

17 May 2019

Mr Rod Sims
Chair
Australian Competition and Consumer Commission
Level 35, The Tower
360 Elizabeth Street
Melbourne Central
Melbourne VIC 3000

Sent by email to: ACCC-CDR@acc.gov.au

Dear Rod,

ACCC consultation on exposure draft Consumer Data Right Rules – banking

Thank you for the opportunity to comment on the ACCC's 29 March 2019 exposure draft *Competition and Consumer (Consumer Data) Rules 2019* for banking (**draft Rules**).

While the draft Rules appear focused on getting ready for the start of the consumer data right (**CDR**) for banking, they propose general rules that seem intended to apply uniformly.

I wish to highlight at this early stage, some areas where the proposed general rules may not suit complaints handling for telecommunications, in case they become fixed for the whole of CDR economy.

It is not clear to me whether the ACCC will contemplate adjusting these general rules sector-by-sector in future, or whether they will become fixed once set for banking.

This letter covers:

- My observations on the general rules, if they will apply uniformly; and
- ACCC coordination of related privacy and CDR reforms.

1. My observations about the general rules, if they will apply uniformly

The general rules could contemplate the differences between the banking and telecommunications sectors and how the proposed consumer consent framework could promote a better user experience.

(a) *The telecommunications sector is not the same as banking*

There are differences between the telecommunications sector and the banking sector, which may need to be reflected in CDR rules for the telecommunications sector.

While the rule-making power in the reform Bill gives the ACCC flexibility to make different rules for different sectors, the draft Rules include general provisions that appear to be intended to apply uniformly across the entire CDR economy. However, I recognise it is possible the ACCC could later modify the rules to make them appropriate for the CDR in the telecommunications sector.

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For example, the ACMA's new complaints handling rules¹ set out the requirements for telecommunications service providers to handle consumer complaints at IDR and retain complaint records for at least two, and not six, years.

If a six year record retention period applied economy-wide, there might be confusion about which records telecommunications providers need to keep for longer. Some records relevant to CDR complaints handling may be inadvertently destroyed. In the absence of information, my office may have to draw inferences or be unable to continue handling the complaint.

(b) *Support for the design of a CDR system that promotes a good user experience*

The proposed design of the CDR consumer consent framework could lead to consumer confusion and possibly CDR complaints that escalate to the Ombudsman.

I can see three possible ways in which the proposed consent framework could be modified to manage this.

(i) Streamlined consent process

The consumer experience may be enhanced by streamlining the consent process.

The draft Rules propose that consumers who wish to port their CDR data and not receive it directly will have to give (and may withdraw) separate consents to:

- allow an accredited person to collect and use their CDR data; and
- for a data holder to disclose their CDR data to the accredited person.

The process for the porting of the customer's CDR data involves multiple steps. Once the accredited person has received the consumer's consents, that person contacts the data holder. The data holder then separately contacts the consumer to obtain their consent for the transfer. This consent is necessary for any porting transaction between the data holder and accredited person.

If the consumer wants to cancel the porting, it seems they must withdraw each of their consents separately with both the data holder and the accredited person.

It is possible the complexity of the process might create confusion and a poor user experience, especially if withdrawal notifications are not recognised by all parties and acted on in a coordinated way. The complexity could be reduced by having an accredited person manage the whole of the porting transaction on behalf of the consumer (including consents and their withdrawal).

(ii) Allow opting out of 90 day reminders

The consumer experience may be enhanced by allowing consumers to opt out of the 90 day reminders that their consents to permit collection and use of their CDR data remain on foot.

(iii) Promoting evolution towards a single 'follow me' CDR dashboard or hub

The draft Rules propose a system where consumers may have to navigate multiple CDR dashboards with multiple parties to be able to port their CDR data to compare and switch.

This could present barriers to CDR consumers exercising their CDR rights and result in industry having to maintain dormant dashboards.

I wonder whether the rules framework could promote future evolution towards a single 'follow me' dashboard. The dashboard could hub the consumer's CDR data to promote a one-stop CDR user experience.

2. ACCC coordination of related privacy and CDR reforms

The CDR and privacy law safeguards are interrelated.

The ACCC's Digital Platforms Inquiry has made some draft recommendations which if adopted, may significantly transform privacy law safeguards.² It has been suggested that the Inquiry's final recommendations on privacy law reforms will inform a broader privacy reform agenda that will be carried forward in the second half of 2019.³

Will there be a pause on CDR consultation processes so the privacy reforms can proceed first?

I look forward to being involved in further discussions with the ACCC and engaging with the detail of the CDR rules for the telecommunications sector.

If you have any questions regarding this letter or the submission, please feel free to contact me, or my Senior Policy Advisor, Ai-Lin Lee on [REDACTED] or [REDACTED].

Yours sincerely,



Judi Jones
Telecommunications Industry Ombudsman

¹ ACMA *New complaints handling rules*. See: <https://www.acma.gov.au/Industry/Telco/Infrastructure/The-NBN-and-industry/new-complaints-handling-rules-1>.

² ACCC *Digital Platforms Inquiry*. See: <https://www.accc.gov.au/focus-areas/inquiries/digital-platforms-inquiry>

³ Minister for Communications and the Arts, Mitch Fifield, *Tougher penalties to keep Australians safe online* (25 March 2019). See: <https://www.minister.communications.gov.au/minister/mitch-fifield/news/tougher-penalties-keep-australians-safe-online>