

BRIEF: Australian Treasury's regulation proposal signals tougher approach to platforms

5 December 2024



DAVID KENNEDY

david.kennedy@ventureinsights.com.au

Australian Treasury's regulation proposal signals tougher approach to platforms

Abstract: This week the Australian Treasury released a [Proposal](#) for a new legislative regime to regulate economic power of digital platforms. The proposed framework is digital platform-specific, and would introduce new ex ante provisions targeting anti-competitive behaviours such as self-preferencing, tying, and barriers to consumer switching. The proposal is in line with European approaches. A successful outcome will help to address excessive market power and help to maintain competitive markets and productivity growth.

New proposals to crimp digital platform market power

This week, the Federal Treasury Department released a [Proposal paper](#) for a new digital competition regime. The proposal emerged from the ACCC's long-running Platform Services Inquiry. In November 2023, the Australian Government [responded](#) by accepting the need for a new ex ante regulation regime for these platforms.

The Treasury proposal, if implemented, would specify a list of digital platform services to be regulated, potentially aligning with the European Union's list of core platform services. This list could include app distribution, digital content aggregation, social media, search engines, electronic marketplaces, video-sharing platforms, online messaging, operating systems, web browsers, virtual assistants, cloud computing, online advertising, and media referral services. The regime would also be adaptable, allowing updates to the list to address new and emerging digital platform services as technology and market dynamics evolve.

The platform designation framework aims to regulate large platforms that significantly impact Australian consumers and the economy, particularly those posing substantial competition risks. The designation process, conducted by the "relevant Minister" (undefined) based on an ACCC investigation, identifies platforms required to adhere to specific obligations. Both qualitative and quantitative tests would be used to identify "large" platforms.

The associated obligations encompass both broad and service-specific requirements.

The broad obligations, to be outlined in primary legislation, address common anti-competitive behaviors across various services. Designated platforms must avoid self-preferencing, tying products or services, and must facilitate easier switching to competitors. They are also required to ensure fair treatment of business users and provide greater transparency regarding their policies, processes, and data handling practices. These may include new reporting requirements e.g. record keeping requirements..

Service-specific obligations initially focus on app marketplaces and ad tech services, with potential expansion to other services. These tailored rules, detailed in regulations, would guide platforms in fulfilling their broad obligations. For app marketplaces, this includes prohibiting self-preferencing in search results, removing mandatory use of platform payment systems, and ensuring transparent communication of app review criteria. For ad tech services, platforms would be required to provide clear information on pricing and performance, avoid unfair advantages for their own services, and address conflicts of interest.

The ACCC will enforce compliance, investigate breaches, and impose penalties as necessary. Proposed penalties align with the maximum financial penalties under the Competition and Consumer Act, which include fines of \$50 million, three times the benefit obtained, or 30% of adjusted turnover during the breach period. This enforcement ensures that designated platforms adhere to the established obligations, promoting fair competition and protecting consumer interests.

Consultation on the proposals will be open until 14 February 2025.

Why does this matter?

This proposal gained less traction in international media than last week's social media age ban, but is more significant. The economics of digital platforms tends to produce oligopolies or even monopolies, and they increasingly reach across the economy into multitudes of activities ranging from web searches to event ticketing. There is a real risk that digitalisation of the economy could lead to a much less competitive market, lowering our already low productivity growth. Addressing this is important to a pro-productivity agenda.

For this reason, we concluded a couple of years ago that we had reached "peak platform". This never meant that the big digital platforms would disappear. Rather, it meant that the days of untrammelled platform power were drawing to a close, and that governments would step in to limit this power.

The Proposal Paper makes it clear that Australia's move is clearly closely tied to developments in other European and UK jurisdictions. This is good, as Australia does not have the clout to challenge these platforms alone. A concerted international response is required, and is now emerging.

This raises the question of the incoming Trump administration's attitude to these developments. Silicon Valley support for Trump was notable this election, as Democrat appointments at the US FTC were criticising platform economic behaviour.

However, there is a strong strand of anti-platform sentiment in the Republican Party too, despite Elon Musk's prominent support of Trump. The issue is contested within the ruling Republican Party. In short, we cannot assume that the US Government will ride to the rescue of US-based platforms beyond its already-stated commitment to free speech.

About Venture Insights

Venture Insights is an independent company providing research services to companies across the media, telco and tech sectors in Australia, New Zealand, and Europe.

For more information go to ventureinsights.com.au or contact us at contact@ventureinsights.com.au.

Important notice: By accepting this research note, the recipient agrees to be bound by the following terms of use. This research note has been prepared by Venture Insights Pty Ltd and published solely for guidance and general informational purposes to authorised users under the terms of a licence agreement between Venture Insights Pty Ltd and its subscriber. You need to be expressly authorised to use it, and it may only be used for your internal business purposes and no part of this note may be reproduced or distributed in any manner including, but not limited to, via the internet, without the prior permission of Venture Insights Pty Ltd. If you have not received this note directly from Venture Insights Pty Ltd, your receipt is unauthorised. If so, or you have any doubt as to your authority to use it, please return this note to Venture Insights immediately.

This research note may contain the personal opinions of research analysts based on research undertaken. This note has no regard to any specific recipient, including but not limited to any specific investment objectives, and should not be relied on by any recipient for investment or any other purposes. Venture Insights Pty Ltd gives no undertaking to provide the recipient with access to any additional information or to update or keep current any information or opinions contained herein. The information and any opinions contained herein are based on sources believed to be reliable, but the information relied on has not been independently verified. Neither Venture Insights Pty Ltd nor its officers, employees and agents make any warranties or representations, express or implied, as to the accuracy or completeness of information and opinions contained herein and exclude all liability to the fullest extent permitted by law for any direct or indirect loss or damage or any other costs or expenses of any kind which may arise directly or indirectly out of the use of this note, including but not limited to anything caused by any viruses or any failures in computer transmission.

Any trade marks, copyright works, logos or devices used in this report are the property of their respective owners and are used for illustrative purposes only. Unless otherwise disclosed, Venture Insights has no affiliation or connection with any organisations mentioned in this report. However, the information contained in this report has been obtained from a variety of sources, including in some cases the organisations themselves. In addition, organisations mentioned in this report may be clients of Venture Insights.

The recipient hereby indemnifies Venture Insights Pty Ltd and its officers, employees and agents and their related entities against any direct or indirect loss or damage or any other costs or expenses of any kind which they may incur directly or indirectly as a result of the recipient's use of this note.

© 2024 Venture Insights Pty Ltd. All rights reserved.

David Kennedy, Managing Director
david.kennedy@ventureinsights.com.au

Venture Insights
Level 3, 461 Bourke Street, Melbourne, VIC 3000