

10 October 2024

## Exploring a consumer data right for the electricity sector – discussion document

Mercury welcomes the opportunity to provide feedback to the Ministry of Business, Innovation and Employment (MBIE) on its discussion document *Exploring a consumer data right for the electricity sector* (the discussion document).

The government is introducing a 'consumer data right' (CDR) through the Customer and Product Data Bill (the Bill) to give customers greater control over their data (customer and product data) in designated sectors. Fundamentally, a CDR seeks to enhance the confidence, desire, and ease for consumers to share their data. The discussion paper seeks feedback on the possible merits of designating the electricity sector under the CDR regime to be established by the Bill, and the potential scope of a designation. We support the BusinessNZ Energy Council (BEC) submission and the Energy Retailers' Association (ERANZ) submission.

There are significant opportunities to New Zealand from enabling a smart, more flexible electricity sector. Access to data for industry participants and consumers is essential to support modern digitised services and changes to the current data arrangements are required to help unlock the smart system and support greater innovation in the sector. In Mercury's view, enabling greater and more timely access to data will enable consumers to benefit from having access to new innovative services such as energy management tools and distributed flexibility offerings in real time. The problem at present is the lack of uniformity of data (for ease of comparability) and the ability to provide it in (or near) real-time.<sup>1</sup>

We are broadly supportive of a CDR in the electricity sector, provided MBIE addresses some key considerations:

1. a clearly articulated end-state for data request arrangements would allow participants to strategically prepare for long-term compliance;
2. product data should be limited to core electricity matters until such time as gas and telecommunications are included in a designation;
3. MBIE should seek out opportunities to lighten the compliance reporting burden/cost of participating, including adopting a more permissive approach where appropriate to do so and continuing to seek alignment with other electricity sector data related workstreams that are underway;
4. a testing sandbox should be established, and adequate implementation timeframes allocated to participants giving them sufficient time to comply.

### Limiting duplication efforts

The Electricity Authority (the Authority) is reaching for a future where every consumer is empowered to take full advantage of a dynamic and competitive energy market. In this new landscape, consumers are not just passive users of electricity but active participants, equipped with data and innovative tools to make informed decisions. They are undertaking a number of significant workstreams to this end. While we appreciate MBIE and the Authority have been working together to ensure there is no duplication, it would be useful to understand what this entails and ensure the end-state is clear.

---

<sup>1</sup> Boston Consulting Group, 2022, The Future is Electric, available from: <https://web-assets.bcg.com/b3/79/19665b7f40c8ba52d5b372cf7e6c/the-future-is-electric-full-report-october-2022.pdf>



A clearly articulated end-state for data request arrangements between MBIE and the Authority would allow participants to strategically prepare for long-term compliance. For instance, the changes to the Code (s 11.32B) proposed by the Authority in their most recent round of consultation suggest one free data request per month.<sup>2</sup> MBIE ought aligning a limit on the maximum number of requests that an accredited requestor can make to a data holder for free each month and allow charges to be imposed above that limit, as is proposed by the Code. Similarly, the Authority's consultation seeks to make data requests available within 24 hours (with some exceptions). Frequent incremental changes to data access arrangements year-on-year will drive increased costs to businesses and, ultimately, consumers. We acknowledge some data holders could differentiate their services by offering unlimited or instantaneous data access, but as a regulated minimum, one request a month and within 24 hours is reasonable.

MBIE notes there is some uncertainty about whether the Authority's work programme will fully deliver benefits comparable to a CDR, particularly in accessing data from non-electricity sector participants like solar PV and EV charging providers (flexible traders). To manage this issue, the Authority could extend its accreditation program to other non-electricity sector participants such as providers of solar PV and EV charging services to manage this issue.

We have been supportive of a CDR in our submissions throughout the years but within the context of the work being undertaken by the Authority in areas of relevance to a CDR, we now have some reservations that a CDR could lead to duplication efforts and increased compliance burden for sector participants unless managed very closely.

In a sector where consumer data is accessible, we query whether the incremental benefit from further data access justifies the investment required. In our view, to reduce counter-productive compliance costs and maximise CDR uptake, the designation should limit overlap with existing (and emerging) regulatory regimes. In addition, MBIE should seek out opportunities to lighten the compliance reporting burden/cost of participating, including adopting a more permissive approach where appropriate to do so.

#### Definition of consumer, customer data, and data holders

In Mercury's view, the definition of consumers for the purposes of a CDR in electricity should be limited to residential and small business consumers. Large industrial/commercial businesses use and buy electricity (and gas) in a very specific way. They have dedicated and bespoke account-managed electricity agreements with retailers and have a different risk profile to other consumers. As a result, large industry/commercial business should be excluded from a CDR framework.

MBIE is proposing customer-related data such as name of account holder, current plan and meter type/configuration, ICP and address as well as metered data as a suitable starting point for designation. We broadly agree with this assessment as these are available data points within the Electricity Industry Participation Code 2010 (the Code). We have concerns that requiring half-hourly consumption data could create imbalances. As MBIE has highlighted, not all meters are equipped to provide half-hourly data, and rural connectivity remains an unresolved government challenge. Clarifying that data holders are not obligated to supply half-hourly data when unavailable could address this issue.

We support MBIE's preliminary thinking that all electricity retailers would be data holders for the purposes of designation. We are interested in whether there would be some situations where a data holder would also be (or could be) an accredited requestor.

---

<sup>2</sup> Electricity Authority, 2024 Code amendment omnibus four: September 2024 available from: [https://www.ea.govt.nz/documents/5481/Code\\_amendment\\_omnibus\\_4\\_-\\_consultation\\_paper.pdf](https://www.ea.govt.nz/documents/5481/Code_amendment_omnibus_4_-_consultation_paper.pdf)



We would also welcome clarification as to whether pre-and post-paid arrangements would be part of customer data or whether they would form part of product data.

#### Addressing the gaps in consumer data right

MBIE has noted that gas is not being considered for designation at this time as it would require a separate process for designation due to its unique governance arrangements.

In our view, consumers should have the ability to easily compare gas and electricity options to make decisions about electrification, especially given the significant number of 'dual fuel' customers. Many households will be considering whether or not to replace gas appliances with electric options, and to do this they need to be able to make informed decisions around fuel costs. Given the ongoing opaqueness of the gas sector compared to electricity, we believe a CDR that supports the energy transition and includes gas (even in a limited manner such as reticulated gas) would help support these important decisions by New Zealanders.

Similarly, the lack of a CDR in telecommunications has impacts for the growing number of multi-utility providers. We believe a portion of retailers might be unfairly disadvantaged in comparison activities, potentially stifling competition or innovation. This is particularly so when MBIE is considering the product field of "additional fees, discounts, credits or other benefits" as these are unlikely to be useful for consumers across New Zealand when gas or telecommunications are not included. The Commerce Commission reports they are seeing an ongoing increase in penetration of electricity and telecommunications bundlers with nearly 300,000 households bundling broadband with electricity.<sup>3</sup> We would suggest that product data be limited to core electricity price/tariff and associated fees until such time as gas and telecommunications are included.

The ability for providers to benchmark product data and location data against competitors might bring about more competition in the market but might not be useful for consumers if gas/telco bundling is not factored in this. While MBIE acknowledges the complexity of offerings, without the ability for bundled offerings to be comparable it is unlikely that consumers will truly benefit from the innovation that could result from a CDR.

#### Overseas experience and future costs

We acknowledge there is not a 'one size fits all' model to open data.

The Australian Government in May 2021 as part of their Digital Economy Strategy enabled an AUD\$1.2 billion policy to grow Australia's future as a modern and leading digital economy, out of which AUD\$111.3 million was ringfenced to accelerate the rollout of a CDR. Subsequently, in May 2023 the Australian Government announced a further \$88.8 million over two years from 2023–24 to support the operation of the CDR across banking, energy and non-bank lending sectors. The funding also expected to progress the design of action initiation<sup>4</sup> and enable improvements to cyber security.

This is not the case in New Zealand, where no government funding has been allocated to the establishment of a CDR. In New Zealand, is it unclear whether MBIE has considered the significant implementation costs involved in establishing a CDR in electricity particularly when there are existing and upcoming data access arrangements underway as outlined previously. The banking industry in Australia is estimated to have spent AUD~\$1.5b since 2018.<sup>5</sup>

<sup>3</sup> Commerce Commission, 2024, 2023 Telecommunications Monitoring Report available from:

[https://comcom.govt.nz/\\_data/assets/pdf\\_file/0033/361959/2023-Telecommunications-Monitoring-Report-15-August-2024.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0033/361959/2023-Telecommunications-Monitoring-Report-15-August-2024.pdf)

<sup>4</sup> also referred to as "write access" for some use cases and allows a consumer to permit a service provider to initiate actions on their behalf.

<sup>5</sup> Accenture, July 2024 Consumer Data Right Strategic Review July 2024 available from [https://www.ausbanking.org.au/wp-content/uploads/2024/07/CDR-Strategic-Review\\_July-2024.pdf](https://www.ausbanking.org.au/wp-content/uploads/2024/07/CDR-Strategic-Review_July-2024.pdf)



We strongly agree MBIE's preliminary assessment that that there should be no actions designated under the CDR at this stage. For example, switching in electricity is seamless compared to telecommunications fixed line broadband. However, we nonetheless acknowledge that certain actions might be designated in the future. There does not appear to be a consideration of the costs involved in designating actions at a later stage.

The experience in Australia demonstrates that the CDR has seen limited uptake in the energy sector, which raises questions about its potential impact in New Zealand. Despite CDR being designed to empower consumers, the actual take-up in Australia has been slow, partly due to low consumer engagement with complex data-sharing mechanisms.<sup>6</sup> There is no clear indication that New Zealand consumers would behave differently. This should be factored into thinking about an appropriate CDR for the New Zealand electricity sector.

### Testing sandbox and sufficient implementation timeframes

In our view, MBIE should consider developing a testing sandbox to help data holders, and accredited and prospective data recipients, test and improve their CDR solutions – particularly if its separate from the existing regulatory regime. The Authority proposed amendment to clauses 11.32A and 11.32B of the Code will standardise the format for data provision (EIEP 13 format) if MBIE envisages a different standardisation then participants should be provided with an environment to interact with the mock solutions and/or other sandbox participants. It will have the additional benefit of testing the uniformity of data, which is the critical component of a CDR, and aim to limit manual intervention thereby reducing errors.

Furthermore, for participants to have confidence in future arrangements it is essential to:

1. undertake statutory review within 5 years' time of enactment to ensure the legislation and supporting regulations remain fit for purpose and assess whether MBIE's dual role of compliance and policy agency has been successful or otherwise;
2. have a decent implementation period of at least 12 months to ensure processes are streamlined, the sandbox is utilised, and efforts are not duplicated;
3. if a longer implementation period is not possible, then we encourage MBIE to consider a longer period for compliance.<sup>7</sup>

Provided these challenges are adequately addressed, a CDR for electricity sector could provide an overarching framework particularly as it relates to the uniformity of data access arrangements, formats and provisions.

If MBIE proposes for the Minister to designate the electricity sector, we strongly recommend another round of consultation that is not just limited on the technical standards – which in our view should be industry led - but one which extends to identifying and minimising overlaps between the Code and a CDR for electricity. This is particularly important because at time of writing, the Bill has not reached Royal Assent, and it is unclear what changes will be made to the Bill before it reaches this milestone.

It essential to address the issues we outline in this submission upfront or there could be a risk that a similar low uptake such as seen in Australia could occur in New Zealand, diminishing the intended benefits of a CDR designation.

Claudia Vianello



**Regulatory Strategist**

---

<sup>6</sup> Ibid.

<sup>7</sup> This would not be a unique approach in New Zealand, for example the Commerce Commission adopted this approach whereby the industry received additional time from the effective date of the Commerce Commission 111 Contact Code to comply.

