6 September 2018

By email: data@treasury.gov.au
Mr Daniel McAuliffe
Structural Reform Group
The Treasury
Langton Crescent
PARKES ACT 2600

Dear Mr McAuliffe

Submission in relation to Consumer Data Right Draft Bill

REA Group Limited (**REA**) welcomes the opportunity to comment as part of the Treasury's consultation process in relation to the exposure draft of the *Treasury Laws Amendment (Consumer Data Right) Bill 2018* (**Draft Bill**).

As currently contemplated in the Draft Bill, the Consumer Data Right (**CDR**) will initially apply to the banking sector, followed by the telecommunications and energy sectors. While REA is not a participant in these sectors, REA collects, generates and holds consumer data in adjacent sectors. In that context, REA wishes to make a number of initial comments in relation to the Draft Bill, which it hopes are useful to the Treasury.

1.1 Executive Summary

(a) REA understands the rationale for introducing the CDR and is generally supportive of consumers having the ability to harness their own data for the purpose of obtaining better deals.

(b) However, REA is concerned that there are aspects of the Draft Bill that have the potential to operate extremely broadly and in a manner that is at odds with the underlying rationale for the CDR. In particular, REA is concerned that:

(i) (**Definition of CDR data**) first, the concept of "**CDR data**" in the Draft Bill appears likely to capture valuable proprietary data of organisations, which may have the unintended consequence of discouraging innovation or investment in data analytics and improvements to consumer experience based on data insights; and

(ii) (**Reciprocity**) second, the CDR may ultimately *lessen* competition in some markets by facilitating the acquisition of further consumer data by certain global digital search engines, social media platforms and digital content aggregation platforms (**Global Platforms**) including, for example, Google and Facebook. The Global Platforms already possess a broad array of consumer data in vast quantities, which has been gathered in respect of a variety of services. The Global Platforms are uniquely placed to collect and exploit this data as a result of their unrivalled user bases and ability to generate detailed, real-time user profiles and mandated access to CDR data risks entrenching their existing market dominance.

1.2 Background

(a) REA is a Melbourne-based, multinational digital advertising company specialising in property. REA's core business involves advertising properties on behalf of real estate agents and allowing property seekers to search for properties by reference to criteria such as property type, price, location and features.

(b) In Australia, REA operates (among other things) the residential property website www.realestate.com.au and the commercial property website www.realcommercial.com.au, as well as equivalent mobile sites and mobile device and watch apps for iOS and Android operating systems.

(c) The digital advertising markets in which REA operates are highly competitive. To maintain its competitiveness, REA must invest heavily in its user experience and develop new services for real estate agents and property seekers. As part of that investment, REA collects, uses and transforms consumer and business data in various ways to develop new insights and functionalities. For example, REA uses the data it collects from consumers and businesses to create new (i.e., inferred, proprietary) data regarding user interests and preferences, which REA then uses to improve the relevance of property search results. In this context, REA believes that it is well placed to identify the potential effects of the CDR reforms on incentives to invest in data capabilities and data-related services.

1.3 The application of the CDR to value-added customer data

(a) CDR data, as defined in the Draft Bill, includes information designated as CDR data with respect to a sector, as well as any information "derived" directly or indirectly from that data. REA is concerned that this has a cascading effect, such that it will capture a broad range of data created by an organisation as a result of its own expertise, insight, analysis or transformation, and at its own expense (referred to in this submission as "**value-added customer data**").

(b) Specifically, REA is concerned that mandating disclosure of value-added customer data will:

(i) reduce incentives to invest in data capabilities and data-related services – to illustrate, if REA were required to provide to its competitors value-added customer data created for the purposes of enhancing the utility of REA's services, then REA would be likely to invest less in the creation of that data and would tend to seek out other means of improving the attractiveness of its services (we note these concerns were also considered in the *Review into Open Banking* report[1]);

(ii) create incentives to invest unproductively in seeking to circumvent the CDR obligations or limit the competitive disadvantage that may result – such as by involving unrelated third parties, who may not be bound by CDR obligations, or may be bound in different ways, in the creation of value-added customer data; and

(iii) result in a breach of intellectual property rights and/or interfere with existing commercial arrangements.

[1] Review into Open Banking, 38.

(c) REA recognises that the Draft Bill contemplates that the Consumer Data Rules (**Rules**) for a designated sector may allow for compensation to be paid to a data holder where it is required to disclose proprietary information. However, the value of proprietary data to a data holder will be extremely difficult to quantify objectively, and will differ in value depending on who is using it and how it is used. REA also considers it commercially unrealistic to suggest that a third party could place a "fair" or "market" value on proprietary data that a data holder would never contemplate licensing in the ordinary course of business. For example, a digital business may have made substantial investments in its data capabilities that allow it to use proprietary data to provide unique and valuable insights to its customers (at least for a period of time until competitors catch-up), and the loss of the ability to differentiate their business offering in that way is unlikely to be able to be quantified in an assessment of fair or market value.

(d) Given the ever-increasing importance of digital businesses and data innovation to the performance and international competitiveness of the Australian economy, REA submits that potential unintended effects on incentives to innovate should be weighed very seriously. REA also considers that it ought to be possible to preserve and protect innovation incentives, while achieving the policy objectives of the CDR by providing for the sharing of consumer-provided data to better enabling price comparison and switching.

(e) In light of the potentially detrimental effect on innovation associated with any requirement to transfer value-added customer data to competitors, REA recommends that:

(i) the definition of CDR data be narrowed in such a way as to exclude any data created through the application of expertise, insight or analysis or transformation of a customer's transaction data to enhance its usability and value, while still allowing access to and control of the un-processed data provided by the consumer, thereby not compromising underlying objectives of the CDR; and/or

(ii) there be a clear articulation (either within the Draft Bill or as part of the associated regulations) which sets out particular categories of data that should never fall within the scope of the CDR (including for example, materially transformed data, behavioural or inferred data, or data to which proprietary expertise or insights have been applied), and which is capable of being adapted as technology changes.

1.4 Principle of reciprocity

(a) The Draft Bill incorporates the principle of reciprocity – in effect requiring that any accredited entity in possession of a consumer's CDR data can be directed by a consumer to provide that data to other CDR participants. The principle also operates to require that any accredited entity receiving CDR data must be willing to share equivalent data, in response to a CDR consumer's request.

(b) However, there are significant differences in the level of analytical sophistication of potential recipients of CDR data, resulting in differing levels of competitive advantage gained through any one consumer's data. For that reason, the benefit gained by data holders subject to the CDR will differ substantially based on the data holders' market power and access to complimentary sets of data. In

particular, the Global Platforms have unmatched user bases and access to user data, allowing for particularly sophisticated uses and transformations of consumer data that others are unable to deploy. Similarly, the Global Platforms have unique abilities to influence consumer habits and behaviours. Accordingly, reciprocal arrangements that at first glance appear fair as between competitors may in fact operate to the advantage of Global Platform incumbents.

(c) In this context, REA is concerned about the potential for Global Platforms to extract additional value from any incremental data obtained via the CDR, allowing them to entrench their market dominance at the expense of smaller, local and/or specialist competitors.

(d) REA considers that the most appropriate way of addressing this issue described above is to avoid compelling the transfer of value-added customer data (as set out in section 3 above), and to ensure that, in creating sector-specific rules, the Australian Competition and Consumer Commission takes into account the likely effect of the transfer of particular CDR data types to particular recipients and sets limits on the use of CDR data so that it is not, for example, simply integrated into the Digital Platforms' existing user profiles for use across their various businesses.

In conclusion, REA recommends that there be clearly defined parameters around the way in which the CDR is implemented such that it does not inadvertently stifle innovation, or entrench the positions of market-dominant Global Platforms at the expense of smaller, local and/or specialist competitors.

Yours sincerely

Sarah Turner
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REA Group Limited