Electricity Authority

Default Distributor Agreement (DDA) Research

Research Report

March 2018

Contents

Introduction

1.1 Background

The Electricity Authority (the Authority) is an independent Crown entity responsible for the efficient operation of the New Zealand electricity market. The Authority is the electricity market regulator - regulating the electricity market by developing and setting the market rules, enforcing and administering them and monitoring the market's performance.

The Authority promotes competition in, reliable supply by, and the efficient operation of, the New Zealand electricity industry for the long-term benefit of consumers.

The Authority is undertaking cost benefit analysis on the introduction of a default distributor agreement (DDA). This research was conducted to inform this analysis.

1.2 Methodology

The report outlines the responses from online surveys conducted with electricity retailers and distributors. In total 22 retailers and 23 distributors took part in this research.

Breakdown of respondents

Respondent by type	Surveys distributed	Completed surveys
Retailers	29	22
Distributors	27	23

Base: All respondents

Fieldwork was conducted from 15th February to 20th March 2018.

Due to the small sample sizes the counts have been reported instead of percentages in the tables.

Executive summary

Model Use of System Agreements

- More than half of both retailers and distributors used the Model Use of System Agreement as a starting point for negotiations.
- Generally, distributors indicated their average cost of negotiating UoSAs was lower than retailers. Around half of distributors stated their average cost of negotiating UoSAs was $1,000 or less, while only four retailers estimated their negotiation costs at this level.
- More distributors than retailers claimed the costs of negotiating UoSAs did not vary much. There were slightly more retailers who indicated the cost of negotiations varied.
- All retailers indicated that if they had a default agreement their costs would decrease. Distributors were split on how it would impact them. More than half of distributors indicated their costs would increase if they had a default agreement.

Trading

- Around half of retailers stated there were areas or networks they would not trade. The most common reasons given for not trading in some areas related to pricing and metering issues.
- When asked about networks retailers have begun trading in over the last six months, half of the retailers indicated they now trade in one to three new networks.
- Distributors claimed to have a moderate increase in the number of retailers joining their network in the last six months, with 15 distributors stating they had one to three new retailers join.
- Future trading – retailers
  - Retailers were expecting to be on more new networks over the next two years.
  - Eight (of 22) retailers thought the lack of a DDA was a barrier to expanding into other network areas. Around half did not see this as a barrier.
  - Retailers were asked how many new networks they would begin trading on if a DDA was available, results were relatively similar to the general projections for the next two years.
- Future trading – distributors
  - Distributors were more optimistic over the two-year period, with six distributors expecting six or more retailers on their network.
  - In a similar pattern to retailers, the expected number of retailers to join the distributors' network if a DDA was available was very similar to the general projections for the next two years.
  - There was marginal interest in shifting current retailers onto a DDA if it were available. Close to half of the distributors said they would not put any of their current retailers onto a DDA if it was available.
  - Nearly all distributors stated that negotiation costs were not a barrier to a potential new entrant retailer joining their network.
  - Half of distributors indicated that there would not be a significant difference in costs from maintaining multiple agreements versus using a default agreement.

Negotiations

- Retailers
    - The majority of retailers indicated that none of their UoSA negotiations resulted in no agreement in the past six months – with two retailers failing to negotiate an agreement once over that period. Over the past two years, there were six retailers who indicated their UoSA negotiations resulted in no agreement with three of these six, claiming to have had multiple negotiations fail.
    - More than half of retailers felt their terms and conditions for UoSA were no different than others. Six retailers thought their terms and conditions were worse compared to other retailers' agreements.
    - An overwhelming majority of retailers stated they felt disadvantaged compared to distributors in negotiations. The main reasons for believing retailers were disadvantaged during negotiations related to the monopoly position of distributors, followed by slow and inflexible processes.
- Renegotiating UoSA
    - Around half of distributors said they have tried to renegotiate UoSAs with existing retailers, a lower number of retailers indicated they have tried to negotiate. There were only a few, across both retailers and distributors, that indicated the outcome of the renegotiations resulted in better terms and conditions.
    - Many more retailers than distributors felt there were unnecessary terms and conditions in the UoSA that increase the cost of doing business.
    - Most retailers felt they had signed an agreement or UoSA because they needed to trade on a network despite the terms and conditions not being fair.
- 'Most favoured nation' clauses
    - More than half of distributors said they had 'most favoured nation' clauses in their UoSA so they provided the best terms and conditions to other retailers on their network. Only four retailers stated they had these clauses, and more than half were unsure if they had these clauses in their agreements.
        - None of the retailers who had the clauses have used them. The reasons given were that the clauses had not been required, that it did not add any additional value, and that the legal process to enact the clause was onerous.
- UoSA a barrier to innovation
    - Over half of retailers stated that terms in their UoSA stopped them from offering a new service or innovating. In contrast, only two distributors said there were terms in their UoSA that stopped them offering a new service or innovating.
        - The main reasons given by retailers for the UoSA being a barrier to introduction of new services or innovation related to pricing and cost structures, not working for solar, and not being set up for a competitive environment.

Profile

3.1 Number of ICPs

Amongst retailers there was a spread of ICP sizes; five large, five medium, four small and 8 micro retailers. There were five large distributors, 15 medium and three small distributors.

ICP/ total connections		
How many ICPs does your company have in total? (Retailers) *How many ICPs/ connections do you have on your network? (Distributors)*		
	Retailers	**Distributors**
Base: n=	***22***	***23***
	Count	
Large: Over 100,000 ICPs	5	5
Medium: Between 10,000 and 99,999 ICPs	5	15
Small: Between 1,000 and 9,999 ICPs	4	3
Micro: 999 or fewer ICPs	8	-

Base: All respondents

3.2 Trust owned distributors

Most were trust-owned distributors.

Trust-owned distributor	
Are you a trust-owned distributor? (Distributors)	
	Distributors
Base: n=	***23***
	Count
Yes	16
No	7
Unsure	-

Base: All distributors

3.3 Current use of UoSA

More than half of the retailers indicated they currently use the Model Use of System Agreement as a starting point for negotiations. Six retailers did not and two were unsure.

A similar number of distributors stated they use the Model Use of System Agreement as a starting point for negotiations.

Model Use of System Agreement

Do you currently use the Model Use of System Agreement as a starting point for negotiations? (Retailers/ Distributors)

	Retailers	Distributors
Base: n=	***22***	***23***
	Count	
Yes	14	16
No	6	6
Unsure	2	1

Base: All respondents

Related costs

4.1 Cost of Use of System Agreements

Ten retailers indicated the average cost of negotiating their UoSAs was $5,000 or less. There was a small number who stated their average cost was more than $20,000.

Generally, distributors indicated their average cost was lower than retailers. Around half of distributors stated their average cost of negotiating UoSAs was $1,000 or less. Six distributors indicated the average cost was between $1,001 and $5,000. A couple of distributors said the average cost was between $10,001 and $20,000.

Average cost of negotiating Use of System Agreements

What was the average cost of negotiating your UoSAs (use of system agreements) – these costs could include time / effort / sort of people used—lawyers either internal or external, etc? (Retailers/ Distributors)

	Retailers	Distributors
Base: n=	***22***	***23***
	Count	
$1,000 or less	4	12
$1,001-$5,000	6	6
$5,001-$10,000	4	-
$10,001-$20,000	3	2
More than $20,000	3	-
Unsure/ Difficult to quantify	2	3

Base: All respondents

4.2 Variation of costs

Close to a third of retailers stated that the costs of negotiating UoSAs vary a lot per agreement. Five retailers said it only varies a little and five said the cost per agreement does not vary much.

Nine of the distributors indicated the costs did not vary much. Six said the costs vary a lot and five said the costs only varies a little.

Variation in costs of negotiating Use of System Agreements

How much do the costs of negotiating your UoSAs vary per agreement? (Retailers/ Distributors)

	Retailers	Distributors
Base: n=	*22*	*23*
	Count	
Varies a lot	7	6
Varies a little	5	5
Does not vary much	5	9
Unsure	5	3

Base: All respondents

4.3 Default agreement impact on cost

- ***Decrease in costs***

All retailers indicated that if they had a default agreement their costs would decrease.

For some retailers a default agreement could save them a significant amount. Four retailers stated their costs could decrease by more than $10,000 if they had a default agreement.

For other retailers the reduction in cost are more moderate, six retailers indicated their costs would decrease by $1,000 or less.

Eight distributors indicated their costs would decrease if they had a default agreement. The decrease in costs were more moderate than the decreases for retailers. Of these eight distributors, six stated their costs would decrease by $500 or less.

Default agreement impact on cost – Decrease		
If you had a default agreement, by how much will it increase/decrease costs (these costs could include time / effort / sort of people used during negotiations – lawyers either internal or external, etc.)? (Retailers/ Distributors) – Decrease – by how much?		
	Retailers	**Distributors**
Base: n=	***22***	***8***
	Count	
$500 or less	3	6
$501-$1,000	3	1
$1,001-$5,000	7	1
$5,001-$10,000	2	-
More than $10,000	4	-
Unsure/ Difficult to quantify	3	-

Base: Respondents who indicated a default agreement would decrease costs

- ### *Increase in costs*

Fifteen distributors indicated their costs would increase if they had a default agreement. Close to half of these distributors stated a small increase of $500 or less. Although there were four distributors who stated their costs would increase by more than $10,000.

Default agreement impact on cost – Increase		
If you had a default agreement, by how much will it increase/decrease costs (these costs could include time / effort / sort of people used during negotiations – lawyers either internal or external, etc.)? (Retailers/ Distributors) – Increase – by how much?		
	Retailers	**Distributors**
Base: n=	***-***	***15***
	Count	
$500 or less	-	7
$501-$1,000	-	-
$1,001-$5,000	-	-
$5,001-$10,000	-	1
More than $10,000	-	4
Unsure/ Difficult to quantify	-	3

Base: Respondents who indicated a default agreement would increase costs

Trading

5.1 Areas not traded - Retailers

Around half of retailers stated there were areas or networks they would not trade. Seven indicated they would trade in any network and a few were unsure.

Areas retailers would not trade

Are there places/areas/networks you would not trade? (Retailers)	
	Retailers
Base: n=	***22***
	Count
Yes	12
No	7
Unsure	3

Base: All retailers

The most common reasons given for not trading in some areas related to pricing and metering issues.

Reasons for not trading in some areas – Verbatim comments

Why do you choose not to trade in some places? Are the UoSA important in this choice? (Retailers)	
	Retailers
Base: n=	***12***
	Verbatim comments
Pricing	
So big difference in which some networks display their price structure, unnecessarily complicated and inconsistent with other companies, that the complexity and number of variation is too big to handle. As well difficult to check if charges are correct. Uniformity should be a rule.	
Network Price Category codes are too complicated are the main reason we don't operate in some networks. UOSA agreements to date have slowed us down moving into some networks for the following reasons: - Some networks require us to use their own meters - Some networks have EIEP reporting that is unique to their own networks - Non-standard Demand charging (Orion / Powerco West).	
Tauranga due to the non-competitive nature of the local Trust Dividend. It is paid to only TrustPower customers and is not independent of the retailer leading to a significant barrier to entry to that market place. This is not a UoSA issue. Orion network due to Orion's onerous charging methodology whereby they will bill; retailers for consumers demand even though the retailer may not have had the customer for the period of billing. Yes, this is UoSA issue as it relates to Orion's charging practices.	

Reasons for not trading in some areas – Verbatim comments (continued)
Smart meters
We cannot trade where METRIX meters have too great a share of the market as they refuse to supply us with HHR data. UoSA take too much time (which is not a cost to me in $ but takes too long and we never see any urgency on the distributor side).
Reasons vary, some relate to UoSA issues others relate to smart meter penetration.
Not enough smart meters and too much complexity to operate on the smaller network given that the pricing structure is so different across all networks.
Other
The common area to not trade is many of the small embedded networks where there is limited expected benefit from trading with just a few customers and incurring additional UoSA costs, data management and accounts processing etc. Otherwise it comes down to either accepting unreasonable terms from the EDB or limiting trading opportunities. It should be noted that some commercial customers require that a retailer is able to supply all of their branches, which means having national representation.
Remote / Difficult. Yes.
Partially, areas are exclusively private networks where the cost to negotiate exceeds the potential value.
Yes.
Yes, we are cancelling our UoSA with ORION and do not trade on The Lines Company.
No comment.

Base: Retailers who choose not to trade in some areas

5.2 Current trading - Retailers

- ***Number of networks operating in***

Six retailers stated they were operating in all local networks. A couple of retailers operate in one to four local networks. Five operators operate in five to nine and 9 operate in more than 10 networks.

Number of local networks retailers are operating in

How many local networks are you operating in now? (Retailers)	
	Retailers
Base: n=	***22***
	Count
1-4	2
5-9	5
10-14	2
15-19	2
20-24	1
25 or more	4
All of them	6
Unsure	-

Base: All retailers

- ### *New networks traded in last six months*

When asked about networks retailers have begun trading in over the last six months, half of the retailers indicated they now trade in one to three new networks.

Number of new networks begun trading in last six months

How many new networks have you begun trading on in the past six months? (Retailers)

	Retailers
Base: n=	*22*
	Count
None - Already trade in all	1
None	3
1	4
2	3
3	4
4	1
5	2
6 or more	3
Unsure	1

Base: All retailers

5.3 Current trading - Distributors

Over the last six months, eight distributors had two retailers join their network. Six distributors had three retailers join and four distributors had four retailers join. There were only a couple of distributors who have not had any retailers join their network in the last six months.

Number of retailers joining network in the last six months

How many retailers joined your network in the last six months? (Distributors)

	Distributors
Base: n=	*23*
	Count
None	2
1	1
2	8
3	6
4	4
5	1
6 or more	1

Base: All distributors

5.4 Future trading - Retailers

- ### *Trading on new networks*

Retailers were asked to indicate how many new networks they plan to begin trading on over the next two years. There were five ambitious retailers who were planning on trading in 6 or more new networks over the next six months. Six retailers were more moderate and indicated they plan on adding 1-2 networks. Looking out to two years, a greater number of retailers were planning to trade on more new networks.

Trading on new networks – Retailers

How many new networks do you plan to begin trading on in the next six months / two years? (Retailers)

	Six months	Two years
	Count	
None - Already trade in all	1	1
None	5	3
1	2	1
2	4	2
3	-	2
4	1	2
5	-	1
6-9	3	1
10 or more	2	5
All	1	1
Unsure	3	3

Base: All retailers (n=22)

- ### *Impact of lack of DDA on expansion into other areas*

Eight retailers thought the lack of a DDA was a barrier to expanding into other network areas. Around half did not see this as a barrier.

Lack of DDA a barrier to expanding into other network areas

Is the lack of a default distributor agreement (or DDA) a barrier to expanding into other network areas? (Retailers)

	Retailers
Base: n=	*22*
	Count
Yes	8
No	12
Unsure	2

Base: All retailers

- ### *Impact if DDA was available*

Five retailers would add six or more networks over the next six months if a DDA was available. When looking over the two-year period more retailers indicated they would begin trading on more new networks, with seven retailers stating they would begin trading on six or more new networks.

Future trading if DDA was available – Retailers

How many new networks would you begin trading on in the next six months / two years if a DDA was available? (Retailers)

	Six months	Two years
	Count	
None	6	4
1	1	-
2	3	1
3	-	2
4	2	2
5	-	1
6-9	2	1
10 or more	3	6
All	-	-
Unsure	5	5

Base: All retailers (n=22)

5.5 Future trading - Distributors

- ### *Trading with new retailers*

Distributors were asked to indicate how many retailers they would expect on their network over the next two years, around half of distributors were expecting 1-2 new retailers over the next six months.

Distributors were more optimistic over the two-year period. Six distributors were expecting six or more retailers on their network over the next two years.

Future trading – Distributors

How many new retailers would you expect on your network in the next six months / two years? (Distributors)

	Six months	Two years
	Count	
None	3	-
1	5	2
2	8	1
3	-	3
4	1	2
5	-	5
6-9	2	2
10 or more	-	4
Unsure	4	4

Base: All distributors (n=23)

- ### *Impact if DDA was available*

Around half of the distributors would expect 1-2 new retailers over the next six months if the DDA available. Three distributors are not expecting any new retailers on their network and five were unsure.

Over the next two years more distributors were expecting new retailers if the DDA was available. Five distributors would expect six or more retailers if the DDA was available.

Future trading if DDA was available – Distributors

How many new retailers would you expect on your network in the next six months / two years if the DDA was available? (Distributors)

	Six months	Two years
	Count	
None	3	-
1	5	2
2	8	1
3	-	3
4	1	2
5	-	5
6-9	1	2
10 or more	-	3
Unsure	5	5

Base: All distributors (n=23)

- ### *Number of retailers moved to DDA if available*

Close to half of the distributors said they would not put any of their current retailers onto a DDA if it was available. Four distributors indicated they would put 1-5 of their current retailers on a default distributor agreement.

There were some distributors who showed notable interested in putting current retailers on a DDA. Three distributors stated they would put all their current retailers on a DDA if it were available and one distributors who would shift most to DDA.

Number of retailers that distributors would put on a default distributor agreement (DDA)

How many current retailers would you put on a default distributor agreement (DDA) if it were available? (Distributors)

	Distributors
Base: n=	*23*
	Count
None	11
1-5	4
6-10	-
More than 10	1
Most	1
All	3
Unsure	3

Base: All distributors

- ### *Negotiation costs barrier to new retailers joining network*

Nearly all distributors stated that negotiation costs were not a barrier to a potential new entrant retailer joining their network, while a couple were unsure.

Negotiation costs a barrier to new entrant retailers joining network

Are there potential new entrant retailers that you won't have on your network because of negotiation costs? (Distributors)

	Distributors
Base: n=	***23***
	Count
Yes	-
No	21
Unsure	2

Base: All distributors

- ### *Impact on costs of maintaining multiple agreements versus a DDA*

Half of distributors indicated that there would not be a significant difference in costs from maintaining multiple agreements versus using a default agreement. Only a couple of distributors thought there would be a significant difference in costs and nine distributors were unsure.

Difference in cost of maintaining multiple agreements versus a default agreement

Will there be a significant difference in costs from maintaining multiple agreements versus using a default agreement? (Distributors)

	Distributors
Base: n=	***23***
	Count
Yes	2
No	12
Unsure	9

Base: All distributors

Negotiations

6.1 Negotiations - Retailers

- ***Outcome of UoSA negotiations***

A clear majority of retailers indicated that none of their UoSA negotiations resulted in no agreement in the past six months with only two stating that they had not negotiated an agreement.

Over the past two years, there were six retailers who indicated their UoSA negotiations resulted in no agreement. While three of these six, claiming to have had multiple negotiations fail.

UoSA negotiations resulting in no agreement – Retailers

Over the past six months/ 2 years, how many UoSA negotiations resulted in no agreement? (Retailers)

	Six months	Two years
	Count	
None	17	13
1	2	3
2	-	1
3	-	1
4	-	1
5	-	-
6-9	-	-
10 or more	-	-
All	-	-
Unsure	3	3

Base: All retailers (n=22)

- ### *Terms and conditions compared to other retailers*

Over half of retailers felt their terms and conditions for UoSA are no different than others. Six retailers thought their terms and conditions were worse compared to other retailers' agreements. One retailer felt they had better terms and conditions than others.

Terms and Conditions for UoSA compared to other retailers

Do you believe the terms and conditions for your UoSA are better, worse, or no different than others compared to other retailers' agreements with distributors on the same network? (Retailers)

	Retailers
Base: n=	***22***
	Count
Better	1
Worse	6
No different than others	15

Base: All retailers

- ### *Disadvantaged during negotiations*

An overwhelming majority of retailers stated they feel disadvantaged compared to distributors in negotiations.

Retailer bargaining position

When it comes to negotiations, how would you describe your bargaining position – do you feel you are: (Retailers)

	Retailers
Base: n=	***22***
	Count
Disadvantaged compared to the distributor	20
Advantaged compared to the distributor	-
About the same	2
Unsure	-

Base: All retailers

The main reasons for believing retailers were disadvantaged during negotiations related to the monopoly position of distributors, followed by slow and inflexible processes.

Reasons for retailers feeling disadvantaged during negotiations – Verbatim comments

In what way do you feel disadvantaged during negotiations? (Retailers)	
	Retailers
Base: n=	***20***
	Verbatim comments
Monopoly	
As a monopoly supplier, we are offered "take it or leave it" terms. We have no negotiating leverage even as a large retailer. It is very problematic and adds risk to our business that we then need to mitigate. There is a complete imbalance of power.	
Distributor is dictating and demanding terms. Orion got clause 29 promising that any new agreement with any new retailer will be offered to previous retailers, but unsure if they really can implement it.	
Distributors are fixed in their views and don't need to change, they are monopolies with no competition and no incentives to do anything different. Consumers on their network can still get supply from another retailer so there is no incentive for a distributor to sign another retailer. That's not to say they are abusing their positions we have good relationships with distributions and most have been very helpful to us as a new retailer. We are grateful they have allowed us as a new entrant to trade on their networks.	
I have been in negotiations with a number of network companies – at both large and small organisations. These negotiations are not even or workable. Because of their monopoly position it is often a 'take it or leave it' attitude.	
If we want to trade on their network, they can delay and stall as long as they like and there is little we can do. They have no incentive to have more retailers, so all the incentive is on our side. Though the network new retailers are a cost and add overhead of extra communications and files and potential issues.	
Most UoSA are a take or leave basis with no room to negotiate terms. This would be ok if all terms were the same for all traders on the network.	
No incentive for the distributor to agree/respond to timeframes. Have experienced monopoly behaviours in relation to fees, data access and other terms.	
Sign it or don't use their lines. They have a monopoly.	
The distributor has a monopoly over specific areas. If we want to enter those areas, we are obliged to agree to the distributor's demands.	
There is effectively no negotiation.	
There is generally no negotiation whatsoever. It is very much a 'take it or leave it' process. There is no additional benefit to the distributor from having more retailers on their network, only cost. Basically, there is nothing that a retailer can offer a distributor in negotiation.	
There is no other option but to engage with the only option available for the region.	
They are a natural monopoly; our choices are to either compromise or jog on and trade elsewhere.	

Base: Retailers who describe their bargaining position as disadvantaged compared to the distributor during negotiations

Reasons for retailers feeling disadvantaged during negotiations – Verbatim comments (Continued)

In what way do you feel disadvantaged during negotiations? (Retailers)	
	Retailers
Base: n=	***20***
	Verbatim comments
Monopoly (continued)	
They are monopolies and hence have we essentially have to accept their terms, within reason, if we want to trade on their networks.	
We don't have an option.	
We have zero bargaining power. It is ultimately completely up to the distributor what they will condescend to give us. They will not move at all on anything of any commercial significance to them and our ability to secure changes is on minor points only.	
Slow and inflexible processes	
Processes are slow, dated and cumbersome – especially when it is their own contract. In one case it took the distributor 6 weeks to sign and return a signed agreement. Most distributors are still sending 2 100+ page documents by snail mail to sign. If immigration New Zealand can accept scanned copies I think a network can.	
The EDB provides their standard UoSA for Retailers to sign. This may or may not be updated from pre-model UoSA. They are always reluctant to vary from their standard UoSA & will only consider change if something is clearly pointed out to be either incorrect or unreasonable. The most favoured clause only works a) for new updates on the UoSA, and b) if the EDB actually advises Retailers that they have signed a new version. This clause also acts as a deterrent to EDBs to make any changes, even if they are reasonable, because they do not wish to go to all Retailers on their network with the new amended contract as that then creates more work. Retailers have no negotiating power due to the natural monopoly nature of the EDBs.	
Other	
They have the ICP regardless of who is the Retailer. They are all about cost so the fewer retailers the better from their perspective. As a Micro Retailer we cannot build significant ICP quickly.	
No comment.	

Base: Retailers who describe their bargaining position as disadvantaged compared to the distributor during negotiations

6.2 Renegotiating UoSA

- ### *Number that have renegotiated UoSA*

Nine retailers have tried to renegotiate their UoSA, while 13 have not renegotiated their UoSA.

Around half of distributors said they have tried to negotiate UoSAs with existing retailers, eight had not and two were unsure.

Renegotiating UoSA

Have you tried to renegotiate your UoSA? (Retailers) Have you tried to renegotiate UoSAs with existing retailers? (Distributors)		
	Retailers	**Distributors**
Base: n=	***22***	***23***
	Count	
Yes	9	13
No	13	8
Unsure	-	2

Base: All respondents

- ### *Outcome of renegotiation*

Only one retailer said the outcome of the renegotiations resulted in better terms and conditions. Of the remaining nine retailers that renegotiated their UoSA, three retailers stated the negotiations resulted in no deal at all, two retailers said terms and conditions were worse, while two retailers stated the negotiations made no difference to terms and conditions.

In line with retailers, two of the distributors said the outcome of the negotiations was better terms and conditions for them. Five of the thirteen distributors stated the negotiations resulted in no deal at all, five distributors said there was no difference, while one distributor said the outcome of the negotiations was worse terms and conditions for their UoSA.

Outcome of negotiating UoSA

What was the outcome when you renegotiated – were terms and conditions better for you, worse for you, no different, or did you end up with no deal at all? (Retailers/ Distributors)		
	Retailers	***Distributors***
Base: n=	***9***	***13***
	Count	
Better for me	1	2
Worse for me	2	1
No different for me	2	5
No deal at all	3	5
Unsure	1	-

Base: Respondents who tried to renegotiate UoSA

• *Unnecessary or unfair terms and conditions in UoSA*

Fourteen retailers felt there were unnecessary terms and conditions in the UoSA that increase the cost of doing business. One retailer did not think that was the case and seven were unsure.

A few distributors felt there were unnecessary terms and conditions in the UoSA that increase the cost of doing business. Although most did not think that was the case.

Unnecessary terms and conditions in the UoSA

Are there unnecessary terms and conditions in the UoSA that increase the cost of doing business? (Retailers/ Distributors)

	Retailers	Distributors
Base: n=	***22***	***23***
	Count	
Yes	14	3
No	1	12
Unsure	7	8

Base: All respondents

• *Signing UoSA with unfair terms and conditions*

Most retailers felt they had signed an agreement or UoSA because they needed to trade on a network despite the terms and conditions not being fair.

Signing UoSA regardless of unfair terms and conditions

Have you ever signed an agreement or UoSA despite the terms and conditions not be fair or favourable because you needed to trade on a network? (Retailers)

	Retailers
Base: n=	***22***
	Count
Yes	18
No	2
Unsure	2

Base: All retailers

Additionally, nineteen retailers had signed an agreement with provisions they did not want, only two said they have never done this.

Signed agreement with unwanted provisions

Have you ever signed an agreement with provisions that you did not want? (Retailers)

	Retailers
Base: n=	***22***
	Count
Yes	19
No	2
Unsure	1

Base: All retailers

Of those nineteen retailers who had signed an agreement with provisions they did not want, seven retailers indicated that the associated cost was large, six were neutral and three said it was a minor cost.

Cost of unwanted provisions

Thinking about the cost to your business of accepting this clause or provision that you did not want – please note the cost on a scale of 1 to 5 where 1 means a major cost and 5 means a minor cost? (Retailers)

	Retailers
Base: n=	***19***
	Count
1 – Major cost	1
2	6
Total 1 + 2	**7**
3	**6**
4	1
5 – Minor cost	2
Total 4 + 5	**3**
Unsure	3

Base: Retailers who signed an agreement with provisions that they did not want

6.3 'Most favoured nation' clauses

- ***Use of 'most favoured nation' clauses***

Only four retailers stated they have 'most favoured nation' clauses in their UoSA to ensure that they get the best terms and conditions available to others on their network. Over half were unsure if they had this clause in their UoSA.

More than half of distributors said they have 'most favoured nation' clauses in their UoSA so they provide the best terms and conditions to other retailers on their network. Five did not have the clause and four distributors were unsure.

'Most favoured nation' clauses

Do you have "most favoured nation" clauses in your UoSA so that you get the best Terms & Conditions available to other customers on the same network? (Retailers)

Do you have "most favoured nation" clauses in your UoSA so that you provide the best Terms & Conditions available to other retailers on your network? (Distributors)

	Retailers	Distributors
Base: n=	***22***	***23***
	Count	
Yes	4	14
No	5	5
Unsure	13	4

Base: All respondents

- ***Offering of 'most favoured nation' clauses***

Of the four retailers that have the 'most favoured nation' clauses, three stated that the distributor proactively offers these clauses and one retailer indicated that the distributor includes these clauses happily when asked.

Ten out of the 14 distributors who have 'most favoured nation' clauses said they proactively offer these clauses. One distributor stated they will include these clauses happily when asked by retailers. Only one distributor said they do not offer these clauses.

Offering of 'most favoured nation' clauses			
Which of the following best describes how you get these clauses? (Retailers) *Which of the following best describes how you provide these clauses? (Distributors)*			
Base: n=	**Retailers** ***4***		**Distributors** ***14***
	Count		**Count**
The distributor proactively offers these clauses	3	You proactively offer these clauses	10
The distributor includes these clauses happily when we ask	1	You include these clauses happily when asked	1
The distributor reluctantly offers these clauses only when asked	-	You offer these clauses only when negotiated	-
These clauses are not offered	-	These clauses are not offered	1
Unsure	-	Unsure	2

Base: Respondents who have 'most favoured nation' clauses in UoSA

- ### *Implementation of 'most favoured nation' clauses*

None of the retailers with the 'most favoured nation' clause have actually used it.

Use of 'Most favoured nation' clause among retailers	
Have you used the "most favoured nation" clause? (Retailers)	
Base: n=	**Retailers** ***4***
	Count
Yes	-
No	4

Base: Retailers who have 'most favoured nation' clauses in UoSA

Retailers that had not used the clause said that this was because it had not been required, that it did not add any additional value, and that the legal process to enact the clause was onerous.

Reasons for not using 'most favoured nation' clause – Verbatim comments

Why have you not used the "most favoured nation" clause? (Retailers)

	Retailers
Base: n=	*4*
	Verbatim comments
The need has never arisen.	
Option has not yet arisen.	
It has not added additional value to our existing agreement. Often subsequent agreements have less benefit rather than more. For example, the threshold for change under one of our UoSA has since the threshold increased from 66% to 75% of retailers in agreement to push change in subsequent agreements. This is an eroding of rights over time rather than the other way around (thereby not really falling under a "favoured nation").	
Because it is part of the most ridiculously long legal document possible. As a small retailer you just don't have the option to negotiate anything except for Prudential levels and the approach here is totally inconsistent across networks and limits the ability to compete.	

Base: Retailers who have not used the 'most favoured nation' clause

- ### *Disadvantaged without 'most favoured nation' clause*

Three out of the five retailers who do not have the 'most favoured nation' clause in their UoSA feel disadvantaged.

In contrast, none of the distributors felt that retailers are disadvantaged if they do not have the 'most favoured nation' clauses in their UoSA.

Disadvantage to not have the 'most favoured nation' clauses in UoSA

Do you feel it is a disadvantage not to have the "most favoured nation" clauses in your UoSA? (Retailers)

Do you feel retailers are disadvantaged if they do not have the "most favoured nation" clauses in their UoSA? (Distributors)

	Retailers	Distributors
Base: n=	*5*	*5*
	Count	
Yes	3	-
No	1	5
Unsure	1	-

Base: Respondents who do not have the 'most favoured nation' clause in their UoSA

6.4 UoSA a barrier to innovation or introduction of new services

Over half of retailers stated that terms in their UoSA stopped them from offering a new service or innovating.

In contrast, only two distributors said there were terms in their UoSA that stopped them offering a new service or innovating. More than half of distributors said that terms in the UoSA had not stopped them offering a new service or innovating.

UoSA barriers to offering a new service or innovation

Have terms in the UoSA stopped you offering a new service or innovating? (Retailers)

Have terms in any UoSA you have negotiated with a retailer stopped you offering a new service or innovating? (Distributors)

	Retailers	Distributors
Base: n=	*22*	*23*
	Count	
Yes	13	2
No	7	17
Unsure	2	4

Base: All respondents

The main reasons given by retailers for the UoSA being a barrier to introduction of new services or innovation related to pricing and cost structures, not working for solar, and not being set up for a competitive environment.

Examples of when terms of UoSA was a barrier to offering a service or innovation – Retailers verbatim comments

Can you provide some examples where you have not offered a service or innovation due to the terms in the UoSA? (Retailers)

	Retailers
Base: n=	*13*
	Verbatim comments
Pricing/ Costs	
Lack of cost-reflective pricing and lack of ubiquitous approaches on these has prevented pricing innovation being commercialised on all networks. Networks are complicit in protecting the incumbent gentailers from threat by tailoring their pricing structures to the lowest common denominator in terms of system capability.	
Demand response clauses that allow the distributor to control load without paying a reasonable cost for doing so. Whilst it is pragmatic for load control to be available in an emergency, without a mechanism for cost recovery it will never be invested in.	

Base: Retailers who indicated terms in the UoSA stopped them offering a new service or innovating

Examples of when terms of UoSA was a barrier to offering a service or innovation – Retailers verbatim comments (continued)

Can you provide some examples where you have not offered a service or innovation due to the terms in the UoSA? (Retailers)	
	Retailers
Base: n=	***13***
	Verbatim comments
Low User Fixed Charge Regulation has prevented us adding different technologies that would add value to the consumer.	
Mainly around irregular Capacity Code pricing as opposed to legal terms in the UOSA.	
Orion's pricing methodology.	
We stopped selling to NHH customers in one network because we could not provide HHR billing information. Another network announced an intention to start billing for Power Factor, while customers that demand group did not have meters capable of measuring PF.	
Solar	
Aggregation, metering, solar.	
Battery and solar is discouraged. i.e. Not all network companies offer a fair, if any, payment for batteries being used during heavy loaded times.	
Not-competitive	
The terms of the UoSA do not appropriate cater for the changing environment whereby networks can and do compete in the competitive market. Not only are they leveraging off their regulated asset base they are using the UoSA to obtain data that has been commercially obtained by retailers to then, arguably, offer the same service in the competitive market. This is problematic. The UoSA should be used for operational purposes only e.g. data for billing and reconciliation purposes. Definitions, etc needed to be tightened up to ensure that the contract is used only for the purposes for which it was/is intended. We have had great difficulty trying to renegotiate a UoSA to restrict the use of data we provide to the regulated business that we provide it to and for the purposes needed operationally. Having a clear, coherent DDA that reflects the changing nature of the market and restricts the contract to the provision of the network service only would reduce costs. We have spent over 18 months trying to renegotiate our UoSA with substantial external legal costs and yet we still have made little progress.	
Other	
Load control - where distributor is the only party able to load control.	
Particularly in instances where networks own metering assets and have rolled the provisions into their UoSA.	
We have to offer 24/7 fault contact as CKHK do not provide this service. Taking contact in this situation adds to our cost - yet we are unable to provide any added value service to customers as CKHK rarely acknowledge the service request, rarely give us any indication of expected fix time, never indicate when they will turn up at the customer and do not let us know that the fault has been fixed. Another CKHK service issue is that they provide up to 10 notifications a day for planned outages but do not only send us the ones for our customers. As a Micro retailer it is a significant hassle that they will do nothing about. If you standardise UoS agreements how about making the services more standardised across the networks. CKHK is very expensive (53% of my customers' bills last week) but provides very little in the way of customer service support.	
No comment.	

Base: Retailers who indicated terms in the UoSA stopped them offering a new service or innovating

Examples of when terms of UoSA was a barrier to offering a service or innovation – Distributors verbatim comments

Can you provide some examples where you have not offered a service or innovation due to the terms in the UoSA? (Distributors)	
	Distributors
Base: n=	***2***
	Verbatim comments
The even-handedness provision has limited our willingness to explore and pilot new innovations with a single retailer. We have had to consider how different load control offerings might fit with the even handedness requirements of the UoSA. The UoSA provisions around data limit an EDB's use of data to that related to the provision of network services. The drafting (and narrow interpretation taken by many Retailers) limits innovation that would rely on access to such information (for example, around pricing structures).	
Early on, TPOW blocked us from moving to GXP pricing, relying on an equity clause in the UoSA.	

Base: Distributors who indicated terms in the UoSA stopped them offering a new service or innovating