

15 February 2019

Australian Competition and Consumer Commission
By email: platforminquiry@accc.gov.au

Dear Sir/Madam

ACCC DIGITAL PLATFORMS INQUIRY: PRELIMINARY REPORT

The Insurance Council of Australia¹ (Insurance Council) appreciates the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) *Digital Platforms Inquiry: Preliminary Report*.

While the inquiry's terms of reference and the preliminary report focus on digital platforms and the media and advertising services markets, several of the recommendations have broader implications for the general insurance sector. The Insurance Council's submission highlights the unintended consequences of applying recommendations aimed at large digital platforms (primarily Google and Facebook) to other sectors.

Competition and acquisitions

The ACCC proposes to amend section 50(3) of the *Competition and Consumer Act 2010* to include, when assessing the competitive effects of a merger or acquisition:

- (a) the likelihood that an acquisition would result in the removal of a potential competitor;
and
- (b) the amount and nature of data which the acquirer would likely have access to as a result of the acquisition.

In regard to criterion (a), the report cites the example of Facebook acquiring Instagram in 2012.

While the criteria may be applicable to digital platforms, it is less clear that this is the case for other sectors including the Australian general insurance sector. Further, as the report notes, without the benefit of hindsight it is difficult to review acquisitions of nascent competitors and predict their likely future in the absence of the proposed acquisition.

In relation to criterion (b), insurers typically acquire customer data in the event of a merger or acquisition. If s50(3) is to be amended to include this criteria, it would need to be sensibly

¹ The Insurance Council of Australia is the representative body of the general insurance industry in Australia. Our members represent approximately 95 percent of total premium income written by private sector general insurers. Insurance Council members, both insurers and reinsurers, are a significant part of the financial services system. September 2018 Australian Prudential Regulation Authority statistics show that the private sector insurance industry generates gross written premium of \$47.2 billion per annum and has total assets of \$121.2 billion. The industry employs approximately 60,000 people and on average pays out about \$124.8 million in claims each working day.

Insurance Council members provide insurance products ranging from those usually purchased by individuals (such as home and contents insurance, travel insurance, motor vehicle insurance) to those purchased by small businesses and larger organisations (such as product and public liability insurance, professional indemnity insurance, commercial property, and directors and officers insurance).

applied given that the scale of the data acquired by insurers is of a different scale to the vast data sets of Facebook and Google that the ACCC is considering.

Privacy

The Insurance Council understands the ACCC's concern that:

“The rapid growth of online activity, including in particular the high levels of social media penetration in Australia, has increased the need for enhanced privacy and data protection. This need is particularly acute given the multi-faceted role digital platforms now perform in Australian communities”. (p 224)

While general insurers recognise the importance of robust privacy protections, the proposed recommendations relating to the use and collection of personal information require further consideration and consultation if they are to extend to sectors beyond digital platforms.

For example, it is not clear that there needs to be additional strengthening of notification requirements in dealing with consumers' personal information. General insurers already comply with extensive regulation in this area including the Australian Privacy Principles, cybersecurity standards issued by the Australian Prudential Regulation Authority, and breach reporting requirements under the Australian Securities and Investments Commission (for example under s912(d) *Corporations Act 2001*).

The ACCC has recommended enabling consumers to require erasure of their personal information. However, data collected by insurers in the course of underwriting insurance products and paying out claims becomes actuarial data which is essential to the pricing of future applications for insurance. Enabling consumers to delete data collected about them will have a detrimental impact to the sustainability of the industry. In addition, insurers often retain personal data after a customer no longer has a current policy with them in order to continue servicing potential long tail claims.

Additional sector-by-sector consultation is needed

The ACCC's inquiry has considered the business models of Facebook and Google, and related evidence and case studies. While the inquiry's preliminary recommendations may be appropriate for digital platforms, further consideration and consultation is required to assess whether the recommendations may be appropriate for other sectors. The general insurance sector, in particular, differs in terms of business models, scale, and the large body of regulation to which it is subject. These factors need to be examined when considering increasing the obligations governing how data is dealt with by insurers.

If you have any questions or comments in relation to our submission, please contact John Anning, the Insurance Council's General Manager Policy, Regulation Directorate, on (02) 9253 5121 or janning@insurancecouncil.com.au.

Yours sincerely



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