Electricity Authority
By email: submissions@ea.govt.nz

27 February 2018

**Multiple Trading Relationships Consultation**

Mercury appreciates the opportunity to comment on the Multiple Trading Relationships (MTR) Consultation Paper. At this stage we understand the main issues are being considered at a high level and we support the Authority engaging with industry early to develop its thinking. We also understand that considerations for enabling MTR are complex so the Authority has a lot of moving parts to contemplate. We are keen to continue to work with the Authority and be involved in the process to deliver best efficient outcomes for all consumers. We support the Authority undertaking a market study and a cost/benefit analysis to see whether MTR are will deliver net benefits at this early stage. This further work would better enable us to provide more meaningful and detailed feedback to the Authority on the particular implications for Mercury and our customers.

Our further comments are set out below and our specific responses to the Authority's questions are appended to this submission. We also support the submission from the Electricity Retailers Association of New Zealand.

It is our view that this consultation covers two quite separate topics discussed individually below.

**Multiple Trading Relationships**

While enabling multiple retailers per ICP may increase consumer choice, the implementation costs to make the necessary regulatory and process changes would likely be significant. Enabling MTR is likely to result in cost savings to only a very small percentage of customers who are attracted to engaging with multiple retailers. These consumers are likely to be those with localised generation sources such as solar that would like to sell excess generation to an alternative retailer or neighbouring households or consumers with unique demand profiles (such as from electric vehicles) that may want to procure additional services from other retailers or third parties that complement their needs (such as off-peak tariffs). As a result, enabling MTR is unlikely to reduce costs overall for all customers and may in fact increase costs for some consumers particularly the most vulnerable who are unable to afford the upfront capital required for such new technologies. We note Australian studies concluded that there was a lack of demand for the kinds of services that can be made available through enabling multiple retailers. The Australian Commission concluded that it is not appropriate to implement regulatory arrangements where the benefits are received by a small group of consumers but significant costs are imposed on other consumers that do not benefit.[1] Before the Authority were to consider enabling multiple retailers per ICP, a thorough cost/benefit

[1] Australian Energy Market Commission Final Rule Determination "National Electricity Amendment (Multiple Trading Relationships) Rule 2016 National Energy Retail Amendment (Multiple Trading Relationships) Rule 2016" (25 February 2016).

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analysis detailing the expected regulatory and processes costs and the net competition/efficiency gains would be required.

The retail electricity market in New Zealand is highly competitive and there is significant evidence of innovation. Retailers have become increasingly consumer-centric in their product offerings offering bundled services, more profiled tariffs (e.g. discounted night-time electricity for EV owners) free power days to reward customer loyalty and even products that allow trading of surplus electricity generation with neighbouring households.

Consumers have more choice than ever and can to easily switch to a retailer that offers a more appropriate bundled offer if they are not happy with the offering from their existing retailer. Consumers are often time poor and we have seen more one-stop-shop packages emerge rather than desire for engagement with multiple retailers for the same or similar services. Research of consumer preferences from our own re-brand in 2016 revealed that consumers value and want simplicity, not greater complexity.[2] We are therefore not persuaded that the consultation paper provides sufficient evidence to support the contention that there is a significant consumer preference for MTR.[3]

Enabling multiple retailers would also introduce additional layers of complexity. It would require careful consideration into the independent and shared responsibilities of retailers such as those relating to switching, notification of outages, disconnections, vulnerable and medically dependant consumers. Clarity around which party would manage customer complaints, distribution pricing (e.g. where the consumer has peak and off-peak tariffs with more than one retailer), and cost sharing of metering services will need to be addressed. These would all require substantive consultation and would be likely to entail significant costs to change.

To some extent the Electricity (Low Fixed Charge Tariff Option for Domestic Consumers) Regulations 2004 (LFC Regulations) may impede MTR.[4] However, this would only relate to consumers on the low user tariff and a retailer intending to 'charge' the consumer. In our view, the LFC Regulations would not themselves prevent a solar customer for example from selling excess generation to an alternative retailer. In any event, there is industry consensus for these regulations to be reviewed as they are no longer fit for purpose.

**Consumption data**

The other issue the Authority has identified as a 'soft constraint' concerns barriers around obtaining consumption data which is channelled through the consumer's retailer. The Authority has suggested that the 'hard constraint' may be reduced or fall away if this 'soft constraint' is addressed. In our view, these are two quite separate issues. More liberalised access to data would not enable MTR to occur without addressing the practical and regulatory constraints identified above. Conversely, access to data is a much wider issue and should form a separate study by the Authority, perhaps together with the subsequent review of the access to data issues touched on in the Authority's Data Exchange Consultation.[5]

We also do not agree that there are barriers to consumers accessing their data. Consumers at any time can access their consumption data either directly (through our on-line Good Energy Monitor portal) or through a direct request

[2] Mercury carried out a number of focus groups 2015 prior to the re-brand from MRP to Mercury in 2016. The theme of ease and simplicity has also been present in subsequent qualitative research with customers and non-customers from 2016-2017.
[3] There is no evidence in the paper of any engagement with consumers via focus groups or other forums that have relationships with customers.
[4] Clause 21.
[5] Data and Data Exchange for Market Transactions Consultation (September 2017).

from an authorised third party. As a matter of best practice, Mercury aims to provide this information within 5 working days to our customers.

Privacy

Smart meters providing actual half-hourly data provide a great opportunity for innovation and potential cost savings for consumers. We fully support emerging innovative products and services where consumer privacy is protected. Privacy rights of individual customers must be respected and protected otherwise consumers' confidence in the electricity market will be undermined.

Market participants are constrained by the Privacy Act in releasing personal information to third parties. Consumption data once it is associated with an account holder is personal information as it concerns an 'identifiable individual'.[6]

Principle 11 of the Privacy Act governs 'disclosure' of personal information and expressly allows information to be disclosed where the agency believes on reasonable grounds that either *"the disclosure is to the individual concerned; or the disclosure is authorised by the individual concerned."*

Retailers must therefore satisfy themselves (on reasonable grounds) the identity of someone requesting their consumption data or the person requesting the information on their behalf, before releasing that information. Mercury's current authorisation process is very robust and consistent with the Privacy Act.[7]

A more liberalised system must factor in privacy constraints which are there to protect the consumer. Any breach could also have long-lasting reputational damage if it transpires that the customer did not actually provide consent. The privacy of customers must be protected given the increased granularity of data becoming available and the potential for this data to be personal in nature when linked to an account holder. Statistics show that 58% of people surveyed by the Office of the Privacy Commissioner (OPC) were "very concerned" with businesses sharing their personal information with other businesses without their permission.[8]

The OPC noted in its BIM last year that "*inadequate attention to privacy of customer and client data can erode trust and confidence, impede the delivery of essential public services, and wipe out shareholder value."* And, in its open letter of May 2017, the OPC noted that bulk disclosure of smart meter data risks infringing privacy and a data breach can have "*serious consequences for the individuals affected and retailer reputation*."[9]

[6] See definition of personal information in the Privacy Act. Usage information collected from smart meters is personal information once it is associated with an account holder. This is particularly so if only one person lives at a residential address; and data collected from that address will also be about the resident/account holder.

[7] A Mercury customer will obtain a code from us to pass to their agent. The code can only be used once and will expire if not used. The Code is generated via a Web Admin portal. It can be either emailed or provided verbally to the customer. The customer can also request an agent authorisation code via their My Account login. Once the third party has the authorisation code, the third party goes to the EA's EIEP transaction hub to submit their data request. 24 months of either detailed/half hourly consumption (EIEP 13A) or summary/monthly read consumption (EIEP 13B) can be requested (depending on meter type, analog meter in non-half hour etc.).

[8] Privacy Commissioner Individual Privacy and Personal Information UMR Omnibus Results (March 2014).

[9] Public Statement about bulk disclosure of smart meter data (26 May 2017).

The Authority would be unable to regulate to make consumption data more widely available if that meant the requirements of the Privacy Act were compromised. This would create an immediate impasse and likely result in legal challenge. Any Code changes contrary to the Privacy Act may be considered ultra vires.[10]

The Privacy Commissioner has recently suggested reform of the Privacy Act (including improving data portability and addressing controls around re-identification of anonymised data) to respond to current data sharing trends. In February 2017, the OPC recommended to the Minister a review of the Privacy Act in light of changes in IT, data science, and significant developments in international legal frameworks. It considers privacy laws should be fit for purpose in the current environment and adequately future focused to anticipate foreseeable developments.[11]

"*Important developments since 2011 that impact on the operation and adequacy of the privacy legislation include developments in data science and information technology, and new business models built on data-driven enterprise*." And there "*are apparent gaps and weaknesses in the Privacy Act's enforcement framework that need to be addressed if the reforms proposed are to introduce an effective and modernised form of privacy regulation*."

Some of the recommendations include:

- Empowering the OPC to apply to the High Court for a civil penalty to be imposed in cases of serious breaches (up to $100,000 in case of an individual and up to $1 million in the case of a body corporate);
- An update to protect against the risk that individuals can be unexpectedly identified from data that had been purportedly anonymised; and
- Introducing a data portability right.

Data portability and protection is also likely to become higher profile with changes to EU regulation this year which will drive greater consumer protections including greater sanctions for misuse of data.[12] Its "*standards lift the baseline internationally in response to the challenges to consumers and data protection in today's global economy*."[13] We also note the 'Green Button' initiative in the US and Canada which enables consumers to download their own energy usage data in an easy to use format in order to reduce their energy costs. Under this regime, consent and authorisation are paramount to releasing a consumer's data to a third party.[14]

Accordingly, the climate is changing around privacy and data sharing/portability. The Authority must be wary of regulating prematurely and in isolation of the OPC. Access to data is a wider issue than presented in this consultation paper. As mentioned, we suggest the Authority undertake a broader and separate review of data if it is considering any regulatory intervention.

<u>Industry practices</u>

The Authority should also consider emerging industry practices. For example, authorising neutral agencies to hold data on behalf of a retailer to undertake analysis to provide to third parties (rather than the data itself) is a model that we are starting to see emerge as data security and management becomes a business opportunity.[15] Our view

[10] The EA has in the past suggested a centralised database for which it did not proceed with given the complexities and privacy issues.
[11] See also OPC BIM 2017.
[12] General Data Protection Regulation (GDPR) (Regulation (EU) 2016/679).
[13] OPC BIM.
[14] Privacy by Design and Third Party Access to Customer Energy Usage (Jan 2013) Ann Cavoukian and Jules Polonetsky (page 13).
[15] Ampli

is that issues related to data longer term are likely to be resolved by the market and the need for regulation is likely to be limited.

Commercial value

Mercury fully supports innovation that equips the consumer with choices based on their particular needs and consumption patterns. However, provision of data is subject to not only privacy constraints but also commercial arrangements reflecting the investments made to collect, store, and distribute data. While the customer can request data at any time where they have a direct relationship with us, third parties should face the same costs as other market participants for the provision of data to ensure there is a level playing field and the sustainability of the market is not undermined.

**Conclusion**

Our view is that the Authority should conduct a market study and undertake a cost/benefit analysis to consider whether enabling MTR is appropriate at this point in time and then re-consult on the findings. Once this exercise is complete we would be able to provide more valuable feedback to the Authority on the various process changes we would need to undertake and the likely costs of those changes.

We also query the Authority's reasoning for reform around access to data. The paper states that retailers are incentivised to delay providing consumption data to consumers implying that retailers are potentially obstructive to market competition. As we have set out above, Mercury provides consumption data to its customers in a timely fashion and must meet the requirement under the Privacy Act. Furthermore retailers incur significant costs in gathering, storing and providing access to data which should be recognised. Regulatory arrangements should ensure a level playing field by promoting access to data on commercial terms from all parties.

Our specific responses to the Authority's questions are set out in the Appendix. However, we caveat this with noting the difficultly to answer these specific questions as this paper is really an issues paper seeking high level feedback from industry.

If you have any questions, please contact me on 09 308 8237 or at rebekah.mccrae@mercury.co.nz

Yours sincerely

**Rebekah McCrae**

| | Question | Comment |
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| **1** | How materiel are the constraints to consumers establishing multiple trading relationships at a single connection identified above? | See Cover Letter. We do not think there are material constraints to consumers realising the potential benefits proposed under a MTR regime within the current environment and that the costs are likely to outweigh the benefits of substantive reform at present. |
| **2** | Are there other constraints that prevent multiple trading relationships from efficiently occurring? If so, please describe them. | There are practical hurdles that will need to be overcome to address the shared/independent responsibilities of each retailer. We refer to our Cover Letter. Furthermore, Mercury is of the view that the majority of customers have a very limited appetite to add complexity in the provision of an essential service. |
| **3** | What do you consider to be the benefits of multiple trading relationships? | MTR would give consumers more choice but there is a significant cost burden to be overcome and there is no evidence to suggest that consumers prefer dealing with multiple retailers. See Cover Letter. We also are not convinced that competition would be materially improved. Retailers already have an incentive to offer the most attractive bundled offers (e.g. competitive day/night/EV tariffs). As mentioned in our Cover Letter, enabling MTR will only benefit a small number of customers who have the ability to invest in new technology but implementation costs would be borne by all consumers including vulnerable consumers who would also be unlikely to benefit from MTR. |
| **4** | What other services could be enabled by reducing or removing the barriers to multiple trading relationships? | In theory, consumers could choose a second retailer for a night time tariff/EV tariff but we are not convinced that consumers would want this choice bearing in mind the complexity of having to dealing with two retailers and the overall costs to implement a system enabling MTR. Furthermore, there is already an incentive for retailers to offer a competitive bundled offer entailing different tariffs for the consumer to choose. We do not think that competition will be materially improved by singling out these tariff options through MTR. |

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| **5** | What changes, if any would be needed to the switching and disconnection/reconnection processes if a consumer were able to have multiple retailers? | Significant process changes would be required. We refer to our Cover Letter. At this stage we think it is premature to start detailing these sorts of changes. In our view the first priority should be for a cost/benefit analysis of enabling MTR before going into more granular considerations such as specific changes to switching, disconnection how the customer complaint regime would work. Even if there was a case for enabling MTR, these sorts of considerations around switching and disconnections depend on how technically/practically the Authority intends to implement MTR (namely what changes will occur at the metering installation). |
| **6** | What other data exchange processes that have not been identified in this paper need to be changed to accommodate multiple trading relationships? | Access to data and enabling MTR are two separate issues. Currently, there are no barriers to accessing data. See Cover Letter. |
| **7** | How could the data exchange processes be modified to accommodate multiple trading relationships? | The data exchange process is constrained by Privacy Act requirements. We do not think that there are barriers in any event. MTR and access to data are two quite separate issues. See Cover Letter.<br><br>The data exchange process itself should mirror the contractual relationship the participant has with the MEP. This provides various retailers/participants with the optimal transaction basis based on their system requirements. Mandating data exchange processes could result in innovation being restricted as participants may be forced to adhere to data exchange formats that do not support their business model. This could have an unintended consequence of stifling innovation or creating barriers to innovative and emerging business models. |
| **8** | What other services, if any, would have to share costs between multiple users? | Costs will be incurred by MEPs and retailers but the Authority must bear in mind that ultimately these costs will be borne by the consumer. Distributors would need to split network costs at an ICP level between participants which results in a lack of transparency for the consumer and add a layer of complexity. |
| **9** | How could the cost of these services be shared amongst multiple users? | What first must be assessed is whether this is a project worth investing in. At this stage, we do not think that there are benefits to all consumers but rather a small pool of them. The Authority should address this first before these secondary granular issues are considered. In any event, costs initially incurred by MEP's and retailers will ultimately be borne by the end user. We refer to question 1 and 3 above. |

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| **10** | Could consumer data be more efficiently shared with service providers that have a legitimate claim for access to their consumer's data? If so, how? | Provision of consumption data is subject to the Privacy Act. Our current practice for providing consumption data is consistent with this Act and efficient. We generally provide this information to consumers (or their authorised agent) within 5 working days. There is already an incentive for us to provide this information timely in order to keep a good relationship with the consumer. We refer to our Cover Letter which provides further context and comments. |
| **11** | How much value is there in making it easier for appropriately authorised firms to access information such as a consumer's tariff structure, the smart meter functionality that is used by the consumer's MEP, a consumer's controllable appliances? | The term "appropriately authorised" is concerning and we are unclear what the Authority mean by this. Release of personal information to a third party requires the customer's consent pursuant to the Privacy Act. |
| **12** | Are there other industry participants that may need to amend their systems to operate in an environment with multiple trading relationships? | MEPs are likely to be affected along with retailers and possibly distributors. |
| **13** | What are the costs of the above changes recognised in questions 10-13? | To determine the costs associated with enabling MTR, depends on how the changes are implemented (e.g. to what extent are they borne by an MEP through technical changes to the metering installation). As such, it is difficult to quantify these costs at this time although there would be substantial costs associated with changes to our systems and processes. In any event, this would be a premature exercise until such time the Authority has provided evidence of the net competition and efficiency benefits for consumers. |
| **14** | What other obligations need to change if multiple traders can serve an ICP? | UoSAs may need to be amended for example to deal with pricing arrangements with distributors where the consumer has different retailers for peak/off-peak pricing. |
| **15** | How could the obligations discussed above be amended to accommodate multiple traders at an ICP? | There will need to be significant regulatory and process changes. We consider it premature to detail the options for amending the Code and systems until such time there are evidentiary benefits for consumers. |
| **16** | What costs would be involved in amending consumer-related responsibilities to accommodate multiple traders at an ICP? | We consider this outside scope of the Authority's ambit which is to regulate the industry, not the consumer. Mercury is aware that in Australia it has been established that consumer obligations need to sit at a contractual level as consumers are not market participants and therefore the regulator has no power to enforce obligations on them. |
| **17** | What additional matters would need to be considered if we were to introduce multiple trading relationships? What amendments would need to be made to the Code to facilitate multiple trading relationships? | See our response to question 15, above. |
| **18** | What is the cost of the changes needed to enable multiple trading relationships? | See our response to question 13, above. |