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2 December 2025

## Level Playing Field Measures Code Amendments

Mercury welcomes the opportunity to submit on the Electricity Authority's (Authority's) consultation paper, *Level playing field measures*, 14 October 2025.

We are pleased the Authority has taken on board the industry's feedback that the top priority should be developing the existing hedge market to support improved transparency, price discovery and to address concerns around availability of risk management products.

Mercury supports the Authority's conclusion that prices for ASX baseload, Over the Counter (OTC) baseload, and peak hedge contracts were likely to be competitive, and that there is no compelling evidence to suggest a margin squeeze is occurring.<sup>1</sup> Given this evidence, we do not consider the Authority has clearly articulated a rationale for moving towards what in some instances looks like a disproportionate regulatory intervention. We support the Authority staying alert to the risk that arrangements that would act to limit price discovery in a workably competitive market would likely be to the detriment of consumers.<sup>2</sup>

We recognise, as the Authority notes, that some stakeholders perceive ongoing issues in the market that may continue to undermine confidence. We support increased transparency to help better assess these concerns on an ongoing basis and to promote greater openness and confidence in market outcomes<sup>3</sup>. We look forward to working with the Authority to establish a workable, proportionate monitoring regime.

To ensure good outcomes are achieved under any new monitoring regime, it will be key that the Authority provides compliance guidance that helps to facilitate greater transparency, specifies the conduct expected, and frames the scope and intentions of the regime in order to adequately address stakeholder perceptions and build confidence.<sup>4</sup> This guidance needs to be prepared efficiently and transparently, particularly given the requirement that the regime is proposed to commence on 1 July 2026.

We suggest that the Authority's current approach to developing compliance guidance for the Code amendments (as proposed in Appendix B) and the Retail Price Consistency Assessment (RPCA) guidance would benefit from further refinement to avoid potential inconsistencies, regulatory uncertainty and to enable the timely implementation of an effective monitoring regime.

In our view the best starting place would be to update the existing regulatory tools – i.e. OTC Code of Conduct and Retail Gross Margin (RGM) reporting regime – to prepare the guidance as this will be both transparent and efficient and avoid needing to start from scratch. Any remaining gaps could be separately addressed within the arrangements for the regime.

This submission sets out our recommendations for how these two existing regulatory tools could be updated and transcribed into the proposed non-discrimination obligation regime, as well as identifying where new guidance may be needed to fill the remaining gaps.

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<sup>1</sup> Consultation paragraphs 3.19 and 3.82. As the Authority notes in footnote 8, this evidence is consistent with workable competition.

<sup>2</sup> Paragraph 12.24.

<sup>3</sup> Paragraph 3.82.

<sup>4</sup> This aligns with the Authority's rationale for monitoring the consistency of retail prices with the cost of supply, using a clear framework and robust parameters as noted in paragraph 3.82.



## **Mandating an updated OTC Code of Conduct**

Mercury recommends that the Authority mandate an updated OTC Code of Conduct with robust monitoring and enforcement provisions.<sup>5</sup> We consider that this would give effect to the non-discrimination obligation principles 1(1), 3, 5 and 6.

Mercury agrees with the Authority's view that the voluntary code is not a suitable alternative to the proposed non-discrimination obligations.<sup>6</sup> Mercury does not suggest that the current OTC Code of Conduct should be simply adopted in its current form. Instead, we propose that it should be updated and transcribed either as non-discrimination obligation guidelines or into the Industry Code.

The current voluntary OTC Code of Conduct is the outcome of an Authority initiative (in late 2022) to establish an OTC Electricity Market Working Group that included gentailers and independent retailers. The Authority was motivated by the importance of the OTC market and the need to provide access to competitively priced risk management products to give confidence in electricity markets.

Signatories to the voluntary code have committed to an efficient OTC market, support improved liquidity, high integrity conduct, efficient RFP issuance and response practices, and adopting trading practices and processes that are transparent, efficient, and objectively justifiable. This aligns in general with the non-discrimination principles noted above.

We disagree with the Authority's view that mandatory non-discrimination principles guidelines can operate alongside a voluntary OTC Code of Conduct.<sup>7</sup> Under the Authority's proposal, the voluntary OTC Code of Conduct would become irrelevant as the sector would focus resources on compliance with the mandatory principles.

Updating the OTC Code of Conduct would ensure that the Authority and the OTC Electricity Market Working Group's efforts to define fair and good-faith trading practices are fully realised. Utilising the OTC Code of Conduct provides a sound and familiar starting point for preparing guidance, transparently and efficiently.

## **Updating the Retail Gross Margin (RGM) reporting regime and transcribe to the RPCA**

Mercury supports greater transparency and monitoring of gentailers' actual retail margins to address perceived market issues noted above and to build confidence. We recommend that this is best – i.e. transparently and efficiently – achieved by updating the RGM reporting regime, targeting and addressing issues identified in the RGM post-implementation review, and to align with Principles 1(3) and 1(4).

We look forward to engaging with the Authority and the sector on this subject at the RPCA guidance workshop to be held on 9 December 2025. A key point that we wish to discuss at the workshop is the Authority's rationale for suggesting that the RPCA involves a forward-looking comparison methodology. We think the options analysis underpinning this initial view will be important for all parties to understand and robustly test.<sup>8</sup>

Mercury recommends that the Authority consider (as an alternative) a retrospective (or backward-looking) assessment of retail margins as it would be more effective, efficient and accurate for assessing retail margins because it will rely on actual reported revenue and costs.

The forward-looking assessment, on the other hand, will rely heavily on hypothetically derived assumptions needed in order to prepare forecast revenue and costs. A retrospective assessment of actual retail margins is expected, therefore, to give a more transparent, unbiased assessment of compliance with Principle 1(3) and 1(4), than a forward-looking, hypothetical retail margin assessment.

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<sup>5</sup> Mercury also proposed mandating the OTC Code of Conduct in response to the Authority's Level Playing Field measures option paper.

<sup>6</sup> Paragraph 5.86.

<sup>7</sup> Paragraph 5.84.

<sup>8</sup> We note that the consultation paper, footnote 17, touches on the distinction between the forward-looking and backward-looking (referred to here as retrospective) approaches for assessing the retail margin, however we propose that a more fulsome assessment of these options is required, focusing on the purpose of the monitoring regime.



Mercury notes that the assessment of “objectively justifiable” will still be very important, regardless of whether a forward-looking or retrospective approach is adopted.

RPCA guidance can be delivered by updating the RGM, targeting issues identified in the RGM post-implementation review and ensuring it aligns with Principles 1(3) and 1(4).

### **Equal access to commercial information and protection of confidential information**

Mercury takes confidentiality of third-party information very seriously and is unaware of any issues in this regard. We strongly encourage parties (including the Authority) to raise any issues of this nature immediately if they do arise.

In the absence of a clear problem, we are uncertain what these proposed measures are trying to solve and consider it would be useful for the Authority to share further details of its rationale and envisaged benefits of Principles 4 and 5. Specifically, we are concerned by the potentially broad reach of these principles and the potential for compliance to be excessively intrusive, particularly in the absence of a clear problem to solve.

For instance, the definition of “commercial information” is extremely broad and the provision effectively creates a continuous disclosure obligation which is intrusive and unworkable. In its current form, Principle 4 appears to introduce a disproportionate compliance burden.

Similarly, for Principle 5, the definition of “buyer confidential information” is broad and this information could be hard to isolate. Buyer confidential information is shared as part of normal business operation, for example in shared systems, but the way Mercury currently “discloses” information internally does not provide an *“advantage to the internal business unit”*. Therefore, we do not consider creating an information barrier is necessary and it would introduce significant operational costs.

As currently drafted these provisions will require significant changes to how information is received and cascaded through the organisation, with little or no corresponding benefit.

### **Summary of our recommendations to effectively enable the proposed Principles**

The following table sets out the general alignment between the principles and those existing regulatory tools we recommend should be updated, along with where new guidance should be prepared.

<b>Principle</b>	<b>Preparation of compliance guidance</b>
1(1). A gentainer must not discriminate between buyers for supply of risk management contracts	Mandate an updated OTC Code of Conduct to address Principle 1(1)
1(2). A gentainer must not discriminate against buyers in favour of its own internal business units for supply of risk management contracts	Prepare guidance from scratch
1(3) & (4). A gentainer must not discriminate against buyers in favour of its own internal business units when pricing risk management contracts	Update the RGM reporting regime and transcribe to the RPCA
2. Obligation to trade in good faith	Mandate an updated OTC Code of Conduct to address Principle 2
3. Objective credit assessments	Mandate and updated OTC Code of Conduct to address Principle 3
4. Equal access to commercial information	Propose removal of this principle



<b>Principle</b>	<b>Preparation of compliance guidance</b>
5. Protection of confidential information	Mandate an updated OTC Code of Conduct noting that this is addressed under the obligation to trade in good faith
6. Record keeping	Mandate an updated OTC Code of Code, enhanced with the additional monitoring and enforcement provisions informed by regulated record keeping requirements

These points are further expanded on in our response to the Authority's questions, which is attached.

We look forward to continuing to engage with the Authority and the sector on the finalising and implementation of level playing field Code amendments.

Yours faithfully,



Tim Thompson  
**Executive General Manager Wholesale Markets**



## ANNEX: Mercury comments on the Authority questions

Questions	Mercury Comments
<b>Problem definition</b>	
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?	As above, we support the Authority's conclusion the market is likely to be competitive, and that there is no compelling evidence to suggest significant market power or that a margin squeeze is occurring but recognise that some stakeholders' perceive an issue in the market.
<b>Level Playing Field options (options 1-4)</b>	
Q2. Do you have any new evidence that is relevant to the choice of level playing field interventions to address the identified competition issues?	<p>The choice of interventions should focus on and be proportionate to addressing the perceptions that there are issues. As above, Mercury supports greater transparency to address the perceived issue and build confidence.</p> <p>Mercury notes that the Authority is currently consulting on a proposal to require mandatory market making of the new standardised super-peak contract and Mercury is considering that proposal. The Authority needs to ensure all these regulatory measures are working in concert.</p>
<b>Approach to applying non-discrimination obligations</b>	
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?	<p>The Guidance refers to "non-discrimination" in different ways by saying we should deal with buyers "<i>on substantially the same price and non-price terms</i>", that we should "<i>not prioritise</i>" ourselves over others and if we are not discriminating we will be able to show "<i>an economically justifiable link between the expected cost of electricity supply and its retail prices</i>." This creates some confusion, and clear and consistent guidance is needed.</p> <p>We agree with Frontier that determining what is "non-discriminatory" will be difficult. As Frontier said "<i>Participants contract at different times, over different time horizons, for different shapes, and using different products. Further, the price for a contract today can change tomorrow as more information becomes available. The point being that the gentailers and independent parties can still have entirely different hedging costs simply due to choices made by the participants rather than discriminatory pricing.</i>"<sup>9</sup></p> <p>Similarly, "objectively justifiable" is not defined beyond being an evidence-based approach that is "<i>reasonable, consistent and transparent</i>". A shared understanding of this concept will be very important to avoid unnecessary uncertainty.</p> <p>Furthermore, Principle 1(4) needs to be clarified to ensure that "as efficient as" means a buyer in effect adopting the relevant gentainer's operating costs</p>

<sup>9</sup> Frontier Economics – Review of Electricity Market Performance, 23, May 2025, page 90.



Questions	Mercury Comments
	<p>and risk management approach. We can't be guessing at other's profitability.</p> <p>We consider that our proposed approach to mandate an updated OTC Code of Conduct, aligned to specific principles, set out above in our submission letter, will better achieve the Authority's aims.</p>
<p>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?</p>	<p>We support the implementation of an appropriate RPCA but not forward-looking as currently proposed. We recommend that greater transparency may be better achieved, by taking a retrospective approach, updating the RGM reporting regime, targeting and addressing issues identified in the RGM post-implementation review, to align with Principles 1(3) and 1(4).</p> <p>We note that the Authority states the ... <i>November 2024 Internal Transfer Price and Retail Gross Margin post-implementation review found a general consensus that the current ITP and RGM reporting had limited usefulness, with gentailers using ITPs primarily for accounting purposes rather than setting retail prices.</i> [emphasis added]<sup>10</sup> That is, the key issue identified relates to the determination to the ITP.</p> <p>We propose that ITP is replaced with a retrospective cost of supply benchmark.</p> <p>The Authority also notes in the recently released <i>Agenda and briefing document for 9 December 2025 workshop to develop retail price consistency assessment guidelines</i>:</p> <p style="padding-left: 40px;"><i>We [the Authority] propose the assessment involves a forward-looking comparison to see whether the gentailers' expected 'netback' (ie, retail price minus network costs and levies, retail costs and metering costs) exceeds a measure of energy cost based on prices of risk management contracts observed in the electricity market.</i> [emphasis added]</p> <p>An issue with taking a <i>forward-looking</i> approach is that it relies on a clearly defined competition problem and then an extensive set of assumptions in order to forecast revenue and costs. For example, a forward-looking approach has been adopted in the case of regulated electricity distribution lines and fibre access networks. In the case of these regulated networks, the identified competition issue relates directly to the market power of the monopoly network. The forward-looking models used to calculate the value of the regulated networks use the assets that make up the monopoly network as a starting point. A complex set of detailed assumptions and methodologies are then derived to develop models used to forecast costs and revenues. This process, for these regulated networks, took an extensive period of time.</p> <p>In contrast, in the case of gentailers, the Authority has found that the market is likely to be competitive, and that there is no compelling evidence to suggest significant market power or that a margin squeeze is occurring. In other words, there is no starting point on which to base a forward-looking model for assessing retail margins.</p> <p>Basing any assessment on actual data is simpler and likely to be more accurate and meaningful for addressing some stakeholders' perceptions of an issue in the market. The Authority proposes to compare the results of the</p>

<sup>10</sup> Paragraph 11.11.



Questions	Mercury Comments
	<p>proposed forward-looking RPCA with independent retailers' RGM. It is very unlikely that such a comparison would be useful or even valid, simply because one set of values would be forward-looking and the other set would involve retrospective revenues and costs. Mercury's view is that this is unlikely to increase transparency.</p> <p>We agree with the Authority's general point in footnote 17, that the forward looking expected (opportunity) cost of supply perspective on retail pricing differs from a retrospective, backward-looking perspective. However, the choice of the appropriate methodology should take into consideration the purpose of the RPCA, which is to address perceived issues in the market, given that there is no compelling evidence to suggest gentailers have engaged in a margin squeeze and the market is likely to be workably competitive. Within this context, the role of the RPCA should be to monitor conduct and not regulate conduct.</p> <p>In any event, it needs to be clear that the RPCA or RGM is not a bright-line compliance test that a gentailer will "pass" or "fail".</p>
Q5. Is our proposal around "uncommitted capacity" workable? What suggestions do you have for improving it?	<p>Mercury envisages the proposal for uncommitted capacity as specified in paragraphs B.10. to B.12 of the consultation paper to be workable. However, we may raise specific points and seek clarification from the Authority as we determine methodologies and prepare forecasts.</p>
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?	<p>The scope the NDOs guidance should focus on specific issues related to the perception that there may be issues in the market that may undermine confidence. Any creep in the scope beyond this risks adversely impacting market performance that the Authority has noted is likely to be competitive, which suggests the regulatory focus should be just on super-peak hedges.</p>
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?	<p>We agree in general with the Authority's view as stated in paragraph 5.69. However, as MLCs are likely to be negotiated between parties that have material resources and bargaining power this price information might be relevant to estimating the cost of energy supply for the RPCA. We therefore request the Authority clarify what is meant by carve out in this context.</p>
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?	<p>As above, Mercury recommends that the Authority mandate an updated OTC Code of Code with robust monitoring and enforcement provisions. We propose that this would give effect to the non-discrimination obligation principles 1(1), 3, 5 and 6.</p> <p>As such, the OTC Electricity Market Working Group could be reconvened to assist in the process of mandating and updating the OTC Code of Conduct to bring it under the non-discrimination regime.</p>
Q9. Should investment in new flexible generation assets be carved out from the proposed NDOs? Why or why not? If you think new investment should be ringfenced, please provide details of	<p>Mercury has no comment.</p>



<b>Questions</b>	<b>Mercury Comments</b>
how you suggest any carve outs be implemented.	
Q10. What impact do you think the revised NDOs will have on retail prices and/or incentives to invest in generation? How does this compare to the impacts you posited in response to the LPF Options paper? Can you share any evidence that supports your view?	Mercury has no comment, particularly as the Authority is yet to publish its guidance on the RPCA.
<b>Retail price consistency assessment</b>	
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? If not, why? Can you share any evidence that supports your view? How could we adjust the test to further improve confidence?	<p>As discussed in our submission, Mercury supports greater transparency and monitoring of gentailers' retrospective actual retail margins to address perceived market issues noted above and to build confidence. We recommend that this is best achieved by updating the RGM reporting regime, targeting and addressing issues identified in the RGM post-implementation review, and to align with Principles 1(3) and 1(4).</p> <p>The retrospective assessment is more effective and efficient at assessing retail margins because it will rely on actual reported revenue and costs, whereas the forward-looking assessment will rely heavily on hypothetically derived assumptions to prepare forecast revenue and costs. Therefore, a retrospective assessment of actual retail margins is expected to give a more transparent, unbiased assessment of compliance with Principle 1(3) and 1(4), than a forward-looking, hypothetical retail margin assessment.</p>
Q12. What impact do you think the RPCA will have on retail prices and incentives to invest in generation? How does this compare to the impacts you posited in response in the LPF Options paper? Can you share any evidence that supports your view?	Mercury has no comment.
Q13. How could the proposed approach to the RPCA be improved?	We refer the reader to our response in Q.4 and Q.11 and the discussion above.
Q14. How often should gentailers make and disclose their assessment – should it be more or less frequent than every six months, and why?	We in general expect that assessments every six months is feasible, but this will need to be confirmed once the RPCA format and guidance is finalised. Careful consideration will need to be given to what information is able to be published publicly.
Q15. Would it be sufficient for the Authority to provide gentailers with guidance on the methodology for the	<p>We propose that the updated RGM should be either transcribed as non-discrimination obligation guidelines or into the Industry Code.</p> <p>As a general point, we note there is some confusion in the current proposal in relation to compliance with the non-binding guidance. Clause</p>



<b>Questions</b>	<b>Mercury Comments</b>
RPCA or should it be prescribed in the Code, and why?	<p>13.236V(5)(a) states that participants are required to provide the Authority with a “clear and full explanation” of the approach taken to the RPCA including areas where, and reasons why, you have departed from the RPCA guidance.</p> <p>This appears to elevate the status of the guidance creating a potential legal grey area. The guidance isn’t a legal instrument that creates obligations on gentailers but we are required to explain why we haven’t complied with it. This needs to be clarified.</p>
Q16. If you do not support the RPCA approach, what would you propose instead to demonstrate compliance with non-discrimination principles?	Please refer to our submission above.
<b>Implementation pathway</b>	
Q17. Is the proposed implementation timeline achievable?	We will need to reconsider the timeline following the outcome of this consultation and as more information about the guidance becomes available.
Q18. Should the Authority consider adding or removing any particular steps, or providing more or less time at any point?	We do not have any comments regarding the addition or removal of particular steps. We would welcome, though, an ongoing engagement with the Authority, particularly to seek the Authority’s views on issues as they arise.
Q19. Does the proposed approach to implementation provide the right balance between certainty, transparency and flexibility to allow gentailers to demonstrate their compliance with the non-discrimination obligations, and to provide an appropriate basis for enforcement action if they do not?	Our general view, given the NDO regime is nascent, is a preference for flexibility to get the regime up and running, and then the proposed escalation pathway can address issues as they arise.
<b>Escalation pathway</b>	
Q20. Do you support the revised approach of incrementally creating more specification for NDOs or the RPCA as required? Why or why not?	In general, we support any future changes focusing on refining the NDO with appropriate industry consultation.
Q21. What are your views on the proposed approach to the escalation pathway?	As above, we support the approach of incrementally creating more specifications as a reaction to any issues identified, however, we would expect to be consulted on any changes.
<b>Power Purchase Agreements</b>	



<b>Questions</b>	<b>Mercury Comments</b>
Q22. Do you have any feedback, including suggestions for improvement, on the way that the NDOs will affect buyers seeking firming for PPAs?	We have no comment on how the NDOs will affect buyers for PPAs, other than our general comment that we recognise that some stakeholders perceive ongoing issues in the market that may continue to undermine confidence and that we support increased transparency to help better assess these concerns on an ongoing basis and to promote greater openness and confidence in market outcomes.
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?	We are willing to engage with the Authority and sector in a co-design group to consider a range of flexibility products that suit the needs of independent power generators.
<b>Internal Transfer Price disclosure requirements</b>	
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?	We support the proposal to revoke the ITP requirements. As above, we would suggest retaining an updated form of RGM reporting for all participants to reflect the outcomes of the Review.
<b>Regulatory Statement for the proposed amendment</b>	
Q25. Do you agree with the objectives of the proposed amendment? If not, why not?	Mercury broadly supports the objectives, and as above, agrees with increased transparency to ensure confidence in the market.
Q26. Do you agree the benefits of the proposed amendment outweigh its costs?	<p>Mercury is concerned that the costs could be considerable and are likely to outweigh any benefit. Paragraph 12.15 appears to articulate the risk in more certain terms than the rest of the paper where it talks to perceptions of risk and a lack of confidence in the market. We note also paragraph 12.20 where it is explicit that this is addressing a “risk of” a risk. Any regulatory intervention needs to be proportionate to the risk or problem it is seeking to solve, and we don’t believe this assessment demonstrates that proportionality.</p> <p>Paragraph 12.17 notes that by addressing the risk that gentailers “may be” exercising significant market power the NDOs will result in lower hedging costs and downward pressure on retail prices. There is no conclusive evidence of that behaviour and, therefore, those benefits may not eventuate as current prices are consistent with workable competition (which the Authority acknowledges is a possible scenario).</p> <p>We note that any changes to the current proposal, including the issuance of further guidance, should be subject to a further more detailed regulatory impact assessment.</p>
Q27. Do you agree the proposed amendment is preferable to the other options? If you disagree, please	As above, Mercury believes mandating an updated OTC Conduct to give effect to the NDOs is the better approach.



<b>Questions</b>	<b>Mercury Comments</b>
explain your preferred option in terms consistent with the Authority's statutory objective in section 15 of the Electricity Industry Act 2010.	
Q28. Do you agree the Authority's proposed amendment complies with section 32(1) of the Act?	It will be important to assess any final proposal against the Authority's objectives.
Q29. Do you have any comments on the regulatory statement?	Given the potentially significant impact of the changes currently proposed, we would expect to see a more detailed Regulatory Impact Statement and, as above, this assessment will need to be repeated for any final solution, including any guidance.
<b>Appendix A – Proposed Code amendments</b>	
<b>Proposed Code amendments</b>	
Q30. Do you have any comments on the drafting of the proposed Code amendments?	Our submission sets out a variety of ways we think the obligations and guidance could be amended.
<b>Draft guidance to support Code amendments</b>	
Q31. Do you have any comments on the draft guidance?	<p>See question 15 above and our recommendation to mandate an updated OTC Code of Conduct.</p> <p>The present draft guidance lacks clarity in some areas and then is overly prescriptive in others. For example, we agree, as extensively set out in the OTC Code of Conduct, that gentailers should engage with buyers in a timely and constructive manner. However, the proposed guidance under paragraph B.15 specifies that gentailers should respond to buyers' requests within 5 days and allow buyers at least 5 days to respond in turn. This level of detail risks distorting conduct in a market that is workably competitive and thereby reduce economic efficiency.</p>
Q32. Is any further guidance needed to help clarify what constitutes an "objectively justifiable" reason for discrimination under the NDOs? Please explain.	Mercury agrees that understanding the concept of "objectively justifiable" will be important while retaining flexibility for gentailers to independently decide what that means for them.

