Submission on discussion document: *Options for establishing a consumer data right in New Zealand*

Your name and organisation

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Organisation	Google

Responses to discussion document questions

Does New Zealand need a consumer data right?		
1	*Are there any additional problems that are preventing greater data portability in New Zealand that have not been identified in this discussion document?*	
2	*Do you agree with the potential benefits, costs or risks associated with a consumer data right as outlined in this discussion document? Why/why not?*	

Google broadly supports a consumer data right for New Zealand.

Google's approach to data portability is simple: the user comes first. Google has been a leader on data portability for more than a decade. In 2007, Google formed a team of engineers dedicated to "liberating" data so that consumers and businesses using Google products always have a choice when it comes to the technology they use. This team developed early iterations of our data portability tools that allowed users to export a copy of their data from Google products.

Four years later, we launched a data portability product called "Google Takeout" to centralise this function and we have continued to invest in this product. Takeout currently allows users to export a copy of their data from over 70 Google products, including sending a copy directly to certain competing services.

Google is also expanding on these efforts through its work on the Data Transfer Project, an initiative Google founded and continues to lead with industry partners that is aimed at making it easier for users to transfer their data directly between online services. Google has also called for the adoption of responsible data protection regulation that gives users the ability to download their personal data in a machine-readable format.

Data portability benefits both consumers and competition by enabling user control over their data, promoting user choice, and driving innovation and competition between providers.

Making it easier for consumers to choose among services facilitates competition, giving users the power to try new services and choose the offering that best suits their individual needs. For example, mobile number portability has been found to "promote competition between telecommunications service providers by, among other things, allowing

customers to respond to price and service changes without changing their telephone numbers."

Data portability ensures that the digital marketplace remains competitive by allowing users to choose where they take their business. Google has always believed that consumers should use our products because they provide unique value and features — and, if a user wants to switch to another product or service because they think it is better — they should be able to do so as easily as possible. This concept of allowing users to choose products and services based on choice, rather than being locked in, helps drive innovation and facilitates competition.

3	*Are there additional benefits, costs or risks that have not been explored in the above discussion on a consumer data right?*
4	*What would the costs and benefits be of applying the consumer data right to businesses and other entities, in addition to individuals?*
	See Data Driven Innovation in NZ, 2015 Report
5	*Do you have any comments on the types of data that we propose be included or excluded from a consumer data right (i.e. 'consumer data' and 'product data')?*

Principles for Data Portability

We have established principles (agreed to by the Partners of the Data Transfer Project) that describe best practice from our perspective. Governments may wish to consider these principles when making decisions about portability standards and requirements.

● **Build for users:** Data portability tools should be easy to find, intuitive to use, and readily available for users. They should also be open and interoperable with standard industry formats, where applicable, so that users can easily transfer data between services or download it for their own purposes.

● **Privacy and security:** Service providers on each side of the portability transaction should have strong privacy and security measures—such as encryption in transit—to guard against unauthorized access, diversion of data, or other types of fraud. It is important to apply privacy principles such as data minimization and transparency when transferring data between providers. When users initiate a transfer they should be told in a clear and concise manner about the types and scope of data being transferred as well as how the data will be used at the destination service. Users should also be advised about the privacy and security practices of the destination service. These measures will help to educate users about the data being transferred and how the data will be used at the destination service.

● **Reciprocity:** While portability offers more choice and flexibility for users, it will be important to ensure that flexibility is consistent across the ecosystem. A user's decision to move data to another service provider should not result in any loss of transparency or control over that data. Specifically, individuals should have assurance that data imported to a provider can likewise be exported again, if they so choose. There should not be a dead-end for users in transferring their data, and any service

provider that only offers import should be transparent and upfront about this.

- **Focus on user's data:** Portability efforts should emphasize data and use cases that support the individual user. Focusing on content a user creates, imports, approves for collection, or has control over, reduces the friction for users who want to switch among products or services or use their data in novel ways, because the data they export is meaningful to them. Portability should not extend to data that may negatively impact the privacy of other users, or data collected to improve a service, including data generated to improve system performance or train models that may be commercially sensitive or proprietary. This approach encourages companies to continue to support data portability, knowing that their proprietary technologies are not threatened by data portability requirements. For a detailed taxonomy of such data, see ISO/IEC 19944:2017.

- **Respect Everyone:** We live in a collaborative world: people connect and share on social media, they edit docs together, and they comment on videos, pictures, and more. Data portability tools should focus only on providing data that is directly tied to the person requesting the transfer. We think this strikes the right balance between portability, privacy, and benefits of trying a new service.

We believe these principles promote user choice and encourage responsible product development, maximizing the benefits to users and mitigating the potential drawbacks. These principles are described in the White Paper

For further information, please see:

- DTP Public Link: https://www.regulations.gov/document?D=FTC-2020-0062-0010

- Google Public Link: https://www.regulations.gov/document?D=FTC-2020-0062-0011

6	*What would the costs and benefits be of including both read access and write access in a consumer data right?*
	There are a range of factors to consider, but in essence we think direct service-to-service portability is a positive development. Please see the Data Transfer Project for further details.

What form could a consumer data right take in New Zealand?

7	*Do you have any comments on the outcomes that we are seeking to achieve? Are there any additional outcomes that we should seek to achieve?*
8	*Do you have any comments on our proposed criteria for assessing options? Are there any additional factors that should be considered?*
9	*Do you have any comments on the discussion of Option one: Status quo?*

10	*Do you have any comments on the discussion of Option two: A sectoral-designation process?*
	There are different ways in which businesses operate within a sector - some may be clearly in one sector and not in other sectors. Other businesses may have limited or partial involvement across a range of sectors. It would be important to consider thresholds and existing portability options within a sector before the sector and/or a business is designated.
11	*Do you have any comments on the discussion of Option three: An economy-wide consumer data right?*
12	*Do you have any comments on the discussion of Option four: Sector-specific approach?*
13	*This discussion document outlines four possible options to establish a consumer data right in New Zealand. Are there any other viable options?*
14	*Do you have any comments on our initial analysis of the four options against our assessment criteria?*
15	*Do you agree or disagree with our assessment that Option two is most likely to achieve the best outcome using the assessment criteria?*
	Google broadly agrees that developing option two, a sectoral-designation approach, is more likely to enhance benefits and mitigate costs.

How could a consumer data right be designed?

16	*Do you agree with the key elements of a data portability regime as outlined in this section? Are there any elements that should be changed, added or removed?*
	See principles outlined above.
17	*Do you have any feedback on our discussion of any of these key elements?*
18	*Are there any areas where you think that more detail should be included in primary legislation?*
19	*How could a consumer data right be designed to protect the interests of vulnerable consumers?*

20	*Do you have any suggestions for considering how Te Tiriti o Waitangi should shape the introduction of a consumer data right in New Zealand?*
21	*How could a consumer data right be designed to ensure that the needs of disabled people or those with accessibility issues are met?*
22	*To what extent should we be considering compatibility with overseas jurisdictions at this stage in the development of a consumer data right in New Zealand?*
23	*Do you have any comments on where a consumer data right would best sit in legislation?*
24	*Do you have any comments on the arrangements for establishing any new bodies to oversee parts of a consumer data right?*
25	*What are the pros or cons of having multiple regulators, or a single regulator, involved in a consumer data right?*
	If a sector specific consumer data right is developed (as per option two), then the relevant sectoral regulator should have some role. For example, in the finance sector this may be the Banking Ombudsman. Having said that, as the subject matter relates to personal information there may also be a role for the Privacy Commissioner.
26	*If government decides to establish a consumer data right, do you have any suggestions of how its effectiveness could be measured?*
	It may be helpful to consider proxies such as the number of access requests and surveys on whether consumers feel more empowered.