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Sarah Gillies
Electricity Authority
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Via email: rmr@ea.govt.nz

18 December 2024

Dear Sarah,

Octopus Energy Submission on the Risk Management Review

Octopus Energy appreciates the opportunity to provide feedback on the Electricity Authority's Risk Management Review. We commend the Authority for recognising the potential to improve the OTC market, the evidence gathered highlights risk management access challenges and supports the case for intervention.

However, we wish to highlight concerns regarding the narrow scope of the review and its apparent underestimation of the existence and potential impacts of market power. We believe this has led to insufficient consideration of competition issues affecting the electricity market. We're also concerned that the criteria for intervention is insufficient to address the access problems identified or the broader competition issues that have not been considered but are relevant. Retail competition is at risk without significant improvements to the regulatory framework.

In this submission, we provide overarching observations and attach a table outlining detailed comments corresponding to the sections of the review.

Market settings that support competition
The electricity market settings of 30 years ago are no longer suited to today. Advances in technology and shifting economic conditions are fundamentally transforming the role of electricity retailers. Three decades ago, a retailer's primary role was to bill customers. Today thanks to smart technology, retailers

can actively manage demand and serve as the interface for consumers' distributed energy resources, unlocking significant value and efficiency.

At the same time, New Zealand faces the dual challenges of electrification and decarbonisation. Scaling the electricity sector efficiently to meet these goals requires making it attractive to new entrants. 'Big 4' gentailers alone lack the capital and incentives to deliver the scale of generation needed. A level playing field is therefore essential to attracting new investment and fostering innovation in New Zealand's electricity market.

Octopus Energy is eager to invest more significantly in New Zealand, but we are currently hesitant due to market settings that appear to favor incumbents and enable the exercise of market power.

However, with the right market settings, we see an opportunity to leverage smart technology to create a cleaner, more affordable energy system while delivering exceptional customer service. We bring proven capability and a strong track record of driving innovation and delivering outstanding outcomes for consumers.

Octopus Energy is a unique player in the global energy sector. Unlike many competitors, we are not a product of privatisation but began as a retail market entrant in the UK in 2016. Since then, we have grown to become one of the largest retailers in the UK and a trusted technology provider for some of the world's biggest energy companies. Today, we operate in 18 countries, including the US, Japan, New Zealand, and the UK, and manage one of Europe's largest renewable investment funds.

Our success underscores how technology and innovation can drive better outcomes for consumers, but it also highlights the critical role of regulatory frameworks in enabling efficient and innovative operators to succeed. With the right conditions in New Zealand, we are confident that we can contribute to building a more sustainable and consumer-focused energy future.

Scope and Framing of Issues

The scope of the review significantly influences how problems are identified and solutions proposed. A place to start this review would have been to identify what a workably competitive market looks like and whether the current market structure facilitates this.

Since the inception of this work program, we have consistently raised concerns regarding the review's limited scope and underlying assumptions regarding the availability of over-the-counter (OTC) risk management contracts. Specifically, we believe the review has not sufficiently addressed the broader issues identified by the Commerce Commission. The current structural framework enables a margin squeeze where 'Big 4' Gentailers are using profits from their wholesale operations to cross subsidise their retail businesses, setting retail prices at levels that leave independent retailers unable to compete. Additionally, the practice may involve a refusal to supply hedge products through OTC trades, further disadvantageing competitors.

By narrowing the scope, the Authority has missed a valuable opportunity to collect comprehensive information on competition issues in the electricity market. This information is critical to determining the most appropriate regulatory responses. A piecemeal approach risks underestimating the extent of the challenges and, consequently, implementing solutions that may not be adequately proportionate to address them.

We are particularly concerned about the lack of focus on retail pricing analysis and the potential for a margin squeeze. Comprehensive monitoring of both wholesale and retail markets is an essential aspect of the Authority's responsibilities. Gathering robust data on these areas is crucial for assessing market efficiency and identifying any exploitation of market power.

The apparent lack of urgency in collecting and analysing retail market data is troubling. The Authority has previously acknowledged the harm that price discrimination can cause to market efficiency (such as with the 'Tiwai Contract'), and greater priority could have been given to addressing these concerns earlier. Without proactive action, there is a risk of reinforcing perceptions of bias toward the status quo.

Treatment of Market Power and Competitive Dynamics
The review appears to downplay the presence of market power and assumes the market is workably competitive without presenting a robust evidential basis for these conclusions. We wish to highlight the following concerns:

- ***Revisiting Previous Findings on Market Power:*** There seems to be a departure from earlier conclusions by the Commerce Commission and the Authority, without clear evidence to support this shift.

- ***Efficiency of Spot Prices, ASX Prices and Trading Conduct Rules:*** The assumption that spot prices and ASX prices are efficient and the over-reliance on trading conduct rules as a safeguard against market power warrant further scrutiny. As the Authority has previously noted, trading conduct monitoring has inherent limitations due to imperfect information and the subjective nature of assessments related to market conditions, such as hydrology and rainfall risks. Determining the efficiency of prices requires more comprehensive analysis. This review makes unqualified claims that "spot prices are competitive" and "ASX prices are efficient" problematic.
- ***Security of Supply and Investment:*** Security of supply has deteriorated, and investment in new generation and flexibility has lagged behind decommissioning and peak demand growth. These trends suggest inefficiencies in the market's investment response; elevated pricing for prolonged periods and deteriorating security of supply indicate problems.
- ***Vertical Integration and Market Power:*** The review does not adequately consider how 'Big 4' Gentailers may exercise market power in both retail and wholesale markets. Market power held in the wholesale market can be translated into the retail market - this is the crux of our margin squeeze concern. Without evidence the claim is made that "Gentailers have an efficient hedge against … volatility". There is no analysis to consider whether this 'efficiency' is procompetitive and best for consumers. There would be real value in identifying both the benefits and harms of vertical integration. This would help the Authority determine the appropriate regulatory response. Our view is that vertical integration in and of itself is not a bad thing, it's the combination of vertical integration and unconstrained market power that is.
- ***Barriers to Entry and Expansion:*** The threat of entry and growth is a critical dynamic for ensuring an effective and efficient market. The review cites instances of refusal to supply, where only one of the 'Big 4' consistently responds to requests for proposals (RFPs) and where only half of requests result in trades. Independent retail competition is retrenching. Meanwhile the generation sector continues to be highly concentrated and further consolidated[1]. This highlights the imbalance of

[1] Tilt was acquired by Mercury and in it's short existence built ~5% of capacity. Manawa is the subject of a takeover by Contact Energy.
Concentration was highlighted by the ACCC as a barrier to generation entry and expansion.
https://www.accc.gov.au/system/files/accc-inquiry-national-electricity-market-december-2023-report_0.pdf

bargaining power, structural barriers to growth and a lack of competitive tension in the market.

Since 2018 the market has been characterised by consistently high contract prices exceeding LRMC and a decline in security of supply, this does not reflect the expected outcomes of a workably competitive market.[2]

Findings and proportional response

The data illustrates there are significant problems accessing risk management products:

> **OTC contracts are available and traded but for some products there is limited volume**
>
> 2.3. Almost all requests (over 99%) received at least one offer. However, the OTC market is not very deep:
>
> (a) Super-peak contract requests (those that are impacted the most by capacity scarcity) received fewer offers per request
>
> (b) Around a third of all offers received were for less volume than requested
>
> (c) All offers received for super-peak contract requests were from gentailers (no other participant types responded to such requests)
>
> (d) Around half of all requests resulted in a trade

On the basis of this evidence we think there needs to be a robust risk management product access regime implemented[3] . The criteria outlined by the Authority will not adequately or proportionately address access problems. Our recommendation is that the Authority's primary criteria/ objective should be to establish a framework that ensures a level playing field and does not permit the giving of preference to, or discrimination against external parties compared with internal businesses.

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[2] "A workably competitive market is one that provides outcomes that are reasonably close to those found in strongly competitive markets…
The degree of rivalry is critical. In a workably competitive market no firm has significant market power and consequently prices are not too much or for too long significantly above costs…
In our view, what matters is that workably competitive markets have a tendency towards generating certain outcomes." Wellington International Airport Ltd and others v Commerce Commission [2013] NZHC 3289 (11 December 2013), para 14-15, and 18.

[3] For example, operational separation as identified in the Code Amendment Proposal proposed by Matthews law on behalf of the independent retailers.

We encourage the Electricity Authority to broaden its perspective and consider a more comprehensive examination of competition dynamics across the electricity market. Addressing these concerns will be vital for ensuring the market operates efficiently and in the long-term interests of consumers.

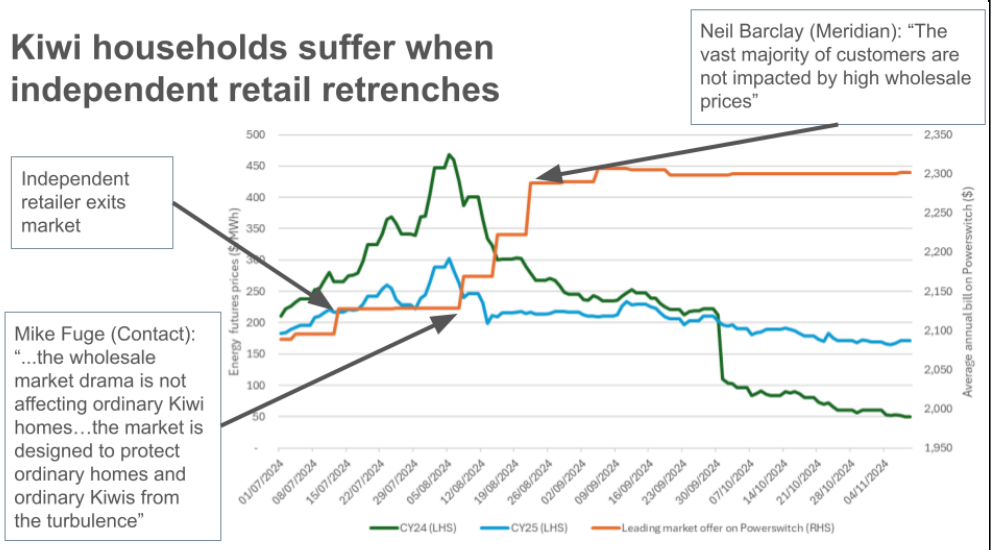
We appreciate the opportunity to provide input and remain available to engage further on these important issues.

Yours sincerely,

Margaret Cooney
COO Octopus Energy New Zealand

Detailed comments RMR

Reference	Comment
1.1	The focus on risk management options for independent retailers only was a missed opportunity to look at the performance and challenges of the contracts market more broadly.
1.15.	The RMR was established in parallel with findings from the Commerce Commission of evidence of competition problems. Particularly relevant to that decision was a view by the Commerce Commission that the Electricity Authority holds a regulatory toolkit that could be utilised to address the issues more quickly.
1.18	Agree retail pricing data is critical to assessing a margin squeeze. It's a shame that this wasn't done earlier. We raised this at the very beginning of the process and have repeatedly raised this. The efficiency of the market depends on the pricing of risk management options in aggregate. If 'Big 4' Gentailers are pricing their own retail offers differently to the market this should raise questions - it should be considered an indication of the exercise of market power in the retail or generation markets. OTC contracts may be on par with ASX but they are at a significant premium to internal pricing. Given the concentration of the 'Big 4' Gentailers it's necessary to look at this internal pricing too to determine the efficiency or not of the market.
1.22	Important to note that it is not just the Independent Retailers that have been critical of the Electricity Authority's implementation of EPR recommendations. The Consumer Advisory Council, MBIE, and MEUG have also criticised the implementation of measures e.g Internal Transfer Price Monitoring. Status quo bias and a culture of intransigence are a concern.
1.23	Consideration of efficient risk management options and whether market power is negatively impacting competition can't be assessed by looking at a limited segment of the retail market alone. Vertically integrated firms with significant market power have the ability to exercise this via conduct in both the generation and retail markets.

	Narrowing the scope means that you don't have a full picture of the challenges in the market and the appropriate regulatory solutions.
2	Broadly agree with the description of retail responsibilities. One of the other benefits of retail is tension on the upward value chain that drives efficiency. For example 'Big 4' Gentailers have been slow to adopt TOU.
2.4	This section only looks at the innovation benefits. One of the significant benefits of entry is price competition. A recent snapshot of prices on PowerSwitch shows that when independent retail retrenches prices for end consumers increase. 
3.11	Important to note that timing of independent retail stalling coincides with a step change in wholesale prices and ASX access issues. Independent growth hasn't just stalled but 'Big 4' Gentailer share has increased. The retrenching of Nova should also be noted as they are vertically integrated but unlikely to have significant market power.
4.12	Additionally the examples from abroad are not 'gentailer' models. Gentailer innovation often follows - e.g Contact Hot Water years after independent retailers had made it available.
3.5	The paper highlights one of the market failings - that insufficient

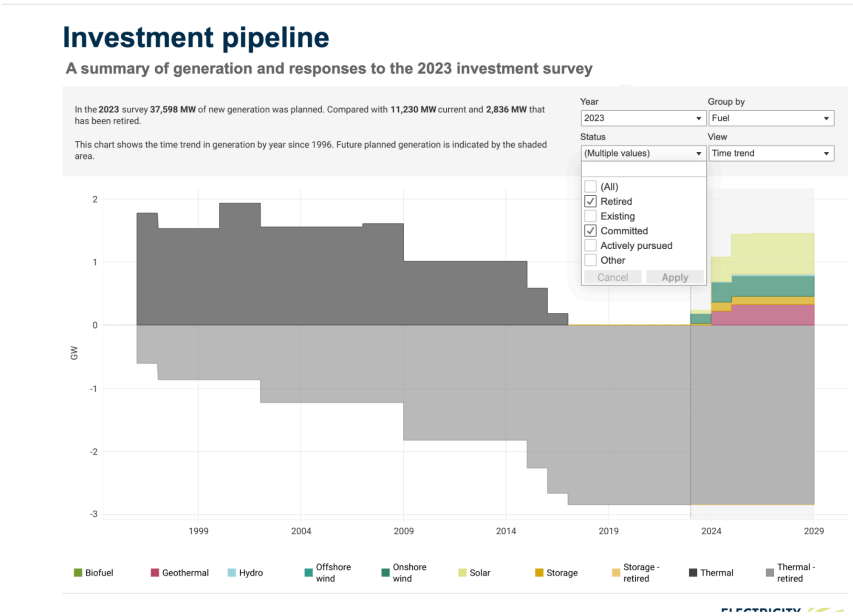
	capacity is being built to meet peak demand requirements. This should link into a discussion of incentives, behaviours and how this impacts the efficiency of the market.
5	It's important to distinguish electricity risk management products from insurance products. Typically these products take the form of a Contract For Difference, these involve the swapping of risk to the party best placed to manage the risk or tolerate it. It has benefits to both parties. It should not have sustained risk premiums as the price of these products should tend to the long run marginal cost of the new generation. Risk premiums for sustained periods indicate a market inefficiency such as the exercise of market power.
6.4	Risk management products are also 'demanded' by the internal retail business. As scarcity leads to price increases in the market these should be reflected in the 'internal price' faced by integrated firms. They should also be reflected in the energy component of a retail price. If not, why not?
6.8	It's worth noting a prudent risk management approach involves buying contracts on a regular basis outside of the current 12 months. A speculative approach would involve buying opportunistically rather than on a regular longer term basis. Volatility of long dated contract prices should be a cause for concern, the ASX charts show considerable volatility in price, this needs unpacking. Is the pricing fair or is it reflective of a premium because of market power. Additionally there is no commentary in this section about ASX access issues. In that environment there was greater opportunity to exercise market power and lift ASX prices. It also arguably translates into more OTC bargaining power for generators as there were no substitutes.
6.9	We note your comment that market reform shouldn't dull these signals but more pertinently - If the market was operating efficiently, rising prices should trigger further investment in new supply. Why has this not happened? We're in a predicament where market prices have been elevated

	for many years, we have precarious levels of security of supply. The paper seems complacent about market inefficiencies/failures.
7	The statement that 'gentailers have an efficient hedge' needs unpacking. How have you measured efficiency and is this beneficial to competition and consumers? The paper highlights that Gentailers favour 'supply' of risk management products to their own businesses. This is not an observation that can not be casually bypassed. Gentailers giving preference to their own retail businesses distorts the efficiency of price signals in the market and has the potential to foreclose independent retail competition. If the Electricity Authority thinks it is acceptable for large firms with market power to favour their own supply/ restrict access then it needs to make it clear why? This conduct would be inconsistent with competition law principles in New Zealand. New Zealand competition case law is highlighted below. ***Fisher & Paykel v CC [1990] 2 NZLR 731 (HC) at 757-8*** "workable and effective competition" = "a market framework in which the presence of other participants (or the existence of potential new entrants) is sufficient to ensure that each participant is constrained to act efficiently and in its planning to take account of those other participants or likely entrants as unknown quantities. To that end there must be an opportunity for each participant or new entrant to achieve an equal footing with the efficient participants in the market by having equivalent access to the means of entry, sources of supply, outlets for product, information, expertise and finance." – **Telecom v Clear (PC)(1994) 6 TCLR 138** Applied Kahn's "principle of comparative parity" (non-discrimination): "in considering whether competition would be deterred by [the incumbent's] charges, what is pertinent is not the absolute level of those charges but whether [the incumbent] is charging [access seeker] more for the service it provides to [access seeker] than it charges its own customers for the same component of its own services." The Competition Markets Authority has looked at the potential harms of vertical integration, it would be useful for the Electricity

	Authority to consider the benefits and harms in the New Zealand context. The extract below is from the Energy Market Investigation Summary of Final Report 24 June 2016. It is useful for considering the implications in New Zealand. The UK energy market had operational separation and non discrimination provisions in place, additionally it had significantly lower levels over vertical integration and market concentration. 82. We have examined three main ways in which vertical integration might harm competition in wholesale and retail electricity markets. 83. First, it could mean that independent (non-vertically integrated) generators are not able to compete effectively because of the prevalence of vertically integrated suppliers. The concern here is that independent generators would be harmed because vertically integrated suppliers refuse to buy from them, or will buy on worse terms. However, we have found no evidence of this, and continued investment in independent generation suggests that this is not a concern. 84. Secondly, if vertically integrated generators refuse to supply independent (non-vertically integrated) suppliers, or supply them on worse terms, it could mean that independent suppliers have to pay higher costs for wholesale electricity than vertically integrated suppliers. As a result they may be unable to compete effectively, resulting in harm to customers. The lack of unilateral market power makes it implausible that vertically integrated generators would be able to discriminate in this way, and the recent growth of independent retailers suggests that they have not been foreclosed from the market. 85. Lastly, vertical integration could raise barriers to entry and growth by new suppliers if they were unable to secure sufficient wholesale electricity. However, our analysis of wholesale market liquidity suggests that vertically integrated firms carry out extensive external trading, and liquidity in the products that vertically integrated firms use to hedge their exposure to wholesale market risk is sufficient for independent firms to hedge in a similar way.
Chapter 4	Throughout this chapter there is a suggestion that demand response is a substitutable risk management product. There needs to be real caution around this, demand response is certainly a response to high price and a retailers tool for managing price risk but it does require the customers accepting interruption so it's not a substitute per se. There is some insightful analysis around the value of different risk management approaches. However one of the biggest factors

	influencing price risk is - fuel/ dry year risk. There is very limited discussion of dry year risk in this paper. There is a wider sector debate about dry year risk and whether this is being adequately managed. It's really important that there is holistic consideration of risk and policy responses to manage it.
5.29	I think the Authority needs to be really careful about the inferences it draws. Investors the world over are looking at developing new generation projects, however to date in New Zealand independent generation appears to have similar challenges to independent retail. Tilt sold to Mercury, Manawa is to be acquired by Contact and even the recent Helios project sale to Genesis - provide evidence of the challenges faced. It is relevant to note that if you look at other markets e.g Australia and the UK it isn't incumbent gentailers leading generation build out.
5.38	This is really an aside to the RMR but the authority may have misinterpreted my comments around barriers to undertaking hot water control in some networks. Additionally the comment around load management protocols is a broader issue than hot water. We've found most of the major networks receptive to hot water control alongside the network control. However some smaller networks have suggested that we'd need to remove the customer off the discounted 'controlled' network prices or pay a fee to the network to run retailer hot water control alongside the network control. It should be possible for the customer to get the benefit of both network and retailer control. Additionally, a nascent issue for consideration is where the network isn't controlling the hot water (or EV's, batteries) and a retailers is. At some reasonable scale there will need to be coordination of the retailers actions with the network. Happy to have a discussion to clarify this.
5.44	We're happy to discuss VPP/ distributed asset optimisation in more detail with you. We currently control batteries and EV's using Kraken Flex our tool for optimising and controlling distributed devices. As part of the Resi - Flex program with Wellington Electricity and

	Orion we are taking a network signal as well as a spot market price forecast to optimise. There is real potential in distributed asset optimisation but in order for customers to have the incentive to participate we need to reward them for providing access to their devices.
5.46	The paper comments on working capital requirements to meet margin calls related to the ASX. There would be real value in interrogating the issues around credit/ prudential more broadly. Our experience is that there isn't consistency across 'Big 4' Gentailers around credit forms and policies, it would be valuable for all to develop standardised forms. There is potential for credit/prudential arrangements to be used to increase costs, frustrate the contracting process or set at unreasonable levels and used as an excuse for not trading. Additionally, ASX Contracts cant be lodged as HSA's which are a useful tool in helping manage overall electricity market security.
6.7	It's encouraging to see the uptake of Hot Water Control by Gentailers. This uses existing technology so the question really has to be asked of why they've been so slow to make it broadly available? We and other independent retailers had it in the field over a year ahead of Contact.
6.8	It would have been more valuable to look at the build out rate and ask whether gentailers have worked quickly enough to build our capacity or contract for new capacity from independent generators. In the context of needing to build out capacity to replace Huntly, TCC and other capacity from previously decommissioned plant as well as support electrification of new demand, why in the face of sustained high prices has more not been built?

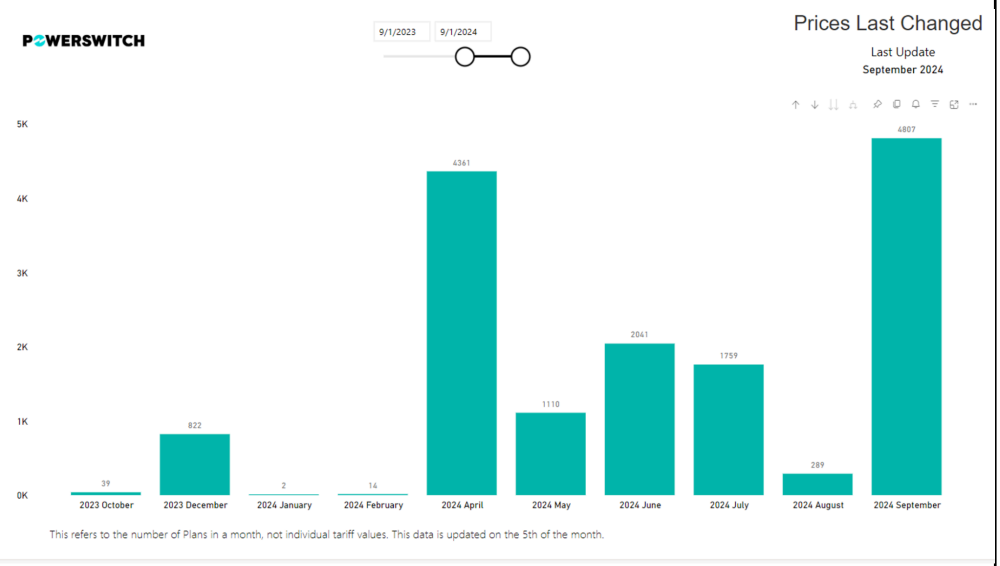
	
Chapter 5	This section makes the bold and unfounded assumption that ASX pricing is efficient. Pricing has been stubbornly above the LRMC of new supply for a prolonged period. This is inconsistent with the outcomes expected of effective competition. Without scrutiny this is not a safe assumption to make. Additionally, gentailers are pricing retail customers below the ‘efficient’ market price, and acquisition offers in particular can be significantly discounted. Given the previous comments of the Electricity Authority about the harm of price discrimination we think this further warrants consideration. We are in a predicament of low security of supply and high prices signals, such that it is deterring energy intensive production. The Electricity Authority should be sensitive to the distortion of investment signals on both the supply and demand side of the market. If market risk was being responded to by dominant 'Big 4' Gentailers we should have seen them building more new generation or contracting for it. The extract from ‘INEFFICIENT PRICE DISCRIMINATION IN THE WHOLESALE ELECTRICITY MARKET – ISSUES AND OPTIONS ‘ below highlights the public policy issue.

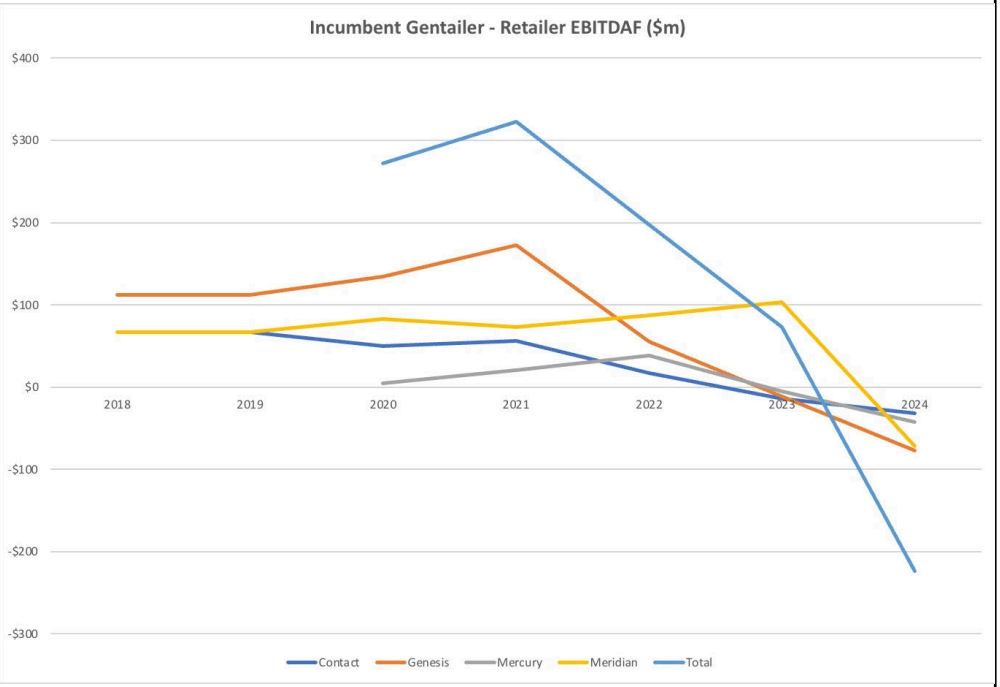
	However, an electricity market segmented through **inefficient price discrimination** may fail to deliver efficient outcomes in at least three ways: • consumers with relatively low valued uses of electricity may potentially consume too much electricity and other consumers with higher valued uses may consume too little[2] • the benefits of consuming electricity may be less than the costs of producing it. This is a waste of finite resources • resultant market prices may distort signals for investment in generation and electrification, thereby compromising the efficient transition to a low emissions economy. Inefficient price discrimination alone justifies efforts to develop cost-effective policy interventions. The public policy concerns are amplified if inefficient price discrimination also results in large wealth transfers to suppliers (generators) from consumers who are not party to the contract. In the case of the Tiwai contracts, it appears that generators have effectively subsidised the price of electricity to the NZAS and, as a consequence, prices have remained higher for other consumers. The potential efficiency costs are estimated to be around $57 million to $117 million per year. The subsidisation of NZAS is estimated to be over $500 million over the contract's 4-year term. Generators may be willing to subsidise NZAS because its demand increases national prices and spot market revenues by as much as $850 million per year, more than offsetting the cost of the subsidy. The Authority considers good market design should ensure that the incentives on generators are such that all participants can be confident that electricity is going to consumers with the highest valued use. When electricity is not allocated to consumers with the highest valued use, the adverse efficiency implications of segmentation can potentially be unwound if high- and low-value parties are able to re-contract in secondary markets. Market design can promote efficient allocations by facilitating direct competition for electricity between users, ensuring users are treated consistently, and removing artificial barriers that hinder welfare-enhancing trades.
2.3	Your data shows that there are real challenges accessing products. Only half of all requests resulted in a trade! Only one 'Big 4 ' Gentailer prices all requests! Around ⅓ offers were for less volume than requested! A significant portion of trading is happening without any competitive tension. These results warrant further interrogation and should be matched against retail market activity at the same time to determine if there has been predation. Has the Electricity Authority considered what constructive foreclosure of the market would look like? Or what level of access is necessary to facilitate effective competition? The evidence tabled here suggests real and significant access issues that need to be addressed.

2.9	We agree that credit arrangements are necessary but it would be valuable to consider if they are being set fairly and how these could be standardised. There needs to be reasonable options available for posting credit. This is an avenue for creating barriers to entry and growth. OFGEM's Supplier Market Access Rules provide an example of how credit criteria have been standardised. These rules benefit traders, retailers and generations by reducing the transaction costs negotiating credit arrangements. They also remove the scope for dominant firms to misuse 'credit' as a reason for denying access. Our experience is that some parties have provided a level of credit discretion before credit becomes an issue. Others require an arrangement that needs to exist prior to any trading; this could be a negotiated legal agreement/CSA others some wording in the confirmation. Some accept cash, others require bank LoC/ guarantees.
6	We've previously highlighted the inconsistency between retail pricing of large 'Big 4' Gentailers and the ASX presenting a barrier to competition. On top of the above the data in this section highlights that there are challenges accessing cover comparable to the ASX benchmarking demonstrating significant price discrimination is occurring. ● there appears to be an increasing trend in super-peak prices over time (relative to ASX baseload prices). When we add a shape premium to ASX prices, super-peak prices are sometimes still substantially higher. Offer prices for super peak contracts could be consistent with a lack of competition, or simply reflect scarcity. (para 2.7 Ch 5) ● There have been some accepted prices that were substantially higher than ASX prices (plus shape premium). This could be because the contract was competitively priced, or because the buyer had no other viable alternative (point (a) para 2.7 Ch 5) ● We also compared the OTC offer prices for super-peak products to the ASX baseload prices updated incorporating our estimates for premia. The results indicate that the accepted offers are still mostly above the ASX prices, even after including the premia (para 6.12 Ch 5)

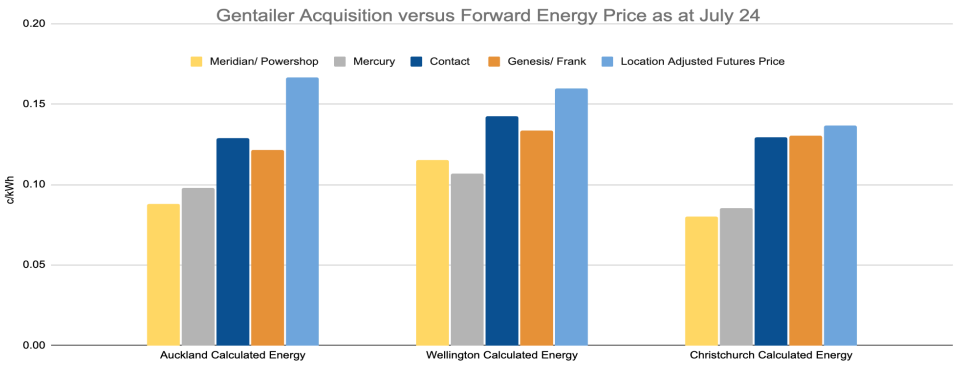
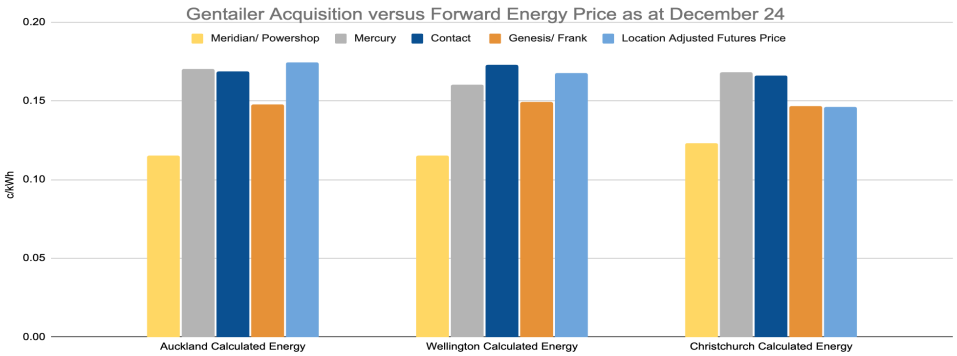
	• Requests with no offers accepted often (but not always) showed the highest deviation from the ASX, with a few offers priced considerably above the ASX (para 6.6 Ch 5) • There was a slightly increasing trend in offer prices for baseload products over the time period we have data for. (para 6.6 Ch 5)
Chapter 6	We agree with the proposition that the market will become more volatile as intermittent renewable penetration increases. Ultimately all parties in the market should face the same view of market price and risk. This section implies that preferred/ matched i.e. discriminatory access is acceptable. “Since gentailers own most of the flexible generation, as the supply/demand balance becomes shorter there is less capacity left over to underwrite financial contracts for other parties.” (para 4.7 CH 6) This assumption seems inconsistent with the statutory objective of promoting competition and ensuring a level playing field.
Chapter 7	
1.1	This section talks about substantial market power, this is the threshold for s36 of the Commerce Act. The Electricity Authority’s statutory objective to promote competition means it should also be considering the use of market power more generally. Market power at a lower level than ‘substantial’ still has the potential to impede competition and lead to inefficient outcomes. The work of the MDAG for example looked at significant market power.
3.9	We agree with your comment that ‘A gentailer with market power in relation to risk management would have an incentive to resist helping its competitors in the retail or wholesale markets, ie, to limit (beyond any scarcity driven limits) or overprice the supply of risk management products to competitors to give the gentailers own retail and generation functions a competitive advantage’. This is born out in the data from previous chapters regarding contracting with independent retailers and the under representation, relative to market share of 'Big 4' Gentailers as counterparties to PPA’s.

	As mentioned this is where there is real value in analysing the retail pricing conduct of parties. From our perspective there are notable differences between the approaches of smaller firms Nova and Pioneer compared with ‘Big 4’ Gentailer retail pricing activity. We also agree that vertical integration per se is not a bad thing, however where it is used to exercise market power and distorts efficient price signals it is problematic.
4.7	One dimension worth considering is that the scale of the customer base will impact the economics and ability to use particular products.
5.4	In this section you suggest that ‘Big 4’ Gentailers are investing in further flexibility. Yes, they have investments underway but more critically this has lagged demand for flexible generation which highlights an incentives problem and would support the contention of unilateral or coordinated market power being exercised. Additionally we’ve recently seen Contact Energy propose the acquisition of Manawa Energy. Rather than spending capital expanding production, they’ve prioritised consolidation. Similarly, Mercury bought Tilt Renewables rather than spending capital building new capacity. Genesis Huntly Firming Option has been highlighted as a reason for not providing other contract forms. The product itself was complex (what amount to commit, when to commit, when it is available and perhaps understanding of coal/ carbon pricing). It’s more suited to generators with fuel management capability. The HFO’s are not an accessible or suitable product for a small independent retailer like ourselves so this could instead be seen as restricting trading.
Footnote 6	These refusals to price are problematic, the criteria outlined in chapter 8 would not adequately ensure requirements for 'Big 4' Gentailers around offering shaped hedges.
5.5	There is opportunity for tacit coordination which should be explored more:

	CEOs are prone to making comments on prices in the media including expected price movements. Industry forums such as ERANZ, CEO's Forum have the potential to provide insight into trading positions and price change strategies. Noting the coincidence of price changes on PowerSwitch would suggest that electricity is similar to retail fuel prices and would benefit from more scrutiny. Additionally the knowledge from this paper that only one Gentailer consistently responds to RFP's will signal the imbalance of bargaining power and lack of competitive tension. 
5.10	We don't dispute that matching could be an economically rational behaviour. Use of market power is an economically rational behaviour! But an inefficient behaviour! Matching should be a concern when the value of electricity products sold 'via' the market to industrials or independent retailers has higher value than the value of electricity products sold internally. We note that the 'Big 4' Gentailers have reported significant negative losses in their retail segments.

	 By contrast smaller gentailer Nova/Todd's, who are unlikely to have market power to exercise, have retrenched from retail as wholesale prices have increased. At the beginning of 2021 they had ~ 117K customers, now they have 91K. Manawa who are vertically integrated but not matched and are unlikely to have significant market power has been a more flexible and responsive trader to deal with than the 'Big 4' Gentailers typically have been.
5.12	We're concerned you are too quick to conclude no evidence of market power and have not done sufficient analysis to dismiss the Wolak report findings. The Wholesale Market Review noted that there was evidence of market power being exercised. Additionally the suggestion that spot market market power would not have a bearing on contract markets is not credible. Derivative contracts are a function of the price risk in the underlying market. If price can be increased through the exercise of market power this risk will be priced into the contract. In any case the Authority needs to answer the question why, if the

	ASX is efficient, is it acceptable for 'Big 4' Gentailers to have retail acquisition prices below this?
6	This is a very disappointing discussion. You should have considered retail pricing behaviour as part of this analysis. We agree with the generally held view that the ITP's reported to the Electricity Authority don't serve the purpose intended of them - to improve transparency. That in and of itself does not undermine the margin squeeze concerns expressed by independent retailers. A key point we've emphasised to the Authority is the importance of retail price monitoring. If the implied 'energy' component of a retail price is below the price of the market that should raise concerns about inefficient price discrimination and misuse of market power. As illustrated above, even with preferential (i.e. below market cost) ITP's, 'Big 4' Gentailer retail businesses are showing retail segment losses. Our analysis of Powerswitch prices throughout the year has highlighted that prices are below longdated ASX costs adjusted for location and profile. *Annual cost is derived from Powerswitch and utilises the cheapest standard user offer available from the 'Big 4' Gentailer brands. Costs are then backed out to leave a derived energy price. Assumptions are;* ● *Wellington and Auckland, based on 8,000 kWh. Christchurch based on 9,000 kWh* ● *Cost to serve is $150 p.a.* ● *Metering is $120 p.a.* ● *Network Costs come from MBIE QSDEP* ● *Location / profile adjusted long dated futures price is the average ASX futures prices across the past 12 months adjusted to reference node within the Network area*

	 
Chapter 8	When the Authority issued its Project Initiation Document for this work program we became concerned that the Authority was defining the scope of it narrowly so that it could limit the problems found and as a result minimise changes. We are encouraged that the Authority has recognised that changes are necessary. However we remain concerned that problems have been de-scoped and downplayed: - Margin squeeze analysis needs to be undertaken; - There is evidence of refusals to supply and low levels of response. - There is evidence of price discrimination. - There is evidence of internal preference when efficient markets rely on non discriminatory access. We do not have confidence that the criteria are sufficient to address access problems arising from market power. They are a set of priorities that don't directly address the problem when the

	evidence supports significant access issues. The proposed criteria are ● cut through the complexity of the market on both the supply and demand side ● ensure incentives for participating in all types of risk management are maintained –demand response, syndicated batteries, Huntly firming options etc ● ensure incentives for investing to supply risk management options are maintained ● ensure risk management options that have alternative uses – demand response, batteries – have access to other markets to help make them economic for risk management ● consider ability to supply, which in turn relates to fuel supply conditions ● ensure transparency for pricing methods, and be able to validate pricing outcomes ● ensure transparency around market prices and quantities is ongoing and timely Our recommendation is that the Authority's primary criteria/ objective should be to establish a framework that ensures a level playing field and does not permit the giving of preference to, or discrimination against external parties compared with internal businesses.