COMMUNICATIONS ALLIANCE LTD

COMMUNICATIONS ALLIANCE SUBMISSION

to the

Proposed amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020*

14 October 2022

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About Communications Alliance

Communications Alliance is the primary communications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including carriers, carriage and internet service providers, content providers, platform providers, equipment vendors, IT companies, consultants and business groups.

Its vision is to be the most influential association in Australian communications, co-operatively initiating programs that promote sustainable industry development, innovation and growth, while generating positive outcomes for customers and society.

The prime mission of Communications Alliance is to create a co-operative stakeholder environment that allows the industry to take the lead on initiatives which grow the Australian communications industry, enhance the connectivity of all Australians and foster the highest standards of business behaviour.

For more details about Communications Alliance, see http://www.commsalliance.com.au.

Submission provided to:

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INTRODUCTION

Communications Alliance welcomes the opportunity to make this submission in response to the exposure draft of the Proposed amendments to the *Competition and Consumer (Consumer Data Right) Rules 2020* and Explanatory Materials.

The telecommunications industry values the ongoing consultative processes undertaken by the Department of the Treasury in relation to the Consumer Data Right (CDR) framework as it will relate to our industry, including the stakeholder forums held on 28 September 2022.

However, we also note the recently released Statutory Review into the CDR, and in particular, finding 1.2 and recommendation 1.4 and welcome Treasury's consideration and action on these matters:

- **Finding 1.2:** In developing the CDR, multiple agencies are seeking regular feedback from a wide range of stakeholders. CDR participants, particularly smaller ones, have found it difficult to engage with these successive consultation processes. Consultation is important to successfully implement the CDR, however, the extent and scope of consultation are barriers particularly for smaller participants and consumer groups. Without better coordination or consideration of ways to lessen the consultation load, there may be adverse competition outcomes that are contrary to the policy objectives of the CDR.
- **Recommendation 1.4:** To provide greater clarity and certainty to all participants, the Government, with CDR agencies, should provide greater transparency on CDR consultation processes and a timeline that outlines expected future developments.

Members of Communications Alliance may make individual submissions.

For any questions relating to this submission please contact Christiane Gillespie-Jones on 02 9959 9118 or at c.gillespiejones@commsalliance.com.au.

1 DEFINED TERMS FOR THE TELECOMMUNICATIONS SECTOR

1.1 Part 1, Schedule 5 of the Amending Rules sets out the defined terms for the telecommunications sector. Clause 1.3 sets out the meaning of 'customer data', 'account data', 'billing data', 'product specific data' and 'usage data'.

More detail in the Amending Rules

1.2 The exposure draft Explanatory Materials note that the Amending Rules define telecommunications data sets by means of broad descriptors, combined with minimum inclusions of key data, to allow flexibility for further refinement and specification of data sets in the data standards.

1.3 While this may superficially appear prudent (to accommodate flexibility in the future), we note this is already accommodated through 'voluntary data', and we are concerned that the rules are currently too loose in their definition such that they do not provide adequate guidance to the standards setting process.

1.4 There are many examples where there is significant opportunity to tighten the scope of the CDR rules to provide better guidance to the standards setting process. For example, product specific data includes 'bundles', but it is not clear what is intended by the term bundle. Is it limited to other 'relevant products' (as per the definition), or does it potentially include devices or other products (for example, streaming video on demand) services sold together with the carriage service? Similar questions arise on terms such as 'accessibility' (Schedule 5, clause 1.3, item 4(b)(vii)) and 'duration of calls' (Schedule 5, clause 1.3, item 5(b)(i)).

1.5 We also have concerns regarding data type such as 'payment method' (Schedule 5, clause 1.3, item 3(b)(iv)) and information related to a customer's eligibility to acquire a product (Schedule 5, clause 1.3, item 1(b)(iii)(B)) given the current heightened sensitivity on data security.

1.6 Communications Alliance members would welcome the opportunity to work with Treasury to refine the data definitions in Schedule 5 of the CDR rules.

Services in operation

1.7 We welcome the effort by Treasury to ensure that the telecommunications sector-specific requirements are intended to align with existing industry regulations where possible, avoiding additional, unnecessary layers of regulatory burden and minimising implementation costs for data holders. In the interests of this alignment, the requirements apply to carriage service providers but not to carriers, although the latter are also specified as data holders in the designation instrument.

1.8 Smaller carriage service providers (<30,000 services in operation) have been excluded from mandatory obligations under the CDR, but can opt in to participate on a voluntary basis in relation to product or consumer data or both. This aligns with the Telecommunications Consumer Protections (TCP) Code definition of 'small supplier' (a supplier with fewer than 30,000 services in operation) which industry supports.

1.9 We understand the de minimis threshold of 30,000 services in operation means all services in operation, whether mobile or fixed, and agree this threshold is appropriate.

Account data

1.10 The defined term 'account data' excludes information about whether the account is associated with a hardship program, which we support. We understand hardship in this context to mean 'financial hardship', where a customer is unable to pay a bill, and is on a repayment plan. We consider hardship in this context does not mean hardship in the context of support for vulnerable members of the community such as Priority Assist [1], nor does it relate to matters such as accounts flagged for victims of domestic and family violence. We strongly recommend this type of 'hardship' information should be expressly excluded.

Usage data

1.11 A stated purpose of the CDR includes to allow consumers to access consolidated information about their internet and mobile bills. Therefore, the defined term 'usage data' should only be the usage data for the relevant product, as it appears on a bill.

1.12 As currently defined in Schedule 5, usage data is the number and duration of voice calls, the data usage and number of SMS messages and for any relevant product that includes data, that data usage of that product.

1.13 However, 'usage data' should be more clearly defined to make it clear that the only required itemised data is that which appears on a bill – specifically stating 'itemised usage data for the purposes of billing'. In summary, the information on a bill should be provided in digital form through the CDR.

1.14 A telecommunications provider may offer streaming services or pay-TV with an internet and/or phone service. The way that each of these services appears on the bill can differ. The entertainment service and an unlimited internet service may be typically shown as a monthly fee with no usage data, whereas a mobile phone bill may show information about the calls and data usage (although it may not if calls/sms etc are unlimited).

1.15 Given unlimited plans may show the monthly fee for the service, and may not include detailed usage, it should not be mandatory to provide the usage information for unlimited plans under CDR because the usage does not appear on the user's bill. Many providers do not have systems in place to meter usage data for unlimited internet and voice/SMS plans and the investment required to capture such data and inject it into the CDR system would be prohibitive.

1.16 In light of the definition of 'required consumer data' in clause 3.2(2), our understanding is that only usage data that is 'held' in 'a digital form' would be required to be provided, and, therefore, if a provider did not hold detailed usage data in digital form, they do not have to make system changes to keep data in a certain form in order to provide it. If this understanding is not correct, we ask Treasury to clarify the intended operation.

1.17 In fact, it would greatly clarify the CDR regime for CDR participants and consumers alike if Treasury could expressly state that, as a general principle, if a provider does not already collect, hold, or produce any category or item of CDR data, they do not have to make any changes (whether in process or system or otherwise) to collect, hold, or produce such category or item of CDR data for purposes of the CDR.

Metadata

[1] Communications Alliance Code C609:2007, Priority Assistance for Life Threatening Medical Conditions, available at: https://www.commsalliance.com.au/Documents/all/codes/c609

1.18 The Amending Rules set out circumstances in which data is neither required nor voluntary consumer data, which includes data that is metadata in relation to communications. This is appropriate; however, it is not clear whether the metadata that appears on bills is also excluded, and this should be clarified.

1.19 For example, with unlimited broadband products there is often limited, if any, metadata made available to consumers on their bill. The information on the bill is information about the subscriber and the account, rather than the use of their broadband service. However, for mobile services the duration of a call may appear on a bill. If this is considered metadata for the purposes of CDR the Amending Rules should make this clear.

1.20 The term 'metadata' should be clearly defined in the Amending Rules, to reduce the risk of individual interpretation by CSPs about what metadata includes – or excludes. There is a conflict in the current drafting of the Amending Rules that needs to be resolved – metadata is excluded, but the definition of 'usage data' is inclusive rather than exclusive (i.e., not finite) and can be interpreted, depending on the definition of metadata, to include metadata.

1.21 This leads to a legal conflict that needs to be addressed. The best way to address it, in our view, is to make the definition of usage data exclusive, e.g. by limiting the usage data to usage data for the purpose of the bill (which would still require a sentence that any such data does not constitute metadata).

1.22 Finally, the defined term 'usage data' does not appear to include MMS, only SMS. MMS should be included unless there is a logical reason to exclude it.

2 ELIGIBLE CDR CONSUMERS IN RELATION TO THE TELECOMMUNICATIONS SECTOR

2.1 The CDR Rules define economy-wide eligibility criteria that consumers must meet in order to participate in the CDR regime. The Amending Rules set out additional eligibility requirements for the telecommunications sector, which are that the open account of the data holder must relate to a relevant product and must be set up in such a way that it can be accessed online.

Eligible CDR consumers in the telecommunications sector

2.2 The Amending Rules set out the additional consumer eligibility requirements for the telecommunications sector, being that the account must relate to a relevant product, must be set up in such a way that it can be accessed online and must not be a large-scale commercial account.

2.3 We understand that Treasury has applied the same approach regarding online services as the banking sector, in that some customers may choose not to use online services, but if they have the option to do so, then they fall within the eligibility criteria – i.e., whether the customer chooses to access the online services is immaterial, as long as the online access has been offered. Treasury should clarify that customers who do not have access to or have chosen not to create an online account are excluded.

Large-scale commercial accounts

2.4 The Amending Rules exclude 'large-scale commercial accounts' from the CDR where the spend associated with (or forecasted for) the account exceeds $40,000 over a 12-month period.

2.5 This aligns with the TCP Code, which defines a 'consumer' as an individual, or a business with an annual spend with the supplier that is no greater than $40,000. This is an established term understood by industry. Aligning with the TCP Code will provide regulatory certainty for industry, and will reduce the compliance burden which is appropriate. Conversely, adopting a higher threshold will increase compliance costs which, ultimately, are likely to be borne by consumers.

2.6 An account is also defined as a 'large-scale commercial account' if the account holder had a genuine or reasonable opportunity to negotiate its terms. This is appropriate, as individuals tend to have standard contracts (a Standard Form of Agreement or similar) based on advertised terms. Customers that are able to negotiate terms or products tend to be significant businesses with bespoke accounts.

2.7 Business and large-scale commercial accounts may already have access to data through existing customer portals – for example, a business with multiple mobile services and handsets will be able to see the data for each individual service but will pay one consolidated bill for all services. In summary, we strongly agree that large scale commercial accounts should be excluded from the CDR.

Secondary users

2.8 The Explanatory Materials (paragraph 11) notes that it is Treasury's intention to exclude secondary users for the telecommunications sector, and we agree this is the appropriate approach. However, we are concerned that the proposed drafting of 'Additional criteria for eligibility – telecommunications sector' (Schedule 5, clause 2.1) does not fully give effect to this intention due to the definition of 'secondary user' (clause 1.7) and 'Meaning of eligible' (clause 1.10B) in the General Rules.

2.9 As noted in the Communications Alliance submission in April 2022, there are varying approaches to account structures across industry. This may include:

(a) account holder (has the contractual relationship with the provider and full account privileges and is a common legal concept);

(b) authorised representatives / third parties / other contacts (who may be authorised for some but not all account privileges, for example, they could make account or billing enquiries but could not close an account);

(c) Other end-users (may use telecommunications services/products, for example, multiple mobile phones on the one account, but have no account management privileges).

2.10 Communications Alliance previously submitted that only the Primary Account Owner (i.e. the account holder) should be considered an eligible CDR consumer to minimise authentication/consent complexities and we believe Treasury intended to adopt this approach given the comments in the Explanatory Material.

2.11 While we think the proposed drafting clearly excludes other end-users who do not have any account privileges from being considered an eligible CDR consumer, we do not think the proposed drafting fully gives effect to Treasury's intention that only account holders be considered eligible CDR consumers.

2.12 This is because authorised representatives/third parties with some account privileges are not clearly excluded as they potentially come within the definition of 'secondary user' in the General Rules. 'Secondary user' is defined to include a person who "[…] has account privileges in relation to the account" (Clause 1.7). This could potentially capture authorised representatives /third parties who may have some account

privileges even though they do not have all account privileges (the definition does not go into this level of detail). As such, by virtue of clause 1.10B of the General Rules, these secondary users would be considered eligible CDR consumers, unless they are specifically excluded by the sector-specific Schedules.

2.13 Communications Alliance members maintain their view (as previously submitted) that only the Primary Account Owner with the direct contractual relationship with the provider and full account privileges should be considered an eligible CDR customer.

2.14 As such, we believe the additional criteria for eligibility in the telecommunications sector specific Schedule (Schedule 5, clause 2.1) needs to expressly exclude 'secondary users' so that only account holders can make CDR requests / authorisations. Communications Alliance considers this express exclusion is necessary to minimise complexity to industry in implementation, for the clear operation of the Rules and to fully give effect to Treasury's intention.

3 CDR DATA THAT CAN OR MUST BE DISCLOSED

3.1 Part 3, Schedule 5 of the Amending Rules sets out the CDR data that can be accessed under the Rules, which are defined as required product data, voluntary product data, required consumer data and voluntary consumer data. Data explicitly excluded includes account type, closed accounts, historical data more than 12 months before the request was made and metadata.

3.2 Unlike some other industry sectors, the telecommunications industry already provides a substantial amount of information to customers. For example, CSPs provide a summary of each of their current offers (the Critical Information Summary (CIS)), free of charge to allow consumers to compare offers provided by each CSP which best suit their needs.

3.3 The CIS includes a description of the services, the minimum and maximum monthly cost, the minimum term of the offer, whether the offer depends on a bundling arrangement, applicable early termination fees, information about how to access internal dispute resolution processes and contact details for the Telecommunications Industry Ombudsman.

3.4 The Amending Rules define telecommunications data sets by means of broad descriptors, combined with minimum inclusions of key data. The exposure draft Explanatory Materials state this approach allows flexibility for further refinement and specification of data sets in the data standards. We object to this approach. It is not the role of the data standards (and the Data Standards Body) to define the data sets, partly driven through unreasonable timeframes. Instead, the Rules ought to clearly state that the detail in the data standards should align with the requirements of the data to be made available under the TCP Code, to prevent duplication.

Publicly offered products

3.5 The Amending Rules must be clear and workable from a practical perspective. We are concerned that this is not the case for product data requests related to products available to business and enterprise customers.

3.6 The Amending Rules limit product data requests to 'publicly offered' products, as is the case in the banking sector The term 'publicly offered' is not defined in the Amending Rules, and no guidance is provided in the Explanatory Materials.

3.7 The term 'publicly offered' products does not clearly enough exclude products available to enterprise and business customers from product data requests, despite the unclear benefit for this customer cohort and the significant regulatory burden. There is no standard set of product information made available in relation to enterprise and business products that would easily facilitate product data requests or enable comparison or product switching through CDR.

3.8 In contrast, for consumers, CISs and Key Fact Sheets are already made available for offers advertised on a provider's website. In this context, the term 'publicly offered' products serves the function of appropriately excluding legacy or grandfathered products from product data requests. This intent should also be set out in the Explanatory Materials.

3.9 However, it is more complicated from a business or enterprise perspective. The term 'publicly offered' does not provide the necessary clarity to exclude enterprise products that are advertised on a provider's website for marketing purposes, for example, but where publicly available information is at a high-level and does not include pricing. If pricing is not included in the publicly available information about the product, then does this mean it is not an 'offer'? Further, the fact that these products may have standard terms and conditions, to facilitate ease of doing business, does not enable comparison between products when these terms do not extend to pricing.

3.10 In these circumstances, we submit that business and enterprise products, should be excluded from scope of the product data request – regardless of whether they are advertised publicly or the level of negotiation – and that this should be made clear in the Explanatory Materials.

4 DISPUTE RESOLUTION REQUIREMENTS IN RELATION TO THE TELECOMMUNCIATIONS SECTOR

4.1 Part 4, Schedule 5 sets out the requirements that accredited persons and data holders in the telecommunications sector must meet in relation to their internal and external dispute resolution processes.

4.2 For internal dispute resolutions, accredited persons must comply with ASIC's Regulatory Guide 271, and data holders must comply with *Telecommunications (Consumer Complaints Handling) Industry Standard 2018*.

4.3 For external dispute resolutions, accredited persons must be members of the Australian Financial Complaints Authority and data holders must be members of the TIO.

4.4 The Explanatory Materials states that the multiple dispute resolution body structure is intended to minimise disturbance to the existing jurisdiction of the external dispute resolution providers, and ensures appropriate expertise is brought to bear on disputes.

4.5 This 'no wrong door' approach was applied in both the banking and energy sectors, so that disputes can be triaged to the appropriate body with a simple, consumer-centric experience. This is intended to offer clarity and simplicity to consumers, so that, if they are dealing with a CSP in any capacity, there is a recognised dispute resolution channel, and if they are dealing with an accredited data recipient, there is also a recognised dispute resolution channel.

4.6 We support the 'no wrong door' approach, but processes need to be put into place to assure that complaint ends up with the appropriate body. More detail is needed around how this will work in practice, including detail around how the dispute agencies will work together to manage complaints. Further, guidance should be put in place to

clarify that if a complainant goes to the 'wrong door' (for example, the TIO), then fees should not be charged to carriage service provider and the 'complaint' must not enter the respective statistics of that body.

4.7 Regarding membership of the TIO, under Sections 128 and 132 of the *Telecommunications (Consumer Protection and Services Standards) Act 1999* (Act), all carriers and eligible CSPs already have a legal obligation to join the TIO. If a data holder is not a CSP but is a required to join the TIO, this may require substantial additional work around the inner workings of the TIO, membership, fees, constitution etc.

5 STAGED APPLICATION

5.1 Part 5, Schedule 5 sets out a two-stage application of the CDR to the telecommunications sector.

Staged application

5.2 Telstra, Optus and TPG Telecom must comply by the Tranche 1 date, which is yet to be determined, but will be at least 12 months from the making of the Rules. The remaining CSPs (defined as 'large CSPs' or those with over 30,000 services in operation) must comply from the Tranche 2 date, which will be 12 months after Tranche 1.

5.3 We understand a similar approach was taken in the application of CDR to the banking and energy sectors, where major corporations in each sector implemented CDR in a first tranche, and smaller operators were afforded additional time through a second tranche. We have no 'in principle' object to this two-staged approach being used for the telecommunications sector.

Phased implementation

5.4 The CDR Rules, however, leave no scope for a phased implementation for the telecommunications sector. Phased implementation was employed in the banking sector, where the major four banks were permitted to introduce banking products across three discrete phases[2] across roughly 7 months (1 July 2021 for phase 1 through to 1 Feb 2022 for phase 3). Similarly in the energy sector, gas products are not in scope for Version 1 of Energy CDR, but instead are flagged for consideration in the future.

5.5 Given: 1) the breadth of data captured by the rules; 2) inclusion of both consumer and small business customer segments for both fixed internet and mobile 'relevant products'; 3) the significant increase in complexity related to Outsourced Service Providers (OSPs); and 4) the heightened sensitivity around data breaches and data security, we consider implementing the full obligations of CDR for telecommunications in a single phase is likely impossible (or at least, very difficult) and very risky, especially if the timeframe is only 12 months. We urge Treasury to reconsider the timeframes and introduce a *phased implementation* for the telecommunications sector.

Timeframe to comply

5.6 While we support the phased application, industry needs more time to comply than the proposed 12 months from the making of the Rules. The proposed date for Tranche

[2] CDR Rules, proposed amendments, Schedule 3, clause 1.4 and the Commencement Table in Schedule 3, clause 6.6. Note that the phasing for banking was amended, and the ACCC's website contains the final phasing for banking, dated 19 February 2021. It is available at https://www.accc.gov.au/focus-areas/consumer-data-right-cdr-0/accc-makes-amendments-to-the-consumer-data-right-rules, and the infographic available on that website sets out the timing: https://www.accc.gov.au/system/files/20-64FAC_CDR_Phasing_D07.pdf

1 should be no earlier than 24 months from the making of the Rules, and should include a phased introduction approach to reduce the risk that arises from attempting to do too many aspects in a single tranche. This is based on the experience in other sectors in complying with CDR.

5.7 The 12-month CDR implementation timeframe did not prove to be sufficiently long for the banking sector and is highly unlikely to provide sufficient times for budgeting, execution and testing of IT and business process changes, and recruitment and training of staff in the telecommunications sector.

5.8 The length of time taken to make the data standards should also be carefully considered in setting the timeframe for commencement, which has been an issue in the application of CDR to the energy sector.

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