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Submissions
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CODE AMENDMENT PROPOSAL: DEFAULT DISTRIBUTOR AGREEMENT

Introduction

Unison Networks Limited (Unison) welcomes the opportunity to provide a submission to the Electricity Authority (the Authority) on the *Default Distributor Agreement*. We have contributed to the development of the ENA's submission and support the recommendations contained. In this submission we focus on key issues where we have particularly strong views, rather than reiterate the submission points addressed by ENA.

In this submission we address the following:

- Agreement structure and ability to remain a durable document
- Application of the Consumer Guarantees Act
- Risk allocation
- Prudential requirements
- Data access
- Load control
- Meter functionality

Proposed Default Distributor Agreement

In general, Unison supports the Default Distributor Agreement (DDA), and the Electricity Participation Code (Code) amendment to govern the contractual relationship between traders and distributors. We agree that an agreed upon DDA will assist in meeting the Authority's objectives of reducing barriers to entry (enhancing competition) and transaction costs (increasing efficiency).

Unison is, however, concerned that the cost savings from contract negotiation has been overstated in this consultation process. In our experience, and observation of counterparty negotiation processes when forming a contract based around the Model Use of System Agreement, is that the timeframes, management and legal costs are minimal.. The real efficiency benefits would result from the standardisation of processes and operating models by stakeholders.

Through our engagement with the ENA DDA working group we have also been able to participate in direct engagement with the Authority around its DDA objectives and plans, as

well as highlight our areas of concern. We would like to acknowledge the proactive engagement of the Authority in these forums which is a productive way to enhance mutual understanding between the regulator and stakeholders.

1. *Agreement structure and variation*

Unison 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. However, we recommend the Authority provides further consideration to the following to ensure the DDA remains sustainable and durable:

- Review of the agreement template to ensure it is fit for purpose in an evolving electricity market. The DDA appears to still be based on the Model Use of System Agreement (MUoSA), a template that was originally developed over 10 years ago. It is important that the drafting of the DDA is forward looking to match the Authority's intention for the document, for example, how it envisages that there could be multiple participants trading at a single ICP. We recommend a further review of the DDA to ensure it creates a framework for the range of service arrangements (distributor-trader, distributor-service taker, and distributor-service provider) that facilitates the distributor operating a neutral platform providing and procuring services from parties in real-time.
- Review of the proposed DDA to ensure there is no ambiguity with Part 4A of the Commerce Act. Any contractual terms that are inconsistent, or in conflict with the requirements of the Commerce Act should be resolved. In Unison's view 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.
- We acknowledge the difficulty of prescribing terms for future participants, and potential uses of the network. It is vital that as changes in the electricity market emerge, that these can be accommodated in the Code framework and the DDA without it being a costly and lengthy process. Our concern is that by the proposed approach, DDAs are agreements subject to variation through either consultation, negotiation, rulings panel consideration or specific regulatory change that is retrospective. Such an approach could leave distributors with arrangements that effectively become grand-parented legacy arrangements whose 'fit for purpose' is progressively eroded over time. We strongly recommend the development of a straightforward mechanism for periodic review, amendment or termination. Distributors would otherwise find themselves in unconscionable position, where a trader who is happy with an existing contract could disagree to it being modified, even if the agreement is no longer fit for purpose. An agreement in perpetuity could be onerous on stakeholders in the evolving electricity market. We strongly recommend the development of mechanisms, whereby changes in regulatory intent which are codified, are reflected in DDA terms (core or operational) effective upon code change implementation. This could also be achieved through applying core terms that are effectively "posted terms" set by the Authority. This structures the DDA as a live document that evolves through the Code.

2. *Consumer Guarantees Act*

The DDA includes a Distributor Indemnity clause (clause 25.1) by referencing section 46A of the Consumer Guarantees Act 1993 (CGA). Notwithstanding the DDA, the CGA provides indemnification of gas and electricity retailers. The benefit of such an inclusion, would be in providing clarification for stakeholders of a clear process for the handling of claims under the CGA. Without the right for the distributor to request direct participation in the settlement of claims, there is a moral hazard risk of there being little incentive for a trader to manage claims that appropriately limit costs to the distributor (whether financial, reputational or other).

Unison have implemented such process arrangements, that were developed in collaboration with retailers, for our current UoSAs. The relevant clauses include:

26.9 Claims for which the Retailer wishes to be indemnified for under the Distributor's Indemnity: If a Consumer makes a claim against the Retailer in relation to which the Retailer wishes to be indemnified by the Distributor under the Distributor's indemnity under clause 26.8 the parties will follow the process outlined in schedule 1:

Claims process where the Retailer wishes to be indemnified under clause 26.8

26.8 If a Consumer makes a claim against the Retailer in relation to which the Retailer wishes to be indemnified by the Distributor under clause 26.8 (a "Claim"), and the Consumer is agreeable to the Distributor assuming management and defence of the Claim, the Retailer will give written notice and provide details of the Claim to the Distributor, otherwise the Retailer will manage the Claim for the Consumer. Where the Retailer gives written notice of a Claim to the Distributor, the Distributor will advise the Retailer as soon as practicable, but no later than 3 Working Days after receiving the notice, whether or not it intends assuming management and defence of the Claim. If the Distributor assumes the management and defence of the Claim, the Retailer shall be entitled to make it clear to the relevant Consumer and the Dispute Resolution Scheme that the Distributor is managing the Claim. Whichever party conducts management and defence of the Claim, it will ensure that the other party is kept informed on a timely basis of any development in relation to the Claim, and is consulted in a timely manner prior to taking any significant steps in relation to the Claim so that the reputation of the other party is not unfairly harmed. If, in respect of any Claim for which the management and defence has been assumed by the Distributor, the Distributor intends to assert that the distributor indemnity under clause 26.8 does not apply, the Distributor will promptly notify the Retailer accordingly. In that event, the Retailer shall be entitled to resume management and defence of the Claim as it relates to the Retailer.

Unison recommends the Authority consider the inclusion of a process for the handling of claims under the CGA to ensure clarity for stakeholders and provide assurance that claims and costs are efficiently managed for all stakeholders.

3. *Risk allocation*

It is important that the DDA provides an appropriate apportionment of risk, by allocating risk to the party best able to manage or mitigate the risk (including through economic means). In addition, the proposed 2020-25 default price-quality path limits the distributor's ability to include in their prices the costs associated with such risk mitigation.

The proposed clause 24.7, bases the 'limitation of liability' on the size of the trader, rather than the number of ICPs associated with the trader which have incurred direct damage associated with an event. The clause 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 \$2 million under the proposed drafting meanwhile their exposure relative to the size of their business when compared to a new entrant retailer. Unison believes that 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 proposed drafting also increases the exposure for distributors based on the number of retailers on the network rather than linking this to the number of parties affected. The result is that Distributors would face the consequence that the greater the number of traders on their 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.

Additionally, most retailers limit their liability to an individual customer to \$10,000 in respect to direct damage that has incurred only as a consequence of a given event. This liability limit however does not limit a distributor's liability to the retailer. The distributor's liability exposure liability could be far greater due to the proposed limitation of liability based on the size of the trader. Whereas 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.

4. *Prudential requirements*

We are concerned that the proposed inclusion of the current prudential security regime in the DDA does not reflect the true extent of the risk posed by a trader defaulting.

The present prudential arrangements provide for two weeks of prudential security, upon request, at a cost to the trader and distributor which is broadly reflective of the market cost of debt cover. However, this provides less than 25% of the cover actually 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).

The Code and proposed DDA provide the distributor with a right to request additional prudential security however this is at cost that it 15% above the market cost if the trader elects that the additional security is in the form of a cash deposit. In practice, it is Unison's experience that when requested traders do elect to provide additional security this is always as cash deposits. The impact is that this cost is a general cost incorporated into Unison's distribution prices with the result being that the cost is born by consumers through delivery charges billed to all traders. Effectively the risks associated with new entrant retailers and associated costs are subsidised by all consumers rather than borne by the new entrant retailer.

It is also our experience that when limited prudential security is held (equivalent to two weeks or less), and traders come under financial pressure as has been the case over the last twelve months during which wholesale prices have been significantly higher than historical levels, traders will make trade-offs in their obligations. The result is that traders will prioritise meeting wholesale market obligations over paying distributor delivery charges. Given that distributors must allow traders to access their networks, and the prudential security available is prescribed

and capped, distributors are not in a position 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 when in effect the distribution service is part and parcel of the market and trader prudential risk should be treated on equivalent terms with other market obligations.

Unison recommends the Authority provides further consideration to 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.

5. *Data access*

Unison welcomes and supports the enabling of distributors to access metering consumption data via traders in the proposed Appendix C of Schedule 12A.1.

We support the additional recommendations contained in the ENA's submission to ensure the data is efficiently and cost effectively received and utilised by distributors. The accessibility of smart meter data by a Code amendment is consistent with the Government's response to Electricity Price Review's recommendations.

Distributors require access to consumption data to efficiently plan and manage their networks. Importantly such data will be used in the development of efficient and cost reflective based distribution pricing. Unison acknowledges the importance of data security and associated privacy implications. We believe 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.

It is important that any data usage provisions are pragmatic, to enable distributors to realise the benefits of the data. Distributors will need to be able to combine and retain data as necessary, subject to complying with reasonable data security measures. We believe the concerns raised around distributors using data for commercial advantage in competitive markets, or leveraging a birds-eye view, are issues being addressed in other Authority workstreams along with the Commission. These workstreams are a more appropriate avenue to consult on facilitating access for services in the evolving electricity market.

In addition, we support the standard terms for request and provision of consumer information for Trust and consumer owned and cooperative distribution activities included in the proposed Appendix B of Schedule 12A.1. However, we believe that 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 but not limited to access, connection standards and power quality, tree trimming, connections, disconnections and decommissioning, and service interruption communication and response.

6. *Load control*

Unison is concerned that the proposed DDA does not allow for the development of load control. It is important consumers can benefit from future load control opportunities, by making load available to other parties at their discretion.

The DDA limits distributor load control services to existing hot water control capabilities and is based on a price category selection. For example, the DDA template links a distributor's right to 'hot water control' to the basis that the distributor is offering a price category for a control limited period of availability. As distributors transition to more cost reflective pricing, controlled services may be offered through new pricing structures, including but not limited to, time of use. 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. We strongly recommend that the DDA is agnostic to the technology enabling the service and pricing structures.

7. *Metering functionality*

Both retailers and distributors have an interest in the capabilities of metering technologies deployed at each ICP. However, it is only retailers that have the responsibility for ensuring compliant metering at the ICP and contract with MEPs to provide services. In some cases this has resulted in a significant inefficiency where two meters have been deployed at the ICP in order for the distributor to obtain the desired information about service characteristics and to provide functionality (e.g., "last gasp" during an outage event).

Unison submits that 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 (e.g., enhanced capability for EDBs to undertake LV monitoring, which will become increasingly relevant in an environment of significant deployment of DER)."

Concluding comments

In conclusion we recommend the Authority:

- **Review** the DDA to ensure it is durable, and that mechanisms are in place to accommodate changes in the evolving electricity market.
- **Include** a process between the parties for claims under the CGA for clarity.
- **Consider** that the limitation of the liability is based on the number of ICPs associated with the trader which have incurred direct damage associated with an event.
- **Review** the proposed prudential security regime to reflect the true extent of the risk posed by a trader defaulting or ensure it is correctly reflected as a market function.
- **Note our support of** the Code amendment to enable the access of metering consumption data; and recommend further review of the proposed provisions to ensure the benefits of the data are realised.

- **Ensure** the DDA enables distributors to continue with maintaining and developing load management service capability, and thus allowing consumers to subscribe to, and benefit from this.
- **Include** provisions in the DDA to enable EDBs to gain access to meter functionality that will support the efficient delivery of the distribution service and enable new markets to develop over time (e.g., by supporting low voltage network visibility).

We would be happy to discuss any of the points made in this submission with the Commission: please contact Jason Larkin, Commercial Manager, on 0800 286 476.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Nathan Strong' with a stylized flourish at the end.

Nathan Strong
GENERAL MANAGER BUSINESS ASSURANCE