Via email consumerdataright@mbie.govt.nz

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Unlocking the value from our customer data – Draft Customer and Product Data Bill

Mercury welcomes the opportunity to provide feedback to the Ministry of Business Innovation and Employment (MBIE) in response to its *Unlocking value from our customer data* discussion document (the document) and the draft Customer and Product Data Bill (the Bill) published in June 2023.

The development of a Consumer Data Right (CDR) for New Zealand is an ambitious project. We are positive about the opportunities and benefits that an increasingly interconnected digital economy can bring for both consumers and industry. As proposed, the Bill will require businesses that hold designated customer data to provide that data to accredited requestors, subject to privacy and security safeguards. The law is also expected to require designated product data to be made available electronically on request. It is expected this will allow for new, data-enabled products and services to be created.

We believe in inclusive consultative processes which bring New Zealanders along the policy journey. Yet since 2020 there has been limited opportunity to publicly engage in the development of a CDR. While the CDR promises benefits to consumers, confronting technical issues such as: interoperability; the need for strong authentication and privacy measures; and the management of cyber and fraud risks associated with these changes; means policy makers should be leveraging industry experience in these areas and enabling proper engagement. We would have been eager to attend workshops and roundtables over the last 24 months to gain insights on how a CDR might differ from the existing voluntary and/or regulated data sharing agreements which are already in place in the industries in which we operate. Going forward, we encourage MBIE to provide greater direction and construct a timeline that outlines:

a. future developments and implementation timeframes as a whole - from the development of secondary legislation that would enable the workings of a CDR to the issue of “which sector will be designated next?”; and
b. a schedule of when New Zealanders can expect engagement and consultation on the more nuanced aspects of the CDR.

During this process, we also encourage MBIE to maintain a level of situational and environmental awareness to limit conflict with major dates and events in energy and telecommunications industries particularly as New Zealand transitions to a low- carbon economy and addresses its digital future.

We would like to respond to MBIE’s document by outlining five points:

1. authorisation requirements should be streamlined and support a good customer experience;
2. financial grade API standards may not be fit for purpose in telecommunications and energy sectors;
3. third party provider accreditation is fundamental;
4. complaints process ought to be clarified; and
5. it is essential to embed a statutory review;

We also would like to highlight there is a difference between consent and authorisation, and the documents are conflating these concepts. The Bill refers to authorisation, but supplementary documentation refers to consent. It is imperative that the CDR focuses on authorisation to ensure alignment with the Privacy Act 2020. We therefore refer to authorisation throughout our submission.

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Authorisation requirements should be streamlined and support a good consumer experience

Authorisation requirements directly impact the consumer experience. Mercury encourages MBIE to design the CDR in a way that streamlines and creates user-ease when it comes to consumer's managing their authorisation, particularly with multi-product providers. Mercury would like to see authorisation durations be standarised across industries and consideration given to those who offer bundled services. Handling both new and on-going authorisations is a significant aspect of any CDR, and businesses who operate across multiple industries may incur a significant amount of cost (both financial and time) in managing authorisations while, simultaneously, consumers might experience 'authorisation fatigue'.

As part of the overall authorisation process, Mercury strongly supports the bundling of authorisations, or at minimum, the design of an aggregate authorisation process or platform. A September 2022 review of the CDR rules in Australia noted:

> *As the CDR continues to build momentum expanding in both functionality and sectors, it is expected that many consumers will access the CDR via multiple applications provided by their service providers, such as a bank or energy provider, a third party fintech, or a combination of both. It is easy to see how the average consumer may lose track and become overwhelmed if managing multiple consents across multiple applications and across various sectors that also differ in format… consideration could be given to improving the long-term experience of consumers in the CDR ecosystem by providing a consolidated consumer dashboard to track and manage consents…*[1]

We also agree that rules and regulations could specify events that require authorisation to end - such as when a customer closes an account with a data holder - or when an accredited requestor's accreditation is suspended or cancelled so that associated authorisations end automatically. We believe a 12-month authorisation to be sufficient. In addition, we would be interested in discussing an option of having a common 'authorisation renewal date' whereby while authorisation can be given and withdrawn at any time, to lessen administrative burdens, all renewals fall on a specific calendar date if no changes have been made prior.

Financial grade API standards may not be fit for purpose in telecommunications and energy sectors

In principle, rules and functionality should, to the extent possible, apply consistently across all sectors of the economy to give consumers a seamless experience. 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). We have 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 via standardised data frameworks. Switching is seamless in electricity where there is a 'central registry', whereas this does not exist in telecommunications switching making the process, by and large, more complicated.

However, we acknowledge that having one single standard for customer information might involve differences that could be difficult to resolve when the rubber hits the road. For example, when it comes to joint accounts, New Zealanders may discover that the joint account holder arrangements used in banking might be different to the ones in energy and any agnostic standard would be highly confusing for customers. How this tension is addressed by policy makers, industry and technical experts will determine the success of the CDR.

Having a standard, economy wide system may prove fruitful if the right settings are adopted. We have some reservations on the use of banking API's without more information or details as there are existing data sharing frameworks, particularly in electricity, which have been trialled and tested for some time[2]. An assessment of whether the current banking standards might or might not be suitable for energy and telecommunications, and which might

[1] The Australian Treasury, *Statutory Review of the Consumer Data Right Report,* September 2022 available from: https://treasury.gov.au/sites/default/files/2022-09/p2022-314513-report.pdf p.43

[2] Energy consumers are already able to request their consumption data, and retailers must comply with these requests within five working days. Retailers are also required to make tariff data available, and there is also an Application Programming Interfaces (API) for third parties to access information about the type of meter held at a certain premise. In 2020, the Electricity Authority extended these rules to enable authorised third parties to access consumption data on behalf of consumers. Third parties wanting to use the standardised formats and file exchange software must sign up to certain terms and conditions of use.

require modification, is a matter which may be best explored via a technical workshop. Our key concern is that changes to our systems will not only require expertise uplift in the appropriate personnel managing IT networks but also unintentionally leave designated sectors with high implementation and compliance costs in order to operate within a system designed primarily for banking.

Third party provider accreditation is fundamental

We understand that the draft law will require data holders to comply only with request from accredited entities, but any entity or person (accredited and non-accredited) can still request data on behalf of a customer irrespective of whether they are accredited or not. It is fundamental that data holders are only required by regulation to provide data to *accredited* data holders who follow a robust accreditation process. We are supportive of the TCF's view that MBIE consider the additional requirement that accredited requestors be certified before they can hold and store large amounts of personal information. In addition, given the nascent stages of this initiative, we believe as first step there should only be one accreditation class instead of two, noting that an additional tier could be easily created in future.

Furthermore, Mercury is strongly encouraged by MBIE's proposal of developing a registry of CDR accredited organisations which consumers and data holders can access, akin to the one available in Australia. We believe this is a fundamental requirement of a CDR framework. Interestingly, in the recent Australian review of the CDR, some submitters highlighted concerns with one agency being responsible for both onboarding new participants into the system and undertake enforcement activities on said participants. We would welcome MBIE's views on how this risk is going to managed.

Complaints process ought to be clarified

As proposed, when a sector is designated, accompanying regulations will require customer complaints to be referred to existing industry dispute resolution bodies if the complaints have not been resolved via a service provider's internal complaints process. Our general approach to complaints is to refer to Utilities Dispute or Telecommunications Dispute Resolution if the issues cannot be solved internally. MBIE suggests that the designation regulations require both data holders and accredited requestors to be a member of the relevant industry dispute resolution scheme, and we strongly support this.

However, it is unclear from the diagram in the discussion document whether a complaints process is expected to be initiated to all parties simultaneously, and/or who determines whether it is a matter for the Privacy Commissioner, the industry dispute scheme or MBIE/the regulator.

Essential to embed a statutory review

Mercury is supportive of a specialist agency being tasked with the implementation of the CDR. In our 2020 submission we noted that feedback from Australia was that having too many government departments created uncertainty over who is responsible for what. A 2022 statutory review of the CDR in Australia explicitly called-out:

> *"…the regulatory environment that the CDR operates within is complex. Where possible, the CDR should seek opportunities for alignment with other regulatory schemes, limiting duplication and overlapping regulatory obligations to make the CDR easier to navigate, reducing additional compliance burdens and confusion for participants".*[3]

However, we have some reservations at the proposal for MBIE to have an on-going compliance and enforcement function as well as policy setting function. Last year, the Australian Consumer and Competition Commission (ACCC) explained there ought to be a functional separation of the entities responsible for the rulemaking, operations and enforcement.[4]

[3] Treasury, 2022. p 64.
[4] ACCC Submission, Statutory Review of the Consumer Data Right, May 2022 https://treasury.gov.au/sites/default/files/2022-09/c2022-314513-australian_competition_and_consumer_commission.pdf

We encourage MBIE to consider including in the Bill a provision for a periodic statutory review of the CDR to ensure it is fit-for-purpose as it matures. This review may consider MBIE's rulemaking and regulatory functions, and other work such as implementation and governance arrangements of the CDR and other digital economy initiatives, as well as address any other issues that arise.

Closing remarks

Neither the document, nor the exposure bill, are clear as to whether there is a difference between observed and derived data. We support the TCF's recommendation that MBIE explicitly state that data that is imputed, derived or value-added data is not considered CDR data. Should MBIE decide that derived data is to be included as part of a CDR, then as a minimum, reciprocal rights must be enshrined in legislation - any other arrangement would create significant market asymmetries and have the opposite effect of what is intended.

Global discussions on data ethics and the positive impacts of data-sharing frameworks on civil society are still developing. We continue to be supportive of the development of an economy-wide CDR but we urge MBIE to proceed mindfully, provide ample opportunity for informed stakeholder engagement given the level of technical expertise required, and develop clear timelines and future plans for this exciting initiative.

Please don't hesitate to contact me at Privacy of natural persons if you have any questions in relation to this submission.

Yours sincerely,

Privacy of natural persons

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