



ACCC Ad-Tech Inquiry Interim Report: Submission by the Computer & Communications Industry Association (CCIA)

5 March 2021

1. Introduction

The Computer and Communications Industry Association (CCIA) welcomes the opportunity to submit comments to the Australian Competition & Consumer Commission (ACCC) in respect of the ACCC's Interim Report in its Digital advertising services inquiry (the 'Interim Report').

CCIA represents large, medium, and small companies in the high technology products and services sectors, including computer hardware and software, electronic commerce, telecommunications, and Internet products and services¹. Our members employ more than 750,000 workers and generate annual revenues in excess of \$540 billion. CCIA remains committed to protecting and advancing the interests of our members, the industry as a whole, as well as society's need to benefit from the positive contributions that our industry can make.²

CCIA's members are leading innovators of what some refer to as the 'digital economy'. Many operate so-called multi-sided business models, where it is often the advertising revenue generated on one side of the business that funds the innovations valued by consumers. Others offer more traditional services and products online, using advertising to enhance consumer experience. Many advertising services offered by CCIA's members create benefits and efficiencies for both consumers and advertisers alike.

¹ A complete list of CCIA's members can be found here: <http://www.ccianet.org/about/members/>.

² A complete summary of CCIA's mission statement can be found here: <http://www.ccianet.org/about/ccias-mission/>.



While we commend the ACCC for the detailed work it has undertaken so far in the Inquiry, CCIA is concerned that the Interim Report does not reflect the true nature of the ad tech ecosystem or the competitive dynamics of digital advertising. First, the Interim Report does not take into account the extent to which digital advertising competes, for both advertising dollars and consumer attention, with offline advertising. In reality, most advertisers and agencies use a mix of different media to reach their target audience, and regularly switch between suppliers. Second, within the digital advertising space, the Interim Report focuses heavily on a narrow selection of companies, and thereby fails properly to represent the dynamic nature of the ad tech ecosystem and its many and varied participants. The growth of the Internet has provided a plethora of new digital advertising opportunities, including to players who previously operated solely offline. Numerous stakeholders, operating under a variety of business models, play important roles in the digital advertising sector, and we encourage the ACCC to expand its analysis beyond its very limited set of so-called “digital platforms”. For example, important market players, such as Criteo, Index Exchange, MediaMath, OpenX, and Telaria, who operate important scaled businesses, are not mentioned throughout the Interim Report.

Because of this mischaracterization of the competitive dynamics of the ad-tech ecosystem, CCIA is concerned that some of the ACCC’s reform proposals are based on assumptions that do not reflect market realities and could create unnecessary burdens, inefficiencies and barriers to entry in a sector that is currently and (absent disincentivizing intervention) would continue to evidence immense growth, innovation and competition. Further, CCIA shares the ACCC’s concerns regarding the significant tensions between ACCC proposals that would require data sharing between participants and protection of consumer privacy. Given these complexities, we encourage the ACCC to carefully consider these issues before recommending intervention in the ad-tech sector. Finally, CCIA suggests that the ACCC should try to avoid acting unilaterally when developing regulatory proposals that cut across privacy and data protection expectations and regulations. Instead, we would encourage the ACCC to cooperate and align with privacy, data and competition authorities both within Australia and globally.



To assist the Inquiry, this submission provides additional information regarding the dynamic nature of competition in the advertising sector, including details regarding competition between online and offline channels for advertising spend. It also provides CCIA's comments on some of the six reform proposals included in the Interim Report.

In making this submission, CCIA seeks to contribute to the ongoing discussion regarding digital advertising taking place in Australia. CCIA hopes that industry-led changes rather than government intervention will contribute to the continued growth of the dynamic ad-tech sector, and that the unintended consequences of poorly conceived and unnecessary intervention can be avoided.

2. Competitive Dynamics in Ad-Tech

CCIA believes that the Interim Report doesn't analyze the ad-tech sector from a dynamic perspective but adopts a static and narrow lens, thereby mischaracterizing the competitive market dynamics at play.

a) There is intense competition between online and offline advertising and constant market disruption

Competition for consumer attention, and in turn, advertising revenue, remains fierce between online and offline advertising. Most advertisers and agencies use a mix of different media as the most effective way to reach a target audience and oftentimes switch between suppliers. Advertisers focus on their goals (reaching audiences, ROI, etc), not on artificial distinctions based on media. Even if online advertising offers particular opportunities to businesses due to its personalization feature, it is important not to analyze this medium in an isolated bucket – a convergence of the different channels is actually what is taking place in reality, as further explained below. Therefore, any competition analysis should take account of both online and offline participants, as well as participants that operate across both mediums.



Tyler Cowen, professor of economics at George Mason University, argues that not only is advertising competitive across formats, but that companies like Google and Facebook are helping disrupt monopolies in other sectors:

Then there's the digital advertising industry that the two companies lead. But that's not a monopoly, either: Google as an advertising platform still competes with Facebook, television, radio, circulars, direct mail and, for that matter, e-mail and word of mouth. Insofar as Google has taken a big share of the ad market, it is because its ads are cheaper and better targeted than alternatives. When it comes to ads, Google is fundamentally a price-lowering institution for small and niche businesses that can now afford more reach for less than ever before. By boosting small startups elsewhere in the economy, Google and Facebook actually serve as major forces acting against monopolies in other sectors.³

New technologies and innovation will continue to disrupt the advertising marketplace. For example, television advertising will increasingly take advantage of new tools such as granular set-top box data to personalize ads to the viewer⁴. It is important, therefore, to acknowledge that the advertising sector comprises online and offline channels and that new mediums will have to be taken into account as innovation continues to open new mediums for advertising campaigns to be launched. In essence, advertising depends essentially on consumers' attention, and companies engaging in advertising campaigns compete for attention across a variety of channels including some of which were unthinkable years ago, e.g. smart speakers and digital billboards.

b) *Within the digital advertising segment, operators compete with a large and increasing variety of services*

In addition to competition between online and offline advertising, even within the digital advertising sector, operators compete with a variety of services for user attention in the digital

³ See Tyler Cowen, *Breaking Up Big Tech Would Be A Big Mistake*, The Globe & Mail (Apr. 12, 2019), <https://www.theglobeandmail.com/opinion/article-breaking-up-big-tech-would-be-a-big-mistake/>.

⁴ See e.g. Jeanine Poggi, *Here's How AT&T's Xandr and Turner Plan to Work Together in 2019*, AdAge (Jan. 8, 2019), <https://adage.com/article/media/xandr-turner-plan-fix-tv-advertising-2019/316160>; Sara Fischer, *The future of TV advertising is here--and it involves targeting the specific interests of viewers*, Business Insider (Jan. 25, 2019), <https://www.businessinsider.com/future-of-tv-advertising-targeting-the-specific-interests-of-viewers-2019-1>.



space, all of which have the opportunity to display relevant advertising. This includes services such as messaging, gaming, streaming, various search engines, social media, and video, some of which can be displayed on various mediums including desktop, mobile, and with new mediums appearing regularly.

CCIA is of the opinion that the Interim Report omits these important options for advertisers with respect to display advertising, and therefore the description of the ad-tech sector is not complete or reflective of real market dynamics. Advertisers continue to purchase advertising on various media operators which serve different purposes. However, it is important to bear in mind that different advertising channels often compete against each other. Even if online advertising offers unprecedented opportunities to businesses due to its personalization feature, it is important not to analyze this medium in an isolated bucket – a convergence of the different channels is actually what is taking place in reality, as further explained below. Consequently, CCIA encourages the ACCC to broaden up its competitive analysis of the ad-tech sector to include real market dynamics that characterize this sector.

3. Comments on the reform proposals set out in the Interim Report

a) Measures to improve data portability and interoperability

Balanced and reciprocal user-initiated data portability and interoperability mechanisms can support user autonomy and benefit competition and innovation within a sector. However, the advantages of such systems for transferring data are context dependent, and require recognizing and balancing the inherent trade-offs between intersecting interests. Data portability or interoperability mandates or regulations that set strict requirements and procedures for achieving transfers would be significant market interventions with significant potential downsides. Therefore, any proposed data portability or interoperability measure must be targeted for a specific purpose in a manner which will have well-evidenced benefits for small players and be balanced to avoid causing unintended consequences to competition in the market.



Any transfer of information either to a user or between services on either a directed or ongoing basis presents inherent privacy and security risks, including fraudulent requests and ongoing transfers of personal data without user consent. However, the potential privacy and security risks of data portability are broader than the facilitation of inappropriate access by third parties. Personal information sought by a user for transfer may relate to multiple additional individuals, implicating the privacy interests of third parties. Additionally, from an operational perspective, requirements to retain data in an identifiable format for the sole purpose of enabling future portability is contrary to the principle of data minimization and would raise security concerns.

The establishment of mandatory data portability or interoperability frameworks may also negatively impact competition and innovation in the ad sector. For example, obligations to develop and deploy portability mechanisms could create compliance costs that advantage incumbents over smaller competitors and establish new barriers to market entry.⁵ Furthermore, if data transfer mandates were extended to analytic information and insights generated by an organization, portability could allow some companies to free ride on the efforts of others, thereby chilling the incentives for investment in, and the development of, new innovative services. Finally, portability and interoperability mandates could also preference particular technologies, protocols, and data formats, resulting in homogenization of services and limiting the ability of firms to compete by offering differentiating products and features to consumers.

Finally, data portability rights have been established under the Treasury Laws Amendment (Consumer Data Right) Act 2019 which adopts a measured, sectoral approach to implementation. Any frameworks to promote data transfers between ad tech participants will also be impacted by privacy requirements that are currently under review by the Attorney-General.⁶ The ACCC should ensure that any efforts to expand data portability and interoperability in the ad tech sector are fully consistent with these ongoing processes.

⁵ Peter Swire & Yianni Lagos, "Why the Right to Data Portability Likely Reduces Consumer Welfare: Antitrust and Privacy Critique," 72 Md. L. Rev. 335, 356 (2013).

⁶ Australian Government Attorney-General's Department, "Review of the Privacy Act 1988" (Oct. 30, 2020) <https://www.ag.gov.au/integrity/consultations/review-privacy-act-1988>.



b) *Data Separation Mechanisms*

The Interim Report raises data separation mechanisms such as data silos and purpose limitation requirements as potential measures to promote competition in ad tech markets. Such requirements would be a significant intervention in relevant participants' businesses practices and potentially require costly reengineering of enterprise architecture. Therefore, any potential advantages accrued by such mechanisms must be weighed against potential risks to market competition and innovation and the negative impacts on end-users.

Specifically, any proposed data separation mechanism should specifically consider the following dynamics. First, whether the mechanism would impose uneven costs on certain market participants, thereby unduly skewing competition in favour of particular business models at the expense of others. Second, the resulting efficiency and innovation benefits to users (e.g. from the ability of providers to seamlessly integrate services). Third, whether the mechanism would result in the proliferation of new notice and consent requests for routine business practices, potentially degrading user experience and reducing the effectiveness of existing privacy notices.

c) *Vertical integration and proposals to manage conflicts of interest*

The Interim Report identifies vertical integration of certain ad-tech players as a potential anticompetitive aspect of the ad-tech sector. Equally, the Interim Report accounts for the efficiencies and pro-consumer benefits that typically characterize vertically integrated business models but fails to apply these findings to certain businesses without sound justification. On the contrary, the Interim Report considers that some vertically integrated companies in the ad-tech sector can result in poor outcomes for advertisers and publishers because of the potential conflicts of interest that may exist when a tech supplier operates both on the buy-side and sell-side of the markets as well as self preferencing concerns.

The Interim Report proposes to adopt rules to manage conflicts of interests and self-preferencing issues, including obligations to prevent sharing of information across ad tech services, to provide equal access to ad tech services, and increased transparency.



CCIA supports the idea of adopting rules to manage conflicts of interests, provided they are industry developed, as this will best ensure they are aligned with market dynamics. Even then, CCIA considers that certain questions around conflicts of interest need further consideration before rules are developed and adopted to address them.

First, the ACCC should study deeply the benefits of vertically integrated business models, and how adopting measures to address perceived conflicts of interest could negatively affect efficiency and innovation to the detriment of consumers. Second, the tensions between privacy and increased transparency need to be carefully considered. Third, many ad tech participants work with two-sided products, such as exchanges/SSPs. The ACCC should take into account the complications that may arise when applying best interest obligations across these types of two-sided products that could negatively affect innovation. Finally, before adopting any rules that impose equal access obligations, the ACCC should study their potential impact on innovation. For example, if a product needs to work equally well with all third parties from the outset, this may delay or impede the dynamic rollout of new products and features.

On this basis, CCIA considers that the ACCC should not move quickly to introduce measures to address conflict of interest concerns, but should consider the above issues carefully and then allow the industry to develop measures to address these concerns.

d) *Common transaction and user IDs*

CCIA has long supported risk-based and outcome-oriented privacy principles to ensure that personal data is collected and processed in a responsible manner consistent with user expectations. The establishment of privacy protections that are compatible with emergent global standards will support a trustworthy digital economy and help ensure that the benefits of innovation and new technologies are available to Australian businesses and consumers. Therefore, CCIA welcomes the ACCC's recognition of consumer privacy interests in the Interim Report as well as the Attorney-General's Departments ongoing review of the Privacy Act 1988.



In the context of digital advertising, the Interim Report acknowledges the inherent tension between consumer privacy rights and expectations (and the need to protect user privacy in regulatory interventions) on the one hand and increased data sharing and transparency between participants on the other. Individuals using digital products and services expect their data to be secured and not identified or shared more broadly than is necessary to accomplish the purpose of collection. Therefore, while promoting transparency in price, operation, and performance in ad tech services is an important public policy goal shared by market players, interventions to expand ad tech data sharing or transparency must be balanced with vital privacy interests and obligations under existing law. Responsibly protecting consumer privacy and processing data consistently with legal obligations is necessary for the sustainability and trustworthiness of online advertising and is in the long term interests of industry participants, including advertisers and publishers.

With these principles in mind we turn to proposals five and six of the Interim Report pertaining to common transaction and user IDs. While well intentioned, each proposal could present significant risks to user privacy in their implementation. The creation and application of a unique ID for tracking individual users or advertisements could raise threats of connecting previously pseudonymous and non-personal data that may lead to identification of users as well as the pooling of different sources of user data without consent. This proposal appears out of step with the reforms being debated in the context of the Privacy Act review to expand the definition of personal information under the Act to include unique identifiers. CCIA urges the ACCC to give further consideration to these proposals and ensure that any reforms in ad tech are developed with end user privacy as a core priority and avoid cutting across privacy and data protection regulations being developed by authorities both within Australia and globally.