

Digital Platforms Inquiry
Australian Competition and Consumer Commission
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Digital Platform Services Inquiry - Kogan Australia Pty Ltd submission in response to ACCC Issues Paper

Executive Summary

Kogan facilitates choice and competition by connecting suppliers and merchants to a growing community of customers.

There is intense competition in online retail sales in Australia, which represents just 13% of total retail sales in Australia - a level of online retail penetration that is significantly lower than comparable markets abroad. Online marketplaces constitute a minor portion of this 13%. There are a growing number of marketplace operators in addition to the four referenced in the current ACCC Issues Paper, from major brands and new entrants alike, including Bunnings, Myer, Mydeal, The Iconic, Wish, Woolworths and others. As a result, both consumers and sellers have considerable choice as to which online marketplaces they select.

We recognise that in recent years, agile and customer driven online platforms have been disrupting traditional retail channels, and the means by which this is occurring may not always be fully understood. We recognise that the management of data is something that is also of interest to regulators, being a tool used by online retailers to enhance the customer's retail experience. Nonetheless, it is clear that traditional retail still represents the vast majority of Australian retail.

As part of our commitment to our customers and suppliers, as a marketplace operator, Kogan has various internal policies to protect consumers, promote competition and ensure integrity, safety and security throughout our business.

The number of online marketplaces operating in Australia is growing at a faster pace than ever before - due to the relatively low barriers to entry to launch a marketplace, with increasingly lower technology barriers over time.

Marketplaces in turn provide lower barriers of entry for sellers to be onboarded, and have enabled thousands of small to medium businesses to access large communities

of consumers, promoting competition. This is in direct contrast to most traditional retailers who play a gatekeeper role in respect of their customers - denying third party sellers any ability to promote their products.

Whilst some marketplaces, like Kogan, also sell their own-branded products, on the same websites as marketplace sellers, this is no different to incumbent retailers such as Coles and Myer who have operations that compete with their suppliers, such as developing their own private label products, allowing concession stores within stores, and competing online channels. In fact, in Kogan's experience, marketplace sellers that tend to offer similar product categories to the categories where Kogan's own-brands are most well-known tend to attract more business on the Kogan marketplace than sellers in categories for which Kogan is less well known. In other words, competition within the platform actually boosts seller performance on the platform.

In relation to the management of customer data, the practices of marketplaces are analogous to traditional retailers that also use loyalty cards, online sales, and other programs to gather and use customer data for the operation and improvement of their businesses, including informing their retail planning and merchandising.

Kogan has always been and continues to be a champion of competition and customer choice, and online marketplaces have dramatically increased competition by facilitating more sellers to have access to more consumers, and providing a larger product range at lower prices to consumers.

However, Kogan submits that there is indeed a gatekeeper role in Australian retail that warrants regulatory attention and investigation, and has significantly diminished competition for many years. That gatekeeper role is played by large traditional and incumbent retailers with significant market share - who influence the denial of supply of popular brands to online retailers. Kogan submits that a primary reason why online retail penetration in Australia is lower than comparable countries internationally is due to this practice. It is not by choice that Kogan, which is one of Australia's largest online retailers, cannot gain supply of a significant number of famous brands - we submit it is due to the pressure exerted by major Australian retailers on brands to deny supply of their goods to online retailers - especially those like Kogan who seek to drive down prices for consumers.

Response to Invitation to Provide a Submission

- 1 Thank you for providing the opportunity for Kogan Australia Pty Ltd (**Kogan**) to provide a submission in response to the ACCC's Issues Paper dated July 2021 released as part of its report on general online retail marketplaces (**Issues Paper**).
- 2 The ACCC's Issues Paper provides the ACCC with a valuable and timely opportunity to:

- (a) consider the various issues which impact the efficient and competitive functioning of online retail marketplaces for the benefit of consumers; and, as part of this,
 - (b) to further analyse and, if considered necessary, specifically investigate the matters outlined below which are not addressed in the Issues Paper, but which Kogan believes based on its own experiences continue to impede the effective growth of online retailing including online marketplace retailing as a means to allow consumers to view, compare and purchase the widest variety of products at the most competitive prices.
- 3 As further explained below, general online retail marketplaces — whilst a relatively nascent and small part of the wider retail market — have a powerful and inherently procompetitive effect. As the ACCC correctly identifies in its Issues Paper, the increasing prevalence and popularity of online retail marketplaces provides a new and developing platform for many thousands of sellers, ranging from individuals, small business and larger enterprises, to access the established customer base of incumbent online and other retailers. In doing so, online marketplaces reduce barriers to entry into the retail market, provide consumers with a far greater variety of product choice and means of comparison and, in doing so, drive increased price and non-price competition between retailers.
- 4 Together and in combination, these economic factors benefit consumers, including in the manner described further below. For this paramount reason, in Kogan's submission, the ACCC and other applicable regulators and stakeholders should be careful to ensure that no action they take adversely impacts the growth and efficient functioning of online retail marketplaces. This will allow for effective and enduring competition against the longstanding incumbent large retailers who — by reason of their financial strength, network effects, supplier clout and in some cases vertical integration — continue to maintain a position of market power in the retail market and who are now increasingly leveraging their resources to enter the eCommerce market.
- 5 In this submission, Kogan provides the ACCC with further background information, analysis and context regarding online retail marketplaces and eCommerce more generally. This is intended to assist the ACCC in conducting further analysis, including by potentially expanding the scope of its current inquiry beyond the matters identified in the Issues Paper.
- 6 Kogan would be grateful to have the opportunity to discuss this submission further with the ACCC.

Background to the eCommerce market and general online retail marketplaces

- 7 In this submission, Kogan explains:

- (a) the relatively small percentage of the retail market attributable to general online retail marketplaces. This analysis is intended to highlight for the ACCC the fact that the market for online retail marketplaces is still in its early stages of development and highly dynamic. Accordingly, far from having theoretically harmful competitive effects, in Kogan's respectful submission, the regulatory focus should instead be on ensuring that incumbent and far larger retail participants, who now compete in both physical and online marketplaces, do not take steps to impede or hinder the development of online marketplaces which represent an emerging and effective competitive threat to their historical market dominance;
- (b) the multiple means by which sellers can now access consumers, including by bypassing marketplaces. This reality of the market provides a strong countervailing power on marketplace operators in the form of competitive rivalry, which prevents them from acting in a way which unduly prevents or hinders the sellers from offering the most competitive prices for the widest range of goods. The fact is, if one marketplace offers prohibitive terms, the seller can and will either choose to list their products with another marketplace or establish their own website to sell direct to consumers; and
- (c) the "gatekeeper" function that is exercised by the major incumbent retailers, which has and will, unless addressed, continue to impede the effective growth of online retailing, including through online marketplaces.

The size of the market for the supply of general online retail marketplaces

- 8 It should be noted at the outset that eCommerce reflects a small portion of total retail sales in Australia. The NAB Online Retail Sales Index for May 2021 estimated that *"in the 12 months to May, Australians spent \$48.1 billion on online retail, a level that is around 13.2% of the total retail trade estimate"*. According to that analysis, **86.8%** of total retail sales are not conducted online. It is therefore clear in Kogan's submission that physical retailing still remains the primary means of sales to consumers.
- 9 Of the 13.2% of total retail sales in Australia that is represented by online retail sales, Kogan estimates that sales conducted through marketplaces represent a small minority. Most online sales to consumers in Australia are not conducted through marketplaces, including general marketplaces. Rather, the majority of sales made online in Australia occurs through direct retailing by sellers on their own websites. For example, JB HiFi reported direct online retail sales of \$1.1 billion in FY2021², and for the 6 months to December 2020, Officeworks, Bunnings, Kmart and Target reported direct online retail sales of

¹<https://business.nab.com.au/nab-online-retail-sales-index-may-2021-47305/>

²<https://investors.jbhifi.com.au/wp-content/uploads/2021/08/Results-presentation-2021-Full-Year-Results.pdf>

approximately \$560m, \$280m, \$274m, and \$242m respectively³. These each exceed the total sales achieved by the vast majority of online retail marketplaces.

- 10 In relation to Kogan, the ACCC states in the Issues Paper that Kogan's gross sales were \$638.2 million in the latter half of 2020. While this is correct, it should be noted that this figure represents the totality of the gross sales number for the entire Kogan business. In fact, Kogan's general online retail marketplace reflected only approximately \$171.8 million, which is approximately 27% of Kogan's reported gross sales in the half year ended December 2020. The remainder of Kogan's gross sales related to direct retailing of Kogan's products on its website or revenue derived from Kogan's services businesses such as Kogan Mobile or Kogan Internet.
- 11 Finally, while the ACCC's Issues Paper states that the eCommerce industry experienced an unusual growth in sales last year as a result of the COVID-19 pandemic, growth in the second half of financial year 2021 subsided to more traditional levels.

The multiple means of access to consumers available to sellers

- 12 The ACCC appears to have limited the scope of its inquiry to four operators of online retail marketplaces — being eBay, Amazon, Catch and Kogan. In Kogan's respectful submission this is an unduly narrow approach and ignores the wider prevalence of general online retail marketplaces and other means of direct online selling. This wider scope of inquiry by the ACCC would in Kogan's view demonstrate the breadth of competition within the market, as well as the wide array of options available to sellers and consumers, which in turn places a strong competitive constraint on marketplace operators.
- 13 Many retailers (both pure-play and traditional), have expanded the models under which they allow brands and sellers onto their websites. In particular, some of the largest retailers in the country now offer a marketplace or dropship⁴ model to brands and suppliers. This includes major retailers such as Bunnings and Woolworths.
- 14 A table showing the online forms of retailing conducted by various retailers is outlined below.

³https://www.wesfarmers.com.au/docs/default-source/asx-announcements/2021-half-year-results-briefing-presentation.pdf?sfvrsn=f5550fbb_0

⁴ Dropshipping is an arrangement whereby a third party seller is able to list products on a retail website, and fulfil directly to the consumer in a manner similar to a marketplace, however, the seller does not have a direct relationship with the consumer and may not be responsible for setting the retail price of the product on the website.

General Online Marketplaces	Total Website Visits in AU FY21 (m) (SimilarWeb)	Retail Sales through Website?	Dropship or Marketplace Model through Website?
eBay.com.au	852.4	No	Yes
Amazon.com.au	404.3	Yes	Yes
Bunnings.com.au	302.1	Yes	Yes
woolworths.com.au	276.4	Yes	Yes
Amazon.com	222.3	Yes	Yes
Kogan.com	130.5	Yes	Yes
eBay.com	126.5	No	Yes
Myer.com.au	122.9	Yes	Yes
Catch.com.au	119.6	Yes	Yes
Etsy.com	106.7	No	Yes
Aliexpress.com	77.5	No	Yes
Theiconic.com.au	75.5	Yes	Yes
Wish.com	64.4	No	Yes
templeandwebster.com.au	63.9	Yes	Yes
Mydeal.com.au	51.8	Yes	Yes
DanMurphys.com.au	51.6	Yes	Yes
GraysOnline.com.au	28.2	Yes	Yes
Alibaba.com	24.2	No	Yes
Amazon.co.uk	14.1	Yes	Yes
redbubble.com	13.8	No	Yes
Taobao.com	13.5	No	Yes
Petstock.com.au	9.9	Yes	Yes
Surfstitch.com	8.9	Yes	Yes
Fishpond.com.au	8.8	Yes	Yes
BikeExchange.com.au	6.1	No	Yes
T-mall.com	3.9	No	Yes
Newegg.com	3.8	Yes	Yes
ShopmyLocal.com.au	1.5	No	Yes
Fishpond.com	0.3	Yes	Yes
TradeSquare.com.au	0.1	No	Yes
clickcentral.com.au		No	Yes

- 15 The establishment and increased popularity and prevalence of online retailing has greatly increased the means of sellers of all forms to access buyers directly. This demonstrates the procompetitive effect of eCommerce and online retailing. Consumers now have ready and immediate access in real time to

thousands of sellers over a wider variety of product categories. Apart from increasing competition at the retail level, the increasing prevalence and popularity of online retailing has provided demonstrable public benefits. For example, online retailers played a vital role during the height of the pandemic by leveraging their supply chains, scalable technology, and last-mile fulfillment capabilities in order to rapidly enable the delivery of essential goods to consumers required to remain at home.

- 16 As a telling example of the procompetitive effects of online retail, many established brands and suppliers that traditionally operated purely on a wholesale basis have now expanded the means by which they directly access consumers. These brands and suppliers that were traditionally wholesaling, are now able to access consumers through a variety of effective means. The most common means of access to consumers are:
- (a) selling directly to retailers for resale by the retailer (traditional);
 - (b) selling via “dropshipping” on retail websites;
 - (c) selling via a marketplace arrangement on retail websites; and
 - (d) selling directly to consumers via one's own direct-to-consumer websites or store fronts.
- 17 More than ever, traditional brands and suppliers as well as new marketplace sellers (who include individuals and small to medium sized businesses), are able to engage in “channel-management”, whereby they can pick and choose which combination of options (and which websites from each model) they wish to deal with. Many sellers engage in multi-channel strategies. This is facilitated by the ease by which sellers can list and delist a product from one marketplace and then list the same product with another marketplace.
- 18 This provides sellers with an effective countervailing power, which in turn incentivises the online marketplaces to offer competitive terms and which prevents online marketplaces, and online retailers more generally, from engaging in anti-competitive behaviour. When there is so much competition between marketplaces, it is impossible for any marketplace to impose unreasonable terms on a seller.

The gatekeeper function performed by traditional incumbent retailers

- 19 Whilst acknowledging the above competitive and public benefits, in the Issues Paper, the ACCC states that it is “*cognisant of potential future risks posed by online marketplaces due to their ability to perform a gatekeeper role, enabling them to exercise a degree of market power and extract increasing value from sellers and consumers, potentially increasing prices*”. In Kogan’s respectful submission this concern is theoretical in nature and, based on the evidence at hand regarding the manner in which marketplaces compete for sellers and buyers, is unlikely to eventuate. Certainly, the exact opposite

situation is currently playing out in the market - with more marketplaces being launched within Australia at a faster pace than ever before.

- 20 Rather, in Kogan's submission, the competitive threat to the online retail market, and to Australian consumers, remains attributable to the power of large incumbent physical retailers who hold substantial market share, who exercise significant clout over famous brands and who are now entering and penetrating the online market at increasing rates. For the entire history of online retailing and today, notwithstanding the increasingly flexible ways in which consumer can access products online, pure-play online retailers like Kogan have faced substantial barriers to entry by reason of several major brands and sellers — who have existing and long-term relationships with traditional retailers and buying groups — refusing to supply their products to Kogan due to pressure that is placed to bear by the traditional retailers in the exercise of their market power. As a direct result, many pure-play online retailers such as Kogan have needed to establish and develop their own supply chains, or rely on indirect channels such as parallel importing, due to the “gatekeeper” role that is played by a small number of major and established retailers in Australia.
- 21 This reluctance to supply pure-play online retailers due to the pressure imposed by major incumbent retailers and buying groups has no doubt had a deleterious impact on competition for the sale of products online, to the ultimate detriment of consumers and has in Kogan's submission delayed the growth of pure-play eCommerce businesses in Australia. Kogan believes that this is one of the primary reasons why Australian eCommerce market penetration of the total Australian retail market is significantly lower than comparable economies such as the United States, or the UK. For example, KPMG estimates that online retail sales as a percentage of total retail spend (ex grocery and liquor) was 31% in the UK compared with 13% in Australia in calendar year 2019.⁵ The comparison is similar in many other comparable economies, and this should be the source of significant concern and enquiry by Australian regulators in Kogan's view.
- 22 In Kogan's respectful submission the above mentioned issue is the primary and immediate issue which needs to be addressed at a regulatory level to ensure the effective and competitive functioning of the eCommerce industry generally, including online retail marketplaces.

⁵<https://home.kpmg/au/en/home/insights/2020/04/coronavirus-covid-19-retail-survival-and-revival.html>