Summary of submissions

Code amendment proposal: Default Distributor Agreement

Introduction

1. The Electricity Authority (Authority) published a consultation paper *Code amendment proposal: Default Distributor Agreement* (consultation paper) on 20 August 2019. The consultation paper is available on the Authority's website.[1]

2. In the consultation paper, the Authority sought submissions on a revised proposal to amend Part 12A of the Code to introduce a default distributor agreement (or DDA). The submissions are available on the Authority's website.

3. The consultation paper provided:

   (a) background relating to proposal, including about the problems the Authority identified with the way in which distributors and retailers enter into distribution agreements

   (b) a proposal to introduce a framework for regulating distribution agreements in Part 12A of the Code, including a requirement for distributors to develop and publish a DDA based on a DDA template

   (c) a regulatory statement that included a statement of objectives, and an evaluation of the costs and benefits of the proposal and alternative means of achieving the objectives.

4. The consultation paper sought responses from submitters on the following questions:

   Question 1: What are your views on the problem definition? Specifically:

   (a) the efficiency problem

   (b) the competition in retail markets problem

   (c) the competition in related services problem.

   Question 2: What are your views on the revised:

   (a) Part 12A proposal

   (b) DDA template proposal.

   Question 3: What are your views on the draft Code, appended to this paper, which would introduce the proposal?

   Question 4: What are your views on the Regulatory Statement? Specifically:

   (a) the efficiency costs and benefits

   (b) the costs and benefits in the retail market

   (c) the costs and benefits in the related-services market.

5. The consultation period ran from 20 August to 15 October 2019.

[1] https://www.ea.govt.nz/development/work-programme/consumer-choice-competition/default-distribution-agreement/consultation/

6. This paper summarises the feedback received from stakeholders in response to the questions and other material presented in the consultation paper.

7. Due to the nature of the material included in the consultation paper, and the significant interest in the project shown by a range of stakeholders, this summary of submissions paper provides a comprehensive picture of the points made in submissions received. The paper also summarises at a high level the key themes that arose.

8. Please note that this paper provides a summary of submissions only.

Feedback received

9. In response to the consultation paper, the Authority received feedback from the 28 parties listed in Table 1.

Table 1 List of parties that provided feedback

Suppliers	Networks	Consumers / Other
Contact Energy	Aurora Energy	Axos Systems
Electric Kiwi	Counties Power	Intellihub
Electricity Retailers' Association of New Zealand (ERANZ)[2]	Distribution Group	Major Electricity Users' Group (MEUG)
Flick Electric	Eastland Network	
Genesis	Electricity Networks Association (ENA)[3]	
Mercury	Entrust[4]	
Meridian and Powershop	Mainpower	
Nova Energy	Network Tasman	
Simply Energy	Northpower	
Trustpower	Orion New Zealand	
	Powerco	
	Unison	
	Vector	
	WEL Networks	
	Wellington Electricity Lines	

[2] Represents companies that sell electricity to New Zealand consumers and businesses.
[3] Industry membership body that represents the 27 local electricity distribution businesses.
[4] 75.1% shareholding in Vector.

How we have structured this paper

10. As with the summary of submissions published on 20 December 2016 relating to the DDA proposal, we have organised this summary of submissions in two parts.

The body of the paper summarises key themes

11. The first part of this summary of submissions briefly describes a number of key themes that have emerged from submissions.

12. We acknowledge that identifying key themes in the context of a relatively complex proposal and a substantial amount of submissions is a somewhat subjective exercise. Nevertheless, we have sought to include in this part some high-level submission themes that relate to submitters' views of:

    (a) the Authority's description of the problems that it is seeking to address, described in section 3 of the consultation paper

    (b) the Authority's proposal (including the proposed Code amendment and DDA template), described in section 4 of the consultation paper

    (c) the regulatory statement, described in section 5 of the consultation paper.

13. The summary of key themes is set out in the following section.

Appendix A groups similar submissions together in the tables

14. The second part is a comprehensive summary of submissions grouped as tables in Appendix A.

15. Submitters frequently submitted essentially similar views about particular aspects of the Authority's proposal. Where this has occurred, we have sought to group common submission points together in the summary tables.

16. Some submitters indicated in their submissions that they support or endorse submissions made by other submitters. In those cases, we have identified the submission as being made the by submitter who made the submission, and those submitters that have specifically indicated that they support or endorse the particular part of the submission. We have also outlined at the start of Appendix A submitters who have indicated general support for another submission.

17. We have divided the summary tables in a way that reflects the difference in the nature of submissions received from distributors, from retailers, and from other parties. Accordingly, Appendix A is divided into three sections:

    (a) Section 1 contains a summary of the submissions received from distributors

    (b) Section 2 contains a summary of the submissions received from retailers

    (c) Section 3 contains a summary of the submissions received from parties that are not, in the context of their submissions, distributors or retailers.

18. In each of the three sections, we have grouped the submission points as follows:

    (a) General comments

    (b) Submissions in response to question 1 (problem definition)

(c) Submissions in response to questions 2 and 3 (revised Part 12A and default DDA proposal, and draft Code), separated into the following categories:

(i) Code amendments and default distributor agreement – general comments

(ii) Code amendments – comments on specific clauses/subparts

(iii) Default distributor agreement – comments on specific clauses/schedules.

(d) Submissions in response to question 4 (regulatory statement).

19. For each submission, the summary tables set out the name of the submitter, the relevant page number from the submission, and a summary of the submission.

Summary of key themes in submissions

20. This section provides a high-level summary of feedback in the following areas:

(a) Is there a problem with the way distributors and retailers enter into agreements for distribution services?

(b) Should the Authority amend the Code in the way it has proposed? What aspects (or omissions) of the proposal would benefit from further consideration?

(c) Is the regulatory statement/cost-benefit analysis robust and how could it be improved?

21. Please note that we have generally not attributed submission points to specific submitters. Full attribution of specific submission points is provided in the summary tables included in Appendix A.

Whether there is a problem that needs to be addressed

Many distributors question whether problems exist and evidence of problems

22. Many distributors question whether the problems identified by the Authority exist, and do not agree that the evidence referred to by the Authority was robust or supported the case for change. In doing so, a number of distributors observe that the issues identified by the Authority relating to high transaction costs under the current framework are not consistent with their experience. Some submissions also:

(a) disagree that the current approach to distribution agreements acts as a barrier to entry or limits competition in the retail market

(b) raise issues relating to the reliability of the survey referred to by the Authority in relation to problems with current arrangements.

Retailers generally agree that there is a problem and support the proposal

23. In contrast to the view of most distributors, most retailers indicate that they support the DDA proposal (subject to some refinements), and generally agree with the Authority's assessment of the problems with the current framework. Many agree that the proposed standardisation of distribution contracts would reduce transaction costs, lower barriers to entry, and increase competition in the

retail market. Several submitters also raise concerns about the ability of distributors to reduce competition in related services markets.

24. The Major Electricity Users Group also indicates that it agrees with the policy problems identified by the Authority.

Some submitters raise concerns about unnecessary costs and suggest other projects would better meet the Authority's objectives

25. Several submitters raise concerns about the priority given to the DDA project and the associated costs and disruption, and submit that other projects would better achieve the Authority's objectives.

Most submitters suggest changes to refine the proposal

26. Submitters collectively provided a substantial amount of feedback and suggested drafting changes to the draft Code amendments and DDA template, as set out in more detail in Appendix A.

27. A number of submissions, including some submissions from both distributors and retailers, suggest:

(a) reviewing the proposed transition process and expanding the implementation timeframes, particularly the timeframe for parties to negotiate alternative agreements

(b) considering whether the proposal provides sufficient flexibility so that the DDA is future-proofed and does not limit innovation, and provides for changes over time

(c) reviewing the proposed DDA to ensure that it reflects current practices, such as billing practices and data exchange formats.

28. Distributor suggestions include:

(a) reviewing the 'evergreen' nature of the agreements, and how agreements could be updated, varied, and terminated over time to reflect changes in the market and the regulatory framework

(b) revising the offer and termination provisions (eg, to allow for distributors to refuse to enter into an agreement with a retailer who has defaulted)

(c) changing the allocation of risk between traders and distributors under the DDA (eg, to provide distributors with greater protection through prudential security provisions, and lowering liability caps and indemnities given by distributors)

(d) expanding the ability of distributors to obtain and use data from retailers (eg, to allow distributors to combine data for network planning purposes), and clarifying default terms that apply to data exchange

(e) reconsidering the proposed appeals process for operational terms, including whether the Rulings Panel is equipped to consider issues relating to operational terms, the ability of parties to appeal decisions of the Rulings Panel, and the application of Rulings Panel decisions to existing agreements

(f) revising or removing requirements under the DDA to comply with Authority guidelines

(g) limiting the ability of the Authority to publish distribution agreements, to address confidentiality concerns and limit publication to agreements relating to distribution services

(h) clarifying load control provisions to ensure that they allow for future development of load control

(i) clarifying trust dividend arrangements to ensure that they do not undermine the ability of dividends to be paid to trust beneficiaries.

29. Retailer suggestions include:

(a) clarifying or changing the proposed treatment of existing distribution agreements (eg, to allow existing agreements to continue rather than being required to transition to the DDA if both parties want the existing agreement to continue)

(b) considering further provisions in relation to the transition process and operational terms (eg, Authority approval of proposed distribution agreements, introducing default operational terms, further prescribing the operational terms consultation process, or requiring greater transparency in relation to differences in operational terms)

(c) reconsidering whether the right to opt to use the DDA should be given only to the retailer, not distributors

(d) increasing the liability caps applicable to distributors under the DDA

(e) considering changes to dispute resolution processes

(f) reinstating even-handedness provisions in the DDA

(g) introducing further safeguards relating to a distributor's right to use and disclose data provided by retailers

(h) considering the application of the DDA to embedded networks and conveyance arrangements.

30. Suggestions made by other parties include:

(a) clarifying provisions of the DDA that relate to metering, to ensure that they are consistent with Part 10 of the Code

(b) clarifying data management and audit requirements.

Views on the regulatory statement

Many distributors consider that the benefits do not outweigh the costs

31. Distributors that commented on the regulatory statement generally express the view that the proposal has not been adequately justified because, for example:

(a) the benefits do not outweigh the costs, or the claimed net benefits are small

(b) the cost-benefit analysis relies on unverified survey information, with the costs of contract negotiation skewed by an outlier

(c) the analysis does not sufficiently consider the potential unintended consequences of the standardised approach

(d) some of the benefits referred to by the Authority are already available

(e) retaining the MUoSA approach would involve less cost and disruption.

Retailers generally support the regulatory statement

32. In contrast, retailers that commented on the regulatory statement generally agree that the proposal would provide benefits such as increased efficiency and reduced barriers to entry. However, some raise concerns about the costs, particularly if existing agreements are required to transition to the DDA.

Further consultation

33. Most distributor submissions submit that the Authority should undertake further consultation on the draft DDA template and Code amendments to ensure, for example, that there are not unintended consequences as a result of the drafting. Suggestions include a technical drafting workshop, a cross-submission process, and another round of consultation.

Appendix A Summary of submissions by submitter group

A.1 Appendix A contains the submission summary tables noted in paragraph 14.

Section	Name of submitter	Submissions endorsed/supported
Section 1: Distributors	Aurora Energy	Supports ENA’s submission
	Counties Power	
	Distribution Group	
	Eastland Network	Supports ENA’s [and PWC’s] submission
	Electricity Networks Association	
	Entrust	
	Mainpower	Supports ENA’s submission
	Network Tasman	Supports ENA’s submission
	Northpower	Supports specified aspects of ENA's submission (including drafting changes proposed to Code and DDA)
	Orion New Zealand	Supports ENA’s submission
	Powerco	
	Unison	Supports ENA's submission
	Vector	Supports Entrust’s and ENA’s submissions
	WEL Networks	Supports ENA’s submission
	Wellington Electricity Lines	Supports ENA’s submission (with some alternative solutions and drafting amendments)

Section 2: Retailers	Contact Energy	Supports ERANZ's submission
	Electric Kiwi	
	Electricity Retailers' Association of New Zealand (ERANZ)	
	Flick Electric	
	Genesis	
	Mercury	Supports ERANZ's submission
	Meridian and Powershop	
	Nova Energy	Supports ERANZ's submission
	Simply Energy	
	Trustpower	
Section 3: Others	Axos Systems	
	Intellihub	
	Major Electricity Users' Group (MEUG)	

Section 1: Distributors

General comments	
Submitters	**Submission**
Distribution Group (pp.4, 8); ENA (p.1); Entrust (pp.1, 2); Mainpower (p.1); Northpower (p.3); Orion (p.18); Powerco (p.1); Vector (pp.3, 31); WEL Networks (p.1), Wellington Electricity Lines (pp.2, 6)	The Authority should undertake further consultation on the proposal. Suggestions for further consultation included in different submissions include: • a further technical drafting consultation or workshop • a two stage submission process with a cross-submission process following the current submission process • a working meeting with ENA • another round of consultation.
Orion (p.1)	Concerned that the Authority has not responded to concerns raised relating to the DDA proposal in the past in many areas. Urges the Authority to consider and respond to the points raised and alternatives suggested.
Distribution Group (pp.4, 7)	The additional cost for distributors in having to establish default agreements is unwelcome, especially at a time when distributors are focussed on various other matters. The proposal has the potential to require numerous existing contracts to be discarded and renegotiated.
Distribution Group (pp.8-9); Wellington Electricity Lines (p.1)	The MUoSA approach should be retained. This option would result in far less cost for the sector and avoid disruption.
Wellington Electricity Lines (p.1)	The DDA approach has not been adequately justified as the estimated net benefits are small and appear to be based on unverified data. The DDA proposal adds complexity and risk for distributors, and ultimately cost that may not be able to be recovered or that will be borne by electricity consumers. The outcomes are not consistent with the regulatory objectives of the Authority or Commerce Commission.

General comments	
Submitters	**Submission**
Counties Power (p.1); Entrust (p.12); Network Tasman (p.1); WEL Networks (p.1)	The Authority should ensure that it does not inadvertently trigger unintended consequences.
Counties Power (pp.1-2)	The introduction of the DDA could lead to an automatic default position being adopted by traders, which may prevent a distributor from including reasonable conditions in its particular form of UoSA that support innovation and investment (eg, provisions around the use and access to real-time smart meter data where the metering equipment is owned by the distributor). The DDA will not encourage investment in smart meters and future technology, and will discourage distributors from investing in new technology on their networks.
ENA (p.1)	Accepts that the Authority may introduce a DDA, but has many concerns with the proposed drafting of the template DDA and proposed Code amendment (which may be difficult to address once the DDA comes into effect).
Network Tasman (pp.1-2)	The Authority's analysis is insufficiently robust to justify the significant change being proposed. The Authority must conduct a robust and comprehensive cost-benefit analysis before further progressing the DDA project.
Orion (p.1)	Orion has significant concerns about the impact that the Authority's approach will have on Orion's business, customers, and costs. It is not good practice to have an agreement in place in perpetuity.
Aurora Energy (p.1)	Any DDA that the Authority introduces must appropriately balance the risks between the parties, and accurately reflect the operating environments and commercial practicalities of the relationship.
Powerco (p.1)	Supports the concept of a DDA, but wants to ensure that the DDA is neutral, workable, and future-proofed.
Unison (p.1)	In general, supports the DDA and proposed Code amendment, and considers that an agreed DDA will assist in meeting the Authority's objectives of reducing barriers to entry (enhancing competition) and transaction costs (increasing efficiency). However, Unison is concerned that the cost savings from contract negotiation are overstated.
Vector (p.4)	The net benefits of a DDA are not clearly justifiable. There are regulatory levers that can deliver much greater efficiency and consumer benefits without the risk of stifling innovation. It is of critical importance that the regulatory framework and arrangements continue to evolve and are allowed to do so, to ensure that consumers can maximise the benefits from new technology solutions and meaningfully contribute to 'creating a new energy future'.

General comments	
Submitters	**Submission**
Entrust (pp.1, 12)	If the Authority gets the regulation wrong, or is overly prescriptive, there is a risk of additional transaction costs for trusts, distributors, and retailers, as well as an increased risk of non-payment to trust beneficiaries that may cause issues in terms of the obligations owed under trust deeds. The Authority needs to be careful to ensure its DDA proposals do not undermine the ability of shareholder trusts to pay dividends.
Mainpower (p.1)	The conveyance model should remain a viable option for distributors. Strongly opposes any attempts to remove support for the conveyance model or limit the options of distributors using the conveyance model.

Q1: What are your views on the problem definition? Specifically: **(a) the efficiency problem** **(b) the competition in retail markets problem** **(c) the competition in related services problem**	
Submitters	**Submission**
Counties Power (p.1); Distribution Group (p.8); Network Tasman (pp.2-3); Orion (p.19); Unison (p.1); Wellington Electricity Lines (p.4)	The experience of distributors is not consistent with the issues identified by the Authority. For example: • Counties Power states that the issues identified by the Authority have not been experienced by Counties Power or traders using or seeking to use the Counties Power network. • The Distribution Group states that the experience of distributors who support the Distribution Group's submission is that new retailers willingly engage in negotiations to establish UoSAs, and incumbent retailers also generally engage positively in updating legacy agreements. There are rarely any instances of conduct that is inconsistent with the requirements of existing UoSAs or that has escalated to dispute processes or termination. • The results of the survey relied on by the Authority do not align with Network Tasman's experience with UoSA negotiations (in respect of which not one of the 14 retailers who have entered the network since 2016 have sought to negotiate different terms to the template agreement). • Orion does not agree that the current approach of negotiating agreements is leading to inefficient outcomes, and Orion has not observed a lack of competition in retail markets that relates to the current approach for agreements. • Unison's experience is that timeframes, management and legal costs are minimal. The real efficiency benefits would result from the standardisation of processes and operating models.

Q1: What are your views on the problem definition? Specifically: **(a) the efficiency problem** **(b) the competition in retail markets problem** **(c) the competition in related services problem**	
Submitters	**Submission**
	• Wellington Electricity Lines' experience is not consistent with the issues identified in the consultation paper (relating to UoSAs generating higher than necessary transaction costs, limiting retail competition and resulting in favourable terms for distributors). For example, new entrants have signed up to Wellington Electricity Lines' UoSA without raising concerns about the terms.
Powerco (p.1)	Agrees that the DDA will deliver more efficient and easier network access, increased levels of retail market competition, and greater use of innovative technologies and business models.
Network Tasman (pp.2-3)	The Authority's analysis and conclusions relating to higher than necessary transaction costs rely on the results of a survey that have not been independently verified or scrutinised by the Authority. Certain factors undermine the Authority's ability to draw robust conclusions from the survey results, including: • Survey respondents do not appear to have been given information about what the hypothetical default agreement would consist of. • The Authority has assumed that the 'default agreement' respondents had in mind when completing the survey is consistent with the DDA that has been proposed by the Authority (which is highly unlikely given the significant change to the structure of the DDA proposal from what was previously proposed and the cost of reviewing operational, recorded and collateral terms are unlikely to have been factored into survey responses).
Vector (pp.5-6)	The consumer benefits from imposing a DDA are not clearly justifiable compared to the magnitude of consumer benefits the Authority has cited to support its other proposals. The value of static efficiency is highly diminished in a rapidly evolving energy sector where assumptions can change within short periods of time. The costs to consumers of unintentionally stifling innovation through more prescriptive measures such as a DDA can be high. There are far more effective regulatory levers that can unlock consumer benefits without the downside of limiting innovation (eg, greater access to data and implementing wholesale market reforms).
Network Tasman (pp.1, 3-4)	The Authority assumes that the presence of unequal bargaining power between distributors and retailers inhibits retail competition. The presence of unequal bargaining power is not a problem in itself. It is only when unequal bargaining power is used to the detriment of consumers that it becomes a problem. The Authority has not presented evidence that distributors have used unequal bargaining power to the detriment of consumers, and has not tested assumptions that underpin the apparent assumption that retailers' inability to have their preferred terms and conditions incorporated into the UoSA is evidence that distributors are abusing their bargaining power (eg, whether the terms proposed by the retailer were reasonable). The Authority cannot assume that distributors including

Q1: What are your views on the problem definition? Specifically: (a) the efficiency problem (b) the competition in retail markets problem (c) the competition in related services problem	
Submitters	**Submission**
	their preferred terms and conditions in their UoSAs is evidence of distributors abusing their unequal bargaining power, and must assess each of the issues raised on their merits and has not done so.
Wellington Electricity Lines (p.4)	Wellington Electricity Lines questions the need for disruption, without more compelling evidence of the detrimental impact to retail competition.
Network Tasman (p.4)	In relation to prudential requirements being introduced by distributors beyond those specified in the Code, the Authority does not provide any evidence of how widespread the issue is or the harm caused by imposing these alternative conditions. The Authority must understand how widespread the practice is before it can establish the size of the problem and assess the net benefits of any proposed solution. The Authority's sole focus should be on identifying the level of prudential requirements that efficiently allocate the relevant risks of retailer default. The Authority does not consider the efficient level of prudential requirements or how the risks of retailer default should be allocated in the consultation paper. It is unlikely that maintaining the current prudential requirements set out in the DDA is in the long-term interests of consumers because it artificially lowers the bar to entry and encourages inefficient entry to the retail market.
Network Tasman (pp.4, 7-8)	If the proposed retailer default process is completed, distributors will be left with more than two months of unpaid lines charges, after prudential security has been called upon. The Authority is silent on why it is efficient (and therefore in the long-term benefit of consumers) for distributors to carry this level of commercial risk as a result of a failed retail business (especially given the prudential security available to the clearing manager is such that it is not subject to any commercial risk in the event of trader default).
Vector (pp.6-8)	There is no longer a clear case for intervention through a DDA based on limited competition in the retail market, as there are currently more retailers than ever before. Vector has not seen evidence that the current arrangements regarding UoSAs act as a barrier to entry for new retailers. Current equal access and even-handedness arrangements offer efficiency to small, new retailers, and there is not an imbalance in bargaining positions in the negotiation of UoSAs (particularly in the case of large gentailers). In addition, the Commerce Commission has extensive powers over distributors to address competition risks. The main challenges that new retailers face (eg, compliance with Code requirements, exposure to the wholesale market) do not arise from the UoSA negotiation process. The DDA will not support the objective of promoting greater retail market competition.
Vector (p.7)	A 'one-size-fits-all' approach for distribution agreements will yield the 'lowest common denominator', which will limit future innovation. It also unnecessarily restricts contracting innovation and regulatory innovation, which are particularly important in a dynamic environment.

Q1: What are your views on the problem definition? Specifically: **(a) the efficiency problem** **(b) the competition in retail markets problem** **(c) the competition in related services problem**	
Submitters	**Submission**
Orion (p.19)	While the proposal provides a framework to address any problem in related services, no such problem has yet been identified.
Vector (p.8)	Distributors are facing stronger incentives to support the connection of more distributed energy resources (DER). Distributors providing services 'behind the meter' increase competition in related services markets. The regulatory framework should allow innovation, flexibility, and diversity to enable commercial solutions and partnerships to be developed, and should not restrict distributors from investing in DER that promotes innovation in the market.

Q2: What are your views on the revised: **(a) Part 12A proposal** **(b) DDA template proposal.** **Q3: What are your views on the draft Code, appended to this paper, which would introduce the proposal?**
Answers to these questions are set out in the tables below.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Orion (p.19)	Objects to a wide range of aspects that would be introduced by the Part 12A proposal, and that would effectively be mandated and locked in by the DDA template proposal (see details below).
Unison (p.2)	Supports the concept of a neutral Part 12 and modular structure of the DDA as a basis for forming agreements with parties other than retailers using the network in different ways, but recommends further consideration be given to certain factors (described further below) to ensure that the DDA remains sustainable and durable.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Wellington Electricity Lines (p.2)	The modular structure of the proposed DDA reflects the inherent difficulties in implementing default terms (eg, due to the requirement for contracts to reflect the operating practices of each distributor and jurisdictional boundaries between the Authority and Commerce Commission). The 'recorded terms' solution is awkward, adds complexity, and will create issues in future when terms are revised.
Wellington Electricity Lines (p.5)	A number of suggested changes to the 2016 draft DDA have not been incorporated, and significant issues remain that need to be resolved before the agreement can be implemented. Otherwise, the DDA will not be workable or durable, and the implementation timetable will not be able to be met due to a lack of agreement on operational terms.
Unison (p.2)	The DDA template should be reviewed to ensure that it is fit for purpose in an evolving electricity market (as it appears to be based on the MUoSA template developed over 10 years ago), and that it creates a framework for the range of service arrangements (distributor-trader, distributor-service taker, and distributor-service provider) that facilitate the distributor operating a neutral platform providing and procuring services from parties in real-time.
ENA (pp.3, A4); Powerco (p.5); WEL Networks (p.1); Wellington Electricity Lines (p.7)	There should be a requirement for the Authority to undertake a periodic review (eg, every 3 or 4 years) of the default terms to ensure they remain fit for purpose (see suggested drafting of new clause 14 of Schedule 12A.4 appended to ENA's submission). This could be similar to the Commerce Commission's input methodology review process under section 52Y of the Commerce Act.
Entrust (p.1)	Supports the changes the Authority has made to allow distributors and retailers to retain their existing UoSA arrangements by mutual agreement, and the provision for distributors and retailers to negotiate alternative trust dividend provisions to proposed Appendices A and B in Schedule 12A.1 of the Code.
Aurora Energy (pp.2-3); ENA (pp.2-3); Northpower (p.6); Powerco (pp.3, 5); Unison (p.2); Vector (pp.12-13); WEL Networks (pp.2-3)	Part 12A contemplates evergreen distribution agreements, without sufficient ability to review, amend, update, or terminate an agreement. This means that the agreement cannot evolve to reflect (potentially unforeseeable) changes in market conditions or the parties' reasonable requirements. Flexibility is required to accommodate changes that may arise over time.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Wellington Electricity Lines (p.7)	The process for incorporating future amendments into each distributor's DDA and the consequence for existing agreements is not clear (which is particularly relevant because the DDAs are assumed to apply in perpetuity unless terminated). The possibility of multiple versions of contracts being in use at one time undermines the objective of standardised contracts. Part 12A.1 should be amended to require traders to update their DDAs periodically, to ensure that modifications to schedules, operational terms, or recorded terms flow through into existing agreements that are based on the default.
Aurora Energy (pp.2-3)	To enable DDAs to evolve and adapt, incorporate core terms into Part 12 as regulated terms, with regulated terms incorporated by reference into each DDA. With the agreement of both parties, one or more of the regulated terms could be expressly excluded from the DDA (so that, if only one regulated term was not incorporated, the remaining terms would still form part of the DDA and would be live to any Code amendment). The template DDA could continue to provide guidance on recorded terms and operational terms.
Unison (p.2)	To enable DDAs to evolve, mechanisms should be developed so that changes in regulatory intent that are codified are reflected in DDA terms (core or operational) or through applying core terms that are effectively 'posted terms' set by the Authority.
Northpower (p.6)	It is unclear how distributors should deal with DDAs that do not align with subsequent DDAs. There should be a process for transitioning traders to an updated DDA or deemed update mechanism.
WEL Networks (p.2)	Participants should only be required to adhere to any DDA for as long as the Code requirement remains in force.
Orion (p.2); WEL Networks (p.1); Wellington Electricity Lines (pp.2, 5)	Replace references to 'Default Distributor Agreement' with 'Default Distribution Terms', as the reference to agreement implies negotiated outcomes.
Unison (p.2)	The proposed DDA should be reviewed to ensure there is no ambiguity with Part 4A of the Commerce Act. The inclusion of performance service levels adds an unnecessary level of confusion for parties to the DDA, when such measures are already regulated by the Commerce Commission.
Distribution Group (p.5); ENA (p.2); Northpower (p.3); Orion (p.1);	The draft DDA does not reflect an appropriate balance of risk between traders and distributors (as detailed further below). Ultimately the costs may be borne by electricity users.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Powerco (p.3); Unison (pp.4-5); Vector (p.29); WEL Networks (p.2); Wellington Electricity Lines (p.9)	
Wellington Electricity Lines (p.9)	It is outside the jurisdiction of the Authority to impose additional costs and risk on distributors who are limited in their ability to manage the transferred costs under the Commerce Act. The draft DDA terms should be amended to improve the incentives on traders to act prudently, and reduce the opportunities for them to pass on losses to distributors.
Northpower (p.3)	The DDA does not adequately address appropriate limits and exclusions on the parties' liabilities. Distributors are not able to put in place mitigation measures for customers such as insurance and physical surge protection equipment, and do not have visibility of voltage data for customers from their smart meters. Voltage movement on the LV network is driven by customer load and distributed generation. As such, most of this risk should sit with customers via their agreements with traders.
Northpower (p.5)	The current prudential regime is not sufficient to protect distributors from bad debtors, and distributors are required to sign a new agreement with a trader who has been terminated for non-payment even if bills remain unpaid. The DDA should allow for a prudential regime where larger deposits are required, and should also contain an ability to stand down or ban companies or their directors/shareholders from entering into a new UoSA if a debt is still outstanding with any dstributor.
Aurora Energy (p.3); Counties Power (p.2); Distribution Group (pp.10-11); ENA (pp.3, A2-3); Orion (p.5); WEL Networks (pp.3-4)	The Code should protect distributors from irresponsible/defaulting traders, by ensuring that a distributor is not required to enter into an agreement with an irresponsible trader in certain circumstances. For example, the proposal that a trader, regardless of the reasons for termination of a UoSA, is entitled to operate under the proposed DDA 20 working days after the previous UoSA has been terminated should be amended as it does not support good operational performance and could compromise a distributor's ability to maintain health and safety standards (eg, if termination was a result of the trader defaulting due to operational malpractice).

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Wellington Electricity Lines (p.11)	A distributor should be able to defer entering into a new contract with a trader: • until all previous contract obligations have been met by that trader; • who has defaulted on a previous contract due to a financial breach, except where the breach is deemed a genuine breach and is subject to the clause 23 dispute resolution processes at the time the new contract is entered into.
Powerco (p.11)	All traders (and directors, owners, and related parties of that trader) that have previously had a distribution contract terminated should be prohibited from entering into a new DDA agreement, until all outstanding obligations under the previously terminated distribution agreement are satisfied (including outstanding obligations to all distributors).
Wellington Electricity Lines (p.11)	If a trader demonstrates behaviour that is inconsistent with its obligations as a market participant, the contracts between distributors and traders should not be solely relied on to resolve this behaviour. Market approval processes should intervene where a trader has not acted consistently with the expectations of the Authority at the time the initial market participant approval was given and the right to participate should be reviewed in this instance.
Network Tasman (pp.4, 7-8)	The DDA does not provide a mechanism for a distributor to stop a retailer operating on the distributor's network or to stop them adding new customers if the breach is not a 'Serious Financial Breach'. If a trader continues to trade on a distributor's network following the termination of its agreement (a scenario that Network Tasman has experienced recently), the distributor would have to allege a breach to the Authority. If the matter went to the Rulings Panel, the process could result in outstanding debts of more than 4 months of lines charges.
Aurora Energy (p.3); Counties Power (p.1); ENA (pp.2, 5); Distribution Group (pp.5, 12); Northpower (p.5); Powerco (p.6); Unison (p.5); WEL Networks (p.4); Wellington	The proposal to enable distributors to obtain data from traders is welcome, but amendments are required to ensure that the data sharing arrangements are commercially workable and of practical use to distributors (see specific comments relating to proposed Code amendments below). For example, distributors will need to be able to combine data.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Electricity Lines (p.17)	
Unison (p.5)	Concerns raised relating to distributors using data for commercial advantage in competitive markets, or leveraging a birds-eye view, are being addressed in other Authority workstreams along with the Commerce Commission and these workstreams are a more appropriate avenue to consult on facilitating access for services in the evolving electricity market.
Unison (p.6)	The DDA should make it mandatory for retailers to consult with distributors on the performance characteristics of meters being replaced at an ICP and for good faith negotiation on recovery of incremental costs associated with the desired functionality required by the distributor. This would provide significant long-term benefits to consumers associated with improved collection and provision of relevant network information.
Counties Power (pp.2-3)	The proposal would allow traders and third parties to compete for additional services such as load management services. If future load management services are contestable, Counties Power would have to reassess whether the potential risks associated with a third party, who would not prioritise network reliability and customer hardship, would justify continuation of its load control rate and ripple relay infrastructure (with consequences including higher customer bills driven by the removal of the discounted controlled rate and costs directly associated with network investment requirements to meet the increased peak demand).
Wellington Electricity Lines (p.15)	A robust set of principles for load management have already been established by an industry working group, which was co-ordinated by the ENA. The DDA should be consistent with these principles.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, clause 2	Distribution Group (pp.4, 10, 13)	The proposal has the potential to cause considerable confusion about the status of contracts, particularly as there are no formal contract acceptance procedures proposed. Parties to the contracts should be required to formally execute the initial default contracts, and acknowledge in writing any future amendments (eg, as a result of appeals to the Rulings Panel or amendments by the Authority). Insert a new subclause (3) which requires distributors and participants to execute distribution agreements. This requirement should also apply to any amendments or new schedules to the distribution agreement.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, clause 3	Distribution Group (pp.4, 10, 13); Northpower (p.7); ENA (p.A13); Vector (Code mark-up); WEL Networks (p.2); Wellington Electricity Lines (p.8)	Extend the minimum time allowed for a trader to notify a distributor of the intention to trade to 40 business days (to allow more time for parties to enter into alternative agreements if they wish and practicalities).
	Northpower (p.7)	Amend the requirement for a proposed participant to give notice that it *wishes* to trade on a network, to a written notice lodged when a participant *will* trade (to better capture genuine participants who intend to trade and avoid administrative costs for a distributor for non-genuine enquiries).
Schedule 12A.1, clause 5	Distribution Group (p.13); Northpower (p.7); Wellington Electricity Lines (p.8)	Extend the maximum time allowed before a contract becomes binding from 5 to 20 business days (eg, to allow for set up, prudential security to be paid, and outage, connection, and billing interfaces to be established).
	ENA (p.A1); WEL Networks (p.1)	This clause could be interpreted as an 'offer' by the distributor that will immediately become binding once accepted by the trader. However, the process for entering into the agreement is specified in clause 6(2) and immediate acceptance would undercut the ability of the distributor to suggest a negotiated agreement, as the obligation to 'offer' to contract on the standard DDA terms is compulsory. Amend clause 5 to make it clear that the distributor must provide the DDA terms, rather than requiring the distributor to offer to contract, as follows: ***Distributor must offer default distributor agreement terms ~~to contract~~*** *The **distributor** must provide ~~offer to contract with~~ the person that gives notice under clause 3~~2~~(1)~~.~~ ~~on~~ the **distributor's** terms set out in the **default distributor agreement** no later than 5 **business days** after receiving the notice.*

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, clause 6(2)	Distribution Group (pp.5, 11, 13); Wellington Electricity Lines (pp.11-12)	Insert a new subclause to allow for a stand down period before a distributor is required to enter into a new agreement with a retailer that has previously defaulted. This period should end once the Authority's Market Operations team has confirmed that the retailer is approved to continue as a market participant.
	Orion (p.5)	To ensure that a distributor is not required to trade with retailers who may have defaulted and have outstanding obligations (and in the absence of a realistic bond allowance), where the party is the defaulting retailer or a related party, allow distributors to: • defer any new agreement until all prior obligations have been met, and • require a one year stand-down period before there is any obligation to enter into a new agreement (to ensure that the retailer cannot provide continuous services to its customers while not meeting its contractual obligations to the distributor).
	ENA (p.A13); Vector (Code mark-up); WEL Networks (p.2); Wellington Electricity Lines (p.8)	Amend the 5 business days timeframe to 20 business days (to provide more time for the negotiation of alternative agreements and practicalities).
	Orion (p.15)	Amend the 5 business days timeframe to 10 business days (to provide time to ensure that all systems and processes needed to support a new retailer are in place).
	Powerco (pp.17, 19)	Extend the timeframe between the date of notice and the agreement taking effect to account for operational practicalities.
	Orion (p.14)	The proposed approach may result in it being unclear if an 'agreement' is in place. There should be a clear request and acceptance process, which explicitly identifies that the arrangement is in place and the date from which it applies.
Schedule 12A.1, clause 6(3)	Distribution Group (pp.4, 9-10, 13)	Insert a provision for both parties to agree that the DDA will not apply as a binding contract (ie, extend the time available for parties to execute alternative agreements by removing fall back deadlines for DDAs for new retailers where both parties agree to contract under alternative agreements).

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Distribution Group (pp.4, 9-10, 13); ENA (p.A13); Powerco (pp.16, 18); Vector (Code mark-up); WEL Networks (p.2); Wellington Electricity Lines (p.8)	Extend the time limit for contract acceptance to 40 business days. This will provide a more reasonable time period for alternative agreement negotiations. Powerco also suggests that distributors and traders should be allowed the flexibility to agree to an alternative timeframe.
	Orion (p.15)	The 20 business day timeframe is not sufficient. If a negotiated alternative is a genuine option, the timeframe should be open-ended (with either party having the ability to give notice to contract on the basis of the DDA at any time).
	Wellington Electricity Lines (p.8)	Insert a new paragraph (c) ('*except where agreed by the parties*') to allow for the parties to mutually agree to defer the timeframe for the DDA to become binding.
Schedule 12A.1, clause 6(4)	ENA (p.A1); WEL Networks (p.1)	There may be some collateral terms that are intended to function together, and which would not function correctly if they were not included with other complementary terms. Amend clause 6(4) to make it clear that a trader cannot 'pick and choose' and delete components of the collateral terms that are designed to operate as a group, by adding '*If any particular **collateral terms** are identified in the **default distributor agreement** as terms that can be included or excluded as a group but not individually, then the notice in this subclause 6(4) can only provide that the person does not agree to those **collateral terms** as a group.*'
Schedule 12A.1, clause 6(5)	Distribution Group (pp.4, 10, 13); Northpower (p.7); Orion (p.15); Powerco (p.5)	The Code should allow distributors to vary recorded terms in existing contracts (eg, because the recorded terms may be influenced by Commerce Act regulation, and allowing variation is consistent with a distributor's discretion to include recorded terms).

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Distribution Group (pp.4, 10, 13)	Insert provisions for updating operational or recorded terms in existing contracts with traders that used the distributor's default terms. This will also be required if default terms are changed (eg, as a result of a Code amendment).
	Powerco (p.5)	Allow a distributor to remove / include Appendices as appropriate (consistent with a distributor's discretion to include Appendices and to allow for changes to the nature of the relationship with a trader or in the distributor's own circumstances).
	ENA (p.A1); WEL Networks (p.1)	Clarify that the 'distributor agreement' in this subclause does not include a negotiated 'alternative agreement' and that parties using the DDA template are permitted to agree alternative terms in relation to the subject matter of the Appendices (see suggested drafting changes appended to ENA's submission).
Schedule 12A.1, clauses 7(2) and 9(1)	ENA (p.A2); WEL Networks (p.1)	As Appendix C is for the benefit of the distributor, it should be for the distributor to elect that Appendix C applies rather than the distributor or the trader (see suggested drafting changes to clauses 7(2) and 9 appended to ENA's submission).
Schedule 12A.1, clause7(3)-(5)	ENA (pp.3, A2); WEL Networks (p.1)	These clauses only permit the parties to enter into agreements for additional services at the time they initially contract. There is no reason why they should not be permitted to enter into such arrangements at a subsequent date. Amend to make it clear that participants may agree alternative terms at any time (see suggested drafting changes appended to ENA's submission).
Schedule 12A.1, clause 8	Distribution Group (p.14); ENA (p.A2); WEL Networks (p.1)	Insert a new clause 8(5) to clarify that alternative agreements can be agreed later, even after default agreements have been entered into. See, for example, the suggested drafting changes appended to ENA's submission.
Schedule 12A.1, clause 11	Aurora Energy (p.3); Distribution Group (pp.4, 11, 13); Powerco (p.16); Wellington Electricity Networks (p.7);	The Authority's power to publish agreements should be restricted, and the Code should provide for consideration or redaction of commercially sensitive information in the agreements. Amend clause 11 to allow participants to provide redacted versions of agreements to be published. Some submissions also suggest including a requirement for the Authority to notify each relevant participant that an agreement is to be published.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Distribution Group (p.11); ENA (p.A13); Powerco (pp.16, 20); Wellington Electricity Lines (p.7)	Remove the reference to 'any other agreement' in subclauses (1)(c) and (3), as only use of system agreements should be captured by the clause but the clause could capture a much broader range of agreements that are not related to distribution services.
	Vector (Code mark-up)	Amend paragraph (c) by adding '*for Distribution Services*' after 'any other agreement'.
Schedule 12A.1, clause 12	ENA (p.A2, Code mark-up); Vector (Code mark-up); WEL Networks (p.1)	Consequential changes are required to reflect other amendments proposed (see suggested drafting changes appended to ENA's and Vector's submissions).
Schedule 12A.1, new clause 13	ENA (pp.2-3, A2); WEL Networks (pp.1, 2); Northpower (p.6); Powerco (p.5)	Evergreen contractual arrangements are unusual because market conditions and the parties' commercial needs inevitably evolve. There should be an opportunity to periodically refresh existing distributor agreements to update the terms to reflect the distributor's latest DDA (eg, for agreements to be updated every 3 years – see the suggested drafting of a new clause 13 appended to ENA's submission).
Schedule 12A.1, new clause 14	ENA (pp.3, A2-3); WEL Networks (pp.3-4)	Insert a new clause 14 to ensure that distributors are not always required to contract with traders who continually demonstrate an inability to perform their obligations, and to enable distributors to apply for an exemption from the requirement to contract with traders (see the suggested drafting of a new clause 14 appended to ENA's submission). The current drafting does not provide a mechanism for distributors to stop a trader that has defaulted from trading on the network again, and fails to appropriately balance the risk between traders and distributors. This is significantly different to the risk that the wholesale electricity market carries for such traders.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendices A and B	Entrust (p.5, Code mark-up)	It is difficult to have 'one size fits all' requirements for trust dividend arrangements. Being overly prescriptive can create the risk of unintended consequences and a lack of flexibility for the future. There is material scope to ensure the Appendices can be used as the default whilst ensuring that obligations under trust deeds can be met (see suggested drafting changes appended to Entrust's submission).
Schedule 12A.1, Appendix A	Distribution Group (pp.12, 14); Northpower (p.9)	The title 'income distribution services' and explanation in the consultation paper misrepresents these services, and refers to them as dividends payments. The terminology in the Appendix should be changed to replace 'income distribution services' to '*payments or credits on behalf of distributors*'. Change references to 'income distribution paid or payable' to '*payments or credits made or to be made*'.
	Network Tasman (p.5)	Amend references to 'income distribution services' by replacing 'income' with the term 'financial' or 'monetary' (as the money distributed is not income and is not subject to income tax).
	Entrust (pp.1, 3-4)	Concerned about any arrangements that introduce potential inefficiencies, increase transaction costs in relation to the dividend arrangements, or could lead to beneficiaries missing out on their dividend entitlement. The Authority must consider the risk of unintended consequences in considering proposed trust dividend arrangements, particularly given most of the focus in designing the regulatory framework for network access has been in relation to competition issues.
	Entrust (pp.1, 4, 10, 12)	The proposed treatment of trust dividends as 'Additional services' warrants further consideration. The Authority should consider whether distributors should be able to prescribe their own default provisions in relation to trust dividend arrangements and whether to treat trust dividend arrangements in a similar manner to operational terms under the DDA, to address the lack of flexibility in Appendix A. This consideration could include whether the distributor's default provisions would be subject to an approval process (by the Authority or the Rulings Panel) and/or subject to rules which limit the distributor's discretion.
	Entrust (pp.2, 7, 11); Vector (Code mark-up)	Insert a new clause to provide for unsuccessful attempts to pay a trust beneficiary their dividend entitlement and ensure that provisions do not inadvertently restrict customer requests to have the dividend put on to their power bill (see suggested new clause 9 in the drafting changes appended to Entrust's and Vector's submissions).
Schedule 12A.1, Appendix A, clause 1	Entrust (p.8); Vector (p.13)	Insert a grandfathering provision in relation to distributions for which notice has already been given under an existing UoSA prior to a distributor agreement being entered into (see suggested drafting changes appended to Entrust's and Vector's submissions).

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix A, clause 2	Entrust (pp.8-9); Vector (Code mark-up)	The requirement to provide a draft of any promotional material and copies of any publicity information to the trader with the initial 'request notice' at least 40 business days before the income distribution does not accord with Vector and Entrust's current practice, and is impractical and unnecessary. Amend clause 2 to provide for drafts of promotional material and publicity information to be provided '*as soon as reasonably practicable*' after the distributor has given notice.
	Entrust (p.9); Vector (Code mark-up)	Insert a timeframe (5 business days after receipt of the notice) for when a trader is required to advise a distributor if it is unable to meet any of the requirements of the distributor's request notice.
Schedule 12A.1, Appendix A, clause 4(2)	Entrust (pp.9-10); Network Tasman (pp.5-6)	Amend the 10 business days timeframe for traders to provide a file to distributors after a distributor's request to 2 business days. A 2 business days timeframe significantly reduces the number of wash-ups required as a result of initial data being inaccurate (eg, due to customer churn, changes in address).
Schedule 12A.1, Appendix A, clause 4(3)	Distribution Group (p.14)	Amend the 2 business days provided for distributors to return files to traders to 10 business days following the deadline for traders to supply the information (which is within 10 business days of the distributor's request). A distributor requires files from all traders before the credits or payments can be calculated. The shorter timeframe is impractical because it assumes all traders provide the data files on the same day.
	Entrust (pp.2, 7-8, 9-10); Vector (Code mark-up)	The 2 business days timeframe for distributors to return files to traders is not workable or reasonably practicable. Entrust currently takes approximately 35 business days to review, cleanse, and prepare the finalised Customer Information File before returning it to traders. Amend to require the distributor to return the finalised file to the trader '*as soon as reasonably practicable*' after receiving the file. Alternatively, categorise the Customer Information File timings as operational terms.
	Network Tasman (p.6)	Amend the 2 business days provided for distributors to return files to traders to '*no later than 2 business days of receiving <u>all</u> trader files*'. Distributors require all traders' files before confirming payments to each consumer in order to identify omissions and duplicates. The current proposal would not allow a distributor to provide an accurate file back to each trader if one trader provides its file late.
Schedule 12A.1, Appendix A, clause 5(1)	Entrust (p.10); Vector (p.14)	Amend the trader's obligation to pay the income distribution to qualifying customers so that it arises following receipt of payment of the income distribution from the distributor / Shareholder Trust and not following receipt of the Customer Information File.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix A, clause 5(2)	Entrust (p.10); Vector (p.14)	Amend the invoice identification to include '[Distributor Name/Name of Shareholder Trust]', and/or provide flexibility in the wording requirements.
Schedule 12A.1, Appendix A, clause 6(b)	Entrust (pp.2, 10); Vector (Code mark-up)	Amend so that the distributor has the right to require the trader to provide a file to the distributor setting out, in respect of each customer to whom a distribution is not fully paid: the ICP, amount of the distribution not paid, the customer name and, if available, forwarding address. Confirmation of the number of customers to whom a distribution is not paid is not adequate to allow a Shareholder Trust or distributor to identify the affected trust beneficiaries and arrange for alternative means of distribution payment.
Schedule 12A.1, Appendix A, clause 7 and 9	Entrust (p.10); Vector (Code mark-up)	Include a reciprocal requirement for the trader to keep information provided to it under Appendix A confidential, and permit the distributor to use confidential customer information obtained under Appendix A for purposes permitted under Appendix B (see suggested drafting changes appended to Entrust's submission).
Schedule 12A.1, Appendix A, clause 8	Distribution Group (p.14)	Amend subclause (2) to require the distributor to pay on the 20th of the month following the trader's GST invoice. This is consistent with the payment terms in the DDA.
	Entrust (pp.10-11); Vector (p.14)	Subclauses (1) and (4) are not consistent with how Entrust pays dividends (eg, it is Entrust not Vector that pays income distributions to traders). Amend so that: • The distributor can nominate that its underlying Shareholder Trust will pay the trader and receive the GST invoice (if any) from the trader, as well as any refunds. • The trader only issues a GST invoice if required by the distributor, as not all income distributions will be subject to GST (see suggested drafting changes appended to Entrust's and Vector's submissions, including related change to clause 4(3)).
	Entrust (p.11); Vector (Code mark-up)	Amend the requirement for traders to hold trust dividends in an appropriate bank account to be held '*on trust*' to protect the trust dividend payments.
Schedule 12A.1, Appendix A, clause 10	Distribution Group (p.14)	Insert a new subclause to require the trader to notify the distributor immediately if it receives notification of a claim or potential claim, to ensure the distributor is able to respond to the trader or affected party as soon as possible and limit the potential cost or reputational damage that may result during the course of a claim.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix A, clause 11	Entrust (Code mark-up); Vector (Code mark-up)	As Appendix A will form part of the distribution agreement, delete duplicative definitions that are already defined in the DDA template.
Schedule 12A.1, Appendix B	Unison (p.5)	Supports the standard terms for request and provision of consumer information for trust and consumer-owned and co-operative distribution activities, but the use of this information should be extended to legitimate use for any activities associated with the provision of the range of distributor services and functions as detailed in the distributor's DDA (including access, connection standards and power quality, tree trimming, connections, disconnections and decommissioning, and service interruption communication and response).
Schedule 12A.1, Appendix B, clauses 2 and 3	Entrust (p.11); Vector (Code mark-up)	In future, Entrust may need bank account details of beneficiaries (given cheques are becoming less common). To facilitate this, insert a new clause requiring the trader (on request) to include an authorisation clause in its customer agreements (see suggested drafting changes appended to Entrust's and Vector's submissions).
Schedule 12A.1, Appendix B, clause 3	Distribution Group (p.14)	In subclause (1)(c), change the term 'pay income distributions' to align with the edits required to Appendix A. Also allow for payment to non-shareholders, as the restriction is unnecessary and would restrict current practices. In subclause (1)(e), remove 'other', which is unnecessary. It is important that 'any' requirements are provided for in this clause.
	Entrust (Code mark-up); Vector (pp.14-15)	Insert a new paragraph to allow distributors to use the beneficiary information obtained under Appendix B to include, with any correspondence that its shareholder trust sends to its beneficiaries, promotional material relating to the planning and management of their network or the provision of distribution services.
Schedule 12A.1, Appendix B, clause 6	Entrust (Code mark-up); Vector (Code mark-up)	As Appendix B will form part of the distribution agreement, delete duplicative definitions that are already defined in the DDA template.
Schedule 12A.1, Appendix C	Distribution Group (p.5); Wellington Electricity Lines (p.18)	The template for the exchange of consumption data, including the clause 19 data agreement, should be included as default terms (ie, have the same status as the remainder of the Appendix C template).
	Orion (p.15)	The data agreement should form part of the actual agreement, rather than being referenced as an attachment.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Northpower (p.5)	There should be a mandatory requirement to include the data sharing agreement in the DDA and for traders to provide the data on those terms.
	Orion (p.15); Vector (p.20)	Appendix C should contain the terms of a default data agreement to apply if the parties are unable to agree. See, for example, the suggested drafting changes to clauses 3(3) and 19 of Appendix C appended to Vector's submission.
	Wellington Electricity Lines (pp.18-19)	The draft access agreement fails to acknowledge the changing nature of the electricity system (eg, the increased opportunity for consumers to install behind the meter generation, storage, and EV charging requires participants to work more closely together to share information) and reflects the traditional energy market model by focusing on energy consumption. It needs to be more flexible to accommodate provision of other forms of information. Given the criticality of information such as the location and use of distributed energy technologies, the data agreement should be included as a core term.
	Northpower (p.5)	There should be a requirement for the data sharing to include customer data not just consumption data (to allow for outage notifications etc.).
	Orion (pp.9-10)	The Appendix is entitled 'Customer information' and should be extended to include the provision of such (ie names, addresses, contact numbers, and email addresses), as well as consumption information. Orion currently receives monthly updates of customer information from all retailers that is treated as confidential and used for various matters such as contacting customers in the event of power supply emergencies, notifying customers of outages, and consulting on changes to services.
	Powerco (p.9)	Clause 8(4) refers to the names and contact details of customers, but the Appendix narrowly applies to consumption data. Customer names and contact details are essential to allow notification of land access and to fulfil other statutory obligations on distributors and should also be able to be shared under Appendix C.
	Wellington Electricity Lines (p.18)	To assist the distributor in contacting a customer for operational purposes, include provision of additional customer information (such as names, addresses and contact information), subject to appropriate confidentiality safeguards.
	Counties Power (p.1)	The proposal should be extended to real time consumption data (where available).
	Powerco (pp.7, 9); Aurora Energy	Use the DDA to set expectations on traders to deliver consumption data of acceptable quality and provide the distributor with adequate safeguards (eg, require traders to take reasonable steps to ensure that the data they provide distributors is up to date, complete and

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	(pp.3-4); Northpower (p.5)	accurate). Accurate consumption data supports distributors to provide improved cost efficiency and customer service outcomes, and will be more important if the concept of sub-ICP services is pursued.
	Unison (p.5)	In relation to data security and associated privacy implications, these key matters would be more appropriately addressed through independent certification against standardised requirements. The proposal of counterparty oversight would add unnecessary costs to participants which are ultimately passed on to consumers and could be cost prohibitive to smaller or new entrant retailers.
	Vector (p.15)	A trader should be required to procure that its Metering Equipment Providers provide requested consumption data if the data is held by the Metering Equipment Provider but not the trader (see suggested drafting changes to clauses 1, 2(2), and 21 of Appendix C appended to Vector's submission).
	Wellington Electricity Lines (p.19)	Amend the title of Appendix C to '*Data Exchange Terms*' to better reflect its purpose.
Schedule 12A.1, Appendix C, clause 2	Distribution Group (p.14); ENA (p.A10); WEL Networks (p.4)	Insert a requirement for the trader to undertake reasonable endeavours to provide the information in the format requested by the distributor. ENA also suggests clarifying what happens if the parties are unable to agree the format in which data is provided by mirroring the wording in the EU's General Data Protection Regulation as it relates to the right to data portability (see suggested drafting changes appended to ENA's submission).
	ENA (p.A10); Vector (Code mark-up); WEL Networks (p.4)	Clarify the drafting of clause 2(2) and (3), including to provide that data may be provided by the trader or Metering Equipment Provider (see different suggested drafting changes appended to ENA's and Vector's submissions).
	ENA (p.A10); WEL Networks (p.4)	Move the obligation relating to ensuring consumption data is free from viruses up from clause 17 of Appendix C.
Schedule 12A.1, Appendix C, clause 3(2)	ENA (Code mark-up); Vector (Code mark-up)	Delete paragraph (a), as the Consumption Data to be provided will be specified in each request made under clause 2.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C, clauses 3(2). 3(3) and 19	ENA (p.A10); WEL Networks (p.4)	Clarify that clause 3 sets out the minimum rights the distributor is entitled to insist upon; and the Data Agreement covers additional matters agreed by the parties which exceed any default rights of the distributor under clause 3 (see suggested drafting changes appended to ENA's submission).
Schedule 12A.1, Appendix C, clause 3(3)	Distribution Group (p.14)	Insert an acknowledgment that the Data Agreement forms part of Appendix C of Schedule 12A.1 once executed.
	Vector (p.20, Code mark-up)	Insert '*If the parties fail to agree to any term of the Data Agreement, the relevant default term set out in clause 16 will apply*'. Appendix C should contain the terms of a default data agreement to apply if the parties are unable to agree. See the suggested drafting changes to clauses 3(3) and 19 of Appendix C appended to Vector's submission.
Schedule 12A.1, Appendix C, clause 3(4)(d)	Aurora Energy (pp.3-4); Distribution Group (pp.12-13, 15); ENA (pp.5, A11); Network Tasman (p.6); Northpower (p.5); Orion (p.15); Powerco (pp.3, 6, 9); Unison (p.5); Vector (p.18); WEL Networks (p.4); Wellington Electricity Lines (p.18)	The proposal includes restrictions that are contrary to the use for the data and reduce the value of the data (eg, distributors must be able to combine data from other retailers to understand customer use across the network and for network planning purposes, and retain data for a period of time to understand trends including demand response). Remove reference to combining with other data or databases to allow distributors to combine consumption data.
	Powerco (p.7)	If merging the data generates data privacy and data security concerns, a better and more innovative solution must be found that does not constrain the ability to use it for its intended purpose.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	ENA (p.A10); Unison (p.5); WEL Networks (p.4)	Amend the restriction on transferring consumption data outside New Zealand, given businesses often use third party cloud providers to host data overseas. See suggested drafting changes appended to ENA's submission, which are based on the approach under the Privacy Bill.
	Vector (pp.18-19)	Remove the restriction on transferring consumption data outside New Zealand, given it would prevent the storage of data on servers located outside of New Zealand (which is a common practice already adopted by industry participants). Any requirement for distributors to relocate data storage to New Zealand would involve considerable cost and inconvenience, for no apparent consumer benefit given Metering Equipment Providers and traders can and do store that data overseas. If the Authority wishes to impose geographical restrictions on the storage of consumption data, the restrictions would need to be imposed on all participants that hold the data to have any effect.
Schedule 12A.1, Appendix C, clause 3(5)	Distribution Group (pp.13, 15); Wellington Electricity Lines (p.18)	Any charges from the trader to the distributor must reflect reasonable out of pocket costs to the trader. Insert 'reasonable' in the reference to trader's costs, charges, or other expenses.
	Northpower (p.5)	Traders should be required to provide data at no cost.
Schedule 12A.1, Appendix C, clause 4	Powerco (p.9)	Clarify whether reasonable costs and out of pocket expenses are intended to be the same thing.
	Vector (Code mark-up)	Amend reference to 'costs' in subclause (1) to '*out of pocket expenses*', to align clause 4(1) with clause 4(2) and ensure that traders cannot charge multiple distributors for the same internal costs.
	ENA (Code mark-up)	Insert a new paragraph to clarify, to avoid doubt, that the trader will not require any payment for the supply of any Consumption Data except as provided in clause 4.
Schedule 12A.1, Appendix C, clause 5	Distribution Group (p.15); ENA (p.11); Powerco (p.9); Unison (p.5); Vector (Code mark-	Amend to require the trader to ensure that it complies with its obligations under the Privacy Act (eg, to ensure that it has customer consent to share consumption data/use the information as agreed). See, for example, the suggested drafting changes appended to ENA's and Vector's submissions.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	up); WEL Networks (p.4)	
Schedule 12A.1, Appendix C, clause 6	Distribution Group (p.15); ENA (p.A11); Unison (p.5); WEL Networks (p.4)	Insert a clause which permits the distributor to use and disclose aggregated consumption information, on the condition that no individual ICP data is revealed or disclosed. See, for example, the suggested drafting changes appended to ENA's submission.
	ENA (p.A11); Unison (p.5); Powerco (p.9); WEL Networks (p.4)	The confidentiality obligation is unduly restrictive, applying to disclosure even of the existence of consumption data. Clarify that the distributor must not disclose the consumption data, rather than the existence of it.
Schedule 12A.1, Appendix C, clause 7(1)	ENA (Code mark-up); Vector (Code mark-up)	Clarify drafting (see suggested drafting changes appended to ENA's and Vector's submissions).
Schedule 12A.1, Appendix C, clause 7(2)	Vector (p.20)	Amend the restriction on disclosing consumption data to certain 'excluded personnel' to make it clear that the excluded personnel do not include any employee, agent, advisor, or contractor of the distributor who is involved in the offering, provision, marketing, or sale of electricity generation, retail or storage goods or services '*for a Permitted Purpose*' (see suggested drafting changes, and related amendments to clauses 8(2) and 17(2) of Appendix C, appended to Vector's submission).
Schedule 12A.1, Appendix C, clause 8	Powerco (pp.7, 9)	Remove the requirement to establish a 'Data team'. The requirement misunderstands how the data needs to be used within a network business for pricing and asset management purposes. For the data to be useful, it needs to be shared widely across the business. Any contestability concerns should be fully addressed by the inclusion of the Permitted Purposes in 3(4)(a). If more widespread sharing of data within the distribution business generates some data privacy and data security concerns, a better and more innovative solution must be found that does not constrain the ability to use data for its intended purpose.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	ENA (p.A11); Unison (p.5); Vector (Code mark-up); WEL Networks (p.4)	Simplify clause 8, given the relevant people who make up the data team are also described in clause 7 (see different suggested drafting changes appended to ENA's and Vector's submissions).
Schedule 12A.1, Appendix C clause 9(a)	ENA (Code mark-up); Vector (Code mark-up)	Insert '*or an Other Purpose*' at the end of paragraph (a).
Schedule 12A.1, Appendix C clause 10(2)(a)	ENA (p.11); Network Tasman (p.6); Unison (p.5); Vector (Code mark-up); WEL Networks (p.4)	Delete paragraph (a), as the requirement to physically and electronically quarantine consumption data is impractical.
Schedule 12A.1, Appendix C clause 10(2)(c)	ENA (Code mark-up); Vector (Code mark-up)	Delete '*the confidential nature of the'* in paragraph (c).
Schedule 12A.1, Appendix C clause 10(2)(g)	Powerco (p.9); Vector (Code mark-up)	Delete paragraph (g), as referring to locked cupboards is unnecessarily specific.
Schedule 12A.1, Appendix C clause 10(2)(g)	Vector (Code mark-up)	Delete paragraph (h) as it overlaps with clause 11.
Schedule 12A.1, Appendix C clause 11	Vector (Code mark-up)	Amend paragraph (c) as follows: '*notify the Trader in writing of any breach <u>related to the disclosure and use of the Consumption Data only</u>, and provide it with a copy of the report*'.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C, clause 12	Aurora Energy (p.4); Distribution Group (pp.13, 15); ENA (p.12); Northpower (p.5); Powerco (pp.3, 9, 10); Unison (p.5); WEL Networks (p.4); Wellington Electricity Lines (p.18)	The distributor's indemnity is too wide and should be limited. Limitations suggested in submissions include: • It should only cover losses that are caused by the distributor's breach or that are within the distributor's control. • It should not indemnify for loss arising due to voluntary representations made by the trader to its customers, or to the extent the trader caused or contributed to the loss. • The distributor should not be liable for losses that were not reasonably foreseeable. See, for example, suggested drafting changes appended to ENA's submission.
	Wellington Electricity Lines (p.18)	The trader should be expected to undertake actions to mitigate any potential losses, and losses should be limited to those that were not foreseeable at the time the agreement was entered into.
	Distribution Group (p.15)	Redraft 12(1) to tie any loss incurred by the trader to the distributor's breach of its obligations under the agreement.
	Vector (pp.17-18)	Delete the indemnity in clause 12 as the liability regime for consumption data should be the same as for consumer information under the DDA. Having a broad indemnity beyond the protection already afforded to traders under the provisions of the DDA is not justified. A distributor is not provided with any reciprocal indemnification from a trader should the trader breach its obligation under Appendix C to supply consumption data to the distributor.
Schedule 12A.1, Appendix C, clause 13	Aurora Energy (p.4)	If auditors have access to a distributor's systems and premises, any information discovered through the audit must be kept confidential.
	Distribution Group (pp.13, 15); ENA (pp.5, A12); Orion (p.15); Unison (p.5); Vector (p.19); WEL Networks	Amend to provide for distributors to undertake annual audits and provide results to all traders who provided consumption data. This would reduce complexity and cost, and avoid distributors having multiple audits by traders. See, for example, different suggested drafting changes appended to ENA's and Vector's submissions.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	(p.4); Wellington Electricity Lines (p.18)	
	Orion (p.15)	There is no provision for the distributor to object to a specific auditor. The Authority already has a participant audit process that would provide a more efficient mechanism to check on these processes, and the function should be included in the Authority audit instead.
	ENA (Code mark-up); Orion (p.15); Vector (p.19); Wellington Electricity Lines (p.18)	Require traders to keep audit information confidential (see suggested drafting changes appended to ENA's and Vector's submissions).
	Wellington Electricity Lines (p.18)	Specify that the audit provisions in clause 13 are limited to the audit of the distributor's use the data provided by the trader. There is an opportunity to draw on existing audit processes (such as the registry information audit obligations for distributors under Part 11 of the Code).
	Northpower (p.5)	The audit rights should be limited.
Schedule 12A.1, Appendix C, clauses 14 and 15	Vector (p.18); Wellington Electricity Lines (p.18)	Align the termination requirements in clauses 14-15 with those in the wider default agreement to avoid confusion or unnecessary complexity and inconsistency. Vector suggests that the clauses should sit in the DDA only, with the provisions in the DDA being amended to incorporate the concept of 'Serious Breach', which is the only new concept introduced into these provisions in Appendix C (see suggested drafting changes appended to Vector's submission).
	ENA (p.A12); Powerco (pp.9, 10); Unison (p.5); WEL Networks (p.4)	The termination rights are drafted in a way that appears to trigger termination of the whole agreement to which the Appendix belongs (rather than just the Appendix), and the triggers for termination are not linked to misuse of data and allow for termination for minor breaches. Replace the termination provisions with a simpler clause allowing termination of Appendix C for insolvency, unremedied material breach, or an ongoing pattern of non-trivial breaches (see, for example, the suggested drafting changes appended to ENA's submission). Powerco also submits that, even in the event of termination, some provision should be made for a distributor to receive the minimum necessary data to allow for provision of distribution services.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C, clause 16	Aurora Energy (p.4); Orion (p.16)	The requirement for distributors to destroy consumption data should be removed (eg, as distributors should be able to retain consumption data for record keeping purposes or be able to observe variations and trends over long periods of time).
	ENA (pp.5, A12); Unison (p.5); Vector (Code mark-up); WEL Networks (p.4)	Amend clause 16 to recognise that distributors may have a legitimate need to keep and use Consumption Data after the end of the agreement for permitted purposes (see suggested drafting changes appended to ENA's and Vector's submissions). If distributors are exposed to the risk they will have to return data, the benefits of the data for network planning purposes will be limited.
	Powerco (pp.3, 7, 9)	Remove the requirement to destroy consumption data or apply the requirements only when supplied for 'Other Purposes'. Data still has significant value after it has been used for the initial permitted purpose. For example, it can be used again (with significant value in trend and time-series analysis) and used to validate results. Retaining data will avoid unnecessary duplication of costs (ie, consumers paying multiple times for their distributor to access and use the same consumption data). If retaining data generates additional data privacy and data security concerns, a more innovative and efficient solution should be found.
	Northpower (p.5)	Distributors should have the ability to retain data after use (subject to the terms of the agreement regarding keeping the data confidential).
Schedule 12A.1, Appendix C, clause 18	ENA (Code mark-up); Vector (Code mark-up)	Clarify drafting (see different suggested drafting changes appended to ENA's and Vector's submissions).
Schedule 12A.1, Appendix C, clause 19	ENA (p.10)	The draft template Data Agreement suggests that the parties have to reach agreement on a range of matters that are already provided for in the operative clauses. Clarify that the Data Agreement covers additional matters agreed by the parties which exceed any default rights of the distributor under clause 3 (see suggested drafting changes appended to ENA's submission).
	Vector (p.20)	Appendix C will be unable to function as intended unless it also includes default terms of the Data Agreement to be entered into between the distributor and the trader. Amend clause 19 to include default terms for the Data Agreement (see suggested drafting changes appended to Vector's submission).
	Wellington Electricity Lines (p.18)	Amend clause to acknowledge that distributors will wish to retain consumption data over multiple years because trend data will provide important information for asset management and pricing purposes.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C, clause 20	Vector (Code mark-up)	Amend certificate to exclude copies of Consumption Data stored in routine electronic backups made by the distributor or its contractors which cannot easily be destroyed or erased (see suggested drafting changes appended to Vector's submission).
Schedule 12A.1, Appendix C, clause 21	Distribution Group (pp.12, 15); ENA (Code mark-up); Vector (pp.15-16)	Include reference to meeting obligations under Part 4 of the Commerce Act in the definition of 'Permitted Purposes'. Vector suggests amending the definition to allow distributors to use consumption data to plan and manage their networks in order to provide 'electricity lines services' (as defined in section 54C of the Commerce Act 1986), to ensure that distributors are not restricted from using consumption data to perform their regulated activities. See also the suggested drafting changes appended to ENA's submission
	Orion (p.16)	Customer information has wider applications in the efficient provision of a distribution service than the 'Permitted Purposes'. The information is useful when responding to or interacting with customers in relation to upgrades or downgrades, power quality issues, considering pricing options or alternatives, and investigating consumption anomalies.
	Vector (pp.16-17)	Amend definition of 'Permitted Purposes' to allow distributors to use consumption data to prepare, publish, and distribute reports for public interest purposes that contain anonymised and aggregated consumption data (see suggested drafting changes and example report appended to Vector's submission).
	Vector (Code mark-up)	As Appendix C will form part of the distribution agreement, delete duplicative definitions that are already defined in the DDA template.
	ENA (Code mark-up); Vector (Code mark-up)	Consequential changes to definitions to reflect comments above (see suggested drafting changes appended to ENA's and Vector's submissions).
Schedule 12A.3, clause 7	ENA (p.A7); WEL Networks (p.3)	The provisions relating to additional security do not take into account amounts that the trader owes or that are disputed, which means that the amount of security may quickly become inadequate in circumstances where a trader decides to prolong disputes. A 15% premium on bank bill yield rates substantially overstates most traders' true cost of posting additional security and is significantly more than Default Interest under the DDA template. There is a real risk that traders will use the prudential requirements to make a largely risk-free return that substantially exceeds their cost of capital. It also renders additional security prohibitively expensive for distributors, which introduces cost and risk into the business that will ultimately be borne by consumers through regulated prices. Changes are also required to

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		ensure that the real cost of security on normal terms is passed through to the distributor, and the trader cannot make a windfall by choosing a cash deposit as security (see suggested drafting changes appended to ENA's submission).
Schedule 12A.4	Vector (pp.12-13)	Given the evergreen nature of distributor agreements under the DDA proposal, Part 12A needs to provide a regime to amend recorded and collateral terms in such agreements. As recorded terms address matters that may fall under the Commission's jurisdiction, it is not appropriate for the Authority to prescribe how these terms can be amended. For the Authority to do so would be contrary to the Court of Appeal's declaratory judgment of 13 March 2019. A distributor should be able to specify how a recorded term can be amended in the recorded term itself and amend recorded terms included in its published DDA at any time by making it available on its website (see suggested drafting changes appended to Vector's submission). Part 12A should also include a regime to allow for collateral terms to be amended that is consistent with how such terms can be incorporated into DDAs and distributor agreements. A distributor should be free to amend a collateral term in its published DDA at any time by making the DDA with the amended collateral term available on its website, and to give traders on existing agreements 15 business days' notice of an amended collateral term, with the existing agreement deemed to be amended from the expiry of that 15 business days' notice period if the trader does not object). (see suggested new clauses 15 and 16 of the drafting changes appended to Vector's submission).
Schedule 12A.4, clause 4	Distribution Group (pp.4, 11, 15); Wellington Electricity Lines (p.8)	If there are appeal rights to the Rulings Panel in relation to disputes about operational terms, the principles to guide the Rulings Panel on operational matters should include: • enable compliance with applicable regulation and legislation • reflect prudent and efficient operating practices. These concepts are used by the Commerce Commission when evaluating expenditure allowances for distributors. Wellington Electricity Lines also suggests including the following as additional decision criteria (to assist the Rulings Panel and avoid a potential conflict with the rulings Panel intervening in pricing and pricing methodologies): • be consistent with the regulation of distributors under Part 4 of the Commerce Act • treat all traders who trade on the distributor's network equally.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	ENA (p.A3); Vector (Code mark-up); WEL Networks (pp.1, 2)	The principles for operational terms should not undermine the ability of the distributor to determine its commercially reasonable operational requirements. To ensure the appropriate balance is set and remove duplication (and ensure that the Rulings Panel has regard to all participants with whom the distributor may have a distributor agreement when setting operational terms), amend clause 4(2) as follows: *The principles are that a **distributor's operational terms** must—* *(a) be consistent with the **Authority's** objective set out in section 15 of the **Act**; and* *(b) reflect a fair and reasonable balance between the legitimate interests of the **distributor** and the reasonable requirements of ~~the~~ **participants** trading on, connected to, or using the **distributor's network** or equipment connected to the **distributor's network**; and* *~~(c)~~ reflect the interests of **consumers** on the **distributor's network**.~~; and~~* *~~(d) reflect the reasonable requirements of the **participant** party trading on, connected to, or using the **distributor's network** or equipment connected to the **distributor's network**, and the ability of the **distributor** to meet those requirements.~~*
Schedule 12A.4, clause 6	Distribution Group (pp.4, 9, 15)	Supports a phased approach to implementing DDAs, but the 90 and 150 day periods should include extension provisions where the Rulings Panel is considering appeals and has not resolved them during the prescribed periods (to avoid the Rulings Panel being forced to rush its deliberations due to an abnormally heavy workload during the initial set up period). Allow for a minimum of 10 working days to execute any decision of the Rulings Panel that requires a change to the proposed operational terms.
	Wellington Electricity Lines (p.6)	Concerned that the 90 day timetable will not be able to be met due to the number of terms to be consulted on and implemented (eg, if the Rulings Panel is required to adjudicate on operational terms, with potentially multiple retailers referring terms to the Panel). It is not appropriate for the consultation process to be curtailed due to the 90 day timeframe, and it is important that the proposed process is well executed (as the DDAs established during the initial period are expected to provide reference contracts for other distributors). The Authority should therefore provide advance notice of the date the amended Code will come into effect so that distributors can be as well prepared as possible before the 90 day timeframe commences.
Schedule 12A.4, clause 7	Vector (pp.10-11)	Insert a new subclause to provide for distributors' existing operational terms to be grandfathered into distributors' DDAs by being exempt from any consultation with traders and Rulings Panel review (see suggested drafting changes appended to Vector's submission). This would address timing issues and the risk that distributors may be forced to have different operational terms across their agreements.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		If this change is not accepted, Vector will require not less than 150 days after Part 12A comes into force to prepare, consult on, and publish its initial DDA (to allow for all Rulings Panel reviews to have been determined first).
Schedule 12A.4, clause 8	Aurora Energy (pp.4-5)	Determination of amendments to operational terms appears to fall outside the functions of the Rulings Panel. Any challenge process must not have negative operational effects on distributors (eg, inconsistent or inefficient processes). A more appropriate body to rule on operational matters would be a body with members who have day-to-day experience in the operations of distributors and traders.
	Wellington Electricity Lines (pp.8-9)	The Rulings Panel may not have appropriate experience for the new role of determining operational terms, which differs from its primary role of adjudicating on whether participants have acted consistently with the Code. There could also be a conflict between the core terms set out in the DDA and distributor obligations when publishing prices and pricing methodologies under the Commerce Act if a retailer appeals a distributor's pricing approach to the Rulings Panel.
	Aurora Energy (pp.4-5); Orion (p.16); Powerco (p.13)	The Rulings Panel should not have the ability to rule on matters such as Schedule 7 and its contents (pricing methodology, price categories, price options and prices).
	Distribution Group (pp.4, 11)	There should not be any appeal rights to the Rulings Panel in relation to disputes about operational terms (as the dispute resolution procedure within the DDA should be sufficient).
	Aurora Energy (p.5); Distribution Group (pp.4, 11, 15); Northpower (p.6); Vector (pp.11-12); Wellington Electricity Lines (p.9)	If disputes about operational terms can be referred to the Rulings Panel, distributors should have the right to appeal a decision of the Rulings Panel (eg, if they believe the Rulings Panel has made an error or the decision requires a participant to make significant changes to current operating practices or incur significant costs). Several submissions also suggest that traders could have an equivalent right to appeal. See, for example, suggested drafting changes appended to Vector's submission.
	Distribution Group (pp.4, 11, 15);	Require the Rulings Panel to consider operational and cost impacts when making its decisions (eg, the implications for distributors of having different operational terms across multiple contracts or of having to apply the same change in each of its other distribution agreements).

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Powerco (p.13); Wellington Electricity Lines (p.9)	
	ENA (pp.4, A3-4); Vector (Code mark-up); WEL Networks (p.2)	The Rulings Panel should not be able to amend operational terms if it simply prefers a different approach that it considers is also consistent with the principles, as this would be an unreasonable and unjustifiable intrusion on the ability of distributors to determine their operational arrangements. It may also encourage traders not to participate meaningfully in consultation but instead go to dispute resolution, which would be an inefficient approach. To address this issue, add the following subclauses after clause 8(3): *(4) The **Rulings Panel** may only amend an **operational term** under clause 8(3)(b) if it is satisfied that:* *(a) the **operational term** is inconsistent with the principles in clause 4(2); and* *(b) it would be commercially reasonable to require the **distributor** to apply the amended term, having regard to the impact on the distributor, including but not limited to:* *(i) the operational impact on the **distributor**; and* *(ii) the cost to the **distributor** of implementing the amended term.* *(5) Before it amends an **operational term** under subclause (3), the **Rulings Panel** must consider the impact on the **distributor** of having different operational terms applying across its **distribution agreements** with **participants**.*
	Powerco (p.12)	The Rulings Panel should only amend an operational term if it is satisfied that the operational term is inconsistent with the principles in clause 4(2) of Schedule 12A.4 (with the onus on the trader to show that this is necessary). Operational terms should only be revised by the Rulings Panel to the extent necessary to correct provisions that are contrary to the principles in clause 4(2), and where it would be commercially reasonable to require the distributor to apply the amended term, having regard to the impact and cost to the distributor.
	Northpower (p.6)	Supports the inclusion of the Rulings Panel to adjudicate on disputes under the DDA, but the impact of any ruling on operational terms may lead to multiple versions of a DDA being in operation if distributors need to work to multiple different sets of operational terms due to Rulings Panel decisions on those terms over time. More clarity is needed in relation to the guidelines that the Rulings Panel will work to and how the Rulings Panel is comprised.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Orion (p.16)	The Rulings Panel is not well placed to consider appeals against the operational terms in a distributor's DDA, because it is not clear what basis it would consider a complaint against, the timeframe for establishment is insufficient for its involvement, there is no right of appeal, and a solution/ruling might suit one retailer but not others. The Code requirement should extend only as far as an obligation to consult on operational terms, to act reasonably, and to have due regard for the impact on retailers.
	Powerco (p.12); Vector (p.12)	Members of the Rulings Panel who hear appeals on operational terms will require experience of day-to-day front-line operations of distributors and traders.
	Powerco (p.13)	The DDA needs to provide clear criteria on which decisions by the Rulings Panel should be made.
	Wellington Electricity Lines (p.6)	Include an extension provision where the Rulings Panel is unable to meet the deadlines for appeals during the initial 90 day period under clause 6 of Schedule 12A.4.
Schedule 12A.4, clause 10	Aurora Energy (p.5); Orion (p.16)	If the Rulings Panel amends an operational term, the trader should not be given the sole discretion to determine whether the amendment is made to its agreement. Otherwise, a distributor's operational policies may not be standardised, which would lead to significant operational inefficiencies and higher costs for distributors (and undermine the objectives of standardisation and efficiency).
	ENA (p.A4); Vector (Code mark-up); WEL Networks (p.1)	Insert a new clause 10(5) as follows: '*Despite anything else in this clause 10, if the **Rulings Panel** amends an **operational term** under clause 8(3)(b), the **distributor** may at any time amend each of its distributor agreements to include the amendment by giving not less than 10 **business days'** notice to the affected **participant(s)***'. This clarifies that, if the Rulings Panel amends an operational term, the distributor may at any time amend each of its distributor agreements to include the amendment. Otherwise, different operational terms may apply across the various agreements the distributor has with traders (which might be unworkable from an operational perspective and would undermine the aim of achieving greater uniformity).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
Recorded terms	Vector (DDA mark-up)	Amend references to include reference to any rights the distributor may have to amend the terms (see comments above relating to Schedule 12A.4, and suggested drafting changes appended to Vector's submission).
2.2(a)	Vector (pp.23-24)	Amend clause 2.2(a) so that distributors have the right to elect whether to qualify their obligation to deliver electricity by either Service Standards and/or a Good Electricity Industry Practice standard. The proposed structure relating to making Schedule 1 (Service Standards) a recorded term is inflexible and likely to discourage distributors from setting any Service Standards at all – particularly where breach of Service Standards could expose distributors to an uncapped indemnity liability under clause 27. If a distributor elects the general quality standard to deliver electricity in accordance with Good Electricity Industry Practice, then the force majeure and liability provisions in the DDA should similarly provide that the distributor will not have liability for any failure to convey electricity or any failure of the Network in circumstances where the distributor has acted in accordance with Good Electricity Industry Practice. If the DDA template was to provide that the distributor had liability in these situations, that would constitute an attempt by the Authority to mandate a quality standard onto the distributor, in breach of the Court of Appeal's March 2019 judgment. See suggested drafting changes (including new clauses 21.1(b)(v) and 24.5(a)(vi)) appended to Vector's submission.
2.2 and 2.3	Wellington Electricity Lines (p.17)	Include the phrase '*in accordance with Good Electricity Industry Practice*' in clauses 2.2 and 2.3, as it was in the MUoSA, to set the expectations of the DDA obligations against this standard. The term should also be included in the definitions in clause 33 of the DDA.
3	Powerco (p.16)	Although clause 3 of the DDA contemplates that some ICPs may be supplied on a conveyance-only basis, it is not clear which provisions do not apply or apply while a particular ICP or customer is conveyance-only. This may result in the DDA cutting across or doubling up on the arrangements agreed by the distributor and the customer under a Direct Customer Agreement. There is no clear statement that the obligation to provide 'Distribution Services' does not apply at conveyance-only ICPs; the Service Standards and Service Guarantee Payments do not apply to conveyance-only customers/ICPs; or the pricing consultation provisions in clause 7.4 do not apply to conveyance-only customers/ICPs.
	ENA (pp.6, A5); Vector (pp.21-23); WEL Networks (p.1)	Amend clause 3 and the definition of 'Direct Customer Agreement' in clause 33.2 to clarify that a distributor and customer may agree to contract directly without a formal written request from the customer, and ensure that the conveyance-only provisions of the DDA template are not triggered by agreements between a customer and a distributor for new technology services offerings (see suggested drafting changes appended to ENA's and Vector's submissions).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
4	Wellington Electricity Lines (p.19)	Amend to refer to '*any'* terms or requirements set out in Schedule 5, rather than 'the' terms or requirements (as Schedule 5 is intended to be included in the DDA as recorded terms, which are not mandatory, and this means that the core terms will not be able to be complied with if an agreement does not include terms similar to those set out in Schedule 5).
4.4	Wellington Electricity Lines (p.15)	Extend the requirement to maintain a safe environment consistent with the distributor's health and safety policies to refer to public safety policies (which is more consistent with the Health and Safety at Work Act 2015).
4.7	Wellington Electricity Lines (p.10)	Move the process for communicating customer requests for restoration to Schedule 5, as it is an operational arrangement not a core term.
5.1	Distribution Group (pp.16, 19-20); Wellington Electricity Lines (p.15)	The DDA relies on controlled price categories when assigning control rights to distributors, but some price categories might allow for both controlled and uncontrolled load (such as time of use pricing). Amend to recognise that a distributor may control load even where specific controlled load pricing categories are not used, and broaden the description of pricing categories to refer to '*a price option which allows for non-continuous level of service*'.
	Wellington Electricity Lines (p.15)	Amend to require a trader to pass on the non-continuous supply pricing category to consumers.
	Distribution Group (pp.16, 20); ENA (DDA mark-up); Vector (p.25); WEL Networks (p.4); Wellington Electricity Lines (p.15)	As it is possible that third parties may obtain the rights to control load on behalf of customers, amend to provide for contractual arrangements between the distributor and third parties or customers which assign load control rights. See, for example, suggested new clause 5.9 in the drafting changes appended to ENA's and Vector's submissions.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Orion (pp.12-13); Vector (pp.24-25)	Providing for a distributor to control load only where it provides a price category or price option for a non-continuous service will hinder moves to cost reflective pricing and new load control solutions (eg, new hot water load control).
	ENA (pp.6, A13); Vector (pp.24-25); WEL Networks (p.4)	Amend clause 5.1 to include an 'other load control option' to ensure a distributor is able to compete for the control of customers' load and reflect that customers can choose to allow the load to be controlled by retailers, distributors, or load aggregators (see suggested drafting changes appended to ENA's and Vector's submissions).
	Vector (p.23)	The Authority may wish to consider whether the DDA template presents barriers to a customer's freedom to contract with more than one trader (such as in the area of load control, where the DDA template only contemplates the distributor and one retailer having the right to control a customer's load).
	Wellington Electricity Lines (p.15)	The provision for assigning customer load to third parties must ensure that the rights holder has obtained the right, and that the obligations set out in clause 5 and Schedule 8 are met.
	Unison (p.6)	The proposed DDA does not allow for the development of load control. It limits distributor load control services to existing hot water control capabilities and is based on a price category selection. The DDA framework needs to enable distributors to continue to efficiently maintain and develop load management service capability and allow consumers to subscribe to and benefit from this. The DDA should be agnostic to the technology enabling the service and pricing structures.
	Powerco (pp.18, 19)	Traders should be responsible for enabling or disabling load control equipment. Since signalling for ripple relays and pilot wires cannot discriminate between individual ICPs and their tariff option allocation, a distributor is reliant on the trader to ensure that these items of load control equipment are enabled or disabled to reflect whether the ICP is allocated to a controlled network tariff option.
5.2	Powerco (pp.18, 19)	Extend clause 5.2 to require the trader to notify the distributor when its customer takes up a price option for controllable load that is likely to affect existing arrangements (to avoid a situation in which a customer offers the same controllable load at the same time to a distributor and trader).
5.6	Orion (p.11)	Extend priority access to controllable load to capacity emergencies on the distribution network following contingent events.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Vector (DDA mark-up)	Insert the following new subparagraph to paragraph (b): '*a Trader will not operate its controllable load in a manner that could risk damage to the Distributor's network*'.
6.1	Wellington Electricity Lines (p.16)	Amend to '*The distributor may obtain information from the reconciliation manager*'.
6.2, 7.4(a), 17.4, 17.5(c)	Aurora Energy (p.7); Distribution Group (pp.4, 19-21); ENA (pp.4, A5); Orion (pp.10, 13); Powerco (pp.3, 12); Vector (p.29); WEL Networks (p.2); Wellington Electricity Lines (pp.15, 16)	Compliance with guidelines issued by the Authority should not be mandatory. The Authority should not be able to extend the regulation of contract terms by elevating the status of guidelines through default contracts to quasi-regulation making powers (without a proper statutory basis or consultation process). The proposal will introduce regulatory uncertainty and risk. To address this, some submitters suggest changing references to 'in accordance with guidelines' to '*have regard to guidelines*'. Alternatively, some submit that the references should be deleted. Vector submits that the DDA should only require distributors to comply with the requirements of the Code (not Authority guidelines), to ensure that distributors have the opportunity to be consulted on those requirements and any subsequent changes to them (see suggested drafting changes appended to ENA's and Vector's submissions).
6.5	Distribution Group (pp.16, 20); Orion (p.10); Wellington Electricity Lines (p.16)	Clause 6.5 from 2016 DDA (which imposes requirements on traders for non-technical losses) should be added back in as it is not included anywhere in the current draft contract terms.
6.6	Distribution Group (pp.16, 20); Orion (p.10); Wellington Electricity Lines (p.16)	Delete clause 6.6. The formal dispute resolution process is not helpful and is expected to be unworkable as there are many different methods to estimate losses. Orion suggests replacing the provision with an obligation on the distributor to act reasonably in determining factors.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
7.1	Wellington Electricity Lines (p.14)	Reword clause 7.1 as it could be read as requiring price schedules to be included in Schedule 7, which is not practical because it would require continual updates.
7.3	Distribution Group (pp.17, 20); Wellington Electricity Lines (p.14)	Remove unreasonable restrictions on price changes within annual cycles (eg, to allow for changes relating to pass through cost changes, new services, agreements with retailers, and compliance with any regulation within this period).
	Orion (p.13-14)	Clause 7.3 would inappropriately lock in an annual cycle of price changes. It allows for price decreases at any time, but prevents a subsequent price change for 12 months, and would prevent any other price changes for 12 months if a price for a specific customer was changed. Amend clause 7.3 so that it states: '*Unless otherwise agreed with the Trader, the Distributor may not increase its Prices for any one ICP more than once in any 12 month period ending on 31 March, excluding any change that results from a change in….*'
7.7	ENA (p.A14); Powerco (pp.17, 19)	Clause 7.7 should allow corrections of an obvious pricing error (see, for example, the suggested drafting changes appended to ENA's submission). Powerco suggests that this should be provided traders agree that it was an obvious error.
8.1(b)	Northpower (pp.7-8)	Clarify the process for a distributor to change the price category code based upon a change in the attributes of an ICP, as it is not clear what the process is and clause 8.9 only refers to situations in which an ICP has been incorrectly allocated (which would not capture changes to the attributes of the ICP). This will be of importance to the implementation of cost reflective pricing (as ICPs will need to be moved between the default and time of use price category based on whether the meter is communicating, and whether the retailer can provide and calculate the data, which is a change of the attributes of the ICP). The notice period for a change in attributes should be nil (not 50 days as it is for incorrectly allocated ICPs under clause 8.9), so that the price category can be updated in real time.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
8.4	Powerco (pp.17, 19)	Amend 5 working days timeframe for advising of a decision for a price category request to 10 working days (consistent with the current MUoSA). Traders often process price category changes in bulk, which results in 50-150 price category change requests being received in one day, and 5 days is enough time to analyse each request before responding to the trader.
8.5	Distribution Group (pp.16-17, 20)	Clause 8.5 needs to be strengthened to provide more incentive on traders to assign ICPs to the correct distribution pricing category. Insert a subclause to require the trader to maintain all information required for assigning price categories and to assign ICPs to pricing categories based on all the distributor's price category criteria.
	ENA (p.A14)	Clarify that the trader must only select a price option where all eligibility criteria, including the meter register configuration, are satisfied (see suggested drafting changes appended to ENA's submission). Distributors rely on traders to maintain correct information about each site as necessary to select the correct Price Option.
	Wellington Electricity Lines (p.14)	The drafting does not correctly reflect the obligations for traders in assigning ICPs to pricing categories. Amend so that a trader must maintain the necessary information to ensure they are able to comply with the requirements in clause 8.5, and notify the distributor within 10 working days of the pricing option for an ICP.
8.6	Distribution Group (pp.17, 20-21); Wellington Electricity Lines (p.14)	Amend to allow a distributor to claim unrecovered revenue, and associated costs incurred, where a trader has failed to allocate an ICP to the correct pricing category (to remove an incentive for traders to allocate ICPs to incorrect pricing codes to reduce line charges). Wellington Electricity Lines also submits that clauses 8.7 to 8.9 should be amended in an equivalent manner.
8.7	Powerco (pp.17, 19)	Rather than requiring the distributor to issue a credit note payable in the next monthly billing cycle, a better and more efficient solution would be to incorporate credits for price category corrections into the relevant revision cycles rather than processing a 'one-off' credit. This would remove the need for the distributor to produce and process manual credit notes for each ICP that is subject to a historical price category correction.
	Powerco (pp.17-18, 19)	Limit the maximum period for credits for price category corrections to 14 months to align to the Reconciliation Manager revision cycle. This would negate the need for distributors to produce and process manual credit notes for the single month that falls outside the 14-month revision period.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
8.9	ENA (p.A14); Vector (DDA mark-up)	Amend so that any correction of a mistake in relation to Price Category is done in the same way as an initial allocation.
8.12(c)	Distribution Group (p.21); Orion (p.17); Wellington Electricity Lines (p.20)	Amend to reflect that distributors may not be responsible for vacant site disconnections (eg, so that clause applies only where a distributor is responsible for such disconnections).
9	Orion (p.11)	Amend the billing and payment clause to be an operational term, so that distributors can develop documentation that reflects their current processes, and avoid the unnecessary cost of changes. Otherwise, if there are to be mandated approaches to the billing process, a notice period of at least 12 months should be provided to enable the adjustments to be made (eg, to scope, commission, and test changes to billing systems).
	Orion (p.10); Wellington Electricity Lines (p.17)	Amend references to 'Use of Money' adjustments to acknowledge that use of money adjustments '*may'* be paid or credited (and that the treatment should be consistent for debits and credits). The cost of implementing Use of Money adjustments may be disproportionate to the value of credits or debits because the processing may be complex, due to GST and RWT considerations, and often the amounts are small.
9.2	Northpower (p.8)	There is a risk that retailers will attempt to arbitrage between default and time of use rates by failing to submit time-sliced data for ICPs where there is a financial benefit to do so, but no technical reason why they cannot. If retailers submit incomplete information, distributors should be able to estimate the consumption in the higher of the available prices (eg, peak for time of use, uncontrolled for default), with retailers having the ability to wash-up the volumes in the following month.
9.3	Distribution Group (pp.16, 21); ENA (pp.6-7, A14); Vector (p.21); Wellington	Amend to accommodate current billing practices. As drafted, distributors may be required to implement billing system changes to comply with the clause, which is not reasonable (eg, it would add unnecessary cost and could delay implementation and compliance with a DDA). Suggestions in submissions to address this include to move clause 9.3 to Schedule 2 and include it as an operational term (to provide more flexibility, given the timing of pro-forma invoices and wash-ups may differ between distributors and retailers, due to billing cycles and systems). Alternatively, see suggested drafting changes appended to ENA's and Vector's submissions.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Electricity Lines (pp.16-17)	
	Northpower (p.8)	The DDA requires a separate credit note or invoice in respect of an estimate washed up with actual readings. However, under incremental normalised billing, these are netted against the current month's consumption and a separate invoice is not created. This implies a shift to replacement normalised, which the Authority should consult on separately. Key to successfully implementing replacement normalised billing would be a reasonable lead time to facilitate system changes, testing, and transition planning.
	Orion (p.11)	Amend to allow the distributor to align its revision cycle with the reconciliation manager's cycle, or alternatively establish a process for revision invoices that does not unreasonably delay the application of adjustments to billing information. Requiring all revisions to be applied immediately would require up to 14 months of invoices to be issued each month.
9.4	Wellington Electricity Lines (p.16)	Insert the following to the end of clause 9.4: '*Unless the delay is due to the Trader not meeting its obligations in accordance with Schedule 2. In this latter circumstance no extension will be provided to the Trader*' (as the due date for payment should not be deferred if the trader caused the delay).
9.7	Vector (DDA mark-up)	Clarify drafting (see suggested drafting changes appended to Vector's submission).
10	Distribution Group (p.17); ENA (pp.2, 5); Network Tasman (pp.4, 7-8); Unison (pp.4-5); WEL Networks (p.2); Wellington Electricity Lines (p.9)	The draft DDA does not correctly balance risk between traders and distributors through the prudential arrangements. It is not appropriate that distribution customers, and ultimately the customers of other retailers, carry the financial risk of the failure of new entrant retailers. The costs associated with the risks for distributors will ultimately be borne by consumers through regulated distribution prices. ENA's submission also contains suggested drafting clarifications (see suggested drafting changes appended to ENA's submission).
	Network Tasman (pp.4, 7-8)	If the proposed retailer default process is completed, distributors will be left with more than 2 months of unpaid lines charges, even after prudential security has been called upon. The Authority is silent on why it is efficient (and therefore for the long-term benefit of consumers)

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
		for distributors to carry this level of commercial risk as a result of a failed retail business (especially given the prudential security available to the clearing manager is such that it is not subject to any commercial risk in the event of trader default). Even in the unlikely event that distributors could use the option of additional security with perfection, distributors are still exposed to commercial risk from failing retailers because a failing retailer will accrue more debts that exceed 2 months of lines charges.
	Network Tasman (pp.4, 7-8)	There are considerable information asymmetries between retailers and distributors about the retailer's financial sustainability and the retailer has a strong incentive to ensure distributors have no knowledge of any financial difficulties the retailer may be facing. Distributors are therefore ill-equipped to efficiently use the option to require 'additional security' from retailers.
	Unison (p.4)	The current prudential arrangements provide less than 25% of the cover required by a distributor in the event of trader default where its ICPs are transferred to another trader (which, even under the Authority's process for trader default, would take at least 8 weeks).
	Unison (pp.4-5)	The Authority should further consider the proposed prudential requirements as a market function rather than commercial arrangement. The alignment of the DDA prudential requirements with those of the clearing manager could achieve the correct function of prudential security. In Unison's experience, when limited prudential security is held and traders come under financial pressure, traders prioritise meeting wholesale market obligations over paying distributor charges. Given distributors must allow traders to access their networks, and the prudential security available is prescribed and capped, distributors are not able to commercially manage the risks associated with new entrant retailers. In effect, this is a de facto regulated subordination of distributor credit exposure to wholesale market exposure.
10.1	Distribution Group (p.21)	Include an additional subclause that states that the trader is required to comply with the prudential requirements at all times under the contract. This will help to mitigate the situation where the trader's financial position deteriorates unbeknown to the distributor, compromising the security available to the distributor
10.2	Powerco (p.15)	The distributor should be able to choose which form of security the trader uses.
10.2 and 10.3	Wellington Electricity Lines (p.10)	Amend to require a trader to maintain the agreed level of security at all times, not just at the time the contract is entered into.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
10.6	Aurora Energy (p.5); Wellington Electricity Lines (pp.9-10)	Increase the base level of prudential security from 2 weeks to 2 months or *'any period of not more than 2 months'* (as the debt recovery process and payment terms under the DDA mean that distributors will be exposed to at least 6 weeks to 2 months of charges being at risk in the event of a trader default). Aurora Energy submits that this would align a distributor's rights with the rights of the clearing manager.
	Orion (pp.3-4)	Extend the 2 week allowance for prudential security (without interest payment) to 3 months to match the period it would likely take for a distributor to withdraw service (and ensure customers do not face a disproportionate share of the risk associated with the failure of start-up retailers).
	Distribution Group (pp.17, 21)	Include an additional option where the distributor and trader agree an alternative value for the base level of security, which would not be able to exceed $5,000 per trader if elected. This would address the problem that arises for distributors when arranging security for new entrant traders with very few connections. The cost of obtaining the security exceeds the value of the security for such small traders.
10.7	ENA (p.A7), Wellington Electricity Lines (pp.10, 11)	Amend to allow distributors to increase the value of additional security by the value of any monies owing or under dispute. Without additional security, a distributor will be exposed to financial losses as the default processes under the DDA take time, and the amount of security may quickly become inadequate in circumstances where a trader decides to prolong disputes. See, for example, the suggested drafting changes appended to ENA's submission.
10.9	Distribution Group (pp.17, 21); Wellington Electricity Lines (p.10)	Change the rate required for additional security to 5% above the bank bill rate, as 15% is excessive/punitive and not justified, and distributors are not be able to access lower cost options if a trader elects to provide security by cash deposit.
	ENA (pp.A7-8); WEL Networks (p.3)	A 15% premium on bank bill yield rates substantially overstates most traders' true cost of posting additional security and is significantly more than Default Interest under the DDA template. There is a real risk that traders will use the prudential requirements to make a largely risk-free return that substantially exceeds their cost of capital. It also renders additional security prohibitively expensive for distributors, which introduces cost and risk into the business that will ultimately be borne by consumers through regulated prices. Amend to ensure that the real cost of security on normal terms is passed through to the distributor, and the trader cannot make a windfall by choosing a cash deposit as security (see suggested drafting changes appended to ENA's submission).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Unison (p.4)	In Unison's experience, when traders elect to provide additional security, it is always as cash deposits (which is at a cost of 15% above the market cost). This cost is a general cost incorporated into Unison's distribution prices, which means the cost is borne by consumers and effectively the risks associated with new entrant retailers and associated costs are subsidised by all consumers rather than borne by the new entrant retailer.
	Powerco (p.15)	The agreement should state that amounts payable on a cash deposit security must represent the trader's actual costs of acquiring the security on commercially standard terms.
	Orion (p.5)	In relation to encouraging cost-reflective pricing, Orion seeks the Authority's view on applying the cost of the 15% charge for holding a retailer's bond as a loading on delivery prices charged to the retailer.
10.20	ENA (p.A8)	Change the 2 working days' notice to draw down on a cash deposit if an insolvency event occurs to allow the distributor to draw down on the cash deposit immediately.
10.22	Distribution Group (pp.17, 21); Wellington Electricity Lines (pp.10-11)	Remove paragraph (c) (which excludes amounts subject to genuine dispute from security available to the distributor), as the carve out creates an incentive for traders to dispute charges to delay payment to distributors. Wellington Electricity Lines suggests that an alternative option would be to require the trader to increase the amount of security provided by the amount under dispute.
	ENA (p.A8); Orion (p.5)	Clarify (or delete) the drafting in paragraph (a) that suggests that the distributor is unable to call on security if the trader has failed to maintain 'acceptable' security.
10.23	Distribution Group (pp.18, 21)	Remove reference to 'on 2 working days' notice' to allow a distributor to call on security immediately if clause 10.22 applies.
10.23 and 10.25	Powerco (pp.4, 15)	Amend so that the distributor is entitled to increase the Additional Security to include any amounts disputed and withheld by the trader, and the maximum combined security amount is equal to the distributor's estimate of 2 months' charges plus the amounts disputed and withheld.
10.26	Network Tasman (p.5)	Amend the requirement for the prudential cash deposit received from each retailer to be held in an individual trust account in the name of the retailer providing the cash deposit (which is an overly burdensome administrative task). Instead, require distributors to maintain a single trust account for the purposes of holding prudential cash deposits.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
12.3	Vector (DDA mark-up)	Insert a new paragraph (b) as follows (so that the trader's obligation not to interfere with or damage the distributor's equipment also extends to the network): '*interfere with or damage the Network or cause or permit any person, material or device to do so*'.
12.6	Vector (DDA mark-up)	Provide for clause 12.6 to be varied without the consent of any customer.
18	Vector (p.18)	Amend clause to include the concept of 'Serious Breach' (to address comments made regarding the default and termination provisions of Appendix C of the draft Code amendments above).
19	Aurora Energy (p.6)	The DDA should provide for termination at will/by providing notice. Otherwise, parties may be locked into an agreement that is not commercially workable or consistent with the regulatory framework.
19.1	ENA (p.A5); WEL Networks (p.1); Wellington Electricity Lines (p.11)	Delete paragraph (b) as the dispute resolution process should not lead to contract termination.
	ENA (p.A5); Orion (pp.2, 15); Powerco (pp.3, 5); WEL Networks (p.1); Wellington Electricity Lines (p.11)	To address concerns that the agreements remain evergreen even if no longer required by the Code, allow for the agreement to be terminated if the Code is amended to remove the obligation on distributors to maintain distribution agreements (or include a sunset clause). See, for example, suggested drafting changes appended to ENA's submission.
19.2	ENA (pp.A5-6); WEL Networks (p.1)	Clarify that clause 19.2 only applies to the events of default described in clause 18.4 (ie, is subject to a reasonable materiality standard). Otherwise, clauses 18.1 and 18.3 would mean that a failure of the distributor to remedy any breach of the agreement within 5 working days would be an event of default that could lead to termination.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
19.7	Vector (DDA mark-up)	Insert '*If the Distributor continues to charge the Trader for Distribution Services after the effective date of termination of this Agreement under clause 19.6, then the Trader will continue to be bound by all of the terms of this Agreement as if the Agreement had not been terminated for so long as the Trader is liable to pay such charges.*'
19.8	ENA (DDA mark-up); Vector (DDA mark-up)	Clarify drafting (see suggested drafting changes appended to ENA's and Vector's submissions).
19.9	Powerco (pp.18, 19)	Extend the wording of clause 19.9 to make it clear that traders are still responsible for fulfilling their obligations relating to subsequent revision periods after termination (as a trader still has obligations for at least 3 months after the date that supply ceases to keep submitting and paying revision invoices).
20	Powerco (pp.16, 19); ENA (p.A14); Vector (p.25)	Clause 20.1 limits use of Confidential Information to the purposes expressly permitted by the agreement, but there is no provision that explicitly authorises the use of Confidential Information for particular purposes. Include general authorisations for each party to use Confidential Information for the purpose of performing its obligations and exercising its rights under the DDA (see, for example, the suggested drafting changes appended to ENA's and Vector's submissions). Powerco submits that this should include any specific purposes for which the information was provided.
	Vector (p.26)	Insert a new subclause to restrict a trader's use of customer information and consumption data that the trader receives in error in respect of customers other than its own (see suggested drafting changes appended to Vector's submission). This will protect consumers from unauthorised use of their information, and protect traders from their information being misused by another trader. The provision should not be subject to the direct damage limitation, consequential loss exclusion or monetary cap on liability in clauses 24.2, 24.3, and 24.7 of the DDA template, as those clauses would otherwise significantly reduce the scope and effectiveness of the provision.
21	Vector (DDA mark-up)	Insert new provisions relating to recorded terms (see suggested drafting changes appended to Vector's submission). The distributor should be entitled to include provisions that deal with its entitlement to levy charges during a Force Majeure Event given they concern payment arrangements during an interruption in supply and therefore the regulation of quality standards. As such, consistent with the Court of Appeal's March 2019 judgment (and the approach taken in clause 9.10 of the DDA), they fall within the Commerce Commission's jurisdiction and outside of the Authority's jurisdiction.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
22	Vector (DDA mark-up)	Clarify drafting to reflect suggested changes relating to variations of recorded terms, and that the Commerce Commission can permit or require changes by way of decision or direction and not just a determination (see suggested drafting changes appended to Vector's submission).
	Aurora (p.6)	At a minimum, distributors need to have the ability to vary recorded term and add additional service appendices after a contract is formed.
23	Vector (DDA mark-up)	Insert a new subclause as follows (to enable distributors to share arbitral decisions with other traders, which will assist parties in understanding how the DDA should be interpreted): '*The Distributor may disclose the arbitrator's decision under clause 23.8 to the extent that it relates to the interpretation of this Agreement or provisions of this Agreement.*'
24.2	ENA (p.A8); Northpower (p.4); Vector (DDA mark-up)	Delete the specific reference to Good Electricity Industry Practice, as it is unnecessary (because, if a clause indicates an obligation to exercise Good Electricity Industry Practice, the failure to do so will cause a breach of the Agreement, which is already referred to in clause 24.2).
24.2 and 24.3	Vector (p.27)	Amend so that the direct damage limitation and consequential loss exclusion do not apply to clauses 24.10 and 29, as to apply them would effectively remove any available remedy to the distributor if the trader breaches the provisions because the distributor is unlikely to suffer damage to physical property but could suffer consequential loss (see suggested drafting changes appended to Vector's submission).
24.5	Distribution Group (pp.18, 22); Wellington Electricity Lines (p.12)	Under this clause, distributors may be liable for any failure to convey electricity for any reasons not stated in clause 24.5. This implies higher service standards than elsewhere in the DDA and than standards required under Commerce Act.
	Distribution Group (pp.18, 22)	Amend to acknowledge that distributors are not required to provide continuous supply on their networks, and that their supply targets and service standard expectations are specified in Schedule 1 and Schedule 5.
	Wellington Electricity Lines (p.12)	Amend to state '*except to the extent that the failure is caused or contributed to by the Distributor not acting in accordance with this Agreement or Good Electricity Industry Practice*'. The DDA will increase the risk that distributors are exposed to and should not place additional undue risk on distributors that distributors are not able to mitigate.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
24.7	Distribution Group (pp.5, 18, 22)	The liability cap as drafted would result in excessive amounts of liability, which would be expected to grow significantly as more traders enter each network and would be disproportionate for smaller networks. Amend the limitation on liability to be the lesser of the actual value of the loss or damage incurred and the liability caps. These caps should be set as: • the lesser of $10,000 per affected ICP; and • the lesser of $2,000,000 and 5% of annual lines charge revenue for the entire network (not per agreement) per event or connected events.
	Orion (p.5)	A limit of 10 times the annual charges (approximately $10,000) provides an appropriate share of risk between a distributor and customers.
	ENA (pp.A8-9); Vector (pp.27-28); WEL Networks (pp.2-3)	Amend the $10,000 per ICP liability cap in this clause to be calculated based on each ICP supplied by the trader affected by the event, rather than all ICPs on the network supplied by the trader, as it is not fair or reasonable to link liability levels to ICPs that are unaffected by the event (see suggested drafting changes appended to ENA's and Vector's submissions).
	ENA (p.A8); Vector (pp.28-29); WEL Networks (pp.2-3)	Include an annual liability cap in addition to a per-event liability cap, to more appropriately and reasonably balance the risk faced by both distributors and traders (see suggested drafting changes appended to ENA's and Vector's submissions).
	Northpower (pp.3-4)	The liability cap should be refined to clarify that it applies per ICP affected by the event or series of events, not per all ICPs at which the trader trades on that day. This would ensure liabilities are proportionate to the number of affected customers on a network and not the proportion of customers with a particular trader. It also ensures fairness if there are alternative agreements in place instead of the DDA for some traders. To achieve a balanced position, the liability cap should be changed as proposed by the ENA but the per event limit should be capped at the lesser of: • the value of the damage up to a maximum amount of $10,000 (applied as a cap at each ICP affected); and • the lesser of $2,000,000 and 5% of the distributor's total annual line charge revenue.
	Unison (pp.3-4)	The liability cap should relate to the liability for the direct damage incurred by a party for a given event and should be set in relation to the number of ICPs associated with a trader that have incurred direct damage as a consequence of an event. The liability cap proposed by the Authority provides a bias in favour of larger retailers who in most cases have more than 200 ICPs and therefore will enjoy a liability cap of

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
		$2,000,000 under the proposed drafting, and also increases the exposure for distributors based on the number of retailers on the network rather than the number of parties affected. This means that the greater the number of traders on a distributor's network (no matter how small), the higher the cumulative amount of liability for which they could be liable (despite the network itself, and any likely loss arising from events, not changing). A liability cap set at $10,000 per affected ICP would effectively align the distributor's liability with that of the retailer under its consumer contracts (as most retailers limit their liability to an individual customer to $10,000 in respect to direct damage incurred only as a consequence of a given event).
	Wellington Electricity Lines (p.12)	The reference to $10,000 'per ICP' would result in excessive amounts of liability that are disproportionate. Insert the term '*affected ICPs*' and cap the amount to the value of the actual loss for the affected ICP. Liability should be capped at the lesser of $10,000 per affected ICP or the amount of the loss or damage suffered (to avoid the issues of escalating liability due to increases in the number of traders on a network and liability becoming grossly disproportionate for smaller distributors). The cap should be allocated between contracts in proportion to the number of ICPs affected by an event.
	Orion (pp.6-7)	The discussion in the consultation paper makes it clear that the Authority intends that liability should be limited to affected ICPs. Limiting liability to affected ICPs aligns with the individual limits that retailers have in their retail contracts with customers, provides a level of risk for distributors that is commensurate with the cost of the service, and leaves the greater share of the risk with the customer, where it can best be efficiently managed. The issue is more complicated than simply referring to ICPs affected. Amend clause 24.7 so that it states: *Subject to clauses 24.1 and 24.8, but despite any other provision of this Agreement, the maximum total liability of each party under or in connection with this Agreement (whether in contract, tort (including negligence) or otherwise) for any single event or series of connected events will not in any circumstances exceed the lesser of:* *(a) where the liability relates to damage at an ICP, the value of that damage up to a maximum amount of $10,000 (applied as a cap at each ICP affected), or* *(b) $2,000,000 in total.*
	Orion (p.8)	Concerned that the proposal will mean that each additional retailer that trades on a distributor's network will expose the distributor to an additional $2,000,000 in liability, and that customers supplied by large retailers will be disadvantaged. The distributor should have the ability

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
		to scale payments in relation to any event so that the total payment does not exceed a combined total amount per event (set at $5 million). Insert an additional paragraph as follows: '*where the total liability of the Distributor to the Trader and all other traders in relation to that single event or series of connected events would be in excess of $5,000,000 (after the application of the cap in part (a) or (b) of this clause), the proportion of $5,000,000 that the liability would otherwise bear to the total liability for that event. In order to quantify this limitation, the Distributor may, acting reasonable, delay payment of a portion of any liability if it considers that this limit may apply*.'
	Wellington Electricity Lines (p.12)	Replace the $2,000,000 cap per contract to a total cumulative liability of $5,000,000 per network event.
	Wellington Electricity Lines (p.12)	As an alternative, a cap should be able to be agreed between the parties, to provide certainty for both parties while being proportionate to the level of activity of each trader on a network.
24.8	Orion (p.6); Wellington Electricity Lines (p.12)	The carve outs in clause 24.8 inappropriately expose distributors to unlimited liabilities. The only exclusion that should be recognised in respect of the limitation of liability is the Consumer Guarantees Act. Amend clause 24.8(a) to this effect.
	Orion (p.6); WEL Networks (p.3)	The DDA provides for no limitation of liability in relation to breach of confidentiality. Orion submits that the $2,000,000 cap is a sufficient incentive to maintain the confidentiality provisions, and these obligations should not be carved out of the limitation on liability. WEL Networks submits that liability should be limited by excluding losses that are not a direct, natural, and probable consequence of the breach and/or capped at a reasonable level ($2,000,000).
24.9	Orion (p.14); Wellington Electricity Lines (p.12)	Amend to better align with recent amendments to the Consumer Guarantees Act that limit the ability to contract out of the Act.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	ENA (DDA mark-up); Vector (DDA nark-up)	Add '*or any other law'* to paragraph (a)(ii) to align it with subparagraph (i).
24.11	ENA (p.A9); Northpower (p.4); Vector (DDA mark-up)	Amend clause 24.11 to ensure that section 15 of the Contract and Commercial Law Act does not inadvertently prevent the parties from varying the agreement (see suggested drafting changes appended to ENA's and Vector's submissions).
25.1	Unison (p.3)	Consider the inclusion of a process for the handling of claims under the Consumer Guarantees Act to ensure clarity for stakeholders and provide assurance that claims and costs are efficiently managed for all stakeholders (see example clauses in Unison's UoSAs referred to in Unison's submission). For example, without the right for the distributor to request direct participation in the settlement of claims, there is a risk that a trader will have little incentive to manage claims in a way that appropriately limits costs to the distributor.
26.1	Aurora Energy (p.6); Distribution Group (pp.18, 22); ENA (p.A9); Northpower (p.4); Orion (pp.8-9); Vector (DDA mark-up); WEL Networks (pp.2-3); Wellington Electricity Lines (p.13)	Amend paragraph (a) to require the trader to notify the distributor immediately/as soon as it becomes aware of a claim involving a potential network event (to help to avoid the situation where a retailer elects to pay out on a claim relying on the distributor's indemnity rather than its own). See, for example, the suggested drafting changes appended to ENA's and Vector's submissions. Orion submits that the indemnity should only apply where the distributor is given reasonable notice in advance of a claim being settled.
	Northpower (p.4)	Insert a time limit within which a trader can claim to be indemnified by the distributor (so that a decision on whether to be indemnified is required to take place as soon as reasonably practicable after the liability arises).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Vector (DDA mark-up)	Insert additional recorded terms provisions relating to the conduct of Consumer Guarantees Act claims (see suggested drafting changes appended to Vector's submission). Provisions relating to the conduct and payment of Consumer Guarantees Act claims should be permitted as recorded terms, given such claims relate to the regulation of quality standards and as such, consistent with the Court of Appeal's March 2019 judgment, fall within the Commerce Commission's jurisdiction and outside of the Authority's jurisdiction.
27.1	Distribution Group (pp.18-19, 22-23)	Amend references to 'direct loss or damage' to actual losses incurred by the third party where the trader is at fault and in breach of the agreement.
	Vector (pp.26-27)	Amend so that the indemnity is subject to the consequential loss exclusion in clause 24.3 and the monetary cap on liability in clause 24.7 (see suggested drafting changes appended to Vector's submission).
	Distribution Group (p.23); ENA (p.9); Northpower (p.4); Vector (DDA mark-up); Wellington Electricity Lines (p.13)	Amend to clarify that, if the trader has a contractual right to terminate, it should not be penalised for exercising it (see suggested drafting changes appended to ENA's and Vector's submissions).
	Vector (DDA mark-up)	Insert '*or the Distributor suffering an Insolvency Event*' to the end of paragraph (a)(iii), as the insolvency of the distributor should not result in liability to the trader.
27.2	Distribution Group (p.23); ENA (p.9); Northpower (p.4); Vector (DDA mark-up); Wellington Electricity Lines (p.13)	Amend to clarify that, if the distributor has a contractual right to terminate, it should not be penalised for exercising it (see suggested drafting changes appended to ENA's and Vector's submissions).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Distribution Group (pp.118-9, 22-23); Wellington Electricity Lines (p.13)	There is no limit on the indemnity to be given by distributors under clause 27.2, even when the trader is in breach of the agreement. The DDA should provide incentives for retailers to limit indemnities with customers for network events.
	Distribution Group (pp.19, 22-23)	Insert an additional subclause to state that the distributor shall not indemnify the trader against any losses which arise as a result of the trader breaching the agreement. A similar subclause can be added to Clause 27.1 to protect the trader.
	Aurora Energy (p.6)	The indemnity and liability clauses place unacceptable risks on distributors. Clause 27 should limit the indemnity provided by a distributor to only those circumstances where the distributor is at fault. The indemnity should also be subject to a monetary limitation so that a trader is not able to pass through to the distributor any unlimited liability that it has. Where a network event is the basis of the claim, a limit should be included in the DDA, as the trader is able to limit its liability in its arrangement with its customers. Relevant third parties are in a better position to assess and mitigate any significant losses from network events, whereas if they were passed through to the distributor, they will ultimately be borne by all consumers. There are also challenges for distributors being able to insure for liability which is assumed by way of an indemnity.
	Vector (pp.26-27)	Amend so that the indemnity is subject to the consequential loss exclusion in clause 24.3 and the monetary cap on liability in clause 24.7 (see suggested drafting changes appended to Vector's submission). This would ensure that distributors would not be exposed to unlimited liabilities that they would have no ability to mitigate and customers would still enjoy the protections afforded at law. Traders would be free to limit their liability in customer agreements to align with the limitation.
	Northpower (pp.3, 4)	The indemnity should be limited to the legal liability to pay for the loss in accordance with the common law on recovery for such loss or damage and should not be liability by way of indemnity. It should also be subject to the overall liability cap. The risk of having an indemnity from the distributor to the trader is that the trader will not use its contract with its customer to limit/exclude liability for such losses and the trader is best placed to manage this risk (along with the customer).
	Distribution Group (pp.18-19, 22-23); Orion (p.8);	Amend references to 'direct loss or damage' to actual losses incurred by the third party where the distributor is at fault and in breach of the agreement.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Wellington Electricity Lines (p.13)	
	Vector (DDA mark-up)	Insert '*or the Trader suffering an Insolvency Event*' to the end of paragraph (a)(iii), as the insolvency of the trader should not result in liability to the distributor.
New 27.3	ENA (p.A9); Northpower (p.4); WEL Networks (pp.2-3); Wellington Electricity Lines (p.13)	Insert a new clause 27.3 to specify circumstances in which the distributor will not be liable under the indemnity in clause 27.2, and clarify the concept of direct loss in clause 33.2 (see suggested drafting changes appended to ENA's submission). Otherwise, the indemnity potentially provides a 'blank cheque' for traders to expose distributors to unlimited liability for breaches of the DDA, which would not be an efficient outcome.
30.2	ENA (DDA mark-up); Vector (DDA mark-up)	Amend 2 working days timeframe for notices sent by post to 3 working days, to reflect NZ Post's target delivery times for domestic mail.
31	Aurora Energy (pp.6-7); Powerco (pp.9, 10)	The DDA omits some clauses relating to EIEPs that were included in the MUoSA, which exposes distributors to the risk that they are unable to access customer information necessary to fulfil their obligations under the DDA. Powerco suggests that traders should be obliged to give the distributor access to '*such customer information as is reasonably available to trader and necessary to enable the distributor to fulfil its obligations in accordance with this Agreement*'.
	Distribution Group (p.23); Wellington Electricity Lines (p.14)	Insert a requirement for retailers to provide distributors with the customer information required for distributors to fulfil their obligations under the DDA, and allow distributors to audit the data.
	Vector (pp.29-30)	Given the importance of accurate information to billing and the performance of obligations under the DDA, each party to the DDA should have a right to access the books and records of the other party to allow them (or an independent auditor) to verify the accuracy of

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
		information provided by that other party under the DDA (see suggested new clauses 31.2 to 31.5 in the drafting changes appended to Vector's submission, which are based on the model interposed UoSA).
32	Vector (DDA mark-up)	Amend entire agreement clause to clarify that the terms of any UoSA in force immediately prior to the distribution agreement continue in full force and effect after the termination of that agreement to the supply of distribution services made prior to that agreement's termination (see suggested drafting changes appended to Vector's submission).
33.2	Wellington Electricity Lines (p.17)	The definition of the term 'distribution services' attempts to be too precise, but misses certain aspects of the service, and is also inconsistent with legislative definitions. Amend the definition to align to the definition in section 5 of the Electricity Industry Act 2010 (ie, '*Distribution services refer to the services provided by distributors in conveying electricity on lines other than lines that are part of the national grid*').
	Vector (DDA mark-up)	Insert definition of 'Serious Breach' based on the definition in Appendix C of Schedule 12A.1, with changes to: • introduce a requirement that the two or more breaches be non-trivial and attributable to the same underlying cause – ie, material and related breaches of Appendix C (as opposed to immaterial and unrelated breaches) • remove the second limb of the Authority's proposed definition of Serious Breach because it lacks any appropriate materiality threshold (see suggested drafting changes appended to Vector's submission).
	Distribution Group (pp.18, 21)	The proposed definition of a Serious Financial Breach is ineffective for smaller retailers and small networks (as the reference to the greater of $100,000 or 20% of monthly line charges means that paragraph (a) of the definition will never apply for smaller retailers, and a serious financial breach for smaller retailers will be limited to a material breach of the prudential requirements, which is a much more complex and lengthy process). Amend the definition of Serious Financial Breach by inserting a new paragraph to improve materiality criteria for smaller traders as follows: *(c) a failure by the Trader to pay the lesser of $100,000 or 100% of the actual charges payable by the Trader for the previous month, unless the amount is genuinely disputed by the trader in accordance with clause 9.7.*
	Network Tasman (p.5)	Serious Financial Breach should be defined as a failure by the trader to pay an amount due that equals or exceeds the actual charges payable by the trader for the previous month. Otherwise, small to medium distributors will be exposed to significant commercial risk (eg, 21 of the traders operating on the Network Tasman network could default on their monthly invoice and fail to meet the threshold in the Authority's proposed definition of serious financial breach).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	ENA (pp.A9-10); Northpower (pp.5-6)	Amend the definition of Serious Financial Breach to the '*failure by the Trader to pay an amount due and owing that exceeds the lesser of $100,000 or the actual charges payable by the Trader for the previous two months*', to make the threshold proportionate to the size of the defaulting retailer and protect a distributor from a material non-payment that could threaten cashflows. Northpower submits that, otherwise, there will be a cross subsidy between large retailers who pay on time (to avoid being immediately in serious financial breach) and small retailers (who will not be in breach if they do not pay on time), which will result in inefficient outcomes that are not cost reflective.
	Northpower (p.6)	In relation to a serious financial breach as a result of a breach of prudential requirements, the prudential process is cumbersome, time-consuming, and expensive to administer for the relatively small amount of money that distributors can hold as security. In practice, distributors are forced to take prudential to trigger a serious financial breach when a retailer does not pay, in order to enable termination of contract and prevent the accrual of further lines charges to the retailer in default. Distributors are not using the prudential process for the security provided, because the amount is too small to cover the debts accrued by the time the UoSA is terminated and consumers are transferred to a new retailer. As such, it would be more efficient if the definition of Serious Financial Breach was amended so that a distributor does not need to take prudential security in order to terminate a small retailer for non-payment. A minimum amount of security of $5,000 would be a practical method to estimate prudential requirements for small retailers.
	Distribution Group (p.23)	Insert a definition of losses to state that a direct loss is a direct, natural, and probable consequence of the event.
	Distribution Group (p.23)	Insert a definition of Network Event, to provide clarity for interpretation of the indemnity and liability clauses.
Schedule 1	Eastland (p.2)	The Service Guarantee Payments should be removed as they have been difficult to manage and the costs of administering the payments has been well in excess of the benefits received by consumers.
	Distribution Group (pp.16, 19); Wellington Electricity Lines (p.19)	The DDA template implies that distributors must comply with the service interruption standards at all times, which is not the case. If the DDA does not acknowledge that distributors may be unable to meet target service levels from time to time, it is implied distributors may be in breach of contract for normal operating circumstances (which would be equivalent to indirect regulation of higher service standards than required under the Commerce Act). To address this issue, insert the following: '*Failure to meet these service levels does not of itself constitute a breach of contract.* *The distributor will use all reasonable endeavours in accordance with Good Electricity Industry Practice to meet these service standards.*'

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Orion (p.9)	Schedule 1 appears to present the Service Standards as strict obligations, such that any non-compliance may be viewed as a breach of the agreement, and may trigger an indemnity liability for the distributor under clause 27. In reality, a certain level of performance payments should be expected, and the payment should be the extent of the obligation in the absence of any wider breach. To avoid duplication of liability, any payment under the service standards should be offset against any other claim and payment made for the same event.
Schedule 2, clause S2.1(c)	Orion (p.18)	Amend the last paragraph (c) to reflect that GXP charges are calculated as prices applied to 'quantities', and are not applied to ICPs.
Schedule 3, clause S3.2	Orion (p.18)	Update to refer to the separate EIEP 5A and EIEP 5B files.
Schedule 5	Wellington Electricity Lines (pp.19-20)	Amend the Schedule to include the following in relation to communication of unplanned outages (as it is not always possible for distributors to meet the service interruption communication requirements): '*the distributor will use all reasonable endeavours in accordance with Good Electricity Industry Practice to meet these criteria*'.
Schedule 5, clause S5.2(a)	Distribution Group (p.19); Wellington Electricity Lines (p.20)	The proposed communications standards for unplanned interruptions during the initial event period are not reasonable or achievable. It is impractical during a major event to notify all traders of each unplanned interruption within 10 minutes of becoming aware of an interruption. Suggests replacing the 10 minute standard with 30 minutes for staffed control rooms.
Schedule 5, clause S5.3(b)	Orion (p.18)	Amend the timeframe for a distributor to provide an expected time for restoration from 10 minutes after a fault to 30 minutes (which is more in line with operational response times).
Schedule 5, clause S5.8	Distribution Group (p.19); Wellington Electricity Lines (p.20)	Where a trader is contracted to manage fault calls it should do so under normal operating conditions. Amend to reflect that, during major events, a distributor may prefer to manage fault calls directly (eg, to state that, at the distributor's request, the trader may provide the distributor's contact details).
	Orion (p.18)	Allowing the retailer to refer calls directly to the distributor undermines the contractual obligation for the retailer to take calls (in situations where it is the retailer's responsibility).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
Schedule 5, clause S5.16	Orion (p.18)	It is not appropriate to require the distributor to meet the retailer's costs of notifying customers of planned outages because the retailer is the only party in a position to minimise the costs and will not be incentivised to do so if reimbursed. All costs are ultimately borne by customers (so the transactional cost of reimbursement and then including it in delivery charges is an unnecessary burden).
Schedule 6, clause S6.4(d)	Orion (p.18)	Amend the timeframe for the distributor to advise that a new ICP is ready to connect to refer to the completion of any upgrades or extension that might be needed (as the 2 working days timeframe does not leave much time to construct the new network that might be needed for the new ICP).
Schedule 6, clause S6.5	Distribution Group (p.21)	Amend the reference to connection of a new connection or change in capacity of an existing connection within 2 days, as this can only occur if the site is ready for connection. Suggest adding '*subject to the party providing a code of compliance and record of inspection for the site, where relevant*'.
Schedule 6, clause S6.6	Wellington Electricity Lines (p.20)	Amend 2 working days timeframe for new connections to be electrically connected to reflect 4 day deadline that Wellington Electricity Lines currently operates to (subject to ensuring that the site is ready for connection and the party wishing to be connected producing a Certificate of Compliance and Record of Inspection).
Schedule 6, clause S6.13(a)	Distribution Group (p.21); Orion (p.17); Wellington Electricity Lines (p.20)	Delete reference to the customer's last address provided by the trader for disconnection warnings, as the DDA template does not require traders to provide customer addresses to distributors.
Schedule 6, clause S6.14	Distribution Group (p.21); Orion (p.17); Wellington Electricity Lines (p.20)	Amend to reflect that distributors are not able to make changes to the Registry for temporary disconnections.
Schedule 6, clause S6.15	Distribution Group (p.21); Orion (p.17); Wellington	Amend the date by which a restoration following a temporary disconnection must be made to the date 'agreed' with the customer (as it may not always be possible to reconnect on the date requested by the customer).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Electricity Lines (p.20)	
Schedule 6, clause S6.25	Distribution Group (p.21); Orion (p.17); Wellington Electricity Lines (p.20)	Amend to reflect that distributors are not responsible for removing meters when decommissioning ICPs.
Schedule 8	Orion (pp.11-12); Wellington Electricity Lines (p.21)	Amend Schedule 8 to include provision for a central load control co-ordination role for distributors (to help avoid network security risk during periods of high or low load control, or transitioning off periods of load control). Orion submits that this should include: • The ability for distributors to set prudent limits on maximum change and rate of change of load as a result of load management. • A requirement for retailers to submit load management programs and the basis of operation to the distributor for approval, at its discretion. • The ability for distributors to adjust such limits and approvals to mitigate issues that might arise over time.
	Orion (p.12	It may be worth giving some consideration to a framework for distributors and load controlling parties to agree the terms on which a network capacity upgrade might be provided.
Schedule 8, clause S8.1	Distribution Group (p.20); Wellington Electricity Lines (p.20)	The priorities for load management should refer to network emergencies as well as grid emergencies, and this should be prioritised above 'any other right to control load'/market participation rights.
	Orion (p.17)	Clause S8.1 only gives priority for grid emergency and market participation, and there is no priority for what is currently the highest value use of load control – network investment deferral. This provides an avenue for retailers to eliminate a distributor's access to controllable load, which would immediately require a distributor to undertake a large capital spend to upgrade its network, and mean that retailers may be faced with benefits associated with market participation without being exposed to higher network costs (so may not act in the interests of customers). Re-word the policy to protect existing use and benefits.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
Schedule 8, S8.3(c)	Distribution Group (p.20)	The trader and the distributor should both be required to negotiate in good faith when agreeing on load control equipment upgrades. The trader should not be able to prevent upgrades to equipment which requires renewal due to age or obsolescence, where the equipment is required to provide agreed services under the distribution agreement. Accordingly, paragraph (c) should be amended to include the phrase '*the trader and distributor must negotiate in good faith to agree suitable terms for the upgrade of the trader's load control equipment*'.

Q4: What are your views on the Regulatory Statement? Specifically:

(a) the efficiency costs and benefits

(b) the costs and benefits in the retail market

(c) the costs and benefits in the related-services market.

Submitters	Submission
Distribution Group (pp.4, 7)	The Distribution Group is not persuaded that the benefits outweigh the costs. The MUoSA approach can be retained at lower cost and fully meet the Authority's objectives.
Distribution Group (p.7)	The cost-benefit analysis is underwhelming. The analysis has been based on un-validated survey information, which shows that the 'estimates' of the costs of contract negotiation differ significantly between distributors ($2,883 per contract on average) and retailers ($15,055 per contract on average). The retailer cost estimates appear to be skewed upwards by a single data point of $150,000 per contract. This estimate and the divergence in cost estimates are not plausible. Outliers have been excluded from the data used to quantify the cost impacts of the proposals and the same approach should be applied to the baseline (status quo) costs. The cost estimates should also be independently verified before being relied on to support the cost benefit analysis. The benefits of the proposal are quantified at just $1.1m - $1.3m per annum between 2019 and 2021, which is an insignificant amount when the number of contract arrangements which will be affected are considered. All arrangements will need to be revisited under the proposal to ensure consistency for certain terms, and the proposal has the potential to require numerous existing contracts to be renegotiated.
Network Tasman (pp.1-2)	The Authority's analysis is insufficiently robust to justify the significant change being proposed. There may be benefits from moving to a DDA, but the cost-benefit analysis is insufficiently detailed or robust to justify the proposed changes and fails to consider relevant nuances or details. The 'broad approach' to the cost-benefit analysis is not an appropriate tool for assessing the costs and benefits of such a fundamental change to the way that services worth $2.6b/year are

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Submitters	Submission
	contracted. The change is justified based on annual benefits to consumers of just $1 to $1.3 million, or 0.05% of the revenues collected for the services in question. The Authority must conduct a robust and comprehensive cost-benefit analysis before further progressing the DDA project.
Network Tasman (p.1)	No apparent consideration has been given to the likelihood of drafting errors or the consequences of such an outcome. The DDA will be the sole contract that will govern the terms and conditions under which $2.6 billion worth of services are provided. Even a minor error could result in costs that would swamp the proposed benefits of the DDA.
Wellington Electricity Lines (p.4)	The financial justification for introducing a DDA is weak, and the net benefits are insignificant and do not justify the disruption for distributors and traders. There is considerable disparity in the cost estimates of negotiating a new UoSA provided by retailers and distributors, with the range of cost estimates provided by traders varying widely (including an outlier of $150,000 per contract) and the difference not explained in the consultation paper. Without some form of verification, Wellington Electricity Lines questions whether the survey data used can be relied on for the cost benefit analysis. At the very least, the outlier should be ignored.
Orion (pp.2-3, 20)	Does not agree with the assessment of costs and benefits. The cost of change will exceed the benefits. The consultation process alone will cost more than the $3,000 savings per new agreement negotiation (and the Authority's own figures show an average of just 3 new retailers per year). Suggests an error has been made in the assessment of the static efficiency benefit in the consultation paper, as it appears to take the entire estimated cost of negotiations as a saving, when the Authority's estimate of savings is only 17% of total costs (so that the consultation paper overstates the savings by more than 80%). Orion also questions the average cost of negotiating under the current approach and notes that the average has been significantly skewed by a single outlier.
Vector (p.32)	The consumer benefits from imposing a DDA are not clearly justifiable from the Authority's cost-benefit analysis. The net benefits from the proposed DDA seem miniscule compared with estimated benefits from other Authority initiatives. The main basis of the cost-benefit analysis is a survey, and survey respondents could have widely varying perceptions of what constitutes the process of contract formation and their respective costs. A cost-benefit assessment in a highly dynamic market needs to consider new/future challenges and opportunities, and the possibility of chilling innovation as an unintended consequence of adopting a 'one-size-fits-all' approach.

Q4: What are your views on the Regulatory Statement? Specifically:

(a) the efficiency costs and benefits

(b) the costs and benefits in the retail market

(c) the costs and benefits in the related-services market.

Submitters	Submission
	The value of static efficiency is diminished in a rapidly evolving market where participants can have converging or multiple roles, and where market segments are becoming artificial. In considering costs and benefits to consumers, it is more appropriate to take a broader view of how efficiencies can be realised for consumers.
Vector (p.32)	Disagrees that having a DDA removes (or diminishes) the need for parties to negotiate. As more service providers enter the market, and market transactions become more numerous and complex, customers could seek more customised terms that cater to their unique needs – which involves negotiation. The evolution of the regulatory framework itself could also trigger the need for new negotiations or re-negotiations.
Orion (p.3)	Some of the net benefits to consumers referred to in the consultation paper are quite tenuous and others are options already available in many cases so cannot be attributed as benefits in adopting a DDA. For example: • Lower cost to negotiate contracts – The option for retailers to enter a market and avoid the cost of negotiation is already available to retailers as they can elect to accept the distributor's current standard agreement. • Retailers can compete on a level playing field – The vast majority of existing agreements include a provision to offer any new agreement to existing participants. If this is an issue in a small number of network areas, then a Code requirement to include such a provision would represent a much more cost-effective fix than entirely replacing all agreements. • Level playing field and increased transparency in negotiation – The proposed approach would allow a distributor to negotiate a deal with a specific retailer and not offer it to others. • More equal bargaining position – At least some of the surveyed retailers suggested that they did not consider that they held an unequal bargaining position. In conjunction with the requirement to offer any new agreement to all existing retailers, this concern is largely moot.
Orion (p.20)	Does not agree that the proposal will increase transparency in the negotiation process – the proposal specifically allows for individual negotiation and supports differing outcomes.
Vector (pp.32-33)	There are other initiatives that could address inefficiencies in the retail market with greater traction and minimal unintended consequences (eg, enabling greater data access and reforming the wholesale market).

Q4: What are your views on the Regulatory Statement? Specifically:

(a) the efficiency costs and benefits

(b) the costs and benefits in the retail market

(c) the costs and benefits in the related-services market.

Submitters	Submission
Vector (p.33)	Disagrees that distributors may prefer fewer large retailers than multiple retailers on their network. Distributors face incentives to enable retail competition and connect more DER to help make their network become 'asset light'. In addition, distributors are already highly regulated and the Commerce Commission has extensive powers to address competition risks.
Orion (p.20)	The DDA template provides a basis for participants to compete for existing and new contestable services, but does so by excluding distributors from these activities, even where the distributor might be the most efficient provider. It provides a basis for participants to provide and profit from new services without regard to the impact that it might have on distributors' costs (which will then ultimately be borne by customers). The proposed changes will have an adverse impact on reliability of supply, as the proposal provides for uncoordinated demand management which is much more likely to increase or create loading peaks than it is to reduce them.
Orion (p.3)	A new benefit has been identified in the consultation paper that suggests that making the changes to Part 12A 'neutral' will provide benefits in related services markets. However, no market failure in this area has yet been identified. Issues in this area should be addressed if they arise, and this should not be taken as a benefit associated with the proposed change.
Vector (p.33)	The adoption of a modular, neutral approach for the Part 12A proposal is appropriate in a dynamic environment. In the absence of a DDA, distributors may, over time, find it more cost-effective to develop 'modules' of their agreements to facilitate the connection of more DER. A distributor-generated 'modular agreement' that reflects the characteristics of a distributor's network and the unique needs of the retailer avoids the risk of erring on the side of stifling innovation.
Vector (p.33)	Disagrees that a DDA will have no direct impact on security of supply. Distributors need to ensure that their networks are resilient to both traditional and new challenges (eg, changing technology and consumer behaviour). It is therefore important that contractual arrangements provide distributors with greater ability to utilise demand response rapidly to substitute for traditional supply when necessary.
Vector (pp.33-34)	If a DDA is adopted, it should be used as a tool to enable innovation and industry transformation. Optionality and flexibility are important to this.
Wellington Electricity Lines (p.4)	Questions whether the claimed related services market benefit that will result from the neutral approach to Part 12A is real, as there is no evidence of a cost that will be avoided if the 'neutral' contract amendment is not introduced.

Section 2: Retailers

General comments	
Submitters	**Submission**
Contact (p.1)	Supports proposal to introduce DDA, but considers further refinement is needed (especially on timeframes to allow for implementation).
Electric Kiwi (pp.1-2)	Does not support the DDA project. The proposal will impose additional unnecessary costs on retailers to establish new contracts and will not help retailers compete. The Authority should prioritise other projects that promote competition (eg, hedge market development), as retail market problems are not driven by distribution arrangements.
ERANZ (p.2); Nova (p.1)	Supports proposal to introduce DDA, but thinks that changing to the DDA should not be the default and that parties should be allowed to continue existing arrangements if they wish to.
Flick (p.1)	Supports proposal to introduce DDA, but more could be done to level the playing field in distribution access. Current bilateral negotiations favour large incumbent retailers and are a deterrent to new entrants.
Genesis (p.1)	Broadly supports proposal. Agrees with the Electricity Price Review Panel's recommendation relating to standardised access to networks and its comments regarding the power imbalance in retailer / distributor negotiations.
Mercury (p.1)	Supports proposal to introduce DDA.
Meridian (p.1)	Supports proposal to introduce DDA. Suggests considering that certain terms in the Code be mandated, as the process of landing on default terms is often more convoluted and time consuming than would be ideal.
Trustpower (pp.1, 3, 4-6, 9)	Supports proposal to introduce DDA, but strongly opposes the proposed approach of requiring both retailer and distributor to mutually agree to carry over existing arrangements as 'alternative arrangements'. Existing arrangements must be allowed to continue in their current form unless retailers opt to switch to the DDA. It is illogical that a proposal that seeks to limit distributors' monopoly power allows distributors to end existing arrangements that may be preferred by the retailer. The Court of Appeal's decision in *Vector Limited v Electricity Authority* requires the Authority to reconsider its approach and the Authority must be particularly careful to ensure that proposals that interfere with freedom of contract are justified. The Authority has not established that its proposal for transition of the existing agreements is lawful, and the proposal to allow distributors to terminate existing UoSAs is not necessary or desirable to promote the efficiency and competition outcomes under section 32 of the Electricity Industry Act 2010.
Trustpower (p.3)	A DDA does not reduce administration and contract management for retailers as they will still have a contract with each distributor.

General comments	
Submitters	**Submission**
Nova (p.1)	Over time, distributors have added more one-sided terms to their UoSAs, which means retailers have had to choose between keeping out of date UoSAs or accepting less balanced terms. The DDA rebalances this position.
Simply Energy (pp.1-2)	Strongly supports implementation of a DDA but thinks there is a missed opportunity to capture an additional $93 million per year of benefits (see Q4 below). In addition, the proposed amendments only summarise historical industry contract terms, and there has not been much of an attempt to improve the terms to lead to efficiency benefits.

Q1: What are your views on the problem definition? Specifically: **(a) the efficiency problem** **(b) the competition in retail markets problem** **(c) the competition in related services problem**	
Submitters	**Submission**
Contact (p.2)	A more standardised approach to distribution contracts will reduce transaction costs and be in the best interests of all customers.
ERANZ (pp.2-3, 6)	The efficiency benefits of the proposal are likely to be significant. Having access to a standard agreement for common services will increase competition, innovation, and the efficiency of retail markets. A DDA will reduce transaction cost for both retailers and distributors, which will benefit consumers. The requirement to negotiate with up to 28 different distributors is a barrier to entry for smaller retailers to enter the market, or for existing retailers to expand into lower populated regions across New Zealand. The proposal will lower barriers to entry and expansion. The experience of ERANZ members aligns with the Authority's definition of the problem with the current approach to negotiating distribution agreements. The underlying problem with bilateral negotiations is that it does not reflect the natural monopoly characteristics and monopoly negotiating power of distributors.
Genesis (pp.1-2, 5); Mercury (pp.5-6); Meridian (p.2)	Agree that the current framework of individually negotiated agreements is inefficient and costly, and limits retail and contestable services competition.
Mercury (pp.5-6); Trustpower (pp.4-5)	Agrees that the bargaining position between distributors and retailers is unequal.

Q1: What are your views on the problem definition? Specifically: **(a) the efficiency problem** **(b) the competition in retail markets problem** **(c) the competition in related services problem**	
Submitters	**Submission**
Trustpower (pp.4-5)	Supports the objective of ensuring that retailers are not required to sign unfavourable network access agreements, but opposes changes that will effectively require retailers to sign up to an agreement that is unfavourable compared to their existing agreements.
Meridian (p.2)	A number of networks have legacy agreements that no longer reflect industry arrangements, which are unlikely to efficiently allocate risk.
Trustpower (p.9)	Overall agrees with the Authority's assessment of the problems with current market arrangements and considers the Authority's outline of the efficiency problem is an improvement on previous descriptions. The operational terms, and how distributors approach the DDA, will determine if the DDA process is more efficient than the status quo.
Trustpower (p.5)	The Authority should be very cautious about accepting distributors' views that retailers can inhibit competition and innovation by refusing to renegotiate 'evergreen' legacy UoSAs. This is especially the case when the Authority has not cited any concerns voiced by retailers that they are at a disadvantage due to the terms of historic UoSAs negotiated by other retailers.
Nova (p.2)	The DDA will help clear barriers to adopting new agreements. Retail competition will be enhanced by enabling retailers to commence trading on new networks faster with less preliminary negotiations. Consistency in terms will help operational teams manage interactions with distributors.
Simply Energy (p.9)	Agrees that UoSAs generate higher than necessary costs. However, negotiating the agreement is only part of the issue. The bigger issue is making changes that create standardisation of information exchange (which can reduce costs, improve customer health and safety, and encourage new entrants). Agrees that UoSAs can limit both retail and contestable services competition.
Contact (p.2)	UoSAs have enabled distributors to reduce workable competition in related services and additional services markets. The proposed changes to the DDA template relating to the right to control load (para 4.14 of consultation paper) will not have a meaningful impact on competition in related and additional services markets (eg, in relation to hot water controlled load tariffs, distributors have invested in ripple plant using regulated tariffs and selected ripple technology as the only technology that customers can utilise if they wish to receive benefits from providing a service to the distribution network).
Mercury (pp.5-6)	Agrees that distributors can favour themselves or affiliates in related-services markets. Distributors include terms to assign the right to provide related services to themselves (or their affiliates), and can link the distribution services to the supply to additional services by the retailer. The threat of anti-competitive behaviour can be enough to discourage a third party from entering a local network, and a DDA will ensure there are no undue barriers.

Q1: What are your views on the problem definition? Specifically: **(a) the efficiency problem** **(b) the competition in retail markets problem** **(c) the competition in related services problem**	
Submitters	**Submission**
Nova (p.2)	Concerns about distributors competing with retailers or using their data has been a barrier to the parties working closely together. Retailers need to be assured that the data they provide will not be used to their disadvantage, and distributors need to be required to allow third parties to carry out work supplementary to core network operations.

Q2: What are your views on the revised: **(a) Part 12A proposal** **(b) DDA template proposal.** **Q3: What are your views on the draft Code, appended to this paper, which would introduce the proposal?**
Answers to these questions are set out in the tables below.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
ERANZ (pp.2, 4, 6-8)	The proposal provides an appropriate balance between standardisation and flexibility. The DDA will have long term benefits for end consumers by reducing contractual imbalance, increasing competition, reducing transaction costs etc. Allowing for alternative agreements and providing for default operational terms to be updated over time will leave room for innovation, which is particularly important given rapid developments in consumer technologies.
ERANZ (p.8); Genesis (p.5); Mercury (p.6)	Supports the modular and flexible approach to the DDA under Part 12A (although ERANZ notes that it is not engaged at an operational level).
Meridian (p.2)	The draft Code is clear and well drafted, but diagrams and flow charts might be helpful to assist parties to understand the Code given the complexity of the processes relating to moving to DDAs (if it is clear that they are aids to interpretation only).

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Mercury (pp.1, 2, 3, 4)	Agrees a DDA will address contractual imbalances, reduce transaction costs, improve competition by providing a level playing field, and balance standardisation and flexibility. Some changes to transition requirements and operational terms are suggested to further enhance the net benefits of the DDA (see further below).
Electric Kiwi (pp.1-2)	It is unorthodox to require distributors and retailers to replace their existing UoSAs, and will mean that the arrangements will effectively regulate both distributors and retailers. The Authority has provided no evidence that retailers should be regulated/forced to enter into new contracts. If the proposal is adopted, it should provide that retailers have the choice to maintain existing contracts, negotiate new contracts, or opt-in to the DDA (with an exception for specific evergreen contracts which favour the incumbent retailer).
ERANZ (pp.2, 4)	Distributors and retailers will naturally converge to the DDA, but should not be compelled to move to a DDA if both are mutually satisfied with their existing contracts. The default should be that existing arrangements remain unless one party actively chooses to move to a DDA. Mandating replacement of existing agreements would discard the effort that the industry has expended over recent time, add unnecessary cost, be a distraction to new-entrant and established retailers, and divert them from their roles increasing innovation and competition in the market.
Genesis (pp.2-3, 6); Mercury (pp.1, 2, 9)	The right to opt to use the DDA should be given to the retailer, and not distributors. Otherwise, distributors could force retailers who prefer to remain on an existing agreement (which may have taken significant time and effort to negotiate) to change to the DDA. Mercury suggests distinguishing between MUoSAs and legacy agreements for this purpose.
Genesis (pp.3, 6-7)	The process for confirming continuation of existing agreements should be clearer (eg, carrying over terms should not require the existing terms to be reformatted into the DDA format, which is unnecessary and costly). A more simple and efficient process would be for the retailer to confirm by written notice to the relevant distributor and the Authority that the existing distribution agreement is to continue.
Trustpower (pp.2-4, 9, 11)	Trustpower has concerns regarding the Authority's proposed treatment of existing UoSAs. Existing UoSAs should be allowed to remain in place (see general comments above).
ERANZ (p.7)	A standard suite of operational clauses (encompassing as many network nuances as possible) should be developed to prevent the need for bespoke operational clauses.
Trustpower (p.6)	The Authority should closely monitor and limit the contents of the operational terms in a distributor's DDA, and restrict the changes that distributors can make to the DDA template (including not allowing distributors to make changes to the core terms).
Flick (p.1); Mercury (pp.7-8)	Even-handedness provisions should be included in the DDA.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Genesis (pp.9-10)	The consultation requirements in Schedules 12A.1, 12A.2, and 12A.4 should be more prescriptive to help minimise the number of objections.
Mercury (p.7)	Agrees retailers should have a choice about whether collateral terms are included in distributor agreements, and supports the mechanism that will allow retailers to exclude any collateral terms the retailer does not agree with. However, the DDA should include a schedule that contains all collateral terms that the distributor wishes to include in its DDA to ensure collateral terms are clearly identified.
Mercury (pp.8-9, 10)	Agrees with having a staggered approach to the publication of the DDA by Group 1 and Group 2 distributors, but it is likely that, in practice, distributors and the Rulings Panel will not be able to cope with the volume of queries and objections unless standardised operational terms are introduced.
Flick (p.1)	The Authority should consider introducing a formal dispute resolution process overseen by the Authority to provide a low cost means to resolve disputes and ensure smaller retailers have a real opportunity to enforce the agreements.
Mercury (p.10)	The DDA should not prevent a party from initiating court proceedings in relation to a dispute under the DDA. The parties should not be limited to mediation and arbitration, as these are not public and therefore may run counter to the aims of consistency and transparency.
Meridian (p.3)	The Code should include a statement about the extent to which parties to a DDA can pursue claims for breaches of the DDA before the Rulings Panel.
Simply Energy (pp.5-6)	The dispute resolution process should be replaced with a more cost-effective process (which replicates the effect of the default dispute resolution process set out in clause 6.3 of the Code). A lack of access to a cost-effective process for operational disputes is a barrier to incentivising operational improvements.
Contact (p.4)	Load management will continue to play an important role in developing a reliable, efficient, and sustainable electricity market. In order to drive innovation in customer products and services, the role of a DDA in facilitating competitive market arrangements should be reviewed. The proposed DDA template in relation to load control does not change existing arrangements. Where distributors load control during peak/off-peak/shoulder times, there should be time of use tariffs for the management of that specific controlled portion. It is unclear why controlling load to support electricity at transmission level is a ‘related service’ but controlling load to participate in wholesale market is an ‘additional service’ (para 2.5 of consultation paper). These are all independent of distribution services and should all be classified as ‘additional services’ in the proposed Code amendments.
Trustpower (pp.7, 10-11)	In relation to references to the ability for a distributor to remove its distribution equipment from a property, property owners should be explicitly told when a distributor proposes to remove their equipment from a property or decommission an ICP before the distributor takes any action.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
Mercury (pp.6, 12)	Supports the addition of default terms for common additional services, particularly in Appendix C of Schedule 12A.1, and the proposed data template (particularly the restriction on who Consumption Data can be disclosed to), subject to some technical comments.
Trustpower (pp.2, 6)	Supports introducing a default data sharing template.
Simply Energy (pp.7-8)	The Authority should urgently undertake a review of the IT tools and framework underpinning industry data exchange, and set expectations regarding industry transition to the new tools (as the current framework is 20 years old and not fit for purpose).

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
12A.2	Mercury (p.10)	Supports modular and flexible design which allows amendment to extend coverage to any new network users.
Schedule 12A.1, clause 3	Mercury (p.16)	If a retailer appeals an operational term under clause 8 of Schedule 12A.4, they will require an extension to the timeframe set out in clause 3.
Schedule 12A.1, clause 6(3)	Contact (p.2); Genesis (p.7); Mercury (p.10)	The proposed 20 business days timeframe is inadequate (eg, because operational terms are complex and vary due to regional or network nuances, and parties may also need to negotiate collateral terms and other services).
	Contact (p.2)	Instead of a 20 business days timeframe, an open timeframe should be allowed, with either party able to give 5 working days' notice at any time in the negotiation process for the DDA to take effect (to provide flexibility and reduce unreasonable costs and delays).
	Genesis (p.7)	3 months would be the minimum reasonable period for retailers to assess DDAs, given the scale of the matters being considered and number of distributors and retailers involved.
	Mercury (p.10)	A 3 month timeframe would be more appropriate (unless the operational terms are standardised, in which case the proposed 20 working days would be acceptable).
	Nova (p.4)	Delete clause. There is no need for a time limitation given either party can adopt the DDA at any time, and the requirement creates unnecessary pressure.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, clause 7	Mercury (pp.10-11)	Supports option to include additional services such as Appendix C in a distributor agreement. Agrees that either party should be able to opt-in to use the default templates or mutually agree to alternative terms.
Schedule 12A.1, clause 8	Mercury (p.11)	Supports the right to have an alternative agreement, but should only require notification to the Authority, not repackaging into the DDA format. If this is accepted, amend this clause, for the avoidance of doubt, to include existing arrangements that have become alternative arrangements.
Schedule 12A.1, clause 11	Flick (p.1)	Supports the Authority publishing all contracts for distribution services, including contracts entered into on the basis of a DDA, alternative agreements, and side-agreements. The Authority should also share its intended approach to review and assessment of these agreements.
	Genesis (p.9)	The Authority should not have an unfettered right to publish distribution agreements or other agreements. Any power to disclose the agreements should be supported by evidence-based reasons, with clearly defined thresholds and procedures for disclosure.
	Mercury (pp.7, 11)	Supports the Authority receiving copies of all agreements for distribution services and any side agreements. However, the proposal does not deal with clauses in alternative agreements that may give some retailers significant advantage but that are not inconsistent with the Authority's statutory objective. The Authority should either reintroduce equal access and even-handedness clauses, or use its ability to prescribe standard terms that are consistent with its statutory objective to add beneficial clauses to the DDA where these become apparent through the Authority's monitoring process.
	Mercury (p.11)	The clause suggests that executed copies need to be provided, which is inconsistent with the understood intention of removing requirements to sign agreements (which can create unnecessary delays in connection). It is unclear if this clause refers to the final agreement made between the parties or the distributor's DDA that takes effect by default if the parties have not agreed within a certain timeframe.
Schedule 12A.1, clause 12	Mercury (pp.3, 9, 11, 12)	Amend the transition process so that: • The distributor gives notice to all participants that it is willing to contract on the terms set out in its DDA as posted on its website. • Where the parties have an existing agreement based on the MUoSA, the retailer/participant may decide whether to adopt the distributor's DDA or to transition the existing agreement. If the parties have a legacy agreement, either party may decide to adopt the distributor's DDA or the parties may mutually agree to transition their existing agreement. The parties may mutually agree to negotiate a new alternative agreement.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		• The parties have 3 months to negotiate any new terms. • The distributor's DDA will apply as a binding contract at the end of the 3 month period, if the Authority has not received either notice that the parties are transitioning their existing arrangements to become an alternative agreement together with a copy of the alternative agreement, or a copy of the distributor agreement or any alternative agreement agreed between the parties.
Schedule 12A.1, clause 12(3)	Mercury (pp.2, 11, 12)	Does not support distributors being able to unilaterally opt into their own DDA where parties have a MUoSA. MUoSAs should be distinguished from legacy agreements that the DDA is designed to replace.
Schedule 12A.1, clause 12(5)	Contact (pp.2-3)	It is inefficient to mandate replacement of an arrangement if both parties are happy with an existing arrangement.
	Contact (pp.2-3); Mercury (pp.3, 12); Trustpower (p.8)	If existing UoSAs are required to be replaced, a 2 month transition period is too short as negotiations will take time. Submissions suggest changing to 3 months (Mercury) or 6 months (Contact).
	Mercury (p.16)	If a retailer appeals an operational term under clause 8 of Schedule 12A.4, it will require an extension to the timeframe set out in clause 12(5).
	Trustpower (pp.8, 10)	Clarify whether the 2 month timeframe is suspended if dispute resolution proceedings are entered into, otherwise parties would be in breach of the Code if negotiations take longer.
	Nova (pp.2, 4)	Delete clause 12(5), as it creates unnecessary complexity and work in the transition.
Schedule 12A.1, clause 12(7)	Mercury (pp.2-3, 12)	It is inefficient to require parties to repackage existing UoSAs to transition to 'alternative agreements'. A simpler mechanism would be for parties to notify the Authority of their intention to retain their current agreement, and deem the agreement to have transitioned to become an 'alternative agreement'. The Code should specify a default EIEP standard (eg, EIEP4) that enables traders to develop a single report that could be automated across all networks.
Schedule 12A.1, Appendix A, clause 4	Simply Energy (pp.6-7, 9)	Concerned that distributors can unilaterally specify a file format for customer information exchange, which means that traders are required to support multiple formats. Amend to specify a default EIEP standard, to enable traders to develop a single report that could be automated across networks.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix A and B	Mercury (p.14)	Clarifications to the liability and indemnity provisions are required to ensure they are consistent with clause 24.7 of the DDA.
Schedule 12A.1, Appendix B, clause 2(a) and 3(1)(e)	Genesis (p.10)	Clauses 2(a) and 3(1)(e) (to the extent that clause 3(1)(e) refers to the trust meeting its requirements under the relevant trust deed/constitution) are too wide and should be removed. Information should be provided and used solely for the limited purposes in clauses 3(1) and (2).
Schedule 12A.1, Appendix C	Contact (p.3)	A definition of 'network management and planning' should be developed.
	Genesis (pp.4, 8, 10, 11)	Pleased that Appendix C seeks to address retailer concerns about the use of customer and consumption data by third parties. There must be safeguards to ensure that the appropriate balance is struck between providing third parties access to information and giving customers and retailers protection from unauthorised access to, or the misuse of, that information. Information provided for income distribution, or trust and co-operative company purposes, should provide retailers and customers with same rights and protections that they have for consumption data. The same financial and reputational risks arise so there is no reason for the distinction. Accordingly, the appendices to Schedule 12A.1 should be amended to contain the same protections (and consistent drafting).
	Mercury (pp.6, 12)	Supports ability to opt-in to Appendix C and the addition of default terms for common additional services, particularly in Appendix C of Schedule 12A.1. Subject to some technical comments, supports the proposed data template and the restriction on to whom Consumption Data can be disclosed to (as it provides comfort that data may only be used for limited purposes, within a strict framework, with remedies available).
	Simply Energy (pp.8, 10)	Insert a provision to allow for traders to require distributors to get data directly from Metering Equipment Providers, and to require Metering Equipment Providers to pro-rata their metering costs between retailers and distributors. The Authority should signal to distributors that it will consider changes to the DDA so that traders will no longer be required to provide EIEP1 files to distributors (with distributors to make arrangements with Metering Equipment Providers to directly access ICP meter data to generate their own invoices, and existing costs of metering split between traders and distributors). This would reduce barriers for new

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		entrant retailers, mean that distributors would have access to higher quality data that could better inform investment and operational decision-making, and create stronger incentives for retailers and networks to reconcile data.
	Mercury (pp.14-15)	Appendix C would benefit from some clarity as to whether it is a standalone agreement or part of the DDA. If the latter, clarifications are required (eg, to prioritise the application of certain clauses of Appendix C with the DDA terms) to Appendix C, as well as Appendix A and B.
Schedule 12A.1, Appendix C, clause 2(2)	Genesis (p.10)	5 business days is not enough time to respond to a request for information and collate the data. 10 business days would be a more reasonable period, and is consistent with response times under Appendix A of Schedule 12A.1.
Schedule 12A.1, Appendix C, clause 3(2)	Mercury (p.13)	Supports the format of the Data Agreement that provides a tight framework around the provision of consumption data to the distributor including a Permitted Time Period during which the Consumption Data may be utilised and specifying the frequency of access that the distributor may have to the Consumption Data.
Schedule 12A.1, Appendix C, clause 3(2)(b)	Mercury (p.13)	'Other Purposes' should be defined to make a requirement for mutual agreement clear (ie, the other purposes for which a distributor can use Consumption Data must only be those that are agreed between the parties).
Schedule 12A.1, Appendix C, clause 3(2)(d)	Contact (p.3); Mercury (p.13)	Restrictions on the frequency of data requests from distributors should be considered (eg, Mercury suggests that the frequency should be no less than 6 monthly or annually), as requests to provide regular volumes of data require additional resource/administrative effort.
Schedule 12A.1, Appendix C, clause 3(4)	Mercury (p.13)	Supports the proposal that Consumption Data can only be used for 'Permitted Purposes'.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C, clause 3(4)(d)	Contact (p.3)	It is not clear whether data storage in the cloud and the implications of the Privacy Bill are anticipated by this clause.
Schedule 12A.1, Appendix C, clause 4(2)	Contact (p.3)	Replace 'out of pocket expenses' with '*costs'* for consistency.
	Mercury (p.13)	Supports a distributor being required to pay a trader's reasonable costs.
Schedule 12A.1, Appendix C, clause 5	Mercury (p.13)	Supports a distributor being required to comply with the Privacy Act.
Schedule 12A.1, Appendix C, clause 7	Mercury (p.15)	Amend to clarify that the distributor must only disclose Consumption Data to its employees, directors, agents, advisors, and contractors (as provided for in clause 7(1)) in accordance with clause 8 (to reduce potential inconsistency and ensure a distributor can only disclose data to the 'Data Team').
Schedule 12A.1, Appendix C, clause 7(1)(b)	Genesis (p.10)	Insert '*to the extent such Consumption Data is required to be known by such persons in connection with the Permitted Purposes or Other Purposes*'.
Schedule 12A.1, Appendix C, clause 7(1)(c)	Genesis (p.11)	Amend so that, where disclosure is required, the distributor must notify the trader of the proposed disclosure, or if not reasonably practicable, promptly following disclosure.
Schedule 12A.1, Appendix C, clause 7(2)	Genesis (p.11)	Amend to: • extend the prohibition to related companies or affiliates of the distributor • refer to products and services not regulated by the Commerce Act • clarify that nothing prevents the distributors from engaging in such activities provided they do not use the consumption data to do so.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Mercury (pp.6, 13)	Supports this provision and clause 8(2)(b), which expand the restriction on to whom Consumption Data may be disclosed to include any person involved in the provision of electricity retail services. Distributors who retail or offer competitive products will be unable to obtain an unfair advantage by acquiring high value customers that competitors cannot identify as easily.
Schedule 12A.1, Appendix C, clause 10(2)(h)	Contact (p.3)	Require a distributor to notify a data breach '*as soon as reasonably practicable after discovery*' and extend this clause to other forms of breaches contemplated in the Privacy Bill.
Schedule 12A.1, Appendix C, clauses 11 and 14	Mercury (p.14)	Clauses 11 and 14 both deal with how the distributor must respond to a breach. To avoid any inconsistencies (and for clarity), it may be more appropriate to include these provisions in the same clause.
Schedule 12A.1, Appendix C, clause 12	Mercury (pp.13-14)	Agrees liability should be unlimited for a breach of a data sharing provision by a distributor. However, there is ambiguity as to whether the liability cap in clause 24.7 of the DDA will apply, as it says it applies '*despite any other provision of this agreement*' and the terms of Appendix C are effectively incorporated into the DDA. This needs to be clarified so that a data provision breach is expressly carved out, either by Appendix C being a standalone agreement or amending clause 12(2) as follows: '*The Distributor's liability for breach <u>of this Appendix</u> will not be limited by this Agreement or any other agreement entered into by the parties*.' Further clarification would also be required to other provisions (such as the interpretation provisions, which clarify the prioritisation of clauses, and clause 24.7 of the DDA).
Schedule 12A.1, Appendix C, clause 13	Contact (p.3)	Each retailers' regulated reconciliation participant annual audit should include an audit of the distributor to ensure compliance with Appendix C.
	Flick (pp.1-2)	The Authority should ensure distributors are meeting their obligations either through Authority audits or by requiring distributors to submit independent audits annually, as emerging retailers have less resources to dedicate to audits.
	Genesis (p.4)	Agrees audit rights are critical to support disclosure of information to distributors. However, audit provisions should follow the audit framework set out in clauses 11.10, 11.11, and Part 16A of the Code, which would allow the audits to be added to the distributor's annual audit and allow retailers or the Authority to request and audit in the intervening period of they believe it is merited.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C, clause 15	Mercury (p.15)	References to 'this Agreement' in clause 15 should be replaced with references to 'this Appendix' to clarify that the termination provisions in the Appendix only allow either party to terminate the Appendix; they do not give a right to terminate the full DDA.
Schedule 12A.1, Appendix C, clause 16	Mercury (p.15)	References to 'this Agreement' should be changed to 'this Appendix'. If this is not changed, arguably the distributor would not be obliged to destroy the Consumption Data on termination of Appendix C; it would only be required to destroy the Consumption Data on termination of the DDA.
Schedule 12A.1, Appendix C, clause 18(2)	Trustpower (pp.6-7, 10)	A trader should be able to assign its obligations under clause 18(2) to another participant (eg, a metering equipment provider) provided both parties agree to the transfer of responsibility. This may allow for more efficient data transfer and would aid the flexibility and adaptability of the Code.
Schedule 12A.1, Appendix C, clause 18(7)	Mercury (p.14)	Appendix C should have its own dispute resolution process, but the ambiguity between clause 23 of the DDA and clause 18(7) of Appendix C needs to be clarified. Parties should not be precluded from referring a dispute to the courts. If Appendix C does not have its own dispute resolution process, it is imperative that clause 12(3) of Appendix C is clarified to apply despite any provisions to the contrary in the DDA so that the retailer can seek equitable relief if appropriate.
Schedule 12A.1, clause 21 definitions	Genesis (p.10)	Amend the definition of Consumption Data so that it refers to '*electricity consumption data collected by the relevant MEP for each ICP the trader supplies, and which the electricity trader holds or obtains…'*, as retailers should not have to incur undue costs (time and resources) in repackaging data.
	Genesis (p.10)	'Other Purposes' should be added as a defined term as follows: '*means the purposes which the Trader and Distributor agree and record in the Data Agreement that the Consumption Data may be used for in addition to the Permitted Purposes*'. Clause 3(2) can then be amended to refer to 'Any Other Purposes'.
	Mercury (p.13)	Supports the definition of 'Permitted Purposes' being limited to developing distribution prices, and planning and management of the network.
Schedule 12A.2	Simply Energy (pp.6-7, 10)	Amend to provide a mechanism for traders to elect to use a default EIEP1 methodology if there is no agreement otherwise, to standardise the methodology and support automation and efficiency of data exchange (as parties are required to manage approximately 40 EIEP1 file

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
		types variants, which is expensive). Suggests providing 2 years for compliance, as a default methodology would require some parties to invest in IT systems to process the default files.
Schedule 12A.3	Contact (p.3)	Embedded networks should also be required to align their distributor agreements with the DDA. With significant growth of these networks, UoSAs often take time to negotiate.
	Meridian (p.2)	Embedded network owners and retailers trading on embedded networks should both have the option of requiring the other to enter into a DDA. There is no good reason for an embedded network owner to have different terms of use to the local network in which it is embedded. The Authority's standardisation and efficiency benefits will be reduced if DDAs do not apply to embedded networks. The Authority should also mandate a DDA applicable to conveyance arrangements between distributors and retailers.
	Simply Energy (pp.10-11)	Insert the following at the end of clause 9(1): '*unless that pricing structure changes is the same as local network where the distributor's embedded network is connected'.* There is no need for an embedded network owner to consult with a trader if they seek to follow local network pricing, and embedded network owners should not be prevented from following local network pricing structures because they have not had the opportunity to consult with traders.
Schedule 12A.4, clause 3	Mercury (pp.3-4, 15-16)	Operational terms should be standardised as part of the core DDA, which would simplify the process for the adoption of DDAs. Operational terms written by distributors may not reflect optimal or best practice, and there may be regional variances despite the standardisation objective. Standardised terms could still be designed to give distributors flexibility where required, and parties are free to agree other terms. If operational terms are standardised, consultation under clause 6(2) would not be necessary and variances would be clearly set out in a schedule appended to a distributor's DDA.
Schedule 12A.4, clause 6	Genesis (p.7)	Supports the two phased approach the Authority has proposed.
	Meridian (p.3)	The timeframe for smaller distributors to develop DDAs should not start until after the largest 5 distributors have completed developing DDAs, not contemporaneously (to aid standardisation). This could be achieved by making the time allocation 90 days for the larger distributors and 90 or 60 days for other distributors.
Schedule 12A.4, clause 6(2)	Contact (pp.3-4); Mercury (pp.3-4, 16)	The consultation process for operational terms is not sufficiently prescribed.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
	Contact (pp.3-4)	The timeframe to assess operational terms is inadequate. Consider including a consultation period (separate from the development period) of at least 3 months.
	Contact (p.4); ERANZ (p.7); Trustpower (pp.7, 10)	Provide for Authority to review or approve proposed DDAs before they are presented to retailers (eg, to reduce duplication of effort, with multiple retailers reviewing the same document and possibly multiple appeals to the Rulings Panel).
Schedule 12A.4, clause 7	Contact (pp.3-4); ERANZ (p.5); Genesis (pp.3, 7); Mercury (p.4); Trustpower (pp.7, 10)	Retailers need a longer timeframe to assess operational terms, as distributors will be publishing their DDAs in quick succession and operational terms can be complex. Some submissions suggest a period of at least 3 or 6 months or 40 business days rather than 20 business days. ERANZ also recommends that the Authority have the ability to extend the timeframe if required.
	ERANZ (pp.5, 7); Genesis (p.7); Trustpower (pp.8, 10)	Each distributor should also be required to append a table to the DDA, which shows terms that differ from the standard DDA terms, to facilitate retailers' review of the terms. Some submissions submit that the table should include the reasons for the differences.
	Contact (p.4)	Replace 'participated in consultation', which is unclear, to '*made a written submission to the Distributor*'.
	Mercury (p.4)	It is not enough that the only redress for retailers once the operational terms have been published is to go to a Rulings Panel.
	Meridian (p.3)	Clarify whether the entire DDA does not apply if a retailer appeals an operational term, until the appeal is determined.
Schedule 12A.4, clause 8	Mercury (p.4, 9, 16)	Supports the Rulings Panel as a forum to deal with disputes regarding operational terms. However, the Rulings Panel will be inundated with appeals seeking review of operational terms, which will result in unnecessary time delays and administrative costs. Standardising operational terms would reduce the role of the Rulings Panel and result in cost and time savings for all parties.
	Trustpower (pp.8, 10)	Trustpower expects that the Rulings Panel will receive many appeals, and questions how this will impact the Panel's existing operations and whether the Panel will have the capacity to make informed judgments on appeals within the timeframes proposed.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.4, clause 10(4)	Meridian (p.3)	If a retailer accepts an operational term and subsequently another retailer appeals it and it is overturned, clause 10(4) appears to prevent the first retailer getting the benefit of the Rulings Panel's decision. This seems to run contrary to the Authority's policy that all retailers should enjoy the same terms with distributors.
Schedule 12A.4, clause 12	Contact (p.4)	Insert a right for retailers to suggest amendments to operational terms.
	Genesis (p.11)	There should be a requirement for a distributor to notify participants when an amended operational term is available on its website. Provisions for consulting and notifying retailers of the proposed amendments to operational terms should be the same as in clauses 6(2) and 6(3).
Schedule 12A.4, Appendix A	Meridian (p.3)	Insert a statement about how changes to the DDA template will impact existing agreements.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
5	Contact (p.4)	Clause 5.6 is the only clause related to core distribution services and should be in main body of DDA dealing with load control, with the other subclauses and information in table 1 on Service Standards related to Controlled Electricity Supply Categories included as additional services in a new Appendix to Part 12A.1.
7.7	Contact (p.5)	In instances contemplated in clause 7.7, the DDA should require distributors to comply with clause 7.4(a)-(c) so that retailers can notify consumers of the price change and allow consumers time to make changes as a result.
8(1)	Nova (p.3)	Include a requirement that a price category cannot include retrospective elements, so that a trader is not advised of a price in arrears.
8.9(b)	Contact (p.5)	Increase the timeframe to 30 working days, to allow retailers more time to challenge a distributor's notification of why a price category has been incorrectly allocated (which often requires a site visit).
8.12(c)	Nova (p.3)	There needs to be a standard registry code and EIEP format for notification of vacant site disconnections.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
9.2	Mercury (p.16)	Due to the cyclical nature of meter reading, it is impractical to provide completely accurate data for each ICP within the timeframe required for the provision of data under clause 9.2 without incurring unreasonable system costs. Adding a wash up clause would offer a practical solution to avoid such unreasonable costs.
9.7	Simply Energy (p.5)	Amend the dispute mechanism to specify an amount that a trader can hold back if EIEP1 compliant data has not been provided with the invoice, by inserting '*If the Distributor has not provided EIEP1 data in the prescribed format to the Trader, the Trader may dispute the invoice for an amount of up to 5% of the invoice'*. This would help to incentivise participants to improve compliance with EIEP1.
	Simply Energy (p.5)	Clause 9.7 does not work because the disputing party is required to give detailed reasons for the dispute, which it cannot do if the other party has not provided supporting data in the specified format.
	Simply Energy (p.11)	The period for disputes and wash-ups should (at least) be aligned with the energy market wash-up cycle (ie, so that there is no ability to raise disputes 14 months after the billing period), or ideally be changed to a 7 month wash-up cycle. Allowing for subsequent invoices that wash up a billing period to be disputable for 18 months from the date of the invoice is not a reasonable commercial term and places an asymmetric risk on traders because a trader is unlikely to have the ability to recover any under-charged line tariff from a customer after such a period.
10	Simply Energy (pp.4-5)	Amend to require that prepayment of network charges is treated as prudential security and included for the purpose of the interest payment. Invoicing charges in advance unnecessarily ties up trader working capital and bypasses the intent of the prudential security requirements.
12	Genesis (p.11)	Disagrees with the undertakings in clauses 12.1, 12.3, and 12.5 in relation to customers for a 6 month period after a person ceases to be a customer. Where a customer remains at an ICP, distributors will have protection under the distribution agreement with the customer's new retailer. This change would avoid confusion as to who a distributor should seek redress from if damage occurs after a customer has switched retailers. The appropriate party is the new retailer and/or the customer pursuant to that retailer's distribution agreement and the terms and conditions of the contract it has with that customer.
13.3	Nova (p.3)	Insert '*The Distributor shall advise the Trader promptly once the non-compliance has been resolved or what other actions have been taken or are necessary at the ICP*', so that the distributor is required to respond to a notification of a non-complying installation, and the trader can commence supply or take whatever other action is necessary for the site.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
14.1(a)(iii)	Contact (p.5)	Remove clause 14.1(a)(iii). If a momentary power quality event causes protection equipment to trigger, this is an interruption from a customer's perspective and it is not a useful for a retailer to ask a customer to acknowledge otherwise.
14.2	Contact (p.5)	Clause 14.2 implies that the obligation to monitor power quality only exists if a customer or retailer raises a concern, but there would be value in distributors being required to monitor power quality on all parts of their network.
17	Contact (p.5)	Insert a requirement for distributors to not agree to the installation of any new unmetered load unless installing a meter is not reasonably practicable.
21	Nova (p.3)	Clarify that, if the distributor is unable to deliver electricity, no service charges apply (unless they are fully offset by a Service Guarantee Payment under Schedule 1).
23	Simply Energy (pp.5-6)	Replace the dispute resolution process with a more cost-effective process (which replicates the effect of the default dispute resolution process set out in clause 6.3 of the Code). A lack of access to a cost-effective process for operational disputes is a barrier to incentivising operational improvements.
24.7	Contact (p.5); Mercury (pp.8, 16); Nova (p.4)	The proposed liability caps are too low and are based on agreements where retailers had unequal bargaining power.
	Contact (p.5)	The caps should be increased to at least $25,000 per ICP and $5 million plus index adjustment. Damages payable as a consequence of failure to meet quality and service standards in the recorded terms should be excluded from the cap.
	Mercury (pp.8, 14, 16)	A blanket amount should not be applied as a maximum liability cap across all retailers and distributors as it is not necessarily reflective of the size of a network and the level of retailer's activity in a network. The liability cap approach should enable the amount of the cap to be determined by reference to the size of the network and the extent of a retailer's use of the network. In any event, there should be no liability cap for either party for wilful breach or gross negligence.
	Nova (pp.3-4)	The cap should be increased to the lesser of $3 million or $10,000 times the number of ICPs on the network at which the trader traded on the day of the event. The proposed liability cap is inconsistent with better UoSAs, which include caps of over $2 million.
33	Genesis (p.12)	Amend definition of 'Vacant Site' to '*an ICP where the Trader does not have a Customer Agreement with a Customer*'.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
	Nova (p.4)	A distributor should be required to ensure that there are sufficient parties authorised as 'Warranted Persons' to carry out work on the network. Nova has had issues with the Warranted Person withdrawing from carrying out disconnections, which created difficulty in getting work completed in a reasonable timeframe.
Schedule 2, clause S2.1	Genesis (p.12)	The reference to half-hour metered ICPs to define use of EIEP3 is outmoded. The clause should reference defined use in EIEP3 itself.
	Nova (p.4)	The only option for consumption volume information should be 'replacement RM normalised' in paragraphs (c)(i) and (d). All participants should be able to deal with replacement RM normalised, and there is no need to perpetuate the alternatives.
	Trustpower (p.10)	Update billing terminology, as references to 'as-billed', 'incremental normalised' and 'replacement incremental normalised' are not in line with current industry thinking and the industry is moving towards 'replacement normalised wash-ups'.
	Simply Energy (pp.3-4)	The requirement to provide a complete set of data within 5 business days is arbitrary, and means that traders must support a dedicated business process for distributors to estimate any missing data and generate EIEP1 files. Amend the Code and DDA to make it clear that traders are not required to duplicate billing processes to support distributor reporting, by amending clause S2.1(b) as follows: '*the Trader must endeavour to provide the information for the prior month by 5:00pm on the 5th Working Day after the last day of each month. The Trader must provide the information for the month preceding the prior month by 5:00pm on the 5th Working Day after the last day of each month'.* This needs to expressly override the EIEP1 protocol's business rules.
Schedule 3	Genesis (p.12)	The Schedule should be updated to capture recently mandated EIEPs.
Schedule 5	Contact (pp.5-6)	Amend reference to EIEP5 in clause S5.3 to EIEP5b to ensure unplanned outages are not processed through the planned outages channel (EIEP5a). Amend the requirement to log a call through EIEP5 in clause S5.7, as it is not an appropriate mechanism to record the transaction.
	Mercury (pp.16-17)	A trader should be notified of every Unplanned Service Interruption, not only an Unplanned Service Interruption 'affecting 20 or more Customers'. Otherwise, what if this threshold were not met and one of the customers were Medically Dependent?

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
Schedule 8	Contact (p.4)	Incorporate clauses S8.1 and S8.2 into clause 5.6, with any remaining provisions incorporated into a new Appendix to Part 12A.1.

Q4: What are your views on the Regulatory Statement? Specifically: **(a) the efficiency costs and benefits** **(b) the costs and benefits in the retail market** **(c) the costs and benefits in the related-services market.**	
Submitters	**Submission**
ERANZ (pp.8-9)	Broadly agrees with net positive benefit in the cost-benefit assessment. The Authority's estimate of productive efficiency benefits is reasonable, and potentially conservative, but the paper potentially undervalues benefits for existing historical distribution agreements. The estimates of implementation costs are reasonable. However, the benefits would be increased by removing the requirement that all parties change to the DDA. There is no evidence that mandating replacement of existing agreements would have a benefit where both parties are happy with an existing arrangement, and it would instead just discard past efforts to negotiate terms and add unnecessary cost and distraction.
Flick (p.1)	Clear benefits of a default agreement include reduced barriers to entry, reduced operating costs, and increased efficiency.
Genesis (p.12)	While some longer-term benefits are difficult to quantify, the cost-benefit analysis appears reasonable. As between retailers, the largest efficiencies and benefits potentially accrue to smaller and new retailers.
Mercury (p.17); Meridian (p.3)	Agrees with Authority's Regulatory Statement.
Nova (p.5)	The DDA provides clear efficiency costs and benefits. The costs would be lower if DDA was not imposed by default in the absence of agreeing to an alternative within a short timeframe. There will be benefits to retail competition, and retailer's operating costs can be expected to be lower with greater consistency between distributors' operating procedures.

Q4: What are your views on the Regulatory Statement? Specifically: **(a) the efficiency costs and benefits** **(b) the costs and benefits in the retail market** **(c) the costs and benefits in the related-services market.**	
Submitters	**Submission**
Trustpower (pp.3-4, 11)	The value to the industry referenced in the Regulatory Statement is overstated. While the DDA will reduce barriers and make it easier for retailers (particularly smaller traders) to expand into new networks, the retailers' costs to transition to the DDA will be higher than the Authority has accounted for (as retailers will still have to request legal review of, and analyse, each individual distributor's DDA). The more variance between DDAs and the default template, the higher the costs likely to be incurred. If distributors have the ability to require a retailer to enter a new agreement, this will lead to an increase in costs for both parties, but primarily the retailer. The resulting costs are directly contrary to the intention of reducing transaction costs. To justify the imposition of additional cost on retailers who prefer their existing network access arrangements, the Authority must be able to demonstrate that those costs will be outweighed by competition benefits (which it has not done). No evidence has been provided by the Authority to show that different retailers are treated differently by distributors on particular networks. If the Regulatory Statement is referring only to fairer terms for all retailers than those which currently exist, then this statement is true. Agrees the proposed DDA implementation will increase the transparency of the negotiation process.
Nova (p.5)	In relation to related services, the expected benefits might take some time to become apparent (eg, where distributors are engaged in metering services, there are practical limitations to installing alternative meters).
Trustpower (p.12)	Agrees with the intent of the Regulatory Statement as it relates to the costs and benefits in the related services market.
Simply Energy (pp.1, 12)	The Regulatory Statement fails to capture the majority of the potential benefits of DDA and Code amendments. There are additional benefits of approximately $93 million per year that could be captured that are not currently being considered, such as: • eliminating duplicate billing processes to support distributor reporting • treating repayment of network charges as prudential security • incentivising adoption of a mechanism to dispute an invoice when EIEP1 files are non-compliant • providing a timeframe for reviewing and mandating non-regulated EIEP files • providing a default EIEP1 methodology • reviewing industry IT mechanisms for moving data between participants

Q4: What are your views on the Regulatory Statement? Specifically: (a) the efficiency costs and benefits (b) the costs and benefits in the retail market (c) the costs and benefits in the related-services market.	
Submitters	**Submission**
	• eliminating the requirement for trader to network EIEP1 files.

Section 3: Others

General comments	
Submitters	**Submission**
Axos (pp.2-3)	The dependency of distributors on traders for the provision of certain information should be reduced. Metering Equipment Providers could supply NHH & HHR metering data directly to distributors so that distributors calculate EIEP1 and EIEP3 information independently of traders in support of their monthly invoicing process. To support this, the trader and distributor could pay a share (determined by the Authority) of metering costs (the total cost would not change from the status quo).
Intellihub (p.1)	The Authority has not proactively engaged with Intellihub on the DDA proposal and it is surprising that the proposal includes provisions governing the installation of Metering Equipment.
MEUG (p.1)	MEUG is comfortable with the proposed DDA template and modular approach as it provides flexibility for bespoke direct customer contracts to be added in the future if merited.

Q1: What are your views on the problem definition? Specifically: **(a) the efficiency problem** **(b) the competition in retail markets problem** **(c) the competition in related services problem**	
Submitters	**Submission**
MEUG (p.2)	Agrees that there are policy problems with the status quo relative to the counterfactual of a DDA of: • cost inefficiencies and barriers to innovation in how customers of line services contract with electricity distribution monopolies • detriments to competition in the retail market • detriments to competition in related services that are likely to be compounded as opportunities for new technology, such as small-scale distributed generation and storage, enable a wider range of consumers to offer and benefit from related services and new supplier and aggregator business models to be developed.

Q2: What are your views on the revised: **(a) Part 12A proposal** **(b) DDA template proposal.** **Q3: What are your views on the draft Code, appended to this paper, which would introduce the proposal?**
Answers to these questions are set out in the tables below.

Code amendments and default distributor agreement – general comments	
Submitters	**Submission**
MEUG (p.2)	Agrees with the benefits of transparency and having a single source for all contracts via the Authority, but supports further consideration of the Authority making all contracts available on the Authority's website to check costs are less than expected benefits.
Intellihub (cover letter, p.1)	The Authority should reconsider the provisions of the DDA template which govern metering equipment. Provisions regarding metering in the proposed DDA are inconsistent with Part 10 of the Code (and appear to be based on historic MUoSAs, which were drafted when distributors and retailers were responsible for metering) and risk producing outcomes that are not in the long-term interest of consumers.
Axos (p.1)	Supports the DDA but considers that it does not go far enough in some respects.
Axos (p.1)	The DDA can be streamlined by reducing the ambiguity about which particular format of EIEP implementation is supported by the DDA. The DDA should be consistent with the direction of the EEP standards evolution and only support the EIEP 'replacement normalised' format, particularly for Trader>Network. 'As billed' would be the format preferred for Network>Trader. This increased standardisation would have the additional benefit of enabling clause 9 of the DDA to have greater clarity around how disputed invoices, wash-ups, and interest calculations are carried out. Alternatively, the DDA should be revised as the EIEP standards are finalised following the current EIEP consultation.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C	Axos (p.2)	Traders should be obliged to follow the same security and data management practices imposed on distributors, and distributors should arguably have similar rights to audit those practices.

Code amendments – comments on specific clauses/subparts		
Clause	**Submitters**	**Submission**
Schedule 12A.1, Appendix C, 3(4)(d)	Axos (p.2)	Distributors should not be restricted from transferring data outside New Zealand, given data is regularly moved or stored offshore.
Schedule 12A.1, Appendix C, 13	Axos (p.2)	Several third parties (approved by the Authority) should be responsible for the audit function based on detailed requirements managed by the Authority, so that there are not numerous different opinions by auditors appointed by traders on what constitutes good data management and data audit practices. Clauses 7 and 13 overlap and should be consolidated.

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
2.3(h)	Axos (p.1)	Include an additional requirement for traders to obtain consent from their customers to provide information to distributors for the purposes of servicing any obligations realised by Appendix C of Schedule 12A.1.
11.1(b)	Intellihub (pp.2, 5)	Delete or clarify that clause 11.1(b) is subject to Part 10 of the Code (to ensure parties to the DDA are aware of the additional compliance obligations and existing Metering Equipment Providers have oversight of metering equipment installation). Under Part 10 of the Code, participants who have a right of access to premises can only exercise the right for certain purposes and distributors do not have the right provided for in clause 11.1(b) of the DDA under Part 10.
12.11	Intellihub (pp.1, 3, 4, 5)	Delete or clarify that clause 12.11 is subject to Part 10 of the Code. Allowing distributors to install Additional Metering Equipment will mean a distributor will be able to install meters and leverage its monopoly distribution business to distort the competitive metering market, and potentially seek to influence retailers to displace existing Metering Equipment Providers (eg, by sharing costs of the meter between the regulated and non-regulated parts of its business).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
		By giving either party a broad power to install Additional Metering Equipment, the DDA appears to encourage duplication of metering equipment at a premises, which is inconsistent with Part 10 of the Code and established industry practice that seeks to minimise such inefficiencies. It also: • does not reflect that a key initiative under the Part 12A proposal is to standardise distributors' access to smart meter data and to mitigate the need for distributors to inefficiently duplicate existing metering infrastructure • increases the risk that consumers will pay for the costs of meters that do not meet the compliance and testing standards under Part 10, and could interfere with and cause damage to existing meter installations and generally increase health and safety risks. The provisos in the clause relating to interference with other equipment and Good Electricity Industry Practice do not recognise that: • Metering Equipment Providers will likely own or use existing metering equipment under Part 10 and are unlikely to have a contractual relationship with an installing party that damages their equipment • provisions of Part 10 relating to metering equipment standards and testing go far beyond the definition of Good Electricity Industry Practice in the DDA (which does not specifically cover metering). Clause 12.11 risks triggering issues for the Metering Equipment Provider or Approved Test House (eg, by impacting a metering installation certification). A Metering Equipment Provider should at least be advised that Additional Metering Equipment will be installed at an ICP to provide it with the opportunity to validate that the existing certification will not be impacted.
12.12	Intellihub (pp.3, 5)	Delete or clarify that clause 12.12 is subject to Part 10 of the Code. The indemnity that requires an installing party to make good any damage to metering equipment only applies to the metering equipment and/or certification of the other party to the DDA and does not recognise that it could be a third party Metering Equipment Provider's equipment or certification. It will be difficult for a Metering Equipment Provider to be aware that its equipment/certification has been put at risk, as there is no easy way for a Metering Equipment Provider to identify the Additional Metering Equipment unless it is notified or impacts consumers or traders in certain ways (eg, causes a meter to stop communicating).

Default distributor agreement – comments on specific clauses/schedules		
Clause/ Schedule	**Submitters**	**Submission**
17	Axos (p.3)	Clause 17 should be more nuanced to cover the commonly accepted practice of distributors charging traders for ICPs that are inactive for reasons such as being remotely disconnected via AMI.
20	Axos (p.3)	Clause 20 of the DDA overlaps with Part 12A, and the clauses should be consolidated.
33.2	Axos (p.2)	Amend the definition of 'interest rate' so that the Authority provides a standardised API to industry participants to query at no cost (rather than relying on accessing information from Reuters which does not appear to support automated retrieval).

Q4: What are your views on the Regulatory Statement? Specifically: **(a) the efficiency costs and benefits** **(b) the costs and benefits in the retail market** **(c) the costs and benefits in the related-services market.**	
Submitters	**Submission**
MEUG (p.2)	The magnitude of the estimated benefits and costs of the proposal for relevant policy problems are reasonable. MEUG agrees that the proposal is likely to have the highest NPV relative to other feasible alternatives to replace the status quo.