

via email: TaskForce@ea.govt.nz.

5 November 2024

Energy Competition Task Force - request for level playing field measures

While we appreciate the Electricity Authority's efforts to seek stakeholder views on level playing field measures, we believe that even before identifying a range of potential measures for general consideration, it is essential to clearly define the problem that any potential measures are meant to address.

Lack of Clear Problem Definition

The Authority has requested early input from stakeholders for initiative 1D of the Task Force's work programme on investigating level playing field measures, such as non-discrimination rules, for use as a regulatory backstop if earlier steps are not effective, regarding:

- Level playing field measures the Task Force should consider;
- Practical examples of level playing field measures being implemented, preferably in comparable overseas electricity markets; and
- Existing published work on level playing measures that stakeholders consider would usefully inform the Authority's work.

This request, however, does not provide a problem statement nor a clear definition of what is meant by "level playing field measures". The term level playing field takes on a number of meanings within the context of economic regulation, and we have observed that various meanings have been implied in discussions within the New Zealand context. Without clarity on the specific issues the Authority is concerned about — whether related to market power, vertical integration, or infrastructure access — it is challenging to identify what is meant by level playing field measures and therefore for stakeholders to offer meaningful feedback.

Further analysis required

Starting with a range of measures before the problem has been well defined raises the risk that resources and time are wasted on measures that are subsequently found to be irrelevant or costly without any benefit. It also raises the risk that a solution ends up searching for a problem, which may have unintended adverse outcomes.

We recommend that the Authority undertake further analysis and articulate:

- Specific problems that have been observed;
- Market behaviors or trends that indicate existing regulatory tools are inadequate; and,
- Impact of these problems on market participants and consumers.

The Authority is already undertaking a range of work that could help inform this analysis. There are the other Task Force actions: 1A Consider requiring gentailers to offer firming for Power Purchase Agreements; 1B Introduce standardised flexibility products; and, 1C Prepare for virtual disaggregation of the flexible generation base. Further, the Authority is about to publish the results of its Risk Management Review, as well as its post-implementation review of the Internal Transfer Pricing and Gross Retail Margin monitoring regimes. Once these investigations have concluded, the Authority will be better placed to undertake further analysis.

Looking forward, we are also concerned that the current request, which is to inform a "regulatory backstop if earlier steps are not effective", raises the risk of suggesting a problem that may not eventuate in the future. That is, attempting to specify a problem at this point may be premature as it is overtaken by future market developments.

Classification: General



Any prematurely specified potential measures may become irrelevant, or more may significantly distort future incentives and ultimately investment decisions, particularly in innovative flexible energy storage, generation and demand-side flexibility.

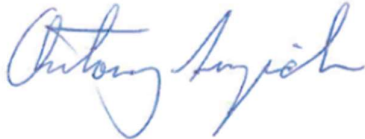
Identify metrics to indicate effectiveness of Task Force measures

To mitigate the risk of unintended adverse consequences, Mercury proposes the Authority should instead focus on developing the Competition Dashboard, as proposed by MDAG Recommendation D12. This dashboard is intended to provide a framework of relevant quantitative and (where useful) qualitative indicators to guide the Authority's regulatory judgements. It should identify metrics that would indicate whether the earlier steps, such as the other Package 1 actions or those pursuant to the risk management review are effective.

We believe that focusing on an evidence-based problem definition is crucial. This is consistent with the government's expectation that regulatory agencies are to maintain a transparent compliance and enforcement strategy that is evidence-informed, risk-based, responsive, and proportionate to the risks or harms being managed.¹ We encourage the Authority to revisit its framing of initiative 1D and provide a clear, detailed problem statement. This will ensure that any future input is relevant, targeted, and constructive. A similar approach should also be adopted for other Task Force initiatives

As a final comment, Mercury also requests the Authority publish the responses it receives to the present request on its website by 12 November.

Yours sincerely,



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¹ [Government Expectations for Good Regulatory Practice](#), page 5

