3 March 2023

Tony Baldwin
Chair
Market Development Advisory Group
Electricity Authority

Dear Tony,

There is a substantial 'risk of unintended consequences' if the transition to greater reliance on renewables isn't well managed

2degrees, Electric Kiwi, Flick Electric, Haast Energy Trading (Haast) and Pulse Energy (the independents) consider that:

- A much more competitive electricity market is needed for a successful energy transition.

- Development and provision of risk management tools which enable independent operators to compete on a level playing field is an essential pre-requisite for a competitive market.

- The issues MDAG has raised are issues for today not just the future. The Authority needs to act with urgency and pace to establish a regulatory environment which enables independent suppliers to enter and compete on a level playing field. This includes addressing hedge market/risk management issues which have been an ongoing issue since the Electricity Commission was first established.

- The forecast increase in electricity demand provides a window of opportunity to increase competition via (relative) increased investment by independent generators. If that window is missed the only options would be to accept restricted competition as a permanent 'feature' of the market – which would naturally and inevitably lead to need for heavier forms of conduct regulation – and/or (belated) structural intervention.

- Weakening the existing Undesirable Trading Situation (UTS) provisions, by imposing an artificial restriction that conduct can't be both a UTS and breach the trading conduct provisions would be a backward step. The change would undermine confidence in the market and increase the risk that higher prices/volatility would not be accepted.

The energy transition presents both opportunities and risks

The 100RE project and wholesale market review (WMR) highlight the potential very large risk of unintended consequences if the energy transition is not well managed. When considering options to reform the electricity sector, and to try and facilitate a successful energy transition, it is important to have at front and centre of mind the risk of unintended consequences from inaction and delay.

The ACCC has noted there is an "opportunity to achieve a greater level of competition in the market through the diversification of generation types and ownership", as well as "the risk that … the transition sees existing generation ownership trends retained or worsened".[1] There is a risk that if current market problems are not resolved the window of opportunity, created by the need for a large uplift in generation offers for a more competitive market, could be lost.

MDAG should consider the implications for the electricity market, and the transition, if this window is missed and generation investment continues to be dominated by the existing, incumbent gentailers.

Hedge market development needs to be prioritised and fast-tracked

Our lived experience is that the problems in the contract market stem from the actions and market power of the incumbent, vertical-integrated gentailers. One of the Authority's main priorities should be rapid evolution and development of hedge market arrangements and availability of new products, as part of mandated market-making requirements, including shaped and capped products.

This work-stream should be progressed under a much more condensed timeframe than 2023-28 for options B1-B8. We consider a 2-year time-frame to be realistic and achievable.

B5 should be able to be progressed within a year and at the same time as B1, B3 and B4. B6 and B8 should then be progressed, again in parallel, within a 12-month time-frame and completed by 2025. Transpower's development and implementation of a far more complex and novel new TPM highlights what can be achieved if a project is suitably prioritised and resourced.

The independent retailer WMR and winter peak submissions are part of our MDAG submission

Given the high degree of overlap, two recent independents' submissions are part of this MDAG submission, namely:

- the latest WMR consultation – particularly in relation to there already being substantial competition problems, that these problems are spilling over into retail and the efficacy of structural options); and

- the winter peak demand consultation – particularly in relation to the need for immediate extension of mandatory market-making to include capped products.[2]

Process matters

We welcome the extended consultation period given the Christmas period and the large volume of material released as part of the consultation. We also welcome MDAG's stakeholder engagement and the discussions we have had about the consultation. While it is a pity the planned in-person workshops did not go ahead, we found the MDAG representatives at the 19 January zoom meeting to be engaging and helpful. MDAG's stakeholder engagement continues to be of a high standard and helps build stakeholder 'buy-in'.

[1] ACCC, Inquiry into the National Electricity Market, November 2022, available at: https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20-%20November%202022%20report.pdf.
[2] These were submitted to MDAG when they were submitted to the Authority in December.

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Summary of the independents' views

The transition creates risks and opportunities for competition

- **The Electricity Authority and MDAG have done a good job of identifying large competition problems in the electricity market and that these are likely to get worse if they are not suitably addressed.** For example, we agree with the Authority "the structure of the market in the future implied by the pipeline [of new generation projects] is one that remains highly concentrated".[3]

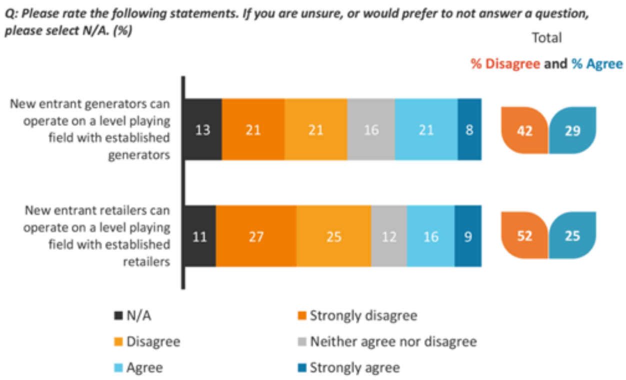
- **The energy transition presents opportunities and risks:** We consider the ACCC's focus on the "opportunity to achieve a greater level of competition in the market through the diversification of generation types and ownership" is something MDAG should consider, as well as "the risk that … the transition sees existing generation ownership trends retained or worsened".[4]

- The forecast electricity demand growth creates an opportunity to reduce market concentration but only if regulatory and market settings are conducive to a substantial increase in the relative level of new entrant and independent generation investment. If generation investment continues to be dominated by the incumbent operators the window will be lost and existing market concentration will be further entrenched. There simply has not been enough independent new generation over the last 25-years to reduce market concentration and the market power of the baby-ECNZs.

- **All roads lead to Rome:** The common theme in MDAG's "Five key areas for future action" is that they all necessitate improvement in competition. MDAG should be explicit about the extent to which it considers each of its proposals would improve competitive outcomes (including likely changes in measures such as HHI).

There isn't a level playing field and confidence in the market is low

- There is little or no scope for the increase in generation investment needs to drive reduced market concentration/power (or stop market concentration/power getting worse) if new entrants cannot operate on a level playing field. The Authority's market perception survey highlights the market is far from providing a level playing field.[5]

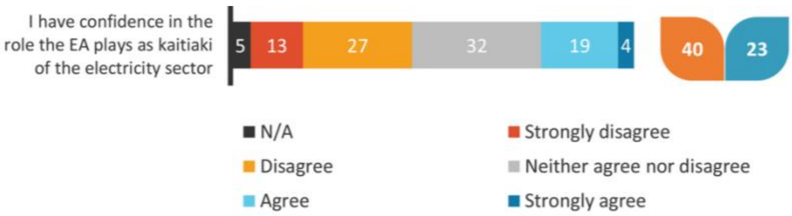


[3] Electricity Authority, The Authority's response to submissions on the 2021 Market Monitoring Review of Structure, Conduct and Performance in the Wholesale Electricity Market, undated.
[4] ACCC, Inquiry into the National Electricity Market, November 2022, available at: https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20-%20November%202022%20report.pdf.
[5] Electricity Authority, Electricity Authority survey of electricity industry participant perceptions 2021/22.

- **The electricity market is far from delivering the expectations in MDAG's report that "Confidence among wholesale buyers and sellers that the high prices make sense (which means confidence in the structure and rules of the market, including the sufficiency of competition)"** or "General public and political acceptance that volatility and high prices (in times of scarcity) in the wholesale market are, in fact, in the best long-term interest of consumers".[6]

- Confidence amongst market participants that competition will ensure wholesale market prices are set at an efficient level (a corollary to confidence that high prices make sense) is low (only 32% of participants have confidence) and decreasing (dropping from an already lower 35% in 2020/21 to 32% in 2021/22). The level of confidence is even lower if gentailers are excluded (28%).

- Confidence in market outcomes and confidence with the regulator are likely to be inextricably linked. This gives rise to broader issues the Authority needs to address that maybe beyond the scope of the work MDAG is doing. The gap between gentailer confidence (48%) and everyone else (18%) is not conducive to a healthy, competitive market.



Access to exchange traded and OTC hedging contracts is critical for independent retailers and generators to manage their exposure to price and volume risk

- We agree "Being able to hedge shape-related price risk will become increasingly important for market participants". **The independents support mandatory market-making and new hedging products, including shaped and capped products.** We also support introduction of non-discrimination/equivalence of input rules etc for wholesale access.

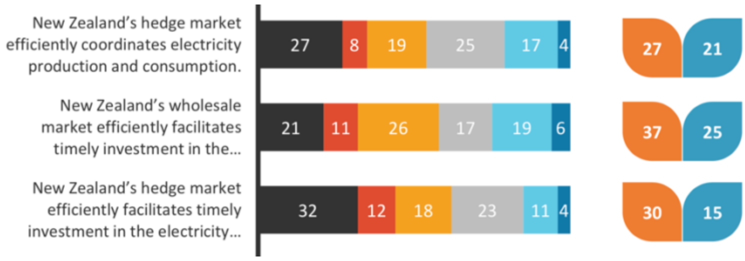
- We reiterate, we also agree "Contracts market will have to do more 'heavy lifting'" and "Overall, … increased volatility per se should not pose unmanageable risks for investors or purchasers *provided they can enter into suitable forward contracts*. This involves both access to the products themselves and having confidence in the pricing of those contracts".[7]

- We similarly agree with the ACCC that "To maintain and promote competition during periods of temporary price volatility, it is essential that market participants can appropriately manage financial risks". The ACCC's observation that "retailers are finding it increasingly difficult to manage their exposure to prices in a volatile spot market. This, in turn, increases the likelihood

[6] MDAG, Price discovery in a renewables-based electricity system, OPTIONS PAPER, 6 December 2022, paragraphs 4.3(b) and (d).
[7] Electric Kiwi, Flick Electric, Pulse Energy, and Vocus, MDAG has highlighted well the importance of addressing competition problems to enable efficient operation of the wholesale electricity market and successful transition to 100% renewables, 11 March 2022.

of retailer failure, declining competition, and higher bills for consumers”[8] is equally applicable in the New Zealand context.

- The Authority’s market perception survey indicates current hedge market arrangements are not fit to deliver the outcomes needed in the transition to greater reliance on renewables.[9]



- **MDAG should focus on what is required to ENABLE market participants to manage risk properly.** The latest consultation’s problem definition instead appears to have a demand-side focus on “avoid[ing] … undermining … incentives on market participants to manage risk properly” and not “intefer[ing] to ‘soften the landing’ for unhedged participants”.[10]

There are a wide range of reforms proposed that could be worth adopting

- **Various options are ‘motherhood and apple pie’:** For example, if short-term forecasts can be improved (A1) it would be difficult to see why this would not be supported.

- **It is difficult to comment on a [day?] ahead market given the limited of information provided in the consultation (A6).** The idea of a day ahead market is not new but there is no discussion of its history in New Zealand.

- **We do not support MDAG’s proposal that a trading incident should not be able to be both a UTS and a trading conduct breach (A7)**. It is not unusual that conduct can breach multiple different rules and regulations.

- **We support “Greater transparency of hedge info (esp non-base load) covering offers, bids + agreed prices” (B1).** This should be able to be adopted much more quickly than the 1-2 years envisioned in the consultation paper.

- **We support “develop standardised ‘shape’ products” (B5) and capped products, and support “market-making in caps or other shaped products” (B8). Regulation is needed as the incumbent market-makers have limited incentives or interest to offer profiled or capacity products.** No meaningful market in these products has developed in the 7-years since the Authority opted not to regulate market-making for the base-load products and started the now failed cap project. That is unlikely to change going forward, unless regulated.

  While MDAG has proposed to model an access code arrangement on the grocery wholesale reforms, the approach taken to groceries reflects that the regulatory regime is new and therefore provides an opportunity for the incumbent supermarkets to prove more

[8] ACCC, Inquiry into the National Electricity Market, November 2022, available at: https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20-%20November%202022%20report.pdf.
[9] Electricity Authority, Electricity Authority survey of electricity industry participant perceptions 2021/22.
[10] The main example we are aware of in this category was the Authority’s decision to declare 26 March 2011 a UTS which insulated Mercury Energy from its unhedged position.

interventionist regulation is not needed. The electricity industry is well past that point. Reliance on voluntary arrangements has been an abject failure.

- **If the MDAG proposal "that the Authority work with market participants to co-design a standardised product (or products) which meets the needs of buyers and sellers (including providers of DSF)" is adopted, it will be critical it is open to ALL market participants to participate**. This is an initiative that may be best handled by MDAG as part of the implementation phase of the 100RE project/WMR.

- **We are open to consideration of extension of the trading conduct rules to include the hedge market (B7).** This is an initiative MDAG could progress for the Authority. It might be useful to consider what would happen where an offer is consistent with clause 13.5A(2) but inconsistent with clause 13.5A(3)(a).

- **We welcome rejection of a capacity mechanism option (B9):** Our views on a capacity mechanism are unchanged. We share the Authority and MDAG's concerns about this option.

- **We support MDAG's proposal for "Sunset profiling if smart meters in place" (C2):** These are arrangements that should never have been allowed to continue. The phase-out should be as rapid as possible i.e. 3 months or less.

- **We do not support inclusion of regulation of retail tariff setting (DSF retail tariff requirements) even as a backstop option (C3).** We welcome that MDAG is not proposing this option but are not comfortable with the 'at this stage' qualification to the MDAG position.

  It is important to avoid price regulation of workably competitive or potentially workably competitive parts of the market. As discussed at the 19 January workshop, MDAG (and the accompanying Batstone paper) does not seem to have identified a clear market or regulatory failure in relation to DSF.

  The basis of a competitive, or potentially competitive, market is that it provides consumers with choice. If a consumer wants a time-of-use tariff or options such as a 'free hour of power' these are readily available but may require a switch of retailer.[11] It could dampen competition, and the motivation of consumers to consider switching, if regulated homogeneity requirements were introduced, even if the "initial requirements" were intended to be broadly permissive. If some retailers have not enabled their processes and systems to be able to offer consumers DSF-type tariffs this is likely to reflect their own commercial imperatives and any regulation may increase costs to consumers.

- **It would be useful to investigate the application of/trials in DSF in other jurisdictions, including the scope and the design of the trials and the outcomes, such as in the UK, before making decisions/recommendations about pilots/trials in New Zealand (C5).**

- **More work is required to determine whether a new ancillary service (C9) should be adopted:** The Authority has had discussions with the CEO Forum in response to their advocacy of this option but there hasn't been a wider industry dialogue.[12] The CEO Forum correspondence largely treats the justification for this option as axiomatic.

[11] The key initiative should be to improve the performance of Powerswitch with respect to DSF-type tariffs.
[12] The Authority did not mention these discussions or the related correspondence in its winter peak demand consultation.

- **We support improvements to Powerswitch (C14):** The independent retailers have raised concerns with the Authority and Powerswitch about its reliability, including the risk of false-positives (recommending a switch when it will result in the consumer moving to a more expensive tariff). The current inability of Powerswitch to recognise the benefits of dynamic pricing, which encourages load-shifting, is likely to result in Powerswitch becoming less and less useful (and more misleading) for consumers.

- **Structural reform remains the "gold-standard" (D6):** We agree that "If structural solutions are ultimately required, they should be put in place with the least possible delay. That means some initial scoping work would make sense as a precautionary step, even if it turns out structural options were not ultimately needed". At the workshop a suggestion was made by an attendee that it would be undesirable to undertake further work on structural reform design because it could encourage some industry participants to claim market settings aren't working (a 'Chicken Little sky is falling in' strategy?). We do not think this is plausible. Ultimately if structural reform is adopted it will be a consequence of ongoing (and increasing) abuse of market power/loss of social licence and the harm to consumers.

  While we consider MDAG should explore options such as virtual asset swaps, the Options Paper does not provide a fully balanced qualitative assessment of the potential benefits of structural reform. Unsubstantiated weight is put on issues such as that breaking-up ownership of run of the river systems could result in "coordination difficulties".

- **We consider there is merit in looking at both horizontal and vertical-separation options. If upstream (wholesale) market power is addressed there would be less need for vertical-separation (D7).** There is no competition problem where a vertically-integrated entity does not have market power in either up or downstream markets.

- **"E1 – Structured information programme for wider stakeholders" could either increase or decrease confidence.** There are a number of examples where a 'rose-tinted' perspective has been provided by the Authority that downplays or dismisses legitimate concerns about the market. For example, our submission in response to WMR 2022 commented on contradictory statements the Authority has made in relation to wholesale market. This includes that the Authority has claimed both that there has been a "persistence of high spot and forward prices, well above the cost of new renewable supply" (WMR 2022) and "outcomes in the spot and hedge markets are consistent with a healthy and efficient market to the long-term benefit of consumers" (May 2022).[13]

- **We support the "Enhance monitoring with more autonomy" proposal (E4).** There is still a large gap in monitoring and compliance enforcement. The Authority has not shown that its own monitoring and enforcement of the trading conduct rules is material and hasn't yet challenged any behaviour in a meaningful way.

  We agree with MDAG "the level of resources devoted to the function should be reviewed. If more resources were available, we expect this would allow more active monitoring and accelerate the investigation processes".[14] We also agree "there is a case for making the monitoring function more independent from the rule-making function".[15]

[13] Electricity Authority, Re: Flick Electric submission to the Petitions Committee on market pricing and vertical-integration in the electricity market, 27 May 2022.
[14] MDAG, Price discovery in a renewables-based electricity system, LIBRARY OF OPTIONS, 6 December 2022, paragraph 6.13.
[15] MDAG, Price discovery in a renewables-based electricity system, LIBRARY OF OPTIONS, 6 December 2022, paragraph 6.14.

- **We support "Periodic warrant of fitness review for independent regulatory agencies" (E5).**

- **We are open to a discussion about the resources the Authority needs to undertake the MDAG proposed work.** We would like to see a fleshed-out work programme with resourcing requirements, key milestones and timing etc to be able to comment on the need for additional budget. We have been clear: "The independent retailers support funding that has a clear and direct consumer and competition focus. We would specifically support extra funding for the Authority… to expedite projects for development of competition (both wholesale and retail), including more rapid prioritisation of the wholesale market review (WMR)".[16]

[16] 2degrees, Electric Kiwi, Flick Electric, OurPower and Pulse, Funding proposals should have a clear focus on "consumer centricity" and "thriving competition", 1 November 2022.

Market failures are likely to get worse without major reform

The MDAG 100RE Issues and Options Papers highlight well the need to ensure and protect the integrity of, and trust and confidence in, the wholesale electricity market as we transition to greater reliance on renewable electricity.

MDAG has robustly identified there is a significant risk the high levels of market concentration in the market will worsen and the market power of incumbent generators, particularly Meridian, with high degrees of control of storage capacity will increase. We strongly agree with MDAG that:[17]

> "The key findings were that larger generators with substantial flexible resources may well have greater means and incentive to exercise market power in the supply of shaped products (such as contracts to complement intermittent generation sources) in the future.
>
> "Although these findings are not determinative because they are based on projections of the future, they nonetheless indicate the critical importance of maintaining effective competition for the provision of shaped products. While some may advocate for a 'wait and see' approach, we think this would be unwise."

The latest consultation reflects a need to act with "urgency" with MDAG stressing that "The future is arriving faster than expected"[18] and:[19]

> "… it will take time to design possible solutions and put them in place. Waiting for a problem to emerge before starting that work could mean that an extended harm occurs before a solution is in place, or that hasty and sub-optimal solutions are implemented. Second, confidence in competition is a foundational 'must have' element for any open wholesale electricity market. If that confidence is not present, policy is unlikely to be durable. That in turn will make it less likely that investment at the pace needed to provide reliable and affordable power will occur."

We agree with MDAG that:[20]

> "Looking ahead we expect the contract market will need to do more heavy lifting to help both risk management and investment. On the risk management front, we expect a significant increase in shorter-term spot price volatility as the share of intermittent supply increases and fossil-fuelled thermal generation declines. Market participants will need access to products to manage the associated spot price risks."

MDAG has clearly demonstrated the high stakes involved in getting the transition to greater reliance on renewables right and ensuring competition can be relied on.

There is a risk of unintended consequences from inertia and regulatory incrementalism

There has been a lot of emphasis on the "risk of unintended consequences" trope which has been used to argue against major or transformative reforms. The MDAG consultations highlight the potentially larger risk of unintended consequences if the transition is not managed well and incrementalist reforms prove inadequate.

Despite MDAG's clear position that it "would be unwise" to adopt a "wait and see" approach, MDAG appear to be proposing to do just that in relation to contract market reform. For example, MDAG proposes adopting an access code rather than mandated cap products with mandated cap products not introduced until 2028, if at all.

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[17] MDAG, Price discovery in a renewables-based electricity system, OPTIONS PAPER, 6 December 2022, paragraphs 3.54 and 3.55.
[18] MDAG, Price discovery in a renewables-based electricity system, OPTIONS PAPER, 6 December 2022, section 12.
[19] MDAG, Price discovery in a renewables-based electricity system, OPTIONS PAPER, 6 December 2022, paragraph 3.56.
[20] MDAG, Price discovery in a renewables-based electricity system, OPTIONS PAPER, 6 December 2022, paragraph 3.29.

MDAG's stated preference for a "focus on conduct-based measures in the first instance" implies MDAG considers there will be time for 'two bites at the cherry' – if the first round of incrementalist reforms don't work. We consider this to be a risky assumption to base policy reform on. Care is needed to ensure regulatory stability is not a roadblock against needed reforms or the promotion of competition (including "thriving competition") for the long-term benefit of consumers.

If underlying problems are not addressed it can end-up resulting in need for more regulation

Any tolerance of higher market shares reinforces and heightens the need for effective rules restricting the (mis)-use of substantial or significant market power. We agree with the Commerce Commission that:[21]

> Some submitters have also implied that because New Zealand has a small population and more concentrated markets are more prevalent compared to other larger countries, we need to be concerned about scale, and so this means that New Zealand should have a more relaxed approach to rules regarding unilateral conduct by firms with substantial market power. …
>
> … we disagree that New Zealand's market size and global position mean a more relaxed attitude to unilateral conduct by firms with market power is warranted. In our view, the opposite is the case. It is even more important for a small economy like New Zealand to have an effective rule on unilateral market power.

Regulatory incrementalism does not ensure regulatory stability or certainty

MDAG has captured the sentiment of numerous of our submissions that:[22]

> "A lack of confidence in competition is obviously a problem for consumers, but it can also be bad for suppliers. If policy makers lack confidence in competition, the policy/regulatory environment will be less stable. That in turn can have a chilling effect on the longer-term investments needed to underpin the shift to renewables".

"Regulatory stability" does not, for example, provide a "steady environment for investment" if it favours or entrenches incumbent operators at the expense of investment by new entrant or independent operators. There are plenty of examples of 'stable' regulatory regimes which were subsequently displaced because they did not deliver the outcomes they should have.

We agree with the MBIE:[23]

> "… the electricity sector in New Zealand will need to adapt rapidly if it is going to maintain its social license to operate. If people lose trust in the market and market participants, perhaps because of pricing or reliability, then the political process may explore alternatives to the current market. Such alternatives exist and are being used in other jurisdictions."

- We have seen this in telecommunications in the 2000s when the Government got fed-up and stepped in. The Telecommunications Act was introduced in 1999 and, following the conservative approach the Commerce Commission took to regulatory intervention, was ultimately overhauled in 2005, including by reversing previous Commerce Commission recommendations against regulation of Local Loop Unbundling (LLU). The ex-Prime Minister's recent comments about banking super-profits could just as easily been aimed at the gentailers.[24]

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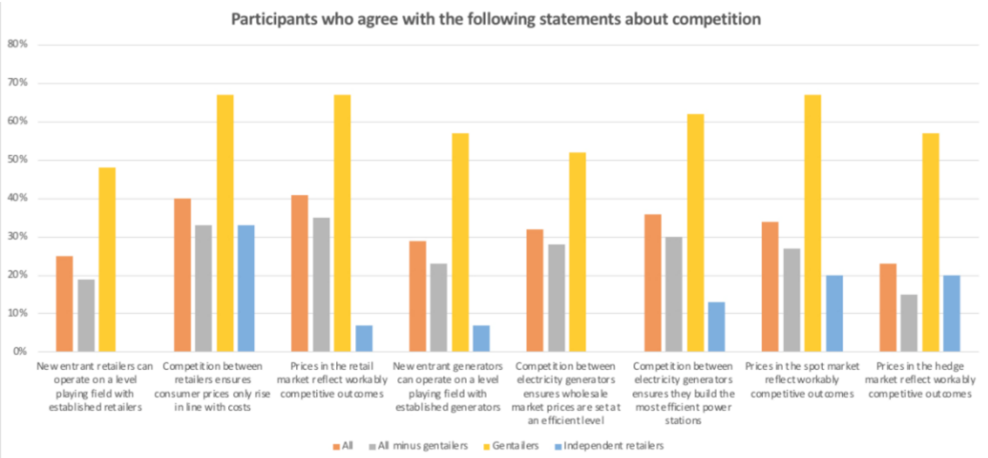
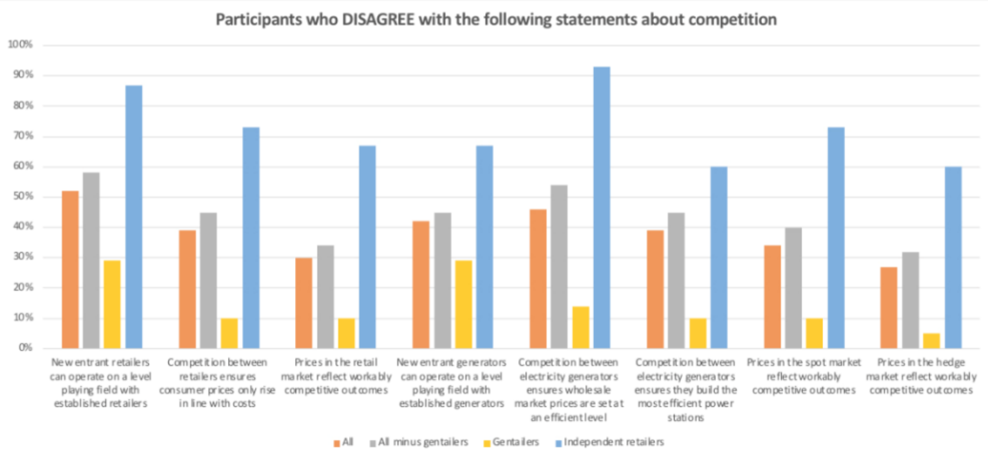
[21] The Commerce Commission has made similar comments about the need to reform section 36 of the Commerce Act e.g. Commerce Commission, Commerce Commission submission to Targeted Commerce Act Review Issues Paper, 10 February 2016.
[22] MDAG, Price discovery in a renewables-based electricity system, OPTIONS PAPER, 6 December 2022, paragraph 10.2.
[23] MBIE, Investigation into electricity supply interruptions of 9 August 2021, 2021: https://www.mbie.govt.nz/dmsdocument/17988-investigation-into-electricity-supply-interruptions-of-9-august-2021
[24] https://www.1news.co.nz/2022/11/08/pm-asks-banks-to-reassess-record-profit-making/

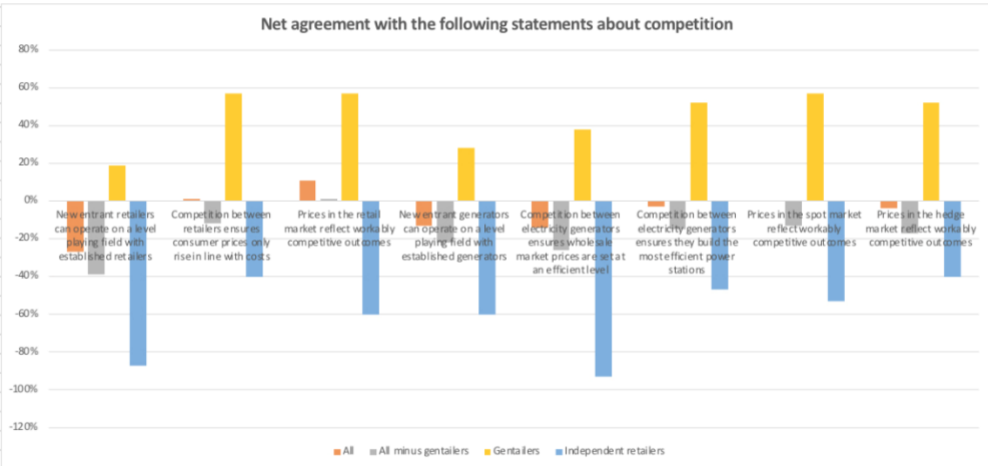
The market participant surveys provide evidence of major problems

The majority of market participants consider that competition is NOT working well

The Authority's market participant surveys show that market participants do not consider competition in either the wholesale or retail markets is working well. This includes a majority that consider competition in the wholesale market is not resulting in efficient prices and does not reflect workably competitive market outcomes. The majority of survey participants also consider that competition is not ensuring electricity generators build the most efficient power stations.[25]



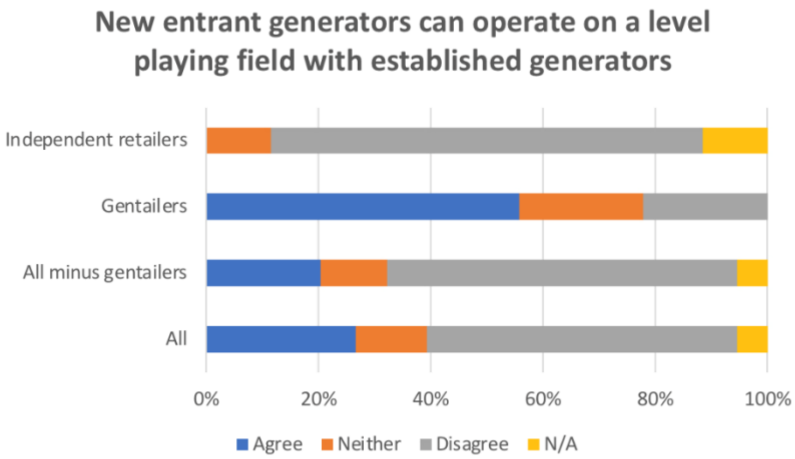




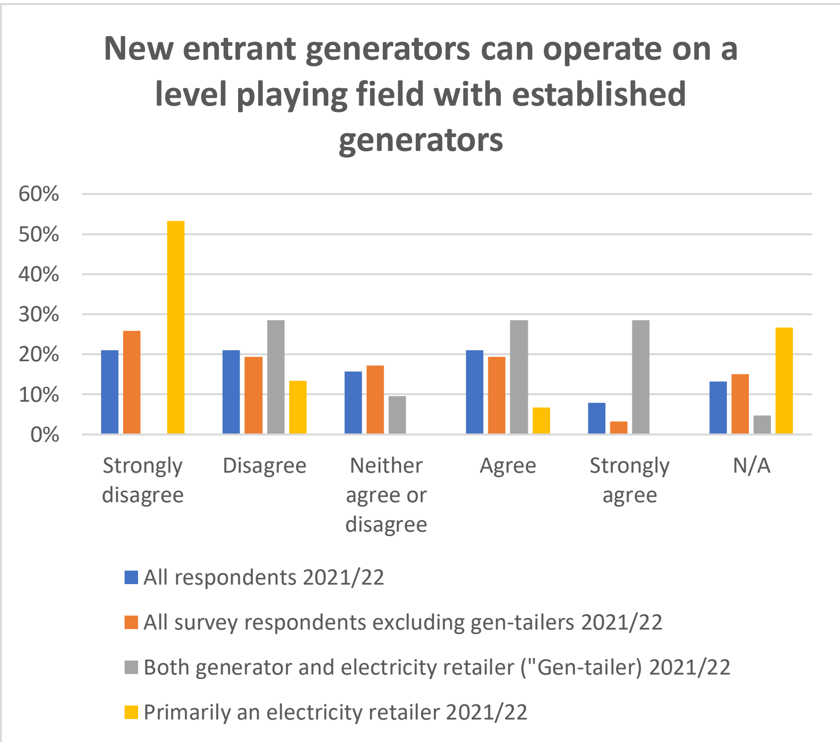
[25] Electricity Authority, Electricity Authority survey of electricity industry participant perceptions 2021/22. Breakdown of survey results by participant type provided under the Official Information Act.

Market participants don't consider there is a level playing field for new entrants

The Authority's market perception survey indicates the market is far from providing a level playing field. If this situation continues generation investment is likely to continue to be dominated by the incumbent gentailers further locking in (or worsening) market power/concentration issues.



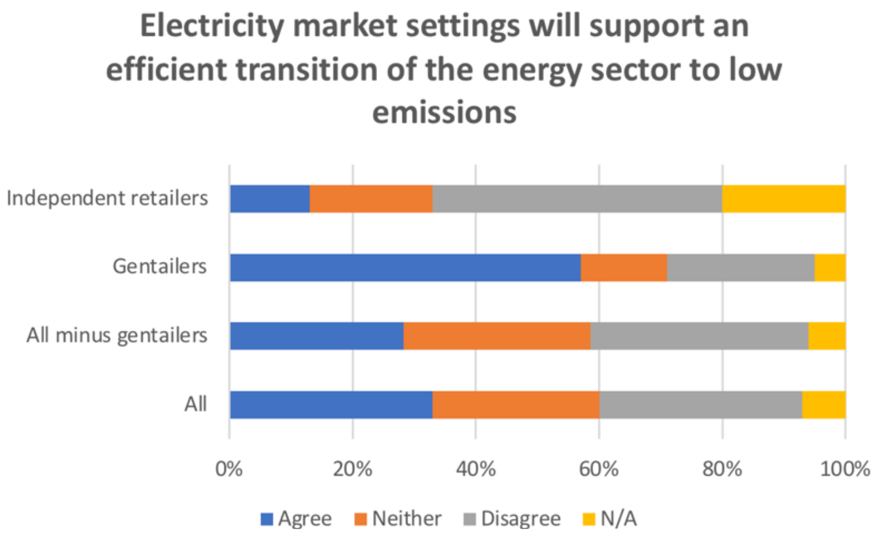
The survey essentially shows that only incumbent gentailers consider that there is a level playing field. If you dig deeper into these statistics, what is clear is that not only do most market participants disagree there is a level playing field, the majority strongly disagree.

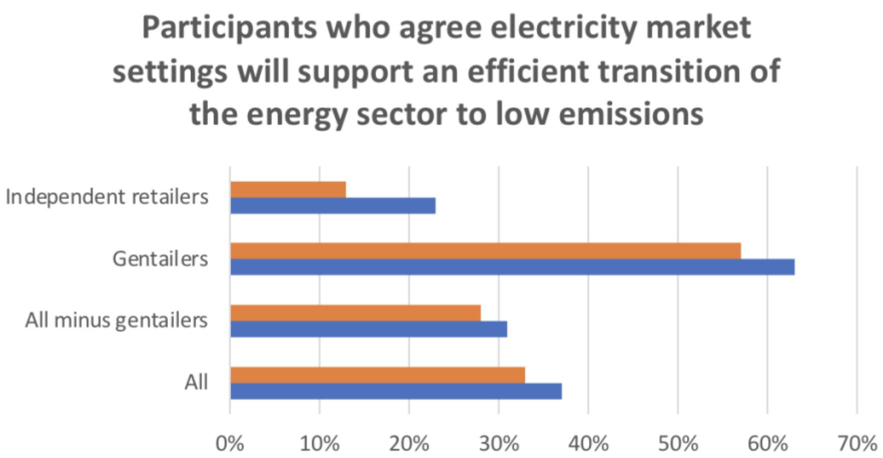


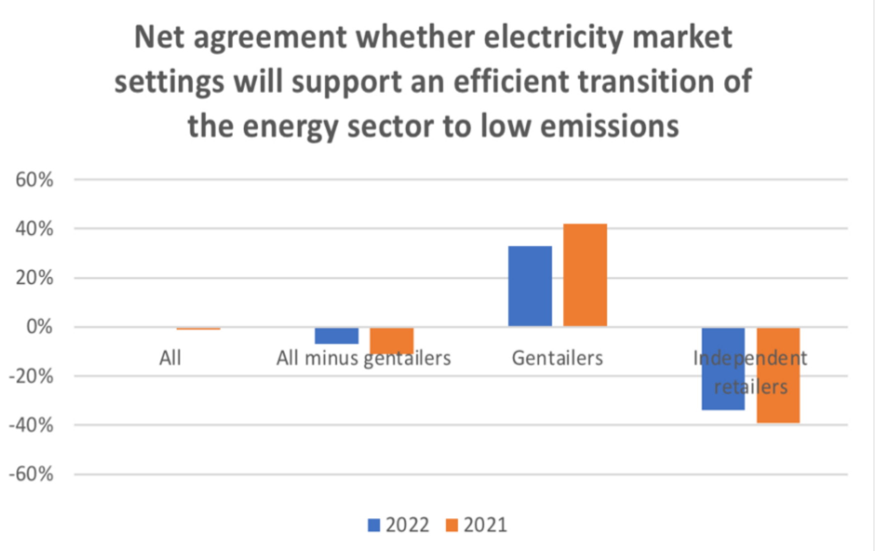
MDAG and the Authority should consider why there is low confidence electricity market settings will support an efficient transition to low emissions, the confidence has deteriorated and whether this is likely to change under the reforms that are being considered/proposed.

There is low confidence that market settings will support an efficient transition

Basically, the only market participants who have confidence electricity market settings will support an efficient transition are the incumbent gentailers, and even their confidence has dropped.



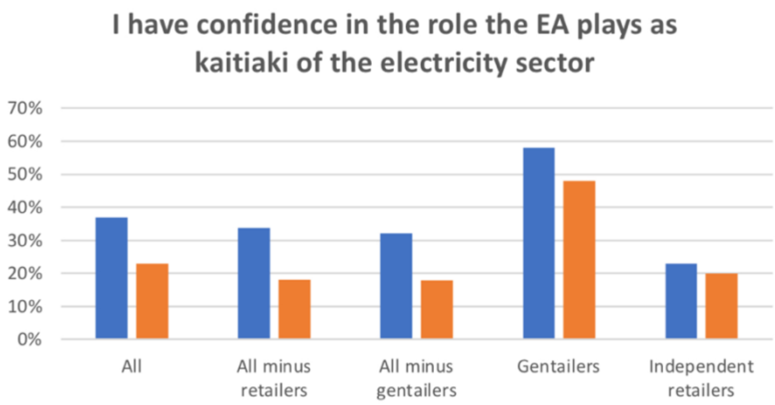


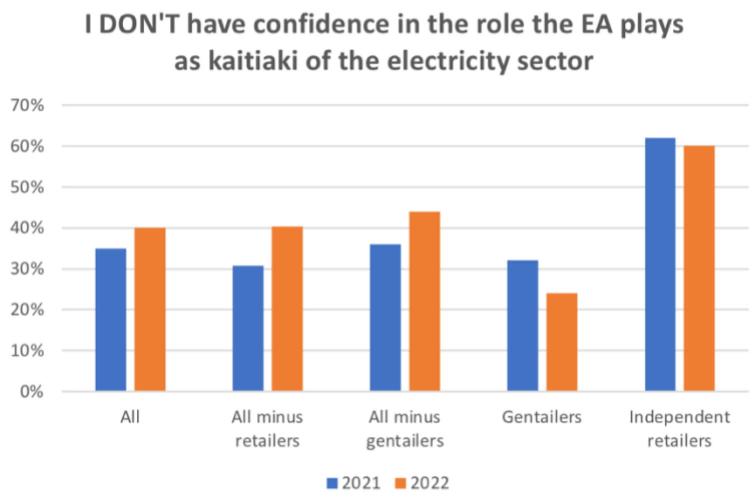


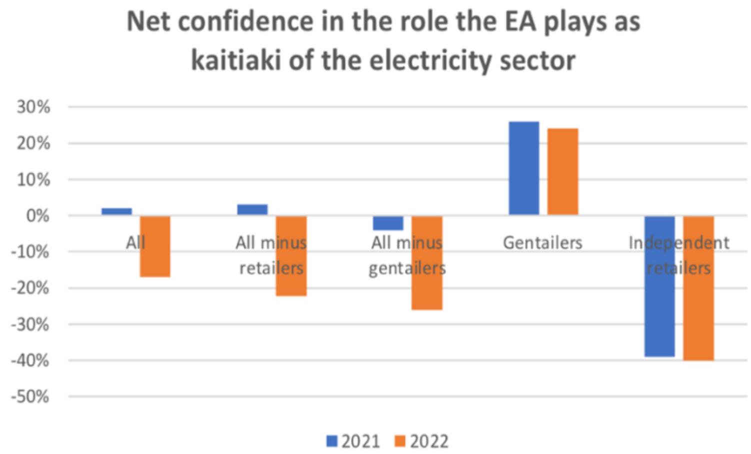
Confidence in the regulator is low

The only market participant type that has 'net confidence' in the role the Authority plays in the electricity sector are the incumbent gentailers. Independent retailers' net confidence is negative and all market participants that are not retailers now have negative net confidence.

- We consider the low level of confidence in the Authority puts at risk confidence in the electricity market. While caution is needed reading too much into a time series with two data points the apparent drop in confidence has been material and dramatic. This gives rise to broader issues that may be beyond the scope of the work MDAG is doing.







MDAG and the Authority should draw on the work being undertaken by the ACCC

The ACCC inquiry into electricity supply in Australia[26] has useful parallels to the WMR and the MDAG 100RE project which should be considered. The ACCC inquiry includes detailed consideration of the importance of competition and the importance of hedge market arrangements for competition at both the wholesale and retail levels.

We agree with the ACCC that:

i. "Maintaining and developing competition in electricity markets throughout the transition to renewable energy is of paramount importance";

ii. "To maintain and promote competition during periods of temporary price volatility, it is essential that market participants can appropriately manage financial risks"; and

iii. "as the sector transitions … there is an opportunity to achieve a greater level of competition in the market through the diversification of generation types and ownership. There is also the risk that … the transition sees existing generation ownership trends retained or worsened".[27]

MDAG has made similar observations as the ACCC in relation to (i) and (ii) above, but the (iii) potential to increase competition and what this would require (and not just mitigating the risk competition will get worse) is something MDAG should consider and prioritise.

We also agree with the ACCC, for example, in relation to the following statements and consider they apply equally in the New Zealand setting:

- "Maintaining and developing competition in electricity markets throughout the transition to renewable energy is of paramount importance. Well-functioning competitive markets are critical to delivering the investment needed for new electricity generation and storage capacity at an efficient cost to consumers."

- "To maintain and promote competition during periods of temporary price volatility, it is essential that market participants can appropriately manage financial risks. Our analysis indicates that retailers are finding it increasingly difficult to manage their exposure to prices in a volatile spot market. This, in turn, increases the likelihood of retailer failure, declining competition, and higher bills for consumers.

  "Preserving competition in retail markets is the best way to deliver benefits to households and businesses over the longer term. … it is … crucial to preserve the conditions for future retail competition."

[26] ACCC, Inquiry into the National Electricity Market, November 2022, available at: https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20-%20November%202022%20report.pdf.
[27] ACCC, Inquiry into the National Electricity Market, November 2022, available at: https://www.accc.gov.au/system/files/Inquiry%20into%20the%20National%20Electricity%20Market%20-%20November%202022%20report.pdf.

- “Given the important role that hedging contracts play in enabling competition amongst both electricity retailers and generators, it is critical that competition in t he contracts market itself is maintained. A competitive contracts market should facilitate the entry of new retailers and generators into the National Electricity Market and enable them to participate and compete alongside larger incumbents.”

- “The transition in the generation mix would ideally occur in an orderly fashion, to enable the development and emergence of different contract types. However, a rapid and disorderly transition could stunt this development, where new contract types may not be developed and offered to the market at the same pace as baseload plant closures. This could increase the level and volatility of both spot and forward electricity prices, result in lower contracts market liquidity, and increase retailers’ wholesale energy costs. This dynamic could be exacerbated by an increase in margin requirements, further reducing contract liquidity and increasing retailers’ energy costs. “

  “… It is therefore imperative that the move to a more decarbonised National Electricity Market be managed in an orderly fashion to minimise adverse impacts on prices, volatility, and contracts market liquidity. This in turn can minimise the potential increase in barriers to entry or expansion in the retail and generation sectors, as well as the potential increase in retailer exits, that may otherwise arise from a disorderly transition …”

- “Contracts market evolution can promote an orderly transition

  “An orderly transition in the National Electricity Market involves both physical and financial aspects: … contracts market evolution can lower barriers to entry for new forms of dispatchable capacity – especially batteries for which the existing structure of hedging contracts is ill-suited – and result in increased investment in these new forms of dispatchable capacity. Furthermore, contracts market evolution can reduce the need for new-entrants to integrate vertically or horizontally, which can promote competition and competitive outcomes alongside an orderly transition.”

- “Managing risk is increasingly challenging

  “Access to exchange-traded and over-the-counter hedging contracts is critical to allow electricity retailers and generators to manage their exposure to price and volume risk.”

- “High and volatile wholesale electricity spot prices, coupled with high contract prices, reduced access to hedging contracts, … are impacting the financial viability of retailers.”

- “As more renewable capacity is built, new entrants are needed to diversify ownership”

- “A liquid contracts market underlines a competitive wholesale electricity market”

- “Hedging contracts are essential to managing risk for market participants”

- “Recent and current market conditions are having a significant impact on the ability of retailers to manage their risk.:

What happens in the wholesale market impacts competition in retail

MDAG's discussion about the importance of hedging arrangements is illustrative of the interaction between the wholesale and retail markets. If market power increases in the wholesale market it will result in worse outcomes for competition/market power in the retail market.

The European Union recognises "Where [a supplier] has significant market power on a specific market, it may also be deemed to have significant market power on a closely related market, where the links between the two markets are such as to allow the market power held in one market to be leveraged into the other market, thereby strengthening the market power of the [supplier]".

The Consumer Advocacy Council has recognised this symbiotic relationship well in submission to the Authority in response to the 2022 WMR consultation e.g.:[28]

> "The vertical integration of generators and retailers (gen-tailers) is weakening competitiveness in the electricity market. The vertically integrated gen-tailers can generate at close to their own contracted position, which creates effective self-hedges against the impact of spot price volatility and spikes.
>
> "However, small retailers do not have the same protection and are exposed to the risk associated with volatile spot prices and have difficulty in obtaining adequate bilateral hedges. This hinders competition in the retail market."

The companion NZIER report also highlighted issues faced by small players and new entrants:

> "… the wholesale market volatility and the resulting lift in the futures price … may have negatively affected new entrant retailers [that] could not obtain suitable bilateral arrangements to enable them to be competitive against the five gen-tailers [that] are vertically integrated. Analysis of EA's data on trends in retail market share and entry and exit shows that 14 retailers have left the electricity market since late 2018 and a number of other new entrant retailers have either not increased customer numbers or have reduced customer numbers.
>
> "... our analysis showed some signs of market power across the vertically integrated gentailers, as it has given them significant competitive advantage over other competitors … and created barriers for new entrants through self-hedging contracts … This has consistently enabled them to obtain large short-term profits from the wholesale market. However, the increased number of grid emergency notices in the recent winter (NZ Herald 2022; RNZ 2022a) and Transpower's concerns about constrained generation capacity for the next two winters suggest that the gen-tailers are incentivised to make short-term profits and pay excessive dividends to shareholders rather than making longterm investment in new renewable generation. Ultimately, this comes at the cost of higher electricity bills for consumers, especially households and small businesses."

[28] Consumer Advocacy Council, Re: Promoting competition in the wholesale electricity market in the transition towards 100% renewable electricity, 16 December 2022.

We are strongly opposed to MDAG's UTS proposal (A7)

The independents fully support the current Code provisions that conduct can give rise to both a breach of the trading conduct rules and result in a UTS.

The MDAG proposal would weaken the protections against "any situation that threats or threaten, confidence in, or the integrity of, the wholesale market" and weaken trust and confidence in periods of high prices and/or increased price volatility.

The interaction of the UTS and conduct provisions have already been considered

The interaction of the UTS and conduct provisions is a matter that was considered by WAG when it developed the original proposed trading conduct rules, the Authority when it adopted the trading conduct rules and again was raised during the MDAG review of the trading conduct rules. None of these reviews give cause for concern about the potential for conduct to result in both a trading conduct breach and a UTS.

We reiterate:[29]

> "The interrelationship between the existing UTS rules and the proposed trading conduct rules was discussed at the Wellington workshop. No changes to the existing UTS rules are needed, and it is appropriate that the UTS rules are additive to the trading conduct rules. The current arrangements reflect that a UTS can simply be an extreme form of breach of the existing HSOTC rules, as reflected in the December 2019 HSOTC and UTS breach complaint. [Footnote: This has parallels, for example, that under New Zealand laws an act of murder can also be an act of terrorism.]"

It is appropriate a "material breach of any law" can constitute a UTS

We agree with the Authority that: "A single event or circumstance may give rise to more than one potential action. … The Authority considers that by ensuring that there is certainty about the availability of the UTS provisions it will promote, not harm, market confidence".[30]

We also agree with the Authority that:[31]

> "… it would not be problematic if a single event or circumstance were to trigger parallel actions under the UTS and conduct provisions. Indeed, it is not uncommon for parties to allege a Code breach when seeking to invoke the UTS provisions, and such cases have been satisfactorily resolved to date.
>
> "The Code sets a relatively high bar for a UTS, since the situation must threaten, or may threaten, confidence in, or the integrity of, the wholesale market. This means the Authority would likely first determine whether a situation is a UTS, and if so, pursue that process to a conclusion."

The MDAG proposal would result in boundary issues

The way the Authority has operated the UTS and trading conduct provisions is to establish whether there was a UTS first and then determine whether there was a trading conduct breach. The MDAG proposal would turn this on its head by requiring the Authority to first determine whether there was

[29] Ecotricity, Electric Kiwi, energyclubnz, Flick Electric, Pulse and Vocus, Independent retailer recommendations for enhancements to the MDAG draft Trading Conduct Code Amendment Proposal, 30 April 2020, available at: https://www.ea.govt.nz/assets/dms-assets/26/26733Joint-Independent-Retailer-submission-MDAG-HSOTC-discussion-paper.pdf.

[30] Electricity Authority, Decision Paper, Improving the efficiency of prices in pivotal supplier situations, 4 June 2014.

[31] Electricity Authority, Consultation Paper, Improving the efficiency of prices in pivotal supplier situations, 18 February 2014.

a trading conduct breach and then whether the matter can or "cannot satisfactorily be resolved" through the trading conduct breach mechanism. This would delay the determination of whether there was a UTS which could be particularly problematic in a situation where correcting the UTS with urgency is critical for protecting confidence in, or the integrity of, the wholesale market.

The MDAG proposal would result in boundary issues in determining whether a matter is a trading conduct breach or a UTS.

The Authority very deliberately "amend[ed] the Code to make it clear that enforcing the conduct provision is not a "mechanism available under this Code" for the purposes of determining whether or not a UTS exists". This is because the Authority was concerned "given the ramifications of declaring a UTS, participants could be incentivised to challenge the Authority's ability to act" and "To remove any uncertainty and ensure the Authority can take timely action in respect of a UTS".[32]

The UTS and trading conduct rules don't give rise to "double jeopardy"

MDAG should be clear why it thinks it would be undesirable for the Authority to be able to adopt actions to correct a UTS where conduct may currently fall foul of UTS and trading conduct provisions. We reject the suggestion this somehow amounts to "double jeopardy".[33]

Double jeopardy applies where a person can be <u>prosecuted</u> or punished twice for the same <u>offence</u>. Double jeopardy does not apply where a person could be convicted for more than one offence due to one act.

It is not unusual that a particular type of conduct can breach multiple different regulation or laws e.g. if someone drove down Lambton Quay at 100km/hr they would be in breach of the speed limit and likely convicted for dangerous driving.

Furthermore, the "double jeopardy" argument breaks down as the Authority has been clear it does not need to find a party to be "blameworthy" for there to be a UTS (as was the case in the 26 March 2011 and the December 2019 UTSs) and there is no "punishment" provision in the UTS. The Authority has been clear "Pursuing an enforcement action against a participant for alleged breach is not a mechanisms [sic] that is within the Code. That is because the enforcement provisions are not under the Code, they are in the Act and the Electricity Industry (Enforcement) Regulations".[34]

[32] Electricity Authority, Consultation Paper, Improving the efficiency of prices in pivotal supplier situations, 18 February 2014.
[33] Description provided by the MDAG Chair at the 19 January workshop.
[34] Electricity Authority, Decision Paper, Improving the efficiency of prices in pivotal supplier situations, 4 June 2014.

Priority should be given to mandatory market-making for capped/shaped products (B5 and B8)

Our lived experience is that the problems in the contract market stem from vertical-integration of incumbent suppliers with market power.

The independent retailers' experience, consistent with vertical-integration in other jurisdictions and network industries, is that sub-optimal hedging and risk management is due to weak (present) market-making arrangements and the incentives of vertically-integrated incumbent suppliers i.e. it is a supply-side problem. The independent retailers have been consistently clear about the desire to be able to hedge on a level playing field and that the inability to do so has curbed the growth of independent retailers and insulated incumbent retailers from competition.

In highly vertically-integrated markets wholesale liquidity doesn't develop without mandatory market-making. Despite ample evidence on the need for liquid and transparent profiled products the paper doesn't recommend market-making on caps. MDAG instead are proposing to rely on voluntary arrangements which would further delay putting in place arrangements needed to ensure independent retailers can protect themselves against high and volatile spot pricing.

A liquid contracts market would help facilitate competition

We consider there is a need for a sharper focus on ensuring independents (both supply and demand) have access to risk management tools that can enable protection against spot price volatility and high spot prices. In addition addressing the underlying source of problems in the market (market concentration) and not just the symptoms is critical.

Given the clear evidence laid out by MDAG of the importance of access to contracting/hedge arrangements any reforms should be started immediately. It is not clear, for example, why developing standardised 'shape' products and an access code should be delayed until 2024 and mid-2025, respectively. Given the criticality of market-making in caps or other shaped products the suggestion that such measures could be in place by 2028 (if at all) is alarming.

MDAG should recommend mandatory market-making for shaped/capped products as a priority and explore complementary options such as development of a wholesale access regime and non-discrimination/equivalence of input rules and not just an "access code" covering non-price terms.

This work-stream should be progressed under a much more condensed time-frame than 2023-28 for options B1-B8. We consider a 2-year time-frame to be realistic and achievable.

B5 should be able to be progressed within a year and at the same time as B1, B3 and B4. B6 and B8 should then be progressed, again in parallel, within a 12-month time-frame and completed by 2025. Transpower's development and implementation of a far more complex and novel new TPM highlights what can be achieved if a project is suitably prioritised and resourced.

In principle, we support industry-led policy development on technical matters

We agree with the examples MDAG has provided of successful industry-led development in electricity (particularly during the WEMDG and EMCO/M-Co periods) and in telecommunications with the TCF.

We are conscious though of failed industry-led policy development such as on transmission pricing where the majority Transmission Pricing Advisory Group (TPAG) view (which was only supported by a small minority of stakeholders in submissions) simply reflected that TPAG was dominated by South Island generation interests. At best, this resulted in delay in the TPM review being progressed. The Authority only invited vertically-integrated gentailers to participate in the "industry-led" development of a commercial market-making option and this was reflected in their recommendations.

Industry-led initiatives, including the Authority's recent appointment of an OTC Working Group, are less likely to be successful in to policy matters that are contentious and/or that can impact the level of competition.

There are minimum requisites for industry-led initiatives to be successful

We consider that it would be useful for MDAG to provide as much guidance to the Authority as it can in terms of the particular precursors or principles required for successful industry-led initiatives.

In our view, industry-led initiatives are most likely to be successful if they:

- reflect genuine industry-wide representation with industry participants choosing their own representatives (rather than this being determined by the regulator or operating as a 'closed shop');[35]
- are open and transparent;
- have clear procedural rules for how they will operate;
- have a tight terms of reference and purpose;
- have a clear time-table, including project milestones, for completion of the project;
- have strong project management and leadership; and
- include consumer oversight and participation.[36]

[35] The Telecommunications Act has certain requirements for the TCF to be recognised as a body that can propose Codes i.e. it must consist of at least 75% of all eligible persons (access seekers, telecommunications service providers and persons about to become, within the foreseeable future, with an access seeker or telecommunications service provider) who are, for the time being, registered with the Commission for the purpose of voting on a draft code.

[36] The Consumer Advocacy Council would be an obvious fit for this function.

Extension of trading conduct rules to the hedge market may require additional reform to the trading conduct rules (B7)

We are open to consideration of extension of trading conduct rules to the hedge market, but care may be needed to ensure the changes would work as intended. The existing trading conduct rules may require more than a perfunctory change to their scope.

MDAG should consider whether there is a potential conflict between the premise of section 13.5A and application to the hedge market. Section 13.5A is based on the premise that "offers … will generally be subject to competitive disciplines" and "significant market power will be limited to certain locations or periods".

Extension of the trading conduct rules to the hedge market would only make sense if there were sustained and ongoing issues of significant market power. Use of market power in the spot market can be transitory, but less so in the hedge market as market participants have more flexibility about when they enter (or don't enter) into new hedging arrangements.

The latest thinking in competition law reflects that conduct which is OK by a supplier without market power isn't necessarily OK by a supplier with significant or substantial market power

The new section 13.5A(2) is predicated on the philosophy that actions of a generator is acceptable (essentially a 'safe-harbour') if it is "consistent with the offer that the generator, acting rationally, would have made if no generator could exercise significant market power …"

A potential problem with this 'safe-harbour' is that what might be OK if a supplier does not have market power will not necessarily be OK if the supplier does have market power e.g. refusal to supply. Conduct by a supplier that is a monopolist or has significant/substantial market power can harm competition or efficient market outcomes, while the same conduct by a smaller market participant might be harmless. This distinction has been recognised in the revamp of the anti-competitive conduct rules in section 36 of the Commerce Act which will come into effect from 5 April 2023. It may be worthwhile for MDAG to liaise with the Commerce Commission and Government officials about the underlying rational for the latest changes to section 36.

The Commerce Act reform highlights there can be situations where an offer is consistent with clause 13.5A(2) but inconsistent with clause 13.5A(3)(a). MDAG should consider what would/should happen if offers are consistent with (13.5A(2)) offers that a generator, acting rationally, would have made if they did not have significant market power, but (13.5A(3)) the exercise of market power has a net adverse impact on economic efficiency.

The Commerce Commission has explained why "it is well-accepted that a firm with substantial market power can damage the competitive process in a market in a way that a firm without substantial market power cannot". The commentary is couched in terms of competition but could just as readily be extrapolated to refer to efficiency more generally. This is clear from the Commerce Commission submission in 2016, namely:[37]

[37] Commerce Commission, Targeted Review of the Commerce Act 1986, Cross-submission to the Ministry of Business, Innovation and Employment, 21 July 2016.

- "… conduct undertaken by a firm without substantial market power can be benign or even pro-competitive, but that same conduct can be anticompetitive when undertaken by a firm with substantial market power. That is, a firm's conduct could pass the taking advantage test even though it demonstrably damages the competitive process. In effect, what the take advantage test does is create a safe harbour based on the form of the conduct, rather than the substance of its impact. The substantive effect of the conduct is never examined as part of the counterfactual test."

- "The problem with the taking advantage test is that it effectively exempts conduct undertaken by a firm with substantial market power if it can be shown that a firm in a competitive market would have engaged in the same conduct. In doing so the test makes the main focus a hypothetical inquiry into the possible reasons why another firm may undertake conduct as opposed to the more important question of why the particular firm with market power undertook the conduct and the impact of that conduct, both pro- and anti-competitive.

  "In effect the test means that if conduct would be undertaken by a firm in a competitive market, it is presumed that it will not harm the competitive process if undertaken by a firm with substantial market power.

  "This is not a safe way to sort conduct that is liable to harm the competitive process, from conduct that is not. Indeed, as can be seen, the impact of the conduct is not even a core question that is asked as part of the taking advantage test. The test assumes that the firm in a competitive market would have the same business rationale for undertaking the conduct, where in reality, the business rationale will often differ as the real-life impact of the conduct will differ.

  "We consider the best way to ensure that conduct does not harm the competitive process is to focus a test directly on the impact of the conduct on the competitive process."

This is a point also noted by the Australian Harper Review Panel which concluded: "Business conduct should not be immunised merely because it is often undertaken by firms without market power. Conduct such as exclusive dealing, loss-leader pricing and cross subsidisation may all be undertaken by firms without market power without raising competition concerns, while the same conduct undertaken by a firm with market power might raise competition concerns."[38]

There may be scope to more accurately target the trading conduct rules

While the current trading conduct rules are a substantial improvement compared to the previous High Standard of Trading Conduct rules, they may throw the net: (i) too widely covering market participants who don't have market power and can't cause harm to the market; but (ii) too narrowly at the potential market abuses that may cause harm to consumers. We would welcome the opportunity to engage with MDAG on development of further refinement and reform of the trading conduct rules.

[38] Professor Ian Harper, Peter Anderson, Su McCluskey, and Michael O'Bryan QC "Competition Policy Review: Final Report" (March 2015) (Harper Report) at 338.

Concluding remarks

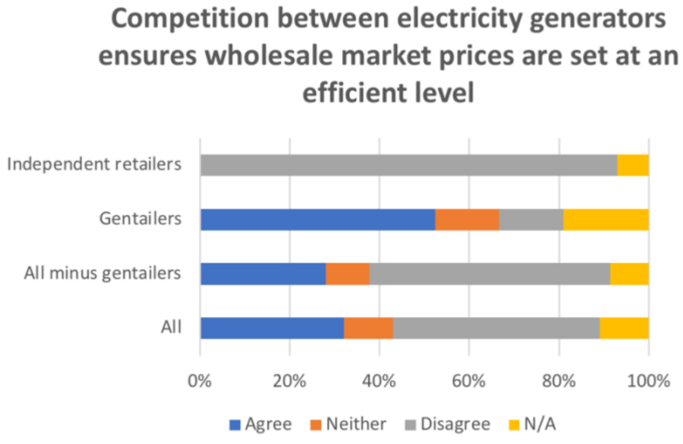
The Authority (WMR and inefficient price discrimination) and MDAG (100RE) have provided rigorous evidence of ongoing and substantial competition issues in the wholesale electricity market and that competition problems are likely to worsen if nothing is done about it. This is backed up by other evidence including the Authority's annual survey of market participant perceptions.

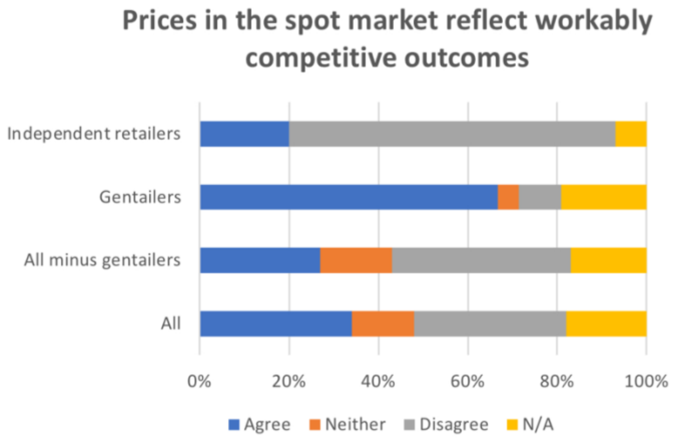
MDAG has laid out a robust case why the sector cannot afford to take a "wait and see" approach and needs to act with "urgency" to ensure a successful transition to greater reliance on renewable electricity.

We welcome MDAG's emphasis on the importance of a workably competitive market and multiple citations that "Ensuring competition is a non-negotiable prerequisite for the market in general".

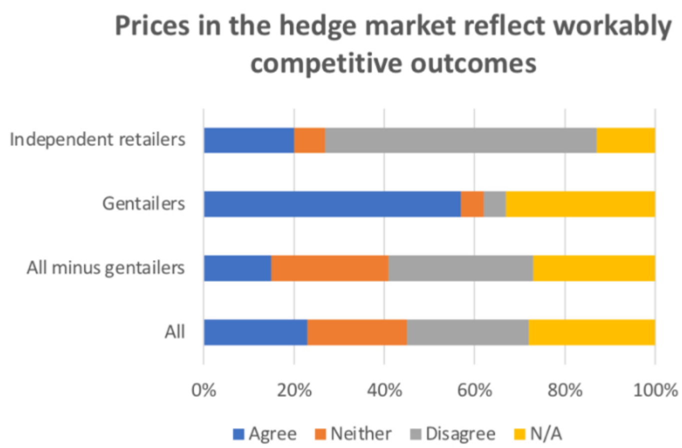
There is a long way to go to achieve a workably competitive market

The Authority's market participant survey highlights that most industry participants don't believe prices in the wholesale market are set efficiently or reflect workably competitive outcomes.[39]





[39] Electricity Authority, Electricity Authority survey of electricity industry participant perceptions 2021/22. Breakdown of survey results by participant type provided under the Official Information Act.



The Authority faces a choice between regulatory stability and its strategic ambitions

In our view, the Authority faces a fundamentally philosophical cross-roads between its recognition of the need to act with "urgency" to address the substantial, systemic problems it has identified versus the incrementalist and 'trial and error' approach implicit in some of the proposals. The Authority faces a similar choice between achievement of its strategic ambitions and its general preference for regulatory "stability" and incremental reform.

Ultimately, if the underlying competition issues are not adequately addressed there will be an increasing need to rely on regulatory intervention (including potentially in relation to wholesale pricing/price caps etc). As MDAG has reiterated in the latest consultation:[40]

> "As discussed in the Issues Paper competition is a vital ingredient to successfully shift to a renewables-based system. Without effective competition, consumers and policy makers will not have confidence in electricity spot or contract prices. Competition is often reduced when the system is tight, and yet those are the times when it can be most important to have confidence in prices and the market rules that govern their formation.
>
> "A lack of confidence in competition is obviously a problem for consumers, but it can also be bad for suppliers. If policy makers lack confidence in competition, the policy/regulatory environment will be less stable. That in turn can have a chilling effect on the longer-term investments needed to underpin the shift to renewables."

We reiterate "What seems clear from the MDAG work is that if regulatory and policy settings continue an 'incrementalist' path, and current competition problems are not addressed they will get worse in a 100% renewables scenario with the dominance of vertically-integrated incumbent suppliers further entrenched, and the role of independents kept limited and marginalised".[41]

There are 'low-hanging fruit' reform options which should be fast-tracked

From our perspective, while structural reform provides the most surety of resolving the issues the Authority and MDAG have identified, and delivering the kinds of benefits we saw from break-up of ECNZ and Telecom, there are complementary, moderate reforms that could 'punch above their weight'.

[40] MDAG, Price discovery in a renewables-based electricity system, OPTIONS PAPER, 6 December 2022, paragraphs 10.1 and 10.2.
[41] Electric Kiwi, Flick Electric, Pulse Energy, and Vocus, MDAG has highlighted well the importance of addressing competition problems to enable efficient operation of the wholesale electricity market and successful transition to 100% renewables, 11 March 2022.

The issue of access to wholesale contracting/hedge arrangements has been an ongoing issue which is holding the industry and competition back. The current arrangements do not provide the protections needed against (extremely) high and increasingly volatile spot prices.

We reiterate from the last consultation that “We do not fear or object to the potential for the transition to 100% renewables to result in higher spot price volatility, if the volatility genuinely reflects the outcomes of a workably competitive market and tools are available to enable independent retailers (and generators) to manage risk on a level playing field with vertically-integrated incumbents. These are also pre-conditions MDAG have appropriately identified for an energy-only market to work properly”.[42]

Extending mandatory market-making to include capped products and adoption of conventional non-discrimination/equivalence of input rules would be a much better option than relying on an access code and taking a 6-year “wait and see” approach before putting in place regulated (capped) hedging arrangements.

Summary of the independents’ views on potential reform options/development

Support further work	Don’t support
Improvement in short-term forecasts (A1)	Trading incidents not being able to be both trading conduct breaches and a UTS (A7)
“Greater transparency of hedge info (esp non-base load) covering offers, bids + agreed prices” (B1)	Capacity market mechanism (B9)
“develop standardised ‘shape’ products” (B5) and capped products	Regulation of retail tariff setting (DSF retail tariff requirements), including as a backstop (C3)
Potential extension of the trading conduct rules to include the hedge market (B7)	
Regulated access (mandatory market-making) for profiled or capacity (shaped) products (B8)[43]	
Sunset profiling if smart meters in place over 12-month period (C2)	
Provide significant funding for pilots/trials to kick-start dynamic tariff use (C5)	
Reform/review of Powerswitch (C14)	
Physical disaggregation of flexible generation base (D6)	
Virtual disaggregation of flexible generation base (D7)	
Enhanced wholesale market compliance monitoring with more autonomy (E4)	
“Periodic warrant of fitness review for independent regulatory agencies” (E5)	

[42] Conditions (a) – (e) all require a workably and fully competitive market to be satisfied. Conditions (c) – (e) also require that tools are available to enable independent retailers (and generators) to manage risk on a level playing field with vertically-integrated incumbents.
[43] This work-stream should be progressed under a much more condensed timeframe than 2023-28 for options B1-B8. We consider a 2-year time-frame to be realistic and achievable. B5 should be able to be progressed within a year and at the same time as B1, B3 and B4. B6 and B8 should then be progressed, again in parallel, within a 12-month time-frame and completed by 2025. Transpower’s development and implementation of a far more complex and novel new TPM highlights what can be achieved if a project is suitably prioritised and resourced.

Support further work	Don't support
Other	
It is difficult to comment on a [day?] ahead market given the paucity of information provided in the consultation (A6).	
In principle, we support industry-led initiatives on technical issues but whether they are successful depends on how they are implemented. We have very little confidence that industry-led initiatives, including the Authority's recent appointment of an OTC Working Group, will be successful in relation to hedge market and risk management or other initiatives that enable competition.	
More work is required to Determine whether a new ancillary service (C9) is justified.	
"E1 – Structured information programme for wider stakeholders" could decrease confidence if it is simply used to talk up how well the market is working.	

Yours sincerely,

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