ACCC DIGITAL ADVERTISING SERVICES INQUIRY

WHY STOCK EXCHANGES ARE NOT COMPARABLE TO ONLINE AD EXCHANGES

2 July 2021

A. INTRODUCTION

1. We welcome the opportunity to comment on third-party submissions made to the ACCC's Interim Report.

2. A few third parties have proposed that certain rules governing the operation of stock exchanges should be applied to online ad exchanges. None of these submissions establishes that stock exchanges are, in fact, comparable to online ad exchanges and thus none provides detailed reasons as to why the application of such rules to online ad exchanges would be appropriate or desirable. This submission sets out our views on the topic.

3. At a high level, stock exchanges and online ad exchanges have some superficial common features: both involve electronic matching of buyers and sellers, the potential for asymmetric information and the importance of speed. But there are a number of differences between stock exchanges and online ad exchanges that make financial regulatory mechanisms ill-suited to online advertising.

4. Many of the considerations relevant to the balancing of publisher and advertiser interests, which is a fundamental part of the multi-sided online advertising ecosystem, are not applicable to operators of stock exchanges.[1] For example:

    - Stock exchanges compete to get issuers to choose a single exchange for their inventory, but ad exchanges/SSPs compete to fill demand for inventory listed on multiple exchanges.

    - Ad exchanges facilitate transactions for more diverse inventory and provide a broader array of product features than stock exchanges do.

    - Assets sold on stock exchanges can be traded repeatedly, while impressions are expiring assets.

    - On stock exchanges, there are "common values" for assets (i.e. buyers agree on the value). On online ad exchanges, there are "private values" (i.e. buyers each have idiosyncratic values).

5. These differences have important implications for the role of price transparency in stock exchanges as compared to online ad exchanges. A stock exchange exists not only to provide a forum for transactions but to signal the price of those transactions. Online ad exchanges don't do the latter because they compete to deliver demand for highly differentiated ad inventory. The winning auction price for each successful

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1 See para. 62 of our response to the ACCC's Interim Report. This submission considers comparisons drawn between stock exchanges and online ad exchanges in Australia. There may be additional and different considerations in other parts of the world.

transaction reflects the buyer's highly-specific preferences, which is commonly proprietary information.

6. Part B of this submission sets out some examples of important differences between stock exchanges and online ad exchanges. Part C addresses specific proposals in third party submissions regarding the potential application of stock exchange rules to online ad exchanges, and explains the significant concerns arising in respect of each of them.

B. EXAMPLES OF IMPORTANT DIFFERENCES BETWEEN STOCK EXCHANGES AND ONLINE AD EXCHANGES

Stock exchanges and online ad exchanges compete in different ways.

7. One important difference between stock exchanges and online ad exchanges is that multi-homing across exchanges is prevalent in online advertising, but not in stock markets. This results in different competition among stock exchanges than among ad exchanges. It is important that the application of any rules to online advertising is based on careful regard to the particular dynamics of competition in the online advertising industry. This is discussed with respect to specific rules referred to in third party submissions in Part C below.

8. There are significant administrative and regulatory costs to listing a stock on a public exchange. As a result, many companies do not offer their stock on a public exchange, and it is rare for companies to be admitted to the list of multiple exchanges in Australia. Cross-listings across jurisdictions are less rare, but mostly limited to large multinationals and a number of companies have terminated such cross-listings.[2] Even when a public company does choose to list on multiple financial exchanges, it typically does not list the same stock on multiple exchanges. Instead, a company allocates different kinds of stock to different exchanges.

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2 For example, in 2006, Brambles (ASX:BXB) unified its British and Australian listed companies into a single entity, Brambles Limited (**Brambles**), with a primary listing on the Australian stock exchange (**ASX**). This ended Brambles' dual listing on the ASX and the London Stock Exchange (**LSE**), although Brambles maintained a secondary listing on the LSE until 2009, when it announced the cancellation of this listing (which took effect in March 2010). See: https://www.smh.com.au/business/brambles-to-break-shackles-of-dual-listing-20060914-gdodwv.html; https://www.ft.com/content/d82fb6c4-60a9-11da-9b07-0000779e2340; https://www.brambles.com/Content/cms/news/CancellationofSecondaryListingonLSE.pdf. By way of further examples, from May 2007 to May 2008, 35 large European companies terminated their cross-listings on stock exchanges in New York. Two of these, British Airways and Air France, estimated annual savings of $20 million each on annual service and compliance costs. This is detailed in a report from Mckinsey & Company, available here: https://www.mckinsey.com/business-functions/strategy-and-corporate-finance/our-insights/why-cross-listing-shares-doesnt-create-value.

9. The fact that public companies are generally admitted to the list of one Australian exchange means that stock exchanges mainly compete against each other on an *ex-ante* basis to get public companies to list their stock in the first instance. After that listing decision has been made, those exchanges generally do not compete in real-time to get market participants to execute trades of that stock on one exchange rather than another.

10. Multi-homing on ad exchanges results in different competitive dynamics among ad exchanges. Publishers tend to route their inventory through multiple exchanges simultaneously, offering the same exact inventory for sale on multiple exchanges at the same time. For example, a recent Advertiser Perceptions SSP Report estimated that publishers currently use 6 SSPs on average, and will use 7.7 in 12 months.[3]

11. Ad exchanges offering the same publisher inventory at the same time compete on a real-time basis to find a buyer with the highest price for the publisher. As a result, an ad exchange's failure to fill inventory results in a zero value for that inventory (use it or lose it). This distinguishes ad exchanges from a stock exchange where a public company has decided that it will be the only (or principal) place their stock will trade.

12. Generally, assets sold on stock exchanges can be traded repeatedly, while ad impressions are expiring assets. Therefore, and in contrast to an online ad exchange, a stock exchange does not lose anything when market participants decide to trade in that stock at a later time because that trade will occur on that stock exchange.[4] Similarly, the fact that the value of a stock does not expire implies that the buyer can resell the stock at a substantially later time, something that is not possible with an ad impression.

Ad exchanges provide features that stock exchanges do not

13. Comparisons between the fees charged for financial transactions and the fees charged for ad transactions are misconceived because online ad exchanges provide functions beyond trading execution that stock exchanges do not.[5] Indeed, the CMA has

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3 See commentary on the Advertiser Perceptions SSP Report here: https://www.adexchanger.com/online-advertising/google-ad-manager-maintains-lead-in-latest-advertiser-perceptions-ssp-report/?oly_enc_id=4457J8932923J3I.

4 We note that, in Australia, shares in listed issuers can be traded on both the ASX (where most trades occur) and Chi-X.

5 There is no evidence to suggest that we charge significantly more for ad tech services than competing ad exchanges. The CMA has previously concluded that our fees across the value chain are in line with average industry levels in the UK. CMA, "*Online Platforms and Digital Advertising Market Study Final Report*", Appendix R, para. 73.

cautioned against such comparisons for this reason, and specifically highlighted the targeting functions offered by DSPs as potentially value-adding.[6]

14. Generally, it is more difficult to bring together market participants for transactions in differentiated products because valuing them requires more information, which in turn makes it more difficult to match buyers and sellers who agree on a value. This is less of a problem in financial markets where stock prices are generally publicly available and the stock of a public issuer is a homogenous product. Therefore, the assets have "common values" (i.e. buyers agree on their value). As such, the services that stock exchanges provide are price transparency and transaction execution.

15. Online advertising transactions take place under very different conditions. Ad inventory, even inventory from the same publisher, is not homogenous. Rather, the value of any given ad impression varies drastically depending on the identification of a potential end-user and the context in which the ad will be shown. On online ad exchanges, there are "private values" (i.e. buyers each have idiosyncratic values). Some advertisers may be particularly interested in impressions for particular users of certain kinds of publishers. Other advertisers may object to placing their ads on particular websites; for example, some may not want to show an ad on an adult website.

16. Ad exchanges provide tools to overcome the transaction costs involved in matching these diverse preferences for advertisers and publishers so that: i) publishers receive the highest possible revenues for their inventory; and ii) advertisers maximise their chances of reaching their ideal audience (as reflected in their willingness to pay a publisher) without showing ads in contexts that are undesirable to them.

17. In addition to reducing transaction costs, ad exchanges provide value to their customers in other ways, including:

- providing protections and controls for advertisers and publishers on issues like ad fraud and brand safety. Our services have ad fraud defences built into them. We also offer a number of controls to protect the brands of advertisers and publishers;[7]

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6 CMA, "*Online Platforms and Digital Advertising Market Study Final Report*", Appendix R, para. 50.

7 Google Ads offers content exclusion tools to allow brands to customise how their ads are targeted. See "About content exclusions and site category options", available here: https://support.google.com/google-ads/answer/3306596?hl=en-GB. DV360 offers brand safety targeting tools and a "Brand Controls" resource that centralises the various brand safety controls available. See "Brand safety targeting", available here: https://support.google.com/displayvideo/answer/3032915?hl=en and "View and edit brand controls for your advertiser", available here: https://support.google.com/displayvideo/answer/9179543?hl=en. We also provide publishers with tools to opt-in and opt-out of the types of advertising content they wish to show on their properties. See "Protections overview", available here: https://support.google.com/admanager/answer/2913553. We have also partnered with third-party vendors to provide brand safety measurements for advertisers that require

- providing controls for advertisers and publishers to improve user experience online;[8] and
- providing a variety of customer measurement tools.

18. These additional features of ad exchanges provide value on dimensions that financial exchanges do not. This makes it unsound to compare the two, or the fees charged by each, without accounting for the differences between them.[9]

C. COMMENTS ON SPECIFIC PROPOSALS IN THIRD-PARTY SUBMISSIONS

19. Part B above sets out some examples of important differences between stock exchanges and online ad exchanges. This Part C explains why proposals in some third-party submissions to impose rules designed for stock exchanges on online ad exchanges would risk harmful outcomes.[10] No third party submission provides substance or detail for how these proposals would be implemented or operate in practice in the context of an ad exchange. Nevertheless, we provide our views on relevant proposals at a conceptual level.

20. **Proposed Rule:** A best execution requirement that ad tech market participants seek to achieve the best outcomes for customers.[11]

Google Comment

We seek to help businesses large and small to reach customers, which helps publishers fund their content online and contributes to sustaining the ad-supported web for Australians and people around the world. However, a best execution requirement would be difficult to develop for, or apply, to online advertising.

As noted, the value of highly differentiated publisher inventory is very different from buyer to buyer. Accordingly, it would be very difficult to develop a fixed and universally applicable definition of "best outcomes" equivalent to a stock exchange participant's duty to get the best price.

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their brand safety to be verified.

8 See our response to the Interim Report at para. 13.

9 Although we do not charge separate fees for each AdX function (e.g. brand safety; fraud prevention; and visibility measurement) as some competitors might, a simple comparison of AdX's fees against financial transaction costs fails to capture that these additional functions may account for a significant portion of fees charged by ad exchanges.

10 Free TV pp 13 and 15, News Corp p 12, Guardian Australia, p 9, AANA at p 5.

11 Free TV submission to the Interim Report, p 13.

Similarly, non-price considerations such as protecting brand safety and enhancing user experience will have different value to different customers, adding more complexity to any attempt to formulate generally applicable standards of “best outcomes”.

Further, imposing strict obligations to obtain short-run best-interest outcomes for individual participants would be inconsistent with incentivising investments in long-term optimisations that reduce externalities on the ecosystem as a whole. For example, measures to address ad fraud practices and other invalid activity may not be in the short-term interests of some publishers and advertisers, but they are critical to maintaining long-term trust in the online advertising ecosystem on which its viability for all participants depends.

21. **Proposed Rule:** The ACCC designated as a supervisor of ad tech services with powers equivalent to those that the Corporations Act confers on ASIC to supervise financial markets, which would empower the ACCC to develop market integrity rules for the ad tech industry.[12]

Google Comment

The ACCC, and in particular the Digital Platforms Branch, already has powers to monitor and investigate the ad tech industry under existing competition and consumer law. Australian competition and consumer law provides the ACCC with appropriate mechanisms for investigating and evaluating whether certain practices in ad tech actually harm competition and consumers. The ACCC’s existing functions and powers are generally principle-based and flexible in their application. This makes them more suited to the dynamic ad tech ecosystem than the types of rigid rules that have long applied under the securities laws. This is especially the case given the important differences between stock exchanges and online ad exchanges outlined in Part B above.

22. **Proposed Rule:** Ad exchanges and SSPs required to provide all bidders access to the exchange at fair and equal speeds and with fair and equal access to information.[13]

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12 Free TV submission to the Interim Report, p 15.

13 News Corp submission to the Interim Report, p 12.

Google Comment

With respect to "speed access", there is no requirement for the ASX to provide all participants with "equal" access to speed.[14] On the contrary, some ASX participants use speed as a competitive advantage.[15] Moreover, we query how such a requirement could practically be achieved in online advertising, where speed of access is likely to be affected by factors outside of the exchange's control such as the physical location of the buyers' infrastructure.

With respect to "information access", this is not well defined in third-party submissions. Importantly, there are different considerations with the provision of information to participants in ad tech compared to financial markets.

In the context of financial markets, companies listed on a stock exchange have disclosure requirements that are designed to ensure that all investors have access to certain facts about potential investments (such as the performance of the underlying company) so that they can make informed investment decisions.

In contrast, in the context of online advertising, each potential buyer of an impression may know something different about the impression. This reflects differences in the proprietary information available to different buyers, which can influence how and when they bid. For example, Criteo may have unique information on products that the end user has recently viewed and be able to offer its customers a hyper-targeted ad. These differences represent competition between ad tech providers, and not the type of misappropriation that animates insider trading regulation in financial markets.

Imposing regulations to require equal access to all information about every impression and user is neither a realistic nor desirable goal. It would remove an important aspect of competition between ad tech providers and would have serious privacy implications for users.

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14 Section 792A(1)(a) of the Corporations Act 2001 (Cth) requires the ASX to do all things necessary, to the extent that it is reasonably practicable to do so, to ensure that the ASX market is "fair, orderly and transparent". With respect to this requirement, ASIC's Regulatory Guide 172 states that: "Fair access" encompasses "Access to facilities and services is provided in a fair, transparent and non-discriminatory manner, including as to commercial terms. This includes access to order types, products, data and other services. Fair access is provided to users and, where appropriate, other stakeholders" (RG 172.25).

15 For example, some ASX participants use 'High Frequency Trading' (**HFT**) to distinguish themselves from their competitors. HFT relies on powerful computers to scan multiple markets and transact a large number of orders at extremely high speeds. Some traders pay exchanges to "co-locate" their computers beside an exchange's execution engine to obtain a speed advantage. ASIC's 2013 report into HFT states: "We do not regard the fact that market participants can co-locate to obtain a speed advantage as inherently unfair. Speed of access to the market has always been contestable, from the days of physical proximity on the floor, when an open outcry system operated." Available at: [rep331-published-18-March-2013.pdf (asic.gov.au)](rep331-published-18-March-2013.pdf).

23. **Proposed Rule:** The ACCC should require market participants to enable full and independent verification of DSP services.[16]

<u>Google Comment</u>

Provided that privacy safeguards are established, we support a proposal for a voluntary industry-led standard to enable full, independent verification of DSP services.[17] However, our support for such a standard reflects the needs of the online advertising ecosystem, not any experience with transposing financial regulation. Any solution related to independent verification of DSP services requires agreement from multiple ad tech participants and must incorporate consumer privacy protections and data security. A voluntary and industry-led solution from industry stakeholders facing these challenges daily in the ad tech space is most likely to achieve a workable balance between expanding verification while maintaining privacy and security.

24. **Proposed Rule:** Minimum information requirements similar to Product Disclosure Statements required by stock exchanges, which the third parties argue would enable ad buyers to assess more accurately the competitiveness of DSPs and the performance of ad campaigns.[18]

<u>Google Comment</u>

It is unclear how such requirements could be applied to ad tech. In financial markets, a Product Disclosure Statement (**PDS**) is prepared by or on behalf of the issuer or seller of a financial product. Regulations generally (with a few exceptions) require a PDS only for retail clients. The PDS must contain sufficient information for a retail client to make an informed decision about whether to purchase a financial product.[19] It is not feasible to require publishers to make comparable disclosures for each of the enormous number of impressions in their ad inventory that appears almost instantaneously, in real-time, and that varies depending on the user. For similar reasons, even if such disclosures were reasonably possible, we consider they would be of no practical use to purchasers of online advertising inventory.

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16 Guardian Australia submission to the Interim Report, p 9.

17 See our response to the Interim Report at para. 2.3.1.

18 AANA submission to the Interim Report, p 5.

19 Corporations Act 2001 (Cth), ss 1013A and 1013D.

D. CONCLUSION

25. There are important differences between stock exchanges and online ad exchanges, which caution against relying on their superficial similarities in the ACCC's Ad Tech Inquiry. Given the differences, it does not follow that because certain rules and regulations have been imposed in financial markets, it would also be appropriate to impose them in the online advertising space.