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OPEN FOR BETTER - APPLYING OPEN BANKING TO SMALL BUSINESS BANKING

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Introduction

Open Banking is not a term of art. It can mean different things in different places and to different people. In Australia, Open Banking is a framework designed to give customers a right to direct that the information they already share with their bank be safely shared with others they trust. It is intended to give customers more control over their information, leading to more choice in their banking and more convenience in managing their money, and resulting in more confidence in the use of an asset mostly undiscovered by those customers – their data.[2]

In Australia, Open Banking is to be the first part of the Consumer Data Right, a more general right being created for consumers to control their data, including who can have it and who can use it. Banking is the first sector of the Australian economy to which this right is to be applied and more sectors of the economy are to follow, including energy and telecommunications. Open Banking is to work together with the application of the Consumer Data Right in other sectors to form a single, broader framework.

Starting with banking makes sense because of the firm foundation of principles provided by the duties that a bank owes its customer. A bank has a duty to keep a customer's money safe and to pay it to others at the customer's direction. Also, a bank has a duty to keep its customer's information confidential. So, a similar obligation for a bank to provide the customer's information to others at the customer's direction makes sense – both money and information are valuable and the bank would not have either without the customer. In this way, the long-established banker-customer relationship can help guide Open Banking's construction and once the framework is built, it can be extended to other sectors.

Of course, there is much more to Open Banking (and the Consumer Data Right) than extending the banker-customer relationship. However, four design principles have emerged and been adopted to guide the development in Australia:

OPEN BANKING SHOULD BE:

CUSTOMER FOCUSSED	ENCOURAGE COMPETITION	CREATE OPPORTUNITIES	EFFICIENT AND FAIR
It should be for the customer, about the customer, and seen from the customer's perspective.	It should be done to increase competition for the banking products and services available to customers so that customers can make better choices.	It should provide a framework on which new ideas and business can emerge and grow, establishing a vibrant and creative data industry.	It should be effected with security and privacy in mind, so that it is sustainable and fair, without being more complex or costly than needed.

These principles of who Open Banking should be for, why it should be done, what it should do and how it should be achieved, serve as an architecture to consider the implications of Open Banking for small business customers.

1. The Author led the Australian Government's review into Open Banking conducted in 2017. However, this paper is not written in any official capacity and the views expressed should be taken to be the author's own.
2. All references to the implementation of Open Banking and the Consumer Data Right in Australia in this paper are taken from the Report of the Australian Government's Review into Open Banking published in February 2018 and the subsequent announcements of the Australian Government to implement the recommendations made in that Report.

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CUSTOMERS

including small business customers in Open Banking

The customers who will be able to take advantage of Open Banking in Australia are not limited to individuals. Businesses, including small businesses, will also be included. This is important because of the acuteness of information asymmetries for small businesses, which can lead to higher cost and lower availability of credit.[3] The Open Banking Review found that smaller businesses typically have less documentation and shorter financial histories, so it is generally harder and more costly for competing providers to acquire the required information to make accurate assessments of potential small business customers. A bank that has an established relationship with a small business is at a significant advantage over its competitors in the supply of data-related services.

It has been argued that recent innovations in the small business lending market negate the need for Open Banking to be available and small businesses and that banks already make data available to small business customers through accounting software providers. However, these alternative means of accessing data are not as customer-centric as Open Banking and the Open Banking Review was not persuaded to exclude small business from Open Banking, particularly given its basis as a broad customer-centric right.

The decision to include small businesses in Open Banking would normally give rise to a need to define what a small business might be, and the Australian legal framework could not be said to be lacking when it comes to definitions of small business used for regulatory purposes. They are many, varied and not entirely consistent. Australia's Open Banking framework avoids the need to consider this complexity by adopting a different basis for inclusion of customers in Open Banking – by reference to the accounts which the customer holds, rather than by reference to the customer who holds the account. Open Banking is to apply to all customers holding the relevant accounts in Australia, whether individual or business, and whether big or small.

These accounts to which Open Banking is to apply include many which are a fundamental part of a small business's financial arrangements, including current accounts, cheque accounts, transaction accounts, GST and tax accounts, cash management accounts, trust accounts, farm management accounts, foreign currency accounts, business finance accounts, business lines of credit, business overdrafts as well as credit and charge cards accounts for business. A small business that holds one or more of these accounts in Australia with an Authorised Deposit-taking Institution, other than a local branch of a foreign bank (for convenience, such an ADI is referred to as a bank in this paper) is to be entitled to require its bank to share its data with another accredited entity.

It is important to understand the types of data relating to a small business customer that a bank can be required to share. Open Banking applies to two types of data connected to the customer:

- Customer-provided Data: Data which the customer has provided to its bank, including information by themselves, on their financial situation and information needed for making payments;[4]
- Transaction Data: Data which is generated is a result of transactions made on the customer's account or service, including records of deposits and withdrawals, account balances, fees and charges, and interest earned and paid.

Also, Open Banking is to apply to product data which banks are under existing obligations to publicly disclose, which is intended to enable efficient analysis and comparison of the terms of those products.
Open Banking does not apply to value-added customer data, such as data that results from the bank's efforts to gain insights about a customer, or aggregated data sets created when banks use multiple customers' data to produce de-identified, collective or averaged data sets.

In summary, Open Banking is to include small business customers by giving them the right to direct their bank to on-share the data which they have provided to their bank, and their transaction data, with other entities that the small business has chosen to trust with that data. This makes it important to consider who those entities could be, and why a small business would choose to share its information.

CHOICE

- encouraging competition for small business banking

The Reserve Bank of Australia has found that the market for small business loans, for example, has more structural impediments to competition than most other lending markets because the information asymmetries tend to be more significant.[5] Banks have to invest resources to acquire sufficient information to make a well-informed lending decision, which increases the cost of assessing and approving a loan application. When lenders are unable to access sufficient information to make a proper assessment, the risks associated with the loan are generally, and justifiably, perceived to be greater. This leads to higher provisioning and higher loan costs for the borrower.

Open Banking is intended to significantly expand the menu of potential services available to small businesses, including services related to the provision of credit, and to lead to better tailoring of products to their needs. That, in turn, should empower small businesses to seek out better deals at more competitive prices.

There are a number of important components in Open Banking which are needed to support this objective. The first is accreditation. This is the process that determines with whom a small business customer could direct its bank to share data. Under Open Banking, the data may only be shared with other accredited entities. Australian banks are automatically acredited, and for other entities (such as fintech companies and data intermediaries) a graduated, risk-based accredition standard is to be used. This model is to have regard to existing licensing regimes and the criteria is to be determined by the Australian Competition and Consumer Commission (the ACCC is to be the lead regulator under Open Banking and the Consumer Data Right). The graduated risk-based approach is intended to avoid the need to impose high standards for participation when those standards are not warranted due to the limited information held, or the way in which it is held.

The second part is reciprocity. Not only are banks subject to a customer's request to direct its data to another accredited entity, but each other accredited entity is also subject to directions from their customers too. This applies to data already provided to them under Open Banking, plus other customer-provided data and transaction data held by the accredited entity for the customer. For example, the small business customer could require not only that its bank share the customer's information with an accredited fintech but also that the accredited fintech share the customer's information with the bank. This puts the customer at the heart of a data ecosystem built around its information and its requests for the sharing of that information. It also improves the contestibility of the customer's business, as a bank who is required to transfer customer information to another bank can benefit from a similar request made of the recipient if the bank improves the services which it provides the customer.

The third part is cost. The transfer of data under Open Banking is to be made free of charge to the customer. This is consistent with the thinking explained at the start of this paper, that an ability to direct that information shared between bank and customer be shared with another that the customer chooses should be regarded as an extension of the customer banker-customer relationship, rather than an add-on service for which there is a separate charge. There is some economic analysis of this in the Report of the Open Banking Review.

These three parts are intended to assist in remedying the information asymmetry which has been identified with small business lending – giving small business customers an avenue for testing whether the products and services which they are being offered by their bank are in fact the best for them. The provision of this information to alternative providers of those services is intended to harness transparency and business incentives for the customer's benefit. One example of this is if a competing lender feels unable to offer a customer competitive pricing because it just doesn't have enough validated information to assess the viability of a prospective customer's business. The ability to request the transaction information of the

3. See Financial System Inquiry, Interim Report, 15 July 2014, 2-62.
4. There is an exception to this relating to data which is provided for identification purposes. This is outlined in the Report (recommendation 3.4), but is beyond the scope of this paper.
5. Reserve Bank of Australia, Submission to the Financial System Inquiry of 2014, March 2014, 154.

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prospective customer directly from the customer's existing bank should enhance the information available to that competing lender in volume, reliability and granularity.

CONVENIENCE

- new banking services for small business through Open Banking

Like the other parts of Open Banking, the method of transferring information is to be customer-focussed. Most transfers are likely take place using mobile or online technology based on technological standards set by a newly established Data Standards Body. The intent is to minimise unnecessary friction for the customer, whilst also providing the customer with safegards, so that the transfer of information for Open Banking can be user-friendly. Even this could provide significant benefits to small business customers, as it should mean that they do not need to visit the bank branch with a bundle of papers to provide the financial performance of their business.

This standardised technology basis provides opportunities for services to be created for small business customers which are beyond comparison services for competition purposes. Two examples of this are account aggregatation and data analytic services. Small businesses may have multiple accounts with multiple banks. Open Banking allows all of the data relating to the multiple accounts to be shared with one provider who provides a single "window" into the small businesses finances. This may seem like a simple service, but most small businesses are low on resources and any time-saving counts. Also, the ability to aggregate finances in one place removes one impediment to using multiple, competing service providers – being the complication of having multiple banking systems to navigate. Another example of the potential benefits of Open Banking to small business is its use to better inform them of their own operations. Small businesses have little access to the data analytics available to large businesses to assess the trends in their sector and own customer base. This sort of support should be more available to small businesses once there is a safe and easy way of transferring their transaction data (which reveals much about their business) to data specialists that are accredited for Open Banking. Those data specialists could be banks themselves. However, provided that they meet the accreditation criteria, the providers of these services need not be financial services providers, indeed they may be existing participants in the data industry.

As Open Banking and the Consumer Data Right progresses it should connect more customers, data holders and data recipients. All of these would be linked by their participation in a system which has shared rules and standards under which customer data and new and existing services and products are provided and exchanged. The foundation of the system is customers, as they will have relationships with both data holders and data recipients. From a customer perspective, the ability to provide their data that is held by one service provider (like their bank) to another in a completely different sector (like their telecommunications provider) could enable an entirely new field of products and services to be offered, enhancing choice and convenience. This should allow suppliers to small businesses to be even more customer-centric in the services they provide.

CONFIDENCE

- the safeguards to protect small business using Open Banking

Customer confidence is critical to the success of Open Banking. Customers need to trust that the right safeguards are put in place to ensure that their choice and convenience does not come at the cost of their rights to confidentiality. Customers also need to be confident that Open Banking is focused on giving them control of their data, that data recipients will take appropriate security measures to protect that data and that there are remedies available for losses that may be suffered. This applies to small business customers just as much as it does to individuals.

Australia's Open Banking framework has a range of safeguards built in by design and available to small business customers. These include:

- The accreditation system briefly described above, which means that a small business's data can be received under Open Banking only by those who meet the security standards required for that data. Also, it means that the recipients of that data are subject to Australia's privacy and confidentiality laws and subject to the jurisdiction of Australian regulators.
- The regulatory system for Open Banking, which is based on a multiple regulator model, led by the Australian Competition and Consumer Commission. The ACCC is to be primarily responsible for competition and consumer issues, as well as standard-setting. The Office of the Australian Information Commissioner is to be responsible for privacy protection.
- The consent requirements for use of information provided under Open Banking, which are an enhancement over the current requirements under Australian law. Not only is data only shared when the customer has given an explicit direction to do so, but informed, and explicit consent of the customer is required for the use of that information when it has been shared. Also, notifications to customers of the implications of sharing data, including the use to which the recipient is applying the customer's data, should be clear and concise.
- The dispute resolution mechanisms added for small businesses in Open Banking. The mechanisms for dispute resolution in the Australian Privacy Act are only available for dipsutes relating to personal information. For other breaches of confidence, the primary resolution mechanism available to small businesses is likely to be the courts. However, small businesses are likely to be financially constrained from taking their disputes through the court system. Accordingly, the Open Banking framework is to provide small business customers with similar access to alternative dispute resolution services for confidentiality disputes as exist for disputes relating to personal information under the Privacy Act.

These, and the other safeguards which are to be part of Open Banking offer a better framework for small business to share their data with confidence.

CONCLUSION:

- giving small business more choice, convenience and confidence

Open Banking is designed to make it easier for small businsses to share their banking information with others they trust. They may choose to share their information with others to obtain better priced or better quality banking services, to better understand their finances or to better comprehend their own business or their own customers. Australia's Open Banking framework is not designed to make the choices for small businesses as to what they should be using their information for. Instead it is designed to provide a safe and effective means to empower small businesses to make their own decisions. Hopefully, this will mean that small businesses can start to share in the value of their banking data, and harness it for the benefit of their business.