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Data Availability and Use

Submission to the Productivity Commission

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia's largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

To find out more about CHOICE's campaign work visit
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INTRODUCTION

CHOICE appreciates the opportunity to provide the following comments to the Productivity Commission on its public inquiry into data availability and use. CHOICE supported the 2014 Financial System Inquiry recommendation that led to this process.

Australian consumers face increasingly complex choices in markets for everyday products and services. This complexity is compounded by rapid price rises (e.g. in energy and health insurance), fast-moving technologies (in telecommunications), barriers to switching (in banking), and poor information (in all of these markets). Consumers say that health insurance, superannuation, mortgages, home and contents insurance and utilities are most complicated products and are difficult to choose.¹ As a result of this complexity, many consumers feel less confident about choosing the right product or provider. This in turn reduces competitive pressure, resulting in lower incentives for innovation and price-based competition.

At the same time, we are witnessing an exponential increase in the amount of consumer data collected by retailers and service providers, both public and private. The emergence of 'big data' has transformed transaction histories into valuable databases, with potential for application in product design and marketing, and implications for privacy and security. This also presents a significant, largely untapped opportunity to provide benefits for consumers.

The role of governments

There is a strong case for providing consumers with access to certain data collected by governments and regulatory agencies. For example, providing Australian consumers with information on businesses that have had high levels of complaints made against them would address existing asymmetries of information, where businesses are aware of the volume of complaints made against them but consumers are not. Addressing this will empower consumers to make more informed purchasing decisions and pressure businesses to improve their complaints handling and other practices.

Australia's Consumer Law regulators are only resourced to escalate a fraction of issues raised with them to enforcement. An even smaller number of matters result in new or revised

¹ CHOICE, Consumer Pulse Survey, June 2014. The survey was designed and analysed by CHOICE with fieldwork by GMI/Lightspeed Research conducted with 1001 consumers aged 18-75 years between 13 and 25 June 2014. Final data has been weighted to ensure it is representative of the Australian population based on the ABS Census 2011. Cost of living questions about people's concerns with expenses is based on the total population including people who do not have a given expense. We have done this to represent the overall views of Australians.

mandatory standards. Yet simply publishing this information can have a powerful network effect. For example, providing transparent information on products that have caused injuries and deaths as reported by consumers will empower consumers in their dealings with businesses, and encourage a more proactive approach from businesses to product safety recalls.

Currently, a consumer who has experienced a ‘near miss’ safety incident with a product may be disinclined to pursue their rights under the Australian Consumer Law to a refund, replacement or repair based on the fact that the product is unsafe, being persuaded by the business that their incident was a ‘one off’, or that the safety risks are minimal. Were mandatory product safety reports made public, however, the information asymmetry will be addressed and consumers will be able to more confidently assert their rights.

There is also a role for government to facilitate third party access to privately held data. For example, comparison sites can assist consumers with difficult product comparisons but can struggle to access all information about some products. Governments have a role to play to reduce conflicts of interest in the current comparison site business models and to allow greater access to data about pricing.

Giving consumers access to their own data can drive better markets

CHOICE believes the best way to drive greater efficiency in complex retail markets is by giving consumers access to the data collected *about them*. By allowing consumers to access their transaction and consumption data, and making it sharable in a secure digital format, we can create opportunities for third party innovators to provide services that help consumers. We can also create pressure for product innovation and price-based competition by the businesses that hold this information.

Three steps are required to unlock these benefits:

1. Recognising consumers have the right to access their own transaction and consumption data in a useful format.
2. Identifying the barriers to making this data available, especially in retail markets that are difficult for consumers to negotiate.
3. Taking action in targeted markets to remove these barriers and drive genuine competition.

It is important to acknowledge that, whether data is held by government or private companies, simply making it available will not result in better-informed consumers – it is necessary that the

data also be accessible and useable. The United States' "smart disclosure" policy memorandum provides some guidelines to ensure that data is not merely released but is provided to consumers in a format that will aid their ability to make informed decisions. CHOICE agrees that the characteristics of smart disclosure include accessibility, machine readability, standardisation, timeliness, interoperability and privacy protection.

1. Government data

There is substantial data held by government agencies that would benefit consumers if it were released in an appropriate format. In particular, consumer complaints about businesses held by Federal and State and Territory consumer law regulators and product safety reports made to the Australian Competition and Consumer Commission (ACCC) are valuable datasets that could be used to provide consumers with useful information about the products they buy and the businesses they deal with.

Complaints data

Providing consumers with access to relevant information currently held by businesses can be facilitated by Government. NSW Fair Trading's pilot complaints register is one example that could be adopted nationally. CHOICE strongly supports the decision to create a consumer complaints register that will publish information about individual traders who are the subject of a high number of complaints and encourages other States and Territories, and the Federal regulators such as the ACCC and ASIC, to follow suit.

Sharing this data will improve consumer welfare by empowering consumers to make informed decisions about what goods and services best meet their needs. Providing consumers with information on the traders that have had high levels of complaints made against them will help address existing asymmetries of information, where businesses are aware of the volume of complaints made against them but consumers are not. Addressing this will empower consumers to make more informed purchasing decisions and pressure businesses to improve their complaints handling and other practices.

In order to facilitate innovation by third parties and app developers, regulators should endeavour to release as much information as possible. At a minimum such complaints registers should include information about the trader, the product or service complained about, the problem or practice complained about and the purchase method used.

It may also be desirable to publish the outcomes of dispute resolution between consumers and businesses, as is done by the United States' Consumer Financial Protection Bureau or the Netherlands' consumer advocacy organisation, Consumentenbond.² In these examples, the

² See the Consumer Complaints Database <http://www.consumerfinance.gov/data-research/consumer-complaints/> and Klachtenkompas <http://www.klachtenkompas.nl/>.

provision of data goes beyond simply increasing transparency but also provides consumers with a pathway towards public complaint resolutions that can benefit other consumers.

Recommendation 1

CHOICE recommends:

- That all Australian Consumer Law regulators, at the Federal and State and Territory levels, follow the example of NSW Fair Trading and make consumer complaints data publicly available.

Product safety data

Under the current regulatory regime for product safety, substantial data on product safety injuries and deaths is collected and stored, but is kept confidential. Existing *Competition and Consumer Act 2010* (Cth) Schedule 2 s132A confidentiality provisions regarding mandatory injury reports should be revoked. Australian consumers have a right to information about the nature of product-related injuries and/or deaths, including the steps taken by suppliers in response to the incidents.

Since the ACL came into force on 1 January 2011 there have been over 10,000 mandatory reports 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 10,000 mandatory reports as a result of the legal action taken against Woolworths for failing to make the mandatory reports within the required two day period on eight occasions. On that occasion Woolworths was fined \$57,000 for failing to comply with its obligations.

CHOICE believes that the Australian public has a fundamental right to know the nature of these injuries and/or deaths, including the steps taken by suppliers in response to the incidents. In other jurisdictions information of this nature is made available. For example, in the United States, the Consumer Safety Protection Bureau publishes a public portal and a publicly accessible, searchable database of consumer product incident reports. CHOICE would like to see a similar model adopted in Australia.

Through the www.SaferProducts.gov website, consumers, child service providers, health care professionals, government officials and public safety entities can submit reports of harm (known as “Reports”) involving consumer products. Manufacturers, importers and private

labellers identified in Reports receive a copy of the Report, and have the opportunity to comment on them. Completed Reports and manufacturer comments are then published online at www.SaferProducts.gov for anyone to search. There are processes in place to deal with materially inaccurate information and confidentiality requests.

CHOICE receives regular reports from our members about product safety issues. Despite referring our members to the relevant regulatory agency, we know that our members are very unlikely to receive a comprehensive response to the issue they raise. These are examples of product safety incidents reported by CHOICE members:

I live in Victoria and would like to know who to report a problem with an electrical appliance. We have an Asko clothes washing machine, while in use my wife noticed a strange noise and smell, luckily she turned it off at the power point. Our son is an electrician and took the rear cover off and turned it back on at the power point, the electrical motor had burnt out and was arcing to the motor mount. Which could have potentially started a fire or become a quite serious shock hazard if the frame was to become live, luckily my wife turned it off. The circuit breaker did not trip. I have a video of the power arcing out (which shows how frightening it was) that I can send if you would like to see it.

I am writing to inform you that I suffered a catastrophic failure of the Tagabike while riding it across the very busy intersection of Cleveland Street and Regent Street Redfern this morning around 9.15 am. The front and rear parts of the tricycle separated completely after the link hinge cracked apart causing me to sustain injuries as a result of falling onto the road between the collapsed parts. (Images and doctors notes available.) I had just dropped my daughter to preschool fortunately she was not on the tricycle at the time of the incident nor was her younger brother. Witnesses kindly offered assistance in the wake of the accident.

The tips of my Bernafon hearing aid have come off in my ear a few times which can only be removed by a doctor. It is quite distressing. The company I bought them from has offered to make a mould to stop it from happening. But I'm not sure if it will work. I'm worried that it will happen to others.

A public, searchable system like www.SaferProducts.gov is a transparent way of seeing how businesses respond to legitimate concerns from members of the public, such as those raised above by CHOICE members.

Recommendations 2 and 3

CHOICE recommends:

- The confidentiality provisions found in s132A of the *Competition and Consumer Act 2010* (Cth) Schedule 2 be revoked; and
- The Government develop an online, searchable database of product safety reports, in a similar fashion to www.SaferProducts.gov.

2. Private data

The recent Competition Policy Review and Financial Systems Inquiry both made recommendations to increase consumers' access to, and improve the use of, their data. CHOICE strongly endorses these recommendations. Providing consumers with relevant, accessible information about the products they consume and the way in which they do so would 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.

An example is the UK's Midata programme. 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.

An example of how a Midata-style scheme could work by encouraging the development of third party comparison tools for the credit card market is below. In this example, a consumer would upload or provide secure access to their actual credit card transactions over the preceding 12 months. The comparison would then show the costs and benefits of switching to other products based on the consumers' actual spending habits, i.e. whether they paid off their balance in full every month, and how any benefits they received such as rewards compared to their annual fee and interest payments. This type of data-driven comparison would address some of the most significant detriment in the credit card market, where a focus on rewards with questionable value and limited-time introductory offers obscures the true costs of incredibly high interest rates.

Credit card search results							
Provider	Card	Platform	Interest rate (p.a.)	Yearly fee (\$AUD)	Linked to your rewards?	Better off by: (p.a.)	Apply
	 Platinum Discovery Card		12.5%	\$0	Yes	\$227.00	Go to site Compare
	 Gold Premium Card		13.75%	\$19	Yes	\$168.00	Go to site Compare
	 ACU Essential Credit Card		14.99%	\$15	No	\$176.00	Go to site Compare
this little piggy bank.	 Platinum Rewards Card		19.99%	\$49	Yes	\$85.00	Go to site Compare
	 Money miser Maximiser Card		19.99%	\$49	No	\$85.00	Go to site Compare
	 Ultimate Credit Card		22.99%	\$49	No	\$58.00	Go to site Compare

Example: third party comparison tool for credit card accounts

While the four markets identified as initial priorities for the Midata programme provide a guideline for potential launch points in Australia, the automotive industry could be another sector to consider, given the increasing amount and depth of proprietary information held by consumers' cars, via on-board computers. Given the increasingly sophisticated operation of motor vehicle software, this issue will have significant impacts on consumers' rights and also the subsequent costs of vehicle repair and maintenance. Providing consumers, and independent repairers of their choice, with access to car service and repair data will empower consumers to engage more effectively with the market and will encourage a more competitive marketplace.

Recommendation 4

CHOICE recommends:

- The Federal Government work with industry to provide consumers with safe and secure access to their own personal data in order for them to gain insights into their own use of products and services, and to make better choices about the products and services which best suit their needs.

3. Third party access to data

Benefits of facilitating third party access

There can be significant public benefit to facilitating consumer or third party access to privately held data sets. For example, the Safer Homes project by the NRMA helps consumers to understand their risk of theft, bush fire, weather damage and car safety using data sets held by the insurer. This information is available for free to any consumer at saferhomes.nrma.com.au

CHOICE encourages the Productivity Commission to consider the benefits of third party access to insurance data for comparison sites. It is difficult for consumers to understand and compare complex insurance products, leading to poor competitive pressure and inefficient outcomes across the industry. Comparison sites can assist with product comparisons but can struggle to access all information about insurance products and accurate premiums.

The problem of insurance comparison has, in some limited cases, been addressed through direct government intervention. For example, the NSW Government has released a 'Green Slip Calculator' to help consumers find the most affordable compulsory third party insurance in the state.³ However, it could be addressed through further information provision to third parties.

Comparison sites need to be provided with easy access to information about products. The costs involved in researching and compiling product information act as a barrier to entry, particularly for insurance comparisons. Data costs can be relatively low for a comparison site that only includes information on products from providers that are willing to pay to be listed. These costs are, however, significantly higher for a comparison site that seeks to be comprehensive and in doing so comply with best practice standards.

This situation perpetuates the current business model of comparison sites, which in some cases involves only listing products of providers who are willing to pay to be listed or ranking or prioritising results based on the amounts providers are willing to pay.

In order to overcome these problems and better realise the potential competitive benefits of comparison sites, thought should be given to the way in which information about products is provided to third parties so that it is readily adaptable to use in a comparison site and to consumers directly.

³ <http://www.greenslips.nsw.gov.au/>

Risks of third party access

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

It is unclear if the new comprehensive credit reporting system is working to the benefit of all consumers. CHOICE recommends that any review of the credit reporting system focuses on the need for any additional consumer protection requirements, particularly for low-income and vulnerable consumers who may experience restricted access to services.

Recommendations 5 and 6

CHOICE recommends that:

- The Productivity Commission explores ways to reduce barriers to third party access to insurance information, particularly product and pricing information necessary for comparison sites.
- That any review of the comprehensive credit reporting system assesses the impact of the system on low-income and vulnerable consumers.