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By email: [ecomcomjointproject@comcom.govt.nz](mailto:ecomcomjointproject@comcom.govt.nz)

## **ERANZ feedback on Terms of Reference for Spotlight on Emerging Contestable Services**

The Electricity Retailers Association of New Zealand (ERANZ) welcomes the opportunity to provide feedback on the Electricity Authority and Commerce Commission's 1 April 2019 Terms of Reference on the joint project on emerging contestable services such as distributed energy.

ERANZ welcomes this proposed stream of work – it is a key area of focus for retailers, and we applaud the joint approach taken by regulators.

### **Background**

This work coincides with a time of increased scrutiny of the electricity industry. Getting the settings right to drive competition and innovation around emerging services is a critical component to keeping electricity prices low.

The development of emerging technologies is a significant opportunity for the electricity sector. New innovations present a potential path to curb peak demand (hence reducing investment requirements), and to help deliver a greater proportion of renewable electricity.

It is appropriate that EDBs investigate, and invest in, nascent technologies. Indeed, many EDBs have invested in public EV charging, and a significant majority have invested in electricity generation, battery storage, or both.

ERANZ is firmly in support of competition as the key mechanism for driving benefits for electricity consumers. Competition drives innovation and improved services for customers and also keeps prices low.

Competition is a key reason New Zealand has the 11<sup>th</sup> cheapest electricity prices in the developed world. The energy component of electricity bills fell by 4 per cent over the last five years.

However competition that is not on a level playing field can drive long-term harm to consumers, which is why this work of the Electricity Authority and Commerce Commission is vitally important. Proactive regulation is required to ensure this does not eventuate and to provide certainty to market participants.

## Developing a framework for assessing costs and benefits

ERANZ supports the Electricity Authority and Commerce Commission's proposal to develop a framework for identifying and assessing the costs and benefits of an EDB supplying contestable electricity services.

There are several key issues that have potential direct, harmful impacts on consumers that ERANZ suggest should be considered by the Electricity Authority and Commerce Commission as part of the review.

### *Potential cross-subsidisation of investment in emerging technology*

All businesses, including EDBs, need to be preparing and investing for a future that looks different from the one we have today. That includes investing in emerging technology. What is important – particularly for monopolies – is getting the incentives right to drive the appropriate level of investment in new technologies.

Most businesses operate in a competitive market and therefore bear the risk of investing for a future that may or may not eventuate. This is not the case for monopolies. Consumers will pay for network and transmission upgrades regardless of whether the scenario underpinning those investments eventuate.

Absent effective regulation, EDBs could recover their sunk investment following future asset stranding or underutilisation, effectively shielding them from the risk associated with technology uptake and shifting that cost to consumers.

This issue can be resolved by appropriate regulation, such as ringfencing to provide accounting and functional separation of competitive and non-competitive services as this reduces any incentive (actual or perceived) to misuse monopoly power.

### *Potential for inefficient procurement decisions*

There is also the potential for consumer harm to occur where there is a lack of incentives on distributors' procurement decisions. This includes where cross-subsidisation can occur with a monopoly undertaking transactions with a related party.

This issue can be resolved through appropriate regulation – such as external monitoring of procurement choices and enforcing appropriate competitive tendering requirements on transactions involving a monopoly business and a related party.

### *Impact of cross-subsidisation on long-run competitiveness*

Short-run cross-subsidisation can also reduce long-run competitiveness in a market.

The lack of a level playing field, and the significant advantages that confers on non-competitive businesses such as EDBs, means those short-term benefits risk forcing competitive market participants to exit over time, or to prevent new providers from entering the market – ultimately reducing choice and harming consumers.

Again, this is an issue that can be resolved through appropriate regulation, such as information disclosure to ensure scrutiny and transparency of investment decisions.

### *Erosion of trust between market participants*

As well as those factors that directly impact consumers, there are also further issues with monopoly participation in nascent contestable services that affect the overall operation of the electricity market by potentially undermining trust between different parts of the electricity sector – increasing transaction costs, reducing efficiency and ultimately harming consumers.

One example is data sharing between retailers and distributors. The industry is working together well to resolve this issue – good progress is being made through ERANZ's data working group which involves a group of retailers, EDBs, the Electricity Authority, and the Commerce Commission.

Many data sharing challenges stem back to concerns around monopoly participation in contestable markets – and what checks and balances are in place to ensure that data requested to support the management of non-competitive services is not also used to drive an advantage in other, competitive parts of businesses.

Regulation on data sharing is not required at this point – the issue is likely to be resolved in the coming months, with a regulatory backstop provided if needed. However, a clear framework for what is and isn't appropriate activity around monopoly involvement in contestable services will aid in resolving these sorts of issues more quickly when they arise in the future.

### **Potential regulatory solutions to consider**

There are benefits to consumers from EDB participation in emerging contestable services as a result of increased competition - provided the issues raised above can be resolved through appropriate regulation.

ERANZ welcomes the steps that regulators, in collaboration with EDBs and retailers, have taken already to provide clarity around what is and isn't appropriate activity. However, further improvements to the regulatory regime could include:

- improved transparency and disclosure regimes,
- regulator monitoring and enforcement measures,

- external scrutiny of procurement choices, and
- clearly defined boundaries for competitive investments.

### **Engagement on the project**

Distributor involvement in emerging contestable services is complex and a high priority for ERANZ. ERANZ is keen to be involved and happy to meet with regulators at any time to discuss. We are happy to attend workshops but would also welcome more formal opportunities to engage on the work.

Thank you for your consideration of this letter.

Yours sincerely



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**Chief Executive**