



AUSTRALIA

Submission by Free TV Australia

Ad tech inquiry

**Australian Competition
and Consumer**

May 2020

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1. Executive Summary

- This ad tech inquiry comes on the back of the ACCC's world leading Digital Platforms inquiry Final Report that made plain the unprecedented levels of market dominance of Google and Facebook and the impact that this dominance has on the services provided by media companies.
- Free TV strongly supports this inquiry, focussed on the complexities of the ad tech stack and the potential negative impact on economic efficiency caused by high levels of market power and a lack of transparency across the supply chain.
- Google is present at every level of the ad tech stack and in many of these cases they enjoy market shares approaching 75 percent.
- This level of horizontal market power combined with its vertical integration affords Google the opportunity to create constraints on interoperability and to enforce its own standards to reinforce its dominant standing in the ad tech stack.
- There are a number of specific examples of this conduct that we are bringing to the attention of the ACCC in relation to the bundling and tying of products across market segments with the effect of stifling competition.
- Free TV also notes the central role that data plays in powering the ad tech stack and the recent strategic acquisitions and changes to products and services made to reinforce Google's role as data gatekeeper across the entire ad tech stack. Care needs to be taken to ensure that genuinely held privacy concerns are not confused with strategic market behaviour designed to reinforce a dominant data collecting position.
- The lack of pricing transparency is also a significant concern for Free TV members as it means that the market cannot function in a workably competitive manner. In order for participants to make informed choices on supply partners, granular information is needed on the prices paid for each individual service in the supply chain.
- Free TV is proposing three mutually reinforcing workstreams to be developed during this consultation period:
 - Pricing transparency – a model of granular price disclosure needs to be developed to enable genuine competition in the ad tech stack
 - Consistent data collection and streamlined permissions - ensuring that the terms and conditions for ad tech services include a uniform data collection and permissions framework across the supply chain
 - Creation of exchange rules – concerns around current market conduct should be addressed through market trading rules, including ensuring that advertisers and publishers are free to choose their own technology supplier in response to better pricing information
- The role of data also needs to continue being carefully examined in merger and competition law cases, to ensure that strategic acquisitions and market conduct by dominant players such as Google do not limit the potential for the emergence of competing datasets and the further reinforcement of the digital platforms as data gatekeepers.
- These are important reforms that will work in concert with other important initiatives to address the sustainability of businesses that invest in all forms of Australian content.
- Addressing the inefficiencies in the ad tech stack will make a material difference to the return that publishers receive on their inventory—which directly relates to the sustainability of investment in great Australian content that our community relies upon.

2. Introduction

Free TV Australia is the peak industry body for Australia's commercial free-to-air broadcasters. We advance the interests of our members in national policy debates, position the industry for the future in technology and innovation and highlight the important contribution commercial free-to-air television makes to Australia's culture and economy.

Free TV proudly represents all of Australia's commercial free-to-air television broadcasters in metropolitan, regional and remote licence areas.



Free TV and its members were heavily involved during the ACCC's Digital Platforms Inquiry process. We welcomed recommendation 5 from the ACCC's final report that led to the direction from the Government for the formation of this ad tech inquiry.

Free TV members have a complex relationship with the ad tech stack.

In our television markets, our members are rapidly evolving with traditional sales channels being supplemented by programmatic advertising sales. Our metropolitan members sell video inventory associated with their BVOD content, offering advertisers the opportunity to target their desired audience with the benefits of the big screen and a 'sound on' environment.

Our members also have rich online offerings through digital properties such as 7news.com.au, 9news.com.au and 10play.com.au. In this environment, we act as publishers selling online display advertising through supply side platforms and ad exchanges.

We are also an advertiser in our own right, promoting our great Australian content across a number of different platforms.

This places our members in a unique position to assist the ACCC with this inquiry and highlight the issues with the current operation of the ad tech markets. Despite their intimate involvement with and use of many ad tech technologies and companies, our members remain frustrated with the lack of transparency and visibility into pricing throughout the supply chain.

This experience aligns with a key finding of the ACCC in its Final Report:

There is a lack of transparency in the pricing of services used to facilitate automated or programmatic online display advertising, known commonly as 'ad tech' services. This means that both advertisers and websites lack visibility over pricing. They do not know what proportion of advertiser spend goes to ad tech services versus how much goes to the purchasing of advertising inventory. This has led many participants in the display advertising market to question the efficiency of the ad tech supply chain. (Page 119)

This submission highlights the common industry views across commercial free-to-air broadcasters and expands on the points raised during the initial Digital Platforms Inquiry and proposes areas for further work. This submission is structured into 4 parts:

- Market structure (section 3)
- The harms caused by market power (section 4)
- Pricing transparency (section 5)
- Sustainable long-term solutions (section 6).

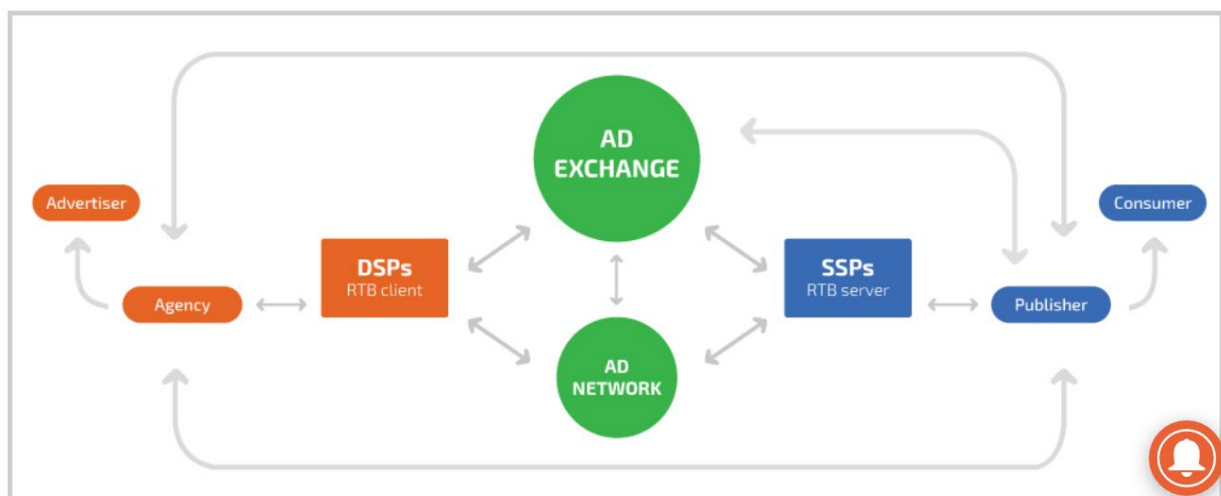
3. Ad tech market structure

Relevant ACCC questions:

- Who are the main competitors in the supply of the following ad tech services in Australia?
 - a) publisher ad servers
 - b) supply-side platforms and ad exchanges
 - c) ad networks
 - d) demand-side platforms
 - e) advertiser ad servers
- Who are the main competitors supplying the following data services in Australia?
 - a) data management platforms
 - b) data brokers
 - c) data analytics services
 - d) ad measurement and verification services.
- For each service in the ad tech supply chain, do any firms have the ability to profitably raise prices or lower quality without losing customers?

3.1 The supply chain

The ad tech stack facilitates the supply and demand market for programmatic advertising. This occurs through exchanges that facilitate real time bidding for advertising inventory made available by publishers. Crucial in this process is the role of data in segmenting audiences to, in theory, serve impressions based on the highest bidding advertiser. The following sections briefly highlight the key components of that supply chain and the market share of the top 5 companies providing services in those components.



Source: Mobidea Academy

At a high level, the ad tech stack is a series of events, depicted in the above diagram. From the righthand (supply) side, publishers offer available inventory through an ad server to a supply side platform (SSP). The SSP connects to or is integrated with an exchange to notify advertisers of the available inventory and attributes of the specific webpage so that advertisers can determine the value of that impression opportunity.

On the demand side, advertisers will generally be executing campaigns via an agency, seeking a particular target audience segment, for example “car intenders”. Advertisers or their agencies place bids via a demand side platform. If the campaign is managed via an agency, their trading desk might have a relationship with more than one DSP.

Each of the DSPs and SSPs connect in a series of virtual marketplaces where the publishers’ digital inventory is uploaded and sold via complex algorithms which match publishers’ characteristics and inventory with advertiser requirements, in a real-time bidding process.

3.2 Google is consolidating its vertical integration

Relevant ACCC questions:

- What is the extent of vertical integration throughout the ad tech supply chain? Has there been a trend towards more or less vertical integration over time?

At the time of making our initial submissions to the ACCC during the Digital Platforms Inquiry, we noted that Google offered products and services in every segment of the ad tech supply chain. Subsequently, Google has undertaken a consolidation and rebranding exercise.

Introducing Display & Video 360

Summary

We’ve unified our DoubleClick advertiser products and the Google Analytics 360 Suite under a single brand: Google Marketing Platform. As part of the launch of Google Marketing Platform, DoubleClick Bid Manager has become Display & Video 360.

Display & Video 360 is a single, integrated tool that helps creative, data, and media teams work together to execute end-to-end campaigns.

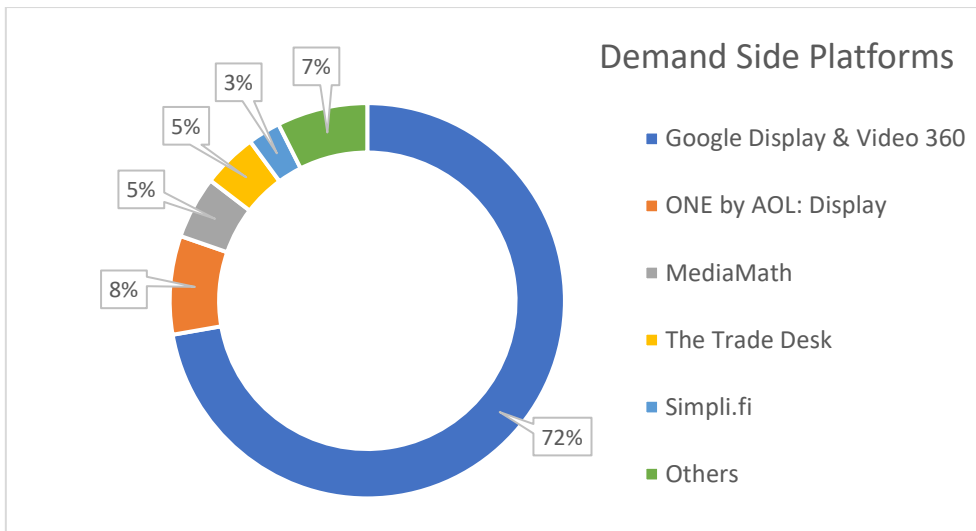
Your Bid Manager account automatically became a Display & Video 360 account as of July 24, 2018.

Source: Google, <https://support.google.com/displayvideo/answer/9059464?hl=en>

These changes have meant that many products that were branded “DoubleClick” have been integrated within one all-encompassing Google product. Doubleclick was an ad tech service provider acquired by Google in 2007 for \$US3.1 billion.¹

These changes have meant that isolating Google’s market share for individual ad tech segments is more complicated. However, indicative market shares are still provided by Datanyze under the old brand structure. These market shares should be verified by the ACCC during this inquiry.

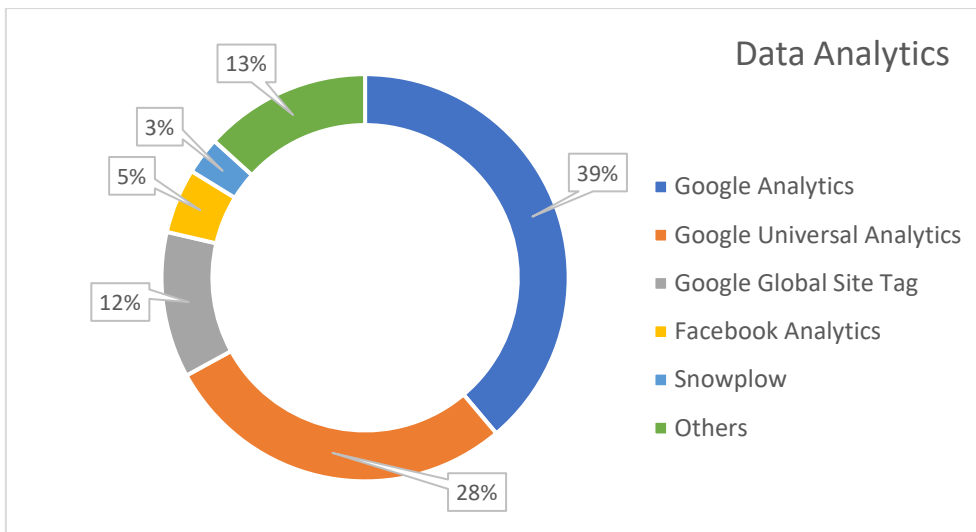
¹ <https://www.nytimes.com/2007/04/14/technology/14DoubleClick.html>



Source: Datanyze

The Google DSP product formerly known as Doubleclick Bid Manager has an estimated market share in Australia of 72%, with the next highest DSP, One by AOL, having about an 8% share. This dominant position creates a virtual bottleneck, with Google controlling the access point for advertisers to the virtual marketplaces in which programmatic advertising is auctioned.

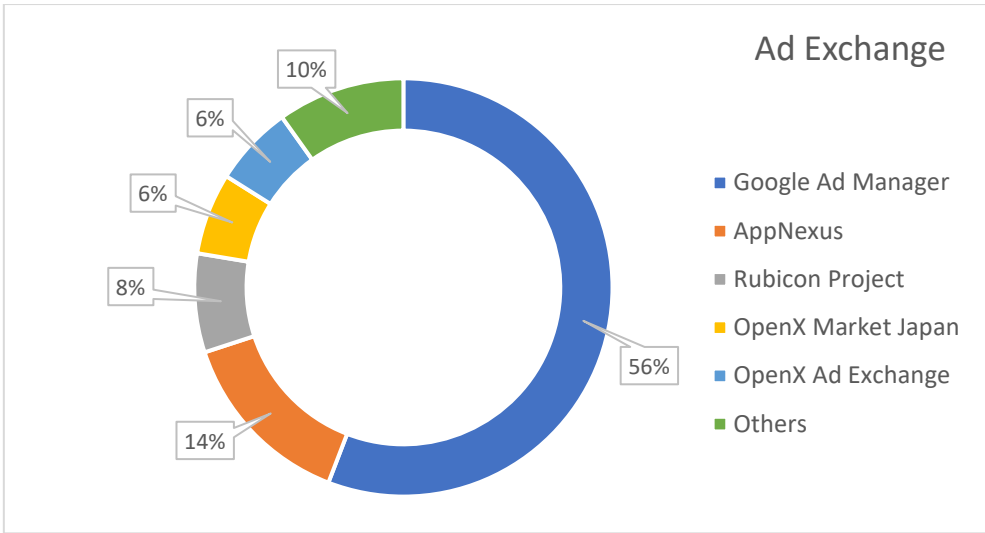
The DSP is assisted by a Data Management Platform, a service to collect, house and analyse data. Advertisers use that data to target ads to particular audience segments. Google’s previous Doubleclick Audience Centre 360 has also been rolled into the new product suite.



Source: Datanyze

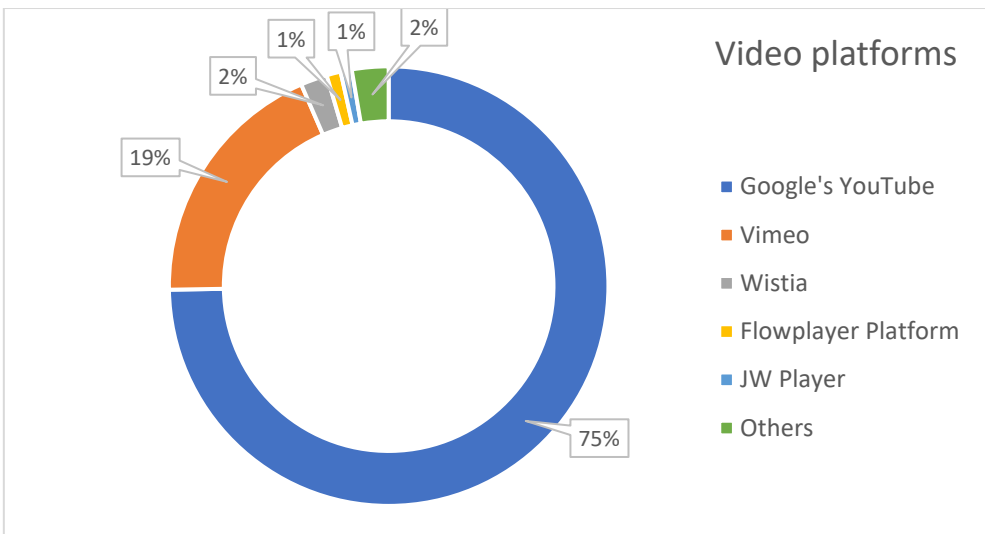
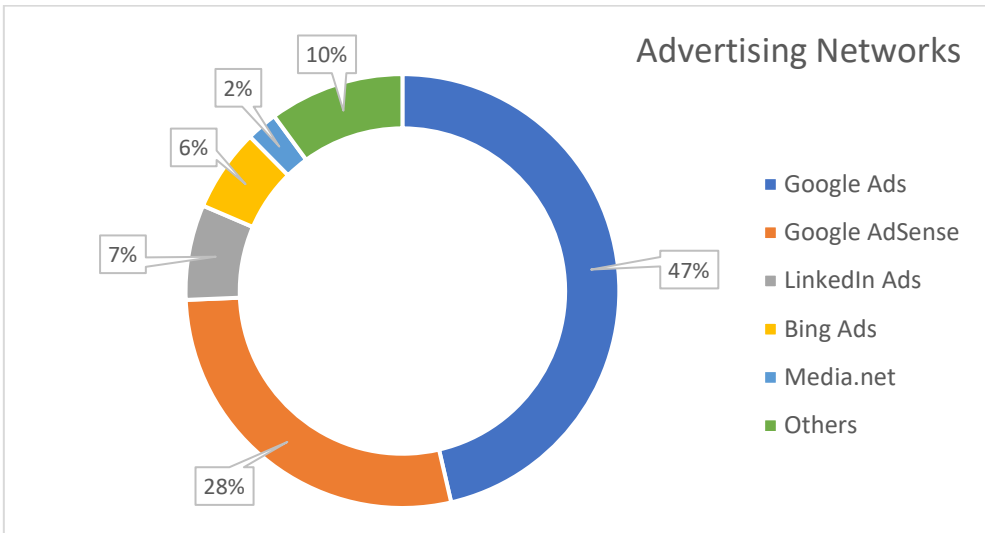
While market share estimates are not known, Google also operates Campaign Manager (previously known as Doubleclick campaign manager). Campaign Manager is one of the two largest advertiser ad servers in the world, allowing media buyers to establish, coordinate and report on campaigns.

On the supply side, Google has combined its SSP and its ad exchange into one product called Google Ad Manager. Previously, Google’s ad server was Doubleclick for Publishers and its SSP was Doubleclick Ad Exchange (AdX). Google Ad Manager has an estimated market share of 56%, with the next highest virtual exchange, Appnexus, on 14%.



Source: Datanyze

Google also offers a product called AdSense which allows small publishers and website owners to monetise ad placements on their website through Google Ads (previously Adwords). Taken together, these two technologies have a market share of almost 75 per cent. Similarly, Google’s YouTube has a market share of around 75 per cent of online video platforms.



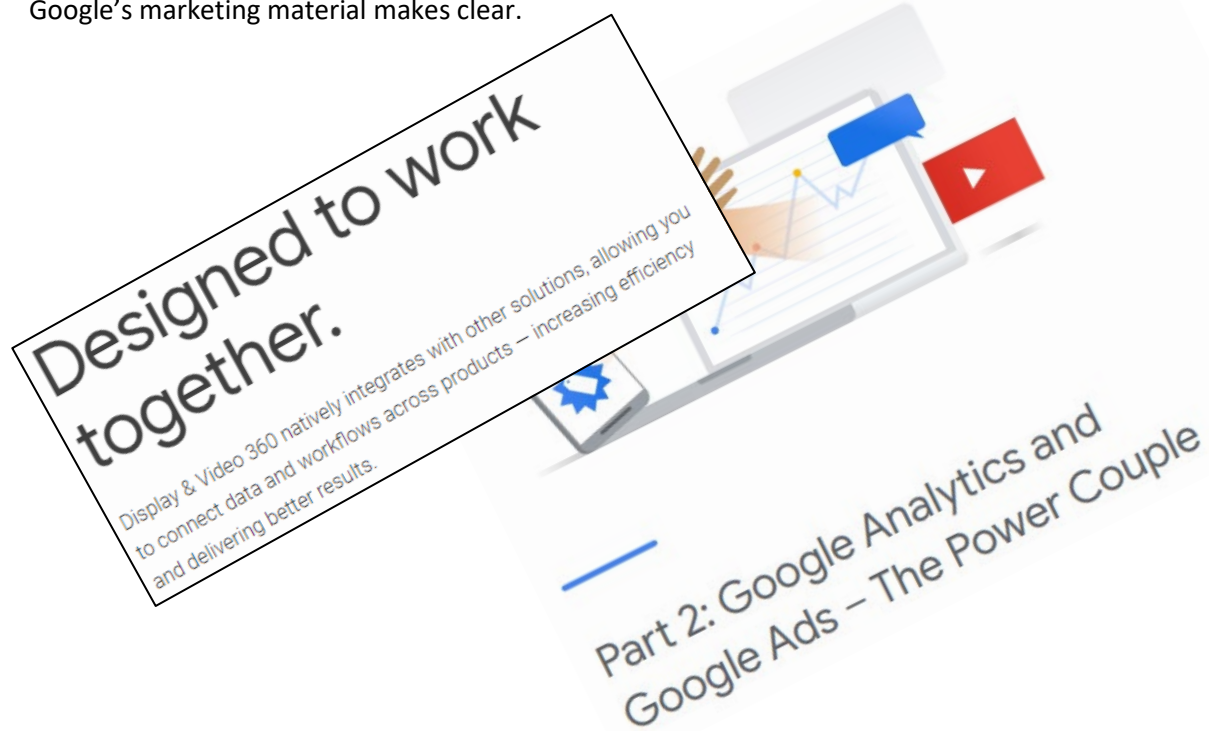
4. What harms are caused by market power

4.1 Requirement to use certain products

Relevant ACCC questions:

- Are any market participants tying or bundling their vertically integrated services along the ad tech supply chain, or preferencing their own ad tech services over those of their competitors, in a way that affects your ability to compete in markets for ad tech services?
- What are the potential benefits and risks of a more vertically integrated ad tech supply chain?
- Are you aware of any restrictive clauses in contractual arrangements that affect your ability to use alternative suppliers of ad tech services, ad agency services, or display advertising services?
- Are any market participants engaging in behaviour that serves their own interests rather than the interests of their customers?
- Are there any terms and conditions regarding data collection, management and disclosure that impact your ability to compete in markets for ad tech services and ad agency services?
- Are there any features or aspects of current auction or bidding processes that you consider may have the potential to preference any particular supplier of ad tech services? If so, please provide examples.
- Do you consider auctions and bidding processes to be run fairly for all market participants?

As the previous section clearly demonstrated, Google is a dominant player in most segments of the ad tech stack. However, while their horizontal market dominance is not absolute in some segments and there are alternative providers, the quality of these service offerings is limited by their ability to interoperate with Google's products in other segments. The interoperability of third-party components with Google components is poorer than for Google-to-Google software, a fact that Google's marketing material makes clear.



Sources: <https://marketingplatform.google.com/about/display-video-360>
https://services.google.com/fh/files/misc/analytics_ads_guide.pdf

Free TV strongly supports the ACCC's key findings in this area from the DPI Final Report:

Google and Facebook have both the ability and incentive to favour their own related businesses (self-preferencing) at the expense of other business users of the platform. They also have the ability and incentive to favour a business with which they have an existing relationship (and through which additional revenue may be generated), such as websites that are members of their display or audience network or use their ad tech services. (Page 12)

Given the substantial market power of each of Google and Facebook, their presence in a significant number of related markets and the opacity of their key algorithms, there is significant potential for self-preferencing by Google and Facebook to substantially lessen competition. (Page 12)

This is clear in the examples below where Google has used its market power to require the use of competitive products in another market.

Bundling access to YouTube inventory with Display and Video 360

[Google bundle YouTube inventory access exclusively with Google's Display and Video 360 product.](#)

Because no advertiser using a competing DSP can buy across YouTube, this offers a significant incentive to advertisers to use the related Google product. As shown in the above section, YouTube is the largest source of video ad inventory in Australia and an unavoidable media partner for advertisers wishing to achieve maximum reach of Australians using video ad formats.

Do I need a Google Ads account to advertise on YouTube? ▲

Yes, your video campaigns are set up on Google Ads, an advertising platform used by businesses running ads on Google and its advertising network – which includes YouTube. Google Ads is where you'll set up, run and manage your YouTube ads. [Sign up for an Google Ads account.](#)

This bundling practice has the effect of locking companies into Google advertising technology services by extending their market power in YouTube advertising inventory into the DSP market.

Bundling of Google search data with Display and Video 360

As found in the ACCC's Final Report, Google has a 95 per cent market share in search and operate the largest web browser, Chrome. Google bundle web browsing and search data with Display and Video 360 by making this data available as [Affinity Audiences](#) and [In Market Audiences](#) in the DSP for advertisers to use to target their campaigns for free. This is powerful data, particularly the search data which is the strongest signal of user intent, and highly valuable to advertisers.

The ability to access highly targeted audience data which they cannot access with other DSPs who do not operate a search engine or web browser provides a material incentive for advertisers to use the Display and Video 360 product. Google uses bundling to extend their market power in search and web browsing into the adjacent DSP market and strengthen their position across the advertising supply chain.

Google's bundling of user data collection with monetisation tools

Google collects data from publisher websites and apps that implement its monetisation products such as Ad Manager, Ad Exchange or Google Analytics. This is stated in their privacy policy.

HOW GOOGLE USES INFORMATION FROM SITES OR APPS THAT USE OUR SERVICES

Many websites and apps use Google services to improve their content and keep it free. When they integrate our services, these sites and apps share information with Google.

For example, when you visit a website that uses advertising services like AdSense, including analytics tools like Google Analytics, or embeds video content from YouTube, your web browser automatically sends certain information to Google. This includes the URL of the page you're visiting and your IP address. We may also set cookies on your browser or read cookies that are already there. Apps that use Google advertising services also share information with Google, such as the name of the app and a unique identifier for advertising.

Google uses the information shared by sites and apps to deliver our services, maintain and improve them, develop new services, measure the effectiveness of advertising, protect against fraud and abuse, and personalize content and ads you see on Google and on our partners' sites and apps. See our Privacy Policy to learn more about how we process data for each of these purposes and our Advertising page for more about Google ads, how your information is used in the context of advertising, and how long Google stores this information.

<https://policies.google.com/technologies/partner-sites?hl=en&gl=US>

Issues with data collection and use are explored further in subsequent sections.

Facebook's bundling of user data collection with social sharing tools

Facebook is a significant source of traffic for many publishers, as established in the ACCC's Final Report. For publishers to have discoverable content on Facebook they need to implement sharing tools on their pages to allow their articles to be shared by users on Facebook.

By doing so however, Facebook collects data from publisher websites that have implemented those social sharing tools.

The screenshot shows the Facebook Help Centre interface. At the top, there is a search bar with the text 'Ask a question' and buttons for 'Log In' and 'Create Account'. Below the search bar are navigation links: 'Home', 'Using Facebook', 'Managing Your Account', 'Privacy and Safety', and 'Policies and Reporting'. On the left side, there is a sidebar menu with categories like 'Login and Password', 'Your Profile and Settings', 'Names on Facebook', 'Keeping Your Account Secure', 'Notifications', 'Ad Preferences', and 'How Ads Work on Facebook'. The main content area features the article title 'Does Facebook receive cookie information when I visit a site with the Like button or another social plugin?' with sub-links for 'Computer help' and 'Mobile help'. The article text explains that when a user visits a site with the 'Like' button, their browser sends information about the cookie to Facebook to provide a personalized experience. It also mentions that Facebook deletes or anonymizes this information within 90 days and does not sell it to advertisers. A 'Share article' button is visible in the top right of the article content.

Source: <https://www.facebook.com/help/206635839404055?ref=dp>

This forced bundling of social sharing tools with Facebook’s collection of audience data effectively forces publishers to hand over their audience data. This further strengthens Facebook’s massive trove of data to improve its audience targeting capabilities and commercial proposition to advertisers. Publishers do not have a mechanism to opt out of Facebook’s collection of data from their websites when they have implemented Facebook’s social sharing tools and Facebook does not compensate publishers for the data it collects.

4.2 Interoperability constraints

Interoperability between Display and Video 360 Programmatic Guaranteed and third-party ad servers

‘Programmatic Guaranteed’ (PG) is a programmatic deal type that allows buyers to buy reserved inventory through programmatic channels by pushing orders directly into a publisher’s ad server. According to the Boston Consulting Group, PG is a fast-rising driver of the growth of programmatic advertising and was estimated to comprise 18% of total display and video programmatic in Australia.²

However, Google’s Display and Video 360 product does not integrate with third party ad servers – only Google’s Ad Manager.

Note that Programmatic Guaranteed deals require the following:

- Marketplace must be activated for your account.
- The publisher must use Google Ad Manager as their ad server.
- These deals can currently serve only the creative formats that are supported by Google Ad Manager. If your creative is rejected, learn more about how to [troubleshoot your rejected creative](#).

Source: <https://support.google.com/displayvideo/answer/7067656?hl=en>

With the market share held by Display and Video 360 and the revenue opportunity from PG, Google’s limiting of interoperability between Display and Video 360 PG and third-party ad servers provides a significant incentive for publishers to use Google Ad Manager.

Whilst limiting interoperability between Display and Video 360 PG and third-party ad servers is to the detriment of Google’s customers who may wish to transact via PG with publishers on third party ad servers, Google use interoperability as a mechanism to lock publishers into using their ad stack.

Interoperability between Google Ads and third-party header bidding technology

Header bidding is a technology that allows publishers to bring multiple ad exchanges into competition with one another and with their reserved campaigns to allocate an impression to the advertiser willing to pay the most. It was developed as technology to maximise yield for publisher’s and get around Google Ads’ [‘last look’ advantage](#) over other SSPs.

Unlike most SSPs or ad exchanges, Google’s own SSP does not integrate with any third-party header bidding technologies. Publishers who wish to access Google Ads demand—which as shown in the previous section is very significant—in a header bidding set up must implement Google’s own header bidding technology called ‘Exchange Bidding’.

² <https://www.bcg.com/en-au/publications/2018/guaranteed-opportunity-programmatic-advertising.aspx>

There is a significant movement from publishers to adopt open source header bidding technologies to create transparency around how bids and impressions are matched in the auction processes.

Prebid is an open source header bidding technology developed by AppNexus. It is the most widely used header bidding technology globally, a list of its members and integrated vendors can be found [here](#). All major SSPs, except Google's support the prebid open source initiative and integrate with Prebid.

Google has chosen not to make Google Ads interoperable with third party open source header bidding technologies to force publishers who want access to Google Ads to use their own header bidding technology. Exchange Bidding is not open source. If a publisher wishes to use Google Ads in a header bidding set-up they must accept a lack of transparency around how Google matches impressions to bids from all SSPs including their own SSP. It is therefore not possible to determine if Google is favouring its own business interests when using Exchange Bidding.

4.3 Cumulative impact reduces competition

Taken together, the examples of bundling and interoperability described in sections 4.1 and 4.2 above have the effect of locking buyers and publishers into Google's increasingly dominant ad stack. This further strengthens the ability for Google to preference their own services, reduce industry transparency and drive more revenue through their products as a gatekeeper intermediary that would otherwise go to publishers.

4.4 Unilateral imposition of standards and data permissions

The concentration of market power in the ad tech stack provides the opportunity for Google to impose technical standards and unilaterally make changes at any time. During the Digital Platforms Inquiry, Free TV raised the examples of the imposition of the Accelerated Mobile Pages (AMP) standard on the industry, in addition to changes to ad-filtering with the market leading Chrome browser.

4.4.1 Changes to third-party cookies

Google has recently announced plans to phase out support for third party cookies on Chrome. This will mean that publishers operating more than one domain will not be able to collect attributes from users with a single profile across all of their digital properties. This will make it harder for publishers who operate networks with multiple websites to build advanced audience segments that compete with Google's data.

Free TV understands that these changes have been made in the guise of improving privacy protection for consumers. Whether or not there will be a material increase in privacy afforded to consumers, what is clear is that these changes reinforce the role of Google as the gatekeeper of consumer data.

As we expand on in the next section, the activities of the digital platforms in reinforcing their extreme market power in relation to the accumulation and use of data is a key issue that should be examined through this inquiry.

4.4.2 Google Privacy Sandbox

In place of third-party cookies, Google is proposing to introduce a Privacy Sandbox that would replace cookies with APIs for advertisers to allow attribution and measurement. However, Google would perform the role of ultimate gatekeeper for this interaction.

Google is yet to share more information on how this Privacy Sandbox will operate. However, Free TV members are very concerned about the potential for these changes to reinforce the monopoly on data held by already dominant digital platforms. Further, yet again, Google will unilaterally be determining how these changes will be implemented and advertisers and publishers will have little other choice than to implement the required changes.

This is an issue because of the extent of Google's vertical integration, combined with its dominance at the horizontal level. Publishers and advertisers have no choice but to interface with the Google ad tech products and make the changes required to undertake measurement and attribution through the Chrome browser.

4.5 Accumulation of data – a feedback loop to market power

Relevant ACCC questions:

- Have any mergers or acquisitions provided suppliers with the ability to profitably raise prices or lower quality without losing customers, or made it more difficult for new companies to enter the market? If so, which ones?
- Has competition, or potential competition, in the supply of ad tech services been impacted by:
 - a) acquisitions of start-up companies
 - b) acquisitions of new technology
 - c) mergers or acquisitions between companies at different levels of the ad tech supply chain?

Free TV considers that a key issue for this inquiry is how the data that powers the ad tech stack is accumulated by the digital platforms. As discussed in earlier sections, Free TV is concerned about actions taken by digital platforms to limit access to data in the ad tech stack and the leveraging of their dominant positions to entrench their gatekeeper role.

There are two recent strategic acquisitions made by Google that highlight the ongoing consolidation of the sector. Notably, both transactions reinforce the role that Google has in relation to the collection and use of consumer data:

- Fitbit (\$2.1 billion) – itself a vertically integrated hardware, software and data company focussing on fitness wearables (ACCC assessment on this matter is pending);
- Nest – (\$3.2 billion) – another vertical hardware and software company focussed on home monitoring and automation, initially purchase in 2014, the full integration of Nest into the Google ecosystem was only completed last year.

The Fitbit transaction would give Google access to the data of the 28 million active Fitbit users in relation to their daily activities including exercise, sleep and location.³

As noted by the European Data Protection Board (EDPB):

The EDPB has noted the intention of Google LLC to acquire Fitbit, Inc.

There are concerns that the possible further combination and accumulation of sensitive personal data regarding people in Europe by a major tech company could entail a high level of risk to the fundamental rights to privacy and to the protection of personal data.⁴

Free TV notes that on top of significant privacy concerns raised by these transactions, such transactions can only lead to a lessening of competition. The performance of the ad tech stack in correctly matching the right advertising opportunity to the right audience at the right time is inextricably linked to data and specifically the size of the dataset. These transactions entrench Google's position at the heart of the ad tech stack.

In relation to Nest, the acquisition by Google led to the closure of the third-party integration program "Works with Nest", in favour of forcing integration with the existing Google Assistant product. This meant that products that previously were able to operate with other platforms, such as Amazon's Alexa voice assistant were no longer able to do so. This is a clear example of Google using a strategic acquisition and its market power in a manner which lessens competition in related markets (in this case a hardware market).

4.5.1 Ads Hubs – removing potential competing datasets

Free TV is concerned that Google is making changes to its products and services under the guise of privacy improvement, but with the real intention being to consolidate its monopoly position in respect of data collection.

A further example of this behaviour was Google's decision to remove the ability of advertisers and publishers to access log level data on their own users. These changes meant that rather than advertisers being able to receive and download useful data on their audience, they could only access data on how often an ad was served without the ability to link each impression to a user ID or cookie/device ID.

Instead of giving advertisers and publishers the ability to access this log level data, Google created "Ad Hubs" and "BigQuery" that ensured that only Google had access to the granular data. If advertisers and publishers want to access this data, it must be done within the Google ecosystem using Google's analysis tools. Again, these changes were made under the pretence of addressing privacy concerns, but Free TV is concerned that these changes were made primarily to ensure that Google remained the data gatekeeper and that there was no potential for competing datasets to be developed over time.

These changes do not appear to be addressing privacy concerns. The user data is still being collected, analysed and having value extracted for the benefit of a private company. The business changes made by Google merely ensure that only it has access to this data and can extract the value.

³ <https://techcrunch.com/2020/02/20/google-gobbling-fitbit-is-a-major-privacy-risk-warns-eu-data-protection-advisor/>

⁴

https://edpb.europa.eu/sites/edpb/files/files/file1/edpb_statement_2020_privacyimplicationsofmergers_en.pdf

A challenge for the ACCC through this process is to unpick the genuinely held privacy concerns, from strategic behaviour by monopoly providers with the only intention being to limit any competitive response. This is an issue for not only this inquiry, but as we expand on in subsequent sections of this submission, an issue for merger analyses.

5. Pricing transparency

Relevant ACCC questions:

- What information do you need to make informed decisions about how to sell your display advertising inventory?
- Do you have access to this information? If not, how does this impact your decision-making about how to sell your display advertising inventory?
- Who controls access to this information?
- Are you able to easily determine the price at which your inventory is sold and the difference between the sale price of your ad inventory and the revenue you receive?
- Can you easily compare the price and quality of services being offered by supply-side ad tech services providers? If not, what is preventing you from being able to make this comparison?
- How does the availability of pricing information affect your ability to maximise the profit generated from your ad inventory?

The lack of pricing transparency in the ad tech stack was a key concern raised during the Digital Platforms Inquiry. It remains a key concern for Free TV members.

Pricing transparency is required to enable participants in the supply chain to have the best information possible on the performance of intermediaries so that advertising spending is driven towards the most efficient providers. This would mean better value for advertisers, more money for publishers and less distortions with other forms of advertising in terms of CPM measures.

As noted in the ACCC's Final Report:

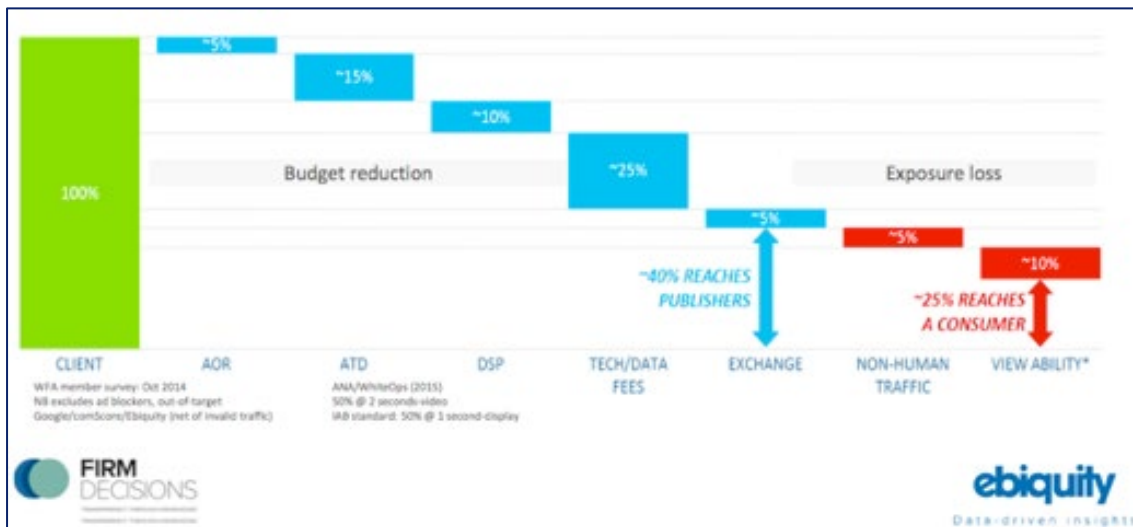
The lack of pricing transparency means that both advertisers and websites lack visibility and may not know what proportion of ad spend is consumed by ad tech services. As set out in the above estimates, between 20 to 75 per cent of advertiser expenditure is taken up by suppliers in the ad tech supply chain. The lack of transparency may assist suppliers of ad tech services generate excessive margins. The lack of transparency may also increase search costs for advertisers and websites in selecting ad tech providers, and contribute to participants in the display advertising market questioning the efficiency of the ad tech supply chain. (Page 153)

The ACCC remains of the view that the lack of pricing transparency regarding ad tech services is a significant issue for both advertisers and websites. This lack of transparency leads participants in the display advertising market to question the efficiency of the ad tech supply chain. In particular, they do not know what proportion of ad spend ad tech services are retaining across the ad tech supply chain. This may make it difficult for advertisers to optimise their spending decisions, leading to increased costs for advertisers. Websites may also be receiving less of the advertiser's dollar than they would if advertisers were more easily able to optimise spend. This lack of transparency also increases search costs for advertisers and websites in selecting ad tech providers, as they are not empowered to seek out more competitive deals. (Page 154)

5.1 No visibility across the supply chain

Free TV members strongly support the findings of the ACCC expressed above as they have very little visibility of pricing across the supply chain.

For example, when we sell an impression into an SSP, we have no visibility of what the advertiser client actually pays at the end of the complex ad tech waterfall. Our visibility of pricing is limited to knowing the fees that were paid on the sell side and the amount we received for the impression.



Source: Ebiquity

As Free TV explained in our initial submission and as the ACCC found in their Final Report, estimates of the cost of the ad tech stack between advertiser and publisher vary from between 20 to 75 per cent.

A more recent study by PWC highlighted that the average return to publishers was 51%.⁵ This detailed study also highlighted the significant challenges in trying to follow the money through the ad tech stack. Of particular note was the “unknown delta” of 15 per cent that PWC found in the ad tech stack waterfall. PWC auditors were unable to account for the loss of 15 per cent of the value between the funds reconciled as having been sent from the DSP and having been received by the SSP. PWC also noted significant other issues associated with data uniformity and permissions that we discuss later in this submission.

This study, and others like it, highlight that the current inefficiency of the ad tech stack is significant in economic terms for Australia.

This year, programmatic expenditure in Australia was forecast to increase to \$2.92 billion.⁶ This means that on a best-case scenario of the ad tech technologies only taking up 20 per cent of the expenditure, the payback to publishers would be \$2.34 billion. However, in the worst-case scenario, the return to publishers could be less than \$1 billion.

These are the extreme ends of estimates and clearly the actual returns will fall somewhere in the middle of these numbers. However, even if the benefits from achieving an efficient well-functioning ad tech stack were only half as extreme, the benefits to publishers of transparency driving prices towards the most efficient supplier would still approach \$1 billion annually.

This highlights the importance of getting pricing transparency right. This would enable participants to focus their expenditure on efficient service providers and ensure that advertisers are getting value for

⁵ <https://www.isba.org.uk/media/2424/executive-summary-programmatic-supply-chain-transparency-study.pdf>
⁶ <https://www.cmo.com.au/article/649878/report-two-thirds-digital-media-programmatic-2019/>

money and that publishers are receiving the returns they need to sustainably invest in Australian content.

5.2 No uniformity in data or permissions

Above we highlighted a significant piece of work undertaken by PWC to map out the ad tech supply chain and the associated costs of the various technologies. The experience of PWC in undertaking this work will be instructive for this ACCC inquiry process.

In summary, the key concerns in relation to data were:

- Contractual terms and conditions across all study participants were inconsistent, as were their interpretations; each study participant had different data definitions, taxonomies and signifiers, retention policies, etc.
- There is a lack of clarity and understanding over how parties share data and who needs to permission what, with up to four separate parties requested to confirm their approval over one data set for one part of one supply chain
- The data captured from a DSP for an impression is not equally captured on the sell side. Impression matching cannot easily be performed at campaign level due to missing information in datasets.⁷

These challenges meant that it took PWC more than a year to obtain the required data.

Even after the permission hurdles had been cleared, of the 267 million impressions served during the collection period, data quality issues meant that only 12 per cent of the impressions could be successfully matched through the supply chain. This is despite the fact that both advertisers and publishers had willingly agreed to take part in the study and have their supply chains mapped.

There is an urgent need to address these data constraints through this inquiry process. As PWC's findings highlight, the programmatic markets are so opaque that even when there are willing buyers and sellers opening up all of their transaction data and global experts in auditing undertaking the analysis, it is still almost impossible to determine where all the money is going.

5.3 What pricing information is required

The size of the challenge in providing better pricing information is well understood and has been reinforced by the PWC study described above. Other studies have reported that programmatic ad impressions can generate more than 100 data points, each with associated transactions across the supply chain.⁸ However, as demonstrated in the previous section, the economic benefit associated with providing better pricing information warrants the effort required to increase transactional transparency.

There are key points across the supply chain where granular transaction level data is required. These include:

- Agency trading desk fees;

⁷ <https://www.isba.org.uk/media/2424/executive-summary-programmatic-supply-chain-transparency-study.pdf>

⁸ <https://www.ebiquity.com/news-insights/blog/transparency-in-programmatic-lessons-from-the-demise-of-adfin/>

- DSP buy side fees;
- DSP sell side fees;
- Ad Exchange / SSP sell side fees;
- Ad Exchange / SSP buy side fees;
- Ad network fees;
- third party data fees; and
- Brand safety and verification fees.

In previous submissions, Free TV has raised the prospect of indices being produced for each of these levels that would disclose average prices for services provided by dominant providers in key sections of the ad-tech stack. While this information would be useful for regulators seeking a better understanding of gross margins and returns being earned in the key segments, this data is unlikely to be granular enough to help inform individual expenditure choices.

Accordingly, it is likely that the ultimate solution will be a form of transaction level receipting, as discussed in the next section.

6. Sustainable long-term solutions

6.1 Sole reliance on competition law inappropriate for ad tech enforcement

The ACCC's Digital Platforms Inquiry Final Report highlighted that the digital platforms enjoy significant power in their respective markets, but that competition law is only breached when this market power is used for an anti-competitive purpose.

Importantly for this inquiry process, the ACCC also noted that:

First, competition law is insufficient to deal with market failures that arise due to a lack of transparency or due to externalities in other markets. While section 46 of the CCA can address misuses of market power, it provides no basis for the ACCC to investigate issues stemming from a lack of transparency or from other market failures. A lack of transparency in these markets also means that potential breaches of section 46 may go undetected. (Page 139)

As highlighted throughout this submission, the ad tech stack is characterised by a lack of transparency, market dominance and externalities in the form of network effects from the collection and use of data.

In addition, Free TV has also noted that competition law can be very slow to address examples of anti-competitive conduct. For example, in June 2017, the European Commission announced that it had imposed a €2.42 billion fine on Google for abusing its dominance as a search engine by giving illegal advantage to its own comparison-shopping service.

In announcing that decision, the Commission stated:

*"From 2008, Google began to implement in European markets a fundamental change in strategy to push its comparison shopping service. This strategy relied on Google's dominance in general internet search, instead of competition on the merits in comparison shopping markets."*⁹

That it took nine years from the commencement of the conduct to the imposition of the penalty is illustrative of the issues with sole reliance on competition law to ensure that proper functioning of complex opaque markets, such as the ad tech stack.

Indeed, it might be the case that competition law is never breached in the ad tech stack, but that significant economic harm is still caused by inefficiencies created from a lack of pricing transparency alone.

In our view, there is ample justification for competition law to be supplemented by market rules that govern the conduct of the ad tech stack, as we expand on below.

6.2 Exchange rules

Free TV considers that there is already ample evidence of the digital platforms enforcing terms and conditions of service that limit interoperability with third party vendors and the bundling of services to exclude rivals. In addition, in this submission we have highlighted the potential costs to the economy associated with a lack of price transparency.

⁹ http://europa.eu/rapid/press-release_IP-17-1784_en.htm

Accordingly, we consider that a set of market rules should be established to sit alongside competition law to govern the conduct of the ad tech market. The proposal is not to replace or supplant the role of competition law, but rather establish a framework where economic efficiency can be maximised.

In effect, the ACCC ad-tech market conduct rules would be analogous to the ASX Operating Rules. As this document explains, Google's ad exchange is analogous to a stock market exchange.

The DoubleClick Ad Exchange

The DoubleClick Ad Exchange is a real-time marketplace to buy and sell display advertising space.

By establishing an open marketplace where prices are set in a real-time auction, the Ad Exchange enables display ads and ad space to be allocated much more efficiently and easily across the web. It's just like a stock exchange, which enables stocks to be traded in an open way.

Source: <https://static.googleusercontent.com/media/www.google.com/en/adexchange/AdExchangeOverview.pdf>

We consider that these market rules should include:

- Ad exchange provisions that govern how auction processes are to be conducted in a transparent and unbiased manner and that market makers clearly disclose how and when buy and sell orders will be matched (including auction mechanics and other aspects)
- Strong and effective protections that ensure interoperability with third party vendors and mechanisms to ensure that the platform cannot unduly incentivise or lock participants into using the platform's products or services as opposed to acting in the best interests of the participant's customers
- Effective mechanisms to ensure that no company can use its substantial market power in one market to extend or leverage that power into other markets to the detriment of competitors
- Industry participants must not favour their own advertising services or inventory by
 - Excluding rivals, or
 - Providing an undue advantage to their own services through rankings, access or other technical or commercial means
- Provisions that enable the pricing transparency model discussed below to operate.

These rules should be implemented under enabling legislation that for administrative efficiency could sit alongside the provisions that will establish the mandatory Code of Conduct between media businesses and digital platforms. The ad-tech market rules would be subject to 5-yearly reviews to ensure that the focus of regulation remained relevant as technology and the ad-tech market evolves.

Free TV submits that this process is far more efficient and effective than waiting for anti-competitive conduct to surface and be dealt with through the existing competition law provisions alone. As highlighted in our earlier submissions, while competition law would remain an enforcement option, sole reliance on it is not likely to maximise economic welfare.

6.3 Uniform data definitions and permissions

A key outcome from this inquiry needs to be a process for ensuring that terms and conditions for ad tech services include a standardised right of data access. As recommended by the PWC report, this

should be implemented in all contracts along the supply chain.¹⁰ Similarly, these standard terms and conditions need to ensure that there is uniformity in data definitions, taxonomies and other matters such as retention policies.

The market dominance of Google in the ad tech stack means that there is no realistic possibility of these negotiations and reforms taking place without Government and regulatory intervention. Accordingly, Free TV considers that a mechanism like market rules (as discussed above) or a mandatory ad tech code of conduct is required to achieve the efficiencies described in this submission.

6.4 Granular pricing information – open dashboards or receipting

As described in section 5.3, granular transaction level pricing information is needed to drive efficiencies through the ad tech stack. At a minimum, this should be enabled by reforms to ensure that data is stored uniformly and that simplified permissions are in place to enable publishers and advertisers to receive consistent log level data.

This log level data would enable publishers and their advertising partners to match impressions and audit their supply chains to determine where fees were going and seek out the most efficient providers.

Beyond this, there appear to be two models that should be further investigated to achieve near real time pricing transparency. The first is the model proposed by the Guardian through the Digital Platforms Inquiry process. This would involve the receipting of transactions through the supply chain to provide complete transparency on the intermediary pricing.

Free TV understands that concerns were raised regarding this model in terms of practicality and the reporting impost on smaller vendors that could potentially further concentrate the supply chain if the smaller players were to withdraw. Some of these concerns could be addressed by applying reporting turnover thresholds to ensure that only participants with material market presence were impacted by the requirement to log transactions. In terms of practicality, this inquiry should fully investigate this option and determine whether it is feasible, including whether any technological developments, such as blockchain, could assist in making this a workable proposition.

Alternatively, market participants with market share above a pre-determined threshold could be required to produce a public (with clients anonymised) version of their dashboards. The data required to be published in these dashboards would be set through the market rules (see above), but would include sufficient information that would ensure that their fees were public.

Free TV looks forward to working constructively with other stakeholders to develop models of pricing transparency through this process.

6.5 Role of data in merger decisions

The ACCC is at the forefront of the global thinking on the application of competition law to digital platforms. The Final Report made some recommendations to strengthen the ability of the ACCC to

¹⁰ <https://www.isba.org.uk/media/2424/executive-summary-programmatic-supply-chain-transparency-study.pdf>

assess merger applications involving the digital platforms by asking for advanced notice of any such transactions.

As part of this inquiry process and in the related 2020-2025 digital platform services inquiry, the ACCC should give further consideration to whether there are any further changes that need to be made to the *Competition and Consumer Act 2010* to ensure that accumulation of data can be considered in the context of the substantial lessening of competition test. This should include whether an additional mandatory factor is required specifically in regard to the acquisition of data.

Recent examples such as the Fitbit acquisition may highlight the challenges of traditional competition law in defining relevant markets when the primary concern of the transaction relates to the accumulation of data, rather than any competition concerns within the wearables market.¹¹ This issue clearly needs to be considered in a global anti-trust context, given the multinational nature of these transactions.

¹¹ Free TV notes that the provisional date for the announcement of the ACCC's finding on this matter is set for 11 June 2020