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Submissions  
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## **ERGANZ SUBMISSION ON LEVEL PLAYING FIELD MEASURES**

The Electricity Retailers' and Generators' Association of New Zealand ('ERGANZ') welcomes the opportunity to provide feedback on the Electricity Authority's consultation paper, 'Level playing field measures' from October 2025.

ERGANZ is the industry association representing companies that sell electricity to Kiwi households and businesses. Collectively, our members supply almost 90 per cent of New Zealand's electricity. We work for a competitive, fair, and sustainable electricity market that benefits consumers.

### **Executive summary**

These proposals are a material improvement over the previously consulted on proposals from May 2025. Compared with the first Level playing field consultation, the provisions contained in this consultation paper are an improvement. It is positive that the Authority has pulled back from virtual disaggregation and mandated internal portfolios. We note the Authority now accepts there is no clear evidence of margin squeeze or predatory pricing, that predatory pricing is unlikely, and that baseload hedges look competitive.

However, ERGANZ still has strong reservations with key planks of the revised regime and believe that many elements remain unworkable in their current format.

The sector is currently undertaking the largest privately funded investment cycle in New Zealand's recent history, with multi-billion-dollar programmes underway across geothermal, wind, solar, batteries and major hydro renewals. Regulatory predictability is therefore essential. The proposed principles-based regime, if implemented pragmatically, strikes a more appropriate balance between enhancing confidence in a level playing field and maintaining the investment settings needed to deliver new capacity, system flexibility and long-term consumer benefits.

ERGANZ notes the findings of the recent government-commissioned review by Frontier Economics which found:<sup>1</sup>

*“In general, the market design works well, provided there is enough capacity and energy, so we do not see a need for fundamental changes to the design of wholesale markets.”*

## **Background**

New Zealand is currently in the middle of the most significant investment cycle the sector has ever seen, larger than the ‘Think Big’ period of the 1970s and 1980s.<sup>2</sup> Recent updates show ERGANZ’s members are investing in multi-billion-dollar programmes across geothermal, wind, solar, large-scale batteries and major hydro renewals, all aimed at delivering a more flexible and reliable system as demand grows and gas production declines. This scale of capital investment heightens the importance of a stable, predictable regulatory environment.

Our members are proud that New Zealand’s progress from around 80% to nearly 95% renewable electricity generation by 2027 is being delivered through private-sector investment and risk-taking. Contact is pursuing a pathway to materially higher geothermal generation, new solar and up to 1GW of battery capacity, Meridian is progressing a pipeline of at least seven new renewable or storage projects alongside the renewal of the Waitaki scheme, and Genesis is investing in firming options at Huntly, gas storage and a 2.5GW renewables pipeline to underpin security of supply.<sup>3</sup>

Yet, more needs to be done. Further decarbonisation and dry-year resilience will require continued large-scale commitment to firm geothermal, batteries, hydro upgrades and other firming solutions. At the same time, gentailers are acutely aware that this build-out is taking place in an environment, with households facing higher overall electricity bills and intense scrutiny of the sector.

Against this backdrop, the Authority’s Level playing field reforms, including new non-discrimination obligations, must be carefully calibrated so they address genuine competition concerns without undermining the ability of gentailers to finance and deliver the new capacity and flexibility New Zealand’s future economic growth now relies on.

## **Submission points**

ERGANZ acknowledges that the Authority has materially improved its Level playing field package since the May 2025 consultation by stepping back from structural remedies and abandoning the internal hedge portfolio concept. However, our members retain significant concerns about the justification, proportionality and workability of several core elements of the revised proposal.

The move to a principles-based non-discrimination regime for the four large gentailers is a material improvement on the earlier consultation, which contemplated a more prescriptive three-step escalation pathway. We consider the new approach better calibrated to the Authority’s stated

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<sup>1</sup> Frontier Economics, May 2025, ‘Review of Electricity Market Performance’, page 3.

<sup>2</sup> Boston Consulting Group, October 2025, ‘Energy to Grow’, page 7.

<sup>3</sup> Business Desk, 28 October 2025, ‘Contact, Meridian and Genesis outline multibillion-dollar transition plans - and the politics to match’.

competition concerns while avoiding the very significant regulatory risk that the earlier proposals would have introduced into the sector.

ERGANZ particularly welcomes the Authority's decision not to proceed with the earlier ideas around mandated internal hedge portfolios, internal transfer pricing regulations and the potential requirement for all hedge trading to move onto regulated markets if earlier steps were deemed ineffective. Those measures would have been complex and very costly to implement, and would have created ongoing uncertainty for investors in a sector that is currently committing many billions of dollars to new generation and firming assets.

By contrast, the revised proposals are better but there remain significant concerns around the practicality of some remaining elements.

In particular, the evidence base does not demonstrate harm at a level that warrants intrusive firm-level tools such as the Retail Price Consistency Assessment (RPCA) or the proposed uncommitted capacity reporting. Both measures carry substantial risk of misinterpretation, behavioural distortion, and unintended market consequences, and neither aligns with how risk is actually managed.

Our preference is for a more proportionate, outcomes-based monitoring framework focused on observable market signals such as wholesale–retail price relationships, product availability and customer switching trends. We therefore support continued refinement of the principles-based elements of the package, but cannot support embedding RPCA or uncommitted capacity into the Code. A narrower, better-targeted set of reforms would more effectively meet the Authority's statutory obligations under Section 32 while preserving the investment certainty necessary for the very large generation and flexibility programmes currently underway.

If the new obligations are implemented, it will be important that the new provisions, including the RPCA and reporting requirements, is proportionate and accompanied by clear guidance, so that gentailers can comply with confidence while continuing to invest in the new capacity and flexibility the electricity system requires.

### Consultation questions

Questions	Comments
Q1. Do you have any comments on our additional analysis of data to inform the problem definition? Do you have any new evidence to add to any of the elements of the problem definition?	<p>ERGANZ acknowledges the Authority's expanded analysis but remains concerned that the evidence base does not demonstrate a level of harm sufficient to justify several of the more intrusive elements of the proposed package. The Authority's own analysis now accepts that there is no clear evidence of margin squeeze, that predatory pricing is unlikely, and that baseload hedges appear competitive.</p> <p>We therefore encourage continued caution in drawing inferences about discrimination from observed</p>

	<p>differences in prices or products. These differences frequently reflect timing, risk profile, volume, counterparty credit, and bilateral commercial context rather than discriminatory behaviour. At this stage ERGANZ has no new quantitative evidence to add, but member experience aligns with the conclusion that the case for intrusive firm-level regulatory tools remains unproven.</p> <p>ERGANZ notes the findings of the Frontier Report, which states: “None of the above suggests that small retailers find hedging contract terms and conditions acceptable and we have been advised as part of the engagement process that small retailers feel that they are paying too much for contracts. We note that our analysis of the retailing margins (see Section 5.3.3) shows that the smaller retailers generally have higher margins and lower energy supply costs than the gentailers they complain charge them too much.”</p>
Q2. Do you have any new evidence that is relevant to the choice of level playing field interventions to address the identified competition issues?	<p>While ERGANZ does not add new evidence, we note that member experience since the earlier LPF consultation reinforces two themes:</p> <ul style="list-style-type: none"> <li>• That material regulatory risk negatively affects major investment decisions, particularly in a period of unprecedented capital commitments; and</li> <li>• That the issues identified in the problem definition are concentrated in a narrow subset of market circumstances.</li> </ul> <p>On that basis, our view is that intrusive firm-level regulatory interventions (such as RPCA and uncommitted capacity reporting) are not justified, and that a more proportionate, outcomes-based approach would better meet the Authority’s statutory obligations.</p>
Q3. Do you have any feedback on our proposed approach to implementing principles-based non-discrimination requirements, as set out in Chapter 5? If you disagree with elements, how would you improve them?	<p>A principles-based NDO framework might work but only with significant refinement. In particular:</p> <ul style="list-style-type: none"> <li>• Principle 1 requires a tighter, telecoms-style definition of “discriminate,” where only unjustified differential treatment is captured. Competitive price discovery, where prices shift in response to market conditions, is not something that can always be “objectively justified” in real time.</li> </ul>

	<ul style="list-style-type: none"> <li>• Principle 2's minimum offer-open period risks creating one-way bets that distort trading behaviour. Fixing quotes for multiple days in a volatile market creates arbitrage opportunities and discourages market-making.</li> <li>• Principle 4 on equal access to commercial information is not workable in an integrated business. ERGANZ recommends instead that the Authority specify the particular information it wishes disclosed, avoiding broad and ambiguous information-symmetry requirements.</li> </ul> <p>Overall, ERGANZ recommends that the Authority narrow the NDOs to what is necessary, proportionate and targeted, consistent with section 32.</p>
Q4. Do you agree that substituting an RPCA test for a requirement to develop an internal hedge portfolio will be more effective at ensuring non-discriminatory pricing than the proposals in the LPF Options paper? Why or why not?	<p>ERGANZ considers that substituting the RPCA test for a requirement to develop an internal hedge portfolio is a significant improvement on the earlier proposals.</p> <p>The internal hedge portfolio concept was complex, intrusive and would have required substantial re-engineering of internal systems with uncertain benefits, while still providing only indirect insight into actual retail margins and potential margin squeeze.</p> <p>Yet, the RPCA still has serious drawbacks:</p> <ul style="list-style-type: none"> <li>• It is forward looking and therefore assumption driven.</li> <li>• Relies on retailer profitability benchmarks, which are inappropriate because equally efficient retailers may be unprofitable for reasons unrelated to hedging access.</li> <li>• Risks being treated as a bright-line test of compliance even though it cannot account for long-term supply contracts, smoothing strategies, or short-term price volatility.</li> <li>• Requires segmentation, which invites lobbying.</li> </ul>
Q5. Is our proposal around "uncommitted capacity" workable? What suggestions do you have for improving it?	<p>ERGANZ does not consider the uncommitted capacity proposal workable. Member feedback indicates the concept is fundamentally flawed, both technically and conceptually:</p> <ul style="list-style-type: none"> <li>• Gentailers do not manage risk by calculating "excess MWh"; they manage to risk limits,</li> </ul>

	<p>which shift constantly with hydrology, volatility, gas access, and counterparty credit.</p> <ul style="list-style-type: none"> <li>• Available contract volume is not a static stock of MWh. As prices change, willingness to contract changes.</li> <li>• Different contract types have dramatically different impacts on portfolio risk, making any single aggregated number meaningless.</li> <li>• A gentailer may have zero uncommitted capacity yet still be willing to trade, because it can hedge the risk elsewhere; or may have apparent capacity yet be unwilling to trade.</li> </ul> <p>ERGANZ recommends that the Authority not proceed with uncommitted capacity reporting. If transparency is desired, qualitative descriptions of hedging approaches or monitoring of market outcomes would be far more reliable and proportionate.</p>
Q6. Do you have any further evidence, particularly relating to costs or incentives, about the impact of applying NDOs to all risk management contracts rather than just super-peak hedges?	ERGANZ notes that broadening NDOs increases governance and documentation burdens without clear evidence of benefit. Many bilateral trades already reflect even-handed practice. Applying NDOs to all products risks capturing bespoke commercial arrangements where legitimate differentiation is necessary.
Q7. Should large users be included as buyers under the NDOs? If so, is a carve out needed for risk management contracts approved under the MLC regime?	<p>ERGANZ is open to large users being included as buyers under the NDOs, recognising that some large users compete directly with retailers for the supply of smaller commercial or bundled loads and that consistent treatment can support confidence in the hedge market.</p> <p>At the same time, large users are generally sophisticated counterparties with specific risk profiles and bespoke contractual needs, and the NDOs should not prevent gentailers from offering genuinely tailored products or pricing where this is objectively justifiable.</p>
Q8. Should the OTC Electricity Market Working Group be reconvened to assess whether any amendments might be made to the voluntary OTC Code of Conduct to reflect the proposed non-discrimination regime?	ERGANZ sees some merit in reconvening the OTC Electricity Market Working Group to consider how a refreshed OTC Code aligns with the new NDOs could help embed good practice, provide additional clarity on expectations and support industry-led solutions to practical issues that arise.

<p>Q9. Should investment in new flexible generation assets be carved out from the proposed NDOs? Why or why not? If you think new investment should be ringfenced, please provide details of how you suggest any carve outs be implemented.</p>	<p>ERGANZ agrees that underwriting long-lived, capital-intensive flexible assets will require a degree of certainty over future offtake, including from a gentailer's own retail book, and that this should be recognised as a legitimate, objectively justifiable rationale for some differentiated treatment.</p> <p>ERGANZ recommends that the guidance explicitly identifies support for efficient new investment as one of the factors that may justify differences in allocation or terms.</p>
<p>Q10. What impact do you think the revised NDOs will have on retail prices and/or incentives to invest in generation? How does this compare to the impacts you posited in response to the LPF Options paper? Can you share any evidence that supports your view?</p>	<p>The revised NDOs introduce additional compliance obligations and uncertainty, particularly through RPCA and uncommitted capacity requirements. These could reduce pricing flexibility, discourage innovation, and negatively affect investment incentives.</p>
<p>Q11. Do you agree that by providing transparency on margins, the RPCA would materially improve stakeholders' confidence that retailers compete on a LPF for the long-term benefit of consumers? If not, why? Can you share any evidence that supports your view? How could we adjust the test to further improve confidence?</p>	<p>The Frontier Report has already found no evidence to support this critical commentary.</p> <p>The Authority should guard against a risk that RPCA results are misinterpreted if presented without adequate context (for example, short-term fluctuations due to hydrology or wholesale price spikes) or if stakeholders expect margins to be uniform across brands and customer segments.</p> <p>To improve understanding, we recommend that the Authority focuses on trends rather than single-period outcomes, and that the Authority's public reporting includes a narrative explanation of key drivers and limitations.</p>
<p>Q12. What impact do you think the RPCA will have on retail prices and incentives to invest in generation? How does this compare to the impacts you posited in response in the LPF Options paper? Can you share any evidence that supports your view?</p>	<p>The impacts will be less intrusive than those associated with the internal hedge portfolio and ITP regime originally contemplated in the LPF Options paper, which members viewed as significantly increasing regulatory risk. However, further improvements are required as contained in this and members' submissions.</p>
<p>Q13. How could the proposed approach to the RPCA be improved?</p>	<p>Further feedback on the RPCA includes:</p> <p>The methodology should explicitly recognise that reasonable margins can vary across customer segments, brands and regions, and that a range of</p>

	<p>outcomes can still be consistent with effective competition.</p> <p>The Code and guidance should provide for a periodic review of the RPCA framework, so lessons from the first few years of operation can be incorporated without requiring full Code change processes.</p>
Q14. How often should gentailers make and disclose their assessment – should it be more or less frequent than every six months, and why?	<p>ERGANZ’s preference is for the RPCA to be prepared and disclosed annually, at least initially. An annual cycle aligns more naturally with retailers’ financial reporting, budgeting and RGM processes, reduces duplication and compliance costs, and is still frequent enough to identify enduring patterns of concern.</p> <p>Six-monthly assessments may be useful for internal monitoring, but public disclosure at that frequency risks over-emphasising short-term volatility, particularly in a system where hydrology and wholesale prices can move substantially within a year.</p>
Q15. Would it be sufficient for the Authority to provide gentailers with guidance on the methodology for the RPCA or should it be prescribed in the Code, and why?	ERGANZ supports the core RPCA obligation being set out in the Code, but the detailed methodology being provided through guidance rather than fully prescribed in Code. However, the Authority needs to avoid any legal grey zones where it tries to “enforce” guidance.
Q16. If you do not support the RPCA approach, what would you propose instead to demonstrate compliance with non-discrimination principles?	<p>See Question 4.</p> <p>A more proportionate approach would focus on:</p> <ul style="list-style-type: none"> <li>• Monitoring market outcomes (e.g., ASX/OTC price ratios.</li> <li>• Case-by-case investigation of specific concerns.</li> <li>• Enhanced voluntary reporting where needed.</li> </ul> <p>This is more aligned with obligations under Section 32.</p>
Q17. Is the proposed implementation timeline achievable?	No. Establishing the necessary governance, documentation, modelling and reporting frameworks for the NDOs and RPCA will require significant internal effort from gentailers, at a time when the Authority is placing a large compliance burden on all market participants.
Q18. Should the Authority consider adding or removing any particular steps,	Yes. ERGANZ recommends a bedding-in period focused on education, not enforcement. In addition, the Authority should remove uncommitted capacity



or providing more or less time at any point?	reporting and introduce a staged transition for any new reporting.
Q19. Does the proposed approach to implementation provide the right balance between certainty, transparency and flexibility to allow gentailers to demonstrate their compliance with the non-discrimination obligations, and to provide an appropriate basis for enforcement action if they do not?	The main risk is that uncertainty about how concepts such as “objectively justifiable” and “uncommitted capacity” will be applied could chill legitimate behaviour; this can be mitigated through clear guidance, early engagement, and a measured enforcement stance in the initial years.
Q20. Do you support the revised approach of incrementally creating more specification for NDOs or the RPCA as required? Why or why not?	Yes, but ERGANZ only supports the revised approach as a significant improvement on the earlier three-step framework, which contemplated a pre-defined escalation to much more intrusive measures.
Q21. What are your views on the proposed approach to the escalation pathway?	ERGANZ recommends the Authority state in advance the types of indicators that would trigger consideration of further specification, so stakeholders have a shared understanding of what would constitute “failure” of the initial regime. Any significant changes to the scope or nature of the obligations should remain subject to full consultation and impact assessment.
Q22. Do you have any feedback, including suggestions for improvement, on the way that the NDOs will affect buyers seeking firming for PPAs?	An outstanding challenge is to ensure that the NDOs provide confidence to PPA counterparties without undermining the ability of gentailers to design bespoke products that reflect project-specific risks, technologies and financing needs.
Q23. Would it be useful to convene a co-design group to consider a range of flexibility products that suit the needs of independent power generators?	Yes, ERGANZ supports the idea of a co-design group to explore flexibility products that meet the needs of independent generators, provided the group has a clear mandate, is time-limited and includes representation from gentailers, independent retailers and generators, large users and financiers.
Q24. Do you support the proposal to revoke the ITP requirements for gentailers? What are your views on retaining the RGM reporting requirements for independent retailers?	ERGANZ supports the proposal to revoke the ITP disclosure requirements for gentailers. In their current form, these requirements have not delivered sufficient transparency or regulatory value to justify their complexity and cost, and they would have required substantial redesign to support the internal hedge portfolio concept that is no longer being pursued.

Q25. Do you agree with the objectives of the proposed amendment? If not, why not?	ERGANZ agrees with the high-level objectives but remains concerned that several proposed tools are not aligned with Section 32 or with the evidence base.
Q26. Do you agree the benefits of the proposed amendment outweigh its costs?	<p>No, it is probable that the significant implementation and consequential costs from these proposals will outweigh any benefits.</p> <p>While this is significantly improved from the earlier proposed set of reforms, key elements particularly RPCA and uncommitted capacity, impose substantial cost and risk without demonstrated commensurate benefit.</p>
Q27. Do you agree the proposed amendment is preferable to the other options? If you disagree, please explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	Only if significantly modified. A narrower NDO regime may be workable. RPCA and uncommitted capacity are not justified relative to market-outcome-based alternatives.
Q28. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	ERGANZ is not persuaded that the more intrusive elements satisfy the Section 32(1) requirement for efficient regulation. We encourage the Authority to re-test these elements against available alternatives.
Q29. Do you have any comments on the regulatory statement?	<p>Given the potentially significant impact of the changes currently proposed, ERGANZ would expect to see a more detailed Regulatory Impact Statement.</p> <p>ERGANZ encourages the Authority to be explicit about the uncertainties inherent in quantifying dynamic effects on entry, innovation and investment, and to treat its quantitative estimates as indicative rather than precise forecasts.</p> <p>It would also be useful to commit to a post-implementation review by a specified date, to test whether the expected benefits and costs have in fact materialised</p>
Q30. Do you have any comments on the drafting of the proposed Code amendments?	N/A

Q31. Do you have any comments on the draft guidance?	N/A
Q32. Is any further guidance needed to help clarify what constitutes an “objectively justifiable” reason for discrimination under the NDOs? Please explain.	Yes. ERGANZ believes that further guidance on “objectively justifiable” reasons for differential treatment would be valuable for both gentailers and counterparties.

## Conclusion

ERGANZ would like to thank the Authority for considering our submission.

If there are any outstanding questions or a need for further comments, please let me know.

Yours sincerely,

Kenny Clark  
Policy Consultant