

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
Treasury Consultation Paper

**Consumer Data Right  
Sectoral Assessment  
Telecommunications**

Public Version

August 2021

## EXECUTIVE SUMMARY

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1. Telecommunications networks are central to the Government's digital economy strategy and are critical infrastructure for the social and economic well-being of the country. Digital services can only be delivered over telecommunications networks, and without efficient national networks there are likely to be material challenges and delays in achieving the digital economy strategy.
2. But the benefits of the digital economy will only be realised if the infrastructure needed to support it is delivered – both mobile and fixed. This requires billions of dollar of capital investment but given the market circumstances this investment is far from guaranteed.
3. The dependence on competitive telecommunications investment can be seen through economic modelling by PwC that shows that the competitive deployment of 5G alone will drive digital services worth an additional \$130 billion of economic growth and 205,000 net new jobs over the decade to 2030.
4. Notwithstanding the importance of the telecommunications to the digital economy, Optus is concerned that the consultation paper incorrectly conflates the implementation of the Consumer Data Right (CDR) with increased competition, efficiency, and improved consumer outcomes. In other words, the consultation ascribes many of the benefits of telecommunications investment to the CDR.
5. This position is contrary to the reality of the nature of competition in the industry. There is no evidence available to the Treasury to support the assertion that implementation of the CDR will have an observable impact on competition or investment. The reality is that the CDR is likely to make little to no impact on competition but will drive up red-tape and costs for the sector.
6. That is not to say that the CDR is not a worthwhile policy. But it must be implemented in a manner which ensures its benefits are greater than the costs. The benefits of the CDR to telecommunications are likely to be negligible. Consequently, there is no case for the expediated implementation timeframe proposed by Treasury and the lack of real consultation with the industry.
7. Optus is concerned with the lack of real consultation with industry and the refusal of Treasury to provide more time for industry to respond to the consultation paper. As a consequence of an artificially constrained timetable, Optus is unable to provide detailed comments on the implementation costs of the CDR or make comments on the types of data that are likely to be available.
8. However, we do note that the data retention policy has cost the industry over \$238 million to implement since 2015-16. Given the potential data sets noted in the consultation paper, this cost estimate appears to be a reasonable cost estimate until the CDR data set can be finalised. The cost of the CDR depends largely on the amount of data needed to be collated and stored. A priority of Treasury should be to minimise the data included in the CDR in order to minimise costs to industry.
9. Given the incremental, if any, net benefits that are likely to result from the CDR (and are not due to other policies or investments), Optus strongly supports the postponement of this process until the policy and financial settings of the industry better support competitive national telecommunications investment. Without further assessment, CDR is likely to be an expensive white elephant for the telecommunications sector.

## COMPETITION IN TELECOMMUNICATIONS MARKETS

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10. The consultation paper places weight on the ‘lack of competition’ in the telecommunications market and often claims that implementation of the CDR will promote increased competitive outcomes.
11. It is not clear the extent to which Treasury has undertaken a rigorous and fact-driven assessment of the level of competition in telecommunications markets. While there is insufficient time in this current consultation to undertake this analysis, Optus sets out some observed market facts from regulators and courts which Treasury may find useful.

### Fixed line competition

12. The last decade has seen fundamental change in the fixed line telecommunications market with Government addressing the long term structural competition issues through its investment in the nbn aimed at structurally separating the legacy incumbent Telstra. This has largely been achieved and already the impact on competition in the retail market can be observed:
  - (a) Telstra held a 72% market share of fixed voice services in June 2009, which the ACCC attributed to its “near-ubiquitous customer access network”, with Telstra’s dominance being linked to its historic ownership of the copper fixed line network – which its competitors required wholesale access to in order to offer services in the retail market.<sup>1</sup>
  - (b) Telstra’s dominance in the emerging DSL fixed broadband market was also evident in 2010, again, due to its ownership of the copper fixed line network. Telstra provided around 63% of all DSL SIOs through its direct retail and wholesale services. The ACCC observed the market “remained highly concentrated”.<sup>2</sup>
13. The structural separation of Telstra achieved through the Government’s \$50bn investment in the nbn has resulted in a material change in fixed line market. The provision of fixed line services on a wholesale-only non-discriminatory basis has enabled retail competition to flourish. This is addressing Telstra’s historical dominance, with its retail fixed line market share falling to 52% in 2016-17 and to 47% in 2019-20.<sup>3</sup> Telstra’s dominance in fixed line voice service has also fallen to 61% in 2016-17 and to 46% by 2019-20.<sup>4</sup> There can be little doubt that the level of competition has increased in recent years. This is expected to increase further as the roll-out of nbn is finalised and the industry moves to a sustainable post-roll-out model.
14. The roll-out of the nbn has not been without issues; and in some regards NBN Co has retained material market power in the wholesale fixed line market which introduces new competition issues. Whilst more needs to be done, the fundamental changes achieved through the structural reform of the fixed line market should not be discounted. Optus observes that regulatory interventions to promote competition remain focused on wholesale infrastructure issues and not at the retail level. In other words, the retail fixed line market is effectively competitive.
15. To be clear, it has taken \$50 billion of Government intervention to achieve these competitive outcomes. Optus submits that Treasury should amend its assessment of the

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<sup>1</sup> ACCC, 2011, Telecommunications Report 2010-11, p.17

<sup>2</sup> Ibid., p.29

<sup>3</sup> ACCC Communications Market Report 2019–20, p.20

<sup>4</sup> Ibid., p.64

sector accordingly and re-assess the expected contribution of the CDR to telecommunications competition.

### Mobile competition

16. The Australian mobile market has long been regarded as highly competitive, and the success story of the Australian telecommunications industry. Australia has a long history of strong infrastructure competition with a minimum of three national mobile networks competing for subscribers. Competition in the mobile market is driven by investment and innovation, with mobile carriers investing in extended coverage and better capacity. As a result of this, Australia is at the forefront globally for mobile download speeds and the deployment of 5G networks.
17. The success of the mobile industry can be seen in global speed rankings, with Australia ranked ninth in the world for mobile download speeds in July 2021. This can be compared to 53<sup>rd</sup> for fixed broadband download speeds.<sup>5</sup> Australia is one of the few markets where average mobile download speeds are greater than fixed broadband speeds.
18. The level of competition in the mobile market has also been subject to an extensive and forensic analysis by the Federal Court in its assessment of the Vodafone-TPG merger. The Court outlined the nature of competition in the mobile market:
  - (a) Mobile Network Operators (MNOs) compete on both price and quality,<sup>6</sup> with competition taking place in a variety of ways including introduction of new plans; discounting of existing plans; and maintaining prices where the quality has improved considerably.<sup>7</sup>
  - (b) In addition to price competition, MNOs and MVNOs also compete by offering subscribers greater value in terms of the inclusions in their plans.<sup>8</sup>
  - (c) Competition in both the pre-paid and the post-paid segments is dynamic.<sup>9</sup>
  - (d) The pre-paid segment exhibits considerable price competition, with competition across the MNOs using own brands and secondary brands, and a significant number of MVNOs.<sup>10</sup>
  - (e) Competition in the post-paid segment is characterised by significant product differentiation. The market is characterised by participants seeking to 'give more, charge less'.<sup>11</sup>
  - (f) Competition in the post-paid segment has also been characterised by considerable competition between Vodafone and Optus.<sup>12</sup>
19. Optus observes that the consultation paper makes no reference to considerable and dynamic retail mobile competition, evidenced by "considerable price competition" and "significant product differentiation". Nor is any reference made to the billions of dollars of capital invested each year by the MNOs to deliver competitive national mobile networks

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<sup>5</sup> <https://www.speedtest.net/global-index/australia>

<sup>6</sup> VHA v ACCC [2020] FCA 117 at [137]

<sup>7</sup> *Ibid.*, at [138]

<sup>8</sup> *Ibid.* at [139]

<sup>9</sup> *Ibid.*, at [140]

<sup>10</sup> *Ibid.*, at [141]

<sup>11</sup> *Ibid.*, at [144]– [149]

<sup>12</sup> *Ibid.*, at [150]

that are among the best performing networks in the world. It is not clear on what basis Treasury has disregarded the views of the Federal Court.

20. Optus submits there is no evidence on which Treasury can make the reasonable claim that there is a lack of competition in fixed line or mobile telecommunications markets. More importantly, Treasury has provided little to no evidence to support the competition claims in the CDR consultation paper.
21. Treasury may disagree with the comments of the Federal Court as to the nature of competition in telecommunications markets. However, Treasury faces the burden to establish a new set of facts which counters these previous conclusions. The consultation paper does not contain this evidence.
22. Optus submits that Treasury should amend its assessment of the sector accordingly and re-assess the expected contribution of the CDR to telecommunications competition to take into account these market facts.

## CDR WILL NOT ALTER COMPETITION IN THE MARKETS

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23. The consultation paper claims that the CDR could overcome structural features of the market that tend to entrench dominant providers, such as complexity of products, bundling of services; and service quality transparency.<sup>13</sup> The consultation paper also claims that CDR could promote new entry into the market.
24. The consultation paper makes little mention of infrastructure investment; and the requirement to invest billions of dollars of capital to become a carrier. The consultation does make one reference that investment in mobile networks poses as a barrier to entry and expansion.<sup>14</sup> No further mention of investment driven competition is made throughout the paper.
25. Optus submits that the Treasury mischaracterises the nature of competition in telecommunications markets – with retail competition being driven by investment by competing networks. The cycle of investment and counter-investment has been the hallmark of the Australian mobile industry. The proposed CDR will not promote new entrants to invest in telecommunications infrastructure, so it cannot impact competition in the sector.
26. The Federal Court found that the merger between TPG and Vodafone would increase the level of competition in the mobile market by enabling TPG to increase its network capacity and ability to compete; by promoting cross-selling opportunities in both residential and business markets; and greater ability to fund further network investment including rolling out 5G faster.<sup>15</sup>
27. The Court confirmed that competition in the mobile market is driven primarily through the ability to invest in ever improving network coverage and capabilities. It is far from clear that the CDR would contribute any measurable impact on the level of competition in the mobile market.
28. In conclusion, the evidence available to the Treasury at this stage does not support the assertion in the consultation paper that implementation of the CDR will have any observable impact on competition. The consultation paper asks how the application of

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<sup>13</sup> Treasury, 2021, p.22

<sup>14</sup> Treasury, 2021, p.10

<sup>15</sup> TPG v ACCC [2020] FCA at [897]

the CDR to telecommunications is likely to encourage competition in the sector. The simple answer is that the CDR is likely to make little to no impact on the level of competition. In other words, the benefits of the CDR are likely to be small.

29. The assessment of the extension of the CDR to the telecommunications industry must recognise the low potential benefit of the CDR.

## CDR WILL NOT DRIVE THE DIGITAL ECONOMY

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30. Treasury observes that the potential benefits of the digitalisation of the Australian economy have been estimated at \$315 billion over the next decade and will benefit all aspects of Australian society.<sup>16</sup> The consultation also recognises that telecommunications is a key sector that will underpin the digital economy. Further, almost all business technologies of the future will rely on fast broadband provided through telecommunications investment. Furthermore, Treasury recognises that telecommunications services delivered through telecommunications investment are at the centre of household social and economic participation.
31. Optus agrees with the central role that the telecommunications industry will play in delivering the digital economy. Put simply, without the telecommunications industry and its continual investment in larger and better networks, there will be no digital economy.
32. Economic modelling by PwC shows that competitive national deployment of 5G could boost the national economy, with cumulative benefits over the decade of \$130 billion – equal to 1.2% of GDP – and the creation of 205,000 net new jobs.
33. The same modelling shows that 5G could drive further economic development of regional Australia. Over the decade, the cumulative economic benefit would be \$38 billion – equal to 1.4% of GDP – with 45,000 net new jobs created.
34. This represents almost one third of the economy potential of the digital economy. However, PwC modelling commissioned by Optus shows that a lack of network choice and a subsequent delay in rolling out competitive 5G networks has the potential to reduce the economic benefits of 5G services by 42% and cost the Australian economy \$55 billion over the decade.
35. Competitive investment is the engine that will deliver the Government's digital economy. But in order to deliver this, there must be focus on delivering policies and removing barriers to efficient competitive infrastructure investment.
36. Australia's mobile sector benefits from two alternative networks competing against the dominant provider. History shows that competitive infrastructure investment is what drives efficiency gains, product improvements, and better consumer outcomes. As Optus looked to step up competition, we invested heavily, particularly outside of capital cities. As a result, in 2017, Optus was named 'best in test' by P3 connect Mobile Benchmark Australia 2017, an accolade which drove Telstra to invest heavily to narrowly reclaim the title the following year.
37. The 2018 neck-and-neck race saw Optus still lead the data category, 'due to better results in smaller towns and on the roads' and show a 'particularly high Quality of 4G Coverage'. Both competitors demonstrated improvements in voice and data. In short,

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<sup>16</sup> Treasury, 2021, p.30

customers benefited from improved coverage that results from competitive network investment.

38. Australians consumers – including Telstra customers – have benefitted from the additional investment and services competition from challenger networks has brought.
39. Treasury claims that the CDR would enhance pressure on Australian telecommunication companies to compete, especially on product quality and customer service.<sup>17</sup> The consultation implies that the CDR will have a measurable impact on telecommunications networks, competition, coverage, prices, quality, and service levels. These lofty claims are inconsistent with the market reality.
40. The consultation paper misrepresents that nature of telecommunications competition and the impact of CDR on the drivers of competition. Most importantly, the consultation makes the blatantly incorrect claim that the CDR will assist the telecommunications industry to deliver the investment required to achieve the digital economy aims of the Government. As recognised by the Federal Court, investment is the key to promoting further competitive tension in an already dynamic and considerably competitive industry. The CDR does not address any of the barriers to competitive investment nor does it address ant of the policy challenges that needs to be addressed to encourage further investment.
41. Encouraging network investment and quicker deployment of a competitive national 5G network that benefits all Australians, such an approach will promote competition, and with it the full consumer and economic benefits of competitive national mobile markets. It will also help to accelerate the achievement of Australia’s digitally connected future

## CDR WILL NOT PROMOTE EFFICIENCY AND INNOVATION

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42. Treasury argues in the consultation paper that the CDR regime will promote efficiency and innovation in telecommunications markets.
43. The consultation paper argues that efficiency of the telecommunications sector will be promoted by assisting consumers to navigate complexity and choose products that best match their requirements.<sup>18</sup> The consultation paper argues that access to information on which to make decisions about telecommunications product remains an issue, “particularly given strong evidence that few consumers read or understand disclosure documents like ‘Key Facts Sheets’ provided for telecommunications products (Shahar & Schneider, 2014)”.
44. However, Treasury has not produced any evidence to support the assertion that few consumers read or understand disclosure documents. The textbook referred to by Treasury (Shahar & Schneider, 2014) cannot possibly discuss the efficacy or ease of understanding Key Facts Sheets as Key Facts Sheets were only introduced as a regulatory requirement in 2018 (as part of the ACMA’s nbn consumer experience rules) and the textbook was published in 2014.<sup>19</sup>

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<sup>17</sup> Treasury, 2021, p.31

<sup>18</sup> Treasury, Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper, August 2021, p.23.

<sup>19</sup> Obligations relating to a Key Facts Sheet are contained in Telecommunications (NBN Consumer Information) Industry Standard 2018, which along with other regulatory instruments, make up the ACMA’s nbn consumer experience rules.

45. Optus notes that the textbook in question examines US disclosure obligations across a range of industries – particularly finance and medical treatment. It is Optus' view that there is a significant difference between the detailed product disclosure statements required to be provided in finance and related services industries (such as insurance or superannuation) and the complexities of medical treatment compared with a one-page Key Facts Sheet referred to by Treasury.
46. The purpose of the Key Facts Sheet is to provide accurate information to customers prior to purchasing an NBN plan and make it easier for consumers to compare plans and pick the right plan for their needs.<sup>20</sup> It is required to be easily accessible from online plan pages and CSPs also have requirements to read a KFS to a customer if the customer is signing up to an NBN plan over the phone or provide a hard copy of the KFS to the customer if the customer is signing up in store.
47. A KFS contains information about the typical speeds that can be achieved on the plans offered by the CSP, the activities that can be undertaken on those plans for different size households, technical limitations that can affect the performance of an nbn service and processes for customers with FTTN/B/C services.<sup>21</sup>
48. In addition, the Telecommunications Consumer Protection Code (TCP Code) contains additional information obligations, for example:
- (a) To provide a two-page summary of critical information relevant to a customer's plan (Critical Information Summary or CIS)
  - (b) To make a range of other information available to assist consumers (not as part of a CIS), including:
    - (i) A description of the key attributes of the products offered;
    - (ii) The manufacturer's name of any non-CSP-supplied goods with the offers;
    - (iii) The main technical features of any goods part of the CSP's offer;
    - (iv) Information on bill formats, bill options, billing periods and payments;
    - (v) Information to estimate what capacity the consumer may need on a product to meet their usage requirements;
    - (vi) Details of any post-sales support and fees or charges for this support;
    - (vii) Network coverage, which may include a map or diagram;
    - (viii) Information about whether a consumer needs to take any action to activate or deactivate international roaming on the CSP's product;
    - (ix) For virtual network operators, the name of the principal carrier whose network is used to provide the service;
    - (x) Information about products offered by the CSP designed for consumers with different disabilities.<sup>22</sup>

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<sup>20</sup> Telecommunications (NBN Consumer Information) Industry Standard 2018 – Explanatory Statement, p. 2. Available at: <https://www.legislation.gov.au/Details/F2018L00814/Explanatory%20Statement/Text>

<sup>21</sup> Telecommunications (NBN Consumer Information) Industry Standard 2018, Division 1 and Division 2.

<sup>22</sup> Telecommunications Consumer Protection Code, 2019, clauses 4.2 and 4.3.



49. The KFS was implemented as a result of ACMA research into consumers' experience migrating to the NBN.<sup>23</sup> The ACMA noted that before migration “[c]onsumers who were more informed about the process and which plans would best meet their needs when connecting to services delivered over the NBN, were better prepared for migration”.<sup>24</sup>
50. Further, industry research conducted by Roy Morgan suggests that most consumers (78%) are satisfied or extremely satisfied about the ease of understanding information on a bill. In addition, around two thirds of customers (66%) who has purchased a telecommunications product in the 6 months prior to being surveyed were satisfied or extremely satisfied with the information provided at point of sale or just after purchase.<sup>25</sup>
51. This evidence suggests that current information obligations, including at point of sale and in relation to bills, are meeting their desired goals of informing customers. In contrast, Treasury provides no consumer research that these existing information obligations are failing to achieve their intended objective. There is no evidence to support claims about the ineffectiveness of existing information obligations.
52. The consultation paper also states that “CDR would encourage further innovation in the markets for fixed line broadband and mobile services, primarily by facilitating the development of new products and service for consumers and businesses, potentially across sectors”.<sup>26</sup> The consultation paper then describes potential products and services as including comparison tools, account aggregation services and predictive services tools.<sup>27</sup>
53. However, these products and services referred to by the consultation paper are not ‘telecommunications’ products and services. These are general products and services; they are not products and services specific to the telecommunications market. If these are the only products and services that Treasury has identified as potential outcomes of the CDR regime, the CDR regime cannot be said to promote innovation in products and services in the telecommunications market.
54. It would seem that the CDR regime is being proposed, not to add value to telecommunications sector, but to support a new industry at a cost to telecommunications customers. As Treasury notes, much of this data is publicly available, yet existing comparison websites have not built capabilities to use this publicly available information. Telecommunications customers and industry will bear the costs of implementing a regime that will benefit other industry participants.

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<sup>23</sup> ACMA, NBN Consumer experience: Households and Businesses the end-to-end journey, August 2018.

<https://www.acma.gov.au/sites/default/files/2019-08/NBN-consumer-experience-households-and-businesses.pdf>

<sup>24</sup> ACMA, NBN Consumer experience: Households and Businesses the end-to-end journey, August 2018, p.2.

<sup>25</sup> Telecommunications customer satisfaction research. July 2020, slide 25 and slide 29.

[https://commsalliance.com.au/\\_data/assets/pdf\\_file/0018/71415/Comms-Satisfaction-Survey-Jul-2020.pdf](https://commsalliance.com.au/_data/assets/pdf_file/0018/71415/Comms-Satisfaction-Survey-Jul-2020.pdf)

<sup>26</sup> Treasury, Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper, August 2021, p.25.

<sup>27</sup> Treasury, Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper, August 2021, pp.25- 26.

## FOCUS MUST BE ON MINIMISING CDR COST AND DATASETS

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55. The above sections have demonstrated that many of the benefits claimed in the consultation paper are not verifiable on actual market behaviour; or supported by an objective fact base. More importantly, we have shown that the implementation of the CDR – if done in a rushed manner – could actually delay the delivery of the key infrastructure assets required to support the digital economy. The only potential benefit identified in the consultation paper is a decrease in costs of third party comparison websites.
56. Optus notes Communications Alliance’s (CA’s) submission addresses a number of key points in relation to proposed datasets (see section 5) and Optus fully endorses these comments and will not repeat them again in detail. Optus notes CA considers in detail consumer data, product data, network information, technology information, internet speeds (as consumer data), fault information, internet speeds (as product data), network coverage and usage information. Optus agrees with CA’s comments and concerns regarding:
- (a) The availability of some potential data (e.g. technology information);
  - (b) Complexities with potential data supply (e.g. fixed line network information);
  - (c) The usefulness or meaningfulness of certain data (e.g. internet speeds, fault information);
  - (d) Whether certain data would even come under a CDR data definition (e.g. internet speeds);
  - (e) What certain data actually means and whether it includes Treasury’s desired level of detail (e.g. mobile coverage data);
  - (f) Whether the data considered is a telecommunications operator’s data or another party, such as, a device manufacturer (e.g. network coverage data);
  - (g) Whether third parties not currently considered as part of the telecommunications CDR regime have more relevant data than telecommunications companies (e.g. messaging usage data).
57. Optus also notes the extensive range of information canvassed as part of the potential CDR dataset for the telecommunications sector is much broader than that designated for both banking and energy. This will increase the costs of implementing a CDR regime in the telecommunications sector.
58. One of the main drivers of the cost of the CDR is the amount of storage required to store the required CDR data sets (including for the mandated period of two years). The more data required to collect and store, the higher the cost to industry.
59. To ensure the CDR provides a net benefit, Optus agrees that only data that can be readily available at low cost should be included. This is consistent with the general principle that “data should also be made available if it is in digital form and the additional cost of provision under the CDR is low”.<sup>28</sup>

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<sup>28</sup> The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021

60. Notwithstanding this general principle, the consultation paper proposes data sets that are neither available nor have low cost to provide. Further, the consultation paper proposed data sets far in excess of those designated in banking and energy. It is not clear why this is the case. Specifically, no mention is made of the banking and energy data sets and there is no discussion as to why a larger data set is required for telecommunications.

### **Cost of CDR is likely to be significant**

61. As mentioned above, Optus estimates that the cost of the CDR will be driven primarily by the cost to store the required datasets. Given the tight timeframes which precludes a detailed costing analysis, Optus submits that Treasury should be guided by the costs of the data retention scheme. Public data shows that the data retention scheme has cost the industry \$238 million since 2015-16.<sup>29</sup>
62. This estimate is likely to be an upward bound, and as mentioned above, is driven by the number of types of data sets required to be collected and stored. Data sets that are complex and large will result in high costs compared to simple and accessible data sets.
63. **[CiC]**
64. Importantly, the designation process should not proceed until Treasury has undertaken the necessary cost estimates, particularly if this consultation is intended to replace the RIS process. At the minimum, Treasury should only designate data sets that are available in a digital form and the additional cost of provision under the CDR is low.

### **Telecommunications data goes beyond other sectors**

65. The consultation paper suggests potential telecommunications datasets that go beyond those that have been designated in the banking and energy sectors. For instance:
- (a) Banking and energy both contain information about the customer account. This is also being proposed in telecommunications.
  - (b) Banking and energy both contain information about the use of the product, including billing information. This is also being proposed in telecommunications.
  - (c) Banking and energy both contain information about products. This is also being proposed in telecommunications. This information is currently available to consumers through regulated fact sheets which must be presented prior to sales and understood by consumers.
66. But this is largely where the alignment ends. The consultation paper proposes a range of quality of service metrics such as network coverage, service quality, fault information, internet speeds, technology, and network information. This data would appear to go far beyond what has been designated under the previous sectors.
67. It is not clear how the inclusion of this data aligns with the Treasury's principle that data should also be made available if it is in digital form and the additional cost of provision under the CDR is low".<sup>30</sup> The cost of the CDR scheme will largely be driven by the inclusion of these complex and novel datasets.

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<sup>29</sup> Telecommunications (Interception and Access) Act 1979 – Annual Report 2019-20, p.75

<sup>30</sup> The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021

## Legal basis of inclusion is not clear

68. Furthermore, it is also not clear in the discussion the legal basis on which such product data sets can be designated. Specifically, s.56BF provides limitations for rules about product data. Product data can only be required to be disclosed where the data relates to eligibility criteria, terms and conditions, price, availability or performance of a product or service. Importantly, CDR can only mandate the release of data relating to availability or performance of a product, where that data is publicly available.<sup>31</sup>
69. Notwithstanding this, the consultation paper envisages including data within CDR that relates to the availability or performance of telecommunications products and services that are not publicly available. This would include any of the quality of service metrics envisaged in the paper. Network coverage data, for example, besides public coverage maps are not publicly available. Neither are internet speeds (fixed or mobile), where this data does not relate to a customer. Optus welcomes further discussions with Treasury on this issue.

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<sup>31</sup> S.56BF(1)(b)