

To: The Electricity Authority (EA) levelplayingfield@ea.govt.nz
From: Electricity Engineers' Association of NZ
Date: 7 May 2025
Subject: EEA Submission – Options Paper – *Level playing field measures*

OVERVIEW

The Electricity Engineers' Association (EEA) welcomes the opportunity to provide feedback on the Electricity Authority's Options Paper – *Level Playing Field Measures*. As the national organisation representing engineers, asset managers, and technical specialists across New Zealand's electricity supply industry, the EEA brings a systems-based and technical lens to the Authority's consultation, grounded in the practical realities of delivering a reliable, secure, and affordable electricity system.

Our members are responsible for the planning, operation, and long-term stewardship of critical electricity infrastructure across the generation, transmission, distribution, and emerging distributed energy resource (DER) value chain. As such, this submission focusses on ensuring regulatory arrangements are fit for purpose, proportionate, and capable of supporting innovation and consumer participation.

We broadly support the Authority's intent to address competition concerns associated with vertical integration and to strengthen confidence in the hedge and retail markets. Our submission is informed by the view that technical, operational, and market reforms must work in tandem to deliver enduring benefits to consumers—especially as the sector navigates the challenges of decarbonisation, electrification, and digitalisation.

The EEA's feedback focuses on ensuring that the Authority's proposed measures are:

- Technically robust and implementable
- Scaled appropriately to risk and market power
- Supportive of efficient investment and system operation, and
- Oriented toward consumer outcomes, such as service innovation, price fairness, and improved access to emerging technologies.

We support a measured, evidence-based approach that improves hedge market access, limits discriminatory behaviour, and enables new retail and flexibility offerings to flourish—without creating unnecessary regulatory burden or distorting legitimate operational efficiencies within vertically integrated businesses.

Summary of Key Positions

- **Support for Proportionate Non-Discrimination Obligations:** The EEA supports the introduction of principles-based non-discrimination requirements targeting vertically integrated gentailers with the ability and incentive to discriminate. These measures should promote fairer access to hedge products and internal transfer pricing (ITP) arrangements without unduly constraining efficient business models.
- **Targeted Roadmap with Escalation Pathways:** We endorse the Authority's proposed roadmap, but recommend clearer triggers, timeframes, and compliance expectations. A three-step escalation pathway—starting with monitoring and voluntary guidance, through to disclosure obligations and, if necessary, prescriptive regulation—offers a pragmatic and responsive framework.
- **Consumer and Innovation Lens:** The EEA encourages the Authority to apply a stronger consumer-centric lens to the evaluation of LPF measures, with a focus on affordability, participation, and support for new technologies such as demand flexibility, DERs, and smart pricing. Enabling innovation across both supply- and demand-side services will be critical to achieving long-term consumer value.
- **Preserve Market Dynamism for Smaller Players:** While risks from large vertically integrated gentailers warrant regulatory attention, smaller integrated players—such as Nova and Pulse—should not be unnecessarily burdened. We support a risk-based and proportionate approach that preserves competitive tension and service innovation from smaller firms.
- **Virtual Disaggregation as a Backstop:** The EEA considers virtual disaggregation a blunt and potentially costly tool that should remain a contingent measure—available only if the roadmap approach demonstrably fails. Its use must be clearly scoped and justified by evidence of persistent market failure.
- **Broader Scope of Market Conduct Risks:** Beyond hedge access, competition risks also arise from information asymmetries, internal pricing opacity, data access barriers, and preferential treatment in emerging markets such as flexibility services. The Authority should take a holistic view of these risks as it develops detailed measures.
- **Alignment with Strategic Sector Outcomes:** LPF reforms must support—not detract from—broader sector goals such as emissions reduction, electrification, system resilience, and investment certainty. Interoperability with pricing, DSO, and consumer data reforms is essential to avoid regulatory duplication or unintended disincentives.

The EEA and its members remain committed to supporting the development of a technically sound, consumer-aligned electricity market that is competitive, resilient, and future-ready. We appreciate the Authority's engagement with these complex issues and look forward to ongoing dialogue as reforms progress.

Discussion Questions

Problem definition — competition concerns from Gentailers vertical integration

Q1. What are the benefits of vertical integration between generation and retail? Do you have any evidence to better specify and quantify these benefits? In particular, we are interested in benefits that would be realised by New Zealand's electricity consumers.

Vertical integration between electricity generators and retailers can deliver a range of benefits to both market participants and consumers when implemented transparently and competitively. From the perspective of EEA members—including engineers, planners, and asset managers across the electricity sector—vertical integration offers potential efficiencies in energy procurement, risk management, and innovation delivery. These efficiencies, when passed through effectively, can translate into tangible benefits for New Zealand's electricity consumers. Potential efficiencies include:

- **Risk management and retail price stability for consumers:** Vertical integration enables retailers to hedge their exposure to wholesale price volatility by aligning their retail load with physical generation assets. This reduces reliance on financial hedging instruments and may result in greater pricing stability for consumers, particularly during periods of market volatility (e.g., dry years, fuel supply constraints).
Consumers, especially households and small businesses, benefit when retailers can offer fixed or more predictable pricing structures due to reduced exposure to spot price fluctuations. In this context, vertical integration can act as a buffer between consumers and wholesale price spikes.
- **Investment certainty and security of supply:** Integrated generator-retailers are often better positioned to make long-term investments in generation capacity due to their ability to secure a revenue stream via their retail base. This can lead to more timely investments in new generation (including renewables), helping to support reliability and reduce supply-side constraints, which ultimately benefits consumers by improving supply resilience and moderating long-term cost pressures.
- **Innovation in product and service offerings:** Vertical integration can enable more coordinated and scalable deployment of innovative offerings that span both the supply and demand sides

of the market. For example, bundled offerings that combine electricity supply with solar, battery storage, or demand flexibility services are often more easily developed and trialled by integrated entities that can manage both customer relationships and market participation. Such innovation can improve consumer choice and enable more active participation in the electricity system—critical for maximising the value of consumer energy resources (CER) and supporting a more flexible and efficient grid.

- **Economies of scale and operational efficiency:** Vertically integrated businesses may realise cost efficiencies by reducing transaction costs and duplicative overheads between generation and retail operations. When these efficiencies are passed on, they can reduce retail margins and contribute to lower electricity bills for consumers.

Caveats and the need for safeguards

While vertical integration can deliver the above benefits, it also has the potential to distort competition if not carefully managed. There is a risk that integrated participants may have the incentive and ability to withhold access to hedge products, restrict market information, or cross-subsidise between business units to the detriment of competitors and consumers.

These risks highlight the importance of continued transparency, effective ringfencing, and regulatory oversight to ensure that the benefits of vertical integration are realised in ways that support rather than undermine competitive retail markets and consumer outcomes.

Q2. Do you agree with our description of the competition concerns that can arise from the combination of Gentailer vertical integration and market power? Why/why not? Do you have any evidence to better specify and quantify the competition risks of vertical integration?

The EEA generally agrees with the Electricity Authority's description of the competition concerns associated with gentailer vertical integration, particularly where such integration coincides with significant market power in both the generation and retail markets. However, it is important to clearly distinguish between vertical integration as a structural feature of the electricity market, and the actual conduct and outcomes that may raise competition concerns.

Vertical integration in itself is not inherently problematic and can deliver efficiency benefits, including reduced transaction costs, improved risk management across the electricity supply chain, and lower retail prices for consumers during periods of wholesale price volatility. These benefits are particularly important in New Zealand's hydro-dominated system, which is characterised by inherent supply variability.

Nonetheless, the EEA recognises that in a market with a small number of large vertically integrated gentailers, there is a credible risk of conduct that may disadvantage smaller or independent participants—such as independent retailers, community energy groups, and new entrants offering demand-side or consumer-centric services. These disadvantages could manifest through:

- **Wholesale market withholding or strategic bidding**, which may raise prices above competitive levels and reduce the ability of independent retailers to compete
- **Asymmetric access to hedge products**, which can make it harder for non-integrated retailers to manage price volatility and offer competitive pricing
- **Preferential treatment of affiliated retailers**, particularly through internal transfer pricing that may not reflect market-based costs
- **Reduced innovation and slower deployment of consumer-focused technologies**, such as time-of-use pricing or smart home integration, where dominant vertically integrated firms have limited incentives to disrupt their own business models.

From a consumer perspective, these risks may translate into higher prices, fewer choices, and a slower transition to more flexible, decarbonised electricity services. For example, barriers faced by innovative new entrants could limit the availability of offerings such as peer-to-peer trading, automated demand flexibility services, or community solar schemes.

While robust evidence on specific anti-competitive behaviours in New Zealand is difficult to isolate due to data asymmetries and market complexity, recent reviews—including the Electricity Price Review (2019)—have highlighted persistent concerns regarding retail competition, especially for residential and small business consumers. The observed stickiness in customer switching rates, pricing disparities between incumbent and challenger retailers, and limited hedge market liquidity for independents are all indicators of structural issues linked to vertical integration and market power.

Therefore, while vertical integration can provide operational and efficiency benefits, the EEA supports further investigation into whether current regulatory frameworks are sufficient to mitigate conduct risks and ensure fair access for all market participants. A principles-based approach that focuses on outcomes—particularly those that matter most to consumers, such as affordability, reliability, and innovation—should guide any policy response.

The EEA is committed to working collaboratively with the Electricity Authority, industry participants, and consumer representatives to ensure that the electricity system remains open, dynamic, and inclusive as it continues to evolve.

Q3. To what extent does vertical integration of smaller gentailers, such as Nova and Pulse, raise competition concerns? Should these smaller gentailers be subject to any proposed Level Playing Field measures?

The EEA recognises the importance of fostering a competitive and dynamic electricity market that delivers long-term benefits to consumers, including price efficiency, service innovation, and equitable access to new technologies. From this perspective, vertical integration — including that of smaller gentailers such as Nova and Pulse — warrants careful but proportionate consideration.

Extent of competition concerns:

Vertical integration among smaller gentailers does not raise the same level of systemic competition concerns as integration by larger incumbents with significant market share and generation portfolios. In general, these smaller players face different incentives and constraints:

- **Limited market power:** Smaller gentailers typically do not possess the scale to influence wholesale or retail prices or materially restrict access for other market participants.
- **Competitive entry point:** Their integrated model often supports their ability to compete with established players, enabling innovation and targeted offerings that may not otherwise be feasible in a separated model — especially in retailing flexibility services or differentiated tariffs.
- **Consumer benefit lens:** From a consumer standpoint, the presence of vertically integrated small gentailers has often resulted in more diverse product offerings, competitive pricing for niche customer segments, and a stronger focus on service differentiation. These outcomes are consistent with the objectives of a well-functioning competitive market.

Application of Level Playing Field measures:

While it is appropriate to ensure a consistent regulatory framework that supports transparency and avoids undue advantage, applying identical measures to all gentailers regardless of size may risk undermining the competitive dynamism that smaller players bring to the market. We support a proportionate and risk-based approach to any proposed Level Playing Field measures.

Specifically:

- **Thresholds or exemptions** could be considered to avoid unintended consequences for smaller gentailers who do not have the capacity or market presence to distort competitive outcomes.
- **Transparency and disclosure requirements** should be calibrated so they are not unduly burdensome on smaller entities while still upholding principles of market fairness.

- **Focus on conduct, not structure:** The Authority should focus more on whether a gentailer's conduct harms competition or consumer outcomes, rather than the mere presence of vertical integration.

In summary, while vigilance is needed to guard against anti-competitive conduct, the vertical integration of smaller gentailers does not, in itself, present a material threat to competition or consumer outcomes. Applying Level Playing Field measures to these firms should be done carefully, with attention to proportionality and potential consumer benefits that such business models can enable.

Q4. Are there other specific areas (other than access to hedges) where Gentailer market power and vertical integration are causing competition concerns?

The EEA acknowledges the Authority's focus on promoting a competitive electricity market that delivers long-term benefits to consumers. While access to financial hedging products is a key issue, there are other specific areas where vertical integration and market power of large gentailers may raise competition concerns that merit further consideration.

1. **Wholesale-retail price separation and transparency:** The ability of vertically integrated gentailers to self-supply generation to their retail arms can limit price discovery and transparency in wholesale markets. This can create barriers for independent retailers and smaller players attempting to compete fairly, potentially limiting innovation and diversity of retail offerings available to consumers. Lack of observable transfer pricing can obscure the true cost of supply and reduce trust in the market.
2. **Influence on market design and operations:** Larger vertically integrated gentailers may exert disproportionate influence on the development and operation of market rules and operational processes, including demand response, flexibility services, and distribution-level market arrangements. This can lead to the design of frameworks that inadvertently favour incumbents or reinforce existing advantages—limiting access for new entrants and technologies that could otherwise provide benefits to consumers through more tailored or cost-effective solutions.
3. **Access to network and system data:** Vertically integrated entities may have superior access to operational data, both from the generation and retail sides, giving them a competitive edge in forecasting, pricing strategies, and customer acquisition. If this data advantage is not balanced by equivalent access for other market participants, it can entrench existing market power. Consumers may face fewer options and less competitive pricing if innovative retailers and service providers cannot compete effectively.

4. **Customer acquisition and bundling practices:** Gentailers with large customer bases and established brand recognition can cross-subsidise customer acquisition activities or bundle retail electricity with other energy services (such as gas, broadband, or appliance financing). While this can offer convenience, it can also make it harder for new or specialist providers to compete on equal terms. This can limit consumer choice and slow the entry of new service models that may deliver more value, flexibility, or sustainability outcomes.
5. **Barriers to market access for new generation:** Gentailers may also own or control strategic connection capacity at key network nodes, and this can delay or disadvantage third-party renewable generation or storage projects competing for the same connection opportunities. This may affect the pace and diversity of renewable energy development and have long-term implications for decarbonisation and affordability outcomes for consumers.

In light of these points, we encourage the Authority to consider a broader view of market power and integration beyond hedging arrangements, ensuring any measures taken are proportionate, transparent, and targeted at maintaining consumer trust, lowering barriers to entry, and supporting innovation and resilience in the electricity sector.

Q5. Do you agree with our preliminary view that the evidence indicates there may be good reasons to introduce a proportionate Level Playing Field measure to address the competition risks in relation to hedging/firming? Why/why not?

The EEA supports the Electricity Authority's efforts to ensure a competitive, efficient, and fair electricity market. We acknowledge the Authority's preliminary view and agree that there is a case to consider introducing proportionate Level Playing Field measures to address competition risks in relation to hedging and firming arrangements — particularly in the context of a market increasingly shaped by variable renewable generation and changing consumer expectations.

From a consumer perspective, affordable and stable pricing depends on a well-functioning wholesale and retail market, where all participants — including smaller retailers and new entrants — can access hedging products on fair and non-discriminatory terms. A lack of access to firming or hedging products can create significant barriers for these participants, limiting their ability to compete and innovate. This, in turn, risks entrenching market power, reducing retail choice, and ultimately undermining value for consumers.

While vertical integration can provide natural hedging benefits to gentailers, it also risks distorting the hedge market where gentailers may have little incentive to sell firming products externally, particularly during tight market conditions. This asymmetry in access to firming products and risk management

tools creates a structural disadvantage for independent retailers and new market entrants, which can reduce competitive pressure and innovation in the sector over time.

We therefore agree there are good reasons to consider proportionate interventions, particularly if they help improve hedge market liquidity, transparency, and accessibility. However, we also note the importance of ensuring any measures are carefully targeted, based on sound evidence, and proportionate to the scale of the issue. It is vital that any reform supports the long-term interests of consumers without creating unintended disincentives for investment in firming capability or adding complexity that could reduce market efficiency.

We encourage the Authority to continue engaging closely with industry and consumers as it refines its assessment and designs any potential measures — including testing their effectiveness, scalability, and compatibility with broader market reforms (such as those related to flexibility, decarbonisation, and distributed energy resources).

Level Playing Field options we have identified

Q6. Have we focused on the right Level Playing Field options? Are there other options that we should add or remove to the list in paragraph 4.1?

The EEA broadly supports the direction and focus of the Level Playing Field options outlined in paragraph 4.1, particularly the emphasis on improving access to hedging products, increasing market transparency, and mitigating the risks associated with gentailer market power. These options align with our shared goals of promoting an efficient, resilient, and competitive electricity market that delivers long-term benefits to consumers.

From a consumer perspective, a more level playing field supports greater innovation and retail choice, which can help reduce costs and enable more tailored and flexible product offerings—especially as emerging technologies (such as solar PV, batteries, EVs, and home energy management systems) gain traction in households and small businesses.

We offer the following reflections on the current list of options and potential areas for enhancement:

1. Refinement of Existing Options

- **Access to hedging:** While improving access to risk management products is essential, the Authority may wish to consider complementary measures such as promoting the development of standardised, exchange-traded hedging instruments and increasing market-making obligations, particularly during periods of market stress.

- **Information transparency:** Enhancing disclosure requirements for vertically integrated gentailers—particularly around internal transfer pricing and contracting behaviour—could help address perceptions of unfair advantage and build confidence in the market.

2. Additional Options to Consider

- **Retail market facilitation and switching support:** Measures that enable easier consumer switching—such as real-time data access, standardised tariffs, or switching support tools—would strengthen competitive pressure on incumbent providers and support consumer empowerment.
- **Consumer data access and interoperability standards:** As more consumers adopt smart technologies, the ability to access and share usage data in a secure, standardised, and consent-based way will be vital for third-party innovation and for consumers to fully participate in emerging flexibility services.
- **Support for demand-side competition:** Consideration should be given to enabling new business models that aggregate consumer flexibility (e.g., virtual power plants) and ensuring that they can compete on fair terms with supply-side incumbents.

3. Options That May Warrant Caution or Refinement

- **Structural separation or ring-fencing:** While these may be effective in addressing certain competition concerns, the Authority should assess the cost-benefit trade-offs of more intrusive measures, particularly where there may be unintended consequences for investment or service delivery.

In conclusion, we support in principle the Authority’s initiative to ensure fair and effective competition in the electricity sector and encourage the Authority to adopt a measured, evidence-based approach that promotes innovation and consumer choice without introducing unnecessary complexity or cost.

Q7. Are there any other important factors we should consider when identifying options (see paragraphs 4.2 to 4.5)?

The EEA supports the Electricity Authority’s efforts to ensure a competitive and dynamic electricity market that delivers long-term benefits for consumers. In identifying and evaluating Level Playing Field (LPF) options, we encourage the Authority to also consider the following additional factors:

1. **Consumer Outcomes and Energy Equity:** While promoting competition and efficiency is essential, it is equally important to evaluate LPF measures through the lens of consumer impact. This includes considering how different options affect affordability, accessibility, and participation for a diverse range of consumers — particularly those who are vulnerable, have

low or fixed incomes, or are located in remote areas. Measures that enable greater consumer choice, transparency, and control (e.g. time-of-use pricing, DER participation) should be prioritised.

2. **Technology Enablement and Flexibility Services:** Options should support the development and integration of DER and demand flexibility services. These innovations can unlock new value streams and improve system resilience and efficiency, but their uptake may be hindered by structural or legacy advantages held by incumbents. LPF options should actively facilitate technology-neutral participation and ensure that flexibility providers, aggregators, and emerging business models are not unintentionally disadvantaged.
3. **Dynamic Market Evolution and Innovation:** We encourage the Authority to consider how proposed measures will influence innovation across the electricity ecosystem. Rules that promote contestability, encourage interoperability, and support data access for third parties can enable new consumer-centric services and investment. A risk-based and proportionate regulatory response will be key to striking the right balance between enabling innovation and mitigating potential harms.
4. **Whole-of-system Coordination and Investment Signals:** Level playing field reforms must also align with broader electricity system goals, including decarbonisation, electrification, and resilience. Options should be assessed in terms of their ability to send clear and efficient signals for investment in generation, network capacity, and smart infrastructure, particularly where consumer-side resources can contribute meaningfully to system performance.
5. **Practical Implementation, Compliance Burden, and Regulatory Certainty:** It is essential that any LPF options are implementable without creating undue compliance burdens, especially for smaller participants. Measures that increase clarity and certainty — both for consumers and industry participants — will be more effective in driving long-term market confidence and reducing the cost of regulatory risk.
6. **Interoperability with Other Reform Programmes:** Finally, we recommend that the Authority align LPF considerations with related reform initiatives — including pricing reform, distribution system operation, and data access frameworks — to ensure coherence and avoid fragmented or conflicting regulatory settings.

Q8. Are there other key features, pros or cons we should consider in our description of the four Level Playing Field options?

The EEA supports the Electricity Authority's objective to promote fair and effective competition, and we welcome the structured comparison of the four Level Playing Field (LPF) options. We also encourage

the Authority to expand its analysis to more explicitly incorporate a consumer lens and assess the practical implications of each option on market innovation, system efficiency, and consumer value.

Key Additional Features and Considerations:

- **Consumer Impact and Choice Enablement:** The analysis would benefit from a clearer assessment of how each LPF option supports consumer outcomes — including greater choice, price transparency, and the ability to participate actively in emerging services such as demand response, smart pricing, and DER integration.
- **Implementation Cost and Compliance Burden:** The relative cost and complexity of each option — particularly for smaller retailers or new entrants — should be more explicitly compared. Proportionate measures are needed to avoid discouraging competition from innovative firms due to high compliance overheads.
- **Risk of Unintended Market Distortions:** Structural options, such as mandated separation, risk undermining valuable coordination benefits unless carefully designed. Each option should be assessed not just on competition grounds, but also on potential unintended impacts on investment signals, operational efficiencies, and consumer pricing.
- **Resilience and System-Wide Efficiency:** Vertically integrated models can offer coordination benefits that contribute to resilience and efficient system operation. Disrupting these models without clear alternatives in place could risk short-term inefficiencies or disruptions to service quality.
- **Dynamic Innovation Incentives:** The long-term impact of LPF options on innovation incentives deserves more attention. The potential for reduced investment in new services, technologies, or partnerships (e.g. in flexibility or digital platforms) should be explicitly considered when weighing options.
- **Data Access and Transparency:** A level playing field must include equal access to relevant market data. Ensuring timely, equitable, and secure access to smart meter data, network constraints, and pricing signals is foundational for third-party innovation and meaningful consumer participation.
- **Alignment with Decarbonisation and Electrification Goals:** LPF measures must not only address market power but also support New Zealand’s broader energy transition. Options that inadvertently delay or complicate DER integration, electrification, or demand flexibility could create longer-term costs for consumers and the system.

Recommendation: Consider a Hybrid Approach

The EEA encourages the Authority to consider a hybrid model that blends elements of the four LPF options. Such an approach could:

- Address the most significant competition risks in a targeted and proportionate manner
- Retain beneficial aspects of vertical integration where they support system efficiency or consumer service innovation
- Enhance transparency and data access to lower barriers for emerging service providers
- Provide a phased implementation pathway, allowing the Authority to adapt and escalate interventions based on market behaviour and consumer outcomes over time.

A hybrid model — for example, combining Option B's behavioural ring-fencing with Option A's data transparency and elements of Option D's service unbundling — may strike a more balanced and dynamic path forward. It can also act as a transitional step, giving the Authority greater flexibility to respond as the market evolves.

Incorporating these additional features — particularly consumer outcomes, innovation incentives, and the potential value of a hybrid model — will strengthen the Authority's analysis and help ensure any measures adopted are both proportionate and future-fit for a decarbonising, increasingly distributed electricity system.

Our assessment of Level Playing Field options

Q9. Have we identified the right criteria for assessing Level Playing Field options (Figure 6)? Is there anything we should add or remove?

The EEA supports the inclusion of clear criteria to assess Level Playing Field (LPF) options. Overall, the criteria presented in Figure 6 provide a sound framework for evaluation. However, we offer the following feedback to enhance the robustness and practical value of the assessment process:

1. Support for the Existing Criteria:

We agree that the current criteria—such as promoting competition, ensuring proportionality, managing unintended consequences, and promoting certainty—are appropriate and necessary. They provide a balanced lens that considers market function, regulatory efficiency, and fairness.

2. Recommended Additions to the Criteria:

a. **Consumer Impact and Accessibility:** While consumer outcomes are indirectly touched upon through efficiency and competition, we recommend adding an explicit criterion focused on consumer impact, particularly in terms of:

- Access to new services and technologies (e.g. flexibility services, smart appliances)
- Affordability and fairness in pricing and product offerings
- Clarity and transparency in how market arrangements affect consumers' ability to participate (especially for smaller or less digitally literate customers)

This would help ensure that LPF measures do not inadvertently entrench complexity or create barriers to participation for residential or small business consumers.

b. **Implementation Feasibility and Cost to Industry:** We recommend separating implementation feasibility and cost into a standalone criterion, given the potential scale of change and investment required by both regulated and unregulated entities. This would allow for a clearer understanding of the trade-offs between policy ambition and practical delivery timelines.

c. **Alignment with Strategic Sector Outcomes:** EEA encourage inclusion of a criterion assessing alignment with broader electricity system goals—such as emissions reduction, electrification, and resilience. This ensures that LPF measures do not operate in isolation but contribute to long-term sector transformation.

3. Clarification of “Proportionality”:

We suggest clarifying how proportionality is assessed—e.g., relative to market share, consumer base, or influence over outcomes. This would assist in applying the criterion consistently and transparently.

We welcome the Authority's efforts to use structured and transparent assessment tools for policy decisions and look forward to further collaboration on ensuring these measures enable innovation, fairness, and value for all participants in the electricity system.

Q10. Do you agree with our application of the assessment criteria (Table 5)? Are changes needed to the colour coding or reasoning?

The EEA supports in principle the Electricity Authority's use of clear and structured criteria to assess Level Playing Field options, and we appreciate the transparency provided in Table 5. This kind of systematic approach improves stakeholder confidence and facilitates more constructive feedback.

However, from both an industry and consumer perspective, we suggest a few refinements to improve consistency and better reflect real-world implications:

1. Effectiveness – Market Confidence and Perceived Fairness (Option A1):

The current green rating may overstate the extent to which Option A1 would shift perceptions of fairness, especially among smaller market participants and consumers. While it may address overt discrimination, the option does not address more systemic or opaque barriers. A yellow rating may better reflect this nuance, particularly when viewed through a consumer lens where perceived bias and complexity in wholesale-retail dynamics persist.

2. Implementation and Ongoing Costs (Options A1 and A2):

We note a potential underestimation of the practical and compliance costs associated with implementing mandatory non-discrimination obligations. While these may be manageable for large participants, for smaller retailers and new entrants, the regulatory burden may be proportionally greater. A yellow rating, rather than green, would provide a more balanced view of the trade-offs and reinforce the importance of implementation support.

3. Flexibility to Adapt Over Time (Options A1–A3):

We support the EA’s positive assessment here, particularly considering future changes to market structure and consumer participation. However, we encourage the Authority to provide more detail in its reasoning on how adaptability will be assured in practice — including through periodic review mechanisms and guidance updates.

4. Impact on Innovation and Consumer Outcomes:

While Table 5 rightly considers innovation from a market efficiency standpoint, we recommend more explicit reference to consumer outcomes — particularly whether options incentivise innovation that delivers value to end users (e.g. through improved pricing structures, DER enablement, or better service). A consumer-centric lens could be integrated more strongly in the reasoning column to strengthen alignment with long-term electricity transition goals.

Recommendation:

The EEA supports the EA’s use of the criteria but recommend the Authority:

- Adjust two colour coding’s as outlined above to improve consistency with likely sector and consumer impacts
- Expand the reasoning in the assessment table to better reflect consumer perspectives and practical implementation considerations

- Include a brief narrative summary of the trade-offs between options to support more informed engagement from non-specialist stakeholders.

Q11. Are there any other material benefits or risks that should be considered (but are currently not) in our assessment of options?

Yes — from the perspective of the EEA and our members, there are several additional benefits and risks that should be factored into the assessment, particularly when viewed through the lens of consumer outcomes, system efficiency, and implementation practicality.

Additional benefits:

- **Greater consumer confidence and trust:** Ensuring a transparent and fair market structure supports public confidence — an essential foundation for consumer participation in emerging markets such as demand flexibility, DER aggregation, and time-of-use pricing. The perception that all providers are competing on equal terms helps encourage uptake of new technologies and behaviours.
- **Improved conditions for innovation and diversity of supply:** By addressing structural advantages and reducing barriers to entry, the proposed measures may enable greater innovation from smaller and non-traditional market participants (e.g. aggregators, community energy groups). This can improve consumer choice and access to tailored energy services, particularly for those with specific needs or preferences.

Additional risks:

- **Administrative and compliance burden:** Some options could impose material implementation costs and resourcing demands, particularly where they require new systems, reporting processes, or functional separation of activities. While the intent is sound, care is needed to ensure proportionality — especially for smaller players who may face capacity constraints.
- **Potential erosion of scale efficiencies:** Measures that mandate strict separation or disclosure may inadvertently limit the ability of integrated businesses to leverage legitimate efficiencies (e.g. shared customer systems or digital platforms). This could reduce investment incentives in areas like customer experience, DER integration, or innovation at the grid edge — areas that ultimately benefit consumers.
- **Risk of consumer disengagement:** As reforms progress across multiple fronts — including flexibility markets, pricing reforms, and evolving retail models — the cumulative impact on

consumer understanding should be considered. Without clear communication, there is a risk of confusion or fatigue, which may undermine the intended benefits.

We recommend that these broader consumer and system-level implications are reflected in the assessment framework, alongside the existing criteria. A balanced view of short-term implementation impacts, and longer-term strategic outcomes is important to ensure enduring benefits across the sector.

Q12. Do you agree with our selection of non-discrimination obligations as our preferred Level Playing Field measure? Why/why not?

The EEA are broadly supportive of the Electricity Authority's selection of non-discrimination obligations as the preferred measure. We agree this is a proportionate and targeted response to the risk that large vertically integrated gentailers could act in ways that limit access to competitive opportunities for independent retailers and service providers.

We see value in this measure from both an industry and consumer perspective. By reducing the potential for discriminatory behaviours, the obligations can help promote greater competition, improve transparency, and enable a more dynamic retail market—ultimately supporting better outcomes for consumers in terms of price, choice, and innovation.

We also support the Authority's proposal to limit the obligations to entities with both the ability and incentive to discriminate. This helps ensure the measure is not unduly burdensome and focuses on addressing the most material risks to competition.

However, it will be important that implementation avoids ambiguity or unintended compliance complexity. Clear guidance on the practical application of the obligations—including what constitutes "material differences" and acceptable exceptions—will be key to ensuring confidence and consistency across the market.

Overall, we consider the proposed obligations to be a sound step forward that supports the Authority's statutory objective and aligns with the long-term interests of electricity consumers.

Roadmap for implementing non-discrimination obligations

Q13. What are your views on our proposed roadmap for the implementation of non-discrimination obligations?

The EEA and our members support the Electricity Authority's objective of promoting fairer competition in the electricity market and acknowledge the value of a staged roadmap for implementing non-discrimination obligations. From both an industry and consumer perspective, we agree that a clear and well-sequenced implementation plan is essential for establishing confidence, ensuring proportionality, and enabling all participants to prepare for compliance.

We commend the Authority for setting out a high-level pathway that recognises the practical challenges of introducing new regulatory obligations. The focus on vertically integrated businesses and the intention to build from existing regulatory frameworks provides a logical foundation.

However, while supportive of the general direction, we offer the following critical observations to help refine the roadmap and ensure it delivers durable benefits for consumers and market participants alike:

- **Greater Clarity and Certainty Required:** The current roadmap remains relatively high-level and lacks detail around timelines, sequencing, and expected outputs at each stage. Greater specificity would give participants more certainty, assist in internal planning and system changes, and signal to consumers that tangible progress is underway.
- **Implementation Risks Need More Attention:** The roadmap could more explicitly address the potential compliance burden on smaller retailers, distributors, and community-scale providers. A one-size-fits-all approach may unintentionally favour larger incumbents—counter to the very objective of promoting a level playing field. The Authority should consider how obligations will be scaled appropriately to mitigate unintended barriers to entry or innovation.
- **Interdependencies with Broader Market Reforms:** The success of non-discrimination obligations is partly dependent on how well they interact with other regulatory initiatives, including those relating to flexibility services, distribution access, and consumer data protections. We recommend that the Authority explicitly map out these interdependencies and articulate how alignment will be managed to avoid duplicative or conflicting requirements.
- **Transparency, Monitoring and Recourse Mechanisms:** To build confidence in the regime—particularly from a consumer lens—it is essential that the roadmap includes a framework for ongoing monitoring, public reporting, and a credible process for investigating potential breaches. Without visible accountability, the obligations risk being perceived as symbolic rather than effective.

- **Industry Co-Design and Testing:** We strongly support early and ongoing engagement with industry in developing implementation guidance and compliance tools. This will help ensure the final obligations are practical, proportionate, and do not produce perverse outcomes—such as discouraging investment in innovation or shared infrastructure that benefits consumers.
- **Consumer Outcomes Must Remain Central:** Finally, the roadmap should more clearly link the implementation of non-discrimination obligations with expected consumer benefits—such as improved service offerings, fairer pricing, or increased access to distributed energy resources. This will help ensure that the focus remains not just on market structure, but on outcomes for end users.

In summary, while we are broadly supportive of the Authority’s proposed roadmap and the direction of reform, we encourage the Authority to take a more detailed and risk-aware approach to implementation. With greater specificity, coordination, and stakeholder co-design, the roadmap can help realise a genuinely level playing field that delivers long-term value to consumers and the wider electricity system.

Q14. Which products should any non-discrimination obligations apply to? Should all hedge contracts be captured, or should the rules be focused on super-peak hedges only? Are there are other interactions between Gentailers and their competitors which would benefit from non-discrimination rules?

We support the introduction of non-discrimination obligations across a broad set of products and services, with a focus on ensuring that both established and emerging retailers—particularly those offering innovative or consumer-centric services—can access competitive wholesale and hedging arrangements on fair and equal terms. This ultimately benefits consumers by supporting a more vibrant, diverse retail market that can offer better pricing, service models, and energy innovation.

The EEA agree that hedge contracts are a critical focus area for non-discrimination obligations. While the proposed emphasis on super-peak hedges reflects current concerns about access during periods of tight supply and high price volatility, we suggest the scope should not be limited exclusively to these products. A broader approach—covering all hedge contracts with reasonable thresholds—may be more effective in preventing undue discrimination. Restricting the obligations to super-peak hedges could create loopholes or incentives to reclassify products in ways that avoid regulatory scrutiny. Instead, a principles-based obligation should ensure that access to risk management products is available on equivalent terms to all eligible parties.

We also encourage the Authority to examine other interactions between gentailers and their retail competitors that may benefit from non-discrimination protections. Examples may include:

- **Access to generation-backed power purchase agreements (PPAs):** New entrant or independent retailers may struggle to secure PPAs on similar terms to those available internally within vertically integrated gentailers.
- **Market-sensitive information sharing within corporate groups:** Ensuring functional separation and governance mechanisms where shared resources (e.g., forecasting tools or market insights) exist between generation and retail arms.
- **Flexibility and demand response procurement:** Gentailers should not unduly prefer their own retail arms when procuring or enabling load-side flexibility, particularly as these markets grow in importance.

Ultimately, effective non-discrimination obligations should support a level playing field across the wholesale-to-retail supply chain, with targeted oversight to avoid entrenching existing market power. For consumers, this means greater choice, pricing transparency, and access to services that support active energy participation.

Q15. Do you have any feedback on the indicative draft non-discrimination principles (and guidance) set out in Appendix B? Without limiting your feedback, we would be particularly interested in your views on the following questions:

- a. Have we got the level of detail/prescription right? For example, do you consider that the principles and guidance will lead to economically meaningful Gentailer ITPs being put in place? What would be the costs and benefits of instead applying a more prescriptive ITP methodology?
- b. How far should the allowance in the principles for different treatment where there is a “cost-based, objectively justifiable reason” extend? Do you agree with the guidance that this allowance should not be extended to volume (at paragraph 13 of Appendix B)?

The EEA supports the Electricity Authority’s objective of enhancing competition and transparency through non-discrimination obligations, and we welcome the draft principles and guidance outlined in Appendix B. Overall, we consider the proposed principles to be a constructive step toward creating a level playing field that benefits not only competitors but also, ultimately, consumers—through improved innovation, pricing transparency, and service options.

a. Have we got the level of detail/prescription right?

The EEA believe the current level of prescription in the draft principles strikes a reasonable balance between flexibility and enforceability. A principle-based approach, supported by clear guidance, should allow for economically meaningful Internal Transfer Prices (ITPs) while recognising the commercial and operational diversity across Gentailers.

This flexibility is important to ensure ITPs reflect actual costs and risks in vertically integrated operations, while also being subject to independent scrutiny. Overly prescriptive methodologies could risk stifling innovation or resulting in unintended consequences by not adequately accounting for legitimate differences in business models or contract structures. For consumers, a principle-based approach—if robustly monitored—should still deliver the intended benefits of competition and lower barriers for new entrants, which in turn can enhance choice and affordability.

However, we acknowledge there is a trade-off. A more prescriptive ITP methodology may reduce interpretative ambiguity and assist with enforcement, but it risks becoming too rigid or quickly outdated. Therefore, we suggest the Authority consider publishing worked examples or scenario-based templates to guide industry participants in applying the principles consistently, while still maintaining flexibility.

b. How far should the allowance in the principles for different treatment where there is a “cost-based, objectively justifiable reason” extend? Do you agree with the guidance that this allowance should not be extended to volume (at paragraph 13 of Appendix B)?

We support the inclusion of a “cost-based, objectively justifiable reason” as a necessary allowance to reflect genuine operational and financial differences. This safeguard enables Gentailers to recover legitimate costs and avoids a blanket requirement that could undermine commercial reality.

However, we strongly agree with the Authority’s guidance that this allowance should not extend to volume. Allowing volume-based differentiation would risk creating loopholes for anti-competitive bundling or preferential treatment that could disproportionately affect smaller retailers or new entrants. From a consumer perspective, this could ultimately reduce competition and choice, particularly during peak pricing periods where hedging products are most critical. Maintaining a prohibition on volume-based justification will help ensure that all parties—regardless of size—have fair access to risk management tools and are not disadvantaged by scale-related discrimination.

Q16. Do you agree that escalation options are needed if principles based non-discrimination obligations are implemented initially? Why/why not?

We agree that escalation options are a necessary feature if principles-based non-discrimination obligations are implemented initially.

While a principles-based framework offers flexibility and encourages innovation, it also introduces ambiguity and interpretive risk. Without clear escalation pathways, this ambiguity could undermine the effectiveness of the obligations and reduce confidence—particularly for independent retailers and new entrants who may lack the resources to challenge potentially discriminatory practices. Escalation mechanisms ensure the regime remains credible, enforceable, and able to evolve in response to market behaviour.

From a consumer lens, a level playing field is essential to enable genuine competition, innovation in retail offerings, and price discipline. If dominant participants are not meaningfully constrained or monitored, consumers may face limited choices and higher prices over time. Escalation options provide assurance that further action can be taken to preserve competitive outcomes if initial principles-based obligations are insufficient.

We recommend that the Authority consider a structured, evidence-based escalation pathway with three progressive steps:

Step 1: Monitoring and Voluntary Compliance

- Principles-based obligations are implemented.
- The Authority actively monitors compliance through reporting, audits, and stakeholder feedback.
- Informal resolution channels are available.

Trigger: Evidence of persistent issues, non-cooperation, or limited access to external parties.

Step 2: Enhanced Transparency and Guidance

- Require disclosure of key ITP and hedge contract terms (subject to commercial sensitivity protections).
- Provide detailed guidance on how principles should apply in practice.
- Use benchmarking or anonymised comparisons to assess fair treatment.

Trigger: Ongoing evidence of discriminatory conduct or avoidance behaviours.

Step 3: Prescriptive Regulation and Enforcement

- Shift to standardised or regulated approaches for ITPs and contract access.

- Introduce penalties for non-compliance and formal dispute resolution processes.
- Consider structural or behavioural remedies if competition is materially harmed.

This graduated approach provides a balance between flexibility and accountability. It supports early adoption while preserving the Authority's ability to act decisively if outcomes fall short of expectations. A clear and transparent escalation pathway is key to maintaining trust in the regime, both from industry participants and consumers.

Q17. Are prescribed non-discrimination requirements and mandatory trading of Gentailer hedges via a common platform suitable escalations given the liquidity, competitive pricing and even-handedness outcomes we are seeking? Why/why not? What alternatives would you suggest (if any)?

On behalf of the Electricity Engineers' Association (EEA) and our members, we consider that prescribed non-discrimination requirements and the mandatory trading of Gentailer hedges via a common platform could be suitable escalation measures, provided they are carefully designed to target clear evidence of ongoing discriminatory conduct or enduring market failures. However, these interventions carry significant costs and risks, so their appropriateness depends on the effectiveness of initial principles-based obligations and the observed market response.

From a consumer perspective, timely and affordable access to competitive retail offerings—particularly from independent or second-tier retailers—can improve choice, innovation, and price outcomes. If initial non-discrimination principles fail to support these objectives, more prescriptive tools may be necessary to shift the balance. Mandatory trading on a common platform may help enhance transparency, comparability, and access to hedge products for smaller retailers, which in turn supports downstream consumer benefits. However, the design must ensure that such platforms do not stifle product innovation or impose disproportionate costs on participants, which could ultimately be passed through to consumers.

That said, mandated hedge trading and strict prescription may also reduce flexibility, efficiency, and the ability to tailor risk management products. These unintended consequences could create inefficiencies or even reduce overall market liquidity if not implemented carefully.

Alternatives or complementary approaches we would suggest include:

1. **Phased Implementation with Monitoring:** Introduce non-discrimination principles first, with clear metrics for assessing whether retail competition and liquidity are improving. Escalation should be contingent on failure to meet these outcomes.

2. **Hedge Transparency Obligations:** Require regular disclosure of aggregate hedge volumes, prices, and counterparty types to provide better visibility without mandating a common trading platform initially.
3. **Access Facilitation Measures:** Explore a regulated “access to hedging” service, where vertically integrated providers must offer standardised hedge products to qualifying independent retailers under transparent, auditable conditions.
4. **Sunset or Review Clauses:** If escalation measures are implemented, include a review or sunset clause to ensure they remain proportionate and effective in a dynamic market environment.

In summary, while both prescribed non-discrimination and mandatory platform trading are credible options, they should not be implemented prematurely or in isolation. The focus should remain on proportionality, evidence, and maintaining the long-term health and adaptability of New Zealand’s wholesale and retail electricity markets.

Q18. What costs and benefits are likely to be involved in setting more prescriptive regulatory accounting rules which detail how ITPs should be calculated? What would be appropriate triggers for introducing more prescriptive requirements for ITPs?

We acknowledge the Electricity Authority’s efforts to promote more consistent and transparent application of Internal Transfer Prices (ITPs). We recognise that prescriptive regulatory accounting rules could help support non-discriminatory conduct, reduce ambiguity, and enhance trust in the hedge market—outcomes that ultimately benefit both the competitive retail market and consumers.

Costs and Benefits of More Prescriptive Rules

Introducing more prescriptive rules for calculating ITPs would come with both implementation costs and potential long-term system benefits:

Costs:

- **Implementation complexity:** Developing and applying a standardised ITP methodology would require technical and systems changes across vertically integrated businesses, particularly if current internal approaches vary significantly.
- **Reduced flexibility and misalignment risk:** A highly prescriptive approach may not reflect the operational diversity of integrated firms, particularly those with different generation portfolios, cost structures, or trading strategies. This could unintentionally create inefficiencies in how generation and retail operations are managed.

- **Disproportionate compliance burden:** For some firms, particularly smaller ones, the cost of compliance could outweigh the competitive benefits, especially if the rules are not appropriately tailored.

Benefits:

- **Improved transparency and comparability:** From a system planning and regulatory assurance perspective, more prescriptive rules may enhance the robustness of compliance monitoring, help identify inappropriate cross-subsidisation, and enable more accurate benchmarking.
- **Market confidence and investment signals:** Clearer and more standardised pricing frameworks could help reduce perceived barriers for independent retailers and new entrants, particularly those lacking internal generation. This may support longer-term consumer benefits through increased competition and innovation.
- **Consumer trust:** While consumers are not directly engaged with ITPs, ensuring that retail prices are not unfairly advantaged by internal pricing practices contributes to perceptions of fairness and legitimacy in the market.

Appropriate Triggers for Introducing Prescriptive Requirements

The EEA supports the Authority's preference for a progressive and proportionate approach. Prescriptive ITP methodologies should not be implemented pre-emptively but instead as a backstop if principles-based guidance proves ineffective. Appropriate triggers could include:

- **Persistent or systemic non-compliance** with non-discrimination principles, evidenced through complaints, investigations, or market monitoring.
- **Failure to produce economically meaningful ITPs**, as demonstrated by disparities between internal and external pricing without cost-based justification.
- **Entrenchment of competitive disadvantage** for independent retailers or generators, particularly if it can be linked to untransparent or discriminatory internal pricing practices.
- **Lack of improvement in hedge market liquidity or access** for non-integrated participants despite the introduction of high-level obligations.

In summary, we support a staged approach. Prescriptive rules should remain a contingent option, to be activated only if clear market failures emerge under a principles-based regime. This balances the cost to industry with the potential benefits to consumers and market efficiency.

Q19. Do you have any views on how the non-discrimination requirements should best be implemented to ensure that Gentailers are no longer able to allocate uncontracted hedge volumes to their own retail function in preference to third parties? What are the key issues and trade-offs?

The EEA supports the objective of ensuring a level playing field in the hedge market to promote transparency, competition, and ultimately consumer benefit. From both an industry and consumer perspective, effective non-discrimination obligations should be designed to prevent vertically integrated gentailers from favouring their own retail operations when allocating uncontracted hedge volumes, while preserving operational flexibility and efficiency in the wholesale market.

Implementation approach

We consider a principles-based framework, supported by clear and enforceable guidance, to be a proportionate starting point. This should include requirements that:

- Gentailers apply consistent and objectively justifiable processes to hedge allocation,
- All qualified third parties are provided access to uncontracted hedges on equivalent terms and timelines as internal retail functions, and
- Decisions and justifications are transparently documented and auditable by the regulator.

If behavioural issues persist or transparency proves insufficient, escalation to more prescriptive requirements (e.g. ringfencing of trading desks or mandatory platform-based trading) may be warranted.

Key issues and trade-offs

There are several implementation challenges and trade-offs to manage:

- **Operational complexity and cost:** Mandating strict separation or trading protocols may impose disproportionate compliance costs on smaller gentailers, which could reduce hedge market liquidity.
- **Commercial sensitivity vs transparency:** While transparency is essential to enforce non-discrimination, commercially sensitive trading strategies and pricing information must also be protected to avoid unintended consequences or market distortion.
- **Market liquidity and consumer outcomes:** Overly rigid rules could reduce the willingness of gentailers to offer hedges at all, potentially reducing hedge market depth, increasing volatility, and ultimately raising retail prices for consumers.
- **Scope and exemptions:** There may be merit in differentiating requirements based on market share or retail dominance to ensure that obligations are targeted at market power concerns without unduly burdening small or emerging participants.

Consumer lens

For consumers, particularly small and mass-market ones, the concern is not the mechanics of hedge allocation per se, but the downstream effects—reduced retail competition, fewer product choices, and higher prices. Ensuring that third-party retailers can access hedging products on fair terms is essential to sustaining competition, innovation, and consumer choice in the electricity market. From a consumer protection standpoint, the priority is to implement measures that are enforceable, proportionate, and capable of achieving behavioural change without suppressing overall market dynamism.

In summary, we support a staged, transparent, and evidence-based approach to implementing non-discrimination requirements, with clear expectations on hedge allocation fairness and escalation options available if issues persist. This balances industry flexibility with the imperative of fair market access that underpins long-term consumer benefit.

Q20. Do you have any views on the triggers for implementing the stronger regulation proposed in our roadmap?

The EEA supports the Electricity Authority's intent to establish clear triggers for progressing from principles-based approaches to more prescriptive regulation in the event that non-discrimination obligations are not delivering the intended outcomes. From both an industry and consumer perspective, such triggers need to be transparent, evidence-based, and targeted to the specific risks identified—namely, the persistent preferential treatment by gentailers that undermines competition and consumer access to affordable electricity.

Key Views on Trigger Design:

1. Evidence of Persistent Non-Compliance or Gaming:

A core trigger should be evidence that vertically integrated gentailers are allocating hedge volumes or setting ITPs in ways that consistently favour their own retail arms to the detriment of independent retailers or the wholesale market. Indicators might include:

- A material and persistent difference between internal transfer prices and traded hedge prices.
- Disproportionately low volumes of hedges made available to third parties relative to retail load.
- Investigations or complaints from retailers not resulting in behavioural change.

2. Lack of Improvement in Market Liquidity or Access:

If after a reasonable period (e.g. 12–24 months), there is no measurable improvement in hedge market liquidity or access for independent participants, this may indicate that softer interventions are insufficient. Monitoring metrics should include:

- Changes in the bid-ask spread.
- Hedge contract volumes and availability by product and region.
- Third-party retailer participation rates in forward markets.

3. Consumer Harm or Retailer Exit:

Triggers should also consider downstream impacts, such as increasing retail market concentration, exit of independent retailers, or barriers to entry that ultimately reduce consumer choice, price competition, and innovation. Early warning signs might include:

- Declining churn rates or rising retail margins without corresponding cost increases.
- Concentration of generation and retail market share in a few gentailers.
- Reduced pass-through of wholesale price signals to end-users.

4. Failure of Transparency and Reporting Measures:

If new reporting requirements (e.g. on ITPs or hedge allocations) are not implemented in good faith, or are subject to delay, data gaps, or manipulation, this could indicate a lack of genuine commitment to fair conduct and justify earlier regulatory escalation.

Trade-offs and Considerations:

The EEA acknowledge that stronger regulatory interventions may increase compliance costs and reduce commercial flexibility. However, a level playing field is essential for fostering competition, supporting independent retailers, and enabling the delivery of innovative consumer offerings—including time-of-use tariffs, demand flexibility services, and DER integration. Consumers ultimately benefit from a more competitive, transparent market where retail pricing better reflects actual costs and risks.

Recommendation:

We recommend that the Authority publish a clear set of qualitative and quantitative indicators aligned to these triggers, supported by regular market monitoring and stakeholder engagement. This will give industry participants clarity on expectations and time to adjust conduct, while ensuring that consumers are protected from enduring structural disadvantages.

Our current thinking on virtual disaggregation

Q21. Does our proposed approach to implementing non-discrimination obligations (as set out in the roadmap in Figure 7) sufficiently address the underlying issue that originally led to MDAG recommending virtual disaggregation?

The EEA is broadly supportive of the Authority's proposed roadmap for implementing non-discrimination obligations as an alternative to virtual disaggregation. The roadmap reflects a measured and principles-based approach that is more proportionate and operationally feasible than structural separation, which would carry significant implementation risks and costs. It also provides a credible framework to begin addressing the competitive distortions identified by MDAG—particularly the ability of vertically integrated gentailers to allocate internal hedge volumes preferentially to their own retail arms, limiting third-party access to risk management tools.

However, we note several areas where further clarity or additional safeguards may be required to ensure the roadmap delivers on its intended outcomes for both market participants and consumers:

- **Effectiveness depends on monitoring and enforcement:** The Authority's approach assumes that principles-based obligations and market monitoring will be sufficient to constrain discriminatory behaviours. However, without timely access to relevant data, transparency over internal transfer prices, and robust compliance processes, the risk remains that vertically integrated participants could continue to advantage their retail arms in subtle or opaque ways. If the Authority is unable to detect or deter such behaviour early, the roadmap's effectiveness will be limited.
- **Escalation thresholds should be clearly defined and publicly communicated:** The Authority proposes escalation options if the initial approach proves ineffective, but greater transparency is needed around what would constitute a "trigger" for escalation. Clear criteria and a timeline for review will provide all parties with certainty and help maintain trust in the regulatory process.
- **Interim benefits for independent retailers and consumers may be limited:** The phased approach, while pragmatic, may not deliver immediate improvements in hedge market liquidity or access for independent retailers. This has implications for competition in the retail market and, ultimately, for consumers. The Authority should monitor not only compliance with principles, but also changes in market structure, price spreads, and retailer churn to assess whether the consumer benefits of the roadmap are materialising.
- **Consideration of complementary measures:** While we support the roadmap's overall direction, we encourage the Authority to remain open to complementary initiatives, such as enhanced

disclosure requirements, improvements to existing hedge platforms, or targeted support for liquidity in peak demand periods, that could help accelerate progress and bolster the impact of the proposed obligations.

In summary, we consider that the proposed roadmap represents a sound and proportionate response to the issues identified by MDAG and avoids the disruption of forced structural reform. However, its success hinges on implementation strength, market oversight, and the Authority's willingness to act if outcomes fall short. We encourage the Authority to maintain a consumer- and competition-focused lens throughout this process and to provide clear signals that the roadmap will adapt if evidence shows that further intervention is needed.

Q22. Do you have any views on whether virtual disaggregation provides a useful response to the competition risks we have identified (relative to the proposed roadmap) and, if it does, how it should be best applied?

We acknowledge the Electricity Authority's original rationale for exploring virtual disaggregation as a tool to address vertical integration concerns and promote more competitive outcomes in hedge and retail markets. We agree that competition risks can arise where gentailers have the ability and incentive to favour their own retail arms over third-party participants in accessing hedge volumes, especially in illiquid or constrained regional markets. However, we believe that virtual disaggregation should be seen as a secondary or contingent mechanism—an escalation pathway if the Authority's proposed roadmap of non-discrimination obligations proves insufficient in practice.

From an engineering and operational standpoint, virtual disaggregation is a relatively blunt instrument that does not address the root cause of discriminatory behaviour—namely, the lack of transparency, accountability, and enforcement mechanisms surrounding internal transfer pricing (ITP) and hedge allocation practices. Its implementation could add complexity and cost without guaranteeing that real behavioural change will occur, especially if incentives remain misaligned.

We generally support the Authority's roadmap approach, which begins with the introduction of principles-based non-discrimination obligations backed by guidance, escalating to more formal enforcement and mandatory platform trading if necessary. This tiered approach is proportionate, pragmatic, and allows industry to demonstrate good-faith compliance before more structural interventions are triggered.

That said, we recognise that from a consumer perspective, perceptions of fairness and transparency in the wholesale and retail markets are essential. Consumers—both directly and indirectly—benefit when

independent retailers can access competitively priced hedges, helping to reduce the risk of price shocks or retailer exit. In this context, virtual disaggregation could act as a credible backstop or “threat of separation,” helping to reinforce behavioural compliance under a lighter-touch regime.

If virtual disaggregation is to remain on the table, it should be applied in a targeted and conditional way—perhaps triggered only where there is consistent evidence of harm or non-compliance under the roadmap. Any application should also be designed to avoid unintended impacts on market efficiency, innovation, or investment signals, particularly in a low-emissions transition where large, integrated players also carry delivery obligations.

In summary:

- We support the roadmap as the preferred approach to addressing the identified competition risks.
- Virtual disaggregation could be useful as a reserve power or escalation tool, not a starting point.
- Its application should be carefully scoped, conditional, and aligned with clear evidence of market failure.
- Any intervention must strike a balance between improving market access for third parties and maintaining long-term investment signals and system security.

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