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ERANZ submission on 'Options for establishing a consumer data right in New Zealand'

Summary

The Electricity Retailers Association of New Zealand ('ERANZ') welcomes the opportunity to provide feedback on the 'Options for establishing a consumer data right in New Zealand' discussion document.

ERANZ is supportive of improvements to New Zealand's privacy and data laws to boost competition while strengthening digital privacy and consumer rights.

ERANZ examined the consumer data rights proposals from the view of our three priorities: consumers, equity, and sustainability. For consumers, the initiatives need to boost competition by driving innovation, enabling more customised products, and helping keep prices low.

The retail electricity sector can see the benefits of a consumer data right giving individuals, and businesses access to a broader range of products and services, further reducing search and switch costs, facilitating increased competition, encouraging innovation, increasing productivity and helping build New Zealand's digital economy.

MBIE can use the opportunity for analysis provided by comparable countries undertaking similar reforms of their data rights regimes, particularly Australia and the United Kingdom. This gives New Zealand the ability to learn relevant lessons and ensure our regime reflects best practice while being tailored to New Zealand's business conditions and existing laws. Therefore, New Zealand should use the advantage of incorporating overseas experiences rather than rushing into force a regime that creates additional costs or performs poorly.

Progress in the retail electricity sector

The retail electricity sector is an excellent example of an industry making significant progress in sharing data and giving customers greater control over their information.

Powerswitch is perhaps the leading achievement of the retail electricity sector's commitment to harnessing data sharing. It is an online consumer portal allowing comparisons between different retailers customised to the person's geographic area, usage patterns, and priorities for services. It uses historical electricity consumption data pulled in from the customer's current electricity retailer, the product suites offered by all retailers, and the address of the customer to know what is available at their home. The portal then provides recommended products and plans best suited to the consumer. While there is more development of the tool required, particularly relating to service levels and bundled non-electricity products, it is a leading example of using personal data to empower consumer choice.

Other stand-out examples in the sector include:

- Data templates used to facilitate information sharing among industry participants, with the regulator, or even third-parties. The format for data templates is developed through a mix of industry negotiations or regulator facilitation.
- Online portals used to provide industry participants with access to relevant data required to fulfil their duties. Provides a safe and secure means for sharing data among participants.
- Electricity information exchange protocols ('EIEP's) provide a set of cost-effective, standardised formats for business-to-business information exchanges. The EIEPs have been developed and revised over many years, supported and coordinated by the Electricity Authority. There are currently 14 different EIEPs, covering a diverse range of electricity information routinely exchanged between traders and distributors, and retailers and third-party providers.

Given the significant progress in the retail electricity sector, it highlights the benefits of MBIE pursuing a sectoral-designation or sector-specific approach (options two and four) to reflect and harness the work already done. Consumers are currently using and benefiting from the tools available, such as Powerswitch. It would be harmful to consumers for this work to be undone or require rework to comply with a generic, economy-wide CDR regime that was mainly designed to accommodate industries without established CDR practices.

Learning lessons from overseas

New Zealand has an advantage in developing a CDR regime after other comparable countries such as Australia, the United Kingdom and in Europe. Given much of MBIE's work to date is modelled off the Australian experience, it would be useful to see some analysis from MBIE on how their experience has gone and what officials consider to be the benefits of their regime.

Overall, we consider it is too early to judge the success of the Australian regime. Therefore, we should avoid predetermining what is the best option until we see more analysis out of these countries on what does and does not work effectively, particularly Australia. The United Kingdom has a longer track record to examine, and specific areas to focus on, such as open banking.

There is a potential benefit for the New Zealand CDR regime to align with Australia's to provide greater harmony and economies of scale in trans-Tasman compliance – particularly for companies operating in both countries – and for New Zealand to benefit from the lessons learned there. However, we note the Australian CDR regime involves multiple regulatory bodies which could lead to a heavier burden of compliance than is justified. This would be a good point for further analysis.

Sectoral designation approach

Based on the broad options presented in the discussion document, ERANZ considers the sectoral designation approach of option two to be best at this stage.

It will be beneficial for MBIE to work towards producing high-level principles around how a sectoral designation approach would work and then considering sector-specific arrangements. ERANZ notes that the retail electricity sector contains a few unique features which should be kept in mind:

- Retail customers' usage is metered through metering companies.
- Household consumption is usually measured based on an Installation Control Point ('ICP'), so it is not necessarily attributable to one person or even one family.
- The sector already supplies substantial data to the Electricity Authority as the industry's regulator.

Compliance costs

Question 1 in the discussion document asks, "Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?"

Introducing a CDR regime with associated requirements on how companies manage and store their data will come with compliance costs. MBIE must be mindful of the cost of information technology transformation, particularly for companies updating existing systems. This is neither cheap nor easy while keeping a company operating. Also, companies are obliged to keep pace with regulatory changes within their own sector as well as various other updates to general laws and regulations. Combined, this consumes project management and information technology resources within companies, and this demand needs to be balanced with the expected benefits.

In addition, the unique model of the retail electricity sector means retailers are not owners of a household's electricity consumption data but are, in fact, users of the data through contracts with metering equipment providers. It would be unfair for electricity retailers to shoulder compliance costs alone; officials need to consider how costs can be shared equitably among all data users in the industry.

ERANZ notes the comments in paragraph 71 of the discussion document around funding the establishment of any new regime as well as ongoing funding for regulators. It should be remembered that companies servicing consumers will already be incurring costs related to information technology upgrades and facilitating the provision of consumer data to third parties as a result of any new CDR regime. It is not reasonable then to expect further financial contributions from companies, particularly as additional costs will heighten barriers to entry for that sector.

Scope

ERANZ wishes to raise two points regarding the scope of a CDR as envisaged in the discussion document: observed data and data reciprocity.

Any CDR regime should include only observed data within its scope. Additional data that is derived, agglomerated, or resulting from propriety analysis should not form part of the regime. As stated in the

name, a CDR is about the consumer's data generated through their use of a provider's products and services, not the data a provider has put considerable expense and expertise into assembling to operate their own systems or better understand the market.

The discussion document makes no mention of reciprocal data-sharing obligations. Data sharing is one way in the United Kingdom, but it is reciprocal in Australia. ERANZ supports the principle of reciprocity where access is a level playing field, rather than a one-way flow from service providers to third parties. The next iteration of consultation would benefit from MBIE, including analysis of the merits of reciprocal data rights and how this could operate in New Zealand. In our view, reciprocity provides some benefits and incentives for incumbents to innovate to drive positive customer outcomes further. This would raise the performance of an entire industry for the benefit of all customers, rather than just those participating in data sharing.

Role and regulation of third and fourth parties

A CDR regime inherently involves people's sensitive, personal information. For this reason, care is required by policymakers to ensure a robust framework for third-parties to operate in. It requires thorough work on liabilities, enforcement and redress. Failures, particularly early on in the regime's lifespan, could negatively impact on the social licence for data sharing. Therefore, there needs to be a strong consideration of how operators in this market behave and are regulated.

Question six opens a preverbal can of worms. The largest feature of a CDR regime left unexplored in the discussion document is the role and regulation of third and fourth parties. ERANZ agrees with the Business NZ recommendation for phasing in read/write access of a provider's data, after an initial trial, utilising read-only access to ensure risks are identified and mitigated first.

Giving third parties write access opens up new questions. For example, any new regime will need clear communications and disclosure to consumers if third-parties are given the ability to close accounts. This could take place inside a comparison tool or switching portal. But in this example, write access to close accounts could expose consumers to undeclared consequences, including additional fees for breaking up bundled deals, or clawbacks on sign-on incentives. Furthermore, where would complaints from consumers about any such unforeseen fees lie, with the original provider or the third-party provider?

The regulation of third parties extends to jurisdiction questions around how will any new regime treat third-party providers who make use of New Zealand's data rights to extract, store, and process consumers' data overseas, outside of our jurisdiction? This is particularly relevant to online-only platforms operating out of foreign countries.

Paragraphs 47-51 discuss the rules for accreditation and security. The next iteration of policy work should consider the role of fourth parties as well. This is to cover situations where third parties develop other commercial and non-consumer products out of the consumers' data or on-sell information to a fourth party—for example, creating new marketing data. But this could also include technology companies who provide a platform for third-parties to build their services, but with the ability to use the information stored with them in some form.

Conclusion

ERANZ supports officials' work to date building awareness of CDR and the possibilities for further development in New Zealand based on overseas lessons. Strengthening protections for consumers is an essential element, alongside facilitating greater use of information-sharing protocols and commercial innovation. ERANZ supports progressing CDR with the objective of helping consumers access better plans and pricing to suit their needs.

ERANZ is happy to meet with MBIE officials if they have further questions regarding the retail electricity sector and the initiatives already underway.

We look forward to participating in further consultation rounds as the ideas within this discussion document are developed further.

Yours sincerely,



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