



Australian Government

Review into Open Banking in Australia

Issues Paper

August 2017

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Consultation process

Request for feedback and comments

Interested parties are invited to comment on aspects of any or all of the issues raised in this paper by 22 September 2017.

Submissions may be lodged electronically or by post.

Providing a confidential response

All information (including name and address details) contained in formal submissions will be made available to the public on the Australian Treasury website, unless it is indicated that you would like all or part of your submission to remain confidential. Automatically generated confidentiality statements in emails do not suffice for this purpose. Respondents who would like their submission to remain confidential should provide this information marked in a separate document.

A request made under the *Freedom of Information Act 1982* for a submission marked 'confidential' to be made available will be determined in accordance with that Act.

Further consultation process during the Review

The Open Banking Review will consult broadly with representatives from the banking, consumer advocacy and FinTech sectors and other interested parties in developing the report and recommendations. This may involve conducting targeted roundtables with interested stakeholders on specific issues where the Review requires more information or to solicit further views.

Closing date for submissions: 22 September 2017

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Review into Open Banking in Australia

Introduction

This Issues Paper explains the context and background for the Government's decision to introduce an Open Banking regime in Australia and invites interested parties to make submissions on the most appropriate model for Australia and the best approach to implementing it.

Open Banking is an example of the increasing trend by governments around the world to find ways to allow greater choice for customers, in this case by giving them easier access to, and more control over, data relating to their finances and transactions held by their banks. Providing customers with better access to such data reduces the time, cost and inconvenience associated with identifying and selecting financial products and services. When consumers make better choices about how and what to consume, the industry affected is driven to become more efficient and competitive. Improved access to data also has the potential to promote innovation and assist service providers to increase the quality and range of their products and services and better tailor their offerings.

In Australia, a number of recent reviews and inquiries have recommended expanding customers' access to data. The 2014 Financial System Inquiry (the Murray Inquiry) recognised the role that increased data sharing could play in the development of alternative business models and products and services of the type that will improve consumer outcomes in financial services. It argued for the development of standards for accessing and formatting data and product information, whilst addressing consumer privacy concerns to strengthen confidence and trust in the use of data.

Similarly, the 2015 Competition Policy Review (the Harper Review) recommended that the Government consider ways to improve individuals' ability to access their own data to inform customer choices. To develop these ideas fully, the Government commissioned a Productivity Commission (PC) Inquiry into Data Availability and Use (the PC's Data Report). The PC's Data Report recommended a new right for consumers across the economy to direct data holders to transfer the consumer's data in a machine-readable form to the consumer or their nominated third party. The Government is currently considering what actions to take in response to the PC's Data Report.

Finally, the 2016 Report of the House of Representatives Standing Committee on Economics' Review of the Four Major Banks (the Coleman Report) concluded that there is a strong case for increasing consumers' access to their banking data and to banking product data. The Committee therefore recommended that banks be required to provide open access to customer and small business data by July 2018.

The terms of reference for this Review require it to have regard to this broader context. The Review's mandate is to make recommendations to the Treasurer on:

- the most appropriate model for Open Banking in Australia
- a regulatory framework under which an Open Banking regime should operate, and
- a roadmap and timetable for its implementation.

Full terms of reference for the Review can be found at www.treasury.gov.au.

What is ‘Open Banking’?

Open Banking refers primarily to giving customers greater access to and control over their own banking data. Open Banking can be distinguished from ‘open data’, which refers to data that is available, typically on the internet, that anyone can access, use or share without the need to obtain consent. Rather, Open Banking enables the customer to direct that they, or third parties chosen by them, be provided with pre-determined parts of their banking data in a secure environment and in a prescribed way, so that it can be used to offer them new or better services, such as:

- more competitive banking products that better suit their needs, or banking products that would otherwise not have been available to them, or
- better personal financial management, accounting, tax and budgeting tools.

The term is also used to refer to enabling open access to banks’ data on their products and services.

What are the likely benefits and costs of Open Banking?

Open Banking promises substantial benefits for competition, innovation and productivity. It has the potential to improve competition by increasing customers’ ability to assess which products and services best meet their needs, and by increasing the range of products and services available to customers. Better and more cost effective data access has the potential to decrease barriers to entry for new providers and to incentivise existing providers to bring new offerings to market. Improved data availability and lower costs for receivers of data may provide opportunities for innovators to develop: new banking or related services (e.g. risk mitigation services); new non-banking services using the data (e.g. analysis of spending behaviour); or improvements to existing non-banking services (e.g. better connections with accounting software).

These potential benefits need to be weighed against the costs and risks associated with change. It is expected that some costs will be incurred in complying with any regulation associated with the regime. And some institutions could miss out on opportunities if customers choose to capture the value in their data for themselves. Importantly, different safeguards may be needed to ensure that only customers themselves can initiate access to their data.

International context

Globally, Open Banking is progressing in a range of jurisdictions. The United Kingdom (UK) is pursuing a progressive rollout of access to banking data under a mandated Open Banking standard, commencing with the preliminary phase in March 2017 of providing open Application Programming Interface (API) access to branch location data. The UK’s Competition and Markets Authority has established and is overseeing an ‘Implementation Entity’ tasked with determining specific industry data sharing protocols. The standards and sharing of customer and transaction data via open APIs are required to be in operation by 1 January 2018. While the UK has made progress towards realising an Open Banking regime, its policy development process has encountered a number of challenges from which other jurisdictions can learn.

The European Union (EU) has moved towards an Open Banking regime via initiatives to mandate payment initiation and account data retrieval by third parties through the Payment Services Directive 2 (PSD2) and to establish data protection regulations, including rights to transfer personal data — the General Data Protection Regulations (GDPR). PSD2 is due to come into force in January 2018, while GDPR will take effect from May 2018.

In the United States, a highly competitive financial ecosystem is creating pressures to engage in synergistic data sharing between established banks and Financial Technology (FinTech) companies. These collaborative partnerships are developing rapidly to extract value from data-driven innovation.

In our region, Singapore has taken steps towards adopting Open Banking — via the use of open APIs — and has defined non-binding standards to encourage greater data sharing. Elsewhere, Japan’s Cabinet agreed draft legislation (Banking Law Amendment) in March of this year to oblige banks to open their APIs.

In addition to drawing on experiences in other jurisdictions, this Review may consider the degree to which alignment with Open Banking regimes in other jurisdictions is desirable or necessary.

What the Review will examine

What data should be shared, and between whom?

There are a range of interpretations of what constitutes customer banking data — from the narrow to the relatively broad. In addition to customer data, banks hold a range of data on their investment, loan and deposit products, and their associated fees and charges. Some data may be more valuable to customers than others and some may cost more for banks to provide. In making its recommendations, the Review will consider which data sets promise the largest net benefit to customers and the community, taking into account the specific characteristics of the Australian banking system and the likely costs of implementation.

The Review will also examine who should be required to share banking data. Applying the requirement broadly would maximise the number of customers who would benefit from being able to unlock the value of their banking data and make the scope of the regime clear. However, for smaller banks, the cost of implementing the reforms may be disproportionately high. The UK’s Open Banking regime applies to the nine largest banks, which collectively account for the bulk of the UK banking market.

The right to direct that data be transferred could be made available to a broad range of customers, or applied in a more restricted way. The broader the range of customers who can initiate instructions to access data, the greater the benefit, and the greater the regulatory burden. The right could be restricted to individuals, or include some businesses. If the right to seek access to data includes small businesses, for example, an appropriate definition would need to be adopted and that status would need to be verifiable by the respective data provider.

Finally, with whom data can be shared and how data is used will be important. Enabling third parties (such as FinTech companies) to develop new banking products and services for banking customers that deliver enhanced outcomes — such as lower fees or lower loan interest rates — will be critical to realising the benefits of Open Banking. The Review may therefore consider mechanisms by which third parties can be identified for suitability to participate in the Open Banking regime.

How should data be shared?

The terms of reference ask the Review to examine the mechanisms for sharing relevant data, including existing or potential sector standards. As part of that examination, the Review will consider whether it is appropriate to set out specific data transfer standards and, if so, the best model for defining those standards.

The Review will also consider specifications and rules (including legal frameworks) to govern the data transfer process in order to provide appropriate protections for customers, whilst being flexible

enough to accommodate future technological innovation. The Review may also take into account whether such specifications and rules would allow for broad participation or would create barriers to entry that could risk excluding certain players from participation.

Determining how a data transfer request is to be initiated by the customer and how that data is to be shared will be an important step in establishing a successful Open Banking regime in Australia. As customers should be able to require their bank to share their data directly or with a third party chosen by them, the Review will consider how to ensure that the customer should become properly aware of the terms of access and use of their shared data.

How to ensure shared data is kept secure and privacy is respected?

Banks currently take substantial steps to ensure that customer data is kept secure and identity fraud is minimised. Enabling data to be shared more widely could increase the risk of unauthorised access resulting in financial loss.

The security of data and customer privacy will therefore be vital in developing and maintaining customers' trust in the benefits of Open Banking. The Review will consider what controls may need to be in place to identify, assess, manage and mitigate risks related to data release and sharing as well as data collection and storage. This may also include examination of related responsibilities and how to determine and apportion liability for data breaches, and how to ensure there are appropriate avenues for redress and compensation.

The Review will also consider issues and risks relating to privacy safeguard requirements arising from the adoption of potential data transfer mechanisms and the enforcement of customer rights in relation to data sharing.

What regulatory framework is needed to give effect to and administer the regime?

The Review has been asked to consider the regulatory framework under which an Open Banking regime should operate, including the necessary regulation and oversight required to support and enforce the regime. This will include making recommendations on the respective roles of the Government, regulator(s) and industry in administering the regime.

The PC has recommended that a new consumer right apply broadly across the economy to enable consumers to access and control their data held by businesses and government. This Review will consider the extent to which an Open Banking regime could operate through a framework (including policies, legislation, standards and infrastructure) that would support a broader consumer right — achieving an appropriate balance between economy-wide standardisation and necessary industry-level adaptation.

The PC has recommended the general consumer right be implemented by legislation under a competition framework, with the Australian Competition and Consumer Commission performing a key regulatory role. The Review will also consider alternative regulatory models, including establishing the regime through licence conditions and industry-specific legislation.

Implementation – timelines, roadmap, costs

The Review has been asked to set out a roadmap and timeframe for achieving a vibrant Open Banking regime in Australia, including recommendations on what entities and systems, if any, should be established to develop the architecture to support the regime. The sooner that implementation occurs, the sooner that customers can enjoy the benefits of an Open Banking regime.

To enable timely implementation, minimise the burden on industry and build customer trust, the Review may consider the merits of a phased introduction of the regime. It may also be prudent to consider other forms of phased implementation to provide more time to learn from the initial operation of Open Banking in other jurisdictions.

The cost of implementation will be affected by many factors including the scope of data to be shared, the flexibility of technical solutions to meet security needs, the resolution of legal issues and the timing of when data is to be released. A model to fund the ongoing operation of the regime, including the cost of regulatory oversight, may also be needed.

The Review will engage broadly with industry to identify ways to achieve the Government's objectives for Open Banking whilst minimising the associated costs of implementation.