free tv
AUSTRALIA

Submission by Free TV Australia

Digital Platform Services Inquiry – March 2024 report on data brokers

Issues Paper

Australian Competition and Consumer Commission

August 2023

1. Summary

- Free TV Australia appreciates the opportunity to comment on ACCC's Digital Platform Services Inquiry – March 2024 report on data brokers.
- Data broking services are a crucial part of the digital advertising ecosystem, particularly for advertisers and publishers who do not enjoy the massive data advantages of the dominant digital platforms who hold troves of first party data.
- However, as the ACCC has acknowledged, it is important to distinguish between data broking services that enrich existing first-party data holdings, and other services that involve the collection, bundling and selling of personal private information. This is a very important distinction and should be carefully explained in the interim report.
- As distinct from the collection, bundling and selling of personal information, data enrichment services use privacy protective "clean rooms" to match first-party data holdings between parties. In the case of Free TV members, this is done to segment existing first-party sets to offer advertisers a relevant audience and provide viewers with advertising that is relevant to them.
- Free TV understands that the focus of this inquiry is not on businesses who collect data on their own customers and use that data within their own businesses. However, it should be recognised that it is the data collection practices and the unprecedented scale of data collection by the dominant digital platforms that means data enrichment by parties with smaller first-party data holdings is essential to effective competition in the digital advertising market.
- The data advantage held by digital platforms gives rise to two significant competition issues:
    - The more effective tracking of consumers that improves ad targeting and attribution capabilities provides a significant competitive advantage in the sale of their own media inventory relative to publishers without the same data advantage; and
    - The ability for large digital platforms to fuel their ad tech services with the data collected from their consumer services, extending their market power in consumer services to the ad tech services market. This then provides them with the ability and incentive to favour their own media inventory for the allocation of advertising budgets.
- While the ACCC has indicated that first-party data broking undertaken by the digital platforms has been examined in previous reviews, this interim report will also be an opportunity to reiterate the importance of action to address the anti-competitive conduct of digital platforms that use their extensive first party data advantage to harm competition in related markets and to reinforce the regulatory reform needed to implement pro-competitive data separation requirements.

2. About Free TV Australia

Free TV Australia is the peak industry body for Australia's commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy. We proudly represent all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.

SEVEN WEST MEDIA Nine 10 SCA WIN NETWORK Imparja

Australia's commercial broadcasters create jobs, provide trusted local news, tell Australian stories, give Australians a voice and nurture Australian talent. A report released in September 2022 by Deloitte Access Economics, *Everybody Gets It: Revaluing the economic and social benefits of commercial* *television in Australia,* highlighted that in 2021, the commercial TV industry supported over 16,000 full-time equivalent jobs and contributed a total of $2.5 billion into the local economy. Further, advertising on commercial TV contributed $161 billion in brand value.

Commercial television reaches an audience of 16 million Australians in an average week, with viewers watching around 3 hours per day. Free TV members are vital to telling Australian stories to Australians, across news, information and entertainment. FTA television broadcasters understand and appreciate the cultural and social dividend that is delivered through the portrayal of the breadth and depth of Australian culture on television, and Australians prefer local stories. Commercial television networks spend more than $1.5 billion on Australian content every year, dedicating over 85% of their content expenditure to local programming.

3. Data brokers are critical to competition in digital advertising markets

The digital advertising market is heavily concentrated. In terms of the search and display (including video)[1] segments of the market, the ACCC has previously found that Google and Meta have revenue shares of around 97%[2] and 62%[3] respectively. This dominance is driven largely by the collection and use of first party datasets of unprecedented scale which no other party can compete against alone.

Free TV notes that the ACCC made the following findings in the Interim Report of the Digital Advertising Services Inquiry (p56):

- There is a widening divide in the volume and scope of data collected for use within the closed ecosystems of large, advertising-funded digital platforms (such as Google and Facebook) compared to the more fragmented data collected by other market participants. This means that large platforms can fuel their ad tech services by a much broader range of data than other ad tech providers, advertisers and publishers.
- Google has a particularly significant data advantage due to its ability to collect reliable first-party data from a wide range of consumer-facing services, which is supplemented by an extensive network of trackers on third-party websites and apps. Research from the ACCC's first monitoring report shows that Google trackers used for advertising purposes were found in more than half of the top 1,000 popular apps from the Google Play Store and that Google's trackers are present on over 80 per cent of 1,000 popular websites in Australia. In addition, Google's access to unique identifiers enables different data sources to be readily combined.
- Access to a large amount of high-quality data enables the more effective tracking of consumers and improves ad targeting and ad attribution capabilities. As these are valuable functions to advertisers and to publishers, improved targeting and attribution capabilities from increased access to data can give rise to a competitive advantage in the supply of display advertising services.
- There are currently no close substitutes to the large datasets held by large advertising-funded digital platforms with numerous consumer-facing services, a large network of third-party trackers and access to a range of unique identifiers to link together different datasets.
- As such, Google's access to data is likely to raise barriers to entry or expansion for smaller rivals or new entrants in the supply of ad tech services. As a result, these smaller rivals or new entrants

[1] The ACCC defines 'display' as referring to "all other types of online advertising, including advertising in banners or videos on webpages, in mobile apps, and alongside social media content" (2020 Social Report on Online Private Messaging Services)
[2] ACCC 2022, Digital Platform Services Inquiry, Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services, pg. 17.
[3] ibid pg. 20.

are unlikely to impose more than a weak competitive constraint on Google in the supply of ad tech services.

The ACCC also noted the following (p63-5):

There are three key factors underpinning Google's data advantage. First, Google has the largest range of over 60 consumer-facing services that are widely-used by Australian consumers, providing Google with access to a large amount of high quality first-party data. For instance, approximately 19.2 million Australians use Google Search and 17.6 million watch videos on YouTube each month. Many of Google's services require consumers to log-in to their Google Account, providing Google with a reliable source of logged-in user data on a significant proportion of Australia's current population of approximately 25 million. In contrast, most ad tech providers in Australia do not supply any consumer-facing services and must rely solely on third-party data sources.

Second, Google has the widest network of trackers on third-party websites and apps in Australia. The ACCC's analysis in the Digital Platform Services Inquiry Interim Report (September 2020) found Google's third-party scripts on over 80% of the top 1,000 websites sampled. While it is clear that Google has the means to collect data via these third-party scripts, the ACCC has not been able to directly observe how that data is being used by Google in each case and for what purpose. The ACCC's commissioned research by AppCensus of the top 1,000 most popular Android apps from the Google Play Store also found that Google's software development kits used for advertising and analytics purposes were found in 91% of apps analysed. Other ad tech providers also use trackers on third party websites and apps to carry out their functions, including for ad targeting, but none have as many trackers on as many websites or apps as Google. …

Third, Google has access to a range of unique identifiers that it can use to identify and link a user across different devices and browsing sessions, including exclusive access to its DoubleClick IDs. This gives Google the ability to track users across its different consumer-facing services and along the ad tech supply chain. This means that Google is likely able to more quickly and accurately identify the user that will be shown a particular ad impression, and know some of that user's characteristics and recent browsing behaviours. It is then able to use this information to optimise its pricing decisions (on the publisher-side) or its bidding decisions (on the advertiser-side). In addition, Google's access to DoubleClick IDs also means that it can quickly match a user across both sides of the ad tech supply chain and is less likely to have to engage in cookie syncing. … In contrast, other providers who do not have a comparable presence across both sides of the supply chain would have to resort to using a combination of other identifiers to attempt to match a user to their own database, which is likely to be both slower and less accurate. Further, some stakeholders are concerned that Google's decision to restrict other market participants' ability to access its DoubleClick IDs further reduces their ability to compete with Google. …

Many stakeholders submit that Google's targeting abilities, which stem from the data advantage described above, makes its services essential for advertisers, and there are no alternative providers that offer comparable targeting capabilities. Rival supplier of data services Oracle submits that Google has created a 'data moat' that constitutes an insurmountable barrier to entry, expansion, and effective competition in the supply of ad tech services.

In light of the above, the ACCC's preliminary view is that Google has unparalleled access to data and that this data advantage assists Google's for ad targeting and attribution services.

Although not quoted above, Free TV notes that the ACCC also considered the following further two points, among others, to underpin Google's data advantage:

- a string of Google acquisitions that have entrenched Google's position in ad tech, including through expanding into related markets, which may have been a source of possible rivals to Google's ad tech services (Final Report, p76-77, and p193-4); and
- Google's misleading public-facing material, which prompted the ACCC to note its concerns "that the widespread perceptions about how Google uses its first-party data in ad tech may be distorting

> competition in the supply of ad tech services in favour of Google. These views are due, at least in part, to Google's business and consumer-facing material. To address this, we recommend that Google ensure its public-facing material, including its terms and conditions make clear how it uses first-party data" (Final Report, p6; see further, Recommendation 1).

That is to say that the current competitive landscape is in part a product, in Free TV members' view, of past regulatory oversight. It would be a perverse outcome for regulatory or legislative intervention to take place against that context in a manner that further entrenches the beneficiaries of such a data advantage.

It is therefore critical for competition in the digital advertising market for online publishers, with smaller first-party data assets, to be able to enrich their data to be able to offer advertisers a compelling product with which to compete against the dominant digital platforms.

Unless Free TV's members are able to undertake data enrichment in relation to their audiences for the purposes of offering segment-based advertising, they will simply be unable to compete in the provision of digital advertising with international digital platforms, and thereby potentially become commercially unviable.

3.1 Lack of data separation arrangements the most pressing regulatory issue

As above, the dominant digital platforms, and in this context primarily Google, use their extensive first-party data holdings to limit competition across markets.

As the ACCC is aware, as part of exploiting this data advantage, Google engages in self-preferencing behaviour that damages competition in related markets. For example, the bundling of click and query data into DV360, makes that product a 'must have' for advertisers. Google also limits the purchase of YouTube inventory to DV360. It then acts on behalf of advertising clients in managing video campaign buys across publisher inventory, including that owned by Google itself.

It is behaviour such as this that has already led the ACCC to recommend to Government that a code of conduct should be enacted as a pro-competitive measure to address the harms identified with respect to Google's conduct. Such a Code should require each designated entity to put in place separation arrangements to ensure that audience data collected from its own consumer services is kept separate from its ad tech services that advertisers might use to target their campaigns.

These data separation arrangements, together with the competition enhancing services provided by data enrichment via clean rooms represent the best opportunity for the development of genuine competition in the digital advertising market.

We submit that this inquiry process should highlight the importance of pro-competitive and privacy protective practices, such as secure data clean rooms environments, as we explain below.

This inquiry also provides an opportunity to reiterate the importance of moving quickly to implement the codes of conduct needed to better regulate the anti-competitive conduct of the dominant digital platforms.

4. Privacy protective data enrichment practices

It is important to understand how data brokers help provide media owners a limited competitive position against the platforms in a privacy protective way.

Free TV members work with data brokers to enrich their understanding of their audiences, using privacy compliant methods. They do so for the purposes of providing more relevant advertising and to assist in better audience marketing activity. Free TV members believe data brokers who build their offerings on owned, first party data where consent can be directly managed should be considered in a separate category to brokers whose offering is built on third party data.

All data enrichment between Free TV members and data brokers is undertaken using anonymised data or data clean rooms which are privacy compliant. Personal Information (PII) is not shared between a member and a data broker. Consents and opt-in arrangements are managed by the data broker.

Free TV members take this enriched view of audience to provide relevant advertising and marketing at a cohort or a group level. We do not target individuals or groups of less than 1000 to ensure the individuals privacy is protected.

It is worth noting that this enriched view of the audience does not match the richness of Google's view of their users. As identified by the ACCC above, Google's view consists of a wide range of data points from more than 2000 websites and apps in Australia with 'no close substitutes'.

In contrast, the enriched view of audience provided data brokers to Free TV members typically only adds one or two additional data points to the existing audience view. This provides members with a limited competitive position against Google.

5. Ensuring consistency with definitions adopted in Privacy Act review

Free TV notes that Recommendation 17 of the Final Report of the ACCC's Digital Platforms Inquiry led to the ongoing review of the Privacy Act by the Attorney-General's Department. As noted by the ACCC, it is therefore appropriate that privacy matters sit outside the scope of this inquiry.

That said, Free TV submits that it would be more appropriate and complementary to the ongoing Privacy Act review for the ACCC's data broking inquiry to adopt the narrower existing definition of Personal Information in the Privacy Act when referring to "information" and "data". This will assist the ACCC in clearly delineating between first-party data enrichment activities and third-party data brokers described throughout this submission.