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Australian Competition & Consumer Commission
Digital Platforms Branch

By email: digitalmonitoring@acc.gov.au

Nine's Submission to the ACCC – Digital Platform Services Inquiry - Discussion Paper for Interim Report no.5

Nine welcomes the opportunity to provide its submission to the Australian Competition and Consumer Commission's Report no. 5 on Updating competition and consumer law for digital platform services (**Report no.5**).

Nine is an Australian media company which produces Australian and international news, sport and entertainment content which is loved and relied upon by Australian audiences. Nine has previously made submissions about how the sustainability of delivering Australian news, sport and stories is currently under threat due to the unfair market power held by the digital platforms and the anti-competitive conduct of the digital platforms especially in the app marketplace.

Australian consumers are also at risk of not being able to find or access Australian news, sport, events of cultural significance and unique Australian stories and content unless this unfair market dynamic is addressed. Similarly, we are one of a few trusted sources to convey emergency information in times of crisis - something our audiences rely upon. Nine, as well as other free-to-air television and radio broadcasters and trusted news publishers, are significant contributors to the Australian economy - through local employment, local investment and local advertising. The effect on the everyday consumers, as well as the economy at large, will be significant without urgent action.

Nine makes these submissions to highlight that the time to act is now - the ACCC's world first inquiry and subsequent findings have been ground breaking but any delay in implementing the findings in a meaningful way will cause consumer harm and will threaten the livelihood of many businesses, including Nine. Enacting the News Media Bargaining Code in response to the findings of the ACCC's Digital Platforms Enquiry was a welcome first step in supporting the sustainability of Australian news businesses, however there is still further reform needed.

Nine strongly supports the ACCC's recommendation that new ex-ante rules are required to correct the digital platforms' anti-competitive behaviour and the resulting consumer harms. Nine also strongly supports the Free TV and CRA submissions.

1. Urgent reform required

Nine supports the findings made by the ACCC in respect of the competition and consumer harms faced by Australian businesses and consumers due to the way in which large digital platforms such as Google, Meta and Apple conduct their businesses.

Urgent regulatory intervention is required now as the substantial market power held by the large digital platforms is unlikely to erode, and if anything will become more entrenched.

Nine takes its obligations as a broadcaster and publisher of Australian news, stories and content seriously, however the ever-increasing anti-competitive nature of the digital platforms combined with them being our unavoidable business partners, is challenging the sustainability of audience growth and reach and simultaneously eroding our revenue (which is in turn, used to create news and content which is in the public interest).

The ever increasing imbalance is exacerbated by the digital platforms' gatekeeper role between Australian businesses and consumers, and their self-preferencing threatens Australians' ability to get the content that they are after.

- For example, featuring apps on the 'Today' tab allows Apple to preference their own apps that offer a similar service (e.g. Apple TV+ vs. 9Now, Apple News vs. The Sydney Morning Herald).
- By way of further example, Apple has indicated that they would not promote Nine's new apps for The Age and The Sydney Morning Herald unless they were "universal" apps that worked on both iPhone and iPad.

Apple and Google place themselves firmly between the user and the app provider for all apps on the App Store and Play Store. This concerning conduct is evident in emerging channels to consumers such as the smart speaker market. Using the Google Assistant to 'play the news' will play a default provider as chosen by an algorithm. It is unclear to news media businesses and consumers how these rankings are formed. It is possible for users to update default services but it is a convoluted and relatively hidden path. This impacts Nine across a range of our media assets:

- Nine Radio: Smart speakers, such as those with Google Assistant, are increasingly becoming the 'radio of the home.' As a result, we are at an inflexion point for customers building new habits for consuming news media. Under the current setup, local brands such as 2GB are very hard for consumers to locate and we risk losing consumers to other brands that are higher on the 'default list'.
- Similar to Nine Radio brands, the Sydney Morning Herald, The Age and Nine News all produce daily news briefings that are not easy to locate

Google and Apple controlled operating systems and their accompanying app stores account for 99% of smartphones worldwide. As a result, app developers essentially have no option but to list in the App Store and Google Play Store. This is because:

- Apple prohibits apps not in the App Store and developers are required to adhere to Apple's very strict rules in order to reach any iPhone users
- Google allows third-party installations to Android phones, but confronting disclaimers prior to installation of non-Play Store apps severely limits app producers' ability to reach Android users.

Apps are a vital channel for reaching Nine users. Nine currently uses apps across the following key assets:

- Our digital streaming: 9Now and Stan apps
- Our free news services: 9News app
- Our subscription news publications: *The Sydney Morning Herald*, *The Age* and *The Australian Financial Review* apps
- Our digital radio: 2GB, 3AW, 4BC, 6PR, 2UE 954, Magic 1278, 4BH 882 and 6GT apps
- Other: Domain

Under the current conditions, app store users of Nine services receive a potentially inferior experience as communication between the user and the service is limited. Furthermore, Nine's communication with users is restricted, which limits the ability to provide audiences with options to enhance their subscriptions - resulting in a possible loss of revenue and audience

for Nine.

It is not always possible to communicate with these customers or understand if they are using the app, resulting in a worse customer experience and risking Nine's business relationship with app users. This could result in a premature churn of a subscriber due to the inability to showcase the breadth of value from our subscriptions.

Even as more information was made available (through development effort and significant time spent working with Apple), Apple's App Store rules limit direct contact with these customers. This is bad for the user as they may not be able to uncover valuable components of their subscription and it is bad for Nine as it may result in lost revenue through premature churn.

Placing a 15% and 30% commission on subscriptions through app marketplaces which significantly undermines the commercial benefit derived by Nine from these apps. In the case of Nine's subscription apps, the commission charged by app marketplaces is fundamentally for processing a payment - no other real benefits exist for consumers or Nine from the app marketplaces' involvement in the transaction.

Nine is concerned that the cumulative effect of these issues means that we are at risk of losing a substantial portion of our audience, that with a declining audience, advertising revenue will also decline ultimately affecting the long-term sustainability of our businesses. Like other Australian businesses, Nine cannot wait years for these issues to be addressed - urgent action is required now to address these fundamental, and anti-competitive, market failures.

2. Mandatory industry codes and required

Nine strongly supports the Free TV position regarding the urgent development of mandatory industry codes which address the following areas:

- digital search engine, social media and other digital content aggregation platform services
- digital display advertising services and digital advertising technology (ad tech) services
- app marketplaces, including those made available on connected TVs and related devices
- any other digital platform services that the ACCC may designate.

Nine does not propose to restate the strong arguments in the Free TV submission, but confirms that as set out by Free TV, to be effective, the following areas would need to be addressed in order to correct consumer harms and ensure the sustainability of Australian media and content providers:

- **Prominence rules and app marketplace protections** – a code is required to ensure free-of-charge prominence for Broadcasting Services Act 1992 (BSA) licenced or national broadcasters.
- **Restrictions on imposition of unfair contract terms** – Dominant service providers are imposing unfair contract terms on businesses, including in relation to data collection and restrictions on the monetisation of content
- **Data separation arrangements** – To address the significant advantages that providers obtain from the vast quantities of consumer data they collect in a privacy protective way, data separation arrangements should be implemented
- **Prohibitions on self-preferencing including management of conflicts of interest** – The ACCC has found strong evidence of Google using its market position to advantage its own products and services in related market segments, with its vertical integration increasing its incentive to self-preference
- **Addressing interoperability** – Rules are required to address interoperability to

- ensure businesses and consumers have greater choice
- **Transparency** – The ACCC has found an absence of transparency impedes competitive outcomes and this should be addressed

Please do not hesitate to contact me if you would like any further information or would like to discuss this matter.

Yours sincerely

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