Improving visibility of competition in the over-the-counter contract market: consultation on updates to clause 2.16 notice

MAREX

Preliminary comments

These responses address the Electricity Authority's consultation on proposed updates to the clause 2.16 OTC bids and offers data notice.

Marex NZ Limited ("Marex") supports the Authority's objective of improving visibility of competition in the OTC contract market. However, the proposed treatment of energy brokers does not adequately distinguish between a broker acting as principal and a broker acting solely as agent.

Marex never acts as principal in the New Zealand electricity market. Marex does not buy or sell electricity or hedge contracts for its own account, take proprietary positions, or initiate speculative requests. Marex acts solely as agent on behalf of clients. The client:

- is the economic principal;
- determines the commercial requirements of the request;
- is the buyer or seller of the relevant contract;
- decides whether to accept or decline an offer; and
- enters into any resulting transaction.

Marex administers and facilitates the process under the client's instructions. It may distribute the request, approach counterparties, receive responses and communicate those responses to the client. That operational role does not make Marex the substantive requestor, buyer, seller or contracting party.

The Authority identifies two issues relating to brokers: that some brokers may make requests for their own account or for speculative purposes, and that the identity of respondents can be obscured where offers are anonymised. The first issue does not arise in relation to Marex.

Marex's comments primarily concern written, off-screen RFPs, EOIs and other written requests of 0.1 MW or more, while excluding standardised super-peak hedge auctions conducted through electronic trading platforms.

Q1. Do you agree with the proposed update to the definition of industrial consumers captured by the notice by including those who are directly connected to the grid or who are a trader of electricity?

Marex does not oppose the objective of closing the identified gap but recommends further clarification.

The amended notice should make clear that the expanded definition applies to end-use industrial consumers, and does not inadvertently capture brokers, advisers or other intermediaries merely because they may fall within a broader definition of "trader in electricity".

The categories of industrial consumer and energy broker should be clear and distinct, particularly as the proposed notice applies different policy rationales and reporting obligations that apply to each.

Subject to this clarification, Marex has no further comment on the proposed expansion of the industrial consumer definition.

Q2. Do you agree with the proposed inclusion of energy brokers, where they are traders in electricity, as applicable participants in the notice?

Marex does not agree with the proposal as drafted.

Marex does not agree that an agency-only broker should be treated as the applicable participant responsible for the complete request and response return.

The Authority's rationale does not distinguish between (i) a broker acting as principal or for its own account and (ii) a broker acting solely as agent for an identified client. Marex falls entirely within the latter category and has no independent economic interest in the requested contract.

The notice should therefore distinguish between a principal broker and an agency broker and therefore does not support making agency brokers responsible for the complete disclosure.

Q3. Do you agree with changing the disclosure obligation for requests made through brokers?

Marex does not agree with the proposed changes.

Under the current notice, the reporting obligation sits with the participant that made the request, including where an energy broker is used. The proposal would transfer this obligation to the broker for requests made on behalf of clients, while removing the obligation from the underlying client.

Marex does not consider this appropriate where the broker acts solely as agent. While Marex may distribute and administer a request, the client remains the substantive requestor and is responsible for determining the terms, evaluating responses, deciding whether to transact and enter into any resulting contract.

The proposed approach could also require Marex to report information it does not hold or control, including the clients internal reasoning for declining an offer, subsequent transactions through other channels, the client's final commercial decision and any resulting HDO identifier.

More importantly, the proposed change could materially affect the commercial viability of facilitating smaller tenders. The reporting requirements are not simply a matter of forwarding information already held by Marex in a structured form. They would require Marex to establish new systems and processes to capture, classify, reconcile and submit detailed information across the tender process, including information relating to the client's eventual decision that Marex may not hold.

Q4. Do you agree with the inclusion of a column to capture generating station(s) to improve distinction between PPAs and contracts for firming?

Marex agrees in principle, subject to clarification of responsibility for the information.

Marex supports the proposed GenStation field as a means of distinguishing PPAs tied to a generating station or proposed generation project from firming contracts.

The broker should not be required to independently determine whether a contract is a PPA, verify generating station details, or infer or reconcile information that has not been clearly provided.

The Authority should also provide clear guidance on how to report multiple, proposed, unknown or unspecified generating stations, and where the generating station differs between the original request and an offer.

Marex recommends that the client remain accountable for the accuracy of request-side GenStation information.

Q5. Do you agree with the inclusion of the TradedHedgeID and OfferDeclineReason columns in the notice to help identify traded contracts and the reasons for declining offers?

Marex partly agrees but does not agree that an agency broker should be responsible for these fields.

The proposed TradedHedgeID must contain the identifier used for the resulting contract under the hedge disclosure obligations. The proposed OfferDeclineReason is a free-text explanation of why an offer was not accepted.

TradedHedgeID

Marex accepts that linking an accepted offer to the relevant HDO record could improve the Authority's analysis.

However, Marex is not the contracting party and is not the party making the hedge disclosure. The HDO identifier should be created after the broker's role has concluded, and it may not be provided to Marex in the ordinary course of the agency relationship.

The TradedHedgeID should therefore be reported by the client or relevant HDO discloser.

A blank field should not be interpreted as meaning that no trade occurred. The notice should distinguish between:

- no trade resulted;
- a trade resulted but the HDO identifier is not yet available;
- a trade resulted but the identifier was not provided to the broker; and
- the outcome is not known to the broker.

OfferDeclineReason

The reason for declining an offer is a decision of the underlying client. Marex may communicate that decision but does not make it.

The client may also have internal commercial, credit, portfolio, governance or risk reasons that it does not communicate to Marex.

The proposed table defines OfferDeclineReason simply as the reason why an offer was not accepted. It does not address what a client should do where the reason is not communicated to the agent broker facilitating the pricing.

Marex recommends that:

- the client report the decline reason;
- the field use a structured taxonomy, with optional supporting text;
- NO REASON PROVIDED, NOT HELD BY BROKER and CLIENT DECISION NOT COMMUNICATED be valid responses;
- no broker be required to infer or characterise a client's internal reasoning; and
- the broker be entitled to report the responding client's explanation to the initiating client verbatim or by selecting the closest prescribed category, without independently verifying it, when permitted.

Q6. Do you agree with the inclusion of a column to the notice to identify the reasons behind non-conforming offers?

Marex partly agrees, subject to significant qualification.

The proposal would add a free-text NonConformingReason field to explain why an offer did not conform to the request.

There are two different concepts that should not be conflated:

1. How the offer differed from the request, which may be objectively identifiable; and
2. Why the respondent chose to make a different offer, which may not be known unless the respondent explains it.

An agency broker may be able to identify that an offer differs in volume, price structure, tenor, node, credit terms or contract profile. That does not mean the broker knows the respondent's reason for making the change.

Marex recommends replacing the single free-text field with:

- a structured NonConformingTerm field identifying the term or terms that differed;
- an optional RespondentReason field containing only a reason expressly provided by the respondent; and
- valid values for NO REASON PROVIDED and NOT HELD.

The notice should also clarify who is responsible for deciding whether an offer is conforming. In some processes, conformity is an objective comparison with the written request. In others, the initiating client may determine whether a commercial variation is acceptable.

Marex should not be required to speculate about a respondent's motivation or be exposed to compliance risk for a reasonable, good-faith classification.

Q7. Do you agree with the proposed changes to improve the data submission? If not, why not? Do you have any suggestions?

Marex agrees that some of the proposed identifiers may improve data linkage, but does not agree that the changes make submission easier for a potential newly captured agency broker.

The proposed ProductID, Tranche and ResponseID fields may help distinguish multiple products, schedules and offers. However, the proposed notice still requires six linked CSV files covering requests and responses.

For an agency broker, this is not basic data forwarding. It would require the broker to:

- convert bespoke RFP, EOI and email terms into prescribed regulatory fields;
- create and maintain multiple linked identifiers;
- classify products, tranches and responses;
- reconcile offers across files;
- process client-provided information where required;
- conduct regulatory quality assurance; and
- submit and correct structured data for transactions in which it is not the principal.

More fundamentally, the proposed schema does not properly represent an agency relationship. As the broker is not necessarily party to, or aware of, the bespoke bilateral credit and commercial relationships between underlying clients in such transactions.

PartyRole

The proposed PartyRole field requires the requestor to be identified as either Buyer or Seller.

Marex is neither the buyer nor seller – the client is. This demonstrates that the current schema assumes that the reporting party and economic principal are the same entity.

RequestType

The RequestType field provides alternative values for RFP, EOI, DREQ, BROKR and OTHER.

A request facilitated by Marex may be both an RFP and made through a broker. The field therefore conflates the form of the request with the channel through which it was made.

Marex recommends separating this into:

- RequestMethod: RFP, EOI, direct request or other; and
- BrokeredFlag: yes or no.

Underlying principal

The proposed files are attributed to the submitting participant through its unique SFTP account. The request master table does not appear to include a field identifying the underlying client.

As drafted, client activity reported through a potential agency broker's SFTP account could therefore be attributed to the broker rather than to the underlying generator, retailer, industrial or other participant that was the actual requestor. That would undermine the Authority's stated intention to analyse outcomes by participant type.

Q8. Do you agree with the Authority's changes to the proposed notice listed in table 2?

Marex generally agrees with the technical corrections in table 2, subject to its broader concerns about the proposed allocation of responsibility.

Marex has no substantive objection to:

- clearer nil-return guidance;
- allowing ANY and UNKNOWN in the node field;
- clarifying how multiple nodes are reported;
- correcting the size of the DeclineReason field;
- adding European-style options;
- adding OtherPartyLegalName to the relevant response file; and
- correcting the effective-date and end-date descriptions.

These amendments are described in table 2 of the consultation paper.

Marex particularly accepts that respondent legal names are information an agency broker may be well placed to provide to the initiating client, when permitted by responding clients.

However, the technical amendments do not resolve the central problems that:

- the schema does not identify the underlying principal;
- the broker is treated as though it were the buyer or seller;
- client-controlled fields are assigned to the broker;
- there are no adequate NOT HELD or NOT PROVIDED values; and

- the proposal does not distinguish between principal and agency brokerage.

Marex's agreement with the technical corrections should therefore not be interpreted as agreement with the proposed transfer of the reporting obligation.

Q9. Do you agree the benefits of the proposed amendments to this clause 2.16 notice outweigh its costs? If not, what area or areas of the Authority's preliminary assessment of benefits and costs do you disagree with?

Marex does not agree that the Authority has demonstrated that the benefits of the proposal, as drafted, outweigh its costs.

The Authority's preliminary assessment appears to assume that the information required under the proposed notice is already held by participants, is relatively straightforward to compile, and would require only basic data cleaning, organisation and process changes. Marex considers this assessment does not adequately account for the position of an agency-only broker.

Information ownership

Marex holds some information generated through the tender process, but does not necessarily hold or control:

- the client's internal reasons for declining an offer, i.e., credit terms;
- the client's final decision-making record;
- information about subsequent transactions outside the brokered process;
- the resulting HDO identifier; or
- information arising after the agency engagement has concluded.

Obtaining such information would require Marex to introduce additional client reporting obligations, contractual arrangements, follow-up processes and controls. Marex does not consider than an agency broker should be required to obtain information that remains the responsibility of the underlying client.

Implementation cost

Information being held by Marex, does not mean it is held in the structure required by the proposed notice. Converting tender information from emails, documents and spreadsheets into the prescribed linked CSV tables and classifications would require data extraction from bespoke tender documents, regulatory interpretation and classification, reconciliation, manual handling on non-standard contract terms, quality assurance and regulatory review.

That is materially more than basic data cleaning and would create both implementation and ongoing compliance costs.

Burden transferred, not removed

The Authority suggests that the reporting burden will be reduced for clients because the broker will report instead. In practice, the client would still need to generate and provide client-controlled information to the broker, which some clients may not want disclosed to an agency broker. This does not remove the underlying reporting obligation; it adds an additional administrative step and transfers responsibility for submission to a party that does not control the information.

Impact on smaller tenders

The proposed requirements apply from 0.1MW, but compliance costs will not necessarily scale with tender size. Smaller tenders may therefore become disproportionately expensive to facilitate.

This could result in higher brokerage chargers, minimum transaction sizes or reduced willingness to facilitate smaller tenders, potentially reducing market access for smaller participants.

Marex's preferred approach

Marex considers that the Authority's objective could be achieved through a narrower approach, under which the client remains responsible for client-controlled information.

Marex recommends that the Authority undertake a broker-specific cost assessment, distinguishing agency and principal brokerage, before concluding that the benefits outweigh the costs. This should consider implementation and ongoing costs, costs by tender size, and potential impacts on the availability and pricing of broker-assisted services.

Marex does not consider the Authority's current preliminary assessment adequately captures these costs.

Q10. Do you agree with the proposed changes to the notice?

Marex does not agree with the proposed notice in its current form.

Marex supports the Authority's objective of improving transparency and visibility in the OTC market, including:

- improved visibility of competition;
- reporting of genuine broker principal activity;
- clearer identification of PPAs and firming contracts; and
- appropriate improvements to the data fields.

However, Marex does not support:

- treating an agency-only broker as the underlying requestor;
- transferring the complete client reporting obligation to the broker;
- requiring brokers to report client decisions or information it does not hold;
- requiring brokers to infer client or respondent reasons or intentions;
- requiring an agency broker to classify itself as buyer or seller;
- free-text reporting that requires the broker to infer reasons; or
- applying the full regime to small written processes from 0.1 MW without a proportionate approach.

Marex's recommended amendments

Marex recommends the notice:

1. retains the underlying client as the requestor and responsible party for client-controlled information;
2. clearly distinguishes between principal and agency brokerage;
3. RequestMethod is separated from whether a request was brokered;
4. NOT HELD, NOT PROVIDED, NOT REASONABLY OBTAINABLE and NOT APPLICABLE are valid responses where appropriate;
5. permits brokers to rely in good faith on information provided by clients and respondents to be communicated to reporting client;
6. includes a simplified approach for smaller processes; and
7. provides sufficient implementation time for systems development, testing and client-process changes.

Commencement

The proposed implementation timetable is concerning. The Authority proposes to make its decision by December 2026 while applying the amended requirements to Q4 2026, with the first return due on 26 January 2027.

This could require potential newly captured brokers to collect and retain information from 1 October 2026, before the final requirements, guidance and validation rules are known. Extending the reporting deadline from 10 to 17 working days does not resolve this issue.

Marex recommends that the amended requirements apply prospectively from a date after the final notice and guidance have been published, with sufficient time for brokers to implement and test compliant processes.

Overall conclusion

The proposal conflates operational facilitation with economic responsibility for the request. An agency broker may administer and facilitate a client's process, but it is not the buyer, seller, decision-maker or contracting principal.

Marex considers that the Authority can achieve its objectives through a narrower approach, while retaining responsibility for client-controlled information with the underlying participant.
