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Default agreement for distribution services

As the organisation representing consumer and community owners of EDBs, ETNZ has both an asset owner and a consumer perspective in addressing this topic. Our responses to the various questions in the Consultation Paper are as follows:

Question No.	Questions in the Paper	Response
1	What is your view of the Authority's assessment of the arrangements that are currently in place governing the way distributors and retailers develop, negotiate, and agree UoSAs, and of the issues that the Authority has identified? Please provide your reasons.	<p>Two points made in the assessment that we feel misrepresent current arrangements are:</p> <p><i>Competition and innovation are inhibited by terms in UoSAs. Distributors may offer retailers in similar circumstances different terms, meaning that retailers with less favourable terms may be at a competitive disadvantage. A distributor can also impose inefficient terms on all retailers on its network, which can prevent retailers from innovating and providing new services in the face of evolving technologies, and restrict innovation and competition in related markets (in particular, the demand response market).</i></p> <p>and</p> <p><i>UoSAs are important in that they support innovation in the retail and distribution sectors. However, distributors can use their market power as monopolies to include terms in UoSAs that may have the effect of inhibiting competition and innovation in the retail market and in related markets.</i></p> <p>These statements suggest that distributors have adopted deliberately anti-competitive policies in negotiating UoSAs. In reality, as part of the legislatively enforced sale of the then</p>

		<p>power companies' retail arms to existing generators in the late 1980s, a number of the emerging distributors were encouraged to accept undesirable or potentially anti-competitive conditions in the trading arrangements with the emerging incumbent retailers. In other words, if they wanted to sell their assets then they were required to accept the terms dictated by the buyers. As additional retailers entered the market distributors understandably sought to arrive at more equitable arrangements.</p> <p>Nevertheless, as distributors have sought to update their UoSAs, they have had to negotiate with retailers against these entrenched arrangements.</p> <p>A number of companies have advised that new retailers have willingly contracted with them on the basis of their current UoSA, and that the established UoSA process does not appear to discourage competition from such new entrants.</p>
2	<p>What feedback do you have on the information in section 3, which describes the Authority's proposed new Part 12A of the Code, which includes a DDA template, requirements to develop a DDA, and provisions that provide that each distributor's DDA is a tailored benchmark agreement?</p>	<p>We disagree with the following statement (3.2.3):</p> <p><i>Distribution services' are the services provided by a distributor that deliver electricity through the distributor's network. It is not proposed that the term 'distribution services' be defined in the Code because that is unnecessary. However, 'distribution' is defined in the Code as having the meaning given to it by section 5 of the Act. 'Distribution' is defined in section 5 as meaning the conveyance of electricity on lines other than lines that are part of the national grid.</i></p> <p>We are uncomfortable with a definition that essentially means that anything Transpower does is not 'distribution' even if it were to involve delivering a service that was identical to the service provided by a typical distributor.</p>

		<p>Including a definition of ‘distribution services’ in the Code might overcome this anomaly.</p> <p>With regard to 3.3.14:</p> <p><i>The Authority is not, at this stage, proposing to regulate conveyance arrangements or arrangements relating to distributors that are embedded network owners. Nor is the Authority proposing to regulate arrangements such as when a party like a large consumer has a direct contractual relationship with the distributor.</i></p> <p>we understand the reasons for this distinction. However we are unclear whether the Authority is proposing to prevent distributors from moving to conveyance arrangements, if – for example – they consider that such arrangements might better serve consumers.</p> <p>As consumer and community-owned entities, ETNZ’s members value having the option of moving to direct relationships with consumers available.</p> <p>We recommend that the Authority makes it clear that the proposed DDA does not preclude the option of moving to conveyance arrangements.</p>
3	<p>What feedback do you have on the detail provided in section 3, which describes the Authority’s proposal to introduce a DDA into Part 12A of the Code along with supporting processes that are designed to allow distributors’ DDAs to act as tailored benchmark agreements?</p>	<p>ETNZ does not have a position on the operational detail of Part 12A, as this is outside the domain of trustees. However, there are several issues where Trust interests are involved:</p> <p>(1) <u>Consultation provisions in 12A.4(5)</u></p> <p><i>The proposed new Part 12A requires each distributor to consult on its operational terms with:</i></p> <p>(a) <i>each trader that trades on its network</i></p> <p>(b) <i>each participant the distributor considers might be affected by the DDA (clause 12A.4(5)).</i></p>

		<p><i>An example of a participant that might be affected by the DDA is a trader that is not yet trading on a distributor's network but has commenced discussions with the distributor with a view to establishing trading operations.</i></p> <p>This is a very loose definition of the types of parties that must be consulted, and it could open the way for claims of various types from participants and potential participants that also feel they should have been consulted. Furthermore, it would create uncertainties and confusion about the level of consultation required, and about the relative effort that should be put into such consultation with different parties.</p> <p>In negotiating statements of corporate intent with their companies Trusts are focussed on the need to ensure that consumer consultation is satisfactory. In turn, the Commerce Commission has become increasingly focussed on promoting consumer consultation by all regulated EDBs.</p> <p>We would support a more specific requirement for consultation with retailers and known potential retailers, with the wider requirement to consult with 'participants who might be affected' removed or significantly modified.</p> <p>We also consider that the consultation provision in 12A should, for clarity, be explained as a mechanism for collecting ideas and reactions, in order to make it clear that it is not a proscribed process of negotiation.</p> <p><u>(2) Requirements relating to 'Trader'</u></p> <p>These requirements are confusing and potentially distortionary. First, the Code definition of 'trader' is:</p> <p>a retailer or a generator or a purchaser who - or (c) enters into</p>
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		<p>an arrangement with another retailer or generator or purchaser to buy or sell contracts (or parts of contracts) for electricity for the purposes of this Code</p> <p>retailer means as follows:</p> <ul style="list-style-type: none"> . (a) except as provided in paragraphs (b) and (c), a participant who supplies electricity to another person for any purpose other than for resupply by the other person: . (b) in Parts 1 (except for the definition of specified participant), 8, 10, and 12 to 15, a participant who supplies electricity to a consumer or to another retailer: . (c) in subpart 4 of Part 9, the retailer defined in paragraph (a) who is recorded by the registry manager as being responsible for the ICP described in clause 9.21(1)(b) <p>In turn, a 'participant' is defined in the Act [7(1)] as - amongst other things -</p> <ul style="list-style-type: none"> (f) a person who consumes electricity that is conveyed to the person directly from the national grid: (g) a person, other than a generator, who generates electricity that is fed into a network: <p>Accordingly, we understand this cascade of definitions to mean that the term 'trader' in the proposed changes to 12A will include a householder who exports electricity from e.g. a solar array into a distribution network.</p> <p>We also understand 12A to require all distributors to have a distribution agreement with such a trader, that agreement to "address only the subject matter of the terms of the default distributor agreement", and the DDA to apply where agreement cannot be reached.</p> <p>The consumers that ETNZ members represent would not be well served by arrangements that require them to address the detail and complexity of</p>
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		the full DDA, or even just its terms.
4	What are your views on the regulatory statement set out in section 4?	<p>We believe that the description of participants' costs understates these. The requirements for consultation, along with the complexity of 12A and the potential for a rapidly increasing burden of establishing compliant distribution agreements with households, would require significant staff increases and other support costs. In addition, the potential for litigation over contractual terms would expand.</p> <p>We doubt whether the claimed net overall benefit of the proposed changes is realistic. Distributors would be under pressure to adopt a one-size-fits-all approach to contracting that would be disadvantaging to some existing consumers, and that would require relatively complex analysis and supporting advice for a greatly expanded group of participants facing the need to enter into a new agreement.</p> <p>When rigidities such as the low user fixed charge requirements are factored into contractual arrangements between distributors and 'consumer retailers' (as traders) then daunting contractual difficulties can be expected to emerge.</p>
5	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	<p>We find it very complex and convoluted, e.g. with the cascading array of definitions noted above. The Code may be appropriate for large retailers and other well-resourced participants but exposing smaller enterprises and consumers wishing to export solar surpluses to its detail would be undesirable.</p>