

14 November 2023

Electricity Authority
Level 7, AON Centre
1 Willis Street
WELLINGTON 6011

By email: DDA@ea.govt.nz

CONSULTATION PAPER – PROPOSED CHANGES TO THE DDA TEMPLATE - Default distributor agreement and consumption data templates

1. Intellihub NZ Limited ("**Intellihub**") would like to thank the Authority for the opportunity to comment on its proposed changes to the default distributor agreement template, consumption data template, and related Part 12A clauses.
2. As a leading provider of metering equipment and data solutions, Intellihub understands the benefits of providing distributors with efficient access to consumption data and other information. The removal of barriers to distributors receiving this information will support the Authority's objectives of promoting the reliable supply of electricity and efficient operation of the industry.
3. However, we are also mindful of the potential for regulatory intervention to result in unintended consequences. Accordingly, we encourage the Authority to consider the broader implications of the proposed amendments, particularly in relation to data protection and privacy.
4. We welcome the opportunity to work alongside the Authority and other participants in the electricity industry to ensure that distributors have the data and information they need, with the aim of increasing the efficiency and resilience of New Zealand's electricity infrastructure and, ultimately, delivering better outcomes for consumers.
5. Intellihub is happy to discuss any aspect of this submission with the Authority.

Yours sincerely



Corrie Stobie
Regulatory Affairs Manager

Questions	Comment
Q1. Do you agree Issue 1, summarised in paragraph 2.21, and described in paragraphs 2.21 to 2.32 and Appendix B, is worthy of attention?	No comment.
Q2. Do you have any feedback on the Authority's assessments of changes to recorded terms, as set out in Appendix B and Appendix C?	No comment.
Q3. Do you agree Issue 2 is worthy of attention?	No comment.
Q4. Do you agree Issue 3 is worthy of attention?	<p><u>Summary of Position</u></p> <p>As a metering equipment provider ("MEP"), Intellihub is broadly supportive of the changes proposed by the Electricity Authority ("EA") to address Issue 3 of the Consultation Paper. We understand the benefits of providing distributors with efficient access to certain data and information. The removal of barriers to distributors receiving this information will support the EA's objectives of promoting the reliable supply of electricity and efficient operation of the industry.</p> <p>However, in seeking to achieve these aims, we are also mindful of the potential for regulatory intervention to result in unintended consequences. Accordingly, we encourage the EA to have regard to the following points when implementing its proposed changes to the default distributor agreement template ("DDA Template"), consumption data template in Appendix C ("Appendix C") and related Part 12A clauses.</p> <p><u>1. Protecting consumer data and privacy</u></p> <p>Intellihub is supportive of the EA's proposals to amend Appendix C to enable:</p> <ul style="list-style-type: none"> (a) distributors to merge consumption data with other datasets for the purpose of providing distribution services or developing distribution prices without needing to obtain prior written agreement from the trader; and (b) a trader to agree to the distributor obtaining consumption data directly from the trader's MEP(s), including by authorising the distributor to procure the trader's MEP(s) to provide that data directly to the trader.

However, while Intellihub agrees that these amendments will assist distributors to access and use consumption data, we are also mindful that important privacy issues should be adequately considered before steps are taken to implement them. We set out these key privacy issues below.

(a) Merging datasets

Where distributors combine consumption data with other datasets, the merged data may be at a higher risk of identifying personal information of consumers. For example, the Office of the Privacy Commission recently issued a statement in which it warned how the manipulation of two publicly available datasets can result in errors which cause emotional and reputational harm (in that case, people were incorrectly identified as owning properties which they did not own – see *Take care when merging – public datasets and privacy*, 23 August 2023, available at www.privacy.org.nz).

Accordingly, to the extent that distributors seek to merge consumption data with other datasets (e.g. weather data, census data, property valuation data, etc), it will be important that the accuracy, sensitivity, and proposed use of the merged dataset is given careful consideration. This will be increasingly important as the volume and granularity of consumption data increases over time, given the potential scale of the harm associated with a data breach will also grow.

Further, we consider that the higher risk of distributors identifying sensitive personal information when merging datasets may exacerbate other privacy issues associated with enabling distributors to procure consumption data directly from MEPs. We discuss these potential privacy issues below.

(b) Procuring data directly from MEPs

While we acknowledge that the ability of distributors to procure consumption data directly from MEPs will help to reduce transaction costs, Intellihub considers that it would be beneficial to clarify the processes and contractual relationships that will govern these data exchanges. In the absence of clear data exchange processes, there is a greater risk of data privacy issues arising.

In particular, we consider that the relationship between the trader/retailer and the consumer is of critical importance. As noted by the EA, it is the trader/retailer that holds the contractual relationship with the consumer and is therefore the regulated 'agency' for the purposes of the Privacy Act 2020 ("**Privacy Act**") and responsible for managing personal information that the retailer has contracted the MEP to collect and provide to the retailer (see footnote 47 of the Consultation Paper).

Accordingly, to the extent that a distributor wishes to procure consumption data directly from a MEP, that data exchange must:

- (a) only occur pursuant to a contract between the relevant retailer and MEP. That is, it would not be appropriate for a MEP to enter into a direct contractual relationship with a distributor for the provision of consumption data, as neither the MEP nor distributor are in a position to obtain consumer consent to share that data with third parties. Therefore, a MEP will only be able to provide consumption data to a distributor to the extent that it has an appropriate contract in place with the relevant retailer; and
- (b) be consistent with the retailer's obligations under the Privacy Act. For example, the retailer will need to ensure that it has obtained consent from each consumer to the exchange of their data with a distributor, including the extent to which such data may be used by the distributor and merged with other datasets. Further, in order to fulfil its privacy law obligations, a retailer will need to maintain a sufficient level of visibility over the data requested by distributors from MEPs to reduce the risk of a distributor procuring data which falls outside the scope of consumer consent.

In the interests of clarifying these arrangements between the relevant participants, and to protect the data and privacy rights of consumers, we have recommended an amendment to clause 7(2) of Appendix C. Please see Question 8 below for the proposed amendment.

2. Limiting the scope of the ICP data mandate

We support the EA's decision to limit the scope of the data exchange arrangements covered under the DDA Template to the provision of consumption data to distributors, rather than extending it to include general ICP data. In particular, Intellihub considers that the provision of power quality data to industry participants, and consumption data to flexibility traders, would be best supported through continuing to incentivise market-led solutions.

Intellihub's views on power quality data and flexibility traders were described in detail as part of our recent submission (dated 10 March 2023) on the EA's issues paper related to 'updating the regulatory settings of distribution networks'. In that submission, we explained that, in our view, the most effective approach to unlocking the potential of distributed energy resources (DER) is to support industry participants to innovate and invest in data driven solutions and technology, while also ensuring that data exchange arrangements are implemented in a way that does not undermine the integrity of communication networks or the privacy rights of consumers.

More specifically:

	<p>(a) MEPs have a strong commercial incentive to provide consumption data and power quality data to distributors and flexibility traders, to maximise revenue streams from their infrastructure investment. For similar reasons, Intellihub is also incentivised to ensure that its contractual arrangements with retailers do not restrict or inhibit its ability to share power quality data with distributors and flexibility traders. The market will therefore develop solutions to address ICP data requirements for distributors and flexibility traders (as is already happening).</p> <p>(b) Regulatory intervention may distort incentives to innovate and invest in new technology and infrastructure. We consider that regulatory intervention should be a last resort, as there is a risk of 'regulatory error' in circumstances where markets and technology will rapidly evolve. Further, the market will be the most efficient mechanism of allocating investment costs to market participants, given it is better placed to assess the specific use requirements of different groups of participants.</p> <p>(a) There are material technical constraints that apply to the delivery of general ICP data such as power quality data. For example, the load capacity of existing communications networks and data processing infrastructure is limited, such that a significant increase in the demands on this infrastructure may risk industry participants being unable to receive certain types of data. Therefore, it is important that increasing quantities of data being exchanged is matched by appropriate levels of investment in key infrastructure (which is also why strong commercial incentives to invest are required).</p> <p>(b) The provision of general ICP data (particularly to flexibility traders) must be done in a way that is consistent with privacy laws. As noted above, consideration must be given to data processing arrangements in place between industry participants in order to protect consumers' privacy rights. Therefore, we encourage the EA to consider making our suggested amendment to clause 7(2) of Appendix C (i.e. clarifying the application of privacy law obligations), as set out under Question 8 below.</p> <p>We encourage the EA to remain vigilant of these points as it continues its review of the regulatory settings for distribution networks, and to continue its approach of limiting interventions to 'least regrets' measures that will not create barriers for future development of the market.</p>
<p>Q5. Do you agree with the objective of the proposed Code amendment? If not, why not?</p>	<p>No comment.</p>

<p>Q6. Do you agree the benefits of the proposed Code amendment outweigh its costs?</p>	<p>No comment.</p>
<p>Q7. Do you agree the proposed Code amendment complies with section 32 of the Act?</p>	<p>No comment.</p>
<p>Q8. Do you have any comments on the drafting of the proposed Code amendment?</p>	<p><u>Appendix C</u></p> <p><i>Clause 7(2)</i></p> <p>As noted in our response to Question 4 above, we propose the following amendment to clause 7(2) of Appendix C:</p> <p><i>The Trader must make any disclosures, and obtain any authorisations, needed under the Privacy Act 2020 to enable <u>the Metering Equipment Provider to provide, and the Distributor to receive and use,</u> the Consumption Data for the Permitted Purposes and Other Purposes, as contemplated under this Agreement.</i></p> <p><i>Clause 5A(7)(a)</i></p> <p>The new clause 5A of Appendix C deals with disputes in respect of the distributor's entitlement to combine consumption data with other datasets, including circumstances where the distributor's right to continue using consumption data provided by the <i>trader</i> may be suspended.</p> <p>Given the proposed changes to Appendix C include enabling distributors to procure consumption data directly from MEPs, we propose a minor amendment to clause 5A(7)(a) to clarify that the suspension also applies to any data provided by a <i>MEP</i> on behalf of trader, as follows:</p> <p><i>The Distributor's obligation not to use a Specified Combination under subclause (5):</i></p> <p>(a) <i>only applies in respect of Consumption Data provided by the Trader (including any Consumption Data provided by the <u>Metering Equipment Provider on behalf of the Trader</u>) who has given the Distributor a Combination Dispute Notice, and does not apply to any other trader's consumption data that is included in the Specified Combination, or to any other data combination which only uses consumption data provided by any other trader.</i></p>