

21 February 2025

Digital Competition Unit

Market Conduct and Digital Division

Treasury

Langton Cres Parkes ACT 2600

via email: [digitalcompetition@treasury.gov.au](mailto:digitalcompetition@treasury.gov.au)

Dear Sir/Madam,

### **New digital competition regime proposal**

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) welcomes the opportunity to comment on Treasury's proposal paper: *A new digital competition regime*. We recommend that the Australian Government:

- assign priority to social media services for designation.
- include internal dispute-resolution mechanisms in the proposed service-level standards.
- address regulatory duplication issues.

Digital platforms have fundamentally changed the way small businesses market and operate their business in Australia and internationally. Social media services on digital platforms are a valuable tool for small businesses to attract new customers, advertise and sell products and services, and build brand loyalty. They serve as single points of contact for businesses to reach a significant portion of the Australian and international markets, with many small and family businesses relying heavily on these platforms.<sup>1</sup>

However, the significant market power of these platforms gives them the ability to impose 'take it or leave it' terms on businesses and make unilateral decisions that have significant consequences for Australian small businesses and flow-on effects for broader commerce.<sup>2</sup> We are aware of small businesses' concerns relating to their increased use of digital platforms and dependence on them.

We support the proposal that social media services should be assigned priority as one of the first services to be investigated for designation under the framework, alongside app marketplaces service and ad-tech services. We also consider that digital platform providers should be required to apply general conditions of access, including an alternative dispute resolution mechanism, to prevent or mitigate the unfair treatment of small businesses. We make the following recommendations to address these concerns:

**Recommendation 1: The Australian Government should investigate social media services for designation under the proposed framework, to prevent or mitigate the harms arising from a lack of competition for small and family businesses.**

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<sup>1</sup> ACCC, *Digital platforms services inquiry: Interim report No. 6 – Report on social media services*, ACCC, Australian Government, March 2023, p 87.

<sup>2</sup> The Treasury, *A new digital competition regime: Proposal paper*, The Treasury, Australian Government, December 2024, p 4.



Small and family businesses face several harms when operating on social media service platforms, particularly owing to lack of regulation, unilateral control by platforms, and the increasing prevalence of cyber threats. The ACCC's Digital Platforms Services Inquiry: 6<sup>th</sup> Interim Report on social media services and the ASBFEO's submission to the Joint Select Committee on Social Media and Australian Society highlighted the unfair trading practices concerns and risks in social media platforms.<sup>3</sup>

Across social media markets, there is a range of unfair trading practices that fall outside of the Australian Consumer Law, including:

- social media service providers may alter their policies or algorithms without prior notice, affecting the visibility and reach of small businesses' content and advertisements.
- unfair account suspensions or content removals can occur without clear reasons, leaving businesses struggling to appeal decisions.
- service providers often require users to agree to onerous contract terms as a condition of gaining access to their services or make access to a service conditional on using another service.
- service providers give preferential treatment to their own products and services when they compete with products and services provided by third parties using their service.
- creating barriers to switching and multi-homing, which can be particularly problematic where there are strong network effects.<sup>4</sup>
- aggressive charge back practices that are unilateral and imposed without proper regard to whether actual circumstance and fulfilment evidence to the detriment of merchants.

These identified issues usually result in significant harms to affected small businesses and the broader public. These unfair trading practices can not only entrench the market power of a firm, but also damage competition in downstream on related digital markets.

**Recommendation 2: the Australian Government should require digital platform service providers to establish general conditions of access to internal and external dispute resolution mechanisms. The mechanism should be easy, accessible, and user-friendly for small business to raise concerns about unfair business practices and any non-compliance under the proposed framework.**

As part of our Assistance function, we help small businesses to resolve disputes with digital platforms and this is the fast-growing area in our case handling. Small businesses having disputes with digital platform providers and digital disputes now make up 26 per cent of cases and have doubled over the past two years. In the September 2024 quarter, the number of digital platform disputes was 86 per cent higher than in the same period a year earlier.

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<sup>3</sup> ACCC, *Digital platforms services inquiry: Interim report No. 6 – Report on social media services*, ACCC, Australian Government, March 2023, p 13. ASBFEO submission to Joint Select Committee on Social Media and Australian Society, *Protecting Australian small businesses and consumers from social media harms*, ASBFEO, Australian Government, July 2024.

<sup>4</sup> ACCC, *Digital platforms services inquiry: Interim report No. 6 – Report on social media services*, ACCC, Australian Government, March 2023, p 15.



However, the new digital competition regime proposal framework does not include dispute resolution obligations or mechanisms and does not align with international regimes. For example, Articles 20 and 21 of the European Union (EU) *Digital Services Act* (DSA) require digital platform providers to maintain an internal complaints system that enables the recipients of their services to lodge complaints, and a mechanism for out-of-court settlement of disputes between users and platforms. Further, Article 6 of the EU *Digital Markets Act* (DMA) requires gatekeepers (designated digital platform service providers) to comply with the obligation to provide an alternative dispute settlement mechanism. The mechanism is easily accessible, impartial, independent and free of charge for the business user, and includes proportionate measures aimed at preventing the abuse of the dispute settlement mechanism by business users.

It is important to safeguard small businesses' right to raise their concerns and complaints about different types of unfair practices, such as discriminatory access conditions, unjustified closing of business user accounts or unclear grounds for product de-listings.

We recommend digital platform service providers implement clear, appropriate and standardised procedures to enable timely and efficient resolution for small business disputes. These procedures should include clear internal escalation points, promotion of external dispute resolution support and dedicated contacts for dispute resolution agencies like the ASBFEO, so that small businesses can have their dispute handled efficiently and resume operating their businesses sooner.

In our submission to the Joint Select Committee on Social Media and Australian Society, we recommended a 'notice-and-action' mechanism that requires digital platforms to promptly act on reports of scams, harmful apps and fake reviews could provide small businesses with more timely and targeted protection than regulatory action.<sup>5</sup>

The ACCC's Interim report no 5 recommended a notice-and-action mechanism should include the following five elements to prevent harms from digital platforms:<sup>6</sup>

- Notice – platforms must provide user-friendly mechanisms for individuals and entities to report scams, harmful apps, or suspected review manipulation.
- Action – platforms must promptly respond to notices.
- Communication – platforms must promptly notify the reporting person and potentially affected consumers of processes and actions undertaken in response to the report.
- Information sharing – platforms must promptly share information about identified issues with other platforms and relevant agencies to aid consumer protection efforts.
- Redress – platforms should be required to provide redress to users who have been harmed by the platform failing to meet its obligations under these measures.

**Recommendation 3: the Australian Government should harmonise new digital regime broad obligations with existing law provisions or frameworks to avoid duplication and enhance regulatory efficiency.**

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<sup>5</sup> ASBFEO submission to Joint Select Committee on Social Media and Australian Society, *Protecting Australian small businesses and consumers from social media harms*, ASBFEO, Australian Government, July 2024.

<sup>6</sup> ACCC, *Digital platforms services inquiry: Interim report No. 5 – Regulatory reform*, ACCC, Australian Government, September 2022, p 83.



The proposed digital platforms competition regime framework introduces new obligations on service providers to enhance fairness, transparency, and competition. However, some of these obligations may overlap with existing provisions under the Competition and Consumer Act (CCA) and Australian Consumer Law (ACL). For example,

- the anti-competitive self-preferencing conduct comes within the broad obligation in Section 46 – Misuse of market power – of the CCA.
- the general protections in Parts 2 and 3 of the ACL, which prohibit misleading and deceptive conduct, unconscionable conduct and unfair contract terms in standard form contracts between business, including small business, as well as certain unfair practices.

Aligning the broad obligations in the new competition regime and the ACL will help reduce legal complexity, allowing service providers to fully comply with their obligations while ensuring there is competition in the digital economy. It is essential to harmonise these new rules with the current legal framework to ensure regulatory consistency and avoid duplication.

If you require any further information, please do not hesitate to contact the ASBFEO via email at [advocacy@asbfeo.gov.au](mailto:advocacy@asbfeo.gov.au).

Yours sincerely

**The Hon Bruce Billson**

Australian Small Business and Family Enterprise Ombudsman