

**Revised Draft Gas Transmission Access GTAC**

*A response to First Gas*

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Trustpower Limited welcomes the opportunity to provide a response to First Gas on its revised draft Gas Transmission Access GTAC.

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Contents

[1 Introduction and Background 2](#_Toc495327982)

[1.1 Introduction 2](#_Toc495327983)

[1.2 Background 2](#_Toc495327984)

[2 Trustpower’s views 3](#_Toc495327985)

[2.1 Executive Summary 3](#_Toc495327986)

[2.2 Structure of this response 5](#_Toc495327987)

[2.3 Issues with design of Priority Rights arrangements 5](#_Toc495327988)

[2.4 Compliance body required to ensure workably competitive market outcomes eventuate 12](#_Toc495327989)

[2.5 Greater information transparency required to ensure Gas Act and GPS objectives can be achieved 15](#_Toc495327990)

[2.6 Concerns with significant TSO discretion and principles-based approach to drafting 17](#_Toc495327991)

[2.7 Improvements to drafting of the GTAC 18](#_Toc495327992)

[3 Trustpower’s requested changes to the GTAC and suggested next steps 19](#_Toc495327993)

[Appendix A The Lantau Group’s Report 20](#_Toc495327994)

[Appendix B Proposed drafting to implement a compliance body– GTAC and Gas Governance (Compliance) Regulations 2008 21](#_Toc495327995)

[Appendix C Trustpower requested changes to the GTAC 24](#_Toc495327996)

Introduction and Background

Introduction

### Trustpower Limited (**Trustpower**) welcomes the opportunity to provide a response to First Gas on its *Revised Draft Gas Transmission Access Code* (**the GTAC**). We note that this constitutes just part of the ongoing negotiation between First Gas and other parties with respect to the development of the new GTAC.

This document captures Trustpower’s requested changes to the proposed GTAC at this stage in the negotiation process. We note that the next round of negotiation is intended to enable a legal review of the GTAC and we have, as a result, largely restricted our requests to more commercial matters, including the actual design of the proposed arrangements and ensuring competitive outcomes eventuate. While marked-up changes to the GTAC have been suggested in Appendix C, these are preliminary and provided for illustrative reasons. We maintain the right to request further amendments to the GTAC following a comprehensive legal review.

Trustpower entered the gas market in 2013. We have successfully grown our customer base to around 30,000 gas customers. We are a multi-product retailer, participating in the electricity, gas and telecommunications industries in New Zealand, and have electricity generation assets in both New Zealand and Australia. As a result we have extensive experience operating under a number of different market arrangements and a broad understanding of what is required to ensure an open and competitive gas market can be established in New Zealand.

Background

In 2016 First Gas became the new transmission system owner of both the Maui and Vector pipelines. To bring transmission access under one arrangement, First Gas has been working with industry over the last 18 months to develop a single new transmission code (the GTAC) that provides an end-to-end service.

Trustpower has been actively involved in the design of the arrangements for the GTAC during this period, through written submissions, one on one meetings with First Gas and attendance of industry workshops. We wish to thank First Gas for enabling ongoing dialogue around the design of the new GTAC and being receptive to the requests received to date around the need for extra time to consider issues.

Trustpower’s views

Executive Summary

We continue to consider that the proposed GTAC, as a whole, would not represent an improvement on the current arrangements outlined in the Maui Pipeline Operating Code (MPOC) and Vector Transmission Code (VTC).

While having a single transmission code would be valuable, we consider that, when compared to the current arrangements, the proposed new arrangements would:

1. Create a potential barrier to accessing gas transport which could act to reduce overall competition in the downstream gas market;
2. Assign risks associated with pipeline congestion to parties who are not best able to manage those risks; and
3. Result in a number of wealth transfers (not all of which are evident at this stage) which will most likely result in costs to some End users.

This is because a number of fundamental design flaws still remain within the proposed design for access products which will have significant implications for the consistency of the new GTAC with the Gas Act and Government Policy Statement (GPS) objectives.

*New GTAC not consistent with Gas Act and GPS objectives or regulatory objective of the GTAC*

We consider that it will not be possible for the Gas Industry Company (GIC) to confirm that the proposed new arrangements (in their current state) would, as a whole, be consistent with the Gas Act and GPS objectives. This is because, in our view, the new arrangements would, as a whole, be inconsistent with the following objectives outlined in the Gas Act:

1. The facilitation and promotion of the ongoing supply of gas meets New Zealand’s energy needs, by providing access to essential infrastructure and competitive market arrangements (refer to paragraph 2.1.2(b));
2. Barriers to competition in the gas industry are minimised (refer to paragraph 2.1.2(a)); and
3. Risks relating to security of supply, including transport arrangements, are properly and efficiently managed by all parties (refer to paragraph 2.1.2(b)).

Note: When considering any revised GTAC proposal (as adjusted following further negotiation) we also recommend that the GIC considers any necessary revisions to the broader regulatory framework that may be required in order to ensure the proposed arrangements operate as intended, i.e. changes to the regulations that govern the gas industry.

We also do not consider that the proposed new arrangements (in their current state) are consistent with the regulatory objective of the GTAC[[1]](#footnote-2):

 *“To promptly establish a new non-discriminatory gas transmission open access regime that facilitates safe, efficient and reliable operation and use of the gas transmission system, including:*

* + *Competition in the production and marketing of gas;*
	+ *Efficient investment; and*
	+ *Transparency of information.”*

*Remaining concerns with GTAC design*

We are particularly concerned that at this stage in the negotiation process the workability of some core aspects of the new GTAC arrangements (particularly Priority Rights) have not been able to be demonstrated, and consider that this is reflective of the fact that the design has not been considered fully.

Households that use gas will likely be adversely impacted by the implementation of the proposed access products – the best solution to avoid this is to remove the proposed Priority Rights arrangements in their entirety from the new GTAC. This would enable a more thorough design process for access products to be undertaken by First Gas and Shippers, in conjunction with parties experienced in market design. This will ensure that the new access products will be fit for purpose.

Notwithstanding the issues around the proposed Priority Rights arrangements, there are a number of other matters that are of concern to Trustpower and require addressing by First Gas in developing the next iteration of the GTAC, including:

1. The transfer of risk from First Gas to Shippers, who in some circumstances have no way to manage or monitor that risk; and
2. The lack of appropriate arrangements to ensure competitive outcomes eventuate;
3. The lack of transparency around the gas industry, including with respect to some core elements of the new GTAC arrangements[[2]](#footnote-3);
4. The adoption of a principles based approach to drafting a multi-lateral contract and significant discretion afforded to First Gas as the Transmission System Operator (**TSO**), which in some circumstances means there were is a lack of detail and significant ambiguity as to how the arrangements will operate in practice; and
5. Issues with the proposed drafting of the GTAC.

***Extension of time for progressing the GTAC required to address issues required***

We suggest that additional time (to that currently allowed[[3]](#footnote-4)) for First Gas to consider these issues, along with those raised by other Shippers and Interconnected Parties, will be necessary in order to ensure the next round of negotiation and legal mark-ups is efficient. To this extent, we support First Gas further exploring the possibility of extending the VTC for a shorter period of time than 12 months, as discussed previously at the industry workshop on 15 September 2017. We continue to support First Gas in ensuring that the GTAC is implemented in a timely manner, but believe that the plethora of issues in the current version increases the likelihood of a contract which is practically unworkable for the industry.

We are strongly of the view that working to unnecessarily tight timeframes will likely result in sub-optimal GTAC arrangements. As an industry, we have a unique opportunity to develop efficient, effective gas transmission arrangements that promote the efficient use of gas in New Zealand for the foreseeable future. While refinements will be possible to the GTAC arrangements (and are naturally expected to be required overtime), it would in our view signal a failure of this current negotiation process if too many refinements to the GTAC were required in quick succession immediately following its implementation. We urge First Gas to keep the following in mind: “*more haste, less speed*”.

Structure of this response

The remainder of our response is structured as follows:

1. Section 2.3 explores the outstanding issues with the proposed design of the Priority Rights arrangements, including the transfer of risk to mass market retailers when they have no way of managing that risk. This is supported by the expert views provided by The Lantau Group in Appendix A;
2. Section 2.4 covers the importance of establishing a compliance function for the new GTAC arrangements. Our suggested drafting to establish a compliance function in the GTAC presented in Appendix B;
3. Section 2.5 presents our views on the importance of enhancing transparency of information within the GTAC arrangements;
4. Section 2.6 touches on our concerns with the limited level of detail available around some important aspects of the new GTAC arrangements, along with the significant discretion afforded to First Gas; and
5. Section 2.7 outlines those high level areas where we request refinements are made to the proposed GTAC, with Appendix C detailing the specific mark-ups to the GTAC.

## Issues with design of Priority Rights arrangements

We continue to have significant concerns with the proposed design for access products under the GTAC, particularly with respect to Priority Rights. The proposed arrangements constitute a significant change from the status quo (i.e. under the VTC), where gas transmission capacity is firm by default, to now being “un-firm”, unless Priority Rights are successfully purchased via an auction or secondary trades, in which case the capacity becomes “firmer”.

This change would be a bespoke arrangement, unique to the NZ gas industry. It is uncertain why firm access cannot be made available for a longer period of time, as we understand occurs in most other jurisdictions[[4]](#footnote-5). This raises a number of important questions:

1. What is it about the NZ gas transmission system that means a unique arrangement for access products is required?
2. Why, under the current Priority Rights design, must households that use gas in congested areas be potentially exposed to unmanageable risk?
3. Would it be better to adjust the Priority Rights regime to just be a long-term investment signal rather than trying to also be an operational management tool (as is currently the case)?
4. Why have market power mitigation arrangements not been included into the design to date?
5. Why do the proposed Priority Rights arrangements not better integrate with the existing arrangements for managing a critical contingency?

With so many unanswered questions that go to the heart of the proposed design, we consider that the implementation of Priority Rights must be delayed to ensure that a robust solution is implemented. To that end, we are concerned that First Gas is willing to continue to “push ahead” with implementing Priority Rights at this time, when there remain so many unresolved issues

One possible motivation for this is that First Gas wants to implement the new arrangements as it will position them well when it comes to seeking approval for funding pipeline investments, with Shippers being strongly incentivised to support any proposal put forward to the Commerce Commission so as to mitigate any unmanageable risk being (or likely to be) placed on them by any congestion arising[[5]](#footnote-6). If First Gas is wanting a long-term investment signal it would be better to explicitly design the regime to achieve this, rather than also trying to provide an operational congestion management tool.

The arrangements as currently designed appear to result in a very one-sided outcome, with the risk of congestion being transferred to Shippers when in reality it more appropriately should sit with First Gas as the asset owner, and system operator, particularly with respect to supplying mass market customers. There appears to be limited benefit (if any) to Shippers and end-users of the proposed new Priority Rights arrangements.

We consider that mass market end users need be excluded from the currently proposed arrangements or automatically assigned firm transport capacity upfront. Mass market customers cannot be expected to respond if congestion arises – a point recognised clearly in the Gas Governance Critical Contingency Management Regulations 2008 (CCM Regulations).

We remain particularly concerned that First Gas has not adequately been able to demonstrate the workability of the proposed Priority Rights arrangements to date, nor has First Gas addressed the following issues with the proposed arrangements:

1. Assigns risk to parties not best placed to manage that risk;
2. Creates a product that Shippers must pay for in most trading periods, but which will not be available when it would be the most valuable[[6]](#footnote-7), i.e. during Critical Contingency, Force Majeure and Emergency events[[7]](#footnote-8);
3. Creates arrangements which continue to be largely uncertain, including with respect to:
	* the timing of when Priority Rights can be called on the day;
	* the timing of when Interruptible Agreements can be entered into vs. a Priority Rights auction being held;
	* how the auction arrangements will operate;
4. Creates arrangements that will potentially result in competition issues arising.

To assist us in considering these important matters, we engaged The Lantau Group (TLG) to provide their expert views on the proposed design for access products. The advice of TLG is presented in Appendix A and raises a number of important design matters that require consideration including:

1. The proposed Priority Rights regime ignores the fact that there already existing a priority rights regime under the CCM Regulations;
2. That firmer transmission capacity is only available through Priority Rights for six months. It is much more common across gas networks globally for firmness to be available for longer periods of time;
3. A lack of clarity as to whether the administrative costs of running and participating in an auction are have been adequately optimised;
4. First Gas can take actions that created the need for Priority Rights (or increase their value) but take no risk in relation to providing firmness for any customers for any real material length of time;
5. The lack of clarity around how the auction process will work and the potential dynamics that this may introduce; and
6. Transparency requirements to ensure efficient decision making needs consideration.

Note: This is not intended to be a comprehensive list but rather capture some of the “flavour” of TLG’s report (Appendix A). Please refer to Appendix A directly to better understand the design matters that need consideration.

TLG notes that the most problematic aspects of the Priority Rights regime concern why exactly it needs to be as it has been proposed. TLG recommend[[8]](#footnote-9):

“*At least three key enhancements merit attention:*

* + *Band 6 and 7 users should have default Priority Rights as there is no reason to expose them to risks that cannot be managed, particularly in a regime that is novel, new, and potentially prone to teething issues or competition risks;*
	+ *In fact, the question could be turned on its head and start with the presumption of firm access and then design the PR regime as a Priority Reduction regime to surrender firm rights for a period. As the price paid to gain flexibility increases, it provides both clear operational and investment signalling – much more clearly than can be inferred from the PR regime at this point;*
	+ *The linkage between distribution expansion and transmission network congestion should be as clear as possible as there are embedded assumptions that may not have been fully vetted or considered in terms of who pays.”*

The matters raised by TLG require careful consideration and this will require more time. TLG notes[[9]](#footnote-10):

*“Yet, the details of the proposed Priority Rights regime are insufficiently clear and, being idiosyncratic to New Zealand, without obvious precedent on which to draw comforting inferences or insights. Consequently, it will (and should) take time to evaluate. It may also mean that a different mechanism is needed or that material changes are advised. At least some are suggested below. But, most importantly, more time is needed than current schedules anticipate, as there is no way in a few short months to close the gap between good intention and robust solution which also avoiding unintended consequences.”*

Accordingly, we request that First Gas removes the Priority Rights arrangements from the current proposed GTAC (refer also to paragraphs 2.1.9 and 2.1.10). Based on the discussion during the 28 September workshop, we understand that this will not cause any issues with respect to implementing a new IT system. Likewise, based on the most recently published 2017 Asset Management Plan for First Gas, we do not consider there is likely to be any congestion arising in the short-term that requires any type of design arrangement to be included within the GTAC so as to manage that congestion.

The remainder of this section further explores the points raised in paragraph 2.3.7, the exception being the competition issues which could arise (paragraph 2.3.7(d)). This is covered in section 2.4.

*Assignment of risk to parties not best placed to manage that risk*

The Priority Rights arrangements assign the risks associated with congestion arising to those parties that did not manage to secure any Priority Rights for the congested period.

We consider that the risks of congestion are not assigned to the party best able to manage them, i.e. a retailer who does not secure any Priority Rights is not able to easily manage the risk of significant overruns or liability arising due to a failure to follow an Operational Flow Order when congestion occurs.

Shippers who retail to mass market customers will have to procure Priority Rights – to not procure Priority Rights would be imprudent. This view is supported by the TLG as follows[[10]](#footnote-11):

*“It is not clear how smaller customers can manage risk associated with not having Priority Rights, as this segment is notoriously insensitive to the need to curtail without a major communications effort or government involvement, so for a retailer to just ignore the Priority Right arrangements and hope that everything turns out to be a critical contingency seems imprudent, if not foolhardy. Consequently, Priority Rights will have to be secured.”*

The proposed Priority Rights design, despite now incorporating a capability to enter into Interruptible Agreements with load, continues to fail to recognise the simple fact that mass market customers cannot readily respond to signals around congestion. This is a fundamental flaw in the design arrangement which will lead to perverse outcomes under the proposed new GTAC. This is supported by the TLG[[11]](#footnote-12):

*“It’s not clear what valid purpose is served in this case whereby Priority Rights run potential counter to the contingency management regulations, as one would expect (what) there to be a consistent relationship between expectations and outcomes under the Priority Rights regime (soft landing) and under the contingency management regime (hard landing). It’s not hard to anticipate the politicised consequence of any error in determining Priority Rights allocations that leave Band 6 or 7 customers exposed. Humans and complex systems make errors. Why tempt fate? Is a situation in which a retailer failed (or was unable) to secure Priority Rights for Band 6 or 7 customers thus putting First Gas into a decidedly awkward position something that First Gas really wants to experience? “It’s not my fault” may be cheeky, it might even be true, but it’s terrible business and political management.”*

As noted earlier, we consider that mass market end users should be excluded from the currently proposed arrangements or automatically assigned firm transport capacity upfront. This is supported by TLG who notes that[[12]](#footnote-13):

*“Priority Rights are not long-term instruments and so represent a continuing business risk and cost to manage, introducing an uncertainty that would be more easily catered for via default Priority Rights and a clear cost allocation (tariff) regime”.*

We also request that the implementation of transitional arrangements for all current Shippers are explored[[13]](#footnote-14) in further detail with industry based on the recommendations of the TLG[[14]](#footnote-15):

*“And, because the Priority Rights regime would be “new”, one might consider borrowing from experience in markets that introduce new competitive mechanisms during periods of relative tightness and start with a set of grandfathered or transitional Priority Rights so that the wealth-transfer and potential competitiveness issues that can arise when replacing prior ambiguity with crystallised scarcity are more clearly manage until everyone gains experience with the arrangements, and in fact, sees some nexus between congestion and some combination of demand or investment response.”*

*Creation of a product that Shippers must pay for in most trading periods, but which will not be available when actually required*

As currently proposed, Shippers would be required to pay for any Priority Rights they have acquired for each trading period during a ~6 month period. However in the few periods where congestion occurs and Shippers would value firm capacity the most, they cannot be used (and so are not paid for). For example during a Critical Contingency, Force Majeure or Emergency event, Priority Rights will not apply.

This creates a perverse design feature when coupled with the fact that during congestion events the actual price for DNC will not necessarily adjust to reflect the relative scarcity of transmission capacity. To have such a simple arrangements for Priority Rights would require a more complex arrangement for DNC in order to achieve an economic nexus. Otherwise the signals provided under the proposed access products will be confused. These views are supported by TLG[[15]](#footnote-16):

*“The workings of a Priority Rights mechanism are like a capacity auction, but without a variable underlying “energy” price or congestion price to go with it. So, the idea of a Priority Right is that is establishes a preference, but not any protection against a price increase (so it is more difficult to value) and no clear protection against congestion beyond what can be inferred from the number of Priority Rights transacted. There’s no integration of “energy” and “capacity” pricing and no similar firm contract mechanism. The Priority Rights proposal is indeed something unusual and bespoke, which makes it especially difficult to assess in a limited time frame.”*

Conceptually it highlights the flawed logic around Priority Rights. Priority Rights do not actually assign priority to capacity, and do not ensure a firm supply of gas to the end user. This point is noted in TLG’s report[[16]](#footnote-17):

*“It is further clear that there is a line between a Priority Right and a contingency that is not well defined, as surely a Priority Right should allow modification of priorities for curtailment during a contingency, as that would both enhance value of Priority Rights and give more meaning to “firmness” as an attribute.”*

*Creation of arrangements which continue to be largely uncertain*

There remain a number of aspects of the Priority Rights design that are uncertain. As outlined above these include:

1. The timing of when Priority Rights can be used on the day – This was discussed at the 28 September workshop where the consensus view appeared to be that they should be available at each nomination cycle (subject to gas flow up to that point in the day). This would attempt to avoid the hoarding concerns previously identified by the industry (e.g. a Shipper would nominate the maximum amount of Priority Rights until the last possible minute as they could only nominate a smaller amount in later nomination cycles) and would mean that Priority Rights are now more valuable.

We request that the GTAC allow Priority Rights to be exercised at any Nomination cycle, subject to deemed flow.

1. The timing of entering into Interruptible Agreements vs. holding a Priority Rights auction – We have previously raised concerns that the timing of when an Interruptible Agreement will be entered into and a Priority Rights auction held need to be carefully considered as whether Interruptible Agreements are entered into is an important input into the priority rights auction decision making, i.e. it will be used to determine bid prices by Shippers, along with likelihood of Priority Rights being needed.

We request that the GTAC requires that Interruptible Agreements be entered into by First Gas, and notified to the industry, prior to a Priority Rights auction being called. This will ensure all Shippers bidding into an auction are better positioned to value Priority Rights as they will be aware of any Interruptible Agreements that have been entered into, or potentially being entered into, including the price that will be paid to the load when interrupted.

This raises another potential market power related issue. Specifically, where an End-user who can offer to have their gas offtake curtailed does not offer to provide an Interruptible Agreement when a request is first issued by First Gas, but rather waits until when congestion is imminent to offer to be interruptible. In this scenario, First Gas may then cancel any Priority Rights that have been issued as the Interruptible Agreement may provide a more effective mechanism for managing congestion (and demand a premium for doing so), particularly if load in the area is largely mass market. If this occurs then any Priority Rights would have been paid for when they not actually needed by Shippers (i.e. congestion didn’t actually arise) and would have been solved with the Interruptible Agreement. This highlights more of the complexity with the proposed access product arrangements that need to be worked through.

1. The Priority Rights arrangements – including auction objectives – The actual arrangements for a Priority Rights auction have not been clearly defined, but rather are intended to be determined after the commencement of the GTAC. While supportive of the anticipated role of the GIC in facilitating the work with industry (via a working group) to determine these arrangements, we note that designing an auction is no easy task, particularly given the concentration of the gas industry, and will required significant work. It is quite likely that at this stage fundamental design issues will surface during the auction design process.

We note that even the best auction design can still suffer from inefficiencies connected to the misalignment of rules and participants’ private incentives. Auctions need objectives for the design to make sense[[17]](#footnote-18). The most important reason for caring about auction design is to ensure economy efficiency is achieved. This requires rules to be designed which are complete, consistent and without loopholes. Otherwise the objectives of the auction will not be fully realised.

We have previously committed to preparing objectives to guide the design of the auction. These have been informed by TLG’s outlined auction success factors and should provide some clarity as to how the arrangements are intended to work from an outcomes perspective. In particular, we suggest the following objectives act as the primary goals for the Priority Rights auction:

* + Promote workable competition (and do not create or reward incentives for gaming, hoarding, or other non-competitive outcomes to the fullest practical extent);
	+ Achieve transparency and efficiency in price discovery for the benefit of operations, planning, and investment signalling;
	+ Do not result in duplicative costs or inefficient expenditure of resources to achieve that which can be achieved more easily another way (transaction efficiency); and
	+ Promote the right balance of least cost (technical or productive efficiency) and highest value (dynamic efficiency) outcomes over the appropriate time frames.

We request the GTAC is amended to reflect these auction objectives.

*Priority Rights arrangements should be removed from the proposed GTAC*

The above paragraphs outline a number of important design matters which require further consideration by First Gas and industry prior to adopting the proposed Priority Rights design in the new GTAC. We note that the GIC’s views would also be advantageous in working through the design matters.

The report by our market design expert, TLG, also highlights a number of design related matters that need further consideration (refer to section 1.6 of Appendix A) and states the following:

“*It would surely be prudent to advance the design to the stage of some meaningful simulations or trials ahead of committing formally to what is currently described using very few words*”[[18]](#footnote-19)

*“It remains unclear how exactly Priority Rights work in practice, which means that if anything does go wrong with their pricing or implementation or market dynamics, the most inelastic demander of firm service will bear the brunt of an “learning process”.[[19]](#footnote-20)*

As outlined above, we consider that the best option is for First Gas to remove the proposed Priority Rights arrangements from the current proposed GTAC. We suggest that First Gas arranges a discussion with industry to seek commitment to design a resilient and robust arrangement for rationing pipeline capacity over the 12 months following implementation of the new GTAC. We believe that this will allow a fit–for-purpose solution to be developed, once the industry has operational experience around how the GTAC will work. An expert in market design could also be engaged during this period to ensure the currently identified pitfalls with the arrangements can be avoided.

To the extent that First Gas may attempt to address these issues at this stage in the development of the GTAC, we note that any substantive design change will require further discussion with industry.

Compliance body required to ensure workably competitive market outcomes eventuate

Most market structures are impacted by a degree of market power. The New Zealand gas industry is no exception, with a significant concentration of market share held by one large consumer and the retail gas industry dominated by a couple of large retailers. This is however not in its self a problem. It is only where a party decides to exercise its market power that issues arise. As a result it has long been recognised that perfect competition is not an achievable standard but rather recreating workably competitive outcomes has become the standard sought by the majority of market designs around the world[[20]](#footnote-21).

Given the significant concentration of the NZ gas industry, we consider that there is the potential for actual outcomes to deviate from workably competitive outcomes under the GTAC. Without sufficient mitigation and oversight there is a risk of substantial consumer harm in the short term from market power related behaviour. Identifying where an unreasonable use of market power, i.e. a substantial deviation from competitive outcomes has occurred, should be the role of a compliance body or market monitor. This will ensure that all industry participants and customers are protected through vigilant and fair oversight of the GTAC arrangements.

We continue to be of the view that ensuring workably competitive outcomes arises, through establishing appropriate market power mitigation arrangements[[21]](#footnote-22) should be a core design element of the GTAC, particularly with respect to the proposed Priority Rights arrangements (including the auction, and on-the-day arrangements for nominations). Even the perception that the relatively high level of market concentration in the New Zealand gas industry could result in limited competitive pressure could create a potential barrier to entry, regardless of whether any non-competitive behaviours actually eventuate. As a result it is imperative that market power mitigation arrangements are incorporated into the GTAC.

The failure to adequately consider this important matter to date[[22]](#footnote-23) in our view represents a significant gap in the GTAC negotiation process, which will potentially have implications for the success of promoting the use of natural gas in NZ.

We note that there are strong links between the current circumstances of the gas industry and those of the electricity industry in the early 2000’s. In particular, one of the reasons for the establishment of the Electricity Commission in 2003 and a move away from the previous self-regulating arrangements, was that the Ministerial Inquiry (2000) identified a number of issues with the electricity market structure including[[23]](#footnote-24):

*“2.14 -The wholesale market was dominated by a small number of electricity generation companies and retailers that also dominated the market's governance bodies (NZEM and MARIA).*

*2.15 - Market rules had been developed and implemented in keeping with the interests of those dominant companies. There was limited representation from other market interests. For example, there was a lack of progress in introducing a real-time market, which had in turn hampered greater participation by electricity purchasers and users.*

*2.16 - There were also limited incentives to ensure that governance structures, which essentially were self-regulating, gave full effect to the market's guiding principles. There were few sanctions to ensure compliance*.”

*Scenarios where competitive issues could arise under the GTAC*

There are a number of specific scenarios where competitive issues could arise under the proposed GTAC arrangements. For example it is conceivable that larger Shippers would be able to price smaller Shippers out of the market for Priority Rights, essentially enabling them to hoard capacity[[24]](#footnote-25). A smaller participant who is not able to obtain Priority Rights could face significant overrun costs as a result which, given their size, could be hard to absorb as a business. Larger Shippers will be able to smear costs of acquisition across their entire portfolio and keep overall transport costs down to all customers. As a result:

1. Larger Shippers will have a significant advantage over smaller Shippers and new entrants under the proposed Priority Rights auction arrangements;
2. There will be an increased barrier to expansion for smaller gas retailers in any given region, which will entrench the positions of large gas retailers in those regions leading to a reduction in competition overall;
3. There are no offsetting pro-competitive effects as the regime results in the costs/risks of capacity constraints being place onto the gas retailer, who will largely have no ability to manage those risks. In particular, in areas that are largely mass market, gas retailers will have no ability to incentivise any physical response to congestion.

This example, along with a number of other potential scenarios where non-competitive outcomes could arise under the proposed Priority Rights arrangements are captured in the expert advice from TLG. TLG summarises the issue as follows[[25]](#footnote-26):

*“Risk mitigation would plausibly force small-customer serving retailers to secure Priority Rights in competition with others. Of course, there is nothing necessarily wrong with competition, but given the diversity of customers and retailers, and the possibility, even if small, that Priority Rights could be hoarded, gamed, or otherwise competitively weaponised, then it compromises what could otherwise be a simple platform for competition.”(underlining added for emphasis*)

While we have focussed our review on those scenarios which could arise with respect to Priority Rights there may be other additional elements of the GTAC arrangements where limited competitive pressures could result in a substantial deviation from workably competitive outcomes arising. We urge the GIC to consider whether broader competitive issues could arise under the new GTAC arrangements as part of its assessment of whether the GTAC, as a whole, is materially better than the current arrangements.

*Considerations for the establishment of a compliance body*

As outlined above we consider there is a strong case for the establishment of a compliance body to oversee the GTAC arrangements.

We consider that the compliance body should be responsible for:

1. Reviewing compliance with the obligations under the GTAC and ensuring workably competitive outcomes arise, particularly with respect to Priority Rights;
2. Reporting on the functioning of the GTAC arrangements on a regular basis. We note that this is consistent with First Gas’s suggestion of a post-implementation review of the arrangements being undertaken by the GIC; and
3. Recommending changes to the GTAC arrangements to address any identified issues, including further revisions to the market power mitigation arrangements. We note that the ability for the compliance body to propose a change to the GTAC this doesn’t necessarily need to be a formal ability within the GTAC at this stage – however whether this is problematic should be considered as part of a post-implementation review of the new GTAC arrangements.

With respect to any compliance review activities, we consider that:

1. It will be important for the compliance body to set the boundaries for behaviour upfront. Given the GTAC is a principles-based contract, it may be uncertain in areas what the expected behaviour of GTAC signatories would be at times. This is particularly the case around Priority Rights as the auction arrangements will be developed separately at a later time to the GTAC development process.
2. The compliance body should be able to refer any potential non-compliance to the Rulings Panel where it identifies that a party has been potentially non-compliant with the GTAC. To the extent that any behaviours may be identified through these review activities that may be inconsistent with competition law, these should be referred by the compliance body to the Commerce Commission for investigation.
3. Ensuring that access to all necessary information is available for the compliance body will be vital to enable them to undertake their role. Specific powers should be incorporated into the GTAC to enable the compliance body to acquire relevant information for assessing any behaviour that it might be concerned about.

We note that it is important that the compliance body is free from influence exerted by parties impacted by the GTAC, i.e. Shippers, First Gas and other Interconnected Parties. The GIC may be an appropriate party to undertake this role. However we note that our broader concerns with the independence of the GIC Board, as outlined throughout the GTAC negotiation process, are of relevance to any decision making around who should undertake this important role.

To the extent that the GIC may be used for this role, then our recommendation for a review to be undertaken by MBIE (or another independent party) of whether the arrangements to support independent decision making by the GIC Board are adequate should extend to cover the GIC’s compliance functions as well.

Our suggested drafting to incorporate a compliance body into the GTAC, and to provide the GIC and Rulings Panel with jurisdiction to preside over matters are outlined in Appendix B. Note: Changes to both the GTAC and the Gas Governance (Compliance) Regulations 2008 are required to achieve this.

We note that in assessing whether the GTAC is materially better than the current arrangements, the GIC needs to consider the broader regulatory environment. We do not consider that the GTAC would be “materially better” without a corresponding amendment to the Gas Governance (Compliance) Regulations to provide a better enforcement regime.

A high level overview of the proposed arrangements follows.

***Proposed regime – GIC and Rulings Panel***

We request that there is incorporated in the GTAC a new complaints mechanism, whereby Shippers and First Gas would be able to bring a complaint to the GIC, alleging breach of the Transmission Service Agreement (TSA)[[26]](#footnote-27) by other Shipper(s), Interconnected Party(s) that are an OBA Party[[27]](#footnote-28), or First Gas, or that conduct of a Shipper, Interconnected Party this is an OBA Party or First Gas threatens, or may threaten, the confidence and integrity of the gas industry.

Note: First Gas should also consider whether Interconnected Party’s that are an OBA party should also be able to raise a complaint and reflect accordingly in the GTAC.

The GIC and the Rulings Panel would have the powers, rights and obligations as set out in the Gas Regulations in determining/settling a complaint, as if the complaint were an alleged breach of a rule or regulation under the Gas Regulations.

Currently, the Gas Regulations do not give the GIC or the Rulings Panel the regulatory jurisdiction to preside over alleged breaches of the GTAC.  As such, we propose that the complaints mechanism under the GTAC be backed by amendments to the Gas Regulations, in order to expand the jurisdiction of the GIC and the Rulings Panel to include presiding over breaches of the GTAC.

The existing compliance regime under the Gas Regulations is, in our opinion, the most appropriate governing regime for the GTAC.  This is because:

1. The GIC already has information-gathering and investigative powers under the Gas Regulations;
2. All settlements which are referred to an investigator must be approved by the Rulings Panel; and
3. The Rulings Panel is an independent body appointed by the Minister of Energy and Resources.

Note: In our proposed amendments to the Gas Regulations, we also give the Rulings Panel the powers to make orders that they are entitled to make under the Gas Act.

In the future consideration should be given to whether there may be a case for the compliance body to undertake an ongoing compliance monitoring role, i.e. be able to identify potential compliance issues in its own right rather than relying on an alleged breach being made by a Shipper, Interconnected Party that is an OBA Party or First Gas.

Greater information transparency required to ensure Gas Act and GPS objectives can be achieved

We continue to strongly support greater transparency of information in the New Zealand gas market and consider that it is an integral part of achieving all the Gas Act and GPS objectives.

Transparency of information has significant benefits in ensuring a competitive and efficient gas market through enabling more efficient decision making and reducing information asymmetries (to name a few benefits). Information transparency can also have an important role in facilitating monitoring of the development and level of competition in the gas market, along with identifying any incidents of potential market power abuse[[28]](#footnote-29).

The concept of full transparency of information underpins the proposed GTAC arrangements. Without full and timely transparency of information (i.e. information asymmetry) the following outcomes will be likely to arise under the GTAC:

1. Inefficient pricing outcomes - Traders will not able to make decisions based on a full understanding of the current or anticipated market situation, for example unless it is clear what the level of expected congestion may be for a delivery point it will not be possible for traders to accurately value Priority Rights when bidding into the auction;
2. Inability to react to market signals - Impacted parties may not be able to appropriately react to any issues in the market, for example large consumers may self-select to reduce their consumption of gas if they know there is an issue, for example, an upstream outage; and
3. Non-competitive behaviours – GTAC participants will not be able to readily identify if other GTAC participants may have been behaving inappropriately and report these to the compliance body unless there is transparency provided. Likewise without a general power to acquire relevant information it may not be possible for the compliance body to form a view around any behaviours that do arise.

Note: This is not intended to be a comprehensive list but rather demonstrate the value of transparency of information within the GTAC itself and the gas industry more broadly.

We consider:

1. Transparency of both near-term and historical information should be sought across the gas industry, including with respect to additional agreements, capacity outlook information (line pack information and forecast capacity of pipelines, gate stations, production facilities[[29]](#footnote-30) etc.), forecast and actual flow information (DNC, unplanned production outages, aggregated consumption information etc.) and details relating to Priority Right auctions (bids, outcomes, secondary trades etc.)
2. The timeframes for publishing information require careful consideration. Publication of the right information at the right time can ensure the market is well aware of events that may impact congestion or pricing in advance.

It still remains largely uncertain how greater transparency will be achieved under the new arrangements. First Gas has indicated that they may be interested in adopting arrangements similar to those adopted in Australia with the Gas Bulletin Boards (GBB) for the east and west coasts[[30]](#footnote-31). The GBB arrangements provide a significant amount of valuable information for new entrants, existing participants and government alike, in an easily accessible and understandable format. The Western Australian GBB also provides a useful tool for managing scarcity events and ensuring all interested parties are well informed during any event.

We consider that a multi-party contract is not the most efficient mechanism for achieving greater transparency of the broader gas market and recommend that the GIC and MBIE progress a regulated solution to ensuring transparency of information through a GBB. This would be more effective and efficient and ensure that costs and information provision requirements can be appropriately targeted, including to parties that might not be subject to the GTAC. However, that is not to say that some improvements to transparency of information should not also be progressed via the GTAC itself, for example greater transparency of production facility outages.

We recommend that given transparency of information is pivotal to ensuring that the Gas Act and GPS objectives can be achieved, the development of regulatory arrangements to enhance transparency of information should be included on the Work Programme for the GIC (and MBIE) for FY2019.

Note: Some foundational scoping work may be required earlier to ensure First Gas’ new IT systems can produce the necessary information.

Concerns with significant TSO discretion and principles-based approach to drafting

As discussed at a number of the public workshops that have been held as part of the negotiation process on the current version of the GTAC, we are concerned with the significant discretion that is afforded to First Gas as the TSO and limited level of design detail that is provided in places. We note other Shippers have also expressed similar concerns during the process and are of the view that a shorter, but more ambiguous code is materially worse than the current arrangements.

While it may be reasonable for First Gas to be provided with discretion given its role in maintaining the security of the pipeline, the proposed level of discretion is much broader and touches across most aspects of the GTAC. This has resulted in extensive discussion with industry around this matter to date and a number of refinements to the GTAC to better clarify the obligations on First Gas have been made as a result, i.e. the ability to veto a GTAC Change has been restricted to where First Gas could not recover the costs that it would incur.

We have proposed further mark-ups in Appendix C which seek to further clarify the discretion afforded to First Gas and provide some more general context as to how this direction could be applied. For example, we propose in section 2.14 to clarify that First Gas should behave as a Reasonable and Prudent Operator when apply any discretion afforded under the GTAC.

Part of the concern with the broader discretion afforded to First Gas stems from the decision to adopt a principles-based approach to drafting. While this might be an increasingly common approach adopted in drafting the arrangements for regulated markets, this is the first time we have seen a multi-party contract adopt this approach, and are concerned with future implications this may have.

The principles-based approach to drafting the GTAC, combined with the significant discretion afforded to First Gas in places, in our view creates uncertainty as to how the arrangements will work in practice. This is evidenced by the recent industry discussions around curtailment and Priority Rights, where worked examples were presented by First Gas. The worked examples stimulated significant discussion around the workability of the arrangements and identified a number of issues which had to date not been identified as the discussion had been at a high level around the principles of the GTAC. This has reinforced our concerns that at this stage in the process the workability of the proposed new arrangements have not yet been demonstrated.

Our preference is for a more prescriptive GTAC to be developed as this will provide greater certainty to Shippers and other interconnected parties around how the new arrangements will operate in practice. Alternatively, a series of worked examples (as was suggested by the GIC) being presented much earlier in the development process may have been able to achieve a similar outcome and ensure workability.

We consider that it will require a significant “leap of faith” to adopt the GTAC in its current form. Based on experience to date, it would be ill-conceived to just assume that the new arrangements will work flawlessly on commencement when limited design detail is available, for example with respect to the auction arrangements for Priority Rights. While we have sought to clarify the arrangements in the GTAC as much as possible during the negotiation process to date and in our mark-ups presented in Appendix C, the underlying issue around the workability of some of the proposed arrangements remains outstanding.

As outlined in paragraphs 2.1.9 and 2.1.10, we consider that additional time is required to address the outstanding issues with the proposed arrangements and ensure that they are workable.

Improvements to drafting of the GTAC

### We have spent considerable time reviewing the proposed GTAC in its entirety. As requested by First Gas, we have marked-up our suggested changes to the GTAC and presented these in Appendix C.

### At a high level the main changes that we consider are required include:

1. The removal of the Priority Right arrangements from the GTAC. We have however not marked-up the GTAC to this effect, but rather have reflected the minimum changes required if First Gas is to proceed with this proposal. For the avoidance of doubt, though, we strongly caution against simply adopting these changes, as the workability of the proposed arrangements has not been demonstrated to date. The minimum changes include:
	* The incorporation of objectives for the auction;
	* Clarification of how the arrangements will work, particularly for secondary trades; and
	* Clarification that marginal pricing will be adopted by the auction;
2. Incorporation of a role for a compliance body. We have not marked-up these changes specifically in the GTAC but rather presented our proposed new section for the GTAC, to be adopted in its entirety, in Appendix B;
3. Clarification of First Gas’s veto ability within the GTAC change process;
4. Clarification of the discretion afforded to First Gas at a high level, as was explored in section 2.6; and
5. Adoption of consistent approach to defining terms. Once again we have not marked up all changes of this nature as we are not currently clear on the rationale applied by First Gas to date, i.e. some terms just defined within the section of the GTAC others up front. We have reflected this matter in a number of comments provided within our suggested GTAC mark-ups.

We also note that another Shipper has identified concerns with the definition of MHQ and MDQ. We share these concerns and support clarification being made to the GTAC to correct this issue.

# Trustpower’s requested changes to the GTAC and suggested next steps

At this stage in the negotiation, we request the following from First Gas:

1. **To explore a delay to implementing the GTAC**. An extension to the period over which the VTC applies of less than 12 months would allow further time for First Gas and the industry to consider the core design issues identified during the negotiation phase, and ensure that the arrangements will work as intended at commencement of the new GTAC. First Gas should explore this further and discuss with all Shippers and interconnected parties.
2. **To remove the concept of Priority Rights in its entirety from the proposed GTAC**. We suggest a discussion with all Shippers is arranged to seek their commitment to work with First Gas to design a resilient and robust arrangement for addressing congestion over the 12 months following implementation of the new GTAC[[31]](#footnote-32). An expert in market design could also be engaged during this period to ensure the current pitfalls with the arrangements can be avoided.

If First Gas does not remove the concept of Priority Rights from the proposed GTAC then there are changes to the current arrangements that are required at a minimum including:

* + Excluding mass market end users from needing Priority Rights, or automatically assigning them rights upfront[[32]](#footnote-33);
	+ Allowing Priority Rights to be exercised at any nomination cycle, subject to deemed flow;
	+ Clarification that Interruptible Agreements must be entered into, and notified to the market, prior to an auction being held;
	+ Inclusion of principles around how the auction should work; and
	+ Other mark-ups in Appendix C which are required to endure clarity and attempt to assist with workability of the Priority Rights arrangements.

We also suggest that transitional arrangements for existing Shippers should be explored regardless of First Gas’ decision around removing Priority Rights from the GTAC.

1. **To establish a compliance body within the GTAC to provide oversight of the entire GTAC**. This should be adopted regardless of the decision around removing Priority Rights. We have suggested drafting to be adopted in the GTAC in Appendix B.
2. To incorporate all mark-ups and consider those additional stated matters as presented in Appendix C.

More broadly, we recommend that the GIC and MBIE consider implementing regulation to ensure transparency within the broader gas market. This should be included on the Work Programme for the GIC for FY2019.

1. **The Lantau Group’s Report**

“*GTAC comments*”, a report by The Lantau Group, 9 October 2017.

*[attached as a separate document]*

1. Proposed drafting to implement a compliance body– GTAC and Gas Governance (Compliance) Regulations 2008

*Proposed amendments to the draft GTAC*

**1.**  **Insert new section 19 in the GTAC: Complaints to GIC and Rulings Panel**

19.1 Notwithstanding section 18, a Shipper or First Gas may, by notice in writing to the GIC, make a Complaint. The notice must contain sufficient details of the alleged breach or conduct, including the date of the alleged breach or conduct and the parties involved.

19.2By entering into a TSA, First Gas and each Shipper acknowledge and agree that where a Complaint is made pursuant to section 19.1:

* 1. GIC shall have the powers, rights and obligations of the market administrator as set out in the Gas Governance Regulations in respect of the Complaint, as if the Complaint were an alleged breach of the rules under the Gas Governance Regulations; and
	2. the Rulings Panel shall have the powers, rights and obligations as set out in the Gas Governance Regulations in respect of the Complaint, as if the Complaint were an alleged breach of the rules under the Gas Governance Regulations. **[*Drafting note: We suggest this paragraph is inserted to provide clarity to Shippers and First Gas that the GIC and Rulings Panel is the compliance body*.]**

**2. Amendment to Section 18.1: *Dispute Resolution* of GTAC**

18.1 Subject to *sections 11.28,* ~~and~~ *11.29 and 19*, any dispute of whatever nature between a Shipper and First Gas, either Party may notify the other in writing that it wishes to attempt resolution of the dispute in accordance with this *section 18 (Dispute Notice).* On receipt of a Dispute Notice, the Parties shall each use reasonable endeavours to resolve the dispute by negotiation. **[*Drafting note: Amendment to section 18.1 is required to allow Shippers or First Gas to complain directly to the GIC/Rulings Panel.*]**

**3. Insert new definitions in Section 1: *Defined Terms*****of GTAC**

***Complaint*** means, in relation to section 19, a complaint brought by a Shipper or First Gas alleging:

##### a breach of the TSA by a Shipper or First Gas;

##### to the extent that an Interconnected Party is an OBA Party, and the provisions of the Code applicable to an OBA Party have been incorporated in the Interconnected Party's ICA, a breach by the Interconnected Party of those provisions under the Code;

##### that the conduct of a Shipper or First Gasthreatens, or may threaten, confidence and integrity of gas markets, which may include (but is not limited to) allegations:

(i) that conduct will or is likely to undermine competition in gas markets;

(ii) that conduct will or is likely to undermine the efficient operation of this Code; or

(iii) of manipulative, misleading or speculative trading activity or conduct under this Code, or activity or conduct that is otherwise inconsistent with a high standard of trading conduct.

***Gas Governance Regulations*** means the Gas Governance (Compliance) Regulations 2008, as amended or replaced from time to time.

***Rulings Panel*** means the panel established by regulation 59 of the Gas Governance Regulations.

*Proposed amendments to the Gas Governance (Compliance) Regulations 2008 ("****Regulations****")*

1. **Amendment to regulation 6 of the Regulations (*Breaches*):**

**6 Breaches**

(1) In these regulations, unless the context otherwise requires, a reference to a participant that has breached a provision of the rules is a reference to a participant that—

(a) has contravened the provision; or

(b) has attempted to contravene the provision; or

(c) has aided, abetted, counselled, or procured any other participant to contravene the provision; or

(d) has induced, or attempted to induce, any other participant, whether by threats or promises or otherwise, to contravene the provision; or

(e) has been in any way, directly or indirectly, knowingly concerned in, or party to, the contravention by any other participant of the provision; or

(f) has conspired with any other participant to contravene the provision.

*(1A) In these regulations, unless the context otherwise requires, a reference to a participant that has breached a provision of the rules is a reference to a participant that has engaged in activity or conduct of a kind that is expressly identified in the Gas Transmission Access Code as being subject to a complaint in accordance with these regulations..*

(2) In these regulations, unless the context otherwise requires, a reference to a breach (including an alleged breach) of the rules refers only to a breach—

(a) that was discovered, or ought reasonably to have been discovered, within 3 years of the date of the breach; and

(b) that occurred within 10 years of the date of any investigation or other proceedings under these regulations in relation to the breach.

1. **Amendment to regulation 50**

**50 Rulings Panel may make certain orders**

(1) Section 43X(1) of the Act provides for requirements and orders that can be made by the Rulings Panel.

*(1A) If the Rulings Panel is determining an alleged breach of the rules of the kind referred to under regulation 6(1A), the Rulings Panel can make any of the orders provided for in section 43X of the Act, and regulations 51, 52, and 55 apply to such orders.*

(2) If the Rulings Panel is determining an alleged breach of regulation 55(1) or 57 of the Gas Governance (Critical Contingency Management) Regulations 2008 by a participant that is a consumer, the Rulings Panel may decide to take no action if the Rulings Panel is satisfied that—

(a) the alleged breach was necessary to prevent or lessen a serious and imminent threat to the health and safety of any person; and

(b) the threat could not reasonably have been foreseen and mitigated by the participant so that the conduct that constituted the alleged breach could have been avoided.

(3) Subclause (2) does not limit the general discretion of the Rulings Panel under section 43X(1) of the Act to decide whether to take action, or what action to take, in respect of any alleged breach.

1. **Amendment to regulation 11 (*mandatory reporting to the market administrator*):**

**11A Exception to regulation 11 for certain rule breaches**

(1) Regulation 11(1) does not apply to the extent that—

(a) the rules that a reporting participant believes to have been breached are 1 or more of the following:

(i) rule 37 of the Gas (Downstream Reconciliation) Rules 2008:

(ii) rules 67.3, 69.1, 69.2, 70.2, and 72.2 of the Gas (Switching Arrangements) Rules 2008; and

(b) the reporting participant is satisfied that, if it were to notify the market administrator of the alleged breach of any rule specified in paragraph (a), there is no likelihood that the market administrator would determine under regulation 18 that the alleged breach raises a material issue on the basis of information known to the reporting participant.

*(c) the alleged breach is of a kind identified in regulation 6(1A) of these regulations.*

(2) In making a decision for the purpose of subclause (1)(b), a reporting participant must have regard to—

(a) any determinations published by the market administrator under regulation 22; and

(b) any guidelines issued by the market administrator under regulation 19(2) or 19A.

(3) Each reporting participant must ensure that the market administrator receives a monthly report detailing any alleged breaches that the reporting participant, in reliance on this regulation, does not notify under regulation 11(1).

(4) This regulation does not limit regulations 9 and 10 (voluntary reporting of alleged breaches).

1. Trustpower requested changes to the GTAC

*[attached as a separate document]*

1. We note that the regulatory objectives which represents a more “targeted” objective for the GTAC development but should be considered to be subordinate to the Gas Act and GPS objectives from the perspective of the GIC’s review [↑](#footnote-ref-2)
2. We make broader suggests in this submission around the need for transparency across the entire gas industry and suggest the GIC and MBIE consider a regulated solution. This suggestion goes beyond the scope of the GTAC. [↑](#footnote-ref-3)
3. As reflected in: <http://gasindustry.co.nz/about-us/news-and-events/news/gas-industry-co-19-september-2017-news-bulletin/> [↑](#footnote-ref-4)
4. It is useful to note that while capacity is un-firm under the MPOC, this portion of the transmission system has a glut of surplus capacity, and as such congestion is highly unlikely. [↑](#footnote-ref-5)
5. There is some uncertainty as to how the need to auction Priority Rights fits with the broader criteria for reliability set by the Commerce Commission. [↑](#footnote-ref-6)
6. Priority Rights are a tool for First Gas to attempt to manage congestion. They do not actually mean a Shipper has firm capacity transport arrangements under all scenarios - just firmer arrangements that provide a potential financial protection [↑](#footnote-ref-7)
7. During contingency events and emergencies shippers will not be required to pay for Priority Rights. [↑](#footnote-ref-8)
8. Refer to page 14, Appendix A. [↑](#footnote-ref-9)
9. Refer to page 4, Appendix A. [↑](#footnote-ref-10)
10. Refer to Appendix A, page 16. [↑](#footnote-ref-11)
11. Refer to Appendix A, page 10. [↑](#footnote-ref-12)
12. Refer to Appendix A, page 16. [↑](#footnote-ref-13)
13. Either now or during the separate consideration of Priority Rights, as requested by Trustpower in this response. [↑](#footnote-ref-14)
14. Refer to Appendix A, page 6. [↑](#footnote-ref-15)
15. Refer to Appendix A, page 16. [↑](#footnote-ref-16)
16. Refer to Appendix A, page 14. [↑](#footnote-ref-17)
17. Refer to: <http://web.mit.edu/esd.126/www/MktsAuctions/EEI.pdf> [↑](#footnote-ref-18)
18. Refer to Appendix A, page 13. [↑](#footnote-ref-19)
19. Refer to Appendix A, page 16. [↑](#footnote-ref-20)
20. Brattle Group: Market Power Mitigation Mechanisms for the Wholesale Electricity Market in Western Australia (1 September 2016). [↑](#footnote-ref-21)
21. By market power mitigation arrangements we mean rules designed to constrain the behaviour of industry participants in addition to the provisions of general competition law. [↑](#footnote-ref-22)
22. Trustpower originally raised this matter for consideration in its submission on the emerging views paper. [↑](#footnote-ref-23)
23. Refer to: <https://www.oag.govt.nz/2009/electricity-commission/part2.htm> [↑](#footnote-ref-24)
24. There will be incentives for larger Shippers to hoard capacity even if there is not anticipated to be physical congestion as it is always possible that an anticipated event which causes congestion could arise, i.e. an unexpected production plant outage. [↑](#footnote-ref-25)
25. Refer to Appendix A, page 16. [↑](#footnote-ref-26)
26. The GTAC forms a part of the TSA. [↑](#footnote-ref-27)
27. For example an Interconnected Party will have obligations under the GTAC where it is an OBA party. An OBA party is defined in the GTAC as an Interconnected Party at a Receipt Point or Delivery Point where an operational balancing agreement applies. The operating balancing agreement places obligations on an OBA party to identify and manage running mismatches at a Receipt Point or Delivery Point, and is deemed to form part of the Interconnected Party's Interconnection Agreement. Where an Interconnected Party is an OBA Party for the purposes of the GTAC, the provisions of the GTAC (including the powers and obligations) which apply to an OBA Party are deemed to be incorporated into the Interconnection Agreement and the Interconnected Party must comply with those provisions (see section 5.3 of the Interconnection Agreement). We note that the behaviour of an OBA Party directly affects First Gas’ management of the transmission system. [↑](#footnote-ref-28)
28. Market power abuse can be both directly monitored by an independent compliance body and by industry participants themselves (who can then report any concerns to the compliance body). The independent compliance body may also be able to obtain additional information directly from parties to aid in any investigation. [↑](#footnote-ref-29)
29. This would capture planned outages. [↑](#footnote-ref-30)
30. A recent rule change request will seek to move the information published on the east coast GBB to align with the greater transparency provided by the west coast GBB: <http://www.aemc.gov.au/News-Center/What-s-New/Announcements/AEMC-fast-tracks-rule-change-request-to-improve-Ga> [↑](#footnote-ref-31)
31. The enormity of the issues associated with Priority Rights may mean that they cannot be addressed during any additional delay to implementing the GTAC in its entirety which is less than 12 months in length. [↑](#footnote-ref-32)
32. This will also require consideration if Priority Rights are removed from the GTAC at this stage and progressed separately. [↑](#footnote-ref-33)