



AUSTRALIAN COMPETITION
& CONSUMER COMMISSION

ACCC submission - Treasury sectoral assessment of telecommunications for the Consumer Data Right (CDR)

August 2021

1. Introduction - summary

The Australian Competition and Consumer Commission (ACCC) is pleased to contribute to Treasury's consultation on the sectoral assessment of telecommunications for designating telecommunications as a sector subject to the Consumer Data Right (CDR).

The ACCC supports the designation of telecommunications as a sector to be subject to the CDR. Effective competition relies on informed purchasing decisions, and the CDR will help to overcome barriers that prevent consumers and small businesses (referred to together as 'consumers' in this submission, from making informed choices. The CDR offers the potential for service providers to become less product focussed and more customer-centric, and develop products and services better aligned with their customers' needs.

We believe there will be a number of use cases relating to comparison, choice and switching between products and service providers. The use cases would facilitate consumers benefiting from the use of CDR data to compare services and switch between providers based on greater awareness of their own usage history, their needs, the technology available to them and the level of service quality and customer service offered. Further use cases are likely to develop, particularly as innovation relating to telecommunications data increases, and when combined with broader technological changes.

This submission considers the factors set out in section 56AD(1)(a)-(e) of the *Competition and Consumer Act 2010* (CCA). The ACCC must consider these factors when consulted by Treasury under section 56AE when Treasury prepares a report to the Minister on the potential designation of a sector.

The role of the ACCC

The ACCC is an independent statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The ACCC is primarily responsible for administering and enforcing the CCA.

In telecommunications, the ACCC performs industry-specific competition and access functions under the CCA, and certain functions under other industry-specific legislation such as the *Telecommunications Act 1997*. This includes regulating the prices and terms of access to declared services provided over the National Broadband Network (NBN) and other fixed-line and mobile networks.

Part IVD of the CCA provides for the ACCC to implement the CDR. The ACCC's CDR roles include accrediting potential data recipients, establishing and maintaining a Register of Accredited Persons and Data Holders, monitoring compliance and taking enforcement action in collaboration with the Office of the Australian Information Commissioner (OAIC), and providing guidance to stakeholders about their obligations under the CDR. The ACCC also plans, designs, builds, tests, runs and secures enabling technologies for the CDR. As implementer and regulator of the CDR, the ACCC looks forward to working with Treasury, the Data Standards Body and the OAIC to continue to expand the CDR.

The CCA also provides that the ACCC must be consulted before the Minister decides whether to make a legislative instrument designating a sector of the economy subject to the CDR. When consulted for this purpose, the ACCC must consider the same issues required to be considered by the Minister under section 56AD(1)(a)-(e) of the CCA.

Features of the telecommunications sector

The telecommunications sector is characterised by technologically complex services supplied using core, fixed-line, wireless and satellite networks by a small number of wholesale network operators and wholesale service providers, and many small, medium and large retail service providers (RSPs).

The telecommunications access framework allows RSPs to access wholesale networks and services in order to provide services to downstream markets. Downstream markets broadly include corporate and government customer segments, small business and residential end-user segments. These markets cover both metropolitan and regional segments. The network technology available in different locations varies considerably, and affects service quality and coverage, particularly in regional Australia.

Another distinctive feature of the sector is the complexity of retail offers, which come in an array of prices and forms, such as bundles, calls and data limits, prepaid and postpaid contracts. The complexity of offers also reflects the complexity of telecommunications technologies and the range of services available. Phone calls (voice telephony), text messaging (SMS) and internet access (broadband) are all services delivered via fixed-line networks, or wireless networks and broadband can be delivered by satellite networks. Further, data speeds and service quality can be packaged in different ways to deliver services that meet the needs of different market segments, such as corporate and government, small business and residential markets

Wholesale-retail supply structure

Many RSPs sell services to consumers based on wholesale services they obtain from network operators. Each layer of the supply chain incorporates different types of information, some of which, but not all, is relevant to consumers and shared between market players.

Fixed-line networks for broadband to stationary locations

The NBN is the largest fixed-line network underlying most fixed telecommunications services to residents around Australia. It provides wholesale broadband services over a mix of network technologies, including fixed wireless and satellite technologies, with different characteristics and limitations in different locations. Non-NBN fixed-line wholesale networks also operate in particular areas.

These network operators provide infrastructure, and often wholesale broadband services using that infrastructure, and some also provide retail services to consumers using their own network infrastructure.

As a result, fixed-line network operators hold information relating to the physical infrastructure used to supply broadband services to consumers premises, and may also hold information relevant to the specific services obtained by consumers in their homes, either directly or through an RSP.

Wireless networks for mobile communications

Wireless services, such as mobile telecommunications, are mostly supplied over mobile networks by three mobile network operators (MNOs), Telstra, Optus and TPG. The MNOs also provide retail services direct to consumers. In addition, a number of mobile virtual network operators (MVNOs) purchase wholesale end-to-end mobile services from MNOs to provide retail services. MNOs and MVNOs hold information relating to the wireless infrastructure used to supply mobile coverage and

reception to mobile devices. They may also hold information relating to the specific mobile services obtained by consumers, either directly or through an MVNO.

Services differ in metropolitan and regional areas

Telecommunications services in regional areas are generally more limited than in metropolitan areas. While the same range of services are available, the network technologies differ, which means quality and accessibility in regional Australia is more limited. Fixed-line network technologies are mostly fibre optic cable-based technologies in metropolitan areas, and rely more on legacy copper networks, fixed wireless and satellite technologies elsewhere. Services in regional and remote areas are more prone to service disruptions, congestion and speed limitations due to the technologies available. Mobile coverage is also more limited, and people living and working in regional areas often rely on fixed-line voice services instead of, or to supplement, mobile coverage.

Out of 8.2 million NBN services in operation nationwide, approximately 4.9 million are in metropolitan and outer metropolitan areas, and 3.3 million in regional areas.¹ This includes around 355,000 NBN fixed wireless services and 93,000 Sky Muster satellite services.²

Mobile services are mainly delivered over 4G networks in Australia, covering 99.2 per cent of the population. However, in regional areas, 3G networks are widely used for voice services and to supplement 4G coverage, and around 0.3 per cent of Australia's population (around 75,000 people), mainly in remote areas, only receive 3G mobile coverage.³

The disparity between telecommunications in metropolitan and regional areas is well recognised. For example, the Regional Telecommunications Review examines telecommunications services in regional, rural and remote areas every three years, and governments have subsidised investments in infrastructure to improve mobile coverage, particularly in regional and remote areas, through its Mobile Black Spot Program.

Complex retail offers

In all locations, retail telecommunications products, both fixed-line and mobile, are offered in a range of prices and a multiplicity of bundled goods and services. Prepaid, postpaid, month-by-month contracts, temporary promotions and discounts are common. The complexity of price and non-price elements of retail offers makes it difficult to compare products from the same provider and those from other providers.

The interests of consumers

The CDR has the potential to deliver significant benefits to telecommunications consumers by facilitating access to, and improving the use of, information about telecommunication products and information about consumers' use of those products. With the CDR, a consumer can choose to share their data with an accredited data recipient (ADR), who may assist by providing products and services tailored to the consumer's specific circumstances.

This way, the CDR should allow consumers to navigate a sector with technologically complex products, multi-layered supply chains, and an array of complex retail offers. It would also help

¹ ACCC NBN Wholesale Market Indicators Report, March quarter 2021 report, 21 May 2021.

² Ibid.

³ Regional Telecommunications Review Issues Paper, July 2021, pp6-7.

consumers with diverse needs, including those who may not be aware of their own usage patterns, to choose to share their data with an ADR to identify products that best suit their circumstances.

The greatest initial benefits to consumers is likely to relate to their choice of broadband product and service provider, and mobile service and service provider. These choices are influenced by information about the products available, but also by information about a consumers' use of these products. Other information about the consumer is likely to be relevant, such as their financial circumstances, location and movement patterns. The CDR would allow a consumer to ask an ADR to access their usage history and costs from one or more, past or present RSPs, to help them identify services that suit their situation. Combining that information with financial data may also allow a more informed recommendation to be made about the products and services that suit the consumer's needs.

For broadband, while most services are supplied using fixed-line networks, consumers purchase broadband services from RSPs. This means consumers benefit from access to network-level data such as the type of NBN technology supplying broadband to their home, alternative technologies available in the same area, and retail-level data such as monthly prices and data limits offered by home broadband RSPs. A consumer's home broadband use, including data uploaded and downloaded for different purposes, and the monthly and total costs actually incurred, is also relevant. The CDR would allow a consumer to ask an ADR to access their usage history and costs from one or more past or present RSPs, and identify products and RSPs to suit their current needs and preferences.

For mobile, consumers benefit from access to network-level data such as the mobile network providing coverage in the locations they visit, including commuting routes, and retail-level data such as calls and data included each month. A consumer's own mobile usage history helps consumers know where they use their mobile most (location history), and the calls, texts and data consumed most when they do. As with fixed broadband, with the CDR, a consumer can ask an ADR to access their mobile usage and location history from one or more past or present RSPs, and identify the mobile products and providers that provide mobile coverage at costs that meet their circumstances.

Some examples of the potential uses of CDR data (use cases) are set out below to illustrate how CDR would improve consumers' decision making, facilitate their informed participation in the sector and promote competition. Other innovative use cases would likely develop over time as new telecommunications products emerge, and from new ADRs providing CDR-enabled services that would allow consumers to use their personal data and product data more effectively.

Switching between service providers – Many consumers choose services and a service provider based on the product features on offer, rather than how those features will meet their needs. The CDR has the potential to turn this around. Combining product data such as price and non-price product features, with consumer data about usage history, would allow ADRs to recommend a service provider that offers services that suit the consumer's needs. While a subset of product data is currently available via Customer Information Summaries, combining more granular product data with consumer data will simplify the process for searching for new products and services to suit the consumer's circumstances.

Relevant information for this use case includes product features such as included calls, text messages, data limits, upload/download speeds, and bundled accessories and related products (eg modems, mobile phone handsets). It also includes network information, such as network reach and coverage, signal strength and the network technology at a particular premises and the attainable speeds on that technology. Price information is also important, including direct and indirect costs, monthly fees, temporary discounts and promotions, minimum total costs, late payment fees, excess usage fees, and accepted payment methods

(eg direct debit, credit card, PayPal, etc). Non-price factors are also relevant, including contract length, consumer contract terms, service reliability, faults, repairs and available remedies, and consumer complaints to the Telecommunications Industry Ombudsman.

Greater availability and accessibility of consumer data, such as consumers' own usage history, including calls and texts made and received, and data consumed across different activities (eg video-conferencing, video streaming, downloading education material, etc), would also help ADRs make improved product recommendations from a range of service providers.

- **Switching between products from the same service provider** - Access to a consumer's usage history can allow an ADR to advise a consumer whether they have the most suitable product for their needs. While there are clear incentives for service providers to try and 'upsell' their products to consumers, more granular usage data can empower consumers to reject and avoid unnecessary upselling. If, for example, an ADR could remind a consumer that they have only used 2GB of the 10GB data available on their plan, the consumer could revise their plan to choose a lower data package at a lower cost. Similarly, an ADR could advise a consumer that their usage history would be met by an RSP's product with lower speeds and data allowances than the high cost plan the consumer currently purchases. The same classes of information and data holders relevant to switching between service providers would be relevant here.
- **Assessing usage across broadband and mobile products from multiple providers** – Consumers often obtain internet and mobile services from different RSPs. In such cases, it is difficult to assess usage and expenses across products because a consumer can currently only obtain separate usage histories from each RSP. The CDR could enable a consumer to direct one or more RSPs to share current and historical usage data with an accredited person to assess their usage and expenses across products. Consumers could also use this information to seek product information suited to their needs across fixed and mobile services. Similarly, it would allow service providers to tailor a product that meets the overall needs of a consumer. Relevant datasets would include a consumer's usage and location history for all the telecommunications services they use. The relevant data holders would include RSPs, and potentially network operators for network line or mobile coverage.
- **Location-based information** – Information about fixed network technology and mobile network coverage in particular locations is important for consumers, particularly consumers in regional areas. The network technology affects the broadband speeds available, and mobile network coverage is relevant to mobile device reception. The CDR would help an ADR identify the best services and service providers to suit the consumer's circumstances.

The relevant databases for individual premises, network technology available and operational, and speeds that can be provided, will be held by the corresponding fixed network operators. Mobile network coverage information will be held by mobile network operators. Consumer data, such as location history, including commuting routes, movement patterns and locations regularly visited, could be provided with the consumer's consent to accredited persons to compare against the product location-based data. We distinguish network-level location data from granular device-level location data, such as metadata and GPS data, which may not be required under this example and which generally attract a suite of privacy safeguards.

- **Consumers experiencing vulnerability** – Some consumers have special needs due to temporary, situational or ongoing vulnerability. For example, consumers with a hearing

impairment may have an interest in RSPs offering reliable access to the National Relay Service or Video Relay Service. This information should be held by retailers. Other consumers have remotely-monitored medical or security alarms in the home to support their health and security needs. As these alarms may not be supported on every NBN fixed network technology, these consumers would benefit from CDR data that could be used by an ADR to identify the networks, service providers, and any battery or other supporting equipment that may be needed. The relevant information would be held by NBN Co.

The circumstances surrounding these potential use cases are explored further below.

Navigating complex retail offers

As noted above, consumers face an array of retail offers when choosing telecommunications services. This complexity can be overwhelming and contribute to consumer inertia – either about switching to better value products from the same provider or to products from other providers. Switching costs include the time and effort required to compare price and non-price product features. Consumers could benefit more from being able to search the market more easily – with the assistance of an ADR – to find deals that better suit their needs.

The ACCC publishes regular data on NBN fixed network speeds and related performance measures under our Measuring Broadband Australia Program to promote competition and service quality. We also provide the industry with public guidance on how to advertise broadband speeds. While these measures have promoted competition between RSPs and increased the transparency of broadband service quality for consumers, they focus on a subset of service characteristics. In contrast, the CDR would facilitate access to a broader range of service information and products from a wider range of RSPs.

NBN Co and mobile network operators also publish coverage maps. This can raise consumers' awareness about the network technologies available to them, which is relevant to the broadband speeds available in their home and the mobile phone reception in the areas they frequent.

However, such information is not perfect. For example, we have previously found a need for better transparency about mobile network coverage and quality due to differences in the way MNOs measure and report on their own network coverage. This means coverage maps are not always comparable across mobile networks and may differ from on-the-ground coverage experience.⁴ For an individual consumer, coverage maps do not provide the level of detail that enable them to determine whether their mobile device will have coverage within the home, or along common commuting routes. The CDR could promote more accurate and comparable coverage data across mobile networks and emerging wireless service providers.

Consumers also consider pricing and value for money when acquiring communications products. Our annual Communications Markets Reports generally show more calls and data are included in retail plans, which suggests consumers are receiving more value for money. However, budget conscious consumers may not value the additional inclusions and may instead prefer fewer inclusions at a lower price. The challenge for these consumers is that service providers may only offer entry-level plans for NBN services with prices and inclusions above budget conscious consumers' preferences.⁵ However, if consumers have more insight into their data use and needs, they may be able to obtain more informed recommendations about switching to lower cost mobile or fixed wireless plans,

⁴ ACCC Measures to address regional mobile issues, October 2017, pp5-13.

⁵ See ACCC Communications Market Report 2019-2020, p22-23.

instead of remaining on a higher cost fixed broadband service or being subject to unnecessary upselling.

The CDR would give consumers the power to seek relevant data from an ADR that would result in recommendations based on price and non-price information for products with features that better suit their needs. It would also enable customers to consent to their own usage data being provided to a third party, including for specific services such as video conferencing and video streaming, so they can make more informed decisions about the retail offers available.

Choosing suitable services in regional areas

In regional Australia, the most common uses of broadband internet include email, web browsing, watching videos, banking, accessing news, shopping and social media. Other uses, such as remote working, online education and telehealth are also important. Mobile devices are the most common way to access data and calls, but data-intensive functions such as navigation, video and social media are used less than in the cities.⁶

Telecommunications infrastructure in regional areas is more likely to be older, more expensive to maintain, less functional and harder to upgrade than other platforms. Regional areas also experience later network rollouts than metropolitan areas. These issues raise concerns about service quality, reliability and longevity.⁷

As illustrated earlier, the CDR provides an opportunity to increase the transparency of network location-based information, such as network technology and coverage, signal strength, network availability, and download and upload speeds. This would help regional consumers to get more informed recommendations about products and service providers suited to their circumstances.

Addressing the needs of customers experiencing vulnerability

Telecommunications consumers experience vulnerability for a range of reasons. Age, location, English language proficiency, financial situation, health, and presence of permanent or temporary disability are some of the factors affecting consumers' vulnerability. There may also be situational circumstances that will affect a consumer's vulnerability, as well as characteristics of a market. As illustrated earlier, the CDR could include data that would help inform these consumers of the services they need.

In addition, the Future Direction of the CDR Inquiry and proposed amendments to the CDR Rules raise the issues of 'action initiation' and sharing CDR data with trusted advisors, whereby accredited third parties may manage products on a consumer's behalf with a consumer's consent.⁸ These developments in the CDR may be useful for some customers experiencing vulnerability, particularly if a third party could help that consumer assess whether their existing services are optimal for their needs and advocate on their behalf.

Consumer dissatisfaction with telecommunications complaint handling

Service reliability and adequate complaint handling are important for all telecommunications consumers. Telecommunications Industry Ombudsman (TIO) data shows the range of issues that consumers and small businesses raised about their telecommunications services. Recent issues

⁶ Regional Telecommunications Review Issues Paper, July 2021, p8.

⁷ Regional Telecommunications Review Issues Paper July 2021, pp6-8.

⁸ Inquiry into the Future Directions for the Consumer Data Right Final Report, October 2020, pp18-21, 35-63, and Exposure Draft Consumer Data Right Rules amendments (Version 3).

included no or delayed action by a service provider, fees, no internet or phone service, delays establishing a service, resolution agreed but not met, failure to cancel a service, intermittent service or drop outs, and inadequate fault testing.⁹ This information is not disaggregated on a service provider level.

The CDR could facilitate more convenient access to information about service providers or services with high levels of faults or complaints. For consumers who value customer service, this data could help them find more reliable services and those service providers with better records of resolving complaints and delivering good customer service.

Efficiency of relevant markets

Telecommunications services are technically complex and provided by a range of service providers seeking to differentiate their products in a variety of retail offers to consumers. This has led to high information asymmetries between service providers and consumers. Such information asymmetries complicate consumer decision making and increase the risks of consumers making inefficient purchasing decisions by acquiring products and services that do not suit their needs.

Many instances of telecommunications legislation (and the Australian Consumer Law), regulatory instruments and self-regulatory codes have been introduced to help ensure appropriate information is provided to consumers about telecommunications services. However, information asymmetries and complex retail options remain a feature of telecommunications markets.

Extending the CDR to telecommunications would help reduce these information asymmetries, alleviate some of the complexity and potentially improve the efficiency of consumers' participation in these markets. Improved consumer decision making would also promote service providers' allocative efficiency by providing incentives to allocate resources to products most valued by consumers.

Importantly, the CDR would also increase efficiency across the sector by prescribing the form in which consumer and product data is collected, stored and shared. It would also increase the efficiency of sharing or porting consumer data between service providers and accredited persons. As such, the CDR could drive significant value for telecommunications consumers, particularly through services offered by ADR.

Privacy and confidentiality of consumers' information

Telecommunications consumers' information is protected by a range of privacy related regulation. This includes Part 13 of the *Telecommunications Act 1992*, the *Privacy Act 1988*, and *Telecommunications (Interception and Access) Act 1979*. The CDR regime also includes strict privacy protections, and also empowers consumers to provide informed consent to share their data with third parties and other providers. The scope and inter-relationships of these pre-existing protections and the role of consent-driven disclosure will be an issue to consider in designating telecommunications to be subject to the CDR.

Promoting competition

Effective competition requires informed purchasing decisions. Extending the CDR to the telecommunications sector would help overcome barriers to consumers' access to information that is relevant to their purchasing decisions. We would expect the services offered by accredited

⁹ TIO Complaints Report for Quarter 3 2020-21, 3 June 2021.

persons to result in better recommendations on the available services that would meet the needs of consumers. Consumers can place value on those features of most importance to them. This might include prices and costs, including headline and hidden fees and charges. It may also include non-price factors, such as product features, service quality, and consumers' own consumption patterns. Greater transparency promotes competition by facilitating informed consumer participation in the sector, and incentivising market participants to compete on the merits of their products and services rather than adopting opaque and confusing marketing strategies.

Greater transparency also promotes competition by facilitating rivalry between RSPs seeking to ensure consumers have the information they need to buy their products, and to invest in products with greatest consumer demand. It will also allow RSPs to develop niche products that can meet a consumer's needs. For example, smaller players, who can adapt to changing market circumstances more quickly than larger players, may release tailored, new or niche products in response to new information about consumers' needs and to compete with other services in the market.

Technically complex products and complex retail offers can obscure the benefits and limitations of services in a multiplicity of bundles, temporary promotions and discounts. Extending the CDR to telecommunications would support consumers to penetrate this complexity and participate in the market more effectively, and foster rivalry among RSPs seeking to win customers.

Promoting data-driven innovation

Extending the CDR to telecommunications would create incentives for innovation in products and services seeking to leverage more informed consumer decisions and data driven innovations.

A key driver of data-driven innovation can arise by allowing consumers to safely and efficiently access products and services that combine consumer and product data from multiple sectors. Commercial interest in combining data across sectors within the CDR ecosystem is apparent from developments such as AGL launching NBN broadband products to consumers in November 2020. Similarly, the Commonwealth Bank announced in May 2021 that it had entered into a strategic partnership with Amber, a new energy retailer, and on 22 July 2021, it announced a strategic partnership with More Telecom and Tangerine Telecom to provide NBN services.

Comparison websites are another example of innovation driven by data. Comparison websites and similar tools are available from a range of service providers across the economy. In telecommunications, RSPs provide comparison tools to their customers to help them choose between different products from the same provider. Comparison websites and similar tools are also available to help consumers choose between products from different service providers.

However, comparison tools can be limited to a consumer's current service provider or rely on information provided by a consumer on a website. This limits the factors a consumer can compare and also the independence of any comparisons.

For example, while headline pricing is readily comparable, usage history and non-price data is also relevant to consumers' choice of services and can be difficult to compare across products and RSPs. This is particularly the case for consumers who obtain fixed internet and mobile services from different RSPs. Non-price data includes information about technology type, download and upload speeds, typical busy period speeds, mobile network coverage, excess usage fees, contract termination fees, contract lengths, faults, complaint handling times and contract terms.

Designating telecommunications subject to the CDR would promote further innovations to help consumers compare such issues more easily. For example, a more responsive comparison tool could

regularly scan the market to identify promotions or new products relevant to the consumer's stated needs. As e-sims become more widespread, the combination of more comparative data and the ability to store more than one network on an e-sim, may lead to a more dynamic and consumer-focused telecommunications sector.

Intellectual property in information

The telecommunications sector generates a myriad of data, some of which relates directly to a consumer, along with other types of data which is the result of technological innovation by the providers themselves. We recognise this latter type of data may be subject to legitimate intellectual property rights.

The telecommunications industry has previously expressed concerns about the scope of potential CDR data in telecommunications, including the view that 'derived' and 'value-added data' is likely to include proprietary information of the data holder.¹⁰

The approach to CDR data in the energy sector is informative. The *Consumer Data Right (Energy Sector) Designation 2020* (Energy Designation) excludes 'materially enhanced information', being information improved by the data holder (or on their behalf) through insight or analysis and significantly more valuable than the original information, from the CDR regime. A similar approach may be appropriate for the telecommunications sector.

The public interest

We consider there is a clear public interest in expanding the CDR to the telecommunications sector. The consumer centric and cross-sectoral nature of the CDR will strengthen the foundations of digital marketplaces that drive innovation and growth of the Australian economy well in to the future.

We recently stated that the "COVID-19 pandemic has highlighted the critical importance of communications services in keeping individuals and communities connected, causing a dramatic shift in the way consumers interact with communication services", which "has led to many Australians relying much more on their home internet service for work, education, entertainment, telehealth and other services as a consequence of physical distancing measures."¹¹

Reliable and comprehensive telecommunications services are critical for protecting a safe, secure and prosperous Australian community.. Consumers must also have the ability to choose appropriate services that meet their needs, including to access education services, telehealth and the capacity to effectively work from home. The CDR is an important enabler of consumers' ability to make informed choices about the goods and services that suit their needs, not just during the COVID-19 pandemic, but in the future.

Telecommunications will continue to play an important role in the community after the pandemic, including as a driver of innovation. There is a clear public interest in the CDR as an enabler of market efficiency and innovation borne from greater access to consumer data as consumers' rely on telecommunications and digital services in new ways.

¹⁰ For example, see: Communications Alliance submission to Senate Economics Legislation Committee inquiry into the Treasury Laws Amendment (Consumer Data Rights) Bill 2019; Joint submission by Communications Alliance, Digital Industry Group (DIGI), Australian Information Industry Association (AIIA) to Treasury Laws Amendment (Consumer Data Right) Bill 2018, 7 September 2018.

¹¹ ACCC Communications Market Report 2019-2020, p9.

Regulatory impact

The telecommunications sector is subject to extensive regulation, including requirements to provide a range of information to consumers, report a range of data to regulators, and keep records of certain types of data. Service providers have invested in systems and processes to meet these regulatory requirements. Some of these systems and processes may be leveraged for CDR purposes, however new systems and processes will likely be necessary to satisfy CDR obligations.

The telecommunications sector is also characterised by service providers of varying sophistication and sizes. The relative impact of CDR regulation on large and small service providers is likely to vary and it will be important to consider this issue in implementing a CDR in the telecommunications sector. The approach taken to implementing the CDR in the banking sector, which introduced CDR obligations on larger service providers in advance of smaller service providers, may provide guidance relevant to the telecommunications sector.

We recognise the CDR imposes substantial cost and regulatory burdens on data holders in designated sectors. However, increased efficiencies brought about by the CDR should more than offset some of the costs accrued through development and implementation. Just over 12 months since CDR commenced, we are already observing significant growth and diversity of both Fintech and Reg Tech product and services offers within the CDR ecosystem. These products and services support prospective and current CDR participants to comply with technical requirements. As the CDR is expanded, we ~~may continue to observe~~ expect to see further growth and diversity of Reg Tech offerings, increasing the efficiency and reducing the cost of regulatory compliance.

The relationship between pre-existing telecommunications regulation and CDR obligations will also be important in extending the CDR to telecommunications, including in the context of any designation instrument and sector-specific rules.

Specified classes of information

Possible classes of information

The telecommunications sector generates and maintains a multitude of data. The potential use cases provided above demonstrate that consumers could benefit from various types of information being made available, such as that relating to:

- fixed-line network technology at certain residences, including NBN and non-NBN networks
- mobile network coverage in comparable form across service providers
- personal usage history across fixed-line and mobile services and different providers
- personal usage history such as call volumes, text message quantities, data downloaded and uploaded
- personal location history, such as regular destinations, and commuting or travel routes
- sources of greatest consumption, such as largest downloads for common activities like video conferencing, video streaming, distance education
- data consumption below, approaching and exceeding data limits
- all direct and indirect charges payable and incurred
- details of financial hardship arrangements available

- disaggregated product features commonly provided in bundles, such as included data downloads and uploads, calls, text messaging, included video streaming, modems, mobile phone handsets or other features, and
- availability of services for disabled consumers, such as the National Relay Service and Video Relay Service.

In some form or another, some of these classes of information are publicly available from wholesale network operators and RSPs, or available to individual consumers from their service providers on request. Service providers do not impose fees on, or charge consumers for obtaining these types of information. This is partly due to telecommunications-specific regulatory obligations to make such information available to consumers, and partly due to competitive pressure on service providers to promote the features of their products. These pressures mean it is unlikely that existing incentives to generate, collect and maintain such information would be reduced by including such classes of information in the CDR regime.

Data holders

The way telecommunications services are supplied means that information relevant to a consumer is typically held by wholesale network operators and RSPs. For example, NBN Co holds data relating to the broadband technology available at a consumer's residence, along with details about connection and download and upload speeds attainable at that residence. This information is also available to RSPs that use an NBN wholesale service to provide retail services. Non-NBN networks and RSPs would be subject to the same issue. Similarly, MNOs have extensive data about the coverage and capacity of their own networks, with some of this information also held by MVNOs.

We understand that Treasury is contemplating a modified peer-to-peer model for sharing CDR data between CDR participants.¹² This model involves a primary data holder and a secondary data holder. Secondary data holders would be able to share data with primary data holders in response to a consumer's request for CDR data held by a primary and secondary data holder.

Under this framework, RSPs would be primary data holders due to their contractual relationship with consumers and their ability to readily authenticate consumers' identities. Wholesale network operators, such as NBN Co or MNOs, would be secondary data holders because of their access to wholesale network supply data. This approach deserves consideration as a way to include CDR data held by different participants in the telecommunications supply chain.

The Energy Designation may also be relevant. It does not have a 'wholesale service provider' concept and adopts three classes of information which may provide a model for telecommunications CDR. The Energy Designation provides for information about a consumer, about the sale or supply of electricity (and gas), and about retail arrangements of a service to consumers' premises. Information about the sale or supply of a service includes information about the physical electricity connection points and various types of technical data, such as metering, defined in the National Electricity Rules. It also includes information about the sale or supply of related goods or services, such as discounts on other services and details of non-electricity supplies that are available in a bundle. Some of these classes of information are similar to data held by telecommunications network operators and a similar approach could be considered for telecommunications.

¹² See Treasury consultation paper, "Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper", pp33-34