19 April 2016

Submissions
c/- Electricity Authority
PO Box 10041
Wellington 6143
by email: submissions@ea.govt.nz

SUBMISSION ON DEFAULT AGREEMENT FOR DISTRIBUTION SERVICES

Introduction

1 Orion New Zealand Limited (**Orion**) welcomes the opportunity to comment on the "Default agreement for distribution services" consultation paper (the **paper**) released by the Electricity Authority (Authority) in January 2016.

2 In summary, we remain concerned that the paper does not:

- make the case that there are material problems that need to be addressed,
- identify a solution that addresses the perceived problems, or
- identify a solution that produces net benefits.

3 The remainder of our submission is structured as follows:

- comments on key aspects of the paper, and
- three appendices that: respond to the specific questions in the paper, comment on the proposed Code drafting and comment on the proposed DDA template drafting.

4 Regarding the latter two appendices, we do not believe it is best practice to consult on the detail of proposed new Code and the DDA when the policy approach has not been finalised. In our view, should the Authority proceed with the change, a further round of consultation will be required to finalise the Code and DDA.

5 The Electricity Networks Association (ENA) has also submitted on the paper. Orion endorses the ENA submission.

Problem definition

6 The paper identifies two key problems:

- *"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).",*

- *"Distributors and retailers face higher than necessary transaction costs from negotiating and administering many different UoSAs. Those costs are passed on to consumers. Higher than necessary transaction costs also undermine retail competition by increasing the cost of doing business – entrant retailers are less likely to expand to trade on new networks."*[1]

7 The paper does not give any examples of specific terms in specific UoSAs that inappropriately advantage some retailers over others, and nor does it give examples of generically inefficient terms that do inhibit competition and innovation.[2] We would be interested to know whether any trader has claimed that any distributor's agreements favour some traders over others, and if so, whether the claims were borne out. It would also be useful to have examples of agreement terms that restrict competition in related markets.

8 Other useful information would be an analysis of the diversity in existing UoSAs and how much "higher than necessary" the consequent transaction costs are.

9 In the absence of more detailed information and examples, we find it difficult to come to the conclusion that a regulatory response is necessary, or, even if we accept it is necessary, what the appropriate regulatory response is.

10 Putting that aside for the moment, if we accept that the stated problems exist and are material, we do not believe that the proposal in the paper will solve the problems. This is because:

- in allowing the parties to still negotiate variations, and having removed clause 3 of the MUoSA (Equal access and even handed treatment) in drafting the proposed Code and the DDA, it is quite possible that a trader could be advantaged over its competitors. On the other hand it is hard to see what the driver is for a distributor to seek to negotiate variations when any other retailer

[1] Both quotes are from p7 of the paper.

[2] The Authority might point to its regulation of prudential requirements in the Code. However while this no doubt favours traders (and arguably favours smaller traders over larger ones), it does this by transferring risk to distributors. We note that after a comprehensive review of wholesale market prudential requirements, the Authority maintained the necessary credit ratings and required number of days cover at the levels that distributors such as Orion maintained before the Code changes. The inconsistency has not in our view been adequately explained.

can always use the default agreement, forcing the distributor to provide its service on at least two different bases.

- given that there may still be negotiations, there will still be cost associated with those negotiations even if an agreement that varies the DDA does not eventuate. Moreover, the paper does not attempt to quantify the costs associated with the process standardisation that might be involved in the creation of operational terms. In our view these could be significant.

- if, on the other hand, there is no material standardisation of operational terms via the DDA process, then transaction costs will not be reduced and the non-standardisation of terms will be locked in via the DDAs.

Limitation of the DDA to the distribution service

11 The paper notes that the proposed DDA has been limited to just the distribution service. Moreover the proposed Code amendments (12A.10) limit the ways that negotiation can vary the DDA terms.

12 It is unclear why either limitation is necessary. As it stands it will require the negotiation of a number of additional agreements wherever a DDA or variant is used. We believe distribution and additional services can be readily encompassed by a single agreement by obliging the distributor (or the trader) to supply 'associated' (or 'additional') services as listed in a schedule, with the content of the schedule being determined by the distributor (or the trader). This is how the MUoSA handled it, and how we handle it.

13 In addition we note that the paper itself is not consistent in its delineation of the distribution service. Para 3.3.21 begins by defining the "essence" of the distribution services being delivery through a local distribution network, but then talks about the reconciliation process (which is not part of the distribution service), physical losses (an inevitable *consequence* of the distribution service, but not something provided by the distributor) and "commercial or non-physical losses [sic]"[3] (again not part of the distribution service). The conception of losses being part of the distribution service then feeds into the DDA at clause 2.2(e) where the Code obligation on distributors to publish loss factors is repeated, and an obligation to "investigate adverse trends in Losses" is introduced via the link to clause 6. Clause 6 also includes an obligation to use the loss factor guidelines. We think this should be consulted on separately. The core DDA does not need to include provisions about losses or loss factors because the Code adequately addresses it.

14 In our view an obligation to supply a loss investigation service can be encompassed via a schedule of associated services and fees should the distributor wish to provide it.

15 A further consequence of limiting the agreement to only the distribution service is that the terms that favour one trader over another might not relate to the distribution service and therefore must be contracted for separately and may be less transparent.

[3] "[sic]" because unlike physical or technical losses, the non-physical component of the difference between injection to and offtake from a network can be positive or negative.

16 Finally we note that the boundary of the distribution service is not necessarily fixed in time, even if the DDA has set it appropriately now. Much of the current discussion of evolving technologies in the Commerce Commission's input methodologies review is about the appropriate boundary of the distribution service. There is a risk that the DDA might lock in a particular conception of the distribution service that restricts future change to the detriment of consumers.

Operational terms

17 Central to the development of each distributor's DDA is the development of distributor-specific operational terms. The paper has two somewhat conflicting perspectives on the development of these terms.

18 First, and for example as set out in paragraph 3.4.17, the paper states that "The Authority considers that distributors will not need to develop new operational terms that reflect new operational processes. Rather, each distributor need only record its current operational practice…". But in the following paragraph the paper states: "If each distributor adopts the approach of incorporating the example operational terms, amending only as necessary to reflect the distributor's practices, the Authority considers that it should be practical for each distributor to publish a DDA within the timeframes proposed". The first perspective is somewhat different to the second.

19 We also note that both perspectives produce draft terms that are subject to consultation and possible appeal to the Rulings Panel. The actual impact on the distributors, and indeed on non-appealing traders, is therefore unknowable in advance.

20 This is particularly concerning when the consultation must include each *participant* that might be affected by the terms (proposed clause 12A.4 (5) (a)), not just each trader. It is not clear which participants the paper has in mind, nor why participants that are not traders, or do not trade in the area, have a role in the formation of the agreement.

21 On a more practical note, the proposal gives the four main distributors "…60 business days after the Code amendment comes into force to develop and consult on their operational terms..." (para 3.4.12(a). It is unclear when it is anticipated the Code changes would come into force, but in principle the time available could be not much more than 60 business days. This might seem like a reasonable amount of time, but there are around 80 interactions here (4 distributors and, say, 20 traders) all occurring at around the same time, and all involving the non-trivial obligation to consult. If the objective is to just get the job done then this might be enough time, but if the idea is that this process leads a drive for more standardisation lead by the largest distributors, then the timing looks very tight. It would be helpful if the Authority clarified how much time it anticipates will be available between when the Code changes are finalised and when they come into force.

Rulings Panel

22 The paper proposes that the Rulings Panel consider trader appeals about a distributor's proposed initial operational terms, and any future amendments to those terms.

23 Our primary concern with the proposed process is that it potentially exposes core business decisions around such things as pricing and service standards - which are operational terms under the DDA - to Rulings Panel review. This is inappropriate. Not only would it involve a significant overreach of responsibilities into key areas of distributors' financial decision-making, it clearly cuts across Part 4 of the Commerce Act. The Code needs to very clearly limit the operational terms that can be appealed to the Rulings Panel.

24 A secondary concern is that it potentially allows an individual trader to seek changes to operational terms (any that are appropriately open to Rulings Panel review) when all or most of the other traders find them acceptable. Efficiency in distributor – trader interactions is generally best served by having standard operational terms that apply to all traders across a network. The Rulings Panel might agree with one trader that the operational terms should be changed, which might then lead to disputes by other traders who were previously happy with the terms.

Changes to the DDA

25 The discussion of operational terms and possible appeals to the Rulings Panel raises a more general issue with these agreements, which is the process by which they can be changed to reflect changing circumstances.

26 One of the difficult issues distributors face with existing agreements is how changes that affect multiple parties can be implemented. The nature of the distribution service is that it is, for pretty much all traders at pretty much all connections, the same. A change that requires the agreement of all parties is both operationally onerous and difficult to achieve, if it is possible. Consideration should be given to some form of voting mechanism whereby if a defined proportion of traders agree to a change, then it becomes effective.

27 This is particularly important as we note that the draft DDA has removed from the MUoSA the notion of "Variable Provisions" and associated schedules. We are not sure why this has been removed. We consider that a variable provisions approach is more efficient.

28 The draft Code for amending operational terms in the DDA appears to us to mean that operational terms *for existing agreements* cannot be changed by those means (see clause 12A.11 (4)) and so any materially amended terms will mean that different traders face different operational terms depending on when they start trading, while the distributors would have to maintain an ability to deliver on multiple different operational obligations as the operational terms change over time. This does not appear to improve efficiency. Operational terms must be able to be changed, and changes must be able to be applied to all traders.

Other options

29 An option that has not been considered in the paper but which we would recommend as an alternative to the options in the paper, is one that leaves existing agreements alone but instead focusses on key operational terms that vary across distributors and which impose material and unreasonable costs on participants. An example of areas where there has already been some Code mandated standardisation is EIEPs, and there may be scope for further standardisation, for example in the area of outage notifications and related processes, if the benefits exceed the costs.

30 In terms of the options in the paper, while we do not believe the paper has established there is a problem to be solved we submit there is a more efficient option. This is to use the Code to *automatically* make the DDA the applicable agreement unless the parties agree otherwise. This is akin to the regulated terms approach for distributed generation in Part 6 of the Code, and is also the approach that was taken with respect to the indemnity that was in Part 12A. It is also the way the DDA comes into effect in some circumstances (see for example draft Code 12A.9 (5)).

31 We envisage this could work by having distributors and traders nominate their approach to the DDA. If either party states that the DDA is their preferred option then that is what applies. Wherever the DDA is used, no execution is required.

32 In terms of the other options considered in the paper:

- in our view the status quo is both much less costly for participants than the paper states and less costly than the proposal. The status quo should be the preferred option;
- it is unclear exactly how binding the constraints on setting of operational terms are, so it is not possible to say if it is superior to an approach where the Code specified both core and operational terms; and
- we do not believe it is likely that distributors would negotiate agreements that are materially different to the DDA, and if they did they could advantage one trader over another. It is thus not possible to say if the proposal is superior to an option whereby the terms (core and / or operational) of the distribution service were specified in the Code.

Cost benefit analysis

33 The paper estimates (gross) benefits from the proposal ranging from a lower bound of $217,500 to an upper bound of $3,261,000. The key source of benefit is reduced transaction costs in negotiating agreements which range from $5,000 to $50,000 per agreement.

34 We struggle to see how these conclusions are arrived at, as no source is given for the estimates of possible cost reductions. Our own costs based on recent agreements is that these are already near zero, so material cost reduction for us is not possible. Trader's costs may be higher than ours, but given the near complete lack of comments and request for changes we have received we cannot imagine they are much higher. The $5,000 lower bound in the paper would therefore be an upper bound, in our experience.

35 The paper acknowledges there are costs in implementing the proposal. We believe the costs are understated. In particular:

- $5,000 per distributor to develop operational terms strikes us as very low. Depending on whether we have to create documents and / or change processes this could cost Orion many times this amount.
- consulting with traders on operational terms appears to be costless for traders. We doubt that it is. We also doubt whether consultation with traders will cost us only $10,000.

- no specific allowance is made for the cost of appeals of the operational terms. These could be significant.

36 However, even accepting the implementation costs in the paper, the quantified net benefits will be negative for plausible values of transaction cost reduction.

37 In addition to the quantified benefits the paper discusses possible dynamic efficiency benefits. However, there is no clear statement of where these will be derived from. There is the suggestion that competition on smaller networks might increase due to the lower cost of negotiating agreements, but if, as we suspect, these costs are already very low, we wonder how much further they can go.

38 In this regard we note the example of The Lines Company. TLC contracts with and directly bills customers. It would seem that traders do not face any contract negotiation related costs, and nor do they have to deal with most of the operational matters that most traders do on interposed networks, including all the price related matters. Yet, according to the Authority's data, TLC has the second highest Herfindahl-Hirschman Index of any network reporting region, and the highest market share by a single trader. This is not a criticism of TLC or its approach. We only use TLC as an example to show there are clearly other important considerations for traders when considering entering new network areas. It would be useful if the Authority established what these considerations are.

Innovation

39 One key area of dynamic efficiency is innovation. The paper concludes that a DDA is unlikely to dampen innovation. We disagree. Innovation includes innovation in distributor business models. The DDA, which is an evergreen agreement with no exit on notice provision for the distributor, looks to significantly constrain a distributor changing its business model, either by moving to conveyance (for example as TLC has done) or otherwise moving the boundary of the trader's and distributor's services.

Suitability of core terms

40 The DDA has been drafted with everything before the schedules, and some parts of the schedules, being core terms, with the rest being operational terms. Variation of the core terms is not to be allowed, whereas some variation is possible in the operational terms.

41 We think there needs to be more discussion of what constitutes core terms, and what those core terms should be.

42 A number of distributors, and in particular Vector, have been negotiating and agreeing MUoSA based agreements over the last three years. These commercial negotiations have presumably been carried out voluntarily, and in good faith (we are not aware of any alleged breaches of the good faith Code obligation). The negotiations have led to agreements that are in some areas materially different to the MUoSA. This difference should be seen as useful information rather than a problem with the approach of the negotiating parties. We note that one entire section of the Vector agreement has been included in the core terms of the proposed DDA. We suggest that, if the proposed changes are pursued, all the DDA core terms should start with what parties have recently commercially agreed to, and, if the negotiations varied the MUoSA terms only revert to the MUoSA with good reason.

43 We provide further comments on the DDA drafting in Appendix 3

Interaction with Part 4 of the Commerce Act

44 The paper at para 3.6.34 notes that the Authority is constrained as to what it can regulate as opposed to what the Commerce Commission can regulate. Specific reference is made to section 32 (2) (b) of the Electricity Industry Act 2010 in the context of information disclosure and in the DDA drafting note in relation to the removal of a section on service performance reporting that was in the MUoSA.

45 We agree the Act constrains the Authority. However:

- in the context of information disclosure the paper does not indicate that the Authority has reviewed the existing disclosures before suggesting "complete transparency" of contract disclosures would be useful. We also do not believe that the Act prohibits the Authority from asking a distributor for information if, for example, a trader alleged that it was disadvantaged by the distributor's agreements with other traders. Nor does the Act stop the Authority suggesting changes to the Commission's disclosure requirements.

- in the context of service performance reporting, the DDA nevertheless has significant obligations around distributors defining service levels (for example in Schedule 1). There appears to be some inconsistency in how the paper has drawn the boundary between what can and cannot be regulated by the Authority versus the Commission.

- in the wider context the DDA effectively regulates areas such as timing of cash flows (see comment below in Appendix 3 about clause 9 of the DDA and billing in advance versus billing in arrears), service guarantee payments, risk allocation and liability, all of which potentially affect distributors much more tangibly than do information disclosure requirements.

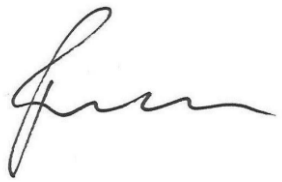
46 We submit that the paper needed to devote considerably more space to discussing the relationship between the two regulatory regimes, particularly since the Authority has previously indicated that it would "review each term in the default agreement and form a view on whether the term deals with matters that the Commission is authorised or required to regulate under the Commerce Act." [4] In our view the paper has not done this.

[4] "More standardisation of UoSAs - consultation paper. Response to legal/process issues raised in submissions", November 2014, para 3.6, p5.

Concluding remarks

47 Thank you for the opportunity to make this submission. Orion does not consider that any part of this submission is confidential. If you have any questions please contact Bruce Rogers (Pricing Manager), DDI 03 363 9870, email bruce.rogers@oriongroup.co.nz.

Yours sincerely



Rob Jamieson
Chief Executive

Appendix 1: Response to specific questions

Question No.	Question	Response
Q1.	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.	As we note in the body of our submission the Authority's assessment does not reflect our experience. Contracts between traders and distributors are regularly entered into (in our experience at very low cost), new traders regularly enter the market, and retail competition continues to increase.
Q2.	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?	See the comments in the body of our submission and in Appendix 2.
Q3.	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?	See the comments in the body of our submission and in Appendix 3.
Q4.	What are your views on the regulatory statement set out in section 4?	We believe the costs of the proposal are understated and the benefits are overstated. Given our experience we cannot see how net benefits can be generated. In our view innovation by distributors will be less likely. All in all we cannot see how the proposal is in the long term interests of consumers.
Q5.	What are your views on the detailed drafting of the Code amendment provided in Appendix B and Appendix C?	See our comments in the appendices below.

Appendix 2: Comments on Code drafting

Clause	Comment	Suggested alternative text
12A.4 (1) (b)	It is not clear why the DDA cannot include any other terms. In particular, it is unclear why it cannot reference a schedule of associated services.	Delete the clause.
12A.5	Operational terms include schedules of items such as prices, service standards and service guarantee payments. It is reasonable for the Code and / or the DDA to constrain the frequency of and notice period for changes to these sorts of terms, but it is not reasonable to subject all of them to appeal to the Rulings Panel.	The Code needs to be clear which operational terms are subject to appeal and which are not. We suggest that as a starting point service standards, service guarantee payments and prices be clearly identified as terms that cannot be appealed to the Rulings Panel. However, similar consideration needs to be given to all operational terms. We note that it is not uncommon for recourse to dispute resolution to be limited.
12A.8	It would be more efficient if parties using the DDA did not have to "enter into" an agreement, but rather that the parties be required to notify the other parties that the DDA applies. See comment below on 12A.9. It might be easier to deem that a trader that is not subject to some other agreement is subject to the DDA.	
12A.9 (4)	It would be more efficient if either the trader or the distributor could give immediate notice that the DDA applies. There is no need for the delay or cost of negotiation if either party is not interested in negotiation. We suspect that at least some traders and some distributors will quickly form the view that a "DDA only" approach is most practical.	
12A.11	12A.11 (4) as written seems to lock in the operational terms of any agreement that is in effect when the distributor introduces new terms.	Delete 12A.11 (4)

Appendix 3: Comments on DDA drafting

Clause	Comment	Suggested alternative text
Title	We are pleased to see the expression "use of system" removed. We suggest a further change to "Default **delivery** services **terms**." We believe this is consistent with the fact that the DDA is not an 'agreement' as normally understood (it is more like a 'posted terms' approach), and that the document covers the entire *delivery* service, including transmission, and not just distribution. This page should also identify the distributor whose terms it is.	Change the title page
Agreement and **Commencement date** page and **Signatures** page	We do not believe that a formal execution of a DDA is necessary or appropriate. We note that the DDA can become the agreement via deeming under, for example, 12A.9 and 12A.12 and so execution would not apply in such cases. The entered Commencement date on the Agreement page is not consistent with the deemed date under clauses 1.1 and elsewhere.	Delete the pages. Further consideration needs to be given as to how the contract is formed and how the terms and the Code interact. It may be best if the DDA makes specific reference to the Code.
2. Summary of general obligations	The standard of good electricity industry practice (GEIP) should be established up front as a key guiding principle. Reconnection is one of the core services alongside creating, disconnecting and decommissioning ICPs.	Reinstate the GEIP standard. Clause 2.2(g) should include, ", reconnect" after "disconnect" and clause 2.3(g) should include ", reconnected" after "disconnected".
3. Conveyance only	We acknowledge that a fixed term contract with a trader may limit the ability of a customer to enter into a direct customer agreement with a distributor. However having the specific limitation in the DDA (3.1) is unnecessary in our view. This is partly because the fixed term contract may readily accommodate such a change (for example larger customers usually contract on a "pass through" basis for delivery charges, and partly because the most	Reword 3.1. Delete everything after "request" and add: "Any conflict between the terms of the Direct Customer Agreement and the Electricity Supply Agreement will be resolved pursuant to clause 3.6(b)."

	likely way to discover whether such a fixed term agreement exists and is relevant is for the distributor and the customer to seek to contract on this basis, and for the trader to then challenge this. Clause 3.6 (b) then seems adequate to deal with the issue. Notification by the distributor and compliance by the trader should be clarified.	Delete 3.2 (b) (ii) and instead make 3.2 (b) (i) a requirement on the distributor. Replace 3.3 with: "The Trader must not supply electricity on an energy only basis to an ICP unless there is a valid Direct Customer Agreement in force in relation to an ICP as indicated by the Registry field that indicates that the Distributor is directly billing the Customer."
4. Service interruptions	The obligation in 4.7 to acknowledge receipt of customer requests is onerous and unnecessary, and could be costly if there are numerous requests. Distributors are obliged to restore within certain timeframes, and will be providing updates on unplanned outages as set out in the operational terms. The development of a system emergency event policy may be costly and time consuming. It may also restrict our ability to respond in innovative ways to what is potentially a very wide range of circumstances. System emergency events include grid emergencies when we may be operating under the control and instruction of the system operator. If this policy is needed, then perhaps it should be a Code requirement. We note that distributors are already required by the Code to produce, regularly update and publish a rolling outage plan for managing energy shortages. Shouldn't this suffice? Otherwise we are unsure what unmet need this policy is addressing. 4.11 implies that there will be service guarantee payments. Not all distributors make such payments.	Delete the requirement to acknowledge. Delete the requirement to have such a policy. Delete this clause and if necessary relocate the inherent limitation of liability to the liability section. Clause 4.10 then references Schedule 1 where service guarantee payments, if any, are set out.

	The referenced operational terms include the word "must" in italicised sections (eg S1.6). Our understanding of the DDA template is that italicised terms are optional. Regarding S1.6: (a) Orion does not define price categories and price options in this way, (b) (i) the "targets" are actually set by regulation, and in any case frequency keeping is the responsibility of the system operator. It is inefficient to repeat (and maintain) this information in the DDA.	Delete S1.6 (b) (i).
5. Load management	Orion does not control load in the way conceived of in clause 5.1.[5] Rather, we provide price signals that encourage and reward demand side response, and we send ripple, text and email signals which enable and facilitate such response. In conducting load management we specify and seek to operate within published (on our web page) service levels for some types of demand response. We also publish a guide to our ripple signalling for parties that wish to use our signals as inputs to their demand response. Examples of response include customers *choosing to*: • have their hot water peak load controlled • have their hot water heated only at night (not necessarily via a response to our ripple signals) • time various consumption activities • run generators. Based on measured aggregate response, our approach is very successful. However, for the vast majority of connections we do not have specific price categories or price options for such response, we do not know whether the retailers' price	Either revise the clause fundamentally, perhaps along the lines of the Vector agreement, or add something along the lines of: "For the avoidance of doubt, nothing in this clause prohibits the distributor continuing to send ripple or other load management signals even though the distributor does not provide specific Price Categories or Price Options."

[5] We do for a few hundred irrigation connections, but we estimate that customer demand response of one form or another occurs at around 150,000 connections.

	categories reflect our (higher level) price signals (but we believe most do) and we do not know whether any equipment *at particular connections* either exists or responds to those signals. Again, we see the response *in aggregate*, so we know our approach works, *in aggregate*. As clause 5.1 is currently drafted it is not clear whether our approach is consistent with the DDA. We need the clause to be clarified, as it potentially places at risk our ability to continue managing load as we currently do. If we cannot there could be a dramatic reduction in security of supply in the short term, and a significant increase in network investment in the longer term. If nothing else this clearly cuts across regulation under Part 4 of the Commerce Act. We are happy to discuss this with the Authority. We also note that Appendix D.15 of the paper indicates that the Authority considers that Vector's clause 6.1(a) is "an improvement on the MUoSA drafting", but this is not in fact reflected in the draft DDA clause 5.1. This clause also relates to the choice of price options, both in regard to clause 8.3 (see below), and the wider question of who creates *customer* price options (we think it is the trader) and how these relate to distribution pricing. How does the distributor know which trader price option the customer has chosen?	
6. Losses and loss factors	This is not part of the distribution service and so it contradicts the philosophy that the DDA only applies to the distribution service. The obligation to calculate loss factors, publicise loss factors and associated categories and codes and to assign loss category codes to ICPs, is in the Code already. As such, any obligation to use the Loss Factor Guidelines should only be done via the Code, and only after consultation. It is not currently a Code obligation. Investigation of adverse trends in non-technical losses by the distributor should only be provided on a voluntary basis, and be able to be charged for, possibly as an	Delete clause 6 in its entirety. Permit the DDA to encompass optional additional services such as loss investigations. If new obligations are to be placed on distributors or traders as in the current draft DDA these should be done via the Code and only after further consultation.

	associated service. This is because a distributor may have to employ resource and develop systems to carry out this task and may be a less efficient provider of this service than, for example, the reconciliation manager. The draft DDA also includes an obligation on traders to "minimise" non-technical losses. Again if this is a sensible obligation it should be in the Code (and most sensibly in the Parts that deal with preparation of submission information if the Code is not already adequate in this area) rather than the DDA. In any case "minimise" is the wrong word as non-technical "losses" are not restricted to sign – they can be gains, and minimising losses would mean maximising gains by overstating actual consumption.	
7. Distribution services prices and process for changing prices	Clause 7.2 is unduly restrictive. For example a distributor may delay a price change for a month due to a need to consult further. As drafted the distributor could not get back to a normal 1 April cycle unless it waited 23 months for its next price change. Should clause 7.6 reference clauses 7.4 and 7.5, rather than 7.3 and 7.4? Clause 7.4 appears to repeat what is in the draft Code 12A.19 (currently 12A.7). The drafting note for clause 7 says it now includes 12A.7. This appears to be an error.	Redraft to allow only one change in any year ending 31 March. We are not sure whether this obligation is best placed in an agreement or the Code. The wording of the proposed Code is arguably superior to the wording of DDA clause 7, in particular because the Code does not use the confusing term "pricing methodology" but instead uses "pricing structure".
8. Allocating price categories and price options to ICPs	8.1 (c) (ii): the new "must" should be a "may". 8.1(c) sets out the business rules that might apply "if known and relevant", so "must" is inappropriate. In fact (c) (i) to (v) are examples of attributes, so would be better listed under (b) as an 'including but not limited to'. 8.3 inappropriately mandates the use of a voluntary EIEP. More generally. 8.3 portrays a rather out-dated view. With the advent and rapid expansion of smart meters, associated interval data and the rise of new technologies,	Redraft. Reword.

	it seems less and less likely that the material attributes of a connection conveyed by 'register content' and 'period of availability' will be relevant. We do not believe this clause is sufficiently future proof to a world where interval data becomes the normal basis for distributor billing, and third party load management systems become more common. 8.10 needs to be clear that the obligation to pay charges that were incurred before the relevant dates remain. For example if charges for any ICP already billed include any estimates or amounts that are subsequently revised in relation to the prior period, these can still be washed up with the trader even though it is not responsible for ongoing charges. (Of course the revisions may result in credits to the Trader.) 8.10 (c) appears to require the distributor to carry out vacant site disconnections. This is not a service that all distributors provide[6], and in any case the clause is not needed.	Clarify the wording of 8.10. Delete 8.10 (c). If 8.10 (a) says "for and from the date…" rather than "for the day…" then 8.10 (c) is not needed in any case.
9. Billing information and payment	Clause 9 appears to be quite prescriptive around timing and process. Much of the section would in our view be better placed in the operational terms to allow flexibility to accommodate some existing variety of practice. The process of billing and associated systems can be quite expensive, time consuming and risky to change. Such changes should not in our view be driven by the DDA. Orion invoices partly in advance. As written, clause 9.3 of the DDA does not allow this since it specifies that invoicing for and payment in relation to a month's delivery service occurs the following month. Orion also has charges that require a full season (May to August) of data to calculate. These cannot, at least not without adding considerable complexity, be washed up	Reconsider core / operational terms balance.

[6] Orion does not except in very unusual circumstances where retailers' agents are not able to access the relevant equipment.

	according to a cycle that is triggered by just one of those months becoming available, or changing. 9.3 (d) requires that wash-ups attract use of money adjustments. For Orion this would involve a potentially costly system change to deal with what is essentially a zero sum set of unders and overs and associated interest payments.	It would be more appropriate for the DDA core terms to *permit* use of money adjustments rather than *require* them.
10. Prudential requirements	We note for the record that it remains unclear to us why the prudential requirements applicable to traders with respect to the distribution service should be less onerous than those applying to the same traders in the wholesale market, and why the credit position distributors are in is materially different to (lower risk than) that of generators in the wholesale market. The key context remains that distributors cannot refuse to supply traders, and nor can distributors practically apply different prices to traders due to poor relative credit quality. Both options are available to suppliers in workably competitive markets. Having consistent and effective credit terms allows distributors to view all traders neutrally from a risk perspective, and that is good for competition. This would also be a clear move towards standardisation of terms for traders. More specifically, the DDA drafting note for clause 10 says that the draft DDA now incorporates what is currently in clauses 12A.4 and 12A.5 of the Code, and that the references to the Code have been deleted. Yet the draft Code 12A.16 and 12A.17 in the paper pretty much repeats everything in clause 10 of the draft DDA. We presume this is an error.	Align the clause with the wholesale market prudential requirements. Delete 12A.16. 12A.17 and, by extension, 12A.15 and 12A.18.
13. Network connection standards	Distributors will need to review their existing forms of this document (Orion's is called the Network Code) to determine if they meet the requirements in the DDA definition. If they do not, the existing documents will need to be revised. Due in particular to the safety aspects of	Consider adding a cross referencing schedule.

	these documents, revision can be a time-consuming process. (In Orion's case the Network Code is a 'controlled' document, with a defined process for change and sign-off.) To facilitate implementation, there could be a schedule in the DDA that cross references distributor documents without requiring name changes. In Orion's case, the Network Code is where we state our commitment to maintain customer service lines.	
15. Customer service lines	Where the distributor agrees to maintain service lines, should this be recorded somewhere in the DDA? The customer may still have obligations even when the distributor agrees to maintain service lines. Eg the maintenance might only relate to fair wear and tear.	
17. Connections, disconnections and decommissioning	17.2 mandates the use of a voluntary EIEP, which is inappropriate and contradictory. 17.4 appears to introduce new obligations in relation to medically dependent and vulnerable customers. We see no need to introduce obligations in the DDA when the matter is covered off by other regulation. That other regulation (the relevant guidelines) are specifically targeted at trader actions with respect to credit related disconnections. In an interposed situation the distributor is not a party to these actions. 17.5: There is no need to repeat requirements set out in the Code. 17.6: This clause looks like it is better dealt with via the Code if indeed any regulation is required.	Change to require compliance with the relevant EIEP and other formats set out in schedule 3. Delete 17.4. Delete 17.5. Delete 17.6
22. Amendments to agreement	"this Agreement" in 22.1 is the DDA. Core terms cannot be changed as they are fixed (at any point in time) by the Code reference to the template. It is unclear how changes to the template get applied to existing traders. Operational terms can presumably be changed via a consultative process, subject to appeal to the Rulings Panel. However it is unclear how new operational terms	Further thought needs to be given to how an agreement which is likely to be deemed as being in place can be deemed to be changed?

	can be applied to existing traders, see comment on 12A.11(4) in appendix 2 above. Operational terms includes items like prices, service standards and service guarantee payments which can change from time to time. It needs to be clear that such items are not subject to Rulings Panel consideration or dispute resolution processes. 22.1(e) and 22.2 do not appear to be necessary. What concerns do they address? So long as supply is maintained to connections, we cannot see that it matters if the relevant GXP changes (and the relevant GXP can change in real time in any case). Moreover, any obligation to consult on changes to the grid should be on the grid owner rather than the distributor.	Clarify the rationale for these clauses.
24. Liability	In our view the limitation of liability clause (24.7) has the same significant problems that the MUoSA had: • the limitation is expressed per ICP rather than per *affected* ICP, so the amount an affected consumer might get depends on how many ICPs are with the trader. This seems like an odd and rather random outcome. • the cap gets bigger and bigger for the same event as the number of traders on the network increases. Again this seems like an odd outcome. It also means a distributor's financial risk position worsens as the number of traders increases. • retailer limitations of liability in their terms and conditions of supply are typically based on the customer being affected (and are typically around $10k per customer per event). • indemnification of the trader for breaches by the distributor is uncapped, leaving unlimited liability for the majority of the distributor's exposure, because clause 27.2 (a) (i) is not subject to the limitation.	The liability clause needs major rework.

	A number of distributors including Orion and Vector have liability clauses that deal with the appropriate allocation of an aggregate cap based on market share. We are happy to discuss this with the Authority.	
25. Indemnity	This clause seems to repeat much of what is in the Consumer Guarantees Act. Is it necessary?	
31. Electricity information exchange protocols	31.1 requires the use of voluntary EIEPs and with respect to mandatory EIEPs unnecessarily repeats a requirement that is in the Code. 31.2 seems to imply that customer information would only be required on an "on request" basis. Many distributors get regular updates at various intervals. The clause should also reference the relevant format to be used as set out in schedule 3. More generally, 31.2 raises an issue with the restriction of the DDA to just the distribution service. The clause restricts the uses of the customer data to the distributor's obligations under the agreement. So if the information is used for other purposes (for example communication of discount information to customers) that would need to be covered off separately. This appears to be inefficient.	Delete the clause. Redraft Reconsider the limitation to the distribution service.
Schedules	The layout of the template schedules is confusing in that they include drafting notes and guidance in numbered clauses, eg S5.13. Having clearly separate notes and guidance (as in the MUoSA and in some part of the DDA template) is a better approach in our view. The obligations in Schedule 7 are largely accomplished by referencing documents which are maintained and published separately. Other schedules should in our view be done in the same way, eg schedules S1.6 and S1.7; Schedule 1, Table 1; Schedule 4; Schedule 6. As it stands information that changes regularly (such as service standards) implies a change to the DDA. This is unnecessary and inefficient. Schedule 3.1 unnecessarily repeats a Code obligation.	

	Schedule 7.1(a): EIEP12 is especially designed for transfer of pricing information, and is mandated in the Code. It does not need to be covered off here. EIEP12 does not include the provision of information in PDF format. Schedule 7.1(b): A "change-highlighted" version of a price schedule can be virtually unreadable. One of the information disclosure requirements is that distributors publish information on the prices that currently apply, and the prices that applied immediately prior.[7] This would seem to fit the bill better.	

[7] Electricity Distribution Information Disclosure Determination 2012 – (consolidated in 2015), 24 March 2105, clause 2.4.18, p. 48.