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The Secretariat,
Statutory Review for the Consumer Data Right
The Treasury,
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VIA ELECTRONIC SUBMISSION

Investnet Yodlee's response to the Statutory Review of the Consumer Data Right; Section 56GH of the *Competition and Consumer Act 2010* (the Act), Part IVD of the Act, containing the primary legislation for the Consumer Data Right (CDR).

Dear Secretariat,

Investnet Yodlee ("Yodlee") welcomes this opportunity to provide feedback and answers to the questions on the Statutory Review of the Consumer Data Right (CDR).

Yodlee is the leading global financial data aggregation platform provider, with twenty-two years in the industry, and twelve years in Australia. Yodlee provides consumer-permissioned account aggregation capabilities with hosted solutions and commercial APIs on a business-to-business basis to customers around the world, including within Australia, that include traditional financial institutions of all sizes as well as financial technology companies. These customers offer data from Yodlee's platform to millions of retail consumers in Australia through the customer's own financial wellness solutions, which provide tools for consumers to track, manage, and improve their financial health across a host of different banks and financial institutions, as well as through platforms that provide financial advice and lending solutions.

When the ACCC launched the Consumer Data Right (CDR) in November 2017 the goal was to "give consumers greater access to and control over their data"¹. The CDR aims to empower consumers to compare and switch between products and services and encourage competition between banks and service providers, all leading to improved financial wellbeing for Australia's citizens and greater innovation in the sector. Intermediaries such as Yodlee were fulfilling that role using commercial contracts in the absence of regulations.

Ongoing support of intermediaries' critical role in the current ecosystem is essential to ensure that consumers depending on the benefits of current solutions are not harmed and that the innovative solutions in the market, offered by incumbents and new entrants, can flourish to achieve the goal of the Consumer Data Right.

¹ ACCC [Consumer Data Right](#)

Question One

Are the objects of Part IVD of the Act fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR?

Yes and no. Conceptually the objects of Part IVD of the Act are fit for purpose to facilitate expansion of the CDR however in reality the full implementation of these has not been realised questioning the ability for the government and readiness of the economy to accept and execute core principals of the CDR. Overall sections 56AA and 56AB of Part IVD of the Act focus broadly on consumers, competition, public interest, choice, innovation and security. There has however been a tendency to over emphasize one object, security, more so than others which has come at the expense of lessening the importance of all aspects being the key to the success of the regime.

Security by far has become the primary focus of the CDR and has led to the neglect of other aspects including efficiency, choice, innovation, and competition. This has caused ongoing delays to the rollout and completion of the banking sector. The outcome of which is:

- a) The method of gaining consent via an ADR is in-efficient and a poor customer experience (the consent screens are overly cumbersome and wordy with too many screens to click through)
- b) The method of gaining consent via a DH is inconsistent across DHs causing drop off and poor customer experience (eg. The Commonwealth Bank has chosen a process where the consumer consents in an application then must exit the application, log in to their Netbank account, go to their inbox and get a one time password (OTP) then transport this OTP back to the application they started at. Others do the logical step of sending the OTP direct to the consumers mobile phone.
- c) The ability to act on choice on your banking product is non-existent without write access
- d) There is little to no change with competition in the market as it is overly inefficient switching banking providers (eg. moving home loans across banks shows little to no change in the sector and still relies on the same credit processes and manual documentation practices)
- e) Trying to gain accreditation or rely on another entity's accreditation has become an enormous task due to the liability framework and the different accreditation models have not made a large difference to the process and adherence to elements of the privacy act
- f) Innovation will exist outside of the CDR through screen scraping and direct data feeds from banks (eg. Xero pay for data direct because CDR does not meet their needs). This will continue until the CDR is a success; by gaining **volume** (which can only be achieved through more entities using CDR data and gaining accreditation), **data quality and parity** with screen scraping and **stable and fast** API feeds.

Recommendations

- Review the CDR guidelines to create a better customer consent flow. By way of example consent flows in the UK and US are extremely different and less onerous
- Create specific guidelines for DHs/banks to follow when they issue OTPs that rely on the consumers mobile phone and not the online banking interface



- Speed up the roll out of write access by creating a new government team focuses solely on this outcome and working across the payments sector with NPP and Pay-to to ensure alignment
- Create a blended liability model for CDR Representatives. Currently the ADR holds full liability. In the future the CDR Rep and the ADR should take on joint accountability and liability under and commercial contract.
- RG209 - consumer lending code needs to be reviewed in light of CDR. If the rules in this act focus on the need for transactional data then banks will find a need to utilize the data in their credit scoring. This data is a far more reliable indicator and determinant of risk however banks traditionally shy away from its use as it offers richer more accurate insight that could see loan approvals dropping and involves a change in the way banks have traditionally assessed risk.

Question Two

Do the existing assessment, designation, rule-making and standards-setting statutory requirements support future implementation of the CDR, including to government-held datasets?

No. Having the advantage of a global footprint and participating and implementing four other Open Banking programs across the world (US, UK, Canada and EMEA), Yodlee sees Australia as fragmented and misaligned in its CDR delivery causing delays, inconsistencies and major gaps in the rollout of the CDR. Jurisdictions such as the UK have shown greater governance and alignment when you have a central independent body responsible for all aspects of the program.

As an industry representative the key focus for our organisation is on scope and timing. How the government internally aligns through assessment, designation, rule-making and standards setting to create an inclusive feedback loop between themselves and industry on decision making for these elements is what we are concerned with and to date this consultation process has fallen short. Discrepancies have existed between Treasury, the Data Standards Body and the ACCC ongoing. Conflicting opinions or gaps in knowledge abound and we see areas where rules are made yet technical standards have been ignored or not thought through in their entirety making the implementation of the CDR problematic from an engineering, technical perspective.

In 2020 Yodlee was ready to test the CDR and provide valuable global open banking expertise and feedback to the Australian Government. We asked to participate with the first 10 commercial entities to test the CDR and because Intermediaries were not recognised as part of the ecosystem we were officially told we could not participate with one of our customers (86400) even though our competitors; Basiq were working with Regional Australia Bank and Frollo were nominated and used this to their commercial advantage for their B2B product.

Recommendation

- Establish a central, independent single regulator overseeing the Consumer Data Right who is solely accountable for the delivery of the CDR.
- For future expansion of the CDR, including government held data sets, Intermediaries must be considered and consulted in the process of assessment, designation, etc.
- The process by which this needs to occur is not just through papers and lengthy feedback cycles (such as this) but workshops and events that bring the industries together in one room. Eg. Banks, Government, Credit Bureaus, Fintech and Technology firms sitting together in a forum.
- As a result of this feedback, industry should be able to track and get a response on the outcomes of their individual advice (eg. We have authored many papers in the assessment process for intermediaries, accreditation models, etc and never received any feedback. For all intents and purposes, a lot of it seems to have been ignored)



Question Three

Does the current operation of the legislative settings enable the development of CDR-powered products and services to benefit consumers?

No. The intent to benefit consumers is at the heart of the CDR however much like the first answer, whilst the intent is there, the reality is still not consistent.

By example, through expanding the CDR to difference accreditation levels to improve adoption for consumer benefit the rules are incomplete for several sectors and overly complex and prescriptive. One of the biggest industries we see this in is the accounting software industry. Through the new “trusted advisor” model to gain access to CDR it assumes you are an accredited entity already, yet many who use these packages are not (eg. Sole traders who operate a business) and therefore the large accounting providers like MYOB, Xero, Sage, etc will never become compliant and will continue to pay for feeds from the banks through their own purpose-built APIs.

Another extremely important omission has been the definition of success of the CDR. It is not enough to state the number of accredited data holders and data recipients as a success measure as many ADRs for example are not active and has no effect on consumer benefit. It is impossible to state that consumers are benefiting when this is not measured in any way, shape, or form. How do we define “consumer benefit”; is it by volume in the number of CDR consents? Is it by data quality? Is it by latency and “up time” of APIs? Is it by complaints? Without this data the measure of success of the CDR will continue to lag and industry will not know whether the current legislative settings are benefiting consumers or not.

Recommendation

- Finish Open Banking. There are still many parts of the open banking program that are not complete; improve and stress test the accreditation levels with a number of audit firms; eg. RSM and Assurance Labs and tech companies like Yodlee. We are at the front-line answering questions every day from customers and there are many different use cases that the government has not considered (eg. reselling CDR data services; when does CDR data stop being CDR data?)
- The definition of “consumer benefit” must be made and published. In our opinion it is a combination of volume, data quality and latency. Ideally if we are ever to move away from screen scraping then Government need to consult with organisations like Envestnet Yodlee on data parity as our customers have no appetite to move away from this when the CDR is less than optimal which is the case now.



Question Four

Could the CDR legislative framework be revised to facilitate direct to consumer data sharing opportunities and address potential risks?

Yes and no. This should be built into the current CDR legislative framework regarding write access / payment initiation however it does cross over with other initiatives and frameworks such as NPP, Pay-to, digital identity and revisions to the privacy act.

It should be noted that many large companies, particularly card schemes and telcos already have companywide digital identity programs in place. For example, Mastercard and Optus. How will this be considered in light of the CDR? Who is currently regulating this practice and are they ensuring there is no overlap or contradiction with CDR legislation?

Recommendation

- Direct to consumer data sharing should form part of the scope of write access /payment initiation and focus on digital identity and changes to the privacy act.
- The government needs to ensure large companies like Optus and Mastercard are aligned to the CDR legislation and do not technically and commercially advance outside of this framework with their own bespoke digital identity programs

Question Five

Are further legislative changes required to support the policy aims of CDR and the delivery of its functions?

Yes. Several sectors need alignment alongside policies and rules to ensure an economy wide consumer centric data sharing environment built from a single set of technical standards.

By example the addition of large business data sets has been ignored which has seen the omission of 2.4 million SMEs sit outside the scheme. The flow on to this is that screen scraping will continue to be a practice in this space, accounting software providers will continue to sit outside the CDR and efficiencies and security practices in this sector will be ignored.

Legislation changes still required are revisions of the privacy act which will have ramifications across all aspects of the CDR but will help resolve some of the problems pointed out above. The catalyst for this should be the work commencing on write access/payment initiation. Without this final change to the legislation then the key objects in the rules (efficiency, choice and competition) will not be *“fit-for-purpose and optimally aligned to facilitate economy-wide expansion of the CDR”*.

Recommendation

- Review the open banking regulations and ensure these are complete and now fit for purpose before moving on to other sectors; feedback as above shows they are not
- Commitment to a timeframe for write access / payment initiation
- Consultation through workshops/industry forums with all parts of the industry in the same room including banks, fintech, telco, credit bureaus, tech firms, etc on the changes required