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Level Playing Field Measures – Proposed Non-discrimination Obligations consultation

Executive Summary

Genesis' position on the key elements of the Authority's proposals is summarised below:

Element	Genesis Position	Alternative / Reference
Non-discrimination principles (Principles 1-6)	Qualified support for modified principles	Schedule B, items 3-4
Definition of "discriminate"	Propose new definition	Schedule B, item 1
Director certification and reporting	Can work with	N/A
Self-reporting	Can work with	Subject to privilege protections
Retail Price Consistency Assessments	**Do not support - exclude**	Market-wide monitoring
Uncommitted capacity reporting	**Do not support - exclude**	Update Security Standards and then market design adjustments to ensure standards met
Revocation of ITP requirements	Support	N/A

The package Genesis can support

To assist the Authority in understanding the framework Genesis could work with, we set out our position plainly:

(a) **Genesis could support** a modified NDO regime as discussed in this submission, including reporting.

(b) **Genesis does not support** the RPCA or uncommitted capacity reporting requirements. These mechanisms lack a sound economic basis, will not

achieve the Authority's objectives, are unworkable, risk unintended consequences and impose disproportionate compliance costs.

(c) **Genesis proposes instead**:

(i) market-wide monitoring of super-peak/ASX price ratios and customer switching outcomes;

(ii) updated Security Standards before any capacity metrics are considered; and

(iii) codified safe harbours, clear definitions, and explicit recognition that competitive tender outcomes satisfy NDO requirements.

If this modified framework is adopted, Genesis could support the NDO regime as a pragmatic (and over time, data driven) means of providing assurance to market participants and other stakeholders that the wholesale electricity market is competitive. In Genesis' view, this modified package delivers the Authority's transparency and confidence objectives in a more proportionate, lower-risk way than the RPCA and uncommitted capacity proposals. The drafting changes required to implement this are set out in Schedules B and C.

1. Introduction

Genesis appreciates the opportunity to provide feedback on the Electricity Authority's (**Authority**) consultation paper "Level Playing Field Measures" dated October 2025 (**Consultation Paper**).

As a vertically integrated generator-retailer, we have direct experience of the benefits that this business model brings to New Zealand's electricity system and, ultimately, to consumers. We also recognise the importance of ensuring market participants and relevant stakeholders have the requisite confidence that the risk management contracts market operates competitively.

Genesis supports the Authority's intent in building understanding and confidence that the wholesale electricity market is competitive amongst market participants and other stakeholders. On this basis, we have qualified support for the non-discrimination principles set out in the proposed Code amendments. However, we have significant concerns about two elements of the proposed package: the Retail Price Consistency Assessment (**RPCA**) and the uncommitted capacity reporting requirement. For the reasons outlined in this submission and set out in the Sapere Report, we consider these mechanisms are not supported by a sound economic basis, will not achieve the Authority's stated objectives and should therefore be excluded from the Code amendments.

If the Authority determines to proceed with these elements, irrespective of our concerns, in the interests of being constructive, Genesis proposes amendments (set out in Schedules B and C) that would make the framework more workable while preserving the Authority's transparency objectives.

Our submission is organised as follows:

(a) **Section 2** set outs out our understanding of the Authority's evolving position.

(b) **Section 3** sets out our position on the NDO elements and the key modifications we consider are required to develop a package we could support.

(c) **Section 4** explains why we do not support the RCPA and uncommitted capacity components of the Authority's proposal and presents an alternative.

Our responses to the specific consultation questions are set out in **Schedule A**. These, and our commentary in sections 2 – 4 should be read alongside:

(i) the economic analysis of the Authority's proposed measures prepared by Sapere Research Group (**Sapere Report**), attached as **Appendix A**;[1]

[1] Murray, K., Hansen, E., Reeve, D., Stevenson, T, Sapere Research Group (2025) *Level Playing Field Measures – Testing the proposed non-discrimination obligations Code amendment*.

(ii) our proposed Code amendments, set out in **Schedule B**; and

(iii) our proposed guidance amendments, set out in **Schedule C**.

2. The Authority's evolving position

Genesis acknowledges the Authority's consideration of submissions on the February 2025 Options Paper and the evolution of its position. We note that the Authority now:

(a) acknowledges there is no evidence of margin squeezing or predatory pricing and accepts that predatory pricing is unlikely in the electricity sector;

(b) recognises that fuel or capacity scarcity - not gentailer conduct - is often the driver of limited access to shaped hedge contracts;

(c) is no longer proposing Step 3 (virtual disaggregation) from the roadmap in the Options Paper;

(d) has removed the requirement for gentailers to develop economically meaningful internal hedge portfolios, accepting submissions regarding the feasibility of this approach; and

(e) accepts that the vertical integration business model has efficiency and competitive benefits and that vertical disintegration or virtual separation is no longer a policy objective.

These are important changes that address some of the most problematic aspects of the earlier proposals. However, the remaining concerns with RPCA and uncommitted capacity reporting are fundamental and these elements should not proceed for the reasons set out below and in the Sapere Report.

3. Genesis position on NDO elements

Genesis does not oppose the Authority's stated objectives of building understanding and confidence amongst independent generators, independent retailers and other market participants that risk management contracts are subject to competitive pressures and pricing and that the wholesale electricity market is competitive.

Sapere's assessment is that the proposed non-discrimination obligations, as designed by the Authority, are not anchored in orthodox competition economics, are unsupported by empirical evidence, and would likely reduce consumer welfare. While Sapere raises more fundamental concerns about the role of non-discrimination obligations as a policy tool - noting the absence of definitive evidence of harm and the risks of unintended consequences - Genesis acknowledges that the Authority may decide to proceed with an NDO framework as a way of providing assurance to the market and stakeholders. We are prepared to work constructively

within that framework, *provided* it remains principles-based and proportionate and does not include RPCA or uncommitted capacity reporting.

On this basis and subject to appropriate modifications to ensure workability and minimise compliance costs as discussed further below, Genesis could work with a framework of non-discrimination principle.

However, our qualified support for these elements is contingent on:

(a) adopting a Code definition of "discriminate" that aligns with established legal precedent;

(b) clarifying the scope of the good faith obligation;

(c) a workable alternative to Principle 4 (access to commercial information) being developed;

(d) adequate protection of commercially sensitive information;

(e) excluding the RPCA and uncommitted capacity reporting requirements; and

(f) adopting our proposed amendments to the Code and guidance as set out in Schedules B and C.

We set out below, the key modifications to the proposed NDO framework and principles that we consider are required in order to develop a package we could support:

3.1 Definition of "discriminate"

The proposed Code amendments do not define "discriminate". This creates uncertainty about the scope of the obligations and the standard against which compliance will be assessed.

The telecommunications sector is the only other New Zealand industry with explicit non-discrimination obligations for vertically integrated entities. Under the Telecommunications Act 2001, objective justification operates as a threshold test: if differences in treatment are objectively justified, they do not constitute discrimination at all. The Commerce Commission's guidance on equivalence and non-discrimination confirms this approach.

The Authority's current drafting reverses this logic. Under the proposed Code, any difference in treatment appears to be presumptively discriminatory, with the gentailer bearing the burden of demonstrating objective justification. This framing mischaracterises legitimate commercial differences as potential breaches requiring defence.

Genesis proposes that the Code include a definition of "discriminate" aligned with telecommunications precedent (Schedule B, item 1):

> *"**discriminate** means to treat a **buyer** differently from another **buyer**, or from the **gentailer's own internal business unit**, in respect of the provision of a **risk management contract**, where such difference in treatment is not based on objectively justifiable reasons."*

This definition establishes that differences in treatment that are objectively justified are **not discrimination**. This provides a clearer compliance framework and avoids the presumption that all differentiated treatment requires justification.

3.2 Clarify scope of good faith obligation

Genesis notes the Authority's confirmation that the matters listed in paragraph B.16 of the draft guidance are "not intended to be exhaustive." While Genesis accepts the principle that gentailers should engage with buyers in good faith, the open-ended nature of the obligation creates uncertainty. Accordingly, Genesis asks the Authority to:

(a) **Clarify the relationship between the Code obligation and the guidance.** If compliance with the listed matters in B.16 is not sufficient to demonstrate good faith, the guidance should identify what additional conduct is required.

(b) **Provide worked examples** of good faith compliance and breach in common trading situations.

(c) **Confirm that commercial decisions made in accordance with published policies do not breach good faith**. In particular, a gentailer should not be regarded as acting in bad faith where it declines or modifies a contract because it is inconsistent with its documented risk management or credit policies, provided those policies are applied consistently across buyers and internal business units.

(d) **Align the good faith obligation with the existing OTC Code of Conduct.** Specifically, the Authority should either:

  (i) cross-reference the OTC Code directly in the guidance as an interpretive aid; or

  (ii) confirm that conduct compliant with the OTC Code will be presumed good faith under Principle 2, absent contrary evidence.

The voluntary OTC Code of Conduct represents market-developed norms that participants have already accepted. The Authority's mandatory obligation should be consistent with, and no more onerous than, this existing standard.

3.3 Principle 4 – equal access to commercial information

Genesis also has concerns about the workability of Principle 4 (equal access to commercial information) in light of the Authority's acceptance that vertical integration delivers efficiency and competitive benefits and that vertical disintegration or virtual separation is no longer a policy objective. Principle 4, as framed, would require an integrated gentailer like Genesis either to construct extensive internal information barriers between generation, trading, risk and retail teams, or to disclose widely the day-to-day commercial information that underpins portfolio management and pricing decisions. In practice, we run these functions in an integrated way to manage hydrology, fuel, plant availability, customer load, and risk in real time.

Requiring staff to second-guess, on an ongoing basis, which internal information flows might trigger "equal access" obligations would create significant governance and compliance cost, and if addressed through disclosure would heighten competition risks by exposing proprietary forecasts, strategies and methodologies to rivals and counterparties.

Genesis therefore asks that the Authority replace the open-ended Principle 4 formulation with targeted and clearly specified transparency requirements in the Code and/or guidance that focus on the additional information the Authority considers necessary to build confidence in the risk management contracts market. This approach would align the principles with the accepted benefits of vertical integration, reduce uncertainty about compliance expectations, and avoid re-creating virtual separation outcomes through the back door.

3.4 Protection of commercially sensitive information

The proposed Code amendments require extensive record-keeping, disclosure, and public reporting. While Genesis accepts appropriate transparency obligations, the framework must include adequate protection for commercially sensitive information.

Genesis asks that the guidance include an explicit carve-out (Schedule C, item 4) confirming that nothing in the record-keeping and disclosure requirements would require public disclosure of:

(a) specific pricing methodologies;

(b) customer-specific terms;

(c) internal forecasts; or

(d) other proprietary business information,

except as specifically required under the Code for the purpose of compliance monitoring by the Authority.

This protection is not merely a matter of commercial confidentiality. A requirement to disclose proprietary methodologies and forecasts would tend to reduce competition as firms converge on similar approaches and reduce innovation. Maintaining diversity in commercial strategies is pro-competitive.

3.5 Self-reporting and legal privilege

Clause 13.236X requires gentailers to self-report alleged breaches of the NDO framework. Genesis queries whether this requirement raises concerns regarding self-incrimination and legal privilege. Genesis proposes that the Authority provide, either in the Code commentary or guidance express recognition that nothing in the Code displaces legal professional privilege.

3.6 Purpose clause amendments

Clause 13.236O(c) includes "facilitate investment in the electricity industry" as a purpose of the NDO subpart.

The Authority acknowledged in paragraph 3.121 of the Consultation Paper that interventions addressing the availability of flexible generation are outside the scope of the LPF work. If investment facilitation is not the target of the current intervention, it should not be included as a purpose.

Genesis recognises the Authority's legitimate concern about investment incentives. However, investment signals in the electricity market are more appropriately addressed through the Security Standards review, and separate workstreams focused on capacity and flexibility. Accordingly, Genesis asks that:

(a) clause 13.236O(c) be deleted; and

(b) clause 13.236O(a) be amended to replace "ensure" with "provide assurance" to better reflect the confidence-building objective.

These amendments are set out in Schedule B, item 3.

4. Genesis does not support the RPCA or uncommitted capacity elements

4.1 Basis for excluding the RPCA

Genesis submits that the RPCA requirement should be excluded from the Code amendments. As discussed in the Sapere Report, the RPCA is not

supported by robust economic evidence and risks false positives and unintended consequences.

As the Sapere Report explains:

> *Competition economics and market theory does not hold that the efficient retail price of each seller will equal its economic cost... any test premised on a tight relationship between cost and price — such as the RPCA — will tend to signal concerns even when prices reflect legitimate competitive dynamics rather than discrimination*. (Sapere Report, section 3.1)

In respect of the RPCA, we note that:

(a) No economic basis for the methodology

The RPCA requires gentailers to demonstrate an "economically justifiable link" between expected cost of supply and retail prices. This assumes such a link can be objectively determined - an assumption that does not hold in competitive electricity markets. In competitive markets, prices are determined by supply and demand, not by cost-plus methodologies. Retailers engage in value-optimising pricing that responds to competitor pricing, customer acquisition objectives, portfolio management, and risk appetite. Requiring cost-price consistency risks imposing a cost-plus regulatory framework on what is intended to be a competitive market.

The Authority itself acknowledged the difficulties with developing robust methodologies, noting in paragraph 5.17 of the Consultation Paper that it is "no longer convinced" that internal hedge portfolios are "the best option for the current circumstances." The same reasoning applies to RPCAs.

Simplified example showing how RPCA misinterprets legitimate pricing

Consider a risk-averse commercial customer who values price certainty. Genesis offers a three-year fixed-price contract that provides budget certainty across multiple financial years. The pricing of this product involves:

Year 1: Wholesale prices spike due to a dry year. The fixed contract price is well below spot-exposed costs. An RPCA snapshot would show the internal business unit receiving a "favourable" price relative to expected cost.

Year 2: Wholesale prices normalise. The fixed contract price is broadly consistent with expected cost.

Year 3: Wholesale prices fall below expectations. The fixed contract price is now above expected cost. An RPCA snapshot would flag this as a potential "inconsistency."

A static RPCA snapshot at any single point would misinterpret this coherent, customer-valued product. The customer wanted price smoothing and budget certainty - exactly what the product delivers. The RPCA cannot distinguish between legitimate risk-based pricing and discriminatory pricing because it ignores, for example, the time-value of risk management. Further forcing RPCA-compliant prices may reduce the availability of long-term smoothed products, or lead to "RPCA-safe" products that do not match consumer risk preferences. Either outcome harms the customer segments that most value price stability.

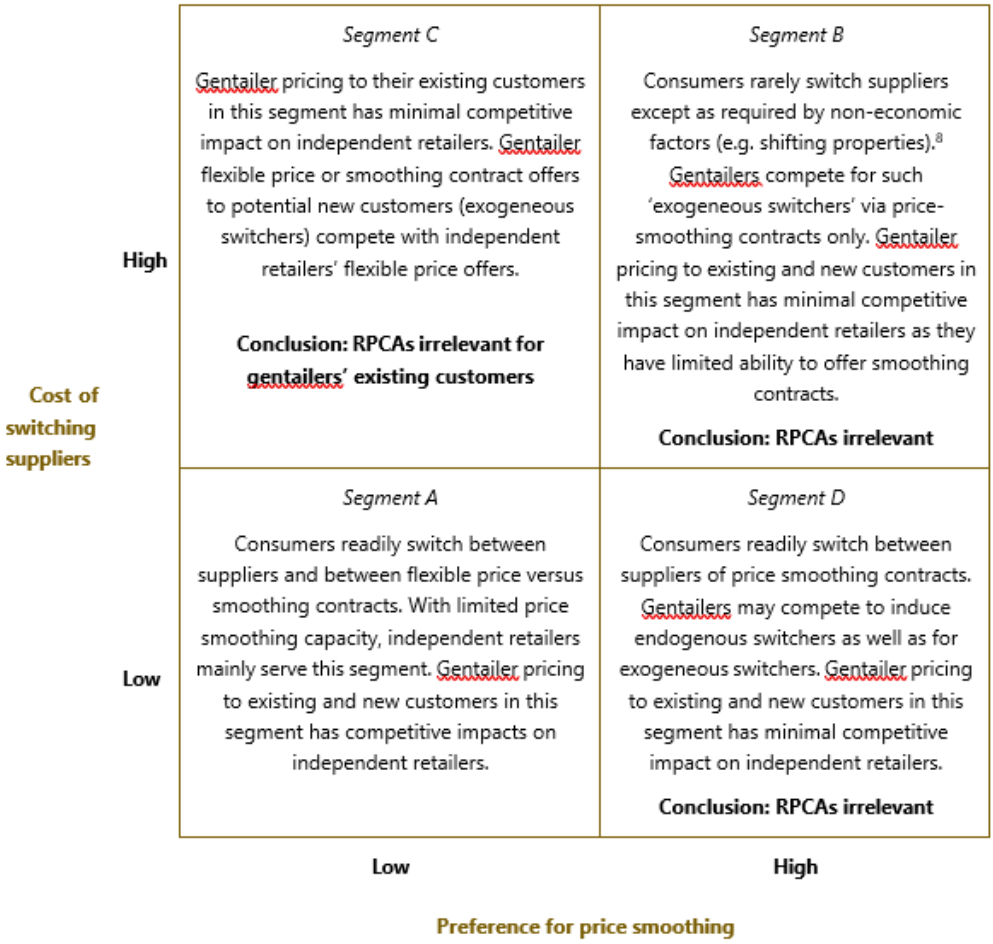
(b) Unintended Consequences

Genesis designs its retail products to meet different customer risk preferences and needs while managing wholesale market risk. In practice this means offering a mix of spot-linked and long-term fixed or price-smoothed products, with pricing that reflects market prices, risk, credit, volume characteristics and commercial strategy in relation to a particular product or market segment, rather than any simple cost-plus relationship. Embedding an RPCA-style framework into this process could risk constraining product innovation and reduce the availability of long-term price-smoothed options for risk-averse customers.

(c) RPCAs are irrelevant for most customer segments

The Sapere Report analyses the retail electricity market by reference to customer preferences for price smoothing and switching costs. Sapere's customer segmentation analysis shows that the RPCAs are irrelevant to the Authority's objectives for three of the four segments identified:[2]

[2] Sapere Report, section 3.3 and Figure 2.



For segments B and D, Sapere finds that gentailer pricing to existing and new customers has minimal competitive impact on independent retailers: independents have limited ability to offer price-smoothing contracts (given their business model and choice not to invest in physical generation), and switching patterns mean gentailers' pricing has little effect on independents' competitive position. For gentailers' existing customers in segment C, Sapere likewise concludes RPCAs are irrelevant. Instead, as Sapere conclude, the proposals protect particular competitors rather than the competitive process.

(d) Competitive price discovery already satisfies non-discrimination requirements

Genesis notes the Authority's response to Contact Energy's question regarding competitive tenders:

> *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.*

This confirmation is significant. It establishes that where prices are determined through competitive processes, the resulting price is by definition non-discriminatory, regardless of whether it can be explained through cost-based analysis.

Genesis asks that this principle be codified in the guidance (Schedule C, item 1). If competitive outcomes satisfy NDO requirements without cost-based justification, then the RPCA mechanism is unnecessary for transactions occurring through market-tested mechanisms.

4.2 Basis for excluding uncommitted capacity analysis and reporting

Genesis submits that the uncommitted capacity reporting requirement should be excluded from the Code amendments. In addition to Sapere's analysis and conclusions outlined below, the concept of "uncommitted capacity" bears no relationship to how Genesis actually manages risk and decides whether to contract. For example, we assess new risk management contracts using portfolio and risk lenses. Our operating environment is complex and dynamic - risk exposure moves constantly with hydrology, spot price volatility, fuel availability, demand, plant constraints and other factors. Accordingly, any snapshot of uncommitted capacity would be out of date almost as soon as it is calculated. Further, the volume of contracts that can be offered at any point in time reflects a supply curve: as prices and risk exposure change, the volume we are prepared to contract also changes. Far from providing a useful indicator of available capacity, such a metric would be operationally unworkable, drive considerable complexity and compliance costs, and would likely confuse, rather than inform, market participants about the true availability of risk management products.

Similarly, on Sapere's analysis, the uncommitted capacity concept cannot be implemented in a way that produces meaningful, comparable information and will not deliver the outcomes the Authority seeks for confidence in the risk management contracts market. As outlined below and discussed in detail in the Sapere Report:

(a) Any portfolio-level measure will be uninformative and potentially misleading

The Authority proposes to infer potential withholding by requiring gentailers to calculate and report "uncommitted capacity" at a portfolio level. Sapere concludes that any such measure will be methodology-dependent, non-comparable across gentailers, and, when aggregated, will fall short of the firm capacity implied by whole-of-system security standards because risk is less diversified at portfolio level. This shortfall arises from the mechanics of applying Security Standards and Security Standard Assumptions to individual portfolios, not from withholding or under-utilisation of capacity.

In addition, Sapere notes that the power system is already struggling to meet even the existing, outdated Security Standards. In that context, portfolio-level calculations are not going to show meaningful "uncommitted" capacity, because prudent security allowances absorb available capacity. Any measure of uncommitted capacity constructed on this basis will be uninformative at best and misleading at worst, and requiring gentailers to publish such numbers risks creating false signals of withholding and undermining, rather than enhancing, confidence in the market.

(b) Security Standards must be updated first – and even then an uncommitted capacity metric would add little value

Any methodology for calculating uncommitted capacity must be grounded in the Security Standards and Security Standard Assumptions. The current Assumptions date from 2012 and do not reflect:

(i) current generation mix (significant increase in intermittent renewables);

(ii) fuel availability constraints (domestic gas supply issues);

(iii) demand characteristics (electrification, demand response evolution); and

(iv) new technologies (grid scale battery storage).

Sapere advises that the first step in determining whether there is any uncommitted capacity, after prudent security allowances, and in establishing what the power system needs for an appropriately secure outcome is to reassess the Security Standards and Security Standard Assumptions so they reflect current generation, demand and technology. After establishing updated Security Standards, the next priority is to adjust market design so that those standards are met in practice.

Sapere then observes that, at that point, it would be possible to establish meaningful benchmarks of uncommitted capacity, but such a measure would become irrelevant. In a workably competitive market with prudent security margins, any party will be able to price risk, and physical generation will not be the only way to manage contracting risk.

Genesis therefore considers that the Authority should focus its efforts on updating the Security Standards and associated market design, rather than embedding an uncommitted capacity reporting regime that is unlikely to be robust, risks misinterpretation, and does not materially advance the Authority's stated confidence and transparency objectives.

4.3 Efficiency, proportionality and section 32 considerations

The Authority must be satisfied that the proposed Code amendments are consistent with its statutory objective and meet the requirements of section 32 of the Electricity Industry Act 2010 (**Act**). Genesis submits that the RPCA and uncommitted capacity reporting requirements do not satisfy this test.

We do so on the following basis:

(a) No demonstrated harm to justify intrusive intervention

The Authority has accepted that:

(i) there is no definitive evidence of margin squeezing or predatory pricing and that predatory pricing is unlikely in the electricity sector;

(ii) fuel or capacity scarcity - not gentailer conduct - is often the driver of limited access to shaped hedge contracts;

(iii) the Authority's Risk Management Review found that prices for ASX baseload, and OTC baseload and peak hedge contracts were likely to be competitive; and

(iv) the vertical integration business model has efficiency and competitive benefits and that vertical disintegration or separation is no longer a policy objective.

After analysing the Authority's proposal, Sapere concludes that:[3]

(i) The Code amendments proposed by the Authority are not anchored in orthodox competition theory and are not supported by empirical evidence.

(ii) That the Authority does not claim that any gentailer has the substantial market power required for classic foreclosure or margin-squeeze theories, nor has it identified evidence of competitive harm.

(iii) That RCPA approach will fail to achieve the Authority's objective and instead result in ambiguity and noise rather than reliable signals and valuable information about the competitiveness of the retail market.

(iv) The proposed Code changes would likely lead to reduced welfare for consumers.

(v) The beneficiaries would be specific firms not competition – conflicting with a fundamental principle of competition policy

[3] Sapere Report, Sections 2 – 4.

that competition rules should protect the competitive process rather than particular competitors.

(vi) That the major deficiencies they have identified mean that the RPCA is not a fit-for-purpose regulatory tool for assessing competitive pricing or non-discrimination, is unlikely to enhance confidence and should not be adopted as a recurring Code obligation.

Genesis agrees, and considers that, on the evidence before the Authority, that the Authority does not have a sufficient basis to justify imposing RPCA or uncommitted capacity reporting under section 32 of the Act. The most intrusive elements of the proposed regime - the RPCA and uncommitted capacity - do not target any clearly demonstrated harm. They are being proposed as transparency and confidence measures, yet their complexity and compliance burden far exceeds what is necessary for those purposes.

(b) Increased compliance costs certain and material despite there being no material benefits

As discussed above the Authority's proposals will not deliver the outcomes the Authority intends. However, they will impose material initial and ongoing compliance costs. These would be driven by:

(i) New / modified models and systems: Implementing RPCA will require changes to existing models or new models to calculate expected costs, reconcile forecasts with actuals, and generate the required outputs on a regular basis.

(ii) Portfolio analytics: To the extent a workable uncommitted capacity definition can be developed (which we consider unlikely given the discussion in section 4.2 above), this may require new portfolio analytics and scenario analysis capabilities, and regular recalibration against changing risk and security assumptions.

(iii) Compliance and assurance costs: Reporting and certification obligations will require enhanced internal governance, legal and internal and external assurance processes. In addition to the implementation costs for these, there will be ongoing costs that would be incurred regardless of contracting / trading volumes.

(c) Consumer harm from conservative product design

Beyond direct compliance costs, the RPCA may create incentives for conservative product design that may harm consumers. For instance:

(i) retailers may reduce or withdraw long-term fixed-price products that create temporary RPCA "inconsistencies" as wholesale prices fluctuate;

(ii) product design may converge toward "RPCA-safe" offerings rather than products tailored to diverse customer risk preferences; and

(iii) risk-averse customers who most value price smoothing options - Segments B and D in the Sapere analysis - would be adversely impacted by reduced product availability.

We consider that a modified monitoring regime, focused on market-wide outcomes rather than firm-specific compliance, avoids these distortions while still providing confidence in competitive market functioning. Given the absence of demonstrated harm and the availability of these less intrusive alternatives, Genesis submits that the RPCA and uncommitted capacity requirements are neither an efficient nor proportionate means of promoting competition for the long-term benefit of consumers and therefore do not satisfy section 32 of the Act.

4.4 Alternative proposal: market-wide monitoring

As outlined above and discussed in detail in the Sapere Report, Sapere's analysis shows that the RPCA approach will fail to achieve the Authority's objective and the proposed RPCA is not fit-for-purpose.

Sapere provides detailed empirical analysis of pricing in the standardised super peak contract market that directly supports the case for market-wide monitoring as an alternative to firm-specific RPCA reporting.[4] Their analysis of trades in the standardised super-peak product since introduction shows that the ratio of super-peak prices to corresponding ASX futures prices has stabilised over time at both Otahuhu and Benmore.

Sapere concludes that:

> *Based on these results it looks as though prices struck for super peak contracts trade as a ratio of the comparable ASX futures prices. That would make sense. The base load contracts reflect the fundamentals of the market. Trade in the super peak contracts just reflect the risk of prices spiking at peak times relative to baseload prices. Shifts in the ratio across the range appear to reflect a meeting of minds on that risk rising or falling. If that is the case the standardised contracts are addressing price discovery. The focus for the Authority, therefore, should be on what can be done to foster the emerging price discovery.*[5]

[4] Sapere Report, Section 4, pages 19-27; Figures 5-8 provide detailed quarterly and node-specific analysis of price ratios across auction dates from January 2025 through November 2025.
[5] Sapere Report, Section 4, page 26.

This pattern indicates that:

(a) **Price discovery is functioning**: Rather than exhibiting the kind of unexplained premiums or discriminatory pricing that would justify intervention, the market is arriving at rational risk-adjusted prices through observable, repeatable transactions.

(b) **Risk premia reflect legitimate market factors**: The variation in ratios across time and nodes reflects genuine differences in risk - peak price volatility, liquidity, location, and contract characteristics - not discriminatory conduct.

(c) **Market mechanisms are self-correcting**: The stabilisation of ratios over successive auctions demonstrates that market participants are reaching consensus on appropriate pricing for the underlying risks.

In short, this is consistent with competitive price discovery and demonstrates that a market-wide indicator is available now, without needing firm-specific RPCA reporting.

On Sapere's analysis, this approach directly targets the Authority's stated confidence objective by focussing on **observable market outcomes**, in contrast to RPCA and uncommitted capacity reporting which focus on firms' internal processes, introduce disproportionate compliance costs, produce ambiguous signals and risk unintended consequences.

Genesis agrees and, accordingly, asks that instead of firm-specific RPCAs and uncommitted capacity reporting that the Authority adopt market-wide monitoring of indicators relevant to its objectives.

The Authority stated in paragraph 3.19 of the Consultation Paper:

> *We have focused our analysis on the pricing of super-peak hedges, as the RMR found that prices for ASX baseload, and OTC baseload and peak hedge contracts were likely to be competitive*.

If ASX prices are competitive, then monitoring the ratio of super-peak prices to ASX prices provides a meaningful indicator of whether super-peak pricing is within reasonable bounds.

Genesis submits that the Authority has a better, low risk tool in front of it and proposes that the Authority:

(i) systematically monitor super-peak/ASX price ratios by node and maturity;

(ii) publish regular analysis of trading patterns and price relationships;

(iii) identify any anomalous pricing that warrants further investigation;

(iv) collect and analyse data on customer switching rates by segment, price dispersion across retailers for comparable products, and barriers to switching; and

(v) use this analysis to provide confidence to market participants about the functioning of the contracts market.

This approach focuses on observable market outcomes and provides market-wide transparency that benefits all participants.

4.5 If the Authority proceeds with RPCA – use RPCA as diagnostic tool only

If despite the discussion above and the Sapere findings, the Authority proceeds with the RPCA, we ask that the guidance be amended to confirm the RPCA is a diagnostic tool only, not a compliance test (Schedule C, item 3).

This would provide as follows:

> *Given that the expected cost of electricity supply is estimated using forward-looking forecasts which will vary from time to time, it is acknowledged that the retail price consistency assessment is a tool for assessment of pricing of risk management contracts and cannot provide a bright line test for whether pricing is discriminatory. All relevant circumstances must be considered on a case by case basis.*

4.6 If the Authority proceeds with uncommitted capacity reporting - safe harbours and amended uncommitted capacity definition required

If despite the discussion above and the Sapere Report findings, the Authority proceeds with uncommitted capacity reporting:

(a) Safe harbour treatment for legitimate capacity allocations: Genesis proposes that the following categories of capacity allocation should be explicitly excluded or recognised as objectively justifiable committed capacity:

(i) Existing contractual commitments: Capacity subject to existing firming contracts or equivalent arrangements with third-party counterparties (including the Huntly Firming Options (HFO);

(ii) Internal hedging arrangements: Capacity reserved to manage wholesale price exposure for retail portfolios, documented in the gentailer's risk management policies.

(iii) Energy security reserves: Strategic fuel reserves and generation capacity maintained to support national energy security.

(iv) Market-tested capacity: Capacity made available through standardised products, published price schedules, or market-making platforms is deemed "tested" for market interest.

Genesis proposes guidance amendments to include explicit safe harbours for these categories (Schedule C, item 2).

(b) Amended "uncommitted capacity" definition: then we ask that the definition be amended to give gentailers greater discretion in determining their uncommitted capacity. Genesis's proposed definition (Schedule B, item 2) provides a less formulaic approach that:

(i) explicitly recognises the gentailer's ability to back risk management contracts with generation capacity;

(ii) includes capacity allocated for documented internal forecasts of organic growth; and

(iii) allows consideration of any other relevant operational, commercial, or risk management considerations including capacity that does not yet have contracted fuel.

5. Conclusion

Genesis supports the Authority's objective of building confidence in the competitiveness of New Zealand's risk management contracts market. We recognize the value of providing assurance to independent generators, independent retailers, and other stakeholders that this market operates competitively.

For this reason, Genesis has qualified support for a modified non-discrimination obligations framework. We could work constructively within such a framework provided it remains principles-based, proportionate, and workable.

However, Genesis cannot support the Retail Price Consistency Assessment or uncommitted capacity elements of the Authority's proposals. As discussed in this submission and the accompanying Sapere Report, these mechanisms:

(a) lack sound economic foundations in competitive market theory;

(b) will not achieve the Authority's stated confidence and transparency objectives;

(c) risk generating false signals of discriminatory conduct where none exists;

(d) impose disproportionate compliance costs without commensurate benefits; and

(e) may distort retail product design to the detriment of consumers who value price certainty.

Genesis proposes instead a market-wide monitoring approach that directly targets the Authority's objectives. Sapere's analysis of super-peak/ASX price ratios demonstrates that meaningful price discovery is already occurring through competitive processes. Monitoring these observable market outcomes provides superior confidence signals compared to firm-specific compliance mechanisms that focus on internal processes and inevitably produce ambiguous results.

The package Genesis could support combines modified NDO principles with competitive safeguards, clear definitions, and market-wide transparency. This approach we submit would deliver the Authority's confidence objectives more effectively and at lower risk than the proposed RPCA and uncommitted capacity requirements. The specific amendments required to implement key elements of a modified framework are set out in Schedules B and C. This would help develop an NDO regime that is a pragmatic, data-driven means of providing market assurance. In our view, this outcome would be consistent with the Authority's statutory objective under section 32 of the Electricity Industry Act without the unworkability and unintended consequences that the RPCA and uncommitted capacity proposals risk creating.

Genesis welcomes the opportunity to discuss these matters further with the Authority.

Yours sincerely

Warwick Williams
Senior Regulatory Counsel | Group Insurance Manager

SCHEDULE A

Responses to Consultation Questions

Question	Comment
Problem definition	
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?	Genesis notes the Authority's additional analysis and the evolution in its position as set out in section 2 of the main submission. The Authority now acknowledges there is no definitive evidence of margin squeezing or predatory pricing, accepts that predatory pricing is unlikely in the electricity sector, and recognises that fuel or capacity scarcity - not gentailer conduct - is often the driver of limited access to shaped hedge contracts. These are important concessions. The Sapere Report provides additional analysis on customer segmentation demonstrating that concerns about retail pricing are only relevant for a subset of customers (those with low switching costs and low preference for price smoothing). For other segments, independent retailers' competitive position is constrained by structural factors unrelated to gentailer conduct. Please see further the analysis in the Sapere Report.
Level Playing Field options (options 1-4)	
Q2. Do you have any new evidence that is relevant to the choice of level playing field interventions to address the identified competition issues?	Genesis does not oppose the Authority's selection of Option 2 (non-discrimination obligations) as the preferred Level Playing Field measure, provided the RPCA and uncommitted capacity elements are excluded as set out in this submission. The Sapere Report provides analysis of trading in the standardised super-peak product since its introduction in January 2025. This demonstrates price discovery is occurring through fortnightly auctions, with prices stabilising as ratios of ASX futures prices. Sapere's analysis shows that prices struck for super peak contracts trade as a ratio of comparable ASX futures prices, indicating that competitive price discovery is functioning through the auction mechanism. This supports market-wide monitoring as a superior alternative to firm-specific obligations.
Approach to applying non-discrimination obligations	
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?	Genesis has qualified support for the principles-based approach to NDOs. We can work with a modified principles-based non-discrimination framework, subject to the amendments discussed in this submission and the changes proposed in Schedules B and C. Our key concerns and proposed improvements are: (a) The Code should include a definition of "discriminate" (see main submission; Schedule B, item 1). (b) The RPCA mechanism should be excluded. If it proceeds, even in a modified form, the guidance should confirm it is diagnostic only (see main submission; Schedule C, item 3).

Question	Comment
	(c) Uncommitted capacity should be excluded. (d) The guidance should confirm that competitive tender outcomes are objectively justifiable (see main submission; Schedule C, item 1).
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?	The RPCA is less problematic than internal hedge portfolios, which the Authority correctly identified as unworkable. However, we do not agree that the RPCA is necessary or appropriate. The Sapere Report demonstrates that the RPCA lacks a sound economic basis in competitive markets. Sapere's customer segmentation analysis shows that RPCAs are irrelevant to the Authority's objectives for three of the four customer segments identified: for segments B and D, independent retailers' comparative disadvantage in offering price smoothing is the source of their limited appeal, not gentailer conduct; for segment C, RPCAs are irrelevant for existing customers since price differentials do not induce switching. The Authority acknowledged in paragraph 5.17 that it was "no longer convinced" that internal hedge portfolios were "the best option for the current circumstances." The same reasoning applies to RPCAs. The worked example in the main submission illustrates how RPCA would misinterpret legitimate long-term smoothed products as "inconsistent" when they are in fact meeting customer needs. We propose market-wide monitoring of super-peak/ASX price ratios as a superior alternative. If the Authority proceeds with the RPCA, we propose the amendments in Schedule C, item 3.
Q5. Is our proposal around "uncommitted capacity" workable? What suggestions do you have for improving it?	No. The proposal is not workable for the reasons set out in this submission and the Sapere Report: 1. Risk concentration means the sum of individual portfolio uncommitted capacity will mechanically be less than system firm capacity. As Sapere concludes, this shortfall "would be a result of the methodology, not evidence of withholding or underutilisation of capacity." 2. The Security Standards date from 2012 and do not reflect current fuel constraints, BESS, solar, or changed demand response patterns. 3. As the Sapere Report concludes, any measure of uncommitted capacity will be "uninformative at best and misleading at worst." If the Authority proceeds with uncommitted capacity reporting, Genesis proposes: (a) the definition be amended as set out in Schedule B, item 2; (b) paragraph B.9 of the guidance be amended to include explicit safe harbours (Schedule C, item 2); and (c) gentailers be permitted to apply their existing risk management frameworks to determine uncommitted capacity. We recommend updating the Security Standards before introducing any capacity reporting concepts.

Question	Comment
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?	Genesis does not oppose NDOs applying to all risk management contracts in principle, provided the RPCA and uncommitted capacity elements are excluded and the NDOs are modified as requested. Principles of non-discrimination and good faith trading can appropriately apply regardless of contract type.
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?	In principle, Genesis does not oppose the inclusion of large users as buyers under the NDOs (modified). A carve out for contracts approved under the Major Load Contracts (MLC) regime would be appropriate to avoid duplication of regulatory requirements.
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?	Genesis does not oppose reconvening the OTC Electricity Market Working Group to consider alignment between the voluntary OTC Code of Conduct and the proposed NDOs. As noted in the main submission, we consider the Authority should align the good faith obligation with the existing OTC Code, either by cross-referencing it in the guidance or by confirming that OTC Code-compliant conduct is presumed good faith.
Q9. Should investment in new flexible generation assets be carved out from the proposed NDOs? Why or why not?	Genesis considers appropriate treatment of new generation investment is essential to ensure the NDOs do not create adverse incentives for investment in new flexible capacity. The Authority acknowledges that the best long-term solution to competition risks is for more flexibility to be introduced into the market. The NDO framework must not hinder investment in new generation. As noted in the main submission, we also consider that clause 13.236O(c) ("facilitate investment in the electricity industry") should be deleted from the purpose clause, as investment facilitation is outside the scope of the LPF work and is better addressed through other workstreams.
Q10. What impact do you think the revised NDOs will have on retail prices and/or incentives to invest in generation?	The NDO framework as proposed (with RPCA and uncommitted capacity) creates risks of adverse impacts on retail pricing flexibility and investment incentives. As set out in the main submission under "Efficiency, proportionality and section 32 considerations", the RPCA risks imposing a cost-plus regulatory mindset that could reduce pricing innovation and flexibility, ultimately to the detriment of consumers. The Sapere Report concludes that "the proposed Code changes proposed by the Authority would likely lead to reduced welfare for consumers." The RPCA will drive conservative product design and may reduce the availability of long-term smoothed products. If the RPCA and uncommitted capacity requirements are excluded as we propose, the remaining NDO framework (principles, director certification, reporting) should have more limited adverse impact.

Question	Comment
Retail price consistency assessment	
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?	No. As set out in this submission and the Sapere Report, the RPCA will not achieve this objective because: 1. There is no sound economic basis for determining cost-price relationships in competitive markets. 2. Sapere's customer segmentation analysis demonstrates that RPCAs are irrelevant for three of the four customer segments: segments B and D (where independent retailers' comparative disadvantage in offering price smoothing is the constraint) and segment C (where RPCAs are irrelevant for existing customers as price differentials do not induce switching). 3. The worked example in the main submission demonstrates how RPCA could misinterpret legitimate product design. 4. As Sapere concludes, the RPCA approach "will fail to achieve the Authority's objective and instead will result in ambiguity and noise rather than reliable signals and valuable information about the competitiveness of the retail market." Market-wide monitoring of super-peak/ASX ratios would better achieve the confidence objective by focusing on observable market outcomes.
Q12. What impact do you think the RPCA will have on retail prices and incentives to invest in generation?	The RPCA risks imposing cost-plus regulation on what is intended to be a competitive market. As set out in the main submission under "Consumer harm from conservative product design", this could: • reduce pricing flexibility and innovation; • cause retailers to reduce or withdraw long-term fixed-price products; • homogenise retail offerings toward "RPCA-safe" products; and • ultimately harm consumers by reducing competitive dynamism and product diversity.
Q13. How could the proposed approach to the RPCA be improved?	Genesis submits the RPCA should be excluded entirely. No refinement to the RPCA methodology can overcome the fundamental problem that cost-price relationships cannot be objectively determined in competitive markets. We propose market-wide monitoring of super-peak/ASX price ratios as a superior alternative (see main submission under "Alternative proposal: market-wide monitoring"). If the Authority proceeds with the RPCA contrary to our submission, we propose the guidance amendments in Schedule C, item 3, to confirm the RPCA is a diagnostic tool only, not a compliance test.
Q14. How often should gentailers make and disclose their assessment – should it be more or less frequent than every six months, and why?	Genesis submits the RPCA should be excluded. If it proceeds contrary to our submission, annual assessment would be sufficient and less burdensome than six-monthly assessments.

Question	Comment
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?	Genesis submits the RPCA should be excluded. The question of guidance versus Code prescription does not arise if there is no RPCA requirement.
Q16. If you do not support the RPCA approach, what would you propose instead to demonstrate compliance with non-discrimination principles?	Genesis proposes market-wide monitoring as set out in section 4.4 of the main submission and section 3.4 of the Sapere Report. This approach includes: 1. Market-wide monitoring of super-peak/ASX price ratios by node and maturity. 2. Publication of regular analysis of trading patterns and price relationships, identifying any anomalous pricing that warrants further investigation. 3. Enhanced analysis of customer switching patterns by segment, price dispersion across retailers for comparable products, and barriers to switching. 4. Director certification and self-reporting (which Genesis can work with). 5. Annual reporting demonstrating compliance with non-discrimination principles. 6. Codification in the guidance that competitive tender outcomes are objectively justifiable (Schedule C, item 1).
Implementation pathway	
Q17. Is the proposed implementation timeline achievable?	The proposed timeline may be achievable for the NDO elements Genesis can work with (principles, director certification, reporting). If the RPCA and uncommitted capacity requirements are excluded as we propose, the timeline should be more readily achievable. However, as set out in the main submission under section 4.3(b), compliance costs will increase and are likely to be material, despite benefits being unlikely or speculative at best. In any event, even with a workable alternative, an adequate lead time would be required – potentially, 9 – 12 months, to implement the necessary systems, processes, and governance arrangements.
Q18. Should the Authority consider adding or removing any particular steps, or providing more or less time at any point?	Genesis submits the RPCA-related steps should be removed from the implementation timeline.
Q19. Does the proposed approach to implementation provide the right balance between certainty, transparency and flexibility?	The principles-based approach provides flexibility, but the RPCA creates uncertainty about how compliance will be assessed. Removing the RPCA would improve the balance between certainty, transparency and flexibility.

Question	Comment
	As set out in the main submission under "Definition of 'discriminate'", we also consider the Code should include a clear definition of "discriminate" to provide compliance certainty.
Escalation pathway	
Q20. Do you support the revised approach of incrementally creating more specification for NDOs or the RPCA as required? Why or why not?	Genesis notes the Authority's view in paragraph 8.27 that Step 3 (virtual disaggregation) "would put significant benefits of vertical integration at risk" and has "high risks of unintended consequences." Any escalation should be evidence-based and proportionate to demonstrated harm, not based on hypothetical concerns. The current evidence base does not support the RPCA or uncommitted capacity requirements, let alone more intrusive measures.
Q21. What are your views on the proposed approach to the escalation pathway?	Genesis notes the Authority's approach of conducting an effectiveness review before considering any significant escalation. Any escalation should be based on demonstrated evidence of harm, not on hypothetical concerns.
Power Purchase Agreements	
Q22. Do you have any feedback, including suggestions for improvement, on the way that the NDOs will affect buyers seeking firming for PPAs?	Genesis does not oppose NDO principles (with the modifications requested) applying to firming arrangements for PPAs. The Authority's ongoing work on the standardised super-peak product is relevant to this area.
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?	Genesis would consider participation in a co-design group focused on developing flexibility products. Market-led product development, supported by appropriate regulatory frameworks, is preferable to prescriptive regulatory mandates.
Internal Transfer Price disclosure requirements	
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?	Genesis supports the proposal to revoke the ITP requirements for gentailers and to retain the retail gross margin reporting for independent retailers.
Regulatory Statement for the proposed amendment	
Q25. Do you agree with the objectives of the proposed amendment? If not, why not?	Genesis does not oppose the Authority's stated objectives of building understanding that risk management contracts are supplied even-handedly, supporting liquidity and competitive pricing, and giving confidence to independent generators and retailers.
Q26. Do you agree the benefits of the proposed amendment outweigh its costs?	For the NDO framework elements Genesis can work with (principles, director certification, reporting), the benefits may outweigh costs if appropriately implemented.

Question	Comment
	However, for the RPCA and uncommitted capacity requirements, we do not agree that benefits outweigh costs. As set out in the main submission under "Efficiency, proportionality and section 32 considerations", these mechanisms impose substantial compliance burdens and create risks of unintended consequences without commensurate benefits, as they will not achieve the Authority's stated objectives. The Sapere Report concludes that the proposed Code amendments "are not anchored in orthodox competition theory and are not supported by empirical evidence" and that "the beneficiaries would be specific firms, not competition." Please see further the analysis in the Sapere Report regarding the costs and benefits of the proposed amendments.
Q27. Do you agree the proposed amendment is preferable to the other options?	Genesis considers NDOs (Option 2) are less problematic than Options 1, 3, and 4. We also note the Authority was right to drop Step 3 (virtual disaggregation) from the roadmap. Our submission proposes modifications to make Option 2 more workable and proportionate.
Q28. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	Genesis has concerns about whether the RPCA and uncommitted capacity requirements represent the most effective means of promoting competition for the long-term benefit of consumers, given: • the absence of definitive evidence of harm; • the availability of less intrusive alternatives (market-wide monitoring); • the certain compliance costs versus speculative benefits; and • the risk of unintended consequences for product design and competition. As the Sapere Report observes, the proposals conflict with "a central tenet of competition policy, that competition rules should be designed to protect the competitive process—competition itself—rather than individual competitors." The NDO principles, director certification, and reporting framework (without RPCA and uncommitted capacity) would better satisfy section 32(1). Please see the main submission under "Efficiency, proportionality and section 32 considerations" for our detailed analysis.
Q29. Do you have any comments on the regulatory statement?	Please see the analysis in the Sapere Report regarding the costs and benefits of the proposed amendments, and the main submission under "Efficiency, proportionality and section 32 considerations".
Appendix A – Proposed Code amendments	
Q30. Do you have any comments on the drafting of the proposed Code amendments?	Genesis's proposed Code amendments are set out in Schedule B. In summary: 1. A definition of "discriminate" should be added (Schedule B, item 1).

Question	Comment
	2. If uncommitted capacity reporting proceeds, the definition should be amended (Schedule B, item 2). 3. The purpose clause should be amended (Schedule B, item 3). 4. The non-discrimination principles should be amended for consistency with the proposed definition (Schedule B, item 4). The RPCA and uncommitted capacity requirements should be removed from the Code amendments.
Draft guidance to support Code amendments	
Q31. Do you have any comments on the draft guidance?	Guidance on RPCA methodology is not required if the RPCA is excluded from the Code amendments as we propose. If the Authority proceeds, however, then Genesis's proposed guidance amendments are set out in Schedule C. In summary: 1. Competitive tender outcomes should be confirmed as objectively justifiable (Schedule C, item 1). 2. Explicit safe harbours should be provided for capacity allocations (Schedule C, item 2). 3. If the RPCA proceeds, it should be confirmed as a diagnostic tool only (Schedule C, item 3). 4. A commercial sensitivity carve-out should be added (Schedule C, item 4).
Q32. Is any further guidance needed to help clarify what constitutes an "objectively justifiable" reason for discrimination under the NDOs? Please explain.	Yes. Genesis considers the Authority should provide worked examples and clear safe harbours for what constitutes "objectively justifiable" reasons. This would reduce compliance uncertainty and avoid chilling legitimate commercial decisions. Examples of objectively justifiable reasons should include: creditworthiness differences, volume differences, contract duration, timing of request, risk profile differences, and prices determined by competitive processes (including open tenders). As set out in the main submission, the guidance should also confirm that competitive tender outcomes are by definition non-discriminatory (Schedule C, item 1).

SCHEDULE B

Proposed Code Amendments

Genesis proposes the following amendments to the proposed Code changes:

1. Definition of "discriminate" (new definition in clause 1.1)

Insert the following definition:

> **discriminate** means to treat a **buyer** differently from another **buyer**, or from the **gentailer's own internal business unit**, in respect of the provision of a **risk management contract**, where such difference in treatment is not based on objectively justifiable reasons

Rationale: This definition aligns with telecommunications precedent. It establishes that differences in treatment that are objectively justified are not discrimination, providing a clearer compliance framework than the current drafting which presumes differences are discriminatory unless justified.

2. Definition of "uncommitted capacity" (amended definition in clause 1.1)

If the Authority proceeds with uncommitted capacity element, amend the definition as follows (new text in underline, deleted text in ~~strikethrough~~):

> **uncommitted capacity** means a gentailer's reasonable expectation, formed at the time of the relevant assessment, of its ability to offer risk management contracts in future periods, ~~calculated as a gentailer's expected gross forecast ability to offer risk management contracts, less~~ which includes consideration of:
>
> (a) the **gentailer's** gross forecast ability to back anticipated **risk management contracts** with generation capacity;
>
> (~~a~~b) the amount of generation that could otherwise be used to back **risk management contracts** that the gentailer reasonably expects to use to supply electricity to its end customers, excluding capacity allocated for documented, internal forecasts of organic growth, any generation not supported by fuel contracts or availability; and
>
> (~~b~~c) a **gentailer's** wholesale commitments, comprised of gentailer market making commitments (regulated or voluntary) and existing risk management contracts entered into with buyers; and
>
> (d) any other relevant operational, commercial, or risk management considerations, including those prescribed in guidance issued by the Authority or reasonably considered by the **gentaile**r in accordance with prudent industry practice.

Rationale: This amendment makes the test less formulaic and gives gentailers greater discretion to determine uncommitted capacity based on legitimate

commercial considerations. It explicitly recognises organic growth forecasts as committed capacity.

3. Purpose clause (clause 13.236O)

Amend clause 13.236O as follows:

> The purpose of this subpart is to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers by requiring **gentailers** to supply **risk management contracts** to buyers on a non-discriminatory basis in accordance with non-discrimination principles to—
>
> (a) provide assurance to **buyers** that **gentailers** are transparent and even-handed in the supply of **risk management contracts**;
>
> (b) support the liquidity and competitive pricing of **risk management contracts**~~; and~~**.**
>
> ~~(c) facilitate investment in the electricity industry.~~

Rationale: "Provide assurance" better reflects the confidence-building objective than "ensure". Paragraph (c) should be deleted as investment facilitation is outside the scope of the LPF work (acknowledged at paragraph 3.121 of the Consultation Paper. Investment incentives are better addressed through the Security Standards review and separate workstreams.

4. Non-discrimination principles (clause 13.236P)

Consequential amendments to clause 13.236P to reflect the definition of "discriminate" and provide symmetric treatment:

> (2) A **gentailer** must not discriminate between buyers and its own internal business units in favour of its own internal business units when offering, agreeing to, or declining trades backed by uncommitted capacity.

> (3) A gentailer must not discriminate between buyers and its own internal business units in favour of its own internal business units when offering, agreeing to, or declining risk management contracts.

Rationale: With the proposed definition of "discriminate", the "without an objectively justifiable reason" carve-out is incorporated in the definition and need not be repeated. The symmetric language ("between… and") confirms that discrimination in either direction is captured.

SCHEDULE C

Proposed Guidance Amendments

Genesis proposes the following amendments to the proposed guidance:

1. Competitive tender outcomes (paragraph B.5)

Add the following sentence to paragraph B.5:

> Differences in commercial terms will likely be objectively justifiable if they are consistent with outcomes expected in a workably competitive market and are supported by a reasonable, evidence-based assessment at the time the terms are offered. If the terms agreed with a buyer are determined by market forces (such as an open competitive tender), then they will be objectively justifiable.

Rationale: This codifies the Authority's confirmation in response to Contact Energy's question that competitive tender outcomes satisfy NDO requirements.

2. Safe harbours for capacity allocation (paragraph B.9)

Amend paragraph B.9.h and add new paragraphs B.9.i and B.9.j:

> h. ~~allow~~prevent a gentailer ~~to~~from allocat~~e~~ing future generation capacity to planned growth in its own retail internal business unit ~~without testing market interest in that capacity~~, provided that capacity made available through standardised products, published price schedules, or market-making platforms is deemed to have been tested for market interest.
>
> i. For the avoidance of doubt, capacity subject to existing contractual commitments (including Huntly Firming Option contracts and equivalent arrangements), internal portfolio hedging arrangements documented in the gentailer's risk management policies, or energy security reserves supported by documented fuel reserve arrangements, is committed capacity and is not subject to the non-discrimination requirements in Principle 1(2).
>
> j. A gentailer may apply its existing risk management frameworks to determine uncommitted capacity, provided those frameworks are documented and applied consistently.

Rationale: These amendments provide explicit safe harbours for legitimate capacity allocations and confirm that market-tested capacity satisfies the "testing" requirement.

3. RPCA as diagnostic tool (paragraphs B.10-B.12)

If the Authority proceeds with the RPCA, amend paragraphs B.10 and B.11 as follows:

> B.10. The Authority expects that gentailers will primarily satisfy subclause (3) of Principle 1 ~~by demonstrating~~to demonstrate an economically justifiable link between the expected cost of electricity supply and its retail price offers~~, ie, passing the retail price consistency assessment that it is required to regularly perform~~. This may be evidenced by the retail price consistency assessment that the gentailer is required to regularly perform. Given that the expected cost of electricity supply is estimated using forward-looking forecasts which will vary from time to time, it is acknowledged that the retail price consistency assessment is a tool for assessment of pricing of risk management contracts and cannot provide a bright line test for whether pricing is discriminatory. All relevant circumstances must be considered on a case by case basis.

> B.11. The retail price consistency assessment informs the~~is based on~~ 'as efficient as' the gentailer's own retail business unit standard, rather than a hypothetical measure of efficiency... However, it is acknowledged that due to differences in circumstances there can be other objectively justifiable reasons for price difference, including differences that are determined by market forces (such as the outcome of a competitive tender process), meaning the retail price consistency assessment is an assessment guide and not a strict test.

Rationale: These amendments confirm the RPCA is diagnostic only and cannot be used as a pass/fail compliance test.

4. Commercial sensitivity carve-out (paragraph B.23)

Add new paragraph B.23:

> B.23. For the avoidance of doubt, nothing in Principle 6 would require a gentailer to publicly disclose commercially sensitive information, including but not limited to pricing methodologies, customer-specific terms, and internal forecasts, except as specifically required under the Code for the purpose of compliance monitoring.

Rationale: This provides appropriate protection for genuinely commercially sensitive information while preserving the Authority's ability to monitor compliance. Requiring disclosure of proprietary methodologies would reduce competitive diversity and innovation.

APPENDIX A

Sapere Research Group, "Testing the proposed non-discrimination obligations Code amendment" (November 2025)

[Sapere Report attached separately]

Level playing field measures

Testing the proposed non-discrimination obligations Code amendment

Kieran Murray, Eric Hansen, David Reeve, Toby Stevenson

2 December 2025

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Executive summary

A clear and robust problem statement capable of being addressed by regulation is the foundation for successful regulatory intervention. After reviewing submissions, the Authority has modified its understanding of the problems it is seeking to resolve with its proposal to introduce Non-Discrimination Obligations (NDOs). Importantly, the Authority:

- accepts there are issues with the availability of, and incentives to build, flexible generation and that solving these issues would be the best solution to competition concerns
- no longer views vertical integration as a problem in-of-itself, and vertical disintegration is no longer viewed as a policy objective; the Authority now acknowledges the efficiency and competitive benefits (at least in the wholesale market) of vertical integration.

Regrettably, the Code amendments proposed by the Authority are not anchored in orthodox competition theory and are not supported by empirical evidence. The Authority does not claim that any gentailer has the substantial market power required for foreclosure or price-squeeze forms of competitive harm, nor has it found evidence of these practices.

The Authority describes 'discrimination' as a competition risk. It provides no theoretical or empirical support for the notion that requiring a gentailer to ensure retailers are treated even-handedly would promote competition. As we explain, the proposed Code changes proposed by the Authority would neither be even-handed, nor promote competition, and would likely lead to reduced welfare for consumers.

The beneficiaries would be specific firms, not competition.

This outcome would conflict with a central tent of competition policy, that competition rules should be designed to protect the competitive process—competition itself—rather than individual competitors.

We support measures that protect and enhance the competitive process. We consider that there are more effective ways to achieve the Authority's goal of improving confidence in the competitive performance of the market, as we summarise below.

RCPA

The Authority proposes that requiring each gentailer to publish Retail Price Consistency Assessments (RPCAs) demonstrating an economically justifiable link between its retail price and the expected cost of electricity supply will enhance the confidence of market participants that they are participating in a competitive market.

Our analysis shows that RCPA approach will fail to achieve the Authority's objective and instead will result in ambiguity and noise rather than reliable signals and valuable information about the competitiveness of the retail market. Major deficiencies in the RPCA approach include:

- It confuses the relationship between price and cost for the marginal seller as being applicable to each individual seller, whereas in fact there is no necessary observable relationship between costs and prices for infra-marginal sellers.

- A myriad of price smoothing approaches are potentially consistent with optimising value in an unbiased manner and there is no economic basis for the Authority or any external party to second-guess the validity of a gentailer's chosen price smoothing policy.
- RCPAs will provide little or no insight into the competitive conditions faced by independent retailers in many important customer segments that differ in their cost of switching and preference for price smoothing.

These deficiencies lead us to the conclusion that the RPCA is not a fit-for-purpose regulatory tool for assessing competitive pricing or non-discrimination, is unlikely to enhance confidence and should not be adopted as a recurring Code obligation.

We propose an alternative approach to the RCPA aimed at the Authority gaining a thorough understanding of the competitive interplay and dynamics in the relevant market segments (as explained below). This alternative approach would require the collection of additional data (alongside existing detailed data) to enable high quality analysis of customer switching patterns and comparison of pricing across comparable contracts. The direction recommended in this paper would, in our view, enable the Authority to gain confidence in the market's competitive performance and then make statements to provide confidence to independent retailers and consumers that they are participating in a competitive market.

Pricing risk management contracts

We note the Authority's current view of the competitiveness of ASX and peak contract prices,[1] and their proposed measures aimed at "increasing transparency of forward prices and improving confidence in the contracts market" (Electricity Authority, 2025d). We have conducted a granular assessment of standardised super peak prices in the action and the relationship to ASX. We have tested if there is a meaningful way to monitor market outcomes to a) indicate non-competitive behaviour and b) provide independent retailer confidence in pricing.

We mapped the ratios of standardised super peak prices to the related quarterly ASX prices at the point of each standardised super peak contract auction through 2025. The results bear out our understanding that prices struck for super peak contracts trade as a ratio of the comparable ASX futures prices. The ASX base load contracts reflect the fundamentals of the market. Trade in the super peak contracts just reflect the risk of prices spiking at peak times relative to baseload prices so it's the relativity to ASX that is the market view of that risk not the absolute prices.

In our view, monitoring this relationship and other indicators of market outcomes, is a better avenue to ensuring confidence in the pricing of risk management contracts. In our view that visibility would be more effective in improving competition in the risk management contracts than having individual gentailers provide objectively justifiable reasons for their contract pricing.

[1] "Prices for ASX baseload, and OTC baseload and peak hedge contracts were likely to be competitive. In the RMR, the Authority could not conclude the same for super-peak prices (Electricity Authority, 2024, Appendix A)."

We support the Authority monitoring the level of competition in the electricity market, especially the market for risk management products but, as we say above, the focus should be on the competitive process i.e. competition itself.

Uncommitted capacity

The proposed code amendment will not yield the outcome the Authority hopes for. We understand the purpose of the proposal but the Authority has ignored the challenges of establishing a meaningful measure of uncommitted capacity given the lack of an up to date framework for determining how much capacity is required to meet security standards. A power system that is struggling to meet, even outdated, security standards is not going to show a reliable measure of uncommitted capacity at the portfolio level. Fundamentally, the sum of individual portfolios of uncommitted capacity will be less than the firm capacity available to the power system due to concentration of risk. As the firm capacity of the power system is currently unable to be uniformly defined, with outdated modelling and assumptions, then any measure of uncommitted capacity will be uninformative at best and misleading at worst.

The first step in both robustly determining whether there is any 'uncommitted capacity', after prudent security allowances, and in establishing the power system needs for an appropriately secure system is to reassess the Security Standards and Security Standard Assumptions.

As a matter of priority, after establishing updated Security Standards, would come market design adjustments to ensure the standards are met. At that point it would be possible to establish meaningful benchmarks of uncommitted capacity, but such a measure would become irrelevant. In a workably competitive market with prudent security margins, any party will be able to price risk. Physical generation would not be the only way to manage contracting risk.

1. Introduction

The Authority proposes to amend the Code to impose Non-Discrimination Obligations (NDOs) on four gentailers. The purpose of the NDO provisions is (Electricity Authority, 2025a, Appendix A):

> "… to promote competition in, and the efficient operation of, the electricity industry for the long-term benefit of consumers by requiring **gentailers** to supply **risk management contracts** to **buyers** on a non-discriminatory basis to—
>
> (a) ensure even-handed supply of **risk management contracts;**
>
> (b) support the liquidity and competitive pricing of **risk management contracts**; and
>
> (c) facilitate investment in the electricity industry."

In this paper we consider:

1. Whether the Authority grounds its problem definition and resulting Proposed Code amendment in either theoretical or empirical economics.
2. Whether the RCPAs will yield the confidence in retail pricing the Authority seeks through the Proposed Code amendment.
3. The realities of pricing individual risk management contracts especially their strong linkage with prices of New Zealand Electricity Futures traded on ASX.
4. The relationship between the uncommitted capacity proposal and the security standards.
5. We outline workable alternatives for monitoring market performance that we consider would better meet the Authority's objectives.

2. The Authority's proposals are not driven by economic or competition principles

2.1 An evolving, but not settled, problem definition

A clear and robust problem statement capable of being addressed by regulation is the foundation for successful regulatory intervention. Many problems start off as vague worries that need to be 'structured' before they can be solved (State Services Commission, 1999). The Authority explains that as result of submissions it has changed its understanding of the problem it is seeking to resolve (Electricity Authority, 2025a, para. 3.1-3.2).

Previously, in its Level Playing Field, Options Paper in February 2025—the full title of which includes the phrase "Prepare for virtual disaggregation of the flexible generation base"—the Authority said it was seeking to test its then thinking of the problem definition and its solutions to that problem (Electricity Authority, 2025b, para. 3.4). It is not easy to confidently summarise the change—between the February Options paper and the October Consultation paper—in how the Authority views the problem. With this caution, the primary conceptual changes in the Authority's thinking appear to be as summarised in Table 1 below:

Table 1: Shift in the Authority's understanding of the problem it wants to resolve

Description of problem	February 2025	October 2025
Availability of, and incentive to build, flexible generation—a pressing issue for the sector and for competition	The evidence points to fuel or capacity scarcity often being the driver behind the current thin and illiquid market for shaped hedge cover (Electricity Authority, 2025b, para. 3.39 (e)).	We agree that there are issues with the availability of, and incentive to build, flexible generation (Electricity Authority, 2025a, para. 3.121). The best long-term solution to competition risks is for more flexibility (generation or otherwise) (Electricity Authority, 2025a, para. 3.107 (d)). Interventions that directly address availability of flexible generation outside scope (Electricity Authority, 2025a, para. 3.121).
Vertical integration/ disintegration	Level Playing Field measures are intended to address hedge contract related competition risks arising from … vertical integration… (Electricity Authority, 2025b, p. 2). The risks to competition associated with vertical integration are well known (Electricity Authority, 2025b, p. 19).	Addressing vertical integration in itself at this time is not a solution to the underlying market power issues and we are not proposing any interventions to unbundle or undo vertical integration (Electricity Authority, 2025a, p. 6). The Authority does not intend to undertake further work on virtual

Description of problem	February 2025	October 2025
	Authority considers virtual disaggregation as an important potential remedy (Electricity Authority, 2025b, para. 7.9).	disaggregation at this time (Electricity Authority, 2025a, p. 6).
Input or customer foreclosure by gentailers	Gentailers have the opportunity and incentive to restrict generation and retail competition because of their control of the flexible generation base... (Electricity Authority, 2025b, para. 3.51). The evidence … raises genuine concerns that this risk may be playing out—withholding of supply, overpricing, favouring supply to internal channels over external competitors (Electricity Authority, 2025b, para. 3.51).	It is less likely that prices set for super-peak hedges reflect a premium above competitive pricing levels than initially indicated… (Electricity Authority, 2025a, p. 4). There is no definitive evidence of a margin squeeze…(Electricity Authority, 2025a, p. 4). In our view, predatory pricing is unlikely in the electricity sector (Electricity Authority, 2025a, para. 3.65).

Thus, it seems the Authority:

- accepts there are issues with the availability of, and incentives to build, flexible generation and that solving these issues would be the best solution to competition concerns, but it does not yet have a work programme to address these underlying problems
- no longer views vertical integration as a problem in-of-itself, and vertical disintegration is no longer viewed as a policy objective; the Authority now acknowledges the efficiency and competitive benefits (at least in the wholesale market) of vertical integration
- accepts that it has not found, nor been provided, any empirical evidence of the anti-competitive practices it had said it was concerned about, such as predatory pricing and foreclosure.

The Authority appears to accept that competition theory and precedent does not support its previous contention that gentailers have the ability and incentive to foreclose or engage in a price squeeze, as these practices are understood in competition economics. Consistent with this theory, the Authority found no evidence of competitive harm. Profitable foreclosure and price squeezes require substantial market power,[2] not just 'some market power' as previously postulated by the Authority (Electricity Authority, 2025b, para. 3.22). No entity in the New Zealand electricity market has substantial market power.

The Authority's position, as summarised in Table 1, is now more aligned with the evidence from the literature that "under most circumstances, profit-maximising vertical-integration decisions are efficient, not just from the firms' but also from the consumers' point of view" (Lafontaine & Slade, 2007, p. 680).

[2] As now acknowledged by the Authority (2025a, para. 6.41).

However, "the Authority sees an ongoing risk that gentailers have opportunities to use market power in a manner that would harm competition" (Electricity Authority, 2025a, p. 4). It is concerned this harm may increase in time as flexible generation reduces as a proportion of the overall mix (Electricity Authority, 2025a, p. 4). The Authority also observes that its previous concerns "have not been substantially disproven" (Electricity Authority, 2025a, para. 3.11).

2.2 Competition policy should rely on sound economics and evidence

To boost confidence in the market, especially for independent retailers, the Authority intends to require gentailers to demonstrate they do not discriminate between their competitors and their own retail businesses when supplying risk management contracts (Electricity Authority, 2025a, p. 4). The Authority no longer attempts to justify its approach in terms of orthodox competition analysis, but rather describes its approach as "a specific regulatory test under a specific regime…" (Electricity Authority, 2025a, para. 6.40).

The Authority's earlier attempt (in its February Options paper) to explain its proposed intervention in terms of competition economics—by referring to concepts such as foreclosure, price and margin squeezes and predatory pricing—has not survived exposure to consultation. There was neither theoretical research nor empirical evidence to support some of its stronger statements.[3] However, the response by the Authority should not be to abandon competition economics.

Competition regulation and economics have evolved as co-dependent fields, due to a "long and fruitful interdisciplinary collaboration" (Baker & Bresnahan, 2008). This co-dependence of competition policy and economics is why the New Zealand High Court sits with an expert Lay Member economist alongside the judge, when it hears appeals of decisions by the Commerce Commission. As a former chair of the Federal Trade Commission remarked, "antitrust relies on sound economics, both theoretical and empirical" (Muris, 2006).

If it is to achieve its objective of building confidence in the market, the Authority must ground its problem definition and solutions in economic theory and empirical evidence. The reasons for doing so were elegantly expressed in one thoughtful submission to the Federal Trade Commission's Hearings on Competition & Consumer Protection in the 21st Century (Manne et al., 2018):

> "The truly progressive approach to antitrust—the one that acknowledges that progress made in our understanding of the most beneficial role of antitrust, with the greatest potential to advance our economy and improve society—is one that focuses on testable economic hypotheses underpinned by solid empirical evidence. This approach, adopted after more than a century of contradictory enforcement actions and judicial decisions, provides clarity and avoids the whims of politically motivated parties."

Regrettably, the Code amendments proposed by the Authority are not anchored in orthodox competition theory and are not supported by empirical evidence. The Authority does not claim that

[3] See statements about withholding and overpricing (Electricity Authority, 2025b, para. 3.51).

any gentailer has the substantial market power required for classic foreclosure or margin-squeeze theories, nor has it identified evidence of competitive harm. Instead, the Authority resorts to characterising its approach as a "specific regulatory test under a specific regime" and to weak inferences of competitive harm.

There are indications, that in forming these inferences of harm, the Authority is mis-reading the literature. Electricity market design does not involve a trade-off between wholesale and retail competition, as the Authority asserts (Electricity Authority, 2025a, para. 3.115). An increase in competitive pressure in an upstream market (for example, in the wholesale market because vertically integrated generators face dispatch risk) cannot reduce competitive pressure in a downstream market.

By not underpinning its proposed interventions with testable economic hypotheses and solid empirical evidence, the Authority leaves open the question: if core competition principles are not guiding its intervention, 'what is the driver'?

2.3 Protecting competitors, not competition

The Authority says the core reason for the measures it proposes is to provide confidence to market participants that they can compete on a level playing field when they invest in generation and retail businesses (Electricity Authority, 2025a, para. 3.15). While the Authority used the term market participants, it seems to have in mind some market participants and not other market participants; the four large gentailers will be subject to rules that do not apply to other market participants who engage in the same activities (Electricity Authority, 2025a, para. 5.39-5.42).

In considering the application of its proposed rules, the Authority does not mention perhaps the most oft-quoted principle in competition policy. Competition experts disagree on many things. But competition economists, agencies, and international forums, endorse as a central tenet the idea that competition rules should be designed to protect the competitive process—competition itself—rather than individual competitors. As the OECD observed, "It is widely agreed that the purpose of competition policy is to protect competition, not competitors" (OECD, 2006, Article DAF/COMP(2005)27, 9). The European Commission's guidance states that "what really matters is protecting an effective competitive process and not simply protecting competitors" (European Commission, 2009, para. 6). In the United States, the Supreme Court established the principle decades ago that: "The antitrust laws … were enacted for the protection of competition, not competitors" (Brunswick Corp. v. Pueblo Bowl-O-Mat, Inc., 1997).[4]

This principle, that competition rules should protect competition and not competitors, permeates competition policy for good reason. Competition on its merits is, and is supposed to be, a destructive process where companies pit themselves against their rivals and try to win customers, win market share, and win the battle for innovation including on organisational forms best suited to meeting customer needs.

However, rather than promote competition on its merits (that is, the process of competition) the Authority considers its measures are "designed to provide an opportunity for gentailers to provide

[4] Quoting Brown Shoe Co v United States, 370 U.S 294, 320 (1962).

assurance to stakeholders that they are transparent and even-handed when trading generation capacity" (Electricity Authority, 2025a, para. 3.16). Tasking an entity with being "even-handed" with its competitors is likely to harm the competitive process and consumer welfare, as we discuss below.

2.4 Non-discrimination does not promote competition

The Authority describes 'discrimination' as a competition risk (Electricity Authority, 2025a, para. 3.15). It provides no theoretical or empirical support for the notion that requiring a gentailer to ensure retailers are treated even-handedly would promote competition. The Code changes proposed by the Authority would neither be even-handed, nor promote competition, and would likely lead to reduced welfare for consumers.

Since the pioneering work by Nobel Laureate, Oliver Williamson (1971, pp. 112–123), economists have recognised that it is not particularly useful to characterise a sharp dichotomy between vertical integration and market transactions; rather, there is a continuum of governance arrangements between spot transactions through to bringing activities in-house. These hybrid forms include various types of long-term contracts and non-linear pricing arrangements, and so on. This continuum means that rules applied to one governance form (ownership), but not other forms (contract), would introduce distortions not even-handedness.

The Authority would apply its non-discrimination rules to entities who underpin their business strategy with physical investment but not to those who achieve a similar risk profile via long-term contract. It would grant entities, who adopt shorter-term risk strategies, an entitlement to obtain the benefit of the physical assess when market conditions suit them to do so, but not an obligation to meet the long-term costs of maintaining the assets when market conditions favour short-term or uncontracted strategies.

The distortions to the market are obvious, as are the long-term risks to consumer welfare. Firms entitled by regulatory intervention to procure a resource when conditions suit them (but not bear the costs of maintaining that resource) have a reduced incentive to develop alternatives for themselves. Incentives for development and innovation are dulled both for the entity forced to share its assets and for entities gaining access. Because it would dull incentives, the proposed measures would lean against the best long-term solution to competition risks; that is "more flexibility (generation or otherwise)" (Electricity Authority, 2025a, para. 3.107 (d)). The Authority's proposed rule would protect competitors, not competition. Even if the Authority could write a rule which ensured entities treated competitors even-handedly, it should not attempt to do so. Unfairness is not anticompetitive. Metaphors implied by the language of 'level playing field', though helpful for describing the concept of rivalry, are flawed. The electricity sector is not a sport or a schoolyard. Behaviour that might be perceived as unfair by a competitor—for example, lowering prices to consumers when a competitor would prefer higher market-wide prices—is often the pinnacle of pro-competitive behaviour.[5]

[5] This statement does not mean 'anything goes'; all market participants must comply with competition law, contract and tort requirements applying to all businesses.

To meet an objective of increased confidence in the market, the Authority should shift its focus to measures of market performance. A market exists to facilitate exchange. The "overall goal is markets that maximise output, whether measured by quantity or quality" (Hovenkamp & Areeda, 2008, p. 114). Hence, the performance of markets is best measured in terms of prices, quality, and innovation. We suggest more fruitful avenues for monitoring below.

3. RPCAs are unlikely to increase confidence in retail prices

This section analyses in detail the proposal that each large gentailer be required to provide RPCA statements to the Authority on a six-monthly cycle, and to make public versions of these statements available as part of gentailers' annual reporting requirements. The section also outlines a workable alternative that we consider would better meet the Authority's objective.

The Authority's proposal requires that each gentailer's RPCA statements demonstrate an economically justifiable link between the expected cost of electricity supply and its retail price for every brand, key segment and location, covering both existing and new retail customers (Electricity Authority, 2025a, para. 6.24).

The Authority's stated purpose is to provide confidence to market participants (we infer, independent retailers) that they can compete on a level playing field when they invest in generation and retail businesses (Electricity Authority, 2025a, para. 3.11). It appears that the Authority itself is also seeking greater confidence in the market's competitive performance: despite accepting that it has neither found nor been provided with any empirical evidence of the anti-competitive practices, the Authority says that its previous concerns "have not been substantially disproven" (Electricity Authority, 2025a, para. 3.11).

We agree that the Authority needs to have confidence in the competitiveness of the retail market. And we support the need for the Authority to enhance its market monitoring, undertake appropriate competitive analysis, and promote continual enhancement of consumer outcomes. However, as discussed below, economic theory predicts that the RPCA approach is unlikely to achieve the Authority's objectives and risks producing false positives, i.e. the RPCA framework is likely to generate misleading or unreliable signals of potential issues where none exist. We conclude that the RPCA is not a fit-for-purpose regulatory tool for assessing competitive pricing or non-discrimination and should not be adopted as a recurring Code obligation.

We propose an alternative approach aimed at the Authority gaining a thorough understanding of the competitive interplay and dynamics in the relevant market segments. This alternative approach would require the collection of additional data (alongside existing detailed data) to enable high quality analysis of customer switching patterns and comparison of pricing across comparable contracts. Adopting the more comprehensive approach recommended in this paper would, in our view, enable the Authority to gain confidence in the market's competitive performance and then make statements to provide confidence to independent retailers and consumers that they are engaged in a competitive market.

3.1 No economic basis for RPCA methodology

The Authority's proposal focuses on the period-by-period (six monthly) pricing decisions of individual sellers rather than the market and economic forces that determine retail prices over time. There is a misplaced focus on individual market actors rather than overall market performance.

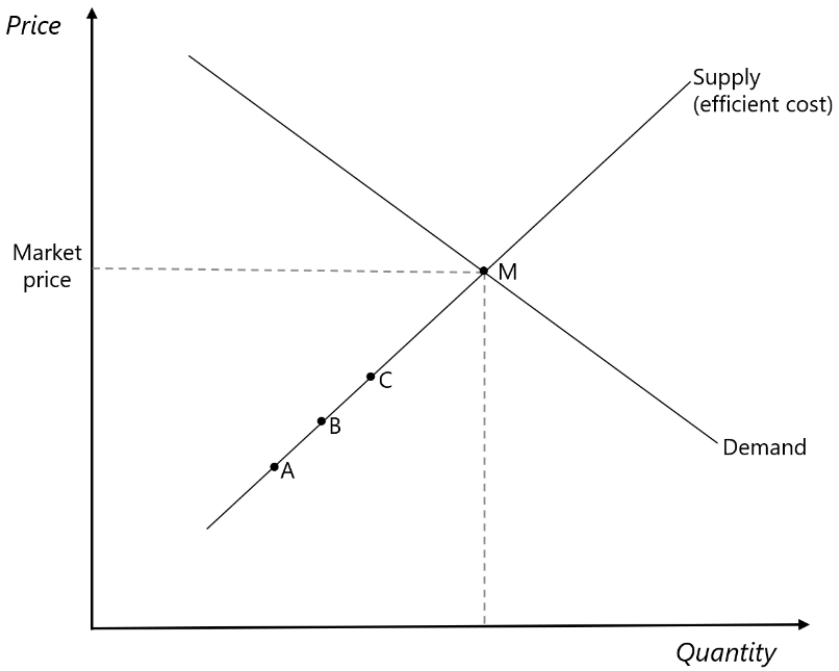
In standard competition frameworks, prices result from the interplay of market forces across both demand and supply. On the supply side, competitive discipline drives firms to provide consumers with cheaper or better products and services (including price smoothing if valued), adopt the most cost-efficient supply arrangements, redirect resources to their most profitable use, and compete away excess returns.

In most real-world markets, including many that would reasonably be categorized as workably competitive, market prices can be impacted by some degree of market power. The dynamics of competitive processes may be viewed as a competition for temporary positions of market power—firms strive to gain an advantage that cannot, at least immediately or very quickly, be fully matched by rivals.

The RPCA proposal is based on the notion that workably competitive markets are characterised by each seller's price being equal or close to their efficient economic cost. This is to be tested by whether any differences can be accounted for by any economically justifiable adjustment between market-based cost of supply and self-supply.

However, competition economics and market theory does not hold that the efficient retail price of each seller will equal its economic cost. This is illustrated in Figure 1 Figure 1below, where equality of price with economic cost applies only to the marginal seller (M); inframarginal sellers (A, B, C etc) achieve excess returns due to their economic cost being lower than the market price, at least temporarily. Thus, in general, there is no necessary observable relationship between individual seller costs and prices.

Figure 1: Relationship between price and efficient economic cost



Accordingly, any test premised on a tight relationship between cost and price - such as the RPCA - will tend to signal concerns even when prices reflect legitimate competitive dynamics rather than discrimination. However, as discussed further below, the expectation of a tight, period-by-period alignment between cost and price is inconsistent with competitive market behaviour. Even in well-

functioning markets, prices typically diverge from firm-specific costs for extended periods due to differences in risk premia, hedging strategies, customer mix, time-of-acquisition effects, and forward-looking pricing.

A person may argue that the figure above does not reflect the opportunity cost of retail sales faced by gentailers. They may argue that the upward sloping supply curve should be replaced with a (nearly) horizontal supply curve to reflect the hedge market available to all gentailers as the alternative to retail sales. In terms of Figure 1, inframarginal sellers A, B, C etc would converge to the same economic cost as the marginal seller, M.

However, the argument presumes that a liquid market exists for hedge contracts of comparable duration and price flexibility to retail customer contracts (for example, price smoothing as discussed in the following section). The lack of a sufficiently comparable, liquid hedge contract is indicated by the Authority's comment that an important design step will be to define an appropriate cost of supply benchmark, including a time horizon, based on a sound economic rationale(Electricity Authority, 2025a, para. 6.26). If appropriate hedge prices were available, the design considerations would be obvious and minor.

The argument also ignores the competitive dynamics of real-world markets. In competitive markets, sellers strive to gain advantage through innovations to products, business models, and pricing strategies. Customer and competitor responses to these strategies, as well as exogeneous changes in the market environment, motivate further adaptation, innovation and market testing in a never-ending process of continual updating of always incomplete new information about consumer demands and competitors' costs and expectations.

In terms of Figure 1 above, not only are the relative positions of sellers (A, B, C etc) changing but adaptation, innovation and updating of expectations means the supply curve itself is moving around (generally moving to the right and/or downward, reflecting economic progress).

The outcome is that gentailers' efficient economic costs—for example scarcity rents, opportunity costs, premiums for risk, etc—are revealed in the process of price discovery. Equilibrium prices and efficient cost are jointly and simultaneously discovered and continually changing via the competitive process (Yarrow & Decker, 2014, p. 9).

These characteristics of competitive markets mean that a gentailer cannot accurately determine its total economic cost *ex ante* nor when it prepares its retail price. In this context, it is unclear how the Authority, or any other external party, could assess whether an economically justifiable link has been formed between retail prices and any external measure of expected energy cost.

3.2 No economic basis to second-guess price smoothing

While the Authority agrees that price smoothing is consistent with workable competition, it nevertheless intends to exercise judgement on whether an observed pattern is too persistent (Electricity Authority, 2025a, para. 6.29). However, the Authority has no economic basis to second-guess the validity of a gentailer's price smoothing policy. The optimal degree of price smoothing depends on customer preferences and competitive dynamics, neither of which the Authority will have

sufficient knowledge to judge the appropriateness of observed outcomes with any reasonable degree of confidence.

Putting aside customer preferences and competitive dynamics for a moment, any symmetric price smoothing policy is potentially consistent with a gentailer optimising its value in an unbiased manner. For example, a gentailer could set its retail price in each period equal to the estimated long run marginal cost of additional market capacity. On the basis that investment incentives will result in the average value of short run marginal cost equal to long run marginal cost, setting the retail price equal to long run marginal cost has the same expected value as setting retail price equal to short run marginal cost period by period. In this scenario, the Authority would have no basis to judge the validity of successive years of retail price deviations from the energy cost implied by ASX hedge prices.

Further, any price smoothing policy based on a linear combination of the short and long run marginal costs also has the same expected value and therefore is equally valid. Similarly, any symmetric partial adjustment policy that incorporates long run trends (such as expected long run inflation) is equally valid. For example, if a gentailer adjusted its retail price by the trend inflation rate plus 33 per cent of any shortfall or excess of its previous price relative to the latest estimate of long run marginal cost it would take six years for 90 per cent of the adjustment to be achieved. Box 1 below elaborates on these points.

The above examples illustrate that myriad price smoothing policies are potentially consistent with a gentailer optimising its value in an unbiased manner. The price smoothing observed in practice will be determined by market competitive dynamics based on customer preferences. We discuss this next.

Box 1: Value optimising pricing policies

Consider a stylised market equilibrium comprising identical gentailers with identical cost structures who each maintain a stable retail customer base indefinitely by regularly expending an appropriate amount on customer management and marketing. In this scenario, each gentailer's retail customer base is effectively a non-depreciating asset with value equal to the present value of the net cashflows expected to be generated over the indefinite future. Similarly, industrial, commercial and other customers may be thought as assets, though they may or may not be as long-lived as the retail customer base. A gentailer may also take on liabilities as part of managing its business.

A value maximising gentailer seeks to optimise its total net asset value. Equivalently, putting aside portfolio diversification and long-run investment considerations without loss of generality, a value maximising gentailer will seek to optimise the present value of retail sales net of short-run marginal cost (being either marginal production cost if below capacity or the opportunity cost of lower sales to other customers if production is at capacity). The incremental value of the retail asset per unit of sales is:

$$V_t = (p_t - srmc_t) + \rho E_t(p_{t+1} - srmc_{t+1}) + \rho^2 E_t(p_{t+2} - srmc_{t+2}) + \cdots$$

$$= E_t \sum_{\tau=0}^{\infty} \rho^{\tau} (p_{t+\tau} - srmc_{t+\tau})$$

Where V_t is the incremental asset value of retail, E_t is the expected value as at period t, ρ is the discount factor, and p_t and $srmc_t$ are the gentailer's retail price and short-run marginal opportunity cost, respectively, in period t.

A fully flexible pricing policy with no smoothing would set the price in each period exclusively in relation to the short run marginal cost in that period. In a competitive market with identical gentailers, competition will result

in price equal to short run marginal cost in each period, resulting in the retail business unit being valued at zero incremental value relative to other sales assets ($V_t = 0$). If the market is imperfectly competitive and subject to Cournot pricing, the price will be a markup on short run marginal cost ($p_t = \mu.srmc_t$, where $\mu \geq 1$), resulting in the retail business unit potentially having a positive incremental value ($V_t \geq 0$).

Price smoothing rules

Any symmetric price smoothing policy is potentially consistent with a gentailer optimising its value in an unbiased manner. Examples for a competitive market with no price markup are:

(1) Price equal to the current estimate of long run marginal cost:

$p_t = lrmc_t$

On the basis that investment incentives will result in the average discounted value of short run marginal cost being equal to long run marginal cost, i.e. $lrmc_t = E_t \sum_{\tau=0}^{\infty} \rho^{\tau} srmc_{t+\tau}$, the retail business unit has zero incremental value ($V_t = 0$), the same value as for a fully flexible pricing policy.[6]

(2) Any linear combination of short and long run marginal cost:

$p_t = \alpha.srmc_t + (1-\alpha).lrmc_t$,

where $0 \leq \alpha \leq 1$ is a weighting factor.

(3) Any symmetric partial adjustment policy with adjustment for underlying trend, for example:

$p_t = (p_{t-1} + \nu) - \theta.(p_{t-1} - lrmc_t)$

where $0 \leq \theta \leq 1$ is the speed of adjustment (e.g. $\theta=0.33$) and ν is the underlying trend such that $lrmc_t = lrmc_{t-1} + \nu + \varepsilon_t$, where $E(\varepsilon_t) = 0$.

(4) Any combination of (2) and (3).

3.3 Many RPCAs may be irrelevant to the competitive concern

This section makes the point that gentailers compete head-on with independent retailers only to the extent to which customers are potential switchers that the independent retailers may have a comparative advantage to acquire and serve. In contrast, the broadbrush requirement to produce an RPCA for every brand, key segment and location may result in many RPCA's being irrelevant to the Authority's competition concerns. We are also concerned that inability to control for or interpret various legitimate drivers of price dispersion will result in ambiguity and noise rather than reliable signals and valuable information about the competitiveness of the retail market.

The retail electricity market comprises a wide range of consumers with varying income and wealth levels and consumption preferences. While consumer preferences may exist across many dimensions

[6] Equivalence also applies in an imperfectly competitive market with Cournot pricing: price smoothing with $p_t = \mu.lrmc_t$ achieves the same expected value (V_t) as flexible pricing with $p_t = \mu.srmc_t$. The same applies to examples (2) – (4).

(for example, service quality, customer relationship, access to information, substitution with other energy sources), to illustrate why many RCPA's would be irrelevant for the Authority's competition concerns we focus on consumer preferences for price smoothing and the opportunity cost of switching suppliers. For simplicity, we divide consumers into four groups according to whether they have high or low switching cost and whether price smoothing is highly preferred or not highly preferred (refer Figure 2 below).[7] Recognising the full suite of consumer preferences would amplify the points made below.

Each supplier to the retail market has an incentive to provide services to those consumers that best fit with their supply characteristics, subject to their comparative advantage relative to competitors. Gentailers have the option to serve all customer segments, though an individual gentailer's comparative advantage and strategy may be to focus on certain segments to the exclusion of other segments. Independent retailers do not have generation capacity as a natural hedge and agreeing long-term price smoothing energy supply contracts comparable to vertical integration may not be feasible or optimal for them. The independent retailer business model may have comparative advantages in many areas of value to their customers but generally not in offering long-term price smoothing contracts.

Figure 2 below shows that RPCAs are irrelevant to the Authority's objectives in two of the four consumer segments (segments B & D). In both these segments, it is the independent retailers' comparative disadvantage in offering price smoothing as part of their service that is the source of their limited appeal to these consumers. Monitoring the pricing behaviour of gentailers in these segments is irrelevant to the Authority's objectives.

The remaining two segments, A and C, include consumers who do not have a strong preference for price smoothing but differ in their cost of switching suppliers—low switching cost in segment A and high switching cost in segment C. The high switching cost in segment C means these consumers do not switch in response to price differentials (unless they become very large). This limits a seller's potential to acquire new customers to those who are considering switching due to non-economic factors such as shifting properties (referred to as exogeneous switchers). RPCAs on existing customers in this segment are irrelevant since price differentials do not induce switching—the source of the limited scope for independent retailers is the high switching cost of these consumers.

This analysis, deliberately kept as simple as possible, suggests that the RCPAs are likely to provide little or no insight into the competitive conditions faced by independent retailers in many important customer segments.

[7] We take the existence of switching cost and price smoothing preferences as exogeneous, with no attempt to explain them or consider policies that many impact them over time. Note also that the relevant switching cost is the consumer's expected opportunity cost of the time involved to research alternative suppliers and pricing plans, conduct the switch, and deal with post-switch billing and account issues that may arise (relative to the consumer's next best alternative use of that time). Price comparison websites reduce the research cost of evaluating alternatives, at least to the extent that consumers are willing to accept the results at face value.

Figure 2: Relevance of RPCA by customer segment

Cost of switching suppliers	Low	High
High	*Segment C* Gentailer pricing to their existing customers in this segment has minimal competitive impact on independent retailers. Gentailer flexible price or smoothing contract offers to potential new customers (exogeneous switchers) compete with independent retailers' flexible price offers. **Conclusion: RPCAs irrelevant for gentailers' existing customers**	*Segment B* Consumers rarely switch suppliers except as required by non-economic factors (e.g. shifting properties).[8] Gentailers compete for such 'exogeneous switchers' via price-smoothing contracts only. Gentailer pricing to existing and new customers in this segment has minimal competitive impact on independent retailers as they have limited ability to offer smoothing contracts. **Conclusion: RPCAs irrelevant**
Low	*Segment A* Consumers readily switch between suppliers and between flexible price versus smoothing contracts. With limited price smoothing capacity, independent retailers mainly serve this segment. Gentailer pricing to existing and new customers in this segment has competitive impacts on independent retailers.	*Segment D* Consumers readily switch between suppliers of price smoothing contracts. Gentailers may compete to induce endogenous switchers as well as for exogeneous switchers. Gentailer pricing to existing and new customers in this segment has minimal competitive impact on independent retailers. **Conclusion: RPCAs irrelevant**

Preference for price smoothing

The RPCA approach seeks to take account of regional and temporal variations through the requirement for an RPCA to be produced for every brand, key segment and location. However, as summarised in Box 2 below, many other legitimate drivers of price differences between customers and segments may render interpretation ambiguous.

[8] Unless sufficiently large price differences or other economic variations arise.

Box 2: Summary of price differences not reflected in RPCA

The RPCA framework, as outlined by the Authority, does not appear to control for or interpret several legitimate drivers of price differences between customers and segments. These include:

- **Timing of customer acquisition:** different cohorts of customers will have signed up at different times under different underlying cost conditions. As with fixed-rate mortgages, price differences between cohorts often reflect contract timing rather than discrimination.
- **Promotional and retention pricing:** temporary discounts and targeted offers are a normal feature of competition in contestable segments.
- **Shaped-product risk premia:** smoothed and shaped retail products carry different risk premia to flat, standardised hedge or ASX products.
- **Price smoothing policies:** as discussed in the previous section, retailers may legitimately adopt symmetric smoothing rules that customers value, which, by construction, create periods where smoothed retail prices sit above or below contemporaneous cost benchmarks.
- **Differences in switching costs and product preferences across segments:** as outlined in the 2×2 segmentation in Figure 2, variation in switching costs and preferences impacts prices and margins.

Because the RPCA framework does not control for or interpret these legitimate drivers of price dispersion, any 'price–cost' gap it reveals will be inherently ambiguous and may simply reflect normal competitive factors.

Overall, the RPCA framework is unreliable because it compares fundamentally mismatched pricing constructs, does not accommodate competitive drivers of retail pricing, and applies a methodology ill-suited to the structure of the retail market. The considerations in sections 3.1–3.3 indicate that the proposed RPCA requirement is not a fit-for-purpose regulatory tool for promoting competition or building confidence in retail prices, and risks generating misleading inferences about normal competitive conduct. If the Authority wishes to build confidence in the competitiveness of retail pricing, we consider that this is better achieved by the alternative monitoring approach set out in section 3.4 below.

3.4 A better approach to enhancing confidence

This section outlines a workable alternative approach that we consider is more likely than the RPCA proposal to enhance independent retailers' confidence in the competitive performance of the market.

The alternative approach outlined below is based on three premises:

- First, an Authority that becomes confident about the competitive performance of the market would be able to provide confidence to the independent retailers and consumers.
- Second, the Authority's primary focus should be on monitoring the competitive performance of the market rather than individual participants (which are subject to competition law and under the Commerce Commission's jurisdiction).
- Third, collecting and analysing more comprehensive data capable of providing high quality information will better equip the Authority to assess the market's competitive performance.

The first premise reflects that the direct route of seeking to enhance the confidence of independent retailers through greater public transparency of prices may increase the risk of tacit coordination between market participants and/or may be ineffective due to the aggregation and averaging required to mitigate commercial sensitivity. The indirect route of restricting the data provision to an independent and credible third party who can provide the necessary reassurance may be a better approach in this case.

The second premise—on the need to focus on monitoring overall market performance (rather than individual participants)—reflects the discussion in section 3.1 that it is the interplay of competitive interactions of sellers with consumers and competitors, along with external economic shocks, that determine retail prices over time. The focus therefore should be on the dynamics of continual changes in competitive positions over time rather than relativities and price justifications in any specific period.

The third premise—on the need to focus on comprehensive data capable of providing high quality information—reflects the price-smoothing and customer segmentation discussions in sections 3.2 and 3.3 above. These sections conclude that there is little information of value to be gained by: (i) collecting and analysing data on customer segments that are distant from the areas of the most competitive concern, or (ii) comparing data that are inherently non-comparable (for example, comparing hedge prices versus the implied cost of energy derived from enduring price-smoothing contracts).

Reflecting these conclusions, we recommend that the Authority discard the RPCA proposal and consider developing its analysis along the following two directions:

- Monitor the 'quantity side' of competitive dynamics through detailed analysis of consumer switching patterns.
- Monitor the 'price side' of competitive dynamics through comparison of pricing across chains of nearly like-for-like contracts.

The following elaborates briefly how these approaches could be developed, intended as starting points for the further development that would be necessary to enable cost/benefit assessments.

3.4.1 Analysis of consumer switching patterns

The purpose of the detailed analysis of consumer switching is for the Authority to gain a thorough understanding of the retail market's competitive performance from a quantitative perspective across various categories of potential switchers.

Understanding the quantitative side of competitive performance would require detailed analysis of switchers, non-switchers, repeat switchers etc by consumer classification, exiting and joining retailer types, exiting and joining contract types, exiting and joining prices, and relevant other explanatory variables (e.g. age, income, property location, other household characteristics). The analysis may require the collection of more comprehensive data than is currently collected on retail electricity consumers as well as other data sources for explanatory variables.

3.4.2 Analysis of comparable pricing arrangements

The purpose of the proposed pricing analysis is for the Authority to gain confidence that competitive dynamics are resulting in a reasonable degree of consistency in: (i) the market prices of new contracts with similar characteristics, (ii) how the market price tends to vary with changes in contract and customer characteristics (e.g. contract duration, credit risk).

For the Authority to gain a thorough understanding and a high degree of confidence, the analysis should cover physical and financial contracts across all customer groups. Each gentailer and independent retailer would provide data on new contracts agreed since the previous reporting period. Data requirements might include details such as the date at which price is agreed, contract duration, price adjustment mechanism (if any), contract type, seller type, customer type and other possible classifiers. The analysis of this data by the Authority would need to take into account that the characteristics of any two contracts and any two customers are likely to differ to some degree.

To summarise, we support the Authority taking a more active approach to market monitoring, undertaking competitive analysis and promoting continual enhancement of consumer outcomes. The considerations in sections 3.1–3.3 indicate that the proposed RPCA requirement is not a fit-for-purpose regulatory tool for promoting competition or building confidence in retail prices, and risks generating misleading inferences about normal competitive conduct. If the Authority wishes to build confidence in the competitiveness of retail pricing, we consider that this would be better achieved by pursuing alternative analysis along the directions set out above. These approaches should be developed further to enable cost/benefit assessments.

4. Pricing individual risk management contracts

4.1 The proposed Code Amendment

The process for pricing individual risk management contracts leans heavily on the prices of New Zealand Electricity Futures traded on ASX. As a result, the success of the proposed Code amendment relies on the efficacy of that market.

The Code amendment proposes the introduction of six non-discrimination principles mainly related to pricing and supply of risk management contracts. Gentailers must provide an annual report to the Authority, that demonstrates whether and how that gentailer has met the non-discrimination principles in that financial year. Importantly the proposed Code Non-discrimination principle 1 directs that (Electricity Authority, 2025a, Appendix A):

> "(1) A gentailer must not discriminate between buyers for the supply of risk management contracts without an **objectively justifiable reason**.
>
> (2) A gentailer must not discriminate against buyers in favour of its own internal business units for the supply of uncommitted capacity without an **objectively justifiable reason**.
>
> (3) A gentailer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts without an **objectively justifiable reason**."

The underlying goal is stated as:

> "addressing the risk to competition from access or price discrimination" (page 5).

As we state elsewhere, we consider the Authority's expectations would be better served by focusing on indicators of competition or otherwise rather than place obligations on select competitors.

4.2 The key outcomes the EA expects to achieve

The key expected outcome for the proposed Code amendments is to improve the confidence of new entrants and independent participants that gentailers do not discriminate over pricing or availability of risk management contracts. The Authority's view remains that there is an issue around access to, and pricing of shaped hedges that it should respond to (Electricity Authority, 2025a, para. 3.15):

> "The Authority is particularly concerned that this risk is impacting on the confidence of new entrants and participants looking to expand in both the retail and generation markets."

We look at the basis of pricing to see where there might be cause for greater confidence than the Authority suggests. Terms for contracts in the retail electricity market or market for risk management contracts include pricing that covers base load contracts within the ASX futures horizon, baseload contracts beyond the ASX futures horizon (e.g. PPAs) and shaped products within the ASX futures horizon.

The Authority has commented on competition in the ASX (Electricity Authority, 2025a, para. 3.19):

> "3.19 We have focused our analysis on the pricing of super-peak hedges, as the RMR found that prices for ASX baseload, and OTC baseload and peak hedge contracts were likely to be competitive. In the RMR, the Authority could not conclude the same for super-peak prices. During the period covered by the RMR, super-peak prices tended to trade at prices well above benchmark prices of ASX baseload plus a shape premium."

As a result, confidence around the competitiveness of shaped risk management products lies around the differential between ASX and shaped contract prices and the preparedness for gentailers to make that product available.

We look at how risk management contracts are priced in some detail to better understand whether the Authority's key outcomes are likely to be achieved with the proposed mechanisms.

4.3 Pricing risk management contracts

Generators typically price electricity risk-management contracts (e.g., CFDs, swaps, caps, PPAs, peak) by adding known costs of funding the contract (cost of carrying the risk and balance sheet constraints) and all of the risks they face through the contract period over their expected spot-market purchase price. As a rule the ASX futures will be used as a proxy for expected spot prices for the immediate four years. The expected value of each risk is often referred to as premia but they are better thought of as risk adjusted costs.

The Australian Energy Market Commission (AEMC) provides a good description of risk premia (Seed Advisory, 2013):

> The risk premium required by a market participant or intermediary to offer a fixed price for some future period (a forward, swap or contract for difference) in exchange for spot market exposure. In the absence of a risk premium, at the time the transaction is entered into, the market price for the forward contract would be equal to the expected spot price over the term of the agreed contract leaving the parties to the transaction indifferent to the choice of the spot or fixed price. The generally used explanation for the difference between the expected spot price and the forward price is that the party offering a fixed price requires compensation for the risk it is assuming in accepting the spot price. The risk premium is also expected to be impacted by other factors including market liquidity. In a less liquid market the risk premium is expected to be higher."

The Authority characterises it as follows (Electricity Authority, 2024, Appendix A):

> "2.2. Electricity hedges contain multiple risk factors (such as market liquidity, as mentioned above by AEMC) that require different premia. Here we discuss different risk factors and – where possible – estimated resulting risk premia. We also discuss how these risk premia may vary over time."

The process of pricing up a risk management contract includes key distinct steps. There is no approved methodology for pricing risk management contracts. Each gentailer will price differently to the extent their hedge book and generation portfolio gives a different level of eagerness to enter into

hedge contracts on request. However, there will be some stylised similarities in approaches and what has to be taken into account.

We have distinguished between base load contracts within the ASX futures horizon, baseload beyond the ASX futures horizon and shaped products within the ASX futures horizon. For all products the ASX prices are a starting point. The issue for the proposed NDOs is the premia over ASX for shaped products.

Step 1: Match to the existing hedge book

Key considerations:

- Assess the shape of the contract against the generation portfolio. For shaped or time-based contracts determine if there is a mis match between the shape of the contract and the fuel plus generation capacity required to cover it. If the hedge book is matched the generator may be reluctant to sell more. With a shaped contracts if there is a risk the generation portfolio might not cover the physical exposure a premium may be required.
- Forecast spot prices. Compare this forecast with current forward prices i.e. New Zealand electricity futures traded on ASX.
- Ensure the volume meets internal limits such as hedge coverage ratio, counterparty exposure, tenor limits.

Step 2: Take account of the risks with the base assumptions

Risks with the base assumptions include the following:

- Forecast spot prices are wrong because of misestimates of fuel costs, hydrology, demand, outages, carbon prices or competitive behaviour.
- Expected physical cover for the hedge book may be too low resulting in an exposure to the spot price.
- Longer-dated contracts require higher premium due to liquidity and uncertainty.
- Counterparty credit risk.

Step 3: Address the multiple risk premia that have to be taken into account

The Authority has covered these additional risk premia for super peak products in particular in the 2024 risk management options paper (Electricity Authority, 2024, Appendix A):

- Location premium
- Shape premium
- Illiquidity premium
- Spot price volatility premium
- Scarcity premium
- ASX volatility premium.

A gentailer will take these risk premia into account having reviewed the risks with the base assumptions (mainly referencing ASX futures) and their ability (willingness) to add more cover to the physical portfolio.

Many risks that a portfolio is exposed to have a range of outcomes, and a range of uncertainty about those outcomes. In isolation, the decisions made by a valuer of risk will depend entirely on their level of conservatism. This is why it is known that the only way to establish a value for all risk premia is through transactions. Transactions become a real data point, marking where more than one decision maker were able to agree on the risk premia. Any party wanting to transact then needs to decide whether that is a risk premium they can accept regardless of the level of conservatism they hold privately. They either transact or they do not.

This is why, after considering the appropriate range of risk premia given prevailing uncertainty, a trader will then always come back to what previous transactions have been done. Where liquidity is low then a trader may still consider that existing transactions are not reliable. However, when liquidity is higher, then there can be no denying that the majority of the market have found an equilibrium on the multiple views of risk. Then if a trader wants to do a transaction their view of risk must meet the market. They can try to influence the market through their spread of contracts, for example they can buy risk they think is underpriced and try to sell at a higher price. If their sales price is met, then their view of risk becomes part of the multi-party decision-making process. If not, then they must accept the market's view on risk.

The only objectively identifiable way of determining risk premia is through observable transactions.

4.4 The Authority's assessment of the risk premia

The Authority's preliminary findings on pricing OTC super peak hedges (Electricity Authority, 2024, Appendix A):

> "Nor could we determine from evidence whether the prices of OTC super-peak hedges were consistent with competitive prices, and whether the increase in OTC super-peak prices (as a percentage of ASX baseload prices) that we observed over the assessment period is justified."

Since the Authority landed on this point standardised supe peak contracts have traded on a fortnightly auction so the super peak prices as a percentage of ASX based load prices is observable. Before the regular and visible trade of super peak contract the Authority concluded (Electricity Authority, 2024, Appendix A):

> "Our analysis indicates that the prices for OTC baseload and peak hedge contracts are likely to be competitive. However, we could not reach the same conclusion for OTC super-peak hedge contract prices as they trade at a substantial unquantified premium over ASX baseload prices adjusted for shape."

The Authority was not able to determine the efficient level of such a premium, explaining that its estimates suffer from:

- likely underestimating the shape premia
- likely underestimating the illiquidity premium
- not estimating a spot price volatility premium

- adopting a scarcity premium that underestimates contract prices
- not adding a premium for ASX volatility.

Hence, the efficient price to be discovered for super peak products must signal an increasingly scarce resource both to ensure efficient use of that limited resource and to create powerful incentives to maintain and invest in flexible generation and demand side flexibility. The discovered price must achieve these incentives while not subjecting customers to market power.

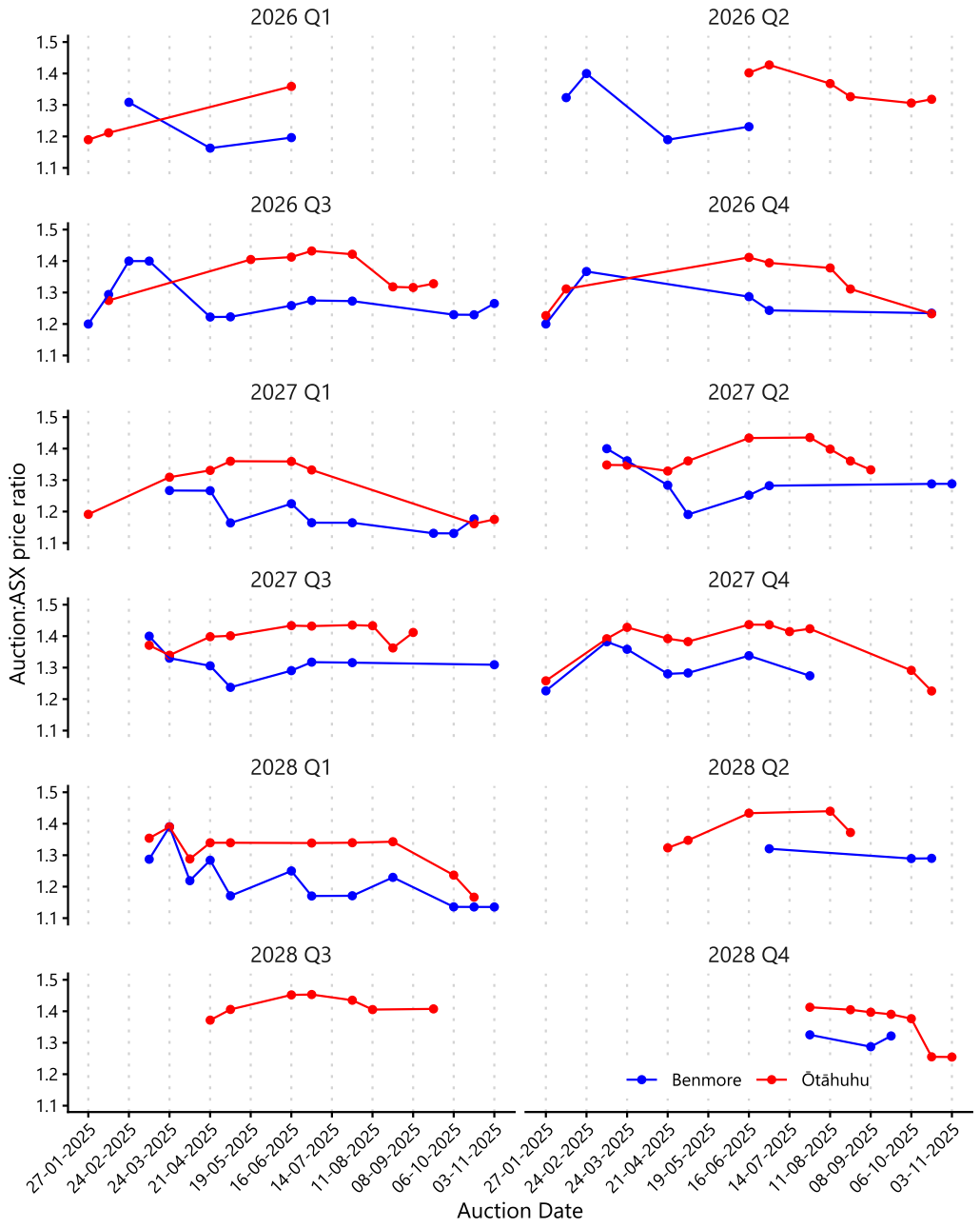
In line with our observation that the Authority should be observing competition rather than competitors we want to test what the market is telling us. Below we look at the experience to date of prices for standardise super peak contracts in relation to ASX prices given the acceptance that ASX prices "are likely to be competitive."

4.5 Analysis of trading in the standardised super peak contract to date

Figure 3 plots the ratios of standardised super peak (volume weighted average) prices over the previous day's futures settlement prices for the same maturity, at Benmore and Otahuhu, in each auction to date (Electricity Authority, 2025c).

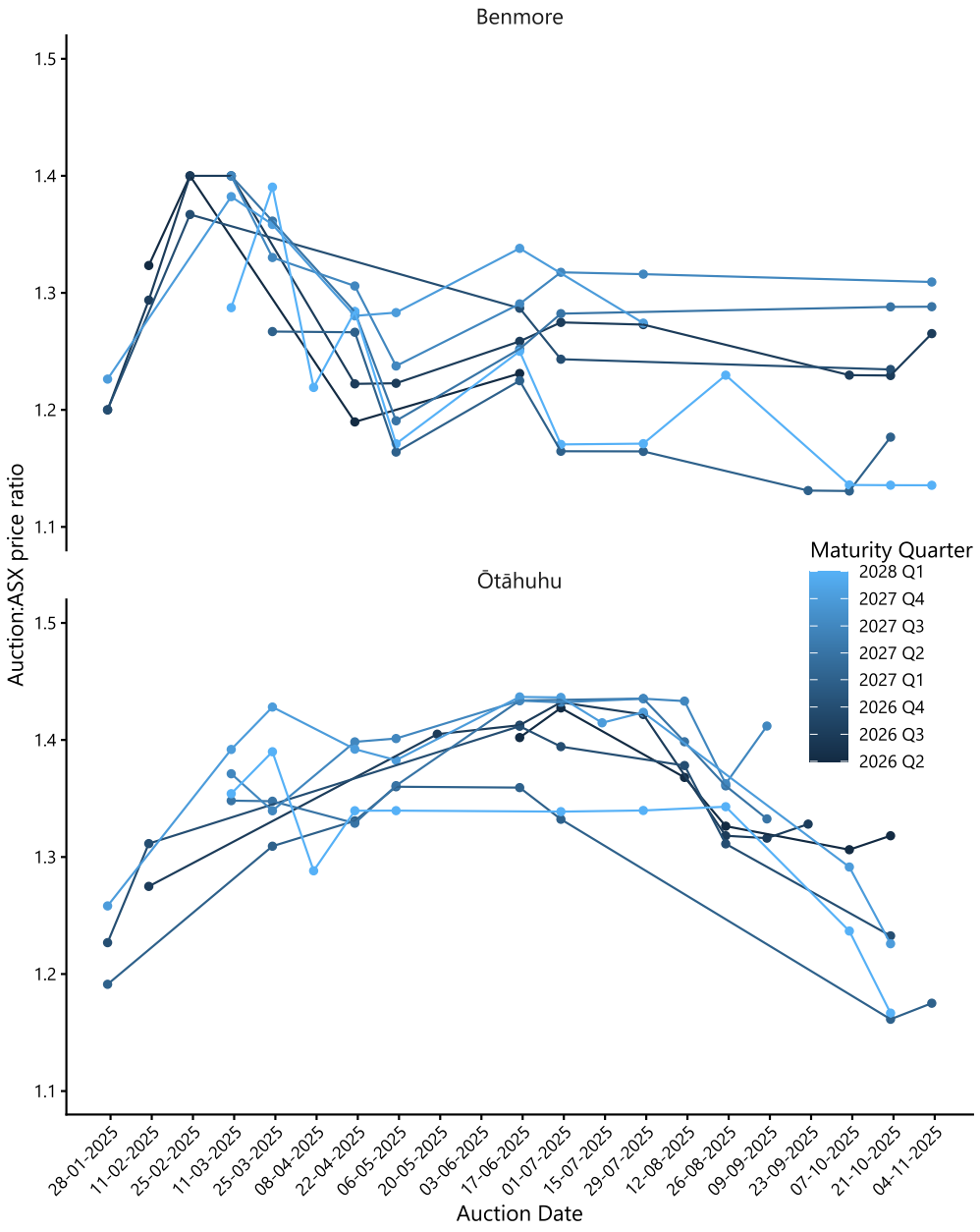
What we learn from Figure 3 is that, after a settling down period, Benmore ratios tend to be lower than the ratio for Otahuhu prices at the same time. We see through the period that ratios for Otahuhu firmed up and are now showing a bit of differentiation between the maturities in recent auctions.

Figure 3: Ratio of prices for trades completed for each maturity auction by auction



In Figure 4 we overlay the ratios for the quarterly contracts 2026 Q2 to 2028 Q1. For Benmore we see that the ratios started firmly in the 130 per cent to 140 per cent range but settled down after a few auctions. Conversely, the ratio between super peak and ASX for Otahuhu firmed through the early auctions and settled into a pattern in the higher range through the more recent auctions.

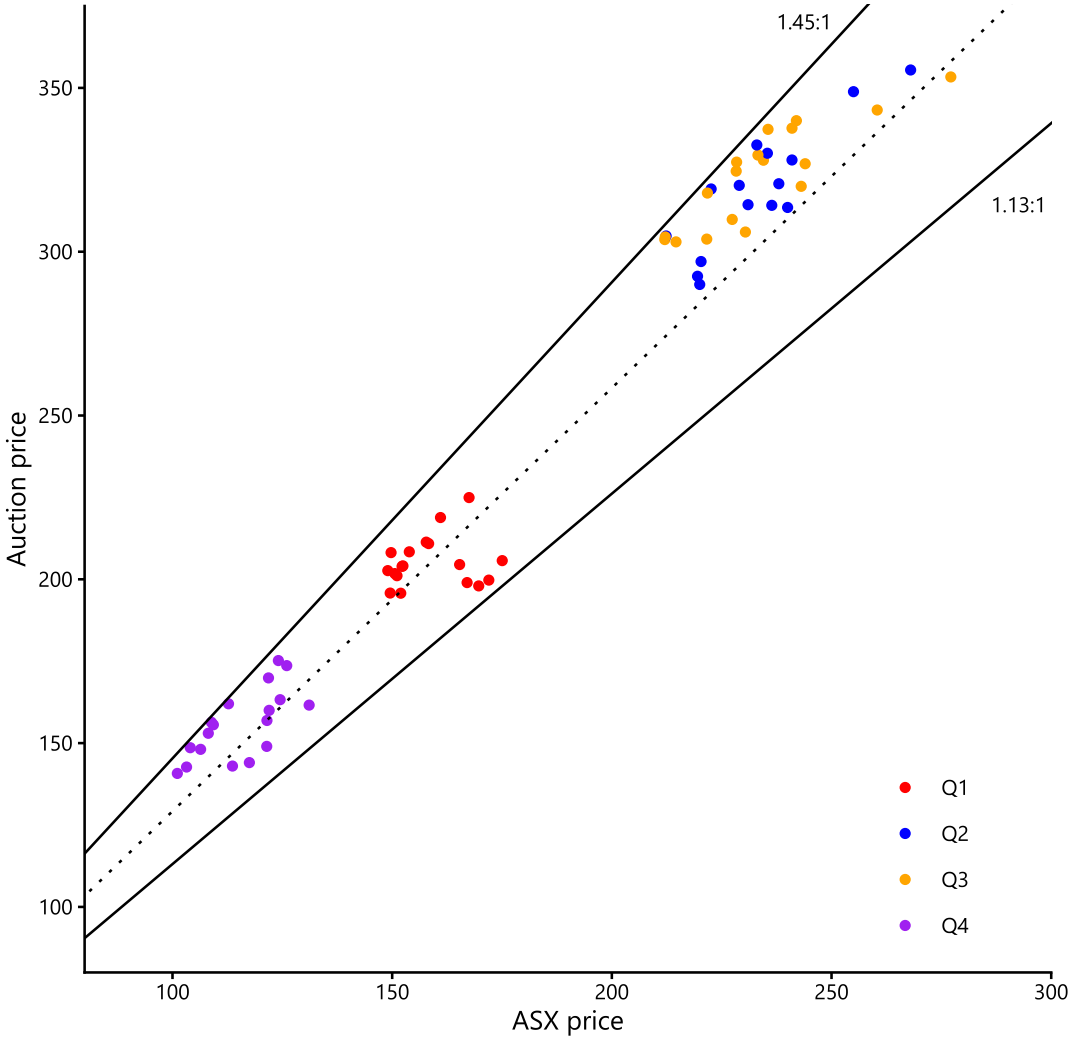
Figure 4: Prices for each maturity traded on the super peak platform by node



Having established that the ratios might tell us something about price discovery in the super peak products, we plotted the (weighted average) auction prices against the ASX prices for the same eight quarters (2026 Q2 to 2028 Q1) to see if we could observe any patterns. We mapped the line showing the highest ratio and lowest ratio amongst all trades so we could see, for any quarter, whether there was a bias towards a high ratio (reflecting higher concern about super peak prices over baseload price) or a lower ratio (reflecting less concern between the two).

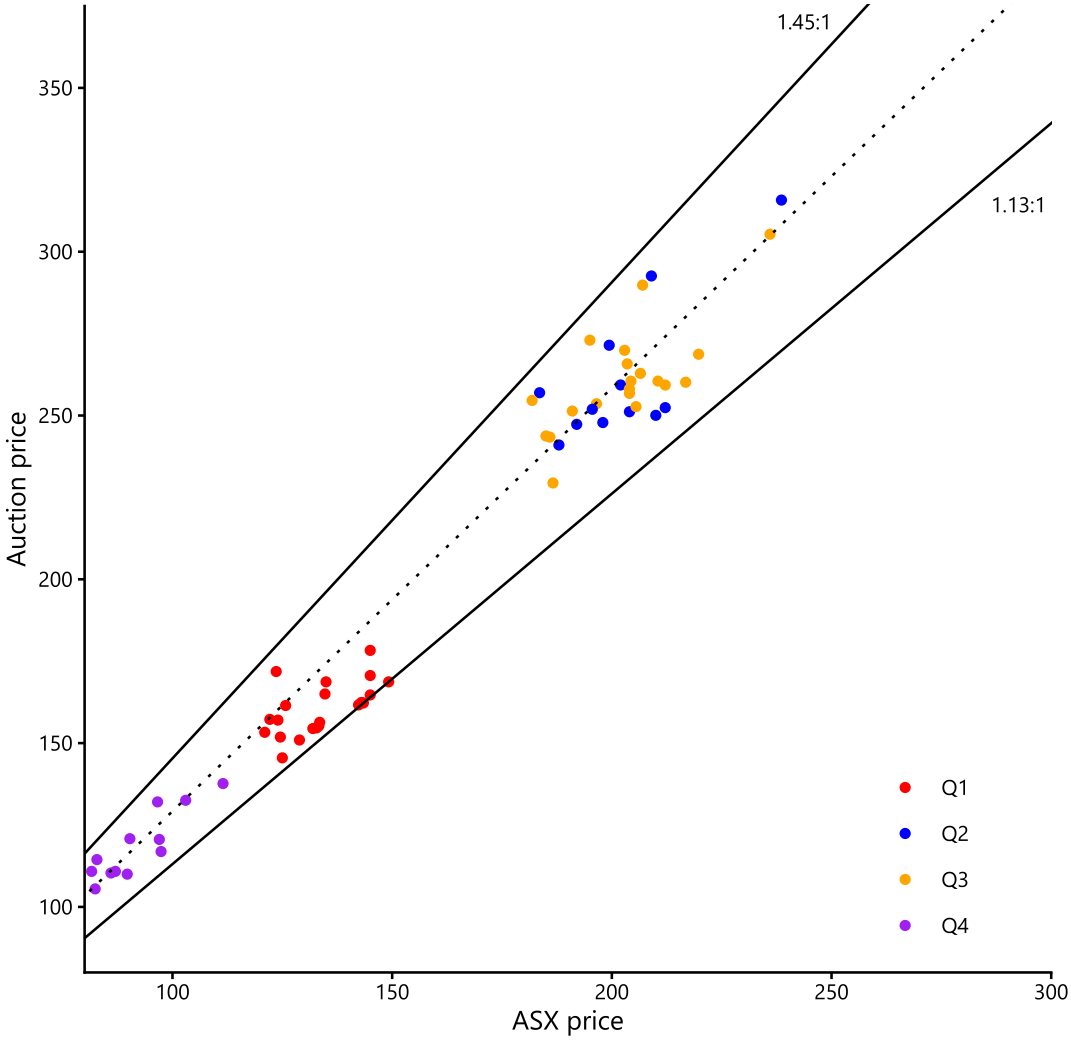
In Figure 5 we see the majority of Auction/ASX price ratios for auctions where Ōtāhuhu trades have occurred located in the higher band, and the same bias visible for the summer and winter quarters. This would come about as a result of sellers reflecting greater risk and buyers being prepared to buy more aggressively. If that had not been the case, we would see trades distributed across the range more.

Figure 5: The ratio of super peak trade prices over simultaneous ASX trade prices for the same maturity at Otahuhu node (quarters 2Q 2026 to 1Q 2028)



Relatively speaking, the same exercise for Benmore shows more incidence of ratios in the lower part of the range in all quarters.

Figure 6: The ratio of super peak trade prices over simultaneous ASX trade prices for the same maturity at Benmore node (quarters 2Q 2026 to 1Q 2028)



Based on these results it looks as though prices struck for super peak contracts trade as a ratio of the comparable ASX futures prices. That would make sense. The base load contracts reflect the fundamentals of the market. Trade in the super peak contracts just reflect the risk of prices spiking at peak times relative to baseload prices. Shifts in the ratio across the range appear to reflect a meeting of minds on that risk rising or falling.

If that is the case the standardised contracts are addressing price discovery. The focus for the Authority, therefore, should be on what can be done to foster the emerging price discovery.

4.6 A better approach to enhancing confidence

In our view, monitoring price outcomes along the lines we have above would be a better avenue to ensuring confidence in the pricing of risk management contracts and improving competition in the risk management contracts than what is proposed. For the reasons explained above, risk premia is better monitored through actual market transactions rather than relying on an onerous regime of

having to provide "objective justification" on enquiry. The exception would be, of course, where monitoring yielded some erratic behaviour.

We support the Authority monitoring the level of competition in the electricity market, especially the market for risk management products but, as we say above, the focus should be on the competitive process i.e. competition itself.

5. Committed/uncommitted capacity

The proposed Code amendment would (Electricity Authority, 2025a, Appendix A):[9]

> "require that a gentailer allocate its uncommitted capacity on a non-discriminatory basis" (page 5).

When pricing risk management contracts, as we discuss above, a gentailer will assess its ability to offer **risk management contracts** in future periods when it receives a request. The proposed definition of uncommitted capacity, i.e. capacity that should be made available to all buyers on a non-discriminatory basis, is to be based on a **gentailer's** expected gross forecast ability to offer product less:

> (a) the amount of generation that could otherwise be used to back **risk management contracts** that the **gentailer** reasonably expects to use to supply electricity to its end customers; and
>
> (b) a **gentailer's** wholesale commitments, comprised of **gentailer** market making commitments (regulated or voluntary) and existing **risk management contracts** entered into with **buyers**.

The Authority is proposing to give gentailers "the flexibility to develop and apply their own methodologies for establishing the amount of, and allocating, uncommitted capacity". This flexibility reflects "the general and business-specific complexities this may involve".

This limb of the proposed Code amendment may not be as straightforward as it seems.

5.1 Uncommitted capacity

The Authority is concerned that risk management contracts could be being withheld as a way of discriminating against independent retailers in preference to their own portfolios. The Authority considers that a measure of whether contracts could potentially be withheld is to assess the uncommitted capacity available to a generator-retailer..

In a functioning wholesale electricity market with functioning contracts markets, it wouldn't matter whether or not generator-retailers are offering contracts. Any party should be able to price a contract and the risk and, with suitable financial resources, offer such contracts. In the absence of generator-retailers making the market we would expect speculators to take up the market and arbitrage any risk-matching opportunities. If the wholesale market is not pricing risk and scarcity correctly, or that risk cannot be robustly determined from market data, and/or there is little contract liquidity for critical products, then any party that has physical assets has a natural advantage in the contracts market.

Therefore, investigating the withholding of generator contracts is a secondary remedy. The primary remedy should be to ensure wholesale "spot" prices accurately reflect the short and long term costs of supply, and contract market price discovery is efficient and there is suitable liquidity.

[9] The definition of uncommitted capacity in the Proposed Code amendments provided in Appendix A is different from provisions for establishing the committed/uncommitted capacity set out in Appendix B para B6.

The Authority is, therefore, trying to assess the level to which a generator-retailer genuinely has such a physical advantage in an underperforming market. As a starting point then, the guidance on what a generator-retailer can genuinely physically cover should begin with what the whole power system can genuinely physically cover. The starting point for considering cover should begin first with the Security Standards (SS) and the Security Standard Assumptions (SSA).

5.1.1 Security Standards

The rules have three security standards:

1. A New Zealand winter energy margin (NZ-WEM) of 14-16 per cent.
2. A South Island winter energy margin (SI-WEM) of 25.5-30 per cent.
3. A North Island winter capacity margin (WCM) of 630-780 MW.

The SS is effectively, although not necessarily expressed exactly as such, an assessment of what total capacity or firm energy needs to be so that, based on reasonable assumptions once credible risks and variability are considered, demand is highly likely to be met without curtailment.[10] The SS and SSA were produced from a convolution model. We understand that this model used a form of supply/cost availability function, a demand/cost loss function, and HVDC function to determine a frontier which costed various levels of supply surplus and demand curtailment. The lowest cost option was then chosen to give the level of surplus chosen for the SS. Such a modelling approach is obviously highly sensitive to input functions, which have changed significantly since 2012.

As we draw out further below there are more input variations now than existed in 2012, for example, in 2012 fuel supplies were held to be firm where they are not in 2025. This raises the question of whether the same convolution model approach would be fit for purpose today. It should be noted that modelling techniques, and the ability to handle large amounts of data input, have improved significantly since 2012.

In the absence of SS modelling updated to reflect the system today we have relied on traditional planning standards for the assessment below. Traditional planning standards have evolved over the history of bulk electricity supply and have stood the test of time. There are better methods for assessing economic levels of security of supply, providing you can make a relatively accurate assessment of the customer damage functions for loss of supply, but planning standards are a useful first order approximation. For the assessment below we use n-g-1 for generation (allowing for a generator to be on long-term outage and for another generating unit to trip in operation), and P90 demand forecasts for demand (a forecast based on observed variations of demand for which the 90th percentile level is chosen), which are explained further below.

The SS determines what the minimum level of supply should be for both capacity and energy, not what the available supply is. The determination of what the available supply is determined from the SSA, although the 'drinks are mixed' as we explain further below.

[10] The SS in the code are specified as what supply is required above average levels of generation and demand.

We should note, the SS benefits from risks distributed across the power system. While the power system may have some degree of risk that one thermal unit could trip, for example, each generator-retailer portfolio has the risk that that trip might happen to them. Therefore, applying an SSA approach to each portfolio would give a level of available generation (for either capacity or energy) that when summed would be less than that assessed for the power system overall. If the WCM or WEM is in deficiency, then the deficiency of generation and retail portfolios in aggregate will be relatively worse. This is not because of any withholding of capacity but because capacity and energy risks are less diversified in an individual generation and/or retail portfolio than in the whole system.

It should also be noted that, collectively, the SS and SSA are 'mixed drinks'. It might be expected for a security standard that you would either denote the surpluses that need to be met and compare that to total capacity, or you would specify that there should be no deficiency of capacity once the SSA's are applied. However, the SS denote the required surpluses and the SSA also specify deratings and additions to generation, demand and transmission. Obviously, the concept of uncommitted capacity resembles the second simple option above, specifying that a generator-retailer portfolio must meet a capacity level and then applying the deratings and additions that should first be applied.

This means that we need to interpret the SS in conjunction with the SSA to arrive at an uncommitted capacity consistent with the industry's SS.

5.1.2 Security Standards Assumptions

The specific numbers in the current SSA are not going to be useful. However, the SSA Document (SSAD) does give the considerations for considering genuinely firm capacity and energy. The SSA are different depending on whether the consideration is the WCM or the WEM.

To determine a generator-retailer's uncommitted capacity using the SSAD approach the generator-retailer would assess their prudent expectation of peak generation capacity for WCM and shortfall of potential energy for WEM, a prudent expectation of the peak demand of their retail base for WCM and WEM, and a prudent expectation of the ability to rely on generation in the other island to supply the other island (HVDC risk) for WCM and WEM. In addition, for a generator-retailer portfolio there would be a prudent expectation of contract exposure for WCM and WEM. This already points to potentially having different levels of uncommitted capacity for capacity and energy and by island, and possibly even more regionalised depending on known transmission constraints.

5.1.2.1 Prudent generation availability

The assessment of availability between capacity and energy is, generally, the same but different numbers may be used.

Thermal

Collectively, the SS and the SSA allow for both a required surplus of availability (capacity and energy) and then also allow for thermal deratings. It is difficult to disaggregate the SS without doing a deeper analysis of the original modelling. However, we can generally surmise that the NI WCM generally seems to align with the planning principle of n-g-1. The target of 630MW to 780MW roughly equating to two Combined Cycle Gas Turbines (CCGT) being out of service. Although the NI WCM also incorporates variations in demand and inter-island transfer. However, the SSAD also allows for a

further 3 per cent of thermal capacity to be derated, which in 2012 equated to a further 90MW of reduced capacity. The SSAD also allows for a further 2 per cent reduction of hydro capacity but applying a n-g-1x thermal-1x hydro seems too conservative, but this is where it gets difficult to unbundle the SS.

Given that the objective of the uncommitted capacity assessment seems to be that contracts should be offered if they are backed by firm physical capacity then an n-g-1 standard seems appropriate. However, this should be considered across thermal (including geothermal) and hydro. This would mean that the thermal generation capacity would be limited by the loss of the two largest single units that would affect capacity or energy depending on the contracts considered. Although, the application of this would need to be consistent. For example, if Huntly Rankine capacity were considered to be 500MW with a 250MW back up then either the -g or -1 is already explicitly considered and only the loss of unit 5 should be considered additional. This would be algebraically equivalent to considering the capacity of Huntly Rankines to be 750MW and allowing for the loss of a Rankine and unit 5.

There is a question of whether n-g-1 is too high a standard for energy availability as long-term outages of large thermal units was considered unlikely in the 2012 SSAD. However, long-term outages have occurred on large thermal units since 2012. In any event it may be fuel availability that is the limit on energy availability for thermals.

The 2012 based SSAD states that thermal units should be assumed to be fully fuelled. That may have been a reasonable assumption in 2012 but is obviously inappropriate in 2025. In 2025 fuel availability must limit energy availability, including any fuel losses that might result from changes in total thermal efficiency arising from the loss of the largest unit. However, again limitations need to be consistent. For example, if Contact were to have only sufficient fuel for one Stratford peaker then the loss of one of those peakers should not be an additional limit on availability.

It should be noted that, for gas plant, fuel availability can also limit capacity availability. As well as declining reserves of gas there is also a limit on the daily production capacity of gas.

The SSAD also makes provision for capacity that should be reserved for ancillary services, i.e. frequency keeping and instantaneous reserve. Such a reservation would need to be tested against historical participation in these markets and may need to be adjusted for new participants in these markets, e.g. BESS. However, the capacity allowance needs to recognise the importance of not only providing for these services but also competing for them, which again means that the sum of individual capacity allowance will be less than the power system would actually clear.

Hydro

Again provision needs to be made for outages. The SSAD makes a probabilistic assessment of both thermal and hydro availability that is additive. It could be argued that allowing for the loss of the largest unit for both thermal and hydro is too conservative. However, hydro units tend to be smaller than thermal units, and long-term outages of hydro units is not uncommon. This approach is also consistent with the planning standard of n-g-1.

The equivalent for hydro operators without thermal would be to allow for the loss of the two largest hydro units.

For capacity availability the SSAD allows that short-term storage limits can lead to further limits on some hydro, e.g. from the SSAD (Electricity Authority, 2012):

> "Further, in the calculation of WCM:
>
> (a) Matahina, Patea and Tokaanu should be derated by 13 MW, 5 MW and 20 MW respectively to account for their limited short-term storage; and
>
> (b) the Waikato hydro scheme should be derated by 60 MW to account for the impact of chronological flow constraints."

Energy availability for hydro would then need to be based on inflow assumptions. As well as hydro units being considered in the n-g-1 assessment low inflows should also be considered. The low energy scenario would depend on the portfolio. For example, low inflows would be the key driver on energy availability for Meridian but for Genesis the loss of thermal capacity would be a bigger driver. Again, there needs to be consistency. Generally speaking, the loss of a hydro unit wouldn't further reduce the ability of a hydro chain to produce energy over sufficient time.

Other renewable generation

For some reason the SSAD doesn't consider geothermal except to explicitly exclude it from the further derating of thermal capacity. It is still implicitly included in the SS surpluses, however. We think the best approach is to consider geothermal units in the n-g-1 assessment as some geothermal units are as large as fossil thermal units, especially in firm energy supply.

The 2012 SSAD assessed wind as likely to have a 20-25 per cent contribution to peak capacity. As far as we're aware the 25 per cent factor is still being used but Transpower is assessing this again now. Some firms may consider that having no wind is a concern for their capacity or energy availability but, if so, this should be treated as one of the components in the n-g-1 assessment, e.g. generating unit on outage and wind output falls to zero.

Solar was not considered in the 2012 SSAD but should be considered to make no contribution to peak capacity but a reasonably reliable contribution to winter energy. We are not aware of an explicit study into the reliable contribution of Battery Energy Storage System (BESS) to capacity and energy availability in New Zealand but note that BESS isn't necessarily firm capacity (as it may not be charged when needed), and on an energy basis BESS is a net load.

5.1.2.2 Prudent allowance for retail demand

On the assumption that the surpluses required in the SS are generally related to planning standards, then the normal planning standard for demand forecasting would be to use the P90 forecast.

This demand then needs to be grossed up for transmission losses. Probably the easiest way to do this is to 'locationally adjust' demand to the same GXP (this can also be done for generation as well) by using the prevailing wholesale market location factors for the relevant period of time.

The SSAD then reduces the demand for normal demand response in a dry period, interruptible load in the NI, and a nominal peak demand response in the NI. The numbers used in the 2012 SSAD are unlikely to be useful now, demand response has evolved, especially in recent years. Individual generator-retailers should now have a better understanding of demand response and many now have

demand response or flexibility contracts in place with customers. Generator-retailers should reduce their demand commitments by any known demand response or flexibility arrangements. Normal demand response should be implicitly recognised in a P90 demand forecast.

5.1.2.3 Prudent transmission adjustments

The SSAD recognises that there can be inter-island limits on the ability of generation in an island to support energy or capacity in the other island. The 2012 SSAD appears to adjust the ability of SI generation to meet NI capacity for average losses across the HVDC during peaks with a limit at the self-covering capacity of the HVDC. The locational adjustment mechanism above is appropriate for the loss adjustment across the HVDC. There is a difficulty with applying an NI wide import limit to individual portfolios. However, at the point where the HVDC can no longer self-cover and reaches the point where it requires marginal reserves (the point at which it could be limited), then NI reserve prices would lift the marginal cost (and price) of delivered HVDC volumes to the NI. Therefore, locational adjustment can still be used to derate the contribution of SI generation to NI capacity.

The adjustment of NI generation to meet energy demands in the SI during a dry period is more problematic. The limit on the HVDC specified in the 2012 SSAD is a capacity limit which then has to be applied over time to establish an energy limit. In practice, southward power flow is not only affected by the SI stability limit on the HVDC but also HVAC limits on south transfer in the NI power system. With the upgrade of the HVDC that was commissioned in 2013 and other AC transmission upgrades, plus difficulty in then applying an island wide limit to an individual portfolio, this means that there is no obvious way of making this adjustment. The Authority would just need to accept any reasonable assessment of this southward energy limit.

5.1.3 Financial contracts

The SS and SSA are entirely physical assessments as they are focused on physical security of supply. A generation portfolio also has financial commitments that are both financially and physically hedged. The net obligations that are physically hedged need to be identified to arrive at a measure of uncommitted capacity.

For many contracts this will simply mean applying the fixed volumes for the relevant periods. Some contracts are variable volume contracts, for example, generation following CFDs (known as synthetic PPAs) where the volumes vary based on physical supply, or options contracts in which the volumes only apply under certain conditions.

For PPAs (most of which are synthetic PPAs) then the best approach would be to treat the contracted supply as if it were a physical supply for the generator-retailer and be covered under section 5.1.2.1.

For variable volume contracts, such as options or swaptions, then the same approach should apply as used for a company's Value at Risk (VaR) or Gross Margin at Risk (GMaR) specifications (usually P90 or P95). VaR and GMaR specifications are suggested because this represents the level at which a company has identified its risk weighted financial capacity and has made physical and financial decisions as a result. Determining the net obligations then involves assessing market scenarios and using the contract strikes that would apply at the specified level, e.g. P90.

5.1.4 Conclusion on uncommitted capacity

The above implies that a measure of uncommitted capacity derived by applying inconsistent security standards and assumptions to individual portfolios will be methodology dependent and non-comparable across generators. Moreover, when such measures are summed across portfolios the total will fall short of the firm capacity derived from whole of power system security standards because risk is less diversified at portfolio level. This result would be a result of the methodology, not evidence of withholding or underutilisation of capacity.

5.2 A better approach to enhancing confidence

The proposed code amendment will not yield the outcome the Authority hopes for. We understand the purpose of the proposal but the Authority has ignored the challenges of establishing a meaningful measure of uncommitted capacity given the lack of an up to date framework for determining how much capacity is required to meet security standards. A power system that is struggling to meet, even outdated, security standards is not going to show uncommitted capacity at the portfolio level. Fundamentally, the sum of individual portfolios of uncommitted capacity will be less than the firm capacity available to the power system due to concentration of risk. As the firm capacity of the power system is currently unable to be uniformly defined, with outdated modelling and assumptions, then any measure of uncommitted capacity will be uninformative at best and misleading at worst.

The first step in both robustly determining whether there is any 'uncommitted capacity', after prudent security allowances, and in establishing the power system needs for an appropriately secure system is to reassess the Security Standards and Security Standard Assumptions.

As a matter of priority, after establishing updated Security Standards, would come market design adjustments to ensure the standards are met. At that point it would be possible to establish meaningful benchmarks of uncommitted capacity, but such a measure would become irrelevant. In a workably competitive market with prudent security margins, any party will be able to price risk. Physical generation would not be the only way to manage contracting risk.

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