



Beautiful business

Consumer Data Right Project Team
Commerce, Consumers and Communications
Ministry of Business, Innovation and Employment
Via email: consumerdataright@mbie.govt.nz

1 October 2020

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

Dear Sir / Madam

Xero welcomes the opportunity to make a submission on the MBIE Discussion Document *Options for establishing a consumer data right New Zealand*

Please find **attached** our submission.

This submission is from Xero (NZ) Limited, 213 Taranaki St, Te Aro, Wellington 6011.

We can be contacted as follows:

Name: Craig Hudson, Managing Director, New Zealand & Pacific Islands

Address: 123 Taranaki St, Te Aro, Wellington 6011

Email: 

Yours faithfully,



Craig Hudson
Managing Director, NZ and Pacific Islands

Xero submission on Discussion Document: Options for establishing a Consumer Data Right in New Zealand

Introduction and executive summary

The global economy is rapidly becoming driven by data. Establishing the legislative and regulatory frameworks to enable consumers to benefit from their own data and to drive innovation and competition across our economy has never been more important.

It is also not without challenges. Embracing the new world of an increasingly data-driven, digital economy requires a lot from government: courage to lead into a new future, the ability to take calculated risks and the need to strike a balance between control and enabling innovation to flourish in the marketplace.

Xero welcomes this discussion document and congratulates MBIE for its leadership on this matter. While creating frameworks for open data and data portability can be challenging from a legislative / policy perspective, it is also critically important for the future of our economy.

For some time now, Xero has been concerned about a purely industry-based approach to developing open data systems, such as open banking. While Xero typically prefers market-based solutions, setting the rules and frameworks around how we treat and consume data now requires a partnership approach between business and government and a regulatory / legislative framework.

Covid-19 is currently accelerating the digital transformation of economies across the globe. Post-Covid 19, consumers will engage more confidently in the new digital economy, and New Zealand must be ready to participate in this.

Xero believes the benefits of a Consumer Data Right (CDR) and the creation of an effective open data ecosystem in New Zealand can be profound for both consumers and our economy. The scale of potential benefit is well canvassed in the discussion document, though probably understated. With the right settings, Xero believes that open data systems can help improve New Zealand's stubbornly poor rate of economic productivity.

Speaking directly to the discussion document, Xero believes the four proposed options have been well considered as a starting point. We do not blanketly endorse any one option, though share the MBIE view that a CDR based around Option Two could potentially deliver a more efficient regime and allow more specific assessments of data sets, maximising consumer outcomes.

This submission sets out the minimum standards and requirements that must be in place in order for a CDR to be successful.

Xero's experience globally, including recent experience with the draft CDR Rules in Australia, has highlighted that the detail must be well thought through. The potential for inadvertent outcomes must be carefully considered and addressed before implementation. It is critically important that time is taken to get the design right from the start, even if that takes longer.

In terms of core design considerations, a CDR framework must support data intermediaries and other third parties if the benefits are to be realised and maximised. Similarly, participation must be encouraged. It must not be cost prohibitive for small business or third parties to become accredited or to participate; rules for participants must be clear and the framework must take a balanced and evidence-based approach to risk management.

Commitment to a CDR regime will never be static; rather it will continually evolve in order to keep step with a rapidly changing world. It is our expectation that through the submission and consultation period, draft standards and requirements (such as points of required consent to access CDR-derived data) will evolve and begin to give more detailed substance to a preferred option.

We look forward to actively supporting this process and participating in it.

About Xero

Xero is one of the fastest growing software as a service (SaaS) companies globally, providing online software to make life better for people in small business, their advisers and communities around the world.

Founded in 2006 in New Zealand, Xero is headquartered in Wellington, and has a global reach - employing more than 3,000 people globally and with approximately 2.3 million subscribers in more than 180 countries.

Xero is committed to improving New Zealand's economic productivity and improving the lives of small business owners, their staff and their families. Small businesses of less than 20 employees are a vital part of the New Zealand economy, accounting for 97 per cent of all enterprises and 29 per cent of all employees. Small businesses account for an estimated 26 per cent of national GDP.

Xero currently has more than half the New Zealand small business economy as customers. The company has been working with direct bank data feeds for more than a decade and is one of the biggest consumers of direct bank feeds in Australasia.

Xero has significant international experience in the development of open data systems and processes, and is committed to working with the New Zealand Government and industry to create an accessible, flexible regime that puts consumers in control of their data.

Offer of support

Given Xero's direct experience in the development of an Australian CDR, and open data systems in other parts of the world, we believe there is an invaluable opportunity to learn from the experiences of others.

For example, Xero is currently working closely with multiple layers of government in Australia (Treasury, ACCC and the standards body, Data61), addressing challenges to ensure high regime participation, increased competition and consumer outcomes. It will be beneficial to leverage the Australian experience to address these issues early in New Zealand's CDR development.

Xero would welcome the opportunity to share its experiences (particularly in the development of the Australian CDR) with MBIE and other officials and extends an open invitation to engage on any issues through the development of a CDR framework.

Definitions

One of the challenges in developing open data systems lies in setting clear and commonly understood definitions for key terms. This is a critically important part of the process of establishing a CDR that works effectively.

For example, data aggregators, integrators and intermediaries are all effectively 'third parties'. Similarly, the term 'data holder' can be interpreted multiple ways from the generator to the holder to the recipient. It will be very important to clarify definitions and Xero is happy to assist in sharing its experience in this area.

What must be present for a CDR to succeed

In order for the potential benefits of a CDR to be realised, the two overarching objectives must be to encourage participation and place the customer / consumer at the heart of all decisions.

The frameworks, systems and processes that build this CDR must be designed for a Software as a Service (SaaS) world rather than seeking to emulate traditional approaches to conventional policy development.

The customer experience of the CDR must be built into all design considerations and a UX or experience led approach to framework design will deliver the most enduring, effective result. Development of a CDR must deliberately and carefully reflect the ecosystem which will likely use it, provide the data and consume it.

For example, Xero's own ecosystem comprises approximately 1,000 apps as well as a multitude of customers, banks, accountants and bookkeepers. The needs of these diverse individuals and organisations must be considered in CDR design.

In order for a CDR to succeed in New Zealand, the following core elements must be present:

- **Clear definition of data** – Xero welcomes the commitment from MBIE in this discussion document to providing clear definitions as to what data is and is not for the purpose of the CDR. This is vitally important.

There will need to be a continual focus on this element of the CDR as policy development progresses to consider issues around product data, derived data and raw transactional data for both retail and enterprise level customers.

We support MBIE's recommendation that data provided under a CDR be both 'Observed' and 'Provided' data. We also strongly agree with the recommendation to exclude 'Derived' data, though further clarification on the definition for this term is required.

Getting the rules right and setting clear boundaries around the treatment of different types of data is critically important to the eventual success of a CDR and consumer confidence in it. For example, a CDR must efficiently facilitate the provision of raw transactional data, while protecting 'Derived' data from being bundled into a CDR.

- **Deal with 'data equivalency'** – The concept of data equivalency is one which has arisen in the Australian CDR development. It relates to the concept of 'reciprocity' by which one organisation will release data if the 'equivalent' data is released by another party.

This issue should be dealt with decisively in early design and any notion of equivalency ruled out in favour of clear guidelines and rules around what data is included in the CDR (and at what point) and what is not. This will be an important and detailed policy point but the Australian experience will provide useful context and guidance.

- **Enable intermediaries** – It will be important to the CDR that data intermediaries are included in it. It is intermediaries who can play a vital role in product and service innovation and deliver new ways of creating economic value from the treatment of data.

Rules around intermediaries are still under development in relation to the Australian CDR, though they are currently more complex than in the UK. These considerations may prove helpful to New Zealand policy makers and there may be opportunities for policy harmonisation in this area.

Inclusion of intermediaries in the CDR would lead to increased participation by fintechs, and consumers. Intermediaries will make it cost effective for all fintechs to connect to multiple financial institutions. These fintechs will only need to build one integration to access data from all financial institutions, instead of multiple integrations at considerable cost.

Inclusion of intermediaries will help drive the consumer benefit and innovation behind the intent of the CDR. On the flipside, a CDR without intermediaries would lose much of the potential commercial and competitive opportunities for consumers.

- **Preserve existing arrangements until the market is ready** – The development of a CDR must not shut off current arrangements, such as 'screen scraping' or existing bilateral data sharing agreements, until a CDR is working smoothly, the market is ready and consumers determine that previous arrangements are no longer required.
- **Clear, workable consent regimes** – Detailed considerations will be required in order to build a clear consent framework for a CDR. Generally speaking, there will need to be clarity around the points at which consent or registration must be sought in order to access consumer data.

These frameworks will need to take a flexible and pragmatic approach that clearly puts the consumer benefit and the consumer experience at the centre of the process. The experience of engaging with a CDR regime must be accessible, simple, quick and, where possible, avoid multiple or duplicated consent or registration points.

By global standards, New Zealand's SMEs experience a relatively high regulatory burden and the introduction of a CDR should not be compliance-driven or introduce an unduly onerous framework. The focus of the CDR must be reflected at all times during these considerations – the purpose is to enable consumer-centric innovation rather than burden small business.

- **Affordable accreditation and access** – There cannot be high barriers to entry with a CDR. A CDR will fail to deliver against the potential benefits if it is cost prohibitive for organisations to participate in it. In Australia there are examples of an AU\$100,000 cost of participating CDRs largely due to overly onerous security provisions.

Costs must be affordable to enable small businesses to participate in the CDR. Along with ensuring that commercial opportunities to enhance data are protected, this will drive innovation, competition and consumer benefits.

As a principle, Xero supports a zero cost regulated pricing mechanism such as that which exists in the UK and Australia. 'Read' data should be at zero cost to prevent data holders charging for access to it, which would render a CDR effectively useless.

Access to 'Write' data is more complex and, as noted in the paper, subject to more risk. As such, 'Write' data will likely need to come at a cost, but costs need to be minimised, transparent and standardised by an independent regulatory body under a CDR.

- **An evidence-based approach to risk management** – In dealing with consumers' data, there is the temptation to build layer upon layer of protection into a CDR framework. But imposing onerous security requirements rather than learning from actual experience will inhibit the success of a CDR, in the same way that accreditation costs could.

New Zealand policy makers will need to take a pragmatic, balanced and evidence-based approach to risk management in order to both protect consumers' data and for the CDR to remain affordable, workable and sufficiently flexible.

- **Access to data to support innovation** - Access to data needs to be flexible and drive innovation. It will be important that a CDR regime provides a data access framework for the purposes of testing and product / offer development.

For example, a start-up technology company should be supported by the framework to receive data in a controlled way in order to test customer solutions and offers without requiring cost prohibitive and repetitive consent processes.

- **Global interoperability** – The discussion document has acknowledged that one of the issues experienced in other countries has been developing CDRs that do not work with global standards and systems.

A CDR in New Zealand must harness work already done, such as through the adoption of ISO accreditation standards, rather than recreating bespoke standards and systems for a domestic market. The whole point of a CDR is that it must work as seamlessly as possible internationally.

Interoperability needs to be focused on two levels in order for a CDR to be as successful and user-friendly as possible: technical standards (including API design standards) and accreditation.

Where successful standards and frameworks are already working well globally, or under development, New Zealand should seek to replicate or adopt those as closely as possible – both from a cost reduction and user experience perspective.

- **Avoiding domestic regime duplications** – Consistency with global standards, audit requirements and accreditation systems will be important to a CDR, but so too will be consistency of standards under domestic laws.

For example, New Zealand is currently advancing development of a CDR at the same time as new privacy laws are due to come into effect and a new digital identity framework will be introduced to parliament as legislation.

A consumer's data must be treated simply and consistently by legal and regulatory frameworks and should not be treated differently by different pieces of legislation or different regulatory frameworks and bodies.

This will need careful attention during the development of legislation.

- **Consistency of data format** – Part of the power of a CDR is that it allows data to be compared and decisions made – for example, consumer switching services. Wherever possible, data needs to be consistently presented to enable simple comparison – this goes again to the customer experience.
- **Education and consumer engagement**
For the consumer to be at the heart of a CDR there must be an investment in both engaging consumers directly in its design and then in ensuring a high level of awareness around what a CDR is and is not for consumers.

Without a well-designed public education programme there is a risk of a CDR being misinterpreted – potentially as a perceived guarantee around control of data and explicit consent all of the time, which might not exist in practice.

The ultimate effectiveness of a CDR will depend at least partially on how well consumers understand it.

While all of these matters need to be clearly and carefully addressed in the development of a potential CDR, attention must also be given to the overarching agency responsible for its operation and oversight.

It is important to consider that a new Privacy Act, a new digital identity framework and a CDR are all being advanced or introduced in parallel in the run-up to the end of the 2020 calendar year, during which time there will also be a general election and new Ministers appointed to portfolios.

Great care will be needed to ensure there are not inadvertent outcomes associated with different regimes, Acts and frameworks impacting on the smooth and successful implementation of a CDR.

Conclusion

This discussion document has done a good job of canvassing the range of issues and opportunities associated with the development of a CDR in New Zealand. Provided the right settings are developed, Xero believes that the benefits of a well designed, accessible, customer centric CDR framework can be profound for consumers and our economy.

Open data systems lie at the heart of the digitisation of our economy which, in turn, can drive the productivity gains that have so far eluded New Zealand for decades.

However, failing to design a CDR that is fit for a digital world that places consumers at its heart and that earns consumers' confidence could set back the digitisation of our economy by years.

Xero sees this consultation as a very important first step in what will be a complex engagement.

We are keen to continue to support this work and look forward to engaging with the MBIE team on the next steps towards the design of a CDR for New Zealand.