

7 May 2025

Electricity Authority
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SUBMISSION ON LEVEL PLAYING FIELD MEASURES

1. Introduction

Thank you for the opportunity to make a submission on the Level Playing Field Measures consultation paper. This submission is from Consumer NZ, an independent, non-profit organisation dedicated to championing and empowering consumers in Aotearoa. Consumer NZ has a reputation for being fair, impartial and providing comprehensive consumer information and advice.

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2. Comments on the consultation in general

Consumer NZ strongly supports the proposal.

New Zealand needs a fairer and more consumer-focused retail electricity market.

We believe in the value of markets. A well-designed, well-functioning, and effectively regulated market will deliver positive outcomes for consumers by fostering innovation, providing choice, and maintaining downward pressure on prices. Unfortunately, this is not what we observe in the New

Zealand electricity market. The current market is failing to deliver as intended for consumers and the broader New Zealand economy. The current situation is unsustainable and must be addressed with urgency.

In our view, achieving greater separation between generation and retail functions is essential to promoting a fairer and more competitive electricity market.

We support regulatory measures being introduced to ensure that independent retailers can procure electricity on terms and rates that are genuinely comparable to those available to gentailers. This would reduce current disparities, enabling independent retailers to compete more effectively and, ultimately, deliver better choices and outcomes for consumers.

We agree a sudden move to complete ownership separation could be unnecessarily disruptive. Implementing targeted measures to enforce functional separation within existing ownership structures could create a more level playing field without the need for drastic structural changes.

However, it is important to consider complete ownership separation as a backstop option if these measures do not achieve the desired results. Full separation should remain a viable policy alternative if functional separation fails to address the existing competitive imbalances, ensuring that the market remains accountable, and consumer interests are protected.

3. Our answers to your questions

Our responses to the specific questions in the consultation document are attached in appendix 1.

Thank you for the opportunity to provide comment.

Appendix 1

Submitter	Consumer NZ
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Questions	Comments
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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.

Whether electricity generators and retailers should be structurally separated has been debated since the retail market opened more than 25 years ago. While the theoretical benefits of vertical integration are well known, our experience at the consumer level suggests these benefits have not been realised in practice.

In theory, vertical integration could benefit consumers by enabling gentailers to hedge internally, reducing their exposure to wholesale price volatility and lowering risk premiums. This, in turn, could support more stable and potentially lower retail prices.

Integration could also allow for greater operational efficiency through improved coordination between generation and retail functions, which should serve to reduce prices.

In addition, gentailers should be better positioned to invest in new generation assets, drawing on the scale of their retail customer base and financial resources.

However, we are not seeing these theoretical benefits flow through to consumers in practice suggesting the supposed consumer benefits of integration are not materialising. Instead, we observe the following.

- **Retail prices have risen significantly: Even after adjusting for inflation, average residential prices are now around 35% higher than when the market opened.¹**
- **Market concentration persists: Around 84% of consumers remain with one of the four largest gentailers, and independent retailers continue to struggle to gain a foothold.²**
- **Barriers to entry are high: Independent retailers tell us they are unable to access hedge products at competitive rates. As a result, independent retailers periodically request that they be hidden on the Powerswitch results page due to the risks of acquiring too many new customers without adequate hedging.**
- **Innovation is stifled: The independent retailers that typically drive innovation have not flourished in New Zealand, despite success in comparable overseas markets. As a result,**

	<p>many New Zealand consumers miss out on new offerings and pricing models that would benefit their circumstances.</p> <ul style="list-style-type: none"> • <u>Security of supply concerns persist:</u> New Zealand has faced several dry-year energy crises, suggesting the supposed investment benefits of integration are not materialising. • <u>Consumers are not engaging with the market as expected as trust has been eroded:</u> Many consumers feel disengaged with and disempowered by the electricity market, questioning both its fairness and transparency. • <u>Wholesale market transparency remains limited,</u> further disadvantaging independent participants and reducing confidence in the system. <p>In summary, while vertical integration may offer efficiencies on paper, these have not translated in practice to lower prices, improved reliability, or more vibrant competition for New Zealand households. On the contrary, current arrangements appear to reinforce incumbent advantages, limit innovation, and erode consumer confidence in the market.</p>
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¹ MBIE. 13 March 2025. [Energy prices](https://www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-statistics-and-modelling/energy-statistics/energy-prices) (residential price (real) 2000: 24.5c/kWh, 2024: 33.06c/kWh). Ministry of Business, Innovation and Employment (MBIE). URL: www.mbie.govt.nz/building-and-energy/energy-and-natural-resources/energy-statistics-and-modelling/energy-statistics/energy-prices.

² EMI. 2025. [Market share trends](https://www.emi.ea.govt.nz/Retail/Reports/R_MST_C?DateFrom=20240401&DateTo=20250331&RegionType=NZ&Grouping=T5&Percent=Y&_rsdr=L12M&MarketSegment=Res&_si=p|2,v|3). Electricity Authority. URL: www.emi.ea.govt.nz/Retail/Reports/R_MST_C?DateFrom=20240401&DateTo=20250331&RegionType=NZ&Grouping=T5&Percent=Y&_rsdr=L12M&MarketSegment=Res&_si=p|2,v|3.

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?

Yes, we agree. The outcomes in the residential electricity retail market are not consistent with what we would expect from a properly functioning competitive market. Vertical integration, combined with market concentration, appears to be reinforcing the market power of gentailers and limiting true competition to the detriment of consumers.

The evidence includes:

- **High market concentration**: Around 84% of residential customers remain with one of the four largest gentailers.³ Independent retailers have struggled to gain market share, despite competitive pricing and innovative offers, suggesting that the playing field favours incumbents.
- **Recent retail market stagnation**: New entrants face significant barriers, particularly in accessing hedging products at competitive rates. The retail market shows few signs of the innovation we would expect in the face of the emergence of new technologies such as automated domestic load control, solar generation, battery storage, electric vehicles, and artificial intelligence.
- **Persistently high prices**: Since at least 2019, forward wholesale prices have consistently exceeded the estimated long-run cost of generation, indicating that the market is not functioning as intended.⁴ As wholesale costs are ultimately reflected in retail prices, any failure or inefficiencies in the market eventually leads to higher electricity bills for consumers than they otherwise would be.
- **Low switching despite potential savings**: While tools like Powerswitch show that many households could save hundreds of dollars per year by switching, actual switching rates remain relatively static.⁵ This suggests a lack of consumer engagement or confidence, potentially due to perceived complexity or distrust in the fairness of the market.

In Consumer NZ's view, these trends reflect the competition failures inherent with vertically integrated gentailers operating in a concentrated market.

	<p>Without stronger competitive pressures and better access to hedging tools for independent retailers, these risks will continue to undermine the potential benefits of the electricity market for residential consumers. Ultimately it is consumers that end up shouldering the burden of a market that is not delivering competitive outcomes.</p>
<p>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?</p>	<p>While vertically integrated smaller gentailers such as Nova and Pulse do not currently raise the same level of competition concern as the large incumbent gentailers, we believe that consistent rules should apply across the board. Applying a uniform set of Level Playing Field measures ensures fairness, promotes transparency, and reduces the risk of regulatory loopholes being exploited.</p> <p>Attempting to draw thresholds based on size or market share introduces complexity, increases regulatory burden, and creates opportunities for gaming the system, for example, through strategic corporate structuring or customer base management to remain below thresholds. A clear, consistent framework is both easier to administer and more likely to maintain competitive neutrality across the market.</p> <p>In our view, proportionate compliance requirements can ensure that obligations are not unduly burdensome for smaller players, while still upholding the principles of fairness and competition.</p>

³ Ibid at 2.

⁴ EA. July 2022. [Concept Consulting: Generation investment survey, July 2022](http://www.ea.govt.nz/documents/2156/information-paper-Generation-Investment-Survey-2022-Concept-Consulting-.pdf). Electricity Authority (EA). URL: www.ea.govt.nz/documents/2156/information-paper-Generation-Investment-Survey-2022-Concept-Consulting-.pdf

⁵ EMI. 2025. [Switching trends](http://www.emi.ea.govt.nz/Retail/Reports/R_SwT_C?DateFrom=20200401&DateTo=20250331&MarketSegment=Res&ShowAs=Rate12M&_rsdr=L60M&_si=s|ra,tg|consumer-switching,v|3). Electricity Authority. URL: www.emi.ea.govt.nz/Retail/Reports/R_SwT_C?DateFrom=20200401&DateTo=20250331&MarketSegment=Res&ShowAs=Rate12M&_rsdr=L60M&_si=s|ra,tg|consumer-switching,v|3

<p>Q4. Are there other specific areas (other than access to hedges) where gentailer market power and vertical integration are causing competition concerns?</p>	<p>Yes, access to consumer data, particularly smart meter data, remains a barrier to effective retail competition.</p> <p>Gentailers currently have both the ability and the incentive to restrict access to this data, especially for independent switching tools like Powerswitch. In contrast, independent retailers have actively supported broader access, recognising that it would promote greater switching.</p> <p>When consumers (or their agents) have timely, accurate access to their usage data, they are far more likely to understand the potential savings available through switching and to act on that information.</p> <p>The current information asymmetry reinforces the status quo, dampening competitive pressure and limiting consumer engagement.</p> <p>Improving access to smart meter data would help level the playing field, enabling more accurate and personalised comparisons, and empowering consumers to make informed choices. This is a crucial step toward increasing competition in the retail market and delivering better outcomes for households.</p>
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<p>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?</p>	<p>Yes, Consumer NZ strongly supports the introduction of proportionate Level Playing Field measures to address the ongoing competition risks related to hedging and firming.</p> <p>Consumer NZ has raised concerns about these issues for many years. The current arrangements are not delivering fair or efficient outcomes for consumers, and maintaining the status quo is no longer tenable.</p> <p>Well-functioning markets can deliver real benefits to consumers, such as lower prices, increased innovation, and greater choice. However, these outcomes are not being realised in New Zealand’s electricity market. Instead, the lack of access to affordable hedging products for independent retailers is entrenching the dominance of vertically integrated gentailers and stifling competition.</p> <p>Introducing targeted and proportionate measures would help level the playing field, enable more effective retail competition, and ultimately deliver better outcomes for consumers and the wider economy.</p>
<p>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?</p>	<p>As a consumer advocacy organisation, we do not have the specialist economic expertise to comment in depth. However, our impression is that the options have been thoroughly researched and considered in the New Zealand market context. We assume the Electricity Authority has access to subject matter experts that have identified a sound set of options to address the issues.</p>
<p>Q7. Are there any other important factors we should consider when identifying options (see paragraphs 4.2 to 4.5)?</p>	<p>As a consumer advocacy organisation, we support beneficial consumer outcomes being prioritised over industry self-interest. As noted above, achieving this will require a change in regulatory approach. The primary objective of regulatory settings should be to deliver fair, affordable, and reliable services for consumers—not to protect the status quo or the commercial interests of incumbent market participants.</p>

<p>Q8. Are there other key features, pros or cons we should consider in our description of the four Level Playing Field options?</p>	<p>No comment.</p>
<p>Q9. Have we identified the right criteria for assessing Level Playing Field options (Figure 6)? Is there anything we should add or remove?</p>	<p>See question 6.</p>
<p>Q10. Do you agree with our application of the assessment criteria (Table 5)? Are changes needed to the colour coding or reasoning?</p>	<p>See question 6.</p>
<p>Q11. Are there any other material benefits or risks that should be considered (but are currently not) in our assessment of options?</p>	<p>No comment.</p>

<p>Q12. Do you agree with our selection of non-discrimination obligations as our preferred Level Playing Field measure? Why/why not?</p>	<p>Consumer NZ’s long-standing preference is for full separation of generation and retail to address the underlying competition issues in the market. However, we recognise that a solution is required urgently – and full separation without disruption would require an extended timeframe to achieve. It is imperative that independent retail options are available to consumers. The current inability of these retailers to secure hedges on equal terms is materially undermining competition and consumer choice.</p> <p>While not our preferred long-term solution, we accept that non-discrimination obligations represent a practical step that can be implemented quickly to begin addressing the imbalance. If this measure fails to deliver meaningful improvements, such as improved access to hedging, greater retail competition, and better outcomes for consumers, we believe full structural separation should be considered.</p>
<p>Q13. What are your views on our proposed roadmap for the implementation of non-discrimination obligations?</p>	<p>We are not an industry participant and therefore cannot comment in detail on the operational or technical practicalities of the proposed roadmap. However, the staged approach appears to be a sensible and proportionate response.</p> <p>We support the principle of starting with the least intrusive intervention and escalating only if the intended outcomes are not achieved. This approach allows for timely action while preserving the ability to apply stronger measures if necessary. It also signals to the industry that meaningful change is expected, with clear consequences if the market fails to deliver.</p>

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?

In our view, non-discrimination obligations should apply to *all* hedge products, not just super-peak hedges. Limiting the obligations to only a subset of hedge contracts risks undermining the intent of the policy and could create loopholes that reduce its effectiveness.

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

No comment.

<p>volume (at paragraph 13 of Appendix B)?</p>	
<p>Q16. Do you agree that escalation options are needed if principles-based non-discrimination obligations are implemented initially? Why/why not?</p>	<p>We agree that escalation mechanisms are a critical safeguard to protect consumers and uphold the integrity of the regulatory framework.</p> <p>While principles-based obligations can be a constructive starting point, providing flexibility and encouraging industry buy-in, they rely heavily on good faith implementation and effective monitoring. If these obligations do not achieve the intended outcomes, or if there is evidence that gentailers are failing to comply or are actively circumventing or undermining the spirit of the requirements, then escalation mechanisms become essential.</p> <p>Escalation options provide a necessary backstop. They help ensure that there are meaningful consequences for non-compliance, and they enable regulators to act swiftly and proportionately where market behaviour deviates from the principles. Without clear pathways for escalation, there is a risk that the non-discrimination objectives will be weakened over time by inconsistent application or deliberate avoidance.</p>

<p>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)?</p>	<p>No comment.</p>
<p>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?</p>	<p>No comment.</p>

<p>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?</p>	<p>No comment.</p>
<p>Q20. Do you have any views on the triggers for implementing the stronger regulation proposed in our roadmap?</p>	<p>No comment.</p>
<p>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?</p>	<p>No comment.</p>

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?

No comment.