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Options for establishing a Consumer Data Right in New Zealand

Genesis Energy Limited (**Genesis**) welcomes the opportunity to comment on the Ministry of Business, Innovation & Employment's (**MBIE**) discussion document *Options for Establishing a Consumer Data Right in New Zealand*.

The paper contains MBIE's preliminary high-level analysis on potential options, and MBIE acknowledges that further consultation and work will be required, including a robust cost benefits analysis. Given this, our submission sets out Genesis' view on the key principles that should underpin a consumer data right and the need to consider, in relation to the electricity industry, the initiatives which the industry has implemented to improve consumer data portability.

Genesis would support a well-designed consumer data right

The proposal to establish a statutory ability for consumers to share data that is held about them with trusted third parties (**CDR**) is intended to facilitate greater consumer data portability. MBIE expects that this greater data portability will give consumers greater choice, reduce switching and search costs, drive competition and innovation and ultimately, benefit consumers through lower prices and better products and services.

We consider that a well-designed CDR and supporting regulatory framework can lead to those outcomes.

As MBIE is aware, New Zealand's electricity industry has established a data portability framework for electricity consumption data. This has evolved over time, with improvements made in 2019 to, amongst other things, leverage the existing data exchange infrastructure and protocols established by the Electricity Authority, and to address Privacy Act concerns.

Genesis supported this framework and the recent improvements. We have been consistent in our view that:¹

- (a) Consumers and persons authorised by them should be able to access their electricity consumption data easily, securely and in a timely manner.
- (b) The regulatory framework supporting this access must:
 - (i) Balance the ease and timeliness of data access with the need to protect consumers (and those providing data on their behalf) from unauthorised access to, or misuse of, their data.
 - (ii) Allow data to be provided in a cost and operationally efficient way.

We were encouraged to see that these principles have been reflected to an extent in the framing of the CDR options.

For the purpose of designing a CDR and supporting regulatory framework, we would add to those principles the following:

- (a) The principle of reciprocity as reflected in the Australian CDR. That is, that accredited providers of data should also be entitled to request data from other accredited parties. This would facilitate the two way sharing of data across sectors and the potential for new products and business models.
- (b) The CDR should promote rather than hinder innovation. (We support MBIE's view that the CDR should not apply to "derived data"² given the potential impact this would have on innovation and intellectual property rights.)
- (c) Safeguards for consumers should include measures to minimise the risk that consumers are switched to, or offered, products or services that are not suitable for them.
- (d) The costs of providing data and maintaining the CDR regime should be allocated fairly between the providers, holders and beneficiaries of that data.

¹ See for example Genesis' submissions to the Electricity Authority on *Multiple Trading Relationships* (27 February 2018), *Quick wins for Increasing Access to Electricity Services* (11 June 2019), *Technical Consultation Paper ACCES Quick Wins* (19 November 2019). See also Genesis' submissions to the Electricity Price Review Panel on the Electricity Price Review Options Paper on 28 March 2019 and found at: https://www.mbe.govt.nz/dmsdocument/4859_genes_s_energy_submissions_on_electricity_price_review_options_paper.pdf

² Data that has been created by a data holder through the application of insights and analytics.

Improved data sharing in the Electricity Industry

There have been a number of initiatives in the electricity industry to facilitate the sharing of data and the comparing of products. In the last 18 months, for example, this has included: the merging of two price comparison websites to make it easier for consumers to make informed choices; improvements to the data portability framework for electricity consumption data (ACCES project) and new standardised data access arrangements between retailers and distributors. Progress is also being made at the retailer level. Genesis, for example, provides its customers with data and insights through its EnergyIQ app. This enables them to engage and take control of how they buy and use energy.

These initiatives have involved a considerable investment of time and resources by electricity industry participants. While we acknowledge that there will be some CDR features common to all sectors, in relation to the electricity sector, we ask that MBIE consider how the existing initiatives and data portability framework can be leveraged to protect the investments that have been made, and to minimise the compliance costs on our industry. Consideration will also need to be given to how information relating to other products in the sector will be treated (e.g. gas and LPG as there is no central registry for these) as well as the treatment of bundled products.

A preferred option is premature at this stage

The discussion document set out four options for a CDR:

- (1) Maintaining the status quo where development is left to the market.
- (2) A sectoral-designation approach, similar to the Australian CDR where an overarching framework applies across the economy, with the CDR applying to specified sectors (and tailored to that sector).
- (3) An economy-wide CDR, similar to the EU's GPDR.
- (4) A sector-specific approach, with each specified sector having a distinct CDR.

MBIE suggests, based on its initial analysis, that the sectoral designation approach is the best option for a CDR in New Zealand. However, the Australian CDR is relatively new, with consultation continuing on aspects of the roll out into their energy sector. We ask that more analysis, including a comparison between the Australian and UK approaches (for example, the extent to which new products and business models have been created, approaches to privacy and consumer protection laws and the impact on consumers under each approach) and a robust cost benefit assessment is carried out, before settling on a preferred option for New Zealand.

Conclusion

Genesis would support a well-designed consumer data right that is underpinned by the principles discussed in this letter, that leverages the data portability initiatives implemented by the electricity industry and is tailored to its characteristics and the products offered to energy consumers. However, before a preferred option is chosen, further analysis including a robust cost benefit assessment is required. Finally, we note that we have reviewed and support the Electricity Retailers Association of New Zealand's submission on the CDR.

Please contact me at [REDACTED] should you wish to discuss any of the matters raised in our submission.

Yours sincerely



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