

7 November 2024

Adrienne Meikle
Chief Executive
Commerce Commission
PO Box 2351
WELLINGTON 6140

Sent via email: registrar@comcom.govt.nz

Dear Adrienne

Statement of Preliminary Issues: Contact Energy Limited / Manawa Energy Limited

1. This is a submission from the Major Electricity Users' Group (MEUG)¹ on the Commerce Commission's (Commission) Statement of Preliminary Issues *Contact Energy Limited / Manawa Energy Limited*² published on 23 October 2024.
2. MEUG members have been consulted on the approach to this submission. This submission does not contain any confidential information and can be published on the Commission's website unaltered. Members may lodge separate submissions.

Lack of competition in market – how can Commission ensure actual benefits flow through to consumers?

3. MEUG and our advisors have reviewed Contact Energy Limited (Contact) and Manawa Energy Limited's (Manawa) clearance application,³ alongside the Commission's Statement of Preliminary Issues, as well as the supporting material in the Case Register.⁴ We have also had the opportunity to discuss this clearance application directly with Contact and Manawa staff, and acknowledge how these discussions have aided our consideration of the clearance application, and what it may mean for New Zealand electricity consumers.
4. MEUG has serious concerns with the state of competition currently in the electricity market, and the negative impact this is already having on pricing for electricity consumers, including our members. We recognise the possible benefits of this acquisition but are seeking to understand what binding undertakings or recourse is available, to ensure the promised benefits are actually realised by electricity consumers.

¹ MEUG is a trade association working to improve New Zealand's electricity sector. We advocate for an affordable and reliable electricity supply that supports a productive economy. Background information on MEUG is available here:

<https://www.meug.co.nz/>

² https://comcom.govt.nz/data/assets/pdf_file/0032/362759/Contact-and-Manawa-Statement-of-Preliminary-Issues-23-October-2024.pdf

³ https://comcom.govt.nz/data/assets/pdf_file/0032/362759/Contact-and-Manawa-Statement-of-Preliminary-Issues-23-October-2024.pdf

⁴ <https://comcom.govt.nz/case-register/case-register-entries/contact-energy-limited-manawa-energy-limited>

Acknowledge that the Commission must use the “substantial lessening of competition test”

5. The Commission has clearly set out the process for assessing the clearance application – how it must “*determine whether an acquisition is likely to substantially lessen competition in a market by considering what would change with the acquisition*”,⁵ through consideration of the factual and counterfactual scenarios. Contact has stated that it considers the relevant markets for assessment are the national wholesale electricity market, retail market, ancillary services market.⁶
6. MEUG supports this focus but considers that it is also important for the Commission to assess the impact on the spot and hedges / contract markets, particularly given the volume of contracts and hedges that are forecast to be made available through this acquisition. We also recommend that the Commission investigate the impact of this acquisition on the market for firming and peaking products. This is an issue currently being considered by the Electricity Authority⁷ and through the Energy Competition Task Force.⁸ The need for flexible generation and peaking and firming capacity to support increased levels of intermittent generation is a significant issue facing the New Zealand electricity market.⁹
7. It is our strongly held view that there is **limited competition in the New Zealand electricity market**. We have raised our concerns with competition in the wholesale market for several years, with our concerns amplifying since the Pohokura outage in 2018. Alongside the increases in gentailer profits,¹⁰ the Electricity Authority and at least one private investment firm¹¹ have estimated that consumers are paying between around \$1 billion and \$2 billion a year more than they would be expected to pay in a workably competitive market. The Market Development Advisory Group (MDAG)¹² has also warned that market concentration and, as a result pricing, will get worse under a more renewable future – not less.
8. MEUG believes that there is already ample evidence that undermines confidence in the wholesale electricity market and points to enduring issues with competition and market rents:
 - The Commerce Commission’s 2009 wholesale market review (Wolak) found market power was exercised and around \$4.3 billion in excess rents over 2001 to 2007.
 - Modelling by Browne et. al. (2011) using an alternative simulation model to Wolak, estimated total market rents for 2006 to 2008 to be \$2.6 billion.
 - Poletti (2016) identified market power rents of around \$5.4 billion from 2010 to 2016.
 - Ireland, Wallace & Associates (IWA) Economic Profit Analysis (EPA) found Meridian Energy earned around \$2 billion in excess economic profit from 2016 to 2021. Analysis by IWA of Contact Energy found little evidence of substantive excess economic profit.¹³
 - The Electricity Authority’s 2021 wholesale market review identified economic withholding and price discrepancy of around \$38/MWh from 2018 to 2021, with an average value of over \$1 billion p.a.

⁵ Paragraph 11, *Statement of Preliminary Issues*.

⁶ Paragraph 18, *Statement of Preliminary Issues*.

⁷ See recently released Issues paper on review of risk management options for electricity retailers, <https://www.ea.govt.nz/news/press-release/review-identifies-risk-to-retail-electricity-competition/>

⁸ See actions specified under package 1 of the Task Force: <https://www.ea.govt.nz/projects/all/energy-competition-task-force/>

⁹ For example, as discussed by Transpower in its [2024 Security of Supply Assessment](#) and [Security of Supply Outlook – 30 September 2024](#).

¹⁰ <https://www.stuff.co.nz/money/350394386/eye-watering-profits-gentailers-what-does-mean-consumers>

¹¹ <https://businessdesk.co.nz/article/energy/some-doing-rain-dances-as-hydro-lakes-shrink>

¹² <https://www.ea.govt.nz/documents/1006/MDAG - Price discovery in a renewables-based electricity system - options paper.pdf>

¹³ This work was commissioned for MEUG.

- In February 2022, investment and advisory group Jarden identified around \$1.9 billion per annum in unexplained pricing.
- Work by MDAG discussed the issues with market concentration, noting that:

“...this means the provision of longer-term flexibility services would become more concentrated among parties with flexible hydro generation capacity, all other things being equal”.

“Nonetheless, a significant thinning of competition in the provision of longer-term flexibility services appears likely with most flexibility being held by parties with the major hydro generation.”¹⁴

This highlights that market concentration issues are likely to get worse, not better, as more renewables enter the generation mix.

9. This body of analysis will continue to hang over the New Zealand wholesale market until there is a rigorous examination of the issue of high pricing and market power, using independent analysis. We welcome the establishment of the Energy Competition Task Force to drive improvements in competition, alongside the release of the Government Policy Statement (GPS) on electricity that sets out the Government’s expectations for “*affordable and secure electricity at internationally competitive prices.*”¹⁵ We also understand that Government is looking to undertake a review of the wholesale electricity market, as part of its response to the August 2024 energy security crisis.
10. Until this work is completed, MEUG expects that the electricity market will continue to be dominated by the large four gentailers. We understand that this acquisition, if it proceeds, would see Contact move from being the third largest generator to the second largest generator, strengthening its position in the market. The loss of Manawa would also reduce the number of counterparties that large consumers can negotiate with when seeking new contracts or renegotiating contracts moving forward. We observe that:
 - Some MEUG members had been in negotiations with Manawa for future supply, therefore this option would be removed from consideration.
 - When Tilt was purchased by Mercury,¹⁶ members saw a reduction in electricity contract options being made available in the market.
 - In the gas sector, the recent exit of Vector from the market has seen a considerable reduction in parties offering gas contracts to consumers.
11. In a market that is already perceived as less than competitive, this proposed acquisition could reduce opportunities for competition to enter the market even further, when electricity consumers look to negotiate supply in coming years.

Assessing the implications of the acquisition on concentration of hydro resources

12. Some industry participants¹⁷ have raised concerns with Contact acquiring Manawa’s hydro assets, with its flexible generation capability.
13. As noted above, hydro generation is becoming an increasingly important and valued resource to provide flexible capacity and firming of the increasing levels of intermittent generation in the market. This issue has been examined by MDAG through its analysis of the ownership of

¹⁴ Page 77, MDAG, <https://www.ea.govt.nz/documents/1006/MDAG - Price discovery in a renewables-based electricity system - options paper.pdf>

¹⁵ <https://www.beehive.govt.nz/release/government-releases-plan-affordable-electricity>

¹⁶ [Mercury buys New Zealand assets in \\$3 billion takeover of Tilt Renewables](#), 15 March 2021, NZ Herald.

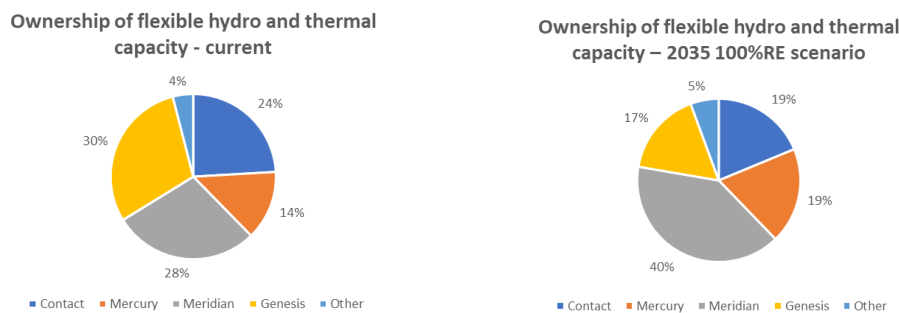
¹⁷ See [Octopus Energy](#) letter and letter from [Anonymous](#).

flexible hydro and thermal capacity at present and that modelled under a 100% renewable energy scenario in 2035. MDAG concluded that:

- Overall flexible hydro/thermal MW capacity shrinks significantly (4,984 MW at present versus 3,563 MW in 2035), all other things being equal.
- Flexible capacity share for largest single party rises from 30% to 40% and the party changes from Genesis to Meridian.

14. This is summarised in the two pie charts provided below, that show that while Contact has a large share of this capacity, it is not the dominant provider. This analysis informed the key observation in the MDAG Options Paper that “larger generators with substantial flexible hydro bases may well have greater means and incentive to exercise market power in the supply of flexibility products as thermal generation declines.”¹⁸ This observation has fed into many of the final recommendations put forward by MDAG and now being worked on by the Electricity Authority.

Figure 1: Changes forecast in ownership of flexible hydro and thermal capacity¹⁹



15. From our discussions with both Contact and Manawa and our review of the information provided, we understand that much of Manawa’s hydro generation is run of river with limited storage (price takers, not price setters). Therefore, these assets are not likely to create a risk around market power.
16. The Electricity Authority has the statutory functions that require it to monitor the market and to detect any market behaviour that is harmful (i.e. spilling, use of market power). If this acquisition proceeds, it will be important that the Electricity Authority effectively carry out this function to provide consumers with the necessary confidence that there are no adverse changes in market behaviour.

Increase in volume offered to the market

17. One of the core benefits of proposed acquisition is “allowing the combined entity to sell a larger volume of long term (i.e., with a minimum duration of 1 year) hedge and physical supply contracts at a fixed price (Fixed Price Contracts) compared to the scenario absent the Transaction”.²⁰
18. On the face of it, there should be benefits to large consumers including MEUG members from having more contracts available to the market, supporting the move to increased electrification, ongoing increases in national electricity demand, improving market liquidity as well as providing support to firm more Power Purchase Agreements (PPAs). Contract has provided analysis to

¹⁸ MDAG Options paper, 6 December 2022.

¹⁹ Sourced from Concept Consulting and John Culy: Competition analysis – a slide pack setting out further analysis of how a renewables-based system could impact on competition in the wholesale electricity market, as referenced on page 29 of the MDAG Final recommendations paper.

²⁰ Paragraph 1.5, Clearance application.

address concerns that they may have the ability to increase spot prices when they are “pivotal”. This analysis states that there are limited periods forecasted where the combined entity would be gross pivotal, but no incentives to increase prices.

19. MEUG notes that at present, most of Manawa’s volume is contracted to Mercury, but this volume will become free over next seven years (and some MEUG members had started discussions with Manawa). Given this counterfactual, the focus of the Commission’s analysis therefore needs to look at which scenario delivers this volume of electricity contracts faster to the market.
20. However, what will matter most to consumers is the **actual (not forecast or theoretical) benefits that are delivered to electricity consumers** in the coming years. MEUG questions what binding undertakings or obligations could be attached to the clearance application or what recourse is available if Contact does not deliver on the promised benefits. One possible option could be requiring Contact to offer a significant volume of contracts of sufficient length to consumers. This option would help with liquidity of market and support competition. This obligation would need to be paired with robust monitoring of the market, as well as consideration of the use of some level of appropriate enforcement and penalties. This type of underwriting would provide consumers and stakeholders with increased confidence of the benefits of this application to “New Zealand Inc”.
21. Alongside any binding obligations that could be included with this acquisition, MEUG notes that Energy Competition Task Force²¹ is developing the following workstreams:
 - 1A: Consider requiring gentailers to offer firming for Power Purchase Agreements
 - 1B: Introduce standardised flexibility products
22. These measures, if designed well, should ensure that Contact can offer a significant level of this proposed volume to the market, to the benefit of both consumers, and independent generators looking to sell PPAs.

Ability to accelerate the generation development pipeline

23. The clearance application and MEUG’s discussions with both Contact and Manawa staff have highlighted the potential for an increase in renewable electricity generation development from the merger of the two businesses. From our discussions, we understand:
 - That Manawa has a generation pipeline of projects but not access to sufficient capital to pursue all these opportunities in a timely manner.
 - Contact, as the only fully privatised gentailer, has access to greater capital to develop these projects and believes that it has demonstrated a good track record of developing generation projects.
24. It is undisputed that the New Zealand electricity market needs significantly more generation capacity to not only address the issues faced in recent winters but to meet the forecasted increase in electricity demand from greater electrification and economic growth over the long-term to meet our net zero target by 2050.²² This was reinforced by the announcements made by Government in August 2024, to bolster energy security.²³

²¹ <https://www.ea.govt.nz/projects/all/energy-competition-task-force/>

²² Refer to recent report from Transpower highlighting continued progress towards highly electrified future, <https://www.transpower.co.nz/news/transpower-report-highlights-continued-progress-towards-highly-electrified-future>

²³ <https://www.beehive.govt.nz/release/urgent-action-taken-bolster-energy-security>

25. In addition, it is important to note that an increase in renewable electricity generation (alongside an increase in competition) will be key to putting downward pressure on current wholesale prices. As is well known, wholesale prices and future prices in recent years have been increasing, making wholesale electricity in NZ relatively expensive. Therefore, MEUG supports actions that will accelerate the development of new generation in New Zealand.
26. Like the proposed increase in volumes offered to the market, it will be important for the Electricity Authority to monitor the actual level of new generation that is delivered in coming years, not just the electricity generation projects announced. We need to see a tangible change in supply levels to support the energy transition and ensure we do not continue to see tight conditions across winter.

Welcome opportunity to discuss our comments further

27. If you have any questions regarding our submission, please contact MEUG on 027 472 7798 or via email at karen@meug.co.nz.

Yours sincerely

A handwritten signature in black ink, appearing to read 'K Boyes', with a long horizontal flourish extending to the right.

Karen Boyes
Major Electricity Users' Group