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Strategic Assessment Team
Consumer Data Right Division
The Treasury
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CONSUMER DATA RIGHT STRATEGIC ASSESSMENT CONSULTATION PAPER SUBMISSION

The Qantas Group welcomes the opportunity to provide comments to the Department of Treasury on the implementation of an economy-wide Consumer Data Right (CDR).

The Group's response to the Strategic Assessment Consultation Paper is contained in Appendix A and focuses on the application of the consumer data right in the context of loyalty schemes and specifically, the Qantas Loyalty business which has more than 13 million members through its Qantas Frequent Flyer and Qantas Business Rewards programs.

If there are any aspects of this submission that Treasury would like to discuss further, please do not hesitate to contact Kate Friedrich at kate.friedrich@qantasloyalty.com.

Yours sincerely,

Andrew McGinnes
Group Executive, Corporate Affairs

APPENDIX A – QANTAS GROUP SUBMISSION TO THE CONSUMER DATA RIGHT STRATEGIC ASSESSMENT

11. Are there any datasets or kinds of data that may or may not be suitable for Consumer Data Right designation (e.g. due to privacy concerns)? Why?

The Consultation Paper identifies loyalty programs as a possible priority area for the CDR rollout. In the Group's view, the benefits of rolling out the CDR across loyalty programs are less substantial compared to other sectors.

No distinct sector and lack of uniformity

It is important to note that loyalty programs are not a distinct sector. Rather, they are an add on layer over other sectors and markets such as retail and airline. This means that a particular loyalty program will have characteristics and datasets that are unique to it, based on the sector or market the program is layered on, and there is a lack of uniformity across different program providers.

This can be distinguished from the use cases and consumer benefits in gaining wider access to open banking data which were very clear and the datasets across service providers were relatively consistent, being largely transaction data. Despite this being a single sector with common datasets, the rollout of CDR across the financial services sector has been staged and complex.

The CDR regulatory framework for loyalty would need to be extremely technical, segmented and comprehensive in order to cover the full spectrum of programs and associated datasets. For example, the provisions that apply to airline loyalty customer data may not be relevant to fast moving consumer goods loyalty programs, and the regulatory framework would need to be segmented accordingly.

Compliance with highly complex and technical legislation is often cost prohibitive for sellers and service providers, and the compliance costs are often passed on to the consumer, such as in the form of less valuable benefits. Changes to interchange fee laws in some countries are an example of where this outcome has manifested. Further, high uplift and compliance costs may reduce some smaller and or disruptor loyalty program providers' ability to operate an innovative or competitive program.

No barriers to inclusion, portability or competition

One of the threshold reasons for the CDR is that consumers should be free to choose who they interact with and should not be locked in with a particular seller or service provider. However, consumers can already be members of all loyalty programs and do not experience any of the same 'portability' barriers that exist in other CDR priority sectors.

A core premise of loyalty programs is that the consumer chooses. A consumer may be a member of many loyalty programs and can select whether to engage with one program over another at any time. In this sense, consumers are free to port their membership or interactions with any loyalty program provider.

Our consumer research shows that consumers who are members of an Australian loyalty program (not just QFF, but members of any program) are members of an average of 4.5 programs at once, while 87 per cent are members of more than one program.[1]

Further, consumers are not locked into loyalty programs. There are no minimum terms or contractual commitments that lock the consumer in with a particular provider, and a consumer can disengage (either actively or passively, and permanently or temporarily) with a loyalty program at any time. In turn, loyalty programs already need to innovate and compete for consumer loyalty and relevance.
In light of these factors, the use case value for loyalty program data is somewhat unclear.

[1] Data source: Ergo Research - June 2021, n=3,327.

Users can access their data, set preferences and shop around

There is a robust existing regulatory framework that applies across loyalty programs to protect consumer data rights. Requirements under the *Privacy Act 1988* and the *Australian Consumer Law* already require entities to provide consumers with access to their personal information and be transparent about how it is handled. For example, we note Australian Privacy Principles one and 12.

As noted above, consumers can choose whether their data is collected and handled within loyalty programs. To an extent, they can also choose preferences about how their data is handled, for example, they can opt into some components of a loyalty program but not others through unsubscribes and preferences.

Additionally, consumers can make the same purchases available through loyalty programs directly. For example, in the online retail market, a person can shop around and determine whether a purchase or redemption through a loyalty program is beneficial to them, or whether they are better off making the purchase directly from a retailer. This contrasts with some industries where there may be price opacity and limited opportunity for customers to do their own due diligence on the value of an offer.

The opportunity for consumer benefit and innovation may be limited

a. Purchases

The data derived from loyalty program purchases and rewards will in most cases already exist openly through other CDR regulations. For example, a family holiday purchase will generally be evidenced via a financial services transaction through a credit card purchase, and this data will therefore already be open and accessible via the CDR in the form of open banking.

Also, loyalty programs share detailed activity statements with their members on a regular basis, and members therefore have visibility over their interactions with their selected programs and related purchases and redemptions.

b. Redemptions and rewards

Where the same family referenced above, for example, uses frequent flyer points to redeem the same holiday, we would query the consumer benefit in a competitor airline loyalty program accessing this raw data, or knowledge that the family had accumulated enough points for the redemption. While a competitor airline loyalty provider may be able to target the consumer to try and change where they place their loyalty using this redemption information, we query the extent of the *consumer* benefit.

Further, this data journey is likely to only be of interest to another airline loyalty provider and not for example, a fast moving consumer goods loyalty provider and therefore does not plainly extend to benefit the consumer or promote innovation among loyalty program providers.

c. Materiality of loyalty program transactions

The Consultation Paper references that CDR may be beneficial in relation to:

> '*significant decision points and events in a consumer's life journey that would benefit from enhanced data access – what is the corresponding data journey and what datasets are significant in that journey? Put another way, which datasets will unlock significant* ***benefits for consumers*** *under the CDR regime (e.g. having access to better services, products and the associated data collected, by removing friction in consumers' lives, and by promoting economic and social inclusion)?*'

As indicated above, loyalty programs are non-discriminatory and non-exclusive, and to a large extent, the member controls how deeply they engage in the programs and therefore how much their data is handled. With this in mind, extending the CDR to loyalty programs may not materially unlock significant benefits to consumers such as better economic and social inclusion.

Further, given the variety of loyalty programs and sectors that they overlay, there may not be many 'significant decision points or events' purchases or redemptions that are consistent across programs. In this sense, there may not be common data journeys or datasets across loyalty programs to open up via the CDR.

Unless the regime is extra-territorial, the CDR could unfairly disadvantage Australian loyalty programs

There is a strong presence of international loyalty players in Australia, particularly in online retail. For example, Amazon Prime, eBay, and Net-a-Porter, to name a few. In addition, several international airline loyalty programs have member cohorts in Australia.

Unless any eventual CDR framework applies on international loyalty programs, the compliance and administrative requirements and costs could impact Australian loyalty program providers' ability to compete against international providers. Further, these costs would likely result in less favourable loyalty benefits to the consumer, as the Australian providers would need to pass through the higher administrative and compliance costs.

Further, compliance costs that only apply to Australian companies could be a barrier to entry or prohibitor for smaller Australian sellers or service providers seeking to offer loyalty programs for their customers.

Significant consumer benefits already exist

The construct of a loyalty program exists to help consumers derive benefit from repeated interactions with a company (or group of companies) that they interact with. At the core of this relationship, a consumer opts for the company to be able to recognise them across all (or many) touchpoints to facilitate the delivery of benefits from those repeated interactions.

Such benefits can take several forms, but include:

- Benefits from spending more with the company through discounts, points and/or member status;
- Special offers on specific items, such as generating a greater discount or reward for a limited time;
- Tailored service based on prior repeated behaviours/preferences, such as seating preferences or specific product discount alerts;
- Increased relevance in marketing, from prior interactions and transactions, for example, sending more communications in product categories that the consumer interacts/transacts with more frequently; and
- Increased relevance of the loyalty program itself – by using deep consumer insights to inform product and program design to align with the needs and wants of members.

The data behind each of these benefits is highly specific to the organisation in question and it is unlikely that the porting of this information would drive incremental benefits beyond what a consumer would have experienced by simply interacting in the same manner with an alternative loyalty program.

Complex, proprietary datasets are core to loyalty programs

Extending the CDR to cover loyalty programs may be less beneficial for a number of reasons, including that:

(a) generally, loyalty program data cannot be easily ported, given the complexity of the datasets and difficulty for third parties to interpret that data,

(b) loyalty program owners' ability to retain their IP and competitive advantage in their unique datasets may be hindered, should the data need to be shared around, and
(c) if loyalty program providers needed to share their proprietary data (despite their investment and IP created within the data), it would discourage innovation, as well as the associated member benefits that are derived and offered from that data and innovation.

Loyalty programs tend to make significant investment in analysing the data that they collect from customers. As a result, the unique material data within loyalty programs is largely segmented, de-identified or anonymised and, ultimately, proprietary in nature. This type of data is therefore complex and somewhat distinct from the transaction data that is generally regulated (or soon to be regulated) on a per industry basis under the CDR, such as banking or retail data. For example, the 'rich' data developed by loyalty programs is often predictive in nature, as opposed to statements of fact, about a consumer or segment of consumers. Loyalty programs may predict an affluence level for a consumer, or that they are a good prospect for marketing of electronics via email. As this data is not factual, they would be complex and of little value to a consumer or a third party, without the supporting IP material that the loyalty program has developed in order to arrive at that prediction.

In contrast, in underlying transactional data, absolute behaviours may be identified (such as a consumer purchased a specific product, for a specific price, on a specific day) that may be valuable as reference for the consumer, and may be interpreted externally without further context. In this regard, raw transaction data is arguably more 'portable' than the segmentation and predictive data held by loyalty programs.

If the 'rich' non-transactional data of loyalty programs was opened up and ported, alternate loyalty providers could piggyback off the efforts and investments of the data set creator. This may discourage innovation, and the customer benefits that are derived from that innovation, if loyalty programs were required to give up any competitive advantage they may have developed through investment in data and their members.