

***Digital Platform Services Inquiry Discussion Paper for Interim Report No. 5:
Updating competition and consumer law for digital platform services
Comments from Yahoo
April 2022***

1. Introduction

- 1.1. Yahoo is pleased to provide these comments on the ACCC's discussion paper and the proposed next steps in its digital platform services inquiry. We welcome the ACCC's openness to feedback and to further evolving its thinking and potential approaches in the light of new evidence and comments from stakeholders.
- 1.2. The discussion paper impacts our business at all levels. We provide here some high-level comments. We may add to these comments as this project evolves.

2. Harms to competition and consumer protection law enforcement in Australia (Question 1)

- 2.1. Chapter 5 sets out a broad range of potential consumer harms, some of which arise from competition problems while others occur more widely in the market. It is important to separate competition issues - such as self-preferencing and other exclusionary practices by firms with market power - from wider consumer protection matters that may concern a broader range of firms including SMEs and those without market power.
- 2.2. The wider set of consumer harms outlined in this chapter will need further analysis including:
 - 2.2.1. Considering whether some harms are in fact a consequence of market power (i.e.: poor or absent market incentives to address harm compared with competing firms) and should therefore be addressed by the pro-competition regime considered further in Chapter 7.
 - 2.2.2. Identifying where each harm is most prevalent, particularly whether they exist in some parts of the ad ecosystem and not others. For example, scam advertisers are most likely to enter the ecosystem where they can sign up as a new advertiser online and pay by credit card with few upfront verification checks. Offenders typically avoid highly managed ad services which require intrusive upfront technical and financial checks as part of an onboarding process. A more targeted approach therefore would be more effective and avoid unnecessary regulation of ad services where a particular harm does not occur.

- 2.2.3. Avoiding unnecessary overlap with other regulatory regimes which may be more appropriate to address a particular harm. For example, potential harms arising from the processing of data (i.e.: harmful profiling/targeting, dark patterns, data security, transparency of processing) are better incorporated into data protection law. Where these harms only concern firms designated as having market power, interventions should be targeted accordingly.
 - 2.2.4. Assessing the existence of standards and self-regulation that are effectively tackling the harm already for some parts of the digital advertising ecosystem. For example, IAB TechLab and the Trustworthy Accountability Group (TAG) standards address fraud and the risk of unauthorised advertisers entering the open demand ecosystem.
- 2.3. Chapter 5 also touches on transparency between platform services and their consumers and business customers. This should be clearly separated from Recommendation 4 of the ACCC's Digital Advertising Services Inquiry Final report on fee transparency within the ad-buying supply chain. Any proposals should be based on a clear definition of "digital platforms".

3. Competition and consumer protection law enforcement in Australia (Question 2)

- 3.1. ACCC's experience of the limitations of existing competition investigation and enforcement powers reflect those of other national competition authorities. Targeted reform should therefore be considered.
- 3.2. As with Chapter 5, this chapter melds a number of competition and non-competition (mainly consumer protection and fair trading) issues. For reasons of practicality and certainty for competing firms, we recommend that regimes to tackle market power and those intended for the wider market are legally and operationally separate.
- 3.3. On consumer protection rules specifically, digital firms have observed that the difficulties associated with enforcing consumer protection rules against primary offenders (e.g.: because they are overseas or investigation resources are over-stretched) can incentivise enforcement against intermediaries because it is more scalable and efficient for regulators to do so. The next phase of this policy review should therefore consider how the enforcement of legacy powers in modern, complex digital supply chains which pre-date them may have unintended consequences and be open to more novel approaches which may be less destructive for these supply chains.
- 3.4. Policy-makers should be open to a varied ecology of approaches in digital markets. These may vary by business model or market segment but each achieves the same consumer outcome. Our response to Question 1 touches

on design considerations to ensure any proposals for reform are targeted, proportionate and evidence-based.