

BCA

Business Council of Australia

ACCC Report on
General Online Retail
Marketplaces

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1. About this submission

This is the Business Council's submission to the Australian Competition and Consumer Commission's (ACCC) report on general online retail marketplaces. The report forms part of the ACCC's ongoing Digital Platform Services Inquiry.

The Business Council represents businesses across a range of sectors, including manufacturing, infrastructure, information technology, mining, retail, financial services and banking, energy, professional services, transport, and telecommunications.

2. Key recommendations

The Business Council recommends:

1. The ACCC provide clarification on the actual or perceived market failures specific to online retail marketplaces in Australia that it is seeking to address.
2. Any recommendations the ACCC may wish to make as part of this report should be made with regard to their impact on the wider retail environment, both present and future.
3. The ACCC should explicitly seek input on the benefits that accrue to consumers and third-party retailers from online retail marketplaces and incorporate these findings within its report.
4. The ACCC conduct an examination of whether existing laws can respond adequately to market failures as outlined above. Additionally, to the extent of any gaps in regulation, the ACCC should support businesses to develop self-regulatory models in the first instance, except where there is clear evidence of undue harm that cannot be mitigated without regulation.
5. We recommend the ACCC consult on the next stages of its report, including any draft findings or recommendations.

3. Overview

Online marketplaces have become an increasingly important part of Australians lives. Online business models are fast changing and dynamic, with a number of competing players, including eBay, Amazon, Kogan, and Catch.com.au as well as new marketplaces enabled by a rising number of ecommerce services. The ACCC has not identified any single marketplace as holding substantial market power.

Online marketplaces do not exist in a vacuum. They sit within a wider retail ecosystem, with competition for market share taking place between physical retailers, hybrid operations which have both physical and online presence and online marketplaces. All are subject to existing Australian laws and regulations. As the ACCC takes this work forward, it will be critical to identify and clearly specify the exact market being examined, and clearly explain any gaps in competition or consumer protections that are specific to this market and are not comparable to non-online retailers.

Australians are sophisticated consumers and have added online shopping to their usual consumption habits. Online shopping is only a part of Australian retail with the majority of consumers continuing to shop at a brick-and-mortar store, a trend expected to continue post-COVID. However, the take up of online shopping has been accelerated by COVID-19, with research by AusPost highlighting that in 2020 more than

9 million households made online purchases, or over four in five of all households. A third of all consumers prefer to shop more online now than they did before the pandemic.¹

This is partly driven by the ease with which online shopping (of which online marketplaces are one part) enables consumers to quickly check prices and discover, compare and purchase products. This drives competition more broadly across the retail landscape and allows consumers to get the best prices. The online environment also allows consumers to share information quickly and easily about the quality of products and the service quality of marketplaces. It also allows sellers, including small businesses, to reach larger numbers of prospective customers with little investment. Similarly, there are low barriers for sellers to switch between, or concurrently offer, their products for sale to consumers through multiple marketplaces. Marketplaces also offer services, such as fast home delivery, which in turn spurs the industry overall to enhance their offers to consumer and deliver additional services. This all adds to price transparency and competition.

Where consumers expectations are not being met, there are low barriers to switch between or concurrently use multiple marketplaces, including both traditional 'brick and mortar' retailers and online services. Many retailers and third-party sellers also sell to consumers through a range of avenues, including multiple online retail marketplaces, physical retailers, and their own online stores.

Marketplaces have been instrumental in helping Australians to adapt quickly to the challenges of COVID. This includes through supporting public health orders during lockdown by allowing Australians to shop from home, limiting unnecessary movement. They have also allowed many Australians to transition to remote working. This has been a critical part of allowing us to avoid the worst of the economic harms that COVID may have caused.

Online marketplaces also deliver important equity outcomes. Australians who might otherwise be under-served by traditional retailers, such as those in outer urban or regional areas, can access a wider range of goods and services. For example, AusPost has identified that one of the main cohorts of households who took up online shopping through the pandemic were 'often those living more rurally'.²

Online marketplaces also support a range of other businesses, supporting wider economic activity and growth, and supporting the wider digitisation of the economy. This includes through providing small or regional businesses with access to new customers at scale and enabling them to compete with larger players. Online marketplaces have also created opportunities for new market entrants in complementary services, such as Buy Now Pay Later services. Further, as recently as July this year, Austrade highlighted the benefits Australian exporters could see from using online sales to trade internationally.³

Online marketplaces are important for both domestic audiences and for our international exports and getting the settings right for online marketplaces in Australia will be important for Australia's future prosperity.

This includes ensuring the competition and consumer frameworks are fit for purpose and reflect best practice regulatory approaches. As always, this should ensure that decisions are evidence based and made in consultation with affected stakeholders, and we welcome the opportunity to contribute to the ACCC's report.

Clarifying the problem

The ACCC is seeking views on the relationships between general online retail marketplaces, third-party sellers and consumers.

¹ https://auspost.com.au/content/dam/auspost_corp/media/documents/ecommerce-industry-report-2021.pdf

² https://auspost.com.au/content/dam/auspost_corp/media/documents/ecommerce-industry-report-2021.pdf

³ <https://www.austrade.gov.au/news/economic-analysis/update-on-the-global-e-commerce-boom-opportunities-for-australian-exporters-in-indonesia-and-across-asia>

General online retail marketplaces operating in Australia are required to work within existing Australian laws, which provide competition protections to consumers with avenues for recourse. It is not clear from the Issues Paper released by the ACCC whether the ACCC has identified a new problem that has emerged which is not already addressed through these existing laws. Similarly with regard to the position of the small businesses which use marketplaces, they appear to have the benefits and protections of current law through the Competition and Consumer Act and through other law such as those concerning Intellectual Property protection. We caution against a solution in search of a problem approach.

If the ACCC is contemplating recommending additional regulation or government intervention is required, we urge the ACCC to identify and provide clarification on the market failures specific to online retail marketplaces in Australia that it is seeking to address. This should clearly articulate the consumer, small business or general competition problem that is specific to online retail marketplaces, which would justify specific and tailored regulation within this one segment of the market. As discussed below, if this case cannot be made then it is likely regulation will result in market distortions or unintended consequences.

Preventing market distortions and supporting innovation

We recommend that any advice or recommendations the ACCC considers as part of this report should be made with regard to the wider retail environment, both present and future.

While the ACCC's issues paper noted that it intends to consider how other shopping options impose competitive constraints on online retail marketplaces - an approach we support - the ACCC's inquiry is focussed on only a slice of the overall retail market. As discussed above, consumers can (and do) make purchases at online retail marketplaces (as defined by the ACCC), as well as at physical retail locations, the online stores operated directly by individual retailers, and specialist online retail markets (eg for clothing or hardware), among others. Businesses selling goods also sell through marketplaces, online stores, and even social media.

The imposition of specific requirements on online retail marketplaces, particularly where there are not similar requirements on other retailers, will create market distortions. While these distortions may not appear significant at present, they will be magnified as online shopping grows and becomes an increasingly important part of Australia's economy.

This will become increasingly apparent as new businesses enter this market. This includes both start-ups as well as existing incumbents. The evolution of business models will be critical if Australian businesses are to remain internationally competitive and attractive to global capital, and if Australians are going to get access to new services and products that improve their quality of life.

We support the ACCC examining the barriers to entry for new online retail marketplaces. The ACCC should ensure that any new regulations do not have the effect of increasing these barriers.

Benefits of online retail marketplaces

The ACCC has sought views on a range of potential challenges that online retail marketplaces may pose for third party sellers and consumers. These are important questions to ensure high quality consumer and competition outcomes for all participants in the retail sector.

To assist to understand the scope of consumer and businesses interactions with marketplaces, we recommend the ACCC explicitly seek input on the benefits that accrue to consumers and businesses from online retail marketplaces and incorporate these findings within its report. This ensures a balanced perspective is brought to bear on the issue. It also aids the determination of whether the benefits of any future decisions taken on online marketplaces outweigh the costs. This this report is an opportunity to understand and weigh up not only the challenges and advantages of online shopping for consumers and businesses.

As noted above, consumers see substantial benefits from the greater choice and convenience provided by online marketplaces, including the ease of price and product comparison, additional discoverability of product retailers, and additional services that marketplaces can provide such as quick delivery. The range of choices regarding products, quality and price has naturally led to an increase in the intensity of competition. Given the growth of online shopping over recent years, it's clear Australians value these benefits, and any assessment would be incomplete without an understanding of them.

The issues paper also asks questions which go to consumer satisfaction with general online retail marketplaces, such as the information provided to consumers or the ability to seek and receive repairs, replacements, or refunds. These are important questions, and the focus of key parts of consumer protection regime which applies across the broader retail market. Marketplaces have the incentive to build a reputation that extends beyond individual sellers and the resources to invest in enhanced consumer protection and compliance. Accordingly, they make an important contribution to increasing levels of consumer protection generally. General consumer and business satisfaction with marketplaces are key components of competition and if satisfaction with a marketplace is poor (eg because of poor returns policies) there are many other retail options able to win over the customer with a superior experience.

Industry-led solutions

If problems are identified, we recommend the ACCC support businesses to develop self-regulatory models in the first instance. As the Government has indicated, self-regulation is preferred except where there is clear evidence of undue harm that cannot be mitigated without recourse to 'new' regulation.

As the ACCC is aware, online marketplaces are subject to the existing laws which all businesses operating in Australia are required to comply with. There are not any readily evident gaps: many of the key problems the ACCC is considering are already addressed within existing frameworks.

Moreover, online shopping is an evolving market with a range of service offerings from new and incumbent businesses, new consumer habits are still forming, and businesses are in the process of building new operating models. The Business Council does not consider 'new' regulation to be an appropriate first response to concerns that may be identified in such a short and narrow inquiry. There is also a material risk that 'new' regulation will have an unintended consequence and stifle positive innovation of what is a relatively new retail offering in Australia

The market which has been defined in the issues paper contains participants which offer substantially different offerings to consumers and third-party sellers. This differentiation is likely to continue as existing players evolve their offerings and new market entrants emerge. Given the players and offerings are still immature, the 'market' will continue to change, potentially in ways that do not conform with the current definitions. This will challenge any regulations that are imposed on the current market or may stifle innovation – as noted above.

As the ACCC has identified, there are a number of general online marketplaces operating within Australia. Having good relationships with consumers and third-party sellers is a key component of competition between marketplaces. The issues paper asks questions which go to consumer satisfaction with general online retail marketplaces, such as the information provided to consumers or the ability to seek and receive repairs, replacements, or refunds. These are important questions, and form key parts of consumer protections across the broader retail market.

However, there are minimal barriers for consumers and third-party retailers to switch to other retailing options (other online marketplaces or their own physical or online retail shopfronts, for example). The ability to share information online among consumers has helped support the protection of consumer outcomes. Further the power of social media in constraining negative practices or conduct by marketplaces and retailers should not be underestimated. This is particularly the case where online reviews can shift public opinion very quickly give the speed with which they may be disseminated. Media organisations have ready

access to and often reviews social media for trending stories and the extensive reach of such media is a fact which all participants in the retail market (whether physical or online) must carefully consider in all their business decisions.

Next steps

We recommend the ACCC consult on the next stages of its report, including any draft findings or recommendations. As we've highlighted above, this is a dynamic section of a much larger retail marketplace. A further round of consultation will ensure the ACCC's recommendations do not create unintended consequences across the wider economy.

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