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ARA SUBMISSION TO TREASURY REGARDING DIGITAL PLATFORMS COMPETITION

The Australian Retailers Association (ARA) welcomes the opportunity to provide comments to Treasury in relation to the ACCC's recommendations for the proposed regulation of digital platforms.

The ARA is the oldest, largest and most diverse national retail body, representing a \$400 billion sector that employs 1.3 million Australians – making retail the largest private sector employer in the country. As Australia's peak retail body, representing more than 120,000 retail shop fronts and online stores, the ARA informs, advocates, educates, protects and unifies our independent, national and international retail community.

We represent the full spectrum of Australian retail, from our largest national and international retailers to our small and medium sized members, who make up 95% of our membership. Our members operate across all categories - from food to fashion, hairdressing to hardware, and everything in between.

Having an online presence has become an economic imperative for retailers, who rely on various digital platforms and services to conduct transactions, engage with customers and advertise. Given this reliance for the delivery of key activities along the retail value chain, we submit that it is problematic to consider the digital marketplace separately from the retail market.

Instead, retailers are conducting business in a hybrid model, through digital channels and their physical stores. For example, a customer may use a retailer's digital app to browse and order goods to be delivered to their home, but they may also use the same app in store to locate items, scan prices and make payments as they leave the store.

We note that the ARA's membership includes businesses of varying sizes who are customers of digital platforms. We also note that some of our members operate digital platforms. Our responses below reflect perspectives from customers of these platforms as well as operators.

As a guiding principle, the ARA suggests that competition rules and regulation for online environments should be equivalent to those that apply to traditional media for conducting customer interactions, transactions and advertising.

We note that the ACCC's recommendations are as follows:

1. Economy-wide consumer measures, including a prohibition against unfair trading practices and unfair contract terms.
2. Consumer measures specific to digital platforms, including mandating internal and external dispute resolution processes and obligations on platforms to prevent and remove scams, harmful apps and fake reviews.
3. A new competition framework which would subject 'designated' digital platforms to mandatory codes applying to the services they provide.
4. Targeted competition obligations for designated digital platforms to be included in the proposed new framework and codes, to address harms such as anti-competitive risks.

While there is a need to ensure economy-wide consumer protections are in place, including digital environments, the ARA suggests that there should be an initial focus on improving existing laws around unfair trading practices and unfair contract terms before new regulations are considered.

We also suggest that the co-regulation framework for telecommunications services provides a useful model that should be considered in relation to any consumer measures specific to digital platforms, particularly in relation to scams, harmful apps and fake reviews.

Recent work on the prevention of text and phone scams could be applied in relation to digital platforms. Likewise, the eSafety Commissioner's powers to monitor and enforce online safety could potentially provide a model for a framework in relation to fake reviews. However, we also note that the operators of digital platforms have a strong commercial incentive to self-regulate in relation to fake reviews and should be given the opportunity to address this with an industry-led approach.

The ARA would welcome the opportunity to discuss the design and development of a code framework for designated digital platforms. As there is strong engagement with industry, we suggest that any future code be co-designed with relevant stakeholders with the preference towards a co-regulatory framework.

The ARA's feedback on the ACCCs' recommendations are outlined in the table below, along with responses to the questions outlined in the consultation paper.

ARA Recommendations	
Objectives of a new regulatory regime	<p>The ARA supports further consideration of regulatory reform to address identified issues for consumers and businesses, as well as further consideration of the ACCC's proposal in relation to a codes-based regulatory framework for designated digital platforms. We suggest a co-regulatory framework, co-designed with industry.</p> <p>In principle, regulation of digital platforms must be equivalent to regulation of traditional media, to ensure a level playing field. We therefore recommend that existing consumer and competition regulatory protections should be relied on in the first instance, where possible.</p> <p>A customised approach to the regulation of digital platforms should be confined to addressing any challenges that exist due to the nature of the digital marketplace.</p>
Coordination with other policies and processes	<p>The ARA recommends that Treasury aligns the process and outcomes of this review into digital platforms with the ongoing review into Australia's payments system, to ensure a consistent and co-ordinated policy approach.</p> <p>As the discussion paper notes, there is also ongoing work around privacy and the Customer Data Right that needs to be considered.</p>
Consumer and small business owner recommendations	<p>The ARA submits that small business operators are just as vulnerable to online scams as consumers, and are particularly vulnerable to other online threats such as ransomware attacks, phishing and related frauds.</p> <p>A recent survey of ARA members found that 34% reported being impacted by a payments-related scam or fraud, at a frequency of 1-2 times per year.</p> <p>Fake online reviews and misinformation can also have a potentially devastating effect on a small retail business. While existing legal remedies are available, they are often not timely or responsive.</p> <p>The ARA recommends regulatory remedies that can be applied quickly to prevent a negative impact on a business, so that retailers are not solely reliant on remedies that provide redress long after the harm has occurred.</p> <p>We recommend that any future co-regulatory framework also adequately deals with the impact of fake reviews or misinformation on small businesses. This approach would be similar to the industry-led response that telecommunications providers have implemented in relation to scams and online-safety.</p> <p>The online world moves rapidly and the regulatory framework needs to be agile, flexible and leverage industry experience and expertise.</p>

	<p>Similarly, the ARA supports the need for digital platforms to provide an avenue for consumers and small business owners to raise concerns and complaints with regard to the services offered. We note that most platforms already have these measures in place. Such a requirement should incorporate dispute resolution processes and access to an independent ombudsman scheme where appropriate.</p> <p>Finally, we note the need for proportionality, with obligations only applicable to those platforms with significant reach and impact.</p>
<p>Competition recommendations</p>	<p>As noted above, the ARA supports further consideration of a co-regulatory framework based on industry codes of conduct for 'designated' digital platforms to address issues and concerns around competition.</p> <p>We note that there has been some attempt by the ACCC to outline criteria for designating which platforms would be included. However, we suggest that further thought needs to be given to how the designation process and relevant thresholds are fair, clearly outlined and based firmly on a set of objective criteria. We understand that this also needs to be balanced with the flexibility to include or exclude a platform to ensure consistency with the policy objectives.</p> <p>We also note that thresholds can create a disincentive for businesses to grow, which would be an undesirable unintended consequence of such an approach.</p> <p>And we recommend a clear separation between the body that establishes the framework and the agency that enforces the rules.</p> <p>Finally, given some of these fundamental difficulties in creating a fair designation process, it would be preferable to engage with industry in the development of an opt-in, self-regulatory approach that could achieve similar outcomes.</p>
<p>Alignment with international developments</p>	<p>The ARA notes international developments in other markets that have been outlined in the consultation paper. We recommend that Australia, as a small market in the global context, should aim to leverage international regulatory approaches and industry undertakings to ensure alignment with rules implemented in other jurisdictions and larger markets.</p>

Thank you again for the opportunity to provide a submission to the Treasury on the ACCC's proposal and recommendations around regulatory framework for digital platforms. We look forward to further engagement as discussions progress on this important initiative. Any queries in relation to this submission can be directed to our policy team at policy@retail.org.au.

Yours sincerely,



Paul Zahra
Chief Executive Officer