



Consumer Data Right rules and standards design paper for telecommunications sector

ACCC submission

April 2022

1. Introduction

The Australian Competition and Consumer Commission (ACCC) welcomes the opportunity to comment on the Treasury and Data Standards Body's consultation on the Consumer Data Right (CDR) rules and standards design paper for the telecommunications sector (Design Paper). The ACCC supports the proposals in the Design Paper, which are consistent with positions we have advocated for in previous engagements with Treasury on the potential extension of the CDR to the telecommunications sector.

The ACCC supports the aim of the consultation, being to identify areas where sector-specific rules and standards will be required to effectively apply the regime to telecommunications entities, and to design these in a way that is aligned with existing sectoral arrangements, seeking to minimise costs for participants.

This submission complements the information in the submission the ACCC provided on the sectoral assessment of telecommunications for the CDR undertaken in July and August 2021.

2. The role of the ACCC

The ACCC is an independent Commonwealth statutory agency that promotes competition, fair trading and product safety for the benefit of consumers, businesses and the Australian community. The primary responsibilities of the ACCC are to enforce compliance with the competition, consumer protection, fair trading and product safety provisions of the *Competition and Consumer Act 2010* (Cth) (CCA), regulate national infrastructure and undertake market studies.

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.

The ACCC's CDR roles include accrediting potential data recipients, establishing and maintaining a Register of accredited persons and banking 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.

3. ACCC response to Design Paper

3.1. Principles for CDR Rules and Standards design

Interoperability within and across sectors, and extensibility across sectors, are key principles that underpin CDR. The CDR Rules have been designed to support interoperability as new sectors are brought within CDR, and to minimise the need for rule changes as CDR expands to cover new sectors. The ACCC supports any changes to the CDR Rules to accommodate new sectors, including the telecommunications sector, allowing for interoperability across sectors, to the extent possible. Arrangements that are interoperable with other sectors, to which CDR has been or will be rolled out to, will reduce barriers to entry for accredited data recipients, and facilitate the development of cross-sectoral data-driven innovation. As CDR is

rolled out across the economy, any sector-specific variations may impact the consistent delivery of CDR.

The design of the Rules and Standards should bring the benefits of CDR in telecommunications to consumers as soon as practicable, while also allowing flexibility to add functionality and additional datasets as CDR in telecommunications matures. For example, we note that Treasury's sectoral report to the Minister in August 2021 noted that it was not intended to require sharing of 'performance or quality of service data' at this time given the difficulty in identifying an appropriate dataset. However, Treasury has indicated that if standardised and publicly available performance data emerges over time, the CDR Rules could require this information be shared. This would support product comparison on non-price elements of telecommunications services.

The ACCC supports the framework design for the telecommunication sector excluding location data.

3.2. Data holders who should be required to share CDR data

ACCC response to questions 1-3

We consider that CDR would be of value to all mass market telecommunications customers, including both residential and small to medium businesses, given CDR's ability to support comparison and other use cases. Nonetheless, we support the consideration of a 'de minimis' threshold to exclude smaller carriers and Carriage Service Provider (CSPs) from mandatory data sharing obligations.

Requiring all carriers and CSPs to comply with CDR obligations may be impractical given the large number of carriers and CSPs in the telecommunications sector (estimated at over 1500¹), and the risk of disproportionate costs on smaller players. On this basis we support establishing a threshold for mandatory participation in the CDR based on the number of customers or 'services in operation' a carrier or CSP has (noting that one customer may have several services in operation).

The Design Paper refers to the ACMA *Telecommunications (Consumer Complaints) Record-Keeping Rules 2018* requiring CSPs with 30,000 or more services in operation to keep records of consumer complaints as a possible threshold. Treasury may also wish to consider the definitions of 'small supplier' and 'large supplier' in the Telecommunications Consumer Protection Code. The Telecommunications Consumer Protections Code defines a 'small supplier' as a CSP with less than 3,000 services in operation and a 'large supplier' as a CSP with 100,000 or more services in operation.

We recommend any threshold introduced apply for consumer data sharing obligations only. Requiring all carriers and CSPs to comply with product data sharing obligations would ensure consumers have visibility of products offered by smaller providers, facilitate product comparison use cases and encourage competition.

3.3. Products that should be in scope

ACCC response to questions 5 and 7

We support excluding products from product reference data sharing where they are not publicly offered, which would align with the approach taken in the banking and energy sectors. The general approach taken by the ACCC, in accordance with the objects of the CDR, is that this criterion should be interpreted broadly, in order to make the benefits of the

¹ Telecommunications Industry Ombudsman Annual Report 2020-21 reported 1,511 members.

CDR as widely available to consumers as is practicable. Accordingly, a product will generally be considered publicly offered if it is available to customers, or a group of eligible customers.

The ACCC would also support exploration of sector-agnostic amendments to the CDR Rules to exempt pilot programs from CDR obligations where certain conditions are met. A pilot is a limited-scale, short-term trial that enables an organisation to understand how a large-scale offering might work in practice. Pilot programs are regularly used in the banking industry to test the viability and scalability of a new product and may also be used in the telecommunications and other sectors.

3.4. Reciprocal data sharing

ACCC response to question 21

Upon accreditation, an accredited person may be subject to reciprocal data holder obligations that require sharing of certain CDR data, at the direction of a consumer, in accordance with the obligations of a data holder.

The provision of reciprocal data in the telecommunications sector could be difficult to define. ACMA noted in its submission to the CDR sectoral assessment for telecommunications, that it is often “a non-trivial process to determine whether a particular communications provider meets the definitional requirements to be considered a CSP. Individual service delivery models must sometimes be assessed on a case-by-case basis, and changing business models mean that the entities within scope of the CSP definition can shift quite quickly”.

The difficulty of determining who is and is not a CSP suggests that there could be entities that do not technically fall within the definition of a carrier or CSP, that nonetheless provide similar services and for whom reciprocal data sharing obligations may be appropriate. Treasury may wish to consider whether a broader definition of a telecommunications provider may be appropriate.

3.5. White labelling

ACCC response to questions 33 and 34

White labelled products are typically supplied by one entity (a white labeller) and branded and retailed to consumers by another entity (a brand owner). White labelled products exist in the telecommunications sector where consumer data may be held by two CSPs, one being a brand owner and another a network provider/white labeller.

We are not aware of any specific features of the telecommunications sector that would necessitate a change to the general approach to white labelling under the CDR and we support maintaining the existing approach.

The requirements for sharing product data in relation to white labelled products are specified in the CDR Rules (2.4(4) and (5)), however there isn't an equivalent rule in relation to consumer data. Despite this, the ACCC's expectations are essentially the same for consumer data requests. This is reflected in section 4.5 of our [Compliance Guidance for Data Holders in the Banking sector](#).

3.6. Internal and external dispute resolution requirements

ACCC response to question 35

The ACCC notes the importance of compulsory internal and external dispute resolution processes for both accredited persons and data holders in the CDR. The ACCC supports

leveraging existing sector-specific internal dispute resolution provisions to the extent possible.

3.7. Staged implementation

ACCC response to question 38

The ACCC supports the staged application of the CDR Rules to CDR participants in the telecommunications sector. A staged implementation could target carriers and CSPs best able to successfully implement CDR in the first instance. It also allows the ACCC to more readily manage its resources to ensure support for participants as they complete onboarding and accreditation activities.

Staged implementation for telecommunications may be able to be achieved by phasing in by participants (e.g. carriers, large CSPs, medium CSPs), type of product (e.g. pre-paid, post-paid), and type of customer (e.g. individual consumer, business). This would be a similar approach to that taken in the banking sector.