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2 May 2022

Digital Platforms Branch
Australian Competition and Consumer Commission

Via email: digitalmonitoring@acc.gov.au

To whom it may concern,

Submission re: ACCC on the Digital Platform Services Inquiry on updating competition and consumer law for digital platform service.

The Council of Small Business Organisations Australia (COSBOA) welcomes the opportunity to provide a submission concerning the Digital Platform Services Inquiry on updating competition and consumer law for digital platform service.

The Council of Small Business Organisations Australia (COSBOA)

COSBOA is the national peak body representing the interests of small business. COSBOA's members collectively represent an estimated 1.3 million of the 2.5 million small and family businesses operating in Australia. As a collaboration of peak organisations across various industries, COSBOA acknowledges that small and medium-sized enterprises (SMEs) are significant contributors to the Australian economy. SMEs employ 68% of Australia's workforce. In GDP terms, SMEs together contribute 56% of value-added. Therefore, small and medium businesses are vital partners in rebuilding Australia's economy as Australia emerges from the COVID-19 pandemic.

We address the following concerns for small businesses in this submission's main points:

- ACL Relevance and Adequacy
- Fake & negative Reviews
- Competition and Consumer Harms
- Dispute resolution

The ACCC's detailed explanation of competition damages and market power deriving from digital platform services is broadly accepted by COSBOA. We also recognise the significant and increasing concerns and potential for harm for consumers. COSBOA shares the following observations and remarks to provide insight into COSBOA's membership discussions and issues relevant to those raised in the discussion paper.

ACL Relevance and Adequacy

In tackling consumer harm caused by digital platform services in Australia, the ACL has several areas of strength. Sections 18 and 29, for example, of the Act prohibit misleading and deceptive conduct and false or misleading representation. Furthermore, if passed in its current form, the Treasury Laws Amendment (Enhancing Tax Integrity and Supporting Business Investment) Bill 2022 before Parliament addressing unfair contract terms reforms can remedy several issues listed in Chapter 5 by the ACCC.

Fake & negative reviews

The harmful impact of defamatory online comments or fake reviews, which have the potential to spread virally, is a significant concern for COSBOA members and a severe issue. The capacity for people to post anonymously is simple but it is incredibly difficult for a small business to respond to or manage through digital platforms.

Since the recent decision of the High Court concerning the *Fairfax Media Publications v Voller [2021] HCA 27 (Voller)* case, the issue of negative online reviews has been an active discussion among our professional association members. Some have advised their memberships that they should undertake a risk assessment of their social media engagement to avoid the potential for defamation claims. Mainly where a commenter can post to a page in real-time and without any vetting control.

There is also a disparity between the methods big business and small business utilise to manage the impacts on the business. Larger companies can engage a social media manager or outsource management to a marketing firm that can review and regulate comments on their social media and websites. Small businesspeople have almost no capacity to do this, with social media pages controlled by a business owner themselves or staff member who may not be available able to administer and monitor pages effectively and promptly.

In addition, Google builds business profiles, providing the capacity for anonymous users to review a business. The business owner may have little knowledge of managing this profile or the time to address or respond to this functionality. In many instances, small business websites and social media pages are set in place and forgotten.

COSBOA strongly supports measures that work toward an endpoint of dealing with online abuse and harassment, where appropriate action can be taken against perpetrators, and compels a social media service provider to remove this abuse in a responsive and timely manner.

COSBOA's broad membership includes businesses like community pharmacists, hair and beauty, hospitality, butchers, and newsagents. For many of these small businesses, abuse, and harassment, when it occurs, is often directed in the form of negative online reviews seeking to harm the business, a staff member, or the owner. These negative reviews or attacks are often baseless or predicated on a twisted version of events, and several people sometimes coordinate them. Social media can also move very quickly, creating severe financial impacts for a small business and creating distress and angst for a business owner attempting to manage the effect on the business and its reputation.

COSBOA adds that Google, Apple, and Meta derive billions in income from Australian businesses, so these companies' capacity to serve them better and do the right thing is fair and in their control. Because these platforms primarily rely on businesses for advertising space, small businesses have a right to expect these platforms to assist them in the event of a complaint.

Competition and Consumer Harms

Small Businesses are consumers of digital products, platforms and services and should be treated as such for the purposes of competition and consumer law.

COSBOA recognises that competition may benefit consumers by lowering prices and increasing variety and innovation. Consumers can also benefit from well-functioning competition in data-driven markets because they are more likely to benefit from goods and services at reasonable rates with improved quality, safety, and privacy outcomes.

In the case of digital platform services, reduced competition may harm small businesses and negatively impact consumer behaviour, affecting innovation, lowering consumer returns, or decreasing service quality. All these examples are consequences that may disadvantage or harm consumers and small businesses while benefiting platforms. Even if they are only passively using digital platform services, small businesses and their customers often feel the burden of reduced competition.

Dispute Resolution

Small businesses' faith in digital platforms and a straightforward method of resolving difficulties and disagreements is critical in ensuring that they interact with them meaningfully. Some platforms continue to do nothing to address the identities of new users or fraudulent profiles, for example. As a result, laws that compel this are necessary.

Reputation for a small business owner is paramount. Fake reviews are popular on platforms like Meta, Google, Menulog, and Tripadvisor, where the public looks at business services. Fake reviews can lead to a drop in sales over time, resulting in a financial loss. Fake reviews also contribute to mental health stresses because a small business owner's identity is typically inextricably linked to their business. When seeking support for other business-related issues, a small business owner, for example, can contact the Australian Small Business and Family Business Ombudsman to settle matters such as payment disputes and receive independent help for restitution. The ombudsman team can give one-on-one assistance for commercial conflicts, including referrals to government resources and alternative dispute resolution. However, when it comes to seeking redress for an online experience, this help is unavailable.

Small business owners are frequently forced to fend for themselves or give up. The time unavailable, legal costs crippling. Their options for redress via digital platforms are limited, as is their capacity to obtain compensation where they have been defamed.

What is clear is that a growing number of small businesses are expected and encouraged to function in a digital context and increasingly need to engage an online customer base. When things go wrong online, there must be effective dispute resolution avenues for small businesses to seek remedy. For example, empowering and effectively resourcing the small business ombudsman might be a solution for a small business to address any disagreements that may emerge successfully.

COSBOA would support a study to identify the types of online disputes that small businesses face and options for creating more effective dispute resolution pathways addressing current and future digital issues.

COSBOA will continue to consult its members on the impacts of digital platform reviews on the small business community and looks forward to involvement in future discussions.

If you wish to discuss any of these matters further, we are more than happy to assist.

Yours sincerely,

A handwritten signature in black ink that reads "A Boyd". The signature is written in a cursive, slightly slanted style.

Alexi Boyd

Chief Executive Officer

Council of Small Business Organisations Australia (COSBOA)

About COSBOA

Small business in Australia is the backbone of the economy. We harness its diversity and provide its people with a voice, distinct from big business.

Established in 1979, The Council of Small Business Organisations of Australia (COSBOA) is a member-based not-for-profit organisation exclusively representing the interests of small businesses.

The capability, representation, and reach of COSBOA are defined by a mix of over 40 national and state-based association members. COSBOA's strength is its capacity to harness its members' views and advance consensus across policy areas common to many. Our member organisations work behind the COSBOA secretariat to assist us with policy development and guide our advocacy - not just for small business but also for the benefit of the Australians they employ.

In this capacity, COSBOA makes submissions and representations to the government, including its agencies, on issues affecting small businesses and to pursue good policy.

More information about COSBOA can be found at www.cosboa.org.au/cosboa-goals