

More standardisation of UoSAs - consultation paper

Response to legal/process issues raised in
submissions

14 November 2014



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1 Introduction

- 1.1 The Electricity Authority (Authority) is examining a range of issues associated with the way in which distributors and retailers develop and enter into use-of-system agreements (UoSAs).¹
- 1.2 The Authority published a consultation paper on 8 April 2014 which sought feedback on a proposal to achieve more standardisation of UoSAs. The Authority considered that adoption of more standardised UoSAs will provide long-term benefits to consumers by promoting competition in the retail market and by promoting more efficient operation of the electricity industry.
- 1.3 The consultation paper also sought feedback from interested parties on matters arising from the Authority's observations of participant responses following the publication of model UoSAs (MUoSAs) in September 2012. The consultation paper discussed a range of matters, including:
- (a) the Authority's view of the observed behaviours relating to the uptake of the MUoSAs and expectations of more standardisation of UoSAs
 - (b) the consequences and implications of these behaviours on achieving the competition and efficiency objectives of the MUoSAs
 - (c) identification of a range of high-level response options the Authority is considering
 - (d) the Authority's preferred option (require reset of all existing interposed agreements and introduce a default agreement for distribution service into the Code), including preliminary views on the likely costs and benefits of that option.
- 1.4 The consultation paper is available on the Authority's website at:
<http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c12201>.
- 1.5 The Authority received 20 submissions on the consultation paper and published a summary of the submissions. The submissions, and the summary of submissions, are also available on the Authority's website at:
<http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements/consultation/#c12201>.

¹ Refer Electricity Authority, 2014/15 work programme, Table 1 (page 5), project 1.9. The work programme is available at, <http://www.ea.govt.nz/about-us/strategic-planning-and-reporting/our-work-programme/>.

2 Concerns raised about the Authority's approach to the more standardisation project

- 2.1 A number of submitters raised concerns about the Authority's approach to the more standardisation of UoSAs project. The Authority has decided to respond to the key legal and process concerns raised by submitters before progressing with this project.
- 2.2 Submitters' concerns about the Authority's approach fell into the following categories:
- (a) that the Authority does not have the jurisdiction to regulate, including concerns that specifically relate to:
 - (i) the overlap between the jurisdiction of the Commerce Commission and the jurisdiction of the Authority
 - (ii) the Authority's power to make Code amendments under the Electricity Industry Act 2010 (Act)
 - (iii) whether, in proposing to regulate UoSAs as it has, the Authority is acting consistently with its statutory objective
 - (b) that the Authority's process is flawed, including submissions that the Authority:
 - (i) has made mistakes of fact in respect of statements it made about Vector and breached Vector's natural justice
 - (ii) is biased or has predetermined its decision
 - (iii) has not clearly set out its expectations in relation to the MUoSAs published in September 2012
 - (iv) has changed its position on more standardisation
 - (c) issues relating to the information relied on by the Authority, including submissions that the Authority has relied on incorrect information and has presented misleading information.
- 2.3 The following sections of this paper address each of the above.

3 Overlap with Commerce Commission's jurisdiction

- 3.1 In its submission, Vector questioned whether the Authority has the jurisdiction to fix standard forms of contract. Vector submitted that the Authority is purporting to regulate matters the Commerce Commission is authorised to regulate under Part 4 of the Commerce Act 1986, as the Commission has "very clear jurisdiction to deal with supply terms in respect of electricity distribution businesses" through information disclosure regulation and price-quality regulation, which allows regulation of quality standards (for distributors that are not consumer owned).

Vector submitted that the Authority is prevented from regulating UoSAs as it has proposed, because section 32(2)(b) of the Electricity Industry Act 2010 provides that the Code may not:

“purport to do or regulate anything that the Commerce Commission is authorised or required to do or regulate under Part 3 or 4 of the Commerce Act 1986 (other than to set quality standards for Transpower and set pricing methodologies (as defined in section 52C of that Act) for Transpower and distributors)”.

- 3.2 The Auckland Energy Consumer Trust's (AECT's) submission questioned whether the Authority's proposal raises any jurisdictional issues either under the terms of the Authority's governing statute, or as between the Authority and Commerce Commission in respect of the overlap in the regulation of the electricity industry.
- 3.3 Orion submitted that it was uncomfortable with the Authority's expectations relating to contract disclosure that exceeded the Commerce Commission's information disclosure requirements. It would, however, be comfortable with a limited disclosure of information to the Authority on a confidential basis if any affected party alleges that existing agreements provide materially superior terms.

Authority's response

- 3.4 The Commerce Commission's powers in Part 4 are broad. In particular, subpart 9 of Part 4 of the Commerce Act, which relates specifically to electricity lines services, provides that:
- (a) all suppliers of electricity lines services are subject to information disclosure regulation
 - (b) suppliers of electricity lines services that are not consumer-owned are also subject to price-quality regulation.
- 3.5 This means that the Authority cannot regulate to require distributors to publicly disclose information or impose price-quality regulation other than by setting pricing methodologies (which is expressly permitted by section 32(2)(b)). What is less clear is what sort of matters fall within the scope of “price-quality regulation”. For example, the regulation of matters such as connection standards and liability limits may not be “price-quality regulation”, but the regulation of service standards could arguably be “price-quality regulation”.
- 3.6 Accordingly, when preparing a regulated default agreement (if that is what the Authority ultimately decides to do), the Authority would review each term in the default agreement and form a view on whether the term deals with matters that the Commission is authorised or required to regulate under the Commerce Act. Any terms that are identified as being matters that the Commission is authorised

or required to regulate would not be regulated by the Authority, and therefore would not be included in a default UoSA.

4 Authority's Code amendment powers under the Act

- 4.1 Vector, AECT, Electricity Networks Association (ENA) and PricewaterhouseCoopers (PwC) on behalf of 21 distribution businesses questioned whether the proposed Code amendments are within the scope of the Authority's Code amendment powers under the Act. AECT considered that the Authority was exceeding its jurisdiction under the Act in prescribing model terms.
- 4.2 Vector submitted that the Authority's power to promote greater standardisation through a Code amendment is more limited than the options considered by the Authority would indicate. Vector submitted that:
- (a) the Authority's Code amendment powers are not unrestricted
 - (b) the Authority's proposals regulate non-price terms of supply, which is heavy handed (a number of other submitters made similar submissions)
 - (c) the Authority's mandate to promote competition is limited to the development of market facilitation measures, and is unlikely to extend to include regulation of specific commercial terms
 - (d) the Authority relies on monopoly bargaining power to justify intervention, but has not demonstrated that there is evidence of that.
- 4.3 AECT submitted that if Parliament intended the Authority to mandate the terms of a UoSA, it would have expressly provided so in the Act. By way of example, AECT noted that section 44 provides that the Code may require Transpower and participants to enter into transmission agreements. AECT submitted that section 44 demonstrates that if Parliament intended that commercial parties would have to be bound by mandatory provisions, it would provide for that expressly in the Act. On that basis, AECT submitted that the Authority cannot specify mandatory UoSA terms as there is no enabling provision equivalent to section 44. AECT also submitted that another example of Parliament expressly providing for the regulation of certain matters is section 42 of the Act, which includes a requirement that the Authority consider amending the Code to require that UoSAs include a provision indemnifying retailers in respect of liability under the [Consumer Guarantees Act 1993](#).
- 4.4 ENA submitted that the Authority has provided no rationale for it to have the "draconian power" to override alternative arrangements to the default terms arrived at by commercial negotiations.

- 4.5 AECT and PwC both made submissions relating to section 42(2)(f):
- (a) AECT submitted that the consultation paper confirms that the Authority's proposal to create a default UoSA flows from the requirement to address more standardisation in section 42(2)(f). AECT submitted that section 42(2)(f) is about ensuring that each individual distributor offers the same terms to all of its customers, and is not about all distributors offering the same terms. AECT submitted that ensuring that all distributors offer the same contractual terms is not the Authority's role
 - (b) PwC submitted that the Authority's proposal is trying to address an issue the Authority has identified with retailer negotiating power, and distributors' ability to exercise monopoly power. PwC submitted that the original intent of section 42(2)(f) was to address perceived barriers to new entrants related to standardisation of UoSAs.

Authority's response

- 4.6 The Authority agrees with Vector's submission that the Authority's Code amendment powers are "not unrestricted". The Authority's Code amendment powers are restricted by the Act, including by section 32.
- 4.7 Vector's assertion that the Authority's proposals are heavy handed reflects Vector's opinion, but is not relevant to the question of whether the Authority has the power to amend the Code as it has proposed. However, any proposed amendments must be supported by a cost-benefit analysis which would need to establish that the proposal had a positive net benefit.
- 4.8 The Authority does not agree with Vector's submission that the Authority's mandate to promote competition is limited to the development of market facilitation measures and is unlikely to extend to include regulation of specific commercial terms. Rather, section 32 provides that the Code may contain any provisions that are consistent with the objective of the Authority and are necessary or desirable to promote competition, reliable supply, and the efficient operation of the electricity industry, the performance by the Authority of its functions, or any other matter required by the Act to be included in the Code. Section 32 does not limit the Authority to being able to implement market facilitation measures only.
- 4.9 The Authority disagrees with AECT's submission that if Parliament intended the Authority to mandate the terms of a UoSA, it would have expressly provided so in the Act. Section 44 is permissive, and does not restrict the Authority's ability to amend the Code to provide for default agreements. That is clear because section 44 begins with the words "*Without limiting section 32...*", and section 32 gives the Authority general power to amend the Code to include provisions that are consistent with the objective of the Authority, provided that they are necessary or desirable to promote competition, reliable supply, the efficient

operation of the electricity industry, the performance by the Authority of its functions, or other matters required by the Act to be included in the Code. Further, section 39 requires that any Code amendment be supported by a cost-benefit analysis.

- 4.10 The Authority disagrees with AECT's interpretation of what "standardisation" means as set out in paragraph 4.5(a) above. In any event, section 42 required the Authority to address specific new matters by 1 November 2011, and so is now spent.
- 4.11 The Authority's proposal to regulate UoSAs was not made in reliance on section 42(2)(f). Rather, the work undertaken by the Authority in accordance with section 42 is simply part of the background to the Authority's current work on more standardisation. This was made clear in the Authority's consultation paper. For example, in section 2 of the consultation paper, the Authority observed:
- (a) service contracts between retailers and distributors were first negotiated in the late 1990s after the separation of network and retail functions (paragraph 2.1.1)
 - (b) a MUoSA was first proposed in the early 2000s (paragraph 2.1.5)
 - (c) the first MUoSA was completed between 2005 and 2008 (paragraph 2.4.2)
 - (d) section 42 required the Authority to address more standardisation (paragraph 2.4.3)
 - (e) the section 42 requirement and other concerns with the 2008 MUoSA led to the publication of comprehensively reviewed MUoSAs.
- 4.12 As required by section 32 of the Act, the Authority will amend the Code only if the amendments are consistent with the Authority's statutory objective and are necessary or desirable to promote any or all of the following matters specified in section 32(1) of the Act:
- (a) competition in the electricity industry
 - (b) the reliable supply of electricity to consumers
 - (c) the efficient operation of the electricity industry
 - (d) the performance by the Authority of its functions
 - (e) any other matter specifically referred to in this Act as a matter for inclusion in the Code.

5 Consistency with Authority's statutory objective

- 5.1 Both Vector and WEL Networks submitted that the Authority is not acting consistently with its statutory objective in proposing to regulate UoSAs as it has.

- 5.2 Vector submitted that the Authority has mistakenly focused on whether its expected outcomes of the standardisation process have been accomplished, rather than whether the Authority's statutory objective is being achieved. Vector considered that asking whether distributors and retailers have adopted the MUoSA is the wrong question, and the Authority should be considering the state of competition, efficiency and reliability in the market. Vector considered that those objectives have been achieved, and that a number of amendments it made to the MUoSA, including to load control provisions, were specifically targeted at ensuring the continued security and reliability of Vector's network.
- 5.3 WEL Networks made similar submissions. It submitted that:
- (a) the Authority has erred in focussing on whether the MUoSA has been adopted. WEL Networks considered the question the Authority should focus on is whether its statutory objective is being achieved, and whether this occurs through adoption of the Authority's chosen model or other means is not relevant
 - (b) the Vector experience suggests that the Authority may take a very narrow view of what is acceptable, preferring the model even where negotiated alternative terms promote the Authority's objective, and focussing on adherence to the MUoSA rather than a broader view consistent with its statutory objective. WEL Networks submitted the Authority has not considered the prospect that the outcomes of a negotiated UoSA may be more pro-competitive and efficient.
- 5.4 ENA submitted that the Authority appears to have interpreted its statutory objective as meaning that Electricity Network Businesses (ENBs)² should adopt the MUoSA with minimal amendments. However, ENA considered that variations from the MUoSA are not necessarily inconsistent with the Authority's statutory objective, and that scope for improvement and innovation was inherent in the MUoSA, which was intended to be a base for negotiated contracts.

Authority's response

- 5.5 The Authority understands the essence of the above submissions is that Vector, WEL Networks and ENA consider that the Authority has asked the wrong question by focussing on whether the MUoSA has been adopted, rather than asking whether it is necessary or desirable to amend the Code to regulate UoSAs, in order to promote competition, reliable supply, or efficiency.

² ENA uses the acronym ENB, meaning electricity network business. In this paper this term is synonymous with "distributor".

- 5.6 The Authority considers that it has addressed the question of whether it is necessary or desirable to amend the Code as is required by section 32. In particular, the consultation paper provides:
- (a) having distributors and retailers negotiating multiple UoSAs incurred significant transaction costs and was a barrier to entry for retailers³
 - (b) MUoSAs should provide the basis for significantly enhanced levels of standardisation in UoSAs negotiated, with the objective of promoting efficiency and retail competition⁴
 - (c) certain competition benefits would be achieved from uptake of the MUoSAs⁵
 - (d) behaviours observed indicate that a largely voluntary regime is unlikely to be successful in achieving the “MUoSA objectives” (as described above), and that is likely to have a material adverse impact on efficiency and competition.⁶
- 5.7 Therefore, the Authority considers the consultation paper was clear that the Authority was proposing to regulate UoSAs to achieve competition and efficiency benefits, not simply because the MUoSAs are not being adopted as expected.

6 Statements about Vector

- 6.1 Vector submitted that the Authority has made allegations and statements that imply improper behaviour by Vector without explicitly presenting those concerns directly to Vector, even though those matters relate to negotiations to which the Authority was not a party. Vector submitted that the Authority’s processes “were far from best practice, were inconsistent with principles of natural justice and did not foster good relationships”. Vector also submitted that the Authority implied that Vector applied undue pressure on Contact and possibly other retailers to sign its UoSA, which is “incorrect, offensive and unsupported by evidence”. Vector submitted that it is not plausible it would have any “monopolistic bargaining power” [sic] over Contact, given Contact's size and resources and that disconnecting Contact's customers is not an option. It also submitted that some changes to its UoSA were made to alleviate Contact's concerns.
- 6.2 ENA, MRP, Orion, PwC, Unison, and WEL Networks also considered that the Authority’s criticism of Vector was unwarranted and/or supported the approach taken by Vector in negotiating UoSAs with its customers.

³ Paragraphs 1.1.5 and 2.5.1 of the consultation paper.

⁴ Paragraphs 1.1.6 and 4.1.2 of the consultation paper.

⁵ Paragraphs 4.1.7 and 4.1.8 of the consultation paper.

⁶ Paragraphs 1.2.3 and section 4.2 of the consultation paper.

6.3 Vector:

- (a) rejected the allegations and implications, including the allegation that its practice is to agree a UoSA with large retailers first and offer it to smaller retailers with limited scope for change, although smaller retailers do leverage off the negotiations of large retailers
- (b) disagreed that distributors can adopt a "take it or leave it" stance, which Vector considered is demonstrated by the fact it is up to version 1.4 of its UoSA (which Vector states was provided to the Authority), and that version contains significant changes from version 1.0
- (c) requested the Authority to withdraw its remarks urgently
- (d) requested the Authority to provide Vector with any evidence it has that Vector or any other party has misused its monopoly position so that it can be assessed through appropriate channels
- (e) recommended that the Authority reviews its processes for handling concerns and complaints to ensure that the principles of natural justice are adhered to and that complaints are resolved effectively
- (f) recommended that the Authority consults with any party it plans to "single out" for criticism in a consultation document.

6.4 Vector also submitted that the emphasis in the consultation paper on its conduct "...has the strong appearance that the Authority is actually seeking to "correct" the actions of a single market participant, rather than seeking to act on the basis of an industry-wide initiative". Vector submitted that the Authority's paper refers to just two distributors out of 29, meaning its analysis is based on limited observations.

Authority's response

6.5 The Authority did not intend any statements in the consultation paper to imply improper behaviour by any participants. Any observations the Authority made about participants' behaviour in respect of UoSA negotiations were not intended as criticisms, rather they reflect concerns raised with the Authority by some retailers. A range of behaviours, as noted in the consultation paper, has led the Authority to consider that its competition and efficiency objectives are not being achieved by the voluntary MUoSAs.

6.6 Most of these concerns were raised through the Authority's feedback channel and were considered by the Board, which initiated this project. The Authority is now in the process of seeking feedback from all interested parties on these issues, to clarify whether there is indeed a problem and, if so, the best way to address it.

6.7 The Authority disagrees with Vector's submission that the Authority's processes were far from best practice and were inconsistent with principles of natural

justice. As the Authority was not implying improper behaviour, there is no need to apply principles of natural justice. In any event, the Authority met with Vector on two occasions (17 July 2013 and 7 April 2014⁷) to discuss the concerns raised about Vector's approach to negotiating UoSAs and its deviations from the MUoSAs (these discussions are referred to in paragraph 111 of Vector's submission). Following these meetings, Vector provided the Authority with its view on the issues and concerns raised by the Authority.

- 6.8 The Authority does not agree with Vector's submission that the Authority appears to want to regulate to correct the actions of a single participant. Rather, if the Authority amends the Code to include provisions to ensure more standardisation of UoSAs, the issue will be whether the proposed Code amendment meets the requirement of the Act, including the section 32 requirements that the amendment is consistent with the objective of the Authority.
- 6.9 As noted in paragraphs 6.1 to 6.4 above, Vector made a number of very detailed submissions about the Authority's statements in the consultation paper, and inferences that the Authority, Vector and others have drawn. The Authority will consider those submissions at the next stage of its work on more standardisation.
- 6.10 There will also be ample opportunities for all interested parties to make further submissions during the next consultation round, which will likely be in the second half of the 2015 calendar year.

7 The Authority is biased or has pre-determined its decision

- 7.1 Vector submitted that the Authority is biased because in commenting on Vector's UoSA, the Authority considered only departures from the MUoSA that favour distributors, and did not consider departures from the MUoSA that favour or were requested by retailers.
- 7.2 Trustpower submitted that it is concerned that a question about core terms was included in the consultation paper, saying it implies that a decision to proceed with mandating has already been made by the Authority.

Authority's response

- 7.3 It is unclear from Vector's submission which clauses it considers were in favour of, or were requested by, retailers. The Authority was unable to find any material variations of this nature, but will consider this issue again during the next phase of the project, and will welcome specific comments from submitters during the next round of consultation. A number of submitters suggested improvements could be made to some of the clauses in the MUoSA, and the Authority intends to

⁷ The meeting was an ENA meeting but Vector's UoSA was discussed with ENA representatives, which included a number of Vector staff.

consider these suggestions during the next phase of development if that remains the desired approach.

- 7.4 The Authority has not made any decisions about more standardisation. Terms that could be “core terms” were listed in the consultation paper because if either options 3 or 5 were preferred, a decision would need to be made as to what terms should be “core terms”.⁸ The inclusion of terms that could be “core terms” was done to give submitters an opportunity to comment on the Authority’s initial assessment of that issue. The Authority is entitled to carry out such an assessment and have a view of what might constitute “core terms”.

8 The Authority’s expectations were not clear

- 8.1 Distributors, in either their own submissions or via submissions made on their behalf (such as the submissions made by ENA, PwC, Powerco and Orion), considered that the Authority had not clearly set out its expectations in publishing MUoSAs in September 2012 and that distributors were acting on their understanding of the Authority’s expectations. Contact also considered that the Authority’s expectations were not explicit enough, and that this resulted in a less than optimal outcome for both retailers and distributors.
- 8.2 Vector considered that it agreed variations to the MUoSA in good faith and so was acting largely in accordance with the Authority’s expectations.

Authority’s response

- 8.3 The Authority’s expectations in publishing MUoSAs in September 2012 were set out in the Authority’s Information Paper and Summary of Submissions *Standardisation of distribution arrangements – model use-of-system agreements*, 11 September 2012.⁹ The Authority considers that its expectations about more standardisation were made clear.
- 8.4 In that paper, the Authority stated it “expects to observe a significant increase in the level of engagement between retailers and distributors in negotiating and finalising MUoSA-based UoSAs”.¹⁰
- 8.5 The Authority also stated that it “considers the MUoSA represents, at its publication date, a best practice benchmark agreement that addresses most of

⁸ Paragraph 6.2.1 of the consultation paper.

⁹ The paper can be found on the Authority’s website at: <http://www.ea.govt.nz/development/work-programme/retail/more-standardisation-of-use-of-system-agreements-and-distribution-tariff-structures/outcome/model-use-of-system-agreements-published/>.

¹⁰ Paragraph 6.5.

the inter-business matters that arise between a distributor and a retailer in the New Zealand Electricity industry".¹¹

8.6 The Authority noted its view that the MUoSA could be used in one of two ways:

(a) "as an agreement template that could be used by a distributor and retailer with only minimal amendments to reflect specific local settings and signed without undue effort or unmanageable risk on either party's part

...

(b) a template that two parties, negotiating in good faith, will be able to use as a basis for negotiations, but improve on to reflect innovative new approaches to the provision of distribution services."

8.7 The Authority also outlined its intended monitoring programme in Appendix A of the September 2012 Information Paper, which set out the steps the Authority intended to take if concerns about the extent of alignment with the MUoSAs were brought to its attention.

9 The Authority has changed its position on more standardisation

9.1 A common theme in a number of submissions was that the Authority had changed its position on more standardisation.

9.2 A number of submitters commented that the Authority had initially indicated that the MUoSAs should be the basis for negotiating UoSAs, but that the MUoSAs were voluntary benchmark agreements only that could be varied by negotiation and agreement. Those submitters considered that there was never meant to be strict alignment of all UoSAs with the MUoSAs, and that the Authority has changed its position.

9.3 ENA submitted that the Authority intended that the MUoSA could be a base/model from which retailers and distributors could negotiate a commercially and operationally sensible contract, and that Vector (and others) did indeed use the model as a base.

9.4 Orion submitted that the consultation paper criticised Vector despite the fact that Vector followed the process designed by the Authority. In Orion's view, the Authority does not like the result of a process it designed, and "the rules have changed but the players have not been told".

9.5 Powerco submitted that the consultation paper expresses expectations as to the speed of migration to, and limited number of departures from, the MUoSA that are a change from the Authority's previous position. Powerco submitted that it is

¹¹ Paragraph 6.13.

- possible for the industry to react to those new expectations, but the model should be given more of a chance to work.
- 9.6 PwC submitted that the original intent of the MUoSA was that it was a voluntary benchmark agreement. PwC expressed surprise at the suggestion that UoSA terms should align strictly to the MUoSA, and considered that the Authority's shift in position favouring a default UoSA is premature and damages regulatory certainty.
- 9.7 Unison submitted that the Authority indicated that the MUoSAs would be a basis for enhanced standardisation, but that variations were expected if the retailer and distributor agreed an alternative approach. Unison considered it had been necessary to depart from the MUoSA because of learnings in the sector.
- 9.8 Vector submitted that given that it is acting consistently with the Authority's expectations, the Authority is acting prematurely and in a timeframe that is less than the Authority indicated it would need for meaningful change following publication of the MUoSAs. Vector also considered that the Authority indicated the MUoSA was a base to start commercial negotiations, which is how Vector utilised the MUoSA. Vector recommended that the Authority step back and reconsider its proposed regulation.
- 9.9 A number of submitters also commented that the Authority had changed its mind on what was an acceptable timeframe for more standardisation, which the Authority initially indicated was up to five years.
- 9.10 ENA submitted that a relatively short window has been allowed for change: 18 months compared with the two to five year timeframe that the Authority indicated in 2012 was a reasonable timeframe within which to achieve more standardisation.
- 9.11 Orion submitted that the consultation paper reaches conclusions that are inconsistent with both the timing and approach expectations set by the Authority in September 2012, when the Authority indicated a timeframe for achieving standardisation over five years. The timeframe set out in the September 2012 paper was considerably longer than the timeframe now being applied.
- 9.12 PwC accepted that the level of activity and completion of negotiations may have been slower than what the Authority might have expected, but submitted that some participants legitimately planned to adopt new UoSA agreements over a five-year period consistent with the Authority's expectations.
- 9.13 WEL Networks submitted that in 2012 the stated timeframe for reviewing and updating UoSAs was a reasonable two to five years, and that the Authority has acted prematurely.

Authority's response

- 9.14 The statements that the Authority made in 2012 about the timeframe by which it expected standardisation to be achieved do not prevent the Authority from reviewing and revising its expectations regarding more standardisation in light of how participants have engaged with each other and/or the uptake of the MUoSAs. If the Authority is satisfied that there is a case for regulating now, and makes that view and the reasons for it clear, then it is able to proceed.
- 9.15 The Authority stated in the consultation paper that it considered persisting with the “largely voluntary regime” is unlikely to result in achieving the intended competition and efficiency benefits in the next two to four years, and so it intended to investigate issues and options for regulation now, rather than later.¹²
- 9.16 The Authority has also given parties an opportunity to comment on its views and options that it is considering, and will give parties further opportunities to comment as the project progresses.

10 Incorrect or misleading information

- 10.1 Vector submitted that the Authority's analysis is based on incorrect information. Vector stated that the Authority's analysis is based on version 1.1 of Vector's UoSA, when Vector is up to version 1.4 (which it had provided to the Authority). Because all retailers have an option of signing the latest version of Vector's UoSA, Vector submitted that the latest version must be the version on which any assessment is based for that assessment to be accurate. Vector also submitted that the Authority has wrongly categorised some amendments made by Vector to the MUoSA as being material, and that the Authority has not understood the effect of some of Vector's amendments.
- 10.2 Orion questioned the relevance of a diagram about retail competition, and stated “We note that this is the second time the Authority has presented information on competitive activity in a way that is somewhat misleading”.
- 10.3 PwC submitted that Figure 2 of the consultation paper is misleading because for the majority of the period covered by Figure 2, the MUoSA had not been published.
- 10.4 Vector considered the Authority had overstated the negotiating power of distributors, and that the Authority has no evidence of any such negotiating power. Vector also considered that the Authority had incorrectly described the nature of the relationship. Vector submitted that distributors are strong supporters of retail competition on their networks, particularly those that are trust owned.

¹² Paragraphs 1.2.3 and 5.1.1 of the consultation paper.

Authority's response

- 10.5 One of the roles of consultation is to gather information about matters on which different views are possible. The Authority welcomes feedback on the analysis presented in the consultation paper and, if necessary, will correct any inaccuracies during the next phase of development.
- 10.6 The Authority does not consider its analysis of Vector's UoSA is based on incorrect information. As stated in the consultation paper, the variations between the MUoSA and Vector's UoSA that were identified in Table 1 were based on analysis of both versions 1.1 and 1.4 of Vector's UoSA.
- 10.7 In response to Orion's and PwC's comments about Figure 2 in the consultation paper being misleading, the figure was based on the most recent information on retail brands provided to the Authority by retailers. The Authority was interested in submitters' views on whether a default UoSA would have any effect on the number of retailers likely to enter into network areas with fewer retail brands.
- 10.8 The Authority does not consider it has overstated the negotiating power of distributors, as submitted by Vector. As stated in the consultation paper, interactions between distributors and retailers do not reflect the characteristics of a 'true' commercial interaction because distributors are natural monopoly providers of electricity distribution services within their local areas.