

Luxembourg Inclusive Finance Research Conference

Data Portability and Financial Inclusion

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Louise Malady

Senior Research Fellow, Law Faculty, UNSW Sydney



Overview

- 1. UNSW Sydney Digital Financial Services (DFS) Research Project**
- 2. Open Banking Review in Australia**
- 3. Financial inclusion implications of Open Banking in Australia**
- 4. The EU and data portability - implications for Australia and the Asia region**

UNSW Sydney DFS Research Project

Team Members: Professor Ross Buckley, Louise Malady, Dr Katharine Kemp, Anton Didenko

- Digital Financial Services (DFS) can improve financial inclusion
- Good regulations enable and facilitate the use of DFS for financial inclusion with the end objective of improved economic growth
- Good regulations deal with risks involved without inhibiting the innovations

UNSW Sydney DFS Research Outputs

Regulating a Revolution – A New Model for Digital Finance

Enabling
Regulation

Agents
Regulation

Country Studies

Customer Fund
Protection

FinTech
Regulation

AML/CFT
Regimes

Consumer
Protection



Major Outputs

- International Conference
 - “Regulating the Revolution: Rethinking the Regulation of Digital Financial Services”
(Sydney, December 10 & 11, 2015)
- Regulatory Handbook (USBs)
- Regulatory Diagnostic Toolkit 2016
- Several papers, briefing notes, submissions, webinars, presentations

Fieldwork

- Malawi - 2013
- Timor Leste – 2014 and 2015
- Solomon Islands - 2016
- Nepal – 2017
- Senegal - 2018

Solomon Islands



Source: <http://www.worldatlas.com/webimage/countrys/oceania/sb.htm>

UNSW Sydney Connection with University of Luxembourg

[Professor Buckley](#), Scientia Professor and King & Wood Mallesons Chair of International Financial Law at UNSW Sydney,

[Professor Douglas Arner](#), Kerry Holdings Professor in Law at the University of Hong Kong

[Professor Dirk Zetsche](#), ADA Chair in Financial Law/Inclusive Finance at the University of Luxembourg.

Together, they have produced several papers on the [impact of big data on the financial system](#), the challenges of regulating FinTech, a [theory of smart regulation](#) that considers different regulatory tools and their role in enabling or restricting innovation, and a [major analysis of the liability risk associated with blockchain](#).

Their global FinTech and RegTech research cooperation is supported by three funding bodies: the [Australian Research Council](#) (ARC), the [Luxembourg National Research Fund](#) (FNR), and the [Hong Kong Research Grants Council Theme-based Research Scheme](#).



Opening Banking/Data Portability

What it is and who is most affected?

- **Optimist view** - Giving customers greater access to and control over their own banking data
- **Pessimist view** – Giving more parties access to customers' banking data *potentially* resulting in customers who are, at best, overwhelmed with product and pricing choices or, at worst, targeted by entities profiling for profit.
- **What we know:**
 - Most **customers are not benefiting** from the enormous stores of data held on them by financial institutions
 - It is the **banks who will need to be doing most of the data sharing** – *on* their products and customers *with* customers and third parties, **if their customers consent to it.**

Open Banking Review in Australia

Background - 2017 **Productivity Commission Report on Data** and the 2016 Report of the House of Representatives Standing Committee on Economics' **Review of the Four Major Banks** (the Coleman Report)

Scott Farrell (King & Wood Mallesons partner and financial law expert) - heading up the review and will report to Treasury by end 2017 – his comments set the stage:

- “...security, privacy and liability are really important and complex issues”
- “...no particular overseas model that Australia should feel that it must adopt because each country has its own customers, business and culture to adapt to.”

Source: James Eyers, **Open banking review wants to facilitate new data industry**, AFR, 16 September 2017, <http://www.afr.com/technology/open-banking-review-wants-to-facilitate-new-data-industry-20170916-gyiwft#ixzz4x3Jn135i>

Open Banking Review

Will be aligned with newly announced ***Consumer Data Right*** legislation
– open access for banking, energy, phone and internet transactions.

Focus on banking - drivers include:

- importance of data for consumer and providers decision making for financial transactions
- current growth and innovation in the fintech sector
- Australian Government's agenda to promote competition in banking sector

Banking – testing ground for broader policy on “open data”.

Consumer Data Right legislation expected in 2018 and to be administered jointly by the Australian Competition and Consumer Commission (ACCC) and the Office of the Australian Information Commissioner (OAIC)

Regulators Response - RBA

- Short and simple submission – reflecting hands-off role in this area.
- Focuses on:
 - **Data sharing standards**, notes other jurisdictions favour **application programming interfaces (APIs)** as the most suitable method for sharing data in an open banking regime. Notes it might be preferable for an **independent party** to facilitate industry standards for sharing.
 - **Industry coordination** to develop and implement the regime – industry led with gov't and regulators taking a more active role if industry progress is slow.
 - **Accreditation of new participants** – principles based rather than being prescriptive as to how they manage risks.
 - **Digital Identity.**

Regulators Response - ASIC

- A **new framework** instead of amendments would provide more flexibility – current framework - FinTech's operations don't require an AFS licence.
- **ASIC wants to administer the framework** – it provides substantial detail in its submission on what the new framework should consider.
 - Should it include rights which are coming under the GDPR – such as the **right to data portability and 'data erasure'**?
 - **Consent** – explore different types of consent depending on the type of permission being granted:
 - » **What is being done with the data** - are you wanting to view consumers' transaction data or process payments on their behalf – very different type of access/consent needed.
 - » **Look at the potential consumer harm** from the proposed use of the data and use this to determine the type of consent required)

Regulators Response - APRA

Consumer Group Concerns

*A market with a **large number of choices** can be “just as inefficient as a market with few choices **if consumers do not understand what is on offer**, cannot easily compare different offers, or are not rewarded making the effort to search, compare and switch.”*

Trust and confidence in the Open Banking regime may be eroded as a result of some of the more dubious business practices which may arise from open banking:

- » Access to banking data by **predatory businesses like debt management firms** could harm consumers rather than help them.
- » Rise in “**profiling for profit**” due to the increased customer financial data being available - consumers struggling with debt are targeted with more credit offers.
- » **Pricing for risk** - leads to vulnerable consumers being unfairly charged more for credit.

Banks' Positions

Publicly commenting on the different technology standards to adopt:

- **Macquarie** – embracing – plans an API-driven open banking platform for customers to authorise third-parties to access data, no screen-scraping.
- **Commbank** - wants screen-scraping to be banned once the open banking regime is implemented.
- **Westpac** - Australia should be a “smart leader” and leverage on technology which used more secure methods involving algorithms take the data rather than the data being taken directly through organisations
- **ANZ** – want to avoid spurious transfers so should be able to charge for data transfers
- **NAB** – Agrees there should be “cost recovery fees”

FinTech views

- Open Banking regimes provide FinTechs with the opportunity to compete with existing participants in the financial system (the banks)
- Yodlee – leading account aggregation platform globally
 - All players should “eventually” participate in sharing because otherwise customers do not get full benefit
 - In the past - banks have blocked third party access – using covenants in T& Cs and technology – this shouldn’t continue
 - Highlights UK where nine banks created the standard API which all players can use at no cost
 - Agreement on two important principles are needed for confidence in open banking – *traceability* and *accountability*
 - In order to scrap screen scrapping – need *reliability* and *availability* of data available through APIs

Issues

- How third parties should be able to receive data - Use of screen scrapping versus Application Programming Interface (API) ('WHAT'S UNDER THE HOOD?')
- What obligations will third parties have to providers – liability (capital/insurance)? (WHO ARE THESE FINTECHS?)
- Incorporating a digital ID into the regime (LOOK TO INDIA?)
- Europe – right to data portability – what data will be portable?

Issues...continued

- Customers interaction with their bank will be through FinTechs/TechFins
 - What's the most appropriate way to regulate these third parties
 - Need to move fast, as technology moves faster
- Weaknesses in the “privacy self-management” paradigm
- Consent model needs to change
- Quality of the data which is portable
- Analytics on the data – will that be shared?

GDPR and Data Portability

If customers consent to it

GDPR:

- Data obtained by consent must be portable
- Consent can be withdrawn at any time
- Allows for other criteria for lawful processing of data – “legitimate interests”

Organisation collecting data judges whether it has “legit interest” and if yes:

- No need to ask for consent
- No need to provide portability of data collected
- No need to give the right to withdraw consent

Which criteria would you choose – consent or legitimate interests?

In EU – the consent process is being actively bypassed – it is burdensome for both individuals and organisations.

Has the right to data portability been oversold and what does this mean for open banking in Australia?

Thank you.

Louise Malady

l.malady@unsw.edu.au

