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15 October 2018

Mr Bruce Cooper
General Manager, Consumer Data Right
Australian Competition and Consumer Commission
GPO Box 520
Melbourne Vic 3001

Submitted electronically: ACCC-CDR@acc.gov.au

Dear Mr Cooper

Re: Consumer Data Right Rules Framework

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Consumer Data Right Rules Framework (the Rules Framework) as released by the Australian Competition and Consumer Commission (ACCC). The Consumer Data Right (CDR) and its eventual extension to the energy sector, has the potential to generate significant benefits for energy consumers. In particular, it will assist consumers with their energy choices, encourage efficient energy use and it will provide easy access to the data needed to facilitate efficient investment in solar, batteries and other distributed energy resources.

We recognise the ACCC is developing a broader framework under which it will develop tailored rules for each sector. Even though the ACCC's initial priority is the banking sector, the Rules Framework is highly relevant to us as energy retailers as the CDR will eventually extend to the energy sector – and energy retailers will likely be classified as a data holder when energy data is designated under CDR legislation.

Our customers' privacy is of utmost importance. The bills that we issue are recognised under various identify guidelines - for example, to verify citizenship to obtain an Australian passport - and we are also subject to extensive regulatory obligations. We consider that at the very least, the CDR should replicate or not undermine existing energy protections for consumers. As such, we welcome the ACCC's statement about authorisation and authentication processes that *'in setting parameters the ACCC ... considers that the balance should be weighted towards ensuring a high degree of security for the CDR regime'*.¹

Consumer consent

Our most material concern relates to the matter of consent, i.e. the process for consumers (including joint account holders) to give consent to a third party to access their data, and how it can be used. We welcome the ACCC's proposal that the Rules Framework should require consent to be:

¹ Australian Competition and Consumer Commission (2018), *Consumer Data Right Rules Framework*, page 41

- freely given
- express
- informed (noting the ACCC's intention to allow accredited data recipients to share data with non-accredited outsourced service providers, including those located overseas)
- be specific as to the purpose of sharing data, that is, the uses to which the data will be put
- time limited
- able to be easily withdrawn with near immediate effect.

The Rules Framework needs to be flexible enough to account for the unique circumstances of sectors to which the CDR could apply. From our perspective, this means the eventual rules for the energy sector must reflect energy's essential service role. They must also reflect community concerns about privacy of usage patterns, and regulatory obligations and community expectations about support that retailers provide to vulnerable consumers.

Accordingly, we strongly encourage the ACCC to avoid creating a scenario where a data holder must provide data at a customer's request, but as a consequence, discloses the details of an individual who is experiencing domestic and/or family violence or another form of vulnerability. This is an emerging issue in the energy sector and regulators such as the Essential Services Commission are contemplating regulatory amendments.

As an example, joint account holders may reside at different addresses if a victim of family violence is seeking refuge from a dangerous situation; in this case, the alleged attacker does not know the other account holder's address. Once we become aware of a situation such as this, we need to ensure that we do not inadvertently disclose the address of a victim when we follow up on outstanding amounts on joint accounts. This means we have processes to verify identity and control the release of information - such as unique passcodes for each joint account holder.

Therefore, the rules about consent should also apply to the energy sector. However, we note the ACCC's statement that for financial data, it proposes to '*make rules to the effect that where consumers with a joint account hold individual authority to transact on that account (that is, they do not require the consent of the other joint account holder(s) to transact), they will be able to apply for the CDR data in their joint accounts.*'²

We expect energy consumption data will be designated under the CDR but this creates some potential risks. Consumption data does not always relate to a single consumer. Rather, it relates to a service/supply at an address at which many individuals could reside. In the case of joint accounts, the ACCC will need to consider whether it is appropriate for another party to be notified if data relating to their joint account, has been or will be accessed. This is not Red and Lumo's current practice, in light of the example described above and given the potential risks for some vulnerable customers. Another issue is the process for joint account holders to terminate a data sharing arrangement.

The ACCC must keep these issues and retailers' regulatory obligations in mind when it develops specific energy sector rules for consent, authorisation, authentication, and

² Ibid, page 33

the transfer of data between accredited recipients and non-accredited outsourced service providers. These controls also need to apply to any arrangements that the ACCC might consider in the future that allow accredited data recipients to access data across different industries.

For example, comparator services allow consumers to compare products or offers across multiple industries (e.g. energy, insurance, telecommunications). The vision for the CDR is that a data recipient could obtain a single accreditation but that accreditation must account for the characteristics and regulatory framework of each industry.

There are numerous points of potential leakage of secure data. The ACCC will need to prepare appropriate controls and then ensure CDR participants adhere to them.

Other issues to note

External Dispute Resolution

In the energy sector, retailers, distribution networks and other sellers of energy who don't have to obtain a retail authorisation from the Australian Energy Regulator must join a jurisdictional energy ombudsman scheme. However, the ACCC recommends that accredited banking data recipients should become members of the Australian Financial Complaints Authority for the purposes of external dispute resolution.

The ACCC will need to consider how energy consumers could access external dispute resolution services when it develops CDR rules for the energy sector. For example, a requirement for energy data recipients to join the existing energy schemes would require substantial revision of constitutions and funding models. This requires careful consideration and extension consultation with the schemes and their members. As energy ombudsman scheme costs are borne by scheme participants, we would be very concerned if retailers ended up bearing the cost of consumer complaints against data recipients.

Ongoing consultation and implementation

Finally, we look forward to the opportunity to participate in future ACCC consultations about how the CDR should apply to the energy sector. We understand that Treasury is proposing to include additional legislative provisions to ensure adequate consultation and impact assessment of CDR rules. This is a welcome step and will require the ACCC to carefully consider the impact of different models.

As mentioned above, the impact incremental cost of additional obligations for scheme participants will need to be considered and compared to any expected benefits. For example, the National Energy Retail Rules currently require retailers to provide consumers with up to two years of historical data (starting from the date of the data request). If applied to the energy sector, the ACCC's proposal for CDR participants to retain records for 6 years, to lodge quarterly reports quarterly, and for CDR participants to develop a dashboard of CDR requests will add to retailers' costs, and this needs to be compared to any expected benefits. This could also coincide with changes to the energy sector to settle the wholesale market every 5 minutes, rather than 30 minutes. This will increase the volume of data that retailers need to retain by a factor of 6.

About Red and Lumo

We are 100% Australian owned subsidiaries of Snowy Hydro Limited. Collectively, we retail gas and electricity in Victoria, New South Wales, Queensland and South Australia to over 1 million customers.

Red and Lumo thank the ACCC for the opportunity to respond to the Rules Framework. Should you have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager [REDACTED]

Yours sincerely

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke at the end.

Ramy Soussou

General Manager Regulatory Affairs & Stakeholder Relations

Red Energy Pty Ltd

Lumo Energy Australia Pty Ltd