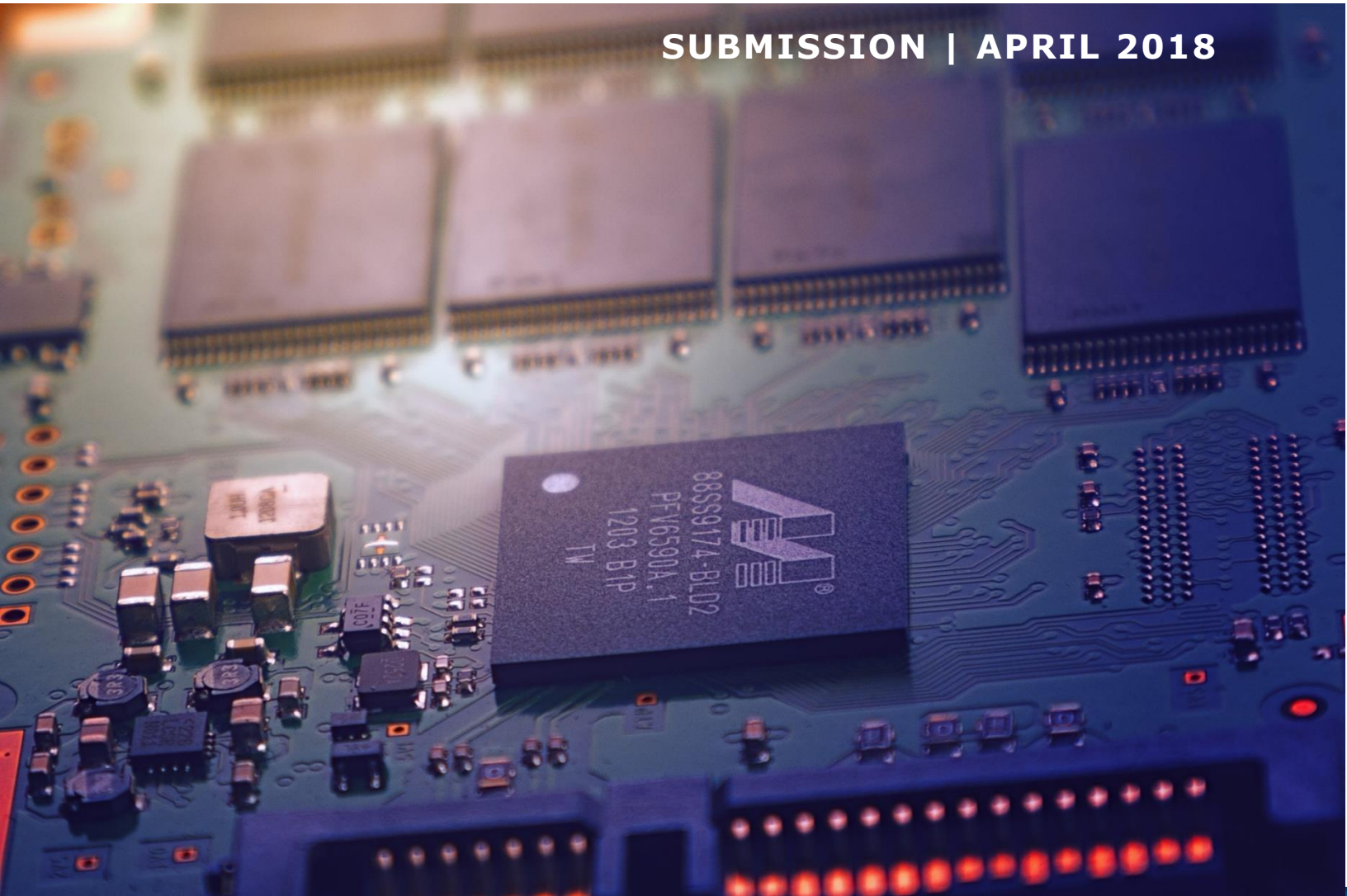


ACCC DIGITAL PLATFORMS INQUIRY

Issues Paper

SUBMISSION | APRIL 2018



About the Chamber

The NSW Business Chamber (“the Chamber”) welcomes the opportunity to make a submission to the ACCC Digital Platforms Inquiry, Issues Paper (“the issues paper”).

As you may be aware, the NSW Business Chamber (“the Chamber”) is one of Australia’s largest business support groups, with a direct membership of more than 20,000 businesses, providing services to over 30,000 businesses each year.

Tracing its heritage back to the Sydney Chamber of Commerce established in 1825, the Chamber works with thousands of businesses ranging in size from owner operators to large corporations, and spanning all industry sectors from product-based manufacturers to service provider enterprises.

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Introduction

Over recent years, digital services and platforms have had a transformative effect on business operations both in Australia and globally.

Digital platforms which can encompass search engines (for example Google, Bing), social media (Facebook, Instagram, Snapchat or Twitter) and content aggregators (Google News, Apple News or Reddit) have fundamentally changed the way in which businesses engage, market and transact with customers.

Beyond interacting with customers, advancements in digital platform technology are also enabling businesses to change business models, strategies, workforce and operations.

It should be recognised that benefits from business investment in new technology and innovation is not limited to the enterprise level. Research undertaken by Deloitte on behalf of Google Australia suggests that there are wider economic benefits achieved from business engaging in digital services.

In its 2017 *Connected Small Businesses* Report, Deloitte identified that relative to Australian SME’s with basic levels of digital engagement, SMEs with advanced levels of digital engagement are:

- 50% more likely to be growing revenue; and
- earn 60% more revenue per employee.

In addition, previous research in that series of work, suggested that compared to businesses with basic digital engagement, Australian SMEs that have advanced levels of digital engagement are:

- more than 8 times more likely to be creating jobs, creating an average of 12 additional jobs in the previous year;

- 7 times more likely to be exporting; and
- more than 14 times more likely to be innovating by offering new products or services¹.

With such significant benefits being delivered through businesses increasing their use of digital services, it's critical that policy makers balance these benefits appropriately in considering any potential regulation of these services.

Implications for Advertisers

As identified in the Issues Paper, over the last 5-10 years, advertising via digital platforms has expanded rapidly. The Australian Communications and Media Authority reported that for the period from 2009 to 2016, print media's share of advertising expenditure decreased (from 46 to 13 per cent) while online advertising increased (15 to 48 per cent).

This increase in expenditure has also been largely directed away from traditional media (newspaper and magazines) and towards new digital platforms. Research suggests Google and Facebook now take up to 40 per cent of total Australian online advertising.

To understand the reasons driving business towards these platforms, the Chamber surveyed its members between 28 March 2018 and 10 April 2018 on their experiences engaging with digital platforms and technology generally. The NSW Business Chamber's *Technology Survey* ("the Survey") received 338 responses and helps inform our responses to this Issues Paper.

Advantages of using digital platforms for advertising services

71 per cent of respondents to the Survey utilised digital platforms to advertise.

Respondents indicated digital advertising had positively affected their business. 62 per cent of respondents indicated digital advertising had increased customers; 43 per cent indicated it had increased sales; and 34 per cent indicated it helped reduce costs.

While respondents to the Survey suggested there are many benefits of utilising these platforms, a number of respondents noted in free text, disadvantages or noted digital advertising platforms they used provided no positive effects or that benefits had decreased over time:

- *"Has had almost no effect"*
- *"increased customers from 2002-2008 but not since"*

A number of respondents suggested their use of these platforms goes beyond what advertising channels traditionally offer. The concept of building brand awareness and community profile were consistently cited by respondents as additional benefits from utilising these platforms. This was further reflected in 36 per cent of respondents indicating that a key attraction to using these platforms is that they allow them to connect to their customers in a deeper way.

Have digital platforms changed the price, quality or choice for advertisers?

¹ See <https://www2.deloitte.com/au/en/pages/economics/articles/connected-small-businesses-google.html>

When asked what attracted them to digital platforms, respondents to the Survey indicated ease of use, cost and effectiveness of platforms were equally attractive (59 per cent).

Other feedback from respondents on aspects that attracted them to digital platforms included:

- *Overcome the limitations of being located regionally*
- *Experimental and hands on control*
- *Speed of implementation*
- *more targeted advertising to customers who are interested*
- *Analytics and Insights to make better business decisions that drive business performance*

Traditional forms of print, tv and radio advertising have not ordinarily been able to offer such services. In the Chamber's view, digital platforms have led to a substantial expansion of choice for business.

While digital platforms have provided new avenues for business to engage and reach customers, only 11 per cent of respondents to the Survey had moved all of their advertising spend to digital platforms - with most retaining an advertising mix. In approximate terms, 41 per cent of respondents used 25 per cent of their advertising spend on digital.

In addition, when asked what would motivate a reduction in their spend on digital advertising 65 per cent nominated price increases, 47 per cent suggested reduced flexibility, 40 per cent poor customer service and 30 per cent reduced analytical functions.

Although the digital advertising market is dominated to a large extent by a number of major digital platforms, it does not appear these large participants are engaging in a manner which unfairly impacts on the performance of the market or suggests the exertion of market power. Feedback from Chamber members suggests there is sufficient scope for new entrants to emerge into the market (for example by addressing the poor customer service or reduced flexibility of a current platform) to meet demands not being met by incumbents.

Regulating technology and the parameters of the Review

With rapid advances in information and communications technology, policymakers face a dynamic environment in trying to set regulatory frameworks. This is undoubtedly the case when considering the digital platforms subject to this inquiry.

Despite recent regulatory reforms to media regulation (such as the abolition of broadcasting licence fees; the repeal of media control and ownership rules and 'safe harbour' provisions),

in a world where more people own a mobile phone than have access to electricity or running water², its obvious current regulatory frameworks will continue to be challenged as new technology develops. As a result, the tensions between policy makers looking to regulate

² See https://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html?CAMPAIGN=Mobile+VNI+2017&COUNTRY_SITE=us&POSITION=Press+Release&REFERRING_SITE=PR&CREATIVE=PR+to+MVNI+white+paper

and control and technology businesses looking to innovate and disrupt will become even more apparent.

In addition, policy makers and regulators are faced with a “goldilocks dilemma” (where they risk intervening too early and pre-empting a technology’s likely impact based on inadequate information: “too cold”; or waiting too long when a technology may be too entrenched to regulate properly: “too hot”)³.

In this light, a cautious, non interventionist approach is preferred - with a view towards working with platforms before targeted interventions are made. Ensuring that any regulatory interventions are targeted appropriately and are made on the basis of a rigorous and transparent assessment of the cost and benefits of intervening is critical.

The Chamber recognises attempts by the ACCC to narrow the field of platforms under consideration for the review to be those digital platforms that:

may impact on competition in media and advertising services markets, particularly in relation to the supply of news and journalistic content. Practically, this may include digital platforms that provide media content, social interaction or search functionality (or some combination of these) to attract consumers to the platform and then sell ‘access’ to these consumers to advertisers.

While the Chamber believes such a definition may still be too broad, the ACCC’s identification of ‘access’ is appropriate. In the Chamber’s view, the point at which platforms act as ‘gatekeepers’ to the flow and access of information is an appropriate juncture for the focus of regulators⁴. The specific harm to be addressed by an intervention must similarly be tightly described.

Once an issue is identified, self-regulation should however be the preferred method of intervention.

As outlined in the Issues Paper, there are a range of existing policies that have been developed by platform holders in relation to privacy, intellectual property, content and conduct. Regulators should work closely with platforms to ensure that these policies meet requisite standards and in their implementation are robust and responsive when action is required to address an issue (for example responding to a copyright breach on a platform). Gatekeeper’s performance should be based on their responsiveness to these issues and further interventions made where performance does not meet an agreed standard.

That said, interventions do need to be balanced against the wider benefits of platforms. The current review is motivated in part by concerns around the negative impact of platforms on journalistic integrity. The Chamber does not wish to comment on this aspect of the inquiry other than to say the impact of platforms in this respect needs to be balanced against the benefits of greater convenience and greater choice in access to information which platforms can provide.

³ <http://www.twentyfirstcenturycompetition.com/2016/01/an-emerging-competition-law-for-a-new-economy-introductory-remarks-for-the-chill-in-competition-panel/>

⁴ http://eprints.lse.ac.uk/73404/1/WPS2017-01_Lynskey.pdf

Furthermore, while this review is also occurring in the context of a major data breach by Facebook, a key 'gatekeeper' platform, it is clear that in response to this breach platforms are recognizing the benefits and significant value in building trust with customers.

Opportunity should be afforded to platforms to demonstrate how they will better meet the expectations of customers on these issues before the imposition of new regulation is placed upon them.

