

24 September 2021

Roger Sutton  
Chief Executive Officer  
Electricity Ashburton Limited T/A EA Networks  
22 JB Cullen Drive  
Ashburton 7772

By email only: [REDACTED]

Dear Roger,

## **Electricity Ashburton Limited: Enforcement response for 2021 DPP3 and ID contraventions**

### **Purpose**

1. The purpose of this letter is to advise you of our enforcement decision for EA Networks Limited trading as EA Networks' (**EA Networks**) contraventions of the:
  - 1.1 Electricity Distribution Services Default Price-Quality Path Determination 2020 (**DPP3**) in the 2021 assessment period<sup>1</sup>; and
  - 1.2 Electricity Distribution Information Disclosure Determination 2021 (**ID Determination**) in the 2021 disclosure year<sup>2</sup>.
2. In summary, EA Networks contravened:
  - 2.1 the DPP3 price path (**first contravention**) and annual price setting compliance statement requirements (**second contravention**) in the 2021 assessment period; and
  - 2.2 the ID Determination requirements for price changes in the 2021 disclosure year (**third contravention**).
3. Having considered the information available, including EA Networks' submissions on the matter, we consider that issuing EA Networks with a warning letter in respect of the first and second contraventions and taking no further action in respect of the

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<sup>1</sup> Under clause 4.2 of the DPP3, the 2021 assessment period refers to the 12 month period commencing 1 April 2020 and ending 31 March 2021.

<sup>2</sup> Under clause 1.4.3 of the ID Determination, the 2021 disclosure year refers to the 12 month period ending 31 March 2021.

third contravention is the appropriate response. We are issuing our enforcement response on the expectation that EA Networks includes the in-year discount announced on 24 February 2021 in its wash-up amount calculation for the 2021 assessment period.

### **Background to the Commission’s enforcement decision**

4. Part 4 of the Commerce Act 1986 provides that all suppliers of electricity distribution services are subject to:
  - 4.1 default/customised price-quality regulation, unless they are exempt;<sup>3</sup> and
  - 4.2 information disclosure regulation.<sup>4</sup>

#### *Default/customised price-quality regulation*

5. EA Networks is not exempt from price-quality regulation and, at the time of the contravention, was subject to a default price-quality path determination that restricted the amount of notional revenue it is allowed to earn in each annual assessment period.
6. The default price-quality path for EA Networks was set by the DPP3 and applies to the regulatory period from 1 April 2020 to 31 March 2025.<sup>5</sup>
7. Under the DPP3, EA Networks is required to:
  - 7.1 comply with the price path;<sup>6</sup>
  - 7.2 provide the Commission with an annual price setting compliance statement before the start of each assessment period which states whether it has complied with the price path for the assessment period;<sup>7</sup> and
  - 7.3 provide the Commission with an annual compliance statement, within 5 months after the end of each assessment period, which states whether it has complied with the requirements to calculate the wash-up amount.<sup>8</sup>

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<sup>3</sup> Subpart 6, Part 4 of the Commerce Act 1986.

<sup>4</sup> Subpart 4, Part 4 of the Commerce Act 1986.

<sup>5</sup> Clause 4.2 of the DPP3.

<sup>6</sup> For the 2021 assessment period, clause 8.3 of the DPP3 provides that to comply with the price path a non-exempt EDB’s forecast revenue from prices must not exceed its forecast allowable revenue. Failure to comply with this requirement constitutes a failure to comply with the requirements for prices permitted under section 87, permitting the Court to impose a pecuniary penalty.

<sup>7</sup> Clauses 11.1(a) and 11.2(a) of the DPP3, pursuant to the power in section 53N. A refusal or failure to comply with a notice under section 53N without reasonable excuse is an offence – see section 103.

<sup>8</sup> Clauses 11.4(a) and 1.5(a) of the DPP3. A refusal or failure to comply with a notice under section 53N without reasonable excuse is an offence – see section 103.

### *Information disclosure regulation*

8. At the time of the contravention, EA Networks was subject to information disclosure regulation requiring it to publicly disclose information to allow interested persons to assess whether the purpose of Part 4 of the Commerce Act 1986 is being met.
9. The information disclosure regulation for EA Networks was set by the ID Determination.<sup>9</sup>
10. Under the ID Determination, EA Networks is required to publicly disclose certain information at least 20 working days before changing a price.<sup>10</sup>

### *Background to investigation*

11. On 19 January 2021, we informed EA Networks that its annual price setting compliance statement for the 2021 assessment period was missing a pass-through balance allowance.
12. On 11 February 2021, EA Networks amended and redisclosed its annual price setting compliance statement. The amended statement included a pass-through balance allowance, an IRIS incentive adjustment and stated that EA Networks was non-compliant with the price path for the 2021 assessment period.
13. On 18 February 2021 we issued a case opening letter to EA Networks.

### **Summary of compliance issues**

14. EA Networks contraventions in the 2021 assessment period were as follows:
  - 14.1 contravention of the price path by \$3.293 million by failing to comply with the pricing requirements under the DPP3 (i.e. the first contravention);
  - 14.2 as a consequence of the first contravention, EA Networks failed, without reasonable excuse, to meet the annual price setting compliance statement requirements in the 2021 assessment period (i.e. the second contravention). EA Networks omitted the pass-through balance allowance and IRIS incentive adjustment from its 2021 annual price setting compliance statement;<sup>11</sup> and
  - 14.3 in order to remedy the impact of the first contravention, EA Networks announced a price change (by way of an in-year discount) on 24 February 2021 in order to refund the price path contravention before the end of the 2021 assessment period. As a result, EA Networks did not provide the

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<sup>9</sup> Clause 1.4.1 of the ID Determination, clause 1.1.4 of the Electricity Distribution Services Input Methodologies Determination 2012.

<sup>10</sup> Clause 2.4.19 of the ID Determination.

<sup>11</sup> EA Networks excel spreadsheet used to calculate its forecast allowable revenue included an estimate pass-through balance allowance of \$35,000 but did not include an IRIS incentive adjustment. However, The estimate pass-through balance allowance was omitted from EA Networks forecast allowable revenue calculation in its annual price setting compliance statement.

required 20 days working notice for the price change (i.e. third contravention).

15. As a consequence of the above contraventions, EA Networks also advised its preference to include the in-year discount in its future wash-up amount calculations in order to prevent the refund from being returned to consumers twice. However, in doing so, EA Networks would contravene the wash-up amount calculation requirements in the DPP3.

### **Our enforcement decision**

16. In deciding on our enforcement response, we analysed EA Networks contraventions using our enforcement criteria:
- 16.1 extent of detriment;
  - 16.2 seriousness of conduct; and
  - 16.3 public interest.<sup>12</sup>

#### *First and second contraventions*

17. Based on our analysis, we have decided to issue a warning letter to EA Networks in respect of the first and second contraventions.
18. We consider the principal aggravating factors in this case are as follows:
- 18.1 we consider the amount of the price path contravention to be relatively high in comparison to previous price path cases;
  - 18.2 the price path contravention would have impacted all consumers connected to EA Networks' network for almost a full assessment period. This could have included disadvantaged or vulnerable consumers;
  - 18.3 we consider EA Networks' price setting conduct as careless. In our view, EA Networks did not take reasonable steps to prevent the contravention of the price path and consequential contraventions from occurring as it did not have appropriate processes or controls in place to identify errors in its price-setting, whether caused by human error or otherwise; and
  - 18.4 2021 is the second consecutive period, albeit under a different price-quality regime, that EA Networks contravened the price path. EA Networks' price path contraventions in 2020 and 2021 were both caused by human error and poor systems and controls.

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<sup>12</sup> <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>

19. These facts were balanced against the following mitigating factors:
- 19.1 EA Networks has admitted the contraventions;
  - 19.2 the second contravention was a consequence of the conduct leading to the first contravention (see paragraphs 14.1 and 14.2);
  - 19.3 EA Networks has proactively engaged and cooperated with our requests throughout the investigation;
  - 19.4 EA Networks self-reported omitting the IRIS incentive adjustment from its FAR calculation;
  - 19.5 EA Networks issued a public apology for failing to comply with the price path, as referred to in paragraphs 14.1 and 14.2;
  - 19.6 EA Networks acted quickly to remedy the harm caused by the first contravention. In June 2021 EA Networks advised us that it estimated 99.7% of the in-year discount had been returned to consumers. It is attempting to return the remaining 0.03% in its July 2021 billing cycle;
  - 19.7 the third contravention resulted from EA Networks quickly remedying the harm caused by the first contravention; and
  - 19.8 EA Networks has undertaken various actions to mitigate future price path contraventions, including the following:
    - 19.8.1 prior to the contraventions occurring, and in response to previous contravention, EA Networks had engaged an independent third party to review its price setting and were in the process of reviewing their internal controls and processes; and
    - 19.8.2 since the breaches occurred, EA Networks engaged its auditor to provide assurance on its amended 2021 and 2022 annual price setting compliance statements and established a new 'Regulatory and Assurance Manager' role.
20. We note that if EA Networks contravenes the price-path again in the future (other than described in paragraph 23), this warning will be a relevant factor that may lead us towards a stronger enforcement response. Particularly relevant would be to the extent to which the causes leading to a future contravention were the same or similar to those leading to this price path contravention.

*Third contravention*

21. Based on our assessment, we have decided to take no further action against EA Networks in respect of the third contravention.

22. Our main reasons for taking no further action are outlined below:
- 22.1 we consider that EA Networks acted in consumer's best interests by announcing an in-year discount as quickly as possible, even though that meant not providing the required 20 working days' notice of its price change; and
- 22.2 we consider it unlikely that this contravention caused harm to any person.

*Compliance with the wash-up amount calculation*

23. EA Networks has signalled it would include the in-year discount announced on 24 February 2021 in its future wash-up amount calculations under the DPP3. On the basis EA Networks does this, we would take no further action.
24. Our main reasons for taking no further action are outlined below:
- 24.1 as outlined above at paragraph 22.1, we think EA Networks acted in consumer's best interests by proactively announcing the in-year discount. In our view, it would be unfair for EA Networks to return the money to consumers twice if it is not able to include the in-year discount in its future wash-up amount calculation;
- 24.2 we consider that harm caused by paying the money back to consumers twice could lead to under-investment in the network which would not be in the long-term interests of New Zealanders; and
- 24.3 the issue arises as a result of the action EA Networks took to remedy the harm resulting from the first contravention.

**Further information**

25. This letter is public information and will be published on our website. We may also make public comment about our investigations and conclusions, including issuing a media release and making comment to media.
26. Thank you for your assistance with this investigation. Please contact Robert Cahn, Acting Head of Compliance and Investigations, on (04) 924 3776 or by email at [Robert.Cahn@comcom.govt.nz](mailto:Robert.Cahn@comcom.govt.nz) if you have any questions about this matter.

Yours sincerely



Elisabeth Welson  
Commissioner