

Consumer Data Right Sectoral Assessment: Telecommunications

NBN Co Limited submission on consultation paper

August 2021





Responses to Consumer Data Right Sectoral Assessment [Telecommunications Consultation Paper](#)

NBN Co Limited (NBN Co) welcomes the opportunity to respond to the Australian Government's *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper* (the Consultation Paper) which seeks feedback from stakeholders to inform a final report and recommendation to the responsible Minister on whether to extend the Consumer Data Right (CDR) to telecommunications. NBN Co supports the intent of the CDR and considers it an important framework for helping consumers derive direct benefits from the data that is collected about them in relation to the provision of a good or a service, and/or consent to the sharing of that data with trusted and accredited third parties.

NBN Co was established to offer wholesale-only, open-access network services to qualified retail service providers (retailers) on non-discriminatory terms. This arrangement has the objective of promoting efficient and effective retail-level competition (primarily via Layer 2 ethernet bit-stream services) and is reflected in a system of contracts, regulations and legislation that govern NBN Co's relationship with its retail customers and enables retailers to interconnect to the National Broadband Network (NBN) and provide services to consumers. Whilst we welcome NBN Co's wholesale services being compared between retailers, NBN Co respectfully submits that the CDR should not apply to NBN Co directly due to NBN Co's role as a wholesale broadband operator.

NBN Co is a wholesale provider of broadband services to retailers and is involved in provisioning wholesale level data with very limited consumer interaction. Accordingly, NBN Co is of the view that it should be excluded from all primary data holder responsibilities. It is also NBN Co's view that NBN Co will operate in a secondary data holder role only where there is wholesale data that can be provided to retailers that they cannot otherwise source by themselves.

NBN Co currently provides wholesale data to retailers to facilitate the sales of broadband products and services to consumers. This data includes information related to orders and network activations and network performance. It is NBN Co's expectation that the existing wholesale data it shares with retailers is sufficient for retailers to support the needs of the CDR and the CDR simply offers a framework for consumers to request the sharing of their data relevant to their retail products and services.

NBN Co has provided responses to the CDR Consultation Paper in the context of its broadband wholesaler role and all comments therefore apply to non-mobile broadband services. The following feedback is provided in response to the questions that specifically apply to NBN Co and or seek views on areas of relevance to NBN Co's potential participation in the future (i.e. Questions 1, 4, 5, 7, 8, 9, 11, 13, 14, 15, 17).

**1. What is ‘telecommunications data’ and the ‘the telecommunications sector’ for the purposes of the CDR?**

For the purposes of CDR, NBN Co defines ‘telecommunications data’ to be data that relates to consumers and their purchase of retail telecommunications products and services.

In line with its role in the broadband sector, NBN Co’s data is wholesale in nature, the company’s data relates to the operation of the physical Layer 2 broadband network and is therefore not likely to be useful for consumers to use on its own. Accordingly, NBN Co does not consider the broadband wholesale related data it holds to be included in the definition of ‘telecommunications data’ for CDR without additional context that could only be provided by their retailer.

4. If telecommunications is designated, which services, products and consumer datasets should be included? What benefits would arise to consumers and how could this encourage competition and data-driven innovation? Please provide examples of potential use cases.

If the telecommunications sector is designated for CDR NBN Co recommends that the data included should include the retail related aspects of fixed line voice, fixed broadband, mobile and wireless services.

As a wholesaler NBN Co provides a uniform set of broadband services to retailers for consumer and business segments which enables competition at the retail level. NBN Co does not operate in a capacity that has detailed visibility of individual consumers, retail products or associated use cases for consumers.

5. Are there limitations on datasets, either in terms of availability or cost of making it available under the CDR? Please provide evidence, if applicable.

In relation to broadband services and products NBN Co is of the view that retailers have access to and are in direct control of the consumer and product datasets that are central to CDR’s objectives, and therefore the retailers are the primary data holder and should be the provider of these datasets to consumers. Based on this principle NBN Co recommends that all consumer and product related datasets (as set out in the Consultation Paper) will, by default, be provided by a customer’s retailer.

In relation to NBN Co’s role the Consultation Paper considers that NBN Co is likely to be a secondary data holder of performance data and usage data and also asserts that the current Australian Competition and Consumer Commission (ACCC) Measuring Broadband Australia (MBA) Program is based on averaged metrics and therefore cannot be relied on by consumers to understand speed and service quality at their location from a particular service provider. We provide our views on these statements below.



Broadband Performance dataset

NBN Co considers the proposed secondary data holder role for the wholesale component of performance data to be valid. NBN Co is of the view that we already make available this wholesale component of performance data to retailers and that therefore this data requirement is already met by NBN Co.

In relation to availability of performance data it is important to note that this dataset is complex and NBN Co's wholesale data contributes to part, but not all, of the performance measures.

In addressing availability and possible limitations of broadband performance data, it is key to acknowledge that the performance experienced by a consumer is complex and impacted by several components (many of which are outside of NBN Co's control):

1. the in-home equipment, configuration and the arrangement of equipment in the home impacts speed and performance;
2. the retailer's provision and management of services affects speed and performance;
3. The type of broadband technology in place at a premises and its configuration (e.g. distance from node) also affect speed and performance;
4. NBN Co's Layer 2 performance data can support a portion of the broader performance dataset, however, it may not fully align with consumer level measurements due to overheads at Layer 3 (Internet Protocol (IP) layer); and
5. Adverse weather events (such as flooding or fire, rain, or dust storms in the case of satellite and fixed wireless) and power outages can affect network performance.

Based on the above it is not easy to provide a simple dataset relating to overall performance from one data owner, given data traverses through many network providers and data centres to support a consumer's service. It is also important to point out that most aspects of these complex and disparate datasets will be historical in nature and not a future prediction of performance or faults.

It is NBN Co's view that performance data currently provided by NBN Co supports the provision of the wholesale broadband provider component of a broader performance dataset that retailers will need to consider combining with other sources of data to provide a comprehensive view of the performance a consumer experiences.

Broadband Usage dataset

In relation to broadband usage data NBN Co does not foresee that it would play a secondary data holder role as retailers have a more detailed view of consumers' usage data than what is available to NBN Co. Specifically, retailers capture usage data at Layer 3 (IP layer), whilst NBN Co primarily records this at Layer 2 (Ethernet layer). As a Layer 2 provider NBN Co's visibility of usage data is only at the ethernet level which means that it has, in general, aggregated visibility of traffic types that pass across the network. There are traffic volume variations between Layers 2 and 3 depending on the traffic type, from a consumer perspective Layer 3 offers greater accuracy. For these reasons and in its wholesale capacity NBN Co currently provides throughput usage data to retailers to assist with validation only.



ACCC Measuring Broadband Australia (MBA) Program

In relation to the ACCC's MBA program, NBN Co views the program as an important independent source of information for consumers on the performance of the **nbn**[™] network in terms of technology and geography, as well as retailers' overall performance. The quarterly reporting increases transparency and consumer awareness of broadband related issues, and since its inception has provided consistent and regular reporting which allows the provision of comparable metrics over time.

While the MBA program does not promote the sharing of consumers' information about their own service to enable more simple switching between retailers, the information it does provide is a separate but useful dataset for consumers to make informed decisions.

7. How is applying the CDR to telecommunications likely to encourage competition in the sector? Please provide examples or evidence, if applicable.

NBN Co believes that, in relation to broadband services, consumers, particularly end users of the **nbn**[™] network, are by and large already provided with the relevant information to make informed consumer decisions and purchases. This is either provided through their monthly bill from their retailer or through customer facing advertising and product information, the ACCC's Broadband Speed Claims – Industry Guidance and other regulatory instruments which require that retailers provide accurate advertising claims and product performance information to consumers at the time of purchase.

While the CDR may allow consumers to freely share their data with potential retail providers or accredited data recipients and even facilitate the switching to a new provider, additional competition is only encouraged in those instances where the implementation of the CDR addresses existing market inefficiencies. The impact of implementing the CDR needs to be balanced against the benefits to consumers.

8. What are the important additional aspects of the competitive and regulatory landscape in telecommunications that should be considered in this sectoral assessment? Please provide examples, if applicable.

Any additional regulatory requirements on the telecommunications sector with the advent of a CDR scheme would need to consider the current range of extensive market regulation and policy requirements that are already in place. These include key features of the Australian telecommunications industry structure which reflects existing Government policy settings. For example:

- NBN Co is required to operate on a wholesale only basis as directed by government policy and as required under the NBN Companies Act, while other network operators must operate on a functionally separated basis.
- A range of regulatory instruments are already in place to ensure that telecommunications consumers are appropriately informed when purchasing a telecommunications service from a retail service provider.
- The provision of NBN services by retailers are subject to a range of regulatory information obligations. For example, the Telecommunications Consumer Protections Code requires carriage service providers to



provide clear and accurate information in relation to their services; Critical Information Summaries for all telecommunications plans and standard offers; as well as promotions that are accurate and not misleading. 'Key Fact Sheets' about NBN Co services offered are prescribed in their content and format by the Telecommunications (NBN Consumer Information) Industry Standard 2018.

Relevant to impacting the competitive landscape of the industry is the importance of avoiding overlapping and/or inconsistent regulatory obligations. Overlapping or inconsistent regulatory instruments only serve to impose cost on industry and give rise to regulatory uncertainty as well as risk. This in turn reduces economic efficiency and may potentially confuse consumers.

Any CDR framework that is implemented for the telecommunications sector should avoid the inclusions of data that are provided by data holders to accredited data recipients for offering comparative services that are in conflict with existing mandatory information that must be provided to consumers by retailers.

9. Is there potential for data sharing under the CDR to make the telecommunications markets more efficient? In what ways? Please provide examples and/or evidence, if applicable.

As discussed in earlier responses, while there are no obligations specifically targeted at enabling easier consumer portability between providers, there is already in place a range of regulatory instruments and industry initiatives to ensure that consumers can be informed as to the capabilities and speed performance of their services, and the suitability of telecommunications products for end users' needs, particularly in relation to NBN Co's fixed line or wireless services. Retailers also have positive obligations to make factual and not misleading advertising claims about performance. NBN Co is supportive of these obligations and their impact in making telecommunications markets efficient and empowering consumers to make an educated choice.

11. What privacy issues should be taken into account when considering the designation of the telecommunications sector to the CDR regime? For example, are there particular classes of data that present privacy or confidentiality risks that cannot be mitigated, such that they should not be designated as CDR data? Please provide examples and/or evidence, if applicable.

To safeguard consumer privacy and security, primary data holders must be able to reliably authenticate CDR consumers and manage consumer consent. As a network wholesaler, NBN Co does not maintain direct relationships with consumers and would not be able to safely action requests for consumer data, incorporating authentication and consent. NBN Co support the position taken in the Consultation Paper that retailers would be best placed to provide a single point of contact to authenticate CDR consumers and to action CDR requests, including the initial capture of consumer consent to share data and subsequent removal of consent over time. The proposed peer-to-peer model is discussed in more detail below.



13. Is the proposed peer-to-peer model for data sharing suitable for the telecommunications sector? If so, what sector-specific issues or modifications would need to be considered? Please provide evidence to support your view.

In principle NBN Co supports the proposed peer-to-peer model outlined in the Consultation Paper in so far that its proposed role as a secondary data holder aligns with existing processes that occur between NBN Co as a fixed line wholesale network provider and the retailers it supports. Under the existing data sharing processes between NBN Co and retailers NBN Co is subject to an equivalence of access obligation which requires NBN Co to make equivalent wholesale data available to all retailers through portals as well as Application Programming Interfaces (APIs). Additionally, NBN Co agrees with the comment that there is no obvious consumer facing entity that could operate a centralised model covering the unique datasets across all telecommunications services.

NBN Co is of the view that options need to be considered and evaluated to understand the most cost efficient and simple way to implement a peer-to-peer model, whilst also upholding the privacy and authentication and consent requirements to ensure consumer privacy protection. In considering the model options NBN Co recommends that consideration is given to smaller organisations to ensure it is feasible for them to efficiently implement the systems required to support CDR.

NBN Co also agrees in principle with other industry concerns raised that an overly complicated API framework between a multitude of potential primary data holders and accredited data recipients will provide limited benefit to consumers in comparison to the potential costs incurred by retailers, unless the solution implemented is suitably simple.

While NBN Co supports the peer-to-peer model in principle, subject to costs affecting retailers, for the telecommunications sector in isolation, it notes that when cross-sector providers need to participate in two or more CDR peer-to-peer schemes this introduces cost and complexity which should be considered more broadly.

14. Are there any reasons why specific participants in the sector should be excluded from data holder responsibilities? Please provide evidence to support your view.

NBN Co is a wholesale provider of broadband services to retailers and is involved in provisioning wholesale level data with very limited consumer interaction, accordingly NBN Co is of the view that it should be excluded from all primary data holder responsibilities.

It is also NBN Co's view that NBN Co operates in a secondary data holder role only where there is wholesale data that can be provided to retailers that they cannot otherwise source by themselves. In NBN Co's view, it already provides adequate wholesale data under its existing WBA arrangements to assist with the provision of the proposed retail-based datasets. Generally, NBN Co has not identified any use cases where NBN Co would need to receive data under the CDR based on a consumer's request and accordingly does not foresee a need to become an Accredited Data Recipient.



15. In what ways should the extension of the CDR take into account existing regulation in the telecommunications sector? Please explain your view.

As noted above, there are extensive requirements placed on fixed and mobile retail providers to provide prescribed information about the products and services they offer to consumers. These information obligations are unlikely to be removed with the advent of a CDR regime for the telecommunications industry. Therefore, care should be taken to ensure the proposed customer and product datapoints set by the CDR framework are consistent with regulated information already provided. Otherwise there is risk of consumer confusion if the information received from either their retail service provider or from a separate accredited data recipient differs. Further additional regulatory obligations should not overlap with existing regulation or consumer protection obligations.

The extension of CDR needs to consider the existing regulatory and policy framework which requires fixed network providers to operate on either a wholesale only or functionally separated basis. Any regulatory obligations should only be imposed on those parties that are able to meet those obligations and are best placed to provide the relevant data.

17. Have the main sources of costs associated with implementing and complying with the CDR regime been identified? Are there any additional costs that should be considered?

On the assumption that any secondary data holder obligations placed on NBN Co can be met by its existing interaction with its retail customers, NBN Co does not expect new significant sources of cost for its business. There may be some costs associated with additional reporting or administrative activities such as regular audit processes that NBN Co may incur.

Should NBN Co be required to increase the volume and frequency of data provided to retailers there would be moderate cost impacts for NBN Co. Whilst it is not expected or preferred by NBN Co, should NBN Co need to provision data directly to consumers or to become accredited data recipients under a CDR framework there would be significant cost impacts for NBN Co to establish consumer facing systems and processes and to manage these.