26 March 2018

COMMUNICATIONS ALLIANCE LTD
www.commsalliance.com.au

Mr Daniel McAuliffe
Department of the Treasury

Email: data@treasury.gov.au

Dear Mr McAuliffe,

RE: Open Banking Report

Communications Alliance welcomes the opportunity to provide a submission to Treasury's consultation on the report *Open Banking* (Report), published in December 2017.

While the Report specifically addresses the consumer data right (CDR) in the banking sector, it is imperative that the regulatory framework designed to facilitate Open Banking can be equally efficiently implemented in an economy-wide context, including the telecommunications and energy sectors.

Individual industry verticals demonstrate substantial differences in the types and volumes of data generated, customer interactions with data holders, technologies used to capture, manipulate and retain data, market characteristics and existing legislative frameworks. Given this, the feedback offered in this submission is high-level. We welcome the assurance from Treasury that detailed consultation with the telecommunications sector will occur later, and in advance of any decisions being made as to the specific application of a CDR in this sector.

Overall, our members lend qualified support to the introduction of a CDR and the high-level principles and goals outlined in the Report. Nevertheless, we urge Treasury and Government agencies to adhere to regulatory best practice, including rigorous cost-benefit analyses, preferably on a sectoral basis, rather than using an economy-wide approach as costs resulting from a CDR regime may vary significantly across sectors. Costs will also vary depending on the size of the data holding organisation. In particular, small businesses and start-ups might find the costs of compliance prohibitive.

While we acknowledge the usefulness of application programming interfaces (APIs), it is fair to assume that the costs of data transfers are likely to be huge where transfers are being facilitated (mandated) via APIs. Use of APIs may constitute significant barriers to entry or be prohibitive and may force some players out of the market. Alternative or supplementary transfer methods may need to be considered.

Against this background it is vital that any rule-making process is accompanied by a transparent, evidence-based regulatory impact assessment that is made available for scrutiny by the relevant stakeholders, including industry.

It is important to also highlight at this stage that the transposition of the envisaged approach for the banking sector and the rules that accompany Open Banking to the telecommunications

sector requires great care and consideration. Some of the issues requiring special attention are discussed below.

Definition of data sets

Recommendation 3.2 of the Report states that all transaction data that forms part of a clearly defined product set ought to be transferrable upon a direction by the customer, and that the period that the sharing obligation applies to ought to be same as already required under the relevant existing regulation. While the definition of transaction data may be relatively straight forward in the banking sector (banking sector experts may beg to differ!), this is certainly not the case in the telecommunications industry.

Customers of communications networks continually interface with multiple network architectures (that often belong to several different telecommunications providers) and, as a result, data is continually being generated in the course of network and traffic management, operations and in relation to the use of telecommunications devices. Such data must not be confused with core 'transactional' data which is more likely to be of primary value to consumers under a future 'Open Telecommunications' regime. Given the criticality of the definition of the data sets and the complexities of telecommunications technologies, it is vital that our industry (including through Communications Alliance) plays a key role in the definition of the data sets to be included in the CDR.

We agree with the proposition that "aggregated data sets" and "data that results from material enhancement by the application of insights, analysis or transformation by the data holder" (Recommendations 3.3 and 3.5) should not be included in the scope but note that the real difficulty for any sector attempting to apply the CDR will lie in defining the threshold as to when data has become aggregated and/or received material enhancement. The importance of finding the right threshold between customer data (which is subject to the CDR) and aggregated/value-added data sets (which is out-of-scope), and clearly defining that threshold, ought not to be underestimated as precisely the ability to add value to data sets will be a significant factor for innovation and economic growth overall.

Market characteristics

While the number of Authorised Deposit-Taking Institutes (ADIs) is relatively limited, it is worth noting that the telecommunications sector is characterised by a very large number of providers (more than 400 carriers and carriage service providers) and that a uniform licencing regime that would capture them all does not exist. There will likely, therefore, be significant challenges in creating a manageable and cost-effective accreditation scheme for the telecommunications sector, and perhaps in other sectors as well.

Reciprocity and data equivalence

Overall, the principle of reciprocal rights to receive data appears reasonable. Given the pervasiveness of telecommunications in today's world and its ever-increasing importance in the future, it is fair to assume that our sector is likely to produce a large volume of data that may be subject to the CDR regime. Therefore, it is key to ensure that the CDR regime in the telecommunications sector works efficiently and, importantly, enjoys the trust of consumers.

Apart from the data volume differences across sectors, a reciprocity requirement raises a number of other questions. For example, how would a regulator determine what constitutes "equivalent data"? It would appear that the rapid technological change, that each sector will

be subject to, makes it necessary to constantly adjust or newly define equivalent data sets. How to neatly categorise organisations as belonging to one sector or the other in cases where one sector is already subject to the CDR while the other is not. How to separate data that organisations generate that operate in two or more sectors?

Early harmonisation across sectors

Given the differences across sectors, it would be preferable to address a few key items on a cross-sectoral basis at a very early stage to avoid the possibility that sectors joining the CDR regime a little down the track will be disadvantaged by the application of rules that were designed for, and suit better, those verticals that joined the regime earlier.

For example, privacy matters and data security are important to the creation of trust by consumers and – consequently – to the success of an economy-wide CDR regime. We recommend, therefore, that analysis of these issues not be left to a sector-by-sector implementation, but rather be scrutinised for harmonisation at the outset of the exercise.

We look forward to further engaging with Treasury and other stakeholders on this important matter.

Please contact Christiane Gillespie-Jones at c.gillespiejones@commsalliance.com.au if you have questions in relation to this submission.

Yours sincerely,

John Stanton
Chief Executive Office
Communications Alliance