

Electricity Authority/Commerce Commission
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Electricity Authority – Commerce Commission joint project – Spotlight on emerging contestable services

Mercury welcomes the collaboration between the Commerce Commission and the Electricity Authority to consider the potential competition implications from electricity distributors participation in contestable markets for distributed energy services. We support the project and the proposed approach as outlined in the terms of reference (ToR) including participation via workshops.

Mercury would like to acknowledge all the work that has been undertaken already (and is continuing) from both the Commerce Commission and Electricity Authority and its working groups to address some of the emerging competition concerns that have been raised by stakeholders. Mercury considers it would be a useful starting point, and a valuable resource for stakeholders, if the joint project could summarise the measures that have introduced to date and their potential effects.

Mercury supports the work and positions that the Electricity Retailers Association of New Zealand (ERANZ) has developed over the past three years to provide the retailer's perspective to the Commerce Commission and Electricity Authority on the issues raised in the ToR. We endorse the areas for focus as outlined in the ERANZ submission to this consultation and add some further context for consideration below.

Mercury notes that the competition issues related to monopoly distribution entities participating in contestable markets for distributed energy services is not a unique issue to New Zealand and has been canvassed extensively in other regulatory jurisdictions. Reviews by both Ofgem in the UK and the Australian Energy Market Commission (AEMC) have very clearly outlined the potential for consumer and competitive detriment and have introduced regulatory ring fencing measures to clearly restrict distribution investments in distributed energy storage. Ofgem in its December 2018 decision outlined the following¹:

“We believe that there is a risk that markets for flexibility at distribution level could be stifled if monopoly entities are able to participate as they have competitive advantages as compared to third-party storage providers.

For example, because network companies control the network infrastructure needed to trade energy and flexibility services, they have the ability to restrict the activities of market participants by denying (or otherwise impeding) their network access. If a network company is also participating in the competitive market, it may have a strong incentive to use this ability to gain an unfair advantage over its rivals. The network companies' incentives to invest efficiently in the network can also be affected, if decisions are driven by shorter-term market signals, rather than longer-term investment signals. Finally, there can also be circumstances where the network company has information not available to the wider market, which might give it an undue advantage in competitive activities.”

¹ Ofgem 20 December 2018 Enabling the competitive deployment of storage in a flexible energy system: decision on changes to the electricity distribution licence
https://www.ofgem.gov.uk/system/files/docs/2018/12/storage_unbundling_decision_letter_final_for_website.pdf

Similar concerns were also raised in the Australian electricity market in a 2015 review²:

“The AEMC has identified three sets of behaviours (in general, not just in relation to energy storage) that have the potential to weaken competition to the detriment of consumers. Some form of ring fencing should then apply:

1. The network business is able to cross-subsidise a competitive service from its regulated activities. A cross-subsidy may impede competition in the competitive market.
2. In the course of performing its regulated activities, the network business acquires commercially sensitive information that may provide it with an advantage in a competitive market. Metering data or load profile data are examples.
3. The network business is able to restrict competition in a competitive market by restricting access to infrastructure or providing access on less favourable terms than to its affiliate.”

In particular the AEMC in its final decision³ outlined its competition concerns with allowing distributors to invest in battery storage “behind the meter” (i.e. within the home) where there is significant competition for distributed energy resources. It noted there are strong parallels to the regulatory logic that has long guided the requirement for structural separation between the competitive and monopoly parts of the electricity sector:

“This same logic appears to be relevant to energy storage, particularly if storage-related activities have the potential to become a significant part of a network business's revenue, or that of a ring-fenced affiliate.

The network business may then use its network to advantage its storage assets (over other forms of distributed energy owned by rivals, or over conventional generation) when competing in the wholesale or retail market. It could use the connections process to make it difficult for rivals to install storage behind the meter, if the business or an affiliate were competing in that space.

The network business could use information it gains in the course of its regulated activities that is not available to other competitors to provide an advantage to its storage-related activities – for instance, information regarding local network issues and customer demand profiles. The network business could leverage its regulated interactions with customers to also offer non-regulated services, in a manner which results in an advantage for its non-regulated activities and does not make clear to customers that they could choose an alternative supplier for these activities.”

The AEMC went on to conclude that it is very important that:

“...the line between regulated and non-regulated services is clear, and that the ring-fencing guidelines are robust and strongly enforced. Any lack of confidence in the practical reality of separating multiple revenue streams from a single asset, and only financing the regulated services from regulated revenue, will be damaging to the market and could potentially deter investment by non-network participants.”

The work of the AEMC led to the Australian Energy Regulator (AER) subsequently releasing ring fencing guidelines as for distributors in 2018.

Mercury notes that in New Zealand our regulatory frameworks for networks are “lighter hand” than those in Australia and the UK. The regulatory view to date has been that ring fencing should be avoided to reduce the risk of stifling innovation and investment in new technologies at an early stage. The preference is to wait for evidence of potential competition issues to emerge before introducing any further regulatory response.

However, there is evidence that the current lack of clarity around regulated and non-regulated services is creating uncertainty and concerns regarding the potential mis-use of data provided to distributors for network planning purposes.

² AEMC 9 October 2015 Integration of Energy Storage Regulatory Implications Discussion Paper <https://www.aemc.gov.au/sites/default/files/content/862ac3dc-2e3d-4ff1-99df-3cddbc58f46f/Integration-of-Storage-Discussion-Paper.pdf>

³ AEMC 3 December 2015 Integration of Energy Storage Regulatory Implications Final Report Paper <https://www.aemc.gov.au/sites/default/files/content/2da0d859-782d-46fb-a6c2-20d6469861dc/AEMC-Integration-of-Energy-Storage-Final-report.pdf>



Distributors are increasingly requesting non-anonymised and non-aggregated half hourly consumption data, which as both the AEMC and Ofgem have observed, have significant value in competitive markets both for electricity retailing (an activity distributors are allowed to undertake up to certain thresholds before requiring structural separation under current regulation) and for distributed energy resources such as solar, battery storage and home energy management systems. Some distributors have made investments in affiliated businesses providing distributed energy resources commercially which would greatly benefit from access from such information.

This has created significant tension in the sector as retailers seek robust contractual assurances that consumption data is only being used for network management purposes and that there are material incentives for distributors to comply with data sharing agreements. While these issues are being progressed through industry discussions they could be resolved much more quickly by for example providing clarity that distributed energy resources particularly into the home are competitive and therefore cannot form part of the regulated lines services⁴.

Mercury would support the joint project building its analytical framework off the considerable work both Ofgem, the AEMC and AER have undertaken to date to characterise the potential for competitive harm in the markets for distributed energy resources.

There are a range of options that in Mercury's view that could be usefully considered to enhance competition that will sit on a spectrum but we would encourage the joint project not to rule anything out in its consideration as the markets for distributed energy resources are developing quickly. Mercury has consistently advocated that it is preferable to establish a clear regulatory framework for distributed energy resources early to avoid potentially costly changes to regulatory frameworks in future and confusion for consumers once significant investments have been committed.

Please direct any queries on this submission to myself on nick.wilson@mercury.co.nz or 09 580 3623.

Sincerely



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⁴ Currently, technologies provided in the competitive markets (such as batteries, solar PV and other home management systems) can form part of the lines service beyond the meter in the home under the Commerce Act 1986. The Electricity Authority has defined battery storage as generation and EV charging as retailing so distributors may be involved in these activities subject to the statutory thresholds under the Electricity Industry Act 2010 section 76.

