

“Six Lessons for Europe from Australia’s Data-Sharing Regime”

7th Luxembourg FinTech Conference
October 6, 2021

Ross P Buckley

KPMG Law -- King & Wood Mallesons Professor
of Disruptive Innovation,
ARC Laureate Fellow,
UNSW Sydney

Data, Its Nature and Value

“Data is the new oil” was all one heard a few years ago.

This aphorism was meant to suggest data’s value. But it said something deeper. For data’s value is not inherent – it is only of value if it is usable. Likewise oil. Who would want a barrel of it, if it couldn’t be turned into petrol or plastics?

So Data is like oil, but also differs from oil, because it is non-rivalrous. That means more than one party can use it, without its value decreasing. Oil, like most things, can only be owned by one entity and used by one entity at a time. Not so data.

The EU’s ambition is – by 2030 – to “enable the EU to become the most attractive, most secure and most dynamic data-agile economy in the world – empowering Europe with data to improve decisions and better the lives of all of its citizens”.

I want to suggest today that EU has a long way to go if serious about that journey.



Open Banking and Open Finance in Europe

In the EU, data sharing is governed by the *Payment Services Directive (PSD2)* and General Data Protection Regulation (GDPR).

PSD2 provides a very narrow form of Open Banking, limited to payments accounts and payment services. The UK open banking framework is limited to payments but is being broadened to Open Finance. The EU aims to have an Open Finance framework in place by 2024.

In Australia Open Banking applied to 29 types of bank accounts (basically all of them) in July 2020. But in Australia, open banking is merely the first step in the Consumer Data Right.

The CDR was announced in Nov 2017 and enacted in 2019. **CDR is highly ambitious – it aims for economy-wide sharing and standardisation of consumer data.**



The Consumer Data Right in Australia

Data-sharing is now being rolled out in the Energy sector, with Telecommunications next, and the plan after that is Insurance, Pensions, Groceries, etc etc

The ultimate goal is to enable data-sharing in every sector of the economy in which it may offer a benefit --- at the least, every sector in which suppliers are concentrated and competition low (which is most of the Aussie economy).

The animating idea is that consumers are often hesitant to switch providers even when being loyal costs them money.

Research supports this. On a \$1,000,000 mortgage Aussies typically pay some \$4000 p.a. more interest than is needed.



Lesson 1 – Expand Open Banking to Open Finance

Europe is currently hobbled by the origins of Open Banking being in PSD2 and the focus on payments.

Every reason that suggest open banking applied to payments information will be a good thing, applies across the board to all of finance.



Lesson 2: Expand Data Sharing Beyond Finance

Data should not be locked up in one sector, the nature of data is to want to move and dance with other types of data!

Data should influence decision-making in sectors other than that in which it is gathered. E.g., merging banking data with pensions and insurance data offers a richer picture of a consumer's financial circumstances.

Combining financial information with data from other sectors should allow each individual dataset to be more valuable, leading to an outcome that is 'greater than the sum of its parts'.

Lesson 3: A Policy Agency Should Lead

Cross-sector data-sharing processes should be driven by a policy agency, not a regulator. The design of a radically new system is not merely a regulatory issue

Australia started by giving the job of directing CDR to the ACCC. Early this year we moved it to Treasury.

Rule-making responsibility now lives with Treasury, who are obliged to consult with the other regulators and stakeholders.

This has allowed for a streamlined and unified approach to the development and implementation of CDR policy, rules, and standards.

A regulator was not the right entity to drive such a fundamental re-ordering of the Australian economy.



Lesson 4: Ensure a ‘Living Framework’

Data-sharing frameworks should be ‘living’, ready to admit their errors and change.

CDR was launched in July 2020, but keeps evolving rapidly. E.g., the Australian Energy Market Operator (AEMO) was initially the designated gateway for energy data. But when this model could not leverage existing National Electricity Market systems, the government, in April 2021, adopted a peer-to-peer (P2P) model with AEMO acting as a ‘secondary data holder’.

Australia’s aim is to develop a framework that is sufficiently clear, yet not overly detailed, and appropriately favors experimentation over heavy-handed ex ante regulation.



Lesson 5: Timely Consumer Education

Consumers are central to data-sharing. They are key to the economy-wide roll out of data-sharing schemes.

Consumer awareness of the aims and goals of CDR in the banking sector in Australia is poor.

Consumer awareness in the UK of open banking is similar, with the FCA engaging in consumer education programs.

Although consumer education should not be the foremost priority in either the UK or the EU today, it cannot be postponed for too long as the framework's success depends significantly on consumer awareness.



Lesson 6: Power of Action Initiation

Data-sharing can bring back commercial morality, a basic fairness, that modern businesses have put aside

Businesses once thought all customers should be offered the same prices. No longer. In Australia, banks and energy companies routinely offer lower prices to new customers.

Economy-wide data sharing should force providers to treat all customers fairly or risk losing them.

I often get phone calls offering cheaper electricity plans. I don't engage. But with CDR, with one click on a website or email, I will be able to share my data with a new electricity company. They can craft a binding offer for me based on my energy usage. Then with 'action initiation' and one more click, I can accept their offer and change providers.

My current provider won't be able to retain me when I call to cancel the service, by offering cheaper electricity – I will already have changed providers! I'll be gone.



Conclusion

So to sum up -- **Six Lessons** –

1. Expand open banking to open finance.
2. Expand data sharing beyond finance across most of the economy. (Data wants to move and interact with data from other sectors).
3. Have a policy agency lead the process, not a regulator.
4. Ensure one's data-sharing framework is 'living', dynamic, ever-changing.
5. At the right time, invest heavily in consumer education – data sharing doesn't work unless driven by consumers!
6. Action initiation can restore more fairness to commercial dealings.

