



TCF Submission to
Ministry of Business, Innovation and Employment
Discussion Document on the Options to Establish a Consumer Data Right
19 October 2020

A. Introduction

1. The New Zealand Telecommunications Forum (known as the TCF) welcomes the opportunity to provide a submission to the Ministry of Business, Innovation and Employment on the Discussion Document: Options for establishing a Consumer Data Right (CDR) in New Zealand (the Document).
2. The TCF is the telecommunications sector's industry body which plays a vital role in bringing together the telecommunications industry and key stakeholders to resolve regulatory, technical and policy issues for the benefit of the sector and consumers. TCF members provide services to approximately 95 percent of New Zealand telecommunications consumers.
3. The TCF develops and administers a range of Codes and activities to support consumers on behalf of the telecommunications industry:
 - 3.1. Number Portability: The TCF manages and administers the Industry Portability Management System on behalf of the industry. This system allows consumers to retain their home phone or mobile number when they switch provider.
 - 3.2. Product Disclosure Code: This Code is mandatory for TCF retailers and specifies what information service providers must make available to customers about their broadband plans, performance and traffic management. The Code is scheduled to be reviewed.

- 3.3. Customer Complaints Code: A mandatory code for TCF members that sets out the principles and processes for Customers to make a complaint and the handling of those complaints by the Telecommunications Dispute Resolutions scheme.
4. The TCF supports transparency of product information for consumers and supports the general concept of a Consumer Data Rights (CDR) scheme.
 5. If the Government were to establish a CDR in New Zealand, the TCF would like to work with the Government to develop legislative framework for a CDR under its preferred option.
 6. This submission does not respond to each question asked specifically in the Document, but comments generally on the concept of CDR.

B. Context

7. The TCF notes that the Document argues that the key principle for introducing a CDR is to improve outcomes for consumers by providing those consumers and businesses with choice and control over their data. The paper argues that better consumer access to data will contribute to informed consumers making knowledgeable choices, or alternatively, where they allow trusted third parties access to their data, these third parties may assist consumers with making decisions.
8. The Document looks to overseas jurisdictions such as the UK and Australia, where CDR has been introduced in order to facilitate 'open banking' (page 7). However, it is still too early to determine the extent to which the introduction of CDR in the banking sector in these jurisdictions has had the anticipated benefits. The sectors mentioned in the Document; banking, electricity and telecommunications, are all quite different in terms of product homogeneity, customer access to data, ease of switching, and customers' ability to compare products. The role that access to, and portability of, consumer data plays in the switching and product comparison process, is also therefore quite different. Consequently, the design and potential benefits of CDR in each sector will be quite different also.

C. Does NZ need a CDR?

9. The TCF acknowledges that establishing CDR in New Zealand could have benefits for consumers. However, we note MBIE's concerns about current regulatory settings regarding how data portability would be established and the interaction between CDR and the current regulatory settings such as the Telecommunications Information Privacy Code and the Privacy Act.

D. Costs and Benefits of Establishing CDR

10. Alongside the regulatory consideration is the costs and benefits to both consumers and service providers in a particular sector. For example, the greatest barrier to data

portability in the telecommunications sector is the cost of developing APIs in order to make the data available to third parties. In a sector with over 90 retailers, this cost could increase the barriers to entry.

11. The TCF notes the potential consumer benefits set out in the Document. However, some of the benefits place considerable weight on the concept that consumers could, or would, behave differently had they better access to data regarding their own needs. The TCF considers that further analysis is required to assess consumer behaviour within sectors against the intended outcome the Government wishes to achieve. To avoid unintended adverse consumer outcomes, the environment should be appropriately assessed before any intervention is implemented.
12. Some of the consumer benefits listed across particular sectors in the Document arguably require the removal of certain structural barriers to switching, but it is not clear at this stage in the assessment that introducing a CDR would remove these barriers. .
13. We are also concerned of the costs and risks of implementing write access. Our industry is already fighting security risks on multiple fronts as has been seen from the recent DDOS attacks, and an increasing number of scam calls and texts and other types of fraud. Increasingly customers are making choices of service provider based on who they can trust with their data. Write access would take this capability out of our member's hands.
14. To safely implement write access there would have to be a sophisticated assurance regime overseeing the security practices of third parties, and a robust monitoring regime by government. The brief discussion on accreditation at paragraphs 49-51 does not fully capture this mammoth task. It is not clear to us that the substantial costs of such a regime are worth any potential benefits. We recommend that the decision to include write access is made sector by sector, rather than enshrined in legislation.

E. Options for consideration

15. CDR is being adopted internationally with various models developed, the Document's options traverses the current major trends. For example, the Australian example (option 2) where legislation is put in place and CDR is applied to a sector by designation by the Australian Treasurer, or the EU example (option 3 & 4) which applies CDR to strengthen data protections for consumers and allows for the access and use of their personal data, with particular sector solutions being put in place for those areas deemed high focus like banking.
16. The TCF supports MBIE's approach to assess each of the options for establishing a CDR against the following criteria: trust, reach, speed, cost and flexibility.

Option 1: Status quo

- 16.1. The TCF agrees that a different approach is required for different sectors. Consumer data held by the telecommunications retail service provider, and their provider's product offerings are quite different to the data held by banking and electricity providers. In addition, sectoral regulators have different tools available to regulate behaviour in each sector. The role of sectoral regulators and the needs of consumers in each sector have not been considered in the discussion paper.

Option 2: A sectoral-designation approach

- 16.2. The TCF in principle supports MBIE's preferred option 2 noting it would have the benefit of alignment with Australia. In some ways it is similar to the current regulatory (statutory and code based) framework for telecommunications where the industry is required to self-regulate to resolve consumer issues, and the regulator acts as a backstop with specific tools and options for intervening with prescriptive rules where self-regulation fails to achieve the prescribed outcomes.
- 16.3. Further consideration of this option specifically on the telecommunications sector would be required before additional generic requirements are imposed. There is a risk that in the absence of sector specific analysis, providers could be subject to significant costs.

Option 3: An economy-wide consumer data right

- 16.4. This option would apply across the entire economy, rather than to specific sectors, but it would be primarily focused on data about individuals and not information about businesses, or 'product data'.
- 16.5. The TCF notes some of the 'cons' against this option in the Document may have major implications for businesses such as the requirement to provide data to third parties in a machine-readable way. Therefore, costs may be disproportionate to the benefits received, particularly for smaller businesses or in certain sectors of the economy. The TCF recommends that further analysis would be required on this option to fully understand the costs to business and the realised benefits for consumers.

Option 4: sector specific approach with no overarching framework.

- 16.6. This option arguably already exists in the telecommunications sector, as the sector already complies with specific legislation relating to the use of personal data e.g. Telecommunications Information Privacy Code. The TCF, as indicated by the Commerce Commission, could proceed with developing specific CDR elements for consumers of telecommunication services. Legislation would not be

required as the Commission already has the tools necessary to resolve consumer issues within the sector.

F. Conclusion

17. The TCF acknowledges that establishing CDR in New Zealand could improve consumer outcomes in certain markets. The TCF supports establishing an overarching legislative framework, and sectors are then considered separately. Specifically, this approach would clearly identify the likely benefits to those consumers, the costs to the particular sector, and consumers, and provide for the necessary interventions to realise those benefits.
18. The TCF looks forward to working with MBIE on the next phase of its consultation, and is happy to answer any questions regarding the information provided and the views set out in this submission.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'G. Thorn', followed by a horizontal line.

Geoff Thorn
Chief Executive Officer
New Zealand Telecommunications Forum (TCF)