

**COMMUNICATIONS
ALLIANCE LTD**



Communications Alliance Submission

to The Treasury's

**INQUIRY INTO
FUTURE DIRECTIONS OF THE
CONSUMER DATA RIGHT**

Issues Paper

21 May 2020

Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

***NOTE: nbn™ is a member of Communications Alliance but has not been involved in the preparation of this submission.**

1. Introduction

We welcome the opportunity to make a submission to The Treasury's Inquiry into *Future Directions of the Consumer Data Right Issues Paper*.

The Inquiry is timely as the banking sector is moving into the final implementation phase of the Consumer Data Right (CDR) regime, underpinned by a legislative and rules framework and technical standards to facilitate the secure exchange of data. Similarly, the required legal steps (designation) are now being put in place to expand the regime to the energy sector. As these sectors further continue to implement the CDR, there will now/soon be an opportunity to analyse the costs and benefits associated with the regime in those sectors. Such analysis will assist the considerations as to how the CDR could be translated most effectively and efficiently, and subsequently implemented, in other sectors of the economy.

The communications industry shares Government's vision, expressed in its Digital Economy Strategy, launched in December 2018: "That Australians enjoy an enhanced quality of life and share in the opportunities of a growing, globally competitive modern economy, enabled by technology."¹ In fact, it is fair to say that our industry is at the very forefront of enabling and driving Australia's digital economy.

Our industry also recognises the rights of consumers to be informed and have appropriate access to their customer and product data to make informed decisions regarding the purchase of products and services and whether to move between providers.

2. The future role of the CDR in the communications sector

The Inquiry invites feedback on the future role of the CDR in different sectors, the outcomes of such a regime and how those could be achieved. It also seeks feedback on the use of the CDR to overcome behavioural and regulatory barriers to safe, convenient and efficient switching between products and providers.

Against the background of these questions, it seems prudent to first perform a 'gap analysis' of the intended objectives of the CDR and the extent to which those objectives may already have been achieved in any given sector.

In a second step, it would then be logical to analyse which steps would need to be taken to remedy any actual shortfalls in achieving those objectives, the costs associated in doing so and the incremental benefit that can be derived from any measures that aim at 'closing the gap'.

If, at the conclusion of this analysis, it is found that the benefits of further measures would indeed outweigh the attendant costs, it will be imperative to ensure that those measures are sufficiently focused on the achievement of the declared objectives rather than the specific means of achieving those.

The declared objectives of the CDR regime can be summarised as:

- To "give customers more control over their information leading, for example, to more choice in where they take their business, or more convenience in managing their money and services"²;
- A reduction of barriers from shifting between providers and "better tailoring of services to customers and greater mobility of customers and greater mobility of customers as they find products more suited to their needs"³; and

¹ p.6, Australia's Tech Future, available online at <https://www.industry.gov.au/sites/default/files/2018-12/australias-tech-future.pdf>

² p.5, para 1.1, Explanatory Memorandum, *Treasury Law Amendment (Consumer Data Right) Bill 2019*

³ p.5, para 1.4, *ibid*

- Fostering innovation and business opportunities as “new ways of using the data are created”⁴ as the result of consumers having access and being able to share their data.

The telecommunications industry already has a number of mechanisms that give consumers access to a broad range of data that relates to them. For example, under the *Telecommunications Consumer Protections Code (TCP Code)*, which is enforceable by the Australian Communications and Media Authority (ACMA), Carriage Service Providers (CSPs) must provide their customers with detailed billing data and itemised charges in a form that customers can read, understand, store and reproduce for up to six years.

The TCP Code and the *Telecommunications (NBN Consumer Information) Industry Standard 2018* both contain provisions that require CSPs to provide their customers with relatively standardised product information in easy English prior to sale, thereby further contributing to a consumer's ability to make informed decisions, including whether to move to a different product and/or service provider.

Such potential for customer churn is further aided by the *C647:2017 NBN Access Transfer* industry code which describes the processes that retail providers are to follow to ensure a smooth transfer of customers on NBN-based networks between providers. nbn supplies market participants with a standard set of services on a non-discriminatory basis and interfaces that allow retail service providers to give effect to customer requests to move to another provider.

Most providers also offer month-to-month plans, thereby minimising transaction costs when moving to another provider. At the same time, unlimited calls and SMS have become the norm in the market. Data allowances have equally increased dramatically in the past few years, with many fixed broadband plans now offering unlimited data usage.

Most importantly, the enforceable *Mobile Number Portability Code (and Local Number Portability Code)* require CSPs to facilitate the porting of consumers' phone numbers, where technically possible. This allows consumers to move between providers with minimal effort, delay and transaction costs. This contrasts the banking industry where a transfer of account numbers from one bank to another is not possible, thereby creating significant barriers to moving between banking institutions.

Overall, it should be noted that the traditional telecommunications market has moved to a broader communications market in which traditional suppliers of telecommunications services (e.g. standard voice calls and SMS) now compete with providers of so-called over-the-top services such as messaging services, online platforms and conferencing services, e.g. WhatsApp, iMessage, Google Message, Facebook Messenger, Zoom, Skype, Microsoft Teams etc.

This broadening of the service offering is a good indicator of a healthy competitive environment in which consumers navigate churn between providers and services or, more commonly, use service offerings from different providers simultaneously and interchangeably.

Importantly, over the past 5 years (or more), consumers of communications services consistently 'get significantly more for less money' – a trend that is not replicated in many sectors.

The ACCC Communications Market Report 2018-19 notes:

“Average real prices fell in 2018–19 across all fixed and mobile services. The average consumer renewing their mobile phone plan would have paid 6.6 per cent less, in real terms for a given level of quality, compared with 2017–18. Those consumers renewing their fixed broadband plan, NBN or non-NBN, would have seen a reduction of 1.5 per cent.

⁴ p.5, para 1.5, Explanatory Memorandum, *Treasury Law Amendment (Consumer Data Right) Bill 2019*

Taking a longer-term view, mobile phone services continue to experience greater declines in prices than fixed broadband services. Mobile phone service prices have fallen by approximately 27 per cent since 2015–16, compared with an approximate 9 per cent decline for fixed broadband services.

Overall, in the past four years, there have been real price declines (for a given level of quality) across all categories (fixed and mobile services). These real price declines reflect the trend of service providers offering greater inclusions at the same, or higher prices. By its nature this quantitative analysis infers that consumers are getting or perceiving greater value from this trend."⁵

As outlined above, it is clear that the telecommunications sector is very competitive – with competitiveness in part driven by easy switching between providers – and already provides easy access to a range of types of data.

The benefits of applying a CDR regime similar to the regime that is being implemented in the banking sector or envisaged for the energy sector seem very limited at best.

With respect to the costs involved in the implementation and ongoing delivery of a CDR regime, we observe that banks and financial institutions (and now also energy companies) as well as regulators and Government appear to have invested substantial resources into the development of the rules governing the CDR, the creation of standards and APIs, security mechanisms and the larger CDR eco-system. At this stage, it is difficult to see how the CDR regime of those two sectors could be translated into arrangements suited to the communications sector without significant adjustments. Indeed, it is also hard to see that the benefits derived from doing so would outweigh the attendant costs.

Therefore, the envisaged benefits of applying additional measures to the communications sector ought to lean more towards building trust in the sharing and use of data by public and private enterprises to enable the creation of new products and services, productivity improvements, and new and more efficient ways for customers to interact with suppliers.

Given the above, we believe that it would be prudent to ensure that any future designation of sectors is preceded by a rigorous cost-benefit analysis, combined with an analysis of which sectors ought to be designated first, in order to quickly maximise consumer benefit from sectoral CDR regimes. It appears that other sectors may have less extensive regulated (or otherwise) data sharing arrangements and more complex product and market structures that hamper easy switching of providers and limit innovation and competition.

We also recommend considering a CDR regime that could be applied more broadly across many sectors of the economy and to leave highly specialised and cost-intensive regimes to sectors where the lack of data exchange, a high degree of complexity of products and difficulties of switching providers has been evidenced, and where a cost-benefit analysis has demonstrated that the application of a customised CDR regime is the most efficient and effective means to address those deficiencies.

3. Read access functionality

The Inquiry seeks feedback on read access functionality in the CDR (including its benefits and costs) as already existing in the banking sector, and on other read access functionalities.

As noted above, consumers in the telecommunications sector already have good access to relatively standardised product information and significant amounts of transactional information pertaining to them. We also note that much of the transactional information, such as the number of phone calls or the volume of data used, are becoming less relevant, due to the market's move to offer unlimited usage.

⁵ https://www.accc.gov.au/system/files/Communications%20Market%20Report%202018-19%20-%20December%202019_D07.pdf

Accordingly, and as discussed above, the implementation of a CDR similar to the regime implemented in the banking sector is likely to be of marginal benefit in our sector, but certainly would be associated with significant costs. For a number of small players in the market (and there is a significant number of those in our sector), these costs could mean that they are unable to continue to operate, thereby reducing competition and consumer choice – the opposite of what the CDR seeks to achieve.

Following on from our recommendation of a broader economy-wide regime, we believe that a CDR that offers read access functionality in form of a baseline for product information in an easily comprehensible format and language across a range of sectors could provide an avenue to more rapidly achieve consumer benefits, without the need for complex and costly privacy, consent and security mechanisms, accreditation and technical (API) implementation.

Indeed, all sectors that have not proven to require a highly customised CDR and that do not already provide such read access ought to be considered for such a 'default' low cost/fast implementation approach to the CDR.

4. Write access functionality

The Inquiry also contemplates the expansion of the CDR to include write access, "that is enabling a trusted third party to change or add to data about a customer at the customer's direction and with their consent."⁶

The notion of write access, i.e. the ability by a trusted party (or to customer itself) to add or change data, does not align well with the operational realities of the telecommunications sector and the way in which data is being created. While customers are associated with specific data, such as account data (name, address, security questions etc.), the by far larger amount of data, such as usage data or location data, is not generated through a 'wilful direction' on the part of the consumer but rather the result of communications networks creating this data in order to function and to provide the service that customers are consuming.

Furthermore, this second category of network generated data is being relied on by Australian (and overseas) Law Enforcement Agencies (LEAs) for the prevention, investigation and prosecution of crimes. Disclosure of and access to such data by third parties (other than LEAs) would not only be impractical and have the potential to severely impede LEAs' investigation and prosecution abilities, but is also currently – and for good reason – prohibited by the *Telecommunications Act 1997*.

Looking at a write access functionality for third parties, it seems that the potential for scams and fraud, including identify theft and take-over, would be significant, especially for vulnerable consumers such as the elderly.

As it stands today – and without the CDR being implemented in many sectors of the economy and, where it is implemented, it does not have write access functionality – our industry and many other sectors combat scamming and fraudulent activities on a large scale and daily basis. The ACCC's Scam Watch statistics estimate the total financial loss due to scams in 2020 alone to be \$53M, with a total of \$143M being lost in 2019. The emotional costs for victims of such malicious activity ought to be added to these figures.

The CDR itself has given rise to intense debate about the risks to privacy and cyber security as evidenced in the debate leading up to the enactment of the legislation and thereafter.

Against the background of those risks, and noting the likely additional costs, it does not seem prudent to further expand the CDR to include write access for third parties without having

⁶ p.6, The Treasury, *Inquiry into the Future Direction of the Consumer Data Right – Issues Paper*, March 2020. <https://www.scamwatch.gov.au/scam-statistics>

gained a better understanding and longstanding experience as to the actual impact and implications that come with an economy-wide CDR.

5. Conclusion

Communications Alliance looks forward to continued engagement with The Treasury and other relevant stakeholders on this important topic.

We continue to lend our support to the overarching objectives and principles of the CDR and stand ready to work with all stakeholders to facilitate their effective and efficient adoption in the communications sector, where this has not yet occurred.

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