



Gumtree Australia welcomes the opportunity to respond to Treasury's *Digital Platforms – Consultation on Regulatory Reforms*. This submission follows on from Gumtree's public submission to the ACCC's Digital Platform Services Inquiry (DPSI) in response to the *February 2022 Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services*. Gumtree does not seek to revisit the details of its 2022 submission to the 5th Inquiry of the DPSI.

A. ABOUT GUMTREE AUSTRALIA (GUMTREE)

Launched in 2007, Gumtree is Australia's favourite classifieds marketplace, reaching 1 in 3 Aussies in cities and local communities all over the country. Every month, Gumtree connects millions of buyers and sellers as they transact more than \$2 billion in new and pre-loved items across 150+ shopping categories, including cars, parts, home and garden, electronics, real estate, services for hire, pets and more.

Gumtree's platform equips users with specialist buying and selling functionality to facilitate safe and successful trading, from posting policies to profile user ratings and PayPal account integration capabilities. However, it does not hold, advertise, or sell products itself.

In addition to the horizontal marketplace, offering a wide variety of generalist goods and services categories, Gumtree Australia also includes:

- CarsGuide: The leading source for new car editorial reviews, news and advice in Australia, helping car buyers make informed choices, independently compare brands and successfully navigate their purchase journey.
- Autotrader: A specialist automotive classifieds platform that provides easy-to-use tools and transparent vehicle information on every dealer listing to help car buyers find the right car, at the right price, in a fast and convenient way.

Gumtree Australia is owned by The Market Herald (ASX:TMH), a diversified Australian digital media business headquartered in Perth that publishes digital content in Australia, Canada, Germany, Switzerland and Austria. The Market Herald acquired Gumtree Australia from Adevinta, a European-based global online classifieds specialist, in October 2022.

B. CONSUMER RECOMMENDATIONS

As an online classifieds provider that is frequently used by millions of consumers to facilitate trade of a very wide range of goods with minimal transaction costs, Gumtree is vitally aware of the importance of ensuring that consumers are safeguarded against scams, fake listings and reviews, the sale of prohibited and non-compliant products, and risks to the physical and online safety of users.

It is unsurprising that the ACCC is recommending the strengthening of consumer safeguards on digital platforms along with proposed Federal regulations to address online scams, online safety, privacy, cyber security, digital identity, digital payments, and online defamation.

While there are valid reasons for each of these regulatory responses, there is a need to recognise the significant costs incurred by responsible online businesses in complying with them and the disproportional burden on smaller, locally owned competitors to the global digital platforms in that compliance effort.

Consumer regulation should be proportionate to the demonstrated levels of consumer harm that are being incurred and minimise unnecessary burden (or overly prescriptive regulatory requirements) on smaller digital platforms that may already have effective safeguards and complaints mechanisms in place. By way of example, Gumtree questions the benefits of a new digital ombuds scheme, which – at most – should only be contemplated in instances where there is significant consumer harm and all internal and other external complaint resolution processes have been exhausted.

Finally, there is a need for a more coordinated and integrated overall approach to consumer protection regulation for the digital sector that provides clarity for consumers, certainty for digital service providers, and minimises duplication and inconsistent requirements. With the plethora of additional consumer regulations already being considered federally and by individual states and territories, Gumtree is concerned that the recommendations in the ACCC's 5th Interim Report might be taken forward without fully considering how they interact with other existing or planned regulatory requirements, including any areas of overlap.

In addition, there are cases of individual consumer regulation of digital platforms at the state and territory level that are inconsistent, making it more difficult for businesses like Gumtree to comply and regulators to enforce. Online ticket reselling and selling pets online are two such examples.

C. COMPETITION RECOMMENDATIONS

Gumtree understands the benefits of the ACCC's proposed approach of enabling legislation, criteria-based designation of digital platforms, and mandatory service-specific codes where the problematic behaviour of the designated platforms is likely to have the most deleterious impact on competition and competitors. This approach provides increased flexibility for the responsible regulator to respond in a timely manner to the evolving digital marketplace, an ability to get early runs on the board if it is taken forward with appropriate urgency, as well as being less reliant upon expensive and drawn-out court proceedings to establish precedents and enforce compliance.

However, there is a real question as to how harmful behaviours by designated platforms in relation to digital services that are not subject to services-specific codes will be handled. Gumtree recognises that the services that have been earmarked for code development are in areas where there is strong evidence from the ACCC's DPSI interim reports of the need for a proactive approach to prevent anti-competitive outcomes.

However, the identified digital services are not exhaustive, nor is it realistic to expect that all the service-specific codes will be able to be developed concurrently. Unlike other international digital platform competition regimes which clearly define and enunciate the prohibited behaviours in primary legislation, there appears to be a risk that designated digital platforms could remain immune should their anti-competitive behaviours affect digital services that are not the subject of a mandatory service-specific code.

As a result, there is a risk that highly problematic anti-competitive behaviours could be allowed to continue potentially for an extended period and become embedded, to such an extent, that they are difficult to unwind or have already caused irreparable damage to competitors.

Designated digital platforms should be prohibited from behaving in ways that use their horizontal and vertical market power to restrict fair competition regardless of the digital services that are being impacted. We encourage the Government to uphold this fundamental principle.

D. GOVERNANCE

The Treasury consultation paper seeks input on the governance arrangements for administering any updated consumer and competition laws. Gumtree does not seek to express a definitive position on whether existing or new regulators should be responsible for administering any new laws.

However, it is important that administration of any additional consumer laws that apply to digital platforms is as coordinated as possible with existing arrangements under Australian Consumer Law (ACL) at the federal and state and territory levels to minimise the potential for regulatory overlap and maximise consistency between the regulation of online and offline businesses. Gumtree sees this as an opportunity to rationalise the current patchwork of consumer-related regulations in a way that targets those behaviours that cause demonstrated consumer detriment while encouraging technology-based, customer service-related innovation and rewarding responsible digital businesses through a light-touch, risk-based approach.

On the competition front, the establishment of a permanent Digital Platforms Branch at the ACCC has been key to the progress that has been made through the work of the Digital Platform Services Inquiry (DPSI) in identifying competition issues in various digital marketplaces and recommending future regulatory approaches. The ACCC has also been active in its collaboration on digital platform issues with other leading competition regulators globally. It may be the case that the establishment of specialist digital regulation units that are part of, and well connected to, whole-of-economy competition regulators makes sense provided they are sufficiently empowered and resourced to take timely action when it is needed.

Yours sincerely,

Gumtree Australia