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VIA EMAIL: energymarkets@mbie.govt.nz

To the Electricity Price Review Secretariat,

Submission regarding the Electricity Price Review, Options Paper

Flick Energy Limited (Flick) appreciates the opportunity to comment on the Options Paper. Our submission encompasses this cover letter and the submission form **attached**.

Since the Issues Paper was published the market has experienced the events of 'Spring 2018'. This period was troubling for many reasons¹, but the most concerning impact is that consumers will pay more² for electricity, many of whom already couldn't afford it.

Flick is proud to be an independent retailer in the New Zealand electricity market that has delivered choice, transparency and innovation to New Zealand consumers. It is clear that competition has benefited many consumers, but too many are still missing out on these benefits. It is also clear that

¹<https://www.ea.govt.nz/code-and-compliance/uts/undesirable-trading-situations-decisions/15-september-2018/>
Flick was party to a UTS Claim that identifies concerns about non compliance with disclosure obligations, lack of market making and sustained high prices.

² This has manifested in a number of ways:

- spot priced customers are obviously seeing significantly higher prices, fixed price customers are facing price rises
<https://www.stuff.co.nz/business/109161872/genesis-reveals-plan-to-raise-prices-after-christmas> we also understand anecdotally commercial customers are already experiencing prices rises although accessing data on this is difficult,
- 'trader' switches have dropped, the last 3 months have been the lowest in the preceding 24 months suggesting competition has dampened
https://www.emi.ea.govt.nz/Retail/Reports/R_SwT_C?DateFrom=20170301&DateTo=20190228&rsdr=L24M&si=tc|consumer-switching.v|3.

Also, refer this article discussing the market
<https://www.energynews.co.nz/column/wholesale-market/42063/where-here-nz-electricity>

practices in this industry and the lack of regulatory focus on positive outcomes for consumers have contributed to this and are fuelling a sense of mistrust in the industry³.

Flick supports most options that are favoured by the Panel in the paper. We are eager to work with the Government to ensure these options are designed, implemented effectively and expediently so that consumers, particularly those in hardship, see benefits as soon as possible. We discuss issues below that we feel need more focus so that this review delivers on the Panel's objectives to ensure that the New Zealand electricity market delivers efficient, fair and equitable prices for consumers.

Protecting consumers

The options paper outlines a number of ways consumer interests can be better represented in this industry. We have indicated our support for these options because consumer interests do need better representation. However, the need for these measures has arisen because of a lack of confidence in the Electricity Authority delivering good outcomes for consumers.

These options add additional cost to address an underlying problem, surely one of the fundamental roles of a regulator is to deliver good outcomes for consumers? Given consumers do not have confidence in the Electricity Authority questions need to be asked of its governance, organisational performance and culture.

Sustainability of independent retail - achieving a level playing field

Competition in the retail market brings benefits to consumers through improved customer service, innovation and price competition, it's evident that a proportion of the market is benefiting from it. To ensure that more customers can benefit from competition in the future, it is necessary to level the playing field so entrant retailers can compete equally.

A level playing means that all parties play by the same set of rules. Success or failure is a result of a firm's efficiency and customer experience rather than their heritage in a market and structural rules that advantage them.

In the absence of a level playing field, the companies that are able to provide the best and most efficient service can be prevented from doing so. This ultimately has a cost to consumers as it means they don't benefit from the sharper prices or better services that they could have.

In markets with vertical integration unlevel playing fields often manifest as:

1. refusal to deal/ not allowing external parties access to wholesale supply/ risk management products on the same terms as they allow their internal retail business (e.g. falling away from market maker obligations, very low transfer prices compared to what is offered externally);
2. vertical margin squeeze, when the spread between wholesale and retail prices is suppressed so that retailing is not sustainability profitable (e.g. targeting aggressively priced winback/ save offers at customers who choose to switch); and

³ At the 2019 Downstream Conference David Talbot from UMR Research presented recent research that asked consumers 'Do you have a favourable or unfavourable opinion of the following industries?' The percentage of 'favourable' responses was: Mobile Phones 61%, Banks 57%, Lines Companies 57%, Power Retailers 53%, Insurance 38%, Petrol Companies 33%. Given the telecommunications sector is subject to the highest level of complaints to the Commerce Commission and Banking is tarred by Australian parent company ownership and the Hayne inquiry, we argue that this says very little for the electricity industry.

3. misuse of information (e.g. use of knowledge of financial position to drive up wholesale prices for a period that is unsustainable for the entrant).

In New Zealand's market arguably all of the above have been allowed to or could easily manifest. In addition, structural rules around prudential offset and use of customer information during switching favour incumbent generator-retailers (gentailers). Independent retailers are becoming increasingly concerned about the sustainability of independent retail because of the clear disadvantages we face compared to vertically integrated businesses.

The Panel has acknowledged the concerns independent retailers have raised but does not favour the 'gold standard' solution for eliminating anti-competitive outcomes - option D5: Prohibit vertically integrated companies. Flick accepts this but it is still critical to ensure robust changes that ensure effective competition can occur. We agree with the Panel's suggestion that there are other measures that can achieve a significant proportion of the level playing field benefits that ownership separation would bring without the disruption, but the options identified in the paper alone are not sufficient to deliver this equivalence.

How to level the playing field with vertical integration

The options listed below and identified as 'favoured' in the paper are all necessary, but they need to be supplemented with additional measures to level the playing field:

- C5: Prohibit win-backs;
- D1: Toughen rules on disclosing wholesale market information;
- D2: Introduce mandatory market-making obligations; and
- D3: Make gentailers release information about the profitability of their retailing activities.

There is a combination of changes that should also be implemented to ensure all parties 'play by the same rules':

1. *NON DISCRIMINATION OBLIGATION*

An Electricity Industry Act amendment placing an obligation on vertically integrated firms to provide wholesale supply/products on equal access terms to their retail division as they do to external retailers. Importantly, this change would make it clear to all participants that independent retailers should be able to access wholesale market cover on equal terms to their vertically integrated competitors. Vertically integrated players ought to be prohibited from an input cost advantage. This alone will not necessarily prevent discrimination occurring but it will provide a remedy for the impact of a breach of the obligation.

There are similar obligations on distribution companies dealing with their own retail/generation businesses in the Act. This approach is also commonly adopted in other industries with vertical integration e.g. telecommunications, water.

This should be implemented immediately.

2. *MEASURES TO PREVENT DISCRIMINATION*

A level playing field can be supported by rules that prescribe how market participants act, which are designed to prevent discrimination occurring. In addition to market making, accounting separation and disclosure options already favoured, gentailers should be required to:

1. Operate a virtual retail trading function and to 'cover' the retail load via market (ASX) based trades or alternatively the gentailer 'transfer price' based on a forward market index - this will ensure market-based wholesale prices rather than opaque transfer prices. It is also likely to increase the type and availability of traded products, and may lead to more innovative demand management practices;
2. Operate separate market prudential arrangements between retail and wholesale (arrangements to allow ASX contract prudential offset would need to be implemented, but all retailers would benefit from this equally);
3. Separate information systems and business processes so there is no sharing of competitor retailer trading information between retail and wholesale divisions;
4. Management incentives based on division performance; and
5. Audit of the above measures.

Within other vertically integrated markets, there are examples of these measures being used to ensure a level playing field⁴ in other industries and ought to be utilised by the Panel as a means to move forward.

The implementation of these measures within the electricity market should be relatively straightforward because: market mechanisms exist, network activities have already been separated, and the operational boundary of retail and wholesale activities already naturally exists in gentailer businesses i.e there is very limited operational overlap, other than on pricing.

These measures should be implemented as soon as practical. This is likely to require operational changes that may require phasing in but it should be achievable to implement the majority of measures within 6 months.

3. *MONITORING AND ENFORCEMENT*

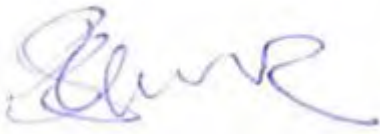
Breach of the arrangements described should be subject to the penalties outlined in the Electricity Industry Act. The arrangements above need to be monitored and enforced.

The measures described above would significantly level the playing field and introduce better competitive practices. They would also preserve vertical integration as an acceptable business structure. This would retain the only benefit of vertical integration that we perceive - a mild reputational/political constraint on the exercise of wholesale market power because gentailers have retail customers/voters impacted by price rises.

Flick is dedicated to working with the Review Panel to ensure that the most is made of this opportunity to set New Zealand up for a more sustainable and fairer electricity industry. If you have any questions about this submission please contact Margaret Cooney - margaret.cooney@flickelectric.co.nz.

Yours sincerely,

⁴ Telstra Australia - Telstra's structural separation undertaking (SSU), BT Openreach in the UK until to legal separation in 2017, UK Water Market - retail competition was introduced in 2015 incumbent vertically integrated Licensees are subject to code and licence based measures.



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	Option	Flick's view on the option	Flick's comment
A	<i>Strengthening the customer voice</i>		
A1	Establish a consumer advisory council	Support	<p>As previously submitted the Australian Energy Consumer Council is a great example.</p> <p>Following a similar design there could be a</p> <ul style="list-style-type: none"> ● Board responsible for organisational governance ● A small team of professionals with the appropriate skills to advocate in regulatory and policy forums and conduct or commission research. ● An Advisory Council with consumer group advocates representing different groups. <p>The organisation's responsibility should be to advocate for consumers. This would involve contributing to regulatory and policy discussions and commissioning research. They should also be prepared to be an independent and vocal critic.</p> <p>We support establishing an interim Customer Advocate, we consider that this could be done through MBIE.</p> <p>We are happy to provide support to establish this function but ultimately it needs to be independent from industry and the Electricity Authority.</p>
A2	Ensure regulatory listen to consumers	Support	<p>As well as an obligation to consult we believe it is necessary to make it explicit that the Electricity Authority must promote the interests of consumers and clarify what this means.</p>

			<p>Section 15 of the Electricity Industry Act 2010 (Act) provides the Electricity Authority (Authority) with a statutory objective:</p> <p><i>To promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers.</i></p> <p>The Commerce Act defines a statutory purpose that the Commerce Commission gives effect to:</p> <p><i>The purpose of this Act is to promote competition in markets for the long-term benefit of consumers within New Zealand.</i></p> <p>The Commerce Commission has been a better advocate for consumers than the Electricity Authority has been for electricity consumers. In part this is attributable to their interpretation of their respective statutory objectives/ purpose.</p> <p>We are concerned that the Commerce Commission and Electricity Authority adopt different interpretations, with the Electricity Authority choosing to only consider efficiency gains. This creates a regulatory bias against initiatives, such as saves and winbacks, that would promote greater competition, because wealth transfers (reduction in excessive returns or economic rents) can be one of the largest benefits from increased competition. Notably, despite the EPR identifying over half a billion dollars per-annum in over-charging or excessive returns (loyalty taxes) under the two-tier retail market, MDAG have completely ignored this in their assessment of whether winbacks is a problem. The Electricity Authority's Advisory Group wouldn't have been able to ignore the main consumer detriment from the two-tier market/winbacks if they had applied the same statutory objective interpretation as the Commerce Commission.</p>
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B	<i>Reducing energy hardship</i>		
B1	Establish a cross-sector energy hardship group	Strongly Support	We are supportive and keen to be a part of initiatives to measure, reduce energy hardship and streamline interactions between agencies for consumers in energy hardship.
B2	Define energy hardship	Strongly Support	<p>We agree that a definition needs to incorporate factors such as housing, income and the cost of energy required to live adequately (i.e heat the home to 18°C), and it needs to be measurable.</p> <p>Given the personal and social cost of energy hardship to New Zealanders the priority should be on getting a definition agreed as soon as possible.</p>
B3	Establish a network of community-level support services to help consumers in energy hardship	Rethink	We are supportive of this concept, but we consider there is an opportunity for streamlining delivery of energy efficiency measures, and including energy hardship support. A number of energy efficiency schemes are already administered by Government agencies there appears to be duplication and limited awareness of what is available (EECA, Ministry of Health and Housing New Zealand).
B4	Set up a fund to help households in energy hardship to become more energy efficient	Rethink	Refer comments above. There is duplication across government, these schemes should be consolidated and more effort should be made to increase awareness of them. We support increasing Government funding for energy efficiency measures.
B5	Offer extra financial support for households in energy hardship	Strongly Support	Additional financial support should be part of a package of measures. In many cases households would also benefit from changing supplier/ plan and improving the energy efficiency of the

			<p>homes. This needs to be tied together with B3 and B4.</p> <p>Financial support could also be delivered through a bulk tender - B8 where the household's energy costs are covered by Government.</p>
B6	Set mandatory minimum standards to protect vulnerable and medically dependent consumers	Support	<p>It is appropriate for a scheme to be mandated and for there to be regulatory oversight and monitoring of these standards.</p> <p>We agree the regulations should cover the matters noted.</p>
B7	Prohibit prompt payment discounts but allow reasonable late payment fees	Strongly Support	<p>It is clear that excessive prompt payment discounts disproportionately impact vulnerable consumers.</p> <p>If firms want to differentiate on price they should do it in their headline price which will be less confusing.</p>
B8	Explore bulk deals for social housing/ WINZ clients	Strongly Support	<p>WINZ/ Housing New Zealand covering energy costs for their clients merits consideration and should be progressed.</p> <p>We understand the concern about shifting costs to taxpayers however this may be less cost than the current approach of funding grants to cover reconnection etc and administration costs of managing them (not to mention the reduction in health costs from warmer, dryer homes).</p> <p>Additionally eliminating the credit risk associated with this customer group is necessary in order to incentivise competition and the most competitive prices in a tender.</p> <p>Practically these tenders should be run by network area, as this would be a workable parcel of customers large and small retailers to compete for. If tendered on a national basis it is unlikely small retailers could access sufficient price risk cover to participate.</p>

			We encourage WINZ/Housing New Zealand to trial this approach and see what the impact is.
C	<i>Increasing retail competition</i>		
C1	Make it easier for consumers to shop around.	Strongly Support	<p>Consolidating what's my number with Powerswitch makes sense as levy funding to operate and build awareness can be consolidated.</p> <p>There are improvements that need to be made, they include the following:</p> <ul style="list-style-type: none"> • Real time data so cost estimates aren't based on profiles that can differ significantly because of when customers use energy and off peak/on peak price differences. • Ability to show the impact of load shifting. • Alternative ranking criteria eg lowest offpeak rate, 'green' • Analytics for: tracking completed switches, customer behaviour on site, monitoring offers etc. • Clarity around the commercial terms and the basis for charging them. Powerswitch charge us for every visit they direct to our site, a flat monthly fee, and a \$75 per application referred by Powerswitch. Every other comparison site we use, the fee is based on a successful customer switch, not an application or traffic referral. Compared to other sites Powerswitch is not as cost effective even though it receives some levy funding. • A robust marketing plan - how will they reach the 42% of the market not actively engaged? <p>It should be noted that we do have existing functionality that allows us to rate customer bills against all other retailer tariffs based on their actual usage (based on 0.5 hr interval data), we are prepared to discuss making that functionality available to Powerswitch for their use.</p>

C2	Include information on power bills to help consumers switch retailer or resolve billing disputes	Support	This should also be included on websites and in electronic interactions (email, facebook etc).
C3	Make it easier to access electricity usage data	Strongly Support	<p>It must be acknowledged that Metering Equipment Providers are a critical enabling party for improved access to data.</p> <p>We agree that data should be immediately available for consumers using Powerswitch but unfortunately retailers are limited by the service levels and capability of metering companies. Given they are monopoly like it is incredibly difficult to negotiate special requirements or demand better service from them even when they fall short of their SLA's.</p> <p>There are also genuine privacy responsibilities that need to be managed.</p> <p>We support developing a better approach, we see this as including a regulated multilateral arrangement between retailers, networks, metering providers and other 'approved' parties such as Powerswitch that provides access to smart meter data on reasonable terms.</p> <p>The issues with accessing meter data also highlight a need to regulate smart metering because of its natural monopoly characteristics and the increasingly important role data can play in improving efficiency and customer experiences.</p>
C4	Make distributors offer retailers standard terms for network access.	Strongly Support	A default agreement is necessary. Distributors generally refuse to negotiate terms even when they are patently irrelevant/ ineffective e.g references to the Y2K bug or MARIA rules.

C5	Prohibit win-backs	Strongly Support	<p>Prohibiting winbacks is necessary for both fairness and competition reasons.</p> <p>Fairness</p> <p>The issues paper highlighted the growing level of ‘loyalty tax’ paid by customers of incumbent providers. This is problematic because it means many people are paying more than they should be for electricity, it’s also these people that will be subsidising potentially below cost deals to ‘switcher’ customers. It is unfair for one person to be paying significantly more than another for exactly the same service, it is a behaviour that erodes trust and confidence in the sector too. In the UK ¹and Australia² regulators have criticised the practice of loyalty taxes and are taking steps to safeguard consumers.</p> <p>The signal of a switch provides the opportunity for targeted price discrimination, incumbent firms like to be able to undertake this because it means they can minimise retention efforts by only targeting offers to valuable customers that have initiated a switch.</p> <p>We note that there is a convention of no save or winback activity</p>
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¹ <https://www.gov.uk/government/news/cma-tackles-loyalty-penalty-charges>

These include:

Cracking down on harmful business practices using enforcement and regulatory powers to clamp down on harmful practices that stop people getting better deals. The CMA has today opened a consumer law enforcement investigation in the anti-virus software sector. This is a first step and further action may be taken by the CMA and regulators against other companies.

Setting out clearly the principles businesses across all markets should follow, such as people being able to leave a contract as easily as they enter it. The CMA will also be looking at whether consumer law should also be reinforced.

Firms should be publicly held to account for charging existing customers much more; regulators should publish the size of the loyalty penalty in key markets and for each supplier on a yearly basis.

Targeted price caps to protect the people worst hit by the loyalty penalty, such as the vulnerable, where needed.

² <https://www.afr.com/business/energy/electricity/power-retailers-under-pressure-as-acc-c-takes-aim-at-loyalty-tax-20180723-h130h0>

			<p>(use of internal customer data) in the Telco market which drives more proactive retention of consumers and above the line price competition.</p> <p>We recommend adopting a rule preventing all winback and save activity, by prohibiting use of outgoing customer's data once a switch notification has been received. This will encourage firms to proactively retain and reward loyal customers. This may go some way to ensuring more customers benefit from competition in the market and to improving trust and confidence in the sector.</p> <p>Competition Allowing use of the switch notification and internal customer data, 'saves and winbacks' creates a structural advantage for incumbent retailers.</p> <p>Win-back and save activity significantly raises the cost of acquiring customers. Retailers typically invest \$200+ in sunk marketing costs to acquire a customer, once a customer has decided to switch their outgoing retailer often counter offers. We see winback offers in the order of \$300 credit plus and additional 10% PPD ~ \$500 value. These offers are sustained at the cost of an incumbent's unengaged customers.</p> <p>This targeted activity amounts to a margin squeeze and could be predatory pricing. It ultimately increases the barriers to entry and growth in the retail market, this dampens competition - in the long run all consumers will suffer as a result.</p> <p>It is interesting to note that in 2009 these aggressive win-backs were referred to as unsustainable by Mercury, who was engaging in them then and still deploys this strategy³. Within the intervening 10 years</p>
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³ <http://www.stuff.co.nz/sunday-star-times/2585945/Customers-win-big-in-power-war>

			<p>entrant market share has barely grown, this suggests that allowing save/win-backs has enabled predation of competition.</p> <p>We also consider that banning saves and winbacks will reduce sunk marketing costs across the industry, this will ultimately flow through to sharper prices for end consumers.</p> <p>Note, we have no problem with a firm marketing to a former customer provided they do not use 'internal' information to do so.</p>
C6	Help non-switching consumers find better deals	Support	We support this. Similarly as the bulk tenders in B8 we'd recommend conducting this on a network basis as it will allow more retailers to compete for these customers.
C7	Introduce retail price caps	Do not support	<p>We agree that there are other options that should be tried first. C5 and C6 should encourage more proactive retention/ lower prices for the unengaged.</p> <p>We consider that the price dispersion (minimum and maximum tariff that a customer is on) by retailer should also be monitored and published. This will also allow customers to understand retailer behaviour and push for better deals.</p>
D	<i>Reinforcing wholesale market competition</i>		
D1	Toughen rules on disclosing wholesale market information	Strongly Support	<p>We are supportive of all efforts to extend or clarify obligations, including ensuring any gas market arrangements facilitate compliance with the electricity market Code. We also support vigorous enforcement of obligations.</p> <p>We are of the view that Section 13.2A of the Code already places an obligation on parties to disclose material information to the market but that this has not been enforced adequately by the Electricity</p>

			<p>Authority.</p> <p>The lack of surveillance and timely enforcement no doubt influences participant behaviour because there is no expectation of repercussions.</p> <p>The 8/11/18 UTS claim showed that there has been a disregard for disclosure obligations by participants⁴. In some cases these non disclosures allowed parties to significantly improve their financial position (estimates of \$10M+ and potentially significantly more than that).</p> <p>The non-disclosures identified in the UTS claim and decision are the subject of compliance investigations. However, we are troubled by the Electricity Authority's approach during the event and in the UTS decision:</p> <ol style="list-style-type: none"> 1. The complaints were raised by participants rather than detected by the EA; 2. Likely non disclosures were not met with any timely public criticism or reminder about the responsibility of participants to comply⁵; 3. The analysis in the UTS decision doesn't account for the benefit of short but tactical delays to make announcements close to the end of the trading window. It is dismissive of the impact asymmetric information had during the events, and
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- Genesis failing to disclose the availability of Huntly 5 on multiple occasions;
 - Contact Energy waiting till near market close to declare shutdowns.
 - Swaption contract between Genesis and Meridian not being disclosed to the market.
 - Fuel supply changes not disclosed by Genesis in a timely fashion.

⁵ Until we suggested that the EA should be doing this nothing was mentioned in Market Briefs or media statements throughout the UTS period.

			<p>didn't take account of the corrosive impact on confidence in the market longer term.⁶</p> <p>It is clear to us that vigorously enforcing information disclosures will require both an attitudinal change and increased resourcing of compliance activities at the Electricity Authority.</p> <p>To encourage compliance by participants it would also be valuable to have a Code requirement for a participant's Directors to sign off that the participant has procedures in place to ensure timely compliance with their disclosure obligations.</p>
D2	Introduce mandatory market making obligations	Strongly Support	<p>Flick supports making market maker obligations mandatory.</p> <p>However in order for this to provide a level playing field there must first be:</p> <ol style="list-style-type: none"> 1. A statutory non discrimination obligation on vertically integrated firms to provide wholesale products on equal terms to independent retailer as they do internally. 2. An obligation for the retail load of a vertically integrated firm to be covered by traded contracts via the market (Also refer comments in D5). <p>Key features of a scheme</p> <p>We support using the emergency Code amendment mechanisms to mandate a scheme with the following features:</p> <ul style="list-style-type: none"> • Quoting and spread requirements the same as the current voluntary scheme. • No "portfolio stress" or similar force majeure clauses.

⁶ [MEUG and Major Gas Users' Group \(MGUG\) letter, Spring 2018: Demonstrates the need for wider strategic perspective on the gas and electricity markets](#)

			<ul style="list-style-type: none"> • Includes the current 4 market makers plus Trustpower. • Has a mechanism to widen spreads to 10% if the contract price has moved by more than 20% net in either direction over the past 5 trading days. <p>How it is introduced</p> <p>The terms of reference for a market making scheme must be set by the review panel and it should be implemented within a prescribed timeframe. This is necessary because the EA can not be relied on to address issues promptly and there is scope for undue influence and delay tactics by Gentrailers.</p>
D3	Make generator-retailers release information about their profitability of their retailing activities	Strongly Support	<p>We support the requirement to introduce financial reporting and disclosure requirements for Gentailers. This should be implemented immediately even if the initial approach is ‘rough’ the transparency will be incredibly beneficial for encouraging equal-handedness and allowing better monitoring. Disclosure and reporting requirements will enable detection of anti competitive behaviour.</p> <p>We also recommend that the retail division of Gentailers must contract via the market to cover their retail load. This would mean all retailers have to transact in a common way allowing monitoring of behavior, and arguably reducing the scope of potential anticompetitive conduct.</p> <p>It will be important to ensure robust rules for cost allocation and related party transfers (RTP), to ensure that cost allocation isn’t used to mask profitability and/or cross-subsidies.</p> <p>We are happy to provide our reporting template as an example of what costs an independent retailer has to use as a benchmark for developing a standard set.</p>

D4	Monitor contract prices and generation costs more closely	Strongly Support	<p>Flick supports increased monitoring contract prices, generation prices and spot prices.</p> <p>Fundamentally the spot price signals need to be accurate in order for derivative contracts to be efficient. Analysis of prices needs to be on a granular basis as market averages can mask localised issues of market power.</p>
D5	Prohibit vertically integrated companies	Rethink	<p>Refer cover letter also.</p> <p>Vertical ownership separation is considered the gold standard for eliminating the incentives for anti-competitive and discriminatory behaviours. We appreciate that the Government is not prepared to force this structural change however there are operational separation measures that must be implemented to ensure a level playing field and safeguard competition.</p> <p>A market with a level playing field does not allow preference or discrimination between parties. Practically this means a vertically integrated firm offering the same terms for wholesale supply to an independent retailer as it does its own retail operation. As a result success or failure in the retail market would be determined by how effectively and efficiently retailers serve customers.</p> <p>Gentailers have submitted analysis that suggests that vertical integration is more efficient than contracting because a vertically integrated generator can adjust generation in response to changes in retail demand. We think this is disingenuous and overstates contracting costs. The same dynamic could be simply achieved through a customer number limited fixed price variable volume contract with an external retailer where the fluctuations in demand would be comparable to the internal retailer's. Putting in place a</p>

			<p>contract like this does not involve significant transaction costs, however in practice it typically comes with a price premium to a fixed volume contract and internal transfer prices.</p> <p>Currently we have a market that allows an integrated retail operation to be given preference over external independent retailers because they are 'insulated' from market price risk giving them an input cost advantage. This occurs because there are not regulated boundaries between the retail and wholesale operations of integrated businesses and there is no monitored and enforced obligation of equal access to wholesale supply.</p> <p>Measures to prevent discrimination</p> <p>There should be an obligation in the Electricity Industry Act on vertically integrated firms to provide wholesale access with internal and external parties on equivalent terms.</p> <p>Further ex-ante measures that prescribe actions are required to prevent anti-competitive behaviour before it occurs.</p> <p>In addition to improvements to market making, we believe the following measures must be implemented to level the playing field:</p> <ul style="list-style-type: none">• Separate accounting of retail and wholesale activities - this will allow better assessment of efficiency and discrimination,• A requirement to 'cover' all retail load via the market (ASX) or at a minimum 'Notional' reported contracting based on a forward market index between the internal wholesale and retail divisions and publication of these terms.• Separate market prudential arrangements for retail businesses of integrated firms.• Separate management incentives based on division performance.• Audited chinese walls to protect trading information of external parties
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			<p>These measures could be implemented swiftly because there is limited functional integration between retail and wholesale operations of gentailers (compared with unbundling network/ retail/ wholesale or telecommunications).</p> <p>If integrated firms are found to act in a discriminatory way full vertical separation would be necessary. This would need to be coupled with measures to constrain market power of generators.</p>
E	<i>Improving transmission and distribution</i>		
E1	Issue a government policy statement on transmission pricing	Neutral	<p>We acknowledge the concerns raised about policising the process and creating uncertainty. That said, ultimately we do think fairness and price shock considerations are relevant and should be had regard to.</p> <p>We consider that if there is a change to the EA's statutory objective and a consumer protection element added these may go a significant way to addressing issues of fairness.</p>
E2	Issue a government policy statement on distribution pricing	Neutral.	<p>The potential impacts of changing approaches to distribution pricing are likely to be quite varied because we have many networks of different sizes and population density. Similarly to E1 fairness and and prices shocks need to be considered alongside efficiency, but changing the objectives and functions of the EA may be a better way to achieve this than a GPS.</p> <p>We are certainly supportive of distribution pricing reform, in particular options for customers to take advantage of tariffs that provide a price signal for shifting load to off peak.</p>

E3	Regulate distribution cost allocation principles	Neutral.	<p>We appreciate that network prices rises have been more rapid for residential consumers than businesses. This reflects the demand profiles of the two user groups rather than any mischief on the part of Networks. If there is going to be a significant move away from cost reflective pricing then we agree that regulation may be required.</p> <p>There are also many areas where there is an urban/rural cross subsidy. Cost reflectivity is challenging in networks with high remote/rural lines, particularly in these networks substituting lines for distributed energy solutions should be encouraged where the economics stack up.</p>
E4	Limit price shocks from distribution price increases	Neutral	<p>We consider that limitations on price shocks/ phased prices are desirable and that the AER process merits consideration.</p>
E5	Phase out low fixed charge tariff regulations	Support	<p>We support removing them. It was clear in the EPR workshops that there are misperceptions about the 'benefits' of Low Fixed Charge Regulations. Consumer Advocates expressed that they are the only limitation on ever increasing electricity prices, we appreciate where this concern is coming from is valid, but it is probably better addressed by other measures: improving competition and access to the competitive market.</p>
E6	Ensure access to smart meter data on reasonable terms	Support	<p>Metering Equipment Providers (MEP's) services need to be regulated more broadly. When smart meters were first installed the MEP's were agents for the Retailers but it has become increasingly important that they service Network companies as well.</p> <p>We strongly support the principle that the terms and prices of access need to be regulated - rather than leaving some room for differences in pricing and service levels. MEP's have natural monopoly characteristics, they should be the subject of economic regulation as networks are.</p>

			There is a genuine lack of awareness of data privacy obligations by many participants in this industry. All participants handling customer data should be required to demonstrate their understanding of the sensitivities and what processes they have in place to ensure it is handled compliantly.
E7	Strengthen the Commerce Commission's powers to regulate distributors' performance	Support	We support strengthening the regime, we would recommend that all distributors are subject to price path regulation.
E8	Require small distributors to amalgamate	Support	We support amalgamation. The efficiency of distributors would likely increase and there would be operational efficiency benefits from more standardisation in the industry.
E9	Lower Transmission and distributor's asset values and rates of return	Do not support.	We are sympathetic to the concerns about undermining investor confidence.
F	<i>Improving the regulatory system</i>		
F1	Give the Electricity Authority clearer, more flexible powers to regulate network access for distributed energy services	Support	We support this approach, it will provide the Electricity Authority with necessary flexibility.
F2	Transfer the Electricity Authority's transmission and distribution-related	Neutral	We support considering the allocation of roles and responsibilities between the Electricity Authority and Commerce Commission as part of the work to consider the merits of a single energy regulator.

	regulatory functions to the Commerce Commission		Across the industry there is a clear preference for dealing with the Commerce Commission over the Electricity Authority. The Electricity Authority should consider if there are changes to it's operating style that would engender more confidence in them.
F3	Give regulators environmental and fairness goals	Neutral	<p>We support amending the Electricity Authority's objectives so that they are required to promote consumer interests. As discussed in A2, like the Commerce Commission the Electricity Authority should have regard to wealth transfers between consumers and producers.</p> <p>As an organisation we see the importance of environmental measures however we don't think there needs to be an environmental limb to the statutory objective, we agree that these are better placed with other dedicated agencies - Commissioner for the Environment, Ministry for the Environment etc</p>
F4	Allow Electricity Authority decisions to be appealed on their merits	Neutral	
F5	Update the Electricity Authority's compliance framework and strengthen its information-gathering powers	Strongly support	<p>We strongly support a review of the compliance regime. The Electricity Authority needs to take a more proactive role in policing the market as highlighted in our response to D3.</p> <p>We have the following concerns about the Electricity Authority's approach including that 1) Rules are not actively policed and immediately enforced - eg. refer UTS claim and non-disclosure of swaption activation and 2) procedures aren't consistent, the Electricity Authority refused to add Fonterra, Ecotricity and others to the spring 2018 UTS claim, even though multiple parties were adjoined on the 26 March 2011 UTS Claim - this type of inconsistency at a minimum creates perceptions of bias and impropriety.</p>

F6	Establish an electricity and gas regulator	Support	We support investigating a single Energy Regulator.
G	<i>Preparing for a low-carbon future</i>		
G1	Set up a fund to encourage more innovation	Support	Flick would support this fund if it had an objective of funding innovations that would reduce energy costs for end consumers.
G2	Examine security and resilience of electricity supply	Strongly support	Flick strongly supports a thorough review of security, reliability and resilience of the electricity system.
G3	Encourage more co-ordination among agencies	Strongly Support	
G4	Improve the energy efficiency of new and existing buildings	Strongly support	A significant factor in the energy hardship equation is the quality of our building stock, improving this is often the least cost way to reduce energy costs.