



TELSTRA CORPORATION LIMITED

Submission to ACCC consultation on

Consumer Data Right Rules Framework

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01 Introduction

We welcome the opportunity to comment on the ACCC's proposed Consumer Data Right (CDR) Rules Framework.

The CDR Rules Framework (the **Framework**) will be used by the ACCC to develop future CDR Rules. While it may be some time before rules are developed for the telecommunications sector, we wish to express our views on the development of the Rules Framework to ensure it is capable of creating future CDR Rules that are both consumer-focussed and consistent in the way they are implemented within and across sectors.

We have previously expressed our in principle support for the proposed introduction of a CDR regime as a way to promote consumer interests and help drive competition and innovation across the economy. In doing so, we have emphasised the need to ensure that the CDR regime is easy for consumers to understand, and that it provides them with benefits which outweigh the cost of creating the scheme.

Fundamental to a consumer-centric and consistent CDR regime is an efficient Framework. It is vital the Framework is underpinned by a set of principles that can guide the creation of specific CDR rules applicable to a designated sector. We observe that the Framework, as currently drafted, is a blend of the actual framework with the specifics of the first set of CDR Rules for parts of the banking sector. We recommend the ACCC focus on developing and completing the Framework by defining a set of principles it will use to guide the creation of CDR Rules as a necessary precursor to creating the first set of CDR Rules. These principles should include aspects such as: safety for CDR Consumers; demonstrable cost/benefit analysis; and use of existing regulatory frameworks and technical alternatives as potential implementation approaches for the CDR regime.

The remainder of our submission is structured as follows:

- **Section 2:** comments on the essential elements of an approach to developing a consumer-centric Framework; and
- **Section 3:** contains specific responses to one aspect of the Framework in respect of which the ACCC sought contributions in its consultation paper.

02 Developing a consumer-centric CDR Rules Framework

A consumer-centric approach to developing the Framework will give the greatest chance of consumer adoption, and therefore, success of the CDR regime.

2.1. Consistency underpins consumer engagement and confidence

It is important to develop a Framework that will, as far as possible, allow for consistent implementation of the CDR regime across any sector in the economy. Familiarity is one form of consistency (consistency over time resulting from using pre-existing solutions), and we note that in the Telecommunications sector, there are already mechanisms that deliver on many of the objectives of the CDR regime such as greater portability between service providers. We strongly believe there should be greater recognition of these mechanisms in both the legislation and in the Framework.

We observe that the current drafting¹ of the Framework is a blend of a general framework and the specifics of the first set of CDR Rules, which will impede consistency and hence, CDR Consumer experience.

¹ Drafting as per the consultation document, *Consumer Data Right Rules Framework*, September 2018. https://consultation.accc.gov.au/communications-1/consumer-data-right-rules-framework-consultation/supporting_documents/ACCCConsumerDataRightRulesFramework.pdf



The ACCC's approach to reciprocity provides a case in point. Section 5.4 of the Framework concludes with the ACCC proposing not to make any rules regarding reciprocity in the *first version* of the rules. It is difficult for potential CDR participants to provide meaningful contributions to the creation of the Framework where the proposal described in the consultation refers only to the initial implementation. It would be more useful if the ACCC outlined the *principles* it will use to create future CDR Rules on reciprocity, for example, reciprocity extending only to equivalent data as specified in a designation instrument for that sector.

Similarly, the ACCC proposes to exclude former and offline customers in the *initial* implementation, but considers it desirable they be brought within scope as soon as possible, without outlining the principles that the ACCC will use to guide and qualify such consumers as eligible for inclusion in the CDR regime.

While our preferred approach is that CDR data should be placed in the hands of the CDR Consumer, thereby allowing them complete control of when, where and how they share that data, we acknowledge that transfer of CDR Data from CDR Data Holders to Accredited Data Recipients could form part of the regime. In this context we note that the Framework does a good job of describing the *general* arrangement for consent, authentication and authorisation rather than jumping straight to the first implementation. The Framework outlines the five-step process to be applied across sectors in a consistent manner that will ensure a similar "look-and-feel" experience for consumers as the CDR regime is rolled out across sectors. The five-step process beginning with consumer-provided consent (to the Accredited Data Recipient) and concluding with consumer-provided authorisation (to the data holder) serves as a two-factor approach to gaining the consumer's approval for their data to be shared, which we support as an important principle that may drive confidence and trust in the CDR regime.

Overall, we have two recommendations regarding the drafting of the Framework to help ensure consistent rule development and CDR implementation:

- the ACCC should consider revising the Framework to contain only framework-level matters such as the principles and structure under which future CDR Rules will be made;
- the Framework should include a principle requiring consistency within and across sectors where possible (noting that sectors will have different existing regimes that already deliver some of the CDR objectives such as portability), to ensure a consistent experience across sectors and over time to avoid potential consumer disengagement with the CDR scheme.

2.2. Keeping it simple will encourage consumer uptake and reduce cost

In relation to CDR data itself, as we noted in our submission² to Treasury's first consultation, mobile devices already log all incoming/outgoing call/SMS/MMS details, both on native call/SMS/MMS applications and over-the-top (OTT) applications, as well as logging data consumption (often on a "per application" basis). This level of detail far exceeds information that could be gathered by a service provider for compliance with the CDR regime, and should therefore be considered by the ACCC when making rules about the disclosure, accuracy and storage (including source) of data within scope of the CDR regime for any given sector.

Using data that is already in the hands of the consumer provides them with the ability to receive the full benefit that the data can bring, as well as controlling how, when and where it is used. A standardised, machine-readable format could readily be uploaded from the customer's device to a competitor's website for a real-time, customised competitive quote tailored to that individual's consumption patterns.

² Telstra submission to Treasury's consultation on Treasury Laws Amendment (Consumer Data Right) Bill 2018, Section 2.2. <https://static.treasury.gov.au/uploads/sites/1/2018/09/t329531-Telstra.pdf>



This simple and straightforward solution could avoid the imposition of inefficient development costs for the CDR regime and the ongoing costs of compliance with it. The concerns about such costs are even greater in sectors where there is no demonstrably high consumer demand for greater data portability, or evidence of actual problems relating to barriers to service portability between service providers that could be resolved by greater data portability. Regulatory best practice principles should be applied to ensure the sector is not unnecessarily burdened with costs (ultimately be borne by the consumer) for little or no demonstrable benefit.

We recommend the Framework, specifically section 4, capture the principle that a CDR data holder may be an entity other than the provider of the service, such as an application on a mobile phone. Consideration of technical alternatives in the Framework could reduce the cost burden to the industry by reusing existing solutions rather than developing new solutions where the cost of that development is ultimately borne by consumers.

2.3. Keeping pace with change

At the same time as ensuring consistency of implementation of the CDR regime, the Framework will need to be able to accommodate new (unforeseen) products. It will need to be dynamic, but in a way that does not undermine the secret nature under which competitors change their plans and offers to customers. As we noted in our submission³ to Treasury's first consultation, the communications sector is competitive, fast-paced with many new products being developed, including complex products such as hybrid modems where customers receive both fixed and mobile connectivity from their modems. The ACCC's consultation notes⁴ that it understands "*the standards process will develop a taxonomy to assist with like-for-like comparison of generic product data between different institutions*", however, for this to work effectively, guidance for the entity developing these standards (notionally, Data 61) will be required so that it understands which products are intended to be compared and on what parameters.

We recommend the ACCC consider the principles in section 5.3.3 of the Framework that outline how it will contend with product evolution and/or new products to ensure consistency in consumer experience.

2.4. Taking the time to get it right

The development of the CDR regime and its first implementation are being conducted largely in parallel and against an aggressive commencement date of 1 July 2019. Insufficient time is being given to consider how the regime may need to operate across multiple sectors, potentially giving rise to precedents being set in one sector that negatively influence the implementation of the CDR regime in other sectors, and/or consumer experience.

In addition, aspects of the legislation are still being resolved, including issues associated with the proposal to have overlapping privacy regimes (i.e., privacy safeguards under the CDR regime and the existing Australian Privacy Principles). We observe in section 13 of the Framework document that the ACCC proposes to make a series of rules relating to the privacy safeguards, and we suggest that it is premature to make rules that give effect to the safeguards while concerns about overlapping privacy regimes are being resolved.

Noting that setting timelines for CDR implementation is not directly the ACCC's responsibility, we would support the ACCC if it determined more time is required while fundamental aspects of the regime are resolved before commencing implementation matters such as setting CDR rules that implement the regime.

³ Telstra submission to Treasury's consultation on Treasury Laws Amendment (Consumer Data Right) Bill 2018, Section 2.3. <https://static.treasury.gov.au/uploads/sites/1/2018/09/t329531-Telstra.pdf>

⁴ ACCC consultation, *Consumer Data Right Rules Framework*, September 2018, Section 5.3.3, page 20.



03 Responses to specific questions in the consultation

3.1. Complex accounts

Section 8.1.1 of the ACCC's CDR Rules Framework seeks input in relation to complex accounts.

Section 5 of our submission⁵ to Treasury's first consultation outlines the complexity arising from the one-to-many relationship that can exist in relation to accounts in the telecommunications sector. A variation on this complexity that is not covered in that submission is where an employer (account owner) provides an employee (account user) with a mobile phone. As the account owner, the employer may wish to obtain a competitive quote for their service(s), or may wish to have the usage data associated with a service sent to an application that tracks consumption. Given the obvious privacy implications, consent is clearly not straightforward.

We recommend the ACCC consider developing principles for dealing with joint/complex accounts where the account owner is not the account user. We would be happy to work with the ACCC through a targeted consultation and/or roundtable approach to the development of such principles that includes representatives from at least the banking, energy and telecommunications sectors to ensure variations of this scenario across sectors is given adequate consideration.

⁵ Telstra submission to Treasury's consultation on Treasury Laws Amendment (Consumer Data Right) Bill 2018, Section 5. <https://static.treasury.gov.au/uploads/sites/1/2018/09/t329531-Telstra.pdf>