

20 July 2020

Australian Competition and Consumer Commission  
Consumer Data Right

Email: [ACCC-CDR@acc.gov.au](mailto:ACCC-CDR@acc.gov.au)

### **CDR Draft Rules Consultation for Accredited Intermediaries**

Thank you for the opportunity to comment on the CDR draft Rules to allow accredited collecting third parties.

The Financial Data and Technology Association (FDATA) is a global association of innovative businesses that help people make better decisions about their financial lives and wellbeing. FDATA leads the campaign for open finance and global interoperability and is a focal point for sharing industry knowledge.

Beyond the UK and Europe, FDATA actively advises policymakers in Singapore, South Africa and Hong Kong. The FDATA North American chapter covers Canada, the United States and Mexico. FDATA is building chapters in Australia, New Zealand, Asia and South America.

FDATA welcomes the ACCC's intention to introduce accredited data intermediaries. The CDR is an evolving system, and as discussed during the recent workshop, the draft Rules are the first step for data intermediaries. However, the Rules, as drafted, may result in unintended complexity both in the short term and as the CDR evolves.

#### **Economies of Scale**

The draft Rules require both the Provider (data intermediary) and Principal (consumer service provider) in a Combined Accredited Person (CAP) arrangement to maintain an unrestricted level of accreditation. Data security is paramount, and there are many ways Providers and Principals might collaborate. However, without tiered accreditation, the draft Rules may not drive more participation in the CDR by the introduction of accredited intermediaries.

The CAP arrangement appears similar in structure to the card payment network. Generally, payment intermediaries are necessary to maintain links between disparate card networks and platforms and the essential systems and procedures to protect payment data and detect fraud. In this sense, a payment intermediary is necessary for economies of scale across a complex and often legacy network.

Currently, intermediaries to collect banking data are necessary because of the lack of standardised APIs. Open banking reduces that barrier. Thus, the value of data intermediation moves away from merely collecting and becomes data structuring, linking, management, protection and analytics.

Given the retention of Outsourced Service Providers, the likely practical implementation of the data segregation control, and the flow of liability, if Providers and Principals must both meet the unrestricted level of accreditation, the economies of scale the draft Rules aim to drive are unclear.

### **Outsourced Service Provider**

The CAP arrangement 'may allow the provider to perform all or part of the functions'<sup>1</sup> in paragraph 1.10(1)(a) including; collecting data, obtaining consent and making consumer data requests. Paragraph 1.10(1)(b) allows for a broader scope of services between Principal and Provider. Except for collecting data, the list of permitted functions appears to be the same as those an ADR can outsource to an external provider.

If that interpretation is correct, the value of being an accredited data intermediary, relative to an Outsourced Service Provider, is unclear. It may add risk if more data moves between an ADR and its Outsourced Service Provider (even if encrypted as required by the Safeguards), and potentially creates an unlevel playing field between the two types of participants.

### **Liability**

Under the CAP arrangement, the Principal and Provider may decide which will discharge various CDR obligations. The Provider will be liable under both the Rules and the CAP contract if it fails to meet an obligation.

However, a breach by the Provider is taken to be a breach by the Principal. The Principal seems to be always liable; by Rules enforcement, an action for damages for a breach of the Privacy Safeguards or under the implied contract between Data Holder and accredited person.

The resources and capability to conduct continuous due diligence on a Provider may be an insurmountable barrier for smaller or start-up businesses (Principal) offering new or innovative consumer services. Further, without a safe harbour or reliance on facts such as accreditation, no level of due diligence may be adequate because of the risks the Principal faces even if it can recover damages under its CAP contract with a Provider.

We look forward to contributing to the ongoing discussion about intermediaries and the evolution of open data sharing in Australia. Also, we continue to welcome and encourage Australia's contribution to global standards and interoperability. Should you require further information or clarification, please contact us at [REDACTED].

FDATA, Australia and New Zealand

---

<sup>1</sup> Paragraph 1.10A(3)(b)