

Guidelines for drafting embedded network use-of-system agreements

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Version control

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1	7 September 2012	Initial document

Overview

This document provides guidance for distributors and traders to adapt the interposed model-use-of-system agreement for use with embedded networks.

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Application of the Guidelines

1. These Guidelines apply to all embedded networks. Their purpose is to provide guidance when drafting a UoSA suitable for an embedded network and a retailer, using the September 2012 version of the interposed MUoSA as a starting point.

Definitions and notation

Abbreviation	Meaning
MUoSA	Model use-of-system agreement
OK	The Interposed MUoSA clause is relevant to embedded networks and appropriate for use in an embedded network UoSA
UoSA	Use-of-system agreement
[clause]	The clause indicated in square brackets may be appropriate for inclusion in an embedded network UoSA, depending on the nature of the embedded network
delete	The clause should not be included in an embedded network UoSA as it is not relevant to embedded networks

Introduction

Principles

2. The presence of an embedded network should not compromise the efficient provision of distribution services to retailers and consumers.
3. To the maximum extent possible, a consumer on an embedded network should be subject to equivalent terms and conditions and receive the same level of services as an equivalent consumer on a local network in a similar geographical setting - i.e. urban, rural, remote rural.
4. Apart from reasonable additional transaction costs, and to the maximum extent possible, a retailer supplying consumers on an embedded network should be subject to equivalent terms and conditions and receive the same level of services as an equivalent retailer trading on a local network in a similar geographical setting – i.e. urban, rural, remote rural.
5. To the maximum extent possible, the provisions of an embedded network UoSA should mirror the equivalent local network MUoSA provisions. An embedded network UoSA should depart from the equivalent local network MUoSA only when necessary to take account of a local situation.

6. The objective of achieving maximum standardisation of UoSAs across local network and embedded network levels has a higher priority than the objective of achieving a simple embedded network agreement, as standardisation should result in lower transaction costs.¹

Assumptions

7. There is a back-to-back UoSA in place that provides the embedded network owner with rights and obligations in relation to the distribution services provided by the upstream network owner. This is necessary for services to be provided to retailers and consumers. The cascade of network agreements might include:
 - (a) if the embedded network is connected to another embedded network, a UoSA agreement between the two embedded network owners;
 - (b) if the embedded network is connected to a local network, a UoSA between the embedded network owner and the owner of the local network to which the embedded network is connected; and
 - (c) a transmission agreement between the upstream local network owner and Transpower.
8. The UoSA between the embedded network owner and local network owner provides for the payment of local network line charges, either by the embedded network owner to the local network owner directly, or by a retailer providing a billing service on behalf of the embedded network owner.

Drafting guidance

9. Where the table below indicates that a MUoSA clause should not be included in an embedded network UoSA, retain the clause number in sequence so as to retain cross references and MUoSA clause structure.
10. This Guideline makes reference to clauses in the interposed MUoSA, as it is understood that interposed arrangements are universally adopted on current embedded networks. A Guideline for conveyance arrangements could be developed if demand for such were to arise in future.

¹ An embedded network UoSA based on the standardised local network MUoSA may be more complex than some embedded network UoSAs in current use. However, taking a standard approach to embedded network UoSAs should lower transaction costs in respect of negotiations between the parties, as parties become familiar and comfortable with the local network MUoSAs.

Interposed MUoSA clauses to be included in interposed embedded network UoSAs

Interposed MUoSA clause	Keep/change recommendation based on clause references from the interposed MUoSA
Introduction	
A, B & C	OK
Agreement	
1. Term of Agreement	1.1 OK
2. Services	2.1 Distributor’s services and obligations
	(a) to (c) OK
	(d) OK (if applicable)
	(e) to (j) OK
	2.2 Retailer’s services and obligations
	(a) to (i) OK
3. Conveyance only	Delete whole section
4. Equal access and even handed treatment	Whole section OK
5. Service Interruptions	5.1 – 5.4 OK except as follows:
	5.4
	(b) Interruptible supply at option of Consumer – OK, although in practice an embedded network owner is unlikely to initiate signals itself to provide such an option in its pricing options. However, the local network owner probably will initiate such signals and the Consumer should have access to these options. Accordingly, (b) can be retained as the back-to-back agreement should give the local network owner the ability to convey such signals on its network.
	(c) Compliance with instructions from the System Operator – OK, except that there are (at least) two upstream “system operators” that may initiate actions that would impact on the embedded network owner: (a) Transpower as System Operator, (b) the local network operator and (c) possibly an interposed embedded network operator. In practice, the only operational interface for embedded networks is with the local network operator. This can be addressed by replacing the references to the “System Operator” with references to the “Local Network Operator” in 5.4(c) and deleting the references to the Code. A new definition of Local Network Operator should be added.
	5.5 to 5.12 OK

Interposed MUoSA clause	Keep/change recommendation based on clause references from the interposed MUoSA
6. Load management	6.1 to 6.5 OK
	6.6 Retailer to make controllable load available to the Distributor for management of system security – delete
	6.7 to 6.8 OK
7. Losses and loss factors	Whole section OK
8. Service performance reporting	Whole section OK
9. Distribution services prices and process for changing prices	Whole section OK
10. Allocating price categories and tariff options to ICPs	Whole section OK
11. Billing information and payment	Whole section OK except remove options relating to GXP priced networks
12. Prudential requirements	Whole section OK
13. Access to the consumer's premises	Whole section OK
14. General operational requirements	Whole section OK
15. Network connection standards	Whole section OK
16. Momentary fluctuations	Whole section OK
17. Consumer service lines	Whole section OK
[18. Tree trimming]	Whole section unlikely to be relevant to embedded networks. May be deleted if this is the case or retained if needed.
19. Connections, disconnections and decommissioning ICPs	Whole section OK
20. Breaches and events of default	Whole section OK
21. Termination of agreement	Whole section OK

Interposed MUoSA clause	Keep/change recommendation based on clause references from the interposed MUoSA
22. Confidentiality	Whole section OK
23. Force majeure	Whole section OK
24. Amendments to agreement	Section OK, except: 24.1(e) - delete 24.5 - delete
25. Dispute resolution procedure	Whole section OK
26. Liability	Whole section OK except for 26.4(b)(v) - Amend to replace "Transmission Provider" with "Local Network provider". If relevant, insert clauses that address the trustee liability issue outlined in the Additional guidance section of this Guideline.
27. Consumer contracts	Whole section OK
28. Notices	Whole section OK
29. Electricity Information Exchange Protocols	Whole section OK
30. Miscellaneous	Whole section OK
31. Interpretation	Deleted, amended and new definitions required as follows: Avoided Transmission Charge – delete Conveyance Only – delete Distributor’s Agreement – delete Electricity Supply Agreement – delete FAIDI – delete FAIFI – delete Feeder – delete GXP – delete Interposed – delete Network Supply Point (NSP) – delete (a). Replace (b) and (c) with "(a) the Network and a Local Network; or" Local Network – add new definition meaning "the immediately upstream network that the Network is connected to at a NSP" Local Network Charge – add a new definition meaning "charges that are applied by the Local Network provider to the Distributor and includes transmission charges"

Interposed MUoSA clause	Keep/change recommendation based on clause references from the interposed MUoSA
	Services – replace “Transmission” with “Local Network”
	System Operator Services – delete
	Transmission Charge – delete
	Transmission Interruption – delete
	Transmission Provider – delete
	Transmission Services – delete
Schedules	
Schedule 1: Service Standards	Schedule OK. Some standards will need to be set with reference to equivalent measures in the immediately upstream local network. The terms FAIDI and FAIFI are not generally relevant to embedded networks.
Schedule 2: Additional services	Schedule OK, if applicable.
Schedule 3: EIEPs	Schedule OK, details to be tailored to local needs.
Schedule 4: Consumer contracts	Schedule OK.
Schedule 5: Service interruption communications policies	Schedule OK, details to be tailored to local needs.
Schedule 6: Connection policies	Schedule OK, details to be tailored to local needs. S6.14(b) Temporary Disconnection rights – add the words “, the Local Network” after Network S6.14(d) Disconnection for a situation encountered under conveyance arrangements - delete
Schedule 7: Pricing principles	Schedule OK, details to be tailored to local needs.
Schedule 8: Load management	Schedule OK, details to be tailored to local needs.
Schedule 9: Pricing information	Schedule OK.

Additional guidance

Electricity Lines Businesses

11. The Authority understands that some existing embedded network UoSAs deem the distributor to be an “electricity lines business” as that term is defined in the Electricity Industry Reform Act 1998.
12. Since those UoSAs were agreed, the Electricity Industry Reform Act 1998 has been repealed and replaced by the Electricity Industry Act 2010. The new Act defines line owners to be all owners of works that are used or intended to be used for the conveyance of electricity. This qualifies embedded network owners as line owners and thus makes them subject to the appropriate provisions of the Electricity Industry Act 2010 and the Electricity Industry Participation Code 2010.

Trustee Liability

13. The Authority understands that embedded network owners who are trustees (particularly those who are trustees of Australian trusts) have frequently required that trustee liability limitation clauses be included in their UoSAs in addition to the usual limitation of liability provisions. The Authority further understands that trustees for embedded networks argue that it is appropriate to limit their liability to the assets of the trust because otherwise their personal assets would be exposed under a contract which they are only entering into in their capacity as trustees.
14. There is no standard drafting used for these clauses but generally they seek to limit the liability of the trustee to the assets of the trust. Without additional provisions, the level of the trustee's liability may be unclear and this may not balance the interests of the parties.
15. The Authority does not object in principle to trustees seeking to limit their liability to the assets of the trust if:
 - (a) they are truly independent trustees (i.e. trustees that have no beneficial interest in the trust assets); and
 - (b) as a result, in the absence of such a limitation, assets of the trustee that are wholly unrelated to the trust would be exposed to any claims under the UoSA.
16. The Authority considers that if a trustee limitation of liability clause is to be included in a UoSA, it is important that the trustee:
 - (a) has the right to be fully indemnified out of the trust assets; and
 - (b) is prepared to exercise its right of indemnity against the trust assets for the benefit of the retailer.
17. This is necessary to ensure that, in practice, the retailer can have recourse to the assets of the trust in the event of a successful claim. Without such provisions, the

trustee limitation of liability clause may have the effect of entirely excluding all liability of the trustee for any breach of the UoSA.

18. To achieve this the Authority considers that the UoSA should:
 - (a) contain a warranty that the trustee has the right to be fully indemnified out of the trust assets in respect of the obligations incurred by the trustee under the UoSA and that the retailer is entitled to be subrogated to that right in respect of the trustee's obligations under the UoSA; and
 - (b) oblige the trustee to exercise its right of indemnity against the trust assets for the benefit of the retailer.
19. If the warranty given by the trustee in 18(a) proved to be incorrect or the trustee's obligation in 18(b) were breached, or the trustee lost its indemnity due to its dishonesty or wilful breach of trust, the trustee's personal assets would become exposed to the relevant claim (for the amount that the trustee/retailer would otherwise have been able to recover from the trust assets via the indemnity. This is a reasonable provision as it provides a strong incentive for the trustee (who is the party best able to manage the risk that indemnity may be lost) to ensure that the warranty is effective at all times.