

# Submission to the ACCC Digital Platform Services Inquiry: March 2025 - Final Report

*August 2024*

**percapita**  
FIGHTING INEQUALITY IN AUSTRALIA

The Centre of the  
**Public  
Square**  
A Per Capita initiative

# SUBMISSION TO THE ACCC DIGITAL PLATFORM SERVICES INQUIRY - MARCH 2025 - FINAL REPORT

The Centre of the Public Square (CPS) at Per Capita thanks the Australian Competition and Consumer Commission (ACCC) and welcomes the opportunity to provide a submission on this important inquiry.

Per Capita is an independent think tank, dedicated to fighting inequality in Australia. We work to build a new vision for Australia, based on fairness, shared prosperity, and social justice. The Centre of the Public Square works to create equity and fairness for Australians online by holding technology companies to account and building better models of citizen collaboration for the Australian public.

This submission outlines our recommendations on how to effectively address and mitigate against the consumer harms caused by dominant digital platforms. We will address and reflect on each of the 3 key topics in the Issues report:

- recent overseas legislative and regulatory developments in markets for digital platform services and their impact on competition and consumers
- major developments and key trends in certain markets for digital platform services
- potential and emerging competition and consumer issues which relate to digital platform services

## Summary

The ACCC's Digital Platform Inquiry (DPI) is a world-leading initiative which looks at addressing the market power and dominance of digital platforms. Since its inception, the inquiry has produced reports and insights that informed policy decisions, further research and the public narrative.

While there was initial material momentum in enacting recommendations from the DPI, the work has largely stalled, with the government delaying many of the proposals recommended in the inquiry. During this time, digital platforms have only continued to grow and cement their dominance, and their investments in newer technologies like artificial intelligence looks set to further entrench their dominance into the future.

In this final report it is important then, that we reflect on the government's progress in passing legislation and regulation as defined in the DPI reports, looking at how Australia compares to the rest of the world, and provide a final call to action to advocate for government to hold digital platforms to account.

We recommend that:

- 1) Australia at a minimum enact regulation that is on parity with, or equivalent to significant global regulation like the Digital Markets Act (DMA), and the Digital Services Act (DSA) from the European Union (EU)

- 2) That Australia considers taxing large digital platforms appropriately, ensuring they do not employ tax minimisation strategies while benefitting enormously from the Australian public and the Australian economy
- 3) That we ensure consumer harms and the power imbalance from current digital platforms is not carried over to newer technologies like artificial intelligence (AI), and apply systemic reforms to achieve this
- 4) That we clarify the government's progress (or lack thereof) in enacting the recommendations from all the work of the Digital Platform Inquiry, and produce a clear checklist for the public and interested parties to help hold government to account

## Regulatory parity

The EU has developed some significant pieces of legislation to combat against consumer harms from dominant digital platforms. The most relevant for this submission is the Digital Markets Act (DMA) and the Digital Services Act (DSA).<sup>1</sup>

The DMA requires that 'gatekeepers' or large digital platforms that provide pre-defined digital services with significant market share, have specific obligations to behave in a fair and competitive way and allow customers room for contestability. Platforms that have been designated under the DMA include Alphabet, Amazon, Apple, ByteDance, Meta and Microsoft.<sup>2</sup>

Examples of obligations include - enabling third parties to inter-operate with other platforms, providing customer data transparency and access, allowing for independent verification of advertising, and more. The platforms must also stop self-preferencing within their own platforms, stop preventing users from uninstalling or pre-installing products, and stop tracking users outside of their core platforms.

The DSA addresses the spread of illegal content, enables transparent advertising and mitigates against disinformation. Measures include flagging mechanisms, requirements for accessibility and new requirements for traceability and transparency.

There are notable clauses in the DSA, such as Article 40, also referred to as "the Crowdtangle provision".<sup>3</sup> It specifies that platforms must make clearly public data available through an API, thereby enabling clarity and transparency in currently opaque algorithmic decision making, content moderation interventions and overall audience recommendations.

The consequences for breaching obligations in the DMA and the DSA are significant, with fines of up to 10% of annual turnover, and repeat offences generating fines up to 20% of annual turnover.<sup>4</sup>

Australia should consider enacting similar pieces of legislation locally, including with similarly significant enforcement mechanisms. Without regulatory parity, bad actors and negligent

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<sup>1</sup> European Commission, *The Digital Services Act package*, <https://digital-strategy.ec.europa.eu/en/policies/digital-services-act-package>, accessed August 2024

<sup>2</sup> European Commission, *Digital Markets Act (DMA) Gatekeepers*, [https://digital-markets-act.ec.europa.eu/gatekeepers\\_en](https://digital-markets-act.ec.europa.eu/gatekeepers_en), accessed August 2024

<sup>3</sup> Silverman, B, 2024, *European Regulators Are Right to be Concerned About The State of X's Transparency*, <https://foundation.mozilla.org/en/blog/EU-Digital-Services-Act-and-The-State-of-X-Transparency/>

<sup>4</sup> European Commission, *Commission sends preliminary findings to Meta over its "Pay or Consent" model for breach of the Digital Markets Act*, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_3582](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3582), accessed August 2024

companies may feel that Australia is a consequence-free zone, where they're able to do as they please without proper punishment.

There is evidence of this already happening. Evidence provided to the Joint Select Committee on Social Media and Australian Society show how online scams are proliferating in Australia given the lack of enforcement mechanisms.

One of the most high-profile online scam victims is billionaire philanthropist Andrew Forrest, who is currently pursuing legal action against Meta/Facebook for allowing scam ads that use his name and image.<sup>5</sup> Andrew Forrest's representatives confirmed that they had to pursue action against Meta in California, as they were continually ignored when attempting to do so from other jurisdictions. Despite having legislation in place to combat against scams in Australia, Meta did not take these to be serious enough to engage with Dr. Forrest's representatives.<sup>6</sup>

Dr. Forrest is an influential public figure with vast resources, and even he and his team could not get anyone from Meta/Facebook to take their claims seriously when doing so from Australia. Regular Australians therefore, will have no way of ever holding Facebook to account in this way. It is up to the government to enact regulation that digital platforms like Facebook take seriously enough for them to engage with.

There are also implementation benefits in having regulatory parity with other larger regions. Given that tech companies already need to comply with regulation for those regions, applying them for Australia will be less labour intensive for those companies. Tech companies have in the past shown preference for this approach, like with the General Data Protection Regulation (GDPR).

Of course, Australia should develop legislation and regulation that suits its local needs, and not those from other countries or regions, but considering similar regulation will likely make for easier application in Australia, given the work has already been done by the tech companies.

## Tax Big Tech

The largest and most dominant digital platforms generate significant revenues and profit from Australia. And yet most of them only declare a fraction of their Australian earnings as taxable.

The ATO's tax transparency reports reveal that Microsoft only declared 6.4% and 6.7% of their income in Australia as taxable in the financial years 2020-2022, Google only 18.2% and 21.5% and Facebook only 8.8% and 9.5%.<sup>7</sup>

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<sup>5</sup> Stempel, J. 2024, *Meta must face Australian billionaire Forrest's US lawsuit over scam Facebook crypto ads*, Reuters, <https://www.reuters.com/technology/meta-must-face-australian-billionaire-forrests-us-lawsuit-over-scam-facebook-2024-06-18/>

<sup>6</sup> Parliament of Australia, *Joint Select Committee on Social Media and Australian Society Public Hearings*, Public Hearing 28 Jun 2024, Hansard transcript, [https://parlinfo.aph.gov.au/parlInfo/download/committees/commint/28187/toc\\_pdf/Social%20Media%20and%20Australian%20Society%20Joint%20Select%20Committee\\_2024\\_06\\_28.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/commint/28187/toc_pdf/Social%20Media%20and%20Australian%20Society%20Joint%20Select%20Committee_2024_06_28.pdf;fileType=application%2Fpdf), accessed August 2024

<sup>7</sup> Rachel Clun, *Tech giants claiming as little as 5 per cent of their revenue as taxable*, March 2024, Sydney Morning Herald, <https://www.smh.com.au/politics/federal/some-tech-giants-claim-as-little-as-5-per-cent-of-their-earnings-are-taxable-20240321-p5fe6g.html>

## Microsoft

NAME	INCOME YEAR	TOTAL INCOME	TAXABLE INCOME	TAX PAYABLE	TAX AS PROPORTION OF TAXABLE INCOME	TAXABLE INCOME AS A PROPORTION OF TOTAL INCOME
Microsoft	2021 - 2022	\$6,296,619,602	\$400,935,241	\$120,280,572	30%	6.4%
Microsoft Datacenter (Australia)	2021 - 2022	\$1,090,699,291	\$0	\$0	0%	0%
Microsoft Clipchamp Holdings	2021 - 2022	\$210,826,619	\$57	\$17	29.8%	0%
Microsoft	2020 - 2021	\$5,021,135,371	\$336,566,007	\$94,742,221	28.1%	6.7%
Microsoft Datacenter (Australia)	2020 - 2021	\$828,934,738	\$0	\$0	0%	0%

## Google

NAME	INCOME YEAR	TOTAL INCOME	TAXABLE INCOME	TAX PAYABLE	TAX AS PROPORTION OF TAXABLE INCOME	TAXABLE INCOME AS A PROPORTION OF TOTAL INCOME
Google Australia	2021-2022	\$1,789,056,238	\$325,873,549	\$83,263,425	25.6%	18.2%
Google Cloud Australia	2021-2022	\$102,951,870	\$22,419,389	\$6,725,817	30%	21.8%
Google Australia	2020-2021	\$1,399,373,514	\$300,364,293	\$77,937,593	25.9%	21.5%

## Facebook

NAME	INCOME YEAR	TOTAL INCOME	TAXABLE INCOME	TAX PAYABLE	TAX AS PROPORTION OF TAXABLE INCOME	TAXABLE INCOME AS A PROPORTION OF TOTAL INCOME
Facebook Australia	2021-2022	\$1,147,348,081	\$100,584,537	\$30,175,361	30%	8.8%
Facebook Australia	2020-2021	\$717,094,838	\$67,955,935	\$20,386,780	30%	9.5%

Sydney Morning Herald tech tax calculations sourced from the Australian Taxation Office

We need systemic reform to address the harmful dominance and anti-competitive behaviours from large tech companies. Appropriate taxation can be one pillar in those reforms, so that these giant companies are paying their proper due to Australia and Australian consumers.

## Applying insight to AI

Artificial intelligence is promising to be a transformative and disruptive general technology. Currently the largest digital platforms are in an 'arms race' and have invested vast amounts of funding, research and resources to try and gain competitive advantage in this burgeoning industry.

AI is set to further entrench the dominant positions of the same companies who own digital platforms the DPI is concerned with.

Already the largest language models, which power consumer AI products come from a small group of companies, like Google, Microsoft and Meta. A CSIRO report found that the vast majority of models are from the US (73%), followed by China (15%), with the rest from the EU and other countries.<sup>8</sup>

The same companies that are currently being investigated for illegal monopolistic status, anti-competitive behaviour, and harmful practices, are also the same companies vying for AI dominance.

While there are some welcome developments in addressing the dominance of specific digital platforms, like the recent ruling from the US that found Google to be an illegal monopoly<sup>9</sup>, we must ensure that the pivot and investment to newer technologies like AI doesn't distract from the systemic interventions that are needed to address this.

Given the colossal amounts of data, computing power and infrastructure needed to power AI models, AI technologies have the potential to further exacerbate the already dominant digital platforms and companies of today, as it becomes virtually impossible for any organisation without the resources and investment to compete with these tech giants.<sup>10</sup>

Further, first mover advantage, network effects, and the virtuous circle of continuous improvement and optimisation will make it likely that the companies with material AI functions now will be much further ahead than those who are still developing, or have just started their AI capabilities. In other words, dominant digital platforms today will become even more so through AI.

## Hold government to account on progress

The ACCC is to be commended for producing rigorous and insightful research for the Digital Platforms Inquiry. Over its 5-year term, this work has been invaluable in clarifying the risks and

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<sup>8</sup> Stefan Hajkovicz, *Artificial intelligence foundation models: Industry enablement, productivity growth, policy lever and sovereign capability considerations for Australia*, 2024, CSIRO Canberra

<sup>9</sup> Robins-Early, 2024, *Google broke law to maintain online search monopoly, US judge rules*, The Guardian, <https://www.theguardian.com/technology/article/2024/aug/05/google-loses-antitrust-lawsuit>

<sup>10</sup> Leswing 2024, *Tech's splurge on AI chips has companies in 'arms race' that's forcing more spending*, CNBC, <https://www.cnbc.com/2024/07/25/tech-splurge-on-ai-chips-has-meta-alphabet-tesla-in-arms-race.html>

harms for Australians from large technology platforms. The recommendations for reform have been clear, evidence-based and considered.

However, implementation by the Australian government has been patchy at best. While there was initial momentum at the beginning of the inquiry, this has since stopped, initiatives have been significantly delayed, or proposals watered down.

Some high-profile examples include the critical review of the Privacy Act, and its much-needed update given the almost 40-year-old bill has not had a wholesale review, and certainly has not accounted for the vast privacy implications brought on by digital platforms and social media. The government's response was already a year later than what was originally expected, with reports of further delays, and that not all recommendations, despite being initially agreed to, may not make the final version.<sup>11</sup>

Another example is the development of the Mis-and Disinformation Code, originally a weak self-regulating scheme that was met with significant backlash after proposed updates, which is now still being worked on by the Communications Department.<sup>12</sup>

As the Inquiry nears its end, we must hold the government to account, calling out their lack of progress in implementing these important reforms, and deliver a final call to action to address the significant harms brought about by large digital platforms.

## Conclusion

The work of holding large digital platforms to account is not done. Over the 5-year term of the Digital Platforms Inquiry, these companies have only gotten larger and more powerful. Already, they are rearranging the playing field and moving on to newer technologies, like artificial intelligence. Yet the systemic reforms required to address known harms they have produced have not sufficiently progressed.

This final report of the ACCC Digital Platforms Services Inquiry must remind government and the public of the critical need to reform digital platforms, so that Australians can live in a more equitable, safe and fairer online consumer environment.

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<sup>11</sup> Hendry, J. 2024, *Privacy bill delayed amid busy legislative agenda*, InnovationAus, <https://www.innovationaus.com/privacy-bill-delayed-amid-busy-legislative-agenda/>

<sup>12</sup> Taylor, J. 2024, *Labor to overhaul misinformation bill after objections over freedom of speech*, Guardian Australia, <https://www.theguardian.com/australia-news/2023/nov/13/labor-misinformation-bill-objections-freedom-of-speech-religious-freedom>