Submission by

Z Energy & Flick

to the

Ministry of Business, Innovation and Employment

on the

Exploring a consumer data right for the electricity sector

10 October 2024

Introduction

Z Energy (*Z*) welcomes the opportunity to submit on the Ministry of Business, Innovation and Employment's (*MBIE*) discussion paper, *Exploring a consumer data right for the electricity sector*. Our responses to individual consultation questions can be found in Appendix A.

Z is one of New Zealand's largest transport energy companies and the owner of electricity retailer, Flick Electric (*Flick*). Flick was established in 2014 as an independent electricity retailer offering consumers greater choice where they get their electricity.

Flick and Z generally support the overarching purpose and intent of a consumer data right (*CDR*) in the electricity sector to help promote competition and achieve better outcomes for customers. This said, given the nature and operation of New Zealand's electricity sector, we recommend that only certain classes of electricity retailers are designated under the Customer and Product Data Bill (*the Bill*) in the first instance. Given the experience in overseas jurisdictions, particularly Australia, we further suggest that consideration is given to this initial designation only occurring once there has been sufficient time to assess the relative costs and benefits arising from CDR in the banking sector in Aotearoa New Zealand.

As our responses detail, we believe the electricity sector should follow a similar approach to designation as has been proposed in the banking sector. Our view is that there is strong justification and market drivers for initially designating the four large retailers / 'gentailers' as data holders under the Bill.

By adopting a phased approach to designation, smaller sized retailers could be brought into the designation framework at a later date (based on the size of their customer base) to provide them more time for planning, reprioritisation of expenditure, and technological implementation.

We look forward to continuing to work constructively with the Government and welcome the opportunity to hold a briefing session to go through our submission in more detail.

If there is any information that would be of use to MBIE, please do not hesitate to contact us.

Annex 1: Responses to specific consultation questions

What a consumer data right for electricity could look like	
5	**Who else may be impacted by a designation of the electricity sector? Should particular groups or classes of entities be explicitly included or excluded from a potential designation?**
	While Flick and Z generally support the overarching purpose and intent of a CDR in the electricity sector, we recommend that only certain classes of electricity retailers should be designated under the Bill in the first instance. The electricity sector should follow a similar approach to designation as has been proposed in the banking sector. Our view is that there is strong justification and market drivers for designating the four large retailers / 'gentailers' as data holders under the Bill at the outset. By adopting a phased approach to designation, smaller sized retailers could be brought into the designation framework at a later date (based on the size of their customer base) to provide them more time for planning, reprioritisation of expenditure, and technological implementation. Realistically, based on the experiences in other jurisdictions, such as Australia, we consider an appropriate lead in time for smaller sized retailers would be an additional two years after full implementation of the CDR by the large retailers. The Australian Energy Council noted that CDR was implemented too quickly in the energy sector when demand wasn't present, resulting in high costs for energy retailers and not enough time to plan appropriately. It seems clear from various insights shared from the NZ banking sector and Australian CDR experience that the cost of implementing CDR is significant for data holders, and will be particularly so for smaller energy retailers who have far more limited internal resources (both financial and personnel-wise) available to support the scale of change required to meet the technical standards of a designation under the Bill. Smaller retailers also do not necessarily have dedicated resources to produce and comply with the ongoing regulatory reporting and administrative measures prescribed under the Bill. Allowing smaller sized retailers time to assess the CDR system and adapt before they need to comply with it could reduce unnecessary costs. This would also allow time for the new system to be entrenched, with any implementation challenges to be resolved and technical standards modified where necessary, before placing the significant compliance costs of a designation on smaller sized retailers. This proposed approach of only designating large retailers would reflect the already challenging environment that smaller retailers are operating in. It also acknowledges that the addition of new regulation and the need for resource-intensive and costly IT infrastructure projects will only add to those challenges, making it harder for small retailers to genuinely compete in the market. The compliance costs to give effect to a designation under the Bill could also create a barrier to entry for new retailers wishing to enter the market and could force existing small retailers to leave the market if they are unable to acquire the resources or capital necessary to meet regulatory requirements. Smaller retailers have smaller customer bases and are less likely to be able to absorb costs in the same way as gentailers, who generally have the benefit of much larger profit margins.

	These likely consequences and the resulting financial burden on smaller retailers do not, in our view, align with the overarching intent and purpose of the CDR (to promote competition and achieve better outcomes for customers), and may in fact have the opposite effect. We highlight that a phased approach to designation has been undertaken in Australia, especially in new sectors. After reviewing the implementation of the CDR across sectors in 2023, the Australian Treasury recommended that a phased approach would be beneficial to allow the scheme to mature, and the Australian Government stated it would continue to support a staged rollout in the energy sector to help learn from the already established banking scheme[1]. Given the experience in overseas jurisdictions, particularly Australia, we further suggest that consideration is given to the initial designation for the electricity sector (for large retailers) only occurring once there has been sufficient time to assess the relative costs and benefits arising from CDR in the banking sector in New Zealand.
9	**Are there any other issues with product data we should be aware of? And why? Please provide examples.**
	We do have some concerns about how product data could be used in the market from a product comparison perspective. While accredited requestors are regulated under the Bill in respect of their technical capabilities and the protection of data, there is no corresponding oversight of their actual service offering. This means that some accredited requestors and/or third parties may not provide an accurate or fair representation of the best options for a specific consumer for various reasons. This could lead to mistrust in the system and ultimately lead to poor uptake of the CDR by customers. For example, requestors may be sponsored or engaged by certain retailers to promote their product offerings above others, or the requestor may not fully understand the complexity of the various tariff plans with reference to the granularity of individual consumption data to be able to make the best recommendations to customers. Considering this, we believe MBIE should consider whether the standards need to include specific obligations on accredited requestors to act in a certain way to ensure consumers are adequately protected. This would be in addition to their obligations under the Fair Trading Act in relation to misleading and deceptive conduct.
10	**What factors should be considered when identifying who the best data holder is under a potential CDR regime? And how might contracting agreements affect the application of a CDR in regard to data holders? (e.g., contracts between metering equipment providers and retailers to share data).**
	We believe that there is value in exploring the establishment of a centralised data holder for the electricity sector. Meter providers (who collect the relevant consumption data) could make this data available to the central depository / data holder, and all requests for such data could then be made through that one body. A similar model successfully operates in the United Kingdom allowing customers to scan a QR code on their electricity bill to immediately access their relevant consumption data in a standardised format.

[1] Australian Energy Council (2024) https://www.energycouncil.com.au/analysis/energy-regulation-a-tale-of-increasing-overload/

	Adopting a similar model to the UK, funded through industry levies, may be a more cost-efficient way to achieve the same objectives for end consumers.
11	**Do you agree with our initial framework for how to identify/designate data holders? Why or why not?**
	We generally agree with the framework proposed by MBIE in relation to determining who should be designated data holders. While the obvious data holders would be electricity retailers, for the reasons outlined in our response to Q5, it would not be in the best interests of customers, nor would it have the effect of increasing competition in the sector, if all retailers were designated in the initial designation regulations. We actively welcome and support voluntary data sharing and encourage switching to ensure our customers are on the best plan for them. In our experience, our approach tends to contrast with the approach of some larger retailers for whom there may be less incentive to proactively share data and encourage switching. To us, this demonstrates that there is value in designating large retailers to realise the intended benefits of the CDR, but less value proposition in designating smaller retailers. This is especially so noting that designating large retailers would mean approximately 85% of customers would already benefit from a CDR regime. From a data sharing perspective, Flick already makes available half hourly consumption (and export) data to its customers either through its customer App or dashboard which can be backdated to 2 years, and larger data sets of consumption data beyond two years can be requested and is made available via a standardised format in accordance with the requirements set by the Electricity Authority. Z customers can request consumption data at any time by contacting Z. Third party agents can also request consumption data through the registry which we are obligated to submit as per the Electricity Industry Participation Code (the *Code*). From a product data perspective, Flick and Z pricing plans are all available through our respective websites and prospective customers only need to enter their address to see the rates of each plan available to them. Flick also offers bill comparisons for current and prospective customers on their request. Accordingly, we do not consider that our customers would be disadvantaged by excluding smaller retailers from initial designation under the Bill as they can still easily access consumption data through their customer account dashboard, take advantage of their data rights under the Code, and take advantage of transparent and efficient pricing comparisons to ensure they are on the best plan for their individual needs. To support cohesion between the obligations of designated data holders under the Bill and small retailers subject to the Code, we strongly encourage MBIE and the Electricity Authority to continue to work together to ensure the regulations and standards under the Bill are aligned to the extent practicable with those obligations set out in the Code and avoid any unnecessary overlap. We note for example that the current consultation includes proposals for half-hourly data that already reflect current Code obligations.
Potential benefits and risks	
13	**What are your thoughts on the potential impacts of a designation on the interests of consumers? Are there any specific benefits that are likely to be enabled with**

	designation? What is the likely scale of the benefits, and over what timeframe would they occur?
	We see real benefit for customers in having better access to consumption data and more transparent product data from the large retailers, for the reasons outlined in our response to Q11 above. For smaller retailers, our view is that the cost of a designation under the Bill will likely outweigh the intended benefit to customers (and arguably those intended benefits can still be achieved without the need for additional regulatory intervention as noted above in Q11). In the current environment, we expect smaller retailers are unlikely to be able to afford to implement new systems and IT infrastructure in the timeframes proposed. The impact of a designation on smaller retailers may for example result in some small retailers being forced out of the market (meaning less choice for consumers), or the costs of implementation and compliance being passed on to consumers through higher charges/tariffs. The Australian Banking Association (ABA)'s recent review of the CDR regime in Australia found that it wasn't delivering for customers and is negatively impacting competition in the banking sector despite significant investment. The review concluded that the regime is "negatively impacting competition in the sector as mid-tier and regional banks incur disproportionately higher compliance costs compared to major banks". We consider this is a useful basis for comparison as Australia's banking sector CDR regime is analogous to what has been proposed for the NZ electricity sector in that they are both data transfer only regimes. The review also identified that high compliance costs are "forcing difficult investment trade-offs", in particular for smaller banks which, in turn, is leading to "vital" technology and customer projects being deprioritised. We expect a similar outcome could arise in New Zealand if small energy retailers were designated under the Bill. We see it as crucial that MBIE acknowledges the challenges that have arisen in Australia and specifically the Australian Treasury's observation that the pace of the rollout into new sectors did not allow time for the system to mature and capitalise on lessons learnt. As a result of this, the Australian Government has paused rollout in the superannuation, insurance and telecommunications sectors, to allow the energy and banking systems to mature. Rushing broad designations in the energy sector in New Zealand risks a low uptake of CDR products and a large amount of wasted costs for smaller retailers if uptake is low.
15	**What are your views on the nature and scale of costs/benefits? Who would these costs/benefits apply to and when?**
	We consider there are likely to be significant benefits available to customers by designating large retailers as data holders under the Bill. As already noted, designating large retailers will mean approximately 85% of customers benefit from a CDR regime. In contrast, the costs for implementing CDR will be disproportionately high for smaller retailers, who are likely to have limited capital and internal resources to support the scale of change required to meet the technical standards of a designation under the Bill. Ongoing compliance costs for smaller retailers may also outweigh the expected benefits for customers as small retailers do not necessarily have dedicated resources to produce and comply with the regulatory reporting and administrative measures under the Bill, in addition to the provision of existing reporting obligations to the

	Electricity Authority. In contrast, larger retailers are likely to be able to absorb these additional administrative compliance tasks within their existing resource capabilities. There is clear evidence from Australia around the risks of imposing heavy financial burdens on data holders in the CDR space, with the Australian Government recently instigating a reset of the country's CDR citing the cost of implementation as an impediment to adoption. The report indicated that costs significantly exceeded original estimates and, in the open banking space, there was an acute burden for small customer owned banks, particularly with the ongoing investment required into compliance with standards and rules changes. In Australia, CDR implementation costs have fallen most heavily on data holders, with one of the main contributing factors of those costs being that data holders did not have systems and data structures in place to meet technical requirements, so very significant systems development work has been required to implement the CDR. There is a real risk that the same unintended consequences and significant financial burden for small electricity retailers could arise in the New Zealand context if they are designated under the Bill, particularly where IT infrastructure systems have not been designed with CDR technical requirements in mind. Unlike in the New Zealand open banking space (where industry led work on technical requirements has been progressing for years), there is no existing infrastructure or technical mechanisms for facilitating data transfers of the kind anticipated by the CDR in the electricity sector. The implication is that the cost of implementation for the electricity sector will be significant. We do not anticipate this is likely to be viable or achievable for many (if any) small retailers from a cost perspective within the timeframes proposed.
16	**Would you be able to quantify potential additional costs to your organisation associated with designation under the Bill?**
	At this stage, it is near impossible to quantify the costs that data holders would incur in relation to a designation under the Bill. As noted above in our response to Q15, in Australia the actual costs of implementation far exceeded the original estimates. For context, Flick recently submitted to the Electricity Authority that its estimated resource costs for enhancing its technical IT systems and databases to meet the Authority's proposed new retail monitoring data requirements within the timeframes proposed would be in the order of Commercial Information [redacted].[2] This cost would increase with increases in the amount of data and/or complexity associated with extracting this. It is difficult to determine costs without understanding what the scope of the CDR regime would actually require of data holders in the electricity sector. This said, the abovementioned cost of meeting a monthly obligation to provide this information should provide MBIE with indicative costs for what might be only a subset of the data covered by the CDR regime.
Other aspects of a potential designation	
22	**Do you think that standards should be led by industry, by government or co-led? What is the role of industry in developing standards? And why?**

[2] These figures are commercially sensitive and subject to withholding grounds under s 9(2)(b)(ii) of the Official Information Act 1982. In the event a request is received for the information and its release is considered, Flick asks that it is provided with an opportunity to object.

	The CDR will need to proactively address the potential intersection and/or conflict with other existing regulatory requirements (in particular, the Code) to avoid duplication of effort and compliance cost. A co-led process will be critical to ensuring the standards are fit for purpose. We support MBIE's approach of working closely with the Electricity Authority and industry participants to ensure retailers are not overburdened by competing compliance regimes. We strongly encourage the regulatory bodies to focus on streamlining and minimising new compliance obligations by leveraging off existing work that has occurred in the industry through the development and application of the Code and adopting a permissive (as opposed to prescriptive) approach under the Bill and associated regulations and standards. In Australia, changing regulatory obligations were outlined as a major contributor to CDR compliance costs and this was a key theme of the Consumer Data Right Compliance Costs Review[3]. It is critical that MBIE use these insights to help inform the development of technical standards and regulations, alongside broad sector input, to avoid the need to continually evolve and refine the standards following implementation.

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[3] Consumer Data Right Compliance Costs Review, Report for the Department of the Treasury, December 2023 https://treasury.gov.au/sites/default/files/2024-08/p2024-512569-report.pdf