Options for establishing a consumer data right in New Zealand

Spark Submission

Public Version

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Summary

1. A Consumer Data Right (CDR) is a regulatory tool that could be applied to a range of policy concerns and which, when used appropriately, could potentially unlock benefits for consumers in some markets. One size will not fit all though, and the scope and application of a CDR is likely to vary in application across different sectors so any legislative framework must be flexible enough to allow for this.
2. We support a high-level legislative framework that can create a common framework for CDRs to ensure consistency where appropriate, but that permits flexibility in exactly how and when a CDR might be implemented in different sectors. The legislative framework should define the process and structure of the analysis which needs to be performed before the appropriate level of CDR intervention can be rolled out to a specific sector.
3. For example, telecommunications is a highly-regulated and highly-competitive sector with lots of product options for customers, offered by a large number of retailers, using multiple different wholesale models. The sector has a history of continuous retail innovation in fixed and mobile services.
4. As a data-driven retailer, we see opportunities in a CDR to help consumers understand and select from their product options in this complex sector. But we can also see the potential for increased complexity and consumer harm from a poorly designed CDR that, rather than enhancing competition in a sector, suppresses innovation and skews markets towards competing only on a core set of metrics determined by the CDR.
5. This risk can be minimised by an overarching structural framework which requires a robust market review, a problem definition and industry consultation, as well as explicit consideration of the benefits and costs (which can be considerable) of different degrees of CDR to determine the optimum level of intervention for that sector.

Sector Specific CDRs

6. Spark welcomes the opportunity to submit on MBIE's consultation document on options for establishing a consumer data right in New Zealand.
7. MBIE states that the aim of a CDR is to give rise to new products and services, allow consumers to compare products more easily, seamlessly switch product providers and transact with more convenience. The expectation would be that a CDR would be implemented where it will increase competition and innovation which, in turn, will benefit consumers by leading to reduced prices and improved product offerings.
8. While the concept of a CDR is relatively new, international experience with considering and implementing CDRs suggests that the benefits delivered by a CDR will depend on existing factors such as the level of consumer participation in the market, the level of retail innovation, and the relevant industry structure.

9. It also suggests that the cost of implementing a CDR may be material for organisations participating in sectors in which a CDR is implemented. Spark's initial estimates of the costs to our business of implementing CDR functionality in our network may well run into the tens of millions of dollars and considerably more under some scenarios where a CDR requires that write access be provided. As these costs are ultimately likely to be passed on to consumers through higher retail prices, it will be important to ensure that the design and implementation of a CDR avoids imposing this level of cost onto market participants.
10. It is essential therefore that there is a clear statement on what problem the CDR is attempting to address for each sector. That allows the cost of the intervention to be weighed up against the expected benefits for consumers. The framework should clearly set out the high level principles of a CDR and how the problem statement should be designed.

The Telecoms Sector already exhibits strong evidence of high levels of competition and innovation.

11. Our observation is that New Zealand's telecommunications sector already performs very well in many of the areas identified in international literature as the target benefits from the introduction of a CDR. Our sector has intense competition (as the Commerce Commission consistently finds in its markets studies and annual market monitoring reporting), very high innovation rates, as well as a sector-specific regulatory access framework that makes our retail markets the most highly-regulated in New Zealand. In particular:
    - New Zealand's mobile telecommunications sector is ranked 3rd best in the world in the GSMA's mobile connectivity index and has been in the top 3 since 2014. This index ranks countries across four categories: infrastructure, affordability, consumer readiness, and content and services. [1]
    - New Zealanders can choose from a range of broadband access technologies including fibre, fixed wireless, cable and copper.
    - Fibre access is wholesaled by the four local fibre companies and other independent providers.
    - There are three competing mobile networks, each with nationwide coverage, and we are at the forefront of mobile network technology deployments including wireless broadband and 5G.
    - Overall investment in the telecommunications industry was $1.7billion in 2019.
    - The Commerce Commission noted in its 2019 annual report that smaller retailers continue to grow their share of broadband connections and now

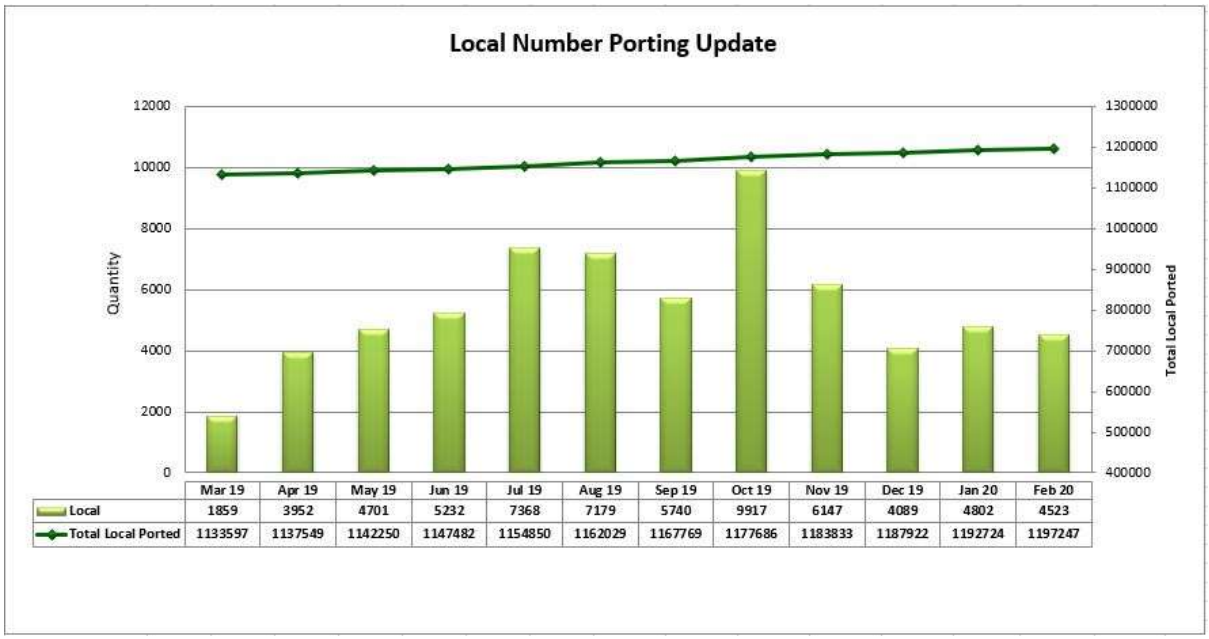
[1] https://www.mobileconnectivityindex.com/#year=2019&zoneIsocode=NZL

make up 11% of the market, with the rest of the market spread between 5 competing RSPs[2]

- Over 1.3 million mobiles and 1.2 million fixed line numbers have been ported as customers change retail provider[3].

12. A range of wholesale models exist in the telecommunications sector which further encourage competition:
    - There are three competing mobile infrastructure operators who retail their voice and wireless broadband services directly and through mobile virtual operators
    - Chorus and the three LFCs offer fibre access services on an equivalent basis. These services are sold by numerous retail providers offering high speed voice and broadband services at up to gigabit speeds.
13. It is clear that telecommunications consumers already have considerable choice over services and technology solutions as well as the retailer they buy them from.
14. Both the Commerce Commission and the Telecommunications Carried Forum (TCF) have developed an extensive range of industry Codes and processes to facilitate switching between retailers. These include fixed and mobile number portability so a customer can keep their phone number when changing provider, and various transfer codes which allow consumers to seamlessly migrate between service providers.
15. As a result there are very high levels of switching in our sector. For example, around 13% of on account mobile customers have changed provider each year on average over the last three years[4]. This compares to around 8% in the electricity sector[5].
16. Number portability is another indicator of how competitive a market is. Every week, the industry handles almost 10,000 porting events, requiring changes to network routing for 12 different networks and updated records and call handling for more than 30 providers; all ensuring that the vast majority of users can use their new service with their old number within a matter of hours.[6]

[2] https://comcom.govt.nz/__data/assets/pdf_file/0021/212763/2019-Annual-Telecommunications-Monitoring-Report-Revised-version-12-March-2020.pdf
[3] https://www.tcf.org.nz/industry/numbering/number-portability/statistics/#mobile-number-porting-statistics
[4] https://comcom.govt.nz/regulated-industries/telecommunications/monitoring-the-telecommunications-market/annual-telecommunications-market-monitoring-report
[5] EA reporting of switching trends for residential customers switching traders. The EA also reports changes of provider to a premises, i.e. where a customer may more house and take their provider with them. This is more equivalent to a "change address" for the telecommunications sector.
[6] https://www.tcf.org.nz/industry/numbering/number-portability/statistics/#mobile-number-porting-statistics



	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19	Sep 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20
Local	1859	3952	4701	5232	7368	7179	5740	9917	6147	4089	4802	4523
Total Local Ported	1133597	1137549	1142250	1147482	1154850	1162029	1167769	1177686	1183833	1187922	1192724	1197247

	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19	Sep 19	Oct 19	Nov 19	Dec 19	Jan 20	Feb 20
Mobile	6808	4155	7703	7013	8315	7382	6313	6962	7203	8027	5776	6083
Total Mobile Ported	1232728	1236883	1244586	1251599	1259914	1267296	1273609	1280571	1287774	1295801	1301577	1307660

17. So if a CDR is to deliver incremental benefits in our sector, these are most likely to come from enabling consumers to better compare services across multiple providers, rather from the other targeted benefits suggested.

18. The telecommunications industry has already done significant work in helping customers understand their usage and purchasing options: Spark makes usage information available to its customers through its app and MySpark customer account pages, showing breakdown of usage by month. We continue to develop this functionality to make it more user friendly.

19. Similarly the telecoms industry has provided information about its broadband products in a standardised form since 2014. The TCF's Broadband Product Disclosure Code lists the information which RSPs need to include in an 'Offer Summary' for each product.

20. But we acknowledge that the high levels of competition (which drive high levels of differentiation and bundling of products and services) and high rates of innovation (which drive continuous refreshing of plans and plan constructs) can make it difficult from some consumers to select the right plans for them.
21. This is an area we are working hard on already, and one the Commerce Commission has already identified as a near-term priority for its work programme.
22. In this context, we would expect any CDR legislative framework to be capable of recognising and adapting to this specific context when, or if, a CDR is to be implemented in our sector.
23. CDRs should be prioritised on those sectors where it is most needed. Given the competitive nature of the telecoms market, and consumer engagement with the market, we suggest other sectors should be prioritised ahead of telecoms in the short term.
24. In addition, the Commerce Commission has wide reaching powers under the Telecommunication Act to regulate industry under the umbrella of 'Retail Service Quality'. Our concern is that the Commerce Commission may take a different approach to a CDR and we risk overlapping, inconsistent regulation and multiple regulators acting in the same space.
25. The Commerce Commission should avoid regulating in this area until the overarching approach is clear.

A POORLY DESIGNED CDR REGIME COULD REDUCE COMPETITION AND INNOVATION

26. One of the features of the New Zealand telecommunications market is the continuing innovation around products and pricing as a result of both of rapidly evolving technologies and intense competition. Increasingly Spark's products include unlimited or endless bundles of data, minutes, SMS etc, and packages which include value added services such as Spotify, Neon, Netflix, Spark Sport either for no extra cost or at a discount.
27. This differentiation and innovation delivers material benefits to end-users of our services. If a CDR is to be implemented in this context, it will be important that it is designed in a way that does not lead to a *reduction* in innovation or competition as retailers focus on the core metrics used to compare services rather than the value add and associated services that we know customers value.
28. For example, retailers can use introductory offers such as half price line rental for a period of time to appear at the top of price comparison websites where options are ranked by monthly line rental charges by default.
29. We want to avoid a CDR artificially collapsing industry competition down to a commoditised service with few value-added services and low differentiation.

IMPLEMENTATION

30. The costs of implementing a CDR will be significant. It is important that the costs to industry are fully understood so they can feed into the cost benefit analysis.
31. It is very difficult to provide estimates of costs as the scope of what could be in a CDR is broad. It can also be that seemingly simple things to implement are actually quite costly due to existing systems limitations, while others may be surprisingly straight forward. This is why it is important to take a sector specific approach and test proposals with industry ahead of implementation, giving organisations time to do a thorough impact assessment on their business to fully understand implementation costs.
32. We also recommend reviewing the lessons learnt from other sector implementations and implementing to other sectors in a phased approach. For example, the initial focus on open banking will inform other sectors as they are added later.

READ VS WRITE ACCESS

33. Write access increases the costs and complexity for industry significantly. A phased approach should always be taken when implementing a CDR in a new sector, with the initial focus on read access only. Once this is established and operating appropriately, the CDR can be extended to write access where this makes sense from a cost benefit perspective.
34. While the cost of implementing read access for a CDR is likely to cost tens of millions of dollars, adding write access could increase this tenfold or more.
35. Not only would it be significantly costly to implement, it also presents a number of risks and concerns from Spark's perspective:
    - Highly robust security and fraud prevention would be critical and would add to the complexity & cost of the solution. For example we would need the ability for a 3rd party agent to authenticate with Spark systems
    - We would need an accountability framework where purchasing decisions are being made on behalf of the customer, which would need to cover both human interactions as well as fully automated bots
    - Any solution requiring us to provide advance notice of our Product Catalogue would negatively impact our ability to rapidly bring products to market and potential competitive differentiation
    - As well as upfront implementation costs, there would also be an ongoing cost to maintain this solution whenever changes are made to our back-end business systems, e.g. if we were to upgrade or replace any internal systems
    - There is a risk of increased customer complaints, and the complexity of those complaints, as a result of product changes actioned by a 3rd party agent

STRUCTURE OF A CDR REGIME

36. We support the government implementing an overarching regime which defines in a sector neutral way the steps which must be gone through before a CDR can be introduced, and how to ensure any CDR is proportionate for the sector.

37. We consider there is benefit in a general discussion, and ultimately a regulatory framework, for how the potentially conflicting requirements of privacy legislation, consumer data protection are balanced.

38. A CDR may require a retailer to share information about a customer with a third party and so it is important that the third party is appropriately authorised to receive this information and the information is used and protected correctly. These organisations need to be subject to regulatory oversight and consumers need the ability to be able to escalate complaints if their data is used inappropriately.

39. Even with this approach there are potential difficulties (including additional complexity and administrative costs for organisations) of having the Privacy Commissioner enforcing the Privacy Act, alongside another body overseeing compliance with the accreditation framework (which is likely to have more onerous privacy requirements).

40. We fully support the need for robust privacy and security requirements. We note that the way that such requirements are structured and implemented will significantly impact both compliance (and consumer privacy) outcomes and organisational compliance costs. We would suggest that

    - those rules that effectively supplement / extend the Privacy Act are built into the Act, or at least structured in a way that reflects the design of the Privacy Act.
    - oversight of the rules avoids creating dual oversight of the same obligations (i.e. the OPC and the accreditation body).

Other Sectors For Consideration

41. One sector that is not mentioned in the consultation is over the top providers. These organisations keep an extensive range of data on their users including their email, messaging and social media content, location data, app usage, advertising preferences, photographs and video content. This information is then monetised in non-transparent ways to end users, making it difficult for end users to know (a) what information of theirs is held; (b) what information of theirs is sold or shared; and (c) what their value to these providers is, all of which makes it impossible for end-users to properly compare value across providers or select the best services for their needs. We suggest these would be a good sector to include as a priority.

Price and Product Comparison Services

42. Price and product comparison services are likely to consume the data provided under the CDR so they can make recommendations to consumers about competitive products. A number of services existing today in the form of price comparison websites.

43. It is important that consumers have a high degree of trust in these services as they are making purchasing decisions based on the usage data and other information they have provided. There is an assumption that these services will be neutral and fair in the way they make their recommendation.

44. Given their central role, we suggest price comparison services should be regulated to ensure their results are unbiased and fair. We support the UK approach where Ofcom provides guidance to price comparison service providers and price comparison sites can be accredited[7].

[ends]

[7] https://www.ofcom.org.uk/phones-telecoms-and-internet/advice-for-consumers/costs-and-billing/price-comparison