

Attn. Keston Ruxton
Commerce Commission
By email: regulation.branch@comcom.govt.nz

25 May 2018

Commerce Commission's open letter on gathering information relating to emerging technologies

Thank you for the opportunity to comment on the Commerce Commission's open letter of 9 May 2018 "Our intention to gather information relating to emerging technologies".

We welcome and support the Commission proactively gathering information from distributors relating to emerging technologies. We support the Commission requiring greater transparency in the distribution information disclosure regime as to how the costs of emerging technologies are being treated and where opportunities exist for the market to provide services on a competitive basis.

We also appreciate the Commission continuing to engage with industry on this issue and giving us the opportunity to input by way of this letter and by the proposed stakeholder meeting.

A continuing issue

Mercury recognises that new technologies, such as distributed generation and storage and vehicle-to-grid electric vehicle charging, have the potential to provide cost effective network support services and solutions. However, distinct from traditional "poles and wires" investments, such technologies are supplied in competitive markets and can have wider benefits for a wider range of participants than just the distribution sector. Increasingly we are seeing some distributors investing in related companies to provide such services to their regulated businesses. Mercury considers this creates incentives for distributors to favour technologies and solutions for providing the network service that benefit their related parties rather than testing the market for alternative solutions that may provide the same benefits at lower costs and greater benefits for consumers.

Mercury's primary concern relates to the provision of new technologies into the home by distributors where significant competition exists for smart home energy services from wide range of participants, including from participants outside of the electricity sector. This competition is essential to drive innovation and ensure technology risk is appropriately borne on the balance sheets of commercial businesses rather than electricity consumers. However, such competition risks being undermined where distributors can roll out new technologies that are provided in competitive markets, as regulated assets into homes. We are aware of an example where a distributor has provided "free batteries" to households, justified on the basis of enhancing network reliability. However, it is currently not possible for other providers of battery services to validate such claims as there is currently no transparent way for the market to understand the network's needs or tender to provide the network the same or similar service that reduces network demand that may be more cost effective for consumers.



We welcomed the Commission's decision in December last year to improve the related-party regime. This gives greater transparency on the arrangements between regulated and unregulated parts of their businesses.¹ This is one step forward in the process for improving disclosure. We consider the above measures could be strengthened through complimentary improved disclosure around investments in emerging technologies so that industry and customers not only have confidence that there is equal access and a level-playing field, but also that these investments are indeed the most efficient and least cost option for the long-term viability of the network infrastructure.

Scope

We support the Commission obtaining information from distributors to better understand:

- What emerging technologies they are investing in;
- What effect emerging technologies are having in the sector; and
- How emerging technology investments are being accounted for within the Part 4 regime.

However, we would also like to see the Commission requesting more granular details from distributors such as: the extent of investments in emerging technologies; whether they are included in the RAB and reasons why they have been included (for example specific details of why they have been chosen as the preferred choice to enhance the network infrastructure and why they are not included under the competitive arm of the business); how they are funded and any returns; where and how the emerging technologies have been procured; and whether the distributors have any direct engagement with consumers to understand their preferences around emerging technologies and how that has been conducted.

While we note the Commission has expressed a view that it does not consider that steps taken in both the U.K. and Australia to ring fence investments in new technologies is required currently, structural separation provisions for retailing and generation do exist under the Electricity Industry Act subject to certain thresholds². The Electricity Authority has confirmed that participants providing an electric vehicle charging service are retailers and participants who are in the business of providing electricity from battery storage that is fed into a network are generators³. We would therefore support the Commission requiring disclosure of the amount (MW) of battery storage being installed in aggregate at both the network and household level how much MWh are being used for EV charging to ensure compliance with the Electricity Authority's structural separation requirements.

Another issue that large scale network battery storage will earn revenue in the wholesale electricity market. Greater transparency through disclosure as to how that revenue is being treated would be welcomed. Mercury advocates for such revenues to be treated as regulated funds and required to be offset against the RAB to reduce consumer charges rather than being treated as unregulated revenue to the distributor.

Information gaps

We appreciate that the starting point for the Commission is to firstly look at the existing information disclosed such as the Asset Management Plans and Electricity Financial and Network Information. However, we are conscious of the wider issue here in that the disclosure regime needs to be improved with the emergence of new technologies in the industry. Documents currently disclosed are not sufficiently detailed to show what investments in new technologies have been included as part of the distributor's regulated business and reasons. Further, the asset registers and explanatory notes contained in the Electricity Financial and Network Information should enable industry participants to clearly see a breakdown of the traditional infrastructure expenditure and investments in

¹ However, we think for example, that the de-minimis threshold of less than 10% total annual expenditure made up of related-party transactions needs to be removed as regulated suppliers that are considerably greater size, a large value of transactions could be excluded from disclosure.

² See sections 72, 75, and 76 of the Electricity Industry Act 2010. There must be separate ownership if a distributor is also generating more than 250MW. Corporate separation and arms'-length rules apply if a distributor also generates more than 50MW or retails more than 75GWh per year to customers connected to their network.

³ Public letter to participants dated 30 November 2016.



emerging technologies (for example detailing at an aggregate level the installed capacity of any solar and batteries being used to provide the network service). Returns on investments in emerging technologies included in the RAB should be clear to industry and consumers.

We support the Commission retrieving information gaps about investments by issuing 'information requests'. However, we do note that section 98 of the Commerce Act is a tool to assist the Commission rather than industry. We would therefore encourage the Commission to publish the information responses it receives in this process in a meaningful way and be mindful of the wider issue by ultimately amending the disclosure regime (so that details of investments in technologies are made available as a matter of course to industry and customers).

International approaches

As the Commission is aware from previous related submissions, other jurisdictions including Australia and the UK consider batteries beyond the point of supply as competitive. The determination by the Commission that batteries and other emerging technologies may be captured under Part 4 of the Commerce Act⁴ makes improvements around transparency and disclosure fundamental to ensuring a level playing field. Investment in emerging technologies also should be part of an equal access framework – in that the most cost-effective solution is procured for the long-term benefit of consumers. We note that the Australian and UK regulators are moving to a more open approach to electricity network regulation encouraging customer and stakeholder engagement in network management decisions.⁵ We recommend the Commission take the principles from these initiatives on board, that the consumer's perspective is relevant and that distribution network solutions should promote the consumer interest. In our view, centralised control is not the best way to achieve an efficient market.

EV chargers

We appreciate the Commission providing guidance on the proposed regulatory treatment of EV chargers costs and revenue. We agree with the Commission that the main purpose of EV chargers is to charge cars, not the provision of the regulated service – conveyance of electricity by line. We therefore conclude that the costs and revenues associated with EV chargers should not be within scope of the regulated service. Unlike the Commission however, we think that this position should stop here without the exception 31.1:

where the EDBs have active control over the EV charger, such that it can be controlled to manage network load (e.g. for the purpose of deferring capital expenditure on the distribution network), and the controller is not separable from the EV charger.

Most chargers would be smart chargers and therefore capable of being controlled and incapable of the control equipment being separable. We agree with the research ERANZ has undertaken to get to this position. Essentially, the exception is superfluous as a large majority of chargers would fall within it automatically regardless of the intention of the supplier.

Further, in our view, EV chargers are installed to enable convenient drawing from the network to charge vehicles, not to export to respond to network demand. The exception assumes there is grid-to-vehicle technology capable of responding to network demands. This is not the reality currently and is being subject to testing internationally. Further, there are issues around consumer preferences/permissions (around exporting energy from their vehicles) which have not to our knowledge been explored.

It may be useful for the Commission to engage with some specialists in the field of EV charging to understand their functionalities and how they translate to creating a fit for purpose regime based on the service being offered by distributors rather than the technology itself.

⁴ <http://www.comcom.govt.nz/regulated-industries/input-methodologies-2/input-methodologies-review/emerging-technology/>

⁵ <https://www.aer.gov.au/news-release/consultation-launched-on-new-approach-to-network-regulation> and <https://www.ofgem.gov.uk/news-blog/our-blog/tougher-price-controls-energy-networks>



If the Commission did decide nevertheless to have the exception then no doubt distributors would simply include all chargers in the RAB. This outcome would have adverse impact in the competitive market as distributors would be able to invest in EV charging with guaranteed cost recovery. This is very much a real concern as we know that some distributors are making EV charging investments.⁶ Additionally, the whole issue around transparency and disclosure becomes even more pressing to address as industry and customers are oblivious to the extent of these investments and the cost recovery.

Stakeholder engagement

IPAG

We note that the IPAG has a specific workstream on open access to networks. We support the Commission collaborating with this group given the overlapping issues relating to emerging technologies.

ERANZ

We support the ERANZ submission.

Proposed meeting

We would like to be involved either via ERANZ or independently. We could add value as a retailer because:

- We have direct relationships with distributors and consumers;
- We can provide input into the development of guidance on how emerging technologies should be treated within the Part 4 regime or amendments to that regime;
- We can provide examples of specific issues we have identified with investments by distributors in emerging technologies; and
- We have the resources to understand consumer preferences for emerging technologies.

Your sincerely,



Nick Wilson
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⁶ The Entrust Energy Solutions Programme which benefits from a \$10.5 sum annually includes EV charging initiatives. See https://www.entrustnz.co.nz/media/64447/annual-report-2017-with-chairmans-report_final.pdf.

