

# IAPP ANZ SUMMIT ONLINE

The New Convergence Between Privacy, Competition and  
Consumer Regulation

24 November 2020

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# Welcome and introductions

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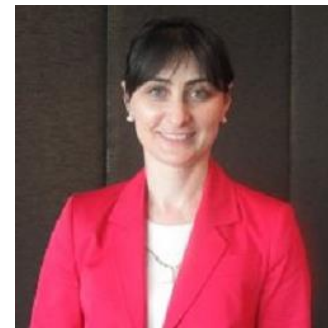
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# Overview

<ul style="list-style-type: none"><li>• Privacy Act reform</li></ul>	<ul style="list-style-type: none"><li>• Impact of privacy reform locally and globally</li></ul>
<ul style="list-style-type: none"><li>• Enforcement action involving handling of customers' personal information - ACCC and OAIC perspective</li></ul>	<ul style="list-style-type: none"><li>• Cooperation between regulators: ACCC and OAIC</li></ul>
<ul style="list-style-type: none"><li>• Customer loyalty schemes</li></ul>	<ul style="list-style-type: none"><li>• Cooperation with international regulators</li></ul>
<ul style="list-style-type: none"><li>• Tensions between privacy/human rights approach and consumer/competition approach</li></ul>	<ul style="list-style-type: none"><li>• What does the future regulatory landscape look like?</li></ul>

# Privacy Act Review

## Terms of reference and issues paper

*“Technology is also rapidly evolving in areas such as artificial intelligence and data analytics, which is why it is crucial that we have a privacy regime that is fit for purpose, can grow trust, empower consumers and support the growing digital economy.”*

- Wide ranging review of the *Privacy Act 1988*
- The Government committed to a review following the Australian Competition and Consumer Commission’s Digital Platforms Inquiry in 2019
- Binding privacy code for social media platforms and other online platforms that trade in personal information

# Recent ACCC law enforcement action involving digital platforms

## Involving the handling of consumers' personal information

- ACCC v Google (*location data*)
- ACCC v Google (*targeted advertising*)
- ACCC v HealthEngine

## Involving other misleading conduct

- ACCC v Trivago
- ACCC v Viagogo
- ACCC v Valve (Steam)

# The ACCC's customer loyalty schemes report (2019)

- The Report examined consumer and competition issues associated with customer loyalty schemes, including the collection, use and disclosure of data
- The Report focussed on the obligations of businesses under the *Competition and Consumer Act 2010 (Cth)*
  - Businesses operating in trade or commerce



# Key recommendations from the customer loyalty scheme report

Recommendation 1:  
Improve how loyalty schemes communicate with customers

- Loyalty scheme operations need to review their approach to presenting terms and conditions
- Loyalty scheme operators should ensure that **changes are fair** and that consumers are **adequately notified**

Recommendation 3: End the practice of automatically linking members' payment cards to their loyalty scheme profile

- Loyalty scheme operations should not automatically link payment cards to loyalty scheme profiles to **track purchasing and transaction behaviour** when a loyalty card is not scanned.

Recommendation 4:  
Improve the data practices of loyalty schemes

- Loyalty scheme operations need to review their approach to presenting consumers with information about how they **handle consumer data**, and provide consumers with **meaningful control** over their data

# Regulatory Approaches

Privacy and human rights  
v  
competition and consumer  
approaches



# EDPB's Recommendations and the new SCCs impact cross-border data transfers

- European Court of Justice's Schrems II decision, July 2020
  - EU-US Safe Harbor and Privacy Shield
  - supplementary technical or organisational measures
  - importers who are no longer able to comply with the standard contractual clauses (SCCs)
- Draft updated SCCs
  - new obligations on international data transfers
  - economics of receiving SCC transferred information
  - importers to seek interim measures to suspend requests until courts rule on the merits
- Draft updated SCCs are subject to consultation until 10 December 2020



Brussels, XXX  
[...] (2020) XXX draft

COMMISSION IMPLEMENTING DECISION (EU) .../...

of XXX

on standard contractual clauses for the transfer of personal data to third countries  
pursuant to Regulation (EU) 2016/679 of the European Parliament and of the Council

# Cooperation between the ACCC and international regulators

- The ACCC engages with overseas competition and consumer authorities
  - The ACCC is a signatory to the Multilateral Assistance and Cooperation Framework for Competition Authorities
  - International Competition Network (ICN) and International Consumer Protection and Enforcement Network (ICPEN)

# The future

## What does the future regulatory landscape look like?

### Digital Platform Services Inquiry 2020-2025

- September 2020 interim report focussed on online private messaging services (text, audio, video) and updated the ACCC's findings on search and social media platforms
- March 2021 report on app marketplaces
- Further reports

Ongoing monitoring of digital platforms, and cooperation with international competition and consumer agencies

The privacy, consumer and competition worlds will continue to converge.

Achieving the best outcome in the public's interest will see more collaborative action from regulators.

Regulators will work together to tackle a broader scope of issues and achieve holistic outcomes.

**Thank you!**

# Our contact details

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