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Data Availability and Use
Productivity Commission
GPO Box 1428
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Dear Commissioner

The Federal Chamber of Automotive Industries (FCAI) is the peak industry body representing the interests of Australian manufacturers and distributors of passenger motor vehicles, light commercials and motor cycles. Our membership includes companies whose sales represent over 99% of the total sales of new vehicles in the Australian market. Further information on the FCAI, including a list of members, is available from www.fcai.com.au.

As an initial point, it is important to distinguish between data and information. As outlined in the Productivity Commission Issues paper, data is raw, unorganised material. Information is data that has been transformed by having been organised, collated, analysed and interpreted. The FCAI understands that the scope of the PC Inquiry is focused upon data, not information, and has provided the comments below with that in mind.

It is important to acknowledge that there are different sources of motor vehicle data. For example:

- Data developed by or integral to vehicle systems operations – environmental, performance, safety, security.
- Data developed by infrastructure – through the vehicle's interaction with toll roads and traffic signals as examples.
- Data Developed by owner/driver – e.g. geospatial data for fleet management and vehicle operations.

This submission is focusing upon data that can be derived from, and is held within, the vehicle itself and also considers instances where data is developed through the interaction with infrastructure, noting that that data may not be stored within the vehicle.

Motor Vehicle Data and its Treatment

With the increasing availability of intelligent transport systems (ITS) within vehicles and the added embedded technology into new and existing vehicles and infrastructure (Cooperative ITS) there will be an increasingly significant amount of data generated by and from motor vehicles. The data ranges from data embedded into the intellectual property of those who developed the vehicle (i.e. the operating system within the vehicle), data based on the location of the vehicle at particular points in time (e.g. geospatial data), and data indicating the point in time operating characteristics of the vehicle (e.g. Event Data Recorders and driver behaviour).

Motor vehicle data has many potentially beneficial uses. Indeed, motor vehicle data is already being used extensively. For example, the various police and road and traffic authorities have particular requirements to enforce a range of laws, including vehicle registration and the High Powered Vehicle laws (a power to weight analysis sourced from FCAI) and the more general laws against unauthorised use or theft. FCAI, in conjunction with the National Exchange of Vehicle and Driver Information System (NEVDIS), makes vehicle specification data available free of charge to assist in these enforcement activities. These are clear instances where private data has an identifiable public benefit.

The undoubted public benefits that motor vehicle data can provide needs to be balanced against protecting people's privacy. One of the key challenges that the international motor industry faces with the emergence of motor data is the need to maintain consumer confidence in the way their private data is treated. The FCAI is developing a procedure that we envisage will ensure that consumer privacy is respected yet they receive the full benefits of vehicle technologies. Insurance companies, for example, would like access to the data, and certain consumers would be happy to pass this information through to them in some situations. At other times they may wish to protect this data. This choice needs to be available to consumers.

FCAI would also point out that in certain circumstances personal data provided by, or through, vehicle technologies will need to be collected by the vehicle distributor for legitimate business purposes. Data will also need to be collected for certain safety, operating, compliance and warranty related matters. Where this data is linked, or is reasonably able to be linked to a particular vehicle or the use of that particular vehicle, it should be dealt with in accordance with these principles:

- The use should be transparent;
- customers should be given a choice;
- the data should be properly secured;
- the data should be processed in a proportionate manner;
- the integrity of the data should be preserved; and
- appropriate access should be provided.

When the data is altered, combined, improved or otherwise collated in a way that no longer provides a link, or a reasonable pathway, to a particular vehicle or the use of the vehicle, the data should no longer be subject to these principles.

Importantly there is a need to ensure that certain data is not generally available. This is particularly so where that data can enable, or assists in enabling, theft of vehicles or could impact the safety of vehicle occupants or other road users. The data embedded in the motor vehicles operational system is core to protection of the vehicle. A very limited range of authorised persons have access to this data under current arrangements, and this should remain the case. Calls for wider access to this data will not assist consumers, but will lead to increased risk and undoubtedly increased administrative and compliance complexity.

Further to the above there is data that is derived from the testing of vehicles to ensure that they meet the technical regulatory standards for introduction to the Australian market. These technical standards are called the Australian Design Rules (ADRs). The results of the company's analysis and independent testing of the vehicle against these criteria are provided to the Government which then analyses the test results and considers the request for approval to import or manufacture the vehicle for road use in Australia. If the vehicle meets the standards, the approval may be given, and the detail of this decision is available to the consumer to ensure they are aware of the Government's analysis. This data should not be required to be generally available.

Similarly with vehicle components that are important to a vehicles operation and/or safety but are not necessarily required to be ADR compliant, the actual engineering standards and properties and the material properties of any particular component are not, and should not be required to be released by the company as this information is the IP of that company.

Where aftermarket parts companies choose to reverse engineer components, as they are doing now, they need to conduct their own research and determine that the performance of their reverse engineered component is at least up to the standard of the OEM component in situ. This is a commercial and technical matter for the aftermarket parts company to determine. They should not be able to get a 'free ride' by taking advantage of the significant amount of time and money spent by the manufacturers.

In terms of the performance of a vehicle, the FCAI members have no issue with the publication of independent third party test results so long as the criteria are clearly identified. There are publications such as the Green Vehicle Guide and also Fuel Track which provide emission performance and fuel price information respectively which are both relevant to the considerations of performance. Broader information around the contribution of motor vehicles to urban air quality is also published by the state based EPAs.

FCAI members nonetheless recognise that there are limits as to what can be published, with considerations such as the Australian Privacy Principles and applicable intellectual property and copyright laws all relevant to the overall data and information considerations in Australia.

Before moving to respond to particular questions raised by the Commission the FCAI would like to briefly comment on the issue of service and repair information. Clearly this type of published technical and maintenance information is far removed from the concept of data as discussed throughout the Commission's issues paper and is not within the scope of the current enquiry. However, we note in response to other submissions that there already exists an Industry Agreement on Access to Service and Repair Information. Service and repair information is widely available in the best interests of consumers as is required by the Industry Agreement. The Agreement has been in operations since December 2014 and no evidence of a systemic breach of the Agreement provisions has been produced to date. It is also worth making the point that the number of independent repairers far outweighs the number of authorised repairers in the maintenance and repair of the Australian vehicle fleet and obviously these independents have access to the information required to service their customers vehicles.

In response to specific questions posed by the Commission we offer the following comments.

Questions on High Value Private Sector Data

What private sector datasets should be considered high-value data to: public policy: researchers and academics; other private sector entities; and the broader community?

- The value of a dataset is not necessarily determined by the holder of the data, but by those who wish access. The same dataset may have a different value depending on its contribution to an objective of the recipient of the data. The quality of the dataset and the point in time where the value of the data is considered are also important in determining the data's value.

What would be the public policy rationale for any associated government intervention?

- FCAI does not believe there is any current or foreseeable rationale for Government intervention in the collection of data from new motor vehicles, other than the role it currently has pursuant to the Privacy Act 1988.

What benefits would the community derive from increasing the availability and use of private sector data?

- Datasets that enable implementation of certain government policies, for example road safety, should be considered high value by the community more broadly.
- In respect of traffic management, the opportunity to reduce congestion through real time traffic information collected by private organisations such as toll road operators would aid in achieving lower CO_2 vehicle emissions (note that this may already be shared with the relevant authorities), would save commuters time and may also assist in providing safer motoring.

It is worth noting that the FCAI already makes a range of information and data available free of charge to the law enforcement community.

Questions on Access to Private Sector Data

What are the reasonable concerns that businesses have about increasing the availability of their datasets?

- It must be properly recognised that:
  - the datasets (including the intellectual property) held by the private sector have significant sunk costs and are of considerable value; and
  - the intellectual property held in the data, often on behalf of third parties, is rightly owned by the data generators and consolidators where applicable.
- Any intervention or arbitrary valuation of the data by external parties (even if assessed on the basis of the value to others in the public or private sector) without proper consideration of the intellectual property and longer term commercial value - let alone the possible opportunity cost, to the data owner/generator - is likely to result in a net loss to that organisation, and usually an opportunistic gain to another.

What principles, protocols or legislative requirements could manage the concerns of private sector data owners about increasing the availability of their data?

- In general, the current legal regime is appropriate to manage concerns when data is shared.
- FCAI notes the suggestion that protocols could be developed to assist in protection of rights within data. While this is perhaps worth considering our initial view is that "protocols" are not appropriate to resolve what are often complex commercial intellectual property matters.

Who should have the ownership rights to data that is generated by individuals but collected by business? For which data does unclear ownership inhibit its availability and use?

- As a general concept, ownership of data generated by individuals but collected by business should be owned by the individual. In the case of new motor vehicles, however, it is often difficult to determine who in fact 'generates' the data. To the extent that the data is relevant to the safety, security, operations, compliance or warranty of new motor vehicles the data is generated by the intellectual property in the vehicle systems and is owned by the manufacturer/distributor who has invested in the research and development to create these systems. Data that is generated because of the decision by the owner, or the driver, to drive in a particular way or to a particular location (geospatial data) is in a sense 'generated' by the owner/driver but relates to the vehicle being driven. On balance, the FCAI is of the view that this geospatial data should be owned by the owner, however it must be available to the manufacturer/distributor if it is relevant to warranty or other commercial claims.

Questions on Consumer Access to, And Control over, Data (EDR)

What impediments currently restrict consumers' access to and use of public and private sector data about themselves? Is there scope to streamline individuals' access to such data and, if there is, how should this be achieved?

- In all likelihood, if data was available for download from a vehicle it would be a raw data download and the consumer would be unlikely to be able to interpret it. (In fact, FCAI suspects that the dealership would also be in a similar position). Therefore, if a consumer wants access to the data about their use of their vehicle, FCAI envisages this would be available from a party other than the dealer/distributor. Often this data would be generated by other systems unrelated to the vehicle operating systems, as designed and installed by the manufacturer. However, if a dealer/distributor is instructed by the owner to provide a 'data dump' to a third party how would the dealer/distributor be able to be assured that only data about that person's use would be provided to the person? It would be very difficult to guarantee this meaning that the dealer/distributor could be unfairly assuming a liability.

Are regulatory solutions of value in giving consumers more access to and control over their own data?

- In a general sense regulatory solutions are of value. The question really is what are those solutions? One of the problems the FCAI envisages is that it would be difficult to ensure that a person who is authorised to access motor vehicle data about themselves is not inadvertently given access to data about other users of the vehicle.

Questions on Privacy Protection

How can individuals' and businesses confidence and trust in the way data is used be maintained and enhanced?

- Treatment of data in accordance with the principles referred to above would continue to build confidence.
- One of the key requirements is transparency – i.e. ensuring that customers are aware of the proposed treatment of private data by the automotive distributor. A problem with this is that the risks of providing wider access to data are often unknown to the consumer, and also often to the automotive distributor, until it is too late.
- To protect against this, if a decision to provide access to data is made then that data must be disaggregated unless clear guidance and complete understanding of the impact of the possible wider access is known in advance.
- Another related issue that needs to be dealt with is the fact that it is very difficult for any one organisation to know how another organisation is using data generated in respect of its vehicles; for example an automotive company will not know what a toll road operator does with their data, and vis-a-versa.
- In the short term the main concerns are likely to involve the geolocation and use data that will be generated. Not all of this data is collected by the automotive manufacturers systems, some of it is collected by integrated infrastructure. Unless this is dealt with individuals' and businesses confidence and trust will diminish.

What weight should be given to privacy protection relative to the benefits of greater data availability and use, particularly given the rate of change in the capabilities of technology?

- Privacy protection should remain paramount. If not, there might be a consumer backlash which could, in the end, reduce the amount of data available to make informed choices and decisions across a host of areas.

What are the benefits and costs of allowing an individual to request deletion of personal information about themselves? In what circumstances and for what types of information should this apply?

- An important point to note in this particular area is that it may not be possible to 'turn off' certain functionality within vehicles and consumers may need to accept, at the time of purchase, that their vehicle will generate data.

Please feel free to contact me if you have any questions on the above submission.

Yours faithfully

Tony Weber
Chief Executive