

## **The Authority's focus should be on delivering effectively competitive markets that provide affordable energy at internationally competitive prices**

2degrees, Electric Kiwi, Flick Electric, Octopus Energy and Pulse Energy (the Independent Electricity Retailers) support the Electricity Authority's proposed funding increase of \$7.8m to cover the cost of third-party service providers and to adjust for inflation.

We specifically support the Authority's intention (under the umbrella of competition initiatives) to "Accelerate the implementation of the ECTF recommendations" and "Accelerate the implementation of the MDAG recommendations".

We note the appropriations consultation paper is also consultation on the Authority's draft revised regulatory strategy, including a set of regulatory principles (Question 7). Our submission focuses principally on the changes to and content of the draft regulatory strategy.<sup>1</sup>

### **Q7: A thriving and highly competitive market should be at the heart of the Authority's regulatory strategy, vision and intended outcomes**

Competition should be at the heart of the Authority's regulatory strategy.

The draft regulatory strategy only explicitly mentions the promotion of competition in its citation of the Authority's statutory objective.

The vision and outcomes refer to consumers having "choices" but at most competition is an implicit subset of choice. Consumers can have choices without there being competition.<sup>2</sup> "Thriving competition" should remain an explicit part of the Authority's strategic ambitions and regulatory strategy.

Competition should have equal status to "Secure & resilient" (rewording of "reliable supply" in the statutory objective), "Accessible" and "Efficient" (rewording of "efficient operation" in the statutory objective). It is not clear why the vision and outcomes explicitly and clearly mirror two elements (reliable supply and efficient operation) of the principle statutory objective but not the third (promotion of competition).

It is only apparent that "Accessible" is intended to include competition from the Authority's Statement of Intent and not from the draft regulatory strategy. The Statement of Intent considers competition to be a subset of "Accessible" and, again, de-emphasises competition relative to the two other elements of the statutory objective. Efficiency, in contrast, gets duplicate reference; as an outcome in its own right and as a subset of "Accessible".

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<sup>1</sup> We do not see value in the proposed "Review of Financial Transmission Rights funding model" and don't consider this to be something that would promote competition. The Authority appears to be treating this as a low priority and should continue to do so or, better still, remove it from the workplan.

The Authority consulted on FTRs in May 2022, and made a decision on the matter, including to review funding, over a year later in June 2023. We are not aware of the matter being progressed since then.

<sup>2</sup> e.g. a sole supermarket in a small town will still provide a wide range of choice of products for consumers albeit less than if there were multiple competing supermarkets.

The Authority's listed "priorities" don't make any mention of competition.<sup>3</sup> The Statement of Intent for 2024-28 also de-emphasises competition, including by:

- dropping the strategic ambition of "thriving competition";
- relegating competition to a subset of the "Accessible" outcome (see above); and
- removing performance measures relating to improvement in the ability of new entrants to compete with established participants and replacing this with a narrower measure (unclear how measured) that there are "Sufficient opportunities to hedge risk or price volatility". These should be complementary measures rather than the latter replacing the former. We note that this measure is related to managing price volatility from increased renewable generation rather than addressing competition issues/existing competition issues per se.

Whether or not it is the intention, it is reasonable to infer from the above that the Authority considers competition to be less important than other aspects of the statutory objective.

We believe that the regulatory strategy, vision and intended outcomes are substantially out of kilter with the recent GPS. The GPS has a heavy and repeated emphasis on competition including that "Effective competition is essential".<sup>4</sup>

The GPS recognises the central role of competition as a means to "affordable energy at internationally competitive prices" and "for our electricity system to deliver reliable electricity at the lowest possible cost to consumers."

### ***We support proportionality as a regulatory principle***

Our last appropriations submission emphasised that "Regulatory reform needs to be proportionate to the problems the Authority is addressing".

Proportionality and ensuring decisions are transparent and understood (two of the Authority's regulatory principles) are important pre-requisites for ensuring regulatory certainty.

Regulatory certainty has and does get confused with regulatory stability and incrementalism.

There is nothing desirable about creating certainty where it is the certainty of a bad outcome for consumers.

If underlying problems are not fully resolved, and are allowed to fester and build, it results in increasing attention to deficiencies in the existing regulatory setting and increased uncertainty about whether existing settings will endure. This is the situation the electricity industry is in now.

The proportionality principle requires that the scope and scale of the problem being addressed is fully and properly assessed. We have raised previously the issue that the Authority often undertakes projects in narrow silos which don't capture all elements of the problems. We raised this, for example, in relation to the Wholesale Market Review (WMR), which otherwise was principally sound, and, most recently, in submission in response to the Risk Management Review.

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<sup>3</sup> The listed priorities are system security and resilience; enabling investment and innovation; consumer protection; monitoring, compliance, education and enforcement; and building trust and confidence. <https://www.ea.govt.nz/about-us/our-strategy-and-priorities/>.

<sup>4</sup> Statement of Government Policy to the Electricity Authority under section 17 of the Electricity Industry Act 2010: New Zealand electricity industry, October 2024.

We have raised variously that if underlying problems are not appropriately addressed short-term regulatory stability can end up being displaced by more substantive regulatory change, particularly if it results in the Government needing to step in and intervene.<sup>5</sup>

### **Success measures for competition**

The Authority's Quarterly report to the Minister for Energy – 1 July to 30 September 2024 – details a suite of success measures and indicators, which will be incorporated into a competition dashboard.

We welcome this and consider that the dashboard would be enhanced by expanding it to include:

- Concentration ratios;
- Gross and Net Pivotal statistics (wholesale only);
- Breakdown of market concentration measures by customer type and region (retail only);
- Reporting on a network reporting region basis (retail only); and
- Competition statistics from the Authority's market participant surveys.<sup>6</sup>

### **The Authority's inclusion of the change in number of retail firms is not a reliable or accurate indicator of declining market concentration**

The inclusion of the number of retailers in the success measures provides a misleading picture of the state of competition.

For example, while there are 40 electricity retailers, 55% of these have less than 100 customers and 30% have less than 10.

In the last 5 years, the total number of retailers has increased from 37 to 40 but this does not indicate an increase in the competitiveness of the market. It reflects the number of tiny retailers in the market; 5 years ago, there were 15 retailers with less than 100 customers (40%), now there are 22 (55%). Likewise, 5 years ago there were 6 retailers with less than 10 customers (16%), now there are 12 (30%).

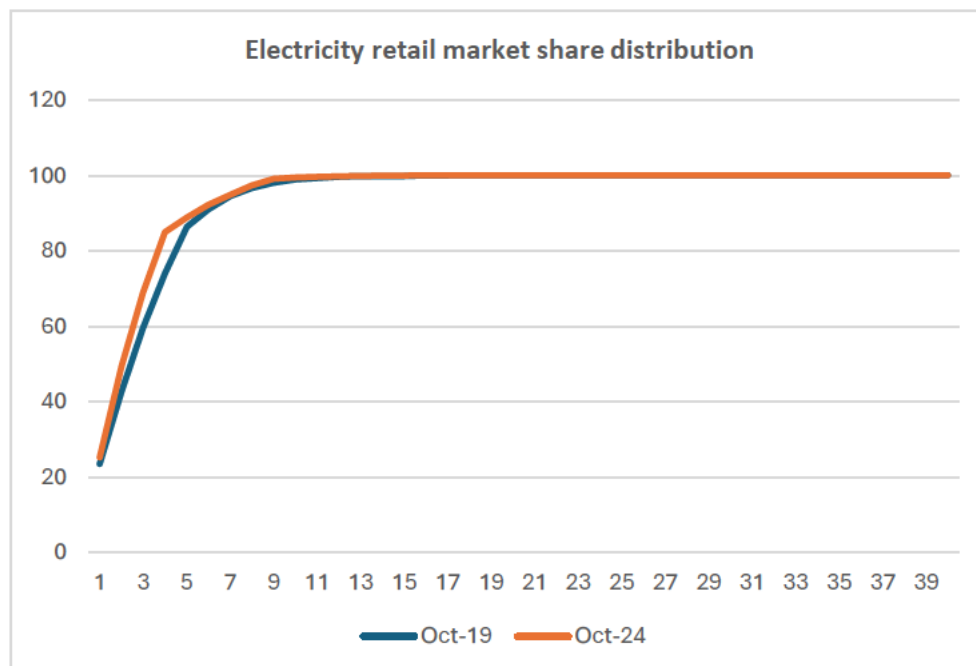
The following two graphs show that while the number of retailers has increased the market share of the larger/incumbent retailers has increased.

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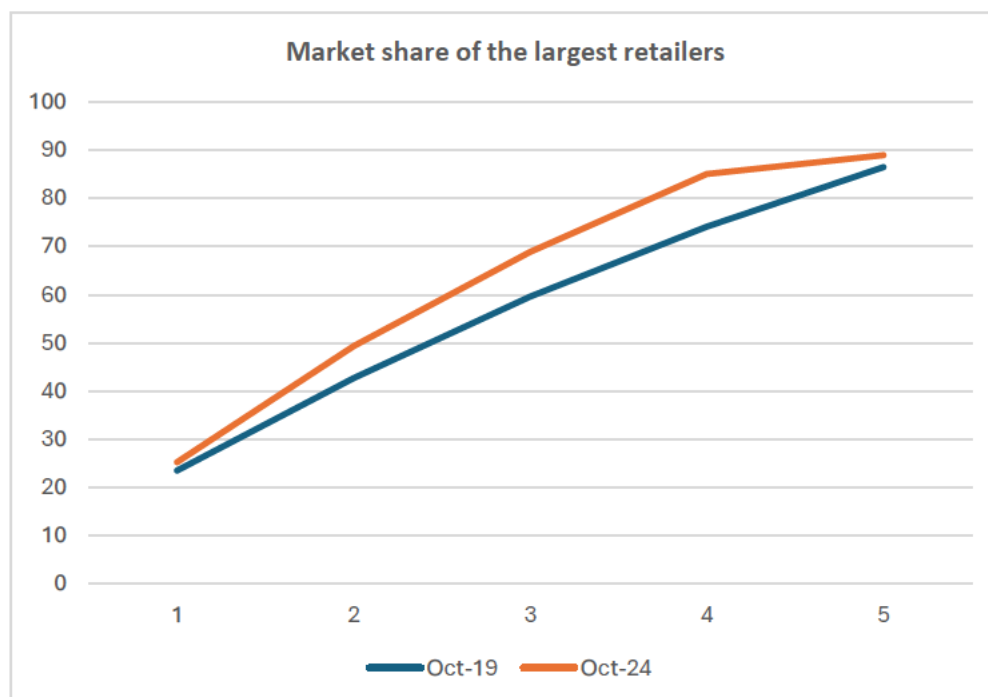
<sup>5</sup> [https://www.ea.govt.nz/documents/4487/Independent\\_Retailers\\_email.pdf](https://www.ea.govt.nz/documents/4487/Independent_Retailers_email.pdf), "It could be helpful to clarify the Authority's strategic direction [Q.5]".

<sup>6</sup> See, for example, the statistics we compiled for the last appropriations consultation.

The flatter the gradient of the first graph, the less the market is concentrated. The blue Oct 2019 reflects a less concentrated market than the 2024 line.



The closer the gradient of the following graph is to 45 degrees, the less concentrated the market will be. Again the blue October 2019 line reflects a less concentrated market.



It would be incorrect to interpret the increase in number of retailers between 2019 and 2024 as representing an improvement in competition. Having more retailers with less than 10 customers does not make the market more competitive. Having more retailers with less than 100 customers doesn't make the market more competitive either.

Underlying the statistics is the unprecedented level of exits from the market (18 in the last 5 years/25 in the last 6 years compared to 4 before that). Information on market exit is more directly relevant to the state of competition.

### **Easy improvements the Authority can make**

There are a number of simple and easy changes the Authority should make to improve the efficiency and transparency of its regulatory processes and stakeholder engagement:

- The Authority should publish (and keep update) a workplan for each of its projects.
- The Authority should publish all submissions on all consultations and publish them a short-time after the consultation ends e.g. including the recent consultation on weakening market-making obligations and the level playing field consultation.<sup>7</sup>

The recent example of the Scarcity Values consultation where the Authority not only published the submissions one working day after receiving them but notified submitters that they would do so at the same time as acknowledging receipt of the submission should become the norm.






- The Authority should provide for 'open-mic' questions and conversations in all its webinars. The ability to engage/ask follow-up questions is severely curtailed if questions can only be provided during the meetings via typed messages.
- The Authority should consult on all policy development, including initiatives that are being developed through working group processes such as the development of a flexibility hedge product. It should make no difference whether the policy initiative is intended to be voluntary or mandated via Code.
- The engagement of Consumer Care provides good precedent for the Authority. The members of the Authority have engaged with stakeholders in an open and highly constructive manner and made it obvious that stakeholder views were been considered and were valued. The engagement clearly reflected that successful consultation would result in better outcomes.
- The Authority should make greater use of cross-submissions; particularly on matters that are likely to be contentious and/or have significant financial impacts e.g. cross-submissions should be included as part of the Risk Management Review consultation.
- The Authority should continue to undertake annual market participant surveys (they will become increasingly useful as time-series trends emerge) and include survey result data on the EMI website.
- The EMI website is invaluable but continues to have a major gap in not including wholesale market concentration statistics and gross/net pivotal statistics. The Authority Board had decided to include these over 4 years ago but nothing happened.<sup>8</sup>

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<sup>7</sup> The Authority only decided to release submissions following an OIA request.

<sup>8</sup> [https://www.ea.govt.nz/documents/1409/Hedge\\_Market\\_Enhancements\\_Securing\\_access\\_to\\_exchange\\_data\\_-\\_decision\\_paper.pdf](https://www.ea.govt.nz/documents/1409/Hedge_Market_Enhancements_Securing_access_to_exchange_data_-_decision_paper.pdf)

Yours sincerely,

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