

**Consumer Data Right Project Team
Ministry of Business, Innovation & Employment**

By email: consumerdataright@mbie.govt.nz

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**MICROSOFT'S RESPONSE TO THE MBIE DISCUSSION DOCUMENT ON THE OPTIONS
FOR ESTABLISHING A CONSUMER DATA RIGHT IN NEW ZEALAND**

Thank you for the opportunity to provide a response to the Ministry of Business, Innovation & Employment's (MBIE) discussion document regarding the establishment of a consumer data right (CDR) in New Zealand. Microsoft wishes to express its support for the establishment of a CDR in New Zealand.

Background

Data portability is critical for user control, competition, and promoting innovation. People should use products because they provide unique value and features. If a consumer wants to switch to another product or service because they think it is better, they should be able to do so as easily as possible. This concept of allowing consumers to choose products and services based on choice, rather than being locked in, helps drive innovation and facilitates competition.

Microsoft is a provider of a number of digital consumer services – such as the consumer version of Office365, Skype and Xbox. In this EU context we have direct experience complying with data portability obligations under the EU's General Data Protection Regulation (GDPR) and similar regulations in other parts of the world.

Microsoft is also a cloud services provider to government and enterprise commercial customers, including energy companies and financial institutions. In this context our customers are subject to data portability requirements and would be subject to CDR regulations. In our role as a technology provider supporting such companies' operations or hosting their consumer-facing services, we have insight on how CDR may impact these entities.

Microsoft perspective on potential establishment of a CDR in New Zealand

1. Microsoft acknowledges that a horizontal, industry-wide approach to data portability could bring benefits that might not be realised through a sector-specific approach. For instance, consumers would have clarity on their rights regardless of the nature of the service or industry they are dealing with. A horizontal approach may be particularly valuable as lines between traditional industries blur, and new business models and start-ups operate across industries. That approach allows consumers to exercise the same rights when transferring their data between service providers who operate in different sectors.
2. Given Microsoft's role as a hyper scale cloud provider, a sector-specific approach would impact Microsoft to a lesser extent than it could affect Microsoft's enterprise customers. We recognize certain commercial or practical aspects may need to be considered in individual industries. On this basis, Microsoft would encourage MBIE to review any sector-specific input provided in response to the discussion document by relevant industry associations.
3. Microsoft is a member of the Data Transfer Project coalition, which has provided in-depth insights on data portability and interoperability to the US Federal Trade Commission.¹ We believe the comments in that document remain valid and worth considering by MBIE when reflecting on the practical implications of, and best practices in, operationalising a CDR framework in New Zealand.
4. While the Data Transfer Project has contributed significantly to creating new capabilities for direct data portability between service providers, service-to-service portability remains a complex technological challenge. Microsoft also encourages MBIE to consider approaches to portability that focus on the users' ability to obtain and share their data with third parties, such as Section 1798.100 of the California Consumer Privacy Act of 2018, and that take into account the remaining technological challenges of service-to-service portability..
5. More broadly, Microsoft believes that clear policies in respect of open data, data sharing or data portability can reinforce consumer data rights while also having positive economic impacts through generating technological innovation and market competition. We believe all these concepts are interrelated and, when correctly implemented, have the potential to enhance data ecosystems and establish more data-driven economies.
6. Policies promoting secure data sharing also help to achieve societal and/or economic benefits. For instance, automotive companies sharing data from real-world testing of autonomous vehicles may limit human risk associated with that new technology. Life science companies are also incentivised to share data from clinical trials to reduce the need for unnecessary exposure of larger groups of people to potential side effects of new drugs.

¹ https://www.ftc.gov/system/files/documents/public_comments/2018/08/ftc-2018-0051-d-0032-154924.pdf

7. The New Zealand Government already has in place an open data policy and industry-led data sharing initiatives have been developed by the financial and agricultural industries. Either a horizontal or sector-specific CDR policy (or a combination of the two) would complement these existing frameworks and help strengthen New Zealand's ability to grow data-driven industries.

In this context, we support New Zealand's adoption of a CDR as an important step to help promote and reinforce user data rights, and encourage the development of responsible and secure services and new business models. We are happy to continue dialogue with MBIE on this topic.

Kind regards,



Maciej Surowiec
Government Affairs Lead
Microsoft

