

6 May 2022

Australian Competition & Consumer Commission
Digital Platform Services Inquiry
23 Marcus Clarke Street
Canberra ACT 2601

via email: digitalmonitoring@acc.gov.au

Dear Sir/Madam

Digital Platform Services Inquiry: Small business dealings with digital platforms

Consumer dependence on platforms such as Google, UberEATS, and Facebook has made digital platforms (DPs) a fundamental element of many modern small business operations. As the Australian Government has actively encouraged digital transformation and small business investment in digitisation, it is important that small businesses are adequately supported by government in their dealings with DPs, particularly where any disputes arise.

The ability to widely connect online with a larger range of customers than ever before presents new and exciting opportunities for small business. As a result, and as the ACCC has already noted, many small businesses rely on a DP for the majority or entirety of their business operations, and any disruptions to their presence on a DP can dramatically impact their viability. The integration of small business and digital platforms has become a vulnerability for many small businesses, due in no small part to the lack of an effective dispute resolution process with many DPs. There is an extreme power imbalance in the relationship between small businesses and DP's, and the challenges faced by small businesses in attempting to defend their own interests in these circumstances is a defect in Australia's digital transformation landscape.

Types of disputes between small businesses and DPs

The Australian Small Business and Family Enterprise Ombudsman (ASBFEO) deals largely with 4 main types of disputes between small businesses and DPs:

- 1. Account blocking and hacking.** This includes the inability of small businesses to access their own DP accounts due to being hacked or having their access blocked by the platform itself.
- 2. Lack of appeal processes.** Small business' who receive a decision against them by a DP often have no recourse for action, even when that decision has not been made in line with the DPs own operating standards.
- 3. Fraudulent misrepresentation.** This occurs where other operators fraudulently misrepresent themselves either by mimicking Australian small businesses online with an aim of hijacking the trade, or by misrepresenting their own trade by selling faulty goods/services.
- 4. Fake review campaigns.** We see many examples of orchestrated campaigns targeting small businesses with fake negative reviews designed to damage reputations.

The common element across all categories of dispute type is a lack of ability to effectively communicate with digital platforms to engage in an appropriate dispute resolution process.

Commonly, communication with DPs is automated, and it is difficult to discuss the matter directly with representatives of the platform. In addition, DPs often lack useful appeal processes, and where a platform makes a decision, there is also a lack of internal review options available. Whilst ASBFEO has had success advocating for small business in this space by using existing interpersonal networks developed with certain DPs, it would be useful to formalise these avenues as a 'back stop' when initial dispute resolution efforts between small businesses and DPs are unsuccessful. Ensuring DPs establish and maintain robust and transparent internal dispute resolution processes for small businesses would enable ASBFEO or another appropriate entity to become an avenue for final escalation and alternative dispute resolution. As very few dispute resolution processes or support mechanisms are currently available directly to small businesses when issues arise with DP's, minor problems are often amplified into major, extremely business limiting problems.

Small businesses need timely, effective dispute resolution processes with DPs to maintain all the benefits associated with integrating their business models with DPs, as well as their own critical cyber security which allows them to flourish and grow as a business.

How ASBFEO interacts with small businesses and DPs

By way of background, ASBFEO has four modes of contact by which small business can seek assistance in dispute resolution with DPs:

1. A telephone information line (Infoline) to connect small businesses directly to specialised agents who can provide further information on dispute resolution pathways.
2. A direct telephone line answered by our head office.
3. Webforms submitted to our Office are allocated to specialised case managers to provide individually tailored support for the small business about dispute resolution.
4. Direct email inbox addresses available to the public listed on our website.

Since ASBFEO's establishment in 2015 until mid-2021 we have had at least 186 DP cases raised with our Office via our online webform. We received just 4 enquiries related to DP dispute resolution in 2016 and this has increased by approximately 300%, 156%, 15%, 4%, 6%, each respective year until 2021. While we do not delineate the specific issue of each call received by the Infoline, anecdotally the proportion of enquiries related to DP dispute resolution reflects the proportion received via webform, and seems to be averaging out at a 5% increase each year. Given this, we estimate the total volume of contacts regarding digital platforms to be more than 500.

Of these, the greatest proportion of disputes related to DPs focussed on account access issues (41%), and 24% of contacts related to the terms and conditions of the DP. This category included concerns about automatic roll-over subscriptions, and disagreements with decisions made about customer refunds, or the DP's refund policy more broadly. Payment and service fee concerns and disputes constitute 17% of enquiries.

Account blocking and hacking

ASBFEO understands the size of a DP positively correlates with two things:

1. The likelihood a small business will use only one DP as the foundation for its business.
2. The likelihood a DP will use an automated dispute resolution platform that fails to meet the timeliness needs of a small business.

As noted above and in the ACCC's discussion paper, small businesses often rely on DPs for the survival of their business. It is therefore imperative that any disruption to a small business' DP account access is minimised.

Case study

ASBFEO successfully advocated for account restoration for a young social media-based sole-trader whose Instagram business account was hacked by a bitcoin scam account claiming it would return the account for payment. In order to contact Instagram directly to have her account restored to her ownership, Instagram requires in-account communication, which she was unable to provide. The complainant contacted ASBFEO regarding the matter, and once ASBFEO wrote to our contacts at Meta (the parent company of Instagram) to seek assistance with the issue, they provided the complainant with access to her account again. We have since received further information about the processes that Instagram users can follow to resolve this kind of dispute, as well as specific contact details for any further disputes or enquiries ASBFEO may need to raise.

Our experience with Meta has demonstrated a typical 7-day timeline for resolving account access issues, which may seem timely for an individual user, but can be incredibly damaging to those relying on Facebook or Instagram for the entirety of their trade. Given the size of these businesses, and the nature of social media where regularity of posting content is imperative, a weeks' worth of lost business activity often has a substantial recovery period and may cause irreparable damage.

ASBFEO has had some success in negotiating these disputes by engaging with contacts at DPs who were able to provide adequate support and immediate assistance. However, the current structure of DPs makes it far too difficult for small businesses to contact a representative of a DP who is able to remedy the dispute in a timely and effective manner. While ASBFEO can, and does, solve these issues effectively and with regularity, it would be more appropriate to amend the regulatory environment in which DPs operate so that they provide standardised and accessible dispute resolution processes in-house. Doing this would allow the Ombudsman to operate as an escalation point for more complex matters requiring an external and independent perspective.

Lack of appeal processes

Often when a small business has a decision made against them by a DP there is no avenue for recourse. ASBFEO has had some success in advocating for small business encountering these roadblocks. Typically, ASBFEO informally contacts the DP seeking appeal or resolution on behalf of the small business. Ensuring DPs provide a support line for small business would help alleviate damage done to small businesses through these sometimes incorrect, but often very damaging decisions, and make room for ASBFEO to assist in escalated matters.

Case study

ASBFEO received correspondence from a courier driver who applied to Amazon to become a delivery driver for Amazon Flex. After submitting his application, the complainant was informed that he had failed the background check and therefore his application was unsuccessful. The complainant sought feedback from Amazon about why he had failed the background check but was denied an explanation. Our Office informally contacted Amazon about the matter. Amazon agreed to review the application and have informed us that a manual adjudication error had occurred. Amazon has since determined that the complainant should have passed the eligibility checks and the complainant has now been approved and deemed eligible to commence driving for Amazon Flex.

If small business operators were simply able to speak to a representative of the DP, or engage directly with a representative of a DP outside of an 'automated response loop', they may be able to resolve these disputes themselves, without the assistance of ASBFEO. ASBFEO remains well-placed to assist in these disputes however, DPs should build these processes into their standard business models and allow small businesses to seek direct dispute resolution as this is usually faster and more cost-effective. Introducing a small business telephone line where small business can contact DP representatives would go a long way to alleviating the stress small businesses face when trying to

rectify a DP's incorrect or uninformed decision and would allow ASBFEO to function as an additional level of dispute resolution recourse.

Fraudulent misrepresentation

Fraudulent misrepresentation takes two main forms:

1. Scammers or fraudsters hijacking accounts or impersonating accounts in order to steal business or damage reputation.
2. The fraudulent sale of goods or services that do not meet their described attributes or values.

While DPs provide a massive platform for small business, they also provide an operating space for scammers and fraudsters who can take advantage of businesses relying on DPs. For example, it is not uncommon to see scammers start social media accounts imitating small businesses to elicit money or trade from customers, or to damage the reputation of the business itself. Motivations for these actions range from malicious personal attacks to commercial decisions adopted by rogue traders. Although legal or policing avenues are commonly pursued to resolve conflicts driven by malicious personal motivators, ASBFEO believes that it would be beneficial for DPs to bolster their scam reporting mechanisms by allowing for direct contact with an in-country person for escalated dispute resolution involving business accounts.

ASBFEO has also dealt with small businesses purchasing goods via online retail, who then receive substandard goods not fit-for-purpose, differing from those advertised. At times this may be a case of misunderstanding advertising or descriptions of goods/services, however fraudulent misrepresentation refers to advertising or claims specifically designed to be misleading. While these circumstances are also covered by Australian Consumer Law, there is room for DPs to moderate accounts of those consistently engaging in misrepresentation and to strengthen dispute resolution processes within DPs.

Fake review campaigns

It is generally understood that online reviews are an increasingly important aspect of a business' marketing, and that the platforming of these reviews may present a significant vulnerability for the small businesses who rely on accurate reflections of their product. The ACCC discussion paper notes that *"consumers are increasingly relying on reviews to decide what products to use or purchase online,"*¹ highlighting a survey which expressed *"that 38% of business owners reported an experience of an untrue negative review posted on their listings and 33% reported a competitor had left a negative review on their listings"*².

False and potentially defamatory reviews can have significant negative impacts on both the financial viability of a business, as well as the mental health of a business owner. Negative reviews of a small business (particularly fake reviews) damage the reputation of the small business owners within the community to which their business is tied, and small business owners experience a strong link between their identity and their business.

ASBFEO has dealt with complaints regarding harmful, potentially damaging fake reviews left on digital platforms, which has been exacerbated by the pandemic. The Ombudsman has received multiple complaints regarding fake review campaigns targeting businesses seeking to comply with public health orders, including Covid-19 restrictions and mask mandates. Whilst the ombudsman appreciates recent actions some DPs have taken employing algorithms that recognise unusual

¹ ACCC. February 2022. Digital Platform Services Inquiry, *Discussion Paper for Interim Report No. 5: Updating competition and consumer law for digital platform services*. p51.

² Ibid. p52.

patterns in reviews and removing these without the need for business owners to lodge formal complaints, there remains more work to be done in this space.

DPs profiting from Australian small business engagement should carry initial responsibility for resolving disputes centred around fake reviews, as they hold the key to algorithms identifying activity types. However, to resolve these issues effectively, action needs to be taken as quickly as possible. The longer fake reviews remain online, the more people are potentially influenced away from a particular small business.

To this extent we support the passing of the *Social Media (Anti-Trolling) Bill 2022* – with the key caveat being that the complaints scheme is strengthened to ensure social media providers react swiftly to events which impact the viability of Australian small businesses. For further detail on this please see our submissions to the *Social Media (Anti-Trolling) Bill 2022*,³ and to the Select Committee on Social Media and Online Safety⁴.

Recommendations

The Australian Government has increasingly advocated for small business to embrace the opportunities afforded by digital transformation, particularly since the outbreak of the Covid-19 Pandemic. Given the Australian Government's position and advocacy on the matter is imperative that the Government supports an environment where business can succeed with a digital-only model. Given this, the Ombudsman recommends:

- 1. Minimum standards of dispute resolution.** The first step to resolving disputes should be via a local, in-country, escalation point within the DP. Given DPs profit massively from small businesses engaging with their platforms, and many small businesses often rely on DPs for the entirety of their business, there is a clear power asymmetry in this relationship. It is not onerous or unreasonable for DPs to assist in rebalancing this relationship with adequate and appropriate escalation contact points built into their standard operating model dedicated to dispute resolution for any business account holder. ASBFEO would encourage any measure that ensures small businesses have access to a representative from DPs in Australia.

To formalise this, the Australian Government should create guidance on the responsibilities of DPs on what constitutes an effective dispute resolution mechanism and make this an enforceable standard for all sizeable DPs. This is an important step in ensuring disputes are solved in a timely and effective manner and that ASBFEO is allowed to continue to operate as an appropriate escalation point for disputes unsuccessfully resolved through standard internal dispute resolution processes.

- 2. Guide to review platform administration.** More enforceable guidelines relating to platforms that host reviews or products, services, and businesses from the public are needed. To this end, we support the passing of the *Social Media (Anti-Trolling) Bill 2022*,⁵ with the caveat that the complaints mechanism be strengthened to include a timeliness aspect to remove unfounded and potentially defamatory reviews.
- 3. Targeted Small Business Federal Circuit Court List.** ASBFEO has previously advocated for the formation of a Federal Small Business Claims List as part of the Federal Circuit Court of Australia to provide affordable and determinative dispute resolution services to allow small businesses to defend their own economic interests. Small businesses are currently in no

³ Australian Small Business and Family Enterprise Ombudsman. 25 February 2022. Submission to the Social Media (Anti-Trolling) Bill 2022 Inquiry.

⁴ Australian Small Business and Family Enterprise Ombudsman. 23 December 2021. Submission to the Inquiry into Social Media and Online Safety.

⁵ Australian Small Business and Family Enterprise Ombudsman. 25 February 2022. Submission to the Social Media (Anti-Trolling) Bill 2022 Inquiry.

position to bring proceedings against large multi-national DPs, or indeed other actors engaging in fraudulent misrepresentation. Facilitating greater access to justice would remove an impediment to the success of the small business sector in Australia.

While ASBFEO will continue to aid, assist, and advocate for small business in Australia, small and family business owners should be encouraged and supported to defend their own economic interests and attempt to resolve disputes directly prior to seeking third-party assistance. An appropriate and transparent dispute resolution framework for DPs would allow this to occur.

ASBFEO appreciates the work the ACCC is doing in this space and looks forward to contributing further to a better digital environment for small business operating in Australia.

Thank you for the opportunity to comment. If you would like to discuss this matter further, please contact Mrs. Atia Sadiqzai on 02 5114 6116 or at atia.sadiqzai@asbfeo.gov.au.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Bruce Billson', written in a cursive style.

The Hon. Bruce Billson
Australian Small Business and Family Enterprise Ombudsman