



## 2degrees supports mandatory market-making for super-peak and other shaped hedge products

2degrees welcomes the opportunity to submit in response to the Electricity Authority's consultation on "Regulating the standardised super-peak hedge contract: issues and options". We also welcome the wider review of market-making.

Getting access regulation right is one of the most important reforms the Authority can initiate to improve competition and the efficient operation of the electricity industry for the long-term benefit of consumers.

Shaped hedges are critical for managing risk in a high renewables market. They help participants, including new and independent generators and retailers, manage risk and ensure they are financially viable. Mandatory market-making for super-peak products would complement and strengthen the non-discrimination rules the Authority has announced.

As an independent electricity retailer, we are dependent on access to suitable risk management tools to manage wholesale (spot price) risk and to offer competitive services to our customers and other electricity consumers. Access to a liquid and efficient hedge market is essential to our engagement in the electricity market and our ability to compete.

### Missing pieces in the consultation

2degrees appreciates that the work the Authority is doing to address the current challenges with our electricity market, but we feel the current consultation is missing some key elements.

The consultation lacks a problem definition. While there is a good summary of the importance of availability of hedge products, the consultation is largely silent on the root causes of access problems (market or regulatory failures).<sup>1</sup>

The options detailed in the consultation are too narrow.<sup>2</sup> The consultation should have included mandatory options as well as voluntary. The consultation essentially treats it as axiomatic that the Authority should start with voluntary arrangements. This issue warrants more than the one cursory paragraph on why the Authority intends to go for a voluntary approach.<sup>3</sup>

The consultation states that the Authority prefers voluntary arrangements because "This would allow liquidity to develop naturally and the market to acquire more information to inform market settings (if required)" but does not include any comparative assessment of the impact different potential options would have on competition etc. Our submission details that there would be material and substantial differences between voluntary and mandated solutions in relation to competition impacts and regulatory certainty.<sup>4</sup>

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<sup>1</sup> The Risk Management Review and Level Playing Field consultations detailed that the incumbent gentailers have market power, coupled with vertical-integration means they lack incentives to provide access to 3<sup>rd</sup> party retailers or generators.

<sup>2</sup> They are limited to sub-options of the Authority's proposed voluntary arrangements i.e. whether a regulated option, if adopted following initial voluntary arrangements, should be via ASX or OTC.

<sup>3</sup> The consultation paper also includes an incomplete listing of prior submitters that support mandated arrangements e.g. it does not mention Vector.

<sup>4</sup> The sole mention of regulatory uncertainty in the consultation is limited to the need for "New monitoring and compliance processes ... to be established" under the market-making OTC option.

## Summary of 2degrees' views

- We are ambitious for New Zealand and ambitious for 2degrees. We want to be in a truly competitive electricity market where we can offer innovative electricity services to all New Zealanders. Current market conditions stifle this ambition.
- We agree access to shaped hedge contracts such as the standardised super-peak hedge contract is an important enabler of competition in the electricity market.
- We agree “Voluntary trading is shallow and lacks liquidity”.
- We agree the obligation to provide shaped or super-peak products should apply to Contact, Genesis, Mercury and Meridian. The ‘big-4’ should be regulated on the basis that they: (i) are vertically-integrated; and (ii) have market power.
- We support the Authority proposal for the super-peak product to be traded OTC.
- Spreads should be narrower. The proposed bid/offer spreads are too wide. The Authority should consider the additional benefits to that could accrue if the spreads are narrowed.
- Provision of shaped/super-peak hedge products should be mandated. The option to mandate super-peak hedge products should have been included in the consultation. The consultation does not include a robust or meaningful basis for only including (initial) voluntary options.

Gentailer incentives are poorly aligned with voluntary arrangements. We have seen ample evidence of the gentailers poor performance in providing super-peak products since January, which is reflected in the consultation paper.

- If the Authority retains voluntary arrangements, we consider it should be much clearer about the triggers for moving to regulation and set out expectations at both the aggregate individual gentailer level. The Authority should require a large and immediate increase in the volume of super-peak products plus a rapid and clear path to the volumes the Authority is proposing for the mandated solution.
- The Authority should develop multiple different shaped hedge products. It won't be the case that ‘one size fits all’ and a range of flexibility is likely to be needed to efficiently manage wholesale market (spot price) risk. Electricity retailers employ risk management strategies tailored to their individual circumstances and risk tolerance.

We support MDAG's recommendation that a suite of standardised flexibility products be developed and agree with [Mercury](#) that “this ... work should be prioritised.”

- The Voluntary Code of Conduct For Participants in New Zealand's Over the Counter Electricity Market should be replaced with new mandatory obligations. The current Voluntary Code provisions are weak at best and has had no real or meaningful impact on trading. For example, the “principle” that “All parties ... have the right to determine at any point in time the risk management features of the trades they want to transact” amounts to a ‘get out of jail free card’ and imposes little or no obligations on Access Providers. The Code includes the principle that parties should act in “good faith” but this is not defined.<sup>5,6</sup>

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<sup>5</sup> The [Grocery Industry Competition Regulations 2023 \(the Grocery Supply Code of Conduct\)](#) in contrast has extensive definition of good faith requirements. The Grocery Code includes includes good faith and non-discrimination principles which are common to robust and orthodox access regime for vertically-integrated industries.

<sup>6</sup> The [Mercury “Expert Panel”](#) also recommended adjustments to the Code, including to “Provide greater clarity of the circumstances where it would not be expected that a party would quote or enter into a trade.”

- Furthermore, in line with our responses on the level playing field consultation, we also consider that all shaped/super-peak hedge products should subject to effective and mandatory equivalence and non-discrimination obligations.
- We believe vertically integrated incumbents should be mandated to trade all shaped/super peak hedges on the OTC market to satisfy their own risk management portfolios and provide appropriate disclosure of existing positions; and
- Full retail shaped hedges should also be regularly offered and traded to provide simple retail customer level hedging and clear price signals as evidence of non-discriminatory pricing.

## A highly liquid hedge market is needed

In the absence of vertical-integration, highly sophisticated hedging is needed to to manage financial risk.

The hedge market does not currently provide the types of products required to efficiently manage risk. A liquid supply of a range of shaped and super-peak products is needed.

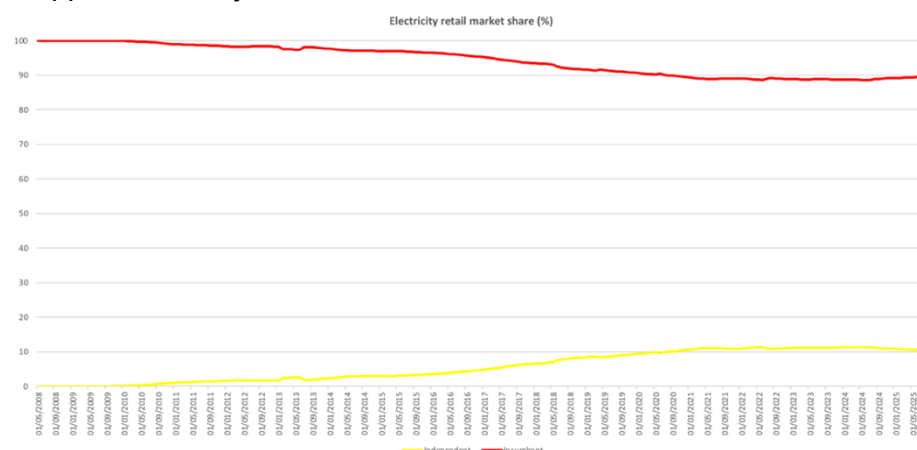
Participants should be able to trade (prices for products are available most of the time), within reasonable bid-ask spreads, and without the trade impacting price materially. If the hedge moving the price unreasonably. If the hedge market is liquid, participants will be able to trade large volumes of prudent quickly at reasonable prices.

Hedge market liquidity requires that bid-ask spreads are low. Low bid-ask spreads allow participants to trade in and out of positions in the market with low transaction costs.

## There is clear evidence of ongoing competition problems

2degrees and the Independent Electricity Retailers have documented in numerous submissions that on any reasonable or objective metric, retail competition has stalled or gone backwards since around 2018/the Pohokura Outages.<sup>7</sup> This trend has continued through 2025 with retail competition statistics getting worse.

Independent electricity retailer market share stalled at around 11% in 2020 and has now dropped down to just 9%.

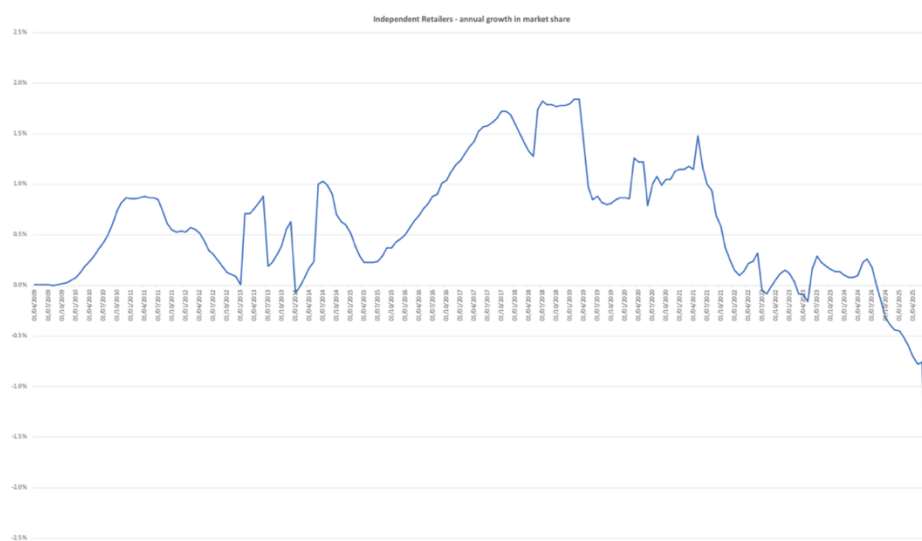


<sup>7</sup> Refer, for example, to: [https://www.ea.govt.nz/documents/4487/Independent\\_Retailers\\_email.pdf](https://www.ea.govt.nz/documents/4487/Independent_Retailers_email.pdf).

The growth in independent electricity retailer market share peaked around 2018-2019 at a modest rate of just 1.8%.

Other troubling electricity retail competition statistics include, by way of example, that:

- 32 electricity retailers have exited the market, 28 of which have exited since 2018. If small and independent retailers only are counted (i.e. excluding Manawa) that translates to nearly 100,000 retail customers worth of exits.
- HHI for the overall NZ electricity retail market is about the same as it was in May 2020.
- The residential HHI for NZ is about the same as it was in January 2020.



- CR1 is about the same as April 2022.
- CR2 is about the same as October 2019.
- CR3 is about the same as July 2018.
- CR4 is about the same as May 2017.
- Overall switching rates have been declining since 2018 and are now back at 2000s levels. Switching for residential, SME, and commercial customers are all at the lowest levels they have been since the Authority started publishing these statistics.

### Electricity retail market entry and growth compares poorly against telecommunications

In our [2018 submission to the Electricity Price Review](#), we commented on how independent retailer entry and growth compared poorly against the inroads entrant retailers have made in telecommunications.

We suggested “A comparison of the rate of entrant retailer market penetration in telecommunications versus electricity is a good way of illustrating the challenges ... in terms of delivering good outcomes and affordable electricity supply to consumers.”

The contrast between electricity and telecommunications is even more stark 7 years on.<sup>8</sup>

Aggregate independent electricity retailer market share is just 9%. The largest independent electricity retailer has a market share of 3.27%.<sup>9</sup>

Mercury and Contact are now the 4<sup>th</sup> and 5<sup>th</sup> largest retailers in the residential broadband market in urban areas with 10 and 7% market share, respectively. Other entrants such as Nova have an aggregate market share of 9%.<sup>10</sup> This totals 26% market share in aggregate.

The Commerce Commission has commented positively that “New entrants – especially energy retailers bundling telecommunications services – are gaining traction. Mercury and Contact now rank fourth and fifth, respectively, having doubled their market share ... over the past five years. These bundled providers represent one of the fastest-growing segments in the market.”<sup>11</sup>

### The proposals are too tentative and cautious

We do not consider voluntary arrangements to be a proportionate or effective solution to the substantive problems in the market.

The Electricity Authority, Energy Competition Task Force, and MDAG have all highlighted the importance of shaped hedge products for managing spot market risk and ensuring competition in the electricity retail market. To adopt voluntary arrangements would mean the market-makers could withdraw the service (to the extent they provide it) unilaterally when it suits them commercially without needing to ask for a Code amendment.

The Authority should not waste further time and move straight to a regulated, mandatory market-making solution. 2degrees supports the [Mercury “Expert Panel”](#) recommendation to adopt mandatory “market-making at the outset”.<sup>12</sup> We do not have the luxury to adopt a ‘wait and see’ approach with voluntary arrangements.

We have seen no evidence that a voluntary approach will have the desired outcomes and consider that mandatory arrangements are more likely to result in better outcomes in terms of promoting competition and efficient operation of the electricity industry, but the consultation has not engaged on this at all.

We remain concerned that the Authority may continue to under-regulate to address the acknowledged market failures in the electricity market<sup>13</sup> and reiterate our warnings of the risks of unintended consequences where regulatory intervention is inadequate or isn’t proportionate to the scale of the problems in the market. We must avoid ineffective regulatory interventions that led to weaker competitive outcomes and less choice and less affordable electricity for consumers.

The Authority’s reforms in relation to hedge access has consistently fallen short of what is needed<sup>14</sup>. Each of the reforms, in and of themselves, have been helpful, but individually and collectively have been inadequate to address the substantive problems in the electricity market. Retail competition performance has continued to deteriorate over this time.

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<sup>8</sup> And even more stark than the comparison we did in our recent [Level Playing Field submission](#) based on the [Commerce Commission’s 2023 Telecommunications Monitoring report](#).

<sup>9</sup> [https://www.emi.ea.govt.nz/Retail/Reports/R\\_MSS\\_C?Percent=Y&si=vj3](https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?Percent=Y&si=vj3)

<sup>10</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0025/367054/2024-Telecommunications-Monitoring-Report-30-June-2025.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0025/367054/2024-Telecommunications-Monitoring-Report-30-June-2025.pdf)

<sup>11</sup> [https://comcom.govt.nz/\\_data/assets/pdf\\_file/0025/367054/2024-Telecommunications-Monitoring-Report-30-June-2025.pdf](https://comcom.govt.nz/_data/assets/pdf_file/0025/367054/2024-Telecommunications-Monitoring-Report-30-June-2025.pdf)

<sup>12</sup> The consultation paper documents support for mandatory arrangements, including from Mercury and Meridian (on the gentailer side), the ‘Mercury’ Expert Panel, and independent retailers. Other stakeholders, not referenced in the consultation, such as Vector, also support mandating the product.

<sup>13</sup> 2degrees, [Level playing field measures need to go beyond current proposals to address problems in the retail and wholesale markets](#), 7 May 2025.

<sup>14</sup> For example the changes made in 2019 (e.g. reducing the maximum bid-ask spread), supplementary obligations in 2020 following the Electricity Price Review, introduction of commercial market making in 2022 and a voluntary shaped product in 2025

## A voluntary approach would result in considerable regulatory uncertainty

Based on the Authority's proposals, there would be considerable uncertainty about what would trigger a move to regulation, and what the Authority's expectations are for the conduct of the large, incumbent gentailers both at the aggregate level and also at the individual gentailer level.

Mandated arrangements would provide far more regulatory certainty for both Access Providers and Access Seekers.

As an Access Seeker that is dependent on access to hedge products to manage our retail book risk and to grow our retail customer base, we would face considerable risk and uncertainty over access to the products if a voluntary approach is adopted. We could grow our customer base on the back of super-peak products and then be exposed to unmanageable risk if voluntary access is curtailed (be it through volume, price or terms and conditions).

A mandated approach would offer far more certainty over access to the super-peak product.

A number of submissions (e.g. [2degrees](#), [Bold Trade and EMH Trading](#), [Haast](#), [Octopus & Pulse](#)) made the point that the Authority decision to weaken market making obligations created an additional regulatory risk for retailers trying to manage risk and build up a customer book. A decision to adopt a voluntary approach would heighten this risk and heighten the likelihood (absent enforceable Code obligations) that we could see a repeat of market makers withdrawing from market making when the market is under stress.

The Authority has previously commented "To meet the Authority's goals of a robust forward price curve and available risk management tools, the Authority needs market makers to reliably provide these services. This is especially important during times of market stress, when prices in the spot and futures markets are increasing rapidly." [emphasis added] The only way of providing surety market powers will reliably provide hedge products is through mandatory obligations.

## Common ground with Mercury

While 2degrees has a different perspective on the necessary reforms for a healthy and competitive electricity market, we share common ground with [Mercury](#) on the desirability of mandatory market-making for super-peak products.

One of the main points of differences is that 2degrees sees this as necessary and complementary to other reforms, including non-discrimination obligations and separation requirements.

We agree with Mercury that a "Priority issue is independent retailer access to risk management products", and "accessing shaped hedge products ... needs to be addressed".

We also agree with Mercury that "Access to risk management contracts underpinned by flexible generation is an important input to both the development of new intermittent renewable electricity projects, such as solar and wind, and the entry and expansion of new retail participants." We welcome their commentary that "...the liquidity and transparency of the risk management contracts market, particularly access to peak or shaped products, is crucial given we are transitioning to a more renewable electricity system and flexible generation will continue to be scarce until new investment comes online. A more transparent and liquid market will provide market participants with comfort that prices reflect the scarcity value of the services rather than market power."



We also welcome Mercury's support for "boosting the existing hedge market" and agree that "Ensuring best practice trading conduct and improving both transparency and liquidity of the hedge market will ensure all market participants can access competitively priced risk management contracts to manage their risks. This will support competition and investment in both the wholesale and retail markets."

We support Mercury's recommendation that the Authority increase "the scope of market making obligations beyond base products to include other products that together are sufficient for effective risk management." We agree with Mercury that "introducing further market making obligations on gentailers would ... improve the credibility, liquidity and accessibility of risk management products to non-integrated retailers and generators."

### Lessons from telecommunications

The experience with regulation in telecommunications also provides lessons that electricity regulation can benefit from. We discussed above how much better retail competition performance is in telecommunications than electricity.

One of the clearest lessons from the telecommunication sector is that if access regulation is not adequate it can result in significant (years or even decades) delays in addressing competition problems which can result in significant harm for NZ Inc and NZ consumers.

This is highlighted well with what MBIE describe as "limited regulation" under the initial iteration of the Telecommunications Act<sup>15</sup> that were ultimately addressed in the significant upgrade of the Telecommunications Act in 2010, including corporate separation, to address the market dominance of Chorus (nee Telecom).

The sweeping changes that subsequently occurred in the New Zealand telecommunications industry led to immense consumer benefits – from pricing, to innovation, service and quality. Creating a more competitive telco landscape has significantly strengthened NZ Inc's competitive position and boosted productivity across numerous sectors.

### Concluding remarks

As a competition and consumer champion, 2degrees is a strong supporter of appropriate regulation that addresses market failures and promotes competition in markets for the long-term benefit of consumers within New Zealand. This is consistent with our purpose of 'Fighting for Fair'.

Regulating shaped products, including a super-peak product, is both necessary and desirable to promote competition, and to ensure trading is deep enough to deliver liquidity and efficient price discovery.

Introduction of a single shaped (super-peak) product is only a partial solution to the wider problems with access to hedge products. The Authority gave its Flexibility Product Group a narrow remit to develop a pragmatic measure that could help with price spikes in advance of winter 2025, rather than addressing the broader matters MDAG recommended be addressed. The Flexibility Product Group [recommended](#) that the Authority consider bringing additional new flexibility products to the market.

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<sup>15</sup> As a point of reference, 2degrees considers that current regulatory settings under the Electricity Industry Act are lighter than the "limited regulation" under the initial iteration of the Telecommunications Act.