Question	Comment
Q1: Do you agree with the proposed regulatory objective? If you disagree explain why, and give an alternative formulation.	With respect to the elements of the objective: - easy to understand and clearly set out rights and obligations: o there is a tension between use of lay language and wording appropriate in a legal interpretation context; - support the achievement of an effective complaints resolution scheme o consumers already have access to an effective low cost complaints resolution scheme as a matter of common law – ie the NZ judicial system and in particular the Small Claims Tribunal.
Q2: Do you agree that the evidence available supports some degree of structured oversight of the quality of retail contract terms? If you disagree explain why.	No The evidence cited of onerous retailer terms and conditions was at a time prior to the implementation of the centralised switching registry on 1 March 2009. Prior to that date customer switching was time consuming, inefficient and subject to frustration through the outgoing retailer refusing to process the switch request. The implementation of the switching registry has substantially reduced the ability of an incumbent retailer to refuse or frustrate the ability of a consumer to switch and effectively reduced the effectiveness of the types of clauses referred to in the consultation paper. Competitive markets and the ability of consumers to switch unhindered is the most effective, efficient and least costly means of ensuring that consumers are able to contract with suppliers on acceptable terms and conditions and at the same time ensuring that consumers are able to make price/quality tradeoffs with suppliers and that suppliers have an incentive and ability to innovate and make differential offerings to customers. When a regulators seeks "oversight of the quality of retail contract terms" they are in effect seeking oversight over the different means and ways in which suppliers offer products to customers. By setting minimum benchmarks to evaluate supplier products, care must be taken not to hinder innovation and the ability of consumers and suppliers to make

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	price/quality/service tradeoffs. Unfortunately this means that from time to time when a supplier innovates through unbundling or bundling goods and services or perhaps provides a different quality of service, this can make standard benchmarks meaningless or misleading. In recent times, we have seen some new innovations in the energy sector such as: - bundling of solar hot water panels and electricity supply by Nova Energy - multiple retail brands and pay in advance through Powershop - bundling of electricity supply with telecommunications by Trustpower - direct supply of electricity distribution lines services to end use customer by The Lines Company This reflects the desire of participants to add value through differentiation which makes standard benchmarks meaningless.
Q3: Do you agree the 'benchmark' terms for retail contracts should be selective and outcome based rather than comprehensive and prescriptive? If you disagree explain why, and describe your preferred approach.	Nova does not believe that benchmark terms and conditions are necessary at all. It is logical that any evaluation of terms and conditions should be outcome based as opposed to prescriptive and limiting.
Q4: Do you agree the focus of governance on retail contracts should be the bundled service (gas, metering, transport) received by consumers?	No As noted above, there are examples in the electricity industry currently where innovation is taking place where there is bundling and unbundling of retail services and this could occur also in the gas industry. Indeed it make be likely, given that Powershop has expressed an

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	interest in retailing gas and solar hot water panels or telecommunications could also be bundled with gas as easily as electricity. This is the difficulty that any regulator faces – what happens when someone innovates and provides a non standard offering? If a regulator is required to oversee contract terms in a competitive market then they must be prepared to evaluate non standard and standards product offerings in a neutral manner. This of course increases the costs of regulation. A regulator who prefers instead a simplistic standard delivery model to make evaluation easy comes at a cost to the consumer from the loss of the benefits arising from dynamic efficiency. If there are concerns in an industry about the quality of such things as contract terms, a more efficient response is to remove/lower barriers to competition as generally such issues only come about due to a lack of competition. This is something the GIC has already attended to through the implementation of the switch registry. In the small consumer (sub 10TJ per annum usage as defined by the GIC) market segment we have seen significant developments in recent times due to increasing intensity in levels of competition which as resulted in lower prices for customers. For example: - incumbent retailers Genesis and Contact Energy responding to losses of market share to Mercury and Nova Energy and reducing prices and engaging in customer win back campaigns - increased churn with the small commercial market as evidenced by what has been described by the GIC Investigator as "aggressive competition" between Egas and Nova Gas and Auckland Gas Limited (Reference – Settlement agreements between Egas and Nova 2009-49 and 2009-65.) Such competition is facilitated by the new registry regime and the certainty and efficiency

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	that the new switching process creates for retailers performing campaigns.
Q5: Are you aware of any instances in the gas industry of consumers having direct contracts with meter owners or distributors? If so, how should these contracts be governed?	Yes although not for consumers less than 10TJ's at this time. There are a number of consumers that have direct relationships with Vector for distribution services as an example. Note that to avoid confusion Nova does not have separate network and energy contracts for supply to customer on its private network. It would be presumptuous to assume that aspects of service delivery will always be bundled. It may be that in the future, gas meters could be owned by consumers or that pipeline services may provided direct to the consumer from the pipeline company rather than bundled with the energy. There is an example of this already in the electricity industry where the lines company invoices consumers directly for liners services and the retailers invoice the consumers separately for the energy.
Q6: Do you agree with the analysis of the need for and scope of benchmark terms relative to consumer expectations? If not explain why.	No. **1) Need for Benchmarks** The benchmarks do not and cannot contemplate all possible variations of customer service proposition. The current set of benchmarks and consumer expectations is based on largely status quo service delivery methods and the application of benchmarks in a regulatory context creates barriers to new and different service offerings that are not comparable. Indeed they may be labelled as "unfair" or "questionable" when in reality there is simply a price/quality/service tradeoff being made by the consumer. In a competitive market with a choice of supplier, the consumer is not compelled to accept supply from any retailer and is also potentially able to either negotiate terms and conditions (especially commercial and industrial consumers).

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	2) Scope of benchmarks - threshold Currently, the GIC has proposed a threshold of 10TJ's which is the same threshold that is used in reconciliation to differentiate where TOU or non TOU metering is applied. The purpose of the proposed bench makes is to reflect the Gas Government Policy Statement requirement of adequate protection of small consumers. Nova believes that a 10TJ threshold is too high and captures many users who could not classed as small consumers and are also unlikely to fall under the ambit of the Electricity and Gas Complaints scheme thresholds which instead applies a dollar value limit. It appears to Nova that the main group of consumers which the Gas GPS is aimed are domestic users. Commercial customers receive a number of benefits that are not available to domestic consumers such as the ability to deduct expenses for income tax calculation purposes, claim GST and adopt legal structures such as limited liability companies. There are other examples of the distinction between domestic consumer and commercial consumers in consumer protection legislation such as the Consumer Guarantees Act and the Door to Door Sales Act. We believe if benchmarks were to be applied then it should only be done so on a basis that is consistent with consumer protection legislation and that they are applied to residential consumer contracts. **3) Scope of benchmarks – terms** In general the benchmarks cover many areas of service delivery to consumers that do not appear to have a history of complaints from consumers. Some benchmarks simply require that retailers to comply with regulatory requirements which they already have an obligation to comply with. Such requirements are not adding to the value of retail contract form and are redundant. Some of the benchmarks require a subjective assessment such as compliance with "good industry practice" which is uncertain at best and should either be made more

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	definitive or deleted.
Q7: Are the benchmark terms proposed for 'how to become a customer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	No. Clause 1.1: The proposed benchmark does not account for the fact that the supply commencement date is uncertain at the time the customer signs up for supply as this is determined through the switching process and subject to the Switching regulations. Most retailers currently get around this issue of supply commencement date (as well as other related issues) by structuring the base agreement as an application form that is accepted by the retailer following the switch process and any other processes the retailer might employ such as credit checks etc. Clause 1.2: How such a clause would operate in practice is unclear as customer already have the ability to switch away from a retailer via the switching regulations and they are unlikely to face any penalty for doing so if the retailer has breached their contract with the customer or other legislation such as the Consumer Guarantees Act or Fair Trading Act. Also what does "reasonable opportunity for the consumer to agree to the terms and conditions offered" entail? Most small consumers generally are offered a supply package that is not able to be varied (although they may be offered some supply options) through negotiation due to issues of scale. Individually negotiating different terms and conditions with each customer would be a costly exercise when generally price is the motivating factor rather than the detailed terms and conditions of supply which by and large are very similar across all retailers. The similarities are due to the fact that gas is delivered to this class of consumer by the same monopoly pipelines infrastructure over which retailers have very little control. Differentiation of service is generally through price and billing/call centre service only. Physical delivery of the product is generally more controlled by the consumer who physically takes the gas (unlike were other types of products that are physically delivered to the consumer by the supplier such as LPG) from the distribution networks and the distribution companies.
Q8: Are the benchmark terms proposed for 'how to stop being a customer of	Clause 2.2 a) is redundant as retailers are required legally to comply with the switching rules. In the case of private competitive networks, consumers are able to switch network and do not need the switching rules to protect their ability to receive supply from others if

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your current retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	they no longer wish to continue to take supply from their incumbent retailer. Clause 2.2 b) is not logical as retailers do not deliver gas to consumers in the same way that other goods and services may be requested and delivered. The consumer takes gas from the distribution pipelines and that is always within their control. Disconnection to prevent daily fixed charges when no gas is being consumed is a requirement flowing from monopoly distribution companies. If distributors did not require customers to be physically disconnected to avoid daily charges when no gas is flowing, then competition ensures that consumers would receive that benefit. If a retailer attempted to continue to charge when there were no such costs this would simply attract competition and the consumer would be able to switch. If the GIC has issues with the disconnection/reconnection process then the starting place for that issue should be monopoly distribution contracts
Q9: Are the benchmark terms proposed for 'changes to a contract' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Clause 3.2 of the contract is redundant as customers can switch away to another retailer if terms are changed without their agreement. Retailers are no longer able to hinder the switch process in the same way that they could prior to the introduction of the switching regulations. Deciding what is "materially less favourable" is a subjective exercise and creates unnecessary certainty around retailer/consumers rights and obligations.
Q10: Are the benchmark terms proposed for 'service standards' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Clause 4.1 appears to be superfluous and cosmetic only. Nova is not aware of any issues raised in any forum regarding the lack of definition of services standards in contracts so we are unsure what issue this requirement seeks to address. The best protection for a consumer is the threat of switching to a competitive retailer should service standards fall below the level they see as acceptable to them. Clause 4.2 a) is redundant as retailers and distributors already have statutory obligations to this effect. Repeating them in contract serves no purpose from a legal perspective. Clause 4.2 b) is a subjective measure – ie good industry practice - that creates uncertainty for retailers and consumers with respect to rights and obligations and is as such it is not

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	good practice to inclusion such clauses in legal contracts. This requirement also potentially limits retailers and consumers ability to make price/quality tradeoffs ie to pay more/less for more/less service.
Q11: Are the benchmark terms proposed for 'prices, bills and payment' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Clause 5.1 a) imposes an arbitrary limit on retailers without conferring any real benefit to consumers. Consumers best protection is the functioning of a competitive market and the ability to switch retailers. Clause 5.1 b) refers to a separate notice for increases in price of more than 5%. If notification is required for price changes what would a "separate" notification be for and what would it be separate from? Clause 5.1 c) is superfluous. In general, most retailers take great care to communicate prices rises and the reasons for them in order to retain customers long term. Poor communication simply leads to customers switching and misleading or deceptive communication is an offence against the Fair Trading Act. Clause 5.2 is largely superfluous as any contract that does not adequately describe the issues listed or that retailers practices did not manage appropriately such as correction of errors, would be difficult to enforce. Clause 5.3 is also superfluous as issues such as payment options are generally details that are not included within terms and conditions and form a part of the suppliers service offerings outside of the contract given that payment mechanism can change through time as new methods come available. Generally the incentive is for retailers to facilitate payment instead of raising unnecessary hurdles that lead to non payment.
Q12: Are the benchmark terms proposed for 'bonds' appropriate? If not please explain why. If an alternative form of words or an additional clause is	6.1c Requires that if a retailer retains a bond for more than 12 months then it must explain why. It seems irrational that if a retailer who requires a bond for credit support reasons would then be required to return it after 12 months. This is not to say that a retailer cannot elect to return a bond to a customer who has a good

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suggested, please provide details.	credit history. The best protection for consumers who are faced with retailers who may require a bond is competition from other suppliers who may offer different terms and conditions around bonds. The right to require a bond could well be a part of the price/quality/service tradeoffs made by retailers and consumers when entering into supply arrangements and raising barriers to such arrangements reduces dynamic efficiency in the retail market. It also decreases the likelihood that there will be cross subsidies between the majority of consumers who have a good credit record and pay their bills and the minority who do not.
Q13: Are the benchmark terms proposed for 'obligations of the parties in relation to supply to the site and access' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Nova is not aware of any issues raised in any forums to date that give rise for the need for benchmarks in this area. Even as documented by the review in Section 7, there appears to be substantive compliance with this benchmark. Generally, the understanding by retailers around this area is very good as it is generally dictated by the rights imposed on retailers by distributors who reserve their rights to access the consumers property through their monopoly distribution contracts as do meter owners.
Q14: Clause 7.1(c) reflects the outcomes in the GPS which relate to efficient market structures and good understanding of roles, in relation to gas metering, pipeline and energy services. Accepting the limitations in what can be covered in a retail contract, does this clause go as far as possible in reflecting these outcomes? Provide alternative wording if you think that amended or extended wording would improve the clause.	
Q15: Are the benchmark terms proposed for 'metering' appropriate? If	8.1a) Why a minimum of meter reading 4 times per year? Reconciliation requirements are for a percentage of customer to be read at least once every four months. Including this

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not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	requirement effectively increases that requirement to 100%. In some circumstances such as with small users in isolated locations where meter reading costs are high, it could be inefficient to require quarterly meter reads. No mention is made of validity of customer reads.
Q16: Are the benchmark terms proposed for 'disconnection and reconnection' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	9.3 limits the ability of retailers and consumers to make price/quality/service tradeoffs. This in effect limits the ability of a retailer to reduce bad debt costs in order to offer savings to customers who are willing to take supply on those terms. 9.4) provides the potential opportunity for consumers to unnecessarily defer disconnection for non payment (the predominant reason for disconnection). Customers have the ultimate protection available to them of switching to another supplier in the event that they believe their existing supplier is in breach of contract. Most retailers wishing to retain customers in the event of a dispute are not likely to disconnect them before they have had the opportunity to go through a dispute resolution process.
Q17: Are the benchmark terms proposed for 'faults and planned shutdowns' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	10.1 b) provides for a minimum notice period of 4 days unless agreed otherwise by the customer. If the consumer enters into a contract with a supplier that provides for a notice period of less than 4 days then there is agreement/acceptance of that notice period. This makes this benchmark redundant.
Q18: Are the benchmark terms proposed for 'privacy' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	This benchmark is redundant as there is already a statutory obligation under the Privacy Act.

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Q19: Are the benchmark terms proposed for 'liability of the retailer and the consumer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	No. With respect to domestic consumers, retailers cannot contract out of the Consumer Guarantees Act so 12.1 is redundant with respect to those customers. With respect to small commercial consumers we do not believe that it is appropriate for benchmarks to expand on the obligations of suppliers with respect to the Consumer Guarantees Act. The existing "line in the sand" for consumers who receive protection under consumer legislation such as the Consumer Guarantees Act and the Door to Door Sales Act clearly excludes those who purchase goods or services for the purpose of operating a commercial business. The reason for this line in the sand is that commercial users receive other legislative benefits such as the ability to make GST claims, deduct expenditure for income tax purposes, adopt legal structures such as limited liability companies etc whereas goods and services procured for personal use are not able to avail themselves of these benefits. In return for the benefits received by commercial consumers of goods and services such as those listed above, there is an expectation that they do not require the same degree of consumer protection that is available to domestic consumers and that they should manage their commercial affairs in a prudent manner.
Q20: Are the benchmark terms proposed for 'dispute resolution' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	13.2 and 13.3) These clauses are redundant. All consumers have access to an independent dispute resolution scheme through the New Zealand judicial system and in particular for small consumers the Small Claims Tribunal.
Q21: Are the benchmark terms proposed for 'how consumers communicate with the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Generally, Nova is not aware that this topic is an area of concern for small consumers.

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Q22: Are the benchmark terms proposed for 'notices from the retailer' appropriate? If not please explain why. If an alternative form of words or an additional clause is suggested, please provide details.	Generally, Nova is not aware that this topic is an area of concern for small consumers.
Q23: Viewing the proposed benchmarks as a whole, are there topics which should have been included and have not, or are there terms which have been included but might be removed to mane the benchmarks more compact? Give reasons for any views expressed, and examples where appropriate.	Regulatory intervention (voluntary or otherwise) in the freedom of suppliers and consumers to enter into contracts is inefficient for a number of reasons including: - cost of monitoring especially when markets and services become fragmented and nonstandard; - duplication (or potential crowding out) of services already offered by others such as the consumers institute; - unnecessary constraints and restrictions hindering innovation and suppliers and consumers making price/quality/service tradeoffs; In general, better outcomes at lower cost from functioning markets where competitors engage in commercial activities that deliver value through reduced prices or improved services to customers. The Gas Industry Company would be better to allocate its resource to areas where there is little or no competition or where market mechanisms are not working sufficiently thereby reducing competition. We note that the implementation of the switching rules has had a pro competitive result and one area that the GIC should focus its efforts on now is the distribution terms and conditions of the monopoly network providers as there is not the competitive tension around those terms that exists in with respect to energy retail (except in areas that are also serviced by competing pipelines).

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Q24: Should the benchmarks be extended or amended to prevent the use of such unfair conditions, or would another approach be more appropriate?	No. The examples quoted in Section 6.3: - reflect the right of a supplier to refuse to transact and is a fundamental legal right just as consumers may elect not to take supply from a retailer if they so choose, - result from terms and conditions of distribution or transmission contracts that retailers must reflect within their contracts with consumers to avoid being exposed to potential breach of contract for reasons outside of their control or to costs that they are charged themselves. In general we note that customers receive a number of protections such as: - competition and choice of supplier - consumer legislation (Fair Trading Act, Consumer Guarantees Act, etc) - common law that provides protection against such contractual provisions such as penalties for breach and contracts that do not expire or are unable to be terminated (unless expressly agreed between the parties) - access to a low cost disputes resolution regime in the form of the Small Claims Tribunal
Q25: Are there other examples of unfair terms in use which should be excluded from acceptable terms? If the answer is yes please give examples.	No

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Q26: To what extent do you think the published standard retail terms reflect the current practice between retailers and consumers (persons consuming less than 10 terajoules per annum)?	We understand that the analysis of retailer contracts was performed by an independent consultant who has no appreciable experience in the energy industry. The consultant also procured standard terms and conditions from retailer websites but did not necessarily have access to all information (such as application forms) that are part of the contract between the retailer and customer. These facts mean that the analysis is potentially flawed. We believe the analysis makes several mistakes regarding interpretation of contracts such as: - ignoring that omission from a contract of a statutory obligation (switching, privacy, safety, etc) does not allow a retailer to avoid those statutory obligations; - that execution of a contract by a customer somehow does not represent reasonable opportunity to agree to the contractual terms and conditions; - retailers are able somehow to enforce terms (such as a bond requirement) not included in a contract; - failure to take account of the fact that consumers always have the ability to resolve a dispute through the Small Claims Tribunal; - failure to recognise that notwithstanding contracts between the consumer and a retailer, the consumer now is able to switch retailer without hindrance and give effect to its own remedy should it be necessary due to breach of contract by a supplier. We also believe that some of the benchmarks proposed are cosmetic and superficial (for example – communications (14) and notices (15)) and do not represent material value for consumers if benchmarks were to be adopted. We understand from consumer forums that the topics of most concern to consumers are material issues of price, disconnection/reconnection and contract termination and ability to

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	switch retailer. Some issues such as disconnection/reconnection are direct pass through of costs and obligations imposed by monopoly distributors and it is those topics that are not subject to competitive pressure that the GIC should be focussing on through review of distribution contracts.
Q27: Do you agree that a common set of benchmarks or minimum terns and conditions should be used, irrespective of whether implementation is voluntary or mandatory (regulated)? If you disagree, explain why.	No 1) Nova does not believe that there has been presented a plausible justification for regulation; and 2) Continuing to develop voluntary model contracts is a waste of resource as they deliver little benefit to consumers or industry compared to competition and innovation. If regulation of retail terms and conditions were to be implemented then all retailers would be required to make extensive changes to their contracts of which many would be largely cosmetic. Such exercises are time consuming and costly and require actual benefits in order to justify them, not to mention the ongoing costs of monitoring. As such we do not believe that regulating terms and conditions would pass a cost/benefit analysis test.
Q28: Do you agree that these are the most appropriate options for analysis, and that they have been appropriately specified? If you think that other options should have been selected or the specifications should be changed, set out your proposals and explain why.	The option of discontinuing the development and monitoring of compliance with model contract terms and conditions on either a voluntary or mandatory basis has not been considered. This is in effect the status quo. The GIC has not made a compelling case for change and appears to be attempting to fix a lot that does not appear to be broken. We understand that the requirement for progress in this area has been a requirement of the Associate Minister of Energy, however regardless of that the onus is still on the Gas Industry Company to demonstrate that there is a problem that requires a regulatory solution

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	and secondly that the benefits of the solution outweigh the costs.
Q29: Do you agree that all of the relevant benefits, costs, risks and uncertainties of the option had been identified and appropriately characterised. If you disagree pleased provide alternative or additional material and explain your reasoning.	The costs of lost dynamic efficiencies resulting from regulation are not included in the assessment of costs. Any restrictions on the ability of competing suppliers to innovate and construct new price/quality/service offerings results in potential opportunity costs for consumers in the long run. Any restriction on the flexibility to develop contract terms is a cost. It is not correct to stay there are benefits. Instead loss of flexibility is a cost and a voluntary regime (option 1) would be less costly than a mandatory regime (option 2) in that regard. By not including the option of no benchmark terms and condition (voluntary or mandatory) the analysis of costs and benefits is not complete.
Q30: What degree of commitment do you think is required from retailers, in relation to the voluntary alignment of their contracts with the proposed benchmarks, to shift the cost/benefit analysis away from regulated benchmarks terms?	
Q31: Based on the analysis above or any additional analysis that you include in your submission, what do you think the preferred option for inclusion in the statement of proposal should be? Explain why.	Abandonment of this workstream unless a clear case can be made that current contractual terms and conditions of retailers require changing. As has been highlighted in the paper the exercise of amending terms and conditions across a large number of consumers and all retailers is not a trivial task and will be costly. For the most part, the proposed benchmarks will require change by all retailers that will have absolutely no impact on the way in which customers are supplied or their service experience. No cost benefit analysis has been performed justifying continuing this workstream.

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	The GIC would be better directing its resources to ensuring that terms and conditions of monopoly service providers are appropriate and ensuring that mechanisms that support competition are efficient and effective.