

15th October 2019

Submissions
Electricity Authority
P O Box 10041
Wellington 6143



By email: submissions@ea.govt.nz

Re: Default Distributor Agreement Consultation Paper

Introduction

Thank you for the opportunity to submit on the Electricity Authority's Default Distributor Agreement Consultation Paper.

We strongly support the Electricity Authority's (EA's) proposal to create a Default Distributor Agreement (DDA). We believe that the existing method for developing and negotiating Use of System Agreements favours large incumbent retailers and is a deterrent to new entrant competitors. We agree that the clear benefits of a default agreement include reduced barriers to entry, reduced operating costs and increased efficiency and innovation.

However, we believe more could be done to ensure that the EA achieves its intention to level the playing field in distribution access.

Even-Handedness

Flick remains concerned at the proposed removal of the even-handedness provisions. Without such provisions, we believe it's likely that large incumbent retailers will negotiate preferable terms with distributors that won't be equally available to smaller participants or new entrants.

It's great that the default agreement will provide a baseline for distribution access. However, at the big end of town better arrangements are likely to persist. While more participants may get the opportunity to play, we expect the playing field will remain far from even. We believe the even-handedness provisions should remain and apply equally to all terms agreed between participants and distributors.

Publishing agreements

We'd strongly support the EA publishing all contracts for distribution services, including contracts entered into on the basis of a DDA, alternative agreements, and side-agreements. This would provide greater confidence to smaller retailers that we're operating on an even playing field or, if not, at least we'd know the terms on which we're being disadvantaged. In addition, Flick believes the EA should share its intended approach to review and assessment of these agreements.

Consumption Data Audit

Schedule 12A.1 clause 13 of the DDA provides that a trader may conduct periodic audits to confirm that a distributor is meeting its obligations in respect of consumption data. Emerging retailers have significantly less resources to dedicate to such audits. We believe the EA should ensure distributors are meeting their obligations either through EA audits or by

requiring distributors to submit independent audits on an annual basis. If we leave the audit burden with the retailer, we run the risk that only large retailers will be able to protect consumption data from misuse.

Introduce Dispute Resolution Forum

In addition to standardising distributor agreements, we believe that the EA should consider introducing a formal dispute resolution process. This dispute resolution process could be supplemented by an initial step that would allow parties to lodge a complaint via the breach process under the Code.

A dispute resolution process overseen by the EA would provide a low cost means to resolve disputes; ensuring smaller retailers have a real opportunity to enforce distributor agreements. Without this kind of forum there remains a risk that the intended benefits of the DDA won't be realised because it will be cost prohibitive for smaller participants to achieve meaningful enforcement of the terms.

Conclusion

We appreciate the work the EA has done on the Default Distributor Agreement. We believe that the resolution of our above concerns will help the EA to achieve its intended outcome to level the playing field for retailer distribution access.

Yours sincerely,



Maiti Prasad
Compliance Manager