



7 August 2020

Australian Competition & Consumer Commission
Email: CCCSecretariat@acc.gov.au

Dear ACCC,

RE: Tinder's discriminatory pricing practices and misuse of data

I write in regard to Tinder's use of customer data to engage in discriminatory pricing practices. CHOICE asks the ACCC to investigate Tinder for breaches of the Australian Consumer Law in relation to misleading and deceptive conduct (section 18(1)) and use of unfair contract terms that are not sufficiently transparent (section 24(1)).

Online products and services increasingly collect and use customer data, often without the knowledge or appropriate consent of the customer. CHOICE has found that Tinder, a popular dating app, has collected personal user data and used it to set differentiated prices for customers of its premium service, Tinder Plus.

Our investigation found that older users of the app were charged much higher prices than younger users; a practice which we believe is discriminatory without justification. Tinder does not explicitly make clear in its 'Terms of Use' or 'Privacy Policy' that personal data collected may be used to set differentiated pricing.

CHOICE finds issue with this practice for three main reasons:

1. **Lack of transparency in price setting:** Tinder has deliberately misled and deceived users of its app through omission and silence in its policies of how prices are determined or may vary.
2. **Misuse of data:** Tinder has not been transparent in its description of how customers' personal information will be used when they agree to use the service. This diminishes customers' control over their data and causes a significant imbalance in customer rights.
3. **Age discrimination:** Tinder is setting higher prices for older users which cannot be reasonably justified.

Tinder's problematic data and pricing practices not only undermine consumer confidence and trust in the digital economy, but reduce the power of consumers to make informed decisions about how and when their personal data will be used.

A recent CHOICE survey found that 79 per cent of people are 'quite concerned' or 'very concerned' about online businesses not being transparent in the different prices they may be providing to different people. 25 per cent of people were not aware that this practice was possible¹, indicating an information asymmetry which online companies can exploit.

CHOICE's investigation into Tinder pricing

CHOICE was aware of lawsuits in the US over Tinder charging more for its Tinder Plus service to older people, and decided to investigate whether this was the same in the Australian context. CHOICE commissioned a mystery shop to collect relevant data. A total of 60 mystery shops were conducted in February to March 2020. The mystery shoppers were asked to sign up to Tinder (if they hadn't already) and take screenshots of the prices of Tinder Plus, as well as information on their profile page. Quotas were set based on gender, age group (18–29, 30–49 and 50+), location and sexuality.

CHOICE's mystery shop confirmed that Tinder charges customers different prices for its premium service, Tinder Plus, without disclosing that prices will vary. The mystery shop revealed a pattern of price discrimination based on age, in which older people are arbitrarily charged more. Tinder's pricing may also be based on other factors but we could not identify a trend in our data sample.

The difference between the lowest and the highest price was substantial. A straight male over 50 in a metropolitan area was given the price of \$34.37 for one month – almost five times as much as a queer female under 30 in a metropolitan area, who was offered the same service for \$6.99.

On average, people who were over the age of 30 were offered prices that were more than double the prices given to those who were under 30. However, there were also large price variations within these age groups, ranging from \$6.99 to \$16.71 in the under-30 cohort and \$14.99 to \$34.37 in the over-30 one. We didn't see a pattern that could explain these differences. While we couldn't confirm a trend in our sample, it is possible that Tinder is setting prices based on other personal data points such as sexuality, gender, location or personal interests.

Lack of transparency

¹ Fieldwork was conducted for Wave 24 of CHOICE's Consumer Pulse survey from the 12th - 24th June, 2020. The survey was designed and analysed by CHOICE with fieldwork and sample of n = 1,113 provided by The ORU. The ORU are ISO 20252 and 26362 accredited and are full AMSRO members. The data has been weighted to ensure it is representative of the Australian population based on the 2016 ABS Census data based on age, state, gender, household income and education levels.

CHOICE maintains that Tinder has deliberately misled and deceived users of its app by omitting in its policies that prices may vary according to customers' personal information. When customers sign up to the app, they consent to the collection of information that is both sensitive and personal in nature, including age, gender, sexuality and location. Customers expect that this personal information will be used primarily by the app's algorithms to find potential 'matches'.

In Tinder's 'Terms of Use'² and its 'Privacy Policy'³, there is no explicit statement that collected personal information, such as age or gender, will be used to inform the range of prices available to customers (refer below). We find this conduct misleading and deceptive by silence and omission.

Pricing. Tinder operates a global business and provides services to a diverse community of members. Our pricing structure may vary by region, length of subscription, bundle size, recent in-app promotions and other factors. We frequently test new features and price points to provide members with increased functionality and payment options should they choose to use them.

CHOICE is concerned that Tinder's 'personalised' pricing model disadvantages the consumer, as they cannot meaningfully compare prices with similar products as they are unaware of the factors determining the price they will pay. Consumers may also be unfairly paying more due to factors outside of their control like age, sexuality and gender. Tinder's lack of transparency in conveying how personal information is used to determine personalised pricing increases the information asymmetry that consumers are already subject to in the market.

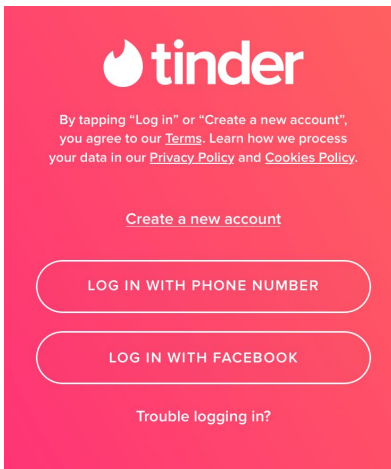
Misuse of data

Tinder is misusing customer data since it does not make clear representations in its 'Terms of Use' that personal information will be used for the purpose of setting prices. CHOICE is concerned that to use Tinder's service, customers have no choice but to hand over their personal information, which in turn is unknowingly used against them.

When signing up, customers must agree to its 'Terms of Use', which includes the 'Privacy Policy' (refer below). As part of this exchange, customers also provide their personal information with the expectation that this information will be used to find potential 'matches'.

² Tinder 2020, 'Terms of Use', accessed on 6 August 2020 at 4.57pm, <https://policies.tinder.com/terms/intl/en>

³ Tinder 2020, 'Privacy Policy', accessed on 6 August 2020 at 4.57pm, <https://policies.tinder.com/privacy/intl/en>



CHOICE asserts that Tinder's 'Terms of Use', specifically terms within its 'Privacy Policy', are not sufficiently transparent and are therefore unfair contract terms. In the 'Privacy Policy', Tinder states that information is primarily used to 'deliver and improve' Tinder's services.

5. How We Use Information

The main reason we use your information is to deliver and improve our services. Additionally, we use your info to help keep you safe and to provide you with advertising that may be of interest to you. Read on for a more detailed explanation of the various reasons we use your information, together with practical examples.

The 'Privacy Policy' explains that personal information is used exclusively in the following ways:

- **To administer your account and provide our services to you**
- **To help you connect with other users**
- **To ensure a consistent experience across your devices**
- **To provide new Tinder services to you**
- **To serve you relevant offers and ads**
- **To improve our services and develop new ones**
- **To prevent, detect and fight fraud or other illegal or unauthorized activities**
- **To ensure legal compliance**

CHOICE notes that there is no mention of Tinder using personal information to determine pricing, demonstrating a complete lack of transparency on Tinder's part. Customers can reasonably assume and expect based on the conditions listed above that their personal information will not be used to set pricing.

An FAQ page on 'profiling and automated decision-making at Tinder'⁴, linked to the 'Privacy Policy', outlines how personal information is used to 'serve relevant offers and ads'. Here,

⁴ Tinder 2020, 'Profiling and automated decision making at Tinder', accessed on 6 August 2020 at 6.06pm, <https://www.help.tinder.com/hc/en-us/articles/360003082172-Profiling-and-automated-decision-making-at-Tinder>

Tinder obfuscates its intended use of personal information by use of the term ‘discounts tailored to your profile’. The reasonable consumer would not understand, based on this explanation, that Tinder will use their information to set ‘tailored’ prices, which in the case of older users could be considered ‘mark-ups’. We also argue that the reasonable consumer would not be able to benefit from so-called ‘discounts’ as they cannot compare against the true baseline price of the service as there does not appear to be a baseline price which is ever disclosed to the customer.

To show you ads and offers that may be of interest to you.

We use information about you to show you useful and relevant ads on and off our service and measure the effectiveness of these ads. We also use information about you to deliver offers and discounts tailored to your profile.

We ask that the ACCC consider this omission as misleading and investigate a likely breach of the Australian Consumer Law (section 18(1)). This practice could also be considered a use of unfair contract terms that are not sufficiently transparent (section 24(1)).

Customers should be told that their personal information is being used to set prices so that they can make an informed decision on whether to use the service or not. Failure to make this clear to customers gives the company a significant advantage in the exchange. Tinder’s deliberate omission and lack of transparency affects the ability of its customers to make informed choices that align with their privacy and data collection preferences. It also diminishes meaningful customer control over the collection and use of their own personal information.

Discriminatory practices

CHOICE understands that Tinder is using age to determine pricing in its Tinder Plus service. We believe this is direct discrimination based on age and causes detriment to older users of the app. Under the Age Discrimination Act 2004, Tinder would need to have justifiable grounds on which to charge older users more than younger users for its pricing to be legal.

CHOICE believes that through this practice, Tinder has unfairly exposed users of its app to profiling, discrimination and exclusion.

Principles to guide Tinder’s practices

CHOICE would like to see Tinder adopt a more transparent approach to its pricing model. We believe Tinder and other online companies which collect consumer data should:

- Be transparent about how they use consumer data
- Put the customer in control of what information is kept and used
- Make prices easily accessible and therefore allow real competition, and
- Treat customers fairly.

CHOICE recognises that the range of issues we have raised in this complaint cover new ground. While the Australian Consumer Law (ACL) could be used to assist consumers navigating the digital economy, we also recognise that the ACL may not be fit-for-purpose for the new problems consumers are facing with online companies' use of data. Laws to prevent unfair practices could better deal with such issues.

CHOICE welcomes a discussion with the ACCC about how to progress this matter.

For further information, please contact CHOICE on apereira@choice.com.au

Yours sincerely,

Amy Pereira

Campaigns and Policy Advisor