



19 October 2020

Consumer Data Right Project Team
Commerce, Consumers and Communications
Ministry of Business, Innovation & Employment
PO Box 1473
Wellington 6140
New Zealand

By Email: consumerdataright@mbie.govt.nz

Dear Sir/Madam

Equifax Submission on Discussion Document Options for establishing a consumer data right in New Zealand

1. We are grateful for the opportunity to submit on the Discussion Document - Options for establishing a consumer data right in New Zealand.
2. Equifax is a global information solutions company. We use data, innovative analytics, technology and industry expertise to transform knowledge into insights that help our customers make informed decisions. Headquartered in Atlanta, Equifax operates in North America, Central and South America, Europe and the Asia Pacific region. Established as the first credit reporting business in NZ, Equifax's mission is to help people and businesses to live their financial best. The company has built great depth of experience in data governance, enabling the collection, disclosure and use of credit information to help lenders make better credit decisions. The advancements of data, analytics and technology have increased decision automation, enabling better consumer experience and more effective flows of credit. More recently the use of data to automate of decisions has broadened, extending into AML / CFT, employment, income and expense verification.
3. We have reviewed the Discussion Document and support a regulated approach to data portability. In our view, a regulated data right is good micro economic reform, supporting a more effective means for decision relevant information to flow between permitted parties. This new level of information flow is likely to encourage innovation in the existing provision of goods and services, whilst also establishing new use cases that benefit the consumer and economy in general.
4. Of the suggested options in the Discussion Document, our preference is for Option Two, a sectoral-designation approach. This approach would create a high-level framework established in legislation that applies across the entire economy, followed by regulations that would enable a progressive and effective rollout across segments. We consider this is the most efficient and consistent way to legislate for a data right. It also results in both businesses and individuals enjoying this right instead of only individuals if the data right was contained within existing privacy legislation.
5. We consider that this new legislation needs to be carefully developed, to balance the appropriate amount of regulation to enable the use of this new right, without stifling innovation and the uptake of this right. We encourage the review of overseas models, particularly the UK which has the most mature open banking / data market. The end consumer will only engage and take benefit from an operationalised CDR (ie: consent and active data sharing) if they trust the framework and are provided with great customer experiences. The unwanted outcome of the incorrect balance of legislation and frameworks is that the system is circumvented, and the incentive for market driven innovation is lost.

6. As a data and analytics company, we support a dedicated implementation body that represents all interested parties, not just the most impacted or well financed. This is the approach that has been taken in the UK, with the establishment of the Open Banking Implementation Entity (OBIE), an industry funded body overseen by the Competition and Markets Authority (CMA). The implementation body does not supplant regulators and agencies with existing remits for Privacy, Competition or Financial Markets.
7. We caution on the advocacy for the establishment of a consumer data right, purely based on the impetus for consumers to switch relationships from one service provider to another. The capability of data portability is a very different concept to account switching – one does not lead to the other. We understand that data portability in the UK has not had a significant impact on switching between suppliers as initially thought it would. Consumers are better enabled for multi-banking environments but that does not mean they are necessarily incentivised to switch. Data portability potentially delivers broader innovations and benefits for consumers beyond finding a new provider.
8. The establishment of a Consumer Data Right needs to consider frameworks that include data holders, data recipients, intermediaries, and consumers. The recent update to the Australian CDR rules highlights the importance of intermediaries to collect data on behalf of third-party data recipients, providing there is consumer consent.
9. As a credit reporter, Equifax has been involved in a 'closed credit data sharing arrangement' where consumers consent to sharing and use of their repayment history (known as comprehensive credit reporting or CCR) with other participating scheme members. The Retail Credit Association of New Zealand was set up to implement CCR and assisted in providing an agreed framework for data sharing both at a principle-based level, and with specific common industry data standards.
10. A general data portability right is likely to be far more complex than CCR, and we consider a dedicated and expert body is necessary for both implementation and enforcement of such a right. We understand that the proponents of a data portability right are generally eager to implement something quickly. In our view, time and care needs to be taken to ensure this data right is fit for purpose in relation to issues of privacy, consent and security, and to ensure it achieves its aims of greater consumer choice and competition, and incentivising innovation. The OBIE in the UK has helped to establish frameworks, standards and rules to enable the system and open banking network to effectively operate.

Set out below are the responses to your specific questions. We advise our submission does not contain any confidential information.

If you would like to discuss these further please do not hesitate to contact the author on Deborah.malaghan@equifax.com or 021 374 483.

Yours faithfully



Deborah Malaghan
Head of Legal

Submission on discussion document: *Options for establishing a consumer data right in New Zealand*

Your name and organisation

Name	Deborah Malaghan
Organisation	Equifax New Zealand Information Services and Solutions Limited

Responses to discussion document questions

Does New Zealand need a consumer data right?

1 *Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?*

We consider an additional problem, or at least a complexity, is the ability to verify identity to prevent fraud. Any new data right would need to ensure that the consumer sharing the data is the consumer who owns the data.

We further consider that conceptually the problem needs to be defined as the ability to share data *efficiently*, as currently data can be shared, but just not in an efficient manner. For example, for a mortgage application, a consumer can share data to enable verification of their income and expense data today. Greater data portability will enable a consumer to do this faster.

2 *Do you agree with the potential benefits, costs or risks associated with a consumer data right as outlined in this discussion document? Why/why not?*

Yes, we generally agree with the areas identified, however, we question the level of benefits. As we noted in relation to the data right in the UK, the evidence has not shown a significant change in the level of switching between providers.

Benefit has still been obtained by consumers in terms of access to credit and the overall visibility of all their financial relationships in one place (via the proliferation of Personal Financial Management apps).

3 *Are there additional benefits, costs or risks that have not been explored in the above discussion on a consumer data right?*

We consider a risk is that the system deployed is too complex to drive consumer/small business adoption. This could be mitigated through enabling a focus on great customer experience through the enabling presence of intermediaries, for example, Account Information Service Providers in the UK, and the recent addition of intermediaries to collect

data on behalf of third-party data recipients, providing there is consumer consent. Intermediaries are essential to unlocking the benefits of data portability, enabling the provision of data, analytical insights and intelligence which data recipients can use to drive decisions.

4

What would the costs and benefits be of applying the consumer data right to businesses and other entities, in addition to individuals?

We consider that as a nation of small businesses, access to data can increase innovation and 'small business welfare' where advisors can be both more effective and efficient. This could potentially also improve small business 'customer outcomes' including access to capital.

5

Do you have any comments on the types of data that we propose be included or excluded from a consumer data right (i.e. 'consumer data' and 'product data')?

We agree with the Discussion Document that 'derived data', that is, specific intellectual property created by a business, should not be subject to the data right.

6

What would the costs and benefits be of including both read access and write access in a consumer data right?

Read access is a given for data portability. Write access triggers a significant amount of additional complexity without yet having defined benefits. Write access maybe considered after an initial implementation period when use cases and frameworks can be better understood.

What form could a consumer data right take in New Zealand?

7

Do you have any comments on the outcomes that we are seeking to achieve? Are there any additional outcomes that we should seek to achieve?

We consider that any outcomes sought should balance the implementation costs for API-Providers (for example, retail banks) with the benefits they would also receive in being able to develop innovative products for their customers and the ability to achieve higher levels of compliance in specific areas like AML and responsible lending.

8

Do you have any comments on our proposed criteria for assessing options? Are there any additional factors that should be considered?

We agree with the criteria and further note that interdependencies with existing legislation should be considered. It is likely that effective operation of data portability will need to consider consent frameworks and involve the application of digital identity at some point in the development lifecycle.

The development of the data portability capability is complementary to existing data sharing regulations such as credit reporting. Data portability will run on the basis of direct consent from the consumer. Lenders tend not to rely on consented data alone as there is a risk that consumers will choose to share only data that supports their application for credit and not data that could hinder it (increasing the risk of adverse selection and creating a moral hazard for lenders). Credit reporting data is shared on a 'legitimate interest' basis. Once the consumer has consented as part of an application process, all permitted information is shared with the prospective lender.

9 *Do you have any comments on the discussion of Option one: Status quo?*

We consider that the status quo is not preferable. Equifax are members of the Business Working Group in the PaymentsNZ API-Centre. Current eco-system participants are making significant progress in defining technical standards to aid in data portability and designing innovative products, however issues such as commercial models and timing require more guidance.

10 *Do you have any comments on the discussion of Option two: A sectoral-designation process?*

This is our preferred option. We consider it is the most efficient, fair, and consistent option across sectors. This option also aligns with Australia's regime which is desirable for ease of Trans-Tasman business.

11 *Do you have any comments on the discussion of Option three: An economy-wide consumer data right?*

We consider this option is not preferable.

12 *Do you have any comments on the discussion of Option four: Sector-specific approach?*

This is our second preferred option, but we are concerned that it will be slower to implement across all sectors than Option Two, with potentially less consistency.

13 *This discussion document outlines four possible options to establish a consumer data right in New Zealand. Are there any other viable options?*

14

Do you have any comments on our initial analysis of the four options against our assessment criteria?

We agree with the options at a high level. Whichever of the frameworks is put in place, the key point will be the ability for the system to operate to the benefit of the consumer and participants. We consider that once the policy makers develop the scheme in more detail, we will have more comments to make on the shape of the scheme. We expect that the learnings from existing overseas regimes will be considered at this stage.

15

Do you agree or disagree with our assessment that Option two is most likely to achieve the best outcome using the assessment criteria?

We agree.

How could a consumer data right be designed?

16

Do you agree with the key elements of a data portability regime as outlined in this section? Are there any elements that should be changed, added or removed?

We agree with the key elements but reiterate the need to make a system that is not too onerous and therefore expensive that it deters participation by the relevant participants. Building a framework that gives the greatest likelihood of success will require participation of a broad set of stakeholders at the next layer of detail.

We believe successful implementation will require a dedicated body, backed by clear definition of participant types, data standards, codes and practice.

17

Do you have any feedback on our discussion of any of these key elements?

As noted in our response to question 16 above.

18

Are there any areas where you think that more detail should be included in primary legislation?

No.

19

How could a consumer data right be designed to protect the interests of vulnerable consumers?

We consider that consent and the purposes need to be made clear and not bundled with other consents. Further, the system needs oversight to determine how many consumers are providing 'enduring consents' to third parties, who may not necessarily understand the implications of this.

Any framework needs to facilitate good practice on the operation of a data portability right.

When consumers share their data, they can intentionally or unintentionally share information that might indicate ways in which they are potentially vulnerable, for example, payment account data may show a consumer is spending a high proportion of their income on gambling, or identify a life event like a bereavement or sudden drop in income.

A consumer data right provides means for 'disclosure', however, all the important things that happen with data are about 'use'. On balance we would expect there to be benefit for vulnerable consumers on the basis that data portability addresses information asymmetry, helping access to mainstream services. However, we need to expect data recipients (for example, lenders) to be rightfully cautious about using this data and doing it in a way that consumers will trust and welcome, whilst enabling better decisions.

This aspect will require leadership across the spectrum of regulators, government agencies and all interested parties to the establishment of a CDR.

20

Do you have any suggestions for considering how Te Tiriti o Waitangi should shape the introduction of a consumer data right in New Zealand?

We consider there should be consultation with iwi to understand any implications.

21

How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?

Being digital in its application there should not be any physical accessibility issues. For mentally incapacitated people there may be additional protections needed where a holder of a power of attorney is acting on their behalf.

Applications built by developers will be subject to web accessibility standards. Technical API design needs to support developers in reaching this goal.

22

To what extent should we be considering compatibility with overseas jurisdictions at this stage in the development of a consumer data right in New Zealand?

More important than compatibility, we consider we should be taking learnings from overseas jurisdictions, especially the perceived flaws in other systems.

Our priority should be getting the cost/benefit mix right for the New Zealand market. As a secondary consideration compatibility will mean that those eco-system providers who are experienced in other jurisdictions can be leveraged by New Zealand in implementing, but

potentially more importantly, in designing and delivering solutions that actually benefit the New Zealand consumer and small business.

23 *Do you have any comments on where a consumer data right would best sit in legislation?*

As a separate piece of legislation for the general data rights, and regulations for the industry specific rights.

24 *Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?*

We consider a dedicated and expert body is essential for developing a system that delivers to its full potential, like what has been created in the UK with the OBIE. We do not support using existing and multiple regulators as they have in Australia, which lack coordination and dedicated expertise.

25 *What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?*

As noted above.

26 *If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?*

Effectiveness measurement should be tied to the end-benefits the CDR is seeking to achieve. By focusing on the number of CDR eco-system participants, consumer consent volumes and volume of API calls, is only measuring sub-components of the enabling features of a CDR system.

Other comments

Please refer to the comments in our cover letter.