

Monday 19 December 2016

Secretariat: Data Availability and Use Inquiry
Productivity Commission
Email: data.access@pc.gov.au

Dear Secretariat,

RE: Data Availability and Use, Draft Report

I write regarding the Draft Report for the inquiry into Data Availability and Use. As CHOICE noted in its earlier submission to this inquiry, Australian consumers face increasingly complex choices in markets for everyday products and services. As a result of this complexity, many consumers feel less confident about choosing the right product or provider. This reduces competitive pressure, resulting in lower incentives for innovation and price-based competition. CHOICE welcomes the recommendations of the Draft Report directed at unlocking data and providing consumers with the tools they need to navigate complex markets.

The proposed new comprehensive right for consumers

CHOICE strongly supports the recommendation to create a new comprehensive right for consumers. The comprehensive right will provide greater control for individuals over data that is collected about them, by ensuring consumers will be able to:

- view information held about them and request edits or corrections;
- appeal automated decisions made through statistical profiling;
- be informed when there is disclosure of their data to third parties; and
- access a machine-readable copy of their data, or have one provided to a nominated third party.

Providing consumers with relevant, accessible information about the products they consume and the way in which they do so will improve both the individual consumer experience and the overall competitiveness of the marketplace. Coupling the release of this information with the development of user-friendly comparator tools would reduce consumer confusion and simplify the ways in which individuals engage with the market.

The UK's Midata programme provides an example of how access to data can empower consumers. The programme was launched in 2011 and initially focused on four key markets: energy, bank accounts, credit cards and mobile phone plans. The value of consumer data in these sectors is substantial, as consumers often enter into lengthy contracts for products that are complex and difficult to compare. A new website, GoCompare.com, allows consumers to drag and drop their Midata file into a comparison tool for bank accounts, to help them find the account that is most suitable based on their use of their current account.

While Midata is an innovative idea, it has not been as successful as it could have been primarily due to users needing to download and then upload their data files, rather than use a simpler process. The Draft Report notes that implementation of the comprehensive right may need to vary across sectors, with some sectors being better placed to use APIs for data transfer, and others needing to use transfer of files.¹ When considering the usefulness of each approach, we should look to the UK's experience. Transfer of files did not open up markets in the manner expected; the UK is now moving to instead use APIs. Australia should avoid repeating costly mistakes – APIs appear to be more beneficial to consumers because they are easier to use. However, this is not the case of needing to choose one approach over another. There may be a case for some sectors to provide csv or similar data files of consumer data in the short term while APIs are built to provide a superior experience in the medium term.

The importance of data held by regulators

CHOICE agrees with the Productivity Commission's view that reforming access to public sector data should be a priority. In particular, there are benefits to be gained through the release of product safety reports and complaints data by consumer law regulators.

Mandatory product safety reports made to the ACCC are currently kept confidential, due to the operation of s132A of the Australian Consumer Law (ACL). Since the ACL came into force on 1 January 2011 there have been over 10,000 mandatory reports made of actual injuries or deaths caused by the use or foreseeable misuse of products and services. We know the details of just eight of those, due to legal action taken against Woolworths for failing to make mandatory reports within the required timeframe.

¹ Productivity Commission, 'Data Availability and Use Draft Report', p18.

These reports represent vital safety information. If they could be shared with other Australian and international regulators, this information could be used to better coordinate regulator responses to safety hazards. If they could be shared with consumer advocates, they could better warn consumers of risks. If testing bodies like CHOICE could access them, we could adapt our testing to take account of consumer experiences with goods. And if these reports were publically available, Australian consumers could make more informed decisions about which businesses to deal with.

In other jurisdictions, similar information is made available. In the United States, the Consumer Safety Protection Bureau publishes a publicly accessible, searchable database of consumer product incident reports at www.SaferProducts.gov. This database allows consumers, health professionals, regulators and other bodies to upload reports which suppliers can then respond to online. In Japan, there is disclosure of the full accident reports made to regulators. CHOICE would like to see a similar approach in Australia, rather than the current situation where this valuable data is collected but inaccessible.

Regulators also collect valuable data on general complaints by consumers about traders. NSW Fair Trading releases some of this data in the form of a Complaints Register. This approach could and should be adopted by the other State, Territory and Federal regulators. Sharing this data will improve consumer welfare by empowering consumers to make more informed decisions about where to buy goods and services, and incentivise businesses to improve their complaints handling processes and their business practices more generally.

Third party access to privately held data sets

In some cases, third party access to data can have a harmful impact on consumers, particularly when it is used to set prices for consumers based on certain characteristics. For example, it could be quite harmful for consumers if the comprehensive credit reporting (CCR) regime is extended to allow non-credit licensees to access individual repayment histories. Extending access will likely make it harder for customers with poor credit ratings to access essential services, such as telecommunications and utilities.

One area that remains unaddressed by industry or governments is the equity issues that will be exacerbated as CCR is used by more businesses to price services to certain segments of the

population. There has been little consideration of the fact that, taken to its natural extension, CCR will lead to some of Australia's most vulnerable and disadvantaged consumers facing higher prices or restricted access to goods or services. In some cases, this may lead to a positive outcome (no credit being arranged for people who are less able to service a loan. But negative outcomes are also likely, for example, we expect that vulnerable groups such as people on low-incomes, who are unemployed, who have survived domestic violence situations or are indigenous will be asked to pay higher interest rates when accessing credit.

It is unclear if the new comprehensive credit reporting system is working to the benefit of all consumers. CHOICE recommends that the credit reporting system is reviewed in the next two years or before it is made mandatory (whichever is sooner) and that the review focuses on the need for any additional consumer protection requirements, particularly for low-income and vulnerable consumers who may experience restricted access to services.

Comments on case study E (financial data) – the importance of maintaining consumer protections when assessing new proposals

The draft report uses the case study of financial data to demonstrate how expanding access to new sources of data could facilitate innovation and increase competition in banking. CHOICE agrees with the conclusions that access to data will facilitate much needed competition in the banking and financial services sector. However, we wish to flag a major risk with the case study, particularly with the conclusion that there is scope for governments to adopt efficiency-enhancing measures to minimise the unintended consequences of regulation to support the growing fintech sector.²

The approach taken by the Federal Government and the Australian Securities and Investments Commission (ASIC) in assessing regulations that apply to the fintech sector to date have focused on the needs of the emerging sector with no or inadequate consideration of the consumer protections required. For example, ASIC recently announced how its 'regulatory sandbox' measures will operate for Australian fintechs. ASIC is providing a blanket licensing exemption for new finance companies selling financial advice, credit and, some insurance that will allow them to operate in a limited manner without a license for 12 months.³ Unlike comparable sandbox

² Draft Report, p. 533.

³ See <http://asic.gov.au/about-asic/media-centre/find-a-media-release/2016-releases/16-440mr-asic-releases-world-first-licensing-exemption-for-fintech-businesses/>

programs in the United Kingdom, Singapore and Hong Kong, ASIC will not be assessing whether a business using the exemption offers anything innovative, poses risks to consumers or if they need the exemption (see table below). CHOICE sees this approach as presenting significant, unmitigated risks to consumers.

International comparisons: how do fintech licensing exemptions work?

	United Kingdom	Singapore	Hong Kong	Australia
How do businesses enter the sandbox?	Applicants must apply to the regulator (FCA) that assesses each individual case for regulatory exemptions. ⁴	Applicants must apply to the regulator (MAS) that assesses each individual case for regulatory exemptions. ⁵	Applicants must apply to the regulator (HKMA) that assesses each individual case for regulatory exemptions. ⁶	There is no assessment, businesses instead notify ASIC that they will be selling a product unlicensed.
What are the evaluation criteria?	Only applicants that are genuinely innovative, aimed at the UK market, will benefit consumers and are ready for testing are accepted.	Applicants should use new or emerging technology, should show that there are few or no comparable services in Singapore, address a problem or bring benefits to consumers or an industry, define the test, assess risks and demonstrate an exit or transition strategy.	Applicants must demonstrate a clear boundary for their sandbox test, that there are adequate consumer protections for the trial, that there are risk management controls and that systems and processes are ready for trial.	There is no evaluation by ASIC. Any business that has insurance and is a member of an EDR scheme can enter. There is no consideration of whether a business is innovative, useful to Australia, has the right consumer protections for an experimental test or is ready to test.

⁴ <https://www.fca.org.uk/firms/project-innovate-innovation-hub/regulatory-sandbox>

⁵ <http://www.mas.gov.sg/Singapore-Financial-Centre/Smart-Financial-Centre/FinTech-Regulatory-Sandbox.aspx>

⁶ <http://www.hkma.gov.hk/media/eng/doc/key-information/guidelines-and-circular/2016/20160906e1.pdf>

Part of the issue with the sandbox proposal is that it appears to have been developed with deep, detailed consultation with industry groups but without comparable engagement with consumer groups. Fintech matters are currently considered by two groups – ASIC's Digital Finance Advisory Committee⁷ and the Treasurer's Fintech Advisory Group⁸. The ASIC body has one consumer representative; the Treasury body has no consumer representative. Further weight must be given to consumer protection issues when assessing efficiency measures for new or emerging business models.

For further information please contact CHOICE

Yours sincerely,

Sarah Agar,
Manager of Consumer Policy

⁷ <http://asic.gov.au/for-business/your-business/innovation-hub/digital-finance-advisory-committee/>

⁸ <http://fintech.treasury.gov.au/working-with-australias-fintech-industry/>