

# Improving visibility of competition in the over-the-counter contract market: clause 2.16 information notice

User:

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## Summary of information submitted

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### Contact information

#### *Organisation*

Nova Energy

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### Submission

#### *Introduction (optional)*

Thank you for the opportunity to provide feedback on the proposal increase transparency in the “over the counter” (OTC) market for electricity hedges. Nova Energy (Nova) participates in this market and therefore has a direct interest in the market being efficient and competitive. It will also be subject to the increased reporting requirements.

Nova supports the Authority obtaining greater visibility on market activity and transactions through introducing new reporting requirements into the Code. However, Nova also urges the Authority to carefully consider how the proposed disclosures might influence market dynamics. While greater transparency will help inform the Authority and potentially enhance competition, there is potential for unintended effects.

The proposed regime could unintentionally encourage behaviours that make it more difficult to accurately assess market conditions. For instance, in scenarios where parties seek price discovery or where parties might act opportunistically in the market, including these activities in disclosed information may create misleading signals or be distortionary.

This creates two key challenges:

Vertically integrated generator-retailers (gentailers), as primary sellers of hedges, cannot easily differentiate between genuine and exploratory requests, leading either to increased administrative burdens if responding to all, or potential criticism if they don't.

The Authority's data collection will capture all requests but may not be a position to distinguish between true unmet demand or intent to transact, risking misinterpretation of the collected data.

There is a high risk therefore that by publishing the output from its collection of OTC market data the Authority will create an illusion of a failing market when that is not the case. Similar risks have been observed overseas—for example, in the United States, enforcement actions have been taken against manipulative trading that distorted market signals; in Australia, concerns have been raised about transparency measures inadvertently exposing sensitive commercial strategies; and in Europe, under the REMIT regime, regulators have acknowledged the challenge of distinguishing genuine trades from strategic behaviour when data lacks context.

Nova encourages the Authority to approach the reporting and interpretation of bids and offers for OTC contracts with caution to ensure a fair and accurate representation of the market.

Nova suggests that in the reporting, the requesting party should disclose the price, volume, and terms it would have been prepared to accept if it did not reach settlement, and if those terms were disclosed to one of the participating bidders in a counteroffer. While not perfect, this will better inform the Authority of whether the reporting party's expected terms were realistic and reduce the likelihood of the Code requirement influencing market behaviours.

Thank you for considering Nova's feedback. Nova looks forward to continuing contributing to the Energy Competition Task Force initiatives.

***Q1. Do you agree with the Authority's proposed approach of collecting data on OTC bids and offers, including those resulting in trades?***

Nova continues to support the EA's endeavours to put in place effective and efficient data collection processes with respect to the operation of the OTC hedge market to provide a sound and evidential basis for policy development and implementation.

Nova does have concerns with the level of disclosure required and the regulatory cost burden that may place on smaller participants. Nova has some suggestions on how the EA may refine its proposal to reduce the costs on parties without reducing the quality of data being provided.

***Q2. Do you agree with the Authority's proposed approach of collecting information from large industrials through this clause 2.16 notice?***

Yes

***Q3. Do you agree with the Authority's proposed approach of not collecting information from non-integrated generators through this clause 2.16 notice? Do you have any thoughts on alternative ways of collecting information on non-integrated generators requests and responses to those requests?***

No comment

***Q4. Do you have feedback on our approach regarding collection of information on PPAs?***

No comment

***Q5. Do you agree with the Authority's proposed approach of collecting data from all retailers, thus including small, micro, and community retailers?***

The EA should be mindful of the additional costs of reporting for small participants that may have limited resources and capabilities, particularly during early phases of business startup. Perhaps a voluntary/discretionary approach may be appropriate for retailers below a certain size.

***Q6. Do you agree with the Authority's proposed approach to collect data on requests made through energy brokers?***

Yes

***Q7. Do you agree with the Authority's preference to restrict the data collection to written requests and requests made through brokers but to exclude text messages and phone calls?***

Yes. Nova also recommends an additional criterion for information to qualify for being reported to the Authority – being that the purchaser must also have at some point in any tender or negotiation process have submitted or advised the potential seller(s) a pricing bid with the last pricing bid made only being required to be reported.

This additional criterion will reduce reporting activity to where parties have a genuine interest in trading and exclude where parties may have been testing the market only for price discovery purposes.

Given that some processes may be reiterative the most valuable information for the EA will be the last prices offers/bids made by the parties irrespective for trades not completed and that the various iterations prior to that point are not particularly useful.

***Q8. Do you agree with the Authority's proposed data collection from retailers and large industrials for requests larger than 0.1MW?***

No comment

***Q9. Do you agree with the Authority's proposed approach to restrict the data collection to include only buy requests?***

Yes

***Q10. Do you agree with our suggestion to collect information on the initial bids and final offers only? Or should we include a field to capture the number of negotiation steps?***

Nova recommends that only hedge requests where the buyer has submitted a pricing bid should be reported to the Authority. Furthermore, only the final bid and offer prices should be disclosed. This approach would reduce reporting requirements and lower compliance costs by avoiding the need to report multiple pricing iterations before the final positions are settled.

By requiring the purchasing party to submit their final bid, this will reduce reporting requirements where parties are testing the market and may not be genuinely interested in trading.

***Q11. Do you agree with the Authority's proposal to require quarterly provision of information?***

Yes

***Q12. Do you have any comments on the changes to the proposed data fields and/or the proposed file structures?***

No – provided that “N/A” responses are accepted (e.g. where no deadline for OTC responses is set).

***Q13. Do you have any comments on the proposal to require participants to provide information that might be classified as confidential?***

Nova agrees that information provided should be treated as commercially sensitive and confidential. This includes protection from disclosure under the Official Information Act. Confidentiality is important to facilitate information flow to the Authority so it can monitor effectiveness of its policy decisions and market efficiency without impacting the normal conduct of commercial discussions and the process of price discovery or leading to potential for strategic behaviour through the availability of what would otherwise be confidential (and unavailable) information.

Exceptions might include scenarios involving parties that are allegedly in breach of the rules or other legislation (including competition provisions of the Commerce Act) where disclosure may be seen as being in the public interest.

***Q14. Do you agree with the Authority’s proposal to publish aggregated information provided by the selected participants, and do you have any comments on how to best maintain confidentiality while providing as much transparency as possible?***

Given the non-standard nature of OTC products, there may be limited value in aggregating data received. The wide number of variables at play including location, time period, profile, etc mean that providing average or adjusted/normalised data renders the information to be of little value. Nova expects the value of the information received will lie in detail of what is received at a transaction level.

Data that may be of value may lie in information as to the numbers of hedge requests that do not result in transactions relative to those that do – i.e., a conversion rate.

Quantification of spreads between buyers and sellers and relativity to other market price benchmarks may be informative.

***Q15. Pursuant to clause 2.21 do you consider that any of the information we propose to collect is confidential? If so, please explain how it is confidential in line with clause 2.21***

Nova’s view is that all information proposed to be collected should be treated as confidential for the reasons set out in question 13.

***Q16. Do you agree the benefits of the proposed clause 2.16 notice outweigh its costs? If not, what area(s) of the Authority's preliminary assessment of benefits and costs do you disagree with?***

Nova has suggested some modifications to the proposed requirements that if adopted, would assist in reducing costs of data recording, collection and disclosure without impacting on quality. I.e., that only potential trades where the buyer has shown a price should be included and only information to the last pricing shown by buyers and sellers should be reported where there may have been multiple rounds of offer and counteroffers.

***Q17. Do you agree the proposed clause 2.16 notice is preferable to the other options? If you disagree, please explain your preferred option with reference to the Authority's statutory objective in section 15 of Act.***

No comment

***Q18. Should the Authority consider further work to monitor competition in the industry?***

No comment

***Q19. Do you have any comments on the proposed data collection or about the notice in general?***

No comment

**Privacy (Please specify which question response require redaction prior to publication)**

***Does this submission contain sensitive information***

No

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