1 April 2022

Australian Competition & Consumer Commission
23 Marcus Clarke Street
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Via email: digitalmonitoring@accc.gov.au

Digital Platform Services Inquiry Discussion Paper for Interim Report No 5: Updating competition and consumer law for digital platform services.

The Financial Services Council (FSC) is a peak body which sets mandatory Standards and develops policy for more than 100 member companies in Australia's largest industry sector, financial services. Our Full Members represent Australia's retail and wholesale funds management businesses, superannuation funds, life insurers and financial advisory networks.

The financial services industry is responsible for investing almost $3 trillion on behalf of more than 14.8 million Australians.

The FSC welcomes the ACCC's consideration of Australia's current competition and consumer protection laws to address consumer harms that can arise in relation to digital platform services.

The FSC's primary concern is around the increase in financial services fraud relating to scam products being advertised on digital platform services such as Facebook and Google. Because of the gatekeeping role of digital platforms, they can aid in the prevention of consumer harm, particularly through their provision of ad tech services.

What competition and consumer harms, as well as key benefits, arise from digital platform services in Australia?

Advertising is an important part of a competitive economy. It is the key way that legitimate financial institutions can inform consumers about any competitive features their products may have such as price, performance and service. It helps ensure that any innovative or disruptive products can challenge well established market incumbents. It also helps inform consumers who may have particular preferences, such as particular risk appetites for low-risk investments or particular investment needs such as ethical investing, that there is a product that may be suitable for them.

In the digital age, where digital platforms are now an integral part of the lives of most Australians, Australians will encounter a large proportion of any advertising they receive about financial products from the internet. Australians depend on digital platforms to source information on financial products, such as through a deliberate search on a search engine if they are seeking a particular product (with the search result influenced by algorithms set by the digital platforms). They receive information about financial products through unsolicited advertisements or chance encounters on their feed about a financial product based on the 'likes' of their social media network

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and other algorithmic reasons. As the discussion paper notes, large digital platforms act as 'gatekeepers between consumers seeking information online and businesses offering or advertising those goods and services online.'

We agree with the ACCC's concern about the 'ease with which third party scammers use digital platforms to conduct scams and distribute advertisements containing false representations, and the sophisticated nature of these scams.'

Online financial scams have become an increasing problem in the digital age, with many ordinary Australians falling victim. The ACCC estimates that in the first half of 2021, Australians have lost over $70 million to investment scams, with losses set to reach $140 million by the end of the year. As the paper notes, investment scams related to social networking in 2021 amounted to $26.6 million up 207% from 2020. Scams are also occurring via search engines that promote ad-sponsored results, meaning that Google is inadvertently directing people to fraudulent financial services.

Our members have observed that their own company brands have been subject to 'brand cloning' where scammers purport to offer financial products from legitimate businesses on popular online platforms like Facebook and Google. Recently in Australia, a number of fund managers were subject to fraudulent investment bonds being offered to prospective investors under their brand.

Regulatory tools to implement potential reform.

Given that losses to investment scams on digital platforms are increasing at a huge rate, the FSC submits that more needs to be done to protect consumers from significant financial detriment.

As the report notes, in the UK, Google has committed to requiring the verification of financial services advertisers targeting the UK. This verification process requires that advertisers must be verified by the Financial Conduct Authority, and any unverified advertisements will not be shown to UK users seeking financial services. The UK Investment Association has noted that while a commitment from Google is welcome, the issue can be more effectively tackled if such a commitment is applied across all major digital platforms, backed up by meaningful legal sanctions so that platforms and search engines cannot profit from scam advertisements they allow to be published.

Preferred Option 1: An industry co-designed Code of Practice

The FSC would welcome the implementation of a similar policy in Australia across the whole industry. This could take the form of an enforceable industry code of practice. The benefit of a code would be its flexibility, with the digital platforms industry able to work with regulators and the financial services industry to design the obligations. Such a code could be modified relatively easily with experience and in response to the rapidly changing digital environment. The implementation of such a policy would help protect consumers and their hard-earned savings from unscrupulous scammers.

We submit that such a code would require digital platform services to only allow paid advertisements for financial services from businesses authorized by the Australian Investments Security Commission (ASIC). ASIC could provide this verification process by providing a readily accessible list of authorized AFSL holders to digital platform services. If an unauthorized entity seeks to advertise a financial services product via a search engine, free email service or on a social media feed, a digital platform service would have a duty under the code of conduct to prevent such an advertisement from appearing.

We further submit that there should be a duty in the proposed code of practice for digital platform services to remove financial advertisements and comparison websites (unpaid or otherwise) as and when they become aware that scam financial products are being promoted via their search engine or social media feed. Failure to do this should lead to a measure of liability for any harm that arises to consumers as a result of the breach of the code. Digital platform services should provide an easily accessible way to submit and escalate complaints in relation to scam advertisements.

Recommendation: Digital platform services should be subject to an industry code of conduct which imposes on them a duty to only allow paid-for advertisements from financial services providers authorized by ASIC. The Code should also impose a duty for digital platform services to remove links and access to financial services advertisements as and when they become aware that they are scam financial products being promoted.

Option 2: A legislative solution

While our preference would be an industry co-designed code, should such a process after having been undertaken prove inadequate, we would support the imposition of duties, whether through legislation or delegated rules set by ASIC to allow for a level of flexibility.

For instance, in the UK, the draft *Online Safety Bill 2021* (UK) proposes to impose duties on 'user to user services' (such as Facebook or Instagram) and 'search services' (such as Google) including to take steps to mitigate and effectively manage the risks of harm to individuals. This could involve taking steps to minimise the risk of members of the public encountering harmful material via search engine results or through 'scrolling' on social media. Notably, the Bill excludes paid for advertisements within its scope.

However, the UK *Joint Committee on the Draft Online Safety Bill (2021-22)*[1] report notes at 261, 'The exclusion of paid-for adverts from the scope of the draft Bill leaves little incentive for operators to remove scam adverts. Regardless of their legitimacy, they generate revenue for platforms.' The Committee recommended that the draft bill be amended to include paid-for advertising within the scope of the Bill, arguing, *'The exclusion of paid-for advertising from the scope of the Online Safety Bill would obstruct the Government's stated aim of tackling online fraud and activity that creates a*

[1] Joint Committee on the Draft Online Safety Bill, House of Commons and House of Lords, *Draft Online Safety Bill Report of Session 2021-22* (Final Report, December 2021).
https://committees.parliament.uk/publications/8206/documents/84092/default/

risk of harm more generally. Excluding paid-for advertising will leave service providers with little incentive to remove harmful adverts, and risks encouraging further proliferation of such content.'

The Financial Conduct Authority, cited in the Parliamentary Committee's report, stated at 259 *'the problem [of online fraud] is most manifest in the paid-for space, so it does not make sense for the Bill not to deal with the very heart of the problem, which is the paid-for advertising space.'*

We submit that if a legislated approach is considered, the Online Safety Bill provides a good model, but should include paid-for advertising as a priority.

If you wish to follow up on this submission or have any questions, please contact **Chaneg Torres, Policy Manager** at [redacted]

Yours sincerely,

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