

12 April 2019

Kimberley Foo. Senior Analyst - regulation
Commerce Commission
PO Box 2351
Wellington 6140

By email to eacomcomjointproject@comcom.govt.nz

Response re 'Spotlight on emerging contestable services'

Dear Kimberley

Thank you for the opportunity to provide feedback on the EA/Commission joint terms of reference on the proposed project to look into contestable services. The ENA provides the following feedback on the terms of reference and notes that individual members may provide their own comments direct to the Commission.

What you are doing

Overall the ENA would be supportive of the project, provided it follows a balanced process that considers both the positive benefit that networks can play in supporting emerging technologies as well as identify areas where policy or competition concerns could emerge. As the terms of reference currently read, they do not convey a balanced approach. From our reading of paragraphs 1 to 4 it appears that the start point for the project is that there will be harm from EDB involvement in contestable services and the exercise is targeted at determining criteria for when that occurs.

There may be considerable benefit for consumers, and indeed to NZ Inc, if EDBs develop and seed new technology into new markets.

Chargers for electric vehicles are a case in point. Some EDBs invested in chargers to seed the market and enable early adopters to minimise range anxiety with first generation EVs. These investments were designed to improve network economics – spread the costs of the network over a greater number of consumers and kWh, thereby creating benefits from all consumers.

Although the investments on their own would not be individually profitable, when considered against the lens of network economics, they are net beneficial to society. Other parties in the supply

chain are not networks and therefore cannot take the same perspective. We were disappointed that the Commission took a very narrow view of whether or not EV chargers provided a conveyance service, rather than a view against the statutory purpose of promoting the long-term benefits of consumers. This has effectively brought to a close EDBs providing seeding investment to promote new markets to improve network economics.

Your terms of reference do not discuss improvements that can be made to the regulatory environment that will promote socially desirable investments by EDBs to support or facilitate new markets. Accordingly, we support taking a wider view of the necessary policy and regulatory settings that will help facilitate emerging technologies rather than a term of reference that has the unintended consequence of narrowly defining the box that distributors may participate in at the expense of potential wider customer benefit in the long term.

We consider that the terms of reference would also benefit from a description of just what contestable markets and services would be included in this review, and especially how the dynamics of the changing technology and market environment will be considered. Also of importance will be consideration of how this changing environment could redefine existing EDB services and how the increasing use of data to shape and reshape services (contestable and not) will impact markets.

How you are doing this

We also have comments on the process for this work. Paras 5 and 6 describe the use of existing data (it's not clear what data and from where) and that you will undertake a qualitative cost benefit analysis using case studies. We consider it important that stakeholders, including EDBs, have the opportunity to shape the framework and analysis that will make up the cost benefit analysis.

The assessments that will flow from the case studies could be very important for shaping regulatory changes. Given recent experience with regulatory cost benefit analysis and the material uncertainty about how the future technology and markets will evolve, the input assumptions to the case studies and the assessments from them need careful attention.

The ENA also considers that it will be essential for the project to give deep consideration to the nature of the New Zealand economy and market. While many New Zealand EDBs are considered small, they are often one of the larger businesses in their communities and have the resources, capabilities and incentives to deploy new technologies in their communities to better provide the network service.

The development of micro-grids and off-grid solutions may simply not occur if the distributors are barred from involvement in use of new technologies to deliver complete alternative solutions. The project will need to give careful consideration to network economics, transaction costs and agency issues.

Closing Comments

The ENA considers that an open consultative process will serve this project best and we urge the regulators to conduct workshops to develop the detailed methodology, especially the case studies and the assessments that will go into the qualitative cost benefit analysis.

As an aside, we would point out that the Commission has already looked at this issue over that last couple of years and not identified any problems. Furthermore, there are regulations already in place to address potential concerns (particularly on cost allocation between regulated and contestable services, and with related party transactions).

Again, thank you for the opportunity to provide feedback.

Yours sincerely

A handwritten signature in black ink, appearing to be 'D. de Boer', written in a cursive style.

David de Boer

Principal Advisor Pricing and Regulation