

## **ARA SUBMISSION: TREASURY REVIEW ON DIGITAL COMPETITION REGIME**

**February 2025**

### **Executive Summary**

The Australian Retailers Association (ARA) welcomes the opportunity to provide a submission in response to the Treasury's consultation on the proposed Digital Competition Regime. Representing a \$430 billion sector that employs over 1.4 million Australians, the ARA acknowledges the government's commitment to fostering competition in the digital economy and ensuring fair market conditions.

The ARA encourages Government to take a more measured and proportionate approach that avoids introducing unnecessary regulation in the retail sector. Retail businesses already operate in a highly competitive environment and there is a real question as to whether additional new regulations are needed in this sector. If new regulations are proposed, those regulations should take account of existing legal frameworks and ultimately be shown to support investment and encourage innovation. The ARA's concern is that the proposed regulations, if they apply to retail, are more likely to discourage investment, and lead to reduced innovation.

The ARA supports a regulatory approach that targets areas of genuine market concern while avoiding overly broad and complex regulation that is not needed. Given Australia's cost of living crisis and poor productivity, the ARA encourages Government to ensure any reforms maintain a stable and predictable environment for business growth.

### **Considerations**

#### **Role of Retail in the Digital Competition Regime**

The role of retail within the proposed Digital Competition Regime must be carefully considered. Unlike digital platforms that have market power, retailers operate within an established competitive framework where consumers have multiple choices. The regulatory approach should reflect this distinction to avoid unnecessary compliance costs and regulatory burdens on retail businesses.

#### **Distortions in the retail sector**

While the ARA does not accept that any new regulations are needed for the retail sector in this sphere, if regulations are proposed it is also essential to ensure that they do not create unintended disparities between online and physical retail, which could result in market distortions. A balanced approach is necessary to ensure that competition rules apply fairly across the sector and do not inadvertently create disparities that could discourage innovation and investment.

#### **Regulatory Consistency and Avoiding Overlap**

The ARA believes that existing competition and consumer protection laws already provide a strong foundation for addressing concerns about digital competition. Additional regulatory measures should not duplicate existing obligations or create uncertainty for businesses. Aligning with the ARA's wider views across various topics, we advocate for policies that reduce compliance costs and promote business certainty.

The government should check that any proposed changes do not overlap with the existing competition and consumer law framework, including the various reforms that are in place (i.e. Merger Reforms) and proposed (i.e. Privacy Reforms).

### **International Approaches to Digital Competition**

There is value in examining international regulatory approaches to ensure that Australia's framework is appropriately tailored to its market. The Japanese Transparency Act provides a targeted, evidence-based model that focuses on addressing specific market harms while maintaining flexibility. The European Union's Digital Markets Act, on the other hand, has introduced broad obligations that are increasingly under scrutiny and are raising concerns which means they may not be suitable for the Australian market. The ARA encourages the government to explore alternative regulatory approaches specific to issues where there is evidence of concern instead of the broad reforms proposed. This would better ensure a balance between enforcement and business flexibility.

### **Oversight and Implementation Considerations**

Ensuring that regulatory decisions are transparent, fair, and evidence-based is essential for the success of the Digital Competition Regime. Given the significant role that the ACCC is expected to play in the regime (from decision maker to enforcer), additional oversight mechanisms would enhance accountability and provide business with confidence that there are appropriate checks and balances in the regime being proposed.

The proposed regime should also be subject to an independent review process. This could potentially be through the Productivity Commission or National Competition Council and would provide a balanced approach that ensures regulatory decisions reflect the broader economic and competitive landscape.

### **Recommendations**

#### **Ensuring Proportionate and Targeted Regulation**

The ARA recommends that the government consider a targeted regulatory approach that focuses on sectors where competition concerns are backed by evidence of harms, such as app stores, social media, and AdTech, rather than applying broad obligations to all online services. Regulatory measures should be evidence-based and proportionate to market needs, ensuring that businesses can continue to operate and innovate without excessive compliance burdens that ultimately seem unlikely to benefit consumers.

#### **Avoid Duplication or Inconsistency with Existing Competition Laws**

As discussed above, the ARA believes existing competition law is up to the task of addressing the concerns raised in the consultation paper. If the Government proceeds with additional provisions, it will be important to ensure alignment with existing competition laws to prevent regulatory complexity. The ARA recommends that any additional competition laws and regulations should be targeted at particular problems in purpose-built laws but should integrate with current legal structures to maintain consistency and avoid unnecessary duplication. An incremental or co-regulatory approach could provide a balanced framework, enabling collaboration between regulators and businesses before introducing broad regulatory obligations.

#### **Introducing a Transparent Review Process**

A review mechanism should be introduced to oversee all key regulatory decisions under the proposed regime. A measured approach would allow for regulatory adjustments as market dynamics evolve, ensuring that businesses can continue to innovate and grow without unnecessary restrictions. Establishing an independent oversight process, such as through the Productivity Commission, every three years would enhance transparency and provide businesses with a fair process for regulatory review.

### **Supporting a Competitive and Innovative Retail Landscape**

The government should ensure that any new regulations support digital investment and business certainty, in line with Australia's broader economic goals. To achieve that objective under the proposed reforms, the government should take more time to observe whether the overseas regimes that it has drawn on (like the DMA) is proving to be supportive or innovation and investment.

### **Conclusion**

The ARA values the opportunity to contribute to this consultation and supports the government's broader goal of ensuring fair competition in digital markets. However, it is essential that any regulatory changes are targeted, and a careful balance must be struck between competition objectives and maintaining a stable and predictable business environment for retailers.

By adopting a measured and evidence-based regulatory approach, the government can ensure that competition is promoted without placing undue burdens on the retail sector. The ARA looks forward to continued engagement with Treasury and the ACCC to refine the framework in a way that supports business innovation and economic growth.

For further discussion, please contact [policy@retail.org.au](mailto:policy@retail.org.au).