



Foundation for Alcohol Research & Education

3 October 2019

Mr Rod Sims
Chair
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601

loyaltyschemes@acc.gov.au

Dear Mr Sims

SUBMISSION – CUSTOMER LOYALTY SCHEMES REVIEW

The Foundation for Alcohol Research and Education (FARE) thanks the Australian and Competition and Consumer Commission (ACCC) for the opportunity to make a submission on the draft report (Report) of the Customer loyalty schemes review.

FARE's submission considers the issues raised and recommendations in the Report in the context of unhealthy commodities, specifically alcohol, but also gambling, tobacco and unhealthy food. FARE has a particular concern to ensure that vulnerable consumers, such as children, dependent drinkers and those in mentally vulnerable situations, are not exploited through the collection and use of their data. This is relevant in areas such as marketing. There is clear and robust evidence that some population groups are especially vulnerable both to the effects of alcohol and alcohol advertising.^{i,ii} Customer loyalty schemes enable targeted marketing and the suspected exploitation of the data of children, young people and other vulnerable consumers.

The ACCC should be guided by the following three principles:

- Children and young people should not be under surveillance, tracked and monetised, and nor should their data be collected, disclosed and used for any profiling or marketing purposes.
- Consumers should have control over the extent to which they are exposed to the marketing of dangerous and addictive products, particularly those vulnerable to harm.
- Particular care should be taken with the collection and use of sensitive and potentially exploitative data, such as data that points to dependency or mental health concerns.

FARE notes the similarities between the issues identified in the Report and a number of those in the Digital Platforms Inquiry final report.

FARE supports customer loyalty schemes being a current priority for the ACCC. FARE has been concerned with the potential for consumer detriment to arise from customer loyalty schemes and the ability for the data collected from customers to be exploited by loyalty schemes or their partners, particularly the data of vulnerable consumers. The use of data for targeted advertising, and the limited

ability for consumers to opt out of targeted advertising from third parties – identified in the Report – is an issue of concern.

FARE broadly supports the recommendations in the Report. The relationship between consumers and customer loyalty schemes should not be characterised by bargaining power imbalances and information asymmetries. Increasing transparency for consumers, ensuring they have the information necessary to make informed decisions and providing them with meaningful control over their data will decrease the imbalance in bargaining power and information asymmetries outlined in the Report and increase consumer welfare.

As outlined in our recent submission to the Government’s consultation on the ACCC’s Digital Platforms Inquiry final report, FARE supports recommendations 16 and 17 of the final report (Draft recommendation 4).

However, we are concerned that Draft recommendation 3 merely encourages the loyalty schemes to improve their data practices, particularly when the Report identifies the practice of automatically linking customers’ payment cards to their loyalty scheme profiles so they can continue to collect consumer data even when loyalty cards are not scanned.

FARE proposes an opt-in arrangement, so that customers have to consciously choose to give their data for any purpose other than providing the relevant product or service. In addition, there should be a blanket prohibition on the use of certain types of data, such as those which can reveal vulnerabilities such as mental health concerns or dependency issues.

Data practices

The targeting of advertising to an intended audience is not a new phenomenon; but, the level of detail available from the vast amount and range of data collected through customer loyalty schemes has notably increased the ability of advertisers to reach their target.

FARE is concerned about the lack of legislative protections to stop alcohol companies directly targeting vulnerable people using data from customer loyalty schemes, or customer loyalty schemes deliberately or inadvertently targeting vulnerable people. An example of inadvertent targeting may be when someone who buys a lot of alcohol (because they are a dependent drinker) is served more and more alcohol ads because the scheme has rightly identified the person as interested in that content.

A recent ABC Radio National *Background Briefing* episode highlighted the difficulty dependent drinkers’ face trying to avoid digital alcohol advertising and marketing. In the episode, a recovering dependent drinker confirms she is targeted with alcohol ads and says, “I actually don’t have Instagram for that very reason because most of my friends that I have on Instagram are linked to pages that have pictures of cocktails and things like that.”ⁱⁱⁱ The individual still periodically receives communications from an alcohol delivery company she used once, even after unsubscribing.^{iv}

The primary purpose of alcohol advertising is to increase sales, thereby increasing the amount of alcohol consumed either by more people or in greater amounts by existing drinkers.^v Evidence shows that the alcohol industry is dependent on Australia’s heaviest drinkers, with 75 per cent of all alcohol sold being consumed by only 20 per cent of people aged 14 and over – Australia’s ‘super consumers’.^{vi} Additionally, nearly half of Australians (42 per cent) are drinking at risky levels, and the average

Australian child commences drinking almost two years below legal age of purchase (average age of commencement is 16.1 years old).^{vii}

Advertising alcohol to vulnerable groups, including children and dependent drinkers, is contrary to community standards. Yet children and dependent drinkers are the objects of direct marketing strategies to promote alcohol. One recent study concluded that “alcohol advertisements consistently violate the content guidelines of alcohol marketing self-regulatory codes and contain themes that could be considered inappropriate for children, adolescents and other vulnerable populations.”^{viii}

Children

A priority is the protection of children and young people. Any collection, use or disclosure of children’s data will have ramifications for their future lives. Children are not in a position to conceptualise or understand the ramifications of highly-detailed profiles being created on them.

As our first guiding principle states, children and young people should not be under surveillance, tracked and monetised, and nor should their data be collected, disclosed and used for any profiling or marketing purposes. To realise this principle, the proposals around data should go further to explicitly prohibit the collection, use and disclosure of children’s and young people’s data for profiling and targeted media.

Monitoring

The potential for detriment to consumers, combined with evidence that consumer protections have not been central to the decision makers of many customer loyalty schemes, speak to the need for independent oversight of customer loyalty schemes.

The data practices of customer loyalty schemes are not just invisible to consumers, but they are also invisible to regulators. FARE recommends that clear, proactive reporting standards be established to determine the broad transfers of data and the uses to which they are being put.

FARE agrees with the ACCC’s recommendation that the definition of personal information be expanded. The expansion should capture information that may be used to identify individuals and also information that may be able to identify sensitive characteristics, such as alcohol dependency or mental health conditions. This includes information from which these characteristics may be inferred, such as regular purchases of alcohol.

Recommendation 1

The Government should specifically prohibit the collection, use and disclosure of children’s and young people’s data for profiling and targeted media.

Individuals vulnerable to harm

Data that may contain information about an individual’s vulnerability, for example addiction issues, should not be used in a way that exploits that vulnerability. As an example, data that points to a person with an alcohol dependency should not be used to target them with on demand alcohol delivery advertisements. The collection and use of data that identifies and leverages consumer vulnerabilities in this way is unethical and falls foul of community standards.

Case study 1: Dee Why RSL ‘Ambassador Rewards’ program^{ix}

In mid-2018, *The Sydney Morning Herald* reported that a Dee Why RSL gambling-room server had quit in 2016 due to his disgust “at how the club encouraged heavy gamblers to stay at pokie machines and keep spending”. The article also outlined how a club member had recently died by suicide. The deceased individual was a ‘diamond’ member of the RSL’s ‘Ambassador Rewards’ program. The club is purported to have linked information of those utilising the loyalty program with individual profiles on them, including spending behaviour, personal details and a photo.

The former gambling-room server said, “Players ... would often be at the machines until dawn and would never pay for drinks because they accrued so many rewards points.” A friend of the deceased has lodged a complaint with Liquor and Gaming NSW, writing, “My friend had so many points that he hadn’t paid for a drink there for a long time”. The chief executive has admitted that drinks can be purchased with rewards points but denies customers are provided them for free.

Case study 2: ALH unconscionable use of consumer data

In 2018, Mr Andrew Wilkie MP raised serious allegations of misconduct in the Australian Parliament relating to ALH, majority-owned by Woolworths. Acting on reports from whistleblowers who previously worked for Woolworths, Mr Wilkie reported to the Parliament that ALH was engaged in practices to keep ‘high-value’ gamblers on site and gambling longer in order to increase revenue.^x

Whistleblowers alleged that this practice included storing and sharing personal information about gamblers and providing them with free food and drink, including alcoholic drinks. One whistleblower in New South Wales reported that venue staff were actively encouraged by the head office to provide free alcoholic beverages to encourage customers to keep gambling. This practice allegedly included a daily target of \$100 worth of alcoholic beverages per day.^{xi}

Among the whistleblower evidence are screenshots appearing to show an electronic database containing details of regular pokies players’ gambling habits, drinking habits and favourite sports teams, and appeared to outline actions taken by pub staff to encourage prolonged gambling.^{xii}

Case study 3: Quantum

As the final report of the Digital Platforms Inquiry outlines, Woolworths, in business with Quantum – a data analytics firm that it partly owns – uses its loyalty rewards program to personalise offers to customers.

Quantum is known to receive de-identified customer data from National Australia Bank on all its account holders. It “uses the NAB data to analyse spending habits for all kinds of sectors, including online gambling.”^{xiii}

It is also known that Sportsbet paid Quantum a sum of money between January 2013 and June 2018.^{xiv}

Case study 4: Cartology

Cartology is Woolworths' new retail media business. It launched in July 2019 and "is the exclusive partner of Woolworths supermarkets and BWS."^{xv} It is in the process of rolling out the 'Woolworths Screen Network', installing a digital screen outside every Woolworth store nationally.^{xvi} Managing Director, Mike Tyquin, has said, "There's a big opportunity for liquor brands to connect with their audiences using our screen network."^{xvii}

They are also offering 'Promoted Products' spots at the top of search results on Woolworths Online and the BWS website.^{xviii}

On Cartology's website it states, "When we combine our 21.5+ million weekly customer visits with our 11.5+ million Woolworths Rewards members and our exclusive media channels, we create campaigns that deliver results."^{xix} It also lists its three core principles as customer personalisation, data-led connections and continuous results, specifying its ability to connect campaign exposure to sales outcomes.^{xx}

The following case study is on its website:

A yogurt brand came to us to launch a new range. They wanted to increase awareness amongst category buyers and bring lapsed shoppers back into their brand. We sent a highly targeted email to premium yogurt shoppers.

We reached 750,000 members, drove awareness of the new product amongst 49% who opened and drove trial amongst the 9% of shoppers who went in store to purchase. We also saw a high repeat rate of 25% amongst the trialists.^{xxi}

People who are vulnerable to alcohol and other harms should not be targeted by the marketing of dangerous and addictive products online. In order to prevent this, consumers must have control over what data is collected and the purposes for which their data is used.

One way to implement this is to provide consumers with options as to how their data can and cannot be used for any purpose other than the purpose of providing the service to them. FARE propose opt-in controls for profiling or targeted advertising for consumers 18 years or older.

This will put the control back in the hands of the consumer, allowing them to make a conscious decision that they wish to have their data collected for online profiling purposes or their personal information used for targeted advertising purposes. In the event that they choose to opt in, they should have the ability to opt out at a later stage.

Children under 18 should not be enrolled in loyalty programs and their data should not be collected.

In addition to concerns around targeted advertising, the mere exposure of people with vulnerabilities to certain harmful types of advertising can be dangerous. People who are recovering from addiction or have other reasons to wish to self-exclude from certain content should be provided the tools to do so and ensure they can be online in a space that doesn't endanger their wellbeing.

Recommendation 2

Collection of customer data should be on an opt-in basis, and customers should be able to request that their data is erased.

Recommendation 3

Data that can be used to reveal vulnerabilities, such as mental health concerns or dependency issues, should not be used and should not be disclosed to third parties.

Need for further inquiry into data practices

While the Report indicates the ACCC is concerned with a range of loyalty scheme data practices, the ACCC views it primarily through a lens of informed consent and privacy and its recommendations flow on from this. The Report does not question whether the collection and use of consumer data is a legitimate market and it does not attempt structural reform of how customer loyalty schemes operate and make money.

There is a need to ascertain the extent to which problematic data practices are occurring across the economy, and to investigate whether broader reform is needed.

FARE recommends a separate inquiry be held into the collection and use of consumer data. The inquiry should look at online and offline businesses that handle and use consumer data and personal information and consider if and what limitations should be placed on data collection and usage.

The inquiry should not merely consider the issue through the lens of the impact on individuals but more broadly through the lens of the impact at a societal level. The inquiry should have a particular focus on vulnerable consumers, who are rightly identified in the Digital Platforms Inquiry final report as those most likely to be impacted by problematic data practices.

We propose that a Parliamentary Joint Select Committee be established to inquire into and investigate these issues.

The establishment of such an inquiry should not preclude Draft recommendation 4 being implemented. This recommendation tackles the issues at an individual level, which is still required in addition to structural reform.

Recommendation 4

Establish a Parliamentary Joint Select Committee to inquire into the collection and use of consumer data.

- a. The inquiry should have a particular focus on vulnerable consumers and societal harm**
- b. The establishment of such an inquiry should not preclude Draft recommendation 4 from the Report being implemented.**

If you have any questions about this submission, please do not hesitate to contact Trish Hepworth on patricia.hepworth@fare.org.au.

We look forward to the release of the final report.

Yours sincerely



MICHAEL THORN
CHIEF EXECUTIVE

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