

9 August 2021

## **Response to ACCC Digital Platform Services Inquiry – Report on General Online Retail Marketplaces Issues Paper Submission 2022**

Gladwin Legal welcomes the opportunity to make a submission in relation to the ACCC's Digital Platform Services Inquiry – Report on General Online Retail Marketplaces Issues Paper.

### **1 INTRODUCTION**

Gladwin Legal is an award-winning commercial law firm which provides legal services to B2C and B2B clients in the retail industry. Many of our clients run digital marketplaces and we regularly assist businesses with the provision of their online retail services. We have been in operation for over 7 years and our principal, Rosalyn Gladwin, has been practicing law for over 16 years. We have a specific interest and niche in the retail industry and have been intimately involved in many aspects of the retail industry, including advising on the establishment of marketplaces and their relevant legal agreements and requirements. Statements made in this submission are based on our professional experience in acting as legal advisors for retailers as well as in our personal experience as consumers.

### **2 SUPPORT FOR MARKETPLACES**

Gladwin Legal supports the existence and growth of marketplaces with appropriate governance. There are many ways in which Marketplaces are great for the economy and for retailers. We have set out some considerations below as to why we consider Marketplaces to be a necessary addition to the online retail landscape.

#### **2.1 General benefits of marketplaces for the retail industry**

- a) Marketplaces have 'economies of scale'. Effective production and large marketing budgets that allow marketplaces to generate heavy online traffic and retail sales, benefiting the industry and economy in general.
- b) For example, many smaller craft vendors who list products on Etsy would be very unlikely to be able to afford the development of a software platform such as that used by Etsy.

- c) Marketplaces can develop software and SaaS products which would be cost prohibitive for many retailers to develop on their own.
- d) Marketplaces can advise retailers of best practice (for example the best way to make a listing, images etc of product). This allows retailers to rely on the guidance of experienced retailers as to what would appeal the most to a consumer.
- e) Marketplaces operate in a 24-hour economy and are not confined by traditional bricks and mortar trading hours.

## **2.2 Marketplace advantages for consumers**

- a) In our opinion, Marketplaces allow consumers to effectively browse many more multiples of items than they would if they were to review the items across individual websites – including that it may bring to the consumer’s attention items that were not previously within their scope of consideration.
- b) Marketplaces offer consumers a convenient way to compare goods from multiple brands and vendors.
- c) Established marketplaces can increase consumer confidence in purchasing products for example by having defined trading terms, refund policies and possibly escrow arrangements such as the use of PayPal.

## **2.3 Marketplace advantages for vendors**

- a) Marketplaces provide vendors with more channels to distribute goods.
- b) Marketplaces allow small businesses and brands to reach a wide audience, when they otherwise may not have the resources to build their own digital retail platform.

## **3 GREATER TRANSPARENCY REQUIRED IN MARKETPLACES**

Gladwin Legal proposes that a greater level of transparency is necessary for marketplaces. Lack of transparency regarding the following issues can lead to consumer confusion and subsequent legal disputes.

### **3.1 Transparency regarding identity of vendor**

Governance regarding transparency as to who is the vendor of goods may be beneficial in marketplace operation, namely whether the vendor is the marketplace itself or a third-party vendor. Consumers may be unduly disadvantaged where the identity of the vendor is not readily apparent.

### **3.2 Clarification of liability for consumers**

Greater clarification as to who is liable for unsatisfactory goods may be beneficial in marketplace governance, namely whether the marketplace or vendor bears responsibility for defective or unsatisfactory goods. If the customer is confused or if where responsibility lies is unclear, customers may be passed on between entities in an attempt to resolve a consumer matter.

### **3.3 Transparency regarding shipping**

Consumers may also benefit from greater upfront transparency regarding shipping costs. On some marketplaces, consumers are unable to view their shipping costs until accessing their digital shopping cart. For example, if multiple goods are selected, and shipped by different vendors (even if there may be a marketplace membership offering free shipping from the marketplace), the customer may end up with multiple shipping fees for each item when they finally visit their cart. This could erode consumer confidence in marketplaces if the consumer has spent time researching items and adding them to their cart only to find out they have potentially spent more on shipping than the actual items.

## **4 GREATER RESPONSIBILITIES FOR MARKETPLACE OPERATORS**

Greater responsibility for marketplace operators regarding product returns and customer service may benefit consumers.

### **4.1 Avoidance of responsibility regarding unsatisfactory goods**

Commonly, marketplaces facilitate transactions between vendors and consumers, but may attempt to avoid responsibility for returns of goods. If a dissatisfied consumer then approaches the vendor directly, it is not often clear which entity bears the responsibility for the goods. Unscrupulous vendors may attempt to avoid responsibility for the unsatisfactory goods. Ultimately, the consumer is left disadvantaged.

### **4.2 Uniform facilitation of purchases and returns**

- a) A uniform facilitation of purchases and returns may assist consumers in this issue. If marketplaces facilitate the transaction, they should also take responsibility for returns and customer services of faulty items.

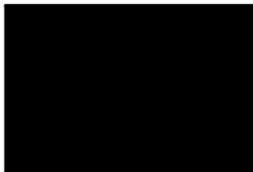
- b) Greater clarification of who is liable for unsatisfactory goods may also assist the consumer (see 3.2).

## 5 CLEAR GUIDELINES FOR MARKETPLACES AND VENDORS

Common issues regarding marketplaces which disadvantage consumers and lead to subsequent legal dispute may be addressed by clear guidelines between marketplaces and vendors. These should ensure that vendors comply with the Australian Consumer Law, and ACCC requirements regarding refunds, returns and quality of goods.

Gladwin Legal is happy to provide any further information in relation to the Digital Platform Services Inquiry. Please do not hesitate to contact us on 1300 033 934 or [info@gladwinlegal.com.au](mailto:info@gladwinlegal.com.au)

Yours sincerely,



**Rosalyn Gladwin**

Principal