

**Re: Update on the new comparison and switching service and upcoming consultation**

Email: [REDACTED]

*This submission was considered within the scope of the Level playing field proposed Code amendments consultation*

Hi Daniel,

Due to the high workload I have with submissions in my role with TLANZ on Privacy, Telecommunications, etc, I am unsure I can do a formal one by 2 December. So if it is ok with you, I am going to list these concerns here for discussion with your team. If they would like more information, I can certainly add it to the list and have our committee provide a formal submission if you would be acceptable to a late filing from us. Currently, the approach is more centred around implementation, but it is unclear whether the proposed changes have taken into account the risk of cartel behaviour and the inability of small retailers to bring an action under the Fair Trading Act. Big boys always win when they own the toys is the standard approach, and the proposed changes must codify the ability for an action to be brought through the EA for formal investigation. Our team have

reviewed [https://www.ea.govt.nz/documents/6611/Reviewing\\_risk\\_management\\_options\\_for\\_electricity\\_retailers\\_update\\_paper\\_follo\\_tK3y81I.pdf](https://www.ea.govt.nz/documents/6611/Reviewing_risk_management_options_for_electricity_retailers_update_paper_follo_tK3y81I.pdf) as part of the investigation, but this creates more questions than answers and more time is needed. Below I detail some initial concerns that have not been addressed in the current discussions in submissions.

- 1 To properly level the playing field with the generators, this must not just be in hedge contracts but also in general. All supplies of electricity to NZX, or under hedge, must be on the same basis to all retailers. To do otherwise creates the risk of cartel behaviour and potential misuse of power. The regulations must provide for reporting and oversight to make sure that there is no price manipulation. Currently, generators have a certain amount of anonymity and, while the general public should not be privy, the regulator must make sure that the generators remain honest. We have seen this behaviour in a number of other industries over the years that followed a similar process.

Currently, the consultation appears to focus on Hedge contracts. We recommend that this be widened to include all supply types

2 Reading through the Q and A these appear to focus more on general application rather than the issues of fair trading and commerce issues that may result in cartel behaviour. With most of our generators being held offshore, binding the entities to proper behaviour is always subject to an understanding of business ethics. Companies are profit-centred industries and ethics to protect consumers seldom weigh in on the argument.

We recommend that the rules incorporate fair trading standards to encompass ethical/standards of behaviour for generators to all retailers.

We think that, if done properly, the approach may be very beneficial long-term. However, we caution that the risks to the market are substantial if the system is not properly managed and reported. We agree with the findings in the 27 February 2025 document "Reviewing the risk management options for electricity retailers" and add that this reinforces our concerns that cartel behaviour is more likely than not, and it will be driven underground due to the complexities in the system.

We are happy to assist further with the approach, but we need more time to investigate the regulations and risks. If your legal team has a draft of the proposals, this may assist us in getting a better handle on the proposed changes being suggested.

Kind Regards,

Lloyd Gallagher LLB. MMS. (Hons)

**Service Team**

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