

Undertaking to the New Zealand Commerce Commission

Given under section 74A of the Commerce Act 1986 (**Act**) by Electricity Ashburton Limited (**EA Limited**).

1. Person(s) giving the Undertaking

- 1.1. This Undertaking is given to the New Zealand Commerce Commission (**Commission**) by EA Limited for the purposes of section 74A of the Act.

2. Background

- 2.1. Section 54G of the Act provides that all electricity lines services supplied by electricity distributors are subject to default/customised price-quality regulation, unless they are exempt.
- 2.2. EA Limited supplies electricity lines services to consumers in the Ashburton area. EA Limited is partially owned by consumers connected to its network and has a policy of paying, on an annual basis, a consumer discount to consumers connected to its network.
- 2.3. Consumers connected to EA Limited's network are divided into groups called tariff codes (**Tariff Codes**). The amount that consumers connected to EA Limited's network pay for electricity lines services depends on which Tariff Code they are in.
- 2.4. EA Limited is not exempt from price-quality regulation and is subject to a default price-quality path (**Price Path**) that limits the amount of notional revenue that it is allowed to earn in each annual assessment period to its allowable notional revenue.
- 2.5. For the annual assessment period ending 31 March 2020 (**2020 Assessment Period**), EA Limited's Price Path was imposed by the Electricity Distribution Services Default Price-Quality Path Determination 2015 [2014] NZCC 33 (**DPP Determination 2015**).
- 2.6. For the 2020 Assessment Period, EA Limited's allowable notional revenue was \$36,800,111 and its notional revenue was \$36,853,016. EA Limited's notional revenue exceeded its allowable notional revenue by \$52,905 and it therefore charged \$52,905 more than it was entitled to charge under the DPP Determination 2015 (this amount being referred to in this Undertaking as the **Overcharge**).
- 2.7. Because EA Limited's notional revenue exceeded its allowable notional revenue, the Commission considers, and EA Limited agrees, that EA Limited has contravened the Price Path imposed by the DPP Determination 2015 (**Contravention**).

- 2.8. EA Limited stated that the Contravention occurred because of the following errors in its calculations:
- 2.8.1. quantities used to set prices had changed by the time regulatory accounts were prepared as a result of ongoing wash-ups to quantity data from the Code reconciliation process, resulting in an overstatement of its notional revenue and allowable notional revenue;
 - 2.8.2. the impact of new connections and a recently introduced tariff for irrigation connections was incorrectly excluded, resulting in an understatement of its notional revenue and allowable notional revenue;
 - 2.8.3. it incorrectly calculated the revenue differential, resulting in an overstatement of its allowable notional revenue;
 - 2.8.4. the data set used to calculate CPI for price setting contained a level of rounding that differed from subsequently published CPI used to prepare the regulatory accounts, resulting in an understatement of its allowable notional revenue; and
 - 2.8.5. it incorrectly used the pricing schedule for the annual assessment period ending 31 March 2018 when populating the price setting model, instead of the updated pricing schedule for the 2020 Assessment Period, resulting in an understatement of its notional revenue.
- 2.9. In response to the Contravention, EA Limited has:
- 2.9.1. commissioned Deloitte to review and report on EA Limited's process for the setting of prices in light of the DPP Determination 2015 for the 2020 Assessment Period (**Deloitte Review**); and
 - 2.9.2. offered this Undertaking to the Commission.
- 2.10. The Commission and EA Limited have agreed that the most expedient mechanism for disgorging the Overcharge and providing compensation to consumers affected by the Contravention is for EA Limited to provide consumers of EA Limited with a refund (as required by clause 5.1 of this Undertaking).

3. Commencement of this Undertaking

- 3.1. This Undertaking comes into effect when:
- 3.1.1. this Undertaking is executed by EA Limited; and
 - 3.1.2. this Undertaking so executed is accepted by the Commission
- (the **Commencement Date**).

4. Acknowledgement of contravention of Price Path

- 4.1. EA Limited acknowledges that it contravened the Price Path imposed by the DPP Determination 2015 for the 2020 Assessment Period because its notional revenue exceeded its allowable notional revenue by the Overcharge.

5. Undertaking

- 5.1. EA Limited undertakes, for the purposes of section 74A of the Act, to the extent it has not done so already, that:

5.1.1. It will disgorge not less than \$57,475 (which EA Limited and the Commission agree is the Overcharge adjusted for the time value of money, given the elapsed period between the time at which the Overcharge was paid by consumers and the time at which the disgorgement occurs) by providing a refund to consumers for the financial year ended 31 March 2021 (**Overcharge Refund**).

5.1.2. The Overcharge Refund for each consumer will be calculated in accordance with the following formula:

$$Refund_{ICP} = \frac{Overcharge}{LCR_{2021}} \times LCR_{ICP}$$

Where:

Refund_{ICP} is the total amount that will be credited to the consumer's account in respect of each ICP associated with that consumer that was affected by the Overcharge.

Overcharge is \$57,475.

LCR₂₀₂₁ is actual line charge revenue billed to currently active consumers for the financial year ended 31 March 2021.

LCR_{ICP} is the ICP's contribution to actual line charge revenue for the financial year ended 31 March 2021.

- 5.1.3. For the avoidance of doubt, EA Limited will not treat the Overcharge Refund as a discount for the purposes of clause 3.1.1(11) of the EDB IMs.
- 5.1.4. It will provide to the Commission a report, within 20 working days of the Commencement Date, that sets out how the Overcharge Refund was calculated for each ICP and the total amount of the Overcharge Refund paid to consumers.
- 5.1.5. It will provide to each consumer a statement explaining how and why the Overcharge Refund has been credited to consumers' accounts in the form set out in Appendix 1 to this Undertaking.

- 5.1.6. It will provide to the Commission a report within 60 working days of the Commencement Date that summarises the findings and recommendations made in the Deloitte Review report and sets out the steps EA Limited has taken in response to those recommendations.
- 5.1.7. It will publish on its website the report required by clause 5.1.6 alongside the Annual Compliance Statement required by clause 11.1 of the DPP Determination 2015 for the 2020 Assessment Period.

6. Further acknowledgements

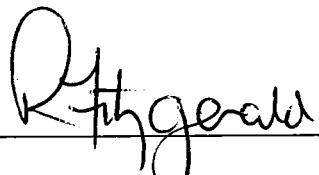
- 6.1. EA Limited further acknowledges that:
 - 6.1.1. the Commission will make this Undertaking publicly available, including by publishing it on the Commission’s register of enforceable undertakings on its website;
 - 6.1.2. the Commission may, from time to time, make public reference to this Undertaking, including in media statements and in Commission publications; and
 - 6.1.3. this Undertaking in no way derogates from the rights and remedies available to any other person arising from the alleged conduct.

Executed as an Undertaking

Executed by Electricity Ashburton Limited pursuant to section 180 of the Companies Act 1993:



Signature of director



Signature of director

Philip John McLeary

Name of director (print)

RICHARD GWYN FITZGERALD

Name of director (print)

9/11/21

Date

9/11/21

Date

Accepted by the New Zealand Commerce Commission pursuant to section 74A of the Act:

A handwritten signature in black ink, appearing to read "SJ Begg", is written over a horizontal line.

Susan Janice Begg

Deputy Chair

A handwritten date "6 Sept 2021" is written in black ink over a horizontal line.

Date

Appendix 1: Consumer refund statement