



22 May 2020

Treasury

By email: data@treasury.gov.au

Dear Sir/Madam

Re: Inquiry into Future Directions for the Consumer Data Right: Issues Paper

The Australian Financial Markets Association (AFMA) welcomes the opportunity to provide comment to the Treasury on Issues Paper launching an *Inquiry into Future Directions for the Consumer Data Right*.

AFMA supports the introduction of Open Banking as part of the Consumer Data Right (CDR) scheme to give customers more control over their own information. AFMA represents 120 firms in the wholesale markets including many firms that will be directly affected by the CDR changes in relation to the banking sector.

The CDR architecture creates regulatory obligations for firm-to-firm electronic communications at the request of consumers in relation to the way data is transferred, secured by encryption, managed and kept confidential. Such coordination includes detailed Application Programming Interface (API) standards, security protocols, and internet-based identity verification services.

Consistent with our submissions to the policy processes around the Consumer Data Right, AFMA would prefer a market-based and industry-led approach to evolving the CDR, as we believe this would offer greater flexibility and lower cost.

While the aims of the scheme are supported, the imposition of the regulatory obligation for the CDR is a high-cost approach and entails significant additions to the technological, human resources, compliance and business governance burdens on firms.

Expansion of the CDR scope within the sector and incremental sectoral applicability should follow only if an independent cost-benefit analysis suggests it would be of net benefit.

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AFMA's comments below address the specific issues raised by the inquiry.

We trust our comments are of assistance in paving the way for the future for Consumer Data Right. Should you wish more information please do not hesitate to contact me via the Secretariat.

Yours sincerely

A handwritten signature in black ink that reads "Damian Jeffree". The signature is written in a cursive style with a large, stylized 'D' and 'J'.

Damian Jeffree

Senior Director of Policy

1. The future roles that could be performed by the Consumer Data Right, the future outcomes which could be achieved, and what is needed for this to happen.

AFMA recognises that the Consumer Data Right regime aims to increase the sharing of data between businesses in several sectors of the economy for the benefit of consumers and business clients.

We note that the CDR redefines the concept of ‘consumer’ away from its ordinary meaning as reflected in the Consumer and Competition Act 2010¹ as being the retail purchase of goods and services of modest value or for ‘personal, domestic or household use or consumption’. The concept now includes businesses purchasing services of any cost for any purpose including commercial purposes.

Extension or expansion of the scheme is therefore not merely a matter of increasing benefits for consumers in the ordinary sense, it is also about changing the business relationships of firms who are peers, or in some case where the ‘consumer’ firm might be larger than the ADI.

While the aims of the CDR in relation to consumers (certainly in the ordinary sense) are valid and supported in general terms, it is critical to consider in each case whether CDR is the most efficient way of achieving this outcome. There may be other more efficient ways to achieve the improvements in outcomes for consumers and business clients other than the high-cost CDR approach.

As such expansion of the scope of the scheme within a sector or the expansion of the scheme to another sector should only be considered where an analysis independent of government is undertaken and suggests that the benefits outweigh the costs and risks of such an expansion.

AFMA notes that at this time, we are still in the initial phase of CDR implementation in the banking sector. This has been a larger project than was anticipated and ensuring the risks to privacy and data were properly identified by the sector and by government sponsored studies and then appropriately addressed has taken considerable time and resources.

It may be appropriate to allow the rollout of CDR within the banking sector to complete, at least for the ‘read phase’, and then undertake an independent analysis of the lessons, costs and benefits before expanding the scheme to other sectors. Future CDR expansions would then benefit from the knowledge and experience gained from a proper assessment of the scheme and its roll-out.

¹ Including s 4B(1)

2. *How can the Consumer Data Right be leveraged with international developments of the kinds described above to enhance opportunities for Australian consumers, Australian businesses and the Australian economy?*

As noted in the response above the CDR regime should have an independent evaluation of the Open Banking experience upon its full implementation to provide guidance for its subsequent developments, and this should extend to evaluation against experiences in other jurisdictions.

The Australian approach to CDR is a regulator-driven, top-down approach involving standardised interfaces and mandatory adoption by the industry. AFMA holds that a market-led rather than regulator-led approach to CDR may be more likely to inject industry-specific efficiencies and have lower costs going forward.

To maximize the potential for integration with international schemes, such as that in Singapore, we suggest increasing the flexibility of the scheme locally might be appropriate. Increased flexibility is more likely to lead to optimised outcomes that will be agile enough to link in more readily with international developments.

There is a case for reviewing the benefits of market-driven Open Banking regimes from other jurisdictions that may be applicable to the Australian context. The approach in Singapore has been characterised by a willingness to shape innovation with a non-mandatory governance framework; by authorities opening their own data for APIs, and by establishing scalable data practices that underpin innovation in the area. This could provide a benchmarking exercise to compare against the local approach.

At this stage as far as we are aware such a comparison has not been undertaken. AFMA would be pleased to assist in the design of such a project.

COVID 19 Environment Calibration

The economic constraints encountered across most economic sectors in the post COVID-19 environment suggest the expansionary expectations attached to the high cost CDR regime should be reconsidered, realigned and rationalised so as not to place additional rigid constraints on Australian firms so as to reconcile the data rights policy objective with the need for greater agility to meet the economic growth objective.

Where the cost benefit analysis suggests the expansion should still proceed, additional mandatory regulatory burdens may not be the best approach. More flexible approaches that factor in greater market-based engagement as in jurisdictions like Singapore may present a way to still proceed but that reduces costs.

- 3. How could the Consumer Data Right be used to overcome behavioural and regulatory barriers to safe, convenient and efficient switching between products and providers, whether those barriers are sector-specific or common across industries.*

AFMA supports the view that unnecessary regulatory barriers to safe, convenient and efficient switching between products and providers should be addressed by regulatory reform rather than adding an additional regulatory layer.

Benefits such as increased consumer switching are important to consider as part of the cost-benefit analysis. These types of factors need to be considered in a holistic way.

- 4. The Inquiry welcomes input from interested parties on these topics – including their benefits and costs – as well as any other ‘read’ access functionality that the Inquiry should consider*

AFMA has no comment on this particular enquiry.

- 5. In the context of Open Banking, the Inquiry is particularly interested in interested parties’ views on how the Consumer Data Right could best enable payment initiation.*

AFMA holds that implementation of ‘read’ access should be completed prior to the ‘write’ access.

Full completion of this first phase will help the assessment of systemic capabilities across technology, data security, regulatory standards and ensure the industry is prepared for the roll out of ‘write’ access.

AFMA would support careful investigation of the risks associated with write access before its roll out in banking is considered. The risks associated with ‘read’ access were investigated concurrently with the roll-out. This is far from an optimal approach.

Given the more extensive risks associated with ‘write’ access a careful analysis should be required upfront before its design is finalised and any roll out is begun.

The CDR regime should consider industry-led guidance for further developments in the API platforms.

6. *The Inquiry welcomes input from interested parties on the above, including potential linkages and interoperability with other consumer-directed domestic and international data portability regimes, and accreditation frameworks that focus on data risk management.*

Interoperability among data portability regimes requires innovation to create consistency in the ultimate consumer experience. Market-based approaches to designing and implementing these business practices and processes have proven to have higher characteristic efficiency and flexibility advantages over more centralised approaches. Industry-based solutions also lower costs to the taxpayer.

We caution against expansion of the CDR into other frameworks that are currently managed successfully on a cooperative basis.

7. *The Inquiry welcomes views on the above as well as any broader role that other aspects of the Consumer Data Right regime could play in supporting productivity and data security in the digital economy.*

The Consumer Data Right is a high cost approach to standards creation and the mandatory approach to implementation creates significant costs for firms, the government and the economy.

The development of standards by the private sector internationally has a long and successful history and present state. Almost all standards both in Australian and internationally are not designed and mandated by government but instead are created by industry and the standards bodies that have evolved from industry. Their adoption does not generally need to be mandated and they retain the vigour and agility of the private sector.

AFMA cautions against the expansion of the government into further standards creation areas. Given the many existing systems in place, AFMA supports a voluntary approach where firms are free to use CDR-related schemes for their businesses beyond CDR applicability as they see beneficial.

AFMA is supportive of increased data security but these matters should be dealt with by a single regulator. The current approach of different standards being implemented by APRA, ASIC, the ACCC and other government bodies is not efficient and risks compromising security standards. Consumer and business client related security concerns are a subset of the wider security agenda and might best be dealt with by a single agency with a holistic focus on these matters.

If the CDR is to support productivity it can only do so where it is of net benefit. Whether it is or not cannot be known *a priori* and must be explored by empirical investigation. We caution against assumptions around contributions to economic efficiencies.

8. *The Inquiry invites submissions from interested parties on how to ensure that, as the Consumer Data Right develops, it does so in a manner that is ethical and fair, as well as inclusive of the needs and choices of all consumers. This includes ways to encourage socially beneficial uses for the Consumer Data Right.*

To develop the CDR in a manner that is ethical and fair it is important that fairness is also extended to the firms that must bear the costs of implementation. Firms should not be required to bear costs for features or extensions where there is no known net benefit.