



26 February 2018

The Treasury
Langton Crescent
PARKES ACT 2600

Email: data@treasury.gov.au

Dear Sir/Madam

Review into Open Banking in Australia – Final Report

We welcome the opportunity to respond to Treasury’s consultation on the Open Banking in Australia Report (the **Report**). We have previously expressed our in principle support for the Productivity Commission’s recommendations to introduce a Consumer Data Right (**CDR**).^{1, 2} The potential for the banking sector implementation of the CDR to act as a template for an economy-wide deployment – with telecommunications and energy flagged as the next two sectors – has prompted us to make a submission to this consultation.

Alongside our continued in principle support for the high-level principles and goals of the CDR, there are some aspects of the approach outlined in the Report that we suggest require consideration prior to implementing the CDR, particularly, if the assumptions that may be relevant to the banking sector are considered relevant a priori to industries such as telecommunications and energy. We outline these below.

Importance of customer-centric approach

In the foreword to the report, the first of Scott Farrell’s four principles states that “*Open Banking should be customer focused. It should be for the customer, be about the customer, and be seen from the customer’s perspective.*” We completely agree. It is vital that the benefits to consumers from an implementation of the CDR are clearly identified and quantified, and are shown to be greater than the costs involved with respect to all parties. Any risks potentially borne by customers, and concerns they may have with the transfer of their information should also be clearly identified and used to guide implementation of the CDR. Failure to do this will risk customers not engaging with the CDR, not understanding or believing its potential benefits, and fearful of the consequences of their data not being safely retained or misused.

In our view, Treasury should give particular attention to:

- ensuring customers have trust in the system, particularly in relation to their data security and privacy. Keeping customers’ data safe is a top priority for Telstra, and should the CDR be implemented in telecommunications, we would be eager to ensure it is done in such a way that our customers will have confidence in how their data will be stored and transmitted;

¹ Telstra submission to Productivity Commission Inquiry Report into Data Availability and Use, 29 July 2016: https://www.pc.gov.au/data/assets/pdf_file/0003/203556/sub088-data-access.pdf

² Telstra submission to Productivity Commission Draft Report on Data Availability and Use, 15 Dec 2016: https://www.pc.gov.au/data/assets/pdf_file/0018/211446/subdr312-data-access.pdf



- appreciating that the protections for data security relevant to the banking sector might be different in other sectors (banking itself may traverse different industries, such as insurance);
- ensuring that, if the CDR is rolled out to more sectors, the customer data brought within the scope of the CDR will meet the needs and concerns of customers in those sectors;
- ensuring customers understand the system and its potential benefits so they are willing and able to participate in it; and
- understanding the nature of the relevant industry sector to which CDR may apply and recognising that CDR may have different implementation costs for companies in different industries.

The banking sector does not necessarily represent other sectors

It is important to acknowledge the differences between banking and other industries and the possible ways in which banking may not necessarily serve as a simple template for the implementation of the CDR in other industries.

Recommendation 3.2 of the Report addresses the type of data that should be transferrable under the CDR, and recommends that *all* transaction data related to a defined set of products be transferrable. Further, the Report recommends that the applicable historical period should align with regulatory requirements for the sector, namely, seven years (under anti-money laundering legislation).

We have expressed our in principle support for the scope of data captured by the CDR to be limited to transaction data (as opposed to transformed or value-added data) in our submissions to the Productivity Commission and, at a high-level, agree with the approach in the Report. However, the concept of 'transaction data' for one sector may not be universally applicable to all other sectors. For example, with banking there is generally a one-to-one relationship between an individual and an account (with the exception of joint accounts). By contrast, in the telecommunications sector, it is ordinary for many-to-one relationships to exist where, for example, entire families or flat-mates share a single broadband service, or, for one member of a family to be the owner of multiple mobiles used by other members of the family such as children or elderly parents. Questions around what it means for an individual to request transfer of *their* data in this context, along with the ensuing privacy considerations, remain unresolved.

In relation to accreditation, we note Recommendation 2.8 where Treasury states that regard should be had to existing licensing regimes and, in the text preceding that recommendation, the statement that 'for Open Banking, accredited parties who are Authorised Deposit-taking Institutions (**ADIs**) should simply require registration to participate'.

We appreciate the efficiencies associated with reliance on existing licensing regimes, but note that industries sectors may not have comparable regimes to those that exist in relation to ADIs, potentially making the determination of accreditation criteria and processes in other sectors more difficult. For example, in the telecoms sector, many providers are not licensed either because they are service providers rather than carriers, or because they are over-the-top (OTT) providers.

Reciprocity and equivalent data

Recommendation 3.9 of the Report addresses the need for reciprocal obligations in Open Banking, whereby *data recipients* participating in the Open Banking regime would be obliged to share any data provided to them under the Open Banking scheme. Further, the preceding text



in the Report specifically contemplates participation in Open Banking by entities whose primary business is not in financial services, and the need for those entities to provide 'equivalent data for the purposes of participating in Open Banking'.

We agree with the need for reciprocity and, in particular, for data recipients who benefit from the CDR to be "... *obliged to provide equivalent data in response to a direction from a customer*"³. If data recipients outside the relevant sectors were not required to reciprocate in any way, then there would be a real risk of those recipients obtaining an unfair competitive advantage.

At the same time, we recognise that the issue of reciprocity and equivalent data raises a number of complex issues that need to be carefully considered. Should reciprocity apply only to data within a sector (like-for-like), or, is there an expectation that *any* customer data held by the original data recipient may potentially be captured? What happens when an entity operates in more than one sector, for example, energy and telecommunications, and only one of those sectors has been included in the CDR? Similarly, what are the implications of reciprocity when entities interact across different industries, for example, as between telecommunications and banking?

The Report suggests a mechanism to deal with reciprocity and equivalent data in the context of Open Banking – the Report recommends that, for data recipients that do not primarily operate in the banking sector, 'the competition regulator should determine what constitutes equivalent data for the purposes of participating in Open Banking'. We have some concerns about the workability of this process, particularly as more sectors and participants are added to the CDR, and in circumstances where it may be difficult to neatly categorise entities as belonging to particular sectors. We note that it may already be difficult to draw a firm line around the banking sector, given its integration with other sectors (e.g., insurance) and the competition between the banks and other financial service providers.

Strategic approach to economy-wide implementation

Given the Treasury's stated intention to create an economy-wide CDR, there is clearly merit in taking a more strategic approach to its implementation to ensure the scope, architecture, systems and processes (for example, accreditation) are workable across sectors, ahead of proceeding with Open Banking as a template for other sectors. This approach may also minimise the risk of 'piecemeal' implementation, the need to rework issues as the CDR is rolled out, and a high burden of administering and participating in a fragmented regime.

Further, as noted above, failure to address some of the issues raised in this submission could inadvertently create competitive asymmetries where some entities become beneficiaries of data but not suppliers of data when they participate in, but sit outside sectors in the CDR.

We suggest that there are many components that would benefit from harmonisation across sectors such as the items we have listed above, as well as consideration of privacy, data security and existing sector-specific legislation that may need to be adjusted in order to work together with the goals of the CDR (e.g. data retention legislation in relation to telecommunications companies). We note the foreshadowed industry consultation (noted by DoCA in their email dated 23 February 2018), and recommend that in addition to industry specific consultation, a broader remit is required to ensure harmonisation across sectors.

³ Open Banking Report, page 44.



Other matters

We support the CDR and are interested in it being implemented successfully. However, there are many risks and concerns that exist in the implementation of CDR beyond banking, and we look forward to the opportunity to work with the Federal Government when formal consultations commence in the second half of 2018.

We also propose that Treasury fully imbed the principles of regulatory best practice in its consideration of implementing the CDR in banking and other sectors.⁴ This would be the best way to convince customers of the value of the CDR and the protection and promotion of their interests at least cost.

We look forward to engaging further with Treasury on this matter. Please don't hesitate to contact Geoff Gerrand on (03) 8649 7350 or by email at geoffrey.gerrand@team.telstra.com if you have any queries about the matters raised in this letter.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Iain Little'.

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⁴ <https://www.pmc.gov.au/resource-centre/regulation/australian-government-guide-regulation>