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CDR - Energy Rules Framework

Thank you for the opportunity to provide a submission in response to the Consultation Paper on the Energy Rules Framework (Consultation Paper).

Momentum Energy is a 100% Australian-owned and operated energy retailer. We pride ourselves on competitive pricing, innovation and outstanding customer service. We retail electricity in Victoria, New South Wales, South Australia, Queensland and the ACT. We offer competitive rates to both residential and business customers along with a range of innovative energy products and services. We also retail natural gas to Victorian customers.

Momentum Energy is owned by Hydro Tasmania, Australia's largest producer of renewable energy.

Momentum Energy (Momentum) welcomes the introduction of the Consumer Data Right (CDR) in the energy sector. The CDR regime will empower consumers and business with new rights to information. This will bring benefits of cross-sectoral data driven innovation, utilisation of new tools and will stimulate competition. We consider the right approach to shaping the future of CDR is critically important to ensure the regime is implemented effectively and consistent with its objective to give customers more and better choices on a range of services.

We appreciate that the Australian Competition and Consumer Commission (ACCC), has the overarching responsibility to develop CDR rules across the economy generally, as well as making specific rules for new sectors designated by Treasury. We agree with the Commission that energy has specific characteristics and that to build a coherent CDR ecosystem, amendments to the existing framework and additional energy specific rules are required. This will ensure a well-functioning CDR ecosystem, without comprising its key principles of interoperability and extensibility across different industries. With these central factors in mind, we provide our feedback below.

General comments

The CDR regime will bring unprecedented changes to the economy and awaken a new era of data sharing innovation. We feel that while it is important to keep up with the acceleration of technological advancement, the ACCC should take time to thoroughly consider any gaps or

issues and how CDR will function effectively within the existing legislative framework. It has been noted that CDR is intended to co-exist with current NEM data sharing arrangements through existing B2B procedures. It is important however, to design a system that is compatible to the effect that it will not create overly complex processes and significantly increase regulatory burden on participants.

The importance of industry engagement cannot be overstated. We emphasise that the ACCC should continue to actively engage with industry participants in energy, as it would allow for the development of a robust CDR regime across the economy.

Data sets

The data sets prescribed in the Data Designation Instrument,¹ are relatively broad. The ACCC has outlined its approach to define these data sets, by specifying the minimum inclusions of each cluster in the CDR Rules.

Recognising privacy is a key issue, certain sensitive information such as concession, hardship and life support data should be separately categorised as its own cluster. This allows the customer to adequately provide their consent and authorise the disclosure of such information, whilst ensuring accredited data recipients (ADRs) can still access data if it is required for a particular use case, such as a comparison service.

Having sensitive information bundled with other data sets (billing data and customer provided data) risks the consumer being unaware of the release of information, which may have consequential impacts. For example, information concerning concession or hardship, could infer that a customer is a low-income earner. Once an ADR establishes this assumption, it may limit customer access to other products or services that the ADR provides. Whilst there are privacy protections built into the existing framework, we are concerned these measures may not be adequate to protect confidential data that once exposed, cannot fully remove the derived analysis used to compose the customer profile.

Presenting sensitive information as its own category would strengthen the protection for consumers as it would allow for more informed consent and give greater control to share specific information. We do not consider this approach would undermine consumer experience or substantially increase operational complexity and costs.

Eligible CDR consumer

Momentum acknowledges the ACCC's responsibility for developing the CDR Rules is limited by the definition of a 'CDR consumer' in the Data Designation Instrument. A large scale economy wide reform should benefit a broad range of consumers and we support having rules that reflect a non-restrictive and flexible approach to achieve this result. However, we are conscious that particular groups of customers, should be excluded from CDR regime, due to the certain arrangements being incompatible with the CDR for a range of reasons.

¹ *Consumer Data Right (Energy Sector) Designation 2020* ('Data Designation Instrument').

Joint account holders and nominated persons

In relation to residential customers, Momentum does not have 'joint account holder' arrangements. The customer who has established the energy account (provided explicit informed consent), is identified as the 'decision maker' and holds sole financial responsibility. The decision-maker can authorise additional persons (nominated persons) to access information, limited to inquiries only. Nominated persons are not permitted to make any changes on the account.

Consistent with the definition of a 'CDR consumer', we agree the Rules should be restricted to persons 'identifiable' to the retailer and as such, they should be listed on the account to make a CDR request. Additionally, we consider a more narrow definition of 'eligibility' may be necessary to address the privacy concerns of data being used to compile insights into other persons such as tenants. This could be for example, that the decision maker must confirm they live at the property.

The inclusion of secondary contacts in the regime, may prove challenging. Whilst these customers are 'known' to retailers, contact information for secondary contacts are not always complete. The proposed 'strong authentication model' would create problems where the secondary contact has not provided a mobile phone number or an email address to complete the authentication process. Further, they may not necessarily have access to the decision-maker's online account. Extending the CDR to authorised contacts would result in retailers having to build systems to record various levels of authorisation within an account and implement mechanisms to verify authority with the decision-maker before disclosing data. This presents privacy risks and technical challenges, which may have serious consequences for an organisation and consumers.

One potential negative consequence is that it may be inconsistent with the family violence provisions in Victoria. The potential access by CDR data by nominated persons could create high risk of misuse of data where for example, metering data is obtained that is used to infer behaviours or activities of people living at the premises. We also consider this is unsuitable for the proposed approach to authentication by NMI or site.

We urge the ACCC to consider these matters when designing the energy specific rules to ensure that these risks are mitigated.

Large customers

The CDR regime is likely to bring the most benefit to mass-market customers, who have more simple tariff structures and plan information. Momentum's view is that larger commercial and industrial customers (C&I) should be excluded from certain data sets.

C&I customers often have tailored negotiated contracts unique to each customer's circumstances, which could involve complex pricing structures, wholesale hedging and purchasing arrangements as well as sophisticated retail provisions. This data is unlikely to be useful for a comparison service, given that C&I contracts are tendered individually. We agree

with the Commission's view, to exclude C&I customers from the 'generic product' data set. We also consider that it should be excluded from the 'tailored product' and 'billing' data sets. The complex structures within C&I arrangements are likely to be commercially sensitive information and such disclosure, would risk sharing of retailer intellectual property. We do not believe it is necessary to include C&I customers in the first version of CDR, given there are high risks and little benefit for this customer segment. Furthermore, there are current existing mechanisms in place for C&I customers to request data.

We also highlight that the AEMO Gateway model may create complications for the disclosure of C&I billing data and pricing structures that are significantly different to mass-market customers. Such challenges could increase build costs and require the resolution of complex problems to enable data to be transferred through the gateway.

In addition, it is unclear how the ACCC intends to phase retailers into the regime using a customer threshold test, given that many retailers only operate in the C&I segment. These energy retailers are large from a portfolio perspective, but small on a customer number basis. If the C&I segment were within scope of the CDR Rules, many larger customers would be excluded if their retailer is below the threshold test.

Minors

Momentum supports the Commission's views to exclude minors from being eligible to make CDR requests. Although the legislative framework in energy, does not limit persons under 18 years old from being able to open an energy account, the risks associated with minors not being able to fully understand the significance and consequences of consent, outweighs the desired benefits of having them included in the CDR regime. We note that the number of Momentum customers that are minors is significantly low. Should the Rules allow for the inclusion of minors, we recommend that additional measures be adopted to ensure consumer protections are adequate.

Active/closed accounts

Momentum considers that it would not impact the requirements of the regime if CDR was extended to closed or inactive accounts. We note that this will depend on use cases for such data however, existing mechanisms in the NEM have seen customers predominantly request for historical payment information and billing data (invoices) on closed accounts. This indicates that it could be beneficial if customers were able to request data via the CDR mechanism on their closed account, provided the data is only up until the account close date. This approach could future proof the CDR regime if it were to replace some or all of the obligations in the energy rules, as CDR evolves.

Noting that the CDR regime promotes cross-sectoral innovation, we envisage an ADR could offer products or services to the customer that encompasses both financial products and energy deals. Historical payment information obtained by the ADR (assuming the customer has consented) on their closed account may be used for credit purposes to offer that financial product. We believe this is a good outcome for consumers, as it would prevent customers

from being required to use two different avenues (CDR request and a request under the NEM) for information to apply for a particular product.

The Supplementary Privacy Impact Assessment (SPIA) highlighted certain privacy risks associated with closed accounts particularly, the fact that it may expose data in relation to a different customer at the previous address. Momentum considers such risks require explicit Rules to address these valid concerns and as such, we recommend for the ACCC to only consider the inclusion of data requests on closed accounts in a future version of the CDR when participants have been given adequate time to work through these issues.

Additionally, if closed accounts are in scope, the ACCC should consider aligning the period in which retailers are required to keep certain data sets on inactive accounts under the recording keeping provisions in the NEM and any other statutory provisions.

Online/offline accounts

The uptake in online accounts in energy is evidently not as strong as other industries such as the banking sector. The Data Standards Body (DSB) in its research, emphasised that online uptake is due to the nature of industry as opposed to other issues. By limiting the CDR rules to only customers with an online account, this would exclude a large segment of offline customers.

We do believe however, that the approach in energy should consistent with the model in banking where the CDR consumer is required to have an online account to be eligible to make a request. This approach would incentivise customers towards digital adoption, making the regime more valuable, improve consumer experience and work towards a more efficient tech-dominated future.

The proposal to extend the regime to offline customers requires proper consideration in the development of the CDR Rules, to ensure mechanisms for which offline customers were to access CDR data does not overly burden the entire process, particularly around the authentication and authorisation procedures. Without an online account, it is likely that in certain situations, retailers would need to manage authorisation and authentication processes manually, which could increase call volumes and strain resources. We question how a data request under the CDR regime will benefit offline customers, when the same request could be made under the existing NEM procedures without the extra barriers.

Momentum suggests expanding the regime to offline consumers at a later stage when there has been more time to consider issues relating to such access.

Authentication

The ACCC has outlined its preference for the current retailer (data holder) to perform the authentication function (Model 1). The Commission has noted there is a possible alternative to this model, whereby retailer authentication is the default process and if there are significant build costs, then the retailer may be permitted by the ACCC to implement to Model

2 (AEMO performs the authentication process with retailer input). Momentum considers that this is an appropriate option, given that both Models 1 and 2 have pros and cons.

With Model 2, we are concerned about consumer experience if AEMO takes on the responsibility for building and facilitating authentication. Recent reforms over the last decade, have led to significant changes in the nature of energy and the relationship between retailers and customers, fostered on stronger trust and interaction between the parties. Authentication with AEMO could undermine that relationship, as consumers have not previously been exposed to AEMO's operations. Further, the transfer of additional data through the gateway for the purposes of authentication, could increase privacy risks. It is also unclear how AEMO would be able to manage complaints and resolve problems for defective authentication, which may result in retailer intervention being required.

We ask that the ACCC to consider these factors, when making a determination on the approach.

Dashboards

Momentum agrees with the ACCC's position that, one party (either the data holder or the gateway) should provide a single dashboard for customers to manage authorisations. We believe this is a good outcome for customers to have a simplistic and complete view of their CDR requests. We are mindful however, that the requirement to update a consumer's dashboard could pose challenges in the three options suggested by the ACCC in the Consultation Paper. All of the options would require extensive changes to retailer systems and we ask that the ACCC provides energy business with adequate time to build these capabilities, when considering implementation of the regime.

Phased implementation

Our view is that it is too early to consider approaches to implementation when the major issues concerning how CDR will operate in energy have yet to be finalised. We recommend for the ACCC to consider implementation timeframes in a subsequent consultation when the CDR Rules have been drafted.

However, we provide our initial comments on this matter. Momentum supports the proposal for the the largest retailers be phased into the regime first, as this would allow access to a large number of customers. The ACCC should also consider additional time for the retailers in tranche 2 to be brought into the regime after the first phase. We suggest a minimum of 12 months, to give an adequate period for smaller retailers to complete the build process.

As highlighted earlier, retailers vary considerably in size and customer numbers. Using a customer number threshold basis, may not be sufficient to bring in the main retailers if the ACCC is considering the inclusion of C&I customers. We recommend for an additional metric to include local retailers in the CDR implementation.

The ACCC has also noted that it intends to phase in data sets with generic product data to be shared before commencement of CDR in energy. While we recognise the current COVID-19

situation and other scheduled reforms (such as 5 Minute Settlement) have created uncertainties as to when CDR will come into effect, we would ask that the ACCC communicate its timeframes well in advance for the sequencing of data sets, to ensure retailers have enough notice to plan for changes.

Should you require any further information with regard to this submission, please do not hesitate to contact me on [REDACTED] or email [REDACTED].

Yours sincerely

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