



COMPETITION POLICY REVIEW
ISSUES PAPER

Submission

June 2014

Executive Summary

The AIMIA Digital Policy Group (Digital Policy Group) welcomes the opportunity to make this submission to the Competition Review Panel on the Competition Review Issues Paper (Issues Paper).

The internet is a paradigm shifting technological development that is driving structural change and productivity growth through myriads of sectors here in Australia and globally.

The Australian digital economy directly contributed \$50 billion or 3.6 per cent of GDP to the Australian economy in 2010 and this contribution is expected to increase by at least \$20 billion over the next five years to \$70 billion¹. Although, we note that the level of integration of digital technologies in everyday commerce and personal activities is now so high, so well accepted, that it is now more and more difficult to refer to a separate digital economy, as opposed to simply how we do things.

The internet puts information and a vastly increased range of products and services at consumers' fingertips. Consumers are benefitting through access to better, cheaper, more varied products, access to products that simply weren't readily available prior to the internet with commensurate improvements in standards of living and reduced pressure on cost of living and wages.

Businesses that are re-orienting themselves to put the consumer at the centre of their operations and being responsive to consumer needs on price, place, convenience are prospering. Conversely, businesses that are not changing will likely face challenges to their current market position, revenues and growth².

The internet breaks down traditional barriers to entry for small and medium enterprises, or even large businesses wishing to take on a new competitor in a new market by allowing instant access beyond local markets to enable easy and cheap access to national and international markets. This increases the likelihood of businesses with competitive, innovative, quality or unique products creating export markets which didn't previously exist³.

Given the significant current and potential contribution of the internet, the Digital Policy Group respectfully submits that the Competition Review Panel's considerations should be guided by the importance of ensuring that the procompetitive effects of the internet are not stymied and inefficient business models are not unnecessarily protected from competition and associated market forces.

The Digital Policy Group also provides comment on three specific issues that prevent the internet from making an optimal contribution to the Australian economy. These include the need for modernisation of Australia's copyright regime, enforcement of key anti-competitive provisions such as resale price maintenance and other tactics that prevent resellers from selling products online, and examination of the prohibition of third line forcing.

The Internet as a Pro-competitive Force

¹ The Connected Continent: How the internet is transforming the Australian economy, Deloitte Access Economics, August 2011
https://www.deloitteaccessconomics.com.au/uploads/File/DAE_Google%20Report_FINAL_V3.pdf, pages 1 and 2

² Deloitte, Digital Disruption Short Fuse Big Bang? Building the Lucky Country Business Imperatives for a prosperous Australia #2, page 2

³ eBay Inc. Towards Commerce 3.0 Roadmap for Building Sustainable Growth into Commerce, page 4
http://www.ebaymainstreet.com/sites/default/files/EBAY_Roadmap_Updated_FIN_lowres.pdf

The Organisation for Economic Cooperation and Development (OECD) recently acknowledged in its *Internet Economy Outlook 2012*:

“What is clear is that the Internet is becoming a key economic infrastructure, revolutionising businesses and serving as a platform for innovation.”⁴

The OECD also notes

“[a]t the company level, the restructuring of business models in association with Internet use has led to improved efficiency and the rapid growth of new online businesses” and for households “[t]he Internet is reshaping the way individuals live, bringing a larger variety of digital goods and services, lower prices, improved information gathering, more distribution channels and so forth. In addition, individuals benefit from a more efficient labour market and, at a broader level, from positive impacts to the environment (OECD, 2009, 2010; Prasad, 2010) and in education. For example, the Internet has become a vital tool for helping match available workers with jobs requiring a certain set of skills.

At the company level, the restructuring of business models in association with Internet use has led to improved efficiencies.... Its impact is also visible in the rapid growth of new online businesses. The Internet’s enhanced communication capabilities are affecting nearly all sectors of the economy in ways both subtle and profound, from making available online previously hard-to-find data to transforming entire markets, as is occurring with music, video, software, books and news.

For governments, Internet development enables better communications with citizens, industry and other organisations and also promotes more efficient governance through improved information sharing, increased transparency and the automation of various resource-intensive services.”⁵

⁴ Page 8, Executive Summary (<http://www.oecd.org/sti/Internetconomy/ieoutlook.htm>)

⁵ *Id.*, pages 3-4.

Here in Australia

The internet is providing growth and opportunity to Australian consumers and business.

As noted above, Deloitte Access Economics has estimated that the direct contribution of the internet to the Australian economy was worth approximately \$50 billion or 3.6 per cent of GDP in 2010. That is expected to increase by at least \$20 billion over the next five years to \$70 billion⁶.

To put this in context, Australia's education and training sector, and retail sector, each contribute \$53 billion to the Australian economy.

The quantitative benefits to consumers are substantial as outlined in the table below.

Table 1: How the internet benefits households⁷

Benefit	Description	Annual Value
Search	The internet is a far more efficient search tool than anything available prior to its development. Although Australians do not devote a large proportion of their time on the internet to searching the amount of time saved in acquiring information is significant.	\$7bn
Variety	Prior to the availability of the internet, consumer purchases were largely restricted by physical location. The internet opens markets up to consumers that were not previously available. The increased variety available to consumers from the internet holds significant value in itself, while the increased competition also reduces prices in a number of markets.	\$16bn
Convenience	This category captures the reduction in time it takes to perform various household chores, for example the added convenience of online banking and using the internet to pay bills, and submit forms and other government communications.	\$8bn
Recreation	Consumers spend a considerable amount of their leisure time on the internet. This category places a value on the time Australians spend on recreational activities on the internet, such as browsing, using social media, and other forms of communication with friends and relatives.	\$22bn

⁶ The Connected Continent: How the internet is transforming the Australian economy, Deloitte Access Economics, August 2011
https://www.deloitteaccessconomics.com.au/uploads/File/DAE_Google%20Report_FINAL_V3.pdf, pages 1 and 2

⁷ The Connected Continent: How the internet is transforming the Australian economy, Deloitte Access Economics, August 2011
https://www.deloitteaccessconomics.com.au/uploads/File/DAE_Google%20Report_FINAL_V3.pdf, page 24

In short, the internet provides savings and efficiencies for individuals.

At a macro level these efficiencies translate to greater income in real terms for consumers and have significant potential to drive further economic growth through productivity gains.

Business

The internet also provides significant potential benefit to business and has the potential to continue to do this.

The Australian Bureau of Statistics recently reported in ***Measures of Australia's Progress Aspirations for our nation: A conversation with Australians about progress*** that Australian's views on prosperity are:

“Australians aspire to a prosperous and efficient economy.

- Efficient workforce
- Efficient use of resources
- Access to resources
- Innovation for efficiency
- Competition
- Effective regulation

An aspiration that recurred during the consultation was that the Australian economy continues to thrive and function well. This included having an economy that uses both labour and other resources efficiently, that is able to access the right resources needed for production purposes at the right time without impediment, that can improve the productivity of work processes (for example by harnessing new technology) and can compete in an increasingly globalised marketplace.”⁸

Another recent report issued by McKinsey Global Institute in July 2012 provides some insight into the value that the internet can provide to business. McKinsey found that:

Improved communication and collaboration through social technologies could raise productivity of interaction workers – high skill knowledge workers, including managers and professionals – by 20 to 25 per cent.⁹

Many businesses are exploiting the opportunities that are available online. The ACMA reported that as at June 2012, 2.44 million domain names were registered under .au (excluding .gov.au), an increase of 15 per cent since June 2011.¹⁰

Digital platforms allow merchants of all sizes to bring products and services to world markets efficiently and to establish trust despite geographical distance and other

⁸ Australian Bureau of Statistics, 1370.0.00.002, *Measure's of Australia's Progress Aspirations of our nation: a conversation with Australians about progress*, November 2012

⁹ McKinsey Global Institute, *The social economy: Unlocking value and productivity through social technology*, July 2012

http://www.mckinsey.com/insights/mgi/research/technology_and_innovation/the_social_economy

¹⁰ Australian Communications and Media Authority, *Communications Report 2011 -2012 series, Report 2 – Australia's progress in the digital economy, Participation trust and confidence*, November 2012, page 7

trade barriers¹¹. What this means is that global trade is no longer the preserve of the privileged few or the largest firms. More importantly perhaps for Australian small and medium businesses is that export opportunities on digital platforms are less limited by the distance of the merchant from the consumer.

This important finding is confirmed in the *Commerce 3.0 Enabling Australian Export Opportunities Report* that reports that 78% of eBay.com.au commercial sellers export, increasing to 97% when they reach sales of \$100 000 and that eBay commercial exporters sell to an average of 28 overseas destinations.

Digital Policy Group members also provide platforms that support Australian innovators and entrepreneurs, who are able to build and improve their own businesses utilizing the services we offer.

Examples of just some of the many Australian innovators and entrepreneurs that have built and expanded their businesses using the services that we provide include:

- i) Founded in Sydney, Freelancer.com is the world's largest outsourcing and crowd sourcing marketplace for small business. Freelancer.com connects over 4,188,506 employers and freelancers globally from over 234 countries & regions. Through the website, employers can hire freelancers to do work in areas such as software, writing, data entry and design right through to engineering and the sciences, sales and marketing, and accounting & legal services.
- ii) The online wine retailer Wine Market Australia that is earning around \$20,000 in revenue a month via its Facebook eCommerce shop. It commits a growing amount to banner ads to engage with fans, acquire new customers and creating strong brand credibility. It has now built a program that integrates its Facebook shop with back-end systems, simplifying the order-filling process and uses the Facebook platform to push different types of offers not suitable to email marketing.¹²
- iii) Yahoo!7 identified the growing trend both in Australia and globally for Social TV. In response Yahoo!7 developed and launched Australia's first Social TV app - FANGO. The audience and commercial insights which drove the innovation process allowed Yahoo!7's team to align technical and sales requirements to develop a product that best fits the audience and advertisers' needs. FANGO launched the new product category of Social TV in Australia and is now widely considered to be leading this growing segment.
- iv) The DealsDirect Group started back in 2000, when Paul Greenberg and Mike Rosenbaum launched an online auction business called Auctionbrokers.com.au. Hosted on eBay, Auctionbrokers provided a service to businesses looking to deliver surplus stock through the auction format. Today, the DealsDirect Group continues to be one of the leading brands in online retail purchasing.
- v) OzHut, which had its beginnings on the eBay platform, is a multi niche Australian retailer specialising in a wide variety of niche lifestyle products. Ozhut enjoyed a 900% increase in revenue in its first three years, growing to \$2.6 million. OzHut was announced as a *BRW* fast starter and featured on another list of 50 fastest

¹¹eBay Inc. *Towards Commerce 3.0 Roadmap for Building Sustainable Growth into Commerce*, page 4

¹² <http://www.smartcompany.com.au/internet/051372-is-social-media-advertising-really-worth-the-time-and-money.html>

growing start-ups, and its company founder was named StartupSmart's best young entrepreneur.

Enhancing the Pro-Competitive Nature of the Internet

The Internet is a unique technology that is open, decentralised and where people can innovate without restriction. These characteristics have fostered an environment that has given rise to key digital platforms including members of the Digital Policy Group.

Anyone and any business with an internet connection can join, research, participate, discuss, sell or promote via the Internet.

As a result the Internet is a powerful pro-competitive force facilitating choice, efficiency and innovation.

On this basis the Digital Policy Group submits that the default position for the Competition Review Panel should be to support and encourage entities that facilitate choice, efficiency and innovation. Conversely, proposals that are likely to potentially hinder competition should be considered carefully.

Specific Areas for Consideration

Specific areas of consideration that will allow the internet to contribute to the competitiveness of the Australian economy include:

- a) Ensuring copyright laws are sufficiently flexible to facilitate competition in markets for copyright content. Flexibility is particularly important, as technological developments have made Australia's laws outdated;
- b) Ensuring enforcement activities properly target anti-competitive activity that seeks to pressure sellers not to sell goods online as well as efforts to maintain resale prices; and
- c) Examining the current prohibition on third line forcing.

Modernising Copyright Laws

Recent technological developments have left Australia's copyright laws outdated and in need of modernisation.

Many countries including Canada, the United States, Ireland, United Kingdom, Singapore, Hong Kong, the Netherlands, Japan, Philippines, South Korea and Israel have already taken or are in the midst of changing to more flexible, technology neutral copyright laws that ensure that creators are appropriately rewarded for their efforts and the creative process whilst also ensuring that copyright legislation does not have a limiting effect on innovation and idea progression.

The introduction of a flexible copyright regime will allow the Australian economy to effectively compete in critical growth industries associated with technology. Such a regime will foster innovation and investment in technology and content creation with commensurate increases in demand for highly skilled digital, technology and content roles here in Australia.

Lateral Economics has quantified the scale of the potential benefit to Australia in moving to a fair use regime as being in the vicinity of \$600m per annum within ten years.¹³

Moreover the Australian Competition and Consumer Commission (ACCC) recently voiced its support for the introduction of a fair use exception in its submission to the Australian Law Reform Commission's (ALRC) inquiry into Copyright and the Digital Economy

The ACCC broadly supports the introduction of a fair use exception, as proposed by the ALRC, and considers that such an exception is likely to promote an appropriate balance between socially beneficial incentives to create and incentives to disseminate and use copyright material. The ACCC considers that an appropriate fair use exception may allow for uses that involve either very limited free riding or detrimental effect on the value of the rights and where the transactions costs or otherwise contracting for that use may be prohibitive. Where a use results in a limited effect on the value of a right, it is also likely to have a limited effect on the incentives to create copyright material that flow from the initial granting of rights.¹⁴

On this basis the Digital Policy Group respectfully submits that the next step for Australia is a thoughtful and carefully balanced transition to a technology neutral, flexible copyright regime and that such a transition should be supported by the Competition Review Panel.

Enforcement of Current Anti-Competitive Protections

Prevention of anti-competitive behaviour is an important element of any competition policy regime.

The online industry is aware of two areas that appear to require attention from an enforcement perspective.

First, eBay seller surveys have found that 34% of sellers report having faced pressure from suppliers not to sell their products online or alternatively not to sell on specific websites¹⁵.

Second, both the 2011 and 2012 ebay sellers survey results report that 25% and 26% of sellers respectively were instructed by their suppliers to sell at a recommended retail price. The intent of this activity is to limit the ability eBay sellers to sell products at a lower price point, for fear of repercussions from their existing suppliers¹⁶.

Because this activity is potentially to the detriment of consumers by limiting the availability of goods at lower prices, the Digital Policy Group submits that greater

¹³ Nick Gruen, 'Excepting the Future', Lateral Economics, 2012, prepared for the Australian Digital Alliance:

<http://digital.org.au/our-work/publication/exceptional-industries-and-excepting-future>.

¹⁴ Australian Consumer and Competition Commission, ACCC Submission to the ALRC Copyright and the Digital Economy Discussion Paper 31 July 2013, page 2

http://www.alrc.gov.au/sites/default/files/subs/658.org_acc.pdf

¹⁵ eBay Online Business Index 2012 page 4

http://media.ebay.com.au/Resource/13/Docs/OBI_March2012_FINAL.pdf

¹⁶ ibid

focus should be placed on preventing these types of activities across all retail channels.

Third Line Forcing

The Australian competition law prohibits third line forcing, where a supplier will only provide goods or services, or only provide a discount, if the purchaser also buys goods or services from a particular third party. These prohibitions have been in place for some time.

Exceptions to this blanket prohibition can be granted by notification to the Australian Competition and Consumer Commission.

There are many hundreds of examples of third line forcing arrangements on the ACCC's Notifications register on its website. There appear to be very few, if any, that are likely to affect competition adversely. In fact, the vast majority of them appear to be pro-competitive.

If a competition law prohibition on certain conduct is outright, it means that the actual impact on competition of that conduct is not examined. It follows that conduct should only be the subject of an outright prohibition if that conduct is likely to be detrimental to economic welfare and so unlikely to be beneficial that no further inquiry as to its impact on competition is required.

Moreover, Australia is the only developed country globally that prohibits third line forcing per se.

The Digital Policy Group respectfully submits that the prohibition on third line forcing should be examined from a deregulatory perspective and in support of reducing unwarranted red tape for business. This could potentially assess the prohibition with the test of having the purpose or likely effect of substantially lessening competition.

About the AIMIA Digital Policy Group

The Digital Policy Group is the policy voice of the digital industry in Australia.

The Digital Policy Group is a special interest group of AIMIA that represents 460 digital players in the Australian digital industry. We represent large and small, local and global players that provide digital content services, applications and platforms.