Banking Competition and Data Ownership

The icon of "competition" is too often held up as unquestionably a good thing. We need to remember that competition is not a goal but a process, a method. It is argued that competition will bring about great benefits but one must be careful to ensure that the ultimate benefits desired are actually obtained. "Competition" is not a panacea providing the answer to everything.

This inquiry was instigated due to public unrest at the seemingly high-handed actions of the banks in raising interest rates more than the RBA's recent rise. Despite the fact that financial institutions caused the GFC, banks were now announcing record profits and substantial executive salaries. Banks seemed to be profiteering and it was argued that more competition would bring about greater concern by banks for their customers.

There is a serious lack of public trust in banks. To most people, the banks seem all powerful. Individuals feel helpless in the face of seemingly arbitrary decisions made by the banks. Banks refer to terms and conditions which are unbearably long and in small print. Almost all the time, the individual is faced with signing an agreement in a situation where it would be socially untenable to stop, read and analyse the terms and conditions.

Not only will an increase in competition force banks to become more consumer oriented but an increase in consumer orientation will also increase competition.

A major issue within banking is the ownership of bank account and credit card data. A major determinant of this poor attitude of banks is the fact that they can see and analyse their customers' spending patterns. The banks can essentially do what they like with the data subject to privacy laws, even sell the data. This makes the public very wary and helps to create an unbalanced relationship in which the banks seem to have all the power.

In 1980, the OECD issued it's "Recommendations of the Council Concerning Guidelines Governing the Protection of Privacy and Trans-Border Flows of Personal Data", which can be found on the OECD web site at http://www.oecd.org/document/18/0,2340,en_2649_34255_1815186_1_1_1_1,00.html

The seven principles governing the OECD's recommendations for protection of personal data were:

1. Notice—data subjects should be given notice when their data is being collected;
2. Purpose—data should only be used for the purpose stated and not for any other purposes;
3. Consent—data should not be disclosed without the data subject's consent;
4. Security—collected data should be kept secure from any potential abuses;
5. Disclosure—data subjects should be informed as to who is collecting their data;
6. Access—data subjects should be allowed to access their data and make corrections to any inaccurate data; and
7. Accountability—data subjects should have a method available to them to hold data collectors accountable for following the above principles.

While the US endorses these principles it has done little to enforce them but the European Union

has embraced them as an important component of their privacy and human rights law. In 1995, the EU issued its Data Protection Directive, 95/46/EC, which incorporated all seven OECD principles (see http://en.wikipedia.org/wiki/Data_Protection_Directive#cite_note-17).

Article 7 of the EU Directive states:-

> *"Member States shall provide that personal data may be processed only if:*
> *(a) the data subject has unambiguously given his consent; or*
> *(b) processing is necessary for the performance of a contract to which the data subject is party or in order to take steps at the request of the data subject prior to entering into a contract; or*
> *(c) processing is necessary for compliance with a legal obligation to which the controller is subject; or*
> *(d) processing is necessary in order to protect the vital interests of the data subject; or*
> *(e) processing is necessary for the performance of a task carried out in the public interest or in the exercise of official authority vested in the controller or in a third party to whom the data are disclosed; or*
> *(f) processing is necessary for the purposes of the legitimate interests pursued by the controller or by the third party or parties to whom the data are disclosed, except where such interests are overridden by the interests for fundamental rights and freedoms of the data subject which require protection under Article 1 (1)."*

Article 6.1b of the EU Directive states that "personal data must be collected for specified, explicit and legitimate purposes and not further processed in a way incompatible with those purposes".

A useful review of how the Directive stands up in the modern world can be found in a review written in 2009 for the UK's Information Commissioner's Office and obtainable online at http://www.ico.gov.uk/upload/documents/library/data_protection/detailed_specialist_guides/review_of_eu_dp_directive.pdf

The banks and credit card companies in Australia are constantly in breach of these principles. In Europe, the banks are essentially just custodians of the data. The data belongs to the individual. The same applies to personal data on telephone calls.

Data ownership is a power issue. If the banks are told that the data they hold in bank accounts belongs to the individual or business, their power would be reduced and they would become more answerable to their customers, which is one of the goals of more competition.

Banks should protect as custodians only all bank account data as private customer-owned data and use the data only to deliver the contracted services. Banks should archive personally identifiable data not needed for service delivery in such a way that it is accessible only by the consumer and relevant government agencies and not accessible by the bank or other marketing agencies, etc.

The data should be seen as belonging to the consumer and be freely available to him at all times. Competition would be enhanced by increasing the information available to the public so that they could more easily compare different banking products from different institutions. To help stimulate this, banks should be asked to make available the last ten year's bank account data in a recognised publically accessible format at no cost to the consumer. Then software developers could more easily create products that analyse the accounts and inform customers where they have been overcharged, whether they have the right sort of bank account with the most suitable institution.

Whether it be in banking, telecommunications or utilities, we need open competitive markets and one way to enhance this is to make it clear that the consumer owns the data.