

ITI Response to Digital Platforms Services Inquiry Discussion Paper

April 20, 2022

We thank the Australian Competition and Consumer Commission (ACCC) for the opportunity to comment on *the Digital Platforms Services Inquiry Discussion Paper* (Discussion Paper.)

About ITI

The Information Technology Industry Council (ITI) is the premier voice for the global information and communications technology (ICT) industry. Our 80 member companies include the world's leading innovators around the world across the ICT spectrum, and nearly a quarter of ITI's members are headquartered outside of the U.S. We advocate on behalf of our members for policy and regulatory environments that foster innovation and maximize all the benefits that ICT companies provide, including economic growth, job creation, and the tools to solve the world's most pressing social, economic, and environmental challenges. We work closely with our partners in government, international organizations, the business community, and civil society to achieve these objectives. We fully support the goal of ensuring market access for innovative challengers, safeguarding consumer welfare and economic efficiency.

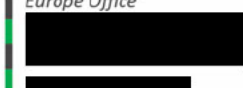
We are grateful for the opportunity to provide feedback on the Australian Competition & Consumer Commission's Discussion Paper, "Interim Report No. 5: Updating competition and consumer law for digital platform services". We write to offer key recommendations for consideration as you consider policies for digital platform services markets. While we appreciate the high-level purpose of the Inquiry is to preserve competitive markets for all, we urge the Australian Competition & Consumer Commission (ACCC) and the Australian Government to maintain a clear separation between competition and consumer protection issues when considering digital platform services policies. We have provided the feedback below in relation to potential competition reform.

Due to the complexities involved in discussing the issues addressed in the paper, we encourage the ACCC to extensively consult with relevant stakeholders, especially in areas where ex-ante regulations can have significant economic impact. We have provided additional context in our recommendations below for your consideration in the Inquiry.

Global Headquarters



Europe Office



Key considerations toward platform regulation in Australia

ITI strongly supports free and undistorted competition as key to promoting innovation and consumer welfare in the digital platform space. We are committed to addressing challenges potentially arising from digitalisation in Australia and globally. Because of our diverse membership, we recognize the many equities at stake in this debate, and the need for action to preserve competitive markets for all. Governments should consider differences in business models and user interaction across digital platforms and develop proportionate instruments to ensure a consistent policy approach and fair competition wherever necessary. As the definition of the term “platform” may refer to very different business models depending on the stakeholder, policymakers should consider the role that specific companies play in the markets they operate in, the value they create, their relationship to customers and competitors, and possible alternative approaches when considering policies to address non-competitive conduct. Digital Platform services – including e-commerce, cloud services, B2B, B2C, search, networking, and travel – play a foundational role in driving technology innovation and economic growth supporting the smooth operation of digital supply chains, which creates market opportunities and access for businesses of all sizes in the tech sector and beyond.

If an anticompetitive business practice is identified, any remedial action should be tailored to address and correct the harm caused by the specific business action of the platform service and be relevant and effective within the specific market and context of application. The initiative should primarily focus on ensuring that market participants of all sizes are able to compete on the merits, while focusing on promoting consumer welfare and addressing identified harms.

Evaluate existing enforcement frameworks

Digital platforms provide Australian consumers and businesses with significant benefits. Introducing new regulation for digital platform services requires consideration of the wider potential implications for businesses and consumers that use platforms, given the dynamic nature of digital markets. In deciding whether new regulatory tools are needed, we encourage the ACCC to evaluate whether *existing* enforcement frameworks (including competition, consumer protection, and privacy) provide more proportionate means of achieving desired outcomes and are already sufficiently flexible to capture the conduct of concern or harms that the ACCC has identified.

Second, if a need for new regulatory tools is identified, we urge the ACCC to leverage existing evidence and experience to focus the proposed framework on types of conduct that are recognized to be particularly harmful to competition, while continuing to study nascent or emerging issues. Third, we encourage the ACCC to embrace a balanced approach toward data

use and access that considers consumer benefits, business confidentiality, and security aspects, in addition to competition concerns.

Proportionality is key to avoid unintended consequences linked to over-enforcement, in terms of choice, reach, trust and innovation. Any remedies should be tailored more specifically to the type of core platform service and be relevant and effective within the specific market and context of application. The initiative should primarily focus on ensuring that market participants, particularly smaller ones, find an ecosystem that enables them to succeed, while focusing on promoting consumer welfare and addressing identified harms.

Seek international viewpoints

As today's economy is highly digitalized and globalized, the international impact of any proposed digital platform services regulations needs to be carefully considered as the discussion progresses. Australia would benefit from the viewpoints expressed by a wide range of stakeholders in other markets, combined with a thorough assessment of the actual need for an ex-ante regime, to move toward a balanced framework that enables innovation, competition, and consumer choice. Maintaining an open and business friendly environment in Australia is not only important for Australian consumers, but also for the development of an innovative, more diverse, and successful business ecosystem in Australia.

ITI and its members thank the ACCC for considering our comments. We would be happy to discuss additional details on any of the aforementioned points.