

27 May 2025

Submissions
Electricity Authority
Level 7, AON Centre
1 Willis Street
Wellington 6011

Via email: info@ea.govt.nz

IMPROVING VISIBILITY OF COMPETITION IN THE OTC CONTRACT MARKET

The Electricity Retailers' Association of New Zealand ('ERANZ') welcomes the opportunity to provide feedback on the Electricity Authority's consultation paper, 'Improving visibility of competition in the OTC contract market' from May 2025.

ERANZ is the industry association representing companies that sell electricity to Kiwi households and businesses. Collectively, our members supply almost 90 per cent of New Zealand's electricity. We work for a competitive, fair, and sustainable electricity market that benefits consumers.

Overall view

ERANZ welcomes the Authority's initiative to improve transparency and monitoring of the over-the-counter (OTC) hedge market. We agree that timely and comprehensive data can support better regulatory oversight and help ensure a level playing field, particularly for smaller and independent retailers.

We support the Authority's proposal to issue an enduring clause 2.16 notice and see this as a positive evolution from the previous section 46 process and voluntary disclosures. Ensuring consistent and wide-ranging participation in OTC data provision aligns with the Authority's statutory objective to promote competition, reliable supply, and efficiency. However, we stress that the scope of the notice should be tightly defined to ensure benefits clearly outweigh compliance costs.

Data interpretation and use

ERANZ supports improved data collection but urges caution in how the Authority interprets and uses the data.

Our members have highlighted a concern that data collected without sufficient commercial context could lead to misleading conclusions. For example:

- A retailer may issue exploratory requests without intending to transact.
- Responses may be withheld due to legal or compliance constraints, not market power.
- Lack of a trade does not automatically imply lack of competition.

We also note that Financial Markets Conduct Act (FMCA) obligations can legally prevent some retailers from transacting in the OTC market. The data collection framework should allow reporting parties to flag when no response was possible because the requestor was not an eligible wholesale investor under the FMCA.

Further, we support the inclusion of a system for counterparties to review data reported about them, akin to the quality assurance process under the Hedge Disclosure Obligations.

Scope of data collection

ERANZ supports including all retailers (including small retailers) and large industrials in the scope of the clause 2.16 notice. However, this needs to be accompanied by clarity on definitions, e.g., which industrials qualify as participants under the Code.

We support excluding non-integrated generators for now and recommend this issue be explored through a separate consultation.

We also endorse:

- Restricting reporting to written buy requests,
- Including requests via brokers,
- Excluding informal communications such as phone calls and text messages, although more clarity is needed on how the Authority classifies communication via messaging apps.

Information granularity and data fields

We support collecting only initial bids and final offers. OTC contract negotiations are often complex, and intermediate steps are unlikely to be useful and may be highly subjective.

We do not support free-text fields for negotiation summaries. Instead, ERANZ recommends using tick-box fields for common decline reasons (e.g., insufficient credit, no ISDA agreement, ineligible investor).

Clarification is also needed on:

- How the Authority defines a “final response”.
- Whether responses that straddle quarters should be reported in full in the later quarter.
- Which fields are mandatory under which conditions.

Confidentiality and publication of data

All data collected under the clause 2.16 notice is commercially sensitive. The Authority's discretion over publication does not provide sufficient certainty. We recommend that publication rules be embedded in the Code, similar to the Hedge Disclosure Obligations.

If anonymised data is to be published, aggregation by contract type and grid zone is appropriate. However, the Authority must be cautious to prevent reverse engineering and avoid releasing misleading or overly simplistic indicators based on incomplete context.

Cost-benefit analysis

We are not satisfied that the Authority has demonstrated the benefits of this clause 2.16 notice outweigh its costs. Benefits referenced in the consultation—such as support for the Task Force or hypothetical future interventions—are not directly attributable to the data collection itself.

The compliance burden is definite and measurable, while the benefits are speculative. ERANZ recommends the Authority undertake a more robust cost-benefit analysis focusing solely on the direct benefits of the data provision.

Legal framework and alternatives

ERANZ recommends that both data provision and publication obligations be codified under the Code itself. This would provide greater certainty and ensure alignment with existing hedge disclosure processes.

The Authority's rationale for not using the Code due to seller-focused obligations is not persuasive, the Code can be updated to define distinct requirements for buyers.

Retrospective reporting

ERANZ strongly opposes any retrospective application of the clause 2.16 notice to cover data from January 2025 onward. If the Authority intended to collect that data, it should have acted earlier. Backdating will significantly increase implementation costs and may result in incomplete or inaccurate reporting.

We recommend the data collection commence no earlier than 1 July 2025 to align with the start of the new financial year.

Conclusion

ERANZ supports the Authority's aim of improving OTC market visibility but urges a pragmatic approach to ensure the proposed data collection is proportionate, targeted, and useful.

We welcome the opportunity to work collaboratively with the Authority on the finalisation and implementation of this proposal.

Yours sincerely,

Kenny Clark
Policy Consultant