Responses to stakeholder questions, Level playing field proposed Code amendments consultation, October 2025

Allen Consulting (received 26 October 2025)

Question	Response
What existing (New Zealand and/or international) precedent did the EA draw on for the development of the NDOs and the RCPA (both the Code principles and voluntary Guidelines)? For example, the Authority didn't mention it but the draft Guidance on good faith is clearly an amended version of the Grocery Good Faith Code requirements.	For guidance on the good faith obligation, we have drawn from clause 6 of the Grocery Supply Code 2023, section 4 of the Employment Relations Act 2000, and section 119 of the Contract and Commercial Law Act 2017. More generally, when developing the proposed NDOs (and associated guidance), we have considered several potentially relevant examples, including: • Electricity generation licence conditions in Great Britain (including the Secure and Promote changes in 2014) • Chorus' deeds of open access undertakings for fibre services (UFB and UFB2) • the Commerce Commission's Equivalence and non-discrimination guidance for telecommunications regulation • the voluntary Code of Conduct for participants in New Zealand's Over the Counter Electricity Market.
Why does the Good Faith Guidance exclude the requirement not to act "recklessly, or with ulterior motive"?	While the draft guidance at B.16 has been informed by the elaborations of what good faith involves in the Grocery Supply Code 2023, the Employment Relations Act 2000, and the Contract and Commercial Law Act 2017, the Authority has sought to focus the guidance on the elements of good faith we anticipate are most likely to be relevant to gentailers and buyers in relation to the supply of risk management contracts.

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	However, the proposed obligation to trade in good faith would impose a general obligation and, as set out at B.17, the matters listed in B.16 are not intended to be exhaustive and would not limit the obligation on gentailers to engage with buyers in good faith and in a timely and constructive manner. If a gentailer were to act recklessly or with ulterior motives in respect of a buyer, such conduct would likely be relevant to determining whether the gentailer had engaged with that buyer in good faith. The same would likely apply if a gentailer's trading relationship with a buyer was not conducted without duress. If submitters consider that the guidance should include reference to recklessness or acting with ulterior motives, trading being conducted without duress, or any other matters, we welcome submissions on such additions.
Why does the Good Faith Guidance exclude the requirement that trading be "conducted without duress"?	See the response above.

Why does Principle 1 refer only to discrimination between buyers and not also "against buyers in favour of its own internal business units"?	We have proposed a different approach to the February Options Paper when assessing discrimination between buyers and discrimination in favour of a gentailer's own internal business units. This is because:
	
	• actual hedge contracts can be used as the basis for assessing whether there is discrimination between buyers
	• for assessing discrimination against a buyer in favour of an internal business unit:
	  ○ there are currently not robust and economically meaningful internal transfer prices (hedge contracts) between a gentailer's internal business units
	  ○ we are no longer proposing that gentailers construct economically meaningful internal hedge portfolios as, after reviewing submissions on the February Options Paper, we now believe that this would be impractical and time consuming.

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	A different assessment methodology is therefore needed.
	
	We split Principle 1 (non-discriminatory supply) into three limbs to help clarify our proposed approach.
	
	• Limb (1) addresses non-discriminatory supply **between buyers**. As per the guidance in Appendix B, "a gentailer should deal or offer to deal with buyers on substantially the same price and non-price terms and conditions (including quality, reliability and timeliness of service) as those made available (either expressly or implicitly) to other buyers."
	• Limbs (2) and (3) of Principle 1 address non-discriminatory supply **against buyers in favour of a gentailer's own internal business units:**
	  ○ Limb (2) is focused on non-discriminatory access to uncommitted capacity.
	  ○ Limb (3) is focused on non-discriminatory pricing of risk management contracts, which we expect to be primarily demonstrated through regular retail price consistency assessments (RPCAs).
	
	Our revised approach will more directly test whether gentailers are effectively providing more favourable pricing of hedge contracts to their own retail businesses by requiring them to regularly perform RPCAs. We think this is a more practical approach to NDOs that would be faster to implement and easier to enforce.

Why do Principles 2 and 3 not exclude discrimination between buyers?	See the response above.
What information would the EA need to establish (Principle 3) whether a gentailer has discriminated against buyers in favour of its own internal business units when pricing risk management contracts? If ITPs (or the ITPs used for retail pricing purposes) aren't	We expect to primarily assess Limb (3) of Principle 1 by considering gentailer disclosures regarding the economically justifiable link between the expected cost of electricity supply and their retail pricing (ie, through the RPCAs that gentailers will be required to undertake every six months). We intend to issue guidance on the recommended methodology for undertaking RPCAs, including the information needed as inputs. We expect to begin

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published, how will it be determined whether discrimination occurred?	engagement with stakeholders in late 2025, before issuing final RPCA guidance in April 2026.
Could you please clarify how the proposal "prevent[s] a gentailer from allocating future generation capacity to planned growth in its own retail internal business unit without testing market interest in that capacity"? It wasn't obvious that the definition of uncommitted capacity's reference to "the amount of generation… the gentailer reasonably expects to use to supply electricity to its end customers" excludes planned retail growth or supply to future/new end-customers.	The proposed NDOs are intended to require that a gentailer allocate its uncommitted capacity on a non-discriminatory basis, such that the gentailer does not prioritise supplying its internal business units over buyers. The guidance in Appendix B (see paragraphs B.6-B.9) elaborates on our proposed approach, including specifically addressing the point you raise at B.9.h., which says that "…the non-discrimination requirements under subclause (2) of Principle 1 are not intended to …allow a gentailer to allocate future generation capacity to planned growth in its own retail internal business unit without testing market interest in that capacity". We welcome submissions on the definition of 'uncommitted capacity', or other aspects of the proposed Code change and guidance, if submitters consider that amendments are needed to clarify the treatment of capacity to meet planned growth of a gentailer's own retail internal business unit. More generally, we note the following: • Regular disclosure of uncommitted capacity and reporting of the matters set out in proposed clause 13.236S of the proposed Code, would provide greater transparency on the extent to which constrained access to hedges reflects scarcity, or withholding. This approach is complemented by our intention, subject to consultation, to rely more heavily on market-making to improve liquidity for key wholesale inputs. • We are currently proposing to provide gentailers the flexibility to develop and apply their own methodologies for establishing the amount of, and allocating, uncommitted capacity, reflecting the general and business-specific complexities this may involve. We may choose to refine or standardise this methodology after

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	receiving submissions or during the initial phases of implementation, subject to consultation.
Who has suggested "the apparent lag in investment in new generation reflects a coordinated strategy to raise electricity prices"?	In paragraph 3.11 of the LPF Consultation Paper, we stated: “We have neither found nor been provided with any substantial evidence that the apparent lag in investment in new generation reflects a coordinated strategy to raise electricity prices”. The discussion around generation investment incentives is set out further in paragraphs 3.83-3.98. There is also brief mention of it in the context of vertical integration (paragraph 3.103). For specific claims by submitters about lack of investment by incumbents, see in particular the Matthews Law section of the IER submission. Along with other theories of harm, there is some discussion of tacit collusion/signalling at page 109. Sapere, as part of the Mercury-funded panel, discuss potential anti-competitive withholding of generation investment.
Why doesn't the consultation include cross-submissions?	If submissions on the draft Code amendments raise issues that we consider require additional consultation, we may undertake further engagement on targeted issues with stakeholders in early 2026. We consider that to be a more effective engagement approach at this point than seeking cross-submissions. Throughout this level playing field work the Authority has focussed on effectively engaging with stakeholders. There has been extensive engagement on development of the level playing field proposals, including: • a call for early input (November 2024) • in-person stakeholder engagement sessions (held in March 2025 in Wellington, Auckland and Christchurch) on the February Options Paper, and online Q&A • written submissions on the February Options Paper (closed in May 2025)

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	• online meetings with the Authority Board and Task Force representatives (June 2025) • the current submission process on the proposed Code amendments (due November 2025) • upcoming engagement on development of the RPCA guidance (commencing November/December 2025).

Contact Energy (received 31 October 2025)

Question	Response
Risk management contract prices are the result of competition between sellers and between buyers. The obligation to demonstrate that different commercial terms are based on objectively justified reasons only considers the supply side of that picture. How should major generators treat differences in terms due to competition between buyers? As an example, if a major generator ran a tender for some capacity, would this regime prevent it from picking the highest bidder if that price could not be explained by objectively justified reasons?	The Authority's proposal would require gentailers to provide non-discriminatory access to risk management contracts, accounting for differences in circumstances. In essence, this would require gentailers to allow all prospective buyers an equal opportunity to seek or bid for uncommitted capacity, unless there are objectively justifiable reasons for discriminating against them. As the Authority is focused on competition and price discovery, it expects that prices for available capacity will be determined by market forces, including processes such as open tenders. Accordingly, the proposals are not intended to require gentailers to accept a price lower than the highest bid in an open tender. We invite stakeholders to provide feedback on whether clarification or amendment is required on this point, or to set out further scenarios where they consider that a difference in terms between buyers is justified.
Our capacity to offer risk management contracts is based on sophisticated risk tests. For the same MWh different contracts will have a different impact on these tests, and at different times we will be at different positions on our overall risk position. Is it consistent with the intent of this regime to express uncommitted capacity as a description for how we carry out our risk tests?	Our intention is to create a consistent obligation on gentailers to offer non-discriminatory access to risk management contracts. Understanding each gentailer's uncommitted capacity at regular intervals is a core part of that. We do not wish to interfere unduly in gentailers' commercial processes and are open to those processes also forming part of any gentailer's response to the non-discrimination obligations if appropriate (and if the Authority decides to amend the Code). It is difficult for us to comment further – we have not specifically considered Contact's risk tests as part of this level playing field work, so do not have a view on whether they are fit for the purpose suggested. If you believe your risk tests fulfil the requirements of the proposed NDOs, we would welcome your submissions on whether the definition of uncommitted capacity and other elements of the proposed Code amendments are workable to allow this

	(please include in your response to question 5 of our October consultation paper). It would be useful for any submission to explain your risk tests and how they work, noting any confidentiality. We also welcome stakeholders' feedback on the appropriate approaches to determining uncommitted capacity, and we acknowledge the determination of uncommitted capacity could be principled, prescriptive, or some combination of both. At one end of the spectrum, a principled approach would allow each gentailer to determine their uncommitted capacity consistent with their internal policies and assessment of risk, while at the other end, a prescribed approach would require gentailers to apply a specific method.

Genesis Energy (received 5 November 2025)

Question	Response
[Does the] level playing field RPCA apply to large business customers? It talks to domestic and small business, but also *all retail segments*.	We are interested in stakeholders' views on which customers the RPCA should apply to, and expect to discuss this at the RPCA workshop in December. At this stage, and subject to consultation, the intent is to focus the RPCA (at least initially) on mass market (residential and small business) customers as that is the group most pertinent to competition by independent retailers. However, the Authority is open to feedback on reasons to take such an approach or to extend the RPCA to other customer groups.