Australian Competition & Consumer Commission
consumer submission on digital markets and platform services

Mr T Stamp, student, Monash University

I would first like to express my gratitude to the ACCC for receiving submissions from consumers such as myself. In my position as a consumer, and in the light of a recent (high-level) study of the European consumer framework, I have certain concerns which I think should be considered by the ACCC in its report on digital markets and digital platform services.

Locking-in bias

Whilst unaware of whether or not the locking-in bias is common in Australia, I believe that it is important to address this issue. In a world in which time is an ever-increasingly rare commodity, which we never have enough of, consumers who are obliged to trawl through webpages will likely consider themselves to be invested in the process. Under Art 8, para 3, of the European 'Consumer Rights Directive', delivery instructions must be mentioned upfront so as to avoid a situation where consumers are faced with exorbitant delivery prices but feel as though they have invested too much time not to bother. I myself recall a situation where I considered purchasing a product online, which was advertised for a low or 'free' price (I forget the actual price, for it was 3-4 years ago), and scrolled through pages of information only to realise that I would need to pay a substantial cost in order to 'benefit' from the 'free' deal.

Information and disclosure obligations

On this point, I wonder whether it might be beneficial to consumers to require product manufacturers, vendors, and/or distributors to summarise key information in a "plain English" format. To my mind, the reality of the standard form contract era is that consumers are faced with lengthy and complex documents that are often difficult to understand. This issue is exacerbated by the need (in many cases) to accept the terms before receiving access to a good or service. If companies were required to summarise key terms covering topics such as exclusion of liability, guarantees, and warranties, in a quick and accessible document, the consumer would be better informed. Here I think the wording of Recital 27 to the EC's Modernisation Directive of 2019 is relevant: "information should be provided in a clear and comprehensible manner and not merely in the standard terms and conditions or similar contractual documents."

End-User Licence Agreements (EULAs)

In a similar vein to my earlier statements on disclosure and the need for information summaries, I consider it important that purchasers of products under EULAs are aware of the nature of this ownership "up-front", before contracting. When I most recently purchased a mobile phone, it was the first time I ever read through the EULA which a consumer must "read" as one of the steps in the set-up process – this of course occurs post-contract, so in my opinion is a little too late. I do think the EULA structure is flawed and detrimental to consumers, but at the very least I think consumers ought to be told, in "plain English", of the nature of their purchase and resulting ownership (or lack thereof).

Data (mis)use

One issue which I find very troubling is the use of data by tech companies. I consider the whole notion of "essential" data 'cookies' to be ridiculous, and applaud the very few companies which provide consumers with the option to reject all cookies. In my opinion, consumers should, at the very least, be given the opportunity to reject "non-essential cookies", but to my mind the optimum system would allow consumers to reject all cookies. On this point, I also think that "opt in" and "opt out" questions should be made clear, as sometimes the consumer could arguably have little or no idea as to what is being opted into or out of.

Another data issue I find concerning is the apparent tendency for some companies (and even some listed charities) to sell consumer data. My parents have suffered from this practice, and have often received telephone calls from scammers, one of whom (rather stupidly) confessed that the company he was calling from received my parents' phone number from a particular charity. It is so easy to give up our personal data, and in many cases companies ask for much more than they really need, so it is important that those who receive personal data are subject to regulation to ensure that they do not misuse it for their own profit.

I am likewise concerned by the tendency for my mobile phone to "listen" to what I say, and then show advertisements on my social media apps or on websites I visit, which explicitly relate to the sort of product I was speaking about. For instance, I once was speaking to a friend about taking a flight from the UK to Paris (this was whilst I was in the UK), and then a few hours later when looking at Facebook, I came across an ad for flights. Some may consider this to be mere convenience, but in my opinion it is deeply concerning that tech companies should be listening to every word I speak when in the proximity of a digital device.

Generative artificial intelligence

Whilst too unfamiliar with this development to make any proper comment, I do consider it to be concerning that the ordinary Australian, exercising intelligence and skill, may be outdone by the "work" of another, who has used generative AI. Though I have not used generative AI, I think there are two potentially significant issues: data use, and dependence. Any one who has access to a LLM program can enter a huge swathe of written information, which I believe will somehow make the program smarter for future users. For some people, this plays out by copying and pasting a large text into a program, seeking clarification (or an answer). For others, it could (I imagine) play out where a person has written an original document but seeks to make it "sound" better. In either case, I imagine that the original creator of the information that is inputted is not given any compensation or benefit for effectively making the AI smarter.

The second issue, dependence, would not likely need a detailed discussion on my part. Increased user interaction makes the user not only more dependent (rather than exercising cognitive function), but also increases reliance on a particular service, to the exclusion of all others, leading to market dominance.