

10 May 2019

Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

Consumer Data Right Rules – consultation review

eftpos Payments Australia Limited (**eftpos**) welcomes the opportunity to respond to the above consultation for feedback on the Consumer Data Right Rules published 29 March 2019 (**the Rules**).

eftpos operates the designated eftpos Payment System, an Australian owned and based debit payments system providing cardholders access to their funds. eftpos' membership includes a number of financial institutions and Australian retailers.

While some of eftpos' membership will hold the roles, as defined under the Rules, of Data Holder, Accredited Data Recipient and CDR Participant when the Rules come into effect 1 July 2019, eftpos has been involved as an approved operation member, in the AusPayNet review of issues relevant to the Consumer Data Rights, including issues of privacy, and provides the following feedback:

- 1) There is some ambiguity in terms between the *Treasury Laws Amendments (Consumer Data Right) Bill 2018 (the Act)* and the Rules so far as the Act refers to both 'a designated gateway for CDR' and CDR Participant, while the Rules make no mention of 'a designated Gateway'. This may cause confusion as to whether 'a designated Gateway' is intended to be considered as a CDR Participant under these Rules. More specific definition around these terms within the Rules may help alleviate any confusion;
- 2) The definition of CDR Participant does not contemplate that different participants within the CDR framework will undertake different roles, for example gateways, contract management, interoperability facilitator, each of which would, naturally, assume differing levels of activity, responsibility and accountability (ie. holding of information vs non-holding) when acting within that framework. As an example, 'a designated gateway', may not hold information in its own right, or on behalf of another entity in so far as it merely passes a message between the parties without retaining or holding that information.
Not differentiating between the various roles of CDR Participants (and 'a designated Gateway' as the case may be), nor including terms in the Act and Rules to better reflect those specified roles, stifle competition due to confusion around regulatory impact, for example:
 - a. entities, acting as CDR Participants, which would otherwise not be required to adhere to RG165, would be required to do so under Rule 6.3; and
 - b. CDR Participants are required under 7.2(4) and 7.4(5) of the Rules to make available a CDR policy directly to a CDR customer, and in accordance with Rule 7.7, advise the CDR consumer of any incorrect, inaccurate, out of date or incomplete information. CDR Participants, in most foreseeable instances, would not have any direct relationship to the CDR Customer and would be unable to meet these obligations.

eftpos suggest that to assist in establishing an open assess framework for all potential participants and to ensure there is competition of roles within the framework upon its commencement (and thereafter):

- Clear definitions for both CDR Participant and 'a designated Gateway' are required within the Rules; and
- A review of whether there needs to be a tiered system for obligations and requirements within the Act and Rules to apply to the various levels of CDR Participant, depending upon their activities, so as to better reflect the actual responsibilities and requirements of participants.

We would be pleased to discuss this submission further with you.

Yours sincerely



Stephen Benton
Managing Director