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Electricity Authority
WELLINGTON

By email only: levelplayingfield@ea.govt.nz

Level Playing Field Code Consultation Proposal - Non-Discrimination Must Apply to All Gentailer Capacity

We write jointly as a group of independent retailers and generators to state in the strongest terms our fundamental concerns with the current Code amendment proposals. As drafted, the Electricity Authority's approach will not deliver a genuinely competitive or level playing field for the New Zealand electricity market.

Critical Flaws with the Proposed Approach

The current proposal to apply non-discrimination obligations (NDOs) only to a gentailer's "uncommitted" capacity is unacceptable. This approach is unorthodox and inconsistent with regulatory best practice in other sectors both here and overseas.

- In both the New Zealand grocery and telecommunications sectors, non-discrimination obligations apply to the full supply of products and services. There is no carve-out for "committed" or self-supplied capacity.
- Internationally, similar regimes, such as the UK's electricity generator licence conditions, also require non-discrimination across all relevant capacity to ensure effective competition.
- By limiting the NDOs to only "uncommitted capacity," the Authority would allow gentailers to classify the vast majority of their output as "committed." This effectively circumvents the non-discrimination requirements and renders the reform ineffective.

This model would undermine the objectives of the reforms:

- The rules would apply to only a tiny and likely insignificant proportion of capacity.
- It would not improve market liquidity or guarantee fair access to risk management products.
- Instead, it would create a loophole that enables refusal to supply, making

enforcement extremely difficult and stifling competition and investment by independent generators and retailers.

The inclusion of a general obligation to “trade in good faith” (Proposed Principle 2) is inadequate and does not provide necessary assurance for independent market participants.

Our Recommendation

We urge the Authority to amend the draft Code so that NDOs apply to the supply of all gentainer capacity, with **no uncommitted/committed carve-out**. Also, any exception for differential treatment where conduct is claimed to be “objectively justifiable” should be limited strictly to reasons that **do not, and are unlikely to, harm competition** in any electricity market. This approach would align the regime with successful models in the grocery and telecommunications sectors, close loopholes, support genuine competition, and help deliver the long-term efficiency and consumer benefits that the Authority has committed to.

The Authority’s proposals include detailed monitoring of prices and margins in the retail sector. Independent generators will be competing with independent retailers to be ‘buyers’ from the gentailers. A detailed monitoring regime for contracts between gentailers and independent generators is also required.

Conclusion

If the Code is adopted in its current form, it will fail to achieve its stated objectives. We strongly urge the Authority to remove the uncommitted capacity carve-out and ensure that robust, grocery-style non-discrimination obligations apply to all gentainer supply.

Yours sincerely

Independent Electricity Generators Association	Independent Electricity Retailers			
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