Pinterest

Response to ACCC Discussion Paper for Interim Report No. 5:
Updating competition and consumer law for digital platform services
15 April 2022

I.   Introduction

On 28 February 2022, the Australian Competition and Consumer Commission (ACCC) published its "Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services," and invited comments from interested parties. Pinterest welcomes the opportunity to provide our response to the ACCC's findings, as well as the potential interventions under consideration.

By way of background, Pinterest is a visual discovery engine where more than 400 million users around the world go to get inspiration for their lives. Pinterest shows users visual recommendations called Pins. The vast majority of Pins have been handpicked, saved and organized over the years by hundreds of millions of Pinners creating billions of boards; they are not the result of web crawling or indexing. Pinterest selects Pins for users based on their interests, using a variety of sources to determine what to recommend to a user, including the user's past search and browsing behavior on Pinterest and the interests they select when signing up for the service. Pinterest users save and organize these recommendations into collections called boards.

Our mission is to inspire users to live a better life and provide the means for them to do more than just dream. Browsing and saving visual ideas on Pinterest's service helps Pinners imagine what their future could look like, which helps them go from inspiration to reality.

On Pinterest, businesses of all sizes and from many industries can achieve a diverse set of goals, from building brand awareness, to increasing online traffic, to driving sales. Pinterest provides a suite of advertising products, including brand and performance-based advertising.

Pinterest competes with internet advertising companies that provide their users with a variety of online products, services, content and advertising offerings, including web search engines, social networks, and other means of discovering, using or acquiring goods and services. Some of these competitors have significantly greater financial, technical, and operational resources, and materially larger user bases than we do. We rely on some of these competitors to operate our service and changes they make in the products or services offered, or the terms upon which they are offered, can have a significant impact on our business and on our ability to compete effectively.

For the most part, Pinterest has grown its user base organically through search engine optimization ("SEO") (i.e. Google Search) and app store discovery (i.e. the Google Play Store and the iOS App Store). In addition, Pinterest uses most of the large paid ad channels, such as Facebook and Google. These platforms provide the benefits of ease of use, familiarity, and security for users, and as a result, those users are accessible to developers such as Pinterest. However, the providers of these services also develop apps or features which compete directly with Pinterest in areas such as image search or shoppable images, and as detailed herein, certain competitive harms arise from larger platforms' dual roles as gatekeepers and competitors.

To fulfill our mission to bring everyone the inspiration to create a life they love, we hope to have an equal opportunity to compete in our sector, together with other new entrants and companies of all sizes. Such an environment will empower us to continue to create innovative products, cultivate a strong user experience, and support our advertising partners. Accordingly, we welcome the Digital Platforms Services Inquiry and appreciate the opportunity to contribute regarding the subject areas most relevant to Pinterest as an app developer and provider of digital advertising services, including app store practices, search engine optimization, and larger platforms' data advantages.

Please note that questions such as the presence of competitive harms, whether and how to implement pro-competitive interventions, whether they will be effective, or whether they may yield unintended adverse effects, can be subjective. Accordingly, some opinions may differ within our company, or may evolve based on changes in market conditions or technological advancements.

II.   Existing and potential regulatory frameworks

Both the Competition and Consumer Act (CCA) and the Australian Consumer Law (ACL) contain powerful tools for addressing conduct by businesses that adversely affect competition and/or consumers throughout the economy. However, as noted in the Discussion Paper, the market for digital platform services is unique in several respects. Namely, large digital services platforms possess competitive advantages of high barriers to entry and expansion, network effects, economies of scale, and a self-perpetuating data advantage. These platforms are able to leverage these advantages to build scale, protect themselves from competition, and act as gatekeepers between users and developers, whom they often compete with downstream.

As such, the largest digital platform service providers have accumulated significant market power, and the resulting competitive harms are difficult to address using the existing tools under the CCA and ACL. Large platforms' control over multiple aspects of the ecosystem means that a wide breadth of anti-competitive conduct is possible. This

conduct may not fit within established provisions of the CCA and ACL, and even when it does, investigations and enforcement actions under the existing regime take a significant amount of time. By the time such actions have been completed, gatekeepers' market power may have grown substantially or become further entrenched, or the prevailing technology or practices in the rapidly-evolving digital services sector may have changed. Furthermore, the available remedies (typically fines that are very small in comparison to the profits enjoyed by the largest platforms) do not alter the underlying competitive dynamics, in which gatekeepers lack competition and essentially act as their own regulators.

In light of the foregoing, a new framework to prevent anti-competitive conduct and provide predictability in the supply of digital platform services may be beneficial. Since such a framework would be intended to address the consequences of entrenched market power, it would be reasonable for new pro-competitive measures to apply only to the largest digital platforms, and particularly those whose services perform a gatekeeping function, such as app marketplaces, operating systems, and search engines.

Of course, it may be reasonable for certain measures to apply to all digital platforms if they address systemic risk, for example, in the area of consumer protection. However, such measures should be proportional to the size and risk profile of the platform, and flexible enough to account for different platforms' features and business models.

Given the potential for rapid changes to technology and market conditions in the digital platform services sector, the framework should strive to allow for sufficient flexibility and ongoing monitoring and adjustment. Furthermore, any measures should be proportionate and targeted to the harms at issue in order to avoid impeding innovation or efficiency, or placing undue burden on smaller platforms.

In light of this need for agility in a regulatory framework, setting forth prohibitions and obligations in the form of legislation is less likely to be an effective approach. It is challenging to strike a balance between provisions that are robust enough to prevent harmful conduct, while also avoiding over-capture of smaller players in the market, or other adverse consequences. Legislation may be slow and difficult to amend in order to address any imbalance, as well as to keep up with innovations in digital services and the accompanying shifts in market power. While empowering a rule-making authority to enact regulations may allow for a more refined and adaptable approach, it would still be relatively static and reactive.

The goals of proportionality and adaptability would be better served by designating platforms with significant market power and then developing codes of practice and/or introducing pro-competitive interventions in order to set expectations for their behavior. As part of this process, the regulator can issue guidance and engage with platforms of all sizes on the feasibility and desirability of proposed reforms. Such an approach has the advantages of being timely, flexible, and targeted to the sources of competitive harm. It would also serve the ultimate goal of a competitive market for digital services, rather than merely punishing bad conduct.

No matter what shape the regulatory framework takes, though, it is crucial that its requirements align with international standards. As digital service platforms operate globally and are deeply interconnected, an international patchwork of regulations will lead to unnecessary administrative burdens, contradictory requirements, and divergent user experiences. Also, if only the largest platforms have the resources to comply with disparate national and regional regulatory regimes, such an environment will only serve to further entrench their market power.

III. Competitive harms and potential interventions

A. Self-preferencing

In light of the wide range of services controlled by gatekeepers – including operating systems, web search results, app store search results, and app store rankings and suggestions – there is a substantial risk that these platforms may favor their own downstream services by making them more discoverable to users. As detailed herein, Pinterest supports measures against self-preferencing in order to help create a level playing field for developers to market their services.

1. Ranking transparency

Web search results, app store search results, and app store rankings are an important way for new users to be able to discover our app, and indeed a large majority of Pinterest's user acquisition comes organically through SEO and app store discovery. However, the platforms that operate these services exercise a large degree of control over app discoverability, without being subject to transparency requirements.

Regarding web search, Google can (and has) made changes to its algorithm and resulting distribution of Pinterest content in Google Search results, making it easier or harder for users to discover and engage with Pinterest content, and impacting referral traffic from SEO into Pinterest. For example, as noted in our Q4 2021 Letter to Shareholders, a decline in search traffic caused by a Google algorithm change in

November 2021 was the primary cause of a contraction in Pinterest's monthly average users on a year-over-year basis.

Similarly for app stores, Pinterest does not receive guidance on how the ranking of apps in search results is determined, nor is it provided any advance notice of changes to the algorithms used for ranking search results, and efforts to gain more insight into how and when algorithms used for ranking search results might change have been unsuccessful.

Accordingly, Pinterest supports requiring increased transparency regarding algorithms or other factors that affect how apps are displayed in search results and app stores. This could be implemented in a relatively straightforward manner by requiring platforms to post information about how their rankings are constructed, and to apply neutral criteria in order to fairly rank their own services alongside third-party products. Such measures would benefit developers as they compete for users through placement in search results and app store rankings.

2. Pre-installation and default settings

In addition to search and ranking transparency, pre-installation and default settings in operating systems also come up frequently in discussions of self-preferencing. While, as a general principle, Pinterest supports efforts to prevent gatekeepers from using surfaces they control to advantage their own apps, it should be noted that a complete ban on pre-installation may have adverse effects on users and developers.

While such an intervention may be simple to implement and create open competition among developers, requiring devices to be sold with little immediate functionality out of the box could be highly disruptive to the user experience of purchasing a new device. Furthermore, pre-installation agreements can be an effective marketing and growth strategy for small and mid-sized developers, so any regulation in this area should be tailored to avoid any unintended adverse consequences such as cutting developers off from the users and revenue they need to effectively compete. Implementation of neutral choice architecture between defaults would likely be the more appropriate approach in this area.

B. Unfair terms of use or access

1. App review

The app review process as currently practiced can result in unexpected rejections of app updates, which has the effect of holding back innovative products from the market and disrupting developers' business plans.

Pinterest makes new app update submissions to the Apple App Store and Google Play Store approximately every week. To date we have not had issues with obtaining approvals from the Google Play Store, and have not needed to appeal from their app review process. On multiple occasions, however, Apple has rejected our app for reasons that either go beyond the App Store Guidelines, or interpret those guidelines in a broad, subjective manner.

If Pinterest fails to cure Apple's problems, Pinterest runs the risk of being delisted from the App Store. Each time Apple rejects Pinterest's app it creates a challenge that is costly for the company, and requires employees from across the company to triage, respond, and cure any of Apple's concerns. Pinterest needs to be able to launch the latest version of its app as quickly as possible in order to provide an attractive offering for users and advertisers. The rejection of updates to the Pinterest app makes it harder for Pinterest to compete, innovate, and comply with regulatory obligations.

Pinterest supports interventions requiring a fair app review process, including consistent application of guidelines and transparency over the reasons for rejection and necessary steps for approval. Merely requiring consistent and transparent application of the guidelines as written, though, may not be adequate to effectively reform the app review process. Often the issue is that the app store guidelines themselves are written so broadly that they can accommodate arbitrary rejections. While some flexibility is necessary for app stores to deal with bad actors, the app store guidelines should state specific, discrete requirements so that developers know what parameters to meet, and are not surprised by rejections.

Even if app review guidelines and processes are reformed, however, the parties to an app review may still reach an impasse over whether the guidelines have been fairly applied, or whether the explanation for a rejection is clear. In these situations, it may be helpful to have a neutral body that can act as an arbiter, ideally within a standard timeline for resolution such that app approvals are not delayed. Such a body would help to confirm fair and consistent application of guidelines, act as a deterrent against unfair app review practices, and allow regulators to react appropriately to any negative trends.

2. In-app payments (IAP)

As Pinterest does not currently offer a subscription service or in-app purchases, it is not subject to IAP requirements. Regardless, such requirements do impact the strategic outlook for Pinterest's business.

At this time, digital advertising is the only method by which the Pinterest service is monetized. However, we are always evaluating potential new products that would increase Pinterest's competitiveness in the market and provide additional utility to users, including the sale of digital goods.

If they were available, Pinterest would strongly consider alternate payment systems with lower commissions. This would allow Pinterest to pursue new monetization opportunities while bringing engaging and useful features to users.

C. Data advantages

1. Background

The user data collected by digital services platforms, including first-party data collection through app signup and features, as well as third-party data collection through purchase and website / app activity, allows platforms to serve relevant content to users so that they can easily find interesting and useful information and products. User data also enables platforms monetised through digital advertising to compete effectively by allowing advertisers to easily create content and buy, forecast, optimize and measure the performance of their advertisements.

Larger, multi-property digital advertising platforms such as Facebook and Google have vast networked user bases among each of the apps in their families, which they use to grow the user base of each of their services (for example, the Facebook network bolsters Instagram's by recommending people to follow, and vice versa). These networks improve the size and engagement of the total audience, which allows these platforms to access larger volumes of data, which is in turn used to better understand their user base to develop engaging features that are used on a frequent basis. This yields more data, and the cycle continues.

These platforms' large user bases and data sets not only attract users on the consumer-end of the market, but also makes them a very attractive partner for online advertisers who get tremendous reach, audience segmentation, and measurement from them. Their superior access to user data enables them to develop and measure more

targeted advertising to advertisers, which can improve the engagement of their audience (the time they spend using the service), and can improve the targeting of ads which improves those ads' performance (the users' engagement with those ads). Third-party purchase and site visitation data also allows them to offer advertisers clear measurements of ad performance, which contributes to advertisers' perception that ads served by these platforms are superior to competitors' offerings.

This scale is self-reinforcing, making these platforms a "must-have" for advertisers. Thus they collect an increasingly greater share of data, and by extension strengthen their position in the digital advertising market. As a result, new entrants and small to medium-sized platforms have a greater challenge in providing advertisers with a compelling, measurement-based reason to shift their budgets.

2. Data portability and interoperability

From Pinterest's perspective, a significant issue when it comes to data advantages is the exclusivity of content in the online space. Due to the sheer size of their user bases, the largest platforms house a correspondingly large share of content, which drives the flywheel of user engagement and advertiser value described previously. This advantage is further compounded in the increasingly vital market for creator content. The largest platforms can use their cash advantage to simply pay creators to use their platforms, further reinforcing their market power.

The state of competition regarding user data may be improved by data portability requirements, allowing users to export contacts, photos, and other content for use on other platforms. More effective, though, would be a regime of data interoperability in which large platform services have enough technical compatibility that content could be cross-posted. With such measures in place, more creators and more content could be made available across platforms, rather than being siloed in one place. This would promote competition as well as create convenience for users.

D. Consumer protection

As a platform committed to positivity, Pinterest is committed to putting the interests of Pinners first when designing and developing products and apps that they might access. With a view to making the platform a safe space for users, Pinterest actively upholds and enforces a robust set of Community Guidelines which prohibit misinformation, impersonation, financial exploitation, spam, adult content, harassment, hate speech, violence, dangerous goods, and more. Pinterest's Community Guidelines can be accessed in their entirety at:

https://policy.pinterest.com/en/community-guidelines

Pinterest has dedicated reporting options for users to report harmful content to us and we use a variety of proactive and reactive methods, such as manual review and automated technologies, to identify and take action on content that violates our policies. We also proactively block search results for terms that violate our policies and stop content from some websites dedicated to spreading harmful content from being saved to Pinterest. In addition to blocking search results for terms associated with self-harm, suicide, drug abuse, and eating disorders, we display an advisory that connects users with resources if they or someone they know are struggling.

Pinterest's Policy team works hard to keep up with harmful trends and proactively takes steps to limit and remove such content. We also work with experts in the fields of misinformation, body image, self-harm, and child sexual exploitation to keep up with best practices and trends and to get feedback on our policies and enforcement approaches. This allows us to take steps before harmful content appears on Pinterest.

In the interest of promoting competition and innovation in digital platform services, Pinterest supports consumer protection regulations that are based on principles of flexibility, proportionality, and consistency.

Moderation systems, particularly where they incorporate automated means, are platform-specific, highly complex, and do not always fit neatly into established categories.The tools and technologies a platform uses to moderate content can vary enormously depending on a number of factors, including the platform's structure and evolving products, the dominant media types found on the platform (e.g. video, audio, image), the state of available technology, the volume of violative content, and other factors such as the complexity of evaluation. As a result, terms or structures that make sense in one context (e.g. tweets) do not make sense in other contexts (e.g. Pins).

Accordingly, it is not reasonable to impose granular, prescriptive requirements on all platforms regarding matters such as their terms of service, transparency reporting, or content moderation methods. Platforms should be given leeway to develop and report on their content moderation systems in a way that makes sense for their service, rather than being required to declare adherence to predetermined terms or categories that may not accurately reflect the reality of their enforcement standards and mechanisms.

Furthermore, expectations should be proportional to a platform's scale and resources. Requirements like inflexible timeframes for removing harmful content, extensive transparency reporting, or appointment of an in-country employee representative may

be reasonable for the largest platforms, but will not be reasonable for smaller, newer companies.

Finally, any guidelines imposed should not deviate unnecessarily from global laws and industry norms. As discussed previously, a proliferation of varying national laws would be unduly burdensome to digital services platforms, whose operations are often global in scope. This principle applies in the consumer protection context as well, as requiring platforms to maintain separate terms of use for various jurisdictions, or to publish numerous distinct transparency reports with varying metrics, would impose undue administrative burden on small- and medium-sized platforms, and may also be confusing to users. Instead, alignment with international standards would promote consistent content moderation, accurate transparency reporting, and clear expectations for users.

IV.   <u>Conclusion</u>

Thank you again for the opportunity to contribute to the important work being done in the DPSI. Pinterest welcomes further engagement as the ACCC considers regulatory reform, particularly where we can raise caution about unintended consequences for market participants. If it would be of assistance, we would be happy to elaborate on or discuss any of the points we have raised in this response, or any other matters of interest to the ACCC.

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