



20 July 2020

Australian Competition & Consumer Commission
Consumer Data Right Rules Team
GPO Box 3131
CANBERRA ACT 2601

By electronic mail: ACCC-CDR@acc.gov.au

Dear Consumer Data Right Rules Team,

Consumer Data Right Rules Consultation

Visa Inc. (Visa) welcomes the opportunity to comment on the Australian Competition & Consumer Commission's (ACCC) "Draft rules that allow for accredited collecting third parties ('intermediaries')" (the Draft Rules) and commends the ACCC's efforts in fostering an inclusive and innovative data-sharing framework that will catalyse the next stage of Australia's economic reform and development.

Visa shares the ACCC's goal of enhancing and leveraging the Consumer Data Right (CDR) for the benefit of Australian citizens and businesses, and we have welcomed the opportunity to share our views on the CDR with the ACCC and Treasury on several occasions. In 2018, for example, we provided our views to Treasury on the early development of the CDR.¹ In the course of this year, we have shared our perspectives with the ACCC on facilitating participation of third-party service providers,² and also provided Treasury with our views on expanding the CDR to 'write access'.

We welcome the recent progress with the introduction of the CDR in Australia. This includes the CDR Privacy Safeguard Guidelines published by the Office of the Australian Information Commissioner, the Accreditation Guidelines published by the ACCC, Treasury's announcement of the expansion of the CDR beyond banking to the energy sector, and finally, that 'read access' is live³ as of 1 July 2020 for Australia's largest banks.

¹ Treasury.gov.au. (2018). 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 9 July 2020].

² Visa's position paper in response to the Australian Competition & Consumer Commission's industry consultation request on facilitating participation of third-party service providers under the CDR regime is available online at: <https://www.accc.gov.au/system/files/CDR%20Rules%20-%20intermediaries%20consultation%20submission%20-%20Visa.pdf>.

³ <https://www.accc.gov.au/media-release/consumer-data-right-goes-live-for-data-sharing>

Visa is invested in the success of the CDR in Australia. The financial services industry is transforming rapidly across the globe, largely driven by the emergence of new technologies and fintech solutions, as well as ever-increasing consumer demands for innovative and agile products and services that offer security, simplicity, convenience, and value. As a result, the ways in which consumers interact with their financial institutions and their data are changing. In 2019, Visa conducted market research in Australia regarding consumer data-sharing preferences and behaviours. Notably, 90% of Australian consumers surveyed report a basic understanding of how information is used in conducting digital activities.⁴ This points to the fact that consumers are digitally engaged and savvy and, therefore, capable of making informed decisions over the use of their data for a more personalised financial services experience. Australia reflects this global trend towards data-sharing, as evidenced by its dynamic and emerging fintech environment and the progression of the CDR from theory to practice.

Visa has a 60-year track record of leading payments innovations and is committed to helping create the next generation of financial products and services in Australia and globally. We strive to put an emphasis on openness and collaboration, in addition to engagement, and believe that innovation can – and will – come from anyone, anywhere. These core values reflect Visa's 60-year journey, during which we have advanced from safely and securely connecting buyers and sellers to connecting fintech developers with financial services firms, and vice versa.

Visa appreciates the continued opportunities to collaborate with the ACCC and other Australian government bodies to fulfill the objectives of the CDR. We share our observations on the Draft Rules below.

I. INITIAL CONSIDERATIONS ON THE DRAFT RULES

As new players and technologies are transforming the data-sharing landscape in Australia, regulation should seek to limit any significant risks whilst also promoting innovation along with competition in the marketplace. This can be a delicate balance to achieve, and one that must keep both consumer demand along with consumer protection at the forefront of consideration.

As an overarching principle – and based on our experience of how Open Banking is developing across the globe – we encourage a flexible approach to regulation and caution against an overly prescriptive or interventionist approach. To aid in the success of the CDR and the open data ecosystem, we encourage regulators to create the right incentives for developers, intermediaries, and financial institutions to invest in new and innovative financial services that will satisfy consumer demand. Visa supports a framework that appropriately focuses on consumer choice, transparency, and data security. Given that the data-sharing ecosystem in Australia is still nascent, an overly prescriptive approach with respect to intermediaries could stifle innovation, inhibit different business models from emerging, and may ultimately result in delayed innovation and consumer adoption.

⁴ The consumer research findings are drawn from the internal Visa report, Global Consumer Research Findings (September 2019). The research sample size was 800 consumers.

Additionally, the success of the CDR and the open data ecosystem will be impacted by how straightforward it is for fintechs and developers to enter the value chain and innovate. We encourage the ACCC to avoid creating an accreditation process that does not take sufficient account of the roles and potential level of risk from the participants, and which could act as a disincentive to fintechs and developers. A 'one size fits all' design approach to the accreditation process and associated requirements could become an inhibitor to entry and innovation. We therefore encourage the ACCC to consider the possibility of different tiers of accreditation based on the scope of services provided. Furthermore, we suggest the ACCC allow the sharing of data between accredited and non-accredited data recipients pursuant to commercial terms that address important issues like data security, safety and consumer preference. Ultimately, a more inclusive environment will encourage more innovators to participate in the Australian ecosystem, making it both more competitive and responsive to consumer and business needs.

The ACCC's consultative approach to the Draft Rules provides a timely opportunity to consider the benefits of a principles-based approach at the early stages of Open Banking, as opposed to more prescriptive rules regarding specific roles and responsibilities within the ecosystem. We note that other jurisdictions which were also early proponents of Open Banking – such as the United Kingdom (UK) – are now reviewing their regulatory regimes to address regulatory burdens as the sector considers moving toward a broader 'open finance' framework. The UK Financial Conduct Authority (FCA) has recognised that while the banks have been required to expose Application Programming Interfaces (APIs), adoption of Open Banking services is still limited, and regulatory burdens are being addressed to ensure long-term success. We commend the ACCC for seeking early stakeholder engagement in the development of the Draft Rules to help guide the success of the CDR and an open data ecosystem in Australia.

II. SPECIFIC ISSUES RAISED IN THE DRAFT RULES

Visa believes there is a significant and essential role for intermediaries that can contribute value and economic efficiency for all CDR ecosystem participants. We commend the ACCC for recognising the important role intermediaries play in engaging with data holders and facilitating consumer data requests. This results in a robust data-sharing environment conducive to creating innovative goods and services for consumers, businesses, and financial institutions. A secure environment for enabling data availability makes it easier for developers to create innovative products and services that consumers can use and trust across multiple accounts. For consumers, this environment gives rise to a sense of security in data-sharing and facilitates data-sharing to create value without having to establish multiple connections.

Against this backdrop, below we address some specific issues relating to the Draft Rules.

(1) Consumer choice and transparency will underscore a trust-based data-sharing ecosystem

Visa supports the ACCC's focus on consumer consent and transparency and the reflection of these principles in the Draft Rules, as well as in the broader CDR framework. Earning public trust to handle and use important financial data necessitates a commitment to privacy, security, and transparency. We believe in empowering consumers with tools to easily access, manage, and use their financial information. When presented with an opportunity to enable financial services or access information that requires consumers to share their personal data,

consumers should be provided with clear information as to what data they are sharing; who may use the data they share; for what purposes and over what periods the data will be used; and clear, simple, and consistent information about their choices and how to manage their data-sharing permissions. To this end, Visa supports the empowerment of consumer data-sharing through the requirement that consumers be provided information to make informed decisions based on a transparent understanding of how that data is used, assurances that it will be used responsibly, and rights to maintain or withdraw data-sharing permissions. Finally, we encourage the ACCC to also recognise that aggregated or otherwise de-personalised data sets (built from properly collected data that reflects appropriate and transparent consumer preferences) are also critical to supporting both innovation and ecosystem health and safety. State-of-the-art fraud and risk tools cannot exist without such information. Accordingly, we encourage the ACCC to avoid placing artificial barriers around potential use cases that could benefit from the CDR, and instead allow the key principles of the regulation – transparency, security and consumer preferences – to drive the implementation of this framework well into the future.

(2) An overly prescriptive approach to commercial roles may inhibit competition and innovation at this early stage

As an overarching guidepost, we encourage the ACCC to take a flexible approach to commercial roles (currently envisioned as ‘principal’ and ‘provider’ in the Draft Rules) in order to allow the data-sharing ecosystem to develop, rather than being overly prescriptive at this early stage of the CDR’s development. Given the diversity of ecosystem participants and early stages of Open Banking as a sector, the defined roles of principal and provider contemplated in the Draft Rules may be overly limiting and specific, potentially inhibiting the dynamism of innovation and lessening competition. Instead, we encourage the ACCC to allow the relationships among different parties in the ecosystem to evolve through commercial agreements guided by consumer demand and preferences.

As the CDR develops in a live, dynamic environment, intermediaries will seek to differentiate themselves by creating innovative goods and services, which may play different roles depending on the services provided to, and the specific commercial relationships with, third parties. In our view, the role for intermediaries should be flexible and guided by the principles of consumer consent and appropriate standards of data security – key concepts that underlie the broader CDR framework. We believe that prescribing strictly defined roles at this early stage of the CDR’s implementation may have the unintended consequence of constraining innovative new business models and technologies that would otherwise emerge to provide valuable services that fulfil consumer needs.

The next year will be crucial in evaluating the success of the CDR, particularly given that data aggregation (‘read access’) is underway for Australia’s largest banks, ‘write access’ is under consideration, and small banks may join the data-sharing ecosystem. With these dynamic elements at play, and still evolving, we propose that a principles-based framework should be considered a more sustainable and future proof approach to a successful open data ecosystem.

Additionally, we suggest that the Draft Rules should allow for the possibility of disclosure of CDR data by an accredited person to non-accredited third parties, as this will encourage the uptake of the CDR regime by lowering the barrier of entry to fintechs and other players. The collection, use, and disclosure of a consumer's CDR data from an accredited person to a non-accredited third party should be guided by terms that address important issues including data security and safety and are driven by consumer preference.

(3) An agile and tiered approach to accreditation can encourage innovation

Visa encourages the ACCC to consider an agile and tiered approach to accreditation to support a robust level of innovation and entry. For example, the requirements to gain accreditation, and the level of accreditation, should be proportionate to the risk, scope and nature of services being offered. A 'one size fits all' approach to accreditation that is not adaptable to the range of goods and services that different intermediaries offer may lead unintentionally to fewer new players and less innovation in Australia.

III. CONTINUED ENGAGEMENT AND PARTNERSHIP

The "Overview of the Consultation Process" notes that the ACCC and the Data Standards Body is hosting workshop-style discussions with stakeholders during the consultation period. We commend the ACCC's inclusive approach to the Draft Rules and the CDR at large, and have participated in one such workshop.

In closing and as outlined above, Visa has submitted comments on the CDR to the ACCC and Treasury throughout the last several years. We are committed to remaining highly engaged with Australian government agencies as the CDR framework evolves. We will continue to participate in these important discussions and contribute to future consultations.

Visa appreciates the opportunity to provide our perspectives on the ACCC's Draft Rules. We look forward to supporting the Australian Government as it transitions to a data-sharing economy.

Yours sincerely,

A solid black rectangular box used to redact the signature of Julian Potter.

Julian Potter
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