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28 August 2020

Mr Bruce Cooper
General Manager, Consumer Data Right Branch
Australian Competition and Consumer Commission
GPO Box 3131
Canberra ACT 2601

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

Dear Mr Cooper,

Re: Consultation Paper - Energy Rules Framework

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to make this submission to the Australian Competition and Consumer Commission's (the ACCC's) consultation paper on an energy rules framework for the Consumer Data Right (CDR).

Red and Lumo support the introduction of the CDR in the energy sector, as it will potentially generate significant benefits for energy consumers. The CDR will assist them with their energy choices, encourage efficient energy use and provide easy access to data to facilitate the efficient investment in solar, batteries and other distributed energy resources. The potential benefits are wide ranging and include product innovation, reduced energy prices and more efficient use of energy infrastructure.

However, the ACCC needs to assess these potential benefits against any additional risks to consumers' privacy and safety. We are very mindful of community expectations and our regulatory responsibilities with respect to personal information and usage data. This is one of our key areas of focus as the CDR extends to energy.

The ACCC must establish a credible framework that all consumers trust. This will involve tradeoffs between consumer protection and functionality, and we acknowledge that some prospective accredited data recipients (ADRs) who currently operate in a single industry, such as banking or telecommunications, may need to adjust their operations to comply with CDR requirements for the energy sector. However, we encourage the ACCC to adopt a conservative approach at the outset.

An example is tiered accreditation. We do not consider it is appropriate to create a framework that has reduced obligations and/or oversight of some CDR participants. There may be benefits from more streamlined or granular accreditation or fewer restrictions on the management of some datasets. However, any future relaxation of these elements of the framework at some future point should reflect actual experience with the CDR and observed obstacles to expected

use cases, rather than at commencement. A more principled approach based on consistency across sectors is more appropriate at this stage. As the ACCC also notes, a consistent framework across different sectors also promotes interoperability, which the ACCC acknowledges to be one of the objectives of the broader CDR framework.

Application of CDR to the energy sector

We welcome the ACCC's carefully considered analysis in the consultation paper of the specific features of the energy sector and how the Rules should account for them. We also appreciate the ACCC's early engagement and we look forward to further opportunities to participate in the ACCC's consultation as it further develops the Rules.

As a general point, we recommend that retailers, rather than the Australian Energy Market Operator (AEMO) be the primary interface between consumers and the energy sector. This is relevant for the ACCC's analysis of appropriate authentication models and for determining which entities should provide a dashboard for consumers to manage their consents. However, it is also an important factor in building consumer trust in the CDR.

The ACCC is well aware that AEMO is not a customer facing organisation nor have consumer protection functions under its legislative functions. Consumers associate the designated CDR datasets - even those for which AEMO is the designated holder - with their retailer, not with the market operator with whom they have no direct dealings and are unlikely to know of its existence. Customers have faith in their retailer to maintain the integrity of their personal and billing data.

A further issue for the energy sector is the industry's readiness, from both a compliance and technology perspective. Our support for particular regulatory models for the energy sector also depends on whether the technical standards - for the collection, retention and transfer of energy data - that support the overarching Rules are adequate. The Data Standards Body is developing these standards in consultation with the ACCC, energy market participants, consumer representatives and other interested parties, and Red and Lumo are actively participating in this process.

The ACCC will closely monitor this process and must give industry sufficient time to implement processes and systems to comply with the technical standards. This includes AEMO, which as noted, will assume new functions as a gateway for consumer data and as a holder of other datasets. However, the energy industry, including AEMO, is simultaneously implementing other significant regulatory initiatives, such as the move to five minute settlement of the wholesale electricity market and the ACCC's faster customer switching as a result of the Retail Electricity Price Inquiry.

Therefore, we recommend the ACCC adopt a conservative approach to setting the timing to implement the CDR, mindful of these other workstreams. This will ensure the integrity of the CDR framework and underlying technical standards are not undermined.

Energy datasets

We note the conclusion of the Supplementary Privacy Impact Assessment of the Consumer Data Right for the energy sector that 'energy data does not generally have the same sensitivities as banking data'.¹ While this may be the case for some consumers and for some energy datasets, energy data is still highly sensitive, particularly personal information, and requires careful controls over its collection, retention and exchange. Our customers expect that we will maintain their privacy and safety by protecting their data and the ACCC is aware of the energy sector's extensive regulatory obligations with respect to data. We do not believe that the relative sensitivity of energy data is a basis for relaxing controls over data handling or the regulation of CDR participants. As with many other aspects of the energy rules framework, there may be a case to reconsider this at some future point but not at this stage.

We welcome the ACCC's acknowledgement that some information included in the current definition of 'customer information - namely, eligibility for concession, hardship and life support status (and potentially the underlying medical condition) - is particularly sensitive and that it is considering the need for additional controls. We support the ACCC's suggestion that it should be separately categorised and that ADRs seeking this information would need to explain how it supports their usage case. Furthermore, this would allow consumers to make a fully informed decision about whether to consent to this data being shared and to assess against the potential benefits.

In the case of meter data, the risks to consumers from misuse does not necessarily arise from the ability to identify an individual, although this might be possible if meter data is combined with information obtained from other sources. Rather, meter data provides information about usage at a particular location which allows third parties to understand behavioural patterns, appliance use, hours of employment and extended absences from the premises. This could lead to a range of outcomes, such as risks to personal safety or to property (including in the case of a consumer who is experiencing family violence), or to less significant issues such as unsolicited marketing and other communications to the household.

Many consumers view this as sensitive information with the potential for negative outcomes if misused. Therefore, the ACCC should apply the same controls to meter data as it proposes for other datasets.

Account holders, joint account holders and nominated persons

We support the ACCC's proposal to make a rule that a CDR consumer must have an account with a retailer - and therefore, be 'known to the retailer' as the ACCC describes - to be an eligible CDR consumer. In our view, the ACCC should link the authority to grant consent and to authenticate CDR data requests to those who have given explicit informed consent to be

¹ KPMG (2020), *Supplementary Privacy Impact Assessment for the Commonwealth Department of Treasury, Consumer Data Right in the Energy Sector*



financially responsible for an account. This means someone to whom energy is directly sold and includes individuals who can make changes to the account, request account information, set up direct debits, and request refunds.

This would exclude some individuals, including nominated representatives who can view and make some (limited) changes to an account but are not financially responsible. It would also exclude someone who resides at a premises but is not a designated account holder with the retailer, thereby overcoming the ACCC's concern about the ability of a landlord to access potentially sensitive information about its tenants. We view this as an appropriate control at such an early stage of the extension of CDR to energy.

We appreciate the ACCC's recognition of the importance of providing additional controls in the event that a consumer may be experiencing family violence. Unfortunately, this is a common issue of which retailers are increasingly aware and therefore, it should be accounted for the Rules. The ACCC is aware that this is a regulatory obligation in Victoria, and Red and Lumo are considering how the National Energy Retail Rules (NERR) could be amended to apply in a similar way (although we understand the majority of retailers already have such controls in place).

We support the ACCC's proposal to address this through the general CDR rule that allows data holders to refuse a request for data where it considers it is necessary to prevent physical or financial harm or abuse, rather than through an additional 'joint account management service' or a specific rule in the energy schedule.

On the other hand, the ACCC needs to also consider how ADRs should address this issue. We acknowledge that ADRs will generally be less able to determine whether a consumer is experiencing family violence, due to less frequent interactions with consumers, for example. However, we recommend the ACCC consider a rule that requires ADRs to take steps in the context of data requests and with the management of dashboards to protect CDR consumers' physical and financial safety. This is an important protection in light of the seriousness of this issue.

As a final point, we see little benefit in classifying large consumers as CDR consumers. We share the ACCC's view that these consumers generally have sophisticated energy management and data access arrangements that give them a high level of visibility over their data use (often in real time). Furthermore, we agree that they often have tailored arrangements with their retailer and metering data provider that are the outcome of selected tender processes.

Authentication

Red and Lumo support the ACCC's proposal for a strong authentication and redirect model, which requires a data holder to confirm a consumer's consent prior to releasing CDR data to an ADR. We agree with the ACCC that the framework should be consistent with that for banking, in light of the sensitivity of the data involved. More importantly, this is an efficient model as it can

leverage retailers' existing processes for customer interaction and verification. It imposes appropriate controls over sensitive data as the CDR is extended to the energy sector for the first time.

We acknowledge this is a model that will take some time to implement due to the necessary technical requirements. It may also generate some implementation and compliance costs for all CDR participants. There may be scope to revisit this and move towards an alternative at some point, such as the resident model, once the integrity and credibility of the CDR has been established, and consumers start to see its benefits or as different usage cases become clearer. However, departure from a strong authentication model is not appropriate at this early stage.

We also support the ACCC's preferred option as outlined in the consultation paper (Model 1) whereby retailers, rather than AEMO, maintain the direct relationship with the customer to manage consent and verification. As mentioned above, this model draws on an established relationship between the consumer and its retailer, allowing the retailer to draw on existing communication channels and established compliance processes.

In contrast, as noted previously, consumers' awareness of AEMO is low. It has no direct relationship with consumers and no functions relating to consumer protection, or the collection and retention of sensitive information about energy consumers. This is yet another reason why AEMO must only retain records of the transfer of information through the gateway rather than retaining any CDR data for which it is not a designated data holder, as recommended by KPMG in its Supplementary Privacy Impact Assessment.²

Dashboards

Similar to our preferred authentication model, we believe that retailers should retain the primary customer relationship and should therefore maintain the data holder dashboard, even when it relates to data that AEMO holds. On this basis, we have a strong preference for Option 1. It is a more flexible and efficient model that will be easier for retailers as data holders to implement, rather than having to align with AEMO's systems. Option 1 also allows retailers to leverage their existing functionality and systems for interacting with customers. This will reduce implementation costs.

Dispute resolution

We agree with the ACCC that the current energy rules provide an adequate framework for internal dispute resolution and that it does not need to introduce additional obligations on retailers in their capacity as data holders. We note that customer complaints, the issues to which they relate, and how they are handled are captured in retailers' regular reporting to the Australian Energy Regulator and the Essential Services Commission so there is sufficient regulatory oversight of this issue.

² Recommendation 4 of KPMG (2020), op. cit.

Accreditation

Red and Lumo recommend the ACCC retain the single form of accreditation (i.e. unrestricted with the same controls over all datasets) for data recipients and that is based on a high standard for initial accreditation and for ongoing regulatory obligations. This reflects our view of the sensitivity of customer, billing and meter data. This also aligns with the ACCC's preferred authentication model that requires consumers to authenticate to release of all datasets and therefore, effectively links meter data with personal information. As such, we do not support tiered accreditation for ADRs who only intend to seek access to a limited number of energy datasets.

A relatively simple accreditation framework (i.e. with a single form of accreditation) should also be easier for the ACCC to administer in the early stages of the CDR. This will also avoid any ambiguity for CDR participants about the form of accreditation they should seek, and for consumers about the extent of their protections.

Despite this, we believe there is a reasonable case for retailers who are designated holders of sensitive information to be able to become ADRs through a streamlined process. This reflects the extensive obligations with respect to privacy, the regulation of retailers' provision of an essential service under the NERR and Energy Retail Code respectively, and the associated level of regulatory oversight. The latter includes regular compliance reporting. Retailers will also need to comply with all technical standards for data protection and exchange in their capacity as data holders.

As the ACCC notes, this framework clearly differs from the obligations on authorised deposit-taking institutions. However, retailers also have significant regulatory obligations, in addition to our powerful commercial incentive to maintain their customers' privacy and safety. This should satisfy the ACCC that there are adequate consumer protections.

However, we think the case for streamlined accreditation of AEMO as an ADR because it is the designated holder of meter and NMI standing data is less compelling. This is because of its current roles and responsibilities, which do not include a consumer protection function.

Phased implementation

We are pleased the ACCC is considering the practicalities for retailers of implementing and complying with the CDR and is open to phased implementation. However, we consider it far too early to assess retailers' readiness - which the ACCC identifies as a principle for assessing different approaches for implementation. Few retailers will be able to estimate the timeframe they need to fully implement the CDR - or the cost - in the absence of draft rules, while the ACCC is still considering options for authentication and for dashboards, and while the Data Standards Body is working with CDR participants to develop the underlying standards. We encourage the ACCC to continue its open consultation with the energy sector and other interested stakeholders so all parties can monitor developments and are aware of the likely

direction and form of the CDR as early as possible. This will give the ACCC the best indication of each retailers' readiness and provide the best basis for assessing different options.

Another key determinant of implementation will be AEMO's readiness. We note the important roles that AEMO will perform in the CDR, both as gateway and data holders, and its involvement in the authentication process for data requests. As mentioned above, this coincides with implementation of other major regulatory initiatives, such as changes to customer switching, and the move to five minute settlement of the wholesale electricity market.

In terms of the staged application to retailers, we note the ACCC's recent suggestion that the CDR could initially apply to retailers such as the incumbent retailers, where the proportion of customers on a standing offer is relatively high. This reflects the common view that the majority of use cases for the CDR in energy, at least in its early stages, relate to price comparisons.

About Red and Lumo

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

Red and Lumo thank the ACCC for the opportunity to comment on the consultation paper. Should you wish to discuss or have any further enquiries regarding this submission, please call Geoff Hargreaves, Regulatory Manager on [REDACTED].

Yours sincerely

A handwritten signature in black ink, appearing to be "Ramy Soussou".

Ramy Soussou
General Manager, Regulatory Affairs & Stakeholder Relations
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