

Briefing for Meeting with Electric Kiwi

12 February 2024

Attendees: Electric Kiwi – Luke Blincoe, Huia Burt
Electricity Authority – Anna Kominik, Sarah Gillies, Rob Bernau

1. Purpose and key points

- 1.1. Ahead of the 12 February meeting with Electric Kiwi this briefing provides:
- (a) A summary of Electric Kiwi's long-standing concerns about competition in electricity markets, and their current core concerns that gentailers are refusing to supply hedge contracts for peak periods and squeezing its margins.
 - (b) An overview of the Authority's plans to analyse the availability and pricing of over the counter (OTC) hedge contracts and the impact this has on competition (underway).
 - (c) Key points from recent staff meetings with Electric Kiwi.
 - (d) Some perspective beyond the immediate risk management issues that Electric Kiwi is raising including its other engagements with the Authority.
- 1.2. It includes a suggested approach to the meeting in response to Electric Kiwi's proposed agenda.

2. Agenda

- 2.1. Electric Kiwi has recently proposed the following agenda for the meeting:

1. *Confirming the shared objectives for Electric Kiwi and the EA*
 - a. *Consumer benefits of workably competitive markets*
 - b. *Consumer benefits of independent retailers*
2. *Summary of Electric Kiwi Commerce Commission s36 complaint*
 - a. *Refusal to supply (both literal and constructive)*
 - b. *Retail margin squeeze*
3. *Risk Management Options review*
 - a. *Gaining a common understanding of the purpose of this workstream*
 - b. *Confirmation of ComCom's role in the review and determining the potential solutions*
 - c. *Likely timeframes and outcomes*
4. *Addressing the retail margin squeeze*
 - a. *Purpose and uses of ITP reporting*
 - b. *Pathways to addressing the retail margin squeeze issue, timeframes and outcomes*
5. *Wrap up*
 - a. *EA position and next steps*
 - b. *EK position and next steps*

2.2. In response we suggest that you:

- (a) Largely reiterate what Authority staff have already said to Electric Kiwi about the scope of this risk management work:
 - (i) The core question we are considering is whether the availability and pricing of OTC contracts, in the context of other risk management options, is creating a barrier to entry or expansion in the retail electricity market, and therefore harming competition.
 - (ii) While our initial data requests and analysis will be OTC focussed, the work is grounded in retail competition, and the Authority's objective which includes promoting competition for the benefit of consumers.
 - (iii) That will require us to further consider what we expect risk management options offer to retailers, and the role of different retailers in the market.
 - (iv) We understand Electric Kiwi's concerns about the impact of the gentailers' internal transfer pricing on retail competition and agree that this is a relevant question to consider.
- (b) Confirm that Commerce Commission staff will be providing analytical support to the Authority, sharing the benefit of their competition economics and

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investigative experience in terms of how to approach and work through these types of questions. That will include Commission staff having the opportunity to comment on any conclusions the Authority is drawing, noting that the Authority remains the sole decision maker for this work.

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- (d) Reorientate some of the discussion to Electric Kiwi's broader position in the market, and some of the future challenges it may face: sections 8 and 9 of this briefing provide some suggestions for doing so.

3. Background

- 3.1. Electric Kiwi's concerns about competition in the wholesale, hedge and retail markets are longstanding. They initially came to prominence in the sector in 2018, in the context of the Government's Electricity Price Review (EPR), and the Pohokura gas field outage, which contributed to elevated and more volatile wholesale electricity prices. These types of price spikes during the 2017-19 period particularly impacted the exchange based (ASX) hedge market,¹ at times prompting one of the four large gentailers² to withdraw from market-making, citing "portfolio stress", with the others then likely to follow. This resulted in a period of substantial price spreads or withdrawal, and muffled price signals.³

¹ A core source of hedge contracts for non-integrated retailers.

² Meridian, Mercury, Genesis and Contact.

³ Part of the core value of the exchange based hedge market is predicting the future price of wholesale electricity, ie, the "forward price curve".

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- 3.2. Electric Kiwi and a number of other non-integrated retailers argued to the EPR panel that, in order for non-integrated retailers to sustainably manage price risk,⁴ gentailer market making on the ASX needed to become mandatory. They also sought mandatory disclosure of the internal transfer pricing (ITP) between the generation and retail arms of the gentailers, to better understand the risk of trading arrangements skewing retail competition.
- 3.3. The EPR panel agreed on both points, which the Authority has since implemented. The panel was not however convinced by non-integrated retailers' argument that these issues merited the compulsory vertical disintegration of the gentailers.
- 3.4. Amid continued elevated wholesale prices, the Authority then initiated the wholesale market competition review (WMR). While the Authority found some evidence of market power, it considered that this was best addressed by ensuring that market settings promoted the entry of new generation, and by increased monitoring of the trading conduct rules.⁵
- 3.5. Electric Kiwi continued to raise issues about the pricing and availability (volume and shape) of hedge contracts, this time through the bilateral OTC market. Those issues were exacerbated by access problems to hedges traded on the ASX that emerged in late 2022. Non-integrated retailers increasingly relied on OTC contracts for their financial hedging during this time.⁶
- 3.6. While Electric Kiwi participated in the OTC working group facilitated by the Authority in 2023, it was sufficiently concerned by these ongoing competition issues to complain to the Commerce Commission in August alleging breaches of section 36 of the Commerce Act. It's letter to the Commerce Commission is attached as Appendix B. Section 9(2)(b)(ii) and Octopus Energy also made similar complaints to the Commission last year.⁷

4. Electric Kiwi's core concerns

- 4.1. Electric Kiwi summarises its complaint to the Commission as follows:

... the gentailers have a substantial degree of power in the market and are engaging in conduct (specifically, refusing to supply critical wholesale inputs and creating a price/margin squeeze) with the purpose, effect or likely effect of substantially lessening competition in downstream retail markets

⁴ Retail (mass) market electricity consumer remains largely on fixed price variable volume contracts. A core function of retailers is to manage the risk of mis-alignment between this stable retail price and relatively volatile wholesale costs.

⁵ Which require all spot market offers to be consistent with offers they would have made in a market where no party could exercise significant market power, irrespective of whether their supply is needed to meet demand or not.

⁶ We understand that these access issues are improving due the emergence of two new brokers.

⁷ The Commission decided in December to not investigate any of the complaints at this time, primarily due to the availability of alternative regulatory pathways, ie, the Authority's concurrent jurisdiction and planned risk management review work, and to actively assist the Authority instead.

- 4.2. The complaint is framed around two issues:

Issue 1: refusal (actual or constructive) by the gentailers to supply hedge contracts for peak periods

- 4.3. This issue is focussed on shaped hedge products that cover morning and evening peak demand, cf, more generic baseload products supplied via the ASX.
- 4.4. The alleged refusals to supply by the gentailers include constructive refusals, ie, pricing too high, or only offering a small proportion of the hedge volume that Electric Kiwi is seeking. s9(2)(b)(ii)
- 4.5. Electric Kiwi says it cannot grow its customer base without ongoing access to this hedge cover as exposure to the spot market during these peak periods is a material financial risk to its business. As well as increasing its input costs, Electric Kiwi says that the uncertainty it faces around the future supply of key risk management products prevents it from prudently managing risk and competing sustainably on price.

Issue 2: margin squeeze by the gentailers

- 4.6. Electric Kiwi claims that a combination of elevated spot and hedge market prices (ie, materially increased input costs for non-integrated retailers – weighted average cost of hedging has increased by s9(2)(b)(ii) since 2018), and suppressed retail prices offered by the gentailers (ie, little corresponding increase in their retail pricing – s9(2)(b)(ii) over the same period), leaves non-integrated retailers with an inadequate margin to compete:⁸
- (a) Electric Kiwi claims that the retail businesses of the gentailers are effectively being cross-subsidised from their generation businesses and that:
 - (i) The supply of electricity to those retail businesses through the gentailers ITPs is at a price well below what any non-integrated retailer can obtain.
 - (ii) Those retail businesses are then offering low prices into the retail market that result in them earning negative gross margins.
 - (b) Electric Kiwi uses the gentailers' ITPs, and their published retail offers, to build a model to evidence these claims. It expresses a view that gentailers are likely to be relatively unconcerned about sacrificing retail profit to maintain their market position so long as their overall profitability is retained (through their generation businesses).
 - (c) Electric Kiwi claims that this margin squeeze issue is exacerbated by issue 1 above.

⁸ Electric Kiwi argue that the gentailers are in effect using their upstream wholesale profits to cross-subsidise their retail arms. In engaging in this strategy, the gentailers' retail arms may be operating at a loss (which may involve below-cost pricing to some retail customers).

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- 4.7. As context Electric Kiwi argues that it is not able to adequately hedge its spot price risk in other ways due to:
- (a) the ASX availability issues;
 - (b) the lack of shaped hedges offered on the ASX platform; and
 - (c) the range of entry barriers to investing directly in firm generation as a hedge.
- 4.8. Underlying both issues is Electric Kiwi's view that the four large gentailers have market power in all of the relevant markets, which enables them to withhold wholesale and hedge market supply, gives them a natural spot price hedge (through vertical integration) not available to the non-integrated retailers, and results in little incentive for them to offer risk management products in excess of what they've already internally committed through their ITPs.⁹

Electric Kiwi argument in sequence

- 4.9. Electric Kiwi's letter to the Commission then works systematically through each aspect of its argument to the Commission, aiming to create a prima facie case under section 36 of the Commerce Act. It is helpful to understand how that argument is built sequentially. Electric Kiwi's letter sets out:
- (a) The rationale for hedging in the electricity market (the difference between volatile spot prices and the stable pricing expectations of most retail customers), and how a non-integrated retailer might go about progressively building a hedge portfolio.
 - (b) The barriers to alternative risk management options for non-integrated retailers, particularly to building their own generation.¹⁰
 - (c) The underlying market power of the large gentailers in the wholesale market, and in the retail market.¹¹

s9(2)(b)(ii)

- (e) Electric Kiwi's evidence for its view that the gentailers are 'selling' wholesale electricity to their own retail businesses on substantially more favourable terms

⁹ Matching generation with retail sales provides a natural hedge against spot price variability as losses in one portfolio are offset by gains in the other.

¹⁰ Includes consenting issues, site availability, balance sheet requirements, the relative difficulty of building the type of generation necessary to provide the peak period hedge cover (eg, hydro).

¹¹ In relation to the wholesale market, Electric Kiwi reference the Authority's WMR May 2023 decision paper stated that "...[the] review of structure conduct and performance in the wholesale market ... found that prices over the review period (January 2019 to mid-2021) had, at least to some extent, reflected underlying supply and demand conditions, but also that generators may have been exercising market power during the review period." The WMR also observed forward prices out to 2026 were well above the cost of new supply. It anticipated that, over time, investment in new renewable generation would bring prices back down to the cost of new supply.

Electric Kiwi's views to retail market power are referenced back to market indicators (continued retail market concentration, flat market share growth for non-integrated retailers, decreased switching rates, and the exit of a number of non-integrated retailers), and to the ability of the gentailers to leverage their wholesale market power.

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(contrasting this with non-discrimination requirement that underpins the New Zealand telecommunications regulatory regime).

- (f) Electric Kiwi's evidence that this conduct has created a margin squeeze, working through:
 - (i) A time series of MBIE retail pricing data vs long-dated baseload hedge costs.
 - (ii) The segment profitability of the gentailers (provides a snapshot of the apparent decline in their retail function EBITDA).
 - (iii) The gentailers disclosed ITPs compared to what Electric Kiwi can buy via the hedge market.
 - (iv) An estimated model of Powershop's costs compared to its retail pricing as a specific example of gentailers operating negative margin retail businesses (Powershop is a subsidiary of Meridian).
- (g) A range of more generic indicators of reduced retail competition, eg, lower switching rates.
- (h) The harm to consumers of reduced competitive pressure in the retail market as a result of the exit of non-integrated retailers. Electric Kiwi highlights the reduced innovation that would result, pointing to the pricing innovation it has promoted (time of use pricing that encourages customers to shift their consumption away from peak periods), and also to the EV and hot water control plans it promotes (currently small scale) that achieve the same effect.¹²

5. Authority review of risk management

- 5.1. The Authority commenced its review of risk management in late 2023 in response to its own questions about the adequacy of electricity price risk management options (discussed with the Board in November). This programme seeks to test whether the availability and pricing of OTC contracts, in the context of other risk management options, is creating a barrier to entry or expansion in the retail electricity market, and therefore harming competition.
- 5.2. The risk management review is focussed on the following:
 - (a) *Impact on retail market competition* – clarify what we expect risk management options to do/offer to retailers. This includes:
 - (i) Forming a clearer view on what workable retail competition looks like – what is the role and value-add of different retailers in the market?

¹²

It contrasts these offerings with Electric Kiwi's view that the gentailers have largely continued offering traditional tariffs, with unchanging fixed and variable rates throughout the day, to most of their customers.

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- (ii) Considering whether the transition to a low-emissions economy in any way impacts our expectations of retail market competition.¹³
- (b) *Assessing accessibility of risk management options* – whether retailers have access to efficient and appropriate risk management options:
 - (i) Focussing on the availability and pricing of shaped OTC contracts, but also considering alternative risk management options (eg, demand response, batteries, generation/quasi-integration/PPAs, ASX).
 - (ii) Specifically testing whether the pricing makes sense given external relativities and costs – OTCs should reflect the costs of their components (volatility, shape, location, volume, credit risk).
 - (iii) Also reviewing whether ASX prices likely remain unbiased predictors of spot prices.
- (c) *The dual role of gentailers in this context*¹⁴ – do gentailer internal relativities (whether ITP or other) lead to competition concerns?
 - (i) Should gentailers have to sell to themselves? How much should non-discrimination thinking apply here?
 - (ii) Includes considering whether the price/margin squeeze analysis sought by the non-integrated retailers is useful in this context.

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- 5.4. The topic coverage of the Authority's risk management review is similar to Electric Kiwi's complaint to the Commission. Though its complaint includes a continued view that the gentailers are using their market power to inefficiently increase wholesale prices. Our focus is a little different, particularly in terms of the extent to which we are committing to analysing the gentailers' internal trading arrangements – see outtakes from staff meetings with Electric Kiwi below.
- 5.5. We also note the alignment between this work and MDAG's recent recommendations in its *price discovery in a renewables-based electricity system* work regarding improving risk management tools particularly:
 - (a) recommendation 8: new flexibility products (standardised);
 - (b) recommendation 24: (contingent) market making for flexibility products; and

¹³ For example, MDAG has focussed on the importance of developing the demand side flexibility market to support the transition. The more OTCs are tailored to a retailer's risk profile, the less the incentives for that retailer to focus on and invest in demand side flexibility.

¹⁴ Noting that this is not intended to be a full study of the pros and cons of vertical integration.

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(c) recommendation 31: (contingent) virtual disaggregation.

- 5.6. This reflects the heavy lifting that these tools will need to do during the transition.
- 5.7. We have begun collecting OTC contract information from non-integrated retailers. Most have already responded (including Electric Kiwi) and we expect to send initial requests to gentailers this month (amongst other things for their views of the same OTC request and response processes). We will also monitor the OTC Code of Conduct as another lens on any shortcomings in this part of the hedge market.
- 5.8. We have had initial meetings with the following stakeholders, to explain our process, and to better understand the nuances of their concerns (including discussing any complaints to the Commission):
- (a) Section 9(2)(b)(ii) on 16 January.
 - (b) Electric Kiwi on 17 and 24 January.
 - (c) Section 9(2)(b)(ii) on 31 January.
- 5.9. A further meeting is scheduled with a group of non-integrated retailers on 12 February (Section 9(2)(b)(ii) Electric Kiwi).

6. Staff meetings with Electric Kiwi

- 6.1. We took the following key points¹⁵ from our meetings with Electric Kiwi last month:
- (a) Electric Kiwi was concerned by perceived differences between the Authority's and the Commission's approach to this issue. In its view, the Commission's scope, intensity and understanding was greater. This concern particularly focussed on the extent to which the Authority has committed to considering the gentailers' internal trading arrangements (ie, we have not committed to margin squeeze analysis). Electric Kiwi appeared to take some comfort from the Commission's ongoing involvement in the Authority's risk management review work.
 - (b) Electric Kiwi understands that the review necessarily includes the Authority taking more of a position on the fundamental question of the role of non-integrated retailers in the retail electricity market and whether access to risk management tools underpins its ongoing role.
 - (c) Electric Kiwi does not accept that the material changes in the sector that have been occurring for the last six years (tighter, more volatile supply; beginning of the exit of fossil fuel generation; beginning of mass electrification; heightened overall uncertainty) are a material driver of risk management contract availability and pricing issues. In its view these changes are just noise – the core driver is

¹⁵ Note that this paragraph 6.1 reflects the recollection of those staff attending the meeting and has not been fact checked with Electric Kiwi.

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the profit motive of the gentailers, and their ability to restrict the supply of wholesale electricity and hedges.

- (d) On a similar point, Electric Kiwi does not accept that the wholesale electricity market is functioning well. In its view, the WMR “provided clear and robust evidence of substantive competition problems and sustained excess pricing – despite the Authority shying away from reaching firm conclusions in its decision paper”.¹⁶ It appears to understand though, that this risk management review work is not re-opening the WMR.
- (e) Electric Kiwi emphasised its role in offering efficient pricing and demand side management to the market, in contrast to the gentailers, and the long-run value that provides to New Zealanders (by shifting load and therefore lowering system costs).¹⁷ This is core to their proposition around the detriment to market competition if non-integrated retailers do not get improved access to hedges.
- (f) Electric Kiwi says it has explored all other risk management options, and will continue to do so, but that none of these are feasible substitutes for hedge contracts being available to non-integrated retailers. It appeared concerned at any suggestion that PPAs were “the answer”, noting that PPAs available in the market generally had the wrong profile and were not for firm generation.
- (g) Electric Kiwi considers that the gentailers having robust, disclosed internal transfer pricing is important, noting that the current ITPs are not robust in their view. Without these, visibility of gentailer profit sources will be even less, which Electric Kiwi describes as a “slippery slope” to market power issues and excess profits¹⁸
- (h) Electric Kiwi draws substantially on the Commission’s regulatory work in its arguments for reform, eg, the Commission’s terminal gate fuel pricing work as a touchstone for reform of the ITPs, and the telecommunications regulatory regime as an example for how to introduce non-discrimination rules into the hedge market.
- (i) Electric Kiwi also referenced the ACCC’s most recent inquiry into the Australian National Electricity Market (a yearly report) which noted the value of promoting competition in retail electricity markets to deliver better outcomes for consumers during the transition, and the importance of access to hedge contracts for non-integrated retailers to enable that competition.

¹⁶ Refer independent retailers’ submission on the 2024/25 levy-funded appropriations consultation.

¹⁷ Electric Kiwi strongly supported the Authority’s recent *targeted reform of distribution pricing* paper, and its underlying theme of more cost reflective network pricing.

¹⁸ The earlier Authority work on the ITPs drew some conclusions about the robustness of these prices, particularly in the April 2021 *internal transfer prices and segmented profitability reporting* paper. We are reviewing that work, and at this point do not recommend making any comment on it.

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7. **Electric Kiwi's broader interactions with the Authority**

- 7.1. Electric Kiwi, often with other non-integrated electricity retailers, has submitted on several relatively recent Authority consultations.

Submission on the 2024/25 levy-funded appropriations consultation (January 2024)

- 7.2. We received a submission on the levy consultation from the group of non-integrated retailers consisting of Section 9(2)(b)(ii) Electric Kiwi, Section 9(2)(b)(ii) on 26 January 2024.
- 7.3. This group of retailers would like to see a scaling up of the Authority's policy ambition to go further and faster in reforming the electricity market. The submission supports additional funding, and/or re-prioritisation within the Authority's fiscal envelope, for projects with a direct focus on addressing competition problems in the wholesale and retail markets:

Whatever the fiscal envelope the Authority has to work within, competition issues in the wholesale and retail markets should be prioritised. Resolving problems independent retailers have in accessing hedge products to manage spot price risk should be the Authority's number one priority for resolution within the 2024 calendar year.

...

We welcome and support the Authority's announcement it is commencing a review of risk management options available to electricity retailers. This should be the Authority's single biggest priority for resolution this calendar year.

- 7.4. It also supports additional funding, and/or re-prioritisation of existing funding, for the Authority's monitoring and compliance function.
- 7.5. The submission acknowledges the contribution MDAG has made by laying out problems and issues for the Authority to address as part of the energy transition and reliance on greater renewable generation. Consistent with the alignment between this risk management work and MDAG's recommendations, the non-integrated retailers would like market-making for flexibility products prioritised:

Market-making for flexibility products (including shape and cap products) (recommendation 24) should be treated as the Authority's single most important priority for implementation as part of recommendation 8 in 2024 (not a tranche 2 action, "contingent on assessing whether previous measures are sufficiently effective")

- 7.6. The submission also supported ensuring that:
- (a) Powerswitch is fully levy-funded.

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- (b) Internal transfer pricing and segmented profitability reporting is enhanced.
- (c) The Authority reinstates its planned review of the interpretation of its statutory objective.
- (d) Visibility of the Authority's work programme is increased, including project milestones, deliverables and consultation dates over the entire life of each project.

Consumer care guidelines

7.7. Electric Kiwi's response to the Authority's October 2023 consultation paper *Options to Update and Strengthen the Consumer Care Guidelines* highlighted its view that:

- (a) Stronger competition will help to protect consumers. The best way for consumers to reduce financial pressures/ensure their electricity supply arrangements best meet their needs is to switch to an alternative/more competitive/lower priced retailer.
- (b) It supports minimum mandatory standards. It argues that elements of the guidelines (including Parts 2, 6, 7 and 8) should either be amended or deleted.
- (c) Consumer protection requires trade-offs to be made and the Authority should explicitly consider these, eg, consumer protection (equity) and efficiency.
- (d) The guidelines do not provide pre-pay consumers, including vulnerable and medically dependent consumers, with any meaningful protection. Electric Kiwi consider that this is a material gap, which it says has been used by some gentailers to effectively bypass the disconnection process in the vulnerable consumer guidelines.
- (e) Compliance monitoring needs to be significantly improved.

7.8. Electric Kiwi self-reports as being 100% compliant with the guidelines.

Other interactions

7.9. Electric Kiwi, and other non-integrated retailers, have raised similar market competition concerns to those set out in their complaint to the Commission in recent submissions on improving hedge disclosure obligations (issues paper), and MDAG's price discovery under 100% renewable electricity supply (issues and options paper). Suggestions and recommendations from these submissions are summarised in Appendix C.¹⁹

7.10. Electric Kiwi staff were also recently interviewed as part of a post-implementation review of ITP and retail gross margin disclosures. Consistent with their market

¹⁹

Electric Kiwi intends to separately come back to the Authority with a more specific view of what it is seeking out of the Authority's risk management review work.

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competition concerns, their view seems to be that the Authority needs to stipulate the ITP methodology for the disclosures to be meaningful.²⁰

- 7.11. Electric Kiwi has also made a recent OIA request relating to the Authority's process for responding these issues. Our response is due on 29 February. The request seeks to:
- (a) Better understand the Authority's interactions with the Commission and MBIE in relation to the various non-integrated retailer complaints to the Commission.
 - (b) Better understand what meetings the Authority Chair and Chief Executive have had in the last 6 months and, we assume, whether they have appropriately prioritised meetings with Electric Kiwi representatives.
- 7.12. We expect Electric Kiwi to have an interest in the Authority's current consultation on consumer plan comparison and switching, noting its concerns with Powerswitch last year about their switching fee and the representation of the overall cost of electricity retailer plans.²¹
- 7.13. Finally, we note that we are still awaiting a decision in relation to Electric Kiwi's appeals against the Authority's UTS decisions regarding 9 August 2021.

7.14.

s9(2)(b)(ii)

7.15.

7.16.

²⁰ That is, in Electric Kiwi's view, to provide a metric to check whether profit is being moved between the gentailers generation and retail functions, and to check whether the gentailers are using their market power to "squeeze" the independents.

²¹ Electric Kiwi consider that Powerswitch under-estimates the savings to consumers from switching to its time of use plans, as Powerswitch does not account for savings arising from the changed consumption patterns (load shifting away from peak times) that Electric Kiwi's plans incentivise.

8. Electric Kiwi and the Authority – our overall view of what each party is seeking from this meeting

8.1. *We think Electric Kiwi is asking the Authority to:*

- (a) Ensure an adequate volume of shaped risk management contracts are available, and efficiently priced.
- (b) Impose some level of financial and operational separation on the gentailers (eg, mandate a specific ITP methodology; impose non-discrimination obligations).
- (c) Investigate gentailer retail pricing and remove their incentive to under-price (noting that Electric Kiwi is otherwise opposed to any retail pricing regulation).
- (d) Fully fund Powerswitch.
- (e) Be substantially more transparent with our work programme.

8.2. *What the Authority wants Electric Kiwi to continue doing:*

- (a) Actively engage with core electricity retailer issues, eg, the consumer care guidelines; OTC working group.
- (b) Submit on a wider range of consultations where it has a view, eg, Electric Kiwi's submission on the recent distribution pricing consultation provided a helpful perspective.
- (c) Trialling retail initiatives that have a positive market impact, eg, load shifting initiatives, and helping the Authority to understand both progress and barriers – if there is a problem with the Code that Electric Kiwi is experiencing, it needs to tell us.²²

8.3. s9(2)(b)(ii)

[REDACTED]

8.4. *Two final points:*

- (a) We appreciate Electric Kiwi's support for Authority's proposed increase in industry-funded levies, and their recognition that the Authority needs to be funded if it is going to move from incremental to transformational.

²²

In our 24 January meeting Electric Kiwi noted that a hot water control trial it was developing was stopped by the relevant metering company due to a "ruling" by the Authority. We are currently seeking more details from them regarding this specific point.

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- (b) It is positive that Electric Kiwi has resolved its cost conflict with Powerswitch and is back on that website. That dispute wasn't ultimately useful to consumers.²³

9. Possible questions about Electric Kiwi's role in the future electricity system

- 9.1. Several MDAG recommendations are likely to have implications for risk management and competition, outside of the specific recommendations focussed on shaped risk management products (8, 24, 31). What do you see as the wider implications for Electric Kiwi and non-integrated retailers from the MDAG report?²⁴
- 9.2. How does Electric Kiwi see the position of non-integrated retailers in a much more decentralised system (eg, more distributed generation, local micro-grids, households with multiple trading relationship and increased reliance on the internet of things)? How do you expect your business to evolve?
- 9.3. Electric Kiwi is engaged in hot water management trials. What role does it see the various sector parties having in hot water management? What is the role of distributors as the owners of existing ripple control infrastructure? How should ripple control and equivalent new technology be funded and allocated?
- 9.4. The Authority is focussed on the development of efficient, competitive flexibility markets. What in your view is the role of retailers vis-a-vis flexibility services providers (eg, Solar Zero) in developing demand side flexibility? Do you see any risks of either crowding out the other?
- 9.5. What lessons has Electric Kiwi learnt from operating in Australia? What should the Authority be closely studying in that system?
- 9.6. What disruptions to the retail market, and the current role of retailers, are you watching for over the medium term:
- (a) Are retailers still wary of the potential for a large data and technology driven company (eg, Google, Amazon) to enter the market as part of a broader business expansion?
- (b) What are the implications for retailers of wireless power transfer (eg, for electric vehicles)?

10. Attachments

- 10.1. The following appendices is attached:

²³ Until mid-2023 Electric Kiwi was refusing to pay the \$50 fee Powerswitch charges retailers for every switch initiated through the website, claiming this charging approach benefitted incumbents. This resulted in Electric Kiwi plans being removed from the website in 2022.

²⁴ While this is a general question, the MDAG recommendations regarding demand side flexibility (10, 19, 20) should be of substantial interest to Electric Kiwi.

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Appendix A – Electric Kiwi: commercial profile

Appendix B – Electric Kiwi August 2023 complaint to the Commerce Commission
(main letter only)

Appendix C – Non-integrated retailer recommendations for further work and
regulatory change arising from submissions

Appendix A Electric Kiwi: commercial profile

Business model

Electric Kiwi was established in mid-2014 and took on its first ‘test’ customers in December of that year before launching to the public in May 2015. It does not own any electricity generation.

Electric Kiwi markets itself as a disrupter who keeps the industry honest. It emphasises its ‘smart and efficient’ in-house developed technology and being a leader in innovation.

Electric Kiwi is owned by Energy Collective Ltd, which is majority owned by a UK-based company (Scientific Investors Ltd). The remaining ownership is held by private investors.

The Energy Collective Ltd also owns ReAmped Energy in Australia, which it launched in 2018. ReAmped Energy is planning to cease retail energy services in Australia. It plans to transfer remaining customers who do not choose a new retailer to OVO Energy (subject to regulatory approval). It estimates this will occur between February and April 2024. In the meantime, it does not accept new customers but remains licensed to sell electricity across all NEM states (other than Tasmania) and gas in NSW and Victoria.

Operations

Electric Kiwi retails electricity and broadband. Broadband is available as an additional service for its electricity customers. It provides electricity to customers with a smart meter and broadband to customers with a fibre connection.

It offers both pre-pay and invoiced electricity plans without minimum contract terms for its retail customers and is listed on Powerswitch. All Electric Kiwi plans offer a solar buyback rate.

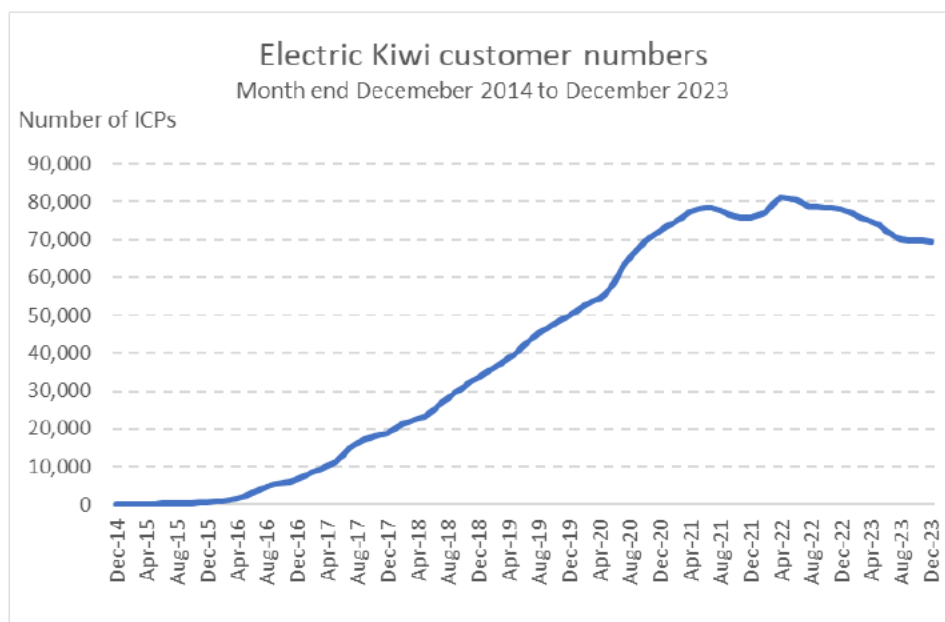
Electric Kiwi won awards for service in 2022 and 2023:

- 2022: NZ Compare people's choice award for power
- 2023: Canstar Blue Most Satisfied Customers – Electricity
- 2023: Canstar Blue Most Satisfied Customers – Bundled Utilities

| Market share as at end of December 2023 | | | |
|---|---------------|---------------|---------|
| Market share | 3.02% of ICPs | | |
| ICP count | Residential | 67,668 | (97.7%) |
| | Commercial | 1,163 | (1.7%) |
| | Industrial | 460 | (0.7%) |
| | | <u>69,291</u> | |

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Growth in Electric Kiwi's electricity customer numbers stalled after a period of growth from 2016 to 2020.



s9(2)(b)(ii)

s9(2)(b)(ii)

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Key personnel



Huia Burt

Huia is Co-Founder, Director and the Chief Strategy Officer for Energy Collective Ltd.

Prior experience includes commercial and risk roles with Mercury Energy and Sapere.



Luke Blincoe

Luke is Chief Executive Officer of Energy Collective Ltd.

Prior experience includes senior management roles with 3M, Genesis Energy and Mercury Energy.

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**Appendix B
Commission**

Electric Kiwi August 2023 complaint to the Commerce

[Attached as separate document]

Appendix C Non-integrated retailer recommendations for further work and regulatory change arising from submissions

Recommendations and suggestions made by non-integrated retailers in submissions to Authority consultations on competition issues (MDAG, WMR, hedge disclosure obligations).

Recommendations

Non-integrated retailers have recommended several areas for the Authority to investigate to gain a clearer understanding of potential market power issues. These include:

- Collecting information that help to satisfy the Authority about price squeeze and price discrimination.
- Considering what it needs to do to reach the level of confidence the Commerce Commission had about the extent of competition problems in the retail petrol and grocery studies.
- Analysing international experience in countries witnessing a rise in renewable energy shares, such as observing negative prices in Germany and UK.
- Applying the regression analysis of WMR up to and including 2022 to assess whether prices remain high for reasons beyond underlying supply and demand conditions.
- Conducting orthodox price squeeze/equivalence of input testing to determine if major incumbents are using high wholesale prices and vertical integration to impose price barriers to retail competition. They believe modelling should be performed for the existence of the market rather than assuming workable competitiveness before 2019. The market internal transfer pricing disclosure requirements will not provide the transparency or data needed to undertake orthodox price squeeze/economic replicability testing.
- Testing different potential changes to the size and number of major incumbent generators against benchmarks for a workably competitive market to determine optimal arrangements that promote competition for the long-term benefit of consumers.
- Reassessing how profile and capacity risks are managed.

Suggested policies

Non-integrated retailers have put forward a range of policy suggestions that they believe could potentially address the market power issue. These policies range from structural reform to mandated market making for shaped contracts. Here are some key recommendations:

- **Creation of Kiwi Power:** Splitting Manapouri and the Huntly coal assets into a new State-Owned Enterprise named Kiwi Power. This new generator would have circa

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1550 MW of capacity spread across both islands, significantly increasing competition in the spot market in both absolute and locational terms.

- **Cap on generation capacity:** Introducing a cap on the generation capacity of each electricity generator to prevent excessive concentrations of market power.
- **Restrictions on Meridian:** Preventing Meridian from owning or operating new firming generation including batteries, to ensure a more balanced and competitive market.
- **Market-making requirements:** Mandating the rapid evolution and development of hedge market arrangements, along with the availability of new products, as part of market-making requirements. This includes shaped and capped products to enhance market dynamics.
- **Behavioural regulations:** Utilising behavioural regulation as a stop-gap or second-best measure to deal with structural problems. Regulation against Tiwai-type contracts is a pragmatic short-term intervention given the lead-time for structural reform which could eventually render such regulations unnecessary.