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TRUSTPOWER SUBMISSION: OPTIONS FOR ESTABLISHING A CONSUMER DATA RIGHT IN NEW ZEALAND

Introduction and overview

- 1.1.1 Trustpower Limited (**Trustpower**) welcomes the forward-thinking approach of the Ministry of Business Innovation and Enterprise (**MBIE**) discussion paper *Options for establishing a consumer data right in New Zealand (the Discussion Document)*.
- 1.1.2 Trustpower is a multiproduct retailer that offers electricity, gas and telecommunications services to its customers. We currently retail to around 267,000 electricity connections, 100,000 telecommunication customers and 39,000 gas customers. We also participate in the fixed wireless and mobile market.
- 1.1.3 We understand that the purpose of the Discussion Document is to assess:
 - a) whether New Zealand needs a consumer data right (**CDR**);
 - b) what form a CDR might take if it is needed; and
 - c) how might a CDR be designed from an institutional perspective.
- 1.1.4 Trustpower recognises the potential benefits that a CDR may provide by giving consumers greater access to their data and to have the ability to share this data. We are supportive of preliminary work on data portability as a way to ascertain how it can best enhance and foster consumer welfare and realise economic benefits.
- 1.1.5 The Discussion Document contains a high-level analysis of the options that MBIE have identified to establish a CDR in New Zealand. Our submission provides our initial views and it should be read in conjunction with the Electricity Retailers' Association (**ERANZ**) submission.

A comprehensive review of the opportunities in New Zealand is needed

- 2.1.1 We agree with MBIE that a more detailed analysis will need to be completed as part of the policy process. In our view this detailed analysis should be multidisciplinary and review the work which has already been undertaken by industry, government agencies and regulators in various sectors in New Zealand, as well as be informed by overseas learnings where applicable.

2.1.2 We note that the Productivity Commission observed the importance of data access and consumer data rights, framed broadly as part of their Future of Work Inquiry.¹ Likewise, the Privacy Commission recommended introducing a right to personal information portability.² There have also been specific workstreams in various industries for example:

- a) the Electricity Authority's *Quick Wins for Increasing Access to Electricity Services* changes makes it easier for consumers to share their electricity consumption data with businesses they trust.³
- b) MBIE undertook work in 2016 on *Retail payment systems in NZ* and the Reserve Bank and Minister Faafoi noted the importance of Open Banking for the future of NZ.⁴

Within this context we consider it is timely to bring these workstreams together and assess the benefits and costs of a CDR in New Zealand in greater detail.

2.1.3 The Australian Productivity Commission (**APC**) undertook an extensive and broad inquiry for improving availability and use of data and sought to balance the many competing factors when making its recommendation around an Australian Consumer Data Right (**ACDR**).⁵ The APC highlighted that one of the competing factors for governments and society is identifying who benefits from data use and how to deal with the unknown.

*Fears about how data will be used and what it will reveal are unsurprising in an era of rapid social and technological change, particularly when the outcomes of this exponential increase in data generation and use are largely unknown. This is true for both the potential benefits — few people would have imagined ten years ago that we would all have access to live traffic streams on our smartphones via Google Maps — and for the potential costs, such as the sheer volume of database hacking every year....Regulation, and the development of trust, need flexible forms in order to cope. This [APC] Report ... designs a legal and policy framework that would give people a level of active control over the data collected about them, and the right to know what is being done with that data, regardless of the platform. Such a framework — principles-based for the most part rather than prescriptive — would give policymakers and citizens alike the knowledge that data regulations are flexible enough to adapt to new platforms and services, rather than needing to be reactive well after the fact.*⁶

2.1.4 It is the assessment, acknowledgement, and balancing of various competing factors which is an important, if not key, element of developing a CDR that delivers the best outcomes for New Zealand businesses and consumers. Future rounds of consultation ought to incorporate a thorough identification and assessment of all relevant competing factors and enable feedback around appropriate trade-offs.

2.1.5 More broadly, we note that the ACDR is still in its infancy, having only commenced full operation recently. MBIE's learnings from the Australian policy design process are visible throughout the Discussion Document and we strongly support MBIE in reviewing the implementation and outcomes of the ACDR as part of the assessment of the viability of a CDR in New Zealand. This

¹ Productivity Commission, *Technological change and the future of work Final Report*, March 2020.

https://www.productivity.govt.nz/assets/Documents/0634858491/Final-report_Technological-change-and-the-future-of-work.pdf notes "Policy work on data access and consumer data rights should be accelerated to help create new markets and increase business dynamism" pg. x

² Privacy Commissioner, *Report to the Minister of Justice*, 2017, Available from <https://www.privacy.org.nz/assets/Files/Reports-to-ParlGovt/OPC-report-to-the-Minister-of-Justice-under-Section-26-of-the-Privacy-Act.pdf>

³ For more, please see the Electricity Authority's project page, <https://www.ea.govt.nz/development/work-programme/evolving-tech-business/acces/>

⁴ Reserve Bank of New Zealand, *An open mind on open banking*, from <https://www.rbnz.govt.nz/financial-stability/financial-stability-report/fsr-may-2018/an-open-mind-on-open-banking>. Ministry of Business Innovation and Enterprise (MBIE), *Retail payment systems in New Zealand Issues Paper*, October 2016, available from <https://www.mbie.govt.nz/assets/3f6cff197b/retail-payment-systems-issues-paper.pdf>

⁵ Productivity Commission, *Inquiry Report - Data Availability and Use*, 2017, p. 94. Available from <https://www.pc.gov.au/inquiries/completed/data-access/report/data-access.pdf>

⁶ Productivity Commission, *Inquiry Report - Data Availability and Use*, 2017, p. 96. Available from <https://www.pc.gov.au/inquiries/completed/data-access/report/data-access.pdf>

will ensure a more thorough understanding of how consumers respond to and interact with a CDR along with those unintended consequences that might arise down the track.

Essential to consider institutional arrangements and policy settings

- 3.1.1 As MBIE recognises, the ACDR operates under a multi-regulator model, comprising the Australian Competition and Consumer Commission (**ACCC**), the Office of the Australian Information Commissioner (**OAIC**), and a new Data Standards Body (**DSB**). The Australian Treasurer and the Government also play a role. While the regulatory model is likely to be determined by which design option is adopted, it is important to consider more broadly where the responsibilities would lie in NZ.
- 3.1.2 As a multi-product retailer, we note the policy/regulatory settings in the industries in which we operate in are vastly different despite the products being similar in a consumer's eyes (i.e. a "utility" service). While we have already seen improvements in the electricity sector as a result of consumers having the ability to share their consumption data with those they trust, as well as reaping the benefits of a world-class switching process, the same cannot be said about the telecommunications sector.⁷
- 3.1.3 The Commerce Commission recently published a letter in which they note they see an opportunity for the telecommunications industry to look at the design and implementation of a CDR in New Zealand. We agree with the Commission that there is an opportunity for improvement within the telecommunications sector in this space. How exactly this should be taken up though will depend on broader policy decisions around the approach to implementing a CDR.
- 3.1.4 In our view, it is essential for MBIE to consult and work with regulators in relevant sectors and be aware of not only the jurisdictional boundaries that each regulator has but also consider the intersect of various industries so that a CDR supports, rather than hinders, progress in specific policy areas. This may work in conjunction with, or be supported by, BusinessNZ recommendation that a private sector advisory group is established to provide guidance and viewpoints on the structure of a CDR.
- 3.1.5 In our view, a dedicated round of consultation around these fundamental considerations is of utmost importance.

Additional remarks

- 4.1.1 As part of the development processes, we encourage MBIE to seek advice and consult further on how a CDR would interact with, or within, the Privacy Act 2020. Additional data sharing has the potential to introduce additional risk. This means strong privacy requirements, the existence of clear and explicit consent, accreditation measures and robust information security provisions, are fundamental elements of a CDR.
- 4.1.2 The Discussion Document notes with regards to data whether it should be on a 'read/write' access basis and whether it should include 'observed/derived data'.

⁷ The switching process in electricity is managed by the Electricity Registry. The registry facilitates the exchange of information between retailers, metering equipment providers and distributors to manage reconciliation, invoicing and switching processes. The registry provides next day notification of any changes made to registry information to registry users affected by the change, for instance the registry notifies a retailer if one of its ICPs has switched suppliers and switches are completed within 5 days. For more, please see the Electricity Authority website <https://www.ea.govt.nz/operations/retail/the-registry/about-the-registry/>

- 4.1.3 In Trustpower's view it would be prudent that a CDR:
- a) focus on a 'read' access approach⁸; and
 - b) have a scope limited to 'observed' data as there should be incentives to innovate and compete through data analytics.
- 4.1.4 We look forward to continuing to participate in future rounds of consultation following the recommendation to the Minister.
- 4.1.5 For any questions relating to the material in this submission, please contact me on [REDACTED] or Matt Vine – Analytics Manager on [REDACTED]

Regards,



Claudia Vianello
Advisor, Strategy and Regulation

⁸ A future examination of whether to expand to include 'write' may be possible in the future. Without a staggered approach however, there is a significant risk of unintended consequences arising.