



Thursday 16 May 2019

The Australian Competition & Consumer Commission

Via email: ACCC-CDR@acc.gov.au

To the ACCC,

RE: Consumer Data Right - CDR draft rules (banking) consultation

I write regarding the interested party consultation on Consumer Data Right (CDR) draft rules (banking). In addition to submissions to Treasury, CHOICE has previously submitted responses to the ACCC on:

- *Energy Data Access Models*¹
- *Consumer Data Right Rules Framework*²

There have been new developments in the design of the Consumer Data Right (CDR) since we submitted our earlier responses and we welcome the opportunity to provide comments through this consultation process.

CHOICE is broadly supportive of the rules outlined in the Exposure Draft.³ In particular, we are pleased to see that businesses will have to meet high standards in order to receive accreditation;⁴ that the rules will ensure consumers have access to strong internal and external dispute resolution frameworks;⁵ and that the rules provide clear, simple, standardised processes for the provision and revocation of consent.⁶ We offer a number of suggestions to ensure that CDR Rules are strengthened in consumers' interests.

¹ CHOICE (2019), [CHOICE Submission to the ACCC on Energy Data Access Models](#), Sydney.

² CHOICE (2018), [Improving Consumer Protections in the Consumer Data Right](#), Sydney.

³ ACCC (2019), [Competition and Consumer \(Data Rules 2019\) - Exposure Draft](#), Canberra.

⁴ Ibid. p39.

⁵ Ibid. p52.

⁶ Ibid. p32.

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Access to CDR data should be fair

To be effective, the CDR must grant consumers free access to data that relates to them. At minimum, consumers should be able to receive detailed information about the price they are paying for a service. In the banking sector detailed product, usage and transaction data must be provided to consumers in order for them to be able to make better and more informed choices about banking products and services.

The exposure draft states that ‘a fee cannot be charged for the disclosure’ of product data request.⁷ It is CHOICE’s first preference that all CDR data access is free but if fees are to be introduced for access to certain data sets under the CDR, it is important that clear caps (per service) are established within the CDR system. Consumers should be able to gain access to non-essential data sets for free at least once a year, to ensure that people who are unable to pay for value-added data are not at a disadvantage. An alternative approach is to allow businesses to charge a fee only once consumers have exceeded the number of times that they are able to access data for free. While the specifics of fees for data access are yet to be determined, CHOICE is concerned that the introduction of a fee will undermine the goal of the CDR - to empower consumers to access their data.

The *Treasury Laws Amendment (Consumer Data Right) Bill 2019* introduced the idea of ‘chargeable data’, which is the ‘data that a person is required to disclose where the Minister has stated in the designation instrument that specific persons can charge a fee, either for the use or disclosure of the data, or both.’⁸ CHOICE reiterates that the ACCC is the most appropriate body to make decisions on chargeable data sets.

The CDR should have effective consumer protections

The CDR must include effective consumer protections to ensure that customer data is not exploited. This includes placing clear disclosure requirements on third parties to require them to gain explicit informed customer consent to allow their data to be aggregated when using one company’s services to analyse multiple data streams from different sectors. In addition, there must be sensible restrictions on how third parties can use data to target consumers and protections against unfair discrimination. This will in part need to be achieved through direct regulation that prevents harmful practices.

The Exposure Draft states that ‘The ACCC is considering rules authorising the disclosure, with the consumers’ consent, of a consumer’s CDR’s data by an accredited person to another accredited person (for example an intermediary) or another person (for example a consumer’s accountant, lawyer or financial counsellor).’⁹

⁷ Ibid. pg21.

⁸ *Treasury Laws Amendment (Consumer Data Right) Bill 2019*, [Explanatory memorandum](#), p26.

⁹ ACCC (2019), [Competition and Consumer \(Data Rules 2019\) - Exposure Draft](#), Canberra, pg57.

CHOICE recommends that CDR data should only be able to be requested, used and stored with express consumer consent and by non-accredited professionals in circumstances where those professionals have an obligation to act in the best interests of a client and would face legal penalties in instances where they breached this requirement. Non-accredited entities should only be able to request and use CDR data if they are providing a service to a consumer in a formal capacity whether the relationship is commercial such as with an accounting firm, or free of charge, such as through a financial counselling service.

The CDR should be easy to navigate for all consumers

The CDR must be easy to understand and access for everyone. In order to achieve this, extensive consumer testing must inform the design of key processes across key groups and cohorts. CHOICE offers the following suggestions to ensure that the CDR is accessible:

- The consumer dashboard is a core tool for the granting, monitoring and revocation of consent.¹⁰ The Rules should require businesses to test the design of consumer dashboard (including visual aids)¹¹ to ensure that they are easy to use by diverse consumer cohorts. Consumer dashboards should meet current Web Content Accessibility Guidelines.
- The Exposure Draft states that consumers can communicate the withdrawal of consent in writing, or by using the accredited person's consumer dashboard.¹² The ACCC should give consideration to how people who may have difficulty navigating online systems can receive assistance to manage their consent.
- The ongoing notification requirement will require accredited persons to notify CDR customers who gave consent, each 90 days, that the consent is still current.¹³ The ACCC should provide clarity on how these notifications should be delivered. CHOICE recommends that these notifications are clear, prominent, unbundled from other communications provided by data recipients, and provide instructions on how to manage consent through consumer dashboards.
- The Accreditation Registrar will be a useful tool to help consumers identify accredited parties.¹⁴ CHOICE recommends that this Accreditation Registrar is simple to locate and use. Additionally, CHOICE recommends that the ACCC prescribes wording, and/or a visual symbol that accredited parties can use in order to clearly display their accreditation status. This would help increase consumer awareness of the role that accreditation plays in the CDR.

Though joint accounts are discussed in the Exposure Draft, CHOICE suggests that greater clarity is provided on the following:

¹⁰ Ibid. pg33.

¹¹ Ibid. pg32.

¹² Ibid. pg33.

¹³ Ibid. pg36.

¹⁴ Ibid. pg51.

- The process by which joint account holders are notified when an individual account holder has granted consent to disclose CDR data.¹⁵
- If the ongoing consent notification requirement will reply to all holders of a joint account.

Oversight of the Consumer Data Right

CHOICE understands that the Data Standards Advisory Committee will play a key role in advising the Data Standards Chair. The Exposure Draft states that the Data Standards Chair 'must appoint to the Data Standards Advisory Committee 2 or more consumer or privacy representatives' and 'may appoint others to the Committee as the Chair sees fit.'¹⁶ CHOICE is pleased to see that consumer and privacy representatives will be included as core members of the committee, but are concerned that without a clear cap on industry representation, there is a risk that industry may dominate committee decisions. CHOICE recommends that the number of industry representatives is capped to equal, or fewer than the number of consumer representatives and domain experts appointed to the committee to ensure that industry interests do not outweigh consumer needs.

For further information please contact CHOICE on [REDACTED]

Yours sincerely,



Linda Przhedetsky

Campaigns and Policy Adviser

¹⁵ Ibid. pg91.

¹⁶ Ibid. pg62.