

How the ACCC Digital Platforms Inquiry affects your business



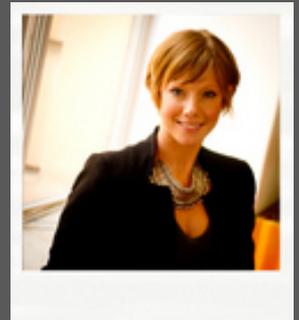
The ACCC's Digital Platforms Inquiry was intended to focus on the impact of Google and Facebook on competition in news and advertising. The final report confirms their power in those markets and proposes regulation to keep them in check. But it goes a lot further than that. The inquiry has provided a platform for the ACCC to seek law reforms that would impact businesses across the board.

Here is a tasting platter of some of the key conclusions.

- 1. Merger law changes:** The ACCC wants to amend the CCA 'merger factors' (things to consider when deciding whether a merger is unlawful) to include the likelihood that the acquisition will remove a potential competitor from the market and the amount and kind of data that the acquirer would have as a result of the acquisition.
- 2. Added consumer law protections:** The ACCC has taken the opportunity to put penalties for unfair contract terms (a longstanding issue) back on the table. It also wants to prohibit specific unfair trading practices like amending T&Cs without reasonable notice and dissuading customers from exercising their rights.
- 3. Privacy Act reforms:** The ACCC was concerned about how Google and Facebook collect and use data - and supports the Government's existing proposal for increased penalties. They're also after stronger notification, consent and data erasure obligations, and a statutory tort for invasions of privacy.
- 4. The digital advertising supply chain is mystifying, possibly dodgy:** The ACCC is proposing a separate inquiry to dig into adtech, given the complexity and opacity of the supply chain. The big news is that will include looking at advertising agency transparency.
- 5. Surprise! Google and Facebook have market power:** Google has it in search and search advertising, Facebook has it in social media and display advertising. That means anything that either of them does which substantially lessens competition is unlawful. The ACCC also said Google and Facebook had 'bargaining power' in a market for news referrals.
- 6. Traditional vs digital media:** The ACCC wants to even the playing field – applying the same regulation to both traditional and digital media. It also wants to see a boost for traditional media, with funding for the public broadcasters, grants for local journalism, and tax changes to encourage philanthropic support for journalism.
- 7. Tackling fake news:** The ACCC has a few ideas on how to do this. Digital media literacy for the community and in schools. A new digital platforms code to counter disinformation. Monitoring what digital platforms are doing to ensure the reliability of news content sources on their service. We're pretty keen to see whether this stuff works.
- 8. A whole new world of regulation for digital platforms:** This includes a shiny new branch of the ACCC for digital markets and algorithms, new codes of conduct for digital platforms and media businesses, and mandatory standards for copyright enforcement via notice and take down. Plus the ability to deal with scams and other emerging issues with new dispute resolution standards for digital platforms, and maybe even a new ombudsman scheme.

The Government has so far implied its support for the Report, without making any specific response to the recommendations. Even if it does adopt the recommendations, we'll be impressed if any of them make it to the top of the legislative agenda in the short term. But if and when they do, businesses will need to look carefully at if and how the reforms impact them.

Questions? Give us a call.



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