

12 October 2018

## **SUBMISSION TO THE ACCC CONSUMER DATA RIGHT RULES FRAMEWORK**

### **About Plenty Wealth**

Plenty Wealth is a Fintech which provides holistic digital advice. That is, we provide advice on all aspects of a customer's financial situation including debt, life insurance, investment, and superannuation.

Some examples of ways we intend to use open banking data include:

- Income (eg salary, dividends), bank assets, bank liabilities, interest expenses and rent expenses form part of our calculations to determine sustainable future spending in order to achieve stated goals. Importantly, we can only calculate sustainable spending by knowing the actual interest rate being charged on debt and the actual interest rate being earned on bank deposits.
- The data provided to us will inform our view of the suitability of existing financial products used by the consumer. For example if the consumer is earning 0.5% interest on their bank account then we might recommend an alternative account with a higher interest rate. Once again, we can only recommend suitable products if we know the actual interest rate being earned by the customer.

### **Introductory comments**

I commend the ACCC on preparing a well thought through paper that highlights important issues. <https://www.accc.gov.au/focus-areas/consumer-data-right/accc-consultation-on-rules-framework>

One over-arching comment from the lens of an aspiring Data Recipient: In the proposed model there are 2 options for organisations that want to receive data. Either you comply with all the requirements of the rules (and become an Accredited Data Recipient), or you obtain data under section 12.1.1 (and you don't have to comply with any of the rules). There is nothing in between.

While at face value the rules strike a reasonable balance between privacy and access (subject to the comments in this submission), they are also onerous for small businesses. Many recipients will choose not to become Accredited, and will restrict their customer base to those consumers who are more "trusting" using section 12.1.1. From that point onwards, those Recipients are completely unregulated (subject to Privacy legislation, much of which may not apply if they are a small business).

It would be preferable if there were 2 tiers of Accreditation which would result in a lower barrier to entry, more Accredited Data Recipients, and therefore less data being shared with Non-Accredited Recipients.

#### **Section 4.2 – which banks are considered to be the 4 majors?**

In the proposed rules, related brands such as Bank West, Ubank, St George and Bank of Melbourne are not considered to be the four major banks. This is surprising. The related brand usually operates under the same legal entity as the associated major bank. Furthermore, the rationale for the phased approach was the level of resources of smaller banks relative to the four majors. By definition, the related brands have access to the same resources of their associated major bank.

Having the related brands included in the first phase will significantly increase the benefit of open banking during the first year. For customers who have accounts with say NAB and St George (including say a husband having all his accounts with Westpac and a wife having all her accounts with St George), it means the difference between being able to take advantage of open banking or not being able to. The point of open banking is getting a complete picture, so there is no benefit if not all of a customer's banks are in scope at a point in time.

#### **Section 5.3.2 – Transaction Data**

The ACCC has requested submissions on which metadata would be valuable. It would be helpful to know the category of spending or income for each transaction. For example, if payments were made to Coles and Caltex then the bank could categorise the transactions as "groceries" and "petrol" respectively.

#### **Section 5.3.3 – product data**

It is imperative that product data is available at an individual level and not just a generic level. This is both for competition and insight reasons.

A guiding principle should be that if a customer can contact a call centre and obtain a piece of information then that information should be in scope for Open Data. This principle makes sense for a number of reasons:

- If staff in a call centre have access to the information then it must already be stored electronically within the bank's systems.
- If the information can be provided to a customer through the call centre then it is clearly information which the bank believes the customer has a right to know, and is information which customers ask for from time to time.

Here are some (of many) examples of data available through call centres that aren't always shown on internet banking or bank statements:

- The actual interest rate being charged or paid to the customer (including any discounts or bonuses)
- Maturity dates of products (eg term deposits, personal loans)
- Maturity dates of fixed rate loans (eg on mortgages) and bonus interest rates
- The rate that will apply once the fixed rate period or bonus period ends
- Whether loans are fixed or variable
- Whether loans are Interest only or Principal and Interest

- Whether mortgages are for owner occupied or investment property
- Whether a loan is offset against a deposit account, and if so then which one.
- Whether automatic credit card repayments are for the entire balance or minimum balance or some other amount

All of the above might be described as “product data”, however importantly it will vary from customer to customer due to discounts and customisation. It is therefore not sufficient to provide this data at a product level.

All the items in the above list should be in scope.

To appreciate the importance of this data at a customer level, we should first understand some use cases.

Use case 1: This service helps customers get better interest rates on bank deposits. It sends you a monthly notification which summarises how much interest you have received, and compares this with the interest you would have received if you were in the best performing deposit in the market. It also sends you a notification each time your interest rate changes, and each time an alternative with a higher interest rate becomes available. 24 hours before your term deposit matures it also sends you a list of available term deposit rates from all other banks. Variations of this service could apply to any product in any industry. For example the same could apply for life insurance, general insurance, health insurance, superannuation, mortgages, credit cards, electricity, mobile phone plans, grocery shopping etc.

Use Case 2: This service helps you budget. In simplified terms it identifies your income (from transaction data), deducts your mortgage interest (based on the interest rate multiplied by the account balance), projects this into the future, identifies future goals (eg home deposit or wedding) and then works out how much is left for other expenses. Then the service helps you set a budget and then track actual expenses against the budget.

No doubt the major banks will put together lots of arguments as to why they should not provide actual interest rates to their customers. The reality is that there is no single piece of data which will add more to competition than the interest rate (ie price of the service) itself.

Some banks have claimed that if interest rates are out-of-scope then Data Recipients can calculate the interest rate themselves based on remaining data. This is not true. For example:

- Some banks calculate monthly interest daily (ie they divide the interest rate by 365 and multiply by the number of days in the month), some calculate it monthly (they divide the interest rate by 12).
- For credit cards banks have different rules as to when the interest starts accruing.
- The calculations become especially challenging when there are offset accounts involved.

If the calculations are as easy as suggested by some banks, and those banks find it difficult to provide interest rates for technical reasons, then those banks should perform the apparently simple calculations and then they can provide actual interest rates.

If Open Data is to achieve its goals then it is imperative that interest rates and customer specific product data are included.

### Section 6.3 – Accreditation should include all AFSLs.

The ACCC has proposed that a streamlined accreditation process should apply to ADIs. While the details of the streamlined approach are yet to be released, we would encourage the ACCC to consider applying this approach to companies holding an AFSL, all of which are regulated entities. Otherwise ADIs will have a competitive advantage over new entrants.

### 9.5 – Consent should not be limited to 90 days

The ACCC has proposed that consent should be time limited to 90 days. While well intended, this proposal will significantly reduce the utility of open banking.

Suppose we have a group of consumers who have chosen to use a data service, and would have made a decision to receive ongoing data until they chose to opt out (if given the opportunity to do so). However, under the proposed rules, after 3 months they are required to opt in again to continue to receive the service. The use cases 1 and 2 referred to in section 5.3.3 above would provide maximum customer benefit and maximum increase in competition if the timeframe was unlimited. 3 months later, we can divide these consumers into 4 groups:

		Would they make an active choice if required to?	
		Yes	No
Do they still want the service?	Yes	Group 1	Group 2
	No	Group 3	Group 4

- Group 1 – Will continue to receive the service regardless of whether they are required to opt in again. They will see opting in as an inconvenience however they will still do so.
- Group 2 – Will lose access to the service, despite wanting the service to continue.
- Group 3 – Have changed their mind during the 3 months and will have opted out when they changed their mind, so the 3 month time limit does not affect them.
- Group 4 – Have changed their mind (don't want the service any more) and will continue to have their data shared until the time period ends. If there was no time limit then they will continue to share data on an ongoing basis.

Groups 1 and 3 will always get their desired outcome because they engage actively and will opt in or opt out as they see fit.

Numerous studies in behavioural economics show that the majority of consumers tend to accept the status quo, even if it is not their preferred outcome. As a result, the majority of consumers will fall into the right hand side of the table above (Groups 2 and 4).

It is also fair to assume that the majority of consumers will fall into the top half of the table (Groups 1 and 2). That is: If someone requested an ongoing service then it is reasonable to assume that they still want the service 3 months later.

By combining these 2 results from the 2 previous paragraphs, we can see that the largest individual group will be Group 2. These are the people that will would like to have the service operate on an ongoing basis, don't opt in every 3 months, and therefore will not get

the benefit of the service if there is a 3 month time limit. The consequences are reduced competition and customers whose needs are unsatisfied. One might ask the question: If they still want the service then why wouldn't they opt in every 3 months? This question assumes that everyone behaves rationally. Behavioural Economics studies show that people don't behave rationally and this is a perfect example.

We should also look at the downside of people in Group 4 continuing to share their data after they no longer require the service. While we recognise the privacy implications, let's put this in perspective. There are millions of ongoing direct debit arrangements in place in Australia. For example, I have a direct debit arrangement in place to pay my personal gas, electricity, Netflix, mortgage, life insurance, car insurance, home insurance, and health insurance bills. And my business has dozens of software subscription arrangements in place including Google mail, Google Adwords, Microsoft 360, AWS, CRM, Anti-Virus, Xero, LinkedIn, marketing consulting, etc.. I even pay my staff by a standing direct debit. Collectively across my business and personal expenses, these amount to around \$500,000 p.a. Nobody has ever suggested to me that these should all be limited to 3 months. And if such a restriction was imposed I would see it as a significant inconvenience and barrier to productivity. It would create hours of extra work for me each year to the point that I would probably decide not to use some of those services. If big brother doesn't stop me from making ongoing automated payments of \$500,000 p.a. then why should I not be allowed to share my data indefinitely as well? Surely the risks to me of sharing data are less than \$500,000 p.a.

If the banks genuinely don't believe in open ended standing arrangements then I challenge them to turn off all automated direct debits that they receive directly from customers (eg mortgage repayments, credit card repayments) and facilitate (which would include every possible type of ongoing direct debit arrangement because ultimately they all operate through a bank).

Let's compare Groups 2 and 4. By imposing a limit of 3 months, we are favouring Group 4 over Group 2. However:

- There will be more people in Group 2 versus Group 4. Why would we favour the minority over the majority?
- The people in Group 4 are those that have changed their minds. By definition, to be in Group 4 you must have wanted to sign up for the service indefinitely, and then decided that you no longer wanted it. In contrast, members of Group 2 have not changed their minds. Why would we favour those who have changed their minds over those who have stuck to their original decision?
- As described above, the downside of allowing ongoing data feeds is less than the risk that consumers and business take every day when they sign up to ongoing direct debits.

Now let's look at what happens if we limit data feeds to 3 months. There are generally 2 types of data recipients:

- Recipients who require data at a point in time only. An example is collecting historical data for credit assessment purposes. The customers don't need to sign up to ongoing data feeds in the first place.
- Recipients who require ongoing (eg daily or even hourly) data feeds. Examples include budgeting or comparing interest rates on products as described in Use Cases 1 and 2 above. (Section 5.3.3 of this submission).

There isn't much in between.

If we limit feeds to 3 months, and we recognise the reality that most consumers who want the services won't opt back in after 3 months (once again, as proven by numerous Behavioural Economics studies), then the second type of data recipient can expect to retain most customers for only 3 months. It isn't viable to run a service with ongoing revenues where most customers drop out after 3 months – the cost of customer acquisition will exceed the lifetime customer value. It will become difficult (or perhaps impossible) for these services to survive. This will lessen competition and reduce utility for customers.

Also note that even if the time limit was extended from 3 months to a longer period such as 12 months, all the above arguments still apply. The only way to favour the majority of customers and ensure the viability of the services which will enhance competition is to make data feeds open ended.

A sensible alternative to limiting the time period would be requiring notifications be sent to consumers which remind them that they have data feeds in place. There can be a requirement that the Data Recipient provides a notification at least once every 3 months, and that the Data provider provides a reminder no more than once every 3 months. There could be standardised wording, formatting, placement and media to ensure that the messages are clear. In designing these, it should be noted that Data Providers may otherwise be incentivised to use messages which invoke fear, and Data Recipients may otherwise be incentivised to hide their messages. The notification should have a link to a dashboard which enables the customer to opt out.

#### **Section 9.4 – Authorisation**

Ideally, the user will not need to leave the application of the Data Recipient in order to provide authorisation. If they are required to do so for security reasons then the Data provider should have standard text and formatting that it is permitted to show to the consumer. This will reduce the risk of the Data Provider creating fear in the mind of the consumer.

#### **Section 9.9 – Revocation of Authorisation**

If the consumer revokes their authorisation on the Data Provider's application then the Data provider should be required to notify the Data Recipient within a short space of time (eg within 1 minute).

#### **12.1.3 – Intermediaries**

The existence of intermediaries will add to the utility of Open Banking by reducing the barrier to entry for Data Recipients.

I understand that there are approximately 150 ADIs in Australia. It is not realistic for a small or medium sized data recipient (and especially a new entrant building a Minimum Viable Product) to connect with all 150 via an API. A more likely scenario is using an intermediary initially for all requests, and then as the Data Recipient's business gains traction to gradually connect directly with the large banks then the small banks and other ADIs. Only a small proportion of Data Recipients will ever have the resources to connect with all 150 ADIs.

It is also important that the products being built by the Data Recipients can connect (either directly or through an intermediary) with every ADI in the country, otherwise the Data Recipient can't service the entire market. Even though the 4 major banks might have say

80% share of the banking market, it is also likely that say 40% of consumers will have at least one product with a smaller bank because most people have relationships with multiple banks. Intermediaries will help smaller Data Recipients cover the entire market and therefore make their products more viable.

### **Safeguard 1**

The ACCC has proposed Consumer Testing. It isn't clear if every Data Recipient would need to undertake consumer testing, or if this would be conducted by the ACCC on behalf of the industry to create standard wording. If it is the former, then this will be a large cost impost and as a result becoming an Accredited Data Recipient will be unachievable for many organisations.

### **Safeguard 6**

Can the ACCC please consider a scenario where a consumer shares data with a Non-Accredited Data Recipient, and then the Recipient becomes Accredited.

I trust that the information provided in this submission has been helpful. Please feel free to contact me on [REDACTED] if you would like to further discuss the matters raised in this submission.

Yours sincerely,



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Director