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Thursday, 28 May 2020

Consumer Data Right
Structural Reform Division
Treasury
Langton Crescent Parkes
ACT 2600

RE: Consumer Data Right (Energy Sector) Designation 2020

ERM Power Retail Pty Ltd (ERM Power) welcomes the opportunity to respond to the draft Consumer Data Right (Energy Sector) Designation 2020 (draft designation), an instrument under Subsection 56AC(2) of the Competition and Consumer Act 2010.

About ERM Power

ERM Power (ERM) is a subsidiary of Shell Energy Australia Pty Ltd (Shell Energy). ERM is one of Australia's leading commercial and industrial electricity retailers, providing large businesses with end to end energy management, from electricity retailing to integrated solutions that improve energy productivity. Market-leading customer satisfaction has fueled ERM Power's growth, and today the Company is the second largest electricity provider to commercial and industrial businesses in Australia by load¹. ERM also operates 662 megawatts of low emission, gas-fired peaking power stations in Western Australia and Queensland, supporting the industry's transition to renewables.

<http://www.ermpower.com.au>

<https://www.shell.com.au/business-customers/shell-energy-australia.html>

General Comments

ERM Power supports the development of the Consumer Data Right (CDR) regime as an important initiative to empower customers with information so that their engagement in the competitive market is enhanced. The CDR will bring opportunities to customers (and their agents) to make informed choices through having access to an expanded source of information, so that they can assess the appropriateness of different offers when making comparisons. While the CDR regime will bring benefits to some customers and support the competitive market, we consider that the draft designation is unnecessarily broad in its application to large and sophisticated business customers (in this submission we use the term "large and sophisticated business customers" to refer to large customers and customers with aggregated consumption under the National Energy Retail Rules). The CDR framework and energy sector designation must safeguard retailers' ability to continue to invest in innovation with proprietary value added and commercially sensitive information protected.

Protection of value added and proprietary information

We commend Treasury for recognizing the importance of preserving the value of retailers' proprietary and value-added data in drafting the designation. We understand that the draft designation attempts to protect certain types of data through the concept of that data being 'materially enhanced', that is, improved through the application of insight or analysis by the data holder and therefore not subject to the CDR. Further, data specified under subsections 8(2) and (3) is determined to be data that cannot be materially enhanced, being factual and based solely on observation. Whilst we agree much of the data under section 8 (3) could be classified in this manner, we

¹ Based on ERM Power analysis of latest published information.



believe information under subsection 8 (3) (i) a *breakdown of an amount charged under (an) arrangement* is unnecessarily broad in relation to large and sophisticated commercial customers' data and if disclosed, presents the risk for retailers of having commercially valuable and proprietary pricing model information available in the market place. Provision of breakdowns of amounts charged (for example, by peak and off-peak periods) means that commercially sensitive and valuable pricing models can be determined. This retailer intellectual property should be protected from disclosure.

Application of Materially Enhanced Data

As with our previous submission, ERM Power's view is that tailored retail product information constitutes value-added consumer data (that is, has been materially enhanced) and should be excluded from the designation. We consider that details of retailer arrangements for large and sophisticated customers under section 9 and referred to in subsection 9 (2) (b) should not be subject to disclosure under the CDR as it is materially enhanced. Large and sophisticated business users tend to contract under bespoke negotiated agreements and the detailed charges may closely align to the underlying wholesale hedging and purchasing arrangements, including those that relate to embedded generation and innovative technologies. Pricing structures are different and include strategically timed pricing and index pricing over the course of the contract and are often constructed through a detailed needs analysis of the customer's operations.

In addition, we consider a breakdown of the amount charged for tailored offers and information around the arrangements will go beyond that which is detailed on a bill and can expose valuable commercial arrangements of the retailer and compromise a retailer's proprietary knowledge embedded in the sculptured arrangement. This data is highly unlikely to be used as a source of offer comparison by customers, given large and sophisticated business customers usually procure via tendering arrangements run by specialist procurement managers or brokers, and the contracts for supply are negotiated to the customers' unique circumstances. It is more likely to be misused by third parties to the detriment of the retailer.

We also consider the proposed data access model adds further reason why large and sophisticated business users' retail arrangements should be excluded from the CDR. The draft designation supports the ACCC's preferred data access model, with AEMO facilitating access under a gateway model for much of the standardized market data. However, where retailers as data holders have more tailored product information, arrangements will need to be put in place to facilitate access to this information for data recipients, compliant with the CDR framework and data standards. Further complication stems from requirements to capture the authorising party to any large business customer retail arrangements (currently not kept as a discreet data field) for validation. The inclusion of large customer retail information as part of the CDR, particularly for more complicated arrangements of large customers will add significant costs and require complex development to enable data to be transferred in an efficient and consistent manner.

However, we consider there may be a valid argument that tailored product information is not materially enhanced when it relates solely to small mass market customers. Often tailored small customer retail arrangements involve more simplistic tariff structures and small customers are more inclined to use this data as a basis for offer comparison. Moreover, simplistic tariff structures of smaller customers, albeit tailored arrangements will require less intensive system builds for data transfer as the attributes relate closely to generic information available through government comparator sites. For these reasons we propose that tailored retail arrangements for large and sophisticated customers should not be captured by the CDR, but tailored retail arrangements for small mass market customers should.

Implementation timeframe of the CDR to the energy sector

It should be noted that the data access methods will result in significant system development with the requirements to interface to AEMO's gateway, and if large customer tailored information continues to be captured by the CDR, facilitating information to customers or other third parties with adequate safeguards, protecting privacy and



protecting against unlawful access. This development will be made at a time when major industry changes are being considered for a delay due to uncertainties stemming from the COVID 19 pandemic, including the introduction of 5 Minute Settlement. We consider that the timeframe for the implementation of the CDR to the energy sector should be reasonable and realistic given the systems required to support the regime will be extensive, costly and will add further pressure on the implementation of various other reforms already in the pipeline.

Please contact me if you would like to discuss this submission further.

Yours sincerely,

[signed]

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