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1 April 2019

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. Consultation Paper: Data Access Models for Energy Data

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to respond to the Australian Competition and Consumer Commission's (ACCC) Consultation paper on Data Access Models for Energy Data. We support the Consumer Data Right (CDR) and extending it to the energy sector will generate significant benefits for energy consumers. In particular, it will assist them with their energy choices, encourage efficient energy use and provide easy access to the data needed to facilitate efficient investment in solar, batteries and other distributed energy resources.

Preferred process for applying the CDR to energy

Red and Lumo commend the ACCC for its measured approach to applying the CDR to the energy sector. We have previously commented on its proposed Rules Framework and support the incremental approach to tailoring rules to each sector. Early consultation on possible models will give industry certainty about its obligations and provide sufficient lead time for implementation.

The Consultation Paper suggests the CDR will apply in the energy sector 'during the first half of 2020 for priority datasets in the NEM'.¹ However, the CDR should not be rushed, but implemented in a way that maintains consumers' trust. The ACCC must develop a realistic forward work plan that includes adequate consultation with industry and other relevant stakeholders, and acknowledges the numerous steps that industry and others must take to implement the CDR in a manner that maintains the integrity of consumers' data. This includes a considered approach for addressing all relevant technical (i.e. development and testing of solutions to facilitate the safe and secure transfer of data) and regulatory issues (i.e. the supporting rules for accreditation and a process of regulatory oversight that ensures those rules are administered effectively).

¹ Australian Competition and Consumer Commission (2019), *Consumer Data Right in Energy Consultation paper: Data Access Models for Energy Data*, page 11

In line with this, we recommend the ACCC and Treasury apply the CDR incrementally, starting with designation, preferred model and rules for a single dataset. This approach would acknowledge the other initiatives that industry is currently implementing, namely the move to 5 minute and global settlements. It would also enable the ACCC to draw on learning from the application of the CDR to the banking sector.

Electricity metering data is the logical dataset for initial designation in this context. This would leverage existing rules and industry processes, and would generate many of the use cases that the CDR will create. As HoustonKemp noted in its report for the COAG Energy Council:

Consumers in the National Electricity Market currently have a right to authorise a third-party representative to access their electricity metering data, through changes to the National Electricity Rules made in 2014. However, there are a number of known impediments to third parties accessing the data. Applying a Consumer Data Right to electricity metering data will address many of these impediments and will be an important step towards improving the accessibility of consumer data in the energy sector. It follows that designating electricity metering data in the National Electricity Market should occur immediately, effective as soon as practicable.²

Preferred model

The Consultation Paper proposes appropriate criteria for assessing different CDR models, including the three that it proposes for energy data. On this basis, Red and Lumo have a clear preference for model 2, which involves the decentralised sharing of metering data (in the first instance, as explained above) by data holders supported by an AEMO gateway. This is the most feasible model as it can leverage existing processes and structures, and (potentially) offers the most efficient user experience for data recipients.

Model 1 would require AEMO to take on a trusted data management and custodian role, which is vastly different from its current role. It would certainly require market participants to vest a significant amount of trust in AEMO that we currently do not. Aside from the significant cost, it would also concentrate highly valuable data into the hands of a single entity, posing an elevated business and security risk - AEMO would most certainly become a valuable target for those inclined to hack.

Even so, Model 2 requires significant investment and lead time to implement. We note that the API gateway part of the e-Hub is new, having only been introduced as part of the metering contestability changes. It is also optional, and caters to a limited scope of datasets. The majority of data exchanges between market participants via B2B still occur using file transfers (File Transfer Protocol), rather than APIs. In our case, we have elected to continue using file transfers as they are well established and reliable. Development of the significant capability to exchange data via e-Hub, APIs would involve significant cost, particularly if industry is required to provide 'on demand' responses to data requests.

² HoustonKemp (2018), *Open consumer energy data: Applying a Consumer Data Right to the energy sector*, page i

Data holders would need to ensure these data requests do not impact their daily business operations or otherwise would need continuously replicate the data to a separate location so it could be readily available 'on demand'.

Despite its central role in this model, we are mindful of AEMO's limitations as a potential administrator of a consumer protection framework under the CDR. AEMO is a market operator with defined roles and responsibilities that do not currently relate to consumer protection. Under Model 2, AEMO's only role should be to regulate access to the gateway and work with Data61 and industry participants to ensure the integrity of the technical solution. Accreditation and oversight of data recipients, particularly in terms of monitoring the form of consent they receive from consumers, are the roles of the ACCC and the Office of the Australian Information Commissioner (OAIC). They will need to work with AEMO to ensure that those who are granted access to the gateway are accredited and that AEMO is aware of any limitations on accreditation and data access that the regulators impose.

Use of the e-Hub today involves the allocation of usernames and plaintext passwords by AEMO - this access method wouldn't be suitable under the CDR, which would require a much more sophisticated method of allocating participant access and authorisation certificates/tokens. We would also expect independent and verifiable certification of AEMO as a secure and trusted data manager, and of the e-Hub as a secure and trusted data service.

Successful designation and implementation of a secure model for the transfer of metering data would then provide a template for the other energy datasets that the ACCC identifies in its Consultation Paper. As with metering data, the ACCC should apply its assessment criteria and adopt a model that is likely to generate the greatest net benefit for consumers. The guiding principle should be to adopt least cost option and leverage existing systems where possible; this also means having regard to which entities are the most logical data holders. For example, AEMO would seem to be a logical holder of NMI standing data, or the Australian Energy Regulator (AER) could be the designated holder of product data as retailers must provide details of all generally available and restricted offers to the AER under the Retail Pricing Information Guideline.

It is for these reasons that Red and Lumo recommend that Treasury, the ACCC and OAIC take a measured and incremental approach to applying the CDR to the energy sector, rather than rushing towards commencement in early 2020.

Other issues to note

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. This might include access to ombudsman schemes. However, any process requires careful consideration and extension consultation with the schemes and their members, in addition to a long lead time for implementation.

For example, a requirement for energy data recipients and/or AEMO to join the existing state-based energy schemes would require substantial revision of constitutions and funding models. 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 accredited data recipients.

We also do not think it is feasible for existing energy market participants to become members of other ombudsman schemes that are not established to consider energy related matters.

In our view, the proposed CDR framework will provide adequate opportunities for complaint handling and doesn't need to mandate that data holders, data recipients or operators of a gateway join an ombudsman scheme. Many CDR participants already have their own complaint handling processes - which both the ACCC and OAIC will monitor and could even strengthen through the CDR rules - and the regulatory agencies themselves can investigate complaints from consumers. We note recent comments from the Australian Information Commissioner and Privacy Commissioner that:

'... the draft legislation provides both the ACCC and the OAIC with distinct but complementary roles in co-regulating the CDR scheme. Once the scheme is operational, the OAIC's primary role will be to regulate the privacy safeguards currently contained within the Bill and the Rules that relate to them, including by handling complaints from individual and small business consumers in relation to their consumer data.'

The Bill gives the OAIC a range of advisory, educative and also regulatory functions in terms of investigative and enforcement options to handle complaints and otherwise investigate suspected privacy breaches.³

Ongoing consultation and implementation

Finally, we look forward to the opportunity to participate in future ACCC and Treasury consultations about how the CDR will apply to the energy sector. We understand that Treasury will soon commence consultation on the designation of datasets. As mentioned, we recommend an incremental approach to designation. This will ensure industry has the capacity to implement the CDR in a way that ensures the security of customer data and by implication, confidence in the CDR.

The designation of energy data under the CDR has obvious benefits, but also creates some potential risks. For example, 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 and gateway operator 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, given the potential risks for some vulnerable customers. Another issue is the process for joint account holders to terminate a data sharing arrangement.

³ Opening statement by Australian Information Commissioner and Privacy Commissioner to the Senate Economics Legislation Committee – Inquiry into the provisions of the Treasury Laws Amendment (Consumer Data Right) Bill 2019

The ACCC must keep these issues and retailers' regulatory obligations in mind when it develops specific energy sector rules for consent, authorisation, authentication, and 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 allows 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 needs to reflect the characteristics and regulatory framework of each industry.

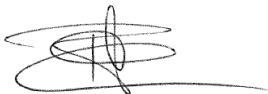
There are numerous points of potential leakage of secure data. The ACCC will need to prepare appropriate controls and then ensure CDR participants adhere to them.

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, South Australia and Queensland, and electricity in the ACT to approximately one million customers.

Red and Lumo thank the ACCC for the opportunity to respond to the Consultation Paper. Should you have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on 0438 671 750.

Yours sincerely

A handwritten signature in black ink, appearing to read "Ramy Soussou". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Ramy Soussou
General Manager Regulatory Affairs & Stakeholder Relations
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