

No choice, no rules

Submission to the ACCC Digital Platforms Inquiry - March 2023 Report on social media services Issues Paper

Jordan Guiao

Research Fellow, Centre for Responsible Technology

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Level 1, Endeavour House, 1 Franklin St
Canberra, ACT 2601
Tel: (02) 61300530
Email: mail@tai.org.au
Website: www.tai.org.au
ISSN: 1836-9014

Summary

The Australia Institute's Centre for Responsible Technology welcomes the opportunity to make a submission to the Digital Platform Services Inquiry – March 2023 Report on social media services Issues Paper.

Social media services are a significant part of the daily economic and civic life of Australians. Australians use social media to communicate, get informed, stay connected to their networks, transact, do business, get entertained, and more.

The largest platforms like Facebook and YouTube are 'must haves' and critical for many Australians, with no viable alternatives in place should those platforms be disrupted or choose to restrict their services in some way.

Social media has also given way to new groups called 'influencers' who play a material role in consumer communications. These influencers have almost no regulation applied to them, despite many gaining revenues and profit from their activities, and their followers considering them important sources of information.

This landscape therefore, of dominant social platforms with no real alternatives, and new groups like social media influencers having little regulatory oversight, provide an environment that can be harmful to consumers, exposing them to potentially misleading and deceptive products and information.

To ensure a safe, healthy and competitive social media environment, we recommend the following:

- Investigate giants like Facebook and Google for potential antitrust breaches, ensuring a competitive social media landscape in Australia
- Invest in local alternatives, encouraging development of alternative social media platforms in Australia
- Have regulation parity with social media advertising/influencer advertising and mainstream media advertising, with social media services being subject to the same rules, governing bodies, codes of conduct, limitations, enforcement mechanisms and penalties.
- Ban influencers from promoting or creating content which requires specific qualifications and certifications – such as health advice, health products, medical treatments, health policy, COVID/pandemic related topics, financial advice, financial investments, and so on.

Introduction

The Australian Competition and Consumer Commission (ACCC) is continuing its five-year Inquiry into digital platforms with its sixth report. This report is examining social media services in Australia for potential consumer and competition issues.

Social media services are now a significant part of the daily lives of Australians, as we use these platforms to connect, communicate, transact, get informed and entertained.

The report focuses on the largest and most influential platforms – including Meta’s Facebook and Instagram, TikTok and Twitter.

The Australia Institute’s Centre for Responsible Technology is an advocate for a healthy, safe and competitive online environment in Australia, which the largest digital platforms regularly threaten. The Centre, in our submission will focus on the following questions from the report to respond to:

- Why is it important for users to have access to social media services?
- What are the main reasons that users use social media services? For example, is it to connect with individuals they know outside of the social media platform, or to connect to previously unknown groups of people?
- Do particular events influence users’ use of social media services, for example, during natural disasters or the COVID-19 pandemic?
- Are any social media services a ‘must have’ for Australian users?
- Are consumers spending less or more time engaging with social media platforms? Has the COVID-19 pandemic and associated lockdowns had an impact on consumer engagement? Are any trends in consumer engagement on social media that emerged during the COVID-19 pandemic likely to continue?
- Has the development of social networking features and related services by social media platforms led to new consumer harms, and/or exacerbated existing consumer harms?
- What impact has advertising on social media had on consumer engagement on social media? Has advertising on social media led to any specific consumer harms?
- Are consumers faces with potentially misleading and/or deceptive claims through advertising on social media (including sponsored advertising or posts featuring influencers)? If so, has the incidence of potentially misleading and/or deceptive claims increased or decreased over time?
- Are businesses impacted by potentially misleading and/or deceptive claims through display advertising, including sponsored advertising or posts featuring influencers?

- What is the process for consumers and business users to report potentially misleading and/or deceptive claims in advertising on social media, and what role do social media platforms play in these processes? How effective are these processes?

No real alternatives

Facebook owned by Meta

The events which transpired while the News Media and Digital Platforms Mandatory Bargaining Code was being negotiated on February 2021 presented a stark reality in Australia's relationship with and reliance on social media platforms, in particular Facebook. Both Facebook and Google – the two platforms subject to the Code, fiercely resisted, launching significant lobbying efforts, consumer campaigns and threatening to pull their services from Australia should the Code pass.¹ Facebook actually took the extraordinary step of doing this, banning Australian 'news' pages from the platform for a period of about a week.²

The ban affected major news organisations, who saw their traffic drop materially due to significantly decreased referrals from Facebook.³ However, it was not just news organisations that were affected. The blanket ban also took down critical services, like health organisations, public service departments and even some emergency services.⁴ While this decision was eventually reversed it exposed how overly reliant many Australians and Australian organisations have become on Facebook.

This incident has done little to dent Australians' use of Facebook, with the platform continuing to engage approximately 17.5 million Australians according to this latest report.⁵ This demonstrates that Facebook continues to grow since the beginning of the Digital Platforms Inquiry.⁶

Although other social media services are listed in this report, including Twitter and Snapchat, Facebook commands a significant share of the market. It also has the most extensive features of all the services. Because of this, not only consumers, but also

¹ BBC News (2021), *Australia news code: What's this row with Facebook and Google all about?*, <https://www.bbc.com/news/world-australia-56107028>

² Allyn (2021), *Facebook blocks news in Australia over Government plan to fore payment to publishers*, <https://www.npr.org/2021/02/17/968723929/facebook-blocks-news-in-australia-over-government-plan-to-force-payment-to-publi>

³ Purtill (2021), *These graphs tell the story of the Facebook news ban – and what happened after*, <https://www.abc.net.au/news/science/2021-03-03/facebook-news-ban-australian-publisher-page-views-rebound/13206616>

⁴ Taylor (2021), *Facebook's botched Australia news ban hits health departments, charities and its own pages*, <https://www.theguardian.com/technology/2021/feb/18/facebook-blocks-health-departments-charities-and-its-own-pages-in-botched-australia-news-ban>

⁵ ACCC (2022), *Digital Platform Services Inquiry – March 2023 Report on social media services Issues Paper*

⁶ ACCC (2019), *Digital Platforms Inquiry Final Report*

businesses and organisations have invested significant resources, effort and capital on building and maintaining Facebook profiles.

While TikTok is emerging as a platform with growing popularity, the demographic for TikTok continues to skew young, with the majority of its users being under 25.⁷ The dominant social platform Meta is also focusing its product Instagram as the main competitor to TikTok, rather than the parent platform of Facebook.⁸

Facebook is currently facing an antitrust lawsuit from the US Federal Trade Commission, which alleged that Meta/Facebook engaged in “anticompetitive conduct and unfair methods of competition” including through its acquisition of Instagram and WhatsApp. Facebook has tried to dismiss these charges which most recently a federal judge has denied.⁹

In Australia, the ACCC’s most recent action against Facebook was a lawsuit alleging it failed to prevent scammers using the platform to promote fake ads featuring public figures and causing consumer harm.¹⁰

During the pandemic, Facebook became a critical communications channel. Many public service departments simulcast live streams of daily announcements on Facebook, including the critical broadcasts from state health authorities.

In NSW, when the daily press conferences on television were discontinued, daily updates were still provided on Facebook, proving how significant a channel it has become for public health messaging.¹¹

In some instances, Facebook was even the preferred communications channel over more traditional channels, for public service messaging such as when NSW Opposition leader Chris Minns conducted announcements on Facebook.¹²

Facebook is therefore a dominant social media service in Australia. Despite known harms, and even taking the extraordinary steps of banning Australian news services, it remains a critical channel, including during the pandemic. There is little by way of alternative

⁷ Kemp (2022), *Digital 2022 Australia Report*, <https://datareportal.com/reports/digital-2022-australia>

⁸ Frier & Stone (2022), *Mark Zuckerberg is blowing up Instagram to try and catch TikTok*, <https://www.bloomberg.com/news/features/2022-05-25/facebook-copies-tiktok-app-to-make-instagram-cool-to-teens>

⁹ Durkee (2022), *Judge refuses to throw out Facebook antitrust lawsuit*, <https://www.forbes.com/sites/alisdurkee/2022/01/11/judge-refuses-to-throw-out-facebook-antitrust-lawsuit/?sh=4e75469c2321>

¹⁰ Elmas (2022), *‘Untold losses’: Facebook sued for helping scammers impersonate celebs and rip-off users*, <https://thenewdaily.com.au/finance/finance-news/2022/03/18/facebook-scams-accf/>

¹¹ Burke (2022), *NSW’s daily COVID-19 update to be scaled back*, <https://www.abc.net.au/news/2022-04-22/nsw-health-changes-reporting-of-covid-19-information/101008330>

¹² Minns (2022), *Chris Minns Facebook Page*, <https://www.facebook.com/ChrisMinnsMP/>

platforms which consumers can substitute it with, and millions of Australians continue to use the platform.

YouTube owned by Alphabet

The Australian public's reliance on YouTube was similarly tested during the News Media and Digital Platforms Mandatory Bargaining Code negotiation period. A roundtable of industry experts hypothesised on the impact of Google/YouTube removing its services in Australia, as it had threatened. The roundtable concluded that the impact would be very disruptive to Australian consumers and businesses, and labelled YouTube "unavoidable" as an advertising platform.¹³

YouTube has not been labelled a 'social media service' as part of this report and therefore not a key focus, although is it part of the consideration set. We argue that YouTube should be included as a key focus – as YouTube encourages networking, content sharing and community activities based around topics of interest, with features that allow for personalised profiles, sharing and commenting.

If YouTube is considered then it would be even more influential and dominant than Facebook, with the platform boasting approximately 21.3 million users in Australia.¹⁴

No other platform comes even close to YouTube and Facebook, with the platform that follows from a user volume perspective being Snapchat at approximately 7.25 million users in Australia.¹⁵ Further, Snapchat is materially distinct from both YouTube and Facebook, with a focus on transient posts, and far fewer features and business investment.

Google has been subject to significant antitrust probes globally. The European Union is leading a probe against Google to examine whether it was giving itself unfair advantage in digital advertising by forcing advertising to use Google Ad Manager to display advertisements on YouTube. In a signal that shows it is worried about this probe, Google recently announced that it is open to letting competitors place ads on YouTube.¹⁶

The US is currently considering several antitrust actions against Google, including the significant American Innovation and Choice Act, which has bipartisan support and would

¹³ Guiao (2020), *Tech-xit: Can Australia survive without Google and Facebook?*
https://d3n8a8pro7vhmx.cloudfront.net/theausinstitute/pages/3386/attachments/original/1603049830/P986_Techxit_Issues_Paper_2.1__Web_.pdf?1603049830

¹⁴ Kemp (2022), *Digital 2022 Australia Report*, <https://datareportal.com/reports/digital-2022-australia>

¹⁵ Ibid.

¹⁶ CNBC, *Google offers to let ad rivals place YouTube ads in EU antitrust probe*,
<https://www.cnbc.com/2022/06/13/google-offers-to-let-ad-rivals-place-youtube-ads-in-eu-antitrust-probe.html>

prevent tech platforms from giving advantages to their own products and making it easier for rivals to collect data and communicate with their users.¹⁷

Facebook and YouTube's dominant and anti-competitive status is being challenged globally, and Australia should consider similar actions, as the platforms continue to enjoy an uncontested share of Australia's social media landscape, despite many recent scandals and new entrants to market.

¹⁷ Nylén (2022), *Tech antitrust bill threatens to break Apple, Google's drip on the Internet*, <https://www.bloomberg.com/graphics/2022-tech-antitrust-bill/?leadSource=verify%20wall>

Lack of regulation leading to harms

Social media services have facilitated a new group/occupation/commercial product called ‘influencers’. Influencers are content creators who have amassed material followings on social media services – in particular Instagram, YouTube and TikTok.

Influencers can charge advertisers to create content that’s favourable to the advertiser – including promotional posts, product placements and endorsements and reviews. This is a growing industry with almost no regulatory oversight designed specifically for its unique format and approach.

The influencer industry is estimated to be worth \$22 billion by 2025.¹⁸ The most popular influencers can charge up to \$30,000 per post.¹⁹ However there are no standardised rates that apply across the whole industry.

To date influencers are regulated by only two Codes – the Australian Association of National Advertisers (AANA) Code of Ethics – a self-regulating code with an associated complaints mechanism through the AdStandards group, and a voluntary industry code proactively developed through the Australian Influencer Marketing Council (AiMCO) and its industry members.²⁰

There are only two influencer specific advertising rules – 1) Influencers must disclose commercial agreements that can be easily understood as part of the AANA Code, and 2) The Therapeutic Goods Administration (TGA) has placed a ban on influencers promoting health products if they have been paid or incentivised to do so.²¹

Apart from the AsStandards group, which processes approximately 30 complaints a year, there is little by way of enforcement. Further, advertisers often participate in indirect engagement with influencers, providing gifts, free merchandise and products, and arranging “in-kind” and cross-promotional deals, which do not need to be disclosed.

¹⁸ Mediaweek (2022), *HypeAuditor reveals the top brands engaging with Australian influencer marketing*, <https://www.mediaweek.com.au/hypeauditor-reveals-brands-engaging-australian-influencer-market/>

¹⁹ Sullivan (2022), *How much do Aussie Instagram beauty influencers really make?* <https://www.news.com.au/finance/work/careers/how-much-do-aussie-instagram-beauty-influencers-really-make/news-story/fea9e09763d28deba49e1bffbbed52fe>

²⁰ AANA (2021), *Influencer marketing under the spotlight but marketers can easily protect themselves*, <https://aana.com.au/2021/05/17/influencer-marketing-under-the-spotlight-but-marketers-can-easily-protect-themselves/>

²¹ Coade (2022), *New TGA rules see influencers banned from health product promotions*, <https://www.smartcompany.com.au/marketing/social-media/tga-rules-influencers/>

Since the TGA ruling only came into effect in July 2022, it is still unclear how effective the ban has become.

There are particular issues with influencers when it comes to sensitive or otherwise regulated topics, like health and financial advice. Content categories/industries such as fitness, food and nutrition, health and wellbeing and finance have significant regulatory oversight, both in the professional practice of each category, as well as in advertising and promoting material as part of that category. These categories are regulated because they have the potential to affect audiences in significant ways. However, when it comes to social media influencers within that category, there is scant regulatory oversight available in comparison to equivalent channels and activity outside of social media.²²

Further, health professionals undergo years of education and training to gain the necessary qualifications and experience to provide health advice to the public. They are subject to multiple regulations, codes of ethics, rigorous oversight systems and frameworks of accountability. Financial advice is similarly strictly regulated, with a license required from the financial regulator which must be updated annually to be authorised to provide financial information to the public. Influencers who weigh in on these topics however, don't need any qualifications to spread their messages to thousands of people.²³

The pandemic, especially the sensitive early periods during lockdown and vaccination rollouts were particularly troublesome, as influencers spread anti-health and anti-vaccination messages.²⁴ Many of these influencers continue to profit from their profiles to date.

Unqualified and unscrupulous influencers on social media are therefore profiting from an unregulated environment, and causing harms and misleading consumers.

²² Guiao (2021), *Insta-harms make Insta-money, how unregulated and unqualified social media influencers profit while spreading disinformation and causing harms online*, https://assets.nationbuilder.com/theausinstitute/pages/3838/attachments/original/1657678558/P1122_Insta-harms_make_Insta-money__Web_.pdf?1657678558

²³ Ibid.

²⁴ McGowan (2021), *How the wellness and influencer crowd serve conspiracies to the masses*, <https://www.theguardian.com/australia-news/2021/feb/25/how-the-wellness-and-influencer-crowd-served-conspiracies-to-the-masses>

Recommendations

To ensure a safe, healthy and competitive social media environment, we recommend the following:

- Investigate giants like Facebook and Google for potential antitrust breaches, ensuring a competitive social media landscape in Australia
- Invest in local alternatives, encouraging development of alternative social media platforms in Australia
- Have regulation parity with social media advertising/influencer advertising and mainstream media advertising, with social media services being subject to the same rules, governing bodies, codes of conduct, limitations, enforcement mechanisms and penalties.
- Ban influencers from promoting or creating content which requires specific qualifications and certifications – such as health advice, health products, medical treatments, health policy, COVID/pandemic related topics, financial advice, financial investments, and so on.

Conclusion

In Australia, there are only really two social media services, as these platforms dominate user volume, reach and advertiser revenue – Meta-owned Facebook and Google owned YouTube. Despite known harms and scandals, these two platforms continue to dominate, suggesting that there are no viable alternatives for Australians to switch to.

This dominance has led to new consumer harms in the form of social media influencers, who enjoy scant regulatory oversight even as their share of revenue from their activities grow into a billion dollar industry.

This anti-competitive and unregulated environment is causing harm to Australians and Australian organisations, and require government intervention.