



Australian Competition & Consumer Commission
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Digital Platforms Unit

Digital platform services inquiry 2020-2025

Thank you for the opportunity to provide feedback on the *Digital platform services inquiry 2020-2025 interim report* examining online and digital marketplaces.

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.

The Commission's role includes:

- encouraging government agencies and larger businesses to enter productive working relationships with small businesses
- facilitating and encouraging the fair treatment of small businesses
- promoting a fair operating environment in which small businesses can flourish.

Online retail marketplaces provide important sales and sourcing channels for small businesses. The COVID-19 pandemic has further strengthened their importance with small business operators looking for new opportunities as lockdown restrictions have curtailed traditional channels.

The Commission's July 2021 Small Business Survey found that business operators are continuing to adjust their business model and implement new strategies because of the COVID-19 pandemic, with one in ten respondents looking to establish or expand online business in the coming months.¹ The Commission would be pleased to support the inquiry by sharing further survey insights related to changing business models during COVID-19.

Platform suspensions and algorithms

The Commission is aware of the use of algorithms as part of efforts to ensure compliance with terms and conditions, other rules and consumer protection laws. Algorithms and forms of artificial intelligence lack the sophistication to fully assess market conduct and may assume activities to be pernicious in circumstances where they are not. Increasing usage of

¹ <https://www.smallbusiness.nsw.gov.au/what-we-do/advocacy/small-business-survey>.

this approach may have the practical effect excluding third-party sellers or other platform participants from digital platforms without a process to confirm whether a breach has actually occurred or whether there is a genuine error or mitigating factor.

The Commission has previously heard from small business operators who have indicated difficulties communicating with digital platforms in these circumstances. Recent examples reported to the Commission include:

- The suspension of a small business from Amazon after accidentally providing incorrect shipping numbers. This small business attempted to contact the digital platform in relation to the matter. While the business had rectified the error, they were unsuccessful in their attempt to get in contact with a representative to lift the suspension.
- A small business marketing their products on Facebook had their account cancelled on the grounds of policy non-compliance. The business is willing to remedy any non-compliance but was unable to contact the platform to address concerns.
- Uber drivers report being suddenly locked out of their account with no reason provided by the platform. These drivers may attempt to contact Uber to rectify the situation but in some situations are unable to get in contact.
- A small business operating on eBay was restricted from trading with no reason provided by the platform. The business attempted to contact eBay but did not receive a response.

Without judging the merits of any individual suspension, the Commission is nonetheless concerned that small businesses, in some cases, appear to experience difficulties having their cases reviewed.

While the Commission is supportive of the use of data to verify and ensure platform users are protected and have a high quality of service, our view is that platforms should ensure there is an appropriate mechanism to rectify issues in a transparent and efficient manner. Small businesses have less diversified income streams and may have committed expenses related to their legitimate use of a platform or digital marketplace. Where an error has occurred, these businesses should be able to expect their access to be restored promptly.

The Commission encourages further monitoring of this emerging risk for small businesses that rely on online marketplaces or digital platforms.

Dispute resolution

If current trends persist, it is foreseeable that some platforms, in some circumstances, will hold significant power and may play an increasing role in regulating market conduct. Effective dispute resolution will become increasingly important as digital platforms are increasingly integrated into markets. Where digital platforms hold a dominant position, it is arguable that they share similarities with some current forms of regulated infrastructure (such as telecommunications).

To ensure recognition of small business needs, the Commission supports the adoption of appropriate and best practice arrangements for platforms handling complaints and resolving disputes. In developing appropriate arrangements, the Commission supports consideration of:

- appropriate channels to communicate with digital platforms, including email and phone numbers
- ensuring timely responses to enquiries
- allowing third-party sellers to continue to trade (where appropriate) while matters are being investigated
- transparency around decisions
- ongoing accessibility of important information.

Effective complaints handling and dispute resolution would allow small businesses to have prompt consideration of common issues such as misleading or fake reviews (which is an increasing topic of concern for small business). The Commission has previously heard from small business operators who have indicated difficulties removing malicious and damaging reviews from digital platforms. Recent examples reported to the Commission include:

- A former employee of a business leaving offensive and negative reviews on Google. The small business was unsuccessful in removing the reviews, with Google refusing on the basis that the reviews are not in violation of Google policies.
- A direct competitor leaving several negative reviews on Google, where the small business reported the issue to Google but did not receive a response after a lengthy period.
- A Facebook page publishing false reviews about a small business with Facebook refusing to take action on the basis that it hasn't breached community standards.

While accepting that a range of factors need to be considered when assessing whether a review is malicious, these examples are indicative of the types of issues that small businesses may encounter across a wide range of online retail marketplaces. Where reviews are false or malicious, dispute resolution processes provided by digital platforms should resolve these issues in a timely manner to minimise reputational damage.

Voluntary code

The Commission would be highly supportive of voluntary industry efforts, whether individual or collective actions, to improve dispute resolution processes for participants of digital marketplaces and other digital platforms. Voluntary industry efforts would improve the experiences of platform users and avert the need for more interventionist approaches, particularly where it involves conduct that could potentially be in breach of the Australian Consumer Law.

Collective action could take the form of a voluntary *Digital Marketplace Code of Conduct* to ensure fair treatment of small businesses operating on a digital platform. The Commission envisages the code would apply to a broad range of online marketplaces, including for both goods and services. As part of the voluntary code, platforms would commit to provide mechanisms to resolve disputes, including between platform participants and with platform itself (such as in the event of suspension).

While development of a voluntary code should ultimately be an industry-led process, the Commission would welcome consideration as to whether there may be a role for the ACCC, as part of this inquiry or otherwise, to facilitate industry coordination and provide guidance on the development of a voluntary industry code.



Small
Business
Commissioner

Thank you again 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
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