

19th September, 2019

Rod Sims
Chair
& The Customer Loyalty Schemes Team
Australian Competition and Consumer Commission (ACCC)
Level 17
2 Lonsdale Street
Melbourne VIC 3000

By email: loyaltyschemes@acc.gov.au

Re: Customer Loyalty Schemes - Draft Report

Dear Rod,

As the ex-Group CEO of Jetstar, I have a deep understanding of, and respect for, the need to manage customer data appropriately. Now as the CEO of Rokt, managing customer data in the most respectful and careful way (and of course, adhering to all global legal requirements) continues to be a core foundational rock for how I run this business - it has to be - Rokt is a leading Mar-Tech business partnering with the best of the best.

I personally, and we as a business at Rokt, fully support the ACCC's efforts and encourage clearer guidelines and regulations in a rapidly evolving digital world and shifting consumer expectations. We think this is a valuable and timely exercise and we would be happy to talk to the ACCC directly both about Rokt and more broadly the digital marketing and loyalty industries.

Prior to my time building Rokt and Jetstar I worked at the Boston Consulting Group where I consulted to a number of major airlines around the design and strategy of their loyalty schemes and so I have relevant domain expertise that might be helpful to your current investigation.

Rokt's services were highlighted in the ACCC's Customer Loyalty Schemes Draft Report (September 2019) (the '**Draft Report**'), so we wanted to take this opportunity to reach out to the ACCC pro-actively and provide some more background, context and detail about the nature of our services, the operation of our technology, the rigorous safeguards we place on consumer data, the importance of clear consent and the global legal and regulatory landscape.

ROKT

As a leading Australian technology company providing e-commerce marketing solutions to some of the biggest global digital brands, Rokt has built a sophisticated Customer Data Platform (CDP) that enables brands to manage consumer data, retention of data and data compliance in every market in which we operate, but more importantly ensures brands are meeting customer expectations. Our continued success is highly dependent on helping our clients manage increasingly stringent and complex global compliance requirements, whilst ensuring they meet ever evolving customer expectations required for them to succeed. We therefore would like to provide our feedback to the Draft Report.

Executive Summary

- I. **What is Rokt?** Rokt operates a platform that makes e-commerce customers' checkout experience more relevant and therefore a better experience. It is important that you and your team understand that the inclusion of Rokt in the context of 'customer loyalty schemes' is misplaced.
- II. **Shortcomings of the Draft Reports.** Rokt's tools, business model and approach to consumer data have been ignored in your report in favour of incorrect and misleading generalised assertions and reliance on often incorrect and certainly outdated information. No data is ever shared with a third party without explicit, unbundled and clear consent from the consumer.
- III. **Use of Consumer Data in E-commerce.** Rokt supports clear and robust regulation with respect to consumer privacy and consumer data rights, and would welcome an Australian approach consistent with emerging global standards (i.e. the General Data Protection Regulation ('GDPR') and the California Consumer Privacy Act ('CCPA')). These approaches help build consumer trust in digital mediums and create a fair and certain environment for businesses, which is key to investment, innovation and growth.

I. What is Rokt?

Rokt provides a technology platform that enables e-commerce customers to make their checkout experience more relevant - benefitting both the consumer and the business. This personalized experience means the messages, products and services a customer sees during a checkout experience are relevant to that individual user. The problem we solve is helping e-commerce business make their checkout experience more relevant and personalized. Rokt partners can choose to utilise Rokt's services to show their own messages (e.g. newsletter signup, app download, payment options), integral third parties core to the e-commerce transaction (e.g. payment options, shipping options, insurance) or other ancillary services. We also provide our clients the option of sourcing integrations and third party content through our marketplace (as illustrated in the examples cited in the Draft Report) and distributed commerce offerings (e.g. adding a hotel room when booking a flight and making it seamlessly part of the same transaction). Our e-commerce partners have control over whatever content is presented to their customers when they are transacting on their site.

II. Shortcomings of the ACCC Draft Report

Misleading use of the Rokt case studies

There are a few points worth noting in the Draft Report's examples:

1. The two examples discussed in the Draft Report are old, dating back years, and no longer in use. When GDPR came into force in May 2018 most organizations made changes to how they dealt with consumer data. Unfortunately all the examples and screenshots in the Draft Report pre-date these changes and, as such, we have included screenshots of more up-to-date user flows as Exhibit 1-4. Exhibits 1 and 2 are up-to-date examples of Ticketmaster and Hoyts, respectively. Exhibits 3 and 4 show additional use cases in which Rokt is helping e-commerce companies solve other user experience problems, such as distributed commerce with a parking booking in the middle of a transaction and helping partners with customer engagement via next best action capabilities (in this case it is an app download campaign);
2. The two examples the Draft Report has highlighted have nothing to do with loyalty schemes - the highlighted integration with Ticketmaster and Hoyts are examples of data practices around e-commerce;
3. The Draft Report's reference to Rokt and its partner Ticketmaster include an incorrect reference to a very outdated Privacy Policy. Specifically footnote 168 included a link to (<https://www.ticketmaster.com.au/legal/privacy.html>), rather than the current version (<https://www.ticketmaster.com.au/privacy/>). Note that the old site has since been diverted to the new one;
4. Unlike a distributed multi system advertising platform (typically seen in display and video advertising), where the flow of consumer data is invisible to the consumer, Rokt is a closed platform where data and content is tightly controlled - as you would expect in e-commerce environments. The *Powered by Rokt* logo is shown when a consumer is presented with third party content sourced from the Rokt marketplace - in much the same way hotel inventory or parking options might be sourced from another provider when someone is booking a flight on an airlines website. Also the Draft Report's Ladbrokes example of data sharing practices is misleading as this type of campaign does not involve any data sharing (even with positive consent from the consumer). This type of campaign only takes the consumer to the advertiser's website to find out more information and this is the most common type of campaign within the Rokt marketplace.
5. We unequivocally reject the characterisation in the Draft Report that Rokt is intentionally trying to deceive consumers. In the case study, it is posited that: '*Rokt obfuscating the source of the targeted advertising is a clear response to the uneasiness of consumers around the sharing of their data with third parties...*'. Rokt prides itself on the transparency and the standards it sets when it comes consumer data usage. For example, Rokt enforces the following requirements for any offer advertisers wish to show on the Rokt network: that the

advertiser making the offer is clearly identified, that the advertising content clearly lays out the specific offer, that the user understands what will happen next if they take up the offer, and that clear and unambiguous consent is obtained from the consumer (e.g., by presenting side-by-side buttons reading ‘Yes Please’ and ‘No thanks’). Such consent is never bundled or assumed - i.e. a consumer can only provide consent to one brand at a time. These requirements are set out in Rokt’s policies with which all advertisers must comply (available at <https://policies.rokt.com>). **Data is never shared with a third party without explicit, unbundled and clear consent from the consumer for that specific advertiser.** When you compare this with digital advertising like display ads you will find that this sets a very high standard for transparency and consumer consent.

6. The statement that Rokt ‘*display[s] targeted advertising through a pop-up to a consumer*’ is also somewhat misleading as Rokt’s primary purpose is to ensure the best action is presented for each user during each stage of an e-commerce transaction, which primarily involves first party content that are natively integrated into the transaction flow. In fact, one of the features of the Rokt technology is the ability to dynamically change the core checkout experience for each consumer (i.e. the number of steps, the specific content, the order of content and personalization of the content).

False assumptions and factual inaccuracies informing the Draft Report

To the extent that the Draft Report is informed or influenced by the Loyalty & Reward Co report for the ACCC (**‘Loyalty & Reward Co Report’**),¹ Rokt has serious concerns that any analysis of Rokt’s business in the Draft Report is fundamentally flawed. The section on page 47 of the Loyalty & Reward Co Report concerning ‘Database generators’, incorrectly refers to Rokt as a data broker: ‘*The personal data which the member enters is collected by the data broker and provided to the sponsoring company to build their database.*’ This characterization is incorrect in a number of ways when it talks to Rokt as an example of a data broker:

1. At Rokt there is no such thing as a ‘sponsoring company’ and there is never any bundled consent (which is strongly alluded to in this section of the Loyalty & Reward Co Report). Clear, unambiguous and separate unbundled consent is always required.
2. The customer will never receive marketing communications from any of Rokt’s advertisers without explicitly consenting to receive information from that specific advertiser.
3. The concept of member and loyalty schemes is irrelevant when talking about the services Rokt provides to e-commerce companies. Rokt does not currently power any loyalty program interaction with its customers nor do we use loyalty program data to power any part of our algorithms or machine learning.

¹Australian Loyalty Schemes - A Loyalty & Reward Co report for the ACCC, June 2019

4. Consumers on these e-commerce sites do not enter personal data at the end of a checkout experience. As previously outlined the examples of Rokt user flows cited are old and pre-date GDPR's implementation in May 2018.

Additionally we note the *'industry expert'* engaged by the ACCC, *Loyalty and Reward Co*, to report on *'Practices relating to the collection, use and disclosure of consumer data collected by loyalty schemes, as well as affiliated merchants and data brokers'* never contacted Rokt or sought any information about Rokt's *'collection, use and disclosure of consumer data'*.

III. Use of Consumer Data

The core point the Draft Report appears to be making is around the adequacy of disclosure for using data for targeted advertising. As mentioned above, whilst this has nothing to do with Rokt from a loyalty scheme perspective, this is an area that is worthy of discussion.

We believe the two key questions here are:

1. How and when should consumer data be used?
2. What is an advertisement?

1. How and when should consumer data be used?

We are concerned that the Draft Report's discussion of Rokt uses generalised language which creates an inaccurate portrayal of its business model and the way it handles consumer data. To speak of e-commerce clients 'sharing' data with Rokt without consumer opt-in, especially in the context of a critique about customer loyalty programs engaged in the sale of member profile data, is a gross mischaracterisation of the services Rokt provides.

The classifications of GDPR are helpful to frame this discussion. Under GDPR, many of the services that Rokt provides are done in the role of a 'data processor' - where we act only in strict accordance with instructions from the data controller. This is very similar to other systems provider (e.g. a customer relationship manager (CRM) provider, e-commerce site provider, payment processor or cloud computing provider) - e-commerce clients use our software to optimize their experience for their customers. Similarly, CCPA (soon to come into effect) provides further clarity to some of these roles.

Our view is that transparency and customer expectations should be at the forefront of every decision made in the context of processing personal data. We are very supportive of the approach adopted by GDPR and CCPA in that they help set a clear set of guidelines around consumer data rights and in doing so stop a lot of the data sharing practices that are invisible to the consumer. So while the ACCC might have some feedback on ways to improve the Rokt experience - the ACCC is able to provide this feedback because what Rokt does is visible and transparent to the consumer and regulator.

We also appreciate the valid concern pointed out in the Draft Report that privacy policies should not be convoluted and opaque, and ultimately clearer requirements remove uncertainty and that is good for investment and innovation.

It is important to distinguish the consumer experience that Rokt supports (where the consumer can see what is happening and clear consent is obtained before any data is shared), from a lot of data practices where information is shared behind the scenes without any transparency to or consent from the consumer. This is often done by bundling consent with use of the e-commerce site's standard services, and what is happening is very opaque to the consumer. This type of data use is the current focus of most regulations, including CCPA and GDPR, and the area where clarity, transparency and certainty is good for both for businesses and consumers.

Lastly, we would say the assertion that e-commerce businesses are somehow acting in an underhanded way by using consumers' data and preferences to present the user with the most relevant experience is inconsistent with the expectations that consumers have of the digital interactions that make up an increasing part of their daily lives. The rapid growth of companies that provide the tools and infrastructure to make this happen are a direct result of the demand for these services. It also overlooks the protections that regulations like GDPR and CCPA provide to consumers when businesses use these tools.

2. What is an advertisement?

The definition of advertisement is important when the Draft Report talks about concerns with 'targeted advertising that lacks adequate disclosure'. Most other major jurisdictions have approached the problem from the more fundamental issue of data use and consumer data rights versus more disclosures around the commercial nature of the content (as we can see by regulations like GDPR and CCPA).

To give some more context around this problem, in an e-commerce environment there are many third party service providers interacting at the time of transaction. For example, when a customer chooses a shipping provider, payment option, sponsored product or insurance provider this typically involves the products and services of a third party that are natively integrated into the transaction experience. The commercial relationships between these providers and the e-commerce business are complex and typically involve some aspects of promotional support that could be defined as advertising.

There are examples of countries (e.g. Germany) that require special disclosures next to content by a third party. However looking at the results Rokt sees in Germany versus other similar markets we see no change in consumer behavior - which would be expected if you believe the premise behind this requirement, namely, that there are consumers that are confused when they engage with third party content. From our experience most consumers are very clear that there must be a commercial relationship between the parties where one brand is promoting another.

ROKT

We believe that the best approach is to focus on ensuring consumer expectations are met. From our experience clear and unambiguous consent delivers the best outcomes for all stakeholders.

I would be happy to sit down and discuss these points with you and your team at the ACCC. I will be in Sydney the weeks commencing the 23rd and 30th September. Also we will be speaking with the Customer Loyalty Schemes Team on the 24th September.

Sincerely,

A handwritten signature in black ink, appearing to read 'B. Buchanan', written over a horizontal line.

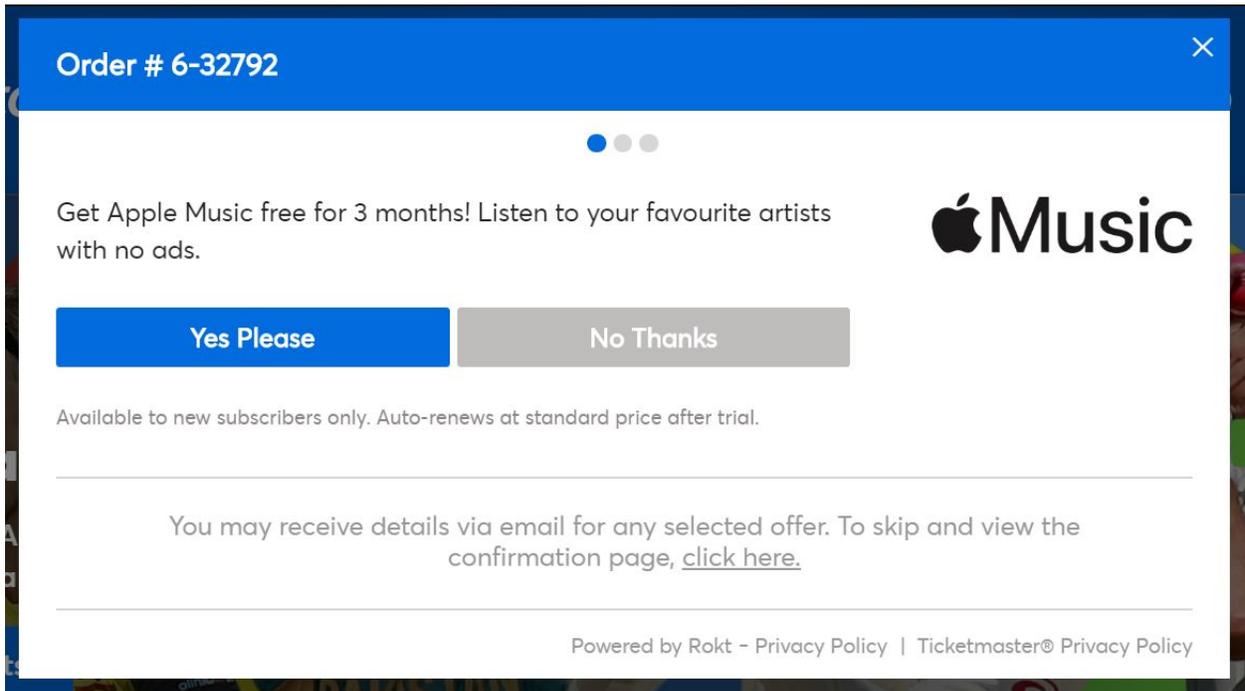
Bruce Buchanan

CEO

EXHIBIT 1

Example of a Current Rokt User Flow on Ticketmaster

In this user flow, no personal information is transferred to the advertiser. The user is simply redirected to a specific page on the advertiser's site to learn more.



The image shows a promotional overlay for Apple Music. At the top left, it displays "Order # 6-32792" in white text on a blue background, with a close button (X) in the top right corner. Below this, the main text reads "Get Apple Music free for 3 months! Listen to your favourite artists with no ads." To the right of this text is the Apple Music logo. Below the text are two buttons: a blue "Yes Please" button and a grey "No Thanks" button. Underneath the buttons, it says "Available to new subscribers only. Auto-renews at standard price after trial." A horizontal line separates this from the next section, which contains the text "You may receive details via email for any selected offer. To skip and view the confirmation page, [click here.](#)" Another horizontal line follows. At the bottom right, it says "Powered by Rokt - Privacy Policy | Ticketmaster® Privacy Policy".

EXHIBIT 2

Example of a Current Rokt User Flow on Hoyts

Booking confirmed for a great show ✕

Get access to the biggest Aussie sports when you start your 14 day free trial of Kayo Sports. Subscribe now for more info to your inbox. [Terms & Conditions](#)

We'll send the confirmation of the offer to: johnnysmith23@gmail.com

Yes Please **No Thanks**

You may receive details via email for any selected offer. To skip and view the confirmation page, [click here](#).

Powered by Rokt - [Privacy Policy](#)

EXHIBIT 3

Example of Distributed Commerce Purchase in a Transaction

In this use case, Rokt helps Ticketmaster display “in transaction” parking options in the transaction experience. Note that this use case is currently deployed in the United States only.

ticketmaster Brooklyn Nets v. Houston Rockets
Fri 11/01 @ 7:00pm, Barclays Center 03:05

Add to Order



40/40 CLUB by Tanduay Rum - Nets v. Rockets
\$150.00

New for the 2019-20 season, 40/40 CLUB by Tanduay Rum is offering an all-inclusive experience for those that pre-reserve access prior to the game. Add to your game experience and enjoy an all-inclusive buffet, and complimentary beer, wine and liquor.

*Alcoholic beverages are available for fans 21 and older in 40/40 CLUB by Tanduay Rum.

Please enter through the Calvin Klein VIP Entrance to receive access.

40/40 Club Access-Not an Event Ticket
\$150.00

SEC 212 ROW 14 SEAT 4-5



verified tickets

Order Details

Total \$318.40

Next

Book Event Parking
For Barclays Center
\$19.00 - \$9.00
powered by PARKWHIZ

Reserved Spaces, No-Surprise Pricing, Fast & Easy to Use.
Parking reservation begins at least one hour before event and ends at least one hour after.

- Closest - 0.15 miles away**
670 Pacific St. - 3min walk - Cielo Garage - Valet | Willoughby Operating Company
Valet, Attended, 670 Pacific St.
\$59.00 **Add**
- Best Price - 0.45 miles away**
180 Ashland Pl. - 11min walk - Ashland Pl. Garage - Valet | Discount Parking
Valet, Attended, 180 Ashland Pl.
\$19.00 **Add**
- 0.49 miles away**
470 Hudson Ave. - 12min walk - Lardon 1350 Garage - Valet | MPG Parking
Valet, Attended, 470 Hudson Ave.
\$20.00 **Add**

Any additional fees associated with each item will be displayed on the billing page. You may delete any item before you complete your order.
By continuing past this page, you agree to our [Terms of Use](#).

Content optimized by Rokt

Doc ID: caa82088e25143f06660364c527e1e84eb789aac

EXHIBIT 4

Example of a Current Rokt App Download User Flow

In this use case, Rokt powers the Partner's first-party campaign -- an app download -- through an embedded placement on the confirmation page.

The screenshot shows a Hotels.com reservation confirmation page for Jenny Smith. The page includes a confirmation message, hotel details for NY Moore Hostel, check-in/out dates, and a total amount of \$55.14. An embedded Rokt campaign titled "Before you get going..." features a man in a red uniform holding a smartphone, with "Yes please" and "No thanks" buttons. To the right, a "Hotels.com Rewards" progress bar shows 10 nights collected, with a "FREE" reward icon. Below it, a "Tell your friends you booked a great deal!" section includes social media sharing options. At the bottom right, a "LOVE, FLORIDA" banner is visible. An arrow points from the text "Content optimized by Rokt" to the Rokt campaign area.

Hotels.com USD

Book online or call
800-246-8357

Hotel Deals Packages Groups Gift Cards Help Jenny Smith Hotels.com Rewards Your bookings

✓ **Thanks Jenny, your reservation is confirmed!**
We've emailed your confirmation to jenny.smith1498@qq.com. There's no need to call us to reconfirm. Enjoy your stay!
Confirmation number: 8152518542691

NY Moore Hostel
Print your booking
Manage your booking

Check in Monday, May 7, 2019 (From 3 PM local time)
Check out Tuesday, May 8, 2019 (Before 11 AM local time)
Your stay 1 night, 1 room
Total amount to be charged by the hotel \$55.14

You will be charged deposits by the property based on the following schedule.

- First night plus tax (after booking)

Prices are quoted in USD. Any remaining amount will be due at the hotel, in their local currency.

Send to your calendar
Email to another address

Before you get going...
We hope you enjoy your stay in this city. Next stop, free nights. Track the nights you've collected in our app, plus get handy reminders as you step closer to your next free night. Book, save and get rewarded on the go.

Yes please No thanks

Powered by Rokt - Privacy Policy

Keep going, Jenny!
Hotels.com Rewards
Collect 10 nights, get 1 free*
✓ You're 1 night closer to getting a free night
We'll add the nights to your account within 72 hours after your stay.
See activity
How it works

Tell your friends you booked a great deal!
f

Share a moment of sunshine.
LOVE, FLORIDA

Content optimized by Rokt

We will find you a rental car that suits your travel needs.