



Australian
Competition &
Consumer
Commission

Platform Operators in the Sharing Economy

A guide for complying with the
competition and consumer law in
Australia

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1. Who this guidance is for

The Australian Competition and Consumer Commission (ACCC) has developed this guidance for sharing economy platform operators to encourage compliance with Australia's competition and consumer protection laws.

The sharing economy is made up of businesses operating online platforms that facilitate the connection of suppliers of goods and services with consumers needing (generally) short-term use of those goods or services. Platform operators generally provide administrative functions, such as facilitating payment and managing the operation of the market including through the use of peer reviews.

Many sharing economy platform operators use reviews and ratings as a means of managing trust and safety. This guidance is especially targeted at this category of platform operator.

Businesses that act as classified markets (such as Ebay and Gumtree), connecting buyers and sellers of goods or that supply goods for the shared use of consumers (for example, companies that charge membership fees to access company owned cars) do not form part of the sharing economy. This guidance is not intended for such businesses, although many of the points discussed are relevant to them and a best practice approach is for such businesses to follow this guidance.

The sharing economy potentially benefits individuals and consumers. Consumers can get greater choice and often cheaper prices. Individuals can become traders and operate their own part time or small business.

Relying on platforms means there is typically a significant imbalance in size, scale and power between consumers and traders on one hand and platform operators on the other. To enable the benefits of the sharing economy to flow to consumers and small businesses, it is vital that platform operators understand where and how their conduct could cause harm to consumers and traders. Like all businesses, platform operators must be aware of and comply with their obligations under the *Competition and Consumer Act 2010* (CCA) and the Australian Consumer Law (ACL).

Platform operators play a key role in providing education and information to traders that use their platforms and should work with traders to ensure compliance with consumer protection laws. They should also ensure they have clear processes and policies for complaint handling and dispute resolution and take an active role in monitoring and addressing conduct that has the potential to harm consumers or traders who use their platform.

The ACCC has developed this guidance to help platform operators comply with their legal obligations. It is a general guide only and is not a substitute for independent legal advice. Platform operators should seek professional advice for any specific questions or concerns.

Terminology

This guidance uses the following terms, which are defined in section 7 – Terminology:

- 'Sharing economy'
- 'Sharing economy platform' referred to as Platform operators
- 'Trader'
- 'Online reviews'
- 'Moderation'
- 'Consumer'

Key principles

We have developed the following principles to provide a broad overview of the ACCC's expectations about compliance and best practice for platform operators. We suggest that platform operators keep these principles in mind when making decisions about all aspects of their service, including when moderating reviews, advertising, marketing and when preparing terms and conditions.

Principle 1: Transparency

In order for consumers to make informed decisions, they need to have all relevant information before them. Where relevant information is hidden, unclear, not disclosed or only partially disclosed, consumers may be misled.

To avoid misleading consumers and traders, platform operators should:

- disclose the full price that the consumer will pay, including any additional fees. Platform operators should also clearly disclose to traders any relevant fees that the platform will deduct
- disclose all terms and conditions, policies and processes via clear and easily accessible links
- avoid using fine print that significantly changes or qualifies prominent representations.

Principle 2: Accuracy and honesty

Platform operators should be accurate and honest in their dealings with consumers and traders. They should include policies and processes to protect consumers and traders and clearly disclose how those policies and processes operate.

Advertising and marketing claims must be accurate.

Platform operators should include processes to manage member conduct, including the detection of phoenixing and sanctions for misconduct.

Principle 3: Effective review processes

If platform operators use reviews as a means of self-regulation or quality control, any statements about the review process or their outcomes should be accurate.

This means that platform operators should have sufficiently robust procedures to ensure that any claims about safety, security, trust etc. are accurate and do not mislead consumers.

Principle 4: Fairness in dealings with consumers and traders

Consumers and traders who use platforms are heavily dependent on platform operators and will need to place a great deal of trust in the platform operators. Platform operators should not abuse this trust and should be fair in all their dealings with traders and consumers.

Platform operators need to understand and comply with the unfair contract terms, unconscionable conduct and consumer guarantee provisions of the ACL.

2. Platform's competition and consumer protection obligations

The CCA sets out a number of obligations prohibiting platform operators from engaging in conduct that has an anti-competitive purpose or leads to a substantial lessening of competition.

Schedule 2 of the CCA contains the ACL. The ACL creates a number of obligations that platform operators must comply with when dealing with consumers (consumers can also include businesses - where the good or service costs less than \$40 000 or is ordinarily used for personal, domestic or household purposes).

This section summarises the key obligations and is followed by further information about how they apply under the three key principles.

2.1. Conduct in Australia

The CCA and ACL apply to conduct in trade or commerce that takes place in Australia. Where a business operates a website that is accessible in Australia or a business is responsible for material on the website, any misleading representations on the website when viewed by consumers in Australia would constitute conduct in Australia and be caught by the ACL.

It is not necessary for a platform operator to have a physical place of business in Australia for it to be engaging in conduct in Australia. This means that businesses that operate platforms or act as traders and place information on a platform must comply with the CCA and ACL where the platform will be accessed and viewed in Australia.

2.2. Misleading or deceptive conduct

It is illegal for a business to make statements that are incorrect or likely to create a false impression. This includes advertisements or statements in any media (print, radio, television, social media and online) or on product packaging, and any statement made by a person representing the business. It is the overall impression that is relevant and this comes from graphics as well as words. Failing to disclose relevant information can also be misleading or deceptive.

In most cases, businesses cannot rely on small print and disclaimers as an excuse for misleading or deceptive conduct.

2.3. False or misleading representations

It is illegal for a business to make false or misleading representations about goods or services when supplying, offering to supply, or promoting those goods or services. Whether a representation is false or misleading will depend on the circumstances of the particular case.

For more information visit [misleading representations](#) on the ACCC website.

2.4. Unconscionable conduct

Businesses must not engage in unconscionable conduct. Generally, 'unconscionable conduct' is conduct that defies good conscience, having regard to society's norms and expectations.

For more information visit [unconscionable conduct](#) on the ACCC website.

2.5. Consumer guarantees

Under the ACL suppliers and manufacturers automatically provide guarantees about the goods they sell, hire or lease, and services they provide to consumers. These rights exist regardless of any warranty provided by the supplier or manufacturer and cannot be excluded.

A supplier includes anyone – such as a platform operator, a retailer or a trader – who, in trade or commerce, sells, leases or hires goods or services to a consumer.

Whenever a business supplies goods or services to a consumer (that is, the good or service costs less than \$40 000 or is ordinarily used for personal, domestic or household purposes) there are guarantees that the:

- goods are of acceptable quality
- goods will match their description, or any sample or demonstration model
- services will be provided with due care and skill and within a reasonable time
- goods and services will be fit for any purpose made known to the supplier.

If a good or service fails to meet a guarantee, a consumer will have rights against the supplier.

If the failure to meet a guarantee on a good is minor, the supplier can choose the remedy, including a repair. If it is major, the consumer can choose a repair, replacement or refund or can recover compensation for its reduction in value.

If a supplier (which can be the platform operator or the trader) does not meet a guarantee on a service and the failure is minor, the consumer can ask the supplier to fix the failure. If the supplier does not fix the failure within a reasonable time, or refuses, the consumer can get someone else to complete the service and recover the costs from the original supplier. If the failure is major, the consumer can cancel the contract and obtain a refund to cover the services that failed and any advance payments and recover damages.

In some cases, consumers can recover damages from the manufacturer if a guarantee is not met.

Consumer rights are not limitless—the consumer guarantees only require a remedy if one of the guarantees has not been met. You are not legally required to provide a remedy if the consumer changes their mind.

For more information visit [consumer guarantees](#) on the ACCC website.

2.6. Unfair contract terms

There are laws protecting consumers and (from 12 November 2016) small businesses from unfair terms in standard form contracts.

A term may be unfair if:

- it causes a significant imbalance between the rights and obligations of the consumer or small business and those of the platform
- it is not reasonably necessary to protect the legitimate interests of the platform
- it would cause the consumer or small business detriment (financial or non-financial) if the platform tried to enforce it.

For more information visit [consumer and small business unfair contract terms](#) on the ACCC website.

2.7. Competition obligations

The CCA imposes a number of obligations on businesses prohibiting anti-competitive conduct. This area of law is complex and whether particular conduct is permissible depends very much on the circumstances and markets involved.

In general, platform operators must not:

- enter into agreements that have the purpose or effect of substantially lessening competition
- seek to restrict who traders, consumers or suppliers can and cannot deal with if this would lead to a substantial lessening of competition
- require consumers or traders to purchase goods or services from a third party.

The ACCC produces a number of publications on complying with a business' competition obligations.

For more information visit [anti-competitive behaviour](#) on the ACCC website.

3. Transparency

3.1. Terms and Conditions

Important information must be clear, prominent and easily accessible. A platform that fails to clearly and prominently disclose important information may be engaging in misleading or deceptive conduct. It is important that consumers and traders understand and can easily access the terms and conditions that apply to their relationship with the platform.

In the ACCC's view, disclosure in a set of terms and conditions located in a separate part of the app or website, or in fine print at the bottom of a page or that is unnecessarily lengthy is not clear and prominent disclosure.

Platform operators should:

- Always disclose all relevant information that a reasonable consumer would expect to rely on when making a purchasing decision via, or from, a platform.
- Ensure that important information is clearly and prominently presented.
- Ensure terms and conditions are clear and easily accessible.
- In circumstances where space is limited, use links to other pages, pop-up boxes or if using an app, links to the website. Where any of these methods are used, they must be prominent and easily distinguishable.
- Avoid burying or hiding information in the terms and conditions. Failing to adequately disclose relevant or important information may be considered misleading or deceptive.

3.2. Policies

Platform policies may cover standards of conduct and behaviour, moderation of reviews, privacy, dispute resolution and matters relevant to traders, such as background checks, service levels and circumstances where they can be de-listed.

Some platform operators require traders to have police and drivers licence checks. Other platform operators require traders to hold certain types of insurance coverage. In some cases, traders may be de-listed if their review rating falls below a certain level.

Platform operators should document and clearly disclose, to both traders and consumers all policies governing behaviour, service levels and processes for de-listing.

Moderation policies set out the way platform operators manage the publication of reviews. Consumers using a platform may believe that all reviews are published. It is therefore important that a platform discloses how it moderates reviews.

Platform operators should ensure that moderation policies state that the platform will not:

- reject or remove reviews unless they are fake or contain material that is offensive or defamatory
- remove genuine reviews solely because a business or individual has lodged a complaint about the review
- approach reviewers with incentives which are tied to the consumer amending or removing a review
- apply disproportionately more rigorous checks on negative reviews than positive reviews.

Moderation policies are discussed further in section 4.2.5.

3.3. Full price

It is important that consumers are not misled about price. If a price is not clearly displayed or is displayed in a way that hides part of the price, consumers may be misled about the true price. Similarly, if platform operators impose a surcharge for payments using credit, debit or pre-paid cards, the surcharge must not exceed the costs to the platform operator of accepting the payment method.

For more information visit [payment surcharges](#) on the ACCC website.

Platform operators should:

- ensure that displayed prices are clear and accurate
- display the total price of a product or service where it can be calculated. Additional fees, such as GST, other taxes, cleaning fees or service fees should be included in the upfront price. If these fees cannot initially be calculated (because, for instance, they are dependent on the number of days a consumer chooses), platform operators should disclose that the additional fee is payable and as soon as it is possible to do so in a booking process, the full price should be disclosed
- state the total price of the good or service as a single figure, which is the minimum total cost that is able to be calculated. This should include any tax, duty, fee, levy or other additional charges (e.g. GST, city tax, cleaning or service fees)
- if using a price that is only part of the total price, also display the total price at least as prominently as the part price
- require traders to display prices in a way that meets these requirements
- if they choose to impose a payment surcharge, ensure that the amount of the surcharge does not exceed their applicable costs of accepting that payment type.

If a platform fails to disclose the full price or structures the display of information in such a way that traders' full prices are not clearly displayed, it may be engaging in misleading or deceptive conduct or breaching the component pricing provisions in the ACL. The ACCC has taken several court actions for conduct of this type.

If a platform changes its prices, any explanation of the reasons for the change should be accurate. If the reasons given are not the actual reasons for the price change, the platform may be engaging in misleading or deceptive conduct.

For more information visit [component pricing](#) on the ACCC website.

4. Accuracy and honesty

4.1. Misleading conduct

Platform operators should:

- not mislead or deceive consumers
- ensure that any statements they make are accurate. This includes statements on their app, website, in advertising, via images or on social media
- not rely on small print and disclaimers as a justification for a misleading overall message. For example, an advertisement states that a product is 'free' but the fine print indicates some payment must be made
- make sure that qualifying statements are clear and prominent so that consumers know what the real offer is
- consider whether the overall impression created by the conduct or statement is false or inaccurate
- take care when making statements about safety and trust or the reasons why the platform is safe or trustworthy.

Consumers are likely to consider trust and safety as important factors when engaging with the sharing economy and may place a lot of weight on such representations. Platform operators should have sufficiently robust terms and conditions and policies in place to justify any representations around safety, trust and protection. If a platform's terms and conditions or policies are not sufficient to support the representation, then the platform will likely be engaging in misleading or deceptive conduct.

When consumers are engaging with traders online, they will often not have the opportunity to view goods being leased or used to provide a service until the time for delivery. For this reason, there is serious potential for consumers to be harmed by misrepresentations made by traders. Accordingly, platform operators should have policies in place that require traders to be truthful, disclose any defects and impose sanctions if they engage in false, misleading or deceptive conduct.

4.2. Phoenixing

In the context of the sharing economy, phoenixing occurs when a person or business closes their account, or has their account cancelled, and opens a new account, appearing to be a new member or user of the platform. People often engage in phoenixing as a means to overcome a bad reputation and start again.

Phoenixing can have serious consequences for consumers and traders. It can mislead them into thinking that they are dealing with a party that is new to the platform or has only received positive feedback. In worst case situations, it can mislead consumers or traders into dealing with someone who has had extremely bad reviews or has engaged in misconduct or criminal behaviour.

Where platform operators make representations around safety and trust, these representations are likely to be misleading or deceptive if the platform does not have appropriate processes for detecting and preventing phoenixing.

Platform operators should:

- be aware of the risk of phoenixing
- have policies that prohibit phoenixing
- have clear processes to detect and prevent phoenixing.

Processes should include, at the very least, approaches for verifying the identity and address of people that seek to list on the platform and cross checking their details with existing or cancelled accounts.

4.3. Ratings

As well as submitting reviews, many platform operators allow consumers and traders to rate the other party. Ratings are often on a scale of 1 to 5, where 1 is a poor rating and 5 is the best rating. There tends to be a trend across all online businesses that allow some form of rating, for average ratings to be very high. This trend means that the differences between what consumers consider to be a good or a bad rating is often measured in fractions rather than whole numbers. Accordingly, minor changes in a rating can have major impacts on consumer perceptions, and actions by platform operators that result in a minor change to the rating can potentially mislead consumers.

In many cases, consumers only read a small number of reviews before making a decision. Often, the major influence in decision making is the overall aggregated rating. Accordingly, ratings are important and have a major impact on consumer decision making.

Platform operators should:

- not engage in conduct that manipulates ratings
- have processes to identify conduct by traders or consumers (such as offering incentives for positive or high ratings) that could manipulate ratings.

The veracity of an average rating can be heavily influenced by the number of reviews that have been used to calculate that rating. For example, an average rating of 5 that is calculated from 2 reviews is a lot less informative and useful than an average rating of 5 calculated from 1000 reviews. If consumers are unaware of how many reviews have gone into calculating the average rating, they may be misled where there have only been a limited number of reviews and give the average rating greater weight than it deserves.

Platform operators should display the number of reviews that have been used in calculating the average rating in circumstances where they use average ratings.

4.4. Comparative pricing and dynamic pricing

As discussed in section 3.3 platform operators should disclose the full price. Representations about price must be accurate and not misleading, in all circumstances. If a platform uses comparative pricing, where it compares its prices (or prices obtained using its platform) with a competitor's or the costs of its services with those of a competitor's services, the comparison must be accurate.

Accuracy is especially important for platform operators using dynamic pricing, which involves the use of algorithms to vary prices according to demand. A representation that a platform's prices are cheaper than its competitors must be accurate in all circumstances. If the use of

dynamic pricing means that in some instances the competitor's service will be cheaper, then the platform's representation will be misleading or deceptive.

Similarly, any statements about how dynamic pricing operates must be accurate. For example, if a platform represents that dynamic pricing is based on demand and prices will go up when there is an increase in demand, if the platform increases the price where there is no change in demand, it is likely the platform will be engaging in misleading or deceptive conduct.

Platform operators should ensure that:

- where they make claims about being cheaper or better than their competitors, these claims are accurate and can be substantiated in all circumstances
- any statements about when prices will, or why prices have changed are accurate.

5. Effective review processes

Reviews form an essential part of most sharing economy platforms. Bi-directional reviews of each other by consumers and traders act as a means of quality control, enabling each party to assess the other party based on the experience of prior consumers or traders. This acts as a powerful tool for removing traditional information asymmetries between purchasers and suppliers.

However, a failure to disclose the operation of review processes, including moderation policies, or a poorly designed review system could result in consumers being misled about how the review system operates, the security provided by the review system and the trustworthiness of counter parties. In these situations, the platform could be engaging in misleading or deceptive conduct.

5.1. Misleading reviews about the platform

Sometimes reviews by traders or consumers may make statements about the platform itself. If these reviews are incorrect or misleading, and the platform operator publishes them, the platform operator will be adopting the review and will be liable for misleading or deceptive conduct.

Platform operators should:

- not publish reviews that may mislead consumers about some aspect of the platform or its service
- not use third party reviews that may mislead consumers about some aspect of the platform or its service as a means of promoting itself or its services.

5.2. Fake reviews about traders

Traders or consumers may sometimes be motivated to write fake reviews. Traders might write fake negative reviews about a competitor as a means of driving more business to themselves. They may also write positive reviews about themselves for a similar reason. Similarly, they may engage or encourage third parties to write fake positive or negative reviews. Fake reviews can skew results, give consumers a misleading impression and offer the party writing or encouraging fake reviews a competitive advantage.

Consumers are likely to believe that reviews are true. If a platform does not have appropriate policies and processes in place to detect and remove fake reviews, it may be engaging in misleading or deceptive conduct if it publishes fake reviews.

A disclaimer in the terms or conditions that the platform operator does not moderate reviews (or words to this effect) is not sufficient to overcome any possible misleading impression.

Platform operators should:

- not publish reviews that they know are fake
- clearly disclose the processes it will follow and the circumstances where it will remove or not publish fake reviews.

We recommend that platform operators develop policies for the detection and removal of fake reviews. There are no definitive indicators of fake reviews. However, the following factors may indicate the possibility that a review is fake:

- the review is part of a sudden spike in reviews for a trader or consumer (positive or negative)
- the review uses the same or similar language to other reviews about the trader or consumer
- the review is written from the same email or IP address as another review for the trader or consumer, or the trader or consumer that is reviewed, or an intermediary working for the trader or consumer (such as a reputation management company)
- the review is written in an overly positive tone, and uses 'marketing speak'
- the review is written in an overly negative tone and recommends use of another product.

More detailed information on how to manage fake reviews can be found in the ACCC publication: What you need to know about: [Online reviews—a guide for business and review platforms](#), available on the ACCC website.

5.3. Incentivised reviews

It is likely that consumers will take reviews at face value and expect that a review is the honestly held opinion of the person posting the review. Anything that skews the true results for the reviewed party will likely mislead consumers about what people who engage with that party actually think. This includes the use of incentives to encourage people to post positive or remove negative reviews.

Platform operators should adopt best practice and avoid soliciting or incentivising reviewers to post reviews, especially positive reviews. If incentives are offered they should be clearly disclosed and should not be conditional on whether the review is positive or negative. A platform may also become aware that a trader has provided incentives for consumers to provide reviews on the review platform. If so, the platform, as a minimum, should prominently disclose on the page of the trader that the trader has provided incentives for reviews. Platform operators should also have processes in place to identify and sanction traders that offer or give incentives to remove negative reviews.

5.4. Representations about the effectiveness of the review system/processes

Some platform operators rely on reviews, background checks and standards of conduct as a major point of difference between themselves and their competitors operating more traditional businesses. However the effectiveness of a review system is only as good as the policies and procedures that support it, the screening policies for members and the standards of conduct that must be met.

Platform operators need to take care when making representations about the benefits of their review system, for example that the platform is safe and trustworthy. If the policies and processes that govern the use and operation of the review system and the management of consumers and traders that list on the platform are not sufficiently robust, such claims may be misleading or deceptive.

The nature of the sharing economy means that platform operators generally act as an intermediary or broker between a consumer and a trader. It is the trader that actually provides the good or service to the consumer. While platform operators will generally have policies in place as part of their relationship with the consumer and the trader, they do not have direct control over either of them. This means that platform operators need to be careful when making representations around trust, safety or protection.

Platform operators should:

- have detailed policies governing who can and cannot use their platform and how participants should conduct themselves
- ensure that these policies set minimum standards, and have processes for detecting and sanctioning non-compliance
- screen new members to check that they meet the standard and where those standards are not met or are breached, the member should be sanctioned or removed from the platform
- have processes for receiving and monitoring complaints. Complaint handling processes should be prominently disclosed and include:
 - a simple method for parties to lodge complaints about each other or the platform
 - steps that will be taken to review and assess the conduct complained about
 - how complaints will be resolved
 - escalation processes where a party is dissatisfied with the outcome.
- have processes for addressing misconduct, including warnings and de-listing
- consider the use of additional protections for consumers and traders, such as guarantees or indemnities. Where representations are made around trust and reliability, a best practice approach to avoid potentially misleading consumers or traders is to include guarantees or indemnities that cover consumers and traders if they experience any loss or damage
- educate traders about their compliance obligations and have processes in place to identify and sanction non-compliance. As well as obligations around consumer protection, the ACL prohibits the supply of certain goods and services. A best practice approach to avoid making misrepresentations around safety, where traders are or may be supplying prohibited goods or services, is to provide traders with educational material setting out their product safety obligations.

By following these steps, platform operators that make representations around safety and trustworthiness will minimise the risk of breaching the law.

5.5. Moderation of reviews

Platform operators will need to moderate reviews where they detect fake reviews. Moderation is important to ensure that review processes are not manipulated in a way that misleads consumers. However, moderation itself manipulates the reviews that are lodged by reviewers. Accordingly, there is scope for moderation to itself mislead consumers.

Platform operators should:

- Have detailed moderation policies that set out how particular events will be managed and in what circumstances reviews will be edited, rejected or deleted. Generally, reviews should be rejected or deleted if they are fake, defamatory or irrelevant. Credible negative reviews should not be rejected or removed
- Among other things, cover processes for the following in their moderation policies:

- managing disputes between consumers and traders over reviews, including through processes for reviewed parties to respond to or comment on reviews made about them
- identifying fake reviews
- processes for ensuring and verifying the validity of reviews
- how reviews will be ordered (discussed in section 5.6)
- how any star or value rankings are calculated, including that reviews that accompany ratings are disclosed (discussed in section 4.3)
- preventing, identifying and addressing phoenixing (discussed in section 4.2)
- preventing punitive reviews by one party in response to a bad review from the other party (discussed in section 5.7)
- Clearly disclose their moderation policies so that consumers understand that the reviews are subject to moderation and can easily access the moderation policies.

5.6. Ordering of reviews

Generally consumers or traders will not read all the reviews on a particular consumer or trader, especially if there are a large number of reviews. They will often only read the first few reviews. This means that the order in which reviews are displayed is very important.

If a platform manipulates the ordering of reviews so that only positive reviews are shown first, consumers could be misled about the true nature of the other party. This is especially the case if the negative reviews actually outnumber the positive reviews.

Platform operators should:

- as a default, display reviews in the order that they are received
- not manipulate or re-order reviews in such a way that a misleading impression is created.

5.7. Bi-lateral reviews

Many platform operators use bi-lateral reviews, where the consumer and trader review each other. There is a risk with such systems that some parties may provide unfounded negative reviews as retribution for themselves receiving a valid negative review. In an effort to avoid the risk of this type of retribution, some people may lodge positive reviews, even when they have had a bad experience.

This conduct would devalue the effectiveness of the review system as a means of quality control and potentially mislead people about the true quality of some traders or consumers. Where the platform makes representations about safety and trustworthiness, this type of conduct could render those representations misleading or deceptive.

In order to manage this risk, the ACCC recommends that where platform operators allow bi-lateral reviews, they:

- require reviews to be submitted within a set time period, after which reviews will not be accepted or published
- do not publish reviews until after
 - both parties have submitted their review; or
 - the time period has passed.

This approach means that the two parties cannot see what the other party has said before they lodge their own review. Following this approach will limit the ability of people to engage in retribution and help maintain the veracity of the review system.

6. Dealing with consumers and traders fairly

6.1. Competition

In Australia certain business practices that limit or prevent competition are against the law. Some of these practices may be relevant to platform operators, particularly as platform operators grow, and it is important for platform operators to be aware of what they can and cannot do.

Whether particular conduct will breach the competition laws depends on the circumstances and the market that the conduct occurs in. However, as a general rule platform operators should take care if they are seeking to constrain a consumer or trader's freedom of choice.

Platform operators should:

- not engage in third line forcing. This occurs when a business will only supply goods or services, or give a particular price or discount, on the condition that the purchaser buys goods or services from a particular third party
- not impose requirements on traders or consumers that prevent them from also dealing or contracting with a competitor of the platform. This type of conduct is known as exclusive dealing and is illegal if it leads to a substantial lessening of competition.

There are processes in the CCA for businesses to apply to the ACCC for authorisation of exclusive dealing and third line forcing or notify the ACCC of exclusive dealing and third line forcing, where the public benefit of the conduct outweighs the public detriment.

For more information visit [anti-competitive behaviour](#) on the ACCC website.

6.2. Unfair contract terms

Terms and conditions govern the relationship between parties. In some cases platform operators may wish to use uniform terms and conditions for all countries in which the platform operates. Where this is the case, some of those terms and conditions may not comply with Australian laws.

Platform operators should:

- take care in drafting the terms and conditions that apply between the platform and consumers and the platform and traders
- not include any unfair contract terms in either set of terms and conditions. The ACL renders terms in standard form consumer contracts (and from 12 November 2016) small business contracts void if they are unfair
- take care when using global terms and conditions. Consider the ACL definition of unfair terms and conditions, and remove them from contracts that apply in Australia.

For more information visit [unfair contract terms](#) on the ACCC website.

6.3. Consumer guarantees

The consumer guarantees apply automatically to goods or services bought by consumers (as defined in the ACL) and potentially include business purchases. The consumer guarantees provide for certain guarantees that apply automatically and cannot be excluded.

If a business attempts to exclude the consumer guarantees or states that it does not provide any guarantee or warranty, it may be engaging in false, misleading or deceptive conduct.

Platform operators should:

- carefully review their terms and conditions to ensure that they comply with Australian law. This is especially the case if the platform is an international business using uniform global terms and conditions
- not misrepresent consumers' and traders' guarantee rights. For example terms and conditions cannot limit or remove rights available under the consumer guarantees
- assist traders to understand their consumer guarantee and ACL obligations, by providing them with simple and clear information about their (trader) obligations.

7. Terminology

'Sharing economy'

There are a range of different definitions of the sharing economy and no generally accepted definition. For the purposes of this guidance, the ACCC considers that the sharing economy covers economic activity that involves individuals or businesses making goods or services available for (generally) short-term use by other individuals through an online facilitator that manages administrative functions and utilises peer review.

'Sharing economy platform'

For the purposes of this guidance the ACCC considers that a sharing economy platform (Platform) is a business that:

- operates an online platform connecting buyers and sellers in the sharing economy (A Platform can operate either online, via an app, or both)
- is generally used to facilitate peer-to-peer transactions; and
- uses reviews, ratings or feedback mechanisms as a means of regulating quality.

'Trader'

- A person or business that offers and provides goods or services for use by consumers via a platform on a frequent or regular (including semi-regular) basis. Traders may be referred to by a number of different terms, such as user, driver, host.
- People who are not acting in trade or commerce and are selling goods or services as one-off or infrequent transactions are not traders.

'Online reviews'

Online reviews are reviews about goods, services or the provider of goods or services that a platform operator publishes online.

'Moderation'

Moderation refers to the processes of a platform operator to manage the editing and publication of online reviews.

'Consumer'

For the purposes of this guide, a consumer is a person who purchases goods or services from a trader through a platform. The definition of 'consumer' in the ACL is more expansive and includes a person who acquires goods or services for less than \$40 000 or goods or services of a kind ordinarily used for personal, domestic or household use or consumption. Accordingly, a trader who acquires services from a platform operator may be a consumer for the purposes of the ACL.

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