

Neutral Part 12A - Default Distributor Agreement

DDA presentation

September 2019

Purpose of today's presentation

- We're here to:
 - introduce our proposed amendment to the Code (the proposal),
 - help clarify outstanding issues regarding the proposal,
 - support the preparation of consultation submissions, and
 - answer questions from industry.
- This presentation is not part of the submission process.
- Topic to be covered in today's workshop:
 - Explaining neutral Part 12A
 - Explaining the Default Distributor Agreement (DDA)
 - Q&A session

The current Part 12A of the Code

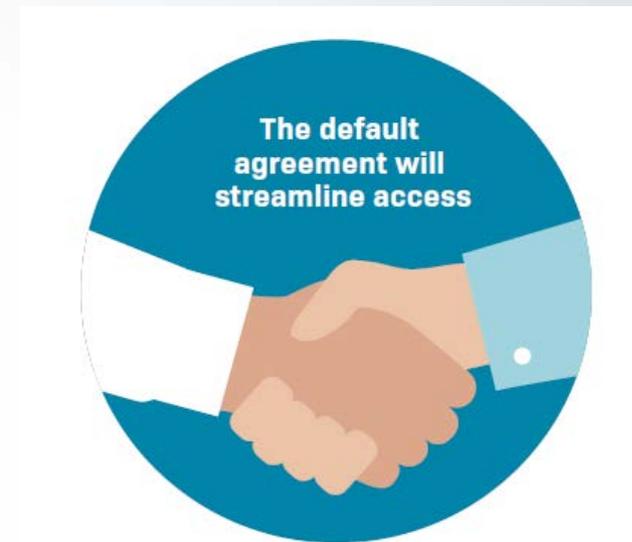
- The current *Electricity Industry Participation Code* (Code) requires each distributor to have a distribution agreement with each retailer trading on its network. This is known as a Use-of-System Agreement (UoSA).
- The model UoSA introduced in 2012 provides standard terms under which a distributor provides the distribution service to the retailer.
- Part 12A complements the model, and prescribes some terms, eg the prudential requirements a distributor can impose on a retailer.

Concerns and proposal development process

- Retailers and distributors expressed concerns with the implementation of the model UoSA. These concerns included:
 - The cost and effort of negotiating each UoSA is higher-than-necessary
 - Terms in the UoSA can inhibit competition in retail market
 - Terms in the UoSA can inhibit competition in the emerging related-services market
- The proposal development– what has happened to date
 - 2014 – consultation on potential options
 - 2016 – consultation on default distributor agreement proposal
 - 2017-19 – declaratory judgement and Court of Appeal
 - 2017-19 – concerns raised with data exchange arrangements

Our proposed amendments to Part 12A

- We have proposed streamlining access to networks and data through more standardised agreements.
- The purpose is to:
 - Remove barriers to innovative and new technologies and business models
 - Promote participation by more and different types of network users
 - Help New Zealand adapt to changes in the future environment and achieve its aspirations for the future of energy
- The DDA complements other projects at the Authority, such as: ACCES and Open Networks



The Default Distributor Agreement (DDA) proposal

- Our proposal is that each local network distributor develop, publish and offer a default agreement to each retailer that trades or seeks to trade on their network.
- Each distributor's default agreement would be based on a DDA template provided by the Authority.
- The DDA template is a backstop agreement that would be deemed to apply unless both parties mutually agree to contract under an alternative agreement.

| | | RETAILER | | |
|-------------|-----------|-----------------|---------------------|-----------|
| | | Preference: | Opt in | Negotiate |
| DISTRIBUTOR | Opt in | Default applies | Default applies | |
| | Negotiate | Default applies | Alternative applies | |

There are five levels of terms included inside the DDA

Core terms

- Every default agreement will contain the Core terms developed by the Authority

Recorded terms

- Terms which may fall within the jurisdiction of the Commerce Commission

Operational terms

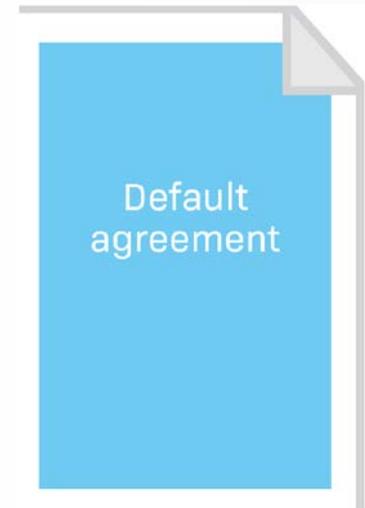
- Operational terms deal with business protocols on a distributor's network. The Authority has provided some drafting guidance within the DDA template

Collateral terms (*Optional*)

- The Distributor may recommend terms not already addressed in their default agreement, which the Retailers can choose to accept.

Other Terms (*Optional*)

- Any other terms may be added to an alternative agreement by mutual agreement.

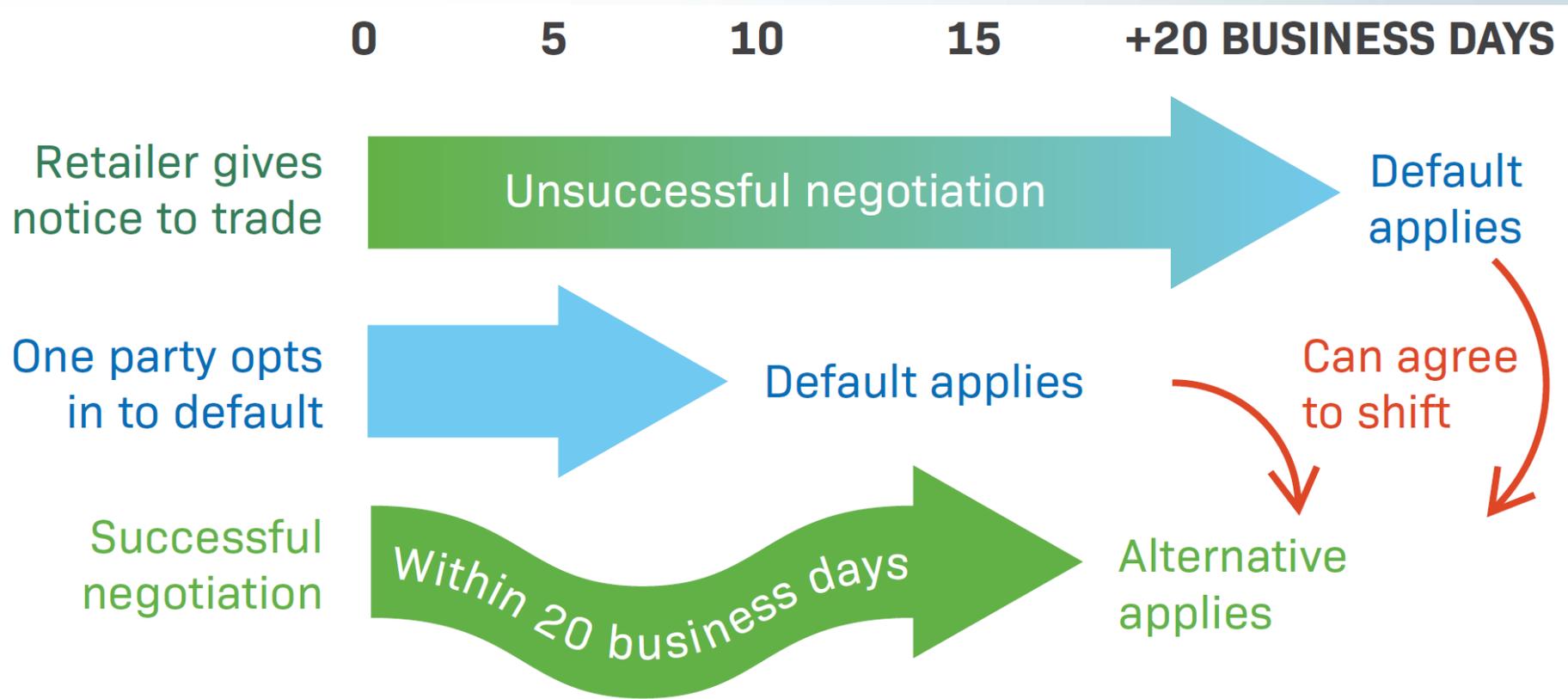


Distributors with different agreement structures

EXAMPLES OF POSSIBLE AGREEMENT TYPES

| TEMPLATE | DEFAULT AGREEMENTS | | NEGOTIATED ALTERNATIVE AGREEMENTS | | | |
|--------------------------|--------------------|---|-----------------------------------|-----------------------|------------------------|-----------------------------|
| DDA Template in the Code | Distributor's DDA | Distributor's DDA with collateral terms | Deleted terms | One alternative term | Many alternative terms | Default terms + other terms |
| Default core term | Default core term | Default core term | Default core term | Default core term | Alternative core term | Default core term |
| Default core term | Default core term | Default core term | Default core term | Alternative core term | Alternative core term | Default core term |
| Recorded term | Recorded term | Recorded term | Recorded term | Recorded term | Recorded term | Recorded term |
| Default core term | Default core term | Default core term | Operational term | Default core term | Alternative core term | Default core term |
| Default core term | Default core term | Default core term | Operational term | Default core term | Alternative core term | Default core term |
| Operational term | Operational term | Operational term | | Operational term | Operational term | Operational term |
| Operational term | Operational term | Operational term | | Operational term | Operational term | Operational term |
| | | Collateral term | | | Other terms | Other terms |

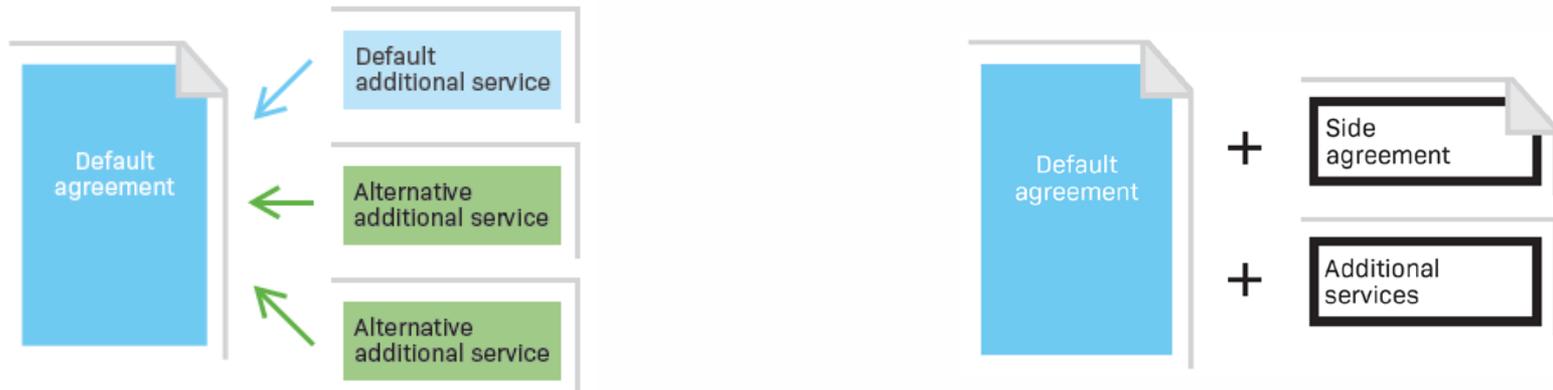
The process of entering into a DDA



Proposed negotiation timings

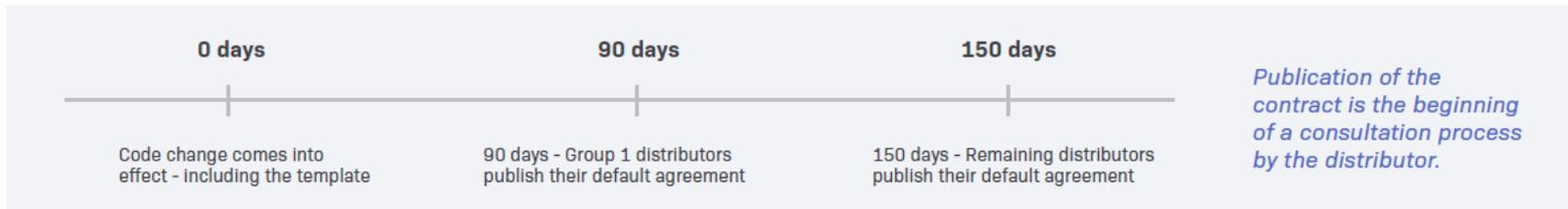
Additional services and side-agreements

- The proposed Code amendment would allow for the contract to provide for additional services. This includes:
 - default terms for additional services that may be used or, if one party prefers, must be used even within an alternative agreement; or
 - participants mutually agreeing to alternative terms for additional services.
- The proposed changes will not stop participants negotiating any side agreements that apply in parallel to the distributor agreement.



We propose a phased transition

- To make the initial DDA development process more manageable for participants, we propose assigning distributors to one of two groups:
 - **Group 1 distributors:** Will have 90 business days after the Code amendment comes into force to develop and consult on their operational terms and then publish a DDA
 - **Group 2 distributors:** Will have 150 business days after the Code amendment comes into force to develop and consult on their operational terms and then publish a DDA.



Frequently Asked Questions

- *Outcome of the Declaratory Judgment*
- *What would happen to my existing Use-of-System Agreement (UoSA)?*
- *Will the default agreement be permanent?*
- *Would all of Part 12A apply to me?*
- *The proposal mentions core, operational, recorded, collateral and other terms. What are the differences?*

Outcome of the Declaratory Judgement

- The Court of Appeal ruled:
 - we have the power to amend the Code to regulate distribution contracts.
 - This is subject to us not regulating quality standards, as they are defined in Part 4 of the Commerce Act 1986.
 - our original proposal to prohibit “any other terms” being included in the distribution contract was unlawful.
- We have made the following changes:
 - We have introduced ‘recorded terms’ to deal with jurisdictional overlaps.
 - We propose a targeted approach to identifying and prohibiting harmful terms.