Promoting competition is preferable to administrative solutions

2degrees opposes regulation of competitive or potentially competitive retail market tariffs; particularly retail offerings of independent and new entrant retailers who do not have market power. While it should be self-evident that more competition would mean more choice, regulation to require more choice of retail tariffs could be counter-productive and undermine competition.

Retail tariff pricing is a core part of any new entrant or independent retailer's market strategy and risk management.

Retail tariff innovation has been a successful part of 2degrees' market strategy and growth in the cellular market with innovations such as Carryover Data, Free Data Hour, unlimited calls/texts to NZ & Aussie, and monthly (rather than 4 weekly) prepaid mobile plans[1] which have helped us differentiate from our competitors.

Any regulatory interference with commercial decisions and retail tariff pricing could directly hamper a core part of our ability to compete and differentiate from our competitors. We consider that the methodological requirement that the peak/off-peak differential reflects "relative economic costs" would be much more restrictive of the type of pricing retailers can adopt than the Authority intends.

The Authority is correct that "there are risks to intervening in the retail market in the way proposed" including that "Requiring retailers to offer a particular price plan … could weaken competition, and hence reduce innovation and efficiency …" The Authority should not countenance options that have "potential" to cause further "decline in retail competition"; particularly given it has acknowledged competition has "stalled". We do not consider that the Authority has provided reasonable basis to dismiss this risk as "relatively low".

Summary of 2degrees' responses to the consultation questions

Question	2degrees' response
Q1	The Authority's problem definition is fundamentally a competition problem. We agree with the Authority that to the extent there is "limited availability of more innovative pricing plans" this "may reflect limits to retail competition …"
Q2	The Authority's focus should be on options which strengthen competition/market-based solutions (consistent with its Code Amendment Principles) i.e. the types of options being considered as part of the level-playing field consultation. We agree with the Authority's previous stance that "It is better to rely on competition to stimulate solutions and innovation, rather than imposing an administrative solution …"
Q3	2degrees does not support regulation of retail tariffs. 2degrees does not consider that tariff regulation is in the long-term interests of consumers in markets that are competitive or potentially competitive (mirroring Part 4 Commerce Act price regulation thresholds).

[1] Prepay Plans | Prepaid Mobile Plans | 2degrees

Question	2degrees' response
	We consider that there is ample availability of TOU and solar injection pricing options available in the market – particularly from smaller and independent retailers – and they are well marketed. The Authority's proposal to mandate TOU tariffs, includes regulation of pricing methodologies to require a specific version of TOU pricing where the differential between peak and off-peak reflects "relative economic cost". Our interpretation of the draft Code proposal is that existing TOU tariffs would not necessarily be complaint and retailers would need to develop new regulatory TOU tariffs to comply. This could interfere with the type of TOU pricing retailers can offer and could hamper the kind of tariff developments and innovations that have already been observed in the market. The proposed solar buyback rebate requirements would impose major financial risk on independent retailers that are not backed by generation investment – particularly given the well telegraphed issues with access to hedge products to manage wholesale risk. This would not be a problem if the regulation is applied to Contact, Genesis, Mercury and Meridian only, but if it is applied to independent retailers it is likely to result in additional barriers to competition.
Q4	If the Authority mandates TOU pricing: • The requirements should be lifted to a less prescriptive principle that encourages customers to shift load away from peaks. • It should not mandate a form of TOU pricing which requires prices to reflect "relative economic cost". This concept should, at most, be something that retailers must "have regard to". • It should only include the concept of "economic cost" if this is clearly defined. • Economic costs/benefit should be determined at the retailer level not the individual customer level e.g. the "economic costs to the retailer of its customers' consumption" rather than "of the customer's consumption".
Q5	2degrees does not consider it would be appropriate or in the long-term interests of consumers for the Authority to consider regulated pass-through of distribution pricing (including distributor rebates). We agree with the Authority's previous commentary that: "The Authority does not see there is a particular efficiency reason why prices should be passed-through. Instead, pass-through could stifle the economic efficiency of the electricity sector because it reduces consumers' choice on how to manage price risk, and eliminates a dimension on which electricity retailers can innovate and compete for customers …"
Q6	We do not consider that regulation of retail tariffs should be applied to new entrant and independent retailers that do not have market power.

Question	2degrees' response
	Independent retailers are the key driver for competition and innovation. Regulation of independent retailers is likely to be counterproductive and would harm competition and innovation. If the proposed regulation were to apply to independent retailers as well as incumbent retailers it would create additional barriers to competition. This is because the proposed regulation would have a larger impact on independent retailers as the lack of adequate access hedge products to manage wholesale risk means that: (i) independent retailers would have a larger "relative" differential between peak/off peak "economic costs"; and (ii) the solar buy-back regulation would impose major financial risk – in effect pushing variable renewables output risk onto retailers without the backing of their own generation or the necessary hedge products/wholesale tools to manage that risk. While the Authority has suggested "The non-discrimination provisions of Package 1 of the Task Force are intended to go some way towards addressing the "natural hedge" advantages of gentailers over independent retailers" these are only at the proposal stage at this point, and there is uncertainty about the extent they will address existing problems without other interventions.[2] If the Authority adopts retail tariff regulation it should apply to the large, incumbent retailers only: Contact, Genesis, Mercury and Meridian (including their subsidiaries). If the Authority moves with its proposal to adopt a percentage threshold we consider that 5% is too low. A problem with a 5% threshold is that it would capture small, independent retailers if they are successful in growing their market share/would act as a barrier to growth given the additional compliance costs if the retailer reaches 5% market share.
Q7	See response to Q12. An additional year should be provided to allow half hour reconciliation systems to be in place. We consider that implementation of the requirement that retailers must supply half-hourly data (clause 00.4) should take affect from 1 April 2027. Regardless of the 2026 versus 2027 implementation timeframe, the Authority should provide for 1 April as the timeframe for implementation, not 1 January. While the Authority has suggested its proposal "is a new offer not a price change" we do not consider it would be desirable to potentially need to increase the price of the "new offer" just 4 months after it is implemented to align with electricity distribution price increases at that date. The new tariffs may be impacted by distribution pricing, particularly if there is any pass-through requirement, so any regulated retail tariff requirements should follow distribution pricing reform.
Q10	Based on the Authority's expectation that a transition period would be needed for workable competition to develop then a sunset clause would seem reasonable. The Authority should be mindful that some currently smaller retailers could reach the 5% threshold within the 5-year transition period. We would

[2] Response to e-mail enquiries.

Question	2degrees' response
	question the efficacy, or whether the compliance costs would be justified if the regulation were to, say, apply to a smaller retailer for 1 or 2 years before the sunset clause comes into effect. This further reinforces our view that the regulation should only apply to the large, incumbent retailers.
Q12	2degrees supports this proposal with the proviso of a 1 April 2027 start date to allow time for systems changes. The compliance costs associated with a 2026 implementation timeframe would be substantially higher than for 2027 and would require diversion of resources from more customer-facing activity and product/tariff development.
Q13	The objectives of the proposed amendment appear to confuse "objective" with "means". A problem with specifying that the "key objective … is to improve the incentives for consumers to move their consumption away from … peak times" is that the objective defines the solution.
Q14	2degrees does not believe the benefits of the proposed amendment would outweigh the costs. The impact of the Authority's proposals would, in our view, be harmful to retail competition and our ability to compete and innovate. Mandating retail tariff options may increase the options available to consumers but this does not mean it will have competition benefits (para 7.10). If this claim was correct then it would follow that the Low Fixed Charge Regulations have substantial competition benefits because they effectively double the tariff choices available to residential consumers. The Authority should not countenance options that have the "potential" to result in a further "decline in retail competition" particularly given it has acknowledged retail competition has "stalled". We do not consider that the Authority has sound basis to dismiss this risk as "relatively low". **The compliance costs could be high** While the Authority's intent is that the tariff regulation would be relatively benign for retailers already offering time-of-use tariffs we question whether this is correct and what would be required for a retailer to demonstrate their pricing reflects "relative economic costs". The Authority has made it clear it expects retailers to provide "high-quality information that would clearly demonstrate how their offerings comply with [the] requirements." Retail tariffs reflect commercial decisions rather than economic theory or uncertain concepts such as "economic cost" that are subject to inconsistent interpretation. Time-varying tariffs can be designed to reflect consumer preferences (e.g. 'free' electricity) and to encourage load shifting from peak to off-peak but this does not necessarily mean the tariffs reflect "relative economic costs".
Q15	2degrees queries the Authority's suggestion it would not be practicable to quantify the costs and benefits of its proposals. The quantified CBA the Authority undertook for its TPM decision principally revolved around the benefits of shifting load between peak and off-peak and so directly parallels the type of impacts the retail tariff proposals would have.[3]

[3] The principle difference is that the Authority considered transmission pricing peak signals to be too strong, while it appears to consider there is insufficient peak signals at the retail level.

The Authority's problem definition is fundamentally a competition problem

2degrees agrees with the Authority's prior statement that "A workably competitive retail electricity sector provides consumers with choice of retailers and innovate retailer services and plans that better match circumstances and preferences. It is better to rely on competition to stimulate solutions and innovation, rather than imposing an administrative solution …"

The only thing that has materially changed since the Authority made this statement is that it has acknowledged there are competition problems in the electricity market and retail competition has "stalled". It is clear from the Authority's problem definition that the problems fundamentally come down to inadequate retail competition hampering innovation and meaning new types of retail tariff offerings may be emerging more slowly than the regulator would expect.

For example, the Authority has commented that "some of the more innovative retailers are finding it difficult to grow in the current environment … reducing the price plan options available to consumers" and "The limited availability of more innovative pricing plans may reflect limits to retail competition …"

2degrees strongly encourages the Authority to focus on policy initiatives that would promote a more strongly competitive market rather than administrative options, such as those set out in the consultation, which are only appropriate if competition has failed and is expected to continue to fail.

Vertical-integration is relevant to the problem definition

Lack of adequate access to super-peak/shaped hedge products means independent retailers have an inefficiently high costs and incentive to manage peak-demand to reduce spot market risk exposure/exposure to high peak-prices.

Given the artificially strong incentives to reduce peak-demand it is not clear why regulation would be necessary requiring independent retailers to offer tariffs that would help reduce their customers' peak demand. At the broader level, the wholesale market as well as lack of fair hedge prices is the core problem limiting retail competition and retail price efficiency.

The Authority, in its Risk Management Review consultation, has noted "Some non-integrated retailers have reduced their need for shaped products by managing their customer demand <u>through time-of-use tariffs</u> or demand response products, or seeking customers with a flatter demand profile" [emphasis added] and "retailers can expand capacity for risk management by offering different [TOU] retail tariffs" albeit that the "viability will depend on the existence of customers willing to take on spot price risks themselves and either ride through the volatility of spot prices or alter their behaviour to avoid high price periods."

The converse of this is that incumbent gentailers are able to use the market power of their wholesale businesses to insulate their internal retail businesses from spot market price/risk exposure.

This would suggest that, to the extent there is a problem, it is an incumbent retailer problem only and should be targeted exclusively at Contact, Genesis, Mercury and Meridian (and their subsidiaries).

The other implication is that the proposed requirement to "provide a financial benefit to each customer which is in proportion to the extent to which that customer's consumption or injection patterns reduce the retailer's economic costs" could have asymmetric impact on incumbent and independent retailers, as incumbent retailers can use their internal wholesale businesses to insulate/minimise these "economic costs" whereas independent retailers have much higher exposure given the limited access to super-peak/shaped hedge products. Two retailer businesses could be identical – but one is vertically-integrated and the other is not – but could require very different tariff design to comply with the proposed regulations (with independent retailers needed a larger peak/off-peak differential to comply).

Price regulation should not apply in competitive markets to suppliers without market power

2degrees' reiterates that we consider price regulation – be it setting overall price caps or regulation of pricing methodologies – of competitive/potentially competitive parts of the market is inappropriate and would not promote the long-term interests of consumers.[4]

The Authority should not interfere with a core part of retailers' competitive market strategies

It is clear time-of-use pricing is becoming an increasingly common part of retailers' competitive market offerings and an increasingly prominent part of their marketing (particularly around periods of 'free' power).

The Authority, in its Risk Management Review, has described risk management, particularly for mass market customers, to be one of electricity retailers "core roles" and it is important "for retailers to demonstrate their own ability to develop an effective risk management portfolio, as this is one of the areas in which they compete."

The Authority goes on to describe "offering a range of retail tariffs … to help consumers to manage their use of and expenditure on electricity (as well as potentially reducing long-term system costs by reducing peaks, and the network and generation expenditure that they drive)" as "part of the core risk management options available to retailers … and are an area where they can differentiate themselves from other retailers."

Concluding remarks

2degrees supports the work the Electricity Authority is doing, as part of the Energy Competition Task Force, in conjunction with the Commerce Commission on promoting competition and improving choice for consumers. We consider that these are laudable outcomes that will help make the electricity industry better for consumers.

Reform options such as those being considered in the level playing field consultation have considerable potential to improve competition in the electricity retail market – and to deliver the types of retail tariff innovation and pricing options the Authority is proposing to use regulation to deliver - should remain the Authority's focus.

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[4] 2degrees and Electric Kiwi, submission to the Electricity Authority, Distribution pricing reform welcome, 15 August 2023.