

Submission to the ACCC on the Digital Platform Services Inquiry on general online retail marketplaces – Issues Paper

18 August 2021

Tara Morice
Director
Digital Platforms Branch
Australian Competition and Consumer Commission

By email: digitalmonitoring@accg.gov.au

Dear Ms Morice

The Consumer Policy Research Centre (CPRC) welcomes the opportunity to contribute to the ACCC's Digital Platform Services Inquiry on general online retail marketplaces.

CPRC is an independent, non-profit consumer research organisation. Our mission is to improve the lives and welfare of consumers by producing evidence-based research that drives policy and practice change. Data and technology issues are a research focus for CPRC, including emerging consumer risks and harms and the opportunities to better use data and technology to improve consumer wellbeing and welfare.

We support ACCC's view that while online retail marketplaces can benefit consumers, their conduct can also cause consumer detriment and the level of support provided by marketplaces is often not at par with consumer and community expectations, especially when compared to what consumers experience in a bricks and mortar retail environment.

Using insights from our various research streams, our submission aims to respond to the following consumer-related issues raised in the issues paper:

- consumer trends and risks affecting online retail marketplaces
- impact of online reviews on consumer choice
- collection and use of data in a digital environment
- consumer experience in accessing remedies and resolving disputes.

Consumer trends and risks affecting online retail marketplaces

While COVID-19 has played a key role in driving more consumers online, the increased trend in online shopping was visible prior to the pandemic. Our research in 2019 found that 97.3% of Australians had already engaged in some form of online shopping.¹ Our 2020 consumer data survey revealed that the frequency of engagement in online shopping is also steadily increasing with 61% of respondents visiting online shopping websites on a monthly

¹¹ Ben Martin Hobbs, "Online Reviews: A guide not a gospel", Consumer Policy Research Centre, (December 2019), [Online reviews: a guide not a gospel - CPRC](#).

basis, if not more frequently (28% visiting at least once a week – up from 21% in 2018).² The trend towards online shopping was further echoed in our Consumers and COVID-19 survey data³ which indicated that by September 2020, 28% of consumers were spending more time online shopping for personal items in comparison to a pre-COVID month. With more consumer engagement in the online retail space, it is likely that some, if not a significant portion of that engagement is within an online retail marketplace. Digital marketplaces⁴, including online retail marketplaces, continue to provide clear benefits to consumers and the economy during COVID-19 but they can also overwhelm consumers and expose them to exploitative practices such as scams, false claims, unsafe products and price gouging.⁵

Qualitative research conducted by CPRC between June and August 2021 found that online life can be a double-edged sword for Australian consumers. While consumers value the convenience and access to more products, the online environment can feel overwhelming, especially with the level of information and marketing they experience. The proliferation of choice, while ostensibly a positive for consumers, has led to an increase in frustration and confusion. Choice becomes meaningless and even detrimental if it is not structured in a way that is clear and easy for consumers to navigate and act in accordance with their preferences.⁶

Our Consumers and COVID-19 survey data⁷ found that consumers continue to experience problems when shopping online, specifically in an online retail marketplace. Up to **43% of consumers surveyed** reported experiencing problems with an online retail marketplace between June and October 2020, noting issues such as:

- product was unsafe, faulty or poor quality
- product / service had misleading costs
- incorrect or misleading information provided about product / service
- unclear or unfair terms and conditions
- difficulty contacting company to change / cancel service
- not receiving what was originally ordered
- poor customer service
- victim of scam or fraud.

Insights from our research indicate that convenience alone is not sufficient to deliver good consumer outcomes. Transparent information, meaningful comparisons, quality customer service, and clear pathways to resolving issues and disputes are critical to enable frequent and meaningful engagement by consumers on online retail marketplaces.

² CPRC, “CPRC 2020 Data and Technology Consumer Survey”, (December 2020), [CPRC 2020 Data and Technology Consumer Survey - CPRC](#).

³ CPRC, “Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps”, (March 2021), [Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps - CPRC](#).

⁴ CPRC research uses the term “digital marketplaces” to mean a broad range of online locations – for example, apps, websites or digital platforms – where consumers can engage in activities such as accessing and receiving information, comparing propositions and finalising transactions (be they monetary or data-based). This submission will make it explicit when data is specific to online retail marketplaces.

⁵ CPRC, “Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps”, (March 2021), [Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps - CPRC](#).

⁶ CPRC, “Consumer Wellbeing Report: Phase 1”, Draft, Unpublished

⁷ CPRC, “Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps”, (March 2021), [Unfair Trading Practices in Digital Market: Evidence and Regulatory Gaps - CPRC](#).

Impact of online reviews on consumer choice

Absence of reliable, independent measures of quality has led consumers to depend on online reviews when shopping online and even in store. CPRC research into online reviews in 2019 found 82% of consumers looked at online reviews when shopping online and 80% of consumers referred to online reviews when instore.⁸ Consumers predominantly use online reviews to seek views of others to avoid bad outcomes (64%) or to assist in making the right purchasing decision (41%) and a significant proportion of consumers (70%) consider online reviews as important as word of mouth from family and friends (73%).⁹ However, only a few consumers write reviews or leave ratings (15% respondents) which can result in extremely positive or negative reviews – known as a two mode distribution of ratings.¹⁰

While there is significant reliance on online reviews, our research indicates that many consumers are aware that fake reviews exist, with 65% of respondents indicating that it was likely that they had read a fake review in the past year. However, there is an inconsistency in consumer response with only 18% admitting that they are unable to detect fake reviews, suggesting an over-confidence in ability to distinguish real from fake.¹¹ High reliance on information about the quality of products and services has incentivised creation of fake reviews to help boost listings of a business's own product or undermine the product listing of another business.¹² Such practices continue to create an environment that impedes a consumer's ability to make genuine choices and places the onus on the consumer to 'play detective' within a complex digital landscape. We continue to urge policy makers and regulators to consider stronger market stewardship in the following ways:

- **Develop and publish service quality ratings** – market stewards can take more of an active role in developing and publishing service quality ratings, informed by consumer testing, drawing on regulatory data. A good example of this is the ACCC broadband speed testing, which also led to specific guidance for internet service providers.¹³
- **Consider consumer barriers such as defamation for active participation in the online review process** – market stewards can consider how consumer law addresses the issue of misleading vs untrue reviews, given that defamation laws in practice can place significant burden of truth on the reviewer. Defences such as expression of honest opinion on a matter of public interest and an evidence-based opinion may still not be enough to avoid being sued.¹⁴

⁸ Ben Martin Hobbs, "Online Reviews: A guide not a gospel", Consumer Policy Research Centre, (December 2019), available online - <https://cprc.org.au/publications/online-reviews-a-guide-not-a-gospel/>

⁹ *Ibid.*

¹⁰ *Ibid.*

Nan Hu, Paul A. Pavlou, and Jennifer Zhang. "Can online reviews reveal a product's true quality?: empirical findings and analytical modeling of Online word-of-mouth communication." *In Proceedings of the 7th ACM conference on Electronic commerce*, pp. 324-330. ACM, 2006.

<https://dl.acm.org/citation.cfm?doid=1134707.1134743>

¹¹ Martin Hobbs, "Online Reviews", p.6.

¹² *Ibid.*

¹³ See ACCC's broadband speed webpage: [Broadband speeds | ACCC](#).

¹⁴ ABC News, [Defamation action over scathing online reviews is more serious than you think - ABC News](#), 20 March 2018.

- **More closely monitor and undertake enforcement action with review sites** – market stewards can evaluate review sites and mechanisms more closely – perhaps through consumer testing. This might involve developing a flagging system where review sites/mechanisms lack adequate rigour/number of reviews/ suspicious reviews – to help minimise consumer harm.
- **Introduce stronger requirements for disclosure of sponsorship arrangements** – market stewards can ensure sponsored content can be more clearly distinguished from genuine reviews/expert opinions.

Collection and use of data

An area that continues to concern consumers is the opacity of how personal data is collected and used by digital marketplaces. Our 2020 Data and Technology Consumer Survey revealed that 94% of Australian consumers do not feel comfortable with how their personal information is collected and shared online:

- Only 12% of consumers feel that they have a clear understanding of how their personal information is collected and shared.
- Only 6% of consumers are comfortable with how their personal information is collected and shared online.¹⁵

The majority of Australians consider companies have a “high” level of responsibility in protecting their personal information with 82% of consumers noting that companies should protect against consumers’ information from being used in ways that make them worse off. The research further reveals consumer discontent with tactics such as ad targeting, personalised price discrimination and exclusion from products and services (practices that have been noted to take place on online retail marketplaces):

- 92% agree that companies should only collect information they need for providing their product / service
- 60% of Australians consider it very or somewhat unacceptable for their online behaviour to be monitored for targeted ads and offers
- 90% believed it is unacceptable to charge people different prices based on past purchase, online browsing, and payment behaviours.¹⁶

These findings clearly suggest that market and regulatory failures in relation to companies’ data-handling practices mean that digital marketplaces are failing to deliver outcomes that are fair and in line with consumer and community expectations.

Urgent reforms are needed to protect consumers from data extraction and manipulation in online marketplaces, including:

- introducing an unfair trading prohibition
- strengthening unfair contract terms provisions
- introducing of a general safety provision
- reforming the Privacy Act to give consumers more control and agency over their data, including:
 - introduction of a direct right of action

¹⁵ CPMC, “CPMC 2020 Data and Technology Consumer Survey”, (December 2020), [CPMC 2020 Data and Technology Consumer Survey - CPMC](#).

¹⁶ *Ibid.*

- requirement to gain consumer consent for data collection
- procedures and processes that safeguard personal and sensitive information
- implementing pro consumer defaults
- strengthening privacy notice requirements
- greater transparency of data collection practices
- right to erasure
- mandatory deletion of information that leads to risk.

Consumer experience in accessing remedies

In our recent submission to the Productivity Commission's draft report on Right to Repair, we highlighted several issues that consumers face in seeking remedies such as a repair¹⁷:

- Consumers struggle to know and understand their rights and to seek remedies. They can often feel the onus of responsibility for solving problems is on them and companies are not set-up to identify and resolve issues.
- Organising repairs can be time consuming, difficult, and offer unpredictable results.
- Even when consumers want products repaired, they feel it is more difficult or expensive, or that the companies actively discourage it by claiming the fixing a product will invalidate the warranty.

While the above experiences are not specific to online retail marketplaces, it is likely that these experiences are similar or even exacerbated in a digital environment as online retail marketplaces operate as a conduit between the seller and consumer and have little to no legal obligation to resolve consumer issues. One of the key barriers for consumers to adequately access remedies via an online retail marketplace is the lack of clarity of how the Australian Consumer Law (ACL) applies to these actors. Currently, the term supply in the *Competition and Consumer Act 2010*, is narrowly defined as, "...in relation to goods—supply (including re-supply) by way of sale, exchange, lease, hire or hire-purchase".¹⁸ As online retail marketplaces consider themselves as only a "facilitator of the supply" but not the actual supplier, it creates scenarios where consumers are often left with the burden to resolve issues with the third-party seller on their own. This is particularly the case when the seller is based overseas, so enforcing the ACL is not only difficult, but likely impossible. Widening the definition of supply within the ACL or including specific obligations within the law that hold online marketplaces accountable can help deliver better consumer outcomes by increasing their confidence in shopping online.

We note that voluntary initiatives such as the Product Safety Pledge¹⁹ assist in ensuring that its online retail marketplaces who are signatories to the pledge are publicly accountable for delivering better outcomes for consumers. However, we agree with the ACCC that such initiatives are limited in their applicability (currently the pledge only relates to product safety outcomes and applies to those who proactively sign-up). Widening the scope of such voluntary initiatives or considering a regulatory response can assist in achieving a

¹⁷ CPRC, "Right to Repair submission for the Productivity Commission", (July 2020), [Right to repair submission - CPRC](#).

¹⁸ *Competition and Consumer Act 2010*, Retrieved from <https://www.legislation.gov.au/Details/C2011C00003>

¹⁹ Product Safety Pledge available at: <http://www.productsafety.gov.au/pledge>.

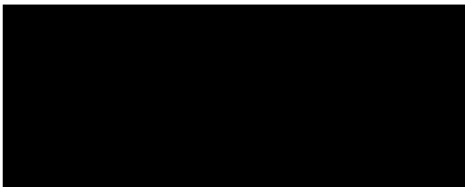
consumer-centric approach where rogue actors are held accountable, and consumers feel protected to safely participate within this retail space.

There must also be effective dispute resolution pathways to enable consumers to seek redress for when things go wrong in the online space. As consumers increase their engagement online, a Digital Ombudsman²⁰ needs to be adequately resourced to meet Benchmarks for Industry-based Customer Dispute Resolution to ensure consumers can effectively resolve any disagreements that will arise.

Further engagement

We would welcome the opportunity to work with the ACCC throughout this inquiry, in particular sharing further insights from our upcoming consumer research projects. For further discussion regarding our research and the contents of this submission, please contact Chandni Gupta, Policy and Program Director at [REDACTED]

Yours sincerely



Lauren Solomon
Chief Executive Officer
Consumer Policy Research Centre

²⁰ See: [Benchmarks for Industry-based Customer Dispute Resolution | Treasury.gov.au](#)