



20 December 2024

**By Email**

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Director  
CDR Framework Unit  
Treasury  
Langton Crescent  
PARKES ACT 2600

Dear Treasury,

**RE: Consumer Data Right Rules – non-bank lending and banking data scope**

Thank you for the opportunity to respond to the consultation regarding the draft amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020* to expand the scope of the CDR to the non-bank lending sector, and narrow the scope of CDR data for the banking sector (the **Draft Rules**). Mastercard acknowledges the work completed by Treasury to date in producing the Draft Rules and supporting materials.

### **Executive summary**

#### Expansion to non-bank lending

Mastercard welcomes the expansion of the CDR to the non-bank lending sector. This will allow more consumers to benefit from the opportunities presented by the CDR to unlock the value of their data. It will also bolster the key CDR use cases in lending and money management.

However, we hold concerns with respect to certain aspects of this expansion, including the de minimis threshold. We consider that adoption of the proposed threshold will undermine the purpose of the CDR as an economy-wide data sharing regime and ultimately, will prevent a full transition away from screen scraping. Instead, we advocate in favour of all non-bank lenders being brought into scope, via a phased rollout that gives the smallest players more time to implement. If a de minimis threshold is to exist, it needs to be carefully designed to ensure that a significant majority of the non-bank lending market is brought into scope.

#### Reduction of scope of CDR data for the banking sector

Mastercard is concerned that removing certain products from the scope of the banking designation will have an adverse effect on the ability of ecosystem participants to deliver high-value use cases. Rather than make these products voluntary for data holders to share, we instead advocate for an approach that allows data holders to impose a fee for access to data pertaining to these products. This would enable data holders to recoup some of their costs associated with compliance, whilst at the same time allowing consumers to consent to access to their data across the full suite of in-scope banking products.

We have set out some more detailed comments on these issues in **Annexure 1** below.

## Further discussion

We would be pleased to meet with Treasury to further discuss the contents of our submission. If this would be helpful or if you require additional information, please contact Mitch Thorp, Senior Counsel, Open Banking at [mitch.thorp@mastercard.com](mailto:mitch.thorp@mastercard.com).

Yours sincerely,



Richard Wormald  
**Division President**  
**Australasia**



## About Mastercard

Mastercard is a technology company in the global payments industry that connects consumers, financial institutions, merchants, governments, digital partners, businesses and other organisations worldwide, enabling them to use electronic forms of payment instead of cash and cheques. We make payments easier and more efficient by providing a wide range of payment solutions and services using our family of well-known and trusted brands, including Mastercard®, Maestro® and Cirrus®. We operate a multi-rail payments network that provides choice and flexibility for consumers and merchants.

At Mastercard, our key strategic priorities are:

1. **Expand in payments.** We continue to focus on expanding upon our core payments network to enable payment flows for consumers, businesses, governments and others, providing them with choice and flexibility to transact across multiple payment rails.
2. **Extend our services.** Our services drive value for our customers and the broader payments ecosystem. We continue to do that as well as diversify our business, by extending our services, which include cyber and intelligence solutions, insights and analytics, test and learn, consulting, managed services, loyalty, processing and payment gateway solutions for e-commerce merchants.
3. **Embrace new network opportunities.** We are building and managing new adjacent network capabilities to power commerce, creating new opportunities to develop and embed services.

Through our third strategic priority, we are focused on opportunities to enable open banking with everyday consumers. We are inspired by the vision of empowering consumers with control of their data so that they have more choice, at a greater convenience and with trust in the ecosystem, to switch products, make better decisions and ultimately benefit more tangibly from the digital revolution. We currently do this by providing our fintech and financial institution partners with open banking products and services that enable them to reliably access, transmit and manage consumer data to meaningfully enhance their customer experience and win in a rapidly changing market at a global scale.

Mastercard is an unrestricted Accredited Data Recipient (**ADR**) and is actively involved in the CDR ecosystem. We recently supported FinTech Australia in the publication of the 4th edition of the Australian Open Banking Ecosystem Map and Report, and we are committed to supporting the growth of the CDR in Australia.



## Annexure 1 – Detailed comments on Draft Rules

We set out below our detailed comments with respect to certain elements of the Draft Rules.

- **Updated 'de minimis' threshold**

Mastercard does not support the proposed revisions to the 'de minimis' threshold contained within the Draft Rules, which would have the effect of reducing the number of non-bank lending data holders required to implement CDR data sharing.

While we understand that these revisions are driven by the government's desire to reduce compliance costs for smaller industry participants, we are concerned that the de minimis threshold will:

- 1. Act as a barrier to consumer uptake of key use cases:** the entry of non-bank lenders stands to significantly enhance the utility of high-value lending and money management use cases – but only if consumers are able to connect to their non-bank lender of choice. Coverage across all non-bank lenders is essential to facilitate this – if a consumer cannot use the CDR to share data from their non-bank lender, e.g. as part of a credit card application journey or when using a personal finance management app, the utility of the use case as a whole will be greatly diminished.
- 2. Does not provide sufficient certainty to ecosystem participants:** we anticipate the de minimis threshold will create significant uncertainty for those non-bank lenders who do not initially meet, but are trading at levels that are close to, the relevant threshold. Whether and when that threshold will be met (thereby triggering compliance obligations) will create uncertainty for that non-bank lender in its day-to-day operations. This same uncertainty will also be felt on the data recipient side, with participants unwilling to make the investment necessary to bring use cases to market, where those use cases cannot adequately serve the entirety of the target market.
- 3. Undermines the transition away from screen scraping:** if the CDR is not available as a means of accessing consumer data from certain non-bank lenders, industry participants will have little option other than to retain existing methods of data access, including screen-scraping. This directly undermines the government's stated desire for the industry to transition away from this practice. It also creates operational issues for participants who will need to maintain different data access methods, rather than being able to transition fully to the CDR. It is therefore essential that API-based connectivity via the CDR is available to access data held by all non-bank lenders.

### Recommendation

A key strength of Australia's CDR regime (relative to other jurisdictions) is coverage. All banks are covered by the scope of the banking designation, leading to over 99% of consumer accounts being accessible via the CDR. It would be disappointing for this advantage to be lost for non-bank lending.

Accordingly, we would encourage Treasury to explore options that would result in *all* non-bank lenders being brought into scope, even if this means extending the proposed implementation dates to give the smallest participants additional time to comply. This approach would replicate that taken during the implementation of the banking designation, where the big four banks were brought into scope first, followed by smaller banks and credit unions.

As an alternative, if the concept of a de minimis threshold is to remain, we would urge Treasury to ensure that the threshold is calculated with a view to capturing at least 75-80% of the total non-bank lending market. While this will still result in many consumers being unable to connect to their non-bank lender of choice, it would at least ensure that a clear majority can benefit from the innovative products and services offered by data recipients. We understand that the effect of the revised de minimis threshold as set out in the Draft Rules would be to capture approximately 40 to 50 non-bank lenders in the market – which appears to be quite a small number given there are over 600 non-bank lenders operating in Australia.<sup>1</sup>

We also note there are differences in the non-bank consumer lending market vs the non-bank business lending market which should be taken in account when determining the de minimis threshold. For example, a business lender may have fewer customers on average when compared with a consumer lender, however the total value of their loan book is likely to be much higher. The application of the de minimis threshold as currently drafted is likely to result in many business lenders being unduly excluded from scope.

Above all, if the majority of consumers aren't able to access their non-bank lending data, the expansion of the CDR to this sector will not succeed.

- **Implementation timing for non-bank lenders**

We note the updated timing for rollout of CDR data sharing obligations under the Draft Rules and acknowledge that the 13 July and 9 November 2026 commencement dates (for the largest providers) are consistent with previous announcements made by the Assistant Treasurer.

#### Recommendation

Mastercard understands the need to give non-bank lenders adequate time to comply with the requirements that designation will impose upon them. However, in order to help achieve the key objective of increasing consumer participation, it is important that non-bank lenders be given an incentive to begin engaging with and participating in the CDR ecosystem immediately as data recipients, rather than waiting for their data holder compliance obligations to commence in 2026 and beyond. Two options Treasury could explore in order to achieve this would be

1. **Data holder exemption:** allow accredited non-bank lenders who hold an Australian Credit Licence (**ACL**) to collect and use CDR data as data holders, rather than data recipients. This would effectively mirror the provisions that were recently amended for authorised deposit-taking institutions (**ADIs**), in Schedule 3 of the CDR Rules.

The effect of including a provision of this nature would be to make it easier for non-bank lenders to use the CDR as a means of obtaining and using the same data that is currently obtained via other means, including via screen scraping.

Mastercard acknowledges that there may be differences in the way that this provision should apply to ACL holders, in comparison to the way it applies to ADIs. For example, the total scope of regulation (including with respect to information security requirements) that applies to ACL holders is not the same as that applying to ADIs. It therefore may be open to Treasury to consider implementing this provision in a way that retains application of some of the CDR Privacy Safeguards (for example Privacy Safeguard 12), where this is considered necessary to ensuring adequate protection of CDR data collected by accredited ACL holders.

2. **Changes to CDR insight disclosure rules:** to allow CDR data to be shared as a CDR insight in connection with a lending use case. This would allow non-bank lenders to begin participating in the CDR without needing to become accredited, as they could instead

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<sup>1</sup> Based on the number of Registered Financial Corporations and taken from the ACCC's submission to the *Treasury sectoral assessment Open Finance – non-bank lending – for the Consumer Data Right* (April 2022).



receive CDR data via an insight disclosure consent that has been obtained via another accredited entity.

Each of these options would, if implemented by the Draft Rules, directly incentivise non-bank lenders to begin engaging with and participating in the CDR ecosystem as data recipients, rather than waiting for their data holder compliance obligations to commence in 2026 and beyond. This in turn would provide more immediate benefits to consumers and would increase uptake of high-value use cases in lending and money management.

- **Narrowing the scope of banking and non-bank lending products:**

Mastercard is concerned that making data sharing voluntary with respect to the products listed in the Draft Rules will diminish the efficacy of key use cases in lending and money management. Products such as consumer leases and margin loans often form a key part of a consumer's overall financial health, and so data sharing in relation to these products is essential in the context of a consumer finance application or PFM/budgeting use case.

Mastercard notes that different participants will have different views about the utility of keeping specific products in or out of scope for mandatory data sharing. Mastercard also recognises that there may be disproportionately high compliance costs associated with maintaining connectivity to products that are subject to comparatively few consumer data requests.

#### Recommendation

Given these costs, and the divergence in views between participants on products, we would suggest that as an alternative to making data sharing voluntary for specific products, Treasury should instead consider allowing data holders to impose a fee for access to data pertaining to these products.

This concept of "premium APIs" has begun to emerge in other jurisdictions, and in our view represents a viable option that enables data holders to reduce compliance costs, whilst at the same time allowing consumers and data recipients to continue accessing the full suite of consumer banking products. It also helps achieve sustainability within the ecosystem, which is critically important in securing investment and driving innovation. For open banking, finance and data to realise its potential, it is essential for there to be sound economic models at the heart of the ecosystem that allow the development of sustainable data-sharing commercial models. Without commercial drivers, the market is neither viable nor scalable - and the industry will not be incentivised to make long-term, sustained investment and deliver ongoing innovation. In our view, these fees should be determined by the market on a case-by-case basis, and implemented in a standardised way that ensures consistency across the ecosystem.

- **Reduced requirements to share historical data**

We note the proposal to reduce the requirement to share historical consumer data from 7 to 2 years. In our view, 2 years' worth of data is generally sufficient to enable the key high-value use cases in lending, money management and accountancy. Accordingly, if there is a quantifiable and meaningful cost saving to be obtained by making this change, we would support this proposal.

As an alternative, we would also support further exploration of the potential for data holders to charge for access to data extending beyond the 2-year timeframe, as means of alleviating some of the costs associated with providing access to this data, whilst still allowing data recipients to obtain access where they need it for a particular use case.

