



Market Conduct Division
Treasury
Langton Cres
Parkes ACT 2600

By email: digitalcompetition@treasury.gov.au

To whom it may concern,

Thank you for the opportunity to provide a submission as part of the consultation on the ACCC's regulatory reform recommendations for Digital Platform Services.

The NSW Small Business Commissioner (the Commission) is an independent statutory office of the NSW Government. It provides strategic advice, advocacy and affordable dispute resolution services across NSW.

Small businesses and digital platforms

Increasingly small businesses rely on digital platforms and online marketplaces to operate their businesses. Online marketplaces provide important sales and sourcing channels for small businesses. Digital platforms can also provide avenues for advertisement, brand engagement, and communicating directly with customers and clients.

The Commission's November 2022 Small Business Survey found that one in five respondents are currently conducting operations and/or selling products or services on a digital platform or an online marketplace. The Commission's July 2021 Small Business Survey found one in ten respondents are looking to establish or expand online business in the coming months. As the COVID-19 pandemic restricted traditional sales channels, many small businesses invested in and established new opportunities through digital platforms.

Engaging with digital platforms can present significant challenges for small businesses. Of the respondents engaged with digital platforms or online marketplaces in the November 2022 survey, one in four encountered difficulties with the digital platform or online marketplace. Qualitative survey responses suggest small businesses experience challenges leveraging the benefits of online marketplaces or digital platforms and accessing customer service and support.

Reported challenges includes pricing structures that do not align with small business profit margins, high service charges without performance accountability and payment delays which make it difficult for small businesses to manage their cashflow. Respondents also experienced challenges with changing policies, specialist online marketplaces becoming more mainstream, products being misrepresented, products being difficult to find due to algorithms or search functions, and scams and other sellers' online behaviours undermining the credibility of the platform.

Some respondents perceive that certain online marketplaces do not have the right balance between protecting consumer and seller rights with some customers fraudulently claiming refunds. Respondents also reported experiencing challenges accessing customer support, resolving disputes, and exiting from platforms.

Adopting a new regulatory framework

The Commission supports the ACCC's recommendation to adopt a new regulatory framework for consumer protection and to improve competition. Small business participation is essential to ensuring a competitive marketplace and digital platforms are becoming increasingly essential to maintaining a viable business model. Other forms of marketplace infrastructure, such as retail leasing, is regulated to promote good business practices and eliminate predatory or harmful conduct. As digital platforms become increasingly important, there is a need to maintain modern and updated regulatory frameworks.

A new regulatory framework should facilitate small businesses' access to digital platforms and online marketplaces and provide small businesses with better protection when using digital platforms to grow and enhance their businesses. This is of growing importance, particularly as small businesses make significant investments and become increasingly reliant on their digital presence.

Digital platform specific consumer measures

The Commission supports the ACCC's recommendation regarding specific consumer measures, including the mandatory process to prevent and remove fake reviews, scams and harmful apps; mandatory internal dispute resolution standards; and access to an independent external ombuds scheme.

Removing fake reviews, scams and harmful apps

The Commission has heard of cases where past employees or competitors have left fake reviews of a small business, which has significantly impacted the business' reputation and access to future customers. In these cases, small businesses have not been able to access a process to verify or remove the review.

In addition, scams and harmful apps also have the potential to undermine the credibility of legitimate small businesses that appear to offer a similar product or service.

Requiring digital platforms to prevent and remove fake reviews, scams and harmful apps in a timely fashion is an important step in ensuring digital platforms provide a credible space for small businesses to sell goods and services. Stronger protections requiring platforms to do so is justified given they hold a gatekeeper role and are the only party that is able to remediate a fake, misleading or deceptive review. The Commission has heard from many small businesses who have faced long delays in their attempts to have fake reviews removed and difficulty in locating who to speak to within a platform to make such requests.

Mandatory internal dispute resolution standards

The Commission supports the recommendation for mandatory internal dispute resolution standards that ensure accessibility, timeliness, accountability, and is strongly supportive of the ability to escalate to a human representative.

Feedback to the Commission indicates that inadequate customer support services is a significant problem for small businesses when engaging with digital platforms. Small businesses are often unable to find avenues to resolve problems with a platform, such as when they are assessed as being non-compliant with the platform's terms of service, make accidental errors, or find themselves blocked or restricted from a service without clear or justifiable reasoning.

The Commission is aware that algorithms and other forms of artificial intelligence often make these assessments, which have high consequences for small businesses. Ensuring a dispute resolution

pathway to a human representative means small businesses can explain their situation to a real person, and work with the digital platform to resolve the issue.

The Commission attempts to contact a human representative from digital platforms when a small business contacts the Commission with an issue. Given the complexity often involved there should be a clear process for all digital platforms that guides and allows small businesses to contact an appropriate and authorised person within these digital platforms to request reviews and resolve pressing issues.

Independent external ombuds scheme

An independent external ombuds scheme is essential to holding digital platforms to account as there is a risk that digital platforms may not prioritise delivering positive outcomes for small businesses and consumers when removing fake reviews, scams and harmful apps, or undertaking mandatory internal dispute resolution standards.

The Commission also receives a number of enquiries regarding digital platform conduct, which indicates that there is a demand for an independent external ombuds scheme. Developing this scheme ensures small businesses can access specialist knowledge and support regarding digital platform regulation and requirements, rather than relying on other consumer bodies that are not specialised in digital regulation.

The Commission is able to assist or provide further information to support the development of such arrangements given our expertise with business-to-business dispute resolution.

Code of conduct

Finally, efforts to improve specific consumer measures should be included in any codes of conducts developed by digital platforms. The Commission would welcome industry-led efforts to improve outcomes for small businesses including voluntary codes committing digital platforms to higher standards of service and appropriate dispute resolution.

Thank you for the opportunity to make a submission. If you require further information, please contact Megan Bennett, at either megan.bennett@smallbusiness.nsw.gov.au or (02) 9372 8767.

Yours sincerely

Chris Lamont
Commissioner
NSW Small Business Commission

Date: 14/02/23