



The Treasury
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To whom it may concern

A NEW DIGITAL COMPETITION DIGITAL REGIME PROPOSAL PAPER – DECEMBER 2024

The NSW Small Business Commission (the Commission) welcomes the opportunity to provide feedback on the proposal paper: *A new digital competition regime*.

The Commission is an independent statutory office of the NSW Government. We provide strategic advice, advocacy and affordable dispute resolution services across NSW. Our 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.

The Commission welcomes the proposal paper as an opportunity to explore appropriate regulatory arrangements for platforms with significant market power. We understand the proposed framework would impose specific requirements on certain 'designated' digital platforms that play a critical role in the Australian economy.

The Commission acknowledges the proposed regime seeks to address issues related to the market power of large digital platforms. The proposal paper discusses elements of a proposed digital competition regime which would impose new obligations on digital platforms that are significant to Australian consumers and businesses.

While the proposal paper primarily focuses on a proposed competition regime to address potential anti-competitive conduct, the Commission encourages broader consideration of consumer protection measures to support positive market outcomes for users of digital platforms, including small businesses. This could be achieved through appropriate service-specific obligations and is in broad alignment with current approaches which consider competition and consumer policy as related policy architectures.

The Commission has previously advocated for stronger customer support and internal dispute resolution mechanisms to minimise service disruptions for small businesses that rely on digital platforms.

In 2024, the Commission received around 470 enquiries and cases related to a digital platform—a 12-fold increase from 2023.¹ Given this, the Commission welcomes initiatives aimed at improving service standards and ensuring small businesses have continuous access to critical services. To support small businesses, the Commission developed the [Digital Platforms Hub](#), which provides guidance for small businesses to support them when navigating common challenges as well as promoting best practices to encourage improved industry standards among digital platform providers.

Due to issues reported by small businesses, the Commission supports proposed obligations on large platforms, including to restrict self-preferencing and tying. The Commission further supports the service specific obligations proposed and support the need for small business to be able to choose to use their

¹ Based on preliminary analysis of the Commission's customer service data.

own payment system. Small businesses should also have access to adequate customer support and dispute resolution. Further, small business should have the ability to easily leave a platform and commence trading on an alternative where they choose to do so. The Commission supports addressing barriers that make it difficult for small businesses to switch or diversify their digital platform providers, ensuring a more competitive and fairer marketplace.

Scope of the framework

The Commission encourages a framework that is sufficiently broad to capture instances where a digital platform may not be large by international standards but nonetheless holds market power or can restrict market access within the Australian context. This includes specialised online marketplaces that play a dominant role in a market segment or platforms that have leveraged significant network effects within Australia to become gatekeepers within markets.

The Commission also supports consideration of mechanisms to ensure that digital platforms with a less significant market position can be subject to service-specific obligations where those standards are designed to prevent consumer detriment, including harm to small businesses using their services. In this regard, while such platforms may not be subject to all obligations under a competition framework, they should still be held accountable through compliance and enforcement measures when engaging in harmful conduct. These service-specific protections are warranted to complement the existing consumer protections of the Australian Consumer Law which generally apply to small businesses.

The proposal outlines a mechanism for updating the list of specified digital platform services that are designated and subject to statutory obligations. For example, following advice informed by the Australian Competition and Consumer Commission's (ACCC) proposed compliance and monitoring functions and a consultation process, the relevant Minister could specify additional services. The Commission supports clear rules around adding designated services to establish protections for small businesses, including where a service is a repeat or significant offender.

Consideration of a regulatory framework to protect investments and goodwill

The Commission encourages consideration of the ways in which small businesses can become reliant on a digital platform and where there can be significant power imbalances between a small business as a user of a digital platform and the service provider. These practices can have broader implications for the ability of small businesses to switch to alternative providers, even if they are not satisfied with their service.

Small businesses that operate on digital platforms often make significant investments (whether in branding, advertising, customer acquisition, or integration with platform-specific tools) to establish and grow their online presence. However, unlike traditional business assets, these investments are inherently tied to the platform and do not provide the business with true ownership or security. This creates a form of platform dependency, where businesses are vulnerable to sudden changes in platform policies, service quality, or accessibility, without corresponding protections or recourse.

The Commission regularly hears from businesses who report being excluded from their accounts without clear avenues to restore their access. This includes circumstances where they have been excluded in error or due to their legitimate activities being incorrectly classified as a breach of a platform's terms of service.

The Commission recently surveyed² small businesses to better understand their experiences with digital platforms. One in four respondents reported they were reliant on digital platforms, with 74 per cent of these businesses indicating they were concerned about losing access to their account. Businesses indicated aspirations to have more control over their accounts and raised concerns about contract terms

² See: <https://www.smallbusiness.nsw.gov.au/sites/default/files/2024-07/Small%20Business%20Momentum%20Survey%20Report%20June%202024.pdf>

with 68 per cent expressing concern about misunderstanding contract terms and conditions. Qualitative survey responses highlight issues with communication, noting a lack of readily available support channels. Response times were raised as a common challenge along with transparency over decisions and appeals. The Commission also regularly hears from businesses reporting fake or malicious customer reviews and there be opportunities to explore alignment with the new *Scams Prevention Framework* to enhance protections for small businesses in the digital economy.

Retail leasing legislation as a possible model

Mechanisms to facilitate restoration of access or removal of fake reviews could be accommodated as part of broader customer support and dispute resolution requirements enforced through service-specific obligations

Other regulatory frameworks seek to promote positive and constructive relationships between contracting parties. This includes retail leasing legislation, including the *Retail Leases Act 1994* in NSW, which promotes good leasing practices, recognising that businesses invest heavily in fit-outs and customer goodwill associated with a particular location. Similar considerations may be warranted in the digital economy, where small businesses invest in platform-based infrastructure yet lack assurances around ongoing access or service obligations. Without mechanisms to mitigate these risks, businesses may face significant disruptions or financial losses when platforms unilaterally change terms, restrict access, or fail to provide adequate support.

The Commission welcomes efforts to address challenges faced by small businesses and appreciates the opportunity to be consulted during the scoping process. We recognise that Treasury will collaborate with relevant agencies to ensure regulatory alignment with ongoing policy initiatives. We understand that further work is needed to refine the details of the proposal before implementation, and we welcome the opportunity to contribute further to its development.

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

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