

2 December 2020

Dr Daniel Tulloch
Electricity Authority – Te Mana Hiko
PO Box 10041
Wellington 6143

cc: Vector Networks, ERANZ, ENA

Dear Dan,

RE: Concerns re Vector Networks Draft Default Distributor Agreement

As you will be aware, in July 2020 the Authority introduced new Part 12A Code provisions to address long-standing contract negotiation problems between distributors and traders, which the industry has been unable to resolve to date. The Code amendments introduce default terms written by the Authority to achieve a higher degree of standardisation in the market and include:

- a Default Distributor Agreement (DDA) Template which provides traders access to local distribution networks on more reasonable terms; and
- a Data Template (at Appendix C of Schedule 12A.1) which allows distributors to access consumption data on reasonable terms.

In accordance with the new Part 12A Code provisions, the “big 5” distributors are currently consulting with traders on the content of their proposed DDAs.

As a consequence of the Court of Appeal’s decision in the matter of *Vector Limited v Electricity Authority (March 2019)*, the Authority is unable to regulate or mandate quality standards (as that term is used in Part 4 of the Commerce Act). The Authority addressed this concern with a ‘Recorded Terms’ approach; that is, identifying terms that may fall within the scope of other regulatory agencies. Those terms are not subject to consultation or to the Rulings Panel appeal process. The consultation is limited to feedback on the proposed ‘Operational Terms’ within each distributor’s Default Distributor Agreement (DDA).

We write to express our concern over the ‘Recorded Terms’ included in Vector’s proposed draft DDA.

Rights to “Network Operational Data” and “Customer Information”

Contact strongly objects to the proposed provisions on “Network Operational Data” and “Customer Information” which Vector has included as ‘Recorded Terms’ in Schedule 1. These provisions are not quality standards (i.e. ‘Recorded Terms’). They are simply contractual rights which grant Vector the ability to obtain and use an extremely broad array of information, without relevant restrictions and security measures. Their inclusion in Schedule 1 as ‘Recorded Terms’ is misplaced.

Contact considers that it is an abuse of process by Vector to include these provisions as ‘Recorded Terms’, when they are not quality standards. Doing so means these terms are not subject to consultation and are not subject to the Rulings Panel appeal process. This cannot be a just and equitable

outcome for traders and inclusion of these terms in Schedule 1 squarely undermines the Authority's objectives.

Any agreement relating to "Network Operational Data" should be subject to a separate agreement negotiated with traders outside of the DDA process. Alternatively, extra terms in the DDA beyond the 'Core', 'Operational' and 'Recorded' terms should be called out as 'Collateral terms'. The Distributor is required to clearly identify 'Collateral Terms', and the amended Part 12A of the Code provides a trader with the right to refuse inclusion of these 'Collateral Terms' in a DDA.

Moreover, the drafting of these provisions elicit the following further concerns:

- Vector's definition of "Network Operational Data" appears to be a 'catch-all'. Contact is relatively comfortable with the provision of data related to electricity quality and usage (limited to information about harmonics, voltage and phase balance) but a specific description should be used in the definition for clarity.
- Use of "Customer Information" that the Distributor holds or obtains from the trader should be used solely for the purposes for which it was obtained (e.g. billing or planned outages) and no more broadly without specific agreement from the customer or trader.
- We are not willing to provide a standing consent. Each data request for "Network Operational Data" or "Customer Information" outside of the regulated processes (e.g. EIEP4) should be assessed on its merits.

Rights to "Consumption Data"

Contact repeats its objection (set out above) to Vector inserting additional rights to "Consumption Data" in Schedule 1. These provisions are not quality standards (i.e. 'Recorded Terms') and therefore their inclusion in Schedule 1 is also misplaced.

The intent of the Data Template (at Appendix C of Schedule 12A.1), which the industry helped to develop, is to allow distributors access to "Consumption Data" for "Permitted Purposes" on reasonable terms.

Vector has sought to add an additional "Permitted Purpose" to "facilitate and advance the quality of the distributor's performance" to its rights to use "Consumption Data". This significantly alters the (already wide) "Permitted Purpose" as drafted by the EA.

The Authority intended for distributors only to use "Consumption Data" for other purposes with the agreement of the trader. Contact considers that any amendment to the "Permitted Purpose" should be dealt with under Schedule 12A.1, clause 9, as Alternative terms for additional services, or under clause 20 of Appendix C.

Furthermore, Contact is not comfortable to enter into an agreement which includes a standing consent to a broader "Permitted Purpose", rather than considering the merits and risks of each data request.

It is still very early in the roll-out of default data sharing of non-anonymised "Consumption Data" and the industry is still getting to grips with, and developing streamlined processes for, sharing non-anonymised data. It is therefore not prudent to extend rights to data at the current time.

Contact is also not able to consent to Vector combining “Consumption Data” with all other data – another ‘Recorded Term’ included in Schedule 1. This is contrary to a ‘Core Term’ of the DDA. Vector should await the outcome of the joint mediation process on this issue to conclude before combining data. It is currently looking likely that the industry may be able to agree a closed list of instances when distributors will be permitted to combine databases, but this will probably be subject to a side agreement between traders and distributors rather than as a Code amendment, as envisaged by Vector in its Schedule 1 drafting.

Consultation Process

We have raised our concerns with Vector directly, both through commercial and legal channels.

Vector considers that the Authority has not moved at the necessary pace in relation to provision and use of data. They have advised us that they see data as fundamental for their business and have therefore taken this opportunity to include terms relevant to the provision of their distribution services generally.

We would be keen to discuss how the Authority (and ENA - cc'd) can help to ensure that the data provisions in Vector’s final post-consultation published DDA reflects the feedback we, and undoubtedly others, will have provided during the consultation process on their current draft version.

Timelines

The consultation process for the two-dozen small distributor contracts is now gaining momentum, with the first few drafts expected to be released next week.

Contact did not anticipate that there would be as much variation between distributors’ draft DDAs as we have seen through consultation with the “big 5” distributors. There was an expectation that there would be some minor variation to account for different operational practices of different distributors, but the effort involved to review and provide feedback on each distributor’s proposed draft DDA has been far more burdensome than we had initially thought.

Consequently, Contact has concerns about the sector’s ability to conclude this process in the EA’s proposed timeframes. We would encourage the Authority to consider an extension in order to fulfil this part of the project.

Jen Hewitt, Contact Senior Legal Counsel [REDACTED] and I look forward to the discussing our concerns further with you at your earliest availability.

Regards

A handwritten signature in blue ink, appearing to read "Chris Abbott".

Chris Abbott
GM Regulatory Affairs and Govt Relations
Ph: [REDACTED]