



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

ACCC Submission – Treasury sectoral assessment of Open Finance – non-bank lending – for the Consumer Data Right

April 2022

Introduction and the Role of the ACCC

The Australian Competition and Consumer Commission (ACCC) is pleased to contribute to Treasury's consultation on the proposal to expand the Consumer Data Right (CDR) to non-bank lending. We understand that the information provided in this submission will inform Treasury's broader sectoral assessment of the extension of the CDR to Open Finance.

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses, and the Australian community. The ACCC's primary responsibilities are to enforce compliance with the competition, consumer protection, fair trading, and product safety provisions of the CCA, regulate national infrastructure and undertake market studies. The ACCC also has a Competition Enforcement and Financial Services Branch that examines competition issues in the financial services sector through market studies, advocacy and investigative work.

The ACCC's CDR roles include accrediting potential data recipients, establishing and maintaining a Register of accredited persons and data holders, monitoring compliance and taking enforcement action in collaboration with the Office of the Australian Information Commissioner (OAIC), and providing guidance to stakeholders about their obligations under the CDR. The ACCC also plans, designs, builds, tests, manages and secures enabling technologies for the CDR. As implementer and regulator of the CDR, the ACCC looks forward to working with Treasury, the Data Standards Body and the OAIC to continue to expand the CDR.

This submission considers the factors set out in section 56AD(1)(a)–(e) of the *Competition and Consumer Act 2010* (Cth) (CCA). The ACCC must consider these factors when consulted by Treasury under section 56AE of the CCA.

Executive Summary

The ACCC supports the designation of Open Finance as a sector to be subject to the CDR, and the inclusion of non-bank lending as a key sub-sector.

As set out in Treasury's consultation paper, non-bank lending has clear parallels with the already designated banking sector. Providing access to consumer data held by non-bank lenders (with a consumer's consent), as well as data about products offered by non-bank lenders, could provide consumers with a more complete view of their liabilities and facilitate comparison of a wider suite of lending products. This could encourage the development of more competitive products and services across both banks and non-bank lenders.¹ These benefits are likely to increase over time with the inclusion of other parts of the Open Finance sector such as superannuation and general insurance.

Including non-bank lending in the Consumer Data Right would promote the interests of consumers, and drive competition and data-driven innovation across bank and non-bank lenders. The inclusion of non-bank lending will also help to drive new use cases for consumers' data while enhancing the effectiveness of existing comparison and switching tools for finance. However, the ACCC anticipates that there may be a higher percentage of consumers in vulnerable circumstances engaged in non-bank lending given the range of non-bank lenders that specialise in providing loans to 'non-conforming borrowers' such as those who may be self-employed or have a poor credit history. For this reason, the ACCC recommends that Treasury give specific consideration to potential risks to vulnerable consumers and the need for specific rules to protect these consumers.

¹ Treasury, *Consumer Data Right Open Finance Sectoral Assessment: Non-bank lending*, March 2022, p. 7.

The ACCC considers that the regulatory impact of designating non-bank lending can be managed through defining data holders to take account of lenders' size and ability to compete with bank lenders. Treasury may wish to consider building in sufficient flexibility to allow the expansion of the CDR regime to a larger cohort of non-bank lenders, or all non-bank lenders, in the future. However, smaller lenders should be able to voluntarily participate in the CDR earlier if they choose to opt in.

To ensure benefits are maximised, the ACCC considers that the designation of non-bank lending should leverage existing classes of information that are specified for banking sector to the extent this is possible. Doing so will provide consistent definitions and treatment of data across bank and non-bank lenders, which will allow accredited data recipients to seamlessly integrate data from bank and non-bank lenders to support identified and innovative use cases.

Features of the non-bank lending sector

A non-bank lender is a business that offers individuals and businesses credit but does not hold a banking license from the Australian Prudential Regulation Authority (APRA) and, as a result, cannot accept deposits from customers. Non-bank lenders finance their lending by securitising loans or with funding from private investors, such as high net worth individuals and institutional investors.²

There are over 600 non-bank lenders operating in Australia that provide a range of services including mortgages, personal loans, credit cards, buy now pay later services, payday loans, motor vehicle finance, equipment and leasing finance.³

The non-bank lending sector plays an important role supporting economic growth by providing an alternative form of funding for individuals and businesses, and in doing so provides an important source of competition to the banking sector.⁴ In January 2022, non-bank lenders accounted for around 8% of loans and advances in the financial system — this includes close to 5% of the stock of residential mortgage lending, around 25% of personal lending (that is credit provided to individuals, but excluding residential mortgages), and around 7.5% of business lending.⁵ Around 59% of non-bank lender credit is provided to households, around 40% to businesses, and the remaining for finance leases.⁶

² Reserve Bank of Australia (RBA), *Financial Stability Review – April 2019 Box D: Non-bank Lending for Property*, April 2019, p. 51.

³ This figure of 600 is based on the number of Registered Financial Corporations.

AUSTRAC, *Australia's non-bank lending and financing sector ML/TF Risk Assessment*, p. 9.

A registered financial corporation is any corporation which engages in the provision of finance in the course of carrying on business in Australia. Corporations which are not registrable corporations include those:

- whose assets in Australia, consisting of debts due to the corporation resulting from transactions entered into in the course of the provision of finance by the corporation, do not exceed \$50,000,000 in aggregate value; and
- to whom the principal amounts outstanding on loans or other financing, as entered into in a financial year, do not exceed \$50,000,000 in aggregate value.

APRA, Registered financial corporations, <<https://www.apra.gov.au/registered-financial-corporations>>, accessed 27 March 2022

⁴ RBA, *Financial Stability Review – April 2019 Box D: Non-bank Lending for Property*, April 2019, p. 51.

⁵ ACCC calculations based on:

APRA, *Monthly Authorised Deposit-taking Institution Statistics*, January 2022;

RBA, *Statistical Table D2 – Lending and Credit Aggregates*, accessed 27 March 2022;

RBA, *Statistical Table B10 – Finance Companies & General Financiers – Selected Assets and Liabilities*, accessed 27 March 2022

See also:

RBA, *Financial Stability Review – April 2019 Box D: Non-bank Lending for Property*, April 2019, p. 51;

RBA, *Financial Stability Review – April 2018 Box B: Recent Trends in Personal Credit*, April 2018.

⁶ RBA, *Statistical Table D2 – Lending and Credit Aggregates*, accessed 27 March 2022.

In recent years, the credit growth in the non-bank lending sector has outpaced credit growth in the banking sector — since the start of 2020, loans and advances from the non-bank lending sector have grown by 12%, while loans and advances from the banking sector have grown by 10%.⁷

The non-bank lending sector also play an important role by providing finance to non-conforming borrowers (individuals and businesses) that are of higher credit risk and may find it more difficult to obtain credit from banks.⁸

Non-bank lenders are required (in most cases) to hold an Australian Credit Licence (or operate as an authorised representative of an Australian Credit Licensee) and are regulated by the Australian Securities and Investments Commission (ASIC). Non-bank lenders are also regulated by the Australian Transaction Reports and Analysis Centre (AUSTRAC) in relation to Anti-Money Laundering and Counter Terrorism Financing (AML/CTF) requirements. Non-bank lenders that are registered financial corporations are also required to report periodic data to APRA.

The interests of consumers

The CDR has the potential to deliver significant benefits to consumers. This includes consumers who have existing loans or other products with non-bank lenders, as well as those who may be interested in comparing products offered by non-bank lenders with those provided by banks. These benefits result from the way the CDR facilitates consumers having improved access to, and use of, information. The CDR can help consumers navigate the large number of complex lending products available, by comparing price and non-price features to find the product that best suits their needs and circumstances. The ability to compare like products is particularly important for products such as home loans where there are over 4,000 products available, or credit cards where there are over 250 products available.⁹

A key reason for bringing non-bank lenders into the CDR is to ‘round out’ the CDR banking rollout, as non-bank lenders often offer similar types of products as authorised deposit taking institutions (ADIs) and therefore generate similar types of data.

At the moment, a consumer who holds products with both an ADI and a non-bank lender, and uses a CDR enabled product such as a mortgage application tool, is unable to obtain a full picture of their finances, as they are only able to disclose ADI held data to an accredited data recipient such as an app provider. Extending the CDR to non-bank lenders would empower consumers by allowing them to disclose a broader range of financial data.

However, we note that there may be a higher proportion of non-bank lending customers who are in vulnerable circumstances as there are a range of non-bank lenders that specialise in providing loans to ‘non-conforming borrowers’ such as those who may be self-employed, have a poor credit history or are experiencing financial hardship, and who struggle to obtain finance from the banking sector. Such consumers may also be more likely to obtain high interest, short term credit products, such as payday loans, which can trap them in difficult to escape debt cycles.

As a result of this, when designating non-bank lending, the ACCC recommends that Treasury give specific consideration to risks that can apply to vulnerable consumers and the

⁷ ACCC calculations based on:

RBA, *Statistical Table D2 – Lending and Credit Aggregates*, accessed 27 March 2022.

⁸ RBA, *Financial Stability Review – April 2019 Box D: Non-bank Lending for Property*, April 2019, p. 51.

⁹ Productivity Commission, *Inquiry into competition in the Australian Financial System – Final Report*, June 2018, p. 12.

need for specific rules to protect these consumers. For example, consideration should be given to:

- how to mitigate the risk of vulnerable consumers being exploited by data recipients obtaining access to consumer data and misusing that data for their own benefit (e.g. to upsell inappropriate products, or set discriminatory pricing or interest rates)
- the scope for CDR participants to circumvent existing protections, such as the limitations on sharing information about a consumer's credit history imposed by the Comprehensive Credit Reporting regime¹⁰
- whether there is a need for a fiduciary interest test, which would require CDR participants to use consumers' CDR data in the consumer's best interests.¹¹

The ACCC welcomes further engagement with Treasury on these issues as CDR rules for non-bank lending are developed.

Potential use cases

Some examples of the potential uses of CDR data (use cases) are set out below to illustrate how extending CDR to non-bank lending could assist with improving consumers' decision making, facilitate their informed participation in the sector and promote competition. Other innovative use cases would likely develop over time as new loan products emerge, and from new accredited data recipients providing CDR-enabled services that would allow consumers to use their personal data and product data more effectively.

Tools to assist consumers experiencing vulnerability

A valuable use case that is made possible by the CDR is using consumer data to assess sources of debt of those in financial hardship and determining ways of better managing that debt. This could be of particular benefit to customers of non-bank lenders whose credit history has prevented them accessing bank finance.

The CDR could enable a consumer to consent to a third party such as a financial counsellor accessing their data from multiple different sectors where the CDR has been rolled out to get a more holistic picture of a consumer's financial hardship and the support available to them. The financial counsellor could use this data to provide advice on options or liaise with providers on the consumer's behalf to manage the debt.

Consumers using financial counsellors are more likely to also be accessing high cost, short term credit products, such as payday loans that are provided by non-bank lenders. Extending the CDR to non-bank lenders could enable financial counselling services to get a much clearer view of a consumer's financial situation to help them get out of debt.

Comparison services

The CDR gives consumers the ability to consent to sharing their data, in a usable, machine-readable form, with accredited third-party data recipients. For consumers using non-bank

¹⁰ The newly introduced Comprehensive Credit Reporting regime restricts the use of repayment history information, and financial hardship information – for example, it requires that only licensed credit providers can share and receive repayment history information, and for financial hardship information to be deleted from credit reports after 12 months. For more details see *National Credit Protection Amendment (Mandatory Credit Reporting and Other Measures) Act 2021* (Cth).

¹¹ If introduced, a fiduciary interest test, otherwise known as a data fiduciary standard or information fiduciary, would require CDR participants who collect consumers' data to use such data in the consumer's best interests. Further consideration and consultation is needed on how such a test could be framed and enforced through the CDR. For more information see Ariel Dobkin, 'Information Fiduciaries in Practice: Data Privacy and User Expectations' (2018) 33(1) *Berkley Technology Law Journal* 1; Jack Balkin, 'The Fiduciary Model of Privacy' (2020) 134(1) *Harvard Law Review Forum* 11; and Neil Richards and Woodrow Hartzog, 'A Duty of Loyalty for Privacy Law' (2021) 99 *Washington University Law Review* 961.

lending products or services, this could be, for example, a different lender who could use this data to assess whether they could provide the consumer with a product better suited to their needs and/or for a lower cost. A consumer could also consent to share their data with a third party providing a loan comparison service, who could use this data to alert the consumer to any suitable lower cost products on the market. This could assist borrowers in discovering prices available in situations where lenders would otherwise require them to complete a home loan application and provide substantial personal information for the lender to assess the borrower's risk profile and determine the interest rate it is willing to offer.

Australia already has a number of comparison websites that compare the prices and conditions of loans from both bank and non-bank lenders. However, the usefulness of comparison tools can be limited by lender's pricing strategies or by relying on information provided by a consumer to a website. This limits the factors a consumer can compare and the accuracy of the results. For example, while headline interest rate pricing is readily comparable, this does not include discretionary discounts provided to individual customers (which are widely used in the home loan market) so it can be difficult to compare across products and loan providers.

Making it easier for consumers to share their data with consent reduces the time and effort associated with comparing products and services, by effectively enabling consumers to outsource the burden of understanding and assessing their borrowing needs and capacity, to a third party.

Facilitating switching between providers

The ACCC's Home Loan Price Inquiry (HLPI), released in December 2020, found that many borrowers could achieve significant savings by switching home loan providers. The HLPI highlighted the potency of a 'loyalty tax' paid by customers who remain tied to their lender over a long period of time and found that the older a person's home loan was, the greater the difference between the interest rate they paid compared to the interest rate available for new customers. The HLPI found that customers with a home loan older than 3 years could significantly benefit from searching for a better deal.¹²

For those borrowers who might be considering switching home loans, there is a likelihood that cognitive overload may be compounded by status quo bias, creating a tendency for consumers to ultimately stick with their existing lender even when a better loan may be available. As a result, even for the motivated and engaged borrower, the time and effort required to source and compare information from different lenders can deter them from doing so. By facilitating easier switching between providers, extending the CDR to non-bank lenders will minimise the impacts of this status quo bias and create the potential for consumers to obtain a better deal more easily.

The HLPI also noted that increasing switching could also increase demand-side pressure on lenders that will encourage them to develop innovative products and lower prices to attract more customers. Borrowers in the non-bank lending market could benefit from easier switching due to the changing market dynamics that occur from having a credible threat of customers switching lenders.

Further, extending the CDR to non-bank lending will reduce the friction involved in switching loans between a broader range of lenders and allow consumers to make informed choices about which lender may offer them the best deal.

¹² ACCC, *Home loan price inquiry: Final report*, November 2020, p. 24.

Efficiency of relevant markets

As outlined above, extending the CDR to non-bank lending could reduce the friction for consumers associated with switching home loan providers. When refinancing a home loan, customers are often required to provide past transaction and savings account data and loan repayment data to the new lender (that they are seeking a loan from) by downloading banking statements and emailing them to providers or by sharing their online banking login credentials (such as their username and password) with companies that 'screen scrape' this data and provide it to the lender. Under the CDR, the process of sharing past account data with a prospective lender is considerably faster and easier for both the consumer and the lender as the consumer's data can be provided securely via the CDR. This will help to overcome the time and effort associated with manually transferring copies of documents, as well as limiting security concerns (and other issues) that can result from screen scraping.

Privacy and confidentiality of consumers' information

Consumers' information in the non-bank lending sector is protected by the *Privacy Act 1988*. The CDR regime also includes strict privacy protections, and also empowers consumers to provide informed consent to share their data with third parties and other providers. Designating the non-bank lending sector under the CDR would enhance the privacy protections available to consumers by ensuring that CDR privacy safeguards apply when consumers' CDR data is shared. These additional privacy protections already apply to consumers sharing CDR data in the banking sector.

However, as mentioned above, Treasury should consider the impact of CDR on existing privacy measures that restrict the sharing of credit history data in certain scenarios, such as those contained in the Comprehensive Credit Reporting regime.

Promoting competition

Bringing non-bank lenders into the CDR would foster a more competitive environment, where obligations on ADIs are extended to non-bank lenders who provide similar products and hold similar data. This would promote greater competition among providers of similar products.

Effective competition requires informed purchasing decisions by consumers. Extending the CDR to non-bank lenders would help overcome barriers to consumers' access to information relevant to their purchasing decisions. At present, consumers can use the CDR to compare different loan products from banks. The inclusion of non-bank lenders in the CDR will improve consumers' ability to assess whether a bank or non-bank loan would best suit their personal circumstances and broaden competition across providers.

Promoting data-driven innovation

A key driver of data-driven innovation can arise by allowing consumers to safely and efficiently access products and services that combine consumer and product data from multiple sectors. The introduction of the CDR into non-bank lending will diversify and grow the quantity of data available to accredited data recipients in the CDR ecosystem, which will help accelerate the potential for data-driven innovation. Commercial interest in combining data across sectors within the CDR ecosystem is already apparent from developments such as AGL launching NBN broadband products to consumers in November 2020. Similarly, the Commonwealth Bank announced in May 2021 that it had entered into a strategic partnership with Amber, a new energy retailer, and on 22 July 2021, it announced a strategic partnership with More Telecom and Tangerine Telecom to provide NBN services. We expect further

commercial interest in combining data sources across CDR sectors as the rollout continues, which will increase the potential for data-driven innovation.

Intellectual property in information

The ACCC recognises that non-bank lenders may hold data that has been generated following a process of innovation or ‘value add’ by the lender themselves — for example, detailed customer and property data generated in the process of assessing a non-conforming borrower that reveals proprietary information about the lender’s credit risk assessment process. We recognise this latter type of data may be subject to legitimate intellectual property rights.

The approach to CDR data in existing sectors is informative. The existing sector designations for banking,¹³ energy,¹⁴ and telecommunications¹⁵ all exclude ‘materially enhanced information’, being information improved by the data holder (or on their behalf) through insight or analysis and significantly more valuable than the original information, from the CDR regime. A similar approach may be appropriate for the non-bank lending sector.

The public interest

The ACCC recognises the need to consider both the public interest and the likely regulatory impact of designating a sector under section 56AD of the legislation. We acknowledge that if the CDR expands to non-bank lending, there will be material upfront costs to designated data holders, with the public benefits accruing over time.

Notwithstanding this, the ACCC considers there is a public interest in expanding the CDR to non-bank lending. The consumer centric and cross-sectoral nature of the CDR will strengthen the foundations of digital marketplaces that drive innovation and growth of the Australian economy well into the future.

Since the start of 2020, growth in non-bank lending has outstripped the growth in bank-lending,¹⁶ highlighting its growing importance to Australian consumers. As well as targeting niche market segments, non-bank lenders play a pivotal role in providing finance to individuals and businesses that are of a higher credit risk and, therefore, find it difficult to obtain credit from banks. By providing easier access to data about non-bank lending products, as well as data specific to consumers, the CDR will enable consumers of non-bank lending products to make more informed choices about the goods and services that suit their needs.

Adopting a size threshold for non-bank lenders to be data holders in the CDR (as discussed in the ‘Data holders’ section below) could advance the public interest by ensuring that medium and large non-bank lenders who compete most closely with the banks are included in the initial rollout, without excessive burden for smaller lenders. For smaller lenders, the cost of building CDR capabilities and compliance may exceed the benefits it would deliver them or their customers. As such, including a threshold for initial CDR participation would maintain the competitive benefits, while allowing small or new lenders to grow and innovate.

However, we note that it may be appropriate to expand the CDR to a broader range of non-bank lenders in the longer term, once CDR is well established in the non-bank lending sector. This would align with the approach taken in banking, where there is no *de minimis*

¹³ *Consumer Data Right (Authorised Deposit-Taking Institutions) Designation 2019* (Cth) s 10.

¹⁴ *Consumer Data Right (Energy Sector) Designation 2020* (Cth) s 11.

¹⁵ *Consumer Data Right (Telecommunications Sector) Designation 2022* (Cth) s 7.

¹⁶ ACCC calculations based on:

RBA, *Statistical Table D2 – Lending and Credit Aggregates*, accessed 27 March 2022

threshold. Hence, if a threshold is applied, we recommend Treasury review this setting at an appropriate point in future. In addition, we note that smaller, but innovative, non-bank lenders may want to voluntarily participate in the CDR to drive consumer uptake. The ACCC supports the ability for smaller lenders to participate voluntarily in the CDR, as was facilitated for the Energy sector, to further advance the public interest.

Regulatory impact

The non-bank lending sector is subject to some specific financial regulation, including the requirement to obtain an Australian Credit Licence, AML/CTF laws and rules that can be made by APRA for non-ADI lenders.¹⁷ However, since non-bank lenders do not hold deposits, they are not regulated to the same extent as ADIs. For example, non-bank lenders do not have to obtain a licence to operate from APRA, or adhere to the minimum expectations expected of ADIs.¹⁸

The non-bank lending sector is characterised by providers of varying sophistication and sizes. The relative impact of CDR regulation on large and small loan providers is likely to vary and it will be important to consider this issue in implementing a CDR in the non-bank lending sector. Initially excluding small non-bank lenders as mandated data holders, as proposed below in the 'Data holders' section, would minimise the regulatory burden on smaller providers.

We recognise the CDR imposes material upfront costs on data holders in designated sectors. However, we consider that these costs are proportionate in view of the benefits discussed in this submission. In addition, increased efficiencies brought about by the CDR could to some degree offset the costs accrued through development and implementation. In the first years since the CDR commenced, we are already observing significant growth and diversity of both Fintech and Reg Tech product and services offers within the CDR ecosystem. These products and services not only support consumers but some also support prospective and current CDR participants in helping them comply with technical requirements. As the CDR is expanded, we expect to see further growth and diversity of Reg Tech offerings, increasing the efficiency and reducing the cost of regulatory compliance including in the non-bank lending sector.

Specified classes of information

Possible classes of information

The ACCC supports designating similar classes of information in the non-bank lending sector as have previously been designated for the banking sector. This consistency would allow for the seamless integration of data from bank and non-bank lenders to support innovative use cases as well as the use cases discussed above. The ACCC would support specifying the following classes of information as 'CDR data':

- information about the consumer or their associate, for example:
 - information identifying the person or associate;
 - information relevant to the eligibility of the person or associate to acquire or use a product or a feature of a product; and
 - the contact details of the person or associate.
- information about the use of a product by a consumer or their associate, for example:

¹⁷ *Banking Act 1959* (Cth) s 38C.

¹⁸ See APRA, *Guidelines: Licensing: Locally-incorporated ADIs*, August 2021.

- information identifying an account associated with the product;
 - information about a transaction made by the person or associate in connection with the product;
 - information about an authorisation given by the person or associate in connection with an account associated with the product; and
 - information about future commitments, such as the profile of future buy-now pay-later instalments due
- information about a product, for example:
 - the terms and conditions associated with the product;
 - each price of the product, including a fee, charge or interest rate associated with the product; and
 - the eligibility criteria a person must meet in order to acquire or use the product

In addition to the classes of information specified in the banking designation, consideration could be given to the inclusion of an additional category of information about the use of a product by a consumer or their associate when designating the non-bank lending sector. The additional category would cover information about future commitments, such as the profile of future buy now pay later (BNPL) instalments due.

Enhancing CDR data sets with details of a consumer's future instalments for BNPL services could improve the reliability of information about a consumer's financial position and improve the usefulness of budgeting or payment management tools for consumers who use BNPL products. Including this information could also reduce instances of inappropriate lending decisions and be of substantial benefit for providers of credit and BNPL services, with resulting reduction of consumer financial distress and reduced lending losses for providers. We suggest that Treasury also consider extending this additional class of information to the banking sector to promote a consistency in approach between different types of lenders.

The ACCC supports the inclusion of all products included in cl 1.4, sch 3 of the CDR Rules (minus ADI specific products) as part of the required products for non-bank lenders in the CDR. In addition, the ACCC also supports including BNPL products as a product under the CDR as these products represent a growing way for consumers to finance their purchases in Australia. Including BNPL products would ensure that a more complete array of lending products are included in the CDR, which will provide consumers with further information about these products and their suitability in an individual's financial circumstances. It would also promote a level playing field between all non-bank lenders of a similar size and customer base.

It is important to note that non-bank lenders offer loans that often target non-conforming borrowers who may struggle to obtain credit through the banking system. For example, a borrower may be self-employed with a fluctuating income. Due to the wider variety of borrowers that are provided with credit by non-bank lenders, this may lead to less standardisation in the data between providers that could be made available using the CDR. The ACCC suggests that Treasury consider this lack of standardisation of data as part of its consideration and defining of which classes of information should be designated under the CDR.

Data holders

As Treasury have raised in the Consultation Paper, defining who should be a relevant data holder in the non-bank lending sector is more difficult than in previous sectoral assessments for banking, energy or telecommunications.

The ACCC is generally supportive of defining data holders in the non-bank lending sector by reference to the definition of a registerable corporation under section 7 of the *Financial Sector (Collection of Data) Act 2001* (Cth). As noted above, there are over 600 registerable corporations operating in Australia, each of which is required to report data to APRA on an ongoing basis.

To be considered a registerable corporation, a firm must engage in the provision of finance in the course of carrying on a business in Australia, or otherwise be specified by APRA. Where a firm is engaging in the provision of finance, the sum of the corporation's debts in Australia must be over \$50,000,000 before they are required to register. This would act as a threshold for initial participation as a data holder. Limiting the initial rollout in this way would help to manage the regulatory burden on smaller non-bank lenders and new entrants.

We consider applying a threshold for non-bank lending data holders during the initial rollout would strike a balance between competition, innovation and barriers to entry. It would help promote competition by including medium and larger non-bank lenders who closely compete with the banking sector in the definition of a data holder. Non-bank lenders that are not registerable corporations (as they are smaller than the threshold), are less likely to be competing directly with banks and are likely only offering a more limited set of lending products to a smaller customer base.

In addition, we expect the majority of lenders who are registered corporations would also have an Australian Credit Licence (ACL). This would complement regulation under the CDR regime because it would also allow ASIC to take action against unscrupulous activity by non-bank lenders.

Once the CDR is well established for non-bank lending, Treasury may wish to consider expansion to all non-bank lenders who hold an ACL and engage in the provision of credit, which would cover all non-bank lenders. This could ensure consumers will eventually be able to share all of their lending data, subject to considerations about the Comprehensive Credit Reporting regime and which organisations are considered to be engaging in the provision of credit.

We note that current registrable corporations also include larger BNPL firms such as Afterpay and zipMoney, which would ensure BNPL products could also be included as part of the non-bank lending sectoral designation. The ACCC recommends that Treasury give consideration to whether the proposed designation will appropriately capture all or the majority of buy-now-pay-later providers above a relevant size threshold.

The ability for APRA to designate individual businesses or classes of corporations could fill any gaps that may arise in the definition of registrable organisations as data holders and would complement APRA's role in authorising ADIs that was utilised for the sectoral designation of the banking sector.