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Morag Bond and Kate Reader  
Co-General Managers - Digital Platforms Branch  
Australian Consumer and Competition Commission  
175 Pitt St.  
Sydney NSW 2000

Dear Ms. Bond and Ms. Reader,

We appreciate the opportunity afforded to the public by the Australian Competition and Consumer Commission (**ACCC**) to comment on the ACCC Digital Advertising Services Inquiry Issues Paper (dated 10 March 2020) (**Issues Paper**).

Microsoft recognizes the notable benefits of digital display advertising services, enabling innovative and popular services to be made available to consumers and transforming the way consumers communicate with each other, access news and information, interact with businesses, and more. But, as the ACCC's Final Report in the Digital Platforms Inquiry (**DPI Report**) and other regulatory inquiries across the globe have recognized, two online platforms have persistently accounted for most of the digital advertising revenues, leading to a host of complex questions about how to enable better competition and ensure that users receive the full benefits of their valuable attention and, increasingly, the data they provide to these platforms for advertising purposes. Microsoft supports the ACCC's continued work to explore the complex business models, dynamics, and impact of digital advertising, including display advertising.

Microsoft also supports the ACCC's continued analysis of the ad tech supply chain, building on the work done in the DPI Report and by other regulators worldwide, such as the Competition and Market Authority's interim report into online platforms and digital advertising (**CMA Interim Report**). Indeed, Microsoft considers it critical that regulators collaborate and exchange ideas, to develop a series of reforms that are consistent and interoperable on a multijurisdictional basis.

## Overview

Microsoft wishes to address three key issues in relation to the ACCC's Issues Paper:

- The persistent position that Google and Facebook hold in relation to the supply of digital advertising;
- The factors that sustain those positions; and
- Support for the development of a code of conduct that is interoperable with reforms across jurisdictions, particularly the code recommended by the CMA in its Interim Report, to effectively regulate dominant platforms in relation to the advertising services supply chain, without stifling the ability of smaller participants to expand. Noting the Government announcement of the development of a now mandatory code

of conduct between Google, Facebook and news media businesses,<sup>1</sup> Microsoft also recognizes that it will be important that a digital advertising code is not inconsistent with the proposed media code.

### **Facebook and Google are must-haves in display advertising**

Facebook and Google have persistently accounted for most of the display advertising revenue because they are essential platforms for advertisers (otherwise known as “must-haves”). Each platform is a gateway to a massive universe of users for digital advertising purposes that cannot be replicated or achieved in any other way. Their size and user engagement mean that the only way to practically run display advertising campaigns that reach users online in a targeted way is to include those platforms. In other words, major brand owners seeking to reach millions of users could not substitute other platforms to achieve advertising campaigns of similar scale to a targeted audience. In this context, many regulators have considered that additional *ex ante* regulation of Facebook and Google may be needed to ensure contestability and protect the interests of smaller players.

### **Facebook’s and Google’s position in display advertising stems from their unparalleled user scale and detailed personal data they have derived from engagement on their web properties and ability to track user activity off site**

Google and Facebook have achieved and sustain their position in the display advertising market through their unparalleled user scale, the detailed personal data they derive from engagement on their web properties, as well as the ability to track activity off site to reveal which campaigns result in the desired user behaviors. As the CMA Interim Report recognizes, Google collects a vast amount of user data from three main sources: its user-facing services (it provides over 50 such services, including search and Gmail); mobile devices running Android, Google’s operating system; and from the analytical technology they place on third-party sites and apps (known as tags). Facebook gathers user data from the three main services it provides in Australia (Facebook, Instagram and WhatsApp) and from its tags.<sup>2</sup>

The ability to measure the effectiveness of advertising is an important driver of advertisers’ decisions on how to allocate expenditure across publishers and platforms. To measure effectiveness, advertisers need to be able to track user actions online, which is done through analytical tools such as tags. As the DPI Report highlighted, Google especially, as well as Facebook, have “trackers”, or tags, on significantly more websites than other firms using these third-party trackers to collect data.<sup>3</sup>

The prevalence of Google and Facebook’s tags enables a more sophisticated analysis of attribution because they can more easily track a consumer’s journey across the internet and provide a single source for the data. In addition, both platforms have rich offline conversion tracking features and in the case of Google, its mobile data can be used to help measure offline conversion by tracking user action based on the user’s location, such as if the user physically visits a store after seeing an advertisement.

<sup>1</sup> Frydenberg and Fletcher, ACCC Mandatory Code of Conduct to Govern the Commercial Relationship between Digital Platforms and Media Companies, 20 April 2020: <https://joshfrydenberg.com.au/latest-news/acc-mandatory-code-of-conduct-to-govern-the-commercial-relationship-between-digital-platforms-and-media-companies/>

<sup>2</sup> CMA Interim Report, p15: [https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim\\_report.pdf](https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf)

<sup>3</sup> DPI Report, Figure 2.6: <https://www.accc.gov.au/system/files/Digital%20platforms%20inquiry%20-%20final%20report.pdf>

This means that Google and Facebook are better able to track users, demonstrate the effectiveness of any particular advertising efforts, and enable advertisers to adjust campaigns to maximize their effectiveness. Given the importance of measured performance in driving advertisers' decisions on how to allocate expenditure in display advertising, these advantages are likely to create a barrier to entry for potential rivals.<sup>4</sup>

### **Collaboration between regulators to develop a code of conduct**

Microsoft welcomes the high level of collaboration demonstrated by the ACCC and other regulators globally in addressing these issues. Collaboration in developing any model for reform is critical to a sector that operates across jurisdictions, in order to avoid the significant issues that would arise from a patchwork of regulatory responses.

As the ACCC considers various policy responses, Microsoft would encourage consideration of the CMA Interim Report recommendation to develop a code of conduct for large online platforms funded by digital advertising. That code of conduct features the following elements:

- It applies only to incumbent players with Strategic Market Status (**SMS**), so that it does not undermine smaller firms' ability to continue operating and challenging the dominance of players with SMS. It defines a 3-pronged test to determine if a platform has SMS, which asks whether the platform:
  1. Has enduring market power over a relevant market;
  2. Acts as an important gateway for businesses to access a significant portion of consumers; and
  3. Is one on which businesses depend, in order to access users on the market's "other side".
- The code is grounded in substantive core principles: fair trading, open choices and trust as transparency. And it proposes an expert and independent body to establish the rules, in consultation with broader industry stakeholders.
- Finally, the code notes the need for a mechanism to enforce the substantive obligations, and a well-funded, specialist entity to undertake enforcement.

We would welcome the opportunity to discuss our observations and comments in greater detail directly with the ACCC at the appropriate time. In the interim, please let us know if you have any questions.

Sincerely,



Thomas Daemen  
Director, Corporate, External, and Legal Affairs  
Microsoft Australia and New Zealand

<sup>4</sup> For more detail, see CMA Interim Report, p171-172:  
[https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim\\_report.pdf](https://assets.publishing.service.gov.uk/media/5dfa0580ed915d0933009761/Interim_report.pdf) and Microsoft's response, p3:  
[https://assets.publishing.service.gov.uk/media/5e8c87d786650c18d05f7f18/200212\\_Microsoft\\_Interim\\_Report\\_Response.pdf](https://assets.publishing.service.gov.uk/media/5e8c87d786650c18d05f7f18/200212_Microsoft_Interim_Report_Response.pdf)