

14 February 2020

**Submitted to the ACCC via email to [ACCC-CDR@acc.gov.au](mailto:ACCC-CDR@acc.gov.au)**

Dear ACCC,

## **Consumer Data Right Consultation on how best to facilitate participation of third party service providers**

We welcome the opportunity to share our feedback and views as the ACCC considers expanding the Consumer Data Right (CDR) Rules (Rules) to provide for the participation of third party service providers.

American Express believes that there is a role for third party service providers within the CDR regime in furthering the core principles of the CDR and helping to deliver consumer focused outcomes that are efficient and innovative.

We have developed our feedback in the context of several potential use cases, each involving an intermediary and exploring how each situation might lead to benefits for consumers, CDR participants and to greater equity and access within the regime generally. Whilst these use cases are illustrative in nature, they are evident within the UK and EU Open Banking environments that have helped inform and shape Australian's own implementation, and continue to provide relevant context as Australia contemplates refinements to the CDR.

The use cases are outlined below.

### **1. API Aggregators and Pass-Through Providers**

#### ***Premise***

An API aggregator would operate as an aggregation hub, pulling in data from multiple Data Holders and making it available to an Accredited Data Recipient (ADR) through one singular API interface. An aggregation hub would operate on a pass-through basis and would not store data.

ADRs would benefit from such a service by saving the cost and complexity of building, managing and updating multiple API interfaces. This is particularly true for less established participants, with limited resources and leaner operations, or for those not mandated to participate.

Expanding the Rules to allow for API aggregators and pass through providers would leave ADRs free to focus on the consumer's data and delivering the consequent services. Resources could be diverted towards developing consumer propositions, that would ultimately benefit consumers in the form of enriched offerings.

## ***Providing for API Aggregators and Pass Through Providers in the Rules***

In considering this scenario, American Express suggests that the Rules could include a type of pass-through service provider, an entity that does not store or collect data, but merely retrieves and transmits the data from a Data Holder to and on behalf of an ADR. Pass-through service providers could be subject to an obligation not to process or use CDR data in their own right.

They would need to meet baseline security requirements to protect data in transit and they would be liable to the ADR for failing to comply, in much the same way that an Outsourced Service Provider is liable to an ADR for failing to comply under the current Rules. Rather than licensing the intermediary, the ADR would be held responsible for such an intermediary.

An intermediary of this type should only have liabilities and accountability to ADRs (and vice versa) – not to consumers; this would avoid consumers being caught in the middle between two otherwise simultaneously accountable parties.

American Express strongly supports the principles of consent which underpin the Rules. However, we have submitted previously our concerns about introducing levels of prescription, complication and restriction within the Rules that would lead to sub-optimal consumer usability of CDR products and services, and potentially impede take-up. We encourage the ACCC to take this into account when determining rules around disclosure of intermediary use.

We believe that when using a pass through service provider or API hub as an intermediary, ultimate responsibility should always sit with the ADR to provide a seamless and “one-stop shop” approach for consumer complaints.

## **2. Insights and Derived-Data Provider**

### ***Premise***

This scenario contemplates a situation where data is passed between two ADRs to create a consumer service, which is not currently accounted for in the Rules. Or, a scenario where an intermediary collects CDR data and processes that data to create derivative data (insights, analytics etc) for the benefit of end-user ADRs. The provider could offer simple data categorisation tools, or more developed data enrichment and insights.

An ADR would benefit from using an insights and derived data service provider by saving the cost of investing in significant data science capabilities and gaining from the deep expertise and experience of organisations dedicated to this space.

### ***Providing for Insights and Derived-Data Providers in the Rules***

In this example, an ADR relying on the capabilities of an insights and derived-data provider to deliver its proposition to consumers is responsible for seeking and managing the consumer’s consent for the collection and use of that data. The end-user ADR would be accountable for the compliance of its provider, in much the same way as an ADR is held responsible for the activities of an Outsourced Service Provider under the current Rules.

In seeking and receiving the requisite consumer consent to collect and use data to deliver a proposition, the end-user ADR would also be liable to the consumer for any compliance failures in relation to that data.

The same protocols would apply in the event that the insights and derived data provider was an ADR in its own right. Sharing of data between two ADR entities should be allowed, if one ADR takes on the role of an intermediary within the transaction. An ADR relying on insights from another ADR to deliver its proposition to the consumer would be responsible for seeking and managing the consumer's consent, disclosing use of the other ADR as an intermediary to consumers and bearing responsibility and accountability for ensuring that any contractual arrangement binds the provider to the full CDR security and privacy rules.

### **3. Referrer and Introducer Models**

#### ***Premise***

Allowing consumers to share their data with marketplace or comparator services to compare and recommend a product or service best suited to consumers' needs has been a frequent example of how the CDR might be expected to drive consumer choice, convenience and market competition.

We have considered the scenario where a consumer may consent to sharing their data with a comparison marketplace (an ADR). The comparison marketplace would refer the consumer to a product provider, along with the consumer's CDR data to allow pre-fill of the provider's application form.

In a more advanced model, the product provider may also receive other insights or information from the ADR marketplace (for example, pre-qualification or eligibility information).

The benefits in this scenario are clear for the consumer. If their ultimate purpose in visiting a comparison marketplace is to find and switch to a product better suited to their needs, being able to provide their data only once, to identify the best product, complete the application and switch to a new provider, delivers reductions in time and effort, whilst still ensuring that the proper principles of consent have been observed.

#### ***Providing for Referrer and Introducer Models in the Rules***

The marketplace ADR would be responsible for obtaining and managing the consumer's consent. The sharing of data with an end-product provider should be consented to by the consumer.

This could be considered in the Rules as analogous to an ADR providing CDR data to the consumer directly, instead for reasons of efficiency, it is passed to the end-product provider. The simple way to regulate this would be to make it clear under the Rules that for expressly solicited product and service referrals, the data ceases to be CDR data upon the successful referral to an end product provider.

## 4. Consent Management Provider

### *Premise*

Much the same as scenario one that considers API Aggregator and Pass Through Providers, a consent management provider would manage consents on behalf of multiple ADRs as a service.

As in scenario one, being able to outsource the complexity and expense of building and maintaining a consent management platform would result in savings for an ADR that could be reinvested towards core customer capabilities and services.

There is also a conceivable future in which consumers will look to a centralised consent management provider to simplify and streamline their view of what consents and authorisations they have given with respect to sharing their data. This is a theme with obvious connections to broader digital transformation likely to occur across the economy as the CDR takes hold.

### *Providing for Consent Management Providers in the Rules*

To the extent that a consent management provider was managing consent on an ADR's behalf, or managing authorisations on a Data Holder's behalf, this scenario would arguably fall under provisions for Outsourced Service Providers within the current Rules.

We suggest that consent management providers should be handled in the same way as an Outsourced Service Provider under the current Rules, with the ADR responsible for its use of consent managers, liable to consumers and under its accreditation requirements in the event of any Rules compliance failures.

American Express would be more than happy to discuss any part of this submission in more detail or to discuss Open Banking or CDR more generally. Please contact Nadia Catchaturyan at [REDACTED] or Adam Roberts at [REDACTED] for further information.