



NIQ Submission to ACCC's Digital Platform Services Inquiry – March 2024 report on data brokers

1 September 2023

1 Introduction

1. NielsenIQ (**NIQ**) welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission (**ACCC**) in response to its Digital Platform Services Inquiry – March 2024 report on data brokers Issues Paper (**Issues Paper**) to assist the ACCC in understanding the nature of the data broker industry in Australia and any related competition and consumer issues.
2. NIQ is a global information services company, with a broad geographic presence in over 100 countries (including Australia) and services covering more than 90% of the world’s population. NIQ was founded in 1923 by Arthur C. Nielsen, Sr., who invented an approach to measuring competitive sales results that made the concept of “market share” a practical management tool. For the last century, NIQ has advanced the practice of market research to provide its clients with a better understanding of their consumers.
3. Today, NIQ is a leading consumer intelligence company with extensive expertise and experience in data brokerage relevant to the Issues Paper. Specifically, NIQ provides data collection, storage, supply, processing, and analysis services in Australia to manufacturers and retailers of fast-moving consumer packaged goods (**FMCPG**) and technology and durable (**T&D**) goods, so that they can make more informed marketing and merchandising decisions. NIQ’s information on consumer behavior allows (i) manufacturers and retailers to quickly identify opportunities for growth, improve supply chain management, reduce inefficiencies, and strengthen their position in the marketplace, and (ii) consumers to have the benefit of price competition, innovation, product improvements, and timely access to products to meet consumer demand.
4. With its global headquarters in Chicago, Illinois, USA, and operational headquarters in Geneva, Switzerland and Nuremberg, Germany, NIQ is a portfolio company controlled by funds managed by Advent International and was formerly part of a larger business controlled by the parent company of Nielsen Company (Holdings) Pty Ltd (**Nielsen Media**). NIQ is no longer affiliated with Nielsen Media or any of its subsidiaries. In July 2023, NIQ combined with GfK, bringing together complementary areas of expertise, fusing NIQ’s leading insights in FMCPG and GfK’s deep understanding of consumer T&D goods. As such, references to “NIQ” hereafter in this submission should be interpreted as meaning the combined NIQ/GfK company, unless otherwise indicated.
5. NIQ provides the following core products and services to its over 30,000 clients (in addition to a few other non-core products and services):
 - a. Retail measurement services. NIQ is a leader in retail measurement services (**RMS**). NIQ invented the concept of market share and builds upon that industry-defining innovation today. NIQ’s retail sales data provides market share, competitive sales volumes, and insights into such activities as distribution, pricing, merchandising and promotion. By combining this detailed information with its in-house expertise (including world-class data



science methodologies and granular product and sales location reference data), NIQ produces valuable insights that help its clients and improve the quality of life for consumers through effective competition.

Depending on the sophistication of each country's retailer systems, NIQ collects retail sales information from stores using electronic point-of-sale technology and/or teams of local field auditors. Stores within its worldwide retail network include grocery, liquor, pharmacy, convenience, discount, specialty, and eCommerce retailers and some wholesalers, who, through various arrangements, share their sales data with NIQ. The electronic retail sales information collected by stores through checkout scanners is generally transmitted directly to NIQ. In Australia, NIQ receives data for its RMS business from data agents appointed by the major retailers. In certain emerging markets where electronic retail sales information is unavailable, NIQ utilizes field auditors to collect information through in-store inventory and price checks. For eCommerce retailers where electronic retail sales information is unavailable, NIQ is increasingly using consumer-sourced data to collect information by leveraging proven expertise developed in its Consumer Panel business, described further below. For all the information NIQ collects, its stringent quality control systems validate and confirm the source data. The data is then processed into databases that clients access using NIQ's proprietary software that allows them to query the information, conduct customized analysis, and generate reports and alerts.

- b. Consumer panel services. NIQ maintains consumer panels (**CPS**) that help its clients understand consumer purchasing dynamics at the household level. Among other things, this information offers insight into shopper behavior such as trial and repeat purchases for new products, brand or retailer loyalty, and customer segmentation. In addition, NIQ's panel data augments its retail measurement information, providing blinded but detailed household demographics, and can provide data in circumstances where NIQ does not collect data from certain retailers.

NIQ's consumer panels collect data from more than 250,000 household panelists across 25 countries, using a combination of in-home scanners and a mobile application to record purchases from each shopping trip. In Australia, for example, a demographically balanced set of approximately 10,000 households participate in the panel. Data received from household panels undergo a quality control process including UPC verification and validation, before being processed into databases and reports. Clients may then access these databases to perform analyses.

- c. Customized market research. Whereas RMS and CPS are based on the continuous tracking of retail data and consumer data, respectively, customized market research (**CMR**) covers a range of research services, the common objective of which is to gain deeper insights into consumer behavior and preferences.

Generally speaking, CMR activities are carried out on an ad hoc or project-by-project basis and are tailored to meet a client's specific demand. CMR is largely survey-based research, by which consumers are asked focused questions about their perceptions, sentiments, and experiences with regard to a particular brand or product. In this way,

CMR offers a different type of insight from the statistics that can be generated using RMS and CPS. CMR allows manufacturers and retailers to understand what consumers think about their products and why they buy them (or don't, as the case may be).

- d. Advanced retail analytics and consulting services. Utilizing its foundation of consumer purchasing information, NIQ provides a wide and growing selection of consumer intelligence and analytical services that help clients make smarter business decisions throughout their product development and marketing cycles. NIQ draws actionable insights from its retail and consumer panel measurement data sets, its online behavioral information, as well as a variety of other proprietary data sets.

Using its comprehensive and granular data, along with advanced modeling techniques and propriety AI, NIQ provides its clients with the analysis that can identify trends, provide real-time insights, and even predict the future. NIQ answers its clients' most pressing questions—including what innovative products to build, where to place them, how to price them, and when to promote them. With these answers, NIQ helps its clients support consumer purchase decisions, whether it be pre-store, in-store, or online. NIQ also helps its clients drive profitable brand and store growth using demand-driven and supply-chain strategies that close the gap between consumer demand and sales.

2 Market dynamics

- 6. **Who are the data brokers operating in Australia that predominantly collect information from other sources (i.e., not directly from consumers)?**
- 7. NIQ notes that the ACCC proposes to focus predominantly on third-party data brokers for the purposes of its report. NIQ is not a “third party data broker” as the ACCC has defined it in the Issues Paper, as NIQ does not buy data about consumers from a range of third-party sources and then sell that data to others. Instead, NIQ obtains data from its own customers (i.e., retailers) for RMS or directly from consumers for CPS and CMR.
- 8. NIQ's principal competitor in Australia in RMS is Circana, which is a large multinational enterprise with considerable financial strength and is the principal data agent for FMCPG retailers in Australia.
- 9. In its CMR business, while data is collected directly from consumers, NIQ outsources the actual “fieldwork” (i.e., data collection) to third parties. NIQ procures survey data from third parties that operate “access panels”, i.e., groups of consumers to whom survey questions can be directed, on a non-exclusive basis. NIQ and almost all of the largest CMR providers (such as Ipsos and Kantar), operate in this way.
- 10. **How do data brokers compete? What factors do data brokers differentiate themselves on (e.g., price, range of data, specific types of data, analysis undertaken, additional services offered)?**
- 11. There is no single competitor that offers all the services that NIQ offers in all the markets in which NIQ offers them. NIQ has many competitors worldwide that offer some of the services NIQ

provides in selected markets. NIQ's success depends on its ability to enhance and expand its suite of services, provide reliable and accurate measurement solutions and related information, drive innovation that anticipates and responds to emerging client needs, strengthen, and expand its geographic footprint, and protect consumer privacy. NIQ believes this, along with its global presence and integrated portfolio of services, are key assets in its ability to effectively compete in the marketplace.

12. **How difficult is it for new data brokers to enter the Australian market? What are their entry strategies (e.g., expansion of overseas data brokers into Australia, expansion of other businesses into data broking, new entrants)? Does this differ depending on the types of data products or services provided?**
13. RMS in T&D in Australia involves market participants seeking access to data directly from retailers. RMS in FMCPG in Australia involves data agents and data processors. Without access to timely, accurate, fairly priced, and comprehensive data from data agents (an essential input), new entrants into the FMCPG RMS market will be very limited. It is critical for new entrants to secure access to a sufficiently large proportion of the retail POS data for the product categories they intend to cover (e.g., generally at least 70% of relevant retail providers) so that they can obtain a representative sample of POS data and produce meaningful RMS data.
14. In CPS, the costs of new entry are falling due to the emergence of new data-gathering technologies, and in particular, technologies that facilitate passive data collection through mobile applications where generally the consumer agrees to provide information (like email or pictures of receipts) for some compensation (points, coupons, services, cash). Passive data collection is a lower cost (per panelist) method than traditional data collection using home scanning and allows for the creation and continuance of a consumer panel at an appropriate scale to be accomplished in a more cost-effective manner. This, in turn, has reduced barriers to entry in CPS.
15. The CMR market in most geographic markets, including Australia, is large, fragmented, and competitive. Barriers to entry in the CMR market are low. Almost all firms that provide CMR services outsource the "fieldwork" (i.e., data collection) to third parties. They procure survey data from third parties that operate "access panels" (i.e., groups of consumers to whom survey questions can be directed, on a non-exclusive basis) to obtain consumer preferences with respect to new product offerings, etc. NIQ and almost all of the largest CMR providers (such as Ipsos and Kantar), operate in this way. This allows many consulting and analytics businesses that do not specialise in RMS or CPS to compete in CMR.
16. In addition, as well as the large number of "traditional" market research services players in this segment (Kantar and Ipsos are the largest at a global level), there are also smaller specialised boutiques that specialise in brand consultation and in positioning, segmentation and analytics work who compete with NIQ in CMR. Customers also have access to free-to-use CMR solutions online (e.g., SurveyMonkey), so are able to do their own CMR.
17. The ACCC has previously recognised the competitive nature of market research and the low barrier to entry. In its consideration of the proposed acquisition of Taylor Nelson Sofres plc by WPP Group plc, the ACCC required divestiture relating to television audience measurement services and noted:

- a. *“The ACCC also considers that the proposed acquisition is unlikely to substantially lessen competition in any of the other areas of competitive overlap between the two firms, such as market research and the provision of online panels. The parties face stronger competition in these markets, and barriers to entry are generally much lower.”*

18. **What are the benefits of data brokers? Who do they benefit? Does this vary by data broker? If so, how?**

19. Consumer intelligence data products and services benefit manufacturer and retailer clients by providing insights into consumer behaviour and facilitating: (i) an understanding of consumer tendencies toward selected products and services, and marketing optimization; and (ii) retail data analysis of products and services, including consumer purchasing data, which can be used for promotional pricing, marketing, inventory, and optimisation strategies.

20. Consumer intelligence data products and services provide benefits to consumers in the form of improving supply chain efficiency, promoting competitive product pricing, and enabling manufacturers (including new entrants) to focus on specific enhanced products or demographic market segments for the introduction of new products or product innovations.

21. Also, in addition to manufacturers and retailers of consumer goods, a wide variety of other actors, including national trademark offices, financial services companies, and regulators rely on NIQ’s data and insights when performing their respective activities. For instance, the European Central Bank has considered “nowcasting” rather than forecasting inflation, a public good that NIQ’s products and services could support.

22. **What factors do you consider when choosing which data broker to acquire products or services from?**

23. To the best of NIQ’s knowledge, its clients consider factors such as data quality, client service, breadth of coverage (POS data access), system usability and functionality, and price when choosing which consumer intelligence company from which to acquire products or services.

3 Data collection and sources

24. **What information do data brokers collect? For each type of information, provide details of:**

- a. **How this information is collected, including details of any technologies used (e.g., tracking scripts, web-based plug-ins, tracking pixels, 49 or SDKs in apps).**
- b. **Where or from whom this information is collected.**
- c. **The terms and conditions under which the data is collected.**
- d. **Any prices or fees paid for the information, including details of how these are determined.**

25. Some of the personal data that NIQ collects may be considered “sensitive” by the laws of many jurisdictions because they may include certain demographic information and consumption preferences. Sensitive personal data is typically more highly regulated than non-sensitive data. Generally, this means that for sensitive data, the consent of the individual providing the data is

more explicit and fully informed and security measures surrounding the storage of the data are more rigorous. The greater constraints that apply to the collection and use of sensitive personal data increase the administrative and operational burdens and costs of panel recruitment and management.

26. Despite these challenges, NIQ has a commitment to privacy and data protection and employs dedicated privacy and information security teams focused on developing, implementing, and maintaining administrative, technical, and physical controls that have been designed to protect consumer information and comply with all applicable privacy laws.
27. NIQ's RMS business is based on point of sale (POS) data received from retailers (or in Australia, data agents) without any consumer-related personal data. The retailers generally commit vis-à-vis their contractual agreement with NIQ to refrain from including any personal data in the data to be delivered to NIQ. In exchange for their POS data, some retailers receive no compensation, some receive financial compensation only, some receive trade and barter services only, and some receive a combination of trade and barter services and financial compensation. In Australia, FMCPG retailers rely upon their appointed data agents (e.g., Circana and Quantum) to manage access to their POS data and distribute it to manufacturers. Data agents work with retailers to develop rate cards for each retailer's POS data, which enhances data sales revenue for both the retailer and the agent.
28. With respect to NIQ's CPS and CMR businesses, data processing may include the processing of personal or sensitive data. The processed data is analyzed, evaluated, and combined with data from other panelists and/or further data of the respective panelists received from other sources in order to use such information for market, advertising, and media research purposes. Panelists are generally not directly remunerated for participating in a panel. In many instances panel participation entitles the panelists to participate in raffles or to receive rewards (products or coupons). In most cases, panelists' personal data processed in connection with the panels is not transferred to NIQ's clients. In general, data transferred to NIQ's clients is aggregated and thereby anonymized or pseudonymized. However, in a limited number of cases, for example, with regard to specific surveys or projects in relation to a specific client for a CMR offering, a transfer of personal or sensitive data to clients may take place. For instance, in connection with user experience (UX) research, the faces of panelists may be shown in videos delivered to clients. Further, personal or sensitive data may be transferred to service providers for processing purposes. This may include the transfer of personal or sensitive data to recipients located outside of Australia. *Transfers of personal or sensitive data to a client or to third parties only take place if the panelists are pre-informed and if they have consented to the transfer.*
29. **Are there any particularly important or must-have sources of information for data brokers to collect? If so, what are they and who supplies these (e.g., digital platforms)?**
30. In order to produce accurate insights for their clients, it is important for NIQ to collect data from a broad representative group of consumers. Similarly, it is critical to secure the cooperation of a sufficiently large proportion of the retail market (or full, fair, timely and accurate access from data agents) so that NIQ can obtain a representative sample of POS data and produce meaningful RMS data.

31. **What information do you sell or provide to data brokers?**
 - a. **To which data brokers? Do you provide or sell the data to multiple data brokers? Why or why not?**
 - b. **Under what terms and conditions (including price) do you sell this data? Is this done via tender, negotiated contracts, take-it-or-leave-it list prices, or other means?**
 - c. **How do you collect this data?**
 - d. **Do you know how this data is used? Do you have any control over this?**
32. NIQ takes an open approach to data sharing and makes its data available to third parties, including its competitors, subject to restrictions that are intended to preserve the integrity of its own data and protect its own intellectual property as well as that of its customers and the privacy of consumers.
33. For example, NIQ makes the POS data that it collects from retailers available on a non-exclusive basis to third parties that offer advanced retail analytics and consulting services to customers in the relevant geographic market for a fee. These services belong to a downstream segment of market data services that includes consulting firm research, advisory services, marketing reports/research, and other secondary analyses.
34. Such services are often provided by companies whose main business is not primary data collection, but which offer retail insights based on data collected by other companies (such as NIQ). Providers of these services include Gartner, Forrester, Mintek, Euromonitor, Deloitte, McKinsey & Co., PwC, etc. There are also companies that specialise in this field (but whose main business is also not primary data collection). This is a fragmented and highly competitive market.

4 Data products and services

35. **What are the business models used by data brokers? How do they monetise their services?**
36. In most markets, NIQ collects and processes (cleanses and analyses) POS data directly from retailers. In Australia, NIQ receives POS data for its RMS business from data agents appointed by the major retailers. Access to such timely, accurate, fairly priced, and comprehensive data from data agents is an essential input for NIQ to effectively compete in Australia. Processed data is typically licensed to manufacturer or retailer clients on a subscription or ad hoc basis for a fee.

5 Potential consumer and small business harms

- 1) **What consumer harms may arise from the use of data products and services sold or provided by data brokers? Which consumers are most likely to be harmed and why?**
37. NIQ sometimes processes personal data in order to recruit for panels that accurately represent the “total audience.” NIQ typically relies on demographic and aggregated data which does not directly identify individuals. NIQ’s clients are typically contractually prohibited from re-identifying individuals from the de-identified data provided to them. In markets where NIQ provides services to customers outside of the FMCPG market, NIQ also may require that its customers



contractually agree not to use data obtained from NIQ to make decisions with respect to any individual regarding credit, insurance, housing, employment, or other similar actions of significant import.

38. **What processes and controls do data brokers have in place to protect consumers? This may include efforts around the de-identification and aggregation of data, data verification processes to ensure data is accurate, or measures to protect stored data. a) Are these controls adequate? What more could/should be done?**
39. NIQ's operations are subject to and affected by data protection laws in many countries. These laws pertain primarily to personal data (i.e., information relating to an identified or identifiable individual), and constrain whether and how NIQ collects personal data, how that data may be used and stored, and whether, to whom, and where that data may be transferred. What constitutes "personal data" varies from country to country and continues to evolve. Privacy laws generally impose obligations on NIQ to establish a lawful basis for the collection and use of the personal information of consumers, provide guidelines as to the maintenance of that information (security, extent, duration, and disposal), and generally entitle consumer access to the information to enable the consumer to correct any errors or to seek the deletion of the information. NIQ sometimes processes personal data in order to recruit for panels that accurately represent the "total audience." Data products and services provided by companies offering consumer intelligence insights typically rely on demographic and aggregated data which does not directly identify individuals. NIQ's clients are typically contractually prohibited from re-identifying individuals from the de-identified data provided to them. In markets where NIQ provides services to customers outside of the FMCPG market, NIQ also may require that its customers contractually agree not to use data obtained from NIQ to make decisions with respect to any individual regarding credit, insurance, housing, employment, or other similar actions of significant import.
40. **To what extent are consumers aware that their data is being collected and used by data brokers? How are they are made aware?**
41. Consumers are aware that their data is being collected and used by NIQ by virtue of their direct contractual relationship with NIQ or by virtue of having provided consent to the collection and use of their data by NIQ.
42. **What steps can consumers currently take to inspect and/or remove the data that is held about them or to otherwise raise a complaint with data brokers?**
43. Existing privacy laws generally impose obligations on NIQ to ensure that consumers are given reasonable opportunities to access the personal information that it may hold about them, correct it if it's inaccurate, or to have it removed. NIQ has procedures in place to comply with these laws.
44. **What bodies or resources exist to assist and support consumers in their dealings with data brokers? What more could be done to better educate and empower consumers?**
45. The Attorney-General's Department's Review of the Privacy Act 1988 (Cth) Report (2023) has made various recommendations regarding the increase of the Office of the Australian Information



Commissioner's enforcement powers to better drive compliance with privacy laws, including existing privacy laws that are applicable to NIQ's operations.

6. Conclusion

46. Companies that collect data, like NIQ, provide a valuable service to the economic well-being of a geographic market. NIQ is uniquely positioned to enable manufacturers to promote and deliver goods and services to consumers in order to meet the needs of consumers. Through NIQ data and analytics, consumers benefit from price competition as well as product innovation.
47. NIQ fully supports the ACCC's attempt to better understand the nature of the data broker industry in Australia and any related competition and consumer issues. NIQ appreciates the opportunity to lodge this submission in that regard.
48. NIQ is hopeful that the ACCC found this submission to be helpful, and if it would be of assistance, would be pleased to engage further with the ACCC on any of the points raised in this submission. We look forward to engaging with the ACCC throughout the Inquiry.