COMMUNICATIONS ALLIANCE LTD

Communications Alliance Submission

to The Department of the Treasury

CONSUMER DATA RIGHT SECTORAL ASSESSMENT TELECOMMUNICATIONS

Consultation Paper

19 August 2021

Contents

Communications Alliance

Communications Alliance is the primary telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see http://www.commsalliance.com.au.

1. Introduction

Communications Alliance welcomes the opportunity to make a submission in response to the Treasury's Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper (Consultation Paper).

The telecommunications industry shares Government's vision, expressed in its Digital Economy Strategy, launched in December 2018: "That Australians enjoy an enhanced quality of life and share in the opportunities of a growing, globally competitive modern economy, enabled by technology."[1] In fact, it is fair to say that our industry is at the very forefront of enabling and driving Australia's digital economy.

Our industry also recognises the rights of consumers to be informed and have appropriate access to their customer and product data, to make informed decisions regarding the purchase of products and services and whether to move between providers.

We continue to lend our support to the overarching objectives of the CDR and welcome an open dialogue with the Government over effective and efficient ways to achieve the desired objectives in our sector.

2. Process

2.1. The Consultation Paper invites feedback on, amongst other issues, the benefits of the application of the CDR in the telecommunications sector. Against this background, it seems prudent to first perform a 'gap analysis' of the intended objectives of the CDR and the extent to which those objectives may already have been achieved in the sector.

In a second step, it would then be logical to analyse which steps would need to be taken to remedy any actual shortfalls in achieving those objectives, the costs associated in doing so and the incremental benefit that can be derived from any measures that aim at 'closing the gap'.

If, at the conclusion of this analysis, it is found that the benefits of further measures would outweigh the attendant costs, it will be imperative to ensure that those measures are sufficiently focused on the achievement of the declared objectives, rather than the specific means of achieving those

The Consultation Paper takes a first step in this direction, but does not provide a clear gap analysis and, consequently, an evaluation of measures required to close the gap and an associated cost-benefit analysis.

2.2. We understand from informal discussions with the Treasury that the Consultation Paper seeks to facilitate input into such an analysis which will subsequently be provided to the Minister (in form of a report) to assist with her considerations for designation of the sector and an 'in-principle' decision whether to designate the sector.

We further understand that section 56AD(2) of the *Treasury Laws Amendment (Consumer Data Right) Act 2019* (CDR Act) requires the Minister to wait 60 days after publication of that report before she can proceed to designate a sector.

Section 56AE(1)(b) further requires the Treasury to consult for 28 days on the draft designation instrument, which, so we have been advised, would run concurrently with the 60-day Ministerial 'waiting' period.

2.3. Against this background, we note with some concern that the Consultation Paper at times lends a greater focus on the potential benefits of the CDR in our sector but tends to fail to attribute equal importance to the costs that such a regime would impose.

[1] p.6, *Australia's Tech Future*, accessed in Aug 2021 at https://www.industry.gov.au/sites/default/files/2018-12/australias-tech-future.pdf

For example, the Consultation Paper notes:

> *"A sectoral assessment process involves consultation with stakeholders to gather information to address the legislative criteria for designating a sector or specific data sets for the CDR. Key factors to consider in extending the CDR to telecommunications are:*
>
> - *the interests of and benefit to consumers*
> - *promoting competition*
> - *the efficiency of relevant markets*
> - *promoting data-driven innovation*
> - *the privacy or confidentiality of consumers' information*
> - *any intellectual property in the information*
> - *the public interest.*
>
> *The sector assessment considers the type of data that should be designated (it may include datasets used in other sectors) and who holds the data in the sector, to inform which data holders and what data should be designated and shared in a secure way, upon a consumer's request.*
>
> *A final report on the sectoral assessment, incorporating stakeholder feedback, will inform the decision about whether to designate telecommunication as a CDR sector and any datasets and entities to be designated."*[2]

The key factors listed above are indeed the criteria that the Minister must consider before designating a sector (section 56AD(1)(a) CDR Act).

However, section 56AD(1)(b) to (e) lists a range of other matters that the Minister must consider, including the regulatory impact and the marginal cost of disclosure within a class of information.

Similarly, the Paper considers that

> *"As a general principle, data should also be made available if it is in digital form and the additional cost of provision under the CDR is low. Data should also be made available if it supports use cases that will provide benefits to consumers, including potential future use cases."*[3]

This statement also omits the due consideration that must be given to costs and, accordingly, should be amended to read "*…if it supports use cases that will provide benefits to consumers, including reasonably foreseeable potential future use cases, and these benefits outweigh the attendant costs.*"

It is imperative that the sectoral assessment for our sector, or for any sector for that matter, while focusing on consumer benefits, does not lose track of the costs associated with realising those benefits, as well as the likelihood of those benefits actually materialising. It is tempting to take a 'futuristic approach' and speculate about benefits for consumers, some of which will no doubt materialise, when the costs are (in the first place) borne by industry – but are likely to be passed on, in one form or another, to consumers.

Consequently, even though future benefits of use cases of data may be uncertain, diffuse and difficult to quantify (as may be costs), appropriate scrutiny of the soundness of each case put forward must still be afforded.

We doubt that is will be possible to create a credible cost-benefit analysis as part of the sectoral assessment in the short timeframe currently envisaged and given some of

[2] p. 6, The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021
[3] p. 19, ibid

the misconceptions about the telecommunications market apparent in the Paper. Australia is at the global forefront in terms of regulating for a CDR in telecommunications. The task is challenging and there are limited use case examples available to define potential benefits, nor any significant international experience to draw on. In the UK, for example, Ofcom has undertaken an extensive consultative process on this issue, but has told us it has not been able to make any conclusions about the case for implementing a CDR in the markets it regulates.

The current consultation process involves a high level of engagement and education on the nature and complexity of the telecommunications sector. As a result of this process, we foresee potential significant changes may be required to the proposals set out in the initial consultation. The lack of opportunity for industry to engage with these changes would be detrimental to the final product, its feasibility, and functionality for consumers.

Consequently, and given that this is the first sectoral assessment that is being undertaken (noting that the designation of the banking and energy sector did not follow the same sectoral assessment approach) we call on the Government to extend the sectoral assessment process in the telecommunications sector for a period of 6 months, in order to provide additional time to adequately assess the social and economic benefits generated in the banking and energy sectors and to test the hypothesis that CDR frameworks will, indeed, spark the innovative market/product forces that have been projected.

We also urge the Treasury to consult with our sector on the draft report prior to submission and publication, to ensure that the Minister is provided with the best possible information basis for her deliberations.

Given that the Treasury is expecting that much of the projection and description of potential future benefits will be provided via the consultative process (and most likely by would-be players separate to existing service providers) it would make sense to give industry an opportunity to 'sanity-check' the feasibility of such benefits as are projected, before they are included in advice to the Minister.

Overall, there appears to be a rush to undertake the designation process, and it is not clear why this is needed – especially in the context of the ongoing COVID pandemic.

3. Scope

3.1. When discussing the scope of the CDR for our sector, a number of considerations are to be taken into account, including:

i) The definition of the telecommunications sector at a high level. The Consultation Paper addresses this question asking

> "…*should the telecommunications sector be defined to cover both the traditional telecommunication services and the complementary and related services that these services facilitate*."

ii) Once this higher order question has been answered, the scope of the businesses to which the CDR obligations within the sector will apply; and

iii) The definition of CDR consumer in the sector, i.e. which persons and businesses ought to be considered a CDR consumer and, hence, have a right to their respective data.

We will briefly discuss each of these considerations in turn.

3.2. As highlighted in our introductory remarks, "our industry is at the very forefront of enabling and driving Australia's digital economy." In other words, almost every product

or service in our society in some form or another is based on or facilitated through the use of the services that our sector provides.

It would be not only impractical, but also inappropriate, to artificially broaden the definition of the telecommunications sector to also include 'complementary and related services' (as is contemplated in the Consultation Paper). Indeed, it is not clear what the Paper means by 'complementary and related services'.

In addition, some of our members offer telecommunications services as an ancillary service which complements their core service offerings. For these providers any expansion of the scope of the CDR to also include 'complementary and related services' may potentially result in a regulatory impost being placed on their core services which would not otherwise be subject to the CDR, and also may not be subject to the CDR for some time. This may raise competition issues for those providers in relation to their regulatory obligations versus those of their competitors in their core business areas.

Consequently, we believe the starting point for determining the scope of the CDR within the sector ought to be the provision of a carriage service within the meaning of the *Telecommunications Act 1997*.

This is not to say that all carriers/carriage services providers (C/CSPs) ought to be covered by the obligations of the CDR. We believe wholesalers ought to be excluded as consumer data is most appropriately provided between retailers and their customers.

3.3. The current consultation timeframe has not given us adequate time to consider the question of scope within the sector in detail, but we note the following:

The Australian telecommunications market includes several large players, around 50 or so medium sized companies and the so-called 'long tail' of around 250 small or mostly very small C/CSPs.

It is important that any CDR regime for the sector is achievable for all tiers of the sector and, through its design, does not interfere with the competitive forces within the market, i.e. does not unduly burden parts of the market. (Also refer to Section 7, Access Model, of our submission.)

It is also worth noting that as at July 2021, only 16 authorised deposit-taking institutions were data holders under the banking CDR scheme.

3.4. As indicated in previous submissions, we do not believe that it is appropriate for the CDR framework to apply beyond mass market residential and small business consumers. As in the banking sector, enterprise customers should be out of scope. These are sophisticated customers with specific data profiles that have entered highly customised contracts and arrangements, which would render comparison between data holders impossible and/or largely meaningless. Implementing a CDR for these corporations would outweigh any potential benefits, because implementation costs for this customer category would be significant, not only due to the very bespoke nature of their contracts but also due to the fact that their data typically sits in systems separate to those that hold individual consumer data.

We note that the Explanatory Memorandum to the CDR Act expressly states that the definition of CDR consumer can be narrowed on a sector-by-sector basis through the designation process.[4]

The Open Banking Inquiry was the trigger for the inclusion of large enterprises into the definition of CDR consumer into the CDR Act and the only sector for which the wider definition has been recommended in the first place. Interestingly, the banking sector has subsequently chosen to exclude that customer segment from the scope of CDR

[4] p.23, para. 1.112, Explanatory Memorandum, *Treasury Laws Amendment (Consumer Data Right) Act 2019*

consumer. Consequently, it would appear far-fetched to now include enterprise customers into the definition for our sector, without apparent benefits.

It is noteworthy that the Productivity Commission (PC) in its report (PC Report) recommended, and the Government accepted, a definition of consumer that did not extend to large enterprises. In fact, the PC Report specifically recommended against such a proposal:

> *The Commission is recommending that Australia's consumers – both individuals and small and medium sized businesses (SMEs) – be afforded a new Comprehensive Right to the use of their digital data.*[5]

The PC Report specifically recommended in Recommendation 5.2 that a consumer

> "*for the purposes of consumer data should include a natural person and an ABN holder with a turnover of less than $3m pa in the most recent financial year*".[6]

The PC Report made this decision after careful and detailed consideration. Indeed, the Inquiry made it very clear that such a limit was intentional:

> *The scope of businesses able to exercise rights as consumers under the Comprehensive Right would be considerably narrower than the scope of 'consumers' under Australian consumer law. This is intentional.*[7] [emphasis added]

The PC Report made clear that the CDR was not the vehicle through which large business would improve access to data. More importantly, the PC Report did not see

> "*significant additional benefits in improved competition or innovation with data from allowing large businesses a Comprehensive Right to data*."[8]

Recommendation 5.2 was accepted by the Government in its response. The Government's response stated it accepted Recommendation 5.2 and it would introduce a CDR to allow "*consumers to access particular data*".[9] There was no statement that the Government would extend the consumer right beyond that recommended by the Inquiry.

Communications Alliance observes that the PC Report's intent, and the Government's acceptance of the recommendation, is clear. Namely, that the CDR regime should apply only to consumers and SMEs with an annual turnover of less than $3 million.

We propose that the definition of CDR Consumer for our sector give effect to the PC Report recommendation and the Government's response. Namely, that a CDR consumer is a "*single person, family groups or other groups resident at a single address in the data holder's dataset, and any entity with an Australian Business Number (ABN) and turnover of $3 million per annum or less*."[10]

It is also important that any definition of the CDR consumer does not inadvertently include IoT devices (connected devices such as fridges, cars, etc. or sensors).

4. Purpose of the CDR in the telecommunications sector

4.1. The declared objectives of the CDR regime can be summarised as:

- To "*give consumers the ability to access and use more information about themselves, and about their use of goods and services, in a manner that allows them to make more informed decisions about both themselves and the good and*

[5] p.15, Productivity Commission, 2018, *Data Availability and Use*, Final Report
[6] Recommendation 5.2, Productivity Commission, 2018, *Data Availability and Use*, Final Report
[7] Ibid, p.198
[8] Ibid, p.198
[9] p3, Australian Government's response to the PC Data Availability and Use Inquiry
[10] p.198, Productivity Commission, 2018, *Data Availability and Use*, Final Report

services they use. By doing so, the CDR aims to increase competition, enable consumers to fairly harvest the value of their data, and enhance consumer welfare."[11]*;*

- A reduction of barriers to shifting between providers *and "better tailoring of services to customers and greater mobility of customers and greater mobility of customers as they find products more suited to their needs"*[12]; and
- Fostering innovation and business opportunities as *"new ways of using the data are created"*[13] as the result of consumers having access and being able to share their data.

The Consultation Paper describes the aims in similar terms as 'benefits for consumers', 'competition and market efficiency' and 'innovation'.

Interestingly. The Consultation Paper adds an additional objective, i.e.

> *"opportunities for the CDR to promote* ***safer and more secure data sharing practices*** *within the telecommunications sector."*[14]

It is not clear to us why this objective was added, or if there are any specific current data sharing practices within the sector that are the target of the objective, and we welcome further explanation.

4.2. As the Consultation Paper indicates and as we have elaborated on in our previous submissions, the telecommunications sector already has a number of mechanisms that give consumers access to a broad range of data that relates to them.

We recognise that some data is currently provided on request and/or (albeit increasingly less) in paper format and/or not necessarily in a machine-readable format. Therefore, there may be benefits derived from providing some data (refer to our discussion on Data Sets in Section 5 further below) to consumers in a common, digitised format.

We also would like to expressly re-state our commitment to some form of a CDR regime in our sector.

4.3. However, we struggle with many of the arguments and use cases put forward by the Consultation Paper as it attempts to make the case as to how the CDR would achieve the desired objectives. In this respect we observe the following:

Competition: the Paper notes that the market for fixed-line and mobile services is highly concentrated and cites statistics from the *ACCC Communications Market Report 2019-20*.

While it is correct that there are a number of larger mobile network operators (MNOs) providing services at a retail level and a number of larger fixed-line network operators, respectively, this does not reflect an absence of competition, between MNOs/larger fixed-line network operators or from virtual mobile network operators (MVNOs)/other fixed-line service providers.

This is also evidenced by the statistics in the Consultation Paper (but not commented on): the market share of MVNOs has increased from 11% in 2016-17 to 15% in 2019-20[15]. Indeed, the same source of *ACCC Communications and Market Reports* for previous years reveals that the share of MVNOs was only 2% in 2008-09[16], i.e. given that it is fair to say that the market share for MVNOs will not have decreased, this share has now

[11] p.5, para 1.3, Explanatory Memorandum, *Treasury Law Amendment (Consumer Data Right) Act 2019*
[12] p.5, para 1.4, ibid
[13] p.5, para 1.5, ibid
[14] p. 8, The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021
[15] p. 21, ibid
[16] p.25 ACCC, *Telecommunications Reports 2009-10*

increased roughly by a factor of 8 in the past 12/13 years – hardly a sign of insignificant or waning competitive momentum.

There are currently 60 MVNOs. The Federal Court, after intensive analysis of all available expert data in Vodafone Hutchison Australia Pty Limited v ACCC, concluded that

> *"There are low barriers to entry into the market for MVNOs. […]"*
>
> *"Competition continues to increase with the entry of additional MVNO competitors."*
>
> *"I [Judge Middleton] expect that these trends will continue in the future. Mr Martin, an experienced telecommunications analyst with over 25 years' experience advising investors on the sector, gave evidence that competition in the Australian mobile market is likely to continue at a high level […]"* [17] [emphasis added]

Similarly, the fixed market has undertaken an unprecedented structural reform to increase competition. The fixed retail market is highly competitive with a large share of retailers supplying NBN services. We note that the fixed wholesale NBN market share of smaller players has equally increased from 3% to 8%, i.e. almost tripled, in the years from 2016-17 to 2019-20.[18]

4.4. The Paper subsequently makes the claim that the (perceived) low numbers of consumers changing mobile providers or changing their mobile plan when staying with their provider are a sign of consumers not taking full advantage of the competition in the market. The Paper notes:

> *"More recent research shows that around a third of mobile phone users changed products with their existing provider in the previous two years, while less than one in five changed providers (ACMA, 2020a, pp. 41, 77)."*[19]

It is not clear on what basis the authors of the Consultation Paper conclude that a provider churn rate of 20% or a product churn rate of 33% in two years are low or are a function of the perceived lack of competition between providers. It would be useful to understand the rationale behind this statement and what churn rates the authors expect to achieve through the introduction of a CDR in the sector.

In the context of switching providers, it must be noted that Australia's portability solutions are world-leading and make it very easy for consumers to port their number from one provider to another, usually within a few minutes and without needing to seek consent from the 'losing provider'. The Local Number Portability industry code, which already provides for easy switching between fixed-line CSPs, is currently being revised to further optimise processes and incorporate latest technical and legislative developments.

We also highlight that industry-internal figures indicate that porting numbers tend to spike when a competitor releases an attractive handset ahead of the competition or whenever plans that are attractive to consumers are being introduced, indicating that consumers do take advantage of competing offerings made available to them through an easy switching process.

Overall, it would be helpful to understand in greater detail and assisted through evidence in which way the current competitive landscape in our sector is – in the Treasury's view – lacking and, importantly, whether and how the CDR would remedy any shortcomings.

---

[17] Vodafone Hutchison Australia Pty Limited v Australian Competition and Consumer Commission [2020] FCA 117 accessed in Aug 2021 at https://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2020/2020fca0117

[18] p. 21, The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021

[19] p. 22, ibid

4.5. Complexity: complexity is alleged to be another reason for (perceived) low churn and consumer inability to take advantage of the full suite of offerings in the market.

The Paper also contends that consumers are often unable to understand their data quantity needs (in Gigabytes) or their bandwidth requirements (in Megabits per second) for a variety of activities.[20]

However, the Paper does not recognise that most fixed-line and mobile plans available to customers either offer unlimited data or, if data is capped, do not have any charges for excess usage. In terms of speed, the speeds of plans for fixed-line services are clearly communicated to customers and subject to ACCC *Broadband speed claims: Industry guidance* (October 2020 Version).

It is also not clear how the CDR would assist with a greater understanding of consumer needs of data quantity and speeds. There are plenty of websites that allow consumers to answer a few questions about their daily usage habits and subsequently provide a good estimate of their needs. These usage calculators are available from service providers as well as independent third parties. CSPs are also required to provide information to assist consumers to estimate what capacity they may need on a service to meet their usage requirements which means that many of them advertise the various speeds of their broadband products by reference to consumers' typical use' of the connectivity such as streaming, gaming video conferencing to increase understanding of what product may meet their needs.

4.6. The Consultation Paper also claims that research has indicated that consumers usually do not read or understand the documentation that our sector providers, e.g. the Key Facts Sheet (and presumably also the Critical Information Summary).

> *"Access to information on which to make decisions about telecommunications remains an issue, particularly given strong evidence that few consumers read or understand disclosure documents like 'Key Facts Sheets' provided for telecommunications products (Shahar & Schneider, 2014)."*[21]

We find this statement confusing, given that the date of the publication of the cited research (2014) predates the actual development and commencement of the regulatory instrument that mandated the Key Facts Sheets, i.e. the *Telecommunication (NBN Consumer Information) Industry Standard 2018*.

Importantly, the Key Facts Sheet and the Critical Information Summary are only one and two pages long, respectively, and come with very prescriptive requirements with respect to their precise contents and how those are to be represented, so that they are of maximum consumer benefit. We believe it is incorrect to say that they are not being read or understood and request that specific evidence of this is being produced. Our members' experience is that the Critical Information Summaries are well received by customers and provide an important role in customers' purchasing decisions.

Irrespective of the correctness of the above claims, we struggle to see a clear connection between the stated issue and resolution of that issue through the CDR. It is not clear why the CDR would solve the issue of complexity if currently available means of access to information have (in the author's opinion) not done so.

4.7. Price/consumer satisfaction: the Consultation Paper correctly notes that prices for products and services in our sector have declined (often dramatically) in the past decade, while inclusions have increased (more dramatically) and service features have improved or have been invented at mind-boggling pace.

[20] pp. 22, 23, The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021
[21] p. 23, ibid

The Paper goes on to cite negative consumer sentiment in terms of expenditures on telecommunications services:

> *"However, despite this, research conducted for the Department of Infrastructure in 2018 showed that Australians generally consider that they spend more on telecommunications services today than they did five years ago, and that consumers are more negative than positive about the affordability of fixed line, broadband and mobile services (Infrastructure Australia, 2019, p. 584)."*

We observe that this sentiment is inconsistent with the data and that, in fact, the share of income spent on telecommunications has decreased consistently from 4.3% in 2003-04 to 3.7% in 2015-16[22] and 3.3% in 2017[23] .

It should be noted that consumers will not necessarily perceive the full decrease in prices for telecommunications services as they now purchase a greater quantity and variety of those services, i.e. while a family once only paid for a landline (and maybe a mobile contract), they now may still pay for a landline, 5 mobile contracts, a couple of broadband contracts for their tablets. They might also purchase online streaming subscriptions through their telecommunications provider.

Given how easy it is already to switch providers and the competitive nature of the telecommunications market, it is not clear how the CDR would have any positive impact on the prices of services for consumers, noting that prices for telecommunications service have already decreased dramatically over the past decade (i.e. without the existence of a CDR), as noted in the Paper.

4.8. The Paper also points to complaints statistics from the Telecommunications Industry Ombudsman (TIO) to indicate that the general level of dissatisfaction with the industry is high.

Our sector is working hard to improve consumer experiences and service and will continue to do so. Accordingly, complaints lodged with telecommunications providers have decreased by 40% in the past two years, and also complaints to the TIO have decreased substantially. The Treasury may wish to contact the TIO for the yet unpublished complaints data for the April-June 2021 quarter which, so we are confident, will confirm a further strong reduction in complaint volumes as already evidenced in the recent Complaints-in-Context report for the same period.

However, irrespective of the figures provided and industry efforts to improve those, we seek evidence as to how the introduction of the CDR for our sector would assist with addressing the issues listed in the Paper as the reasons for the respective complaints.

Even if quality-of-service or performance data were to be part of the CDR in telecommunications – and we expressly note that we do not think that this is useful and/or technically feasible (refer to Section 5, Data Set, below) – this would not result in a reduced number of faults or an improved quality-of-service.

As we will discuss further below, it is also not possible to generate data that would be suitable to 'better match consumers to the right quality-of-service or service performance'.

5. Data Set

5.1. Obviously, the potential data set is a key consideration for any CDR regime and it is critical that the data is capable of delivering value for consumers. It is also important to

[22] p.9 Greg Ogle, *Telecommunications Expenditure in Australia*, Nov 2017
[23] p.8 Department of Infrastructure, Transport, Regional Development and Communications, *Affordability of communications services for low income households*, Working Paper, April 2020

remember that the delivery of any data to the consumer or accredited party ought to be contingent on a positive cost-benefit analysis (i.e. benefits outweighing the costs).

The Consultation Paper recognises this and states:

> *"Accordingly, an important first step in a sectoral assessment is to identify data that will be of most value to consumers in their daily lives. Feedback is sought from stakeholders on the availability, cost and benefit of designating the following possible datasets…"*[24]

5.2. The Consultation Paper makes numerous assertions that consumers are lacking quality-of-service and/or performance-related data and that having such data would improve their decision making. For example:

> *"Surveys of consumers indicate that non-price factors (including issue/fault resolution, mobile coverage and good customer service) are often more important to consumers than price (see (ACMA, 2020)). As noted above, this is even more pronounced for business consumers.*
>
> *Coverage of mobile phone and fixed wireless services is determined by the location of mobile phone towers. […] A consumer purchasing a mobile phone handset and a data plan needs to take this into account when deciding which plan is most appropriate for their circumstances. Current 'coverage maps' are a partial, but imperfect, solution for consumers."*[25]

or

> *"Many service quality factors are observable by consumers for a particular locality or service provider only to a limited extent. Even a very motivated consumer will likely face information gaps when seeking to choose the best service for their circumstances due to gaps in publicly available data."*[26]

or

> *"To confidently change the products and services they use, consumers are likely to require billing information and information on their usage of existing services, and the quality of the service being provided by their current and possible alternative providers. Consumers are likely to need information about coverage (signal availability for wireless and technology availability for fixed broadband), download and upload speeds (with latency also important for some users) and information about faults and rectification times in order to make fully-informed decisions about switching."*[27]

or

> *"Comparison tools could also make it easier for customers to compare service offerings on non-price characteristics, such as customer service (customer complaints received or call centre wait times), internet speed and coverage. For example, based on analysis of internet speed and coverage data provided by telecommunications providers, comparator services could recommend to customers the best type of internet (e.g. mobile broadband or NBN) for their location. This product could be particularly useful for consumers in remote or regional areas."*[28]

Case Studies 1 and 2 also centre on the notion of quality-of-service and performance data as a means to improve consumer decisions.

[24] p. 16, The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021
[25] p. 9/10, ibid
[26] p. 12, ibid
[27] p.19, ibid
[28] p. 25, ibid

5.3. We disagree with this assessment on all fronts, because:

- **consumers do have quality-of-service information to the extent that it is useful for them to have this information and to the extent that our industry can provide it to them;**
- **additional information, due to its limitations and circumstantial nature (which we discuss further below), is unlikely to assist consumers or, worse, could be misleading;**
- **the information is not under the control of a telecommunications provider and/or the data could also not be sourced from the external source, i.e. a CDR in another sector will also not be able to 'add to the picture'; and/or**
- **the additional information as described by the Paper does not exist within the telecommunications provider or cannot be provided by service providers without specifically applying measures to generate those data points (which is not the intention of the CDR), if possible at all.**

5.4. We also observe that no quality-of-service data or fault data is required to be provided as part of CDR in the banking sector. Equally, no such data forms part of the data set in the energy sector. It is unclear why the authors believe that the availability of such data would be of so much greater benefit to consumers in our sector. For example, undoubtedly, if the argument was to be made that call-centre wait times are of value to consumers (if they indeed provided an accurate reflection of service provision-which they do not!) and that they ought to form part of a data set, this would surely hold equally for the banking and energy sector.

5.5. We also would like to highlight that the consultation period has not been sufficient to investigate and comment on whether potential data holders actually have the proposed data available in a form proposed in the consultation paper, or whether it is currently public information. Given the importance of these considerations, we believe further consultation on these questions is important before the designation instrument is made.

5.6. In the following, we will discuss proposed data classes. In doing so, we will assume that the authors of the Paper have associated 'internet speeds' and 'broadband' with fixed-line internet and broadband.

The Consultation Paper appears to blur the lines between product data (data for which there is no CDR consumer[29]), consumer data (data which is unique to a specific consumer, e.g. identity information, usage data) and carrier/network/device data which is not CDR data at all. We indicate in brackets the data category that the Paper has assigned (CD/PD) but note our concerns with these categorisations as indicated in the previous sentence.

5.7. Consumer data (CD): by and large, true consumer data that does not relate to network information, technology information, internet speeds or fault information could be provided, however, we note the importance of performing a dynamic cost-benefit analysis for anticipated use cases of data, especially with view to usage information. (refer to our discussion at 5.15).

5.8. Product data (PD): by and large, true product data that does not relate to performance (speed, coverage) or quality-of-service could be provided.

5.9. Network information (CD): it is being suggested that data as to which wholesale network is providing the service ought to be passed on. This only appears useful for mobile services, but not for fixed-line broadband or voice services, where several networks could be involved in the supply of the service.

[29] section 56AI(1) Note 4, *Treasury Laws Amendment (Consumer Data Right) Act 2019*

5.10. Technology information (CD): the type of fixed broadband technology available is not dependent on the customer's plan, but rather on the location of the premises and can be looked up through publicly available databases, e.g. on the nbn website, i.e. this data is not consumer data. If this information was desired, it would make more sense to obtain this information from such a source rather than individually from each retail provider.

With respect to mobile technology information, again, this information is not plan-dependent but is dynamically assigned to handsets connecting into any base station and depends instead on the customer's location, and when they are at that location, whether the customer is indoors or outdoors, and on the technical capabilities of the device and many more factors. (More on location information below.) In addition, the information is not static at any given location, i.e. with constant network upgrades (and not only with respect to 5G) the network technology availability at that location changes. It is not feasible to feed such data into a CDR system so that it would be of use to consumers/accredited parties.

This data is, in our view, neither consumer data nor product data but network data. The data also does not exist in the form described by the Consultation Paper. MNOs do not have data for each specific location (or even address) as providing this data is not possible for the reasons outlined further below.

5.11. Internet speeds (CD): claimed internet speeds (where applicable) can be provided. Further discussion would be required as to whether maximum speeds for the customer's line at the customer's address are available and whether the data would meet any CDR data definition.

However, irrespective of what data is available, it is important to understand that internet speeds are influenced, often significantly, by other factors not in the control of the telecommunications provider, and these can change dynamically (on a per minute basis). Data for those other factors if often not available (non-existent) and, thus, could not be added through a complementary CDR in other sectors of the economy. Such factors include:

- the impact of other users' usage on what are inherently congestible networks;
- wifi-signal attenuation due to distance to the router and building structures (walls etc.);
- interference from other devices, including household devices (microwaves etc.);
- third-party routers/modems;
- cabling of the customer's premises;
- device connecting to the internet;
- frequencies used to connect (for wifi); and
- environmental conditions.

5.12. Fault information (CD): we do not believe that this is a useful data class as data provided would not assist a customer in choosing between providers. For example:

- there is no consistent definition of a fault in our sector to enable any meaningful comparison;
- some faults may affect a customer's service but relate to a whole geographic area. In addition, the complexities of the supply chain mean that in a large number of cases, faults cannot be rectified by the retail provider because the cause of the problem is not located in their network. As a result, a customer may log a fault with their retail provider (and the data would enter the CDR accordingly) but switching providers may not improve the quality-of-service as the

issue rests with a wholesale provider which could be equally used by other retail providers; and

- the fault may lie with the customer or the customer's equipment.

It is also incorrect to believe that retail providers already have this information at hand. While they log complaints and faults, this does not mean that they are in a position to readily convert this information into a number of faults per individual customer with the associated details and resolution times attached to it, to the extent this is recorded at all.

As indicated above, none of the information would be recorded with consistent definitions across the industry either, thereby severely limiting meaningful comparison.

5.13. Internet speed (PD): while typical speed performance for a service is generally available as a retailer's speed claim for a plan, there are important caveats for some technologies. It is also important to understand that the advertised typical speed performance of a service is an aggregated figure and not one that pertains to a particular customer.

With respect to speed sampling data, the Consultation Paper appears to assume that all retail providers have a large number of 'white boxes' or similar in operation which would provide this data. This is not the case. The ACCC runs a broadband speed monitoring program with associated testing which reported on only just over 1,100 'white boxes'. This data is not retail provider data. In the rare instances, where providers operate 'white boxes' because they choose to use those as part of their own quality assurance measures, these represent limited samples of customers, are often used to inform typical speed claims (which we would propose is captured as product data) and are not otherwise provided to the customer or published. It would also be unhelpful to provide such data to a non-technical expert, as there is considerable engineering analysis required to convert this data into anything remotely useful for a customer (e.g. the ACCC contracts this activity out to technical experts).

5.14. Network coverage (PD): MNOs strive to provide their customers with as accurate mobile coverage information as possible. This information is currently being provided through coverage maps on an MNOs website. (Typically, this is done with address mapping. However, note that address mapping is only provided to assist consumers to locate specific places, e.g. their homes/businesses. Technically speaking, MNOs do not provide data to specific locations but to a complex grid of cell sectors.) The information (which is dependent on some input parameters) supplied on those websites reflects the most useful and reliable information that can be provided to consumers.

However, actual network coverage and performance depends on a multitude of (often dynamic) factors, including:

- the number of devices in use within a specific cell at a given time and the type of use that the device is put to (200 devices making a phone call vs 200 devices streaming the Olympic Games in HD);
- location of the nearest base station(s);
- the angle of the device to the base station;
- technologies available from the base station;
- the device used by the customer;
- the topography of the land;
- interference from other devices;
- attenuation of the signal by building structures or vegetation; and
- weather.

Consequently, it is impossible to provide meaningful information about the actual availability of a network in different locations or the quality of the coverage, beyond the information that that is already being provided through coverage maps.

With respect to information about available technology at a particular location, refer to our discussion above (Technology information (CD)).

Against the background of the above discussion, we also observe that it is necessary to distinguish network data from device data. While retail providers generally have control over network data (of their own networks!), they do not necessarily have control of or visibility over device data. For example, it is not possible for an MNO to 'read out' the signal strength ('coverage bars') that a consumer's mobile phone experiences in a given location. Similarly, it is not necessarily possible for internet service providers to analyse data from all third-party modems etc.

All data generated by applications running 'over-the-top', such as WhatsApp, Facebook, Tiktok etc. (almost any app) are not available to the telecommunications provider, but instead remain on the device and/or are available to the operator of the app.

5.15. Usage information (CD): service providers already provide usage information under obligations of the Telecommunications Consumer Protections Code (TCP Code).

Given the very dynamic nature of usage information (also refer to Section 6, Dynamics of CDR data, below), it is imperative that use cases for this class of data (as for other classes) are thoroughly analysed for their anticipated merits, i.e. each use case needs to be rigorously tested not only against its current costs and benefits but also the future costs of providing the data versus the benefits derived from having access to the data. Without such analysis, our sector faces the very real risk of providing data to second, overlapping regulatory regime – and incurring the attendant costs of doing so – when the value of providing this data was only (foreseeable) short term in nature.

For example, the provision of national SMS/MMS and call data is outdated, as most plans (including prepaid) offer unlimited national texts and calls.

Consequently, in our view, the provision of this sub-class of data would not meet the test of a positive cost-benefit analysis, noting that the data is available for the few customers who are not 'all you can eat' plans.

With respect to messaging, we observe that over-the-top (OTT) messaging services (e.g. WhatsApp, Facebook Messenger etc.) have a greater share in the overall messaging market than SMS/MMS. Non-carrier consumer-market calling providers (e.g. Skype, WhatsApp, FaceTime etc.) and business-oriented video calling applications (e.g. Teams, Zoom, Webex, Google Meet, etc.) have grown exponentially as a direct substitute for traditional phone calls. As a result, any data on carrier-grade SMS/MMS and phone call usage is only of extremely limited value to consumers.

5.16. Irrespective of the data class, no data ought to be required to be stored or made available for a longer period under a CDR regime than already required to be stored or retained under other pieces of regulation and legislation. It follows from the above that no data that is currently collected for other purposes ought to be collected solely for the purposes of making it available under a CDR.

6. Dynamics of CDR Data

6.1. Unfortunately, the Consultation Paper does not contemplate how the CDR in our sector would deal with the dynamic nature of the relevance, collection and retention of data. We believe these considerations are critical to the success of the regime.

As the discussion around SMS and call usage data already highlights, the fast evolution of technologies and associated products and services means that our sector, probably

more than others, is at risk of being asked to make data available – and incur substantial costs for doing so – that may be of very little benefit to consumers in the relatively near future.

6.2. As indicated in our opening section, these and other considerations would require more in-depth discussion than is possible in the short timeframes envisaged for this consultation and the designation process.

7. Access Model

7.1. The Consultation Paper proposes a peer-to-peer data access model for our sector as potentially the most suitable approach, citing consistency with the banking and energy sectors as a reason to consider this model for the telecommunications sector. No other argument for such a model is being offered, other than that it could, on paper, work.

> *"While each sector is unique, consistency with models in other designated sectors is important to ensure the CDR can function economy wide. A peer-to-peer model applies in the banking sector and is currently being implemented in the energy sector with AEMO performing the role of a secondary data holder.*
>
> *A peer-to-peer model directly connecting retailers and data holders similar to the model being implemented for the energy sector is potentially appropriate for the telecommunications sector, as this would ensure interoperability and consistency between sectors and provide a solution where relevant datasets for a consumer are held by more than one potential data holder…."*[30]

The assumption that the telecommunications sector ought to meet the overarching CDR objectives by adopting a very similar approach to the banking sector must be thoroughly tested. Such an assessment would need to examine the costs and benefits associated with the proposed approach, the net consumer benefit and the alternative approaches that might be adopted.

7.2. As highlighted in Section 4, Purpose of the CDR in the telecommunications sector, and Section 3, Scope, the Australian telecommunications market is competitive and characterised by a large number of more than 300 retailers. These retailers, although many are very small, provide services including those vital to rural communities or niche services for more vulnerable consumers.

With respect to the costs involved in the implementation and ongoing delivery of a CDR regime, we observe that banks and financial institutions (and now also energy companies) as well as regulators and the Government appear to have invested substantial resources into the development of the rules governing the CDR, the creation of standards and APIs, security mechanisms and the larger CDR eco-system. At this stage, it is difficult to see how the CDR regime of those two sectors could be translated into arrangements suited to the telecommunications sector without significant adjustments. Indeed, it is also hard to see that the benefits derived from doing so would outweigh the attendant costs.

The implementation of a CDR similar to the regime implemented in the banking or energy sectors is likely to be of marginal benefit in our sector and also the wider economy, but certainly would be associated with significant costs. For a number of small players in the market these costs could mean that they are unable to continue to operate, thereby reducing competition and consumer choice – the opposite of what the CDR seeks to achieve.

7.3. As stated at the outset, we do not oppose a CDR for our sector. However, we believe that, given the characteristics of the market (ease of switching, competition, number

[30] p. 32, The Treasury, *Consumer Data Right Sectoral Assessment Telecommunications Consultation Paper*, Aug 2021

of (small) players, data availability), a more consumer-centric and more cost-effective and efficient CDR ought to be considered.

For example, consumers already hold a vast amount of data that relates to them and their usage of telecommunications services on their smart phones – note that Australia has one of the highest smart phone penetrations in the world. This data goes well beyond the data that their CSP holds as it includes data from OTT applications, such as WhatsApp etc., and accurate and dynamic GPS location data as discussed above.

Importantly, it is readily conceivable (and we believe it worth exploring) that access to the data types envisaged for access and sharing by the CDR regime could be facilitated through an app on the consumer's phone, rather than a transfer solution via a costly API-based framework. This could provide consumers with access to telecommunications data and data held on their devices.

We also highlight that large telecommunications providers have hundreds of systems that would require costly changes in order to enable the use of APIs. Due to the different characteristics of the telecommunications industry, we anticipate that the Standards used to facilitate the CDR in the banking and energy sector would need to be adapted, perhaps quite fundamentally, for our industry.

7.4. The argument of consistency is by and in itself not sufficient to burden our sector – and our customers – with what we believe an inefficient system that, in addition to its inefficiencies, is likely to have substantial negative effects on the diversity of the competitive landscape of our industry.

7.5. Thinking further ahead to other sectors, we also recommend considering a CDR regime that could be applied more broadly across many sectors of the economy and to leave highly specialised and cost-intensive regimes to sectors where the lack of data exchange, a high degree of complexity of products and difficulties of switching providers has been evidenced, and where a cost-benefit analysis has demonstrated that the application of a customised CDR regime is the most efficient and effective means to address those deficiencies.

We believe that a CDR that offers read access functionality in form of a baseline for product information and basic customer information in an easily comprehensible format and language across a range of sectors could provide an avenue to more rapidly achieve consumer benefits, without the need for complex and costly privacy, consent and security mechanisms, accreditation and technical (API) implementation.

Indeed, all sectors that have not proven to require a highly customised CDR and that do not already provide such read access ought to be considered for such a 'default' low cost/fast implementation approach to the CDR.

8. Conclusion

Communications Alliance looks forward to continued engagement with the Treasury and other relevant stakeholders as to whether and, if so, how the telecommunications sector, could be part of a wider CDR regime.

However, we believe that the time allowed for the consultation at this stage and leading up to an envisaged designation by the Minister is substantially too short and urge the Treasury to allow for sufficient time to meaningfully engage with our sector for the benefit of a better CDR in the telecommunications sector.

We continue to lend our support to the overarching objectives of the CDR and stand ready to work with all stakeholders to facilitate an effective and efficient adoption of a CDR regime in our sector.

For any questions relating to this submission please contact Christiane Gillespie-Jones on 02 9959 9118 or at c.gillespiejones@commsalliance.com.au.

Published by:
COMMUNICATIONS
ALLIANCE LTD

Level 12
75 Miller Street
North Sydney
NSW 2060 Australia

Correspondence
PO Box 444
Milsons Point
NSW 1565

T 61 2 9959 9111
F 61 2 9954 6136
E info@commsalliance.com.au
www.commsalliance.com.au
ABN 56 078 026 507