

Ad Tech Inquiry| Submission in response to the interim report

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Strategic Overview

2020 marked a hard reboot for sapience on planet Earth. The period from late 2019 and throughout 2020 simultaneously saw a maturation of the 1989 global factory reset and a transition into a new century. The impact of climate change and pandemic focussed humanity's attention upon the marketplace of global supply chains. These challenges exist at a planetary scale. The scale of these challenges is important. The period also marked the maturation of another form of planetary social infrastructure: the internet. Planetary-scale computation has ensured a cybernetic human society but has also restructured nation state sovereignties borders and economies.

Advertising supports the social infrastructure of the internet. This has a flow on effect. The internet has shifted how humanity governs itself. The political economic intersection of these factors is what makes the Digital Platform Services Inquiry important, and specifically what makes the Digital Advertising Services Inquiry important.

The internet has carved up planetary political economies into Stacks. For the Australian continent, two stacks predominate: the Anglospherical Stack GAFA and the Chinese based BAT [PRC/CCP] Stack of Baidu, Alibaba, Tencent. Both these Stacks intercede in Australia. While GAFA predominates, BAT is also important. For Australian governance, this has significance for the polity. Citizens now participate in a global economy directly, and the defence of the state depends upon secure value and supply chains.

A new informational political economy is immanent of the internet. Planetary computation geopolitics is an armature of data. Ad Tech spirals within this armature. It is not capitalism or communism anymore in dipoles: it is vectoralism. US-based Big Tech platforms don't function like old firms by owning capital, just as the CCP does not redistribute like the era of Mao or Deng. Instead, they both control the vectors which move materialism around with information. Data is now vital to both economic activity and political organisation.

This is a long way to say: the ACCC has a special problem – competition has changed, but the tools at the disposal of government are products of earlier forms of production and governance. The old rules of competition and anti-trust will not work to control broad spectrum competition in an era of Big Tech.

Time is now the key resource. The last decade has shown that we exist in a governance via the curve and the temporal: paranoia and power laws predominate, while the polity is recursive. This means the ACCC has to operate on two time scales – the immediate present and the long term – and has to provide policy options for both.

More accurately, conventional competition policy has focused on static competition, but dynamic competition policy will create much larger long-term gains in the digital economy. Just as previous anti-trust and competition policy is tuned for the industrial economy where markets and innovation are contained and relatively static, it is for an era of restaurants and cafes, not ghost kitchens and mopeds.

Tactical Note: Digital advertising services inquiry: Interim report

While not technically incorrect, the ACCC approach methodologically puts the cart before the horse. The ACCC Chicago style static micro theory-based competition policy excludes innovation. The ACCC is entirely correct, in that competition drives innovation, but innovation also drives competition, and focusing upon one side of the equation may misunderstand the way Big Tech works. Much of current anti-trust policy is tuned for the old industrial era. The ACCC responses are broadly resource driven, not innovation driven. Monopoly power, predatory mergers and models of market power are no longer sufficient to understand competition in the digital economy of Big Tech. The ACCC's measures may seem to consumers and firms to be of benefit – while some of these are real effects – they are short term only and will distort dynamic competition and reduce consumer welfare in the long term.

- ACCC Proposal 1 – Measures to improve data portability and interoperability.

This proposal is in spirit an important first step in ensuring against tech industry magical thinking around consumer consent. However, data portability measures and common user IDs may not increase benefit for consumers. Consent is considered a lawful way to trade consumer data, however, this measure is dependent upon anonymisation. Such controls on data are well known to be weak and insecure.

- ACCC Proposal 2 – Data separation mechanisms.

While consumers may have concerns about data being utilised in vertical integration, this is not where competition regulation could have the best effect. On the contrary, vertical non-market use of data should be encouraged. It is structural diversification which should be targeted for regulation and control.

- ACCC Proposal 3 – Rules to manage conflicts of interest and self-preferencing in the supply of ad tech services.

Please see response to ACCC Proposal 2 above.

- ACCC Proposal 4 – Implementation of a voluntary industry standard to enable full, independent verification of DSP services.

If the ACCC is serious about this proposal, they need to develop a structure for and pursue rigorous prosecution for the regulation. Voluntary codes are prone to exploitation.

Alternatively, rather than pursue demand side codes, the ACCC could encourage, amplify and even develop regulation which encourages innovation in this space to improve consumer welfare.

The reason for this is simple. The current proposal overstates market power and understates the importance of innovation in Big Tech competition. Focus on demand side, and Google in particular, might not fully comprehend the role stress of maintaining innovation in such a Big Tech firm. A focus on market power alone at any point in time avoids the reality that uncertainty is the key competition determinant in digital economies. For example, the massive rise in Zoom during the pandemic – at the exclusion of Google - is an example of how uncertainty leads and Big Tech bleeds.

ACCC Proposal 5 – Implementation of a common transaction ID.

Putting a price on data alone may not affectively ameliorate the key urgent concern of consumers that data privacy is being breached.

- ACCC Proposal 6 – Implementation of a common user ID to allow tracking of attribution activity in a way which protects consumers’ privacy.

Close examination of cryptographic protocols and human cyber weakness indicates that while this proposal is a positive measure to prevent fictional and false consent it is not a cure all in the medium to long term.

In addition, very recent developments in econometrics mean that unbounded dynamic programming via the Q-Transform and competitive equilibria can be recovered as solutions to dynamic programs. This means that non-linear dynamic competition may not just be captured but programmable at macroeconomic scales.

Temporary Conclusion

In conclusion, the ACCC might consider broader proposals for trade-offs between short term and long-term consumer welfare. On the one hand all regulation benefits big players because they can easily pivot faster than small competitors. On the other hand, static competition undervalues just how much innovation is required by Big Tech to compete. Rather than pricing consumer data, harder restrictions on IP control would encourage Big Tech innovation investment. One example demonstrates how this focus skews the broader market. The ACCC has focussed upon Google due to market share. However, People’s Republic of China based Big Tech companies Tencent/WeChat have also adopted a Google style model. At minimum 600,000 Ethnic Chinese Australians and up to a 1.2 million people sized market in Australia cannot operate within this defined market without ascribing to the market power of Tencent in Australia. Ascribing to the Tencent platform requires political affinity with the Communist Party of China. Tencent’s domination of the market in Australia is near 100% and is also tied (unlike Google) to authoritarian non rule of law controls. There are zero references to Tencent in the report.

I would suggest the ACCC support innovation instead of just controlling competition. All regulation will favour the big players and reduce diversity. There will be unintended outcomes for consumers and forms. Regulation to control so called ‘monopoly’ in tech spaces may ironically discourage new entrants. Arguably, Big Tech giants like Google are not even monopolists in the old sense, perhaps not even at all. While they may look and feel they do, on closer inspection, Big Tech firms do not have the market power of traditional monopolist at all. In a Big Tech based economy, demand and supply curves go the opposite way of old school economics. Market share does not equal power in a linear fashion.

This is both a problem and new opportunity for a regulator. The ACCC has an entrepreneurial flair for courageous global intervention. A concern may be enforcement fatigue and resourcing deficits leading to paper tigers. The ACCC needs to be a disruptor. But an innovative one: The ACCC needs to go harder on enforcement of intellectual property infringements, intrusions into new markets, while also encouraging new forms of consumer demand.

Overall, as a society we need to decide which data to ascribe regulation - not all data. We need to develop innovative ecosystems at least as much as control market power. Much of the data collected in advertising is an issue not just because of market dominance, but because it is the wrong sort of data to tackle our continental and planetary problems. Schumpeterian rents and innovation pressures to free up the use of that data may be in long run be more important than short term Ricardian rent competition policy.

This grab owes much to the recent work of Benjamin Bratton, McKenzie Wark, Katharine Kemp, Nicolas Petit, David Teece, and John Stachurski. Time pressure and expediency has precluded full referencing. Apologies for this oversight. Full referencing will take place in response to the ACCC strategic papers in this space.