



CONSULTATION ON STATEMENT OF PRELIMINARY ISSUES: MERCURY NZ
LIMITED / TRUSTPOWER LIMITED'S RETAIL BUSINESS

Submission to the Commerce Commission



31 August 2021

EXECUTIVE SUMMARY

1. **The proposed Mercury-TECT rebate arrangements would restrict competition in Tauranga-Bay of Plenty for the next 30 years and entrench the region's status as the least competitive electricity retail market in New Zealand.**
2. While Vocus welcomes vertical-separation of any of the large incumbent gentailers' wholesale (generation) and electricity retail businesses,¹ we consider the TECT rebate arrangements: (i) would substantially lessen competition in the regional Tauranga-Bay of Plenty retail market, and (ii) are not required to enable the acquisition:
 - 2.1 The proposed TECT rebate arrangements are a new set of arrangements with characteristics which are different and worse for competition than the current arrangements. In particular:
 - (1) They would lock-in the arrangements with Mercury for the next 30 years, until 31 December 2050.
 - (2) There are new 'use-it or lose it' entitlement criteria which inhibit switching through a new risk of permanent loss of entitlement to future distributions.²
 - 2.2 The value of these arrangements to Mercury – specifically the ability to extract excess profits/the benefit of the trust-rebate through higher retail prices – appears to be reflected in Mercury offer being conditional on the proposed TECT restructure being completed, such that *"Trustpower retail customers could continue as beneficiaries of the Trust"*.³
3. **The Commission should consider whether it needs to undertake a Part 2 Commerce Act investigation/action:** Given the Mercury acquisition involves new TECT rebate arrangements, which differ in a number of substantive and material ways from the existing TECT rebate arrangements, we consider it raises both Part 2 (including section 27) and Part 3 Commerce Act issues which the Commission should consider.
4. **The relevant retail markets exceed the Commerce Commission's market concentration thresholds:**⁴ The electricity retail markets are concentrated, and the combined entity would have more than 20% market share, regardless of whether a national or regional market definition is used:

¹ Our view is consistent with our experience in telecommunications, with the positive impact on competition following separation of Telecom's wholesale and retail businesses into Chorus and Spark.

² *"To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stop"*.

³ https://www.tect.org.nz/site_files/20903/upload_files/TECTBeneficiaryletter.pdf?dl=1

⁴ <https://www.mercury.co.nz/news/20210621-mercury-enters-into-binding-agreements-to>

⁴ Commerce Commission, Mergers and acquisitions Guidelines, July 2019.

- 4.1 The regional Tauranga-Bay of Plenty residential and SME retail markets both meet the Commerce Commission's definition of a concentrated market with a Concentration Ratio (CR3) of 78%.^{5,6}
- 4.2 At a national level, the electricity retail market HHI of 2,136 [residential = 2,150⁷] meets the thresholds for a concentrated or highly concentrated market typically used internationally by industry and competition regulators.⁸ The residential HHI for Tauranga-Bay of Plenty of 4,045⁹ is the highest in New Zealand.
- 4.3 At a national level, the merged entity would have 28% [18%] of the national residential [SME] market. The merged entity would have 66% [54%] of the regional Tauranga-Bay of Plenty residential [SME] retail market,¹⁰ well above the Commerce Commission's "safe harbour" thresholds of 40% for an unconcentrated market and 20% for concentrated markets.

5. The Commerce Commission should consider the TECT rebate in regional terms:

The Commission should consider the competitive impacts of the proposed TECT rebate in terms of a regional geographic market rather than a national market. We agree with the Commission that *"A purposive approach to market definition would be one which best isolates the competitive concerns in question, which in this case concerns the competitive effects of the TECT Rebate in the Tauranga region"*.^{11,12}

- 5.1 The regional Tauranga-Bay of Plenty electricity retail market is distinguishable from the retail markets in other parts of the country on a number of measures, including market concentration (highest residential HHI¹³ and CR1 in New Zealand, 2nd highest CR2 and 3rd highest CR3¹⁴) and retail pricing/margins with the Electricity Price Review (EPR) noting *"Trustpower's prices average about \$575 a year more than the cheapest alternative in the Tauranga area"*.¹⁵
- 5.2 The TECT rebate arrangements – and its impact on competition – enables Trustpower to price above its competitors up to the level of the dividend, effectively

⁵ Trustpower (59%), Genesis (12%), and Mercury (7%):

https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&RegionCode=10&MarketSegment=Res&Percent=Y&_si=v|3

⁶ Trustpower (50%), Meridian (18%), and Nova (10%):

https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&RegionCode=10&MarketSegment=SME&Percent=Y&_si=v|3

⁷ https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NZ&MarketSegment=Res&_si=v|3

⁸ https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NZ&_si=v|3

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https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NWK_REPORTING_REGION&MarketSegment=Res&_si=v|3

¹⁰ Trustpower (59%), and Mercury (7%):

https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&Percent=Y&RegionCode=10&_si=v|3

¹¹ Commerce Commission, Commerce Act Division, TECT memorandum, 27 July 2020.

¹² The ACCC has noted in its guidelines on misuse of market power that market definition is purposive, meaning that it will not be defined in isolation and that definition of a relevant market will be considered in the context of the particular conduct under investigation – see ACCC "Guidelines on misuse of market power" (August 2018) at [2.6], citing ACCC v Flight Centre [2016] HCA 49 at [69].

¹³

https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NWK_REPORTING_REGION&MarketSegment=Res&_si=v|3

¹⁴

https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NWK_REPORTING_REGION&MarketSegment=Res&Show=CR3&_si=v|3

¹⁵ Electricity Price Review, HIKOHIKO TE UIRA, FINAL REPORT, 21 May 2019.

resulting in Trustpower capturing the benefits rather than Tauranga/Bay of Plenty consumers/trust beneficiaries.

6. **There is clear evidence of weak competition in Tauranga-Bay of Plenty:** The high level of market concentration, Trustpower's artificially high market share in Tauranga-Bay of Plenty, low level of switching, Trustpower setting prices that are substantially higher than other electricity retailers in Tauranga-Bay of Plenty, and the ability of Trustpower to capture the benefits of the TECT rebates rather than trust-beneficiaries are all clear signs the current arrangements substantially lessen competition.
7. **Impact on horizontal markets:** We are also concerned about the retail telecommunications market impacts. In our view, based on the Trustpower electricity pricing it appears the benefits of the TECT rebate have simply been absorbed by Trustpower. We consider that there may therefore be cross-subsidisation occurring between electricity and broadband, in part funded by the TECT arrangements, which has allowed Trustpower to have a much higher cost of acquisition (COA) in the form of providing appliances and half priced deals for two years which have a distortionary effect and has detrimental impact on competition in both electricity and telecommunications, which we would not want to see continuing under Mercury.

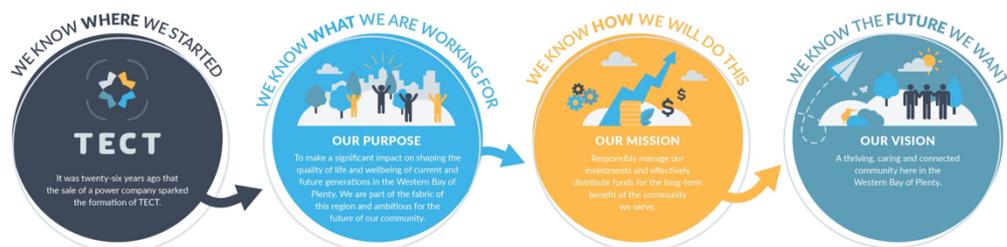
INTRODUCTION

8. Vocus welcomes the opportunity to submit in response to the “*Statement of Preliminary Issues Mercury NZ Limited / Trustpower Limited’s retail business*”, 17 August 2021. [REDACTED]
9. If you would like any further information or have any queries about this submission, please contact:

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PART 2 AND PART 3 COMMERCE ACT CONCERNS

10. Given the Mercury acquisition involves new TECT rebate arrangements, which differ in a number of substantive and material ways from the existing TECT rebate, we consider it raises both Part 2 (including section 27) and Part 3 Commerce Act issues which the Commission should consider.
11. If the acquisition goes ahead there will be no TECT-retail business ownership link to justify paying out rebates to customers of one retailer only.
12. We consider it regrettable the TECT did not consider alternative options such as providing rebates to all consumers in the Tauranga/western Bay of Plenty region, regardless of choice of retailer. This would have brought the TECT rebate arrangements more line with other electricity trusts around New Zealand. The TECT could have also considered, by way of example, continuing to provide current TECT beneficiaries with dividends regardless of who their retailer is in the future.
13. Options such as these would better align with the TECT purpose, including the well-being of current and future generations in Western Bay of Plenty,¹⁶ and the Trust Deed definition of “*Consumer*” meaning “*a person who is named in the records of the Company as being liable to pay the Company any amount for electrical energy supplied or to be supplied to premises situate in the District*”¹⁷ [emphasis added].



¹⁶ <https://www.tect.org.nz/our-story/>

¹⁷ https://www.tect.org.nz/site_files/20903/upload_files/TECTCharitableTrustDeed-updated21August2015.pdf?dl=1 and https://www.tect.org.nz/site_files/20903/upload_files/TECTTrustDeed_updated19October2016.pdf?dl=1

THE PROPOSED NEW TECT REBATE ARRANGEMENTS ARE NEW AND AREN'T SIMPLY A TRANSFER OF EXISTING ARRANGEMENTS WHICH BENEFIT TRUSTPOWER TO MERCURY

14. Our concern with the Proposed Acquisition is principally that the proposed TECT rebate arrangements would restrict competition for the next 30 years and entrench Tauranga-Bay of Plenty's status as the least competitive retail market in New Zealand.
15. Mercury is incorrect to "record" that "any competitive effect of the TECT dividend will exist with or without this transaction" and "Mercury's larger book of retail electricity customers does not change the conditions in which other electricity retailers compete in New Zealand's retail electricity market".
16. The proposed TECT rebate arrangements should not be seen simply as akin to say a monopoly acquiring another monopoly, which would not change the level of competition in the market.¹⁸ The proposed TECT rebate arrangements are a new set of arrangements that has or is likely to have the effect, of substantially lessening competition in a market. The proposed TECT rebate arrangements have characteristics which are significantly different from the current arrangements:

16.1 The new arrangements would lock-in a barrier to competition for the next 30 years: "TECT would retain funds intended to be sufficient to pay a yearly rebate to all existing beneficiaries (as of Thursday 28 January 2021) for approximately 30 years (i.e., the intention is to retain enough funds to pay, based on current financial projections, rebates until 31 December 2050)."¹⁹

16.2 The barrier would be substantial with competitors needing to offer prices between \$500 and \$700 cheaper than Mercury to compete for TECT beneficiaries: "The rebate will be \$500 a year for the first ten years, will increase to \$600 in 2030 and increase further to \$700 in 2040, to take account of inflation. \$500 was the averaged median rebate payment over the five previous years".²⁰

16.3 The arrangements include 'use-it or lose-it' provisions which effectively foreclose the market for trust-beneficiary customers: "To receive a rebate a beneficiary must remain a customer of Trustpower or the buyer of the Retail Business (or a subsequent buyer), in the district - subject to limited exceptions. If you leave, the rebate stops".²¹ The Mercury trust-beneficiary customer would need to consider not only whether the alternative retailer's price is lower than the Mercury post-rebate price, but also how long the lower price would be maintained for given once they lost entitlement to the rebate they could not get it back.

This is likely to effectively remove these customers entirely from the retail market as they will be concerned about losing their TECT rebates if they ever leave Mercury. In our view, this is even worse than the current arrangements in

¹⁸ e.g. Vector purchasing the North Shore UnitedNetworks' electricity distribution business.

¹⁹ https://www.tect.org.nz/site_files/20903/upload_files/TECTBeneficiaryletter.pdf?dl=1

²⁰ https://www.tect.org.nz/site_files/20903/upload_files/TECTBeneficiaryletter.pdf?dl=1

²¹ https://www.tect.org.nz/site_files/20903/upload_files/TECTBeneficiaryletter.pdf?dl=1

disincentivising customers from switching and unfairly guaranteeing an incumbent customer base to Mercury out of the acquisition. The regional impact of this is likely to be substantial.

16.4 Other retailers will face the prospect that Mercury will have 66% [54%] of the Tauranga residential [SME] market, and only being able to compete with about 10% [7.4%] of Mercury’s Tauranga customers.

17. It is telling “Mercury has no comment on whether that dividend changes competitive conditions in Tauranga”. Despite its agnostic position, Mercury’s offer is conditional on the proposed TECT restructure being completed, such that “Trustpower retail customers could continue as beneficiaries of the Trust”.²² These arrangements aren’t required in order for Mercury to acquire Trustpower’s retail business but reflect the value of the conditions to Mercury – specifically the ability to abstract excess returns/the benefit of the trust-rebate through higher retail prices.

THE RELEVANT MARKETS ARE CONCENTRATED

18. The relevant retail markets exceed the Commerce Commission’s market concentration thresholds;²³ electricity retail markets are concentrated, and the combined entity would have more than 20% market share, regardless of whether a national or regional market definition is used:
- 18.1 The regional Tauranga-Bay of Plenty residential [SME] retail market meets the Commerce Commission’s definition of a concentrated market with a Concentration Ratio of 78%²⁴ [78%²⁵].
- 18.2 At a national level, the electricity retail market HHI of 2,136 [residential = 2,150²⁶] meets the typical thresholds a concentrated or highly concentrated market typically used internationally by industry and competition regulators.²⁷ The residential HHI for Tauranga-Bay of Plenty of 4,045²⁸ is the highest in New Zealand.
- 18.3 At a national level, the merged entity would have 28% [18%] of the national residential [SME] market. The merged entity would have 66% [54%] of the regional Tauranga-Bay of Plenty residential [SME] retail market,²⁹ well above the

²² <https://www.mercury.co.nz/news/20210621-mercury-enters-into-binding-agreements-to>

²³ Commerce Commission, Mergers and acquisitions Guidelines, July 2019.

²⁴ Trustpower (59%), Genesis (12%), and Mercury (7%):

https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&RegionCode=10&MarketSegment=Res&Percent=Y&_si=v|3

²⁵ Trustpower (50%), Meridian (18%), and Nova (10%):

https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&RegionCode=10&MarketSegment=SME&Percent=Y&_si=v|3

²⁶ https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NZ&MarketSegment=Res&_si=v|3

²⁷ https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NZ&_si=v|3

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https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NWK_REPORTING_REGION&MarketSegment=Res&_si=v|3

²⁹ Trustpower (59%), and Mercury (7%):

https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&Percent=Y&RegionCode=10&_si=v|3

Commerce Commission's "safe harbour" thresholds of 40% for an unconcentrated market and 20% for concentrated markets.

VERTICAL-SEPARATION IS THE ONE POSITIVE ELEMENT OF THE PROPOSED ACQUISITION

19. Vocus considers that vertical-separation of the large incumbent gentailers' wholesale (generation) and electricity retail businesses would help promote competition in electricity retailing and enable independents retailers to compete on a more level playing-field. Our view is consistent with:
 - 19.1 Our experience in telecommunications, with the separation of Telecom's wholesale and retail businesses into Chorus and Spark.
 - 19.2 The vertical-integration issues the Commission identified in its fuel market and grocery investigations.
 - 19.3 The concerns of independent retailers and other stakeholders have raised about vertical-integration, which have been well canvassed in the Electricity Price Review (EPR) and with the Electricity Authority. They mirror issues that have been identified by regulators in other jurisdictions such as the ACCC.

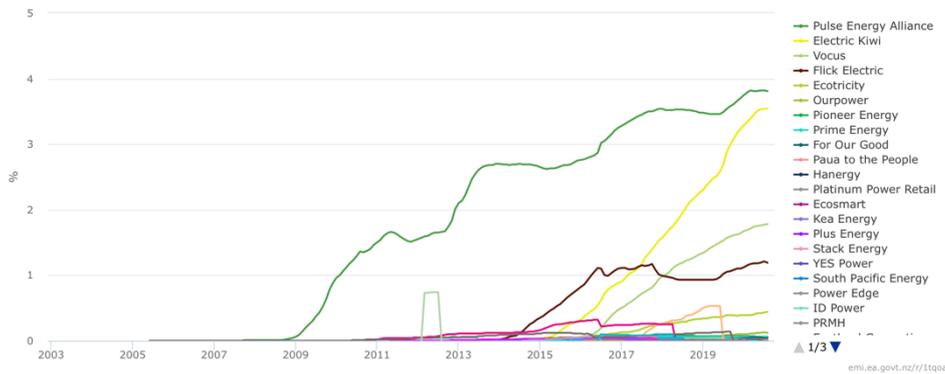
IMPACT OF INDEPENDENT RETAILERS ON COMPETITION

20. In pre-filing correspondence with Mercury, the Commission asked Mercury why the Commission should consider constraint from smaller retailers to be as meaningful as the constraint exerted by larger incumbents.³⁰
21. We strongly disagree with Mercury's contentions that *"that the EPR did not find that independent retailers face barriers to expansion because of the fact that incumbent retailers, like Mercury and Trustpower, have large retail bases or have vertically-integrated wholesale electricity businesses"*, *"all electricity retailers are retailing the same electricity purchased from the same wholesale electricity spot market"*³¹ and *"[independent] retailers provide just as much competitive constraint as other vertically integrated retailers"*, given the current state of the electricity market and the challenges faced by independent retailers.
22. Vocus is one of the fastest growing new entrants, but our market share is about 1.78% after over five years of being in the electricity retail market.

³⁰ Chapman Tripp, Notice seeking clearance for Mercury to acquire the Trustpower retail assets, 30 P July 2021.

³¹ See, for example, the joint Electric Kiwi, Flick Electric and Vocus submission to the Electricity Authority, The independents support wholesale-retail transfer price and segmented financial disclosures, 18 May 2021, for a discussion on these matters, available at: <https://www.ea.govt.nz/assets/dms-assets/28/Independent-retailers-submission-Internal-Transfer-Prices-and-segmented-profitability-reporting.pdf>.

Electricity retail market share trends, excluding the incumbent retailers³²



23. It is important not to be beguiled by the large number of retailers (40)³³ now in electricity retailing across New Zealand:
 - 23.1 Over 30% have less than 10 customers;
 - 23.2 60% have less than 100 customers; and
 - 23.3 Three-quarters have less than 3,000 customers.
24. This compares poorly against the inroads entrant retailers have made in telecommunications. Vocus, for example, has 13% market share in broadband services, more than all entrant retailers in electricity combined.³⁴
25. The following two graphs illustrate the changes in market share in telecommunications between 2014 (Figure 14³⁵) and 2020 (Figure 17).

Figure 14: Estimated ISP market share

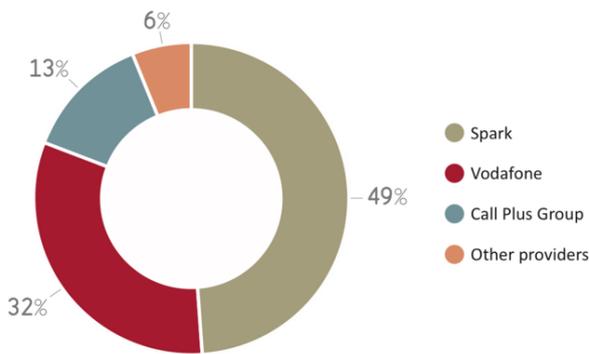
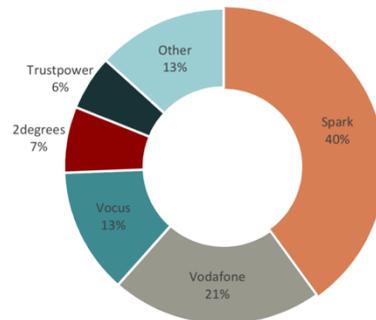


Figure 17: Estimated fixed broadband retailer market share by connections



³²

https://www.emi.ea.govt.nz/Retail/Reports/R_MST_C?DateFrom=20040101&DateTo=20210731&Percent=Y&seriesFilter=BCP,L_DEEP,TAOM,ECOS,ECOT,ELEN,ELKI,ENEL,EMHT,CLUB,ETRN,FLCK,FOGY,HANE,HNET,IDPL,KEAE,LITE,AMPX,NEXG,NGAG,TASP,OCTO,OPHL,ORSL,OURP,PEAK,GIVE,PLEL,PION,PLTM,PLUS,ORBS,EDGE,PRME,PRMH,CPPL,PUNZ,SPWR,SIMP,SOHZ,SPEL,STAK,SUPE,TTTL,SWCH,WANG,WISE,YESP&rsdr=ALL&si=v|3

³³ https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?seriesFilter=ALL&Percent=Y&si=v|=13

³⁴ https://comcom.govt.nz/_data/assets/pdf_file/0030/247377/2020-Annual-Telecommunications-Monitoring-Report-Revised-version-16-March-2021.pdf

³⁵ https://comcom.govt.nz/_data/assets/pdf_file/0024/63825/2014-Annual-Telecommunications-Monitoring-Report-8-June-2015.pdf

26. We agree with the EPR Panel observations the Commission referred to that:
- 26.1 *“the wholesale contract market isn’t working effectively, limiting the ability of independent generators and retailers to manage price risk and undermining confidence in the market”*; and
- 26.2 *“many independent retailers that have entered the sector face barriers to expanding their market share”*.
27. The independent retailers’ have expressed concern that, since the EPR final report, the wholesale electricity market situation has deteriorated with unprecedented high spot prices over the last 4 years, further limiting the availability of hedging arrangements (including availability at reasonable prices) that would enable independent electricity retailers to compete on a level playing field. For example, Electric Kiwi and Flick Electric have publicly stated they are putting their retail activities on hold. Flick Electric is not presently taking on customers at all.

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Some retailers have told us they are not taking on new customers at the moment, so you won't see them here. If your retailer is not appearing, check the prices before you switch.

28. There are worrying signs emerging about the performance of the electricity retail market, both nationally and regionally. For example, the HHI has started to deteriorate in some regional market,³⁶ and some incumbent suppliers in the regional markets are increasing their market share.
29. While the Electricity Authority has suggested, as evidence of improved competition that, *“At the end of November 2020, small and medium retailers collectively served 15.6 per cent of ICPs in the market, overtaking Mercury who supplies 15.5 per cent. In aggregate, small and medium retailers now supply the third-largest number of consumer connections with only Genesis and Contact supplying more”*³⁷ the situation has deteriorated and the aggregate ‘3rd place’ looks set to be short-lived. Since March 2021 the small and medium sized retailers’ aggregate market share has been decreasing.³⁸

³⁶ In the last month the HHI worsened in Central Hawke’s Bay, Nelson, Marlborough, North Canterbury, Central Canterbury, Ashburton, Queenstown, Otago, Dunedin, Southland and Invercargill. Over the last 6 months, the HHI has worsened in Central Hawke’s Bay, Wairarapa, Malbrough, Buller, Central Canterbury, Ashburton, Queenstown and Dunedin.

³⁷ <https://www.emi.ea.govt.nz>, Market Insights.

³⁸

https://www.emi.ea.govt.nz/Retail/Reports/R_MST_C?DateFrom=20040101&DateTo=20210731&RegionType=NZ&RegionCode=NZ&ParentCompany=Y&Grouping=T5&MarketSegment=All&Percent=Y&rsdr=ALL&si=fr1081.frclD.v3

TAURANGA-BAY OF PLENTY IS A REGIONAL ELECTRICITY RETAIL MARKET

30. The Commission should consider the competitive impacts of the proposed TECT rebate in terms of a regional geographic market rather than a national market. We agree with the Commission that *“A purposive approach to market definition would be one which best isolates the competitive concerns in question, which in this case concerns the competitive effects of the TECT Rebate in the Tauranga region”*.^{39,40}
31. We also agree with the Commission *“A narrower market definition may also be appropriate when applying the SSNIP test. While demand for retail electricity is location specific, the presence of the TECT Rebate could mean that other suppliers cannot easily and without significant cost switch or expand to provide retail electricity services in the Tauranga region in response to a SSNIP by a hypothetical monopolist which is similarly tied to the TECT Rebate as Trustpower is. We therefore consider it prudent to account for the possibility of a local retail electricity market in the Tauranga region. Our analysis in this paper proceeds on that basis”*.⁴¹
32. The regional Tauranga-Bay of Plenty electricity retail market is distinguishable from the retail markets in other parts of the country on a number of measures, including for example:
- 32.1 **Tauranga has high market concentration in absolute and relative terms:**
Tauranga-Bay of Plenty electricity retail market has the highest market concentration in New Zealand (highest residential HHI⁴² and CR1 in New Zealand, 2nd highest CR2 and 3rd highest CR3⁴³). Tauranga, King Country and Waitaki stand-out as particular outliers.
- 32.2 There is substantial variation in market concentration across New Zealand, ranging from an HHI of 1,384 in Rotorua to 3,724 in neighbouring Tauranga which would be difficult to explain if there was a genuinely national market.⁴⁴
- 32.3 Similarly, there is a notable and substantial variation in the number of electricity retailers in each of the regional electricity retail markets, ranging from 10 in

³⁹ Commerce Commission, Commerce Act Division, TECT memorandum, 27 July 2020.

⁴⁰ The ACCC has noted in its guidelines on misuse of market power that market definition is purposive, meaning that it will not be defined in isolation and that definition of a relevant market will be considered in the context of the particular conduct under investigation – see ACCC “Guidelines on misuse of market power” (August 2018) at [2.6], citing ACCC v Flight Centre [2016] HCA 49 at [69].

⁴¹ The ACCC has noted in its guidelines on misuse of market power that market definition is purposive, meaning that it will not be defined in isolation and that definition of a relevant market will be considered in the context of the particular conduct under investigation – see ACCC “Guidelines on misuse of market power” (August 2018) at [2.6], citing ACCC v Flight Centre [2016] HCA 49 at [69].

⁴²

https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NWK_REPORTING_REGION&MarketSegment=Res&si=v|3

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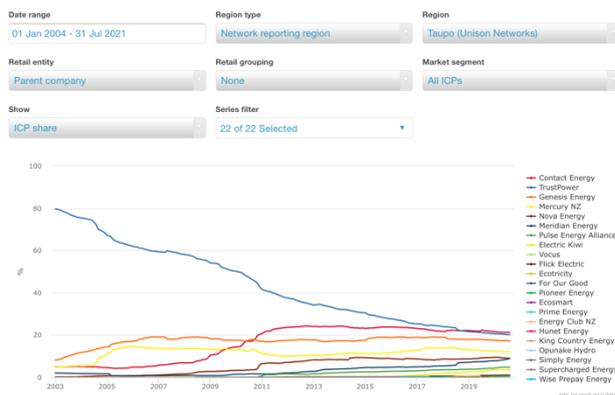
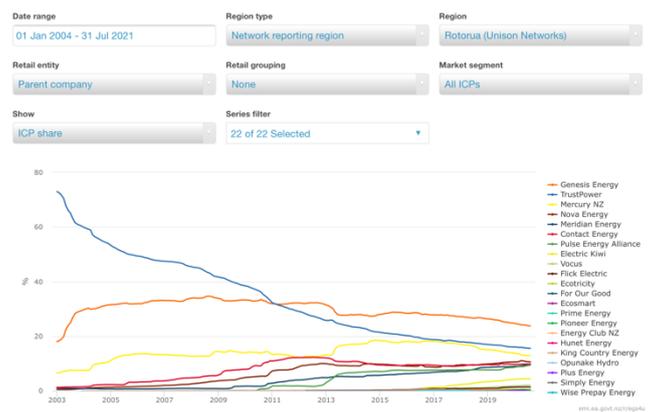
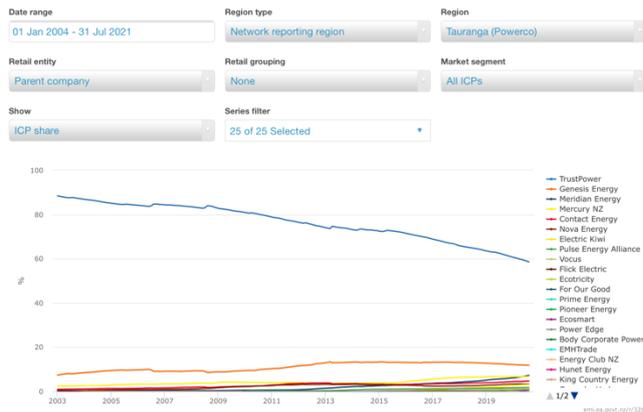
https://www.emi.ea.govt.nz/Retail/Reports/IE31BN?RegionType=NWK_REPORTING_REGION&MarketSegment=Res&Show=CR3&si=v|3

⁴⁴

https://www.emi.ea.govt.nz/Retail/Reports/R_HHI_C?DateFrom=20040101&DateTo=20210731&RegionType=NWK_REPORTING_REGION_DIST&seriesFilter=ALL&rsdr=ALL&si=v|3

Southern Hawke's Bay 10⁴⁵ to 25 in Waitemata.⁴⁶ There are 15 retailers in Tauranga which is relatively low.⁴⁷

32.4 The differences between regional electricity retail markets can be seen by a comparison of Tauranga with neighbouring Rotorua and Taupo. Trustpower is the incumbent in all three regional markets, but while it has retained a high market share in Tauranga (highest in New Zealand), its retail market share in Rotorua and Taupo have both fallen substantially and it has come close to dropping to 3rd place in both.



32.5 The only material difference in the three markets is the TECT rebate arrangements.

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https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&RegionCode=17&si=v|3

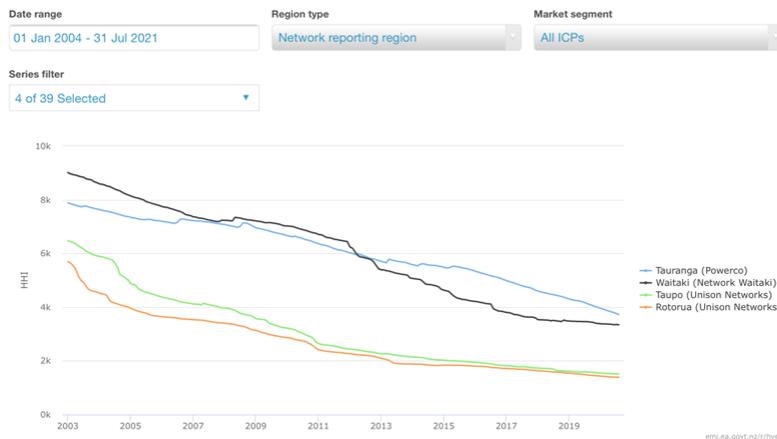
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https://www.emi.ea.govt.nz/Retail/Reports/R_MSS_C?RegionType=NWK_REPORTING_REGION_DIST&RegionCode=10&si=v|3

32.6 While the Commission has suggested “the rate of decline does not appear to be unique to the Tauranga region” and cited Waitaki as a region which “has also had a slow decline in concentration as measured by the region’s HHI” it is clear Tauranga and Waitaki are both outliers and two of the least competitive retail markets in New Zealand. The outcomes are very different if compared to most other regions including Rotorua and Taupo (see graph below).⁴⁸



32.7 **Switching rates are poor in Tauranga in absolute and relative terms:** The Commission has previously observed “switching rates for residential customers in the Tauranga region for 2019 were the second lowest in New Zealand at 3.4%”⁴⁹ The situation is largely unchanged for 2020 with switching rates 3.9% for both Tauranga and Waitaki.⁵⁰ Looking at a longer-term, 5-year, trend Tauranga has a lower level of switching than all other regional markets.⁵¹

32.8 **Tauranga prices are higher than they would be but for the TECT rebate arrangements:** The difference can also be seen by looking at the variations in retail pricing/margins, with the EPR Panel noting “Trustpower’s prices average about \$575 a year more than the cheapest alternative in the Tauranga area”.⁵²

32.9 We repeated the price comparison the EPR undertook using the Powerswitch comparison site for a 3-4 person household in Tauranga. The cheapest option was Powershop with retail charges of \$2,321 which is \$713 cheaper than Trustpower’s best rate of \$3,034. We repeated the exercise for a 1-2 person low-use household and Powershop was again the cheapest at \$1,617 which is \$461 cheaper than Trustpower’s best rate of \$2,078. Trustpower’s pricing was substantially above all the other large electricity retailers, and substantially above Powershop, Mercury, Pulse, Contact, Conricity, Energy Online, ecotricity, Meridian and Genesis.⁵³ This

⁴⁸ https://www.emi.ea.govt.nz/Retail/Reports/R_HHI_C?DateFrom=20040101&DateTo=20210731&RegionType=NWK_REPORTING_REGION_DIST&seriesFilter=10,24,33&rsdr=ALL&si=v3

⁴⁹ Commerce Commission, Commerce Act Division, TECT memorandum, 27 July 2020.

⁵⁰ https://www.emi.ea.govt.nz/Retail/Reports/3ZE3OF?RegionType=NWK_REPORTING_REGION&SwitchType=TR&MarketSegment=Res&si=tlg|consumer-switching,v3

⁵¹ https://www.emi.ea.govt.nz/Retail/Reports/3ZE3OF?DateTo=20191231&RegionType=NWK_REPORTING_REGION&MarketSegment=Res&SwitchType=TR&Timescale=5Y&si=tlg|consumer-switching,v3

⁵² Electricity Price Review, HIKOHIKO TE UIRA, FINAL REPORT, 21 May 2019.

⁵³ The list would likely be longer but Electric Kiwi, Flick Electric, Nova and Vocus (not recognised by the site) are not included.

difference highlights the substantial impact of the TECT rebate on competition and cannot be explained by additional factors such as customer loyalty.

- 32.10 The Commission has previously based its pricing comparison on the post-rebate Trustpower price, which serves to mask the price difference.⁵⁴ This is inappropriate. This masks the extent to which Trustpower is able to capture the benefit of the trust rebates, which in-of-itself is evidence of a substantial lessening of competition. In a fully competitive market consumers would be able to retain the full benefit of the rebate.
- 32.11 Furthermore, under competitively neutral arrangements, where the TECT rebate was set in a way that did not adversely impact on competition, a customers' tariff should not depend on the rebate e.g if the customer was able to receive the rebate regardless of the retailer is selected.
- 32.12 The fact the Commission pricing comparison required the inclusion of the rebate to narrow or eliminate the price difference between Trustpower and other electricity retailers simply highlights the current TECT rebate benefits Trustpower (and, prospectively, Mercury) rather than the actual TECT trust-beneficiaries. The result is a circular arrangement where a consumer only receives a TECT rebate if Trustpower is their retailer resulting in Trustpower being able to price above its customers up to the level of the rebate.
- 32.13 **Impact on horizontal markets:** We are also concerned about the retail telecommunications market impacts. The Commission should carefully consider the potential impacts on horizontal markets, particularly retail telecommunications.
- 32.14 In our view, based on the Trustpower electricity pricing it appears the TECT dividend has been simply absorbed by Trustpower. We consider that there may therefore be a cross-subsidisation occurring between electricity and broadband, in part also funded by the TECT arrangements, which has allowed Trustpower to have a much higher COA in the form of providing appliances and half priced deals for two years which have a distortionary effect and has detrimental impact on competition in both electricity and telecommunications, which we would not want to see continuing under Mercury.
- 32.15 This may reflected in the price comparison below where Trustpower's prices are higher than other retailers, but it is able to offer a higher Total Offer Value potentially off the back of the TECT arrangements but would require greater understanding of Trustpower's cost of serve/ARPU than is publicly available.

⁵⁴ Commerce Commission, Commerce Act Division, TECT memorandum, 27 July 2020.

Measure	Spark	Vodafone	2Degrees	My Republic	Sky	Contact	Skinny	Trustpower	Orcon	Slingshot	Flip
100/20 Unlimited Price	\$90.00	\$83.00	\$89.00	\$85.00	\$89.00	\$69.99	\$78.00	\$99.00	\$89.95	\$84.98	\$65.00
Total Offer Value		\$240.00	\$364.00		\$395.88	\$120.00	\$234.00	\$594.00		\$509.88	
Comments	No offers apart from unplan so savings when you use less	\$10 discounts new customers and \$10 discount for mobile.	Unlimited discount either \$14 or \$16 pm for 12 mths, 100 or 150 joining credit, amazon prime 12 mths	\$100 credit with Gig	Disney channel 12 mths and Sky TV discount	Special Monthly price \$10 OR \$30 discount	3 months free	Power & BB offers: samsung 43"/55" FREE or 12 months half price BB PLUS two months free mob when you add mobile		Frontline campaign	
Measure	Spark	Vodafone	2Degrees	My Republic	Sky	Contact	Skinny	Trustpower	Orcon	Slingshot	Flip
Gig	\$110.00	\$103.00	\$106.00	\$90.00	\$109.00	\$109.99	\$98.00	\$134.00	\$99.95	\$99.95	
Total Offer Value (Gig)		\$240.00	\$438.00	\$100.00	\$515.88	\$360.00	\$294.00	\$804.00		\$599.70	
Comments	No offers apart from unplan so savings when you use less	\$10 discounts new customers and \$10 discount for mobile.	Unlimited discount either \$14 or \$16 pm for 12 mths, 100 or 150 joining credit, amazon prime 12 mths	\$100 credit with Gig	Disney channel 12 mths and Sky TV discount	Special Monthly price \$10 OR \$30 discount	3 months free	Power & BB offers: samsung 43"/55" FREE or 12 months half price BB PLUS two months free mob when you add mobile		Frontline campaign	