



# Digital platforms and competition in Australia

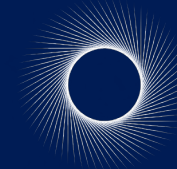
*Background paper*

JULY 2025

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Note: All dollar figures are Australian dollars unless indicated otherwise.

# Executive summary



Digital platforms are drivers of productivity and innovation

- **Tech sector labour productivity has grown 38%** since 2007, far outpacing the national average of 14%
- By increasing tech adoption across small, medium and large businesses, digital platforms have **transformed industries and driven innovation across** the economy
- Australia's overall productivity has reached a 60-year low, making **tech sector growth and increased tech adoption critical**

Treasury has proposed a new ex ante digital competition regime

- The proposal sets **upfront rules for designated platforms** without requiring evidence of harm
- The proposal outlines **six areas which these rules would target**, including interoperability requirements
- This would mark a **departure from Australia's current framework** which has prioritised **evidence-based assessment of harms**

International markets are adopting varied approaches to ex ante

- Some countries and regions (the EU in particular) have **implemented ex ante** measures for digital markets
- Others appear to be taking a **'wait and see' approach** to ex ante, while some like the US see it as an unnecessary risk to innovation and investment
- The implementation of the EU's *Digital Markets Act* has seen **implementation challenges**, with **negative consequences** for consumers and the economy

Government must weigh up the potential impacts of ex ante regulation

- There are no free lunches. Ex ante obligations targeting **interoperability could require platforms to provide largely unfettered access** to third parties, posing risks for privacy, safety and innovation
- There is emerging evidence that **incentives for AI innovation have been distorted** by ex ante obligations in the EU
- Regulatory frameworks must weigh up these challenges and **remain adaptable to emerging technologies**



1

**Digital platforms are driving productivity and innovation across the Australian economy**

2

Some countries have adopted ex ante regimes for digital platforms, while others are adopting a 'wait and see' approach

3

Regulators should carefully measure the potential consequences of ex ante regimes and other regulatory reform options

# Productivity is critical to Australia's prosperity, contributing 80 per cent of the growth in real GDP per person over 40 years

**Productivity is the largest contributor to rising living standards.** Higher productivity means higher wages, lower inflation, and a lower cost of living.

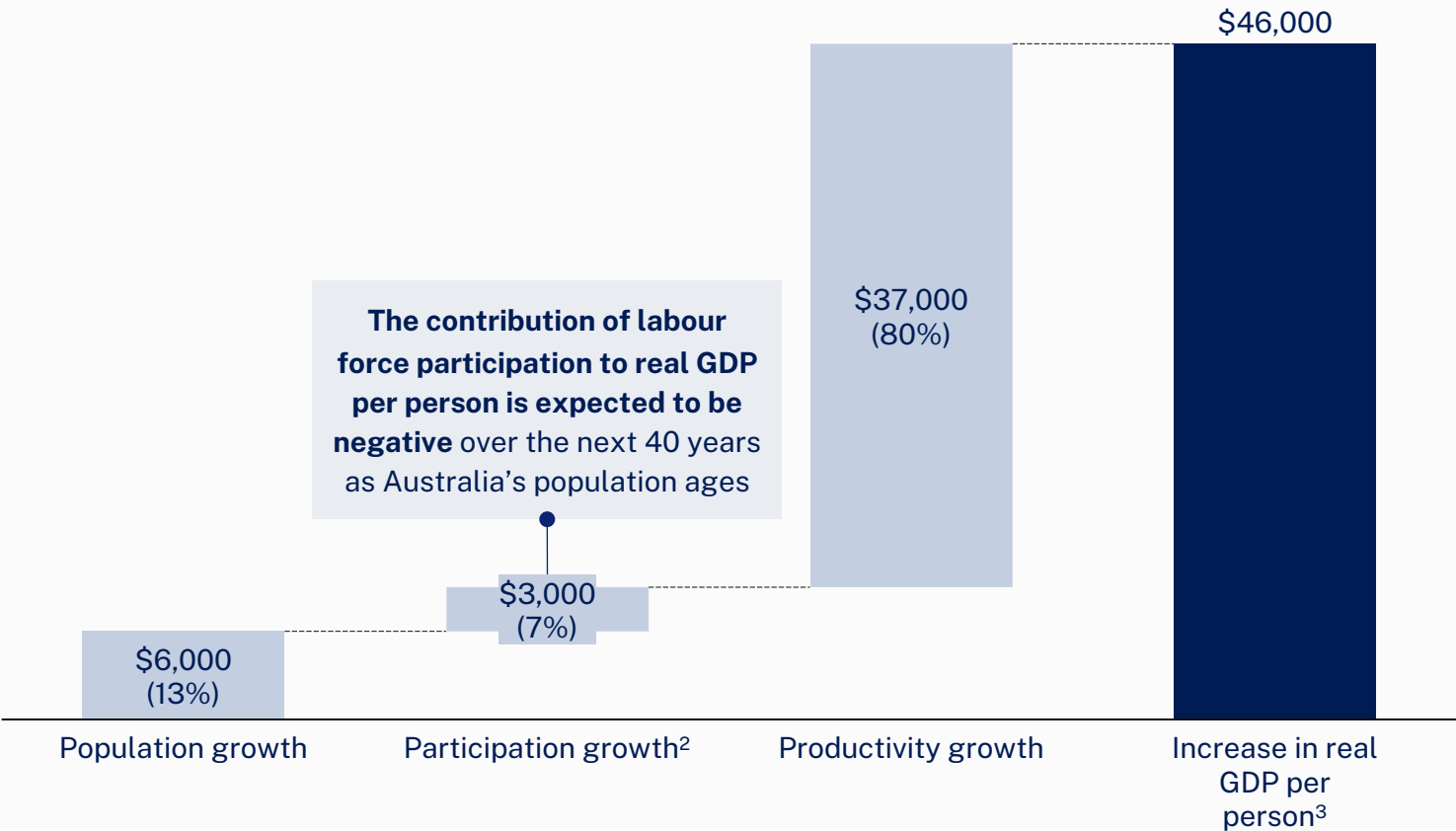
**\$37,000 or 80 per cent of the total increase in real GDP per person** over the past 40 years has come from productivity. Other factors played more modest roles, with increases in the working-age population contributing \$6,000 and increases in labour force participation contributing \$3,000.

**Nearly all future growth is expected to come from productivity gains<sup>1</sup>.** With an ageing population, Australia's participation rate is expected to decline and contribute negatively to real economic growth over the next few decades. Productivity increases will become even more crucial to future economic growth and prosperity.

<sup>1</sup> See e.g., The Treasury (2023) *Intergenerational report*; The Treasury (2010) *Australia to 2050: future challenges*.

Exhibit 1: Factors contributing to growth in Australian real GDP per person since 1984

\$ (2023 prices), 1984-2024



<sup>2</sup> Labour force participation's contribution to real GDP per capita growth reflects changes in participation rate, unemployment rate, and average hours worked.

<sup>3</sup> GDP per capita, deflated by the implicit price deflator.

Source: The Treasury (2023) *Intergenerational report*; ABS (2024) *Australian National Accounts*; Mandala analysis.

# Australia's productivity growth is declining, risking lower wage growth and growth in living standards

A decline in productivity growth has contributed to a decline in wage growth over the last four decades.

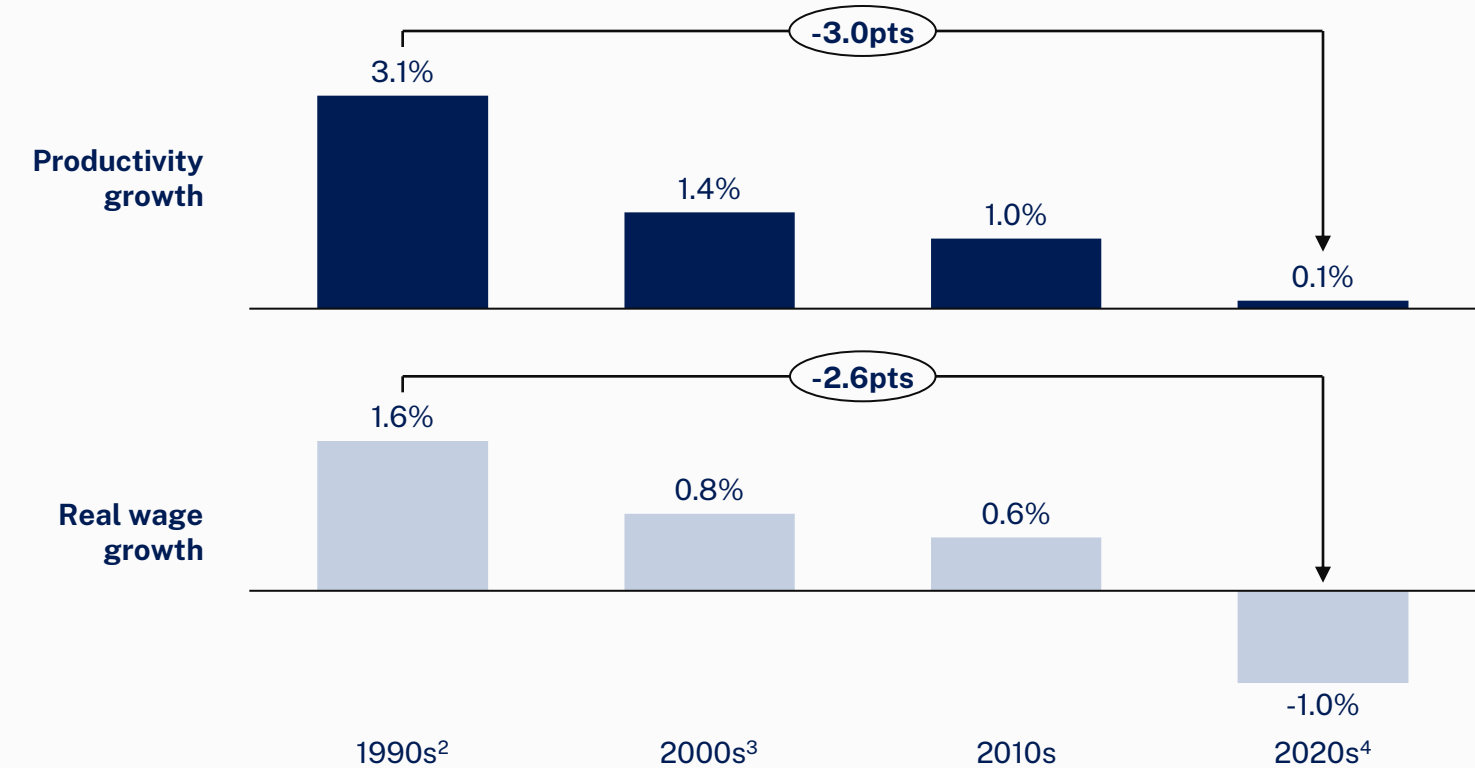
Annual productivity growth has declined from 3.1 per cent in the 1990s to just 0.1 per cent in the 2020s. This has led to a decline in annual real wage growth over the same period, from 1.6 per cent growth in the 1990s to a 1 per cent decline in the 2020s.

Real wages today would be approximately \$18,000 higher per person per year if Australia had maintained 1990s productivity levels. Research shows productivity is a key driver of rising incomes and living standards.<sup>1</sup>

<sup>1</sup> See e.g., Productivity Commission (2023) *PC productivity insights*; The Treasury (2023) *Reigniting productivity growth*.

Exhibit 2: Annual productivity and real wage growth

Average annual percentage increase, 1998-2024



**Real wages would be \$18,000 per person per year higher in 2024 if productivity levels from the 1990s had persisted**

<sup>2</sup> Due to data unavailability for real wages, 1990s includes only 1998–1999 for both average real wage and productivity growth.

<sup>3</sup> Calculations exclude Q3 2000 – Q2 2001 to control for the GST introduction shock.

<sup>4</sup> Includes only the period from 2020 to 2024.

Source: ABS (2024) *Australian National Accounts*; ABS (2024) *Average Weekly Earnings*; ABS (2024) *Wage Price Index*; Mandala analysis.

# Tech is a bright spot in Australia's productivity story, with tech sector productivity outpacing other sectors

While Australia's productivity growth has slowed, the tech sector stands out as an exception. Tech sector productivity has grown by 38 per cent since 2007, compared to the economy-wide average of 14 per cent.

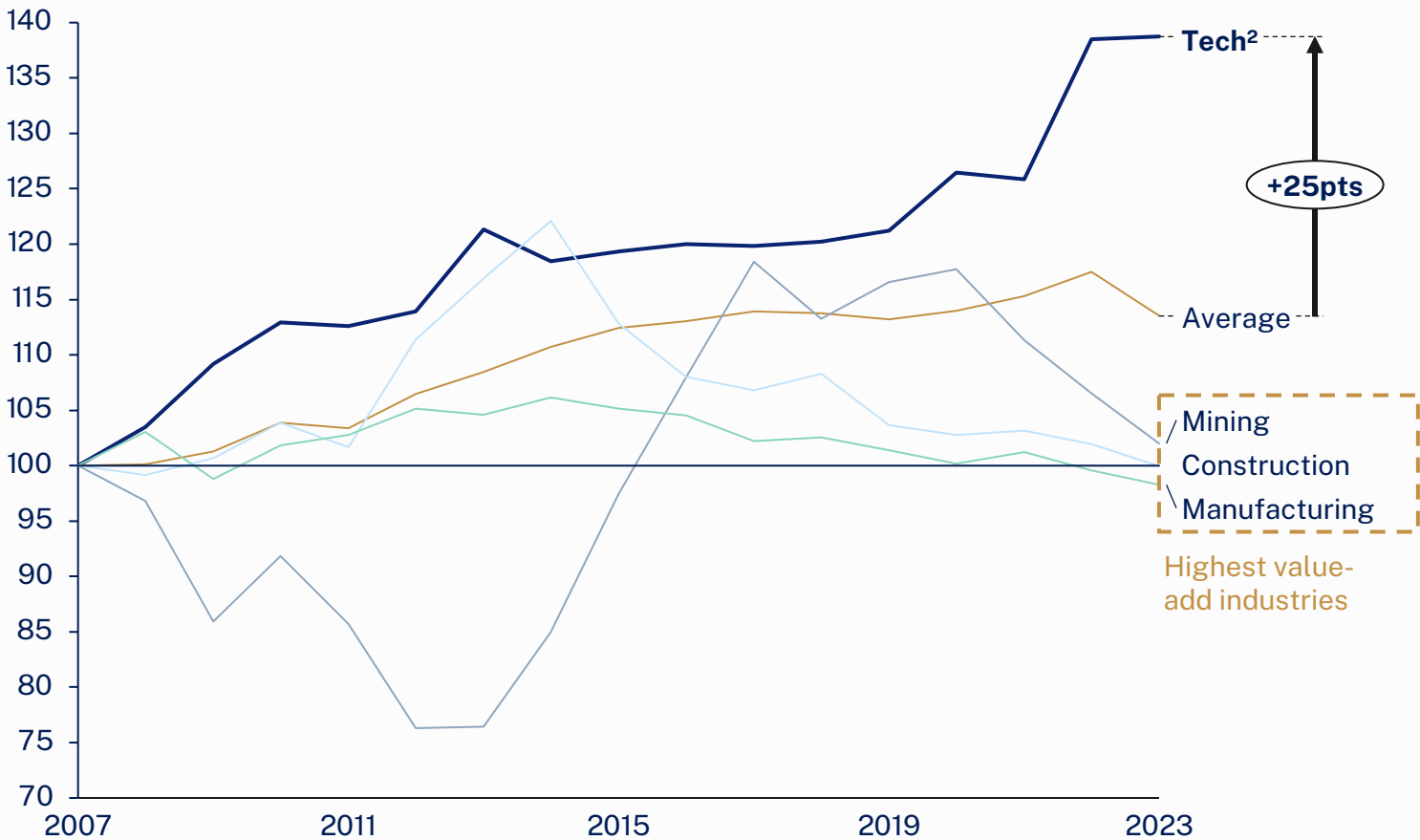
In contrast, other high value-add market sectors have shown much more modest growth, with marginal gains observed in the mining and construction sectors and declines in productivity relative to 2007 in the manufacturing sector.

More importantly, the tech sector has facilitated the increased adoption of new technologies by small, medium and large businesses. Businesses using digital platforms are indirectly adopting the latest technologies, including AI, which lifts their productivity.

Regulatory settings that continue to foster strong productivity growth from the tech sector present an opportunity for Australia to improve national productivity.

Exhibit 3: Labour productivity growth in the highest value-add market-sector industries and tech<sup>1</sup>

Index of labour productivity by industry (2007 = 100), 2007–2023



<sup>1</sup> Includes only market-sector industries that primarily produce goods and services sold at market prices and excludes Healthcare and Social Assistance.  
<sup>2</sup> Defined to include technological services and intelligence, technology-enabling infrastructure, and e-commerce and media platforms.  
Source: ABS (2024) *Estimates of Industry Multifactor Productivity*; Tech Council of Australia (2021) *The economic contribution of Australia's tech sector*; Mandala analysis.

# Digital platforms have transformed sectors like music by facilitating waves of innovation

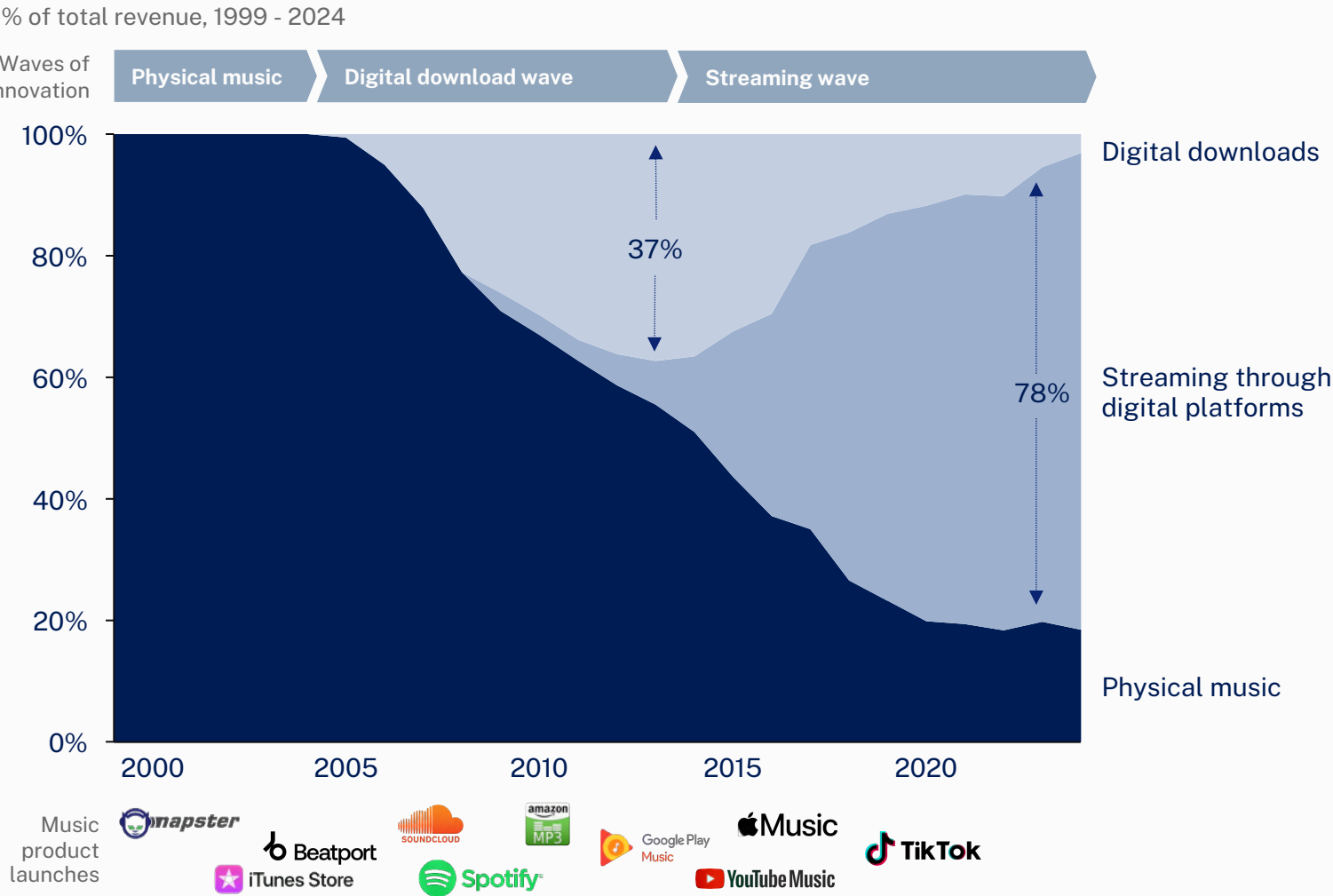
Digital platforms have facilitated constant innovation and disruption in many sectors, ensuring these sectors remain dynamic and competitive.

For example, the music sector has experienced ongoing waves of disruption due to digital platforms. In the 1990s, physical retailers like Sanity and HMV accounted for all music sales. By the late 1990s, digital disruptors had entered the market. For example, in 2003 iTunes developed an innovative platform for online music sales and distribution. Digital downloads peaked at 37 per cent of revenue by 2013.<sup>1</sup>

Streaming services via digital platforms have disrupted the sector over the last decade. Streaming now accounts for 78 per cent of global music sales, has brought 118 times more music options to consumers compared to physical CD stores,<sup>2</sup> and has cut distribution times by 89 per cent compared to vinyl.

<sup>1</sup> Excludes synchronisation and performance rights revenue.  
<sup>2</sup> Based on the average number of songs available across Spotify, YouTube Music, and iTunes compared to the music CDs available at JB Hi-Fi.  
Source: TuneCore (2024) *Preparing my music for release*.

Exhibit 4: Global revenue from digital and physical music sales



Source: IFPI (2025) *Global music report*; Atomic Disc (2024) *Why does it take so long to make vinyl records?*; Mandala analysis.



1

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**Some countries have adopted ex ante regimes for digital platforms, while others are adopting a ‘wait and see’ approach**

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Regulators should carefully measure the potential consequences of ex ante regimes and other regulatory reform options

# Treasury proposed a digital competition regime in 2024 that will reshape market dynamics and incentives

The Australian Treasury proposed a new digital competition regime to address concerns of possible anti-competitive behaviour by digital platforms.

Following the ACCC's Digital Platform Services Inquiry, Treasury's 2022 consultation paper sought stakeholder feedback on the ACCC's regulatory reform recommendations. Treasury then introduced its proposal detailing a framework to regulate digital platforms in 2024.

The proposal outlines a regulatory framework for digital platforms. The proposed framework would apply to digital platform services which are designated based on criteria that indicates a significant market position and potential to impact competition in the Australian economy, but not actual evidence of harm. Once designated, platforms would need to comply with broad and service-specific obligations.

Source: ACCC (2024) Digital platform services inquiry 2020-25; The Treasury (2022) Consultation paper.

Exhibit 5: Treasury's proposal for a new digital competition regime

WHO IT APPLIES TO	OBLIGATIONS	
<p><b>Designated digital platforms</b> with a <b>critical position</b> in the Australian economy</p> <p>The proposal mentions that the priority services to be investigated first include:</p> <ul style="list-style-type: none"><li>▪ App marketplaces</li><li>▪ Ad tech</li><li>▪ Social media</li></ul>	The proposal outlines two tiers of obligations:	
	<p><b>(i) Broad obligations</b> apply across all designated digital platform services</p> <p>The proposal states that the broad obligations would target:</p> <ul style="list-style-type: none"><li>▪ Anti-competitive self-preferencing</li><li>▪ Anti-competitive tying</li><li>▪ Impediments to consumer switching</li><li>▪ Restrictions on interoperability that limit effective competition</li><li>▪ Unfair treatment of business users</li><li>▪ Lack of transparency</li></ul>	<p><b>(ii) Service-specific obligations</b> apply to entities designated for a specified service</p> <p>While these obligations typically focus on conduct within the specified service, they may extend to related services where the designated platform may have market power or control</p>

Source: The Treasury (2024) A new digital competition regime.

# In the past three years, the global regulatory environment has shifted its approach to digital platform markets

The global context for digital platform regulation has **changed** since Treasury's initial consultation in 2022.

- **The White House recently issued a memorandum opposing foreign regulations** that could limit US companies' growth.
- **AI has since disrupted digital sectors** including general search and online marketplace services. These sectors look vastly different and are more dynamic than they were just a few years ago, upending old assumptions about market dominance and competition.
- **New leadership at key regulators** like the CMA, European Commission, and FTC over the last year have brought new perspectives on competition.

The changing global dynamics create more uncertainty for an already-uncertain approach to regulating digital platforms.

Exhibit 6: Key global shifts since Treasury’s initial consultation on digital regulatory reform





KEY SHIFT	DESCRIPTION
US Presidential Action on defending American companies and innovators	The US government has indicated it would <b>impose tariffs and take necessary actions against regulations</b> by ‘foreign governments that could inhibit the growth or intended operation’ of US companies, specifically calling out the ex ante EU rules for scrutiny.
Rise of foundational artificial intelligence models disrupting digital markets	<b>Foundational artificial intelligence (AI) models</b> have <b>disrupted digital platform markets</b> . For example, AI has spurred the emergence of new search and answer engines, including ChatGPT and Perplexity.
Changing leadership of prominent competition regulators	In the last year, <b>Doug Gurr</b> became the new CMA chair, <b>Teresa Ribera</b> became the new European Commissioner for Competition, and <b>Andrew Ferguson</b> became the new FTC Chair. This signals a potential change in global regulatory approaches.

Source: White House (2025) *Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties*; White House (2025) *Presidential actions*; Competition and Markets Authority (2023) *AI Foundational Models: Initial Report*.

# The proposed regime would implement ‘ex ante’ or upfront rules on the market without requiring evidence of harm, unlike traditional ex post enforcement

Exhibit 7: Comparison of ex post and ex ante regulation of conduct

The Government’s proposed new digital competition regime represents an **ex ante regulatory approach**, introducing pre-emptive rules for ‘designated’ digital platforms by amending the CCA to establish broad and service-specific obligations to be enforced by the ACCC














	EX POST REGULATORY REGIME	EX ANTE REGULATORY REGIME
 <b>Description</b>	Identifies and remedies conduct that has been assessed as having anti-competitive effects on the market	Rules place obligations on conduct without an assessment of whether the conduct is harmful
 <b>Applications</b>	Default approach for most sectors of the economy, where regulatory intervention aims to remedy identified harms	Applies to specific sectors or companies, typically those deemed to be natural monopolies (e.g., energy and water sectors) <sup>1</sup>
 <b>When this works best</b>	With robust detection and enforcement capabilities	With clear evidence of harm arising from a pattern of conduct in a stable sector
 <b>Example of regulation</b>	Section 46 of the <i>Competition and Consumer Act 2010</i> (CCA) prohibits corporations with a substantial degree of market power from engaging in conduct that has the purpose, or is likely to have the effect, of substantially lessening competition. <sup>2</sup>	The ACCC regulates some nationally significant infrastructure services. Its functions include deciding on access prices, terms and conditions, such as for the wholesale National Broadband Network (NBN) service. <sup>2</sup>

1 For example, the telecommunications, energy, and water sectors. 2 ACCC (2025) *National Broadband Network (NBN) access regulation*  
2 Types of conduct that may contravene section 46 of the CCA include predatory pricing and refusal to deal, among others.  
Source: Australian Government (2025) *Competition and Consumer Act 2010*; Australian Government (2024) *A new digital competition regime – Proposal paper*; Mandala analysis.



# International markets are taking different approaches to competition regulation, with no global consensus on ex ante regulation

Exhibit 9: Ex ante regulation and implementation status in international markets




There is <b>no global consensus</b> on ex ante digital platform regulation, and attitudes towards ex ante appear to be changing. This is unsurprising given the <b>lack of consensus among competition lawyers and economists</b> on this topic						
	1. FAVOURS ENFORCEMENT USING EXISTING EX POST TOOLS		2. HAS IMPLEMENTED AN EX ANTE REGIME		3. HAS CONSIDERED BUT NOT IMPLEMENTED AN EX ANTE REGIME	
DESCRIPTION	Some jurisdictions have shown opposition to ex ante regimes, preferring to use ex post tools		The European Union pioneered ex ante regulation through the Digital Markets Act (DMA) <sup>1</sup> , followed by a few other countries — some of which have taken a significantly narrower regulatory scope		Several countries have explored ex ante regulation, while others like the South Korea, remain cautiously observant	
EXAMPLES	 US  Taiwan		 EU  Japan  UK		 South Korea  India  Australia  Brazil  Philippines	

<sup>1</sup> DMA applies to all countries in the European Economic Area.  
Source: Murphy (2025) *Mapping the Brussels Effect*; Mandala analysis.

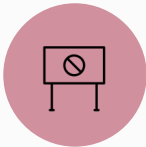


# The US has been more apprehensive of ex ante approaches, citing risks to innovation, regulatory inflexibility, and a lack of evidence of harm

Exhibit 10: Rationale behind market-based regulators’ resistance to ex ante regulations

			
	STIFLING INNOVATION AND BUSINESS PRACTICES	REGULATORY RIGIDITY IN DYNAMIC MARKETS	EXISTING ENFORCEMENT MECHANISMS UNDER EX POST
CONCERNS	<ul style="list-style-type: none"><li>Ex ante regulation could <b>restrict legitimate business practices, stifling innovation and creativity</b><sup>1</sup></li><li>Ex ante regulation could prevent benign or procompetitive conduct, <b>creating inefficiencies and inadvertently harming consumer welfare</b></li></ul>	<ul style="list-style-type: none"><li>Ex ante rules may <b>fail to account for nuanced, interconnected, and rapidly evolving dynamics</b> among distinct digital markets<sup>3</sup></li><li>These prescriptive restrictions could quickly <b>become outdated and difficult to implement</b> in rapidly evolving tech markets</li></ul>	<ul style="list-style-type: none"><li><b>Under the existing ex post enforcement framework</b>, the US Department of Justice (DOJ) and Federal Trade Commission (FTC) has brought several antitrust cases against platforms</li><li>The ex post framework requires the DOJ and FTC to <b>support claims with evidence of demonstrated harms</b>, rather than presumed risks</li></ul>
EXAMPLES	Jim Jordan, Chairman of US House Judiciary Committee, warned that EU ex ante regulations would <b>‘hurt consumers and stifle innovation’</b> . <sup>2</sup>	Taiwan’s Fair Trade Commission emphasised that ‘issue-driven’ enforcement is the most effective enforcement principle given the <b>digital economy’s rapid innovation, short life cycles, and dynamic competition</b> . <sup>4</sup>	In recent years, Department of Justice has pursued <b>enforcement actions against digital platforms over competition concerns</b> , with several cases now entering remedy phase. <sup>5</sup>














1 Aghion et al. (2023), *The Impact of Regulation on Innovation*, ‘[r]egulation reduces aggregate innovation by 5.7 percent’; 2 Jordan (2025) *Letter to Teresa Ribera, Executive Vice-President for a Clean, Just and Competitive Transition*; 3 Ginsburg et al. (2025) *Comment of the Global Antitrust Institute on the Australian Digital Platform Services Inquiry*; 4 Reinsch & Suominen (2023) *Are US Digital Platforms Facing a Growing Wave of Ex Ante Competition Regulation?*; 5 Roller (2025) *Six major tech lawsuits to keep tabs on in 2025*.



# In the EU, regulators and digital platforms have experienced implementation challenges, with consequences for users and the economy

The EU DMA has created challenges for both regulators and digital platforms, as well as flow on effects to consumers and the economy more broadly, with limited evidence of success

Exhibit 11: Challenges and consequences of the implementation of the DMA

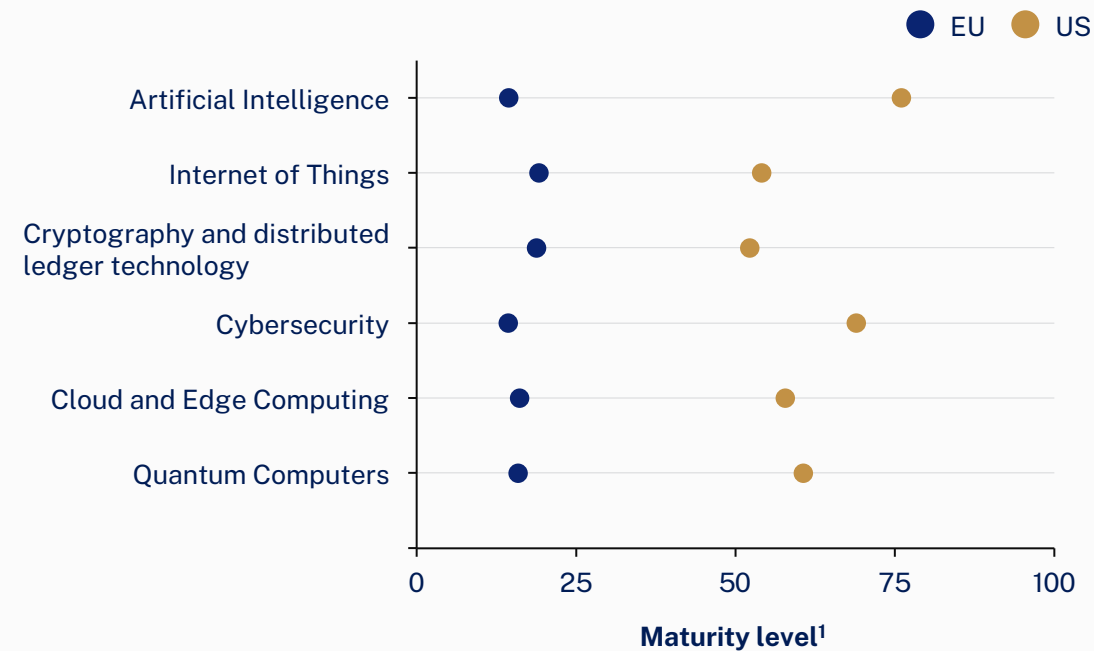
IMPLEMENTATION CHALLENGES FOR REGULATORS AND PLATFORMS		CONSEQUENCES FOR EU CONSUMERS AND THE ECONOMY	
Regulators	 <b>Technical complexity:</b> regulators ‘struggle to make sense’ of platforms’ business models and technical design <sup>2</sup>	 <b>Compromised user experience and safety:</b> degraded quality and safety of services due to obligations like sideloading, which has led to a rise in inappropriate apps in the EU <sup>6</sup>	 <b>Cyber security risks:</b> increased vulnerability to data breaches and security threats due to mandatory interoperability requirements
	 <b>Legal challenges:</b> litigation challenging the EC’s decision to classify services, claiming errors of law, inadequate reasoning, and factual errors <sup>3</sup>		
	 <b>Regulatory overlap:</b> different regulatory frameworks with overlapping provisions (e.g. the <i>Data Act</i> , the <i>GDPR</i> , and the <i>DMA</i> ) <sup>4</sup>		
Digital platforms	 <b>Resource constraints:</b> limited financial and technical resources to enforce the <i>DMA</i> <sup>1</sup>	 <b>Chilled or deferred innovation:</b> new products deferred due to regulatory uncertainty and burden, e.g., Apple postponed launching new AI features in the EU	 <b>Opportunity costs:</b> diverting regulatory resources away from higher value activities e.g., consumer harms in the supermarket/retail or aviation sectors <sup>7</sup>
	 <b>Regulatory uncertainty:</b> managing different requirements across jurisdictions, and lack of clarity on how obligations apply to specific business models		
	 <b>Technical implementation:</b> financial and technical resources required to meet regulatory standards (i.e., adapting systems and APIs)		
	 <b>Regulatory inconsistencies:</b> varying requirements across regulatory frameworks like the <i>Data Act</i> , the <i>GDPR</i> , and the <i>DMA</i> create unnecessary complexity <sup>4</sup>		
	 <b>Reduced innovation and high compliance costs:</b> <i>DMA</i> (and <i>DSA</i> ) estimated to incur up to US\$50B in new compliance and operational costs <sup>5</sup>		
		 <b>Economic costs:</b> immediate cost burden on European firms using digital platform services of estimated €71 billion, equivalent to 0.3% of EU GDP <sup>5</sup>	

1 Maher (2024) *Regulatory Design in the EU DMA*; 2 Caffara (2024) *Of hope, reality and the EU DMA*; 3 Weigl & Guzik (2024) *In Brussels We Trust?* 4 Lobrano (2025) *Simplifying the EU Digital Regulation*; 5 Suominen (2022) *Implications of the European Union’s Digital Regulations*; 6 Vakulov (2025) *Apple’s First Notarised Porn App Stirs Privacy Woes, Third-Party Risks*; 7 KWM (2025) *Concentrating on concentration*; Mandala analysis.

# Growing evidence suggests the US’s thriving tech sector and productivity growth are being driven by its market-driven approach to digital platform regulation

Exhibit 12: EU and US sector maturity in advanced digital technologies

EU and US technology maturity level, 2019-2022

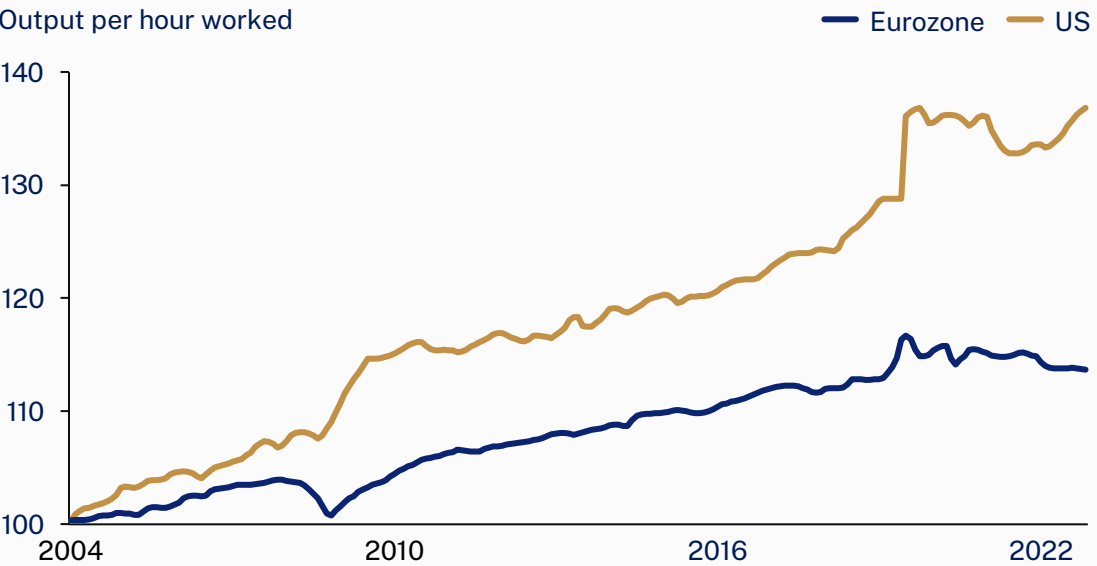


The **US has outpaced the EU on technological maturity** across many advanced technologies, including artificial intelligence, at a time when digital technologies have become critical productivity drivers.

1 X-axis (referred to as the Relatedness Density Index in the Draghi report) indicates how easily a country can build comparative advantage in a particular technology, based on how closely related it is to other technologies the country is already strong in; 2 Anderton et al (2020) *Impact of product market regulation on productivity through firm churning: Evidence from European countries*; Cetto et al. (2016) *The pre-Great Recession slowdown in productivity*; Crafts, N (2006) *Regulation and Productivity Performance*  
Source: Adapted from Draghi (2024) *The Draghi report: A competitiveness strategy for Europe (Part A)*; The Economist (2023) *Productivity has grown faster in western Europe than in America*.

Exhibit 13: Real output per hour worked of the EU and US across time

Index of real US non-farm output per hour and EU output per hour worked (2004=100), 2004-2022







**Productivity in the US has increased by over 35%** since 2004, compared to less than 15% in the EU over the same period. Studies suggest this is due to the impact of stringent regulations in the EU on business dynamism and productivity.<sup>2</sup>



# Some jurisdictions that showed an early interest in ex ante regulation have modified their positions, as global developments continue to play out

Exhibit 14: Examples of international markets that have modified their policy positions on ex ante regulation






THEN	»»»	NOW
<ul style="list-style-type: none"><li>UK Parliament passed the <i>Digital Markets, Competition and Consumers Act</i> in May 2024, granting the Competition &amp; Markets Authority (CMA) powers to administer a <b>new ex ante regulatory regime</b> for the largest tech companies</li></ul>	<div>United Kingdom</div> 	<ul style="list-style-type: none"><li>UK Government <b>has directed regulators to prioritise decisions ‘for growth and not just for risk’</b><sup>2</sup></li><li>CMA CEO, Sarah Cardell, noted that the CMA should ‘both <b>drive growth and investment</b>, and uphold consumer interests’<sup>3</sup></li></ul>
<ul style="list-style-type: none"><li>Korea Fair Trade Commission (KFTC) <b>proposed ex ante platform regulation</b> in 2020 (<i>Online Platform Fairness Act</i>)</li><li>Developed proposed <i>Platform Competition Promotion Act</i>, following EU DMA framework</li></ul>	<div>South Korea</div> 	<ul style="list-style-type: none"><li>KFTC <b>explicitly abandoned EU-style comprehensive platform regulation</b> approach in 2024, instead amending existing competition law to address platform-related issues in traditional framework</li></ul>
<ul style="list-style-type: none"><li>India’s Competition Commission <b>proposed ex ante measures</b> for digital platform regulation via the <i>Draft Digital Competition Bill</i> (March 2024)</li><li>Designed framework to complement existing ex post measures</li></ul>	<div>India</div> 	<ul style="list-style-type: none"><li>Minister of State for Corporate Affairs announced India is in ‘<b>no hurry</b>’ to <b>introduce and enact the Digital Competition Bill</b>.</li><li>Emphasised the need for thorough analysis to adapt global best practices to Indian markets<sup>1</sup></li></ul>
<ul style="list-style-type: none"><li>The Philippine Competition Commission (PCC) announced its plan to develop <b>specialised digital frameworks</b> in 2021</li></ul>	<div>Philippines</div> 	<ul style="list-style-type: none"><li><b>PCC ruled out DMA-style bill in 2024</b>, focusing instead on addressing challenges through its existing framework</li><li>No update on <b>implementation timeline</b> for previously announced digital-specific regulations since</li></ul>

1 Srivats (2025) ‘Not in a hurry to enact Digital Competition Bill’ says MoS Corporate Affairs Malhotra; 2 Gov.UK (2025) Former Amazon boss names interim chair of CMA; 3 Cardell (2025) New CMA proposals to drive growth, investment and business confidence.  
Source: UK Parliament (2024) *Digital Markets, Competition and Consumers Act 2024*; Lee (2025) *Lessons from Korea’s Roller-Coaster Ride Toward Platform (Non)Regulation*; McConnell (2024) *Exclusive: Philippine competition watchdog rules out DMA-style bill, for now*.





# Meanwhile, the regulatory landscape across the EU is evolving, with prominent figures highlighting the need for policies that foster innovation and growth

Exhibit 15: Positions of prominent economists and officials regarding regulation and innovation in the EU

- In his report, The Future of European Competitiveness, Mario Draghi emphasises the need for Europe to accelerate its capacity for innovation and calls for regulatory frameworks that foster investment and innovation.
- These views are gaining traction across Europe, where prominent figures are highlighting the need to focus on Europe’s productivity and growth rather than further antitrust regulation.

 <p><b>“For the most part, we have done all we can to limit innovation”</b> <b>“Regulatory barriers to scaling up are particularly onerous in the tech sector, especially for young companies”</b></p> <p>Mario Draghi, former European Central Bank President, 9 September 2024</p>	 <p><b>“[The Commissioner Designate] should give adequate weight to the European economy’s more acute needs in respect of resilience, efficiency and innovation.”</b></p> <p>Ursula von der Leyen, President of the European Commission, 17 September 2024</p>
 <p><b>“We need to change the status quo. We need to propose to Europe a big campaign of deregulation. And the stakes are very high. Our competitiveness is at stake.”</b></p> <p>Donald Tusk, Prime Minister of Poland, 22 January 2025</p>	 <p><b>“The EU needs entrepreneurial freedom, not antitrust reforms”</b></p> <p>Andreas Mundt, President of the Bundeskartellamt, 30 January 2025</p>
 <p><b>“Europeans need to worry about [the] tech sector lagging behind... Europeans should not just be the referee. They need to get on the field, they need to play the game...”</b></p> <p>Anu Bradford, Leading scholar on the European Union, global economy, and digital regulation, 6 February 2025</p>	 <p><b>“It is highly dubious that [the DMA] will truly improve the position of European businesses, boost European productivity or help unleash European innovation”</b></p> <p>Cristina Caffarra, Competition economist, 26 August 2024</p>

In summary, ex ante regimes overseas are new and remain under scrutiny, the government should carefully monitor impacts before progressing domestically

			
<b>The tech industry is a key driver of growth in Australia</b>	<b>The government has proposed an ex ante digital competition regime</b>	<b>Meanwhile the EU is seeing implementation challenges and shifting attitudes...</b>	<b>....and broader global developments show no consensus on ex ante regimes</b>
<ul style="list-style-type: none"><li>• The technology sector is a bright spot in productivity, outpacing other sectors in Australia</li><li>• The sector is boosting tech adoption by small, medium and large businesses</li><li>• With productivity at a 60-year low, it is important that Australia’s regulatory settings do not restrict our most productive sectors from delivering better outcomes for Australians</li></ul>	<ul style="list-style-type: none"><li>• Ex ante regulation represents a departure from the long history of evidence-based assessment of potential market harms</li><li>• Many theories of harm that form the foundation of proposed obligations are debated by academics and thought leaders</li></ul>	<ul style="list-style-type: none"><li>• The EU, which has the most advanced ex ante digital regulation regime, has effectively only had a year of implementation</li><li>• The impacts of ex ante is yet to be observed on broader economic indicators</li><li>• However, implementation costs and unintended consequences are becoming clear</li></ul>	<ul style="list-style-type: none"><li>• Globally, attitudes towards ex ante digital regulation are diverging</li><li>• Many early followers have since shifted their stances to adopt a ‘wait and see’ approach</li><li>• The changing economic and geopolitical environments have led medium-sized economies to reconsider their policy priorities</li></ul>



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Digital platforms are driving productivity and innovation across the Australian economy

2

Some countries have adopted ex ante regimes for digital platforms, while others are adopting a 'wait and see' approach

3

**Regulators should carefully measure the potential consequences of ex ante regimes and other regulatory reform options**

# Digital regulation should balance benefits delivered by platforms with the need for flexible regulatory frameworks that can adapt to emerging technologies



A

## BENEFITS OF DIGITAL PLATFORMS

Digital platforms make up a complex ecosystem that provides a range of benefits to users and businesses

- Digital platforms provide multiple interrelated services that enable our modern digital lives
- These services provide Australian consumers and businesses with a range of benefits, including time savings, fraud protection, and expanded revenue streams
- Digital platforms enable widespread economic activity, spurring the creation of new businesses and stimulating growth across various sectors
- Digital platforms are rapidly evolving, and new services and features continue to emerge



B

## RISKS OF EX ANTE DIGITAL REGULATION

Ex ante obligations such as mandated interoperability carry risks for users and may stifle innovation

- The proposed ex ante digital regime would impose obligations targeting conduct perceived as anti-competitive, for example by mandating interoperability
- Government must carefully weigh up impacts on user safety, privacy, user experience, innovation, and competition
- Australia can learn from the EU experience, where these risks are playing out
- Australian markets have distinct differences from EU markets. Relying on international regulations overlooks Australia's unique market features



C

## REGULATING EMERGING TECHNOLOGIES

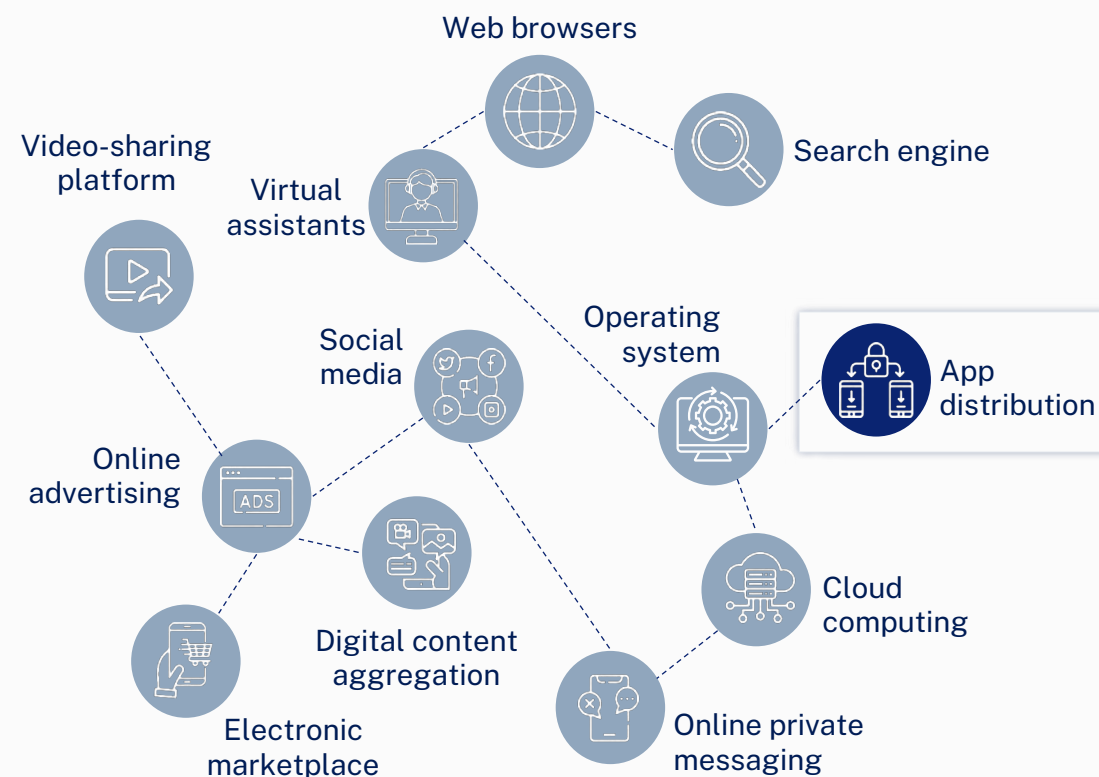
Regulatory frameworks need to be able to adapt to technological innovation and change

- Digital regulation should anticipate and accommodate rapidly evolving technologies, such as AI
- AI is driving innovation and renewed competition across multiple markets, while regulators grapple with how to regulate it
- The EU experience shows how regulatory intervention in digital markets can hamper the benefits of this latest wave of innovation
- Australians could lose early access to cutting edge technology

**Digital platforms provide a range of complex, dynamic and interrelated services that make up modern digital platform ecosystems which makes service-specific regulations problematic**

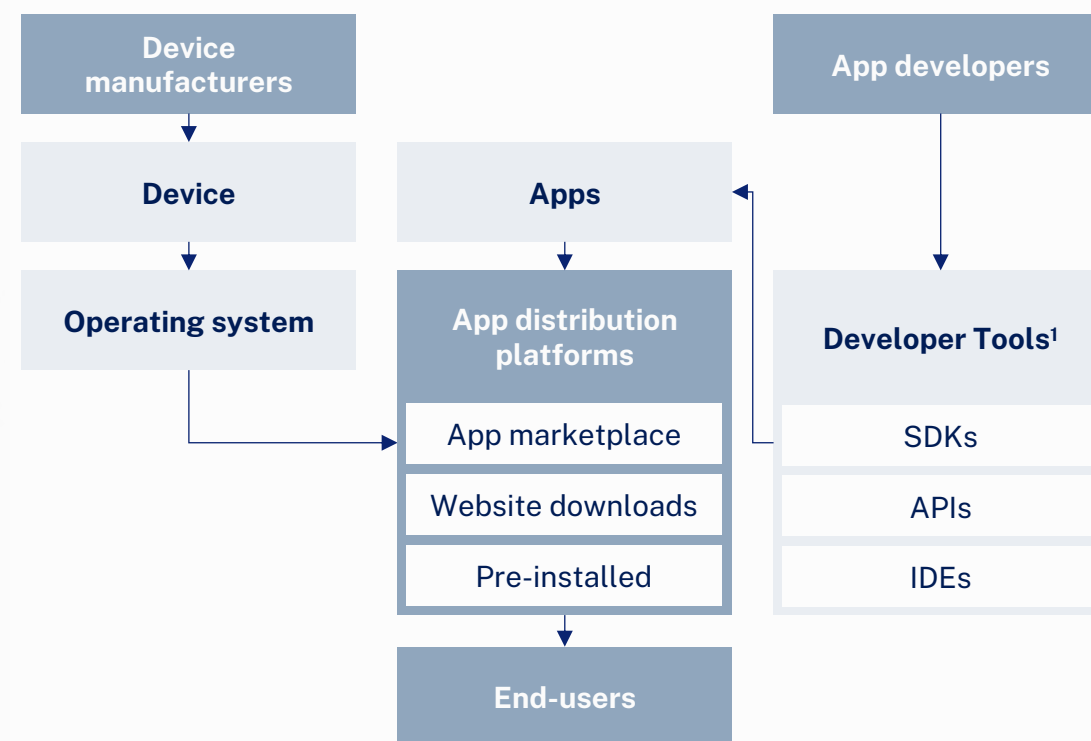
### Exhibit 16: Illustrative map of interrelated digital platform services

Digital platform services are interrelated,  
with new services and features continuously emerging



### Exhibit 17: Illustrative schematic of interactions involving app distribution platforms

Digital platform services involve complex interactions among stakeholders  
e.g. App marketplaces rely on intricate relationships between  
platforms, developers, and users



1 SDKs (Software Development Kits), APIs (Application Programming Interfaces), and IDEs (Integrated Development Environments) are tools used in software development  
Source: Mandala analysis.

# Digital services provide significant value to both the consumers and businesses that use them

Digital platforms have delivered substantial value to Australian consumers, businesses, and the broader economy. In 2022, the Apple App Store facilitated US\$14 billion in billings and sales across Australia and New Zealand. In 2023, app marketplaces supported 182,000 jobs in Australia.

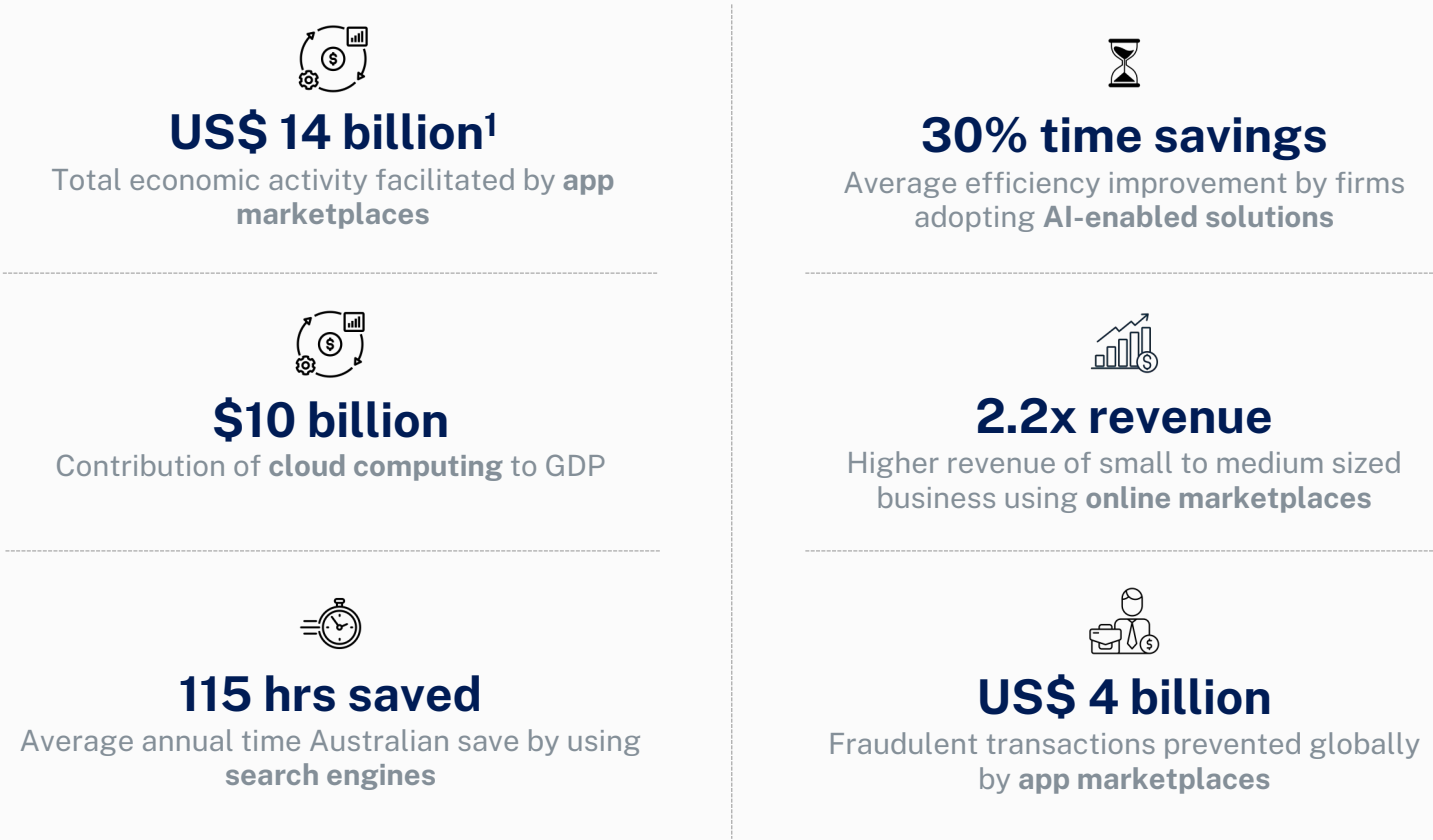
Digital platform services like cloud computing have fuelled the growth of Australian businesses. They have provided the infrastructure for homegrown tech unicorns like Canva to flourish. As digital platforms improve their technology, the small, medium and large businesses indirectly adopt those new technologies, too.

Consumers save significant time through digital platforms, with search engines allowing the average Australian to save approximately 115 hours (4.8 days) annually by providing instant access to information.

Small and medium-sized businesses experience increased revenue by selling through online marketplaces. Businesses that sell through online marketplaces generate 2.2 times the revenue of those that do not.

Source: PPI (2023) *The app economy in Australia*; Tech Council (2023) *Submission in response to ACCC Digital Platforms consultation*.

Exhibit 18: Examples of benefits digital platforms brought to Australian consumers, businesses, and the economy



<sup>1</sup> Estimated billing and sales facilitated by the Apple App Store across Australia and New Zealand. Source: Analysis group (2023) *The continued growth and resilience of Apple's app store ecosystem*; AIIA (2024) *Securing Australia's Cloud potential*; Access Partnership (2022) *Google's economic impact in Australia*; CSIRO (2023) *Australia's AI ecosystem momentum*; Sprout Social (2025) *Social media statistics shaping Australia's digital landscape in 2025*; Apple (2023) *Newsroom*; Android (2023) *Blog*; Mandala analysis.

# Effective regulation should balance consumer benefits, innovation, and fairness while adapting to a dynamic market

Effective regulation of digital platform markets should achieve four key objectives:

- **Deliver positive consumer outcomes** through improved competition, including competitive pricing, higher quality and more secure digital services.
- **Facilitate continued investment and innovation** by preserving and strengthening incentives for platforms to develop new technologies while avoiding burdensome regulations that would stifle innovation.
- **Foster fair markets for all**, to maximise competition on the merits.
- **Ensure adaptability to highly dynamic markets**, to allow regulatory frameworks to remain relevant and not constrain innovation in the digital sector.

Exhibit 19: Goals of an effective regulatory regime for digital markets



**1. Positive consumer outcomes**  
Delivers competitive pricing, choice, and high-quality digital services for consumers.



**2. Continued investment and innovation**  
Preserves incentives for digital platforms to develop new technologies and services by avoiding regulatory burdens that would slow digital innovation and growth.



**3. Fair markets for all**  
Prevents anti-competitive behavior, allowing digital businesses of all sizes to compete on merit by offering better value products and services to consumers.



**4. Adaptability to highly dynamic markets**  
Responds effectively to both current and future challenges in rapidly evolving digital markets. Ensures regulation evolves alongside digital technology rather than constraining it.

**Discussion question:** Are these the right goals for effective regulatory regime for digital markets?

# Ex ante regulatory regimes impose obligations on designated services including mandated interoperability

Ex ante regulatory regimes target specific conduct, but do not assess the effect of this conduct on the market.

Treasury’s proposal identifies six examples of areas that obligations could target. Many of these areas are common to international ex ante regimes, including the *Digital Markets Act* (DMA) in the EU.

While Treasury’s proposal paper does not outline all potential obligations that might attach to target areas, The DMA provides a guide for how obligations might be designed in Australia. For example, to target interoperability, the DMA requires designated platforms to give third parties access to the same features in the same way as the platform itself, generally without compensation and with limited regard for privacy protections implemented by the platform.

Exhibit 20: Example areas that obligations could target in an ex ante regime




EXAMPLE AREAS THAT OBLIGATIONS COULD TARGET	EXAMPLES OF POTENTIAL OBLIGATIONS FOR DESIGNATED SERVICES, BASED ON THE <i>DIGITAL MARKETS ACT</i> <sup>1</sup>
Restrictions on interoperability that limit effective competition	Must enable the distribution of apps through alternative mechanisms, including through direct downloads and third-party app stores
Anti-competitive tying	Must not require end-users to use any other services provided by the platform as a condition for using a designated service
Impediments to consumer switching	Must not restrict the ability of end users to switch between different software applications and services
Anti-competitive self-preferencing	Must not treat its own services and products more favorably than similar services offered by a third party, and must apply transparent, fair and non-discriminatory conditions to any ranking
Unfair treatment of business users	Must apply fair, reasonable and non-discriminatory conditions of access for business users to its services, and must not have conditions for terminating the service that are disproportionate
Lack of transparency	Must provide sufficient transparency over policies and processes governing app review and approval <sup>2</sup>

Explored in more detail in this paper

1 While the Treasury proposal paper does not set out obligations, this table includes obligations from the DMA as an indication of the types of obligations that could be included under a potential Australian regime. 2 There is no clear analogue for a ‘transparency’ obligation in the DMA. This table adopts language used to describe relevant conduct from the Treasury proposal. Source: EU (2022) *Digital Markets Act*; Treasury (2024) *A new digital competition regime*; Mandala analysis.

# Interoperability and related obligations have required platforms to provide third parties with free access to proprietary technologies





Exhibit 21: Digital platform actions to comply with interoperability and related obligations of the *Digital Markets Act*

Technologies	CORE HARDWARE AND SOFTWARE 	APP DISTRIBUTION 	WEB BROWSERS 
To comply, digital platforms have had to:	<ul style="list-style-type: none"><li>provide third parties, including other large platforms, with <b>free access to the platform’s proprietary hardware and software features</b>, including:<ul style="list-style-type: none"><li>reading encrypted notifications</li><li>media casting</li><li>close-range file transfer</li><li>peer-to-peer Wi-Fi connection</li><li>automatic audio switching</li></ul></li><li>provide access to the platform's proprietary features that could <b>compromise end-user data protection</b></li></ul>	<ul style="list-style-type: none"><li>provide third party developers with <b>free access to new app marketplace frameworks and APIs</b></li><li>allow developers to <b>create and install alternative app marketplaces</b> on the platform’s devices</li><li>allow users to <b>download 'sideloaded' apps</b> from outside approved app marketplaces, which may expose end-users to <b>malware, scams, and content that bypasses</b> some of the <b>platform’s usual app screening processes</b></li></ul>	<ul style="list-style-type: none"><li>allow developers to <b>use alternative browser engines</b> for browser apps and apps that offer in-app browsing experiences</li><li>degrade the end-user experience by allowing them to use alternative browsers which may <b>expose them to malicious content</b></li></ul>

**Interoperability:** The ability to exchange information and mutually use the information which has been exchanged through interfaces or other solutions, so that all elements of hardware or software work with other hardware and software and with users in all the ways in which they are intended to function

# Interoperability and related obligations risk user safety, privacy, and may hamper future innovation and competition in digital markets

Exhibit 22: Examples of risks arising from interoperability obligations for digital platforms in the EU

While interoperability and related obligations have introduced clear consumer harms, they have not produced clear consumer benefits.			
			
Diminished privacy and security	Reduced user safety	Diminished incentive to innovate	May reduce competition
<p><b>Third-party access under the EU <i>Digital Markets Act</i></b></p> <p>Third-party developers have requested access to sensitive Apple technologies like messaging, wireless display, and device connectivity. These requests would enable access to users' private data including messages, call history, and photos. Third parties could transfer this information to their servers to combine and profile personal data, creating potential security risks.</p>	<p><b>Compromised safety due to sideloading requirements</b></p> <p>Apple was required to enable user access to sideloaded apps to comply with the DMA's requirements. Sideloading requirements have created safety risks for EU users, especially children. They have allowed users to easily install pornography apps from outside approved app marketplaces, bypassing Apple's usual app approval process.</p>	<p><b>Innovation disincentives from technology sharing</b></p> <p>Mandated interoperability under the DMA requires certain platforms to give away their intellectual property or allow access to their proprietary technologies to their competitors for free. This may reduce incentives to invest in developing new features, as competitors could free-ride on these innovations without incurring the same cost or effort.</p>	<p><b>Ambiguous effects of interoperability</b></p> <p>In a recent decision relating to digital platform competition, the European Commission noted that interoperability may strengthen incumbent market power, noting 'the interoperability of different services make it more challenging for potential competitors to replicate or offer a comparable service efficiently'. Mandated interoperability may have the opposite effect from its intended purpose by reducing competition and consumer choice.</p>

**Discussion question:** What alternative approaches could better promote consumer outcomes and market competition while preserving innovation, user safety and privacy?

# Competition frameworks need to support tech innovations as they emerge over time

Exhibit 23: Emerging tech innovations since the 2010s adding layers of complexity to the regulatory landscape

Each technology adds to the stack of existing regulatory challenges

Artificial Intelligence

+

Blockchain

+

Internet of Things

+

Big data

+

Cloud computing

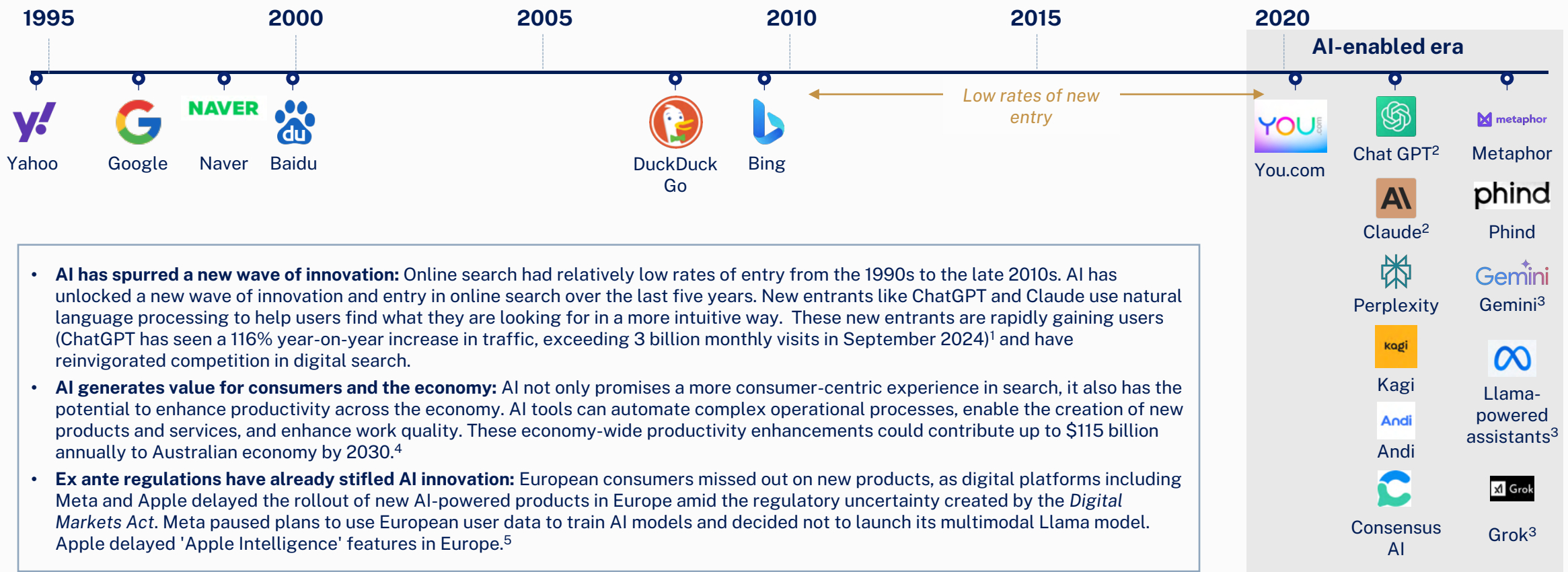
DESCRIPTION	NOVEL REGULATORY ASPECTS
<ul style="list-style-type: none"><li>Computer systems designed to perform tasks that usually require human intelligence, including learning, reasoning, speech recognition, image analysis, and language understanding</li></ul>	<ul style="list-style-type: none"><li>Whether AI could inadvertently lead firms to become party to anti-competitive practices, such as the use of algorithmic pricing tools that leads to unlawful collusion</li><li>Ensuring regulation does not stifle innovation</li></ul>
<ul style="list-style-type: none"><li>Digital currencies and other distributed ledger technology (blockchain) applications that record transactions without requiring centralised authority</li></ul>	<ul style="list-style-type: none"><li>How blockchain based networks of value transfer fit within existing financial frameworks</li><li>International coordination for borderless technologies</li><li>Consumer protection and financial safety vs. benefits</li></ul>
<ul style="list-style-type: none"><li>Network of physical objects embedded with technologies like sensors and software to connect and exchange data with other devices and systems over the internet</li></ul>	<ul style="list-style-type: none"><li>Device security standards</li><li>Privacy from ambient data collection</li><li>Cross-sector regulatory coordination</li></ul>
<ul style="list-style-type: none"><li>Extremely large datasets that can be analysed computationally to reveal patterns, trends, and associations, especially relating to human behaviour and interactions</li></ul>	<ul style="list-style-type: none"><li>Data as a competitive asset in market assessments</li><li>Privacy protection vs. innovation benefits</li><li>Market definition in zero-price services</li></ul>
<ul style="list-style-type: none"><li>The delivery of computing services, including servers, storage, databases, networking, software, and analytics, over the internet</li></ul>	<ul style="list-style-type: none"><li>Data sovereignty and cross-border jurisdiction</li><li>Service interoperability and data portability</li><li>Security and privacy standards</li></ul>

- Regulatory frameworks must be future-proof, meaning they can adapt to emerging technologies
- Policymakers should take a holistic approach to regulation, looking at how digital developments such as AI relate to existing provisions
- This is critical to creating a consistent regulatory and legal framework and avoid a mosaic of different and potentially conflicting provisions

Explored in more detail in this paper

# As the latest wave of tech innovation, AI has fueled new entry and competition in online search but ex ante regulations risk stifling this

Exhibit 24: New entrants to online search by year of entry



1 Carr (2024) ChatGPT topped 3 billion visits in September; 2 ChatGPT and Claude are General AI Chatbots with Search features. Both eventually added web search capabilities in 2023  
3 General AI chatbots with Search features; 4 Microsoft & Tech Council of Australia (2023) Australia's Generative AI opportunity; 5 Reuters (2024) Apple to delay launch of AI-powered features in Europe, blames EU tech rules; The Guardian (2024) Meta pulls plug on release of advanced AI model in EU; Mandala analysis.

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# Australia should consider a regulatory framework for digital platforms that achieves its goals while minimising potential costs

GOALS OF AN EFFECTIVE DIGITAL REGIME		Exhibit 25: Potential regulatory options for digital competition in Australia (non-exhaustive)		
<div>✓ Positive consumer outcomes</div> <div>✓ Continued investment and innovation</div> <div>✓ Fair markets for all</div> <div>✓ Adaptability to highly dynamic market</div>	REGULATORY OPTIONS	Ex ante competition enforcement	Ex post competition enforcement	Any other options?
	POTENTIAL BENEFITS	<ul style="list-style-type: none"><li>May prevent harm before it occurs by restricting conduct<sup>1</sup></li></ul>	<ul style="list-style-type: none"><li>Enables analysis of actual competitive effects of conduct, to avoid preventing innovative, pro-competitive conduct<sup>2</sup></li><li>More flexible and adaptable to developments in digital sectors<sup>3</sup></li></ul>	<p>What is the <b>most suitable framework</b> for regulating competition in digital markets?</p> <p>Are there <b>other regulatory tools</b> that could assess and address competition issues in emerging technology while preserving its pro-competitive potential?</p> <p>Some potential paths forward:</p> <ul style="list-style-type: none"><li>Variations on existing ex post or ex ante approaches (e.g., a modified Section 46)</li><li>Quasi-regulatory tools such as industry codes</li></ul>
	POTENTIAL COSTS	<ul style="list-style-type: none"><li>Have so far been difficult to <b>implement and interpret</b>, creating uncertainty and thwarting innovation<sup>4</sup></li><li>Specific conduct rules may be <b>inflexible in rapidly evolving markets and may harm consumers</b><sup>5</sup></li><li>Risks <b>preventing potentially pro-competitive or benign conduct</b><sup>6</sup></li></ul>	<ul style="list-style-type: none"><li>While enforcement can be robust, <b>cases that continue to litigation can take some time to resolve</b><sup>7</sup></li></ul>	

1 Treasury (2024) A New Digital Competition Regime; 2, 5 Bougette, Budzinski & Marty (2024) Ex-ante versus Ex-post in Competition Law Enforcement: Blurred Boundaries and Economic Rationale;

3 Eroglu & Koksas (2024) Ex-Post Application of Structural Remedies to Large Online Platforms at a National Level, Ginsburg et al. (2025) Comment of the Global Antitrust Institute on the Australian Digital Platform Services Inquiry; 4 Caffara (2024) Of hope, reality and the EU Digital Markets Act; 6 Feyler & Postal (2023) Can Self-Preferencing Algorithms be Procompetitive?; 7 ACCC (2022) Digital Platform Services Inquiry: Interim Report No. 5 – Regulatory Reform.

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