



## **Competition and Consumer (Price Inquiry— Digital Advertising Services) Direction 2020**

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I, Josh Frydenberg, Treasurer, give the following direction to the Australian Competition and Consumer Commission.

Dated: 10 February 2020

Josh Frydenberg  
Treasurer

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## Part 1—Preliminary

### 1 Name

This instrument is the *Competition and Consumer (Price Inquiry—Digital Advertising Services) Direction 2020*.

### 2 Commencement

- (1) Each provision of this instrument specified in column 1 of the table commences, or is taken to have commenced, in accordance with column 2 of the table. Any other statement in column 2 has effect according to its terms.

Commencement information		
Column 1	Column 2	Column 3
Provisions	Commencement	Date/Details
1. The whole of this instrument	The day after this instrument is registered.	

Note: This table relates only to the provisions of this instrument as originally made. It will not be amended to deal with any later amendments of this instrument.

- (2) Any information in column 3 of the table is not part of this instrument. Information may be inserted in this column, or information in it may be edited, in any published version of this instrument.

### 3 Authority

This instrument is made under the *Competition and Consumer Act 2010*.

### 4 Definitions

Note: Expressions have the same meaning in this instrument as in the *Competition and Consumer Act 2010* as in force from time to time—see paragraph 13(1)(b) of the *Legislation Act 2003*.

In this instrument:

**advertiser** means a person that places an advertisement.

**digital advertising agency services** means services supplied to advertisers relating to negotiating, acquiring or managing digital display advertising services.

**digital advertising technology services** means services that provide for, or assist with, the automated buying, selling and delivery of digital display advertising services.

**digital display advertising services** means the supply of opportunities for the placement of advertising, by way of the internet, other than:

- (a) classified advertisements; and

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(b) advertising provided in conjunction with the search results of internet search engines.

Examples: Supply of opportunities to place advertisements that would appear:

- (a) in banners, or in videos, on a webpage; and
- (b) within a software application on a mobile computing device; and
- (c) in conjunction with social media content.

***exempt supply*** has the meaning given by subsection 95A(1) of the Act.

***goods*** has the meaning given by subsection 95A(1) of the Act.

***inquiry*** has the meaning given by subsection 95A(1) of the Act.

***services*** has the meaning given by subsection 95A(1) of the Act.

***State or Territory authority*** has the meaning given by subsection 95A(1) of the Act.

***supply*** has the meaning given by subsection 95A(1) of the Act.

***the Act*** means the *Competition and Consumer Act 2010*.

## **Part 2—Price inquiry into supply of certain digital advertising services**

### **5 Commission to hold inquiry**

- (1) Under subsection 95H(1) of the Act, the Commission is required to hold an inquiry into the markets for the supply of digital advertising technology services and digital advertising agency services. The inquiry is *not* to extend to any of the following:
  - (a) the supply of a good or service by a State or Territory authority;
  - (b) the supply of a good or service that is an exempt supply;
  - (c) reviewing the operation of any Australian law (other than this Act) relating to communications, broadcasting, media, privacy or taxation;
  - (d) reviewing the operation of any program funded by the Commonwealth, or any policy of the Commonwealth (other than policies relating to competition and consumer protection);
  - (e) the supply of creative input for advertising.
- (2) For the purposes of subsection 95J(1), the inquiry is to be held in relation to goods and services of the following descriptions:
  - (a) digital display advertising services;
  - (b) digital advertising technology services;
  - (c) digital advertising agency services.
- (3) Under subsection 95J(2), the inquiry is not to be held in relation to the supply of goods and services by a particular person or persons.

### **6 Directions on matters to be taking into consideration in the inquiry**

Under subsection 95J(6) of the Act, the Commission is directed to take into consideration all of the following matters in holding the inquiry:

- (a) the intensity of competition in the markets, and the efficiency of the markets, for the supply of digital advertising technology services and digital advertising agency services (*those markets*), with particular regard to:
  - (i) how competition in those markets impacts on competition in the market for the supply of digital display advertising services; and
  - (ii) the availability to advertisers, publishers and other market participants of information on activities in those markets; and
  - (iii) the revenue of, and share of an advertiser's digital display advertising services expenditure retained by, each of the suppliers of services referred to in subsection 5(2); and
  - (iv) the concentration of power in the markets amongst and between suppliers of services referred to in subsection 5(2); and
  - (v) auction and bidding processes and other similar processes undertaken in digital display advertising services; and

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- (vi) mergers and acquisitions in those markets; and
- (vii) the behaviour of any suppliers in those markets, including:
  - (A) the nature, characteristics and quality of the services they offer; and
  - (B) the pricing and other terms and conditions they offer to consumers and businesses;

Example 1: Characteristics of services offered include the interoperability of systems or software used or offered by different suppliers.

Example 2: Other terms and conditions include policies relating to privacy and data collection, management and disclosure.

- (b) relationships between suppliers and customers in the markets for services referred to in subsection 5(2), including the extent to which existing corporate structures, or contractual arrangements, have a negative effect on competition in the market or informed decision-making by market participants;
- (c) whether the services referred in subsection 5(2) are being provided or performed to the satisfaction of all market participants.

### 7 Directions as to holding of the inquiry

- (1) Under subsection 95J(6) of the Act, the Commission is directed to do the following in holding the inquiry:
  - (a) give to the Treasurer an interim report on the inquiry by no later than 31 December 2020.
- (2) Under subsection 95P(3) of the Act, the Commission is directed not to make available for public inspection, copies of any interim report until the Treasurer, in writing, authorises the Commission to do so.

### 8 Period for completing the inquiry

For the purposes of subsection 95K(1) of the Act, the inquiry is to be completed, and a report on the matter of inquiry given to the Treasurer, by no later than 31 August 2021.