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21 May 2020

Secretariat
Inquiry into Future Directions for the Consumer Data Right
The Treasury
Langton Crescent
PARKES ACT 2600

Submitted electronically: data@treasury.gov.au

Re: Inquiry into Future Directions for the Consumer Data Right

Red Energy and Lumo Energy (Red and Lumo) welcome the opportunity to provide this submission on Treasury's issues paper inquiring into Future Directions for the Consumer Data Right (CDR).

Red and Lumo support the CDR and believe that applying it to the energy sector will potentially generate significant benefits for energy consumers. It 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, these potential benefits need to be assessed against any risks to consumers' privacy and safety, implementation costs, and costs to ongoing compliance. 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. Our main concern is the potential for poor customer outcomes if third parties are given write access.

We recognise that this Inquiry is looking at the '*future purpose, use and vision for the Consumer Data Right*', noting that the CDR only applies to the banking sector at the moment. Many of our concerns about how the CDR applies in the energy sector will be considered by Data61, the Australian Competition and Consumer Commission (ACCC) and Treasury through their consultation processes. It is vital that practical issues are resolved satisfactorily and that consumers have confidence that CDR works to their benefit before the scope is expanded.

Switching and write access

The issues paper describes write access as 'enabling a trusted third party to change or add to data about a customer at the customer's direction and with their consent'. It states that write access could allow consumers to authorise trusted third parties to apply for, manage, and

change products on their behalf through APIs. In the energy sector, this could involve opening a new account, making changes to or closing an existing account, and facilitating switching between retailers.

However, write access means changes to core elements of the existing national and jurisdictional energy frameworks to amend explicit informed consent (EIC) provisions. This is an area where we see the greatest risk to customer privacy and safety, and the potential for a poor customer experience.

The ACCC raised concerns in its Retail Electricity Pricing Inquiry that *'amending EIC regulation to enable third parties to give EIC on behalf of consumers in isolation poses some significant risks including consumers being switched inadvertently, or without fully understanding the terms of the offer that they are signing up to'*.¹

However, it was optimistic that these risks could be managed and recommended a mandatory code of conduct for third party intermediaries (recommendation 34) that would include an obligation that any recommended offer is in the best interests of the consumer, rather than on the basis of the intermediary's commercial relationships.

In our view, this is only one of the many issues that need to be addressed before the CDR allows for write access. The ACCC's recommendation preceded the Victorian family violence provisions and the AER's binding Hardship Guideline. Furthermore, the requirement to act in a consumer's 'best interest' is subjective and would be difficult to enforce in practice. The ACCC's CDR authorisation process and its ongoing monitoring and enforcement activity will need to explicitly account for a range of issues that we refer to below.

The issue of consent in the energy sector is challenging when a third party is acting on behalf of a financially responsible person and can make fundamental changes to an energy account. It isn't yet clear how a third party will demonstrate they are trusted and are acting in consumer's best interest. In our view, the existing CDR rules (the *Competition and Consumer (Consumer Data Right) Rules 2020*) do not adequately account for many of the specific issues that arise in the energy sector, or are detailed enough, to account for some of the unique scenarios that can arise under some retail contracts.

The following are some of the main issues and risks that an adequate CDR framework must address. They involve more fundamental issues than the simple provision of advice:

¹ Australian Competition and Consumer Commission (2018), *Restoring electricity affordability and Australia's competitive advantage, Retail Electricity Pricing Inquiry—Final Report*, page 284

- How third parties account for consumers' highly specific preferences with respect to contract terms and conditions. For example:
 - Whether a consumer is willing to enter into a contract that involves lower prices during off peak periods in return to greater exposure to network events or high wholesale prices.
 - Whether a consumer is willing to enter into a contract that allows a third party, such as an aggregator to interrupt or reduce their energy supply during peak pricing events or take control of their distributed generation.
 - How third parties account for non price related considerations and preferences. This could include a consumer's preference for a particular brand, factors other than price such as loyalty schemes, Australian ownership and/or Australian based call centres, or whether the retailer offers additional services, such as solar and battery storage or online services.
- How third parties manage consumers who might be experiencing family violence. Retailers operating in Victoria are now obligated to offer assistance to consumers suffering from family violence and this includes controls on accounts to ensure they do not disclose personal details and sensitive information to perpetrators (such as a new address). Red and Lumo are offering these protections to all our customers irrespective of which jurisdiction they reside in.
- Whether switching by a third party undermines the objectives of the AER's hardship guideline and the Essential Services Commission's Payment Difficulties Framework. These frameworks are most effective when there is an extended relationship between a customer and their retailer, who is able to tailor the support it provides based on its knowledge of a customer's specific circumstances. Be it through a specific product, payment plan or tailored energy advice. Similarly, a consumer who switches retailers is much better placed than a third party to explain their circumstances and any assistance they might need to a winning retailer. This is particularly relevant in the current environment where there has been a substantial increase in the level of support that retailers are providing to their customers due to the impact of COVID-19.
- Obligations on third parties to ensure consumers requiring life support are not impacted when they switch retailers.
- How to coordinate switching activity across different industries. For example, direct debits for the payment of energy bills could fail if a third party switches banks without informing the retailer.

- Adequate technical processes for recording the details of consent and for the secure transfer of those details between the various energy market CDR participants.

These issues are even more complex when there is more than one financially responsible person on an energy account. Red and Lumo have rigorous practices in place to manage joint accounts, such as steps that account holders must follow to identify themselves and for the joint verification for actions on accounts. Most recently, we have implemented processes to ensure the safety of an account holder who may be experiencing family violence. Third parties with write access would need to have similar controls to ensure they act in the interest of every individual associated with an account.

There are regulatory frictions in place - such as National Energy Retail Law's EIC requirements at the point of sale and cooling off periods - in addition to obligations on retailers to provide prescribed information, that provide these safeguards. This means consumers are actively involved in the decision to switch retailers, and that they are making considered and informed choices. They have been a core element of energy consumer protections and exist to ensure competitive markets serve consumers' interests and deliver products that reflect their needs and preferences.

A further point to note is that this would also involve changes to existing processes to complete market transfers, as third parties would need to be accounted for in some way. The Inquiry may be aware that the Australian Energy Market Operator (AEMO) and market participants are now making significant changes to market processes and systems to allow for faster customer switching between retailers; this includes allowing for retrospective transfers and for transfers on estimated meter reads. Duplicating work in two regulatory processes to achieve the same outcome should only be progressed where the benefits outweigh the costs.

Read access

The issues paper also discusses read access for third parties, asking questions such as how best to enable consumers to keep track of their various consents, industry cooperation on standards for 'voluntary' data sets, and how to accelerate the creation of a safe and efficient ecosystem for participants and service providers. Most of these issues are being considered through current and proposed consultations and we encourage the Inquiry to monitor these developments.

The issues paper also mentions the possibility of tiered accreditation for third parties under the CDR. The Inquiry will be aware that the ACCC recently consulted on how best to facilitate the participation of third party service providers in the CDR, and discussed the possibility of tiered

accreditation for intermediaries.² As we argued in our submission to that consultation, we do not see a strong case for a tiered accreditation model - with a reduced form of accreditation for intermediaries, for example - particularly as there is no precise definition or clear view of their potential role in the energy sector. We are concerned about the potential harm to consumers if some entities with access to CDR data - such as intermediaries - were subject to lesser regulatory obligations and reduced regulatory oversight. There is potential for this under a tiered accreditation model.

Context for the Inquiry

The issues paper states that one of the key benefits of the CDR for energy consumers is enhanced competition and greater switching rates, and enhanced incentives for innovation.

We note the broader context for this Inquiry, namely, the numerous regulatory initiatives that have occurred in recent years that have specifically sought to encourage consumers to participate in competitive energy markets and find alternative offers and providers. Examples include the Default Market Offer (which functions as a price cap and a common reference point for all offers), the Victorian Default Offer (which is also a reference point), recent improvements to the Australian Energy Regulator's Energy Made Easy website, the creation of Basic Product Information Documents, and advance notification of price changes and the end of fixed benefit periods. We also mentioned AEMO's project to reduce customer switching timeframes, which industry is now implementing. Each of these measures seek to facilitate competition and facilitate switching in retail energy markets.

Looking ahead, the Commonwealth Government has committed to reviewing the DMO Code, the Australian Energy Market Commission is considering how regulation needs to evolve to reflect technological change and a more dynamic market and the Essential Services Commission is reviewing the competitiveness of the Victorian retail energy market.

We mention these initiatives and reviews because they could generate many of the benefits that some stakeholders expect of the CDR. For example, the issues paper states that the CDR potentially offers *'new ways of innovating, where businesses could use the information to compete more effectively, understand their customers better, develop new and improved products and services and assist their customers. With features designed to provide flexibility for, and fairness between, businesses, the Consumer Data Right should provide businesses with the clarity, certainty and consistency needed for them to invest in their technology, people and customers.'*³

² Australian Competition and Consumer Commission (2019), *Consumer Data Right: Consultation on how best to facilitate participation of third party service providers*

³ Australian Government (2020), *Issues Paper: Inquiry into Future Directions for the Consumer Data Right*, page 3

It also suggests that the CDR will encourage innovative offerings from third party service providers to assist consumers with comparisons and switching to improve their 'life admin'.

Competitive energy markets, combined with these recent regulatory initiatives, will deliver many of these benefits. Therefore, the Inquiry should carefully consider the nature and extent of any incremental impact of the CDR within the context of these reforms. The benefits may not outweigh the costs. This includes the potential for greater risks to consumer safety and privacy arising from granting write access to third parties, and the additional implementation costs that market participants and agencies such as AEMO will need to incur to make any necessary system changes. As mentioned above, industry is incurring costs to reduce customer switching timeframes, and any further changes that are not streamlined into the AEMO process to allow third parties to be involved, will add to those costs.

About Red and Lumo

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

Red and Lumo thank the Treasury for the opportunity to comment on the Inquiry's issues paper. Should you wish to discuss aspects or 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 stylized with loops and a long horizontal stroke at the end.

Ramy Soussou

General Manager Regulatory Affairs & Stakeholder Relations

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