

21 April 2020

**By email:** [AdTechInquiry@acc.gov.au](mailto:AdTechInquiry@acc.gov.au)

Australian Competition and Consumer  
Commission

## **PUBLIC REGISTER VERSION**

To whom it may concern

### **ACCC digital advertising services inquiry**

We refer to the Ad Tech Inquiry Issues Paper and fact sheets released by the Australian Competition and Consumer Commission (**ACCC**) on 10 March 2020 (**Issues Paper**), in relation to an inquiry into markets for the supply of digital advertising technology services and digital advertising services (**Inquiry**).

flybuys welcomes the opportunity to make a submission in response to the Issues Paper.

In this letter, we provide our initial comments and observations on issues raised in the Issues Paper that relate to flybuys, and raise points for consideration more generally on digital advertising technology services and digital advertising agency services (collectively, **ad tech services**) in Australia.

#### **1. Summary**

In summary, flybuys' initial comments and observations relate to:

1. flybuys' data services offering and use of data;
2. the role of data services providers such as flybuys in the ad tech services supply chain, including the distinction between data service providers and other key market participants;
3. the competitive market in which data service providers operate;
4. the accessibility of flybuys' datasets to publishers, ad agencies and direct advertisers and interoperability with other ad tech services;
5. the prices charged by data service providers and the value of data services to customers;  
and
6. the potential impacts on the ad tech services ecosystem from broad privacy reforms that are being considered as part of the Digital Platforms Inquiry recommendations.

## **2. Confidentiality**

The parts of this letter that have been highlighted in red and are preceded by the word “**CONFIDENTIAL**” are confidential to flybuys and commercially sensitive. Subject to the below, flybuys’ confidential information must not be disclosed to any third party without flybuys’ prior written consent. flybuys:

- acknowledges that there is no restriction on the internal use, including future use, that the ACCC may make of confidential information consistent with the ACCC's statutory functions; and
- consents to the disclosure of confidential information to the ACCC's external advisors and consultants on the condition that each such advisor or consultant will be informed of the obligation to treat the information as confidential; and
- acknowledges that the ACCC may disclose confidential information to third parties (in addition to its external advisors and consultants) if compelled by law or in accordance with section 155AAA of the *Competition and Consumer Act 2010* (Cth).

## **3. Overview of flybuys’ business**

flybuys’ primary business is the provision of loyalty program services in Australia, allowing consumers (**members**) to earn points by making qualifying purchases from its participating retailers. The flybuys loyalty program has approximately 8.7 million active members and is one of several large Australian loyalty programs.

flybuys collects data from its members to better understand their specific preferences (**member data**) and enable the awarding of points and offers. This is a mutually beneficial practice, which enables flybuys to deliver campaigns and offers that are more likely to be of relevance and interest to particular members, while also providing members with the tangible benefit of points that they can use to obtain rewards.

Recently, flybuys has started offering consulting and data analytics services to advertisers, publishers and ad agencies.

The data services offered by flybuys fall into the following broad categories:

1. **Customer Insight Services:** flybuys offers a range of customer insight reporting and customer analysis services to enable an in-depth understanding of how aggregated customer segments engage with a specific brand, category of product and digital media.
2. **Marketing Activation Services:** flybuys creates aggregated “audience segments” based on its members’ transactional, behavioural and demographic data, which it makes available on a de-identified basis to publishers, ad agencies and direct advertisers via digital platforms for the purpose of advertising to these aggregate consumer segments in their purchasing of digital advertising media (within certain parameters that protect member experience).
3. **Campaign Effectiveness Services:** to complement the Customer Insight and Marketing Activation Services, flybuys provides analysis of the effectiveness of digital advertising campaigns, as well as recommendations as to how advertisers can better engage with their customers.

#### **4. flybuys' digital audience services**

As noted above, flybuys creates aggregate “audience segments” based on its members’ transactional activity within participating loyalty partner brands, and demographic segments.

flybuys collects member data from a number of sources, including data collected at the point of sale by its participating retailers when a flybuys member scans their card and through the flybuys website and app when a member registers for the program or interacts with offers (including via the use of cookies).

flybuys’ aggregate audience segments can be licensed to publishers, ad agencies and advertisers to target a particular audience segment for their digital campaign media purchases across multiple digital channels, including and predominantly digital display advertising.

The flybuys audience segments are provided to flybuys’ digital audience customers on an entirely de-identified basis, with appropriate technical and contractual measures in place to ensure that the audience segments are used only as agreed by the parties and in accordance with all relevant laws.

flybuys takes its custodianship of member data and the privacy rights of its members extremely seriously and details the above data collection and use in its Privacy Policy and further notices as required.

#### **5. Role of data service providers in ad tech services ecosystem**

The primary role of data service providers is to provide datasets that enable ads to be delivered to particular consumers based on their interests, as well as providing consulting and analysis services. As noted in the Issues Paper, this is an important role in the ad tech services ecosystem, in particular, the market for digital display advertising.

However, it is important to note the distinct and separate role that data service providers play, including those data services providers such as flybuys who have a direct and mutually beneficial relationship with consumers, as compared to other key market participants, namely publishers, supply-side and demand-side platforms and advertisers, and to ensure that measures aimed at addressing issues identified with these other market participants do not inadvertently curtail the benefits offered by data service providers.

A number of dominant players in the ad tech services ecosystem are vertically integrated across a number of these services and leverage extensive user data they have collected and which may not be made available to third party service providers, to provide their own upstream or downstream services. That is, large, vertically integrated service providers may restrict access to data except where it is accessed via their own platforms and in many cases utilising opaque modelling, targeting and auction algorithms, leading to an inability for other players in this space to offer competitive, targeted advertising and personalisation services outside of these platforms.

By contrast, data service providers such as flybuys, which are not vertically integrated and remain independent of major digital platforms, perform an important role in the ad tech services supply chain by ensuring the availability of quality datasets that can be accessed independently of these major players. In that way, data services providers play a critical role in ensuring competition in ad tech markets.

flybuys considers that the areas of concern noted by the ACCC in the Issues Paper arise to a much lesser extent, if at all, in respect of data service providers as compared to other key market participants (i.e. publishers, supply-side and demand-side platforms and advertisers). In particular, concerns related to a lack of transparency in pricing and lack of competitiveness arising from vertically-integrated service providers do not arise materially in relation to data service providers. Relevantly, data service providers, such as flybuys, act as “Digital Audience Service Providers” and generally offer their services for a transparent price which is quoted directly to the relevant advertiser purchasing that data, whether directly or via an advertising agency. In this exchange, we consider that there are limited opportunities for such costs to be obscured or “bundled up” in opaque ways.

In light of this, we suggest that data service providers should be treated as a discrete category of participant in the ad tech services supply chain when analysing the operation of the relevant markets and developing recommendations for reform, noting that many of the concerns and issues raised in the Issues Paper do not arise directly as a result of data service provider practices.

### **6. Competitiveness of data services provider market**

The “data services provider market” isn’t specifically defined in the Issues Paper; however, we understand from the examples provided that it could be taken to include, broadly, any service provider supplying data-related services to support the ad-tech services supply chain.

While major platforms play a significant role in the ad-tech services supply chain more generally, the data services provider market remains fragmented and highly competitive. It comprises numerous players from innovative ad tech start-ups offering specialised services to more established data-rich entities providing data broker services and data management platforms. As noted above, data service providers are also less likely to be vertically integrated than other key participants in the ad tech supply chain and therefore are less likely to have either the ability or the incentive to discriminate against competitors in upstream or downstream markets.

### **7. Accessibility of flybuys’ digital audience services**

We note the ACCC’s comments and questions in relation to how targeting capability and the availability of consumer data affect customers’ choice of which ad tech companies and ad agencies to use.

To assist with these considerations, flybuys wishes to clarify that the flybuys digital audience services are made available broadly to publishers, ad agencies and advertisers, and are provided in a manner that allows for interoperability with other ad tech services.

On this basis, flybuys considers that its role as a data service provider does not negatively impact the competitiveness or effectiveness of ad tech services or the accessibility of customer data to support these services more generally. Rather, flybuys allows broad access to its datasets among its data services customers, allowing for increased efficiency and competition in the market for ad tech services, in particular, digital display advertising.

### **8. Cost of data services and pricing transparency**

flybuys digital audience services are priced in a transparent and consistent manner across its three core categories of products and services outlined above.

As set out in further detail below, flybuys provides fixed-fee prices for each of these three core categories of products and services, which is quoted directly to the relevant advertiser purchasing that data (whether directly or via an advertising agency). This price is based on clear, consistent deliverables, with limited opportunity for these costs to be obscured or “bundled up” in opaque ways with other data services within the ad tech services ecosystem.

We provide the following sample pricing information on a confidential basis to assist with the ACCC’s understanding of the pricing models of a data services provider.

**[CONFIDENTIAL]**

### **9. Further issues to consider: impacts on the ad tech services ecosystem from broad privacy reforms**

In addition to some initial observations and comments on the Issues Paper outlined above, flybuys would like to provide some further comments about the impact of proposed privacy reforms flowing from the ACCC’s Digital Platform Inquiry’s Final Report (**DPI Report**) released last year.

flybuys is concerned to ensure that the ACCC’s recommendations on certain issues do not operate in a disproportionate and counterproductive manner or produce unintended negative consequences for participants and consumers.

The proposed privacy reforms, if implemented, will have a transformational impact on the ad tech services ecosystem. In particular, the combined effect of the ACCC’s recommendations:

- that opt-in consumer consent be required for any collection, use or disclosure of personal information (including in the context of targeted advertising), unless such collection, use or disclosure is necessary for the performance of a contract to which the consumer is a party; and
- that a broader definition of ‘Personal Information’ be adopted (to encompass technical data such as location data and IP addresses),

will likely result in organisations being unable to rely on concepts of ‘anonymity’ as the basis for behavioural advertising activities.

Overall, this will result in a substantial reduction in the availability of data which may have the unintended consequence of reducing competition within the ad tech ecosystem, including by limiting the ability of data services providers such as flybuys, which are not vertically integrated and remain independent of major digital platforms, providing access to quality datasets independently. Further, vertically integrated platforms typically operate as ‘walled gardens’, collecting, and obtaining the benefit of, data provided by data service providers without then providing reciprocal access to performance measurement tools. These circumstances potentially further entrench the dominance of these vertically integrated platforms.

flybuys is also concerned that these reforms may limit the ability of service providers to provide valuable, and often free, services which are valued by their customers. It may also result in individuals receiving less targeted and useful information online, and otherwise experiencing an overall decrease in the quality of the services they access online. These implications may not be fully understood by customers, and imposing changes in these areas could significantly affect the customer value proposition across various service providers in ways that may not have been fully considered or understood.

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These significant implications could be somewhat mitigated with further clarity about the scope of the proposal to allow for collection, use and disclosure of personal information where it is necessary in the performance of a contract to which the consumer is a party. This exception could be clearly stated as being applicable in contractual arrangements such as loyalty programs (i.e. where the relevant loyalty program provider has a direct relationship with its members) given members are clearly informed about the mutually beneficial exchange of consumer data for tangible benefits such as relevant offers and points when entering into the contract.

It is also important that recommendations in respect of granular and widespread opt-outs, or specific opt-in requirements, are capable, in reality, of being implemented at a technical level, or without significant intrusion to customers through a multiplicity of communications seeking approvals. For example, where the delivery of particular services is dependent on third party technology providers such as in the context of programmatic advertising, the technical ability to opt-out of services on a granular basis may be limited by capabilities of the third party platforms.

We would be very happy to provide further information in relation to any of the points raised above, or to otherwise discuss any aspects of our response.

Yours sincerely

A handwritten signature in black ink, appearing to read 'John Merakovsky', written in a cursive style.

John Merakovsky  
Chief Executive Officer