

10 February 2020

Dear Sir/Madam

**Visa’s response to ACCC consultation on “how best to facilitate participation of third party service providers”**

Visa welcomes the opportunity to comment on the Australian Competition and Consumer Commission’s (ACCC) consultation paper on facilitating participation of third party service providers under the Consumer Data Right (CDR) regime.

As highlighted in Visa’s previous submissions responding to Open Banking and the Consumer Data standards,<sup>1</sup> we support the objectives of the Consumer Data Right regime, which puts consumers firmly in control of their data and enables the emergence of new players and innovative services that consumers want.

The payments landscape is at a crossroads, driven by the convergence of consumer demand, competition and innovation in the fintech world, and government regulators who are seeking to enhance consumers’ control of their money and financial data. In Australia, the CDR regime is where these trends intersect. This opens financial services to new players, services and possibilities, while giving consumers more choice.

Visa has been a trusted facilitator of commerce between consumers and merchants for decades. We are continuing to evolve our global, open network to meet the demands of consumers and businesses with respect to both payments as well as data access, security and use. As a result, we are building new technology to offer products and services that support CDR. This is a natural evolution of Visa’s 60-year journey during which we have advanced from safely and securely connecting buyers and sellers to connecting fintech developers and financial services firms.

Visa welcomes the ACCC’s recognition that there is a range of innovative business models with the capabilities to operate in the regime. It will be important that the regulatory framework is sufficiently flexible to accommodate emerging business models, without deviating from key principles such as consumer consent and the security of consumer data. An overly prescriptive, or a ‘one size fits all,’ approach to regulation runs the risk of stifling innovation and competition in an evolving CDR environment.

Intermediaries play an important role in the data economy by facilitating the efficient and secure collection and distribution of data, powered by the latest, most secure technology, and supporting the growth of new products and services.

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<sup>1</sup> Previous submissions:

Treasury.gov.au. (2018). Submission on Consumer Data Right Exposure Draft Visa’s Perspectives and Recommendations. [online] Available at: <https://treasury.gov.au/sites/default/files/2019-03/t329531-Visa.docx> [Accessed 6 Feb. 2020] Treasury.gov.au. (2020).

Visa Inc.’s Submission to the Review into Open Banking in Australia – Final Report. [online] Available at: <https://treasury.gov.au/sites/default/files/2019-03/T282002-Visa.pdf> [Accessed 6 Feb. 2020].

Visa supports a regulatory framework that allows intermediaries to become accredited and to collect CDR data on behalf of data recipients. We also recognise that there will be a variety of providers in the CDR space, and that intermediaries may vary in the types of services they support. Given the evolving nature of data movement, the ACCC might consider an accreditation regime that allows sufficient flexibility to support different types of intermediary services. This could be implemented through defined tiers or a principles-based application of certain requirements.

Visa would also suggest that accredited intermediaries and data recipients should be able to utilise outsourcing models to enhance the efficiency of their offerings (e.g. storage or technology outsourcing arrangements), provided such outsourcing arrangements are subject to appropriate security requirements and controls.

Visa is also of the view that the rules should allow for the possibility of the disclosure of CDR data by an accredited person to non-accredited third parties. We believe that extending the CDR in this manner is likely to increase uptake of the CDR regime, by lowering the barrier of entry to innovative fintechs and other small- to medium-sized businesses, such as accountants. We agree with the ACCC that this kind of flexibility has the potential to increase the benefit to consumers through more choice in innovative products and providers. In some ways, such disclosure could provide efficient digital means for the consumer to securely share information with service providers, much the same way they might today using paper copies. Again, such disclosure should always be with consumer consent and appropriate consumer protections in place.

Appendix I sets out the specific questions raised in the ACCC's consultation paper alongside Visa's responses.

As the world pivots to a new orientation based on open data, Visa will continue to leverage our capabilities to deliver value for consumers, financial institutions, fintechs, developers, acquirers and merchants. For example:

- **Consumers** will have more choices in managing their financial data, unlocking new possibilities like paying bills securely on a third-party app or sharing transaction data with other bank or fintech applications. Visa supports empowering consumers with robust tools to manage their financial information and enabling them to have the ability to access and use it however and whenever they choose.<sup>2</sup>
- **Financial Institutions** will be able to build more innovative financial services products, enhance consumer experiences and strengthen their consumer relationships. For example, with consumer consent, a bank could use transaction history to provide consumers with a full-wallet view of their spending, highlighting opportunities for consumers to save money via budgeting and proactive money management.

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<sup>2</sup> Accc.gov.au. (2020). Consultation on how best to facilitate participation of third party service providers, page 3. [online] Available at: [https://www.accc.gov.au/system/files/CDR%20consultation%20paper%20-%20participation%20of%20third%20party%20service%20providers\\_0.PDF](https://www.accc.gov.au/system/files/CDR%20consultation%20paper%20-%20participation%20of%20third%20party%20service%20providers_0.PDF) [Accessed 9 Feb. 2020].



- **Acquirers / Merchants** will be able to utilise consumer financial data to enhance their offerings. For example, if you are a seller you can provide your customers with a broader range of secure, convenient payment options at the point of sale.
- **Fintech / Developers** can accelerate their business with easy-to-integrate application programming interface (API's) that will help them create the next generation of excellent, digital financial experiences.

Visa appreciates the opportunity to provide our perspectives on this topic and looks forward to the release of the draft rules. If there are any queries regarding this submission, Visa will be happy to assist.

Yours sincerely

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## Appendix I – Visa’s response to ACCC’s specific questions in the “Consultation on how best to facilitate participation of third party service providers” Paper

**ACCC question:** If you intend to be an intermediary in the CDR regime, or intend to use an intermediary, please provide a description of the goods or services you intend to provide to accredited persons or to CDR consumers using an intermediary. Do you intend (or intend to use an intermediary) to only collect CDR data, or collect and use CDR data? What value or economic efficiencies do you consider that intermediaries can bring to the CDR regime and for consumers?<sup>3</sup>

**Visa response:** Just as we do today, Visa intends to continue to play a network role by connecting parties to enable the transfer of payments data and information. For more than six decades, we have been safely and securely processing billions of payments transactions each year all over the world. Safety and security are core values for Visa, and we intend to bring our experience and expertise to the Consumer Data Right regime. We are building new technology to offer products and services that will allow us to participate in the value chain.

More broadly, in a global Open Banking environment, intermediaries can create value and economic efficiency by enabling consumers to connect third party developers to their data held by multiple data holders without having to establish individual connections to each holder. In addition, an intermediary can facilitate the “normalisation” of data that might appear in different formats in different bank environments to make that data more accessible to the data recipient, as well as creating more secure environments for access to such data (e.g. through encryption or other means). This makes it easier for consumers to securely link multiple accounts at different banks to their chosen app, and may enhance the ability of such apps to deliver secure, efficient services to consumers. Intermediaries, such as Visa, that are leaders in the technology space can also leverage their experience in cybersecurity, encryption technology, and fraud and risk monitoring to drive security and trust in the Consumer Data Right ecosystem.

**ACCC question:** How should intermediaries be provided for in the rules? In your response please provide your views on whether the rules should adopt either an outsourcing model or an accreditation model, or both and, if so, and in what circumstances each model should apply?<sup>3</sup>

**Visa response:** We believe that an accreditation model for intermediaries would best serve the ACCC’s goals of enabling consumers to access and utilise their financial data in innovative ways, while maintaining high standards in the areas of consumer consent, safety and security.

An accreditation model, with clearly defined requirements and standards, will drive consistency and confidence between all participants in the ecosystem. Areas where this will be important include managing data, privacy safeguards and dispute resolution.

<sup>3</sup> Accc.gov.au. (2020). Consultation on how best to facilitate participation of third party service providers, pages 3-5. [online] Available at: [https://www.accc.gov.au/system/files/CDR%20consultation%20paper%20-%20participation%20of%20third%20party%20service%20providers\\_0.PDF](https://www.accc.gov.au/system/files/CDR%20consultation%20paper%20-%20participation%20of%20third%20party%20service%20providers_0.PDF) [Accessed 9 Feb. 2020].

Visa favours maintaining the current outsourcing model, in addition to the intermediary model, to support the use of third parties that intend to perform niche and limited roles (e.g. storage or technology outsourcing).

**ACCC question:** What obligations should apply to intermediaries? For example, you may wish to provide comment on:

- a. if intermediaries are regulated under an accreditation model, the criteria for accreditation and whether they should be the same or different to the criteria that apply to the current ‘unrestricted’ level, and the extent to which intermediaries should be responsible for complying with the existing rules or data standards;
- b. if intermediaries are regulated under an outsourcing model, the extent to which contractual obligations should be regulated between accredited persons and intermediaries;
- c. if the obligations should differ depending on the nature of the service being provided by the intermediary.<sup>3</sup>

**Visa’s response:** We believe the accreditation criteria applied to intermediaries (whether tiered or principles based) should be commensurate with the nature of services they may provide and the kind of data they may be collecting or using. Data security requirements in particular should be risk-based and tailored to the role of the intermediary in the overall value chain. A “one size fits all” approach may unnecessarily restrict entry of new players and innovation into the Australian market.

As discussed above, Visa believes that the current outsourcing model should be available to support the use of third parties that intend to perform a very niche and limited role (e.g. storage or technology outsourcing). However, the use of the outsourcing model as the only option for intermediaries would be unnecessarily restrictive and undermine the CDR’s objectives of enhancing innovation and competition.

**ACCC question:** How should the use of intermediaries be made transparent to consumers? For example, you may wish to comment on requirements relating to consumer notification and consent?<sup>3</sup>

**Visa’s response:** We support consumer transparency to ensure that consumers are able to have a clear understanding of the data that may be accessed, who is handling their data, how it is being used, and how authorisation for this processing can be withdrawn. Since the intermediary may not have the direct consumer relationship, the onus will ultimately be on the entity that owns the consumer relationship.

**ACCC question:** How should the rules permit the disclosure of CDR data between accredited persons? For example, you may wish to comment on requirements relating to consumer consent, notification and deletion of redundant data, as well as any rules or data standards that should be met?<sup>3</sup>

**Visa’s response:** In this new evolving area, any regulatory framework should, as much as possible, be principles based and technology neutral. Over time, more efficient and advanced ways of achieving the same objective will develop and, given that this is an evolving area, we would encourage that the regulatory framework allows for this.

Intermediaries that are collecting data to provide services to a broad range of clients, including, developers, fintechs, merchants and financial institutions, may or may not have

the direct end-consumer relationship. As stated previously, the onus should ultimately be on the entity that owns the consumer relationship to make clear to the consumer what data may be accessed, who is handling their data, how it is being used, and how authorisation for this processing can be withdrawn.

**ACCC question:** Should the creation of rules for intermediaries also facilitate lower tiers of accreditation? If so, how should the criteria and obligations of new tiers of accreditation differ from the current ‘unrestricted’ accreditation level, and what is the appropriate liability framework where an accredited intermediary is used? <sup>3</sup>

**Visa’s response:** In order to encourage maximum competition and innovation, we believe that the framework should be sufficiently flexible to accommodate smaller fintechs or developers who do not have the resources to meet the requirements of an ‘unrestricted’ accreditation level and may be dealing, comparatively, with a small number of customers. In Europe, the regulatory regime is flexible enough to allow fintechs and developers to connect to an authorised intermediary without necessarily being authorised themselves.

**ACCC question:** What privacy and consumer protections should apply where an accredited person to a non-accredited third party will disclose CDR data? <sup>3</sup>

**Visa’s response:** We support a consent-based regime for the collection, use and disclosure of a consumer’s CDR data from an accredited person to a non-accredited third party. The regime should ensure that the consent is voluntary, express, informed and can be withdrawn.

**ACCC question:** What degree of transparency for CDR consumers should be required where an accredited person discloses CDR data to a non-accredited third party? For example, are there particular consent and notification obligations that should apply? <sup>3</sup>

**Visa’s response:** As discussed above, we support consumer transparency to ensure that consumers are able to have a clear understanding of what data may accessed, who is handling their data, how it is being used, and how authorisation for this processing can be withdrawn. Since the intermediary may not have the direct consumer relationship, the onus should ultimately be on the entity that owns the consumer relationship to make this clear.