Helios

7 May 2025

To: levelplayingfield@ea.govt.nz

Tēnā koutou

Helios is a New Zealand-based solar energy developer committed to supporting Aotearoa's transition to a renewable, resilient, and competitive electricity market. We appreciate the opportunity to provide feedback on the Level Playing Field measures outlined by the Electricity Authority in its February 2025 consultation paper.

Helios supports regulatory reforms that enhance competition, reduce barriers to entry for independent generators and retailers, and improve access to risk management products necessary for financing and constructing renewable energy projects.

General Position

We strongly support measures that:

- Are impactful in the near term, enabling immediate improvement in hedge market access.
- Support a thriving independent generation market, including solar and other intermittent renewable technologies.
- Provide transparent and reliable access to risk management instruments that create enduring investor confidence across both short-term (1-3 yr) and long-term (10-15 yr) horizons to ensure:
    - new generation projects come to market to match growing demand. .
    - No further de-industrialisation occurs in the demand-side of the market, and
    - New Zealand can grow by attracting new industrial customers/demand.

We **do not** support immediate vertical disaggregation or structural separation of the Gentailers, which we consider disproportionate and counterproductive to investment confidence. We do, however, believe this is a reasonable and impactful reserve option if alternatives fail to deliver outcomes in short order.

Support for Non-Discrimination Obligations

Helios supports the Authority's preferred approach to implement mandatory non-discrimination obligations as outlined in the proposed three-step progressive framework. This approach appropriately balances urgency with pragmatism.

We endorse:

- The immediate introduction of principles-based non-discrimination obligations to ensure that Gentailers offer hedging products to independent participants on equivalent terms to their internal retail arms.
- The intention to monitor compliance via internal transfer price (ITP) transparency.
- The potential to escalate to more prescriptive measures if competition concerns persist.

This will contribute to increased accessibility of shaped and super-peak hedge contracts for developers and retailers, facilitating solar project bankability and PPAs. We remain concerned that these measures will be insufficient to encourage independent generation only participation in the electricity sector, but believe that independent generators who incorporate trading as part of their business model and independent retailers will benefit from these.

We appreciate that broader policy instruments outside of the scope of the Electricity Authority may be needed to further accelerate investment in renewable generation beyond just-in-time or just-too-late.

We remain concerned that the incentives to build in an anticipatory manner, bringing generation to market in order to lower prices closer to new entry costs, will not be enabled by these initiatives and tight market conditions–resulting in elevated forward pricing–will persist and slow the pace to decarbonisation of energy use. Helios looks forward to the recommendations of the Frontier Economics led electricity market review.

<u>Investor Confidence in Risk Management Products</u>

From a solar developer's perspective, the availability of shaped and firming hedge contracts is important. The current concentration of flexible generation among Gentailers, combined with limited transparency, creates significant commercial risk for developers seeking to structure PPAs with retail offtakers or direct customers.

We believe:

- The proposed non-discrimination regime will help level the playing field and support merchant solar projects and PPA-backed models.
- Standardised products, alongside equitable OTC access, will provide greater certainty in price discovery and contract availability, both essential for financial modelling and investment decisions.

However, we are concerned that these products are only valuable to a subset of market participants, particularly those willing to build trading portfolios to manage their risk positions as a consequence of contracting intermittent generation. Therefore, we conclude that these measures will be necessary but not sufficient to deliver the rate of renewable energy development and electrification of energy use that needs to occur, in a sufficiently urgent timeframe to meet New Zealand's climate ambitions.

<u>Opposition to Virtual Disaggregation</u>

While Helios supports improved competition, we oppose the use of vertical or virtual disaggregation as a regulatory tool at this stage.

Our key concerns are:

- Investor uncertainty: Structural remedies introduce long-term market and regulatory instability, potentially deterring domestic and international capital.
- Implementation complexity: Disaggregation measures are administratively intensive and may undermine the short-term effectiveness of non-discrimination measures.
- Detrimental to coordination: In some cases, vertical integration allows better alignment of generation and retail investment, which can reduce financing costs and improve resilience.

We believe the proposed non-discrimination measures, if properly enforced, are sufficient to mitigate competition risks without resorting to structural intervention.

<u>Recommendations</u>

Helios recommends that the Electricity Authority:

1. Implement principles-based non-discrimination obligations without delay and build readiness for escalation only if needed.
2. Enhance transparency requirements around internal transfer prices and hedge offerings by Gentailers.
3. Monitor market responses closely through performance metrics, including hedge contract liquidity and retail entry trends.
4. Pause vertical or virtual disaggregation approaches unless overwhelming evidence demonstrates their necessity.

<u>Conclusion</u>

Helios appreciates the Authority's role in addressing longstanding competition concerns and creating a more dynamic, transparent, and accessible electricity market.

Thank you for the opportunity to provide feedback on this important issue.

Nāku noa, nā

[redacted]

Jeff Schlichting
Managing Director

Consultation Questions – Helios Energy Submission

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.

From the perspective of an independent solar developer, vertical integration creates barriers to competition by limiting access to long-term risk management products (e.g. shaped hedges) and reducing price transparency. These effects hinder the entry and expansion of new renewable generation, ultimately impacting long-term consumer choice, innovation, and affordability.

We note that any claimed benefits of vertical integration must be carefully weighed against the competition risks in a highly concentrated market, particularly one where four Gentailers control the vast majority of flexible generation.

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, Helios agrees with the Authority's description of the competition concerns stemming from the combination of vertical integration and market power.

The concentration of flexible generation among the Gentailers limits the availability and fair pricing of hedge products required by independent generators (over long-term horizons) and retailers (assumed to be required over short-term horizons) to manage risk. As a developer, we have observed firsthand that the lack of access to reliable shaped hedge contracts raises the cost of capital and impedes investment in new solar generation projects.

The dual role of Gentailers as both competitor and supplier of critical risk management products introduces a strong incentive to discriminate in favour of their own retail arms — either through price, availability, or negotiation behaviour — resulting in a material risk of margin squeeze for non-integrated participants.

Now that the market is in a state of price tension, it is difficult to see a route to gentailers building to anything other than a level that approximates cost of entry plus a margin – i.e there are weak incentives to overbuild due to market concentration. The demand side of the market urgently needs confidence that there is thriving supply competition that gives confidence in long run pricing, triggering investment by large energy consumers in their own decarbonisation efforts.

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?

While smaller Gentailers may present some level of vertical integration, their market share and control over flexible generation is limited. Therefore, the competition risks associated with their activities are not equivalent to those posed by the four dominant Gentailers.

Helios believes that the proposed Level Playing Field measures — particularly non-discrimination obligations — should be targeted only at participants with significant market power, namely the large Gentailers (Contact, Genesis, Meridian, Mercury). Imposing equivalent obligations on smaller firms could have unintended consequences, such as discouraging investment or innovation from new entrants.

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

Yes. Beyond hedge access, vertical integration also creates challenges in the following areas:

- PPA firming and pricing: Independent generators often find that the pricing or availability of firming services from Gentailers is opaque or uncommercial, which discourages long-term offtake arrangements with large industrials and new industrial players, which undermines the bankability of new independent generation coming to market. Refer to Helios recent submission to the EA's consultation on entrant generators options for PPA's for details of our concerns.

- Information asymmetry: Gentailers have access to superior market data, including internal transfer prices and portfolio positions, giving them an advantage over non-integrated participants in both trading and investment decisions.

- Preference for building internally developed projects as opposed to buying projects from, or entering into PPAs with, independent generators, despite their self-developed projects having a higher LCOE. Gentailers who elect to "self build" projects to meet vertical integration ambitions may not fully value the cost and risk of development, progress less efficient / higher cost projects, resulting in (over the long term) higher costs to consumers.

- Retail expansion barriers: New entrant retailers face difficulty competing with Gentailers who can cross-subsidise their retail arms using vertically integrated profits or internal hedging structures.

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?

Yes. Helios strongly supports the immediate introduction of proportionate, principles-based non-discrimination obligations, as outlined in the Authority's proposal.

The evidence presented — including hedge market illiquidity, lack of transparent internal transfer pricing, and PPA firming challenges — supports the conclusion that competition risks are real and active. While there may be underlying fuel or capacity scarcity, the discrimination risks in product availability and pricing cannot be resolved through market-led solutions alone.

Helios does not support vertical or virtual disaggregation as an immediate solution due to the regulatory uncertainty it creates and the potential chilling effect on investment. We believe the Authority's staged, progressive approach to non-discrimination is appropriate, and that vertical or virtual disaggregation measures should remain as a regulatory backstop.

Q6. Do you agree with our assessment of the four Level Playing Field options? Why/why not?

Yes, we agree with the Authority's assessment of the four Level Playing Field options. In particular, we support the conclusion that non-discrimination obligations are the most proportionate and impactful option at this time.

The proposed non-discrimination obligations, particularly with internal transfer price (ITP) transparency, represent a pragmatic and targeted intervention that can yield significant competition benefits, if implemented correctly, without creating undue disruption to the market.

Q7. Do you agree with our proposal to introduce a three-step progressive implementation approach? Why/why not?

Yes, Helios supports the proposed three-step progressive implementation approach. This staged framework provides:

- Clarity and confidence to investors, knowing that early interventions are measured and market-based.
- Flexibility for the Authority, enabling escalation if necessary based on evidence and market behaviour.
- A strong signalling effect, encouraging voluntary compliance and behavioural change from Gentailers even before escalated intervention.

The clarity around escalation pathways also improves regulatory certainty, which is important for long-term infrastructure investment decisions.

Q8. Do you agree with our draft Level Playing Field principles? Why/why not?

Yes, we broadly agree with the draft Level Playing Field principles set out in Appendix B.

We recommend a stronger emphasis on enforceability, particularly regarding non-discriminatory access to long-term contracts and standardised shaped hedge products. Clear guidelines for compliance and oversight mechanisms (such as audit trails and disclosure of ITP portfolios) will enhance confidence in the regime.

Q9. Do you agree with our current view that the principles-based version of non-discrimination obligations should apply to all hedge contracts?

Yes. Applying non-discrimination obligations to all hedge contracts, rather than just super-peak hedges, is essential to avoid distortions or gaming in the market. Selective application risks simply shifting the discriminatory behaviour to other contract types.

Given that shaped and bespoke hedges are critical to renewable developers and independent retailers, all hedge categories — including baseload, peak, super-peak, and shaped OTC contracts — should be covered under the same principles-based framework.

Q10. Are there any alternatives to the approach that we have not considered in this paper that could better address the competition concerns outlined in Chapter 3?

We believe the Authority has taken a comprehensive view of the primary options. However, one additional complementary measure worth considering is publication of standard offer terms by Gentailers for core OTC hedge products (including shaped products). This would increase transparency and reduce the potential for discriminatory, ad hoc negotiation practices.

That said, we agree that the proposed non-discrimination regime, alongside the standardised flexibility product, forms a solid foundation to address the identified risks.

Q11. Do you agree with our assessment of the impact of the proposed Level Playing Field measures on consumer outcomes? Why/why not?

Yes. We agree that improved access to hedge contracts will enable greater retail and generation competition, apply downward pressure on electricity prices over time and support innovation in retail offerings.

A more competitive market will facilitate greater investment in distributed renewables, which is key to New Zealand's energy transition.

Q12. Are there other impacts (positive or negative) of the proposed measures that we have not identified?

A positive impact not explicitly highlighted is the increase in PPA availability and bankability. With more predictable and fair long-term hedge access, industrials and retailers will have greater confidence entering into PPAs with independent generators.

Q13. Do you agree with our proposal to introduce mandatory non-discrimination obligations on the four large Gentailers only?

Yes. The four large Gentailers (Contact, Genesis, Meridian, Mercury) hold the majority of New Zealand's flexible generation and have the most significant ability to influence hedge contract availability and pricing.

Applying obligations to them alone is targeted and proportionate. Expanding the scope to include smaller gentailers or new entrants could discourage innovation or investment, with little competitive benefit.

Q14. Are there any unintended consequences of our proposals that we should consider further?

The most important risk to manage is compliance circumvention — for example, Gentailers offering formally non-discriminatory contracts that are, in practice, unattractive due to timing, complexity, or commercial conditions.

To mitigate this, the Authority should consider, robust monitoring and enforcement mechanisms, counterparty feedback loops allowing independent parties to flag non-compliant behaviour confidentially and definition of clear guidelines for what constitutes "substantially the same terms."

Q15. Do you agree with our proposed approach to virtual disaggregation (as one of the progressive options to support implementation of non-discrimination obligations)? Why/why not?

Yes, if proven necessary. Please see comments above for Helios' rationale.

Q16. Do you agree with our proposed approach to assessing and designing escalation steps? Why/why not?

Yes, Helios agrees with the proposed approach to assessing and designing escalation steps.

The Authority's intention to monitor compliance and effectiveness under Step 1 (principles-based obligations), while concurrently preparing Steps 2 and 3 (more prescriptive or structural measures), is both pragmatic and effective.

We recommend publishing clear performance indicators (e.g., hedge contract liquidity, independent generator/retailer participation rates) to transparently assess progress and build stakeholder confidence.

Q17. Do you agree with our current view that we should develop Steps 2 and 3 in parallel with implementing Step 1?

No response

Q18. Do you agree with our current thinking on how virtual disaggregation could best be implemented, including the principles for how virtual disaggregation might work?

No response

Q19. Are there any alternatives to our proposed approach to escalation steps that we should consider?

No response

Q20. Do you agree with our initial view that virtual disaggregation could provide a backstop response if the progressive approach is unsuccessful?

No response

Q21. Do you agree with our initial view that the implementation of virtual disaggregation would require us to amend the Code?

No response