



Summary of stakeholder roundtable on competition measures

On Wednesday 1 June 2022, the ACCC held a virtual stakeholder roundtable via Microsoft Teams.

The purpose of the meeting was to facilitate discussion between key stakeholders on the competition issues and potential remedies identified in the discussion paper and in stakeholder submissions to the discussion paper.

The roundtable was chaired by ACCC Chair Gina Cass-Gottlieb and facilitated by Digital Platforms Branch General Manager Kate Reader. ACCC Deputy Chair Delia Rickard, and Commissioners Liza Carver, Peter Crone, and Anna Brakey also attended. Key stakeholders in attendance included representatives from digital platforms, business users of digital platforms, industry associations and academics. Relevant Commonwealth Government agencies and departments attended in an observatory capacity.

The meeting agenda is **Attachment A**.

The following is a summary of the issues discussed during the roundtable.

Ecosystems issues and potential harms

Stakeholders discussed the types of harmful conduct taking place in mobile ecosystems, and potential remedies and regulatory interventions to address these harms.

Several stakeholders identified app stores as the key market where these issues arise. In particular, these stakeholders argued that self-preferencing, anti-steering provisions, and the mandatory use of in-app payment systems within this market harm competition, consumers, and developers.

Some stakeholders noted concerns about the supply of web browsers and search services, where dark patterns and self-preferencing – including the use of pre-installations and defaults – are reducing consumer choice and stifling competition.

Other stakeholders believed that some of this type of conduct can be pro-competitive and can benefit consumers. They also observed that this type of conduct is not exclusive to digital platforms. They considered that rigid rules are likely to have unintended consequences, so precisely defining the harmful conduct is critical when drafting any regulatory intervention.

Stakeholders expressed a range of views on potential regulatory interventions. Some stakeholders proposed that opening up mobile app distribution to prevent mobile operating system (OS) providers from mandating the means of downloading mobile applications could remedy the issues raised in app marketplaces. One stakeholder argued that doing so would expose consumers to privacy and security risks, but this was disputed by another. A stakeholder considered that relevant provisions of the draft United States (US) Open App Markets Act and the European Union's (EU) draft Digital Markets Act (DMA) would provide a good framework and model for regulation to open platforms in Australia.

In relation to the dominance in search and web browsers, stakeholders had conflicting views over potential remedies. Some were supportive of choice screens while noting their limitations. However, another stakeholder cautioned against choice screens as providing consumers choice between a limited list of several large and medium-size providers may lock smaller providers out of the market.

One stakeholder identified that mandating interoperability and open standards could be important tools in addressing competition issues in mobile ecosystems and their related markets.

Addressing data advantages

Stakeholders discussed the types of conduct that give large digital platforms a data advantage; the circumstances in which a regulatory regime should address data advantages; and the benefits and risks of proposed data measures.

Stakeholders expressed concerns about the ability of large platforms to compete against business users on their own platforms and the benefits they may derive from this dual role. As an example, they raised the mandatory use of in-app payment systems in the Apple and Google app stores, which allows Apple and Google access to app data that they can then use to compete in that market. Another noted that a lack of access to data in ad tech has entrenched large platforms and given them the ability and incentive to self-preference.

Stakeholders held a variety of views on regulatory regimes to address data advantages, and the circumstances in which it should apply. One stakeholder proposed that data sharing may be pro-competitive but if deemed necessary, the ACCC must consider on a case-by-case basis whether data is indispensable, the costs outweigh benefits, and access should be on fair, reasonable and non-discriminatory (FRAND) terms.

Several stakeholders were strongly supportive of data separation measures across different services, while another stakeholder expressed support for access to search click-and-query data on FRAND terms.

However, other stakeholders highlighted the risks that could arise from data sharing measures and questioned whether the costs would be proportionate. The stakeholders noted previous examples where shared data may have been inappropriately sold for targeted advertising, including the location data of children, as well as the re-identification of users from de-identified keyword search datasets.

Adequate scrutiny of acquisitions

Stakeholders provided views on whether Australia should consider tailored merger rules to assess acquisitions by major digital platforms.

Stakeholders discussed the implications of potential merger rules specific to digital platforms. Some stakeholders expressed concern that any reforms could stifle innovation and lead to action being taken against mergers that create efficiencies. Stakeholders discussed how the exit strategies of small businesses and start-ups often involve being acquired, and how reforms could reduce their incentives to innovate by making such a strategy more difficult or less certain. Other stakeholders supported measures that would allow for greater regulatory oversight and the ability to intervene to prevent harms to competition, including mandatory notification of transactions.

Stakeholders discussed the importance of applying robust analytical approaches to acquisitions by digital platforms, and the potential utility of using innovative analytical tools.

One stakeholder suggested increased provision of information held by digital platforms about their previous acquisitions could better enable regulators to assess future mergers.

A stakeholder suggested acquisitions of small firms in adjacent markets should be a focus for regulators, on the basis that entry from adjacent markets is likely the only way to introduce competition into 'core' platform services (such as search and social media), because the characteristics that make those services prone to concentration and 'tipping' also discourage direct entry.

A number of stakeholders favoured an economy-wide approach to any merger reforms, citing a range of reasons, including the merits of the current regime, fairness, a lack of evidence that acquisitions have harmed innovation or entrenched market power, and the need for a holistic debate about relevant issues.

Regulatory frameworks

Stakeholders discussed overseas regulatory frameworks and proposals for the regulation of digital platforms.

Most stakeholders broadly agreed that regulation of digital platforms is necessary. However, some stakeholders argued that existing laws are sufficient or that it would be beneficial to wait and learn from international counterparts.

Several stakeholders were favourable of alignment with international regulatory regimes, but one observed that it would be premature to align with international regimes when they do not yet align themselves.

Stakeholders also discussed the merits of principles-based regulation. Several shared favourable views of a prohibitions and obligations model, like the EU's DMA. One stakeholder, however, cautioned against the DMA's broad prohibitions as they could lead to unintended consequences for small app developers, proposing that remedies should be tailored and specific to avoid this.

A number of stakeholders who raised concerns regarding app store, search services and ad-tech viewed mandatory codes, like the United Kingdom's proposed pro-competition regime for digital markets, as the best approach due to their flexibility, enforceability, and efficiency. Stakeholders also noted legislation in the US, Netherlands, and South Korea as instructive.

A stakeholder observed that, regardless of its form, regulation must not reduce incentives to innovate and invest, while another suggested that regulation should be designed to minimise delays to compliance.

A stakeholder considered that there was a need to work across competition and privacy issues when designing a regulatory framework. The ACCC Chair noted that the ACCC works closely with the privacy regulator, the Office of the Australian Information Commissioner (OAIC).

Other issues

In the final session, stakeholders were given the opportunity to raise issues related to competition in digital platforms and potential regulatory interventions that had not been previously covered.

Some stakeholders noted that while there is consensus on the issues that should be regulated, there is no international consensus on the best approach to regulation.

One stakeholder suggested that any regulation should be neutral between digital and analogue competitors. A stakeholder added that interventions have costs, and another cautioned against regulation targeting speculative conduct.

One stakeholder noted it is important that the regulator responsible for the issues discussed in this roundtable is appropriately resourced.

ATTACHMENT A

ACCC DIGITAL PLATFORM SERVICES INQUIRY COMPETITION ROUNDTABLE AGENDA

DATE: 1 June 2022, 2:30pm - 5:30pm (AEST) Host: ACCC Chair Gina Cass-Gottlieb

TIME		ITEM
2:15pm – 2:30pm	15 mins	Join meeting
2:30pm – 4:00pm	10 mins	Welcome and opening remarks
	50 mins	Ecosystem issues and potential harms <ul style="list-style-type: none"> • Which of the following types of conduct by operators of ecosystems may cause harm to consumers and the competitive process, and which markets are most vulnerable to such harm? <ul style="list-style-type: none"> ○ Self-preferencing ○ Tying or bundling of services ○ Pre-installation and default settings ○ Prevention of access to device technology or Application Programming Interfaces (APIs) • Which of these issues require the most immediate attention? • What are the current barriers to interoperability? What are the benefits, challenges and risks of interoperability measures?
	30 mins	Addressing data advantages <ul style="list-style-type: none"> • Should new regulation attempt to address data advantages? If so, in what circumstances (e.g., in what markets and for which businesses)? • What are the benefits and risks of potential measures such as data portability, interoperability and separation? • Are there any other options for addressing data advantages?
10 MINUTE BREAK		
4:10 pm – 5:30pm	20 mins	Adequate scrutiny of acquisitions <ul style="list-style-type: none"> • Do acquisitions by large digital platforms need additional scrutiny? • What reforms to the current merger law could increase the likelihood of preventing harmful acquisitions by large digital platforms?
	40 mins	Regulatory frameworks <ul style="list-style-type: none"> • If the Australian Government did decide to introduce sector-specific competition regulation for digital platforms, what elements of international frameworks and proposals would work well in Australia? • What elements might not be appropriate to Australia?
	20 mins	Other issues