are facing regulations from multiple regulatory bodies which can make compliance difficult.

CONCLUSION

Once again, I would like to thank you for providing us with the opportunity to contribute to the Discussion Paper for the Digital Platform Services Inquiry - September 2022 Report. IAA is committed to the live issue of dangers and risks posed by the increasing use of online services. We have been actively involved in the recent consultations concerning related matters such as the Consumer Data Rights program by the Treasury, Department of Communications' Basic Online Safety Expectations, Attorney General's Privacy Act Review, and the Communications Alliance's C661: Reducing Scam Calls and SMS Industry Code. To this end, we look forward to continuing working with the government and other interested stakeholders in the development of a framework that is measured, effective and practicable to ensure greater competition and protection of consumers in the digital landscape of Australia.

ABOUT THE INTERNET ASSOCIATION OF AUSTRALIA

The Internet Association of Australia (IAA) is a member-based association representing the Internet community. Founded in 1995, as the Western Australian Internet Association (WAIA), the Association changed its name in early 2016 to better reflect our national membership and growth.

Our members comprise industry professionals, corporations and affiliate organisations. IAA provides a range of services and resources for members and supports the development of the Internet industry both within Australia and internationally. Providing technical services as well as social and professional development events, IAA aims to provide services and resources that our members need.

IX-Australia is a service provided by the Internet Association of Australia to Corporate and Affiliate members. It is the longest running carrier neutral Internet Exchange in Australia. Spanning six states and territories, IAA operates over 30 points of presence and operates the New Zealand Internet Exchange on behalf of NZIX Inc in New Zealand.

IAA is also a licenced telecommunications carrier, and operates on a not-for-profit basis.

Yours faithfully,

Narelle Clark
Chief Executive Officer
Internet Association of Australia