



19 April 2016

Submissions
Electricity Authority
PO Box 10041
Wellington 6143

By email: submissions@ea.govt.nz

Default agreement for distribution services

We welcome the opportunity to submit on the consultation paper *Default agreement for distribution services (DDA)*, published 16 January 2016.

In this submission we discuss the following two points.

- Any decision to introduce new regulation should be accompanied by robust cost benefit analysis.
- The Telecommunications Act provides New Zealand precedent for network access regulation that may have some relevance.

Evidence that proposals address access problems and promote competition

We consider it important to ensure any changes to regulation of network services are well justified and supported by quantified cost benefit analysis.

We have some reservations about the analysis, in the consultation paper, which appears to hinge on assumptions that the new DDA regime will reduce transaction costs, and result in greater retail competition. These may be reasonable assumptions but there has been no attempt to assess the extent to which competition is expected to improve, or the level of benefits from greater competition. We encourage the Authority to conduct this analysis for this and other proposals aimed at promoting competition.

We also have concerns about the transition provisions the Authority is proposing which we consider could limit the opportunity for EDBs and retailers to negotiate alternative access arrangements as they would have in workably competitive markets. For example:

- EDBs and retailers would be required to agree new distribution agreements within 20 working days or the DDA would apply, even if the parties are mutually happy with the current access arrangements
- EDBs and new entrant retailers would only have 2 months to agree an alternative distribution agreement or the DDA would apply
- either the EDB or the retailer could require that the DDA apply, and neither party would be required to negotiate alternatives in good faith.

The process could stifle innovation and dynamic efficiency, harm relationships, and may be unrealistic given the amount of other policy change across the industry. Electricity retailers could be forced to accept a DDA, even if they prefer their current access arrangements, with no right to be able to enter into good faith negotiations for alternative arrangements. While we would expect most EDBs would be willing to negotiate alternatives in good faith, the Authority's proposed timeframes would curb their ability to do so.

This approach differs from the Benchmark Agreement regime for transmission (identified as the precedent) which is intended to “provide the basis for the negotiation of transmission agreements” and “act as a default transmission agreement” only “if Transpower and a designated transmission customer fail to execute a transmission agreement”¹. It also differs as Transpower cannot unilaterally require designated transmission customers to accept the Benchmark Agreement unaltered and it is the customer who decides whether to accept it. If the customer wants variations and cannot reach agreement with Transpower then the Rulings Panel can intervene.

Telecommunications Act precedent

It may be useful for the Authority to consider the precedent set by the network access regime under the Telecommunications Act 2001, particularly in relation to standard terms and undertakings.

Notably, there are no mandated time-frames for negotiations but access providers “must provide the service to the access seeker in a timely manner” and the parties are required to negotiate in good faith, including if the access seeker would like to negotiate alternatives to the standard terms. Other considerations under the Telecommunications Act include:

- the application of "standard access principles"
- the Commerce Commission is able to determine standard terms (and "residual terms") and regulated suppliers can propose access "undertakings"²
- the Commerce Commission can "give written notice to 1 or more access providers of the designated access service or specified service requiring them to submit to the Commission, by the date specified in the notice, a standard terms proposal".

We conclude that regulation network access should not inadvertently regulate access seekers (retailers) or impede or preclude parties from negotiating alternative access terms. Finally, we consider that the regulated regime should also accommodate an evolution mechanism to take account of changing conditions.

We appreciate the opportunity to comment on the Authority’s DDA regime proposals. Please do not hesitate to contact me if you would like to discuss further.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'JC' followed by a long horizontal stroke.

Jeremy Cain
Regulatory Affairs & Pricing Manager

¹ Refer Code 12.4(e)

² The "undertakings" provisions in the Telecommunications Act provide that "the Commission may accept an offer from an access provider to supply a service to all access seekers on the terms and conditions of a written undertaking (an **undertaking**)".