

UNCHARTED TERRITORY: ACCC CONCLUDES DIGITAL PLATFORMS INQUIRY WITH BROAD RECOMMENDATIONS FOR REFORM

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News

The Australian Competition and Consumer Commission (ACCC) has released its long-anticipated final report into digital platforms, outlining the proposed reform of merger laws, consumer laws and privacy and data-related protections that if implemented will have broad implications for companies operating in Australia.

Adopting what it described as a ‘holistic approach’ that takes account of the close links between competition, consumer data and privacy issues, the ACCC made 23 recommendations for reforms spanning competition law, consumer protection, media regulation and privacy law.

The ACCC has also recommended that its remit be broadened to include ongoing monitoring and increased investigatory powers over digital platforms.

Herbert Smith Freehills’ Competition Partner [Sarah Benbow](#) said the report into digital platforms was a first globally.

“The ACCC is at the forefront of the global debate on the implications and consequences of digital platforms for competition and consumers,” she said.

“In recent weeks both the US Department of Justice and UK Competition and Markets Authority have followed the ACCC’s lead and launched similar digital platform inquiries.”

Ms Benbow also noted that the ACCC has more than just the digital platforms in its sights, recommending that it conduct an inquiry into ad tech services and advertising and media agencies to determine whether any competition or efficiency concerns exist in that supply chain.

Herbert Smith Freehills' Head of Privacy and Data Protection [Kaman Tsoi](#) noted the ACCC – in consultation with the Office of the Australian Information Commissioner (OAIC) – has proposed an overhaul of Australia's privacy regime with the aim of placing consumer rights at the centre of data-related regulation, to address the ACCC and OAIC's concerns that Australians are not fully aware of or do not feel empowered to exercise their privacy rights, particularly online.

"The ACCC's wide reaching privacy-related recommendations are focused on economy-wide concerns raised by current data practices and are likely to increase the regulatory burden and costs for all businesses – not just digital platforms," he said.

In addition to reforms specific to digital platforms, the ACCC has recommended amendments to the Privacy Act which would bring the Act closer to the EU's General Data Protection Regulation (GDPR). The recommended changes are intended to enable consumers to make more informed decisions and have greater control over their personal information.

The ACCC has also recommended higher penalties and a broader overhaul of privacy and data-related regulation to ensure that the law continues to effectively protect consumers in the digital economy, including a review of whether current exemptions for small businesses, employers and political parties remain appropriate.

Herbert Smith Freehills' Special Counsel [Annalisa Heger](#) said the ACCC had found both Facebook and Google have substantial market power in a number of markets, and found they have substantial bargaining power in their dealings with news media businesses in Australia.

"The ACCC has highlighted what it sees as the 'special responsibility' of firms with market power under competition policy and law, that smaller businesses do not have," she said.

"We see the ACCC's language as reflecting a new emphasis on the role and restrictions on firms with market power."

In terms of next steps, Ms Heger said the Federal Government has declared that digital platforms need to be held to account and announced a 12 week consultation process with industry before delivering its final response to the ACCC's report later this year.

"The Federal Government has already accepted the ACCC's finding that reform is required, but we will need to wait to see how the Government intends to implement any changes."