



COMMERCE COMMISSION

Decision No. 333

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving:

CONTACT ENERGY LIMITED

and

ENERCO NEW ZEALAND LIMITED

The Commission: K M Brown
E C A Harrison
P R Rebstock
E M Coutts

Commission Staff: A J Brice
R J Adam
A Mladenovic
P Clinton

Determination: Pursuant to section 66(3)(a) of the Commerce Act, the Commission determines to give a clearance for the proposed acquisition.

Date of Determination: 10 December 1998

**CONFIDENTIAL MATERIAL IN THIS DECISION IS CONTAINED IN SQUARE
BRACKETS []**

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THE PROPOSAL

- 1 The business acquisition for which clearance is sought in terms of section 66 of the Commerce Act is the acquisition by Contact Energy Limited (Contact), or an interconnected body corporate, of the assets which comprise the gas retailing business of Enerco New Zealand Limited (Enerco). The clearance has been sought by way of a notice given to the Commission pursuant to section 66(1) of the Commerce Act (the Application).
- 2 The assets which are to be acquired comprise Enerco's customer contracts for approximately 112,500 connections, installed meters, book debts, trade marks (including 'Enerco'), and business records and telephone numbers. Enerco will retain ownership of its distribution network, exploration interests, LPG and CNG businesses, and marketing of gas appliances. Enerco will also retain its large retail consumer supply contracts, consisting of customers who consume over 50 TJ of gas per annum.
- 3 The Agreement for Sale and Purchase of Business Assets (the Agreement) also provides for a restraint of trade to apply against Enerco for a period of 3 years, other than in respect of customers consuming over 50 TJ of gas per annum, or for new connections.

THE PROCEDURES

- 4 The notice was registered on 16 November 1998.
- 5 Section 66(3) of the Commerce Act requires the Commission to clear, or to decline to clear, a notice given to it under section 66(1) within 10 working days, unless the Commission and the person who gave the notice agree to a longer period of time. In the case of the Application, an extension of 10 working days was sought by the Commission and agreed to by Contact. Accordingly a determination by the Commission was required by no later than 14 December 1998.
- 6 Contact has sought confidentiality for certain information contained in the Application, and a confidentiality order was made in respect of that information for a period of 20 working days from the Commission's determination of the Application. When the confidentiality order expires, the provisions of the Official Information Act 1982 will apply to that information.
- 7 The Commission's Decision is based on an investigation conducted by staff and their subsequent advice to the Commission.

THE INVESTIGATION

- 8 Commission staff contacted the following parties during the investigation of the proposed acquisition:
 - Natural Gas Corporation of New Zealand Limited (NGC);
 - TransAlta New Zealand Limited (TransAlta);
 - Nova Gas Limited;

- Ministry of Commerce;
- First Electric, a subsidiary of Electricity Corporation of New Zealand Limited (ECNZ);
- Electricity Market Company Limited, now Marketplace Company Limited, (EMCO); and
- TrustPower Limited (TrustPower).

9 In addition, Contact provided further information and comment to the Commission.

THE PARTIES

Contact

10 Contact, a state-owned enterprise, was established in 1996 as a result of the Government splitting ECNZ. Contact undertakes the business of electricity generation, the trading of electricity hedge contracts, electricity retailing to half-hourly metered customers, electricity retailing to non half-hourly metered customers throughout New Zealand, and the wholesaling of natural gas¹. The Hon Bill Birch and the Hon Dr Lockwood Smith are the shareholding Ministers.

Enerco

11 Enerco is a major gas utility company, with interests in gas exploration. Its principal business activities include the retailing of gas to domestic and business users; the supply, installation, and servicing of gas appliances; and an interest in a gas appraisal well near Wairoa. Enerco operates gas distribution networks in the Auckland, Hawke's Bay², Manawatu, Horowhenua³ and Wellington regions.

12 Enerco's majority shareholder is Southpower Limited (Southpower)⁴ which currently holds approximately 74% of the issued shares. The remaining shareholders in Enerco each have holdings below 5%. Southpower has recently announced a take-over proposal to purchase the remaining Enerco shares that it does not own, and to merge the electricity and gas network businesses of the two companies.

MARKET DEFINITION

13 Section 3(1A) of the Commerce Act provides that:

“... ‘market’ is a reference to a market in New Zealand for goods or services as well as other goods or services that, as a matter of fact and commercial common sense, are substitutable for them”.

¹ Hereinafter, the use of the word ‘gas’ refers to natural gas unless otherwise specified.

² Including Hastings, Napier and Havelock North.

³ Including Levin and Foxton.

⁴ On 23 November 1998 Southpower changed its name to Orion New Zealand Limited.

- 14 In considering a proposed business acquisition in terms of section 66 of the Commerce Act, market definition is an important step towards making an assessment of the competitive impact of the acquisition.
- 15 In order to facilitate competition analysis, the Commission's guidelines on business acquisitions (the *Business Acquisitions Guidelines*)⁵ specify a relevant market to be -
- “the smallest space, defined in terms of:
- the products or services bought and sold;
 - the geographic area from which those goods or services are obtained and supplied;
 - the functional level at which the transactions take place; and, where appropriate,
 - the time period;
- within which a hypothetical profit-maximising sole supplier of a good or service would impose at least a small yet significant and non-transitory increase in price (*ssnip*), assuming all other terms of sale remain constant”.^(p. 14)
- 16 The Business Acquisitions Guidelines draw a clear distinction between the processes of defining a relevant market and assessing dominance:
- “It is important to distinguish the process of defining a relevant market from that of assessing whether a business acquisition will lead to the acquisition or strengthening of a dominant position. This first step is a hypothetical exercise which assumes the creation of a total monopoly and estimates buyer reaction to a given level of price rise. The *ssnip* approach is relevant to that process. This does not presuppose or require that such a *ssnip* would result from the actual acquisition which is then to be evaluated in terms of the relevant markets identified through that process”.^(p. 15)
- 17 In determining relevant markets, the Business Acquisitions Guidelines state that “the Commission will generally consider a *ssnip* to involve a five percent increase in price for a period of a minimum of one year”.^(p. 15)

Identifying Relevant Markets

- 18 To identify the relevant markets it is necessary to consider the business activities undertaken by the merging firms and to assess whether, post-acquisition, dominance would, or would be likely to, result or be strengthened.
- 19 Contact is presently wholesaling gas but is not involved in the business of retailing gas. It does however retail electricity, including in the Auckland, Hawke's Bay, Horowhenua and Wellington regions. Appendices 1 and 2 contain a description of the principal business activities carried out by Contact and Enerco respectively.
- 20 The Commission considers that Contact's interests in the generation and wholesaling of electricity, and Enerco's interests in gas exploration, gas distribution, retailing gas appliances and related services, and LPG and CNG businesses are not materially affected by the proposed acquisition. There is no change in ownership, no aggregation of market share and no other change which could impact on market power.
- 21 Accordingly, the Commission considers that the markets which require analysis in the context of the Application are limited to those which relate to Contact's gas wholesaling

⁵ Commerce Commission, *Business Acquisitions Guidelines*, 1996.

and electricity retailing businesses and Enerco's gas retailing business (apart from customers consuming in excess of 50 TJ per annum) in the Auckland, Hawke's Bay, Manawatu, Horowhenua and Wellington regions.

Separate Electricity and Gas Product Markets

22 The Commission has previously adopted discrete electricity and gas product markets when assessing business acquisitions in the energy sector. The Commission stated in Decision 270:⁶

“None of the evidence presented to the Commission points to a clear cut answer to the market definition problem. However all of the evidence is consistent with the conclusion that natural gas and other fuels, especially electricity and to a lesser extent coal, are indeed substitutes for each other, both technically and commercially – but they are at best imperfect substitutes, and cannot be regarded as being in the same market”.

23 This approach is consistent with recent decisions of the courts. In the High Court judgment in *Power New Zealand Ltd v Mercury Energy Ltd* (1996) 1 NZLR 686 (*Power NZ/Mercury*), subsequently upheld in February 1997 by the Court of Appeal, the court said:

“It is common ground that gas is not in close competition with electricity. We see no reason to question this approach”.

24 In *Shell (Petroleum Mining) Company Limited and Another v Kapuni Gas Contracts Limited and Another* (1997) 7 TCLR 463, the High Court heard a substantial (the Court strongly suggested excessive) amount of economic evidence on market definition. It said:

“We accept that {light fuel oil, coal and electricity} are substitutable {for natural gas} in certain favourable circumstances, but always at the edges and seldom in response to a SSNIP”.

25 Accordingly, while the Commission recognises that inter-fuel competition provides some constraint, it does not consider that the constraint is strong enough to place electricity and gas in the same market. The Commission will therefore adopt discrete product markets for electricity and gas in the analysis below.

Defining Relevant Electricity Markets

26 Both the Commission and courts have in the past defined relevant markets pertaining to the business of electricity retailing. In its most recent examinations of proposed electricity power company mergers,⁷ the Commission has found two relevant markets involving the retailing of electricity:

- the local markets for the supply of delivered electricity to ‘small’ consumers, each geographically defined by the boundaries of the electricity distribution networks owned by the electricity power companies; and

⁶ Decision 270, Natural Gas Corporation of New Zealand Limited and Enerco New Zealand Limited, 22 November 1993

⁷ See, for example, Commerce Commission's Decision 302, Powerco Limited and Egmont Electricity Limited, 21 July 1997 and Decision 317, Mercury Energy Limited and Power New Zealand Limited, 26 February 1998.

- the national electricity retail market for ‘medium’ and ‘large’ consumers.
- 27 The genesis of these market definitions belongs to the judgment of the High Court in *Power NZ/Mercury*. In respect of electricity retailing, the court found separate product markets in supply of delivered electricity to small consumers and in retailing to medium and large consumers.
- 28 The segmentation, based on usage, of electricity consumers into small, medium and large consumers arose because small consumers could be supplied with electricity only by their dominant “incumbent retailers”⁸. It has not been economically feasible for non-incumbent retailers to compete with incumbent retailers for small consumers due to the cost of time of use metering and associated equipment being too high in comparison with the potential profit margins able to be derived from small consumers. On the other hand, the consumption levels of medium and large consumers are sufficiently high to allow retail competition, notwithstanding meter costs.
- 29 The Commission has in the past noted that the division between medium and large consumers and small consumers lay within the 100,000 kWh (the consumption of a medium-sized school) to 500,000 kWh (the consumption of a fast food outlet or department store) per annum consumption range. For the purpose of analysis, the Commission has used the lower end of the range. Contact, in the Application⁹ submits that “... small electricity consumers are those which consume less than {200,000 kWh per annum}”. It bases this view on its use-of-systems agreements with Power NZ and Mercury, “... which recognise that consumers whose use is above {200,000 kWh} provide a throughput which justifies the cost of installing a half-hourly meter”.
- 30 A report to the Ministry of Commerce on metering and profiling¹⁰ notes that, based on information from the Ministry:
- “... the average size of transactions indicates that the current threshold for competition is substantially less than 670,000 kWh {per annum} but the actual lower limit is not known”.

⁸ In accordance with the *Rules of the Metering and Reconciliation Information Agreement* published by EMCO, the “incumbent retailer” for a local distribution network is “{a}ny retailer which supplies Electricity to consumers whose Points of Connection are connected to a Local Network such that the total amount of Electricity supplied by that Retailer is not measured Half Hourly ...”. Further, “... there shall be no more than one Incumbent Retailer for each Local Network”. It is in this context that the term is used in this Decision.

⁹ At paragraph 12.2

¹⁰ NZ Institute of Economic Research (Inc.), *Metering and Profiling: Competition for small electricity users*, Report to the Ministry of Commerce, September 1997, p 4.

- 31 For the purposes of this Decision, it therefore appears reasonable for the Commission to continue defining small electricity consumers as those consuming less than 100,000 kWh per annum and for whom it is uneconomical to install time of use meters. Medium and large electricity consumers are therefore those consuming more than 100,000 kWh per annum.¹¹
- 32 The court's reference in *Power NZ/Mercury* to a market for "delivered electricity" to small consumers appeared to recognise the fact that small consumers received a bundled product comprising both line services (distribution) and electricity from their incumbent retailers, who in nearly all cases were the electricity power companies owning the distribution networks.¹² The court also agreed that there should be separate distribution product markets within the boundaries of the local distribution networks.¹³ Prior to *Power NZ/Mercury*, the Commission had not defined one product market in respect of line services and electricity to small electricity consumers; line services and electricity retailing were treated by the Commission as being in separate product markets.
- 33 In the Hawke's Bay and Horowhenua regions, Contact is or will become the incumbent retailer of electricity by virtue of having acquired the previous incumbent retailers (Hawke's Bay Power Distribution Limited and Horowhenua Energy Limited respectively). However, in the Auckland and Wellington regions, Contact is competing for small electricity consumers against the incumbent retailers (Mercury Energy Limited and Power New Zealand Limited, and TransAlta respectively¹⁴). The number of small electricity consumers who have switched to Contact from the incumbent retailers is approximately [] out of a total number of electricity retail consumers in the two regions of approximately 610,000.
- 34 Contact has questioned whether it is now necessary to distinguish a separate product market, limited in geographic scope, for small consumers. In paragraph 12.2 of the Application, Contact states that it:
- "... believes other electricity retailers will compete to supply small customers in the {Hawke's Bay and Horowhenua regions}, and indeed in all other areas in which Contact is the incumbent electricity retailer".
- 35 Also in paragraph 15.1.19 Contact states that it:
- "... believes that as a consequence of a number of factors described below, it will not be dominant in retailing electricity to small customers, in any of its customer areas".

¹¹ The Commission and courts have also previously found a separate product market for electricity wholesaling. Some industrial electricity consumers which consume well in excess of 100,000 kWh per annum are supplied directly by the generator (eg: ECNZ supplies Comalco New Zealand Limited's aluminium smelter at Bluff in this manner). Such consumers have different service requirements compared to medium and large consumers supplied in the national electricity retail market. Accordingly, they are supplied at a different functional level (wholesaling) which is national in geographic scope. The electricity wholesaling market is not a relevant market in the context of the Commission's consideration of the Application.

¹² The exception arises in the case of Alpine Energy Limited, Electricity Invercargill Limited, Dunedin Electricity Limited and The Power Company Limited which originally together established a subsidiary company, United Electricity Limited, to be the incumbent retailer in their local distribution networks.

¹³ Presumably the distinction recognised that it was possible for medium and large electricity consumers to contract separately with the lines business for distribution services while being supplied their electricity by a third party.

¹⁴ Now ECNZ and TransAlta.

- 36 In paragraph 15.2.13 Contact states that:
- “A reassessment of market power in relation to electricity retailing to small customers also calls into question the geographic definition of the market, and whether there is already a sufficient contestable basis to justify including retailing to these customers being included within the national market currently applying to medium and large customers”.
- 37 Contact argues that recent Government electricity industry reform provides reasons to reassess relevant market definitions in respect of small electricity consumers, principally:
- the separation of power companies’ lines businesses and supply businesses (electricity retailing and generation) through the Electricity Industry Reform Act 1998; and
 - the Government’s expectation that electricity industry participants will establish, by April 1999, deemed profiling to enable small electricity consumers to switch retail suppliers, or else face the Government introducing a mandatory ‘default’ system by regulation.
- 38 The requirement that power companies separate their lines and supply businesses has generated considerable bidding for electricity retail businesses as most power companies have elected to retain their lines businesses.¹⁵ Most active to date in acquiring electricity retailing businesses have been Contact, ECNZ (through its subsidiary, First Electric), TransAlta and TrustPower (see Appendix 3). In these instances the companies have taken over a consumer base from the incumbent retailers.
- 39 Contact and First Electric are marketing electricity to small consumers in competition with incumbent retailers, mainly at this stage in the larger population areas. First Electric has publicly signalled its intention to be a ‘national’ retailer and is marketing on that basis. This intention is reflected in its mission statement: “Our challenge is to be the energy retailer chosen by more New Zealanders than any other”.

Conclusion on Electricity Retail Markets

- 40 The Commission has considered the changes which have occurred, and are continuing to occur, in respect of electricity retailing, and their implications for defining the relevant markets. The Commission is satisfied that there is clear evidence of electricity suppliers being able to switch supplies between different categories of consumers, including small consumers, depending on market opportunities. Suppliers do not appear constrained to supplying limited geographical areas or to supplying to consumers on particular networks only. Small consumers now have, or will have in the near future, a choice of suppliers. This situation increasingly matches that of larger consumers. Therefore the Commission concludes that it is no longer appropriate to define discrete markets for the supply of delivered electricity to small consumers and to medium and large consumers. This view is based on the new dynamics in the marketplace arising from:
- the lowered barriers to new entry due to the separation by legislation of electricity lines businesses and supply businesses;
 - the emergence of significant new players in the marketplace who have signalled their intention to compete against incumbent retailers; and, most significantly,

¹⁵ The two notable exceptions are TransAlta and TrustPower. Both have agreed to selling their lines businesses and remaining involved in electricity generation and retailing.

- the Government's stated commitment to ensuring that small electricity consumers benefit from competition, and its expectation that deemed profiling be introduced (either by the industry participants or, if necessary, by itself) in the near future.¹⁶

41 Accordingly, in assessing the Application, the Commission concludes that the relevant market in respect of electricity retailing is the national electricity retail market.

Defining Relevant Gas Markets

42 The business activities carried out by Contact and Enerco which are related to gas and relevant to the Application comprise:

- Contact's wholesaling of gas; and
- Enerco's retailing of gas.

43 In the past five years, the Commission has determined four significant applications involving the gas sector:

- Decision 270, Natural Gas Corporation of New Zealand Limited and Enerco New Zealand Limited, 22 November 1993;
- Decision 272, Enerco New Zealand Limited and Progas Systems Limited, 22 December 1993;
- Decision 302, Powerco Limited and Egmont Electricity Limited, 21 July 1997; and
- Decision 330, Natural Gas Corporation of New Zealand Limited and Powerco Limited, 11 November 1998.¹⁷

44 The principal markets used in the analysis in Decision 270 were:

- the national gas production market;
- the national gas transmission market;
- the gas distribution markets corresponding to the networks of NGC and Enerco;
- the national gas wholesale market; and
- the gas retail market corresponding to the networks of NGC and Enerco.

45 In Decision 330, which also involved the acquisition of a gas retailing business, the markets relevant to the application were:

- the transmission of natural gas in the North Island (the transmission market);
- the wholesaling of natural gas in the North Island, encompassing sales to gas retailers and to medium and large industrial consumers (the wholesale market); and
- the retailing of natural gas to small commercial and domestic consumers connected to Powerco's natural gas distribution network (the retail market).

¹⁶ The Commission understands that industry participants will have a deemed profiling system operating by the middle of next year at the latest.

¹⁷ The earlier three decisions related to applications concerning authorisations for business acquisitions under section 67 of the Commerce Act. Decision 330 concerned an application for clearance of a business acquisition under section 66 of the Commerce Act.

- 46 As with electricity, the segmentation of gas consumers into “small commercial and domestic” and “medium and large industrial” within the relevant market definitions recognises that small consumers are able to economically be supplied with gas only by their “incumbent retailers”¹⁸ retailing in their local gas distribution networks. The current cost of installing daily meters, with data loggers, makes it uneconomic to compete for supply of gas to small consumers.¹⁹ However, the consumption levels of medium and large consumers are high enough so that the cost of such meters does not prevent competition for supply of gas to these consumers.
- 47 In Decision 330 the Commission considered that the appropriate division between small and medium and large gas consumers was 10 TJ per annum (the amount of gas that might be used by a medium-sized dry cleaning operation per annum). While some industry participants have suggested that the threshold could be lower, the Commission is again using the more conservative quantity of 10 TJ per annum as the threshold for the purposes of analysis in this Decision, on the basis that the threshold is not critical to the analysis.
- 48 In the past natural gas represented a bundled product: the distribution service²⁰ and gas. This reflects that, historically, the only option for supply of gas to a small consumer was the consumer’s local gas utility which was both the pipeline owner and incumbent retailer. However, with the recent trend towards gas utilities divesting their gas retailing businesses, a single supplier might not in future provide a bundled product comprising both the distribution service and gas to small consumers.
- 49 In paragraph 15.1.7 of the Application Contact asks:
“... that the Commission reconsiders whether or not Contact, as a non distribution-integrated gas retailer, would necessarily be dominant in retailing gas to small customers {in the Auckland, Manawatu and Wellington regions}”.
- 50 In paragraph 15.1.8 Contact states:
“... the same question arises as to whether Contact would be dominant in gas retailing {in the Hawke’s Bay and Horowhenua regions} ...”.
- 51 If Contact was constrained in retailing gas to small consumers by the ability of those consumers to switch to other suppliers, it would suggest a higher level of competition than previously identified. Consumer segmentation into local and North Island retail markets would be removed as the characteristics of the two consumer groups would be the same.
- 52 Contact argued that, notwithstanding that it would be the incumbent retailer in the Auckland, Manawatu, Hawke’s Bay, Horowhenua and Wellington regions, it would not be in a position to exercise market power because of the potential its consumers would have to switch suppliers in response to a price increase. It pointed out:
- the trend towards the ownership separation of local gas distribution networks from retailing as evidenced by NGC’s recent acquisition of Powerco’s gas retailing assets

¹⁸ This term has the same meaning as in the discussion of electricity above, applied in the context of gas.

¹⁹ Installed data meters are necessary in order for daily usage information to be obtained for the purpose of making Maximum Daily Quantity (MDQ) calculations.

²⁰ This refers to the local low pressure gas pipeline networks. The high pressure gas pipeline (operated by NGC) is in a separate product market for transmission.

(Decision 330) and Contact's proposed acquisition of only specified gas retailing assets owned by Enerco;

- the absence of market power in ownership of meters; and
- the likelihood of deemed profiling in retailing gas to small consumers.

53 In Decision 330 the Commission stated:

"Smaller gas consumers appear to continue to be reliant on their traditional supplier, that is the incumbent gas utility. This reliance is likely to lessen as distribution and retailing are separated and particularly if a regime for deemed profiling is introduced (as NGC states is envisaged for early 1999). At that stage it is possible new retailers may enter the market". (p. 65)

54 The Commission concluded:

"At this time it is considered that it is appropriate to maintain the market definitions used in Decision 302. The characteristics of retailing to small consumers appear quite distinct from those associated with selling to larger customers. This may change as small consumers become more contestable (with deemed profiling, for example) but this is not yet certain". (p. 67)

55 During investigation of the Application, gas retailers indicated that a system of deemed profiling was likely, although there were varying views as to when it would be introduced. However, the Commission notes that there has not been Government intervention to introduce deemed profiling in the gas sector. Contact recognises this at paragraph 15.1.14 of the Application when it states "... the introduction of profiling arrangements for gas has not had the same priority for Government pressure...".

56 The Application suggests that there are a number of matters which will need to be resolved before small gas consumers are readily able to switch suppliers. Reconciliation agreements are an example. In paragraph 15.1.13 of the application, Contact states:

"Enerco has agreed with Contact not to provide distribution services to another retailer until the terms of reconciliation have been agreed to with Contact. This requirement is necessary to ensure that a proper accounting of gas usage is made, because it affects the calculation of a number of important charges (gas, distribution and transmission)."

57 At this time the Commission is not satisfied that supply-side substitutability for small consumers is sufficiently likely or sufficiently immediate to justify changing its previous view of defining discrete markets for the retailing of gas to small consumers. The Commission will monitor future developments closely to assess whether it will be appropriate to adopt different market definitions in the future.

Conclusion on Gas Markets

58 The Commission has concluded that the following markets need to be considered in terms of the Application:

- the North Island gas wholesale market, encompassing sales to gas retailers and to medium and large consumers (ie: those consumers consuming more than 10 TJ per annum); and
- two retail markets encompassing sales of gas to small consumers (ie: those consumers consuming less than 10 TJ per annum), geographically defined by the boundaries of the gas distribution networks owned by Enerco in the Hawke's Bay and Horowhenua regions.

Relevant Markets - Summary

59 The Commission has concluded that the following are the relevant markets for considering the application:

- the national electricity retail market;
- the North Island gas wholesale market, encompassing sales to gas retailers and to medium and large consumers (ie: those consumers consuming more than 10 TJ per annum); and
- two retail markets encompassing sales of gas to small consumers (ie: those consumers consuming less than 10 TJ per annum), geographically defined by the boundaries of the gas distribution networks owned by Enerco in the Hawke's Bay and Horowhenua regions (the Hawke's Bay and Horowhenua retail gas markets).

COMPETITION ANALYSIS

The National Electricity Retail Market

60 Contact has become an important player in the national electricity retail market (approximately 311,800 customers or 18.9% of the market²¹) as a result of its acquisition of the electricity retail businesses of:

- Top Energy Limited;
- Eastland Energy Limited;
- Hawkes Bay Power Distribution Limited;
- Horowhenua Energy Limited (trading as Electra);
- Tasman Energy Limited;
- Mainpower New Zealand Limited; and
- United Electricity Limited.

61 Contact has also commenced retailing electricity to a limited number of domestic and small commercial consumers in the Auckland and Wellington regions who have switched from the incumbent retailers in those regions.

62 In the past the Commission has considered that electricity retailing to small consumers took place in a number of discrete geographic markets corresponding with each local distribution network. Principally because of the cost of metering and other transaction costs involved in switching suppliers, most small consumers did not have a choice of electricity retailers. Rather they were limited to buying from the incumbent retailer on each network.

63 The Commission is now of the view that electricity retailers are no longer constrained to supplying small consumers connected to particular networks only. Accordingly, it has been considered appropriate to define a national electricity retail market.

64 Reforms in the electricity sector have a major impact on the analysis of actual or potential competition in the national electricity retail market. These reforms include the

²¹ See Appendix 3

development of the wholesale market, the separation of electricity lines and supply (retail and generation), and the planned introduction of deemed profiling.

Development of the Wholesale Market

65 In *Power NZ/Mercury* the High Court noted that:

“In our view, the heralded wholesale market in electricity is of utmost importance, not only for its impact upon the wholesale price of electricity but also for its impact upon the character of competition in retail markets.”

66 The High Court quoted the Wholesale Electricity Market Development Group (WEMDG) in its review dated August 1994 of the reforms of the electricity sector. WEMDG stated:

“The current market reforms are incomplete. Despite the emergence of retail sector competition, the reforms have not yet delivered effective wholesale competition. Indeed, retail competition will only become more vigorous when retailers can access alternative and competitive sources of wholesale supply. There is evidence that some power companies are finding it hard to meet the requests of customers for competitive bulk supply at the retail level. One of the stated reasons for this is the lack of competitive wholesale supply.”

67 At the time of *Power NZ/Mercury* and of the WEMDG report, the great bulk of electricity trading took place by way of bilateral contracts between ECNZ (which was then the dominant generator) and individual electricity retailers and large consumers. The New Zealand Electricity Market (NZEM), creating a new wholesale electricity market, was established on 1 October 1996 and this, along with a much greater level of competition amongst generators, has meant that the industry has moved to a situation where the price of electricity is discovered by the interaction of market participants (buyers and sellers). The market allows a number of generators to offer varying amounts of electricity to a range of buyers who will compete to obtain the best deal.

68 NZEM is not the sole means of trading electricity at the wholesale level. Buyers and sellers remain able to enter into bilateral contracts, while an alternative trading pool is operated by RMB Energy Group Limited. Nevertheless, the NZEM pool price appears to provide the benchmark wholesale price for the electricity sector.

69 The Commission considers that the current operation of the wholesale electricity market facilitates competition at the retail level.

Separation of Electricity Lines and Supply Businesses

70 The Electricity Industry Reform Act 1998²² has as a principal purpose the promotion of effective competition in electricity generation and retail. It requires, *inter alia*, that electricity power companies be divided into separate line (ie: distribution) and supply (ie: retailing and generation) businesses. At the time the legislation was announced, the relevant Ministers stated that separation will remove the incentive for power companies to use their lines to frustrate competition in retailing. They noted that supply companies could do this by making access to lines difficult or by cross-subsidising competitive activities from captive line customers.

²² Enacted by Parliament on 3 July 1998.

- 71 The separation has now substantially occurred. Most major power companies have sold either their distribution or retailing businesses, or have announced they will do so within the next few months. The Evening Post reported on 4 December 1998 that retail businesses with 1,288,000 electricity customers (ie: approximately 80% of all electricity customers in New Zealand) have been separated from distribution businesses. It is anticipated that further ownership separations will take place before 1 April 1999 when corporate separation will be required for 'unseparated' power companies. Ownership separation will be required for all companies by 31 December 2003.
- 72 The level of actual and proposed separation is such that retail competition is not significantly constrained by distributors seeking to protect their own retail operations.

Introduction of Deemed Profiling

- 73 In its announcement of electricity reforms on 7 April 1998, the Government pointed out in a policy statement²³ that the consumption by consumers supplied by new entrant retailers is measured using half-hourly time of use meters (unless the incumbent retailer agrees to an alternative form of metering) and this data is supplied to the National Reconciliation Manager. The statement said:

"These metering and reconciliation requirements impose substantial costs on entrant retailers which incumbent retailers do not incur. These costs are higher than the gross margins for most retail consumers at present, particularly domestic and other small consumers. (current technology means that the cost of half-hourly meters, including meter reading, is expensive.)

The Government intends to facilitate the development by the electricity industry of a cheaper system for measuring and reconciling electricity consumption. To this end:

- The Government expects the industry to develop by 1 April 1999 a low cost metering and reconciliation system which will enable all consumers (including domestic and other small consumers) to switch retailers if they wish;

and

- If the industry fails to establish a low cost metering and reconciliation system by 1 April 1999 the Government will introduce a mandatory 'default' system by regulation."

- 74 The industry is seeking to meet the Government's expectation by introducing a system of 'deemed profiling' where a domestic consumption pattern is established from a selected sample of electricity purchasers deemed to be 'typical'. That pattern is then deemed to apply to all in that category of purchasers.
- 75 Deemed profiling enables reconciliation at grid exit points of electricity supplied to multiple retailers without the need to immediately measure individual consumer consumption. Final reconciliation can occur when consumers actual usage is measured by monthly/bi-monthly meter readings. Deemed profiling uses existing equipment and can be introduced fairly swiftly without major logistical requirements.
- 76 EMCO is responsible for the organisation and implementation of deemed profiling, on behalf of electricity industry participants. EMCO has advised the Commission that strong progress has been made towards implementing deemed profiling by the required implementation date of 1 April 1999.

²³ Government Policy Statement: Choice of Retail Supplier for all Consumers, 7 April 1998

- 77 In the event that this date is not met, EMCO advised that the introduction of deemed profiling is likely to be well advanced, and its implementation will follow in a matter of two to three months.
- 78 The Commission believes that it is reasonable to conclude that deemed profiling will be in place by mid 1999.

Current Competition in the Electricity Retail Market

- 79 With the implementation of the market reforms, a number of large firms have signalled a strong interest in the retail market. These are Contact, ECNZ, TransAlta and TrustPower. As shown in Appendix 3, each has acquired the retail businesses of several power companies in recent months. Each has customers in regions where it is not the incumbent retailer. ECNZ (through First Electric) and Contact have been seeking to persuade domestic consumers to switch from their incumbent retailers. Contact has been successful in respect of [] consumers in the Auckland and Wellington regions while First Electric has been successful in respect of 15,000 consumers in the Auckland, Wellington, Bay of Plenty and Christchurch regions.
- 80 Prior to the announcement of the electricity reforms, power companies were competing for medium-sized customers outside the companies' traditional supply areas. The reforms have enhanced actual and potential competition for these customers.
- 81 There are some regions where actual competition at present is limited or non-existent for small consumers. For instance, Contact has noted in the Application that it supplies 100% of the electricity requirements of small consumers in the Hawke's Bay and Horowhenua regions. No other retailer has announced firm plans to supply small consumers in these regions. However, First Electric, for instance, has indicated that it is likely to extend its retail activities to these areas during next year.

Potential New Entry

- 82 In the past it has been considered that the constraints on new entry to electricity retailing markets arose primarily from lack of competition in the wholesale market, difficulty in negotiating a satisfactory use of system agreement with a distributor who was the incumbent retailer, and the cost of time of use meters. These constraints were particularly significant for new retailers seeking to compete in the domestic segment of the market.
- 83 It is considered that these constraints on entry have been, or soon will be, substantially removed by the industry reforms. In particular deemed profiling will remove the need for time of use meters, while the distributor will no longer have an incentive to deter new entry.
- 84 Contact has suggested that a number of overseas companies have been interested in the developments in New Zealand and that they may be interested in entering the market through purchasing existing retail businesses. It notes however that whether they will actually enter the market is not known at this time.
- 85 Those who have been successful in purchasing existing retail businesses to date (ECNZ, Contact, TransAlta and TrustPower) all have substantial generation assets. They have

indicated that they are seeking to reduce their forward risk as generators by acquiring retail customers and thereby securing predictable demand. Whether this a necessary strategy for generators is not clear at this stage. The Chief Executive of EMCO was reported in the Independent on 18 November 1998 as suggesting that this strategy has not worked well overseas and that generators can best reduce risk through an electricity futures market.

- 86 The Commission believes that potential new entry will not be limited to electricity generators, although in the short term, they may be prepared to pay higher prices for existing retail businesses than non-generators. It has been widely reported that some in the industry believe that it is necessary to have at least 400,000 customers to operate a fully efficient national retail operation. Even if this is so, the Commission believes that there is still considerable scope for 'niche' retailers to enter the market to concentrate on particular classes of customers. TrustPower, for instance, suggested that retired people may be a group which could be best serviced by a specialist retailer.
- 87 It has also been suggested that retailers could obtain economies of scope and other commercial advantages by being able to offer natural gas along with electricity. Contact, for instance, states in the Application that the acquisition of Enerco's gas customer base gives it a significant entry point to retail electricity competition on a North Island-wide basis. It is possible that other gas retailers may similarly perceive an advantage in entering the national electricity retail market.

Conclusion on Current State of Competition in the National Electricity Retail Market

- 88 It is considered that the electricity industry reforms have substantially removed the constraints on competitive activity, and on new entry to the market. Having regard to current and potential competitive activity in the market to consumers of all sizes, it is concluded that no firm is currently dominant in the national electricity retail market.

Impact of the Proposed Acquisition on Competition in Electricity Retailing

- 89 As shown in Appendix 3, Contact's current sales in the national electricity retail market amounts to around 15% of the national total. The proposed business acquisition which is the subject of the Application would not result, and would not be likely to result, in any aggregation of market share.
- 90 It is considered that the level of competition in the national electricity retail market would not be materially affected by the proposed acquisition. Major players in that market apart from Contact at present include TransAlta, TrustPower, and ECNZ. Others, such as CentralPower Limited, Powerco Limited and WEL Energy Group Limited, are also competing in the market at present, although their retail businesses are for sale. Each retailer faces actual or potential competition. This situation is not materially affected by the proposed acquisition.
- 91 It is recognised that in the Hawke's Bay and Horowhenua regions, rivalry between the incumbent electricity retailer and the incumbent gas retailer would be lost by the proposed acquisition. However, as the national electricity retail market itself will remain competitive, the loss of the rivalry between these incumbent retailers will not materially affect the level of competition in the market.

Conclusion

- 92 It is concluded that the proposed acquisition would not result, and would not be likely to result, in the acquisition or strengthening of a dominant position in the national electricity retail market.

The North Island Gas Wholesale Market

- 93 Transactions in this market involve acquisition of natural gas by resellers and by medium and large final users (ie: those who take in excess of 10 TJ per annum). In some instances resellers on-sell to other resellers. In other instances those who acquire gas principally for their own use sell any gas which is surplus to their requirements to other end users or resellers. It is considered that the potential for buyers in this market to switch suppliers and to trade amongst themselves means that they all face common market conditions and can be considered within the one wholesale ‘market’.
- 94 The Commission considered the level of competition in this market in Decision 330. In that Decision the Commission assessed separately total sales in the market and also divided those sales into sales to resellers and sales to large end users, and took into account anticipated changes in the forthcoming year. The market is not considered to have changed materially since the date of that decision.

Table 1: Combined Sales	PJ	%
Enerco	[]	[]
Contact	[]	[]
Combined Entity	[]	[]
NGC	[]	[]
Powerco	[]	[]
Shell/Todd	[]	[]
ECNZ	[]	[]
TransAlta	[]	[]
Pacific Energy	[]	[]
Year ended 30 June 1998	69.7	100.0

- 95 The proposed acquisition would result in some market aggregation in the wholesale market. However, Contact’s market share would place it within the ‘safe harbours’ specified in the Business Acquisitions Guidelines. Apart from Contact, NGC, Powerco, Shell/Todd, ECNZ, TransAlta and Enerco (within the constraints contained in the Agreement) will continue to compete in the market.
- 96 New entry to the market will be principally dependent on access to gas and satisfactory access to transmission and distribution networks. As discussed in Decision 330, these are not considered to be substantial entry barriers.

- 97 It is concluded that the proposed acquisition would not result, or would not be likely to result, in an acquisition or strengthening of a dominant position in the North Island gas wholesale market.

The Retailing of Gas in the Hawke's Bay and Horowhenua Markets

Current Competition

- 98 At present Enerco is the only supplier to the markets for the retailing of gas (ie: the selling of gas to small consumers) in the Hawke's Bay and Horowhenua regions. The proposed acquisition would replace Enerco with Contact as the sole supplier to these markets in the short term.
- 99 In Decision 330 the Commission noted that the relevant gas retail market in that case was not competitive. However it was expected that at least some of the customers in the market were likely to have competitive options in the future. In making that comment, the Commission took account of the separation of the distribution and retailing functions and the likelihood of a deemed profiling regime in the near future.
- 100 In many respects changes in the gas retailing sector are mirroring the changes in the electricity retailing sector. Both have moved a substantial distance from the days of franchised monopolies free of any possibility of competition.
- 101 At this time however, the development of competition is less certain in respect of gas than with electricity. Competition for small gas consumers is in its infancy. The split between distribution and retailing, which might encourage the entry of new retailers, is not as certain as it is with electricity. The Government has not placed the same pressure on the gas sector to put in place a deemed profiling regime (although there are signs that one is being developed anyway). At present there are fewer firms indicating an interest in competing for gas retail customers, possibly because of the smaller size of the market.
- 102 The Hawke's Bay and Horowhenua gas retail markets are not being contested at present. It is considered that there is a distinction between these markets (where competition does not exist at present) and the national electricity retail market (where competition is a fact). Nevertheless, it is recognised that the situation in the gas market is changing quickly and if, as is anticipated, deemed profiling and separation of distribution and retailing takes place, it may be appropriate in the future to conclude that the incumbent gas retailer is not in a dominant position.
- 103 Contact has argued that the dominance test requires account to be taken of substitution possibilities over the long term and not just over a period such as the next few months. However, the Commission's decision, in this instance, to find dominance must be based on present market circumstances and future changes which are considered to be likely. There is insufficient likelihood about some of the possible changes to place significant weight on them at this time.
- 104 The Commission concludes that Enerco is currently dominant in the Hawke's Bay and Horowhenua retail gas markets.

Impact of the Proposed Acquisition

- 105 Contact is not currently a participant in the Hawke's Bay and Horowhenua retail gas markets. It is an important participant in the upstream wholesale market but it does not have market power in that market and accordingly vertical integration concerns are not raised by the proposed acquisition.
- 106 There are three other matters which have been considered closely when assessing the competitive impact in retail gas markets. These are the ability of competitors to access Contact's meters, the ability of Contact to prevent new entry by not agreeing reconciliation terms, and the possible lessening of inter-fuel competition.

Access to Gas Meters

- 107 In a submission on the Application, NGC has argued that the fact that Contact will be acquiring the meters from Enerco may make it more difficult for competitors to enter the retail market as they will be reliant on a competitor to provide access to the meters. NGC has submitted that the Commission should require Contact to give an undertaking under section 69A of the Commerce Act to divest itself of the meters to an independent third party which would undertake metering activities on a non-discriminatory basis for all retailers.
- 108 The Commission is not able to meet this submission, not least because it does not have the authority to require that Contact give an undertaking. Section 69A states only that the Commission may accept undertakings of a particular type offered by the applicant.
- 109 Nevertheless, the Commission has received expressions of concern from a number of parties about the possibility that Contact may be able to inhibit competition by denying competitors access to meters. Contact has argued that it would not be in its commercial interest to deny access to its meters to a new retailer as this could lead to the new retailer installing a new meter and this would 'strand' Contact's meter.
- 110 It is accepted that if terms of access to the existing meter were unreasonable, it is possible that it could lead to that meter being stranded, at a cost to Contact. However, it is considered more likely that the competitor would be deterred by the cost of a replacement meter, at a cost to competition in the market. Accordingly, if Contact imposed unreasonable access terms, it would be at risk under the Commerce Act.
- 111 However, what is relevant to the assessment of the Application is whether competition would be affected by the acquisition. In this case, it is considered that Contact would not have a greater incentive or ability to deny access to the meters than Enerco would have if the proposed acquisition did not proceed.
- 112 Accordingly, access to meters is not considered to be materially affected by the acquisition.

Reconciliation Terms

- 113 In the Application, Contact notes that Enerco has agreed with Contact not to provide distribution services to another retailer until the terms of reconciliation have been agreed

with Contact. This has raised the concerns of potential competitors in the retail markets. This matter was raised by the Commission with Contact who responded:²⁴

“It is a condition of Enerco’s Distribution Agreement that all gas retailers (including Contact) also execute the Reconciliation Agreement.

The Distribution and Reconciliation agreements require installation of time of use meters for customers using greater than 10 TJ per annum. For customers using less than 10 TJ, time of use meters can be installed, or the ‘Reconciliator’ can grant approval of a usage profile for those customers. The Reconciliator is the network company.

The requirement to install time of use meters does not apply to the incumbent retailer (Contact) who will assume the residual network connection point demand.

The agreements do not provide Contact with the right to veto the application of a reconciliation profile. The acceptance or otherwise of a profile is made by the Reconciliator who will need to be satisfied the usage profile proposed substantially reflects the customer’s actual gas take.”

- 114 If a reconciliation agreement unreasonably deterred competition, it would be at risk under the Commerce Act whether the responsibility for such an agreement lay with Contact or Enerco. As with the matter of access to meters however, it is not considered that Contact would have a greater ability or incentive to impose anti-competitive reconciliation terms than would Enerco if the acquisition did not proceed. Accordingly, it is not considered that anti-competitive access terms are made more likely by the acquisition.

Loss of Inter-fuel Competition

- 115 Inter-fuel competition was most recently considered by the Commission in Decision 302. In that decision the Commission said about inter-fuel constraints on natural gas:

- electricity places a constraint on the activities of natural gas companies;
- this constraint applies to both the energy and the distribution business of natural gas companies;
- the degree of that constraint varies by application. The Commission believes that the acquisition will have only minimal competitive impact on the supply of natural gas to large industrial users. For large industrial users, this is based on the degree of possible substitution with electricity, proximity to the natural gas transmission system and the viability of other fuels such as coal. However, for domestic and commercial users where, generally, electricity is a viable alternative for natural gas applications, the situation is less clear; and therefore
- on balance the Commission believes electricity is likely to provide a constraint on the supply of natural gas to domestic and commercial consumers.”

²⁴ Letter from Contact to the Commerce Commission dated 7 December 1998.

- 116 In respect of inter-fuel constraint on electricity the Commission said:
- “- Natural gas places some constraint on power company activities;
 - such constraint is less than the constraint that electricity places on the activities of natural gas companies; and
 - there is minimal constraint on the distribution business of power companies.”
- 117 In Decision 302, the Commission considered, inter alia, the competitive impact of the company owning the gas utility in South Taranaki acquiring the company which owned the electricity utility in the same region. The effect of this acquisition was to bring under common ownership the electricity distributor/retailer and the gas distributor/retailer.
- 118 The Commission concluded in that case that while Egmont Electricity Limited and Powerco Limited were dominant in the local markets for the supply of electricity and natural gas to small consumers, there was the potential for the market power of Powerco and Egmont to be constrained by inter-fuel competition in South Taranaki in those areas where Powerco supplies natural gas to consumers connected to the electrical network of Egmont. The Commission concluded that the removal of that inter-fuel competition meant that it was not satisfied that the acquisition would not result in an acquisition or strengthening of dominance in the market for the supply of delivered natural gas to small commercial and domestic consumers connected to the South Taranaki gas distribution networks, or in the market for the supply of delivered electricity to the merged entity’s electrical network (the Commission went on to authorise that acquisition on public benefit grounds under section 67 of the Commerce Act).
- 119 There is a similarity between the Powerco/Egmont Electricity case and the current Contact/Enerco case, and differences.
- Contact is the incumbent electricity retailer in the Hawke’s Bay and Horowhenua regions (as a result of it acquiring the electricity retailing businesses of Hawke’s Bay Power Distribution and Horowhenua Energy) and is seeking a clearance to acquire Enerco’s gas retailing business which includes the gas retailing operations in the Hawke’s Bay and Horowhenua regions. Accordingly inter-fuel competition issues arise in respect of the Application; and
 - The Application does not involve Contact acquiring the gas distribution assets in the Hawke’s Bay and Horowhenua regions.
 - Unlike the situation in South Taranaki, the distribution businesses of both gas and electricity in the Hawke’s Bay and Horowhenua regions will be under separate ownership from the retailing businesses of each; and
 - The retail environment for gas and particularly electricity has changed since Decision 302.
- 120 The issue raised in Decision 302 relating to inter-fuel competition was that the common ownership of the electricity retailer and the gas retailer meant that neither retailer was constrained by inter-fuel competition.
- 121 In this case, Contact is the owner of the incumbent electricity retailer in the Hawke’s Bay and Horowhenua regions, and is seeking to acquire the incumbent gas retailer. As indicated above, the Commission accepts that Contact, as the electricity retailer, would be operating in a competitive national electricity retail market and, as the gas retailer,

would face inter-fuel competition from independent electricity retailers in the same way as Enerco does at present.

- 122 A further issue relating to inter-fuel competition is the use of the superior information on the demand characteristics of individual consumers which may be available to a retailer who services the gas and electricity requirements of the same consumers. A firm which has a dominant position in gas retailing, and is then acquired by an electricity retailer operating in the context of low substitutability between gas and electricity, may, through the information gained from customers' electricity demands, be able more effectively to exploit its market power in gas retailing. Theoretically it would be possible to use this information to extract larger monopoly profits and in the process create a loss of allocative efficiency in the market. However, the Commission considers that such additional information is unlikely to create more than the potential for a *de minimus* increase in dominance from the proposed acquisition.
- 123 Accordingly, there would be no loss of the constraint of inter-fuel competition on dominance in gas retailing as a result of the proposed acquisition.

Conclusion in Respect of Gas Retail Markets

- 124 The Commission concludes that, in terms of section 48 of the Commerce Act, the proposed acquisition would not result, and would not be likely to result, in the strengthening of a dominant position in the Hawke's Bay and Horowhenua retail gas markets.
- 125 Consequently, the Commission concludes that, in terms of section 47 of the Commerce Act, the proposed acquisition would not result, and would not be likely to result, in the acquisition or strengthening of a dominant position in the Hawke's Bay and Horowhenua retail gas markets.

CONCLUSION

- 126 The Commission has considered the impact of the proposal in the four relevant markets:
- the national electricity retail market;
 - the North Island gas wholesale market, encompassing sales to gas retailers and to medium and large consumers (ie: those consumers consuming more than 10 TJ per annum); and
 - two retail markets encompassing sales of gas to small consumers (ie: those consumers consuming less than 10 TJ per annum), geographically defined by the boundaries of the gas distribution networks owned by Enerco in the Hawke's Bay and Horowhenua regions.
- 127 Having regard to the factors set out in section 3(9) of the Commerce Act and all the other relevant factors, the Commission concludes that the proposal would not result, and would not be likely to result, in Contact or any other person acquiring or strengthening a dominant position in a market.

DETERMINATION ON NOTICE OF CLEARANCE

128 Accordingly, pursuant to section 66(3) of the Commerce Act 1986, the Commission gives clearance for the acquisition by Contact Energy Limited of the assets which comprise the gas retailing business of Enerco New Zealand Limited.

Dated this day of December 1998

K M Brown

E C A Harrison

E M Coutts

P R Rebstock

APPENDIX 1: BUSINESS ACTIVITIES OF CONTACT

CONTACT ENERGY LIMITED

Principal Business Activities

(as at December 1998)

Electricity Generation	Electricity Hedge Contracts	Electricity Retailing – Half Hourly Metered Customers	Electricity Retailing – Non Half Hourly Metered Customers	Wholesaling of Natural Gas
<p>Contact owns and operates the Clyde and Roxburgh hydro stations, the Wairakei and Ohaaki geothermal stations, and gas fired power stations at New Plymouth, Stratford, Otahuhu and Whirinaki. Contact sells the electricity generated from these stations (approx. 8,000-9,000 GWh per annum) into the New Zealand Electricity Market (NZEM).</p> <p>Contact is also constructing a 45MW gas fired co-generation plant located at the NZ Dairy Group's Te Rapa factory.</p>	<p>Contact trades hedge contracts (contracts for differences) referenced to the NZEM electricity clearing price.</p> <p>These contracts are typically with existing electricity retailers and large electricity users connected directly to the national grid.</p>	<p>Contact has electricity sale contracts with a number of large use customers.</p>	<p>Contact has recently purchased or has contracted to purchase electricity retailing businesses from the following companies:</p> <ul style="list-style-type: none"> • Hawke's Bay Power Distribution Limited; • Eastland Energy Limited; • Horowhenua Energy Limited; • Tasman Energy Limited; • Mainpower New Zealand Limited; • United Electricity Limited; and • Top Energy Limited. <p>In addition, Contact has commenced retailing electricity to domestic and small commercial customers located in the Auckland and Wellington regions, through a direct sales initiative.</p>	<p>Contact has the rights to approximately 42% of the contracted gas from the Maui field, and rights to 100% of the contracted gas from the Tariki, Ahuroa, and Waihapa fields.</p> <p>Contact has supply contracts with Fletcher Challenge Gas Investments Limited and Fletcher Challenge Limited (for the Taranaki Combined Cycle power station), ECNZ, Enerco and PowerCo.</p> <p>Contact has one contract with an end-user customer (supplying above 10TJ), being NZ Dairy Group.</p>

APPENDIX 2: BUSINESS ACTIVITIES OF ENERCO

ENERCO NEW ZEALAND LIMITED

Principal Business Activities

(as at December 1998)

Gas Exploration	Gas Distribution	Gas Retailing	Gas Appliances and Related Services	Electricity Generation
<p>Gas exploration joint venture with Westech Energy New Zealand Limited.</p> <p>Enerco has a 44.5% interest in the South Wanganui Basin license and a 50% interest in the East Coast Basin license.</p> <p>East Coast region has recently announced finds of commercially viable quantities of gas.</p>	<p>Enerco owns and operates a gas pipeline network incorporating approximately 4250 kilometres of pipeline in the greater Auckland, Hawke's Bay, Manawatu, Horowhenua and Wellington regions.</p> <p>Enerco has recently completed a new pipeline to serve the North Harbour region of Auckland.</p>	<p>Enerco retails natural gas to approximately 112,500 retail customers, and approximately 40 industrial customers (industrial customers being those who consume more than 50TJ of gas per annum), connected to its network.</p> <p>Enerco markets and sells LPG and CNG.</p>	<p>Enerco supplies gas appliances and provides installation and repair services in its supply regions.</p>	<p>Enerco owns a 5% equity interest in the Southdown 120MW gas fired cogeneration power station in Auckland.</p> <p>In addition, Enerco has a number of small cogeneration plants.</p>

APPENDIX 3: ELECTRICITY RETAILING COMPANIES

Total Electricity Sales and Customer Numbers

Year Ended March 1997 (Does not account for customers who have changed supplier by choice)

Company	Sales (GWh)		Number of Customers	
Power New Zealand Limited	3,110		218,800	
Southpower Limited	2,530		154,700	
TransAlta New Zealand Limited	2,310		142,400	
TransAlta	7,950	28.9%	515,900	31.4%
Mercury Energy Limited	4,264		246,700	
ECNZ (Waikato)	4,264	15.5%	246,700	15.0%
United Electricity Limited	1,945		124,000	
Hawke's Bay Power Distribution Limited	704		55,800	
Tasman Energy Limited	410		29,000	
Mainpower New Zealand Limited	337		23,500	
Electra (Horowhenua Energy Limited)	319		35,300	
Top Energy Limited	243		24,400	
Eastland Energy Limited	210		19,800	
Contact	4,168	15.1%	311,800	18.9%
TrustPower Limited	1,166		93,600	
Waipa Power Limited	236		19,700	
Wairoa Power Limited	54		5,500	
TrustPower	1,456	5.3%	118,800	7.2%
Northpower Limited	750		44,100	
Waitaki Power Limited	163		12,200	
ScanPower Limited	88		6,700	
CHB Power Holdings Limited	78		7,800	
ECNZ (South Island)	1,079	3.9%	70,800	4.3%
Waitomo Energy Services Limited	135		13,000	
King Country Energy Limited	122		13,000	
Waitomo/King Country	257	0.9%	26,000	1.6%
Wairarapa Electricity Limited	206		20,500	
ECNZ (Huntly)	206	0.7%	20,500	1.2%
Powerco Limited	1,190		84,300	
WEL Energy Group Limited	790		66,000	
CentralPower Limited	576		51,000	
Bay of Plenty Electricity Limited	496		22,200	
Counties Power Limited	348		30,000	
Central Electric Limited	266		18,900	
Electricity Ashburton Limited	259		13,200	
Marlborough Electric Limited	254		19,500	
Otago Power Limited	234		14,700	
Westpower Limited	174		11,400	
Buller Electricity Limited	88		4,200	
Currently Independent	4,675	17.0%	335,400	20.4%
Very Large Customers	3,500	12.7%		
TOTAL	27,554	100.0%	1,645,900	100.0%

Source: ANZ Securities (NZ) Limited, The New Zealand Electricity Sector, February 1998