Electricity Price Review
Energy Markets Team
Ministry for Business, Innovation and Employment
Via email: EnergyMarkets@mbie.govt.nz

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Mercury Submission to the Electricity Price Review Options Paper

Mercury welcomes the Electricity Price Review (EPR) Options Paper and supports the intent to consider how the world leading performance of New Zealand's electricity sector can be further enhanced for the long-term benefit of consumers. We thank the Panel for its willingness to engage with stakeholders throughout the process to date.

Importantly the Panel has recognised many aspects of the electricity market are working well for consumers and that significant interventions are not an appropriate response in New Zealand.

Mercury supports the view in the Options Paper that there are many factors outside of the electricity sector's control that contribute to vulnerability and there are already many positive initiatives underway to address this. We agree that a joined-up approach across Government, industry and regulators will deliver the best outcomes. Collectively the options in the paper aimed at improving the consumer voice and outcomes for vulnerable consumers through better advice and financial support are well targeted and will make a real difference.

While Mercury supports the intention to introduce additional financial assistance for energy consumers, we reiterate our view that the best outcome would be to better target the Government's existing Winter Energy Payment (WEP) rather than introduce additional tax payer funding. The $374m annually provided to fund the WEP is substantially higher than the $27m publicly reported annually that retail sector incurs for debt write-offs. This suggests the government is significantly overfunding the WEP, much of which benefits wide demographic groups who do not need financial assistance.

Mercury previously noted that if the WEP were better targeted to the 100,000 vulnerable households identified by the EPR it would in fact be capable of completely funding the annual electricity bills for those consumers as well as, more importantly, enabling the purchase of more energy efficient appliances for those households. Reforming the WEP to make it more targeted is a major missed opportunity to make the most meaningful and substantial difference to vulnerability in New Zealand.

As an overarching comment, many of the options supported by the EPR panel will require additional funding. If predominantly funded via industry levy, the outcome of the review will be to raise prices to consumers in the near term.

Mercury welcomes the recognition that as our already strong retail competition continues to expand we must ensure that vulnerable consumers are not left behind. We strongly support the EPR Panel's proposed option to provide stronger regulation around minimum standards, particularly regarding payment terms.

Our analysis indicates that around 33% of retailers (all second tier or new entrants) are restricting payment options to require direct debit or credit card payment only. This approach disadvantages the most vulnerable consumers who live predominantly in a cash economy and may not have access to a bank account or credit card. We agree with the

Panel that the new providers of energy services into the future are unlikely to give high priority to voluntary standards and that regulation is required.

Mercury continues to support positive incentives and choice for consumers through its position that Prompt Payment Discounts (PPDs) should be made reflective of the costs to retailers rather than banned outright. This was a key recommendation from Australian regulators where such discounts were far higher than those observed in New Zealand.

Mercury agrees with the view of the Electricity Authority that the numbers of consumers identified by the EPR Panel as potentially disengaged from the market is likely to be significantly overstated. Many will have engaged with the market but not found cost savings to be material. Further, intense competition in the New Zealand market has resulted much more in a focus on customer retention, incentivising loyalty through many non-price related rewards schemes and value-added services. Consumers do not need to have changed supplier to experience the benefits of competition.

Mercury suggests the Electricity Authority consider the costs and benefits of implementing the Panel’s switching trial proposal as part of its currently funded switching project. A number of commercial switching campaigns have failed to deliver material improvements to switching rates in New Zealand. There may be nearer term options that could better promote consumer awareness. We note that competition is increasingly coming from areas outside of the traditional electricity sector with significant potential for customer disintermediation. Mercury supports the proposal for retailers to take a more proactive role in promoting existing switching websites in their communications with consumers.

We welcome the Panel’s clear recommendation to repeal the Low Fixed Charge Tariff Regulations (LFCT). We agree these regulations are poorly targeted. Phasing out the LFCT will allow for much more efficient price signals for consumers in the longer term. Removing the excessive variability in distribution network charges will reduce the unnecessarily high winter bills for consumers and make a real difference for the most vulnerable households. We also support the various measures in the options paper to promote greater energy efficiency and more efficient building standards. This is an area where New Zealand lags internationally and is a direct contributor to higher energy consumption and costs which impacts the most vulnerable consumers disproportionately.

Mercury supports the transparency and reporting measures outlined in the paper in terms of improving confidence in the efficient operation of the wholesale electricity markets in New Zealand. We also agree with the Panel’s view that forced separation of generation and retailing would be an excessive response without commensurate benefit and potentially some adverse consequences and that other options outlined in the report should help to address the issues identified.

Implementing more sustainable market making arrangements is a priority area for reform. Mercury strongly supports an accelerated push toward a compensated regime that positively incentivises wider participation. In contrast, Mercury considers there are significant risks in imposing mandatory market making requirements which would concentrate unsustainable financial and insolvency risk on a small number of participants and would be likely to be legally challenged.

Mercury supports the proposal for increased powers for regulators to tighten and clarify regulatory frameworks that apply to network monopolies in response to emerging technologies. While the Panel and regulators favour a wait-and-see approach, Mercury considers many of the issues around data sharing and competitive market impacts would be resolved by regulators taking a clear view on the boundary between competitive and regulated activities. As a real example Mercury considers it as indefensible that many network companies consider all consumers in their monopoly areas should pay for public car chargers as part of their regulated asset bases.

In conclusion, Mercury welcomes the options put forward in the report and the opportunity to provide feedback to the Panel to further shape its recommendations. Mercury is encouraged that with industry, regulators and government working together we can build on the exceptional strengths of New Zealand’s existing market to deliver better and fairer outcomes for consumers over the long term.

Electricity Price Review Options Paper – Response to Questions

SECTION A: STRENGTHENING THE CONSUMER VOICE

A1 Establish a consumer advisory council

Mercury supports this option.

Retailers have robust processes in place to understand their customer needs and advocate for positive regulatory change on their behalf. However, it will be valuable to have an independent consumer voice to undertake research and analysis across the electricity supply chain to properly inform policy decisions.

One area where Mercury sees a priority need for a greater consumer voice is in the regulatory approvals process for distribution and transmission regulatory plans. There is a trend toward customised price paths among distributors that so far has led to significant price increases for consumers. This trend looks set to continue as many distributors look to replace aging asset bases. It is therefore important the Consumer Advisory Council has the appropriate expertise on its board and secretariat to also consider technical pricing matters and is able to provide detailed expert analysis into regulatory process.

Given a levy funded consumer advocate has the potential to increase consumer costs it is important that its role and functions be tightly defined initially with clear areas of focus to avoid excessive costs to consumers. Mercury notes that funding for Energy Consumers Australia increased 53% from $6.2m in 2016 to $9.5m in 2018.

Mercury has already offered to contribute funding to establish an interim Consumer Advisory Council to potentially progress some of the initial consumer recommendations in the EPR options paper.

A2 Ensure regulators listen to consumers

Mercury agrees with the Panel that it is unclear that there would be benefits from this option. The EA already has a statutory obligation to act in the long-term interest of consumers which in our view encompasses an obligation to consult with consumer groups. We consider establishing the Consumer Advisory Council (option A1) will achieve the intent of this option.

SECTION B: REDUCING ENERGY HARDSHIP

B1 Establish a cross-sector energy hardship group

Mercury supports this option subject to appropriate design and funding.

The design of the group should ensure existing groups (e.g. ERANZ's Vulnerable Consumer and Medically Dependent Working Group and Access to Energy Working Group) are included to avoid unnecessary duplication and confusion for consumers. We support retailer representation on the group and a post-implementation review after the first year of operation.

As the proposed group would consider the drivers of hardship beyond the electricity sector, we consider funding should come from government rather than by industry levy.

As an over-arching comment, many of the options supported by the EPR panel will require additional funding. If predominantly funded via industry levy, the outcome of the review will be to raise prices to consumers in the near term.

B2 Define energy hardship

Mercury strongly supports this option. There needs to be a clear and robust New Zealand specific definition to ensure assistance is clearly targeted to those most in need and that the government allocates tax payers' funds in the most cost-effective way possible.

As noted in our response to B5, unfortunately the untargeted nature of the Winter Energy Payment (WEP) is creating significant inefficiency, with the funds currently allocated capable of entirely addressing all energy costs for the most vulnerable consumers.

Mercury supports the research ERANZ commissioned from PWC in defining energy vulnerability in New Zealand (attached to ERANZ's submission to the EPR issues paper) which illustrated the number potentially high-priority vulnerable households is likely to be half that of the number suggested by the EPR analysis. Mercury would support the PWC work being used as a basis for setting a New Zealand-specific definition.

B3 Establish a network of community-level support services to help consumers in energy hardship

Mercury supports this option subject to appropriate design and funding.

This should build on work already undertaken in the sector to avoid unnecessary costs and duplication, for example the ERANZ EnergyMate programme which is already having a positive impact. Mercury has for some time funded a dedicated community relations manager to offer support and help to our communities which is unique among retailers we believe and has provided us with valuable insights into issues related to hardship.

Appropriate training is important. Energy advisors need to understand the different energy plans on offer and be able give tailored advice to the individual but they also need training to be able to take a wider pastoral care approach. In Mercury's experience, focussing narrowly on a single element, such as price, without understanding an individual's wider circumstances, leads to short term and unsustainable outcomes.

This initiative should be government-funded as opposed to a levy funded to avoid price increases to consumers.

B4 Set up a fund to help households in energy hardship become more energy efficient

Mercury supports this option subject to government funding.

Mercury strongly agrees that there are further benefits in the government taking measures to reduce New Zealand's disproportionally high household energy consumption compared to many other developed countries. This is largely due to New Zealand's poor housing stock which drives misleading perceptions that electricity is expensive when in fact it is high consumption that causes large winter bills. We agree this initiative should complement option B3.

B5 Offer extra financial support for households in energy hardship

Mercury offers qualified support for this option.

Our qualification is that in our view, and the view of many other respondents to the EPR issues paper, issues with vulnerability could be entirely solved through better targeting of the existing financial assistance provided by the Winter Energy Payment (WEP). Mercury's analysis illustrated that if the WEP were better targeted to the 100,000 households identified by the EPR First Report as potentially vulnerable, this would completely fund the annual electricity bills for those consumers as well as enabling the purchase of more energy efficient appliances for those households.

We maintain our view that the best outcome for New Zealand taxpayers and the most vulnerable consumers would be to better target the WEP rather than introduce additional funding. The WEP currently costs $374m per year to fund. However, publicly reported electricity industry debt write-offs (which can be taken as a proxy for the total amount some consumers are unable to pay to retailers and therefore an indicator of potential vulnerability) total only around $27m per year. This suggests the government is already significantly overfunding the WEP. The preference for universal application is a highly inefficient use of taxpayer's funds with the WEP benefiting wide demographic groups who do not need financial assistance. Better targeting of the WEP is a major missed opportunity to make the most meaningful and substantial difference to vulnerability in New Zealand.

However, should the Panel nevertheless continue to support its recommendation of further financial assistance, Mercury supports it being properly targeted to vulnerable consumers and therefore subject to a clear and robust definition of energy hardship (Option B2) with preferably, the vulnerable households being identified by government. One further step which would have a material benefit for addressing vulnerability would to ensure any concessions are directly credited to consumers energy accounts with their retailer to offset their energy related costs specifically. This is a measure that could be recommended with the existing WEP as well as any further concessions that might be introduced. We understand that ERANZ members have indicated a willingness to work together with government agencies to develop a universal payment process that would see this payment being able to be made directly to any consumer's electricity account to support this targeting.

B6 Set mandatory minimum standards to protect vulnerable and medically dependent consumers

Mercury strongly supports this option and sees this as a priority area for reform.

We agree that payment terms in particular should be better regulated. In our submission to the EPR first report we highlighted that many new-entrant retailers were effectively excluding vulnerable consumers by restricting payment options - for example to require direct debit or credit card payment. It is not uncommon for such vulnerable consumers to be living in a simple cash economy. They may not have access to a bank account let alone a credit card. The Electricity Authority in its EPR response also noted that "Flick provides limited credit risk cover to the market as it requires weekly direct debit payments".

Mercury performed analysis on the payment terms of 23 retailers serving 99.9% of the retail market and found:

- 33% of those retailers are restricting payment options to require direct debit or credit card payment only;
- 52% don't have any or clearly locatable hardship support; and
- 47% don't send customers a paper invoice.

Of those restricting payment terms, all were either second tier or new entrant retailers. This is unsurprising given, as the EA notes, the priority for new entrant retailers is to build to scale and many are not operating sustainably. New entrants are filtering out potential credit risk customers which discriminates against the most vulnerable by limiting their access to more competitively priced products (see EA submission to the EPR First Report).

The regulations should ensure a requirement to have a core set of services available to customers. These could include having minimum methods of payments, obligations to provide hardship information on their websites and bills and an option to request paper bills (as not all customers will have access to a mobile phone or the internet). Mercury notes that in many other jurisdictions these are common requirements. For example, in Victoria, Australia, retailers are required to have a regulated minimum of five payment channels.[1]

Further, Mercury reiterates its view that all retailers should be required to make an offer to supply electricity to any customer who requests it. This could take the form of a standardised offering or a pre-pay offer. If a retailer is unable to offer pre-pay then they should manage that customer's application to another retailer that can. This should form part of any minimum standards to protect vulnerable consumers.

[1] https://www.esc.vic.gov.au/sites/default/files/documents/COD%20-%20RR%20-%20Amended%20Energy%20Retail%20Code%20-%20Version%2012%20incorporating%20obligations%20for%20exempt%20sellers%20-%20~%2020180917.pdf, page 38

B7 Prohibit prompt payment discounts but allow reasonable late payment fees

Mercury supports making PPDs cost reflective, rather than banning them outright which would undermine consumer choice and the competitive market.

The Panel's main concerns around PPDs appear to be:

- In some instances, they are likely in excess of the costs of recovering late payment; and
- Low-income consumers are disadvantaged as they are unlikely to always receive PPDs

The first concern is easily addressed by requiring PPDs to be cost-reflective. This was the recommendation of the ACCC Review which did not propose banning PPDs despite observing discounts far in excess of those seen in the New Zealand market.

We disagree that the second concern will be addressed by banning PPDs which could in fact result in the opposite outcome. We maintain our view that cost-reflective PPDs are a valuable and positive incentive to reward customers who pay on time. Late payment fees on the other hand have a negative connotation and will instead result in consumers accumulating more post-pay debt and worsening credit scores. As noted in previous sections, publicly reported debt write-offs for the industry total around $27m per year. Banning PPDs will likely increase this figure which will result in these costs having to be recovered in higher consumer pricing. Banning PPDs would also likely incentivise retailers to increase credit-checking activity and reject customers with a higher risk of non-payment, who are likely to be low-income or other vulnerable consumers.

Rather than taking away a benefit (currently available to all consumers), the focus should be instead on supporting vulnerable consumers to ensure they are fully benefiting from competition. The other measures proposed by the EPR Panel, such as providing energy literacy advice and budgeting support and ensuring they are on the best retail product (e.g. pre-pay) for their situation, are great examples of what will make a real difference for the most vulnerable.

There appears also to be a view throughout the options paper that electricity is no different from other markets such as the telco sector and therefore there is no justification for prompt payment discounts which are not a feature of such markets.

However, electricity is significantly different from many other products in that the vast majority of electricity consumers pay after, not before, they have consumed the product. Electricity retailers value prompt payment as they are responsible for collecting payments for the rest of the supply chain. This includes for the distribution and transmission networks, metering, the wholesale electricity market and other regulatory and market services, which makes up a the majority of the costs of the total bill. Retailers must pay the rest of the supply chain irrespective of whether they themselves receive payment. Late payment therefore increases retailers' cost of debt which is ultimately recovered in higher consumer pricing. Being paid promptly reduces the cost of debt and keeps consumer pricing as low as possible.

Mercury's view is that regulation should require PPDs and other discounts to be cost-reflective, relating only to the reasonable savings that a retailer expects it will make if consumers satisfy the conditions attached to the discount. More heavy-handed intervention would appear unnecessary with uncertain undesirable impacts on the competitive market and consumers.

Should the Panel continue to support this option, then it is important that retailers are free to determine the appropriate cost-reflective late payment fees. Each retailer will have different costs such that a one-size-fits-all approach is not appropriate. Again, comparisons with the cost structure of other sectors should be avoided. We would strongly oppose any proposal for the capping of late payment fees. This could lead to unintended consequences for vulnerable consumers if late payment fees are capped at level which is not reflective of underlying costs. It will likely result in retailers rejecting consumers who are at a higher risk of non-payment who are most likely to be vulnerable. We are not aware of other sectors being subject to this kind of regulation.

B8 Explore bulk deals for social housing and/or Work and Income clients

Mercury supports this option. We note that as Housing New Zealand is not a single customer (in the way a large commercial or industrial customer would be) there are some challenges in providing a bulk deal across some 60,000 different properties. This may require management through enabling Housing New Zealand to enter into a bulk service arrangement with retailers.

C: INCREASING RETAIL COMPETITION

C1 Make it easier for consumers to shop around

Mercury offers qualified support for this option. We agree that consolidation of the various comparison websites would be clearer for consumers and better assist budgeting agencies but we support open tendering from commencement.

Mercury supports consumer access to data and notes all retailers are required by regulation to provide historic consumption data freely to consumers. Mercury provides an online portal for consumers to access their data and provides it directly upon request. In the discussion in the EPR workshops it was stated that the Panel considered consumers having immediate “real time” access to data within Consumer Powerswitch was important. In our view, providing real time data would not materially improve the accuracy of Consumer Powerswitch which largely provides a ranking of retail offers. The systems costs for both Consumer Powerswitch and retailers to enable real time functionality would be significant and it is unclear whether this would justify the benefits for consumers. As a result, at this stage, Mercury considers a link to real time data is unnecessary.

Mercury supports an open tendering process be conducted from initial consolidation. Multiple comparator websites currently exist and there are other third parties that may see this as an opportunity resulting in a more comprehensive and competitive product for consumers.

Whoever may be successful in obtaining the tender must remain as a neutral third party without actual or perceived conflicts of interest. There should be no ability for commissions or other incentive payments to be made to the provider of these services and customer transfers should not be initiated from this service but rather via the retailer. This would reduce similar concerns to those raised in the recent banking review where the driver for the switching of plans or providers was based on the commissions received rather than the best outcome for the consumer.
Mercury also considers that an effective comparison service should include non-price attributes. Consumer Powerswitch for example predominantly focuses on a ranking of prices rather than on the significant non-price benefits many retailers are now offering such as free power days, energy monitoring and efficiency advice services and reward schemes. It should also include service parameters such as payment options, billing and customer service channels.

Mercury welcomes the Panel’s view that it does not support a requirement for retailers to disclose all generally available price offers. We agree this would stifle innovation and competition and that changes proposed in other measures should help to improve transparency. Retailers are already required under regulation to disclose this information to the Electricity Authority upon request.

C2 Include information on power bills to help consumers switch retailer or resolve billing disputes

Mercury offers qualified support for this option.

This requirement complements the suggested changes in B6 where minimum requirements of bill content could be specified. This is a common requirement in other jurisdictions[2] and ensures basic information is received by consumers irrespective of their retail provider.

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[2] https://www.aer.gov.au/system/files/AER%20Compliance%20Check%20-%20bill%20content%2C%20frequency%20%26%20payment%20method%20-%20June%202017.DOCX

Mercury supports in principle making consumers aware of UDL and their rights to lodge a complaint if they experience customer service that is not up to standard. However, we would like flexibility in the messaging to encourage our customers to contact us in the first instance to resolve any issues they might have before approaching any complaints authority. The low level of consumer recognition of the UDL brand and complaints in general reflects the fact that retailers actually have very robust processes in place for dealing with any customer issues and shouldn't be viewed instead as a material barrier.

C3 Make it easier to access electricity usage data

Mercury supports this option subject to regulators providing retailers with clear advice that any streamlined data access regime is compliant with their obligations under the Privacy Act. We understand the Electricity Authority is intending to consult on this issue which we support.

C4 Make distributors offer retailers standard terms for network access

Mercury supports this option.

Alignment across distributors on terms for network access is something we have supported as part of the Electricity Authority's Default Distribution Agreement workstream. Default terms promote efficiency as retailers have very little power to influence a monopoly in negotiations. We reiterate our views set out in previous submissions, particularly that lack of standardisation creates unnecessary costs and creates barriers for new entrant retailing.

C5 Prohibit win-backs

Mercury notes there is significant conflicting evidence that the Panel has not had time to reconcile to credibly justify the outright banning of win-backs. We support the EA's suggestion to undertake a further trial to assess the wider competitive impacts of banning win-backs.

The main concern appears to be that win-backs are perceived as being unfair as they predominantly apply to those who seek out a more competitive deal and may not be available to all consumers. New entrant retailers have also raised concerns that in their view win-backs impact on competition.

Mercury is concerned that in suggesting a ban on win-backs the Panel is proposing a significant intervention that undermines competitive dynamics in the retail market. This was a major concern in the ACCC report of the Australian electricity market which was explicit that **"the ACCC does not recommend that retailers be banned from engaging in save or win-back activity"** [3]**.**

Independent analysis to the Electricity Authority's Market Development Advisory Group (MDAG) has found that there is no evidence to suggest that win-back activity is having detrimental impacts to competition or was able to substantiate the claims from new entrant retailers that incumbents were targeting new entrants. This analysis should not be ignored in Mercury's view.

Mercury considers that concerns regarding vulnerable consumers are best addressed by the other options in the paper designed to provide increased budgeting support and advice to ensure vulnerable consumers are on the best tariff.

Mercury is unable to substantiate the EPR Panel's view that competitive outcomes in the telco market have been enhanced by a lack of win-back activity. The Commerce Commission clarified in the EPR workshop, win-backs are in fact not banned in the regulation it just not a prevalent feature in the telco market. Analysis from the Commerce Commission released in August 2018 indicates that since 2013 market shares between Spark, Vodafone and

[3] ACCC Retail Electricity Pricing Inquiry—Final Report 2018, Part 6.4.4, pg 151.

2Degrees in the mobile market have remained flat[4]. Further, the telco churn rate of 20,000 customers cited in the EPR paper is far less than monthly churn rate in the residential electricity market which averaged 34,000 customers per month in 2018. This would seem to support the view that any ban on win-back activity will significantly reduce the competitive dynamic in the industry consistent with the ACCC concerns and remove legitimate benefits available to consumers.

We appreciate the Panel may be concerned by claims from new entrant retailers that win-backs are not fair. However, as noted this is not supported by the independent evidence to the MDAG and must also be balanced by the inevitable claims as to the lack of fairness from those consumers who will no longer receive competitive win-back offerings. Given the lack of a consumer voice raised by the Panel, the view of such consumers is substantially lacking in this debate.

Mercury would like to put forward a slight revision to the Panel's recommendation for its consideration. The Panel could recommend that it is inclined to ban win-backs subject to the Electricity Authority undertaking further trials to understand the wider competitive impacts which is the EA preferred approach. There could also be an opportunity for any interim consumer advisory council (discussed in A1) to consider as a priority whether any ban would lead to any unintended consequences from the consumer perspective.
Mercury also considers that, if the EPR Panel proceeds with its preferred option, it should clarify that any ban on win-back activity would apply to all retailers on an equal basis and that the rules around win-back activity should be rigorously enforced by the regulator.

C6 Help non-switching consumers find better deals

Mercury suggests the Electricity Authority could consider this option as part of its forthcoming switching work programme.

We note that one of the existing statutory functions of the EA is "to promote to consumers the benefits of comparing and switching retailers". The EA has already allocated resource to analyse the extent of any consumer inertia toward switching. Mercury agrees with the EA's submission to the first EPR report which stated that the numbers of potentially disengaged consumers identified by the EPR Panel is likely to be overstated. As the EA notes, many consumers will have in fact engaged with the market (which can be verified by considering the numbers of visits to both What's my Number and Consumer Powerswitch) but have not found the savings to be material. Many will also be satisfied with the significant non-price offerings of their existing retailers such as energy monitoring and bill estimation tools, rewards schemes as well as sponsorship activity (Mercury customers for example have the ability to donate via their bill directly to Starship Hospital which has raised over $10m to date).

It is important to note that the potential bill savings in for UK electricity consumers were 5-6 times more than the amount identified as the average potential savings by the EA in New Zealand. The situation in the UK has been driven by regulated standing offer tariffs. These tariffs were introduced as a regulated back-stop in the transition to the competitive market to ensure consumers would always be able find an offer for supply, even if it wasn't the most competitive. However, this has had the unintended consequence of driving competition in the UK market toward providing greater discounts of these artificially high regulated standing offers. This has created the significant gap between headline prices and more competitive offers.

As regulated standing offer tariffs have never been a feature in the New Zealand market our higher levels of retail competition mean the cost savings from switching for consumers are significantly less.
The increase in switching rates achieved in the UK to 22% is the same as the current annual switching rate in the New Zealand market. There have already been a number of residential bulk switching offers made into the New Zealand market from commercial third-party aggregators which have failed to materially deliver increased switching activity.

[4] Commerce Commission Study of mobile telecommunications markets in New Zealand 31 August 2018 section 72 pg 19

There is much more intense focus in New Zealand on encouraging customer loyalty through better customer service and non-price offerings. As a result, it is unlikely that taking a similar approach to that proposed in the UK will result in material switching benefits for consumers and may be viewed negatively by consumers.

Given the costs and significant changes to the role and function of regulatory agencies required to implement any bulk switching offer, Mercury does not support this approach. However, we note the EA already has funding to consider improvements to switching. We would support the EA being tasked with considering the costs and benefits of this option in conjunction with a range of nearer term options to raise consumer awareness. This should also encompass consultation with the consumer advisory panel.

C7 Introduce retail price caps

Mercury agrees with the EPR Panel's view that implementing retail price caps should not be supported as competition is working more effectively in New Zealand when compared to other jurisdictions implementing price caps.
We agree that price caps could result in unintended consequences for competition and innovation in the retail sector.
We agree that the other options identified in this section should assist in facilitating further competitive outcomes for consumers without resorting to heavy handed interventions in the market.

D: REINFORCING WHOLESALE MARKET COMPETITION

D1 Toughen rules on disclosing wholesale market information

We support this option. It is important that the rules on disclosing wholesale market information are both strengthened and broadened.

The disclosure rules overseen by the Electricity Authority and the Gas Industry Company should be standardised for consistency. Information disclosure on generators' plant availability, thermal fuel positions and upstream gas and coal supplies should be brought into line with the current level of transparency regarding hydro lake levels and snow pack with all fuel supply information made available centrally for ease of access.

The System Operator has a key role to play in ensuring this information is made widely available to market participants through its website. The weekly coal stockpile information supplied to and published by the System Operator during November 2018 is a good example of the type of practice that could be implemented on an ongoing basis for gas supply disclosure. Continuous disclosure, preferably in real time, should be required rather than ad hoc and reactive disclosure in response to periods of market stress. Where specific information cannot be shared because of concerns regarding confidentiality in gas contracts, thermal generators should be required to reflect the impact on their ability to generate as a reduction or cessation of MW availability for the duration of the fuel supply outage.

D2 Introduce mandatory market-making obligations

Mercury recognises the importance of market making arrangements in underpinning efficient market arrangements and supports an accelerated push toward a compensated regime that positively incentivises wider participation.
Mercury consider the current market making arrangements are likely unsustainable and could be expanded more widely to other gentailers and retail portfolios and ideally over time, to other entities. However, in Mercury's view mandating such arrangements is likely to result in significant delays. Concerns regarding portfolio stress, particularly for smaller players, will lead to protracted implementation issues and even potentially litigation in our view.

While the EPR Panel raises concerns around the timing for implementation of a compensated regime, discussions between the current market makers, the ASX and the EA have been progressing for the past two years and are significantly advanced. The current market situation provides an incentive to progress this work as a priority. In comparison to a mandatory approach, it is preferable to pursue a compensated arrangement. This will bring the best quality and most sustainable market making, introduce much more explicit incentives to manage market stress (as market makers would forgo any compensation when they don't meet their obligations) and would also mean the costs of market making are shared proportionately across those who benefit and those who are best placed to manage the risk.

Mercury supports moving to a compensated regime as a priority with the existing voluntary arrangements continuing and the EA providing firm oversight and potentially further explicit guidance as to what constitutes legitimate triggers for portfolio stress. Further to the discussion at the EPR workshop, Mercury supports the Panel advocating for a six-month timeframe to progress a compensated regime with the option of further regulatory intervention if such an arrangement is unable to be materially progressed over this period.

D3 Make generator-retailers release information about the profitability of their retailing activities

Mercury supports greater transparency but notes there is no common or agreed methodology across the sector for reporting separately on the financial performance of generation and retailing operations (segmented reporting) and disclosure of the 'transfer prices' of energy sales within their vertically-integrated companies.

The limitations of using a single average transfer price need to be explicitly acknowledged. A single transfer price is indicative only and does not reflect the price a consumer should expect to receive. There is no single price in the wholesale electricity market as prices are set dynamically based on the marginal costs of generation and transmission capacity at any given time. Distribution charges also vary significantly across New Zealand as the EPR Panel's analysis has demonstrated.

Mercury supports greater consultation with regulatory agencies to provide guidance on the form and content of a consistent regulatory reporting regime that might apply.

D4 Monitor contract prices and generation costs more closely

Mercury supports this option.

The Electricity Authority has periodically produced analysis comparing wholesale and forward contract prices with the long run marginal cost of new generation. This analysis has not revealed any evidence of any excessive profits, supporting the EPR Panel's view that the wholesale market is efficient.

D5 Prohibit vertically integrated companies

Mercury supports the Panel's view that forced separation of generation and retailing would be an excessive response without benefit and that the other measures outlined in Section D should help to address the issues identified.

SECTION E: IMPROVING TRANSMISSION AND DISTRIBUTION

E1 Issue a government policy statement on transmission pricing

Mercury supports this option. We agree it would be valuable for the government to provide a view on who it considers should benefit from transmission pricing cost reallocations and whether a prospective approach should be favoured.

E2 Issue a government policy statement on distribution pricing

Mercury supports this option. However, we would not want to see a Policy Statement delaying distribution pricing reform or repeal of the LFCT Regulations. Any Policy Statement should complement the industry-led work on distribution price reform.

Distribution pricing reform should be prioritised for the reasons stated in our previous submission and our more recent submission to the Electricity Authority on their "More Efficient Distribution Prices" consultation paper in December 2018.

We do have concerns around complexity of distribution pricing reform. We have advocated that cost-reflective pricing should be simplified and made as standardised as possible. We agree with the EA that mandatory pass-through is not required as retail competition and innovation will deliver pass through over time.
We cited evidence from Concept Consulting in our previous EPR submission which suggested the majority of the efficiency gains from more complex distribution pricing structures could be achieved instead by implementing relatively simplified structures. These could include specifically raising the fixed component to better reflect the fixed costs of the distribution network and introducing limited peak signalling to educate consumers as to the best times to avoid heavy use of the network. This would have the further benefit of being able to be replicated easily by retailers and therefore have a greater chance of pass through to consumers.

Mercury supports the Distribution Policy Statement including a default simplified tariff with standardised terms like that outlined above to apply for those distributors that have not made progress on reforming pricing by a set date. This would ideally be phased in as the LFCT Regulations are phased out.

E3 Regulate distribution cost allocation principles

Mercury supports this option being subject to further analysis. If it is the case that cost allocations between consumer groups have become unfair then this should be addressed through appropriate cost benefit analysis.
We note that cost-reflective distribution pricing reform will help drive cost-savings for consumers in the longer term. Any further decisions around changes to cost allocation principles should align with this work.

E4 Limit price shocks from distribution price increases

Mercury supports this option. We understand from the EPR workshops that the Panel is considering including this option and Option E3 above in the proposed Government Policy Statement on Distribution Pricing. We support this approach.

It is likely that transitioning to cost-reflective pricing will result in impacts for some consumers. For this reason, we favour increasing the simplified distribution pricing structures as outlined in Option E2 above, targeting financial assistance for the most vulnerable consumers (Option B5) and providing a phased transition for the LFCT and cost-reflective pricing (Option E5).

E5 Phase out low fixed charge tariff regulations

Mercury strongly supports this option. We commend the Panel for the analysis in its first report supporting the broad consensus across the industry for phase out of the LFCT that has emerged through the consultation. We support consultation with distributors and retailers on how to ensure a smooth transition.

E6 Ensure access to smart meter data on reasonable terms

Mercury supports this option. Regulation is being introduced by the EA that should resolve the perceived issues. The industry is also proactively working toward more efficient collective arrangements for data sharing.

As noted in the EPR workshops, retailers do not contract to receive outage information or voltage information as it is not required for billing purposes. It is therefore not possible for retailers to provide this information to distributors.
Mercury supports the view of the ERANZ Data Working Group that distributors should contract directly with Metering Equipment Providers (MEPs) for outage and voltage services. MEPs are already developing outage and voltage services and are seeking to provide these services to distributors. Counties Power is an excellent example of a distributor that has contracted for outage services from its MEP and achieved materially better service levels for

consumers on its network during the recent storm activity in Auckland. There are no regulatory or contractual impediments to other distributors contracting for similar services.
In terms of access to consumption data, Mercury welcomes the EA's early release of its proposed amendments to introduce a draft data sharing agreement (Part 12A) between distributors and retailers. This has been based in part on existing data sharing agreements negotiated already between some distributors and retailers and contain robust protections in Mercury's view. We understand the EA will be consulting on these proposals within the next month as the legal challenge process preventing this to date has now been resolved. This means there will be a regulated back-stop available to participants where they are unable to negotiate reasonable terms with a monopoly which will resolve the issue identified by the EPR panel.

The ERANZ Data Working Group is also engaging proactively with distributors and regulators to discuss what options there may be for a multilateral arrangement to be agreed that allows for distributors to more efficiently get consent to acquire data. This would be subject to agreement on reasonable terms controlling the use of such data, audit rights and any penalty regime that might apply. The draft provisions the EA proposed in its 12A regulatory backstop will form an important input into this discussion.

Mercury has consistently raised the point that the challenges related to data sharing arise from the current lack of adequate ring fencing arrangements between distributors' regulated monopoly activities and competitive markets. Vector has very clearly called for regulations to be changed to allow distributors to retail electricity while significantly downplaying the competition concerns[5]. It is also apparent some distributors are recovering costs unfairly from all electricity consumers for infrastructure provided in competitive markets in their asset bases, such as electric vehicle charging, which is unrelated to the provision of the lines service. These outcomes result in significant concerns from retailers that their consumers' data could be being used for purposes outside of network planning and to favour the commercial interests of the distributor.

Given the above, retailers are seeking greater assurances from distributors as to how data is being kept separate from commercial activities; this includes provisions such as better data use definitions, audit rights and potentially penalty regimes to incentivise compliance. Encouragingly, many distributors are acknowledging retailers' concerns and accepting such provisions. However, in some very limited cases our experience is that such requests have been met with limited assurances that favour the distributor and fall short of standard terms retailers seek and agree in commercial contracts with other parties. We are confident however that over time these issues will be adequately resolved.

The need to further negotiate acceptable terms for data provision would not be necessary if the regulatory framework was clearer regarding the permitted activities by the distribution sector. See our response to F1 for further discussion on this issue.

E7 Strengthen the Commerce Commission's powers to regulate distributors' performance

Mercury supports this option. The Panel's recommendations for the proposed new powers and recommendations to enhance existing ones are welcomed. These measures will help improve distributor accountability and performance. We do however consider there should be more intervention in the governance of distributor procurement choices particularly where they relate to non-core investments. Declining quality of assets coupled with rising prices for consumers has been an ongoing trend of concern. Distribution charges currently make up ~24% of the consumer's bill (incl. GST) so we consider the performance issues are not an insignificant cost for consumers.

Regulatory oversight of distributor decisions and robust compliance monitoring and enforcement provisions are fundamental to ensuring an efficient and reliable network. As noted in our previous EPR submission, there is too much wriggle room for distributors to underperform (e.g. through non-core investments, price quality regulation being overly generous, and information disclosure requirements that are no longer fit-for-purpose).

[5] See recommendation 8 of Vector's submission to the EPR First Report

We would encourage the Panel to support a thorough review of not only the Commission's powers, but also the wider regime. We note the Commission is currently undertaking some work in this space – for example we have seen requests for information from distributors around investments in emerging technologies, consultation on enhanced enforcement options and reforms to the related-party rules. There are significant opportunities for distributors currently to contract for outage management and voltage services from MEPs to vastly improve quality standards for consumers which the Commission is also currently consulting on. The Panel should reinforce this work as well as recommending a review of distributor activity to increase scrutiny and accountability. This may require some core legislative changes.

E8 Require small distributors to amalgamate

Mercury supports the Panel's view that there are unlikely to be substantial efficiency benefits from amalgamation due to network topography remaining unchanged. However, we repeat the comments in our previous submission that there can be benefits from improving back office efficiencies such as standardised agreements/pricing and joint ventures relating to processes and practices that should be incentivised and encouraged.

E9 Lower Transpower and distributors' asset values and rates of return

Mercury supports this option being given further consideration. We repeat the points in our previous EPR submission that the Panel should consider impacts of the Optimised Deprival Value methodology as a basis for determining fair and reasonable charges in the electricity sector.

SECTION F: IMPROVING THE REGULATORY SYSTEM

F1 Give the Electricity Authority clearer, more flexible powers to regulate network access for distributed energy services

Mercury supports this option but considers greater clarity in the regulatory framework would significantly reduce the risk of inefficient consumer outcomes in the longer term.

We agree that uncertainty around the Electricity Authority's powers to regulate terms and conditions of use of transmission and distribution networks should be clarified via amendment to the Electricity Industry Act 2010. The current legal proceedings arising from the Authority's Default Distribution Agreement workstream have caused considerable delay and cost for the regulators and industry.

We also support improved co-ordination between the Electricity Authority and the Commerce Commission.
However, much greater clarity is required regarding the regulatory framework for distribution investments. As noted in our previous submission, we have concerns around the lack of a level playing field arising from new technologies and distributors' access to data that can be used in competitive markets. These issues are very real given technologies provided in competitive markets, such like batteries, can form part of the lines service beyond the meter in the home under the Commerce Act 1986. Consumption data has significant commercial value for related parties for some distributors, allowing them to cherry-pick high value customers that their competitors cannot identify as easily.

Accordingly, the provisions in the Electricity Industry Act 2010 around restricting relationships between a distributor and a generator or retailer should be amended. In our previous submission we advocated for the threshold under that Act to be removed for retailing and revised downward for generation. We maintain this position. Amending the Commerce Act 1986 by excluding behind-the-meter technology investments from the regulated lines service function, would also create more efficient and fairer outcomes for competition and specifically remove the issue of data sharing between distributors and retailers.

In addition to the proposal we therefore suggest:

- Amendment to the Electricity Industry Act 2010 to prohibit distributor retailing and lower the current 50MW threshold for generation; and
- Given the growing number of investments in the emerging technology space and the negative impact on competition, the scope of the regulated lines service under Part 4 of the Commerce Act should be narrowed to exclude behind-the-meter investments.

F2 Transfer the Electricity Authority's transmission and distribution-related regulatory functions to the Commerce Commission

Mercury agrees with the Panel's views that the benefits of this option are unclear while the costs are likely to be excessive to deal with all the complexities associated with implementation.

F3 Give regulators environmental and fairness goals

Mercury does not support this option.

In our view regulators should not have environmental or fairness objectives nor a consumer protection function. We agree that adding to the existing objectives could create too many competing objectives for regulators and requiring difficult and potentially intractable, trade-offs. This is also the case for a consumer protection function for household and small business consumers.

As the Panel notes, the Electricity Authority already must act in the long-term interest of all consumers. Adding a consumer protection 'function' would create confusion and difficult trade-offs with the 'objectives'. Narrowing down consumer protection to household and small business customers (thereby enabling the Electricity Industry Participation Code 2010 to include provisions that promote vulnerable consumers), would require trade-offs with other consumer groups, stifle innovation, and jeopardise efficient NZ Inc outcomes.

F4 Allow Electricity Authority decisions to be appealed on their merits

Mercury supports the Panel's view that there is not a compelling case for allowing merits appeals at this stage in the market's development.

Regulatory accountability is best promoted by ensuring regulators have clear statutory objectives and principles to guide any trade-offs between objectives. In addition, extensive consultation is an integral part of the process of formulating Electricity Authority decisions.

F5: Update the Electricity Authority's compliance framework and strengthen its information-gathering powers

Mercury offers qualified support for this option.

We support in principle a review of the compliance framework in the Electricity Industry Act 2010 and related enforcement regulations. The objective should be to ensure the framework is up to date and fit for purpose and that the benefits of any reform clearly outweigh the costs. As the Panel notes, separating regulatory functions from enforcement will increase compliance costs and risk losing the benefits of consolidating knowledge and expertise across these functions.

We do not support expanding the scope of information gathering powers to enable the EA to conduct inquiries outside the scope of its statutory objectives if requested by the Minister of Energy and Resources. As an independent regulator funded via industry levies, the Authority must operate in a manner consistent with its statutory objectives. If the Minister wishes to conduct additional inquiries the appropriate process is through MBIE with the costs being met from government appropriations. We note the Commerce Commission now has powers to conduct market studies and suggest that rather than duplicating such powers there is a general reliance on these provisions.

F6: Establish an electricity and gas regulator

Mercury agrees with the Panel that it is unclear whether there are material benefits from amalgamation. Rather than pursing an exploratory study Mercury would instead prefer the resources were allocated to prioritising consistency of key information disclosure particularly for fuel (see our response to D1).

SECTION G: PREPARING FOR A LOW-CARBON FUTURE

G1 Set up a fund to encourage more innovation

Mercury does not support this option.

Mercury does support innovation and notes there are already several different sources of funding for innovation directly and indirectly related to the electricity and wider energy sector (e.g. Low emissions Contestable Fund and the Green Growth Fund). Mercury does not support this option as we would like to see the other priority areas above, such as providing support for vulnerable consumers and incentivised market making, being prioritised first rather than this option.

G2 Examine security and resilience of electricity supply

Mercury is undecided on the value of this option. While we broadly support the intent we are unclear on what additional insight or recommendations it may bring over and above the work already being done, for example by Transpower and other government and statutory agency reviews. We consider the Security and Reliability Council constantly monitors these aspects of the sector already and already would have the power to conduct such a review itself if deemed necessary.

G3 Encourage more co-ordination among agencies

Mercury supports this option. We agree that better co-ordination among government agencies is important as New Zealand transitions to a low-carbon economy and the government works to assist those in society who are most vulnerable.

G4 Improve the energy efficiency of new and existing buildings

Mercury supports this option. We agree that New Zealand's relatively poor housing stock when compared internationally is a major contributing factor to higher than necessary electricity bills and drives erroneous perceptions that electricity is expensive. The government should amend the Building Code to strengthen the energy efficiency of new buildings and strengthen regulations governing the quality of rental housing.