

Submission to

**ACCC: Digital Advertising Services Inquiry
Interim Report**

on behalf of

The Media Federation of Australia



12 March 2021

The Media Federation of Australia welcomes the opportunity to make a submission on the ACCC's Interim Report on the Digital Advertising Services Inquiry.

Executive Summary

The MFA welcomes the ACCC's preliminary view that further government regulation of ad agencies is not required at this time.

The MFA supports the preliminary conclusion of the ACCC that many potential issues relating to ad agency services may be mitigated by advertisers closely reviewing contract terms including audit rights and performance obligations, shopping around for the agency that best fits their needs and exercising contractual audit rights.

The MFA supports the ACCC's focus on enabling advertisers to better inform themselves on the details of services to be provided and the costs, any incentives offered, agency fees; and any related service providers, before entering into contracts with ad agencies.

Consistent with the ACCC's objectives, the MFA has in recent years focused on assisting advertisers to understand the digital marketing services that ad agencies offer in response to advertisers need for more transparency and accountability. We are responding to the ACCC's Interim Report by taking a more proactive approach to instilling best practice standards that increase transparency for advertisers and further empower their ability to make informed choices on agencies and services.

- **In June 2020, updated Australian Digital Advertising Practices (ADAPs) were rolled out, a cross-industry initiative by the MFA, AANA and IAB. The 2020 version reflects technical, market and regulatory updates, as well as an expanded section on consumer privacy and continues the MFA's role in guiding best practice and educating advertisers to better equip themselves to make informed choices in regard to digital advertising and services.**

- This year, the MFA and the IAB will be rolling out a free ADAPs e-learning program and proof of knowledge certificate, to ensure the best practice standards are embedded across the industry. MFA members have committed that all relevant staff will undertake the necessary training and complete the proof of knowledge certificate.
- In March 2021, the MFA updated its 2015 Transparency Framework for Agencies and Advertisers, to reflect the higher standards that advertisers require to make informed decisions in choosing an ad agency and developing digital marketing campaigns. The MFA will be launching the 2021 MFA Transparency Framework for Agencies and Advertisers at a member briefing in March 2021.
- We outlined industry initiatives to improve transparency and accountability to advertisers in our previous submission and provide updated details in this submission. We have also attached the updated 2021 MFA Transparency Framework and Australian Digital Advertising Practices for your information. We would be pleased to discuss these initiatives in detail to see if there is further scope for improvement in standards, compliance and training.
- The MFA supports the ACCC's view that advertisers should exercise their rights to review and audit contracts and employ consultants to assist with agency procurement and contract negotiations. We noted in our previous submission that these disciplines are prevalent in the Australian market, particularly in the case of larger advertisers. In our members' experience, advertisers are hard bargainers and know the strength of their market power over the ad agencies competing for their business. In our view, disciplines such as frequent re-contracting have added to the competitive tension between ad agencies but are the reality of a highly competitive market where advertisers seek value for money. In March 2021, the Successful Agency Pitching Guide, an MFA and AANA collaboration to establish best practice standards and educate Advertisers, will be released.

1. About the Media Federation of Australia

The Media Federation of Australia (MFA) represents media communication agencies providing services to advertisers across all media channels, including media planning and buying, proprietary systems and tools, data and analytics, and content development. The MFA's members include the local offices of all the major media agency networks, as well as Australian independent agencies. Our members account for over 90 percent of all media billings placed by media agencies in Australia. The MFA's charter is to represent and advocate for the industry; set best practice standards and guidelines; and provide skills and best practice training for members.

The MFA's submission focuses on Chapter 7 of the Interim Report, which deals with ad agencies, as defined by the ACCC as services supplied to advertisers relating to the purchase of digital display advertising services. We add relevant context by outlining transparency and accountability measures that the MFA has developed with advertiser groups and implemented across its members.

2. Ad agencies in the ad tech supply chain (7.1)

Competition in ad agency services

The MFA provided a detailed profile of the media communications industry and its key attributes and practices in our submission to the ACCC Ad Tech Inquiry Issues Paper. We hope that this information and the individual MFA member agency submissions have contributed to furthering the ACCC's understanding of the sector and its role in the Ad Tech supply chain.

The MFA appreciates the ACCC's recognition that competition for ad agency services has intensified over time, due to a range of factors including:

- The high and increasing volume of companies, including new entrants such as global consulting firms;
- The increasing presence of digital platforms which offer self-service products to advertisers;
- Low barriers to entry for digital ad services;
- In-housing of ad and media services and bypassing of ad agencies through direct contracting with publishers and ad tech providers, including through self-service digital ad products; and
- Increased scrutiny of ad agencies operations in Australia and other markets by advertisers, advertising industry representative groups, and most recently the ACCC in its Digital Platforms Inquiry and the current inquiry.

As we identified in the MFA's submission to the ACCC's Ad Tech Inquiry's Issues Paper, there has been increasing demands by advertisers for more transparency and accountability on pricing and contract terms for digital marketing. Over recent years, the MFA has worked with advertiser groups to better inform advertisers and to develop and implement best practice standards for ad agencies. The MFA has accelerated its Transparency Agenda in response to the ACCC's Digital Platforms Inquiry report and it remains an ongoing high priority for the MFA.

The ACCC's Interim Report has called for advertisers to educate themselves on their contractual rights, and the empowerment of advertisers through seeking information on ad tech services provided by ad agencies and exercising their contractual rights to ensure contracts achieve their objectives. The MFA fully supports this interim recommendation and is strengthening its Transparency Agenda and Digital Advertising Practices, both developed with advertiser groups, to ensure that the industry plays its role in advertiser education to better equip advertisers to make informed choices on digital services.

3. Potential conflicts of interest and transparency (Chapter 7.2.1)

Rebates, discounts and other incentives

The MFA notes the ACCC's discussion in the Interim Report on potential conflicts of interest and in particular, the ACCC's view that potential conflicts may arise over discounts and rebates offered by publishers if agencies reach certain spending levels.

In its Interim Report, the ACCC said that where agencies purchase ad inventory as a 'principal' this could provide benefits such as volume discounts that can ultimately be passed onto advertisers. In the MFA's submission to the Issues Paper, we emphasised that advertisers appoint agencies as independent contractors, not as agents, for the provision of media services. As independent contractors, agencies bear the initial cost and the full financial risk for media that is purchased in preparation for the delivery of media services to advertiser clients. Agencies pay media vendors and seek future reimbursement, consistent with the contractual arrangements and the legal relationship between agency and advertiser.

While recognising the benefits that advertisers can gain, such as passed-through volume discounts, the ACCC says that it is considering whether an agency purchasing as principal may give rise to agencies having the ability to engage in conduct which may not be in the best interests of advertisers. The Interim Report mentions disclosure on rebate and discounts and whether rebates are passed onto advertisers. We would welcome clarification and discussion on any concerns.

The disclosure of rebates is included in the MFA's Transparency Framework for Agencies and Advertisers, which was endorsed by the Australian Association of National Advertisers (AANA) in November 2015 and signed onto by all MFA members, and states in relation to rebates that:

The Agency or the Agency Holding Company discloses any rebates that it receives in relation to their Australian business tied to a client's media spend (volume or share), in accordance with the clients' contract. Rebates are defined as compensation (cash or value) awarded to media agencies by media owners for placing media buys with them.

While the treatment of rebates, discounts and incentives is a matter for individual agencies and their advertiser clients. The MFA and AANA have focused on disclosure to advertisers in contracts. The MFA understands that in practice most ad agencies pass on rebates to their clients. All MFA members have endorsed the MFA Transparency Framework, with the treatment of any rebates and other discounts explicitly captured in the contractual arrangements between advertisers and agencies.

The MFA believes that intense competition for advertiser business and the increased transparency demanded by advertisers, combined with disclosure driven by the MFA's Transparency Agenda, is working in the advertiser's interests. Consistent with the ACCC's view, the MFA recognises that more can be done to ensure that advertisers are educated on their rights and ability to insist on full disclosure in contracts. This priority is included in the 2020 update of the Australian Digital Advertising Practices and is given greater emphasis in the upcoming 2021 version of the MFA's Transparency Framework. The MFA's attention in 2021 will be firmly on compliance, training within our industry, and playing a more proactive role in advertiser education.

Diversity of functions

Ad agencies operate in a highly competitive market, with a large volume and diverse range of agencies, service offerings and specialisations. The increasing diversification of agency services has led to greater customisation for each advertiser, and potentially driven more effective outcomes for advertisers.

The ACCC's Interim Report suggests that benefits as well as potential conflicts of interest could arise where agencies or holding groups offer a diverse range of services. The MFA is not aware of any concerns in relation to the diversity of services offered by ad agencies including trading desks and data services. Individual agencies may consider commenting. The MFA notes that disclosure to advertisers is included in the updated MFA Transparency Framework to guide advertisers on the questions they should ask of ad agencies prior to contracting to ensure they can make informed choices on their choice of agency and digital marketing services. In relation to agency services, the updated framework states that:

Policies regarding the use or recommended use of self-owned ad tech services should be explicit in the client contract and followed according to the contract.

Advertisers should be aware of all relevant commercial relationships that the Agency or the Agency Holding Company has to deliver the required services to the Advertiser, and the nature of the relationship, via the client contract.

4. Price and performance transparency in the supply of ad agency services (7.2.2.)

In its Interim Report, the ACCC states that any conflicts of interest may be less problematic if advertisers are aware of the fact that a conflict of interest exists; able to monitor the actions of ad agencies and assess if the agency is purchasing ad inventory in their best interests, and able to switch to a better provider if an agency is not acting in their best interests.

Further, the ACCC states that advertisers' ability to access ad agency pricing and performance can significantly counteract any risks of harm that arises from an agency's conflicts of interest. It refers to agency contracts typically containing audit rights and that the submission by large agencies that they provide advertisers with a large amount of information on campaign performance and various fees are often itemised by cost component. The right to information access is included in the updated MFA Transparency Framework for Agencies and Advertisers, which states:

The MFA and its members believe Advertisers should have access to information about all parts of the supply chain regarding advertising spend deployment. This right to information access includes the right to engage reputable, independent third parties to audit agencies' advertising spend deployment, in accordance with their client contract.

In addition, the ACCC notes that some large advertisers have provided confidential information to the Ad Tech Inquiry that indicated their satisfaction with the performance and fee information they receive from their agencies, and that their agencies act in their best interests, and that audits have not revealed significant issues.

The MFA welcomes this advertiser feedback and notes that the ACCC is seeking the views of medium and smaller advertisers to finalise its view. We also welcome the ACCC's view on countering any potential conflicts of interests through granular information on fees and performance, and access to audit rights.

The MFA notes the discussion in the Interim Report on agency fee models, which the MFA and some member agencies outlined in our submissions to the Issues Paper to assist the ACCC's understanding of industry practices. The MFA believes that ad agencies have

responded to the increasing demand from advertisers for transparency on costs and other relevant information on digital campaigns.

5. Industry initiatives to improve transparency and accountability

As outlined in the MFA's submission to the ACCC's Ad Tech Inquiry Issues Paper, we recognise that many advertisers lack a good understanding of digital marketing – as compared to more traditional media channels such as TV and Radio. This has contributed to the growth in media agency businesses that do understand digital and can innovate in a competitive, dynamic market. However, some advertisers may find it harder to understand precisely where their money is spent and how each component contributes to the overall campaign delivery due to this increasing complexity of services and the range of intermediaries in the ad tech supply chain. The MFA's Transparency Agenda sets out to deal with those concerns, by providing a program of digital marketing transparency aids and activities. This agenda is an ongoing high priority for us, and our members and we continue to focus on three key areas:

- Establishing robust frameworks on transparency and digital advertising practices
- Embedding best practice across our members and their advertiser clients, equipping them with the tools and training to fully comply
- Implementing measures to ensure compliance

As we have demonstrated through the ADAPs and MFA Transparency Framework and the recent updates to these bodies of work, we continue to work cooperatively with the Australian Association of National Advertisers (AANA), the peak body for advertisers as well as the IAB, to develop and implement initiatives that set best practice industry standards, educate advertisers and agencies and improve transparency. In particular, we have worked closely with the AANA in educating advertisers to make sure that before contracting for services they are aware of the role of any intermediaries in delivering marketing services, the value of these services and agency affiliate relationships. We have summarised the key initiatives below and provided an update on the work conducted over the last 12 months since our submission to the ACCC's Ad Tech Inquiry Issues Paper.

MFA Transparency Framework for Agencies and Advertisers

In 2015, the MFA commissioned PwC to report into media agency transparency, which identified the key issues of interest for advertisers, the drivers and suggested solutions.

This report culminated in the MFA Transparency Framework, signed onto by all members, and endorsed by the AANA, which set expectations for Agencies and Advertisers in the identified key issue areas for advertisers.

The MFA has worked with members to update the 2015 MFA Transparency Framework to reflect progress and the emergence of new issues identified in the ACCC Ad Tech Inquiry Issues Paper and Interim Reports, i.e., ‘the availability of information and pricing transparency’. The 2021 iteration of the MFA Transparency Framework for Agencies and Advertisers moves to a principles approach to accommodate the dynamic nature of the advertising industry and particularly the digital supply chain. The new approach sets out to enhance the availability of clear and relevant information to Advertisers and ensure that Agencies and Advertisers are aware of their rights and responsibilities.

The four principles of Transparency for Agencies and Advertisers to follow are:

- Disclosure
- Education
- Accountability
- Sustainable Contracts

The 2021 MFA Transparency Framework has been signed up to by the MFA board of directors and positive discussions with the AANA for their endorsement are underway. All MFA member agencies are being briefed on the updated MFA Transparency Framework at a member briefing in March 2021. A confidential draft of the 2021 MFA Transparency Framework for Agencies and Advertisers is attached to this submission.

MFA, AANA, IAB Australian Digital Advertising Practices

In July 2018, the MFA, AANA and IAB jointly published the Australian Digital Advertising Practices (ADAPs), an unprecedented initiative to increase knowledge and understanding of the digital value chain. Whilst developed for the advertiser, they also serve to educate and inform all players within the digital ecosystem, including agencies, publishers and ad tech vendors.

The practices focus on 4 key pillars; Digital Value Chain, Viewability, Ad Fraud/Brand Safety and Data Transparency and 5 principles; champion the consumer experience; educate to inspire change; shared ownership and responsibility; every value chain is unique, and; fair value for outcomes delivered.

In June 2020 an updated version of ADAPs was released, developed by a cross-industry team of advertisers, media agencies and digital publishers, assisted by a broader network of subject matter experts. The 2020 version is a comprehensive update reflecting technical, market and regulatory updates, as well as an expanded section on consumer privacy and continues the MFA’s role in guiding best practice and educating advertisers to better equip themselves to make informed choices in regard to digital advertising and services.

The practices are used locally by MFA members to educate their staff and clients and have been conveyed to over 60% of MFA agency employees through the MFA Digital Foundations Certification training program and have been shared and used globally within our member agency networks.

This year, our focus is on embedding the ADAPs best practice standards across the industry. The AANA have recently run a pilot marketer ADAPs workshop and the MFA and IAB will be rolling out a free ADAPs e-learning program and proof of knowledge certificate. MFA members have committed that all relevant staff will undertake the necessary training and complete the proof of knowledge certificate.

A copy of the 2021 Australian Digital Advertising Practices can be found at http://www.mediafederation.org.au/images/Files/ADAP/Australian-Digital-Advertising-Practices_2020-FINAL.pdf

The MFA Digital Foundations Certification Training Program

The MFA believes that a consistent, industry standard level of foundation digital knowledge is a requirement for everyone working in media. The MFA Digital Foundations Certification Training program is an Australian industry recognised program that sets a benchmark for what constitutes basic digital proficiency, including an understanding of the digital marketing landscape, digital marketing services, terminology, trading models and the evaluation and measurement methods. All MFA member agency staff with less than 2 years’ experience are required to complete this comprehensive, 12 week e-learning program and sit the two certification exams. 63% of the MFA industry population have completed certification and gained the necessary foundation digital knowledge since the 2017 program launch.

In February 2019, to grow Advertisers and all players understanding of digital marketing, the MFA provided access to the MFA Digital Foundations Certification Training program to non-members including Advertisers and digital marketing suppliers.

The AANA media contract template

The MFA worked with the AANA over an 18-month period in providing input and feedback on the AANA's revised media contract template released in August 2019 and assisting to create the accompanying Guidance Notes. Our aim has been to ensure a practical and workable tool that is mutually beneficial for both Advertisers and Agencies and advocates for transparency and identifying value in the supply chain.

The MFA recognises that some of the issues of opacity as they pertain to media agencies, can and should be addressed in the contract between an Advertiser and Agency and that transparency and disclosure to Advertisers should form part of an Agency's contractual obligations, should this be what both parties intend.

AANA MFA Successful Agency Pitching Guide

As identified in the MFA's submission to the ACCC's Ad Tech Inquiry Issues Paper, tendering is an established practice in the marketing industry for Advertisers to review their agency relationships and ensure they have the best strategies, ideas, capabilities and prices to meet their needs. A successful tender is a key factor in maintaining effective client-agency relationships that produce the outcomes the Advertiser is seeking and negotiating the media agency contract.

As part of the MFA's Transparency Agenda, and the need to establish best practice standards and education, the AANA and MFA have jointly developed the Successful Agency Pitching Guide, to establish a best practice standard for industry tendering. The Successful Agency Pitching Guide establishes the principles and guidelines for successful agency tendering developed by a cross-industry team of Advertisers and Media Agencies as well as consultation from Industry Pitch Consultants. Developed for Advertisers, it also serves to educate all players and includes a toolkit of resources and clear practical steps to follow. The AANA and the MFA are rolling out the Successful Agency Pitching Guide on March 30, 2021.

Thank you for the opportunity to put forward our views on the Interim Report. We would be pleased to provide further details and clarification.



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