



To. Ms. Kate Reader  
General Manager, Digital Platforms Branch  
Australian Competition & Consumer Commission (ACCC)  
By email: digitalmonitoring@accc.gov.au

Friday September 16, 2022

Dear Ms. Reader,

The Digital Industry Group Inc. (DIGI) thanks you for the extended opportunity to provide our views on the *Digital Platform Services Inquiry March 2023 Report on social media services Issues Paper* (the Issues Paper).

### Background

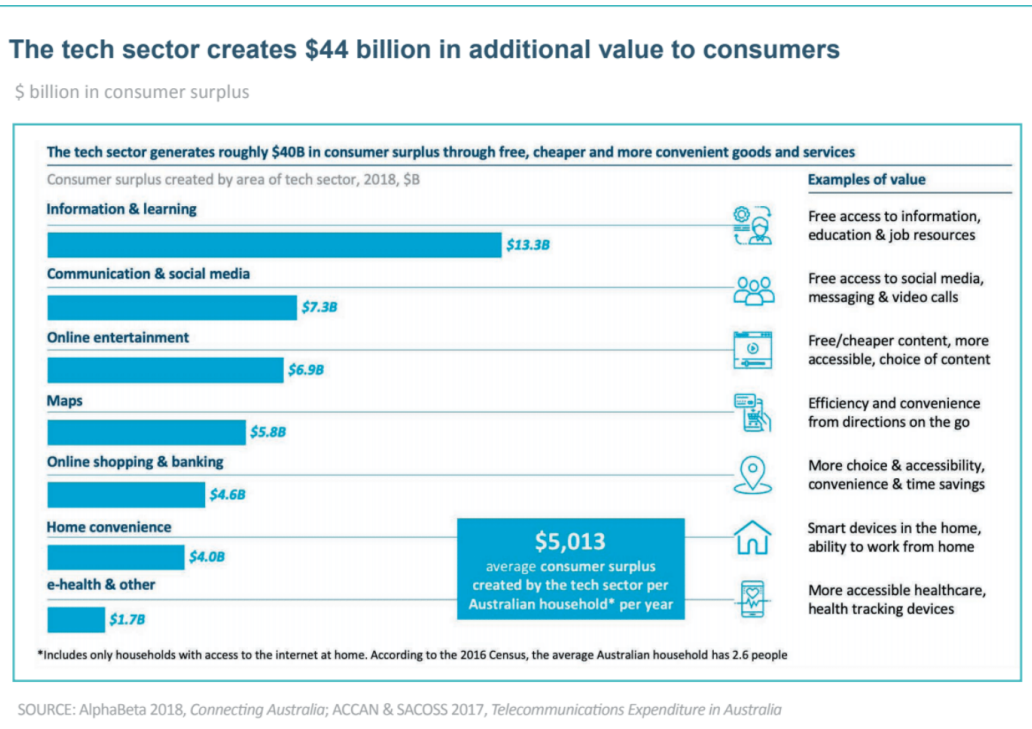
By way of background, DIGI is a non-profit industry association that advocates for the interests of the digital industry in Australia. DIGI's founding members are Apple, eBay, Google, Linktree, Meta, Snap, TikTok, Twitter and Yahoo, and its associate members are Change.org, Gofundme, ProductReview.com.au and Redbubble. DIGI's vision is a thriving Australian digitally-enabled economy that fosters innovation, a growing selection of digital products and services, and where online safety and privacy are protected.

As this vision demonstrates, we share the goals of ensuring competition in Australia's digital economy, and strong consumer protection, and are pleased to have the opportunity to contribute to this inquiry. Our submission will largely focus the questions aimed at market participants in relation to consumer harms.

### Presenting a comprehensive view of social media companies

DIGI encourages a comprehensive view of the role of social media companies, and encourages the final report provided to the Treasurer in 2023 to explore the immense positive impacts that their presence in a domestic market brings to local consumers, jobs and the economy. As one example, according to AlphaBeta (now Accenture) analysis, digital technologies like maps, web search, online banking and shopping generate considerable value for consumers that is not captured in traditional measures of GDP, and are therefore gains that may be measured as a 'consumer surplus'. Per Figure 1, AlphaBeta calculates that the consumer surplus created by such services in Australia is estimated to be nearly \$44 billion, or approximately \$5,000 per Australian household per year on average. 7.3 billion of the estimated consumer surplus is derived from social media services. DIGI posits that, if such analysis were to occur in 2022, that this consumer surplus would have increased due to the impact of the COVID-19 pandemic and associated lockdowns. Social media provided a critically important bridge for continued commerce and connection for people and business through the pandemic, enabling a wide range of social, health and economic benefits.

Figure 1: Consumer surplus from digital platform services



## The regulatory environment

DIGI is concerned that the Issues Paper canvasses a wide range of competition and consumer issues. We understand that, in Australia, competition and consumer issues at the federal level are dealt with by the ACCC under a single legislative regime: the Competition and Consumer Act 2010 (CCA). Nonetheless, Australia should better delineate the competition regime from consumer protection regime on digital platform services. For example, the EU has separated the Digital Markets Act, which is a targeted ex-ante regime applying only to firms with market power, from the Digital Services Act, which is a broader regulatory framework to address issues arising from the operation of digital platforms and intermediary services<sup>1</sup>. Similarly, in the UK, the introduction of the proposed ex-ante pro-competition regime is subject to a separate consultation from reform of the existing ex-post regime for competition and consumer protection<sup>2</sup>. We recommend a level of separation in the presentation of competition and consumer issues in the final report.

## Addressing consumer harms

DIGI and its members believe that the digital industry has a strong responsibility to address consumer

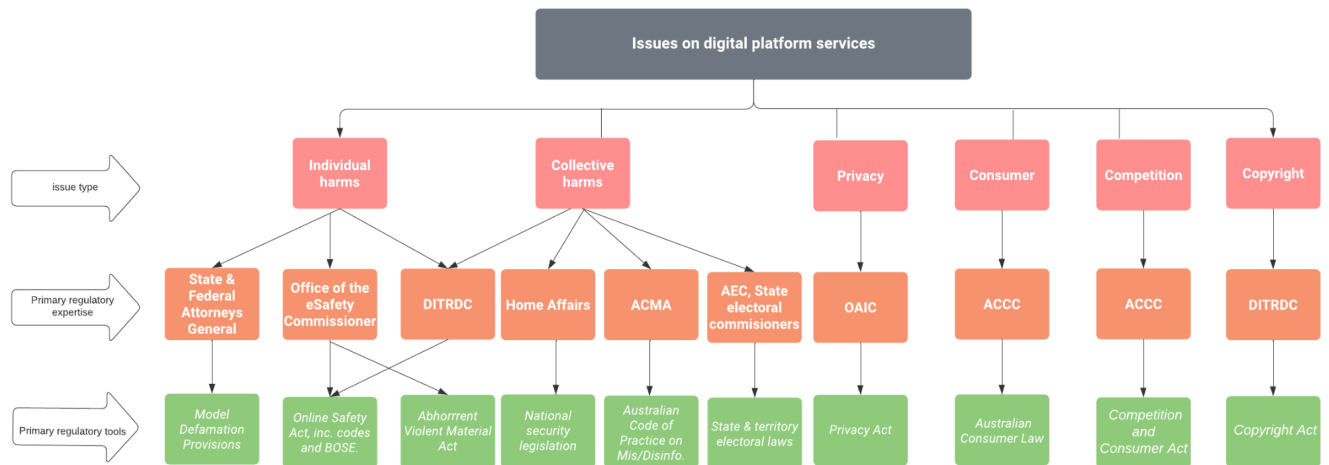
<sup>1</sup> European Parliament (04/04/22), *EU Digital Markets Act and Digital Services Act explained*, accessed at <https://www.europarl.europa.eu/news/en/headlines/society/20211209ST019124/eu-digital-markets-act-and-digital-services-act-explained>

<sup>2</sup> See UK Government (2021), *A new pro-competition regime for digital markets*, accessed at <https://www.gov.uk/government/consultations/a-new-pro-competition-regime-for-digital-markets>; UK Government (2021), *Reforming competition and consumer policy* - GOV.UK, accessed at <https://www.gov.uk/government/consultations/reforming-competition-and-consumer-policy>

harm on social media services. There is an extensive and continued program of work that our members undertake to address a wide range of harms experienced on social media services. Our April 2022 submission to the *Digital Platform Services Inquiry Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services* provided a detailed overview of issues that users of digital platform service might experience, and the approach taken by relevant DIGI members to address those issues.

DIGI is mindful that we should not conflate broader content related issues on social media services with competition and consumer law issues, noting that the latter category is within the ACCC's remit. However, we are also mindful that stakeholders contributing this inquiry may offer input on those broader content related issues; this is why we seek to highlight here that relevant DIGI members have policies, reporting tools, technology and teams dedicated to addressing issues such as cyberbullying, child sexual abuse material, non-consensual sharing of intimate imagery, nudity and adult content, advocacy of suicide and self-harm, defamation, hate speech, pro-terror material and the incitement of violence, misinformation and disinformation, advertising of illegal and potentially harmful goods and services, scams, spam, deceptive conduct, privacy intrusion, hacking & threats to cyber security and copyright infringement. Accountability around their corporate responsibility in each of these areas is ensured through regulator oversight, legislation and a range of co-regulatory and self-regulatory tools. In relation to issues on digital platform services, DIGI provides a non-exhaustive overview of where regulatory expertise lies, and some of the regulatory tools available, in Figure 2.

Figure 2: Issues on social media services and regulatory responses



### Misleading and deceptive claims

To zoom in one area of focus in the Issues Paper, it is worth highlighting that relevant DIGI members have broad-ranging work in relation to misleading and deceptive claims. They have advertising policies that prohibit or restrict a long list of illegal and potentially harmful goods and services that are adapted to jurisdictions including Australian law and include, but are not limited to, topic areas such as online wagering, adult goods and services, alcohol and tobacco sales. These policies include the prohibition of deceptive, misleading, or harmful business propositions, including restrictions on misleading, false, or unsubstantiated claims during the promotion of a product or service. Relevant members also have



varying restrictions on political advertising, and work with Federal, State and Territory electoral offices to prevent electoral interference, as well as more traditional electoral offences.

In terms of the Government oversight of that work, Australian consumer law applies to digital platforms, and has prohibitions on false and misleading statements, unfair contract terms and provisions relating to consumer guarantees, product safety. This law is administered by the ACCC and the State and Territory consumer protection agencies.

In relation to online gambling, the Australian Communications & Media Authority (ACMA) administers the Broadcasting Services (Online Content Service Provider Rules) 2018 (the Rules). The Rules apply to online content service providers who provide gambling promotional content on online content services in conjunction with live coverage of a sporting event.

There are state and federal electoral laws that apply to digital content. In addition to those laws, DIGI has worked with representatives from the Electoral Council of Australia and New Zealand (ECANZ) on a protocol to reflect how electoral law is achieved on relevant digital platform services<sup>3</sup>. Additionally, if enacted, the proposals in Stage 2 Review of the Model Defamation Provisions, concerning the liability of internet intermediaries for third-party content, will provide consumers and business users with improved recourse to address potentially misleading and/or deceptive claims in advertising on social media. We consider these two areas as content related issues on social media services, and not competition and consumer law issues.

### Improving consumer outcomes

The Issues Paper poses the question whether the development of social networking features and related services by social media platforms leads to new consumer harms, and exacerbates existing consumer harms. DIGI posits that many online harms are not new, but they assume new dimensions in the digital realm. For example, through the expertise DIGI has gained through our development of the *Australian Code of Practice on Disinformation and Misinformation*, research demonstrates that misinformation and disinformation are not new phenomena; however the global scale and the speed of communication enabled by digital platforms is the contemporary manifestation of this challenge<sup>4</sup>. Therefore, DIGI has been supportive of proposals to ensure that the ACMA, the relevant regulator, be provided with the long-term mandate to increase its understanding and oversight over misinformation<sup>5</sup> which it currently lacks.

This is used as an example of a broader approach that DIGI recommends in relation to consumer protection on social media services. DIGI and its members believe that the digital industry has a responsibility to address online harms through robust platform-level responses, and that the Australian Government has an important role to play in standardising protections industry-wide, encouraging accountability and providing safety nets for consumers. Those safety nets are reliant upon ensuring

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<sup>3</sup> AEC Media Release (3/8/2022), *AEC celebrates successful disinformation partnerships*, accessed at <https://docs.google.com/document/d/1M3cwMf-uFXyC3M3RMSrhknVg-jH9loPUJllq2duqe2l/edit>

<sup>4</sup> "While the historical impact of rumours and fabricated content have been well documented, ... contemporary social technology means that we are witnessing something new: information pollution at a global scale; a complex web of motivations for creating, disseminating and consuming these 'polluted' messages... and breakneck speeds of communication between trusted peers" in Wardle, Claire (2017), *Towards an interdisciplinary framework for research and policy making*, accessed at <https://firstdraftnews.org/articles/coe-summary/>

<sup>5</sup> DIGI Media Release (21/03/22), *DIGI Welcomes Release Of ACMA Report On Mis/Disinformation Code And Supports Its Five Key Recommendations*, accessed at <https://digi.org.au/digi-welcomes-release-of-acma-report-on-misdisinformation-code-and-supports-its-five-key-recom-mendations/>

*capability* and *capacity* across the Australian Government and existing regulators, in order to better address the digital manifestation of issues in their established portfolio areas. As Figure 2 demonstrates, there are a wide range of relevant portfolio areas. Such an approach is effective because each issue arising on digital platform services is distinct and complex, and requires a high level of specialised knowledge across different regulators and regulatory instruments.

DIGI believes that the best outcomes for consumers will occur when:

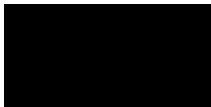
1. Existing regulatory instruments are *modernised* for digital challenges. For example, DIGI is supportive of current efforts to modernise Privacy Act 1988 and the Model Defamation Provisions.
2. Different regulators and Government departments are *resourced and skilled* to continue to specialise in their respective areas of expertise as they relate to digital platform services.
3. There are strong *cooperation mechanisms* with other regulators and Departments, and transparency and consultation with the digital industry.
4. *Consumers and industry* both have clear, comprehensive targeted and public communications about their rights and responsibilities respectively on digital platform services. This should extend to *advertisers*; just as in other mediums, there should be strong frameworks for advertisers to not breach community expectations, in addition to reporting and recourse provided by the intermediary social media platform upon which their advertisements appear.

## Conclusion

DIGI believes that the Australian Government has an important role to play in enabling the growth of the technology sector, and encouraging social and economic benefits that occur through social media services. DIGI also believes that the Australian Government should examine evidence of consumer harm, evaluating existing rules and providing proportionate and targeted interventions to protect consumers.

DIGI sees itself as a key Government partner in this endeavour, through our code development, partnerships, and our ongoing engagement with proposed regulation. We thank you for your consideration of the matters raised in this submission, and for the opportunity to participate, and we look forward to our continued engagement in this inquiry.

Best regards,



Sunita Bose  
Managing Director, DIGI

