September 2017

Competition in the Australian Financial System

Submission to the Productivity Commission

ABOUT US

Set up by consumers for consumers, CHOICE is the consumer advocate that provides Australians with information and advice, free from commercial bias. By mobilising Australia‟s largest and loudest consumer movement, CHOICE fights to hold industry and government accountable and achieve real change on the issues that matter most.

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INTRODUCTION

CHOICE appreciates the opportunity to provide the following comments to the Productivity Commission Inquiry into Competition in the Australian Financial System. The scope of this inquiry is necessarily broad. Our submission focuses on key examples of issues with competition across the system rather than trying to capture all problems with all products.

Competition is not an end unto itself; it is a means to promote the welfare of Australian consumers by allowing them to access the best products at the lowest price, and facilitating easy comparison of and switching between products. To that end, competition policy should be focused on improving outcomes for consumers.

There have been many recent inquiries into Australia"s financial system. Most inquiries have, rightly, focused on consumer protection matters. When inquiries have considered competition, they have focused on supply side issues, ignoring the other half of the economic picture. More work is needed to address the deep, systemic problems in the financial system that restrict effective competition and cause consumer detriment.

Competition in the financial sector is not a supply side problem. We do not need more banks, we need better banks. We need measures which counteract the ability of large, incumbent institutions to capture major sections of the market while charging higher prices than many of their competitors. Improved disclosure is one such measure; when consumers are given timely, targeted information that allows them to evaluate the cost of a product against the rest of the market and they are more inclined to switch. Improving consumers' access to their transaction and consumption data will also make it easier than ever to switch between products. These interventions should make it easier for consumers to become unstuck from their banks and force banks to work to keep their customers.

Information alone cannot help consumers confidently navigate the financial system – it"s time to go beyond disclosure. Combining disclosure with performance-based regulation could help achieve this aim as it will make banks strive to promote consumer understanding of their products.

Finally, we urge the Productivity Commission to closely examine the role that distribution networks play across the financial system. Major banks are currently using services that consumers expect to be acting in their interests as distribution pipelines. This includes financial advisers, mortgage brokers and, worryingly, trusted institutions like schools.

School banking programs such as the Commonwealth Bank's Dollarmites program, allow banks unfettered access to market their brand to school children. Primary schools receive kickbacks from banks when children open an account. These schemes allow banks to cement relationships with children as young as five, with the hopes that they become lifelong customers. Rewarding children for saving with cheap toys becomes rewarding young adults with "special" offers of high-interest personal loans and credit cards. It is time to take banks out of financial literacy education, and to stop them from paying schools commissions to flog their products.

Banks pay experts or trusted professionals to directly sell their products to gain a bigger market share. These sales-by-stealth tactics limit competition and harm consumers, as experts put their financial interests ahead of consumer interests. The solution to these problems isn"t disclosure – it"s to remove the conflicts from our schools and from professions like mortgage broking to better help people navigate an already complex market.

RECOMMENDATIONS

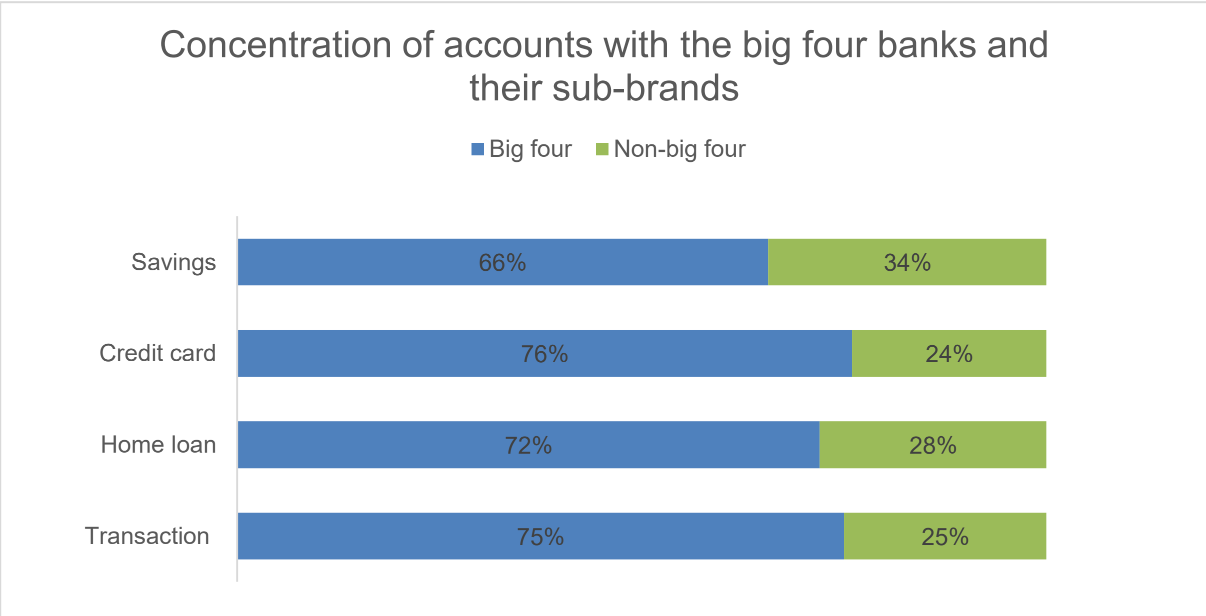
1. That the Productivity Commission assess whether the cost advantage received by the major banks that the implicit government guarantee provides them with competitive advantages that leads to market concentration and consumer harm.
2. Competition is added to ASIC‟s mandate as soon as possible.
3. ASIC is provided with additional funds to conduct field tests and mass data analysis to improve product disclosure across the banking sector.
4. That the Productivity Commission investigate ways to improve timely disclosures to encourage consumers to evaluate whether a product best meets their needs.
5. Consumers are given a legal right to access their own transaction and consumption data in a useful format, and that data is accessible to trusted third party service providers.
6. Following on from the Productivity Commission‟s findings in the Data Availability and Use Inquiry, a definition of personal data is defined for the financial sector. It should be as broad in scope as possible while maintaining the privacy rights of other consumers. Any negotiation on definitions should involve consumer groups.
7. A standardised format for downloadable consumer data is developed. Any discussion on formats should involve consumer groups.
8. That the Productivity Commission investigate what regulatory barriers exist that hinder third-party service providers accessing data held by businesses at the request of the consumer.
9. The ePayments Code is reformed from a voluntary code of practice to a mandatory code of conduct for all parties offering payment services.
10. The ePayments Code is amended to clarify that consumers can share their information with an ASIC accredited list of secure third-party services.
11. The Federal Government pursues a suite of initiatives to allow consumers to cancel or easily switch recurring payments to another product, including:
    - legislation to establish a „tick and flick‟ switching process to allow customers to easily transfer recurring payments to a new credit card. The process should be offered online and in-branch.
    - test a requirement that credit card statements include information about direct debit cancellation and switching processes.
12. That the Productivity Commission explore the benefit of performance-based comprehension standards developed for the retail banking sector.
13. That the Productivity Commission consider whether the major banks‟ ownership of advice channels, including financial advice and mortgage broking, is promoting genuine competition.

14. ADIs are banned from providing financial services and any branded materials to children through schools. If not:
    - Schools are banned from receiving payments from ADIs in exchange for promoting or facilitating their products.
    - ADIs are banned from distributing branded learning materials in schools.
15. That the Productivity Commission consider trail payments to mortgage brokers to ensure they are not discouraging brokers from switching consumers to better products.
16. That the Productivity Commission examine the competitive dynamics across the home lending sector, with a focus on aggregators.
17. That the Productivity Commission consider how the behaviour of professionals in the financial sector contributes to poor competition and examine reforms to address conflicts that pit consumer interests against those purporting to assist them.
18. Consumers are clearly informed if a broker or aggregator they are using is owned by a lender and which lender is funding a white-label loan. All forms of disclosure should be consumer tested by a third-party, ideally ASIC, to ensure that information is conveyed in a manner that is most useful to consumers.
19. The law is amended so that mortgage brokers have to act in the best interests of their clients.

1. Australia‟s concentrated financial system

The Australian financial system is highly concentrated – most people hold products with one of the big four banks or their sub-brands even though these products frequently cost more and return less. CHOICE surveyed a nationally representative sample of people in September 2017. We found that over two-thirds of Australians have a savings account, 72% had a home loan and a quarter or more of people had a transaction or credit card with the big four banks or one of their sub-brands.[1]

These results mirror our 2014 research which found that most people had a transaction account (77%), home loan (71%), credit card (77%) or savings account (66%) with the big four banks or one of their sub-brands.[2] This is despite the fact that people who bank with the big four banks or one of their sub-brands experience lower levels of satisfaction than customers of smaller institutions.[3]



[1] CHOICE Consumer Pulse Survey 2017. The survey was conducted between 15-24 September 2017 with 1029 Australians aged 18+ from a permission-based panel (The ORU). A nationally representative sample was drawn based on population data sourced from ABS Census 2016, and the final sample was weighed by age group, gender and location.
[2] CHOICE Consumer banking survey 2014. Referenced in CHOICE, Submission to the Financial System Inquiry. http://fsi.gov.au/files/2014/04/CHOICE.pdf The survey was conducted between 20-23 March 2014 with 1048 Australians aged 18+ from a permission-based panel (Pureprofile). A nationally representative sample was drawn based on population data sourced from ABS Census 2011, and the final sample was weighed by age group, gender and location.
[3] Ibid.

These statistics suggest that larger incumbents in the financial system do not have to work as hard as their smaller challenger counterparts to retain or attract market share. Ultimately, this lack of competition leaves customers paying more.

Cost advantages to the major banks

Big banks operate on an economy of scale that reduces their funding and operating costs relative to smaller authorised deposit-taking institutions (ADIs). While cost benefits to operating on a large scale exist across the economy, big players in the financial sector derive an additional benefit from their size alone – the market believes they are "too big to fail". There is a perceived implicit guarantee that the government would come to a bank's aid if it got into trouble, due to the devastating ripple effect on the economy if it did not.[4] The RBA estimated that this implicit guarantee was worth between $1.87-3.75 billion in 2013.[5]

Accordingly, these too big to fail institutions are given a two-notch rating uplift by credit rating agency Standard & Poor's, among similar benefits from other agencies.[6] This further lowers their funding costs and compounds their size advantage compared to their smaller competitors.

Big banks have argued that no guarantee exists just for them, but rather that "there is general government support for the whole banking system."[7] Whether or not a guarantee exists, implicit or explicit, is less relevant than the perception that it exists, because it is from this perception that major banks derive material competitive advantages.

While an implicit guarantee can have some benefits to consumers, particularly through increased banking system stability in times of global economic crisis, it is likely a contributing factor to the high level of market share that the big four banks enjoy. We ask that the Productivity Commission examine whether the current level of government support for major banks is distorting the financial system and leading to harmful consumer outcomes.

We need better banks, not more banks

More banks or more banking services are unlikely to improve competition and subsequently conditions for consumers. Currently there are 40 banks (33 Australian-owned and seven foreign owned subsidiaries) in operation in Australia, along with 54 credit unions, four building societies,

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[4] In reality, deposits in ADIs of all sizes receive government protection through the Financial Claims Scheme. However, this guarantee is only activated in the event of insolvency. For a too big to fail institution, the perception is that the government would step in before it got to this point.
[5] Hughes, David; RBA. Parliamentary Briefing, 24 February 2012 – Implicit Guarantees for Banks p 44.
[6] Hughes, David; RBA. Parliamentary Briefing, 24 February 2012 – Implicit Guarantees for Banks, p3; Review of the Four Major Banks (Second Report), April 2017, pp 49.
[7] CBA, first round submission to Financial System Inquiry 2014, p 49.

and various local branches of overseas banks.[8] There is little evidence to suggest that, at this level of market saturation, more banks necessarily entail better banking services for consumers.

There have been decades of interventions aimed at promoting competition with major banks. In the 1970s it was the rise of building societies and credit unions, in the 1980s deregulation and the expected entrance of foreign banks, and most recently regional banks and mortgage originators. Right now, proponents of fintech are selling the same prospect. It is not enough to look at the promise of new entrants on the supply side – we have to look at whether consumers will be engaged, capable and confident to embrace them.

Credit cards: a case study in demand side competition failure

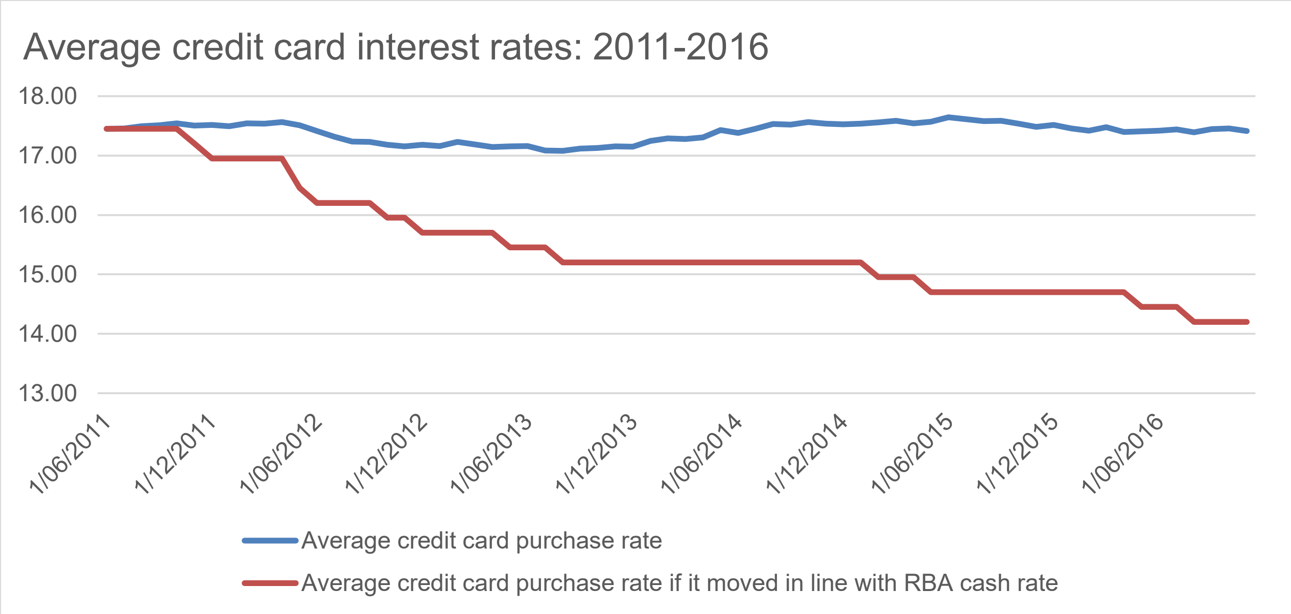
When it comes to credit cards, Australian consumers do not want for choice. There are over 250 credit cards on offer from over 80 institutions, at a range of price points and with a variety of features.[9] As with other retail banking products, the major four banks dominate this market, accounting for two thirds of balances outstanding.[10] Since the majors are not leaders on price, this means that most consumers have a credit card that has a higher interest rate and/or annual fee than other cards on the market. Despite the high number of options in the credit card market, it appears that providers are not competing on price.

Credit card costs are not moving in line with major price reductions for providers

Using data supplied by comparison site Mozo, CHOICE has examined interest rate trends in the credit card market from June 2011 to the end of 2016 (the point when card interest rates largely stopped responding to movements in the official cash rate). The data shows that consumers have been getting a progressively worse deal on credit card products since 2011, and even though significant pressure has been placed on the banking sector in the last two years, credit card products have not improved.

[8] APRA, List of Authorised Deposit-taking Institutions. Retrieved from http://www.apra.gov.au/adi/pages/adilist.aspx, 8 September 2017.
[9] SERC report 2015 Interest rates and informed choice in the Australian credit card market p18
[10] Ibid.

Source: Mozo supplied data on credit card interest rates.



The Reserve Bank has cut the official cash rate by 3.25% since June 2011 but Australian credit card holders have seen no relief in the form of cuts to credit card purchase rates. The average credit card interest rate has dropped only slightly over the last five years from 17.41% to 17.35%. If banks moved rates in-line with the RBA cash rate, the average credit card interest rate would be 14.2%.

Consumers are paying the price in this high interest credit card environment. As of November 2016, the total value of credit card balances accruing interest was $32.2 billion.[11] If credit card interest rates had moved in line with the Reserve Bank cash rate over the last four years, Australian credit card holders would have paid $3.49 billion less in interest since mid-2011.

Consumers are not choosing cards based on price

There is a disconnect between what consumers say they value in a credit card and what actually factors into the purchase decision-making process. In a 2015 survey of credit card holders, only 17% of respondents said that the most or second-most important feature in a card was that it be issued by the bank where they hold their other accounts. Of more importance were low fees (62%) and low interest rates (51%).[12] However, when asked about their decision-

[11] RBA Credit and Charge Card Statistics C01 12/01/2017.
[12] CHOICE (2015), *Submission to the Senate Economic Committee's Inquiry into Matters Related to Credit Card Interest Rates (submission 10)* http://www.aph.gov.au/Parliamentary_Business/Committees/Senate/Economics/Credit_Card_Interest/Submissions

making process in choosing their own credit cards, 26% said the most important factor in choosing their primary card was that it was offered by a bank they had other accounts with. Low fees and low interest rates were the main factor for 11% and 10% of respondents, respectively. Evidently consumers are not emotionally wedded to their bank; the obvious reason for this disconnect is the perceived convenience in bundling products with one institution. Consumers pay for this convenience through higher interest charges and fees.

People on low incomes are most affected when card companies don't compete on price

Credit card debt is declining as a percentage of household income. It is also declining as a percentage of household debt, which is at record levels, largely as a result of climbing mortgage debts.[13] At the end of June 2017 approximately 63% of total outstanding credit card balances were accruing interest.[14] This figure has been trending downwards since its peak at 75% in 2012.

On the face of it, this suggests that consumers are becoming savvier in their use of credit cards, exploiting interest-free periods and balance-transfer products, or accessing different forms of credit. However, it is clear that this change in behaviour is not consistent across all consumers.

In industry parlance, consumers who regularly pay off their balance before it accrues interest are called "transactors". Those whose balances roll over to the next month and incur interest charges are called "revolvers". Industry estimates put the number of cardholders who pay interest on their balances at between 30 and 40 per cent.[15] In 2015 CHOICE research put the figure at 42%.[16] Fifteen per cent of cardholders never pay their balance in full.

There are stark differences in the way these groups use their cards. Compared to transactors, revolvers are low frequency users of credit cards. The RBA has estimated that interest-accruing balances account for only 20-25% of transactions, despite representing nearly two thirds of all credit card debt.[17]

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[13] RBA, *Submission to Inquiry into matters relating to credit card interest rates*, p 16.
[14] RBA, *Credit and Charge Card Statistics.*
[15] RBA, *Submission to Inquiry into matters relating to credit card interest rates*, p 6.
[16] CHOICE, survey into consumer use and understanding of credit cards, July 2015. This survey was conducted among 1,679 Australians aged 18-75 years. Of these, 1,244 have at least one credit card. Quotas were set up to ensure the final sample is representative of the Australian population by age groups, gender and state, data was weighed to the latest ABS population data (Census 2011). Fieldwork was administered and managed by GMI-Lightspeed who is a member of AMSRS and abides strictly to codes of conduct for market research and panel management in Australia. Fieldwork commenced on 23rd July, 2015 and completed on 29th June, 2015, responses to 'In the last twelve months, how many times did you pay off the balance on this card in full?', response options: every month, almost every month (10 or 11 months of the year), most months (6-9 months of the year), occasionally (3-5 months of the year), once or twice in the year, never.
[17] RBA, *Submission to Inquiry into matters relating to credit card interest rates*, p 15.

CHOICE is concerned that low income earners are disproportionately affected by the costs of credit cards. Persistent revolvers are overwhelmingly from low income households.[18] Interest payments made by these consumers help subsidise the rewards programs offered to transactors, who tend to be wealthier and attracted to high-interest cards that offer redeemable points as prizes for frequent usage.

The use of the phrase "low rate" by many credit card providers is disingenuous. Purchase rates for low interest cards issued by the four major banks are between 12.49%-13.99%, as of September 2017.[19] The cheapest cards on the market have substantially lower interest rates and annual fees.[20]

Revolvers tend to hold lower rate credit cards, which suggests some level of consumer engagement with the price of the product, at least in the initial enrolment stage. However, when asked, almost two thirds of all cardholders said they did not know the interest rate that currently applied to their card.[21] If people are not engaged with this most basic feature of a credit product then they are almost certainly not going to be able to evaluate the cost of their debt.

Competition and regulation

As a starting point, competition in the financial system must be closely investigated and the factors stifling demand side competition addressed. This should be done through deep investigations, like this inquiry, and through ongoing examinations. In its response to the Financial System Inquiry"s final report, the Federal Government committed to introduce competition into ASIC"s mandate by end of 2016.[22] This reform has yet to occur and should be prioritised.

Regulators in the United Kingdom have been focused on issues of competition within the retail banking sector, with reviews and specific tests leading to tangible change and an understanding of long-term reform required to the sector. Australia would benefit from a study like the UK"s Competition and Market Authority"s (CMA"s) 2016 „Making banks work harder for you" report, which recommended a suite of proposals to address the dominance of incumbents in the UK banking sector, from better governance, use new technology and changes to disclosure to

18 RBA, *Submission to Inquiry into matters relating to credit card interest rates*, p 6.
19 For products called "Low Rate Card": ANZ: 12.49%, CBA: 13.24%, NAB: 13.99%; Westpac: 13.49%. ANZ, NAB and Westpac have "premium" low-rate cards with slightly lower interest rates and higher annual fees. Sourced 20 September 2017.
20 Community First Credit Union McGrath Pink Visa and Easy Street Easy Low Rate Visa each have 8.99% purchase rates and $40 annual fees. Mozo data, sourced at http://betterbanking.choice.com.au/, 20 September 2017.
21 CHOICE, survey into consumer use and understanding of credit cards, July 2015.
22 Federal Government (2015), *Improving Australia's Financial System, Government response to the Financial System Inquiry* http://treasury.gov.au/~/media/Treasury/Publications%20and%20Media/Publications/2015/Government%20response%20to%20the%20Financial%20System%20Inquiry/Downloads/PDF/Government_response_to_FSI_2015.ashx

consumers.[23] We ask that the Productivity Commission undertake similar investigations and explore whether the CMA‟s approach could be applied in Australia.

In addition, Australian regulators should again borrow approaches applied in the UK and invest in trials to improve consumer engagement and understanding of specific products through effective disclosure. For example, the Financial Conduct Authority in the UK has:

- Partnered with a large financial institution to test the effect of switching behaviour for over 20,000 customers with savings accounts using targeted and timely reminders.[24]
- Partnered with home and motor insurers to conduct trials with 300,000 customers to test improved renewal notice formats. They found that placing last year‟s premium on renewal notices caused 11-18% more consumers to switch or negotiate their home insurance policy.[25]
- Obtained data about over 500,000 customers across two banks to demonstrate that the use of text alerts and mobile applications could reduce reliance on costly unarranged overdrafts by 24%.[26]

Financial institutions are heavily investing in marketing and data insights to better capture and keep customers, not always to the clear benefit of customers. Regulators need to keep up with these data-driven approaches. Australian consumers would greatly benefit from similar studies, ideally conducted by a regulator with the power to act on findings about effective disclosure. To achieve this, ASIC should be given additional funding for field tests and data analysis.

Recommendations

1. That the Productivity Commission assess whether the cost advantage received by the major banks that the implicit government guarantee provides them with competitive advantages that leads to market concentration and consumer harm.
2. Competition is added to ASIC‟s mandate as soon as possible.
3. ASIC is provided with additional funds to conduct field tests and mass data analysis to improve product disclosure across the banking sector.

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[23] Competition and Market Authority (2016) 'Making banks work harder for you' https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/544942/overview-of-the-banking-retail-market.pdf

[24] Financial Conduct Authority, (January 2015), *Occasional Paper No. 7, Stimulating interest: reminding savers when to act when rates decrease.*

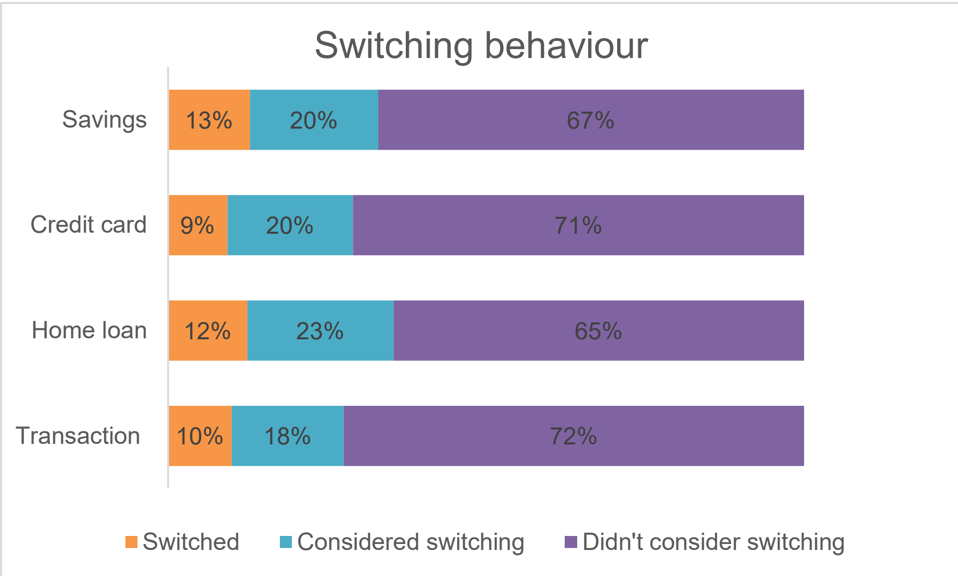
[25] Financial Conduct Authority (December 2015), *Occasional Paper No.12, Encouraging consumers to act at renewal: evidence from field trials in the home and motor insurance markets.*

[26] Financial Conduct Authority (March 2015), *Occasional Paper No. 10, Message received? The impact of annual summaries, text alerts and mobile apps on consumer banking behaviour.*

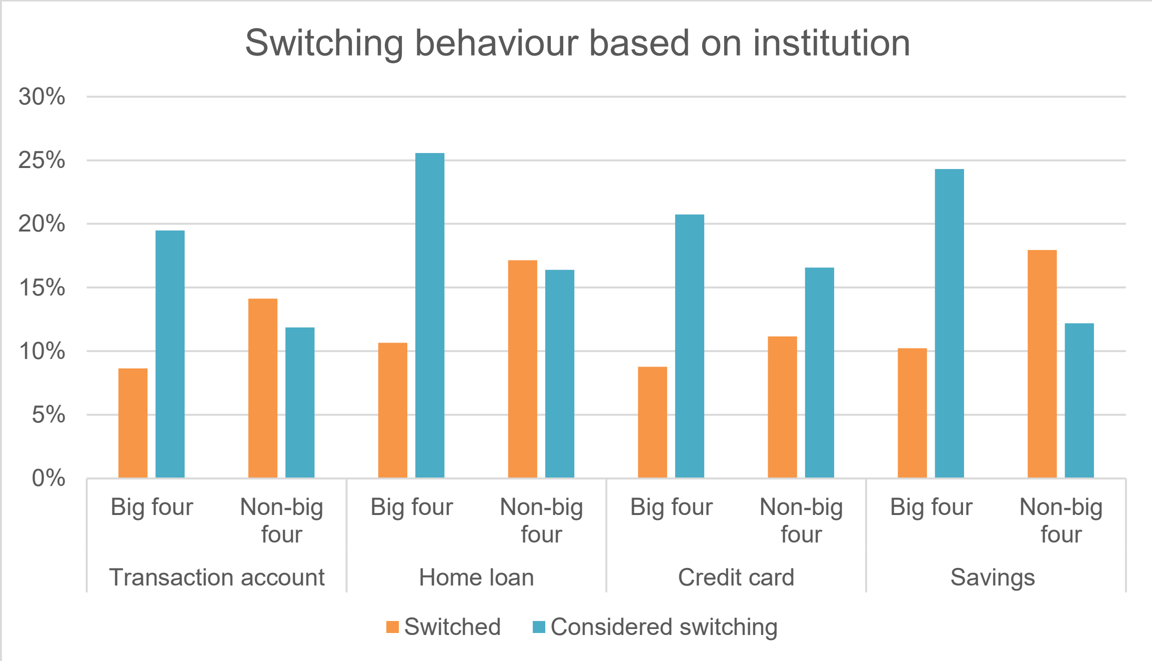
2. Reforms to increase demand side competition

Why aren't consumers switching?

Most people don't regularly switch their banking products. In fact, most people don't even think about switching. As part of our 2017 research we asked people if they had switched banking products or considered switching products in the last two years.



People with the big four banks or one of their sub-brands were less likely to have switched but more likely to have considered switching. For example. 17% of people with home loans with a non-big four bank had switched home loans compared to 11% of people who have home loans with the big four. However, 26% of people with a big four home loan had thought about switching in the last two years but didn't take action compared to 16% of people with a non-big four loan.



There are a range of reasons why consumers are staying put. In 2014 CHOICE research found:

- 36% of people who had not switched said switching was "too much hassle".
- 32% of people who had not switched said they wanted to keep all their accounts with the same institution (around half of respondents with a transaction account, home loan and credit card had these with the same institution).
- Across all products, 30% of consumers faced an issue when switching.[27]
- Many people don�even't think switching is worth their time – 18% of people with credit cards and over 19% of people with transaction accounts didn't switch because they couldn't find a better product.

It is clear the switching process is far from seamless. It is still manual and difficult, especially when credit cards and direct debits are brought into the equation. However, there are solutions to increase consumer engagement with banking products to encourage switching which should see banks compete on further on costs.

Better information

Consumers often tell CHOICE of their feeling of powerlessness when dealing with financial institutions. This is partly because understanding the market and the terms and conditions of

[27] CHOICE Consumer banking survey 2014. When asked "For what reasons did you decide not to switch your main everyday transaction account?".

different products can be impossible without help. The extent of this “information asymmetry” between providers and customers who need their products leads to harm as consumers pay for products that they don‟t need or aren‟t the best deal in the market.

Generally, consumers struggle to understand terms and principles that the finance sector consider basic. Research commissioned by ASIC into consumer understanding of finance has found that only 33% of people have heard of and state they understand the concept of „risk/return trade-off‟.[28] This lack of understanding can be debilitating for some consumers, with 30% finding dealing with money to be stressful and overwhelming.[29]

The best example of poor consumer understanding of basic banking products is with credit cards where most people don‟t know the interest rate that applies to their credit card or understand how minimum monthly repayments work.[30]

Poor understanding of financial products is also seen in consumers taking up products that they don‟t or can‟t use. In August 2017, ASIC secured refunds worth $10 million for 65,000 Commonwealth Bank customers who had purchased consumer credit insurance for credit card repayments.[31] These consumers had been sold the add-on insurance product, despite not meeting the employment criteria for making a claim. In effect, they had been sold a useless product.

Confusion or lack of engagement often stems from opaque product pricing and the difficulty understanding complex financial products. While consumers struggle to identify whether their financial product gives them value, targeted information provided at the right time can prompt people to assess if they are getting a good deal. This information works best when it helps people contextualise or anchor their experience to the rest of the market.

In 2015 the UK Financial Conduct Authority undertook a study into the effects of reminder notices on consumer switching behaviour. In this instance, 20,000 consumers who held savings accounts with high introductory rates were sent reminders when the rates decreased. The study found that switching rates could be increased by up to 7.9 percentage points simply by sending a reminder. Framing the nudge in terms of the potential gain/loss caused by switching/not switching was more successful than simply reminding consumers about the rate change. [32]

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[28] ASIC Report 481, *Key Findings, Australian Financial Attitudes and Behaviour Tracker, Wave 4: Sept 2015-Feb 2016*, February 2016, p. 34.
[29] Ibid, p 15.
[30] CHOICE (2015), *Submission to Senate Economics Committee – Inquiry into matters related to credit card interest rates.*
[31] ASIC, *17-268MR Commonwealth Bank to refund over $10 million for mis-sold consumer credit insurance.*
[32] Stimulating interest: Reminding savers to act when rates decrease, p13.

Similar trials have found that switching increases when insurance customers are reminded of their previous years' premium at renewal time, a reform recommended by the 2017 Senate inquiry into Australia's general insurance industry.[33] The Federal Government has recently embraced the virtues of reminder notices as positive drivers of competition in the retail energy market.[34]

This principle of better, targeted disclosure should continue to be adapted to retail banking. For example, consumers with home loans could be provided with information about the lowest comparison rate available whenever their bank alters its rate. These kinds of interventions should be consumer tested, either in partnership with or led by a regulator, with the results publicly released.

Access to data

CHOICE supports the adoption of a Comprehensive Right for consumers to access and use their digital data, as proposed in the Productivity Commission's Inquiry Report on Data Availability and Use. The Comprehensive Right will provide tangible benefits to consumers of financial services, particularly with regards to increasing competition in the sector.

One of the main reasons consumers give for not switching to a better credit card is that they want to keep all their accounts in the same place. In a 2015 CHOICE survey on credit card use, 26% of people said the most important factor behind their current choice of credit card was that it was provided by the same bank they had other accounts with. Twenty-four per cent hadn't switched cards because they want to keep all accounts with the one bank.[35] This stickiness does not encourage the bank to offer much more than the bare minimum service required to retain customers.

A Comprehensive Right for consumers to access their data would allow third-party services to address information asymmetry and aid consumer decision making. A third-party service which securely aggregates a consumer's data from a variety of financial institutions could provide the convenience of a "one-stop" management tool for a consumer's financial products, freeing them to shop around for the best deal. The Financial Conduct Authority in the UK has recommended this approach, which "would enable those consumers who value convenience in access and

[33] Australia's general insurance industry: sapping consumers of the will to compare, recommendation 3.
[34] Press Conference with the Treasurer, and the Minister for the Environment and Energy, 9 August 2017. Transcript available at https://www.pm.gov.au/media/2017-08-09/press-conference-treasurer-and-minister-environment-and-energy
[35] CHOICE, Survey into consumer use and understanding of credit cards, July 2015.

manage their accounts online to choose between a wider range of providers that may offer products that better suit their needs."[36]

There is also the potential for third parties to provide personalised comparison and switching services to consumers, by accessing the aggregated data held by several different providers. Presently, in order to access their data a consumer has to request it individually from each of their providers and then supply it to a third party. This process could be streamlined by allowing consumers to authorise third parties to access this data on their behalf.

After a consumer switches banks, they then have to update their details for things like direct debits and payment information stored on websites. An open data framework could allow this process to be automated.

Security for consumer data

Regulations need to be updated to guarantee security for consumers using trusted services. ASIC"s ePayment Code is currently voluntary. There is a strong case for mandating the code as it outlines essential protections for consumers in an online world, such as who is responsible in the case of a security breach. In addition, the code currently leaves consumers in a grey area with security protections if they share their banking information, even with trusted and secure third-party services.

Currently, consumers may not receive protections under the ePayments Code if they share their banking details with services that their bank does not endorse. Banks are unlikely to endorse third-party services that introduce greater competition into the credit card or other aspects of the personal banking market. To address this, third party providers should be able to gain ASIC accreditation if they meet adequate security standards. This would give consumers peace of mind that they could share their details with without losing security protections.

Reforms to make switching easier

There are some practical barriers that discourage consumers from switching.

Some of these barriers occur across all banking providers. Recurring payments and direct debits from credit cards and transaction accounts are not easily transferrable. Currently, if someone wants to switch credit cards, they need to contact all businesses they have recurring payment arrangements with to notify each one of the change. This requires a consumer to remember payments that may be due up to a year in advance, from large insurance payments

[36] Financial Conduct Authority, Cash savings market study report, 2015, p 9.

to smaller subscriptions. Card providers should accept requests directly from customers to cancel payments and provide an automated option to transfer all payments. A „tick and flick" process for direct debit transfers was introduced for transaction accounts in 2012. It is rarely used as it is not promoted by banks. To combat this problem, we recommend testing the impact of requiring information about switching products, including recurring payments, on key pieces of communication to a customer.

Other barriers to switching occur at an institution level. A bank benefits when it builds systems that make it easy for a customer to take up a product but more difficult to close that product. The best example of this is with credit card cancellation. The big four banks have quick online application forms to get a credit card or increase debt limits, sometimes with answers provided in sixty-seconds, yet none offer comparable online cancellation options. The Federal Government has drafted new laws to require credit card providers to offer online cancellation options. Similar interventions should be considered for other banking products – where a bank offers online applications and services, they should also offer quick, online cancellation options for all products.

We ask that the Productivity Commission consider barriers to switching across all banking products and consider interventions that will make it as easy for a consumer to get rid of a product as it is for them to get a product.

Moving beyond disclosure

Mandated disclosures have been used to reduce consumer detriment in the financial sector for decades. As consumers become better armed with knowledge, the theory goes, competition increases as firms strive to secure customers in marketplace overflowing with well-informed shoppers.

Clearly this utopian vision has not come to pass. As the financial sector changes at a pace as rapid as the technologies that support it, consumer confusion is only likely to grow. Providing consumers with information is an important protection but more can and should be done.

Banks currently frame disclosure to undermine effectiveness

The ability of firms to undermine disclosure requirements should not be understated. While the format of disclosure is mandated, businesses are able frame the consumer's reception of this information, physically and psychologically.[37] Many financial products are marketed in a way that misdirects consumer thought to their end goal – a new car, a comfortable retirement – rather than their immediate aim of finding the best product at the lowest price.[38]

Bank marketing material frequently front-loads emotive language that describes products as "a special personal loan offer", and "our way of saying thanks". "Don't miss out," the customer is urged. Mandated information disclosure is presented only after the product has been framed as a good deal by the bank.

The potential of performance-based disclosure requirements

Prescriptive regulations, such as mandated disclosure or product design rules, give specific instruction to businesses about what they must and must not do. Performance-based regulations, on the other hand, give goals toward which firms must work, but are less prescriptive in how those goals must be met. Emissions reduction targets are an example from environmental law.

While both tools are useful mechanisms for regulators to achieve their goals in an industry, prescriptive regulation requires only that certain actions be taken; performance-based regulation demands that outcomes be achieved. Businesses are regularly tested to ensure they are on track to meet goals, but the model otherwise allows firms latitude in how they achieve set targets.

In the financial sector, comprehension standards should be established alongside of prescriptive regulations to ensure that service providers' disclosures are effective. Individual consumer understanding of product features and costs would be measured at the time of purchase, and at subsequent intervals.

Businesses would be required to ensure that a certain proportion of customers met a comprehension threshold. This could be done on the basis of a representative sample of the service provider's clients. Existing disclosure requirements would continue and be strengthened to ensure comparability across products, but beyond that businesses would have discretion on how to achieve comprehension targets. Businesses could be rewarded for surpassing targets, and penalised when they are not met. This will also have the side effect of reducing over-

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[37] Willis, Lauren E., Performance-Based Consumer Law (August 16, 2014). 82 University of Chicago Law Review 1309 (2015); Loyola-LA Legal Studies Paper No. 2014-39. Available at SSRN: https://ssrn.com/abstract=2485667 or http://dx.doi.org/10.2139/ssrn.2485667 p., 1322.
[38] Ibid, p. 1324.

complication in product design – any product that cannot be understood by enough customers would not be compliant.

Performance-based consumer law is in many ways a business-friendly approach. Rather than prescribing a set of rules of limited proven effectiveness, performance-based approaches permit individual businesses to leverage knowledge of their own customers to achieve the best comprehension outcomes. These requirements would set a standard against which these disclosures are measured to be effective. Businesses that believe a highly engaged and well-informed customer is the best type of customer will support these measures.

Recommendations:

4. That the Productivity Commission investigate ways to improve timely disclosures to encourage consumers to evaluate whether a product best meets their needs.
5. Consumers are given a legal right to access their own transaction and consumption data in a useful format, and that data is accessible to trusted third party service providers.
6. Following on from the Productivity Commission"s findings in the Data Availability and Use Inquiry, a definition of personal data is defined for the financial sector. It should be as broad in scope as possible while maintaining the privacy rights of other consumers. Any negotiation on definitions should involve consumer groups.
7. A standardised format for downloadable consumer data is developed. Any discussion on formats should involve consumer groups.
8. That the Productivity Commission investigate what regulatory barriers exist that hinder third-party service providers accessing data held by businesses at the request of the consumer.
9. The ePayments Code is reformed from a voluntary code of practice to a mandatory code of conduct for all parties offering payment services.
10. The ePayments Code is amended to clarify that consumers can share their information with an ASIC accredited list of secure third-party services.
11. The Federal Government pursues a suite of initiatives to allow consumers to cancel or easily switch recurring payments to another product, including:
    - legislation to establish a „tick and flick" switching process to allow customers to easily transfer recurring payments to a new credit card. The process should be offered online and in-branch.
    - test a requirement that credit card statements include information about direct debit cancellation and switching processes.
12. That the Productivity Commission explore the benefit of performance-based comprehension standards developed for the retail banking sector.

3. Conflicted distribution networks and the impact on competition

Consumers rely on information and advice to navigate the complexities of the financial system. This can range from information about what"s covered with an insurance product to assistance obtaining a home loan to personal financial advice about investing. These interactions are essential to bridge the information gap between consumer and product provider, but as the interactions are often between a consumer and a salesperson (or at least a party that stands to gain financially), consumers frequently receive information and advice that is not in their best interests.

The major banks are now vertically integrated into mortgage broking and wealth management, and these channels feed customers into their banking business. Even more worrying, banks are deliberately targeting school children and providing incentives for trusted parties, like schools and teachers, to distribute their products.

This is a problem because it means that consumers can"t trust parties they expect have their interests at heart. If someone is using, for example, a mortgage broker thinking they are receiving an independent service, one that will act in their best interests and recommend the best loan for their needs, that may not be the case. The reality is that most consumers are only shown a limited amount of the market, and the broker often receive incentives to act as a sales channel in a way that increases the significant levels of concentration in the mortgage market. These conditions create an illusion of choice at a key point in customers" interactions with the financial system – probably the biggest single transaction they will make, and one that anchors many others.

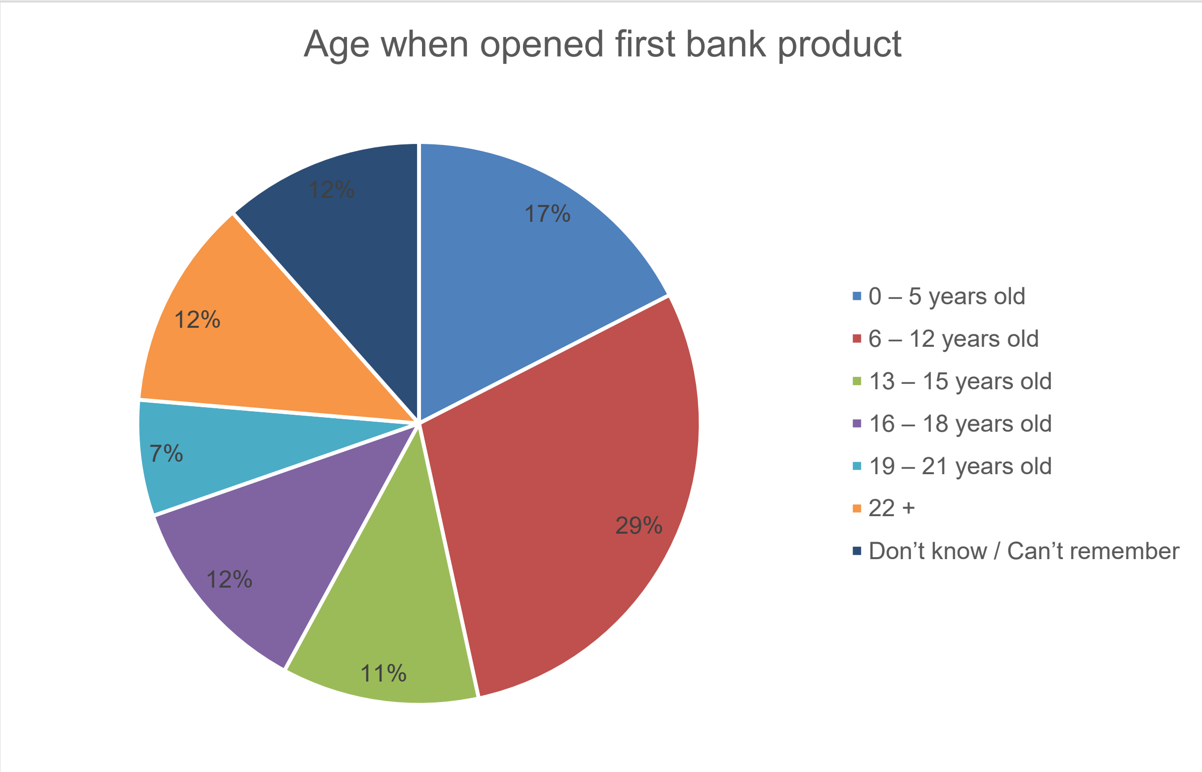
Vertically integrated wealth management is another sales pipeline for major institutions. It"s not just about getting customers, but getting customers with more products and more add-ons. This encourages bundling, which is a key barrier to switching, and increases the risk of misselling.

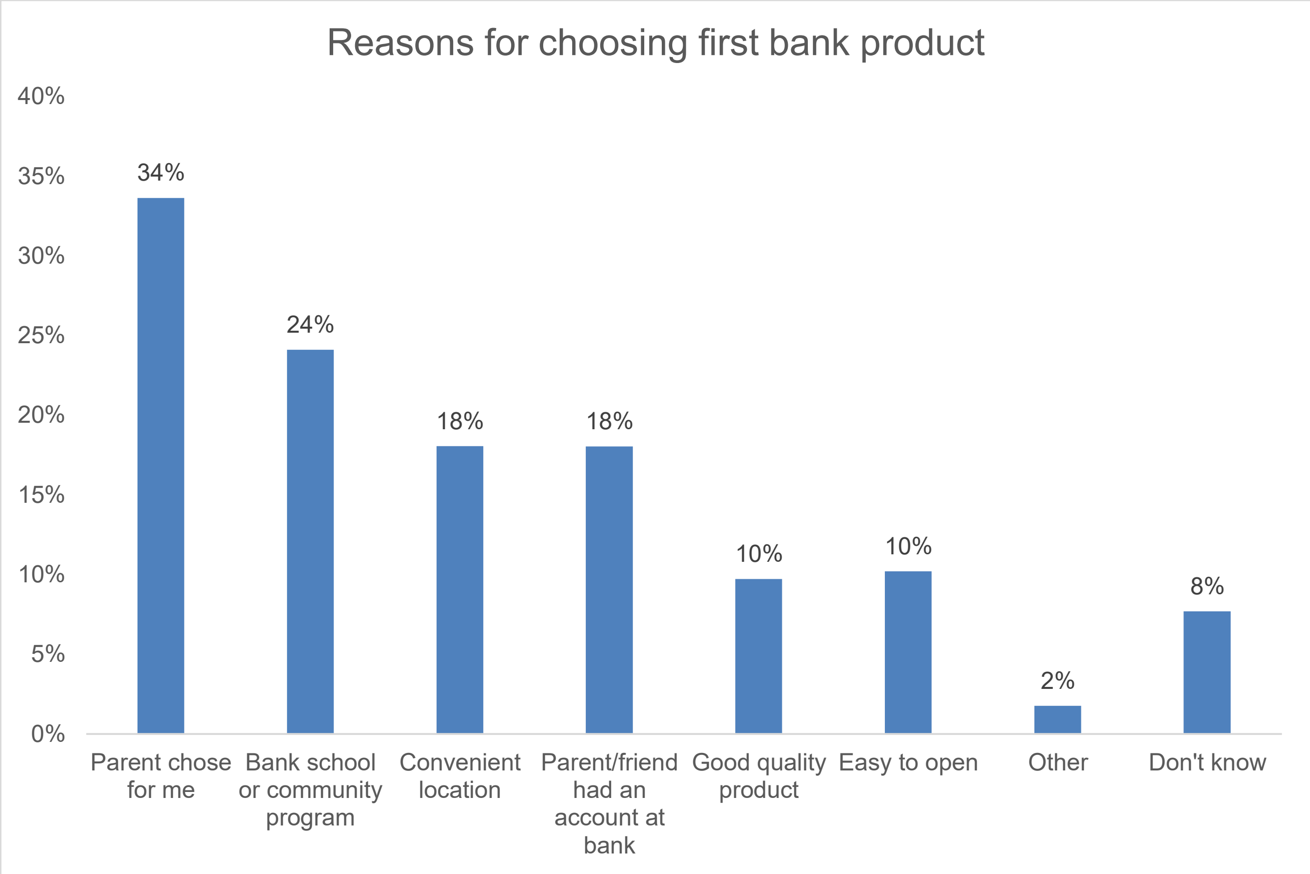
We urge the Commission to consider whether the major banks" ownership of advice channels, including financial advice and mortgage broking, is promoting genuine competition. The Productivity Commission should consider how the behaviour of professionals in the financial sector contributes to poor competition and examine reforms to address conflicts that pit consumer interests against those purporting to assist them.

Banking programs that target children

The first banking product someone choses matters as many Australians are keeping the account opened for them as children. Often this account was opened through an in-school banking program. Given this, we believe that new protections are needed to prevent banks aggressively marketing to children. At minimum, banks should be prevented from giving kickbacks to schools to market and sell products.

Our 2017 survey found that 84% of people got their first banking product with a big four bank or one of their sub-brands; most people got this product between the age of 6-12. Over one third (35%) of people haven"t closed their first account.





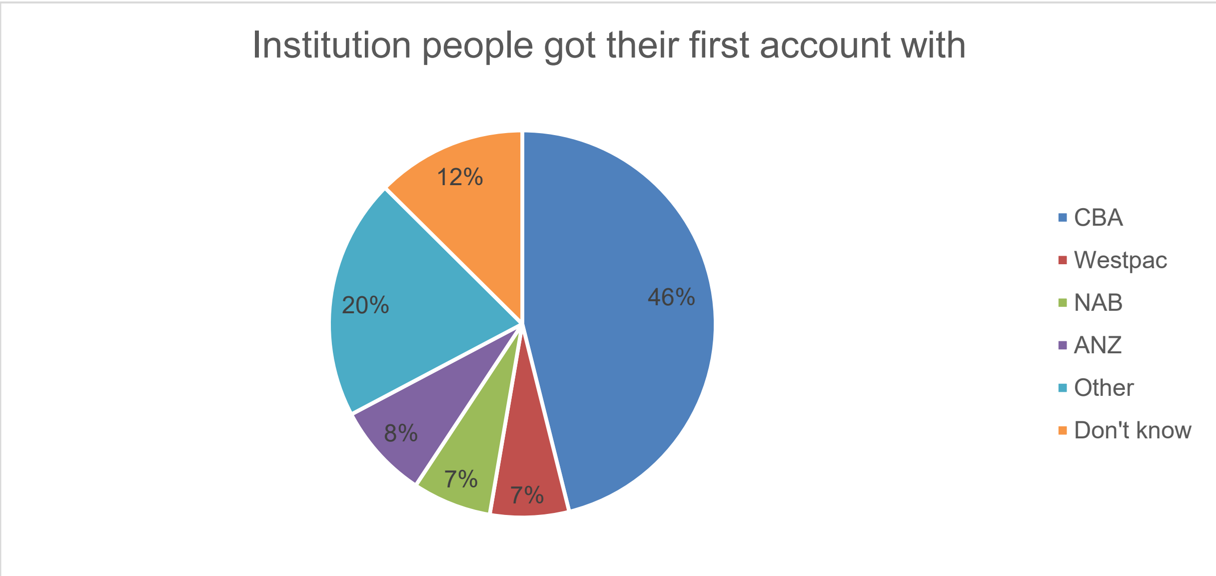
School banking allows banks to unfettered access to child customers

School banking programs allow banks to provide their services to primary school children on school grounds, under the guise of promoting financial literacy and good saving behaviour. The benefits to the bank are significant, as they can collect new customers, expose them to the brand and cement a relationship with them from a young age. As they reach adulthood, these customers then become easy marketing targets for the bank's other products, such as credit cards.

School banking programs are a unique opportunity to build brand recognition in children. Programs often feature a rewards system to encourage regular deposits. After a certain number of deposits children earn small prizes, such as balls, stationery and water bottles. These products are sometimes branded with bank insignia.[39]

Kickbacks to schools lead to major banks dominating the financial sector

The Commonwealth Bank currently dominates the first-account market. As part of our 2017 survey, we asked people what bank they got their account with. 46% of people got their first account with the Commonwealth Bank.



The Commonwealth Bank's School Banking program (commonly called "Dollarmites") offers kickbacks to primary schools to encourage them to participate and sign up their students. Schools receive a $5 upfront commission for every Dollarmite account activated, and a further 5% of every deposit made at the school (capped at $10).

In 2016 Commonwealth Bank paid $2.3 million in commissions to schools.[40] The Commonwealth Bank, like any company in Australia, should be free to donate towards worthy causes. But these payments have nothing to do with altruism – they're clearly tied to the sale and promotion of Commonwealth Bank products. The Dollarmites program provides an

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39 Commonwealth Bank, *School Banking*. Retrieved from https://www.commbank.com.au/personal/kids/school-banking.html, on 12 September 2017.
40 Commonwealth Bank, *Information For Schools*. Retrieved from https://www.commbank.com.au/personal/kids/school-banking/information-for-schools.html, 12/9/2017

immediate commercial benefit to the bank and, more importantly, a lucrative long-term benefit as many people keep their first account.

Commonwealth Bank provides boilerplate communication materials for schools to promote Dollarmites in their community. These commission payments are described as "a great fundraiser for our school".[41] An example of the educational material supplied to Dollarmites-participating schools is telling.[42] The crossword, aimed at 10 to 12 year olds, provides this clue for the answer "credit cards": "cards that allow you to obtain goods and services before you actually pay for them". This is a simplistic and disingenuous description of the high-interest debt cards the bank will be selling to these children when they grow up. It is also a clear indicator that bank involvement in education is not designed to create critical, financially literate consumers.

The Dollarmites program is one of the largest child-targeted marketing schemes in Australia. With over 326,000 active participants, it reaches about 14% of the 5-12 year old population.[43] Dollarmites is facilitated by our primary schools, and the commission payments they receive for selling the Commonwealth Bank's products are a classic example of conflicted remuneration.

Of course, participation is not mandatory; however, schools are actively promoting these products and distributing the banks' branded educational material. The use of rewards products may also make peer pressure a factor for children who don't want to "miss out". The distribution of branded materials in schools means that the marketing also reaches students who do not participate in the scheme, which consequently serves to increase brand awareness of the bank in these children as well.

Other banking products targeting children

While the Dollarmites scheme is by far the largest in-school banking program, it is not the only one. Bank of Sydney offers parents incentives to sign their children up to youth accounts, including "a line of credit to pay school fees".[44] Benefits are also extended personally to school employees, and the bank's website advertises "generous cash back payments" for schools that sign up for the bank's referral program.

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41 Commonwealth Bank, *2017 Newsletter Suite*. Retrieved from https://www.commbank.com.au/content/dam/commbank/personal/youth-students/school-banking/school-banking-coordinators/coordinators-materials/docs/2017-newsletter-suite.docx, 12 September 2017.
42 Commonwealth Bank, *Banking Words Puzzle*. Retrieved from https://www.commbank.com.au/content/dam/commbank/personal/youth-students/school-banking/school-banking-coordinators/coordinators-materials/docs/banking-words-puzzle.pdf, 12 September 2017.
43 CBA Corporate Responsibility Report 2017; Census 2016.
44 Bank of Sydney, *School Banking Program*. Retrieved from https://www.banksyd.com.au/personal-bank-accounts-kidz-a-youth-accounts-school-banking-program.html, 12 September 2017.

School banking is a monopoly

The importance of financial literacy education for young children cannot be understated. CHOICE supports the ASIC MoneySmart Teaching program, which provides teachers with skills and independent resources to provide financial literacy education, and is accessed by 54% of Australian schools.[45] Practical experience is an important component in this education, and a school banking program has a role to play in engaging young consumers.

But letting banks teach primary students about money management is equivalent to letting Ronald McDonald lecture them about the importance of a balanced diet. Leaving aside the obvious conflicts of allowing an institution with a profit motive to market directly to children in schools, school banking programs represent a failure of competition. CHOICE is not aware of any schools that run multiple parallel banking programs, meaning that an ADI – usually the Commonwealth Bank – holds an effective monopoly in whichever school its operates.

The power of brokers and need for higher standards

Mortgage brokers arrange more than half of all home loans in Australia.[46] Ideally, brokers should increase competition in the home loan market, relieving the consumer of much of the leg work of comparing products between lenders, and in some cases allowing them to secure better loans that are available only through broker channels.

However, ASIC"s recent review of mortgage broker remuneration found that brokers are not encouraging competition in the market as some groups claim. At present brokers do not get their clients better priced loans and on average send 80% of loans to just four preferred lenders.[47]

Getting a poor loan, even if customers can afford to pay it, can have significant financial consequences, with consumers paying tens of thousands or even hundreds of thousands of dollars more over the life of a mortgage. In addition, as many people desire to bundle their banking products together, a broker has the power to direct a consumer"s choice of home loan, savings account, credit card and more.

Given this, special attention should be given to the quality of broker recommendations. CHOICE strongly believes that conflicted remuneration that drives market concentration and poor consumer outcomes must be addressed through an industry-wide solution with strong

[45] Kell, Peter. *Financial literacy: ASIC update*. Speech delivered to Australian Bankers Association Financial Literacy Conference, 6 October 2016, p 5.
[46] ASIC (2017), *Report 516: Review of mortgage broker remuneration* page 8
[47] Finding six: interest rates are not different between distribution channels, ASIC review, p. 15.

enforcement arrangements and sanctions for non-compliance. Second, mortgage brokers must be held to higher standards to protect consumers from harmful advice.

We note that industry groups have established a Combined Industry Forum to deal with the issues raised in ASIC‟s review. Industry groups have proactively involved consumer advocates in this process. While we welcome this initiative, all remuneration issues are unlikely to be addressed through this process and it‟s still unclear how any outcomes will apply to all brokers. Given this, we encourage the Productivity Commission to consider the findings of ASIC‟s review as well as the risks created by the current remuneration structures for brokers.[48] To assist with this, we have provided some focused comments on key features of the mortgage broking business model that impacts competition in the home lending market.

Trail commissions may be reducing switching in the home lending market

Trail commission payments to aggregators and brokers are common in Australia. Trail commission payments offer no clear benefit to consumers but significant benefits to the brokers, aggregators and lenders. For consumers, there is some implication that trail accounts for service required by the broker over the life of a loan. It is incredibly unclear what service is being delivered as brokers do not have to contact consumers or provide evidence of any ongoing assessment.

Trail commissions create a clear monetary incentive for brokers and aggregators to leave consumers in a home loan product rather than switch. As noted in ASIC‟s review, aggregators can be paid over $2,200 per year through a trail commission for a single loan, although the average annual amount is likely closer to $750.[49] The only work required for this payment is to not switch the customer to another product. Trail also offers benefits to the lender as it positively incentivises brokers to keep clients in current loans. Trail commissions introduce competition issues as trail commissions pay brokers for no action.

We see trail at its most perverse in businesses established to buy and sell mortgage loan books (the trail payments).[50] The consumer gets no benefit and the possibility of additional service is likely removed when these sales occur. The buyer gets great benefits: ongoing income for no work and, as implied through industry press, the possibility of making the list more valuable through selling additional products from insurance to SMSFs.[51] The price for these books is

[48] For full comments on this matter from consumer groups see the Joint Consumer Submission (2017), *Treasury Inquiry into findings of ASIC's review of mortgage broker remuneration*.
[49] ASIC review, paras 465-466.
[50] For example http://www.trailbookbuyers.com.au/
[51] See http://www.afr.com/real-estate/residential/vic/mortgage-broker-billiondollar-windfall--as-loan-book-prices-soar-20150415-1mlfu7

exceptional. In a quick online search, we found one book sold for $39,000 for delivering expected trail income of $1630 a month plus GST.[52] This money is coming from just 19 clients on the Northern Beaches in Sydney, meaning each client accounts for an average of over $85 a month in payments or $1,029 a year. While it could be argued that the consumer doesn't directly pay for these trail payments, that it's a payment from the lender for arranging the loan this ignores the fact that trail contributes to overall lender costs which are inevitably passed on to the consumer.

As noted by ASIC, trail payments are rare in other comparable markets (New Zealand and the United Kingdom), indicating that remuneration models that continue to allow mortgage broking services to continue are very viable without trail payments.[53]

Ideally, trail payments should be removed. At minimum, trail payments need close interrogation to ensure they are not discouraging brokers from switching consumers to better products.

Barriers to entry for new broker business models

Brokers rely on aggregation services to access lenders' products. Aggregators create "panels" of lenders which allow brokers to access those lenders' products. Their services often include proprietary software which allows brokers to compare products. In this regard aggregators have significant market power as gatekeepers.

This gatekeeper role can allow established businesses to push back against innovation. For example, in 2016 disruptor start-up Hero BroKer launched an online platform that would give consumers direct access to aggregators, taking brokers (and their upfront commissions) out of the equation. However, reports from industry suggest this new business model was blacklisted by the aggregator industry.[54] It is incredibly concerning that established businesses may be able to stifle innovation and new services in this sector.

While aggregators typically have relationships with most or all of the major banks, customer-owned banking associations (COBAs) have much lower rates of representation on aggregator panels.[55] Given the growing market for mortgage brokers, low representation of COBAs on aggregator panels is a cause for concern.

52 Example sourced from http://www.xcllusive.com.au/Sold-Businesses/222-Mortgage-Loan-Book-For-Sale.html , screenshots available if required.

53 ASIC (2017), *Report 516: Review of mortgage broker remuneration*, paragraph 211.

54 Molloy, Amy. 'So your start-up has been blacklisted: what next?' Collective Hub, 2016. Retrieved from https://collectivehub.com/2016/08/so-your-start-up-has-been-blacklisted-what-next/, on 18 September 2017.

55 ASIC (2017), *Report 516: Review of mortgage broker remuneration* paras. 337-343, 516.

We ask that the Productivity Commission examine the competitive dynamics across the home lending sector, with a focus on aggregators.

Vertical integration in the mortgage broker industry

Vertical integration in and of itself is neither good nor bad for consumers. When a large business stakes out multiple positions across its supply chain, the efficiency savings can be passed on to the consumer in the form of lower costs. However, it may have the effect of diminishing competition, as the distributor has an incentive to promote its owner‟s products above others'. There are significant risks to the consumer where the ownership relationship is disguised or undisclosed.

It‟s clear that lender ownership of a broking business influences the recommendations made. NAB has full ownership of three large aggregators: Finance & Systems Technology, Professional Lenders Association Network and Choice Aggregation Services. These aggregators account for approximately 30% of all brokers in Australia.[56] NAB owned-aggregators directed 22% of home loans to NAB-branded or white-labelled loans even though NAB‟s overall home loan market share is 13.2%. Similarly, CBA has a controlling ownership stake (80%) in Aussie Home Loans. CBA received 37.3% of Aussie Home Loans; its overall market share is 20.9%. Consumers were more likely to walk away with a white-labelled NAB or CBA loan from an affiliated network, which means they can‟t easily tell that there‟s a conflict of interest.

Consumers should be clearly informed if a broker or aggregator they are using is owned by a lender. We also expect that brokers clearly indicate, through written disclosure and branding, which lender is funding a white-label loan. All forms of disclosure should be consumer tested by a third-party, ideally ASIC, to ensure that information is conveyed in a manner that is most useful to consumers. However, disclosure is only a small part of the solution to solve these problems.

Disclosure of a conflict does not remove the conflict. This proposal assumes that a consumer is well-placed to weigh up the risks of seeing a broker that is owned-by a larger institution. However, when a consumer is purchasing the expertise of a professional (like mortgage brokers), they are often very poorly placed to assess the quality of the information they are receiving. The consumer is relying on the expertise and ethical behaviour of the professional to guide them through decisions.

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[56] ASIC (2017), *Report 516: Review of mortgage broker remuneration* para 86, 291.

This is best seen in ASIC shadow-shopping research for financial advice. In 2012, ASIC shadow shopped retirement advice found that 39 per cent of advice was poor (failed to meet requirements of the law at the time), 58 per cent was adequate (met requirements of the law) and 3 per cent was good (complied with the law, met clients" needs, improved their situation and clearly explained recommendations). Many people had trouble objectively assessing the quality of information they had received – they trusted that the professional they had seen had done the right thing. 86 per cent of participants felt they had received good quality advice, and 81 per cent said they trusted the advice they received from their adviser „a lot", even though only 3 per cent received objectively good advice.[57]

Consumers cannot be protected from the risks of ownership conflicts through disclosure. Instead, professionals must set high ethical standards to actively manage conflicts that harm consumers.

Need to lift standards for brokers

Brokers should have obligations to recommend the best loan to fit their client"s needs. Their current obligation to clients is quite low – brokers have to help arrange a „not unsuitable" loan. We believe this standard must be lifted, especially as mortgage brokers are involved with a growing share of the home lending market.

ASIC"s research into consumer perceptions of brokers revealed that there"s a mismatch between what consumers think they are getting when they see a broker and what they receive.

Consumer perception	Reality
Brokers will arrange a better deal than if a consumer approaches a lender directly: 25% of all consumers and 58% of consumers with experience of or plans to use a broker thought that brokers would offer a better deal than a bank.[58]	Brokers do not get their clients better priced loans.[59]

57 ASIC (2012) Report 279 Shadow shopping study of retirement advice, p 8, 54.
58 ASIC (2017), *Report 516: Review of mortgage broker remuneration*, para 906.
59 Finding six: interest rates are not different between distribution channels, Ibid, p. 15.

Brokers look at a wide range of loans to get consumers a better deal The main reasons people said they would use a broker is to access a wider range of home loans (32% overall and 40% with experience or intention to use a broker) and to get a better interest rate or deal (27 overall, 35% with experience or intention to use a broker).	Brokers send 80% of borrowers to four preferred lenders.[60]
A broker puts the customers' needs first 86% of people with experience or intention to use a broker thought that brokers would put customer needs first all (27%) or some of the time (59%).[61]	Legally, a broker is only obliged to arrange a „not unsuitable" loan. Commissions and other payments means it"s highly likely a broker will recommend a loan or investment strategy that does not put customer needs first.
Brokers get paid the same amount regardless of the loan arranged 36% of people with experience or intention to use a broker mistakenly believe that brokers get paid the same regardless of the loan[62]	Most brokers are paid varying commissions for loans arranged in addition to volume-based payments, campaign commissions and soft dollar benefits.

Mortgage brokers must meet obligations under the Credit Act.[63] A comparison of the obligations under this Act compared to the required behaviour for financial advisers under the Corporations Act shows that brokers are being held to a relatively low standard.

Financial advisers must…	Mortgage brokers must…
Be licensed or work for or be a representative of a financial services licensee.	Be licensed or work for or be a representative of a credit licensee. [64]
Gather detailed information to understand the financial situation of their client as well as	Make reasonable inquiries into client"s requirements and financial situation, focusing

[60] ASIC (2017), *Report 516: Review of mortgage broker remuneration*, para 86.
[61] Ibid, para 913.
[62] Ibid, para 916
[63] Section 8 of the Act defines the process of credit assistance as where a person suggests a consumer apply for, increase or remain in a particular credit contract or assists the consumer with an application or increase. Section 9 defines instances where a person 'acts as an intermediary' between credit providers and consumers. Both terms include the primary roles of a mortgage broker. For clarity, this paper uses the term 'mortgage broker' where the legislation refers to 'credit assistance providers' or 'intermediary'.
[64] S 26 of the NCCP Act and Regulation 22, http://www.comlaw.gov.au/Details/C2014C00411/Html/Text#_Toc393444815

their goals.	on a client"s ability to meet repayments (income and expenditure).[65]
Act in the client"s best interests.	Make a preliminary assessment about whether a loan would be "not unsuitable (the client can afford to pay the loan without substantial hardship) [66]
Disclose how they are paid but there are many restrictions on remuneration models known to cause consumer harm, like commissions.	Disclose how they are paid, although practically this may occur at the end of the loan arrangement process. [67]
Be members of an external dispute resolution system (such as CIO or FOS).	Be members of an external dispute resolution system (such as CIO or FOS).

Given the important role that brokers play, they should all be held to a higher standard than arranging a "not unsuitable" loan for their customers. They should be required to arrange a good quality loan, preferably one in the best interests of their customers. This would require first clearly defining a mortgage broker in the Credit Act and then articulating new obligations that brokers would need to meet. Alternatively, the proposal the mortgages are reclassified as a financial product so that consumers have protections under the Corporations Act when seeking advice also has some merit and could address these problems.[68]

Recommendations:

13. That the Productivity Commission consider whether the major banks" ownership of advice channels, including financial advice and mortgage broking, is promoting genuine competition.
14. ADIs are banned from providing financial services and any branded materials to children through schools. If not:
    - Schools are banned from receiving payments from ADIs in exchange for promoting or facilitating their products.
    - ADIs are banned from distributing branded learning materials in schools.
15. That the Productivity Commission consider trail payments to mortgage brokers to ensure they are not discouraging brokers from switching consumers to better products.

[65] s 117 of the NCCP Act.
[66] s 115, 123, 138 and 146 of the NCCP Act.
[67] s 113, 114, 121, 136, 137 and 144 of the NCCP Act.
[68] Rice Warner (2017), *Governance of mortgage brokers*, http://www.ricewarner.com/governance-of-mortgage-brokers/

16. That the Productivity Commission examine the competitive dynamics across the home lending sector, with a focus on aggregators.
17. That the Productivity Commission consider how the behaviour of professionals in the financial sector contributes to poor competition and examine reforms to address conflicts that pit consumer interests against those purporting to assist them.
18. Consumers are clearly informed if a broker or aggregator they are using is owned by a lender and which lender is funding a white-label loan. All forms of disclosure should be consumer tested by a third-party, ideally ASIC, to ensure that information is conveyed in a manner that is most useful to consumers.
19. The law is amended so that mortgage brokers have to act in the best interests of their clients.