

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

Terms of Reference

What are we doing:

1. Electricity distributors are increasingly participating in markets for contestable electricity services such as distributed energy services. We are considering the extent to which distributors' participation in these markets is benefitting consumers or hindering the development of competition in these markets in the long term.

Why are we doing this:

2. The Electricity Authority (Authority) and the Commerce Commission (Commission) want to better understand whether the current regulatory arrangements are fit-for-purpose and able to support the best possible outcomes for consumers in the long term.
3. We want to establish a shared understanding of the types of circumstances where the participation of distributors in contestable electricity services is likely to be harmful to consumers in the long term. We also want to develop a framework for how the current and potential regulatory tools could be used to address these harms and when it might be appropriate to intervene in these markets.
4. We expect this work will help make transparent our views on distributors supplying contestable electricity services.

What will we produce:

5. We expect to publish a research paper outlining our framework, assessment, and conclusions.
6. In developing this paper, we expect to:
 - 6.1 Develop a framework for identifying and assessing the costs and benefits of a distributor supplying contestable electricity services including the wider costs and benefits of regulatory tools which could be applied to mitigate competition or other concerns.
 - 6.2 Complete a qualitative assessment of the costs and benefits, and consumer impact for a range of circumstances where distributors are or could supply contestable electricity services.

- 6.2.1 This will involve applying the framework to a series of case studies to provide examples of the circumstances which could give rise to the potential benefits (eg, efficiencies from vertical integration) and the potential costs (eg, the potential ability and incentive to reduce competition).
- 6.2.2 We expect to rely on available information in completing this work. We do not expect to request further information from stakeholders.

When we are doing this:

- 7. We expect to complete this work by Q3 2019.

How are we doing this:

- 8. We expect to seek your views on:
 - 8.1 Our draft framework and the qualitative assessment of the costs and benefits, and consumer impact.
 - 8.2 Our draft conclusions on how we could alleviate potential harms to consumers arising from distributors supplying contestable electricity services.

How to provide your views:

- 9. We would like to hear your views on 'what we are doing' and 'how we are doing this' work. This includes suggestions for the best way we can engage with you (eg workshops) given other consultation processes run by both organisations.
- 10. Please provide your responses by 5pm, 12 April 2019. You should address your response to:
Kimberley Foo (Senior Analyst - Regulation, Commerce Commission)
c/o eacomcomjointproject@comcom.govt.nz
- 11. Please include 'Spotlight on emerging contestable services' in the subject line of your email. All submissions will be published on the Commission and the Authority's website. More guidance for providing submissions can be found in Attachment A.
- 12. The Commission and the Authority will acknowledge receipt of all submissions electronically. Please reply to eacomcomjointproject@comcom.govt.nz if you do not receive electronic acknowledgement of your submission within two business days.

Attachment A

Guidance for providing submissions

13. While we discourage requests for non-disclosure of submissions so that all information can be tested in an open and transparent manner, we recognise that there may be cases where parties that make submissions wish to provide information in confidence. We offer the following guidance:
 - 13.1 If it is necessary to include confidential material in a submission, the information should be clearly marked, with reasons why that information is confidential.
 - 13.2 If you indicate there is part of your submission that should not be published, we will discuss this with you before deciding whether to refrain from publishing that part of your submission.
 - 13.3 Where commercial sensitivity is asserted, submitters must explain why publication of the information would be likely to unreasonably prejudice their commercial position or that of another person who is the subject of the information.
 - 13.4 Both confidential and public versions of the submission should be provided.
 - 13.5 The responsibility for ensuring that confidential information is not included in a public version of a submission rests entirely with the party making the submission.
14. We request that you provide multiple versions of your submission if it contains confidential information or if you wish for the published electronic copies to be 'locked'. This is because we intend to publish all submissions on our website. Where relevant, please provide both an 'unlocked' electronic copy of your submission, and a clearly labelled 'public version'.
15. However, please note that all submissions we receive, including any parts we do not publish, can be requested under the Official Information Act 1982. This means we would be required to release material we did not publish unless good reason existed to withhold it according to the Official Information Act. We would normally consult with you before releasing any material you said should not be published.
16. Additionally, the Commission can receive requests to make orders under s100 of the Commerce Act (Act) in respect of information that should not be made public. Any request for a section 100 order must be made when the relevant information is supplied to us, and must identify the reasons why the relevant information should not be made public. We will provide further information on section 100 orders if requested by parties. A key benefit of such orders is to enable confidential information to be shared with specified parties on a restricted basis for the purpose of making submissions. Any section 100 order will apply for a limited time only as

specified in the order. Once an order expires, we will follow our usual process in response to any request for information under the Official Information Act 1982.