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Electricity Authority

By email: [levelplayingfield@ea.govt.nz](mailto:levelplayingfield@ea.govt.nz)

## **Submission on Non-discrimination obligations: Retail Price Consistency Assessment, uncommitted capacity and other matters**

### **Introduction**

Mercuria New Zealand Limited ("Mercuria") welcomes the opportunity to comment on the Electricity Authority's 26<sup>th</sup> February 2026 consultation paper on non-discrimination obligations.

Mercuria New Zealand is part of Mercuria Energy Group, one of the world's largest independent energy and commodities groups, active across global wholesale physical and derivative markets in power, renewables, and environmental products. Since commencing New Zealand operations, we have pursued two key objectives:

1. Supporting and investing in the country's renewable energy transition, and
2. Promoting healthy, competitive wholesale and retail electricity markets.

These objectives are consistent with the Authority's statutory purpose and intent in implementing the proposed non-discrimination obligations (NDOs)

### **Mercuria's role in the New Zealand electricity market**

Mercuria operates in New Zealand as an active participant in NZ electricity and emissions markets. Our Auckland based team transacts with Gentailers, independent retailers, generators, and large industrial consumers. We play three distinct roles:

- **Bridging buy- and sell-side counterparties across tenors and profiles:**  
Mercuria designs shaped and firming hedge products tailored to each counterparty's load and risk appetite, assuming residual risk that many physical participants prefer not to carry.
- **Enhancing forward price robustness:**  
By trading actively across OTC and exchange products, we help identify pricing inefficiencies, contribute to price discovery, and strengthen the credibility of forward curves essential for investment and contracting decisions.
- **Supporting new generation and flexibility investment:**  
Mercuria negotiates offtake agreements to support new investment to come into the market. Efficient access to risk management products allows us to offer competitive, bankable solutions to developers, enabling project financing and construction.

Our participation deepens market liquidity, facilitates innovation in hedge design, and delivers competitive outcomes for independents.

### **Approach to expected cost of electricity**

The requirement in paragraph A.90 of the draft guidance is critical and should be retained. It requires gentailers to explain any material differences between the prices used in their internal "as if" portfolio and those applied in comparable external trades during the same period. This direct link between actual market behaviour and the RPCA calculation ties the non-discrimination obligations firmly to the RPCA and gives the Authority a clear and practical route for enforcement.

Discounts and premia must be applied on an equivalent basis between internal and external supply. Volume discounts available to external counterparties must also be reflected internally on the same terms. Likewise, the valuation of fixed-volume contracts versus variable-volume contracts must be treated consistently in both channels. Gentailers should not apply premia exclusively to external parties while granting equivalent discounts or more favourable terms to their own retail business unit.

### **Non-discrimination in external pricing between buyer classes**

We strongly support the Authority's proposal to expand the required content of the gentailer's non-discrimination policy and to introduce mandatory record-keeping and annual external audits. These enhancements should explicitly require gentailers to set out their methodologies, decision criteria, and engagement practices for ensuring no discrimination between different classes of external buyers. The policy, records, and audit must cover traders, independent retailers, industrial customers, and commercial customers. Gentailers should be required to demonstrate that prices, volumes, and terms offered to each class are equivalent once relevant factors such as credit quality, contract shape, volume, and risk profile are adjusted for. Any systematic favouring of one buyer class over another must be recorded with an objectively justifiable reason, tested through the annual audit, and subject to full enforcement under the NDOs. These steps will help ensure the obligation in clause 13.236P(1) is applied consistently across all external buyer classes and cannot be evaded in practice.

### **Uncommitted capacity**

We support the symmetry rules set out under Option 2. If a gentailer refuses to supply a risk management contract to a third party because of capacity or risk limits, it should be prohibited from supplying an equivalent volume or risk profile to its own retail business unit. This restriction must be documented in the non-discrimination policy and verified through the annual external audit.

In all other circumstances gentailers must provide prices to external parties that are consistent with the non-discrimination obligations. The core NDO principles will continue to require even-handed treatment in pricing and availability regardless of the final decision on uncommitted capacity.

### **Enforcement and monitoring**

Mercuria supports the proposed internal policies, record-keeping requirements, and annual external audits. These are valuable compliance tools but would rely primarily on gentailers reviewing their own conduct. Effective enforcement may call for a broader approach than self-assessment.

We encourage the Electricity Authority to adopt a proactive and independent approach by making full use of the bid and offer data it already receives through Section 2.16 notices. Regular analysis of these data sets would allow the Authority to observe pricing and contractual terms across buyer classes, supporting prompt action where any inconsistencies or potential discrimination arise.

This direct oversight by the Authority will complement the audit regime and gives market participants greater confidence that the non-discrimination obligations are enforced in practice.

### **Conclusion**

We support the Authority's implementation of the non-discrimination obligations together with the targeted improvements outlined in this submission. To ensure the regime is robust and delivers a genuine level playing field, we recommend the following key enhancements:

- Retain and strengthen the requirement in A.90(b) so that gentailers are required to fully explain any differences between the prices used in their RPCA "as if" portfolio and those applied in actual external trades and offers. Discounts, premia, and the valuation of fixed versus variable volume contracts should be applied on an equivalent basis for internal and external supply.
- Extend the non-discrimination policy, record-keeping obligations, and annual external audits to explicitly address and prevent discrimination between different classes of external buyers, including traders, independent retailers, and industrial or commercial customers. Prices and terms should be equivalent once relevant factors are adjusted for.
- Adopt Option 2 for uncommitted capacity and strictly enforce the symmetry requirements so that any capacity or risk-based restrictions apply equally to the gentailer's own retail business unit and to all

external parties, while ensuring external pricing remains aligned with the non-discrimination obligations.

- Ensure the Authority plays an active and independent enforcement role by regularly analysing the bid and offer data received under Section 2.16 notices across all buyer classes, rather than relying primarily on gentailers' self-assessment through policies and audits.

We encourage the Authority to incorporate these enhancements in the final Code amendments and guidance. We thank the Authority for the opportunity to submit and remain available for any further discussion.