Digital Platform Services Inquiry September 2023 Interim Report

Summary of Consumer Issues Discussion

On Wednesday 14 June 2023, the ACCC held a virtual discussion on consumer issues in relation to Report 7 of the Digital Platform Services Inquiry.

The purpose of the meeting was to facilitate a discussion on consumer issues and benefits relating to the expanding ecosystems of digital platform service providers in Australia. The discussion was chaired by ACCC Deputy Chair Catriona Lowe, and facilitated by Digital Platforms Branch General Manager Kate Reader. Participants included consumer representative groups and researchers.

The following is a summary of the issues raised during the discussion.

Australians' reliance on ecosystems of digital platform service providers

A participant noted that the convergence of different products and services have led consumers to rely on digital platforms as mainstream communications systems and networks, and that this is leading to issues surrounding scams, privacy, and security.

A participant noted that consumers' reliance on ecosystems is increasing year on year, and that consumers often do not have a choice in whether they use these systems. It is very difficult for consumers to navigate the digital economy without using the services offered by the digital platform providers. Platforms can offer their services at a low price point compared to other providers, which attracts consumers. Consumers are then trapped into these ecosystems through the collection of data and other expansion, which reduces consumer choice once they have entered an ecosystem.

A participant considered ecosystems to be a broad and expanding category that includes many consumer electronics from firms pursuing similar models. Almost all Australians are part of one or more digital platform ecosystem, such as through the use of social media products and music streaming. Research on Australian smart TV users found that 26% of users rely on default settings, and are unable to customise their devices, including by downloading new apps, adjusting the order of apps, or adjusting default privacy settings.

Participants raised the following concerns about business models as relevant to digital platform service providers:

- Freemium models, such as those that attract consumers with free trials requiring payment information up-front, can trap consumers into ongoing payments unless they navigate a difficult cancellation process before their trial ends

- Advertising based models, which for smart devices involve the collection of large amounts of data to offer efficient advertising to consumers, and

- The increasing presence of commercial deals between device manufacturers and third parties, which have the capacity to nudge consumers towards preferred businesses.

Participants noted the following consumer harms:

- Financial harms, including unintended purchases, hidden costs in transactions and subscription traps, and vulnerable consumers paying a 'poverty premium'

- Loss of control of personal data, through services nudging or requiring users to share more data than they are aware of or prepared to give

- A broader impact on wellbeing from a deteriorating online experience from the use of dark patterns and other choice architecture

- Increased numbers of consumers being pushed into online services, leading to growing opportunities for scams, and

- The operation of ecosystems limiting consumer's choice and ability to leave these ecosystems, in particular the impact of limitations on interoperability and data portability for consumer cloud storage services.

Consumer cloud storage

A participant noted a significant use of device defaults for consumer cloud storage, citing Android devices and Google Drive, and Apple devices and iCloud.

Participants noted the following consumer harms related to consumer cloud storage:

- Consumers who wish to change devices within an ecosystem aren't facing issues, however where consumers wish to move between ecosystems they are burdened with navigating this, with no support from the ecosystems they are moving between to undertake this process.

- Cloud storage, as a subscription model, prevents consumers from understanding the full cost of a product up-front, particularly where consumers exceed initial storage quotas and face increasing costs. This impacts consumers' ability to compare devices as they are unable to make a genuine comparison between the cost of these ecosystems.

- The initial cost of Apple's service is low at $1.50 per month but can lead consumers being locked in and paying a significant sum over the longer term. To move from these ecosystems, consumers must either use a third-party service or manually export their data to their own hardware.

- The use and functionality of other cloud services, such as Gmail, can be dependent on a paid cloud storage subscription. Consumers can receive punitive prompts to activate a subscription, and may risk losing access to other services unless they pay for a cloud subscription.

Participants noted the following about consumer awareness of cloud storage services:

- Consumers are not aware of the terms and conditions of the services they use, however must accept them to access the services they use. Consumers are unable

to negotiate the terms of these products, and there is little they can do to navigate to a better service.

- There are limited instances where consumers have the awareness or choice to compare cloud storage services. The ability for consumers to integrate their chosen service into their chosen device is very limited. There are also limits to the amount of information consumers can take in about complex products and services.

Smart home devices

Participants made the following comments about privacy and data collection practices:

- Smart TV devices include lengthy terms and conditions. Consumers often accept these terms to begin using their new device. Boxes are sometimes pre-selected for terms and conditions that aren't mandatory to progress. Consumers often agree to give more data than required to access and use these services. Consumers also face difficulty finding and changing these privacy settings after the setup process, and need to navigate varied settings placement and terminologies between manufacturers.

- Automatic Content Recognition (ACR) can track all consumer usage of a smart TV, including consumption of broadcast TV, streaming applications including Netflix and ABC iView, and gaming activity. This data is sent to advertisers to build individual profiles. Some TVs require consumers to make an account with the manufacturer while setting up the device to aid data gathering. This data can be sent to the manufacturer and/or Operating System (OS) provider and it is not always clear to the user which data is being sent and to whom.

- Many consumers consider conversations logged by smart speakers as personal information, however the terms and conditions that consumers agree to enable broader data collection. The majority of consumers expect business to explain how consumer data is used, and protect consumers against data misuse, however neither of these are happening. It's unclear whether consumer sentiment is considered when businesses develop their data sharing practices.

- Smart home devices can hold sensitive personal information, which gives rise to significant data security risks. OECD research has demonstrated that some smart home devices can be hacked easily. However, it is difficult to understand the prevalence of hacking as consumers may not be aware when a harm has occurred.

A participant made the following comments on deceptive design practices:

- Smart TVs nudge users to use smartphones, over remote controls, for a more efficient setup process. This also benefits manufacturers by providing more identifying information which may be used for tracking purposes, and enables manufacturers to ask users a broader range of demographic questions during setup than is feasible on a TV.

- Users are also required to set up accounts on many Smart TVs, with some requiring accounts for both manufacturer and OS provider – for example, TCL TVs require users to set up both Google and TCL accounts to use the smart TV's online features.

- During device set-up, many option selections are pre-ticked. Smart TVs that enable users to disable ACR may have it pre-enabled as an option. In some instances, it is possible to skip through installing features like voice assistants or syncing apps –

but this only becomes clear if users wait several seconds. Privacy optouts may be buried below many windows.

- Advertising can be presented in the TV interface to consumers in non-obvious ways. Some smart TV platforms label certain ads, however this is not the norm.

- In some instances, consumers may not be able to cancel subscription services directly on the TV, and may need to use a phone or desktop computer to do so.

- Consumers' ability to customise home screens varies between TV models. Many smart TVs feature banner ads that take up 50% of the interface.

- Many of the issues present on Smart TVs likely apply equally to other platforms and other smart devices. A significant issue is that platforms are information, content, and news providers. Decisions on preferencing certain service providers are attributable to commercial arrangements between manufacturers and third parties. Consumers may be able to modify these defaults, however consumer inertia means that many are unlikely to do so.

A participant also raised concerns about prominence issues, where manufacturers enter into deals with streaming services and broadcasters for pre-installation or dedicated remote control buttons. The participant noted that this raised competition concerns which may impact local businesses who may not be able to compete against global streaming services such as Netflix and Amazon Prime Video, which can make scaled arrangements on devices manufactured for many markets.

A participant also noted that paid apps and services can be billed to consumers by smart home device providers as a singular line, rather than broken down into individual services. This may reduce the awareness that consumers have over the services they are subscribed to.

Other Issues

Several participants noted possible 'subscription trap' behaviour from other digital platform services including Amazon Prime and Adobe Creative Cloud, where consumers must go through many prompts to cancel their subscription.

A participant noted that the Google Play store encourages consumers to pre-fill their credit card details when purchasing a free app to reduce the friction for future purchases.

A participant noted bundling and default settings on Apple, Google and Microsoft products are ways for trapping consumers into an ecosystem.