26 February 2021

Jessica Robinson
Assistant Secretary
Consumer Data Right Division, Markets Group
The Department of Treasury

Dear Jessica

White label arrangements

The ABA supports the Consumer Data Right (CDR) as a means of providing new opportunities for consent driven sharing of consumer data for white label arrangements. The CDR will provide Brand Owners, which are often not ADI holders, further opportunities to deepen their relationships with their customers by offering innovative financial products.

The ABA holds several concerns relating to the current guidance on white label arrangements. As indicated the meeting on 17 February, this letter outlines these concerns (see Annexure). Most significantly, the current guidance has the potential to undermine existing commercial arrangements. The ABA is aware of one situation where the guidance has resulted in parties seeking to recalibrate the commercials. These arrangements take time to put in place, many have been in place for many years. Renegotiation of the terms of the white label arrangement could result in making the commercials unworkable for one or both the White-labeller and/or the brand. Further, customers of existing white label arrangements are accustomed to the status quo, any recalibration or renegotiation could result on a change to the customer experience, including the diminished visibility of the primary brand, which in turn will impact upon the value of the arrangement.

The ABA requests your earliest consideration of the issues raised within and requests a meeting together with members which have white label business arrangements to work through the Department of Treasury's response to those issues.

Kind regards

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Annexure

1. What are white label arrangements?

White label arrangements are distinct from 'own brand' arrangements because the white label arrangement introduces a third party to the banking service provision process.

The from the outside looking into a white label arrangement the outcome can seem standardised where the customer of a brand (for example a supermarket) can acquire a supermarket-branded product (for example a credit card) which is provided by a licensed entity (for example a bank). Here the supermarket is the 'brand' and the bank is the 'product manufacturer' or the 'White-labeller'.

Whilst the outcome achieved is reasonably standardizable, the commercial arrangements which bring to light those arrangements are bespoke. Elements that give rise to the differences from one white label arrangement to the next are shown in the following table:

Dimension	Options
The parties	ADI (license holder) to ADI (Brand Owner)
	ADI (license holder to non-ADI (Brand Owner)
Product value chain	Marketing and advertising: Brand Owner
	Advice: Brand Owner (if applicable)
	Application process: Brand Owner
	Customer identification: Brand Owner or licensee
	Account opening: Brand Owner or licensee
	Data storage (account details, transactions): Brand Owner or licensee
Brand visibility	Brand Owner
Customer primary relationship	Brand Owner

2. What are the benefits of white label arrangements?

White label arrangements provide benefit to all parties involved:

- The Brand Owner – will benefit from an expanded product offering and a deeper relationship with their client.
- The product manufacturer – will benefit from an expanded client segment and contribute to their economies of scale.
- The customer – will benefit from product design (including pricing) which is aligned to the values of the Brand Owner and with which they will likely have other commercial relationships.

In most cases, the Brand Owner will have exclusive relationship with the customer. Even where the product manufacturer services some aspects of the value chain, it will be in accordance with the brand positioning of the Brand Owner.

White label commercial arrangements are predicated on an agreed distribution of responsibilities in the product and service provision. Any changes which impact this distribution of responsibilities will require a reformulation of the commercials and could undermine the viability of such arrangements

3. White label arrangements and the CDR

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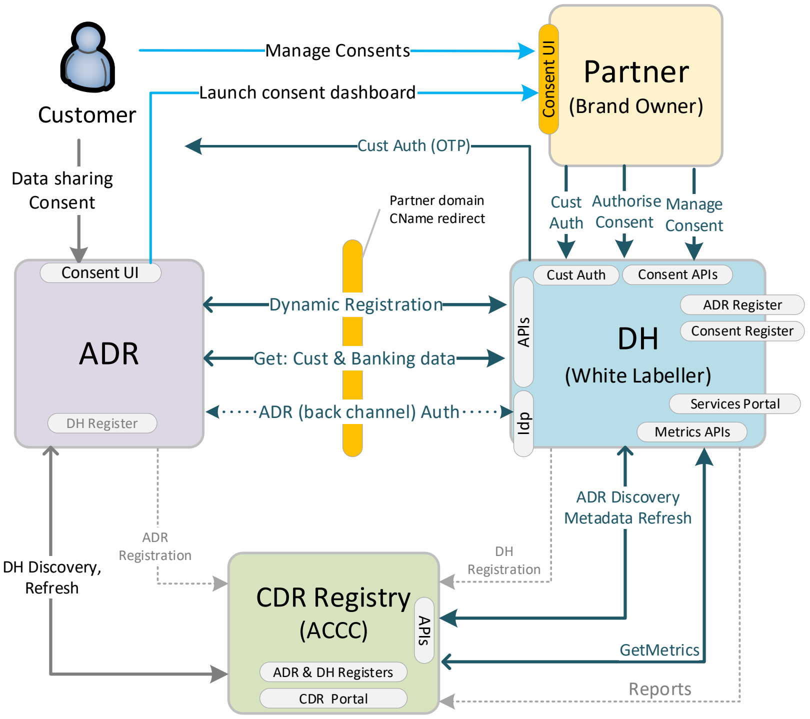
In the context of the CDR, white label arrangements introduce a new third party into the entity relationship between data holders, accredited data recipients and consumers.

Incorporating a new participant (a Brand Owner) into the open banking technical solution involves considerable time and resources to ensure the solution provides the Brand Owner's consumers with an excellent consumer experience.

Technology work is often required by both the Brand Owner and the data holder to provide a compliant open banking solution and this may be further complicated when a Brand Owner offers multiple financial products from different data holders.

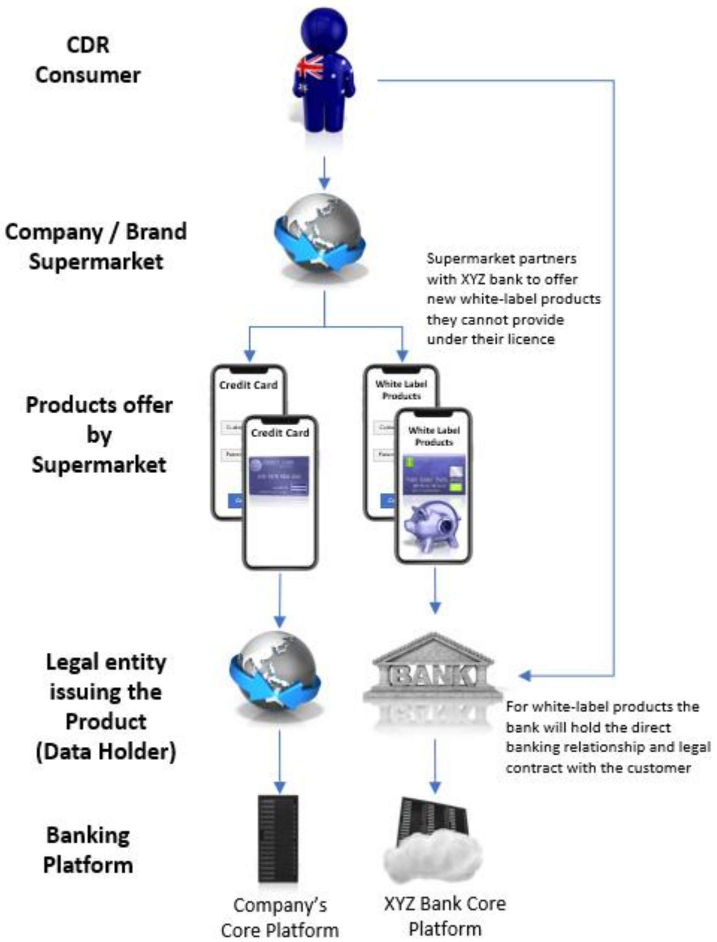
With a Brand Owner partner, the ACCC's ecosystem component diagram ***may*** look like this[1]:



Working example of a white label product scenario and the implications for the various participants

- An existing non-banking company (Supermarket) partners with a bank (XYZ Bank) to offer banking products (transaction accounts and savings accounts) under a white label contract to Supermarket's existing customer base and to new customers.
- The white label products will only be advertised and offered via the Supermarket channels.
- However, the new white label products will not be administered on the Supermarket servicing platform.
- Instead, the accounts will be held, and the associated servicing completed on XYZ Bank's banking platform.

[1] Note that the following is based on the scenario where the Brand Owner is a non-ADI entity, and the White-labeller is an ADI entity. White label arrangements come in many different combinations therefore this illustration will not apply to all arrangements.



From the perspective of the customer of Supermarket:

- An existing customer who already holds a financial product with Supermarket opts to open a new transaction account and savings account with Supermarket.
- Although the transaction account and savings account will be opened via Supermarket's mobile app and will be branded with Supermarket style guide, the legal contract will be between the customer and XYZ Bank, as the issuer of the products.
- When opening the transaction account and savings product, the customer will be onboarded onto XYZ bank's banking platform.
- The customer then opts to sign-up with an accredited data recipient (ADR) to obtain an aggregated view of all their financial products held with multiple data holders.
- As part of the ADR consent process the customer will be asked to confirm who are the providers of the accounts, they wish to grant the ADR access to.
- From a customer's viewpoint the white label transaction account and savings account are being provided by Supermarket, along with any other products they hold directly with Supermarket.
- Accordingly, the customer selects Supermarket as one of their account providers they wish the ADR to contact to obtain their CDR consumer data from.
- Once the consent has been created with the ADR, the customer will be re-directed to the Supermarket site to authenticate themselves, select the accounts to share data from, and to authorise the consent to sharing data.

- Depending on the Supermarket online set-up (i.e. different sites and log ins) the customer may only be presented with the white label transaction account and saving products for selection, or only the products provided by Supermarket under their licence.

From the perspective of Supermarket

- Supermarket has its own open banking solution to respond to consumer data request obligations for the lending product.
- Supermarket has its own open banking solution to respond to consumer data request obligations under the CDR Rules in respect of the lending product.
- For products directly provided by Supermarket under its licence, on Supermarket's registration on the CDR Register:
  - Supermarket will be registered as the brand name
  - Supermarket will be registered as the legal entity
  - the URIs provided will re-direct the ADR to the endpoints provided by Supermarket.
- Supermarket's open banking solution is only for Supermarket-issued financial products. In this way:
  - customers who hold a banking product issued by another entity – such as XYZ Bank - will be unable to select these accounts via the other provider's consent authorisation process
  - equally, customers will be unable to select their Supermarket products via the other provider's consent authorisation process
  - the same principles will apply to the Customer Dashboard, which allow the customer to view and revoke their consents granted to ADRs. Only Supermarket products will appear in the Supermarket-managed Customer Dashboard.
- The scenario becomes more complicated when Supermarket has one app to manage all the financial products (from multiple issuers) it offers to its customers.
- The ACCC's current guidance on white label products and consumer reference data limits its scenario to two data holders providing a white label product through one of those fore-mentioned data holders. In this extended scenario, the ADI data holders do not have a relationship with each other and are issuing a white label product through a non-ADI data holder.

From the perspective of XYZ Bank

- In this scenario, XYZ Bank is the sole data holder involved in providing the white label product and must comply with the consumer data request obligations under the CDR Rules in respect of the transaction account and savings account.
- As a White-labeller bank, XYZ Bank implements an open banking technology solution which caters to different Brand Owners such as Supermarket.
- For the white label products, on XYZ Bank's registration on the CDR Register:
  - "Supermarket" will be registered as a brand name
  - XYZ bank will be registered as the legal entity as the holder of the banking licence
  - the Supermarket URIs provided in the registration (which are different to the ones Supermarket provides in respect of its own issued financial product) will re-direct the ADR to the endpoints to XYZ Bank, and
  - this will enable XYZ Bank to distinguish between the consumer data requests made by ADRs and provide only the data related to Supermarket.
- The XYZ Bank open banking solution is only for XYZ-issued banking products. In this way:

  - customers who hold a banking product issued by another ADI through Supermarket (or a product with Supermarket) will be unable to select these accounts via the white-label app consent authorisation process
  - equally, customers will be unable to select their non-XYZ Bank products via XYZ Bank's consent authorisation process
  - the same principles will apply to the Customer Dashboard, which allow the customer to view and revoke their consents granted to ADRs. Only XYZ Bank Products will appear in the XYZ Bank-managed Customer Dashboard.
- As a White-labeller, XYZ Bank will only want to report on its XYZ Bank-issued products and may wish to do this on a brand basis.

From the perspective of an ADR:

- Depending on the Consumer Data Right registration for XYZ and Supermarket, an ADR may be required to complete the dynamic client registration process twice; one directly with Supermarket and again with white label brand 3rd party technology provider, XYZ Bank.
- A consumer will be unable to include all their products provided by Supermarket within one consent authorisation.
- An ADR will therefore be required to create two separate consents to access the CDR data held by different banking platforms.
- An ADR will have to submit calls to different API endpoints to retrieve the CDR consumer data relating to Supermarket products.
- Two sets of metrics will be generated based on the different URI endpoints and CDR implementations.

Scenario: products provided by multiple data holders under one brand

In the extended scenario, Supermarket consolidates all its financial products into one App and the ecosystem component diagram becomes increasingly complex with multiple open banking solutions.

4. ACCC's Guidance on White Label products

The ABA notes the ACCC's guidance on white label products and email communications from the ACCC on 18 February 2021 from Jodi Ross on behalf the DSB and the Department of Treasury.

The ABA respectfully does not support this position and notes the following issues arising from the ACCC guidance.

Issue 1: Existing white label commercial arrangements may become unworkable

The ACCC guidance states:

> *'Non-ADI white labellers and non-ADI brand owners, like supermarkets or airlines, will not be data holders unless they choose to become accredited'*[2] and
>
> *'Where there is a single data holder involved in providing a white label product (whether that is the white labeller or the brand owner), that data holder must comply with consumer data request obligations under the rules*.'[3]
>
> '*Where there are two data holders involved in providing a white label product (for example, where a brand owner distributes a credit card on behalf of a white labeller*

[2] https://cdr-support.zendesk.com/hc/en-us/articles/900004901443-Approach-to-disclosure-of-consumer-data-white-label-products
[3] ' https://cdr-support.zendesk.com/hc/en-us/articles/900004901443-Approach-to-disclosure-of-consumer-data-white-label-products

bank), it is the data holder that has the contractual relationship with the consumer who will be considered responsible, to avoid unnecessary duplication.'[4]

The ABA notes that this guidance will entail revising contractual arrangements under existing white label arrangements. Such revision could result in the commercials becoming commercially unworkable. Notably, this may occur where an ADI deems that its liability exposure warrants it to bring in-house certain functions which may undermine the Brand Owner's equity and value in the arrangement.

The ABA notes that this guidance will create significant impact on well-established commercial arrangements. The renegotiation of such arrangements is not straight-forward. Additionally, the impending 1 July deadline imposes an urgency to finalise renegotiations which might otherwise take months to work through (and implement). This will undoubtedly lead to suboptimal outcomes and potentially, the cancellation of some arrangements.

The decision not to draft any amendments to the Rules in relation to consumer data for white labelled products is problematic. Without Rules to allow the transfer of the data holder obligations to the Brand Owner, the White-labeller (data holder under the Rules) must manage the Brand Owner as an outsourced service provider. This is because the white-labeller is ultimately responsible for the data holder obligations in respect of the white-labelled products, regardless of any bi-lateral contracts.

The ABA strongly recommends further time be taken to reconsider this guidance. In particular, the Department of Treasury may wish to consider the registration, onboarding, and conformance testing obligations on a White-labeller data holder when it services multiple third-party brands as well as the experience for consumers. The guidance should enable the parties to maintain the functional delineations under their existing arrangements, albeit with the additional cost of compliance under the CDR.

Issue 2: Further guidance is required

In email correspondence sent by the ACCC, on behalf the Department of Treasury and the DSB, it was noted that the further work was being undertaken on how white labels could be implemented and that this guidance was to be published in Q1 of 2021. The ABA agrees that further guidance is required. Examples of further guidance is set in Table 1 below.

However, the ABA notes that the industry is four months away from the implementation of white labels. Given the scope of the implementation, and especially the need to renegotiate commercials with the Brand Owners, this is insufficient time.

Table 1: Further clarification on white label arrangements

Topic area	Clarification is sought on:
Registration, onboarding and display of Product details (for a data holder with multiple home brands and third party partner brands)	• the registration of white label brands on the CDR Register • the registration and management of white label products by a data holder whose business is white labelling financial products • the onboarding process for a White-labeller data holder who also issues "home" brands directly to consumers • the set up on the CDR Register when financial products are issued and offered by a Brand Owner and that Brand Owner also offers white label financial products from a data holder via a white label arrangement
White-labeller Data Holder as as the single data	• the White-labeller data holder's obligations (should the White-labeller not wish to be dependent on the Brand Owner to provide the CDR implementation of the white label products)

[4] https://cdr-support.zendesk.com/hc/en-us/articles/900004901443-Approach-to-disclosure-of-consumer-data-white-label-products

Topic area	Clarification is sought on:
holder responsible for its own banking products	
Brand Owner with multiple white label products – consent management	• the obligations of the Brand Owner and the multiple data holders in providing a CDR implementation of the various white label products • the consumer experience for a customer of the Brand Owner accessing Brand Owner products issued by different data holders • the ADR registration process for ADRs wishing to access consumer data from the Brand Owner products issued by different data holders
Digital identity of the customer	In *some* white labelling arrangements where the White-labeller does not hold the digital identity, the White-labeller is solely dependent on the Brand Owner providing an authentication service to support the White-labeller with CDR compliance. This creates an additional layer of complexity to compliance with the rules for the White-labeller, where the Brand Owner is unable to deliver the authentication service within the expected delivery timeframe. Without further consideration to the Rules to allow White-labellers the ability to introduce a new authentication mechanism, the White-labeller would be put at risk of non-compliance to the CDR rules due to delays with the Brand Owner providing an authentication service.
Rules/Standards alignment	There appears to be misalignment between the ACCC white label guidance and technical/CX standards, whereby the guidance provides flexibility to organisations regarding the build and execution of their technology; however, the standards don't seem to cater to this, for example alternative authentication methods for arrangements where data holder does not hold customer digital identity.

Issue 3: White label obligation date of 1 July 2021 for Phase 1 products is arbitrary.

The CDR Rules do not consider white label arrangements. Commencement table 6.6 contains a swim lane for non-primary banking brands which are the owned subsidiary brands of ADIs[5]. The ABA has been clear to distinguish between white labels and ADI's owned brands. White label arrangements are not non-primary banking brands. These arrangements require separate attention.

The ABA has been advocating with the ACCC for a distinct approach to white label products since before November 2019. There have been multiple meetings with various members of the ACCC CDR team over the course of late 2019 and 2020. However, with the initial data holder compliance pending for phases 1, 2 and three, there was not the focus afforded to the complexities of white label arrangements. Therefore, it was disappointing to see the ACCC guidance in December 2020/January 2021 setting the obligation date for white labels phase 1 products as 1 July 2021[6].

Considering issues 1 and 2 in this paper, 1 July 2021 is not an appropriate compliance date for white label arrangements.

[5] https://www.legislation.gov.au/Details/F2020L01688
[6] https://cdr-support.zendesk.com/hc/en-us/articles/900004901443-Approach-to-disclosure-of-consumer-data-white-label-products

Additionally, the ABA notes that the implication of the ACCC advice is that non-major banks must launch with their own branded products **plus** white-label arrangements on 1 July 2021. This is a very significant and high-risk launch which has been imposed on the non-major banks[7].

The ABA notes the ACCC email advice that: '

> *the ACCC is open to discussing potential exemption applications, in accordance with the ACCC's published exemption guidelines, where a data holder is able to show that it faces implementation challenges that means it will not be able to comply with the CDR rules in time for the go-live date for one or more of its white label products*.'

The ABA questions the appropriateness of the exemption process in this situation. The reason the banks are not able to deliver white labels is because the timelines are arbitrarily set and there is insufficient guidance in respect to the implementation of white label arrangements.

Therefore, the ABA continues to strongly recommend, white label arrangements to be placed on a separate swim lane and urges the Department of Treasury to reconsider the obligation date. We recommend deferring implementation from 1 July until the Department of Treasury assess complexities with the industry and participants and the appropriate guidance is set. The ABA understands that it is possible that the arrangements might require some Rule changes to ensure the viability of white label arrangements moving forward.

Issue 4: Introducing newly agreed white-label arrangements

To foster competition and innovation, it is vital that consideration be given to the set-up of white label arrangements under the CDR Rules. Many of the white label arrangements coming to market from this point on will be new ventures on new technology platforms and with new market participants. While the Brand Owners in the white labelling arrangements may have considerable existing customer bases for their existing products, these Brand Owners will be establishing a new customer base for the white label product. As such, the ABA would anticipate minimal data available for these consumers of new ventures in the first six months of the set up.

The ABA recommends a general transitional relief from the CDR Rules for **new** white label arrangements for six to 12 months after the new venture is launched. This is to allow Brand Owners to establish a customer base, the data holder and the Brand Owners to ensure their technology is resilient and for the Brand Owners and data holders to focus on implementing the operating model for the new venture. This will promote innovation in allowing the parties in the white label arrangements to focus on the new product.

[7] The significance on this launch for the non-major banks is further exacerbated by the fact that they have not had the same opportunity to conduct end-to-end testing to validate their builds. Nor is there a clear set of standards (and associated guidance) to which they are to build for 1 July.