



# NATIONAL AUSTRALIA BANK SUBMISSION

Digital Platforms – Government  
consultation on ACCC’s regulatory  
reform recommendations

February 2023

## **1. Introduction**

NAB welcomes the opportunity to provide a submission on the Digital Platforms: Government consultation on ACCC's regulatory reform recommendations. The consultation has invited stakeholder views on the recommendations and analysis contained in the ACCC's fifth interim report, which focussed on legislative reform and was published on 11 November 2022.

NAB welcomes the Government's commitment to ensuring that Australia has the 'right regulations in place to be a leading digital economy' and the considered and detailed analysis and recommendations set out in the ACCC's fifth interim report.

Safety and security of digital experiences is fundamental for consumers. NAB supports the ACCC's focus on measures to protect users of digital platforms from the escalating threat of scams, including mandatory processes to prevent and remove scams. These are an important complement to other initiatives focused on prevention and detection such as the Australian Financial Crimes Exchange and development of the National Anti-Scam Centre. Combatting scams requires cooperation from governments, the private sector and consumers. It is critical that all sectors are playing their role in preventing, detecting, responding to and sharing information about scams.

NAB's submission focusses on the potential for digital platforms to be included within the scope of the Consumer Data Right ('**CDR**') regime. We also make some comments and observations regarding the expansion of digital platforms to financial services markets and the potential competition impacts of these developments.

NAB is a member of the Australian Banking Association ('**ABA**') and has contributed to the ABA submission in relation to this consultation.

## **2. The case for a new regime and co-ordination with other Government policies and processes**

Given the scale and dynamism of digital platforms' business activities, NAB agrees with the ACCC's analysis that there is a need for additional proactive measures beyond *ex post* enforcement of existing legislation to keep pace with the rate of change and to address competition and consumer concerns, which have the potential to take effect rapidly and have a wide-reaching impact across a broad set of consumers.

## **Application of the CDR regime to Digital Platforms**

NAB notes that Treasury is seeking views on whether existing regulatory frameworks could be improved or better utilised to deal with these concerns and whether any of the ACCC's recommendations are better addressed through other Government reforms or processes.

In this regard, and as previously argued, NAB supports the expansion of the CDR to digital platforms.<sup>1</sup> In NAB's view, the Report provides a timely opportunity for Treasury to explore whether digital platforms should be designated under the CDR regime. NAB believes the designation of digital platforms within the CDR would promote competition in the digital economy, catalyse the creation of innovative products and services, which could be offered across a broader segment of consumers and would encourage adoption of the CDR, more generally.

As the ACCC notes, "access to granular, high-quality data can be a source of competitive advantage for digital platforms that provide services where data is an important input."<sup>2</sup> In today's data driven economy, it could be argued that data is an important input in nearly all services delivered to consumers. This is certainly true of financial services, where data is a necessary input to serving customers well, determining the suitability of relevant products or services and analysing risk (including credit risk), amongst other matters.

The ACCC has put forward a number of potential data obligations to promote competition, namely data access requirements; data portability requirements and data use limitations.<sup>3</sup> In relation to data portability, the ACCC has referenced the CDR as a possible model for data portability.<sup>4</sup> Whilst NAB is cognisant of the potential complexities associated with the designation of digital platforms, NAB believes that these complexities are not insurmountable and that there are a number of reasons why the designation of digital platforms within the CDR would be a suitable legislative mechanism to deliver benefits to consumers and encourage competition.

As the ACCC notes "data portability and access obligations should not be introduced unless privacy and security risks can be appropriately managed. Obligations to increase data access would need to be underpinned by mechanisms that enable consumers to make informed decisions about whether their data can be used for this purpose or should otherwise incorporate safeguards to promote privacy and minimise privacy risks."<sup>5</sup> NAB believes the CDR framework is well suited to address these risks, as

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<sup>1</sup> NAB submission in relation to the Statutory Review of the Consumer Data Right (May 2022), p. 5.

<sup>2</sup> ACCC, 'Digital platform services inquiry - Interim report 5 - Regulatory reform' (September 2022). p. 166.

<sup>3</sup> ACCC, 'Digital platform services inquiry - Interim report 5 - Regulatory reform' (September 2022). p. 168.

<sup>4</sup> ACCC, 'Digital platform services inquiry - Interim report 5 - Regulatory reform' (September 2022). p. 170, Box 6.12.

<sup>5</sup> ACCC, 'Digital platform services inquiry - Interim report 5 - Regulatory reform' (September 2022). p. 165.

it contains a strong and existing privacy and security framework (providing protections beyond those existing in the *Privacy Act 1988* (Cth)). The Privacy Safeguards and CDR Rules place strict requirements on CDR data handling and use and obligations regarding information security controls for the storage of CDR data. In addition, the CDR framework is customer-centric, and consent driven, where consumers are empowered through the regime to share their CDR data to obtain products and services of value to them. Importantly, a principle of data minimisation is also codified in the CDR regime, which ensures that data recipients do not seek to collect more data than is reasonably needed or use data collected for any other purpose than to provide the good/service which a consumer has consented, or for a longer time period than is reasonably needed.

As such, by leveraging the work already undertaken by Government in creating the CDR regime, and the experience of regulators and industry in operating in the CDR ecosystem, Australia could build on its existing CDR framework to safely and effectively address 'data advantages' of digital platforms. Similarly, given the considerable volume of consumer data that digital platforms hold, there is significant potential for innovative customer use cases to be established, and opportunities to ensure that consumers are fully empowered with control of their data (as opposed to data access regimes). In NAB's view, value to consumers will develop in circumstances where a consumer has the opportunity to direct which of their data sets can be shared with whom, amongst a suite of diverse competitors. Under the current CDR architecture, a consumer will have the potential to direct their bank, telecommunications or energy company to share their data with a large digital platform, where it may be combined with extensive lifestyle and social media data. However, consumers cannot direct a large digital platform to unlock the data sets it holds about them and pass this information to their bank, telecommunications, or energy company to provide services or insights of value to the consumer. Moreover, utilising the existing CDR regime for data portability (rather than creating a bespoke data access or portability framework with the need to determine technical standards and rules) would create efficiencies for participants and regulators and help deliver more immediate benefits to consumers and economy as a whole.

Finally, NAB acknowledges the ACCC's recommendation for service specific measures to more accurately target competition issues in particular markets, but in the case of data sharing obligations, considers that a broader framework of 'open data' sharing (through the CDR) is necessary to reflect the realities of today's digital economy where business (especially platforms) provide products and services across sectors. As has been suggested elsewhere:<sup>6</sup>

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<sup>6</sup> Padilla, Jorge and de la Mano, Miguel, Big Tech Banking (December 4, 2018), *Journal of Competition Law & Economics*, Volume 14, Issue 4, 2018, pp. 494–526

*Platforms have the incentive and ability to expand onto other businesses, especially other intermediation and platform markets, in order to acquire the data generated in those markets. They typically succeed because they can combine the data generated on their various platforms in order to create customer “super-profiles” with which to target consumers when and where they are likely to need their services. Their data superiority is not driven by the sheer amount of data in their possession. Instead, it is the result of being able to tap into many complementary sources of data to create databases which, as a result, are not (easily) replicable.*

Similarly, in the context of payments, NAB recommends that these issues be considered holistically across all digital platforms activities and not solely via a service specific lens, as some digital platforms have launched payment services that are intrinsically linked with other areas of the relevant digital platform’s activities.

### **Global perspectives: Digital platforms in financial services – potential risks to competition and financial stability**

Digital platforms are increasingly playing a larger role in financial services both locally and globally, in payments through the use of digital wallets<sup>7</sup> and in consumer credit offerings.<sup>8</sup> Whilst NAB notes that digital platforms provide a number of benefits to consumers, have the potential to increase competition in financial services and deliver innovation, we also note that there is a rising level of government, industry and academic interest in the potential long-term impacts of the entry of digital platforms in financial services, both in relation to competition and financial stability.<sup>9</sup>

For example, the Financial Conduct Authority (‘FCA’) issued a Discussion Paper (DP22/5) in October 2022, which considered the potential scenarios for entry of digital platforms into financial services. Whilst it concluded that there were opportunities for digital platforms to provide ‘competitive

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<sup>7</sup> Parliamentary Joint Committee on Corporations and Financial Services, Report on Mobile Payment and Digital Wallet Financial Services (October 2021) p. xiii.

<sup>8</sup> In 2022 in the UK, Apple purchased Credit Kudos (a Fintech which uses Open Banking data to make credit assessments), which could support provision of BNPL products. See, ‘Apple quietly acquires Credit Kudos for \$150 million’ Finextra, 23 March 2022, (finextra.com); FCA Discussion Paper (DP22/5) ‘The potential competition impacts of Big Tech entry and expansion in retail financial services’ (October 2022), p. 35.

<sup>9</sup> See for example Bank for International Settlements, Financial Stability Institute Occasional Paper No 20 ‘Big tech regulation: in search of a new framework’ by Johannes Ehrentraud, Jamie Lloyd Evans, Amelie Monteil and Fernando Restoy (October 2022); FCA Discussion Paper (DP22/5) ‘The potential competition impacts of Big Tech entry and expansion in retail financial services’ (October 2022).

pressures' to existing financial service providers and consumer benefits including improve access to certain groups of customers, the Discussion Paper also noted that:<sup>10</sup>

*... if Big Tech firms can exploit their ecosystems by attracting consumers to their financial services products, and later lock consumers in, this could be a credible way to gain market power and use it to lessen competition and harm consumers.*

*... Big Tech firms' access to unparalleled data, and an ability to combine data across their ecosystems provides them with a unique competitive advantage that incumbents and fintechs do not possess.*

The Financial Stability Institute of the Bank of International Settlements has also been exploring the entry of digital platforms into financial services and the challenges posed by digital platforms business models which have “the potential to lead to excessive market concentration, amplify operational risks and damage the integrity of the payment and the financial system”<sup>11</sup> and potential regulatory approach to dealing with these challenges. These issues warrant further consideration than what has been provided here and we highlight these as areas where, in NAB’s view, further exploration is necessary including co-ordination with global perspectives and leveraging a cross regulatory focus (i.e., between banking supervisory authorities and competition regulators). NAB intends to undertake further research on this topic and we would welcome further engagement with government on this issue.

## **Conclusion**

NAB is appreciative of the opportunity to contribute a submission to the consultation on the Digital Platforms: Government consultation on ACCC’s regulatory reform recommendations. NAB would welcome the opportunity to discuss any aspect of this submission.

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<sup>10</sup> FCA Discussion Paper (DP22/5) ‘The potential competition impacts of Big Tech entry and expansion in retail financial services’ (October 2022), p. 47.

<sup>11</sup> See Bank for International Settlements, Financial Stability Institute Occasional Paper No 20’ Big tech regulation: in search of a new framework’ by Johannes Ehrentraud, Jamie Lloyd Evans, Amelie Monteil and Fernando Restoy (October 2022), p. 31.