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Level playing field measures need to go beyond current proposals to address problems in the retail and wholesale markets

Thank you for the opportunity to provide feedback on the proposed Level Playing Field Options Paper (Options Paper). 2degrees welcomes the Electricity Authority's (**Authority**) acknowledgement that it needs to act with urgency.

We are ambitious for New Zealand and ambitious for 2degrees. We want to be in a truly competitive electricity market where we can offer innovative electricity services to all New Zealanders. Current market conditions stifle this ambition.

As a competition and consumer champion, 2degrees is a strong supporter of appropriate regulation that addresses market failures and promotes competition in markets for the long-term benefit of consumers within New Zealand. This is consistent with our purpose of 'Fighting for Fair'.

Appropriate, and hard fought-for regulatory settings – particularly wholesale regulatory settings – enabled the entry of 2degrees to the telecommunications market. These included critical access to radio spectrum, 'national roaming' and 'co-location' services as we built out our mobile network, regulation of mobile termination rates (at a time when there was a prevalence of favourable 'on-net' pricing), and number portability (which removed a significant barrier to consumer switching). These regulations coupled with non-discrimination and equivalence requirements, effective monitoring and oversight, and accounting and corporate separation, (which was ultimately replaced with structural separation) were instrumental in achieving the right regulatory framework.

In short, a catalogue of regulations each interoperating and working together to address significant competition harms were needed. These measures, and the telecommunication sector more broadly, can act as a playbook for the Authority's regulation of the electricity market.

2degrees' impact on market competition and innovation, and the associated ongoing consumer benefits this has brought to New Zealand consumers and the broader economy is well-known – and is sometimes referred to as 'the 2degrees effect'.

The success of new entrant retailers' entry into the telecommunications broadband market, including, more recently by the Gentailers, is in stark contrast to the more limited penetration of new entrant retailers in electricity.

It is critically important to get wholesale regulatory settings right, and to ensure independent generators and retailers can compete on a level playing field against the incumbent gentailers.

Substantive response to the Authority's Options Paper

2degrees supports the introduction of non-discrimination obligations as a vital step toward ensuring a fair and competitive electricity market. However, to deliver enduring and effective competitive outcomes, we consider that the Authority should adopt corporate separation measures.

Corporate separation would embed the non-discrimination principles outlined in the Options Paper within a clearer, more enforceable framework – leveraging existing arm's length rules that currently apply to electricity distributors under the Code. It would promote entry and investment in new generation, create a more liquid and accessible hedge market (particularly for OTC products), and ensure all retailers can compete on equal terms. By removing information asymmetries and simplifying compliance, we believe corporate separation measures would offer a regime that is easier to implement, monitor and enforce – delivering long-term benefits for consumers and the wider market.

2degrees directs the Authority to the detailed submissions of the Independent Retailers (of which 2degrees forms a part) for our substantive response to the Options Paper.

The competition harms are not new and the time to act is now

The issues identified with market power and vertical-integration are not new though the detriment it is causing has become increasingly obvious over time.

2degrees' (nee Vocus NZ) submission in 2018 to the Electricity Price Review, for example, highlighted how New Zealand faced the same kinds of problems the ACCC identified in Australia with high vertical-integration and market power, with this market structure resulting in low hedge market liquidity and limiting the ability of independent electricity retailers to compete and aggressively win customers.[1]

The Authority's Wholesale Market Review found evidence of significant and/or substantial market power. For example:

> "The market is dominated by a few large firms, with Meridian needed to meet demand over 90 percent of the time."
>
> "There is evidence to suggest that generators have an increased incentive and ability to exercise market power, and may have been doing so over the review period."
>
> "There is some evidence of an increased incentive and ability for electricity generators to structure their offers into the market in a way that keeps prices high (economic withholding)."
>
> "[There is] evidence to suggest that prices may not have been determined in a competitive environment."

The Authority's views about market power and vertical-integration also mirror concerns expressed by the Commerce Commission that "there appears to be the potential for vertical effects in the supply of shaped hedges", "Gentailers that are able to supply shaped hedges have an incentive to prioritise the needs of their retail arms over the needs of other retailers"; and "there appears to be the potential for unilateral effects in the supply of shaped hedges".[2]

On any reasonable or objective metric, retail competition has stalled or gone backwards. 2degrees and the independent retailers, collectively, have provided evidence to the Authority that competition isn't working as well as it should.[3]

This is in stark contrast with the telecommunications sector. Contact has 5% of the urban broadband market, Mercury has 8% while other entrants such as Nova have an aggregate market share of 10%.[4] In electricity – by way of contrast – the largest entrant retailer has a market share of 3.28% and aggregate independent retailer market share is stuck at around 11%.

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[1] Vocus, Submission on Electricity Price Review first report, 19 October 2018.
[2] Commerce Commission, Statement of Issues Contact Energy Limited / Manawa Energy Limited, 5 February 2025.
[3] Refer, for example, to: Independent_Retailers_email.pdf.
[4] 2023-Telecommunications-Monitoring-Report-15-August-2024.pdf

Retail competition problems are also evidenced by the large number of electricity retailers that have exited the market. Twenty-three retailers have exited in the last 5-6 years.[5] Even more significantly, many of the established independent retailers have taken steps to limit their growth to manage their wholesale price risk. This throttles innovation, reduces competition, and limits consumer benefits from competition.

2degrees believes the time is now for robust regulatory intervention and for the Authority's focus to be the implementation of effective level playing field measures and on initiatives that address both the harm caused by vertical-integration (such as non-discrimination rules) and are targeted at limiting the (mis)use of market power (such as corporate separation).

There is a risk of unintended consequences if regulatory intervention is inadequate

While we can point to the telecommunications industry today as a success story, this wasn't always the case. Our experience is that the Telecommunications Act provides a cautionary lesson the Authority should be mindful of when considering what reforms should be adopted and how far regulation should go.

The initial iteration of the Telecommunications Act was fundamentally sound but substantial upgrade was subsequently required to fully address the competition problems in the telecommunications market and access to wholesale services.

The approach of initially adopting a relatively light-handed approach – albeit which notably provided a regulatory framework for dealing with wholesale access problems that went well beyond that which the Authority is currently contemplating – resulted in considerable delay to competition issues being fully resolved and extended the harm to consumers from weak competition for longer than was otherwise necessary.

We have already seen the risk of 'under-reform' play out in relation to hedge market reform.

From our observation, the Authority's reforms in relation to hedge access issues has consistently fallen short of what is needed, including changes made in 2019 (e.g. reducing the maximum bid-ask spread), introduction of more obligations in 2020 following the Electricity Price Review, introduction of commercial market making in 2022 and a voluntary shaped product in 2025. Each of the reforms, in and of their selves – has been helpful, but individually and collectively have been inadequate to address the substantive problems in the electricity market and retail competition performance has continued to deteriorate over this time.

Concluding remarks

The presence of market power should not continue to be treated as a feature or reality of the New Zealand electricity market or other markets such as banking and groceries. The dominance and control of the market by the incumbent operators needs to be addressed to restore affordability and New Zealand's competitive, clean green advantage in electricity.

Energy policy warrants ambition for consumers and for New Zealand, including more competitive and affordable electricity as the platform for a successful transition to electrification and a low carbon economy.

As a country we cannot just rely on a small number of market participants if we are going to successfully navigate the path to a low emissions economy. We need a large, diverse number of participants making individual choices and competing fiercely to meet consumer needs.

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[5] https://www.emi.ea.govt.nz/Retail/Reports/3CL0V1?_rsdr=ALL&seriesFilter=T,I,X&_si=v|3