

Review of domestic contracting arrangements

Submissions on options paper and next steps

12 February 2014

1 Recommendation

1.1.1 It is recommended the Retail Advisory Group (RAG):

- a) approve the publication of the summary of submissions on the review of domestic contracting arrangements options paper, attached as Appendix A
- b) provide feedback on the main themes arising from submissions, set out in section 4
- c) provide feedback on the suggested recommendations, set out in section 5.

2 Background

2.1.1 The Authority requested the RAG to examine the operational effectiveness of the domestic contracting arrangement and to identify and recommend alternatives that promote competition in, reliable supply by, and efficient operation of the electricity industry for the long-term benefit of consumers. In particular, the Authority requested the RAG to formulate recommendations on:

- a) whether to develop minimum terms and conditions for the relationship between consumers and distributors (where the distributor has a direct relationship) and retailers (referred to as conveyance model arrangements)
- b) whether to more closely monitor retailers' behaviours by monitoring their compliance with the domestic contracts, for example, by collecting and reporting consumer complaints data
- c) the potential to improve the operational efficiency of the arrangements to assist medically dependent and vulnerable consumers.

2.1.2 The RAG consulted on an issues paper in April 2013¹ so it could identify the problems with the domestic contracting arrangements that needed to be addressed. Thirteen parties provided submissions on the issues paper.²

2.1.3 On 5 November 2013, the RAG released an options paper³ seeking feedback on options for addressing the problems that had been identified.

2.1.4 A draft summary of submissions on the options paper is attached as Appendix A.

2.1.5 This paper:

- a) provides the main themes in submissions received on the options paper
- b) outlines draft recommendations for discussion at the RAG meeting to be held on 12 February 2014
- c) sets out the next steps for completing this project.

3 Submissions received

3.1.1 Submissions were received from 11 interested parties, listed in Table 1.

¹ The issues paper is available on the Authority's website at: <http://www.ea.govt.nz/our-work/consultations/advisory-group/domestic-contracting-arrangements/>.

² Submissions and a summary of submissions on the issues are available on the Authority's website at: <http://www.ea.govt.nz/our-work/consultations/advisory-group/domestic-contracting-arrangements/submissions/>.

³ The options paper is available on the Authority's website at: <http://www.ea.govt.nz/our-work/consultations/advisory-group/rag-options-paper-domestic-contracting/>.

Table 1: Submissions on RAG options paper – Review of domestic contracting arrangements

Retailers/generators	Networks	Other
Contact Energy	MainPower	Electricity and Gas Complaints Commission (EGCC)
Genesis Energy	Orion	
Meridian Energy	Powerco	
Mighty River Power	Vector	
Nova Energy		
Trustpower		

4 Main themes in submissions

4.1.1 The options paper sought feedback on issues and options in three areas. The key themes in feedback on each area were:

Developing minimum terms and conditions where a distributor has a direct relationship with domestic consumers

- a) submitters mostly supported providing domestic consumers with more clarity about the minimum terms and conditions available from their distributor under conveyance arrangements to establish clear expectations about the roles and responsibilities of distributors and retailers
- b) the benefits of doing so were seen as relatively small, but so were the costs. The benefits were generally seen as outweighing the costs.

Improving the operational efficiency of the arrangements to assist medically dependent and vulnerable consumers

- c) submitters suggested various changes to aspects of the arrangements to assist medically dependent and vulnerable consumers: bond payment amounts; making prepayment options available to vulnerable consumers; engagement with social agencies; and the definition of vulnerable consumer
- d) submitters considered that the process for identifying medically dependent consumers should be clarified, for example, by being more specific about what is 'permissible' or by improving information sharing between retailers and health professionals (who certify that a consumer is medically dependent)
- e) submitters considered that the co-ordination and prioritisation of ICPs in an emergency could be improved, for example, by providing guidance on expectations for communications between retailers, distributors and emergency management agencies or by facilitating access to information about who is medically dependent
- f) submitters considered that medically dependent consumers should retain responsibility for dealing with interruptions to supply and one submitter questioned whether one consumer group should be preferred over others when restoring supply in emergency situations.

More closely monitoring retailers' behaviours by monitoring their compliance with their domestic contracts

- g) most submitters supported the RAG's recommendation that the Authority should not monitor retailers' compliance with the terms of their domestic contracts.

5 Suggested recommendations

- 5.1.1 The feedback in submissions has been used to identify suggested recommendations to the Authority Board:
 - a) develop minimum terms and conditions for contracts between domestic consumers and distributors operating under conveyance arrangements
 - b) revise the medically dependent consumer guidelines to:
 - i) clarify that retailers are able to seek confirmation from health professionals to certify that a person is medically dependent
 - ii) clarify that decisions about remote disconnection/reconnection of vulnerable consumers are at the discretion of the retailer after taking appropriate precautions to mitigate the potential harm from disconnecting a medically dependent consumer. The requirement for at least one physical site visit if all other attempts to contact the consumer have failed would be retained
 - iii) provide better guidance on expectations for communication between retailers, distributors and emergency management agencies
 - c) communicate with retailers and district health boards to:
 - i) clarify the roles and responsibilities assigned through the medically dependent consumer guideline
 - ii) improve the clarity of the definition of medically dependent consumers
 - iii) clarify the circumstances under which retailers are able to remove medically dependent status from a consumer
 - d) provide distributors, retailers and emergency management agencies with access to information about who is medically dependent, whether by using existing market system processes (EIEP4) or holding this data in a central database
 - e) there is no benefit in the Authority monitoring retailers' compliance with domestic contracts by measuring complaints because issues in this area are identified through the EGCC monitoring processes. However, there may be benefit from providing information on service performance and quality (with this information potentially including complaint statistics).
- 5.1.2 Further work is needed to identify workable approaches for addressing concerns about aspects of the medically dependent consumer/vulnerable consumer guidelines that have implications for equity and social welfare interactions of retailers.
- 5.1.3 The memorandum of understanding between the Authority and the Ministry of Business, Innovation and Employment (MBIE) clarifies that consideration of fairness or equity issues is the responsibility of MBIE. The Electricity Industry Act 2010 provides for the Minister for Energy to develop regulations relating to domestic and small business consumers for fairness reasons.

- 5.1.4 Recommendations to the Authority Board about changes to the aspects of the medically dependent consumer/vulnerable consumer guidelines should be informed by the views of MBIE and potentially the Ministry of Social Development (MSD). Officials from these departments could be invited to the next RAG meeting to provide advice about social welfare implications of:
- a) varying the level of bond payment amounts
 - b) availability of prepayment options to medically dependent consumers
 - c) models of engagement between social agencies and retailers
 - d) definition of vulnerable consumer and the need for separate guidelines.

6 Next steps

6.1.1 The next steps are:

- a) a draft recommendation will be considered by the RAG in March 2014. Officials from MBIE and MSD could also be invited to this meeting
- b) the RAG's recommendation is intended to be provided to the Authority Board in April 2014.

Appendix A Summary of submissions on the review of domestic contracting arrangements options paper

1 Background

- 1.1.1 The Authority requested the RAG to examine the operational effectiveness of the domestic contracting arrangement and to identify and recommend alternatives that promote competition in, reliable supply by, and efficient operation of the electricity industry for the long-term benefit of consumers. In particular, the Authority requested the RAG to formulate recommendations on:
- a) whether to develop minimum terms and conditions for the relationship between consumers and distributors (where the distributor has a direct relationship) and retailers (referred to as conveyance model arrangements)
 - b) whether to more closely monitor retailers' behaviours by monitoring their compliance with the domestic contracts, for example, by collecting and reporting consumer complaints data
 - c) the potential to improve the operational efficiency of the arrangements to assist medically dependent and vulnerable consumers.
- 1.1.2 The RAG consulted on an issues paper in April 2013⁴ so it could identify the problems with the domestic contracting arrangements that needed to be addressed. Thirteen parties provided submissions on the issues paper.⁵
- 1.1.3 On 5 November 2013, the RAG released an options paper⁶ seeking feedback on options for addressing the problems that had been identified. This paper outlines the main themes in submissions received on the options paper.

2 Submissions received

- 2.1.1 Submissions were received from the 11 parties listed in Table 1.

Table 2: Submissions on RAG options paper – Review of domestic contracting arrangements

Retailers/generators	Networks	Other
Contact Energy	MainPower	Electricity and Gas Complaints Commission (EGCC)
Genesis Energy	Orion	
Meridian Energy	Powerco	
Mighty River Power	Vector	
Nova Energy		

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⁵ Submissions and a summary of submissions on the issues are available on the Authority's website at: <http://www.ea.govt.nz/our-work/consultations/advisory-group/domestic-contracting-arrangements/submissions/>.

⁶ The options paper is available on the Authority's website at: <http://www.ea.govt.nz/our-work/consultations/advisory-group/rag-options-paper-domestic-contracting/>.

Trustpower		
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3 Main themes in submissions

3.1.1 The options paper sought feedback on issues and options in three areas. The key themes in feedback on each area were:

Developing minimum terms and conditions where a distributor has a direct relationship with domestic consumers

- a) submitters mostly supported providing domestic consumers with more clarity about the minimum terms and conditions available from their distributor under conveyance arrangements to establish clear expectations about the roles and responsibilities of distributors and retailers
- b) the benefits of doing so were seen as relatively small, but so were the costs. The benefits were generally seen as outweighing the costs

Improving the operational efficiency of the arrangements to assist medically dependent and vulnerable consumers

- c) submitters suggested various changes to aspects of the arrangements to assist medically dependent and vulnerable consumers: bond payment amounts; making prepayment options available to vulnerable consumers; engagement with social agencies; and the definition of vulnerable consumer
- d) submitters considered that the process for identifying medically dependent consumers should be clarified, for example, by being more specific about what is 'permissible' or by improving information sharing between retailers and health professionals (who certify that a consumer is medically dependent)
- e) submitters considered that the co-ordination and prioritisation of ICPs in an emergency could be improved, for example, by providing guidance on expectations for communications between retailers, distributors and emergency management agencies or by facilitating access to information about who is medically dependent
- f) submitters considered that medically dependent consumers should retain responsibility for dealing with interruptions to supply and one submitter questioned whether one consumer group should be preferred over others when restoring supply in emergency situation

More closely monitoring retailers' behaviours by monitoring their compliance with their domestic contracts

- g) most submitters supported the RAG's recommendation that the Authority should not monitor retailers' compliance with the terms of their domestic contracts.

4 Minimum terms and conditions for conveyance arrangements

4.1 Majority of submitters in support of proposal

4.1.1 Eight submitters agreed with the RAG's recommendation that the Authority should establish minimum terms and conditions for conveyance arrangements (Contact, EGCC, Genesis, Meridian, MRP, Nova, Powerco and Trustpower). These submitters suggested:

- a) the existing minimum terms and conditions for interposed arrangements are a sensible starting point (MRP, Powerco)
- b) the industry will need sufficient time (around two years) to update terms and conditions in a pragmatic and cost effective way (Meridian)
- c) the scope of the proposed terms and conditions should be kept to the essential services (Nova)
- d) retailers should not be required to have separate standard terms and conditions for customers under each of the conveyance and interposed models (Contact)
- e) the Authority should clearly signal when it will report on compliance with the new terms and conditions (Meridian)
- f) the outcomes of the saves and winbacks investigation may impact domestic contracts (unfair contract terms may impact competition) (Meridian).

4.1.2 Three submitters disagreed with the RAG's recommendation (Mainpower, Orion and Vector). These submitters considered:

- a) information and education could be used to address any knowledge gaps at a lower cost to participants (Mainpower, Vector)
- b) the minimum terms and conditions for interposed arrangements are not widely known about by consumers, and there is still some lack of clarity about the respective roles of retailers and distributors (Orion)
- c) it has not been established that an issue exists, that is, that consumers under conveyance arrangements are disadvantaged by a lack of minimum terms and conditions (Mainpower, Vector)
- d) it is unclear whether the options paper refers to all conveyance arrangements, or just those where distributors directly invoice their consumers (Mainpower).

4.2 Benefits vs costs

4.2.1 Eight submitters considered the benefits of developing minimum terms and conditions for conveyance arrangements are likely to outweigh the costs (Contact, EGCC, Genesis, Meridian, MRP, Nova, Powerco and Trustpower). These submitters considered the benefits from developing of minimum terms and conditions for conveyance arrangements will likely arise from:

- a) assisting the EGCC to make decisions on complaints by having clear expectations for conveyance arrangements (EGCC)
- b) more consistent transparent, and fair treatment across all consumers (Contact, EGCC, Powerco, Trustpower)

- c) helping to clarify the relationship between distributors and consumers which may result in a decrease in conveyance related complaints and there a decrease in costs to all parties (EGCC).
- 4.2.2 Powerco agreed with the benefits as stated in the consultation paper, although considered these are likely to be very small in practice.
- 4.2.3 MRP agreed that the costs are likely to be minimal, as long as there are no operational changes for existing interposed customer relationships.
- 4.2.4 Three submitters considered the benefits are not likely to outweigh the costs (Mainpower, Orion and Vector). These parties submitted:
 - a) the RAG had underestimated the costs to distributors in reviewing their standard terms and conditions, and these should be factored in regardless of whether it is a voluntary arrangement (Mainpower)
 - b) the benefits will be much smaller than those stated and will arise from 'improved clarity for some' rather than 'certainty for all' (Orion)
 - c) the costs and benefits are not certain or clear, and a more robust cost benefit analysis is needed (Vector).

5 MD and VC guidelines

5.1 Identifying MDC

- 5.1.1 Eight submitters agreed with the options for addressing concerns about identifying medically dependent consumers (Contact, EGCC, Genesis, Mainpower, Meridian, MRP, Nova and Powerco). These submitters considered:
 - a) the process and criteria for identifying MDCs, and the circumstances under which MDC status can be removed, should be clarified (Contact, Genesis)
 - b) removal of medically dependent status should be allowed if the customer does not provide notice within a predetermined time of being requested, for example, two months (Genesis)
 - c) retailers do not have the expertise to be making judgement calls on who is, and who is not, a medically dependent customer. This results in significant inconsistencies between retailers and creates risks for the industry (Contact, Genesis)
 - i) Genesis considered the process of identifying MDCs sits better with the health sector
 - ii) Meridian suggested information sharing agreements with the district health boards could be established to ensure a smooth flow of information and up to date recording of MDCs
 - iii) Contact submitted a central register could be created and operated by a party such as the local district health board
 - d) the definition of vulnerable consumer (in the vulnerable consumer guidelines) also should be reviewed (Meridian, MRP)
 - i) Meridian considered additional protection should be given (for example, via the MDC guidelines) to consumers who are elderly, unwell or disabled and for whom the disconnection of electricity presents a clear threat to their health or wellbeing. Meridian

also submitted that the reference in the definition to ‘severe financial hardship’ is unhelpful as it is not defined

- ii) MRP submitted that the VC guidelines don’t add any value as all consumers should be treated the same and should only be disconnected as a last resort. MRP suggested that, if the VC guidelines are retained, the definition of VC should be reviewed as the second limb is too broad
- e) there is merit in revising the level of bond permitted under the guidelines – this was set in 2005 to reflect an average month’s consumption (Contact).

5.1.2 Two submitters disagreed with the options presented in the consultation paper (Orion and Trustpower):

- a) Orion considered the guidelines are already clear in terms of the definition of MDC, the process for identifying and recording medical dependency, and the circumstances under which retailers are able to remove medically dependent status
- b) Trustpower considered the guidelines already work well, provided they are followed up with robust operational processes, such as those that Trustpower already has in place. In Trustpower’s view, the issue is one of process, rather than policy.

5.2 Co-ordination and prioritisation of ICPs in an emergency

5.2.1 Six submitters agreed with the options for improving co-ordination and prioritisation of ICPs in an emergency (Contact, EGCC, Genesis, Mainpower, Meridian and MRP). These submitters considered that:

- a) although distributors have the ability to identify MDCs (from EIEP 4 which identifies MDCs in the disconnection restriction field) and prioritise restoration to them, this does not always happen (Contact)
- b) better guidance is needed on expectations for communication between retailers, distributors and emergency management agencies (Genesis)
- c) information held by distributors can quickly become out of date (Mainpower)
- d) more education of health practitioners and MDCs is needed about the contents of the guidelines and ensuring they are aware of what they need to do in an emergency (Mainpower)
- e) cost implications should be considered in more detail, as the proposal may incentivise MDCs to register with their retailer, in order to get support from emergency services. Increased costs to the industry will be reflected in increased prices to consumers (Nova).

5.2.2 Three submitters disagreed with the proposal (Orion, Powerco and Trustpower). These submitters considered:

- a) the guidelines should not imply any preferential treatment in restoration of supply for MDCs and VCs; they should remain focussed on disconnection for non-payment (Orion)
- b) individuals should retain responsibility for dealing with interruptions to supply (Orion, Powerco, Trustpower) and the guidelines should include a statement to that effect (Orion).

5.2.3 Three submitters supported the establishment of a central repository of information about MDCs and VCs (Contact, EGCC, Meridian):

- a) Contact considered this will mean retailers will no longer be in the position of having to make judgement calls on whether a customer is medically dependent
- b) Meridian strongly supported this proposal and considered it would also help to identify these consumer groups under the new retailer default provisions
- c) EGCC suggested the registry may not be the most effective place for this, as it is designed to hold network information, not personal information about individual consumers
- d) EGCC also noted that the MD or VC may be someone other than the contracting party, which could cause complexities.

5.2.4 Three submitters did not support the establishment of a central repository of information about MDCs and VCs (Powerco, Genesis, Trustpower)

- a) Powerco submitted that although there will be some benefits, a central repository of information about MDC and VCs would not drive significant improvement in the co-ordination and prioritisation of ICPs in an emergency situation
- b) Genesis did not consider a central repository to be the most cost effective option for addressing the issues identified and preferred other mechanisms, such as publishing guidance on the issue
- c) Powerco and Trustpower did not consider the registry to be suitable as a central repository of information about medical dependency, as the registry was designed to hold network information, not consumer information.

5.3 Engagement between retailers and governmental/social agencies

5.3.1 Five submitters considered the Authority should have a role in facilitating better engagement between retailers and governmental/social agencies (EGCC, Genesis, Meridian, Powerco and Trustpower). These submitters considered:

- a) the Authority is best placed to bridge the gap in communication between the electricity industry and social agencies (Contact, Genesis, Powerco)
- b) in taking on this role, the Authority would further strengthen work that retailers are already doing to develop productive working relationships with social agencies (Meridian, Trustpower)
- c) the Authority could maintain a register of governmental /social and regional community groups including key contacts to aid engagement (Meridian)
- d) not all MD and VCs are aligned with social agencies (for example those suffering temporary financial hardship or those whose income is above the threshold for assistance)
- e) the Protocol between retailers and social agencies should be revived (EGCC)

5.3.2 Three submitters considered the Authority should have no role in facilitating engagement (Contact, MRP and Nova). These submitters considered:

- a) engagement should be driven by retailers (Contact) and some are already doing this (MRP)
- b) the Authority should instead focus on highlighting the costs and weaknesses of the current regime to policy advisors in government, including the Ministry of Social Development (Nova)

- c) the Authority could also be proactive in promoting market-based solutions to servicing MD and VCs, including products specifically tailored to meet the needs of these consumers.

5.3.3 Orion did not see any problems with the Authority facilitating interaction between retailers and social agencies, but submitted that the appropriate owner of both the guidelines and the protocol is the Ministry of Social Development, as these documents are aimed at a social welfare outcome.

5.4 Coping with supply interruptions

5.4.1 Nine submitters considered that no changes to the guidelines are needed regarding the ability of MDCs to cope with supply interruptions (Contact, Genesis, Mainpower, Meridian, MRP, Nova, Orion, Powerco and Trustpower). Submitters considered:

- a) the guidelines are already clear that MDCs must have their own contingency arrangements for loss of supply (Contact, Genesis, Powerco) and that health practitioners are responsible for ensuring MDCs are provided with appropriate knowledge, training and support about what to do if their electricity supply is interrupted (EGCC)
- b) there may be a role for the Authority to educate health practitioners and MDCs about the MDC guidelines (EGCC, Mainpower) and to monitor health practitioners' compliance with the guidelines (EGCC)
- c) an online (planned and unplanned) outage notification tool could be established to improve communications for MDCs during supply interruptions. Transpower and distributors would update the tool with outage information and resolution times. Consumers would be able to access a website independently and retailers would be able to send text or email updates to customers based on the data either warning them of planned outages or keeping them informed on the progress of unplanned outages (Meridian).

5.5 Remote connections/disconnections

5.5.1 Seven submitters considered that no changes to the guidelines needed regarding electronic communications with consumers and remote connections/disconnections (Contact, EGCC, MRP, Nova, Orion, Powerco and Trustpower). These submitters:

- a) supported the RAG's reasoning behind keeping the requirement for a physical site visit (EGCC)
- b) considered the potential benefit of remote disconnection and reconnection in terms of reducing transaction costs should be acknowledged (Orion)
- c) considered a physical site visit should only be required if the retailer has been unable to contact the consumer (Orion)

5.5.2 Two submitters considered changes to the guidelines are required (Genesis and Meridian). These submitters suggested:

- a) the guidelines should enable the full range of benefits from advanced meters by allowing remote connection and disconnection (Genesis)
- b) the guidelines should specifically include that where a consumer has acknowledged receipt of a disconnection notice that remote disconnection can be used. A physical site visit should only be mandatory where all communication has been unacknowledged (Meridian)

- c) remote disconnection is a quick process allowing for equally quick remote reconnection (Meridian).

5.6 Prepayment options

- 5.6.1 Seven submitters considered that no changes to the guidelines are needed regarding the use of prepayment options for medically dependent and vulnerable consumers (Contact, EGCC, Genesis, MRP, Nova, Powerco and Trustpower).
- 5.6.2 The EGCC raised a potential issue about the guideline that allows retailers to “strongly recommend” that prepayment meters not be installed in premises where there is a medically dependent consumer, as this may create a hurdle for MD and VCs who may not be able to contract with any retailer due to a poor credit history. For these consumers, prepayment may be the only option for electricity supply, and they may be discouraged from notifying their retailer of their medically dependent status.
- 5.6.3 Two submitters suggested changes to the guidelines are needed (Meridian and Orion) and submitted:
 - a) the drafting of the guidelines is confusing relating to prepayment options (Meridian)
 - b) the guidelines should not require retailers to provide prepayment options where a retailer has made a commercial decision to the contrary (Meridian)
 - c) it is important to distinguish between MDCs and VCs – prepayment options could easily lead to disconnection of medically dependent consumers for non-payment, which is contrary to the purpose of the protocol and guidelines (noting that the Human Rights Act prevents retailers from refusing to supply a MDC with a prepayment meter) (Orion)

5.7 Alignment with gas industry

- 5.7.1 Four submitters agreed with the RAG’s proposal that the guidelines do not need to be amended to improve alignment with the gas industry (Contact, EGCC, MRP and Powerco).
- 5.7.2 Four submitters considered better alignment with the gas industry is required (Genesis, Nova, Orion and Trustpower), and suggested:
 - a) the magnitude of the allowed bonds should be reconsidered as \$150 is no longer appropriate (ie no longer equivalent to an average monthly bill, especially for dual fuel customers) (Nova, Orion). The setting of bonds should be a commercial issue between the retailer and its customer (Trustpower)
 - b) interactions between the gas and electricity retailer contract benchmarks should be reviewed to ensure a more consistent approach (Genesis).

5.8 Benefits vs costs

- 5.8.1 Six submitters considered the benefits of the proposed changes to the MDC and VC guidelines would be likely to outweigh the costs (Contact, EGCC, Genesis, Meridian, MRP and Powerco).
- 5.8.2 Two submitters did not consider the benefits would outweigh the costs (Nova and Orion). These submitters considered significant additional costs would arise from the expansion of the registry, which would increase costs and complexity for retailers.

6 Monitoring retailers' compliance with their domestic contracts

6.1 Majority of submitters in support of proposal

6.1.1 Eight submitters supported the RAG's recommendation that the Authority should not monitor retailers' compliance with their domestic contracts (Contact, EGCC, Genesis, Meridian, MRP, Nova, Orion and Powerco). These submitters suggested:

- a) to do so would be a sign of regulatory creep (Contact)
- b) the EGCC is able to report on valid complaints it receives and it is not necessary for the Authority to duplicate this work (Contact, Meridian)
- c) the Authority should clarify whether it will continue to monitor retailer and distributor compliance with the MDC and VC guidelines (EGCC)
- d) the cost of monitoring compliance is unwarranted as there is no evidence of material and persistent non-compliance (Meridian, Powerco)
- e) online tools, such as WMN, should be broadened to provide information on service quality indicators (Meridian).

6.1.2 One submitter (Trustpower) did not support the RAG's recommendation and suggested the Authority should monitor the alignment of retailers' terms with the minimum terms and conditions, and that the level of alignment could be reflected on the Powerswitch website.