

23 August 2022

Retailer financial stress data request consultation paper
Electricity Authority

By email: WholesaleConsultation@ea.govt.nz

Proposed retailer financial distress data request

Meridian appreciates the opportunity to provide feedback to the Electricity Authority on its consultation paper *Retailer financial distress data request*. This is the first data request issued under a new Code amendment which enables the Authority to require the supply of information through the issue of information provision notices.

Meridian retains concerns about the legality of the empowering framework for the issue of information provision notices as outlined in our submission on the Authority's 6 July 2021 *Improving the framework for the Authority's information gathering* consultation paper. In addition, we have reservations about whether this notice is within the Authority's mandate and provides net benefits.

The consultation paper does not explain how the proposed notice will further the Authority's statutory objective

It is not enough that the Authority "wishes to continue to collect"¹ information currently covered by the Authority's COVID-19 section 46 request when it expires on 30 September 2022. Instead, the Authority needs to explain how the data request relates to its statutory objective.

¹ Consultation paper para 1.3

The purpose of the Electricity Industry Act 2010 is to provide a framework for the regulation of the electricity industry. The Authority regulates industry participants, not end users such as residential customers, small businesses or industrial companies (unless they are directly connected to the grid). When regulating industry participants, the Authority must promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.

The proposed data request is not focused on the financial distress of retailers

Despite its name, the proposed data request is focused on residential, business and industry financial distress. This is evidenced by the request for information about payment flexibility or deferral requests, overdue invoices, disconnection warning notices, and debt-write offs.

Managing end user customer debt is a core part of retailing. However, the information requested does not seem to be the best available information to assist the Authority to monitor retailer financial distress. Instead it should be considering matters such as a retailer's net asset position, ability to pay debts as due, cash flow, trading losses, future commitments, tax position, debt collection systems, relationship with funders etc.

The Authority's starting point for information-gathering could include independent certification on the matters previously included in 12A.5B of the Code², namely:

- Is the retailer is facing or is likely to face significant liquidity problems in the next six months as a result of the impact of the COVID-19 pandemic?; and
- Was the retailer able to pay its debts as they fell due on 31 December 2019 (i.e. pre-COVID-19)?

The Authority's role is to protect and promote competition, not individual competitors

As the Authority said in its 17 April 2020 briefing to the Minister,³ under its mandate the focus is on:

“protecting critical electricity system attributes and not the survival of individual firms per se.”

² COVID-19 Deferred Payment of Distribution Charges amendment which was in effect from 20.02.20 to 18.11.20

³ Quoted in para 6.2 of R Bernau's Board Paper COVID-19 *Response to retailer debt issues caused by lockdown* for the Authority's 29 April 2020 Board meeting

The Authority's role is to protect and promote competition as a process, but not individual competitors. The Authority has previously said that there was a high threshold for intervention in the case of retailer financial distress such as would be met by the prospect of multiple retailer defaults.

The Authority has not explained how the present circumstances justify the proposed monitoring of retailer distress.

A wider supply of information contains risks and may result in the information being used out of context

The consultation paper states that the Authority "may share the aggregated data with the Ministry of Business, Innovation and Employment which may be used as evidence to inform policy advice". Meridian is concerned that there is a risk that this information will not provide any meaningful insights into the drivers of consumer distress and be used out of context.

Meridian also notes that there is no information as to

- why the Authority thinks its statutory objective will be advanced by handing over this information to MBIE;
- how the information aligns with the MBIE statutory functions; or
- how the confidentiality of the information will be protected.

Meridian acknowledges that the new sections 47A and 47B of the Act are expected to empower the Authority to share information with other agencies but these sections are restricted to information held by the Authority in relation to the performance of its functions. Meridian would be very concerned if this notice was an attempt to obtain information solely for the purposes of onwards disclosure.

The costs and benefits of the proposal have not been fully identified

The Authority considers the costs associated with obtaining the information will decrease relative to the current section 46 request. However, this cannot be correct as the current request expires on 30 September at which point its costs will be zero.

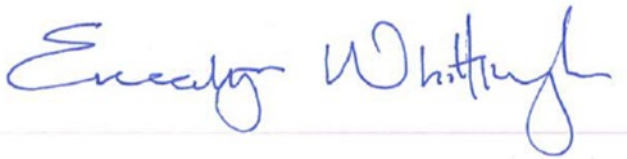
This proposal will bring real and present costs to all retailers. These include the costs of collecting, reviewing, and sharing the information and training staff on the new compliance obligation. In the absence of any evidence of any problems which need to be more actively managed these costs seem disproportionate.

Conclusion

Elements of the proposal appear to exceed the Authority's current mandate and/or pre-empt and exceed proposed changes to that mandate. This suggests the notice should not be published.

Please contact me if you have any queries regarding this submission. Nothing in this submission is confidential and we are comfortable for it to be released in full.

Nāku noa, nā



Evealyn Whittington
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Meridian's answers to the questions raised in the consultation

	Question	Meridian's view
1	Do you have any feedback on the proposed notice?	We think the notice is outside the Authority's current mandate. The Authority is not tasked with managing retailer distress except in extreme circumstances, such as multiple retailer default at a level which effects the efficient operation of the industry.
2	Do you agree this information will assist the Authority in monitoring customer and retailer stress? If not what information do you think will assist the Authority in monitoring customer and retailer stress.	Notwithstanding our response to Q1, if the Authority considers that it needs to monitor this risk then it would be better to focus on matters such as a retailer's net asset position, ability to pay debts as due, cash flow, trading losses, future commitments, tax position, debt collection systems, relationship with funders etc.
3	Do you consider the benefits of the Authority in having this information exceed the costs? If not, why?	No. The notice will impose real and present costs on the whole retail sector for an uncertain and unknown benefit.