



ACCC Digital advertising services inquiry – Interim Report

Xandr response to the ACCC's proposals for consultation

2 March 2021

1. SUMMARY

- (1) The ACCC's proposals have the potential, in combination, to have a material positive impact on competition, and therefore on advertiser and publisher outcomes, while respecting user data privacy.
 - a. Access to data: Data portability, interoperability and separation requirements would help to redress the large data imbalance from dominant ad-funded and consumer-facing platforms, reduce barriers to the legitimate flow of data, and facilitate the reconciliation of disparate data sets across the ad tech stack. This could lower barriers to entry and expansion, improve interoperability, and increase competition and choice.
 - b. Conflicts of interest and self-preferencing: Restricting conflicts of interest and self-preferencing would help to address the incentives of dominant vertically integrated ad-funded platforms to discriminate in favour of their own connected services, and to reduce interoperability with third-party technologies. As a result, publishers and advertisers would have greater ability to choose individual ad technologies on merit, and switch between them more easily.
 - c. Transparency: Greater transparency in relation to ad verification, attribution, auction outcomes and fees would increase customer confidence in digital advertising, empower customers to make informed choices of ad tech provider, and thereby increase competition and choice. Publishers and advertisers would be able to optimize more easily the route by which they conduct ad transactions, they would benefit from increased price competition, and therefore would likely enjoy a greater return on advertiser spend and increased inventory yield.
- (2) The success of the proposals will naturally depend on their design. For example, the ACCC will need to consider how to incentivize engagement by potentially reluctant participants in any new standard-setting measures it mandates. The ACCC should also consider the need for an effective monitoring regime, for example through on-going supervision of and dialogue with key industry participants, and with the potential for sanctions or enforcement action to address inaction or non-compliance.


2. ACCESS TO DATA

- (3) As the ACCC notes, data plays a central role in the provision of ad tech services. Aside from its role in the mechanics of digital advertising, it is of vital importance to the effectiveness of an ad campaign, through ad targeting, and to measuring the effectiveness of the campaign, through attribution. Therefore, a DSP provider that offers the largest amount of high-quality data will be particularly attractive to advertisers. Similar considerations also apply to publishers.
- (4) The ACCC rightly identifies a significant data divide between dominant ad-funded digital platforms and other providers of ad tech services. The former have access to large quantities of ad tech-derived data as well as first-party data from their popular consumer-facing services. Therefore, they have a significant competitive advantage over their rivals, who cannot replicate an equivalent data offering.

- (5) In addition, as the ACCC points out, certain restrictions are placed in particular on Google-controlled data, which make it more difficult for customers to switch between platforms, and therefore incentivize them to focus their advertising spend on a single platform, further restricting choice and competition. For example, the ACCC cites Google's decisions to restrict the transfer of DoubleClick IDs from its buy-side services, to remove the ability of publishers to link bid data from competing auctions, and, looking forward, its proposal to phase out cookies in Chrome.
- (6) The importance of data in digital advertising will not diminish. Therefore, so long as there remains a significant data imbalance and data restrictions, the incentives to use non-Google ad tech providers will be reduced, and the ability of other ad tech providers to compete will be greatly inhibited, with ongoing negative outcomes for publishers, advertisers and, ultimately, for consumers.
- (7) Therefore, Xandr agrees with the ACCC that measures should be introduced to create a more level playing field for ad tech providers from a data perspective, including through data portability, interoperability and, if necessary, separation measures.

Proposal 1: Data portability and interoperability

- (8) The ACCC's proposal combines two distinct, but related aims: to increase data portability and to ensure interoperability.
- (9) Data portability concerns the transfer of user data by a platform with user consent, for example by enabling users to instruct Google to make their data available to an advertiser, publisher or other platform.
- (10) Xandr agrees that such measures could help to redress the data imbalance between Google and other ad tech providers, provided they are designed in a way that facilitates access to the data. For example:
- a. In a consumer context, the consent mechanism would need to be presented in combination with, and in a user-friendly and equivalent manner to, mechanisms by which Google obtains user consent for its own use of the user's data.
 - b. There would also need to be an obligation on Google, on receipt of consent, to make that data available to third parties on the same basis as it is made available to its own ad tech or other services, for example in terms of timing and format, and via independently verifiable means, such as an independent API.
 - c. The power to instruct large platforms in this way should also be granted to their advertiser and publisher customers in relation to their own data, and where they have received a privacy law-compliant request from an end user to issue that instruction on their behalf.
- (11) Data interoperability concerns the mobility of data between platforms that is not contingent on user, advertiser or publisher consent. As examples, the ACCC suggests the introduction of standards to facilitate transfers of non-personal, aggregated or anonymised data, as well as common user and transaction IDs.

- (12) Xandr agrees that data interoperability is key to creating a level playing field and to providing customers with freedom of choice of ad tech provider.
- a. Industry standards governing the transfer of data would help to remove excessive barriers to the legitimate transfer of data between platforms. Lack of access to such data diminishes the potential recipient's ad tech offering, and therefore its utility to publishers and advertisers.
 - b. The success of any initiative to develop an industry standard in digital advertising will be dependent on the good faith engagement of Google, given its market position. Therefore, where the ACCC recommends an industry solution to the issue of data interoperability, or indeed any of the issues identified in its Interim Report, the ACCC should take the necessary steps to incentivize Google's participation in the initiative and its agreement to an equitable solution, including meaningful recognition of the views of third parties that will be affected by the solution.
 - c. 
 - d. Common transaction and user IDs would also facilitate data interoperability between distinct technologies and the use by customers of the technologies of different providers, with obvious benefits for choice and competition, as set out in more detail in section 4 below.
- (13) Data privacy laws should not be an obstacle to new data portability and interoperability measures, as they can be designed in a way that ensures respect for those laws. In a banking context, customer data portability also operates at scale, for example, under the UK Open Banking framework,¹ which was established to facilitate customer switching through the efficient transfer of customer account information between banks while protecting individuals' interests. More broadly, the ACCC supports a Consumer Data Right applicable to various industry sectors, to give consumers greater access to and control over their data so that they can compare and switch between products and services more easily.²
- (14) To ensure that portability and interoperability remedies achieve their aims, the ACCC should oversee both the process by which they are established and their operation in practice. As such, the remedies would require ongoing regulatory oversight by the ACCC.

¹ Open Banking framework was implemented by the CMA in 2017. It rests on the APIs, data structures and security architectures that make it easy and safe for customers to share their financial records.

² See: <https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0>

Proposal 2: Data separation mechanisms

- (15) Xandr agrees that where data portability and interoperability standards cannot be implemented, data separation could be a necessary measure to address the data imbalance between dominant platforms and other ad tech providers.
- (16) Google, in particular, benefits from large amounts of both ad tech data (DoubleClick IDs) and consumer data (Google IDs), the combination of which enriches its data offering to customers and raises potential barriers to data portability.
- (17) While restrictions on internal data sharing could level the playing field among competitors in digital advertising, publishers and advertisers are likely to see greater benefit from increased data portability and interoperability among ad tech providers. Ideally, therefore, data separation measures would only be imposed in cases where a dominant platform refuses to make data readily available to rival ad tech providers on the same basis as data is shared across services within a dominant platform. Such a system would likely be contingent on the development of industry standards that enable data portability and interoperability, as described above.
- (18) In any event, it would likely be necessary for the ACCC to actively monitor the flow of data between the services of dominant platforms, and to third parties, to ensure equal treatment pursuant to industry standards. This would involve, at the very least, access to reporting by digital platforms on the internal flows of data and independent auditing of the arrangements which large online platforms put in place to comply with portability and interoperability requirements.
- (19) [REDACTED]

3. CONFLICTS OF INTEREST AND SELF-PREFERENCING***Proposal 3 – Rules to manage conflicts of interest and self-preferencing in the supply of ad tech services***

- (20) Xandr agrees that new regulatory measures are needed to address inherent conflicts of interest that arise from Google’s vertical integration and market position across the ad tech stack, as they would help to reduce the risk of self-preferencing behaviour.
- (21) Antitrust laws, such as the provisions of the Competition and Consumer Act, play a vital role in regulating the conduct of technology companies, in particular to sanction the most egregious forms of misconduct, which may include self-preferencing.
- (22) However, as the ACCC notes, antitrust laws alone are not sufficient to restore effective competition to digital advertising markets, given the *ex post* nature of antitrust enforcement, the complexity and dynamism of those markets and the non-transparent nature of certain technologies. Indeed, it is now widely recognised that a new form of regulation is required, in addition to antitrust laws, as evidenced by EU, German and UK legislative initiatives, amongst others.
- (23) The ACCC recognises in particular that Google’s vertical integration in digital advertising creates inherent conflicts of interest, which in turn give rise to the ability and incentive to self-preference.

- (24) New rules are required to manage the incentives that arise through vertical integration of dominant ad tech platforms, for example: general principles not to self-preference, and to treat third parties in a fair and non-discriminatory manner; and potentially issue-specific rules to address known examples of self-preferencing.
- (25) However, as the ACCC's report highlights, self-preferencing is the symptom of a structural issue caused by incentives created by Google's vertically integrated ad-funded business model. [REDACTED]
- (26) The ACCC proposes the following requirements:
- a. to put measures in place to manage conflicts of interest, such as preventing the sharing of information between ad tech services, or obligations to act in the best interest of publisher or advertiser customers;
 - b. to provide equal access to ad tech services or "level playing field" obligations; and
 - c. to increase the transparency of the operation of the supply chain.
- (27) Xandr agrees that a combination of such requirements is required to achieve a comprehensive and lasting solution. The consequence of the new requirements should be that, for example, a dominant platform's DSP contracts and interoperates with its own SSP/ad exchange on the same basis as it does with third-party SSP/ad exchanges.
- (28) The ACCC should explore whether its proposals are sufficient to achieve that aim or whether there is also the need for other measures, such as:
- a. operational or functional separation of ad tech services, which would go beyond a simple information exchange barrier, with the result that the dominant platform would in effect transact and interact with its connected technologies on an arm's length basis, and therefore on the same basis as third-party ad tech services;
 - b. a requirement to provide interoperability information of the same quality, detail and timing to its own connected ad tech services as to third-party services; and
 - c. a clear definition of any obligation to act in the best interests of publisher and advertiser customers.
- (29) Of course, the potential benefits of specific measures must be weighed against the regulatory burdens, but it is worth noting that:
- a. [REDACTED] An effective solution will have potentially material and far-reaching positive consequences for digital advertising.
 - b. In terms of compliance, the new obligation on a large platform would in essence be to interoperate with its own ad tech services on the same basis as with third-party ad tech services. Therefore, from a technological basis, with the right approach to interoperability and transparency, there should be no material obstacles to implementation.

4. TRANSPARENCY

- (30) The ACCC has rightly noted that a lack of transparency in digital advertising limits the ability of customers to make informed choices between ad tech providers, and thereby restricts competition between ad tech providers, with negative consequences for customer confidence, pricing and innovation.
- (31) In particular, the ACCC expressed concerns about a lack of transparency in relation to ad verification, ad attribution, auction outcomes and ad tech fees. The ACCC's Interim Reports concisely captures the key ways in which the lack of transparency has negative consequences for customers in those areas [REDACTED]
- (32) Xandr agrees that where steps can be taken to increase transparency, while respecting data privacy considerations, customer confidence in ad tech services will increase, customers will be able to choose their ad tech provider on the merits, advertisers will likely benefit from a greater return on advertising spend and publishers will experience increased inventory yield.
- (33) The ACCC has made three proposals to improve transparency and address the particular issues identified, which it refers to as Proposals 4-6.

Proposal 4: Implementation of a voluntary industry standard to enable full, independent verification of DSP services

- (34) The summary of the proposal is framed as relating to ad verification. However, Xandr notes that the ACCC is also seeking feedback in relation to ad attribution in this context, in particular "*whether a measure should be introduced requiring all DSPs to allow third party verification and / or attribution providers [...] access to the information necessary to fully, and independently verify the performance of their services*".
- (35) Xandr agrees that it is equally necessary to facilitate both third-party verification and attribution, and therefore any new requirement should not be limited to ad verification. Transparency on both elements is necessary so that customers can properly assess the performance of services that they receive from their DSP provider, and to compare the performance of alternative providers. The obligation to provide transparency on one but not the other will only partially improve the status quo. Equally, an obligation to provide access to data should not be limited to only advertiser customers, but should also apply to publishers, as appropriate.
- (36) Xandr notes that the ACCC proposes the introduction of a common user ID, under proposal 6, which Xandr agrees would facilitate independent attribution services. Nevertheless, a clear obligation to facilitate attribution services, as suggested by proposal 4, would increase the likelihood of greater transparency in this regard.
- (37) The ACCC suggests making this a voluntary standard, developed by industry, and notes that it would apply only to ad tech providers that do not already facilitate full, independent verification or attribution services. With the right engagement, an industry-developed voluntary standard is entirely possible. However, the fact that some ad tech providers do not already enable third-party providers may mean that they will be reluctant participants in an industry initiative to do so. The good faith participation of Google in any such initiative would be of particular importance, given its market position.

- (38) Therefore, Xandr suggests that, where the ACCC recommends an industry solution to facilitate independent ad verification and measurement, the ACCC should take the necessary steps to incentivize Google’s participation in the initiative and its agreement to an equitable solution, including meaningful recognition of the views of third parties that will be affected by the solution.
- (39) Finally, Xandr agrees that data privacy should not be an obstacle to ready deployment of an effective solution, given the current practice of some ad tech providers, including Xandr, of facilitating third-party verification and attribution.

Proposal 5: Implementation of a common transaction ID

- (40) The ACCC has proposed a common transaction ID to address concerns about a lack of transparency over auctions and ad tech fees.
- (41) Xandr agrees that addressing the lack of transparency in these areas is key to restoring customer confidence in ad tech services generally and to empower customers to make an informed choice of ad tech provider. A common transaction ID could be an important and effective tool to do so.
- (42) The potential benefits identified by the ACCC include greater clarity regarding auction outcomes and increased price transparency across the whole ad tech supply chain. As a consequence, it would likely increase competition between SSPs, with benefits for both advertisers and publishers.
- a. Advertisers and their DSPs would be able to identify the same offer of inventory across multiple competing SSPs, and, with increased price transparency, identify the most cost-effective SSP through which to bid for inventory. [REDACTED]
 - b. SSPs with the most competitive offering would attract more business, and therefore would be incentivised to lower their fees to publishers, with the result that a greater proportion of an advertiser’s expenditure would be “working media” and inventory yield would increase.
- (43) A common transaction ID should be feasible from both a technical and data privacy perspective.
- a. The main technical requirement is that the transaction ID would need to originate from the publisher’s page, rather than from the ad server. With header bidding, a request for demand is sent by the publisher’s page to multiple non-Google SSPs simultaneously, using the header bidding wrapper located on the page and before the ad server is called. Each transaction ID would be associated with a particular request for demand, and therefore would need to be generated at the same time from the publisher’s page.
 - b. Data privacy rules should not pose an obstacle to the transfer of transaction-related data as part of a common transaction ID. The data is unlikely to include personal data, and where personal data is included, any such data could be anonymised. The data being transferred would be made available in a demand request in any event. Therefore, creating a common transaction ID would not necessarily alter the content of information that would otherwise be made available. The main change

would be the ability of advertisers to identify the same demand request across different platforms, which would not appear to raise concerns from a data privacy-compliance perspective.

- (44) An initiative to establish a protocol for a common transaction ID would benefit from greater momentum if Google were involved in – without dictating the terms of – its creation. Google would also need to commit to exposing the common transaction ID in its log files to facilitate the matching of buy- and sell-side data.
- (45) Notably, the ACCC has suggested that ongoing initiatives to create a common user ID suffer from a lack of progress due to the non-involvement of Google. Therefore, where the ACCC recommends the industry-led development of a common transaction ID, the ACCC should take the necessary steps to incentivize Google’s participation in the initiative and its agreement to an equitable solution, including meaningful recognition of the views of third parties that will be affected by the solution.

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

- (46) The ACCC has proposed a common user ID to improve the ability of third parties to provide independent attribution services.
- (47) Independent attribution analysis is of great potential benefit to advertisers, as noted by the ACCC. As well as the benefits identified by the ACCC, such as the ability to make a more informed choice of ad tech service, data analytics can inform the strategy of a current or future ad campaign, for example, enabling the advertiser to adjust its bidding strategy in response to real-time results.
- (48) A common user ID would facilitate independent attribution by making it easier to track the effectiveness of an ad campaign across multiple platforms, thereby reducing the need to rely on a single platform, and increasing incentives to switch between platforms based on merit, assuming barriers to interoperability are not insurmountable.
- (49) As noted above, Xandr agrees with the ACCC’s parallel suggestion, under proposal 4, to require “*all DSPs to allow third party [...] attribution providers [...] access to the information necessary to fully, and independently verify the performance of their services*”. The combination of that obligation with the introduction of a common user ID could greatly improve independent attribution analysis.
- (50) Xandr notes that a common user ID would benefit digital advertising beyond attribution, as it could also improve and simplify the interoperability of digital advertising technology generally. For example:
 - a. At present, Xandr maintains cookie matching implementations with partners that send it user data, including third-party DSPs, SSPs and data management platforms. Those implementations enable Xandr to link data received to user data already on its platform, which avoids duplication and enhances its offerings. However, cookie matching implementations are cumbersome to maintain and add an extra layer of complexity and cost to the services that can be offered. A common user ID would remove the need for such implementations, improve efficiency and lower costs.

- b. In addition, if a common user ID were available across internet browsers, it would increase competition between ad tech providers by equalising their user targeting and data analytics offerings. Dominant platforms have a significant data advantage, including as a result of their access to first-party data, which rivals cannot replicate. A common user ID would make scale less important and increase the ability of smaller ad tech providers to compete. Accordingly, it would increase choice and price competition, with benefits for advertisers and publishers alike.
- (51) Xandr is not aware of any technical or data privacy reasons that would prevent the establishment of a common user ID protocol. Indeed, there are a number of on-going initiatives to establish one. The ACCC suggests that the main reason for the lack of success to date of those initiatives is the non-involvement of Google, whose support is essential given the significance of its role in digital advertising.
- (52) As a practical matter, the establishment of a protocol for a common user ID could be coordinated by an independent body with experience in such matters. However, for the reasons above, the establishment of a common user ID would enjoy greater momentum and likelihood of success if Google is incentivized to participate in its creation.
