

Determination

Contact Energy Limited and Manawa Energy Limited [2025] NZCC 10

The Commission:	Dr John Small Anne Callinan Bryan Chapple
Summary of application:	An application from Contact Energy Limited to acquire up to 100% of the shares in Manawa Energy Limited.
Determination:	Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to the proposed acquisition.
Date of determination:	6 May 2025

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Executive Summary

- X1. The Commerce Commission (Commission) gives clearance for Contact Energy Limited (Contact) to acquire up to 100% of the shares in Manawa Energy Limited (Manawa) (the Proposed Acquisition). The Commission is satisfied that the Proposed Acquisition would not be likely to have the effect of substantially lessening competition in any relevant market in New Zealand.

The merging parties

- X2. Contact and Manawa are both involved in the generation and wholesale supply of physical electricity in New Zealand. Unlike Contact (which is a vertically integrated generator-retailer or 'gentailer'), Manawa is an independent generator and does not directly sell electricity to any retail/residential customers. There is therefore no overlap between the parties in the retail supply of electricity.
- X3. Contact accounts for approximately 20% of all electricity generated in New Zealand, whereas Manawa accounts for approximately 4% of all electricity generated in New Zealand.

The Commission's focus

- X4. The Commission focused its assessment of the possible competitive effects of the Proposed Acquisition in relation to the two main areas of overlap between Contact and Manawa, which are the:¹
- X4.1 **Supply of shaped hedges.** Contact and Manawa both provide financial contracts (known as hedges) to customers. Hedges operate as a form of insurance to reduce the customer's exposure to volatility in the wholesale 'spot price' for electricity. Specifically, both parties supply 'shaped' hedges which generally reduce financial exposure during certain peak time periods such as the morning and the evening when there is high demand. We understand that these products are of particular importance to independent electricity retailers; and
- X4.2 **Wholesale supply of physical electricity.** Contact and Manawa both generate and sell wholesale electricity to electricity retailers and commercial customers (ie, large commercial and industrial end users of electricity).
- X5. We looked at the potential for unilateral and vertical effects in relation to the supply of shaped hedges, and the potential for unilateral and coordinated effects in the wholesale supply of physical electricity.

¹ We note that although Contact submitted there is a single national market for the wholesale supply of electricity, which would include contractual mechanisms such as shaped hedges, we have considered the two separately. Given our clearance decision was made assuming a narrow approach to market definition, it has not been necessary for us to reach a final view on market definition.

Competition with and without the acquisition

- X6. Our competitive assessment requires us to compare the state of competition with the Proposed Acquisition (the factual) with the state of competition without the Proposed Acquisition (the counterfactual) in which we considered that Manawa would continue to operate as an independent generator.
- X7. We acknowledge that there are concerns about whether competition in the electricity industry is working as well as it could, and that the Commission has expressed such concerns in the past. There are a range of initiatives underway to address these concerns, including a government review of the electricity industry and the work of the Energy Competition Task Force (of which the Commission is a member). However, for a clearance application, the law requires us to only look at such broader factors to the extent they affect whether or not the Proposed Acquisition would lead to a substantial lessening of competition. So, we take the current state of competition as given and focus on whether or not the Proposed Acquisition is likely to substantially lessen that level of competition.
- X8. Initially, we deal with the supply of shaped hedges, then turn to the national market for the wholesale supply of physical electricity.

Shaped hedges

- X9. At present, Manawa has some existing contractual commitments to supply shaped hedges, which suggests that in the absence of the Proposed Acquisition Manawa may continue to offer these hedges in the future.² As a result, the Proposed Acquisition would remove Manawa as an ongoing independent supplier of shaped hedges (though there are other generators, such as Meridian Energy, Mercury and Genesis Energy, who could continue to offer these hedges).
- X10. We tested whether the Proposed Acquisition would eliminate future competition between Contact and Manawa in the supply of shaped hedges as the volumes of flexible generation Manawa has available to commit to selling as shaped hedges increases. If this was the case, the Proposed Acquisition could lead to higher prices of shaped hedges (unilateral effects). It may also lead to the foreclosure of downstream rivals (including independent retailers)³ by Contact either not supplying them with shaped hedges or supplying them at higher prices (vertical effects).
- X11. This competition risk is premised on a counterfactual where, absent the merger, Manawa would sell new shaped hedges to market participants (including independent retailers and generators).

² This was the counterfactual against which we assessed the Proposed Acquisition in our Statement of Issues.

³ Independent retailers are typically not vertically integrated as they do not have their own generation assets. They include, for example, Electric Kiwi, Flick Energy, Octopus and 2degrees.

X12. However, based on the evidence we obtained,⁴ we formed the view that if the Proposed Acquisition did not go ahead, Manawa would have limited ability and incentive to supply new shaped hedges.

X12.1 For Manawa to have the *ability* to supply shaped hedges it must have flexible generation assets which can be deployed on short notice to meet demand. While some of Manawa's hydro assets have the requisite flexibility,⁵ its existing contractual commitments would mean that, until 2028, it would have almost no ability to supply any additional volumes of electricity as shaped hedges.

X12.2 However, Manawa has been willing to supply shaped hedges in the past and its ability to offer new shaped hedges will increase as its contractual commitments to Mercury roll off.⁶ The relevant volumes are modest.

X12.3 This is where Manawa's *incentives* are critical, and we are satisfied that in the future without this transaction Manawa would have very little incentive to offer new shaped hedges.⁷

X12.3.1 Manawa's strategy is to transition to an independent power producer focused on delivering its development pipeline. As part of that strategy Manawa says it will be likely to focus on securing long term, generation following power purchase agreements (PPAs) for a substantial portion of its generation, including the volumes that will become available as the contractual commitments to Mercury roll off. The PPAs will provide it with surety of revenue to fund the development pipeline.

X12.3.2 This strategy will result in Manawa being highly geared and as such it will need to reduce any potential earnings volatility. For Manawa, supplying shaped hedges (with their attendant risks) would run counter to this.

X12.3.3 While Manawa says it could "never say never" to selling shaped hedges, any volumes it did sell would be minimal, at a relatively high price and would only be supplied to prospective buyers which meet its credit and risk criteria. Manawa says its counterparty risk assessment has become more important in the wake of the losses it made from the 2024 default of Prime Energy (an independent

⁴ This included Manawa's submissions in response to the Commission's Statement of Issues and its internal business documents including board and strategy papers.

⁵ Manawa currently operates 25 hydro plants and one diesel-fuelled thermal plant, but only a small number of these plants have the electricity storage capabilities (or 'flexibility') required to be able to supply shaped hedges.

⁶ When Manawa was formed in 2022 it entered in a long-term supply agreement with Mercury. The agreement runs until 2031 but the volumes that Manawa is committed to supply to Mercury decrease overtime.

⁷ Part of our assessment of this involved seeking extensive internal documents from Manawa to confirm that its position is consistent with the arguments it put before us.

retailer) which cost Manawa \$17m in lost revenue, contributing to forecast earnings downgrade of \$35m.

X12.3.4 Rather than leverage any remaining flexible generation by selling shaped hedges, Manawa is more likely to sell through other safer channels (eg, ASX baseload hedges or selling on the spot market when the price of electricity is high).

X12.3.5 Manawa's recent decisions, reflected in its internal documents and its recent actions with external parties in the electricity industry are inconsistent with the theory that it will continue to offer new shaped hedges. For example, in response to multiple invitations, Manawa has, for some time, not expressed any interest in supplying further/more shaped hedges.⁸

X13. In summary, while the Proposed Acquisition would remove Manawa as an independent supplier of shaped hedges, the prospect of Manawa continuing to be an independent supplier of shaped hedges if the Proposed Acquisition did not go ahead is, in our assessment, no more than a mere possibility.⁹ Accordingly, as there would be no material difference in the supply of shaped hedges with and without the Proposed Acquisition, we are satisfied that the Proposed Acquisition will not substantially lessen competition in the supply of shaped hedges. More specifically:

X13.1 the Proposed Acquisition is unlikely to create any unilateral effects because it would not be removing a competitor that would otherwise have been providing a constraint in the supply of shaped hedges. Even if, post-acquisition, Contact was to supply *no* additional shaped hedges using the assets acquired from Manawa, this would not substantially lessen competition compared to the counterfactual; and

X13.2 further, because Manawa would not be a supplier of shaped hedges in the counterfactual, there is limited potential for vertical effects. The Proposed Acquisition does not change any ability or incentive Contact may have to foreclose any of its generation, or retail electricity, competitors.

X14. We note that Contact submitted that the Proposed Acquisition would be "pro-competitive" because the addition of Manawa's flexible generation assets would increase Contact's ability to offer hedge contracts to wholesale customers. Given we consider that Manawa would have limited ability and incentive to supply new shaped hedges, it has not been necessary to estimate any potential increase in the volume of hedge contracts that Contact might supply, post-acquisition. We are, however, satisfied that Contact is unlikely to significantly reduce the volume of hedges it

⁸ For example, Manawa has been approached by at least two potential customers to supply shaped hedges and has refused requests for these products. Some of these responses pre-date the negotiations around the Proposed Acquisition.

⁹ Given that there is no more than a mere possibility of Manawa supplying shaped hedges in the counterfactual, this falls below the "real chance" threshold which the Commission is required to use when assessing relevant counterfactual scenarios.

supplies to customers as a result of the Proposed Acquisition. This reinforces our conclusion that the acquisition is unlikely to substantially lessen competition in the supply of shaped hedges.

- X15. In making our assessment we have also been mindful of the wider factors impacting the electricity industry which make the future supply of shaped hedges increasingly important. The transition in the electricity industry to more intermittent renewable energy sources (such as from solar or wind) is likely to increase spot price volatility and, with that, increase the demand for risk management tools such as shaped hedges and battery capacity. The electricity industry is currently grappling with how best to meet this and other challenges.¹⁰ However, any regulatory changes made will apply equally in both the factual and counterfactual.¹¹ Our analysis has focussed on what would change as a result of the Proposed Acquisition.

Wholesale supply of physical electricity

- X16. The second main area of our investigation related to the wholesale supply of physical electricity. By acquiring Manawa's generation assets, Contact would increase the total amount of electricity it could supply.¹² We would be concerned if this increased Contact's ability and incentive to raise the average wholesale spot price for electricity itself (unilateral effects), or if it increased the potential for Contact and other generators to coordinate their behaviour in the wholesale supply of physical electricity in order to raise average prices (coordinated effects).

Wholesale spot price – net pivotality analysis

- X17. As part of our assessment of the potential for unilateral effects in the wholesale supply of physical electricity we used 'net pivotality analysis' to assess whether Contact would have the ability and incentive to raise the spot price for electricity by itself. A 'net pivotal' generator has ability and incentive to increase the price at which it offers wholesale electricity, raising the spot price as a result.¹³
- X18. In the Commission's Statement of Issues (SoI), we set out calculations of the proportion of time when, following the acquisition of Manawa, Contact might have

¹⁰ See the Electricity Authority's work in reviewing the risk management options available to electricity retailers (<https://www.ea.govt.nz/projects/all/risk-management-review>) and the work of the Energy Competition Task Force to try enable new generators and independent retailers to enter and better compete in the market, and to provide more options for consumers (<https://www.ea.govt.nz/projects/all/energy-competition-task-force/>).

¹¹ Such as standardised super-peak hedge trading (<https://www.ea.govt.nz/news/general-news/energy-competition-task-force-announces-new-standardised-super-peak-hedge-contract-trading-begins-in-january/>) and the potential for the introduction of level playing field measures, which would prevent gentailers from giving their retail arms preferential treatment over independent retailers for hedge contracts (<https://www.ea.govt.nz/projects/all/energy-competition-task-force/consultation/level-playing-field-measures/>).

¹² According to Contact's application at Figure 9, in FY24, Contact generated approximately 20.5% of New Zealand's wholesale electricity while Manawa generated approximately 4.3%.

¹³ A generator is 'net pivotal' when its output is required to meet demand for wholesale electricity and its contractual position is such that it would benefit from higher spot prices.

the ability and incentive to raise the spot price of electricity.¹⁴ Additional evidence we have since received, and discussions with the Electricity Authority, have led us to refine our calculations.

- X19. Based on this refinement, Contact's net pivotality would only be material after the Proposed Acquisition under the assumption that none of the electricity generated by Manawa's assets would be contracted out (ie, it would all be exposed to the spot price). We consider this scenario to be unlikely, given Contact's historical strategy to contract out most of its electricity. The most likely scenario is that Contact will seek to contract out a similar proportion of Manawa's generation as it currently seeks to do for its own generation capacity. Under this assumption, acquiring Manawa's generation assets would only have a negligible impact on Contact's current level of net pivotality. We consider this negligible change is unlikely to increase Contact's ability and incentive to impact the wholesale spot price for electricity by itself.¹⁵

Wholesale spot price – temporal output optimisation analysis

- X20. We also assessed whether after the Proposed Acquisition Contact would have a greater ability and incentive to increase average spot prices through 'temporal output optimisation'. Temporal output optimisation occurs when a generator withholds some electricity from the spot market at a time that is likely to have a meaningful upward impact on prices and increases supply to the market at a time when it would likely have a smaller downward impact on prices.
- X21. Large generators like Contact appear to have the ability to withhold some of their output to optimise their overall revenues, and the acquisition of Manawa would increase the proportion of flexible generation assets available to Contact to do this. However, our analysis indicates that, after the Proposed Acquisition, Contact's payoff from a temporal output optimisation strategy is unlikely to be material.¹⁶ Therefore, the Proposed Acquisition is unlikely to increase Contact's ability and incentive to impact the wholesale spot price for electricity through temporal output optimisation.

Potential for coordination in the wholesale supply of physical electricity

- X22. Finally, we assessed whether the Proposed Acquisition could increase the potential for generators to coordinate their behaviour in the market for the wholesale supply of physical electricity. This is because, currently, there are market features such as a concentration of assets and transparency in the spot price that could make the wholesale supply of physical electricity vulnerable to some form of coordination.

¹⁴ Based on the information provided by Contact and the Electricity Authority, we estimated that the proportion of time could increase from a potentially negligible amount of time (c. 0.1% of all trading periods) to a potentially material amount of time (as much as 7% of all trading periods) as a result of the Proposed Acquisition.

¹⁵ If Contact wanted to contract out less of its generation in order to have a greater degree of pivotality, it could do so now. It chooses not to, and there is no reason to assume that will change following the acquisition of Manawa.

¹⁶ Our analysis indicated that the payoff would only be materially positive under assumptions that appear to be implausible, and that the payoff could potentially be negative (ie, loss-making).

- X23. Offsetting these features are factors which make coordination less likely or more difficult. These include:
- X23.1 volatility in the spot price because of the uncertainty and volatility of electricity supply; and
- X23.2 the fact that generators will often differ in whether or not they have an excess or shortage of uncontracted, flexible generation available and that it is difficult for generators to know rivals' positions at any given point in time.
- X24. As a result of these offsetting factors, the evidence on the wholesale market's vulnerability to coordination is mixed.
- X25. In addition to the vulnerability of the market to coordination, we also need to consider whether the Proposed Acquisition would increase the likelihood of coordination. This could occur if the transaction gave Contact significant additional wholesale market generation flexibility and/or if that geographic spread of assets meant greater control over prices and volumes at specific nodes on the network. Our assessment, based on the evidence we have received, is that Contact will not have materially greater flexibility, or be able to control prices and volumes at a materially greater number of network nodes.
- X26. Further, any mechanism for coordination appears to be highly complex as all generators participating in a coordinated arrangement would need to agree on a large number of parameters across multiple trading periods each day.
- X27. Accordingly, we are satisfied that the Proposed Acquisition will not make coordination more likely, complete or sustainable in the wholesale supply of physical electricity.

The Proposed Acquisition

1. On 30 September 2024, the Commerce Commission registered a clearance application (the Application) from Contact Energy Limited (Contact or the Applicant) seeking clearance to acquire up to 100% of the shares in Manawa Energy Limited (Manawa) (the Proposed Acquisition).¹⁷ We refer to Contact and Manawa together as ‘the Parties’.

Our decision

2. The Commission gives clearance to the Proposed Acquisition as we are satisfied that the merger would not be likely to have the effect of substantially lessening competition in a market in New Zealand.

Our framework

3. Our approach to analysing the competition effects of mergers is based on the principles set out in our Mergers and Acquisitions Guidelines (guidelines).¹⁸

The substantial lessening of competition test

4. As required by the Commerce Act 1986 (the Act), we assess mergers using the substantial lessening of competition test.
5. We determine whether a merger is likely to substantially lessen competition in a market by comparing the likely state of competition if the merger proceeds (the scenario with the merger, often referred to as the factual), with the likely state of competition if the merger does not proceed (the scenario without the merger, often referred to as the counterfactual).¹⁹
6. We make a pragmatic and commercial assessment of what is likely to occur in the future, with and without the merger, based on the information we obtain through our investigation and taking into account factors such as market growth, technological changes and commercial incentives.²⁰
7. We define markets in the way that we consider best isolates the key competition issues that arise from a merger. In many cases this may not require us to precisely define the boundaries of a market. A relevant market is ultimately determined, in the words of the Act, as a matter of fact and commercial common sense.²¹
8. The Act is premised on competition (that is, independent rivalry between buyers and sellers) producing the best outcomes for consumers in the long run. A lessening of competition is a loss of independent rivalry or an increase in market power. Market power can be held by (and exercised at the discretion of) both suppliers and buyers of goods and services. Where suppliers have market power, they have the ability to

¹⁷ A public version of the Application is available on our website at: <https://comcom.govt.nz/case-register>.

¹⁸ Commerce Commission, *Mergers and Acquisitions Guidelines* (May 2022).

¹⁹ *Commerce Commission v Woolworths Limited* (2008) 12 TCLR 194 (CA) at [63].

²⁰ Mergers and Acquisitions Guidelines above n18 at [2.35].

²¹ Section 3(1A). See also *Brambles v Commerce Commission* (2003) 10 TCLR 868 at [81].

profitably raise price above the price that would exist in a competitive market (the 'competitive price'), or reduce non-price factors such as quality or service below competitive levels.²² Our assessment takes pre-existing market conditions (including any market power) as given and enquires into whether the Proposed Acquisition is likely to substantially lessen competition from that starting point.

When a lessening of competition is substantial

9. Only a lessening of competition that is substantial is prohibited. A lessening of competition will be substantial if it is real, of substance, or more than nominal.²³ Some courts have used the word 'material' to describe a lessening of competition that is substantial.²⁴
10. Consequently, there is no bright line that separates a lessening of competition that is substantial from one which is not. What is substantial is a matter of judgement and depends on the facts of each case.²⁵ It is the degree to which competition may be (or has been) lessened which is critical. A lessening of competition does not need to be felt across an entire market, or relate to all dimensions of competition, for it to be substantial. A lessening of competition that adversely affects a significant section of a market may, depending on the circumstances, be a substantial lessening of competition in a market.²⁶ One indicator of whether competition will be substantially lessened is by asking whether suppliers or customers in the relevant market(s) are likely to be affected in a material way.
11. In markets that are already concentrated, a smaller change in competition with a merger may amount to a substantial lessening of competition than would be the case in markets that are less concentrated to begin with.²⁷ While it will always depend on the circumstances of the particular case, in a concentrated market a merger that results in even a relatively small reduction in rivalry might amount to a substantial lessening of competition. This may be because there are few available competitive options and little dynamism left in the market, for example. In such a market, a merger that permanently removed some of the few remaining sources of independent rivalry could well substantially lessen competition.
12. While we commonly assess competition effects of a merger over a two year timeframe, the relevant timeframe for assessment depends on the circumstances in any given case. A longer timeframe will be appropriate if, on the evidence, competition effects are likely to arise in later years.²⁸ Indeed, some mergers that

²² The Act s 3(1A). See also *Brambles v Commerce Commission* above n21 at [81]. A reduction in competition among buyers can harm sellers by allowing buyers to use their enhanced market power to extract lower input prices or purchase volumes from sellers, and to impose non-price terms to a buyer's advantage.

²³ *Woolworths & Ors v Commerce Commission* (2008) 8 NZBLC 102,128 (HC) at [127].

²⁴ *Woolworths & Ors v Commerce Commission* (HC) above n23 at [129].

²⁵ *Mergers and Acquisitions Guidelines* above n18 at [2.23].

²⁶ *Dandy Power Equipment Pty Ltd v Mercury Marine Pty Ltd* (1982) 64 FLR 238; ATPR 40-315, 43,888.

²⁷ M Sumpter, *New Zealand Competition Law and Policy* (CCH, Auckland, 2010) at 186-187, discussing the decision in *Air New Zealand v Commerce Commission* (2004) 11 TCLR 347 (HC).

²⁸ *Woolworths & Ors v Commerce Commission* (HC) above n23 at [131].

may produce competitive benefits in the immediate or short term, may give rise to a substantial lessening of competition over a more extended timeframe.

When a substantial lessening of competition is likely

13. A substantial lessening of competition is ‘likely’ if there is a real and substantial risk, or a real chance, that it will occur. This requires that a substantial lessening of competition is more than a possibility, but does not mean that the effect needs to be more likely than not to occur.²⁹

The clearance test

14. Applying the clearance test always involves assessing matters that are uncertain. Comparisons of what may happen with and without a merger (the factual and counterfactual) involve making predictions about the future and are therefore “necessarily incapable of accurate assessment”.³⁰
15. In *Commerce Commission v Woolworths*, the Court of Appeal found:³¹

[W]hat constitutes a substantial lessening of competition must in the end be a matter of judgment, although we accept, of course, that such a judgment must be informed by as much practical evidence as possible.
16. A decision to give or decline to give clearance is necessarily made on the basis of all of the evidence. However, not all evidence of past or present conduct or events provides a reliable predictor of future likely impact.³² In addition, there may be insufficient evidence to justify a conclusion that there is no likelihood of a substantial lessening of competition in any particular case.³³ We will also sometimes have before us conflicting evidence from different market participants and must determine what weight to give the evidence of each party.³⁴
17. The Commission must make a reasonable enquiry into a clearance application.³⁵ However, the burden of proof ultimately lies with an applicant (or the parties to a merger) to satisfy us on the balance of probabilities that a merger is not likely to substantially lessen competition.³⁶
18. We must clear a merger if we are satisfied that the merger would not be likely to substantially lessen competition in any market.³⁷ If we are not satisfied – including if we are left in doubt – we must decline to clear the merger.³⁸

²⁹ *Woolworths & Ors v Commerce Commission* (HC) above n23 at [111]

³⁰ *Commerce Commission v Woolworths* (CA) above n19 at [75].

³¹ *Commerce Commission v Woolworths* (CA) above n19 at [191].

³² See for example, *Commerce Commission v Woolworths* (CA) above n19 at [192].

³³ See for example, *Commerce Commission v Woolworths* (CA) above n19 at [197].

³⁴ *Brambles New Zealand Ltd v Commerce Commission* above n21 at [64].

³⁵ *Commerce Commission v Woolworths* (CA) above n19 at [101].

³⁶ *Commerce Commission v Southern Cross Medical Care Society* (2001) 10 TCLR 269 (CA) at [7] and *Commerce Commission v Woolworths* (CA) above n19 at [97].

³⁷ Commerce Act 1986, s 66(3)(a).

³⁸ *Commerce Commission v Woolworths Limited* (CA) above n19 at [98].

The Parties

19. Contact and Manawa are both involved in the generation and wholesale supply of electricity in New Zealand. Unlike Contact (which is a vertically integrated generator-retailer or 'gentailer'), Manawa is an independent generator and does not directly sell electricity to any retail/residential customers. There is no relevant overlap between the parties in the retail supply of electricity.
20. Contact generates electricity from two hydro dams in the South Island as well as from geothermal and thermal power stations located across the North Island.³⁹ Contact then supplies some electricity to its retail arm and also wholesales electricity to rival retailers as well as to large commercial and industrial end users.
21. Manawa generates electricity from 25 hydro schemes located across New Zealand and one thermal power station in Northland.⁴⁰ Manawa was formerly known as Trustpower, having been rebranded following the sale of Trustpower's retail business to Mercury NZ Limited (Mercury) in 2022.⁴¹ As part of this sale, Manawa entered into a long-term supply agreement with Mercury (the Mercury Hedge).⁴²
22. Contact accounts for approximately 20% of all electricity generated in New Zealand, whereas Manawa accounts for approximately 4% of all electricity generated in New Zealand.
23. Under the Proposed Acquisition, Contact will acquire 100% of the shares in Manawa.

Industry background

24. The Application relates to the supply of wholesale electricity in New Zealand and all participants in this industry must comply with the obligations set out in the Electricity Industry Participation Code 2010 (the Code), which is administered by the Electricity Authority (EA).⁴³ This section summarises some key background on the wholesale trade in electricity including:
 - 24.1. the main suppliers and customers;
 - 24.2. how the wholesale price for electricity is determined;
 - 24.3. how the industry manages volatility in the wholesale price;
 - 24.4. expected changes to how electricity will be produced; and
 - 24.5. recent regulatory reviews.

³⁹ The Application at [2.8].

⁴⁰ The Application at [3.7].

⁴¹ *Mercury NZ Limited and Trustpower Limited's retail business*, [2021] NZCC 16.

⁴² The Mercury Hedge was initially for 2,000GWh per annum, however since 1 October 2024 Manawa's volumes committed to the Mercury Hedge have begun to roll off. Manawa's commitments under the Mercury Hedge conclude on 30 September 2031. The Application at [13.2].

⁴³ The Application at [8.7] and <https://www.ea.govt.nz/code-and-compliance/code/>.

Wholesale electricity suppliers and customers

25. The two main types of market participants in the wholesale electricity industry are the generators that produce and supply electricity and the customers that source and use electricity (either for retailing purposes or as end-users). Given the current structure of the industry, many market participants are both suppliers and customers.
26. Currently, four entities generate approximately 90% of the electricity produced in New Zealand: Contact; Meridian Energy Limited (Meridian); Mercury; and Genesis Energy Limited (Genesis).⁴⁴ As these are the four largest entities that generate and retail electricity they are commonly referred to as the 'big four' gentailers.
27. The remaining 10% of electricity produced in New Zealand is generated by a number of smaller entities, including Manawa. Most of these entities are similar to Manawa in that they do not have a retail arm and so these tend to be referred to as independent generators.⁴⁵ Independent generators include Lodestone Energy Limited, Ngawha Generation Limited and Eastland Generation Limited.⁴⁶
28. In addition to Contact and the other gentailers, there are a number of other retailers of electricity. However, as most of these retailers are not vertically integrated, they are commonly referred to as independent retailers. Independent retailers include Electric Kiwi Limited, Two Degrees Mobile Limited, Octopus Energy NZ Limited and Flick Electric Limited.

How the wholesale price for electricity is determined

29. When buying electricity from generators, independent retailers and large commercial and industrial (C&I) electricity end users pay the 'spot price' for the physical electricity they require.⁴⁷
 - 29.1. The spot price of electricity differs depending on the combination of supply, demand and distance from the source of the electricity generated.⁴⁸
 - 29.2. The spot price for each half hour is set by the price offered by the last (most expensive) power station whose power is required to fulfil the demand.⁴⁹ All generators whose power is required to fulfil wholesale demand in the

⁴⁴ See The Application at Figure 9, based on EA and other public data.

⁴⁵ Some of these entities are technically gentailers as they have both generation and retail arms (such as Nova Energy Limited and Pulse Energy (through Buller Electricity Limited)).

⁴⁶ See The Application at [25.4].

⁴⁷ The Application at [8.1]-[8.3] and <https://www.ea.govt.nz/industry/wholesale/>.

⁴⁸ Generators submit 'offers' to supply electricity in half hour increments at a particular price, and retailers and other customers submit 'bids' for electricity to be supplied. The price is calculated in half hour increments based on these bids, offers and a forecast of expected demand.
<https://www.ea.govt.nz/industry/wholesale/spot-market/>.

⁴⁹ The Application at [8.3].

particular half hour slot are then paid that spot price for the electricity they produce.⁵⁰

- 29.3. The spot price can be volatile depending on market conditions. The EA notes that the volatility in the spot price is because prices are determined by supply and demand and can therefore vary depending on factors like cold weather and the amount of wholesale electricity available, which in turn can vary based on how dry the lakes are at a generator's hydropower station or the amount of wind at a generator's windfarm.⁵¹

How the industry manages volatility in the wholesale price

30. To manage volatility in the spot price, wholesale market participants have the option of entering into financial contracts, or hedge contracts. Hedge contracts involve the purchase of insurance against spot price volatility rather than the purchase of physical electricity. Purchasers of hedges receive insurance against high spot prices (and sellers receive insurance against low spot prices). By selling hedges, wholesalers can gain certainty over the stream of revenue from the electricity they expect to generate.
31. The type of hedge contracts supplied can vary by the volume covered by the hedge, the trading periods and/or times that the hedge relates to and/or the channel through which the hedge is supplied. We briefly discuss the different types below.
32. The electricity volumes covered by a hedge can be variable or fixed.
- 32.1. Variable volume hedges are those where the volume of electricity covered varies but where the price of the electricity can be fixed or variable. For example, a generator might sell a variable volume contract (also known as power purchase agreements, or PPAs) linked to all or some proportion of the output from an individual plant.
- 32.2. Fixed volume hedges are those where the volume of electricity covered by the hedge contract is fixed for the period of the contract. The price of the electricity under the contract can be fixed or variable.
33. The electricity trading periods covered by a hedge can also vary. This is most relevant for fixed volume hedges, which can be 'shaped' to a particular period of a day or a week (Shaped Hedges).
- 33.1. Shaped Hedges are generally those that cover specific time periods such as the morning and the evening when electricity demand tends to be at its highest (intra-day).⁵² In addition to intra-day periods, Shaped Hedges can also cover intra-week periods as well as inter-seasonal periods. As such, any

⁵⁰ The Application at [8.3].

⁵¹ For example, see Electricity Authority – 'Past and future spot price volatility' (8 April 2024).

⁵² For example, 'peak' Shaped Hedges generally cover volumes for trading periods between 7am and 9pm and 'super-peak' Shaped Hedges generally cover trading periods between 7am and 10.30am, and between 5pm and 9pm.

product which covers a level of volume that changes in specified time periods can be classified as a Shaped Hedge.⁵³ Shaped Hedges are typically provided by generators with flexible types of generation (such as flexible hydro and thermal) as the amount of generation these assets produce can be increased or decreased by the generator. This allows generators to offer products that have a degree of 'shape' to them.

- 33.2. Alternatively, there are hedges that cover all periods during the duration of the hedge, commonly referred to as baseload hedges. Baseload hedges are typically provided by generators with assets that are relatively consistent in terms of the amount of electricity that they produce.
34. The channel through which a hedge is supplied (or traded) can vary and this can also impact on what is covered by a particular hedge contract. There are two main channels for the trading of hedges.⁵⁴
 - 34.1. Australian Stock Exchange hedges (ASX Hedges). Most ASX Hedges are standardised baseload hedge contracts. Under the current trading regulations, all gentailers are required to offer a certain minimum amount of baseload hedges on the ASX.⁵⁵ The trading of ASX Hedges is important to the industry because of the guaranteed minimum supply requirements and because it helps market participants assess the future demand and price of wholesale electricity. However, as these hedges are standardised and cannot be tailored to a customer's particular requirements, customers generally also source hedges from other channels.⁵⁶
 - 34.2. Over the counter hedges (OTC Hedges). OTC Hedges are traded via bilateral negotiations between buyers and sellers and so, unlike ASX Hedges, can be negotiated to each party's particular requirements.
35. Of the different types of hedges, numerous industry participants advised that hedges that are 'shaped' to provide cover for the morning and evening trading periods are

⁵³ For example, a Shaped Hedge could cover X volumes per day during the weekend but X+Y volumes per day during the working week.

⁵⁴ In addition, the EA recently introduced a standardised super-peak hedge contract, enabling customers to manage spot price risk during the periods when demand is likely highest (mornings and evenings), and intermittent generation (eg, solar farms) may be low. Market participants are able to voluntarily trade this product through an appointed broker. Customers can also purchase financial transmission rights. Electricity can be transmitted between different parts of the country (through different nodes) but the longer the distance of transmission, the larger the electricity losses incurred. As a result, there are differences in spot prices across different nodes. Financial transmission rights protect against these geographic differences in spot prices.

⁵⁵ The Code at Part 13, 13.236L.

⁵⁶ For example, see Commerce Commission interview with [] (25 October 2024), Commerce Commission interview with [] (31 October 2024) and Commerce Commission interview with [] (1 November 2024).

an important product for independent retailers and generators and that Contact and Manawa are able to supply these products.⁵⁷

35.1. Various independent retailers advised the Commission that they require access to Shaped Hedges in order to better manage risks around spot price volatility during periods of high demand. These products allow them to be more competitive on price and to therefore compete more successfully for customers.⁵⁸

35.2. The demand for risk management products by retailers, and the impact these products have on how the different retailers compete, was also noted in the EA's review of risk management options for electricity retailers.⁵⁹

36. In addition to a specific hedge contract, some wholesale customers can use demand response as an alternative to hedging. If a wholesale customer is able to easily reduce their electricity consumption when the spot price is high, such as in the 'super peak' periods of the day, then there is less need for them to use a hedge contract as a risk management tool to manage spot price volatility.⁶⁰ However, the EA noted that demand responses are relatively new to the industry⁶¹ and so the ability and extent to which different wholesale customers can use demand response appears to vary.

Industry transitioning to intermittent renewable energy

37. The electricity industry is experiencing significant changes, primarily driven by the transition to intermittent renewable energy sources such as solar and wind and the retirement of carbon producing assets such as thermal generation.⁶² Part of this transition involves new generation assets being built, and there is currently a large

⁵⁷ For example, see Commerce Commission interview with [] (25 October 2024), Commerce Commission interview with [] (30 October 2024), Commerce Commission interview with [] (31 October 2024), Commerce Commission interview with [] (31 October 2024) and Commerce Commission interview with [] (7 November 2024).

⁵⁸ For example, see Electric Kiwi – Submission on Statement of Preliminary Issues (7 November 2024), Commerce Commission interview with [] (31 October 2024), Commerce Commission interview with [] (31 October 2024) and 2degrees – Submission on Contact and Manawa Statement of Issues (5 March 2025).

⁵⁹ Electricity Authority – 'Reviewing risk management options for electricity retailers – issues paper' (7 November 2024) and Electricity Authority – 'Reviewing risk management options for electricity retailers – update paper following submissions' (27 February 2025), p. 4.

⁶⁰ For example, see Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [8.88]-[8.94], Meridian – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [17], Commerce Commission interview with [] (1 November 2024) and Commerce Commission interview with [] (30 October 2024).

⁶¹ Electricity Authority – 'Reviewing risk management options for electricity retailers – issues paper' (7 November 2024), p. 2. and Electricity Authority – 'Reviewing risk management options for electricity retailers – update paper following submissions' (27 February 2025), p. 10.

⁶² Electricity Authority – 'Reviewing risk management options for electricity retailers – issues paper' (7 November 2024), p. 3.

pipeline of new generation projects from both existing generators and new entrants.⁶³

38. While the shift in generation types will contribute to a more sustainable energy mix, the variability of the volumes of electricity that will be generated will necessitate a change in how the industry operates.
 - 38.1. The transition to renewables is likely to increase volatility in the wholesale spot price for electricity as the intermittent nature of this type of generation will likely lead to greater variability in supply. This is because intermittent sources of energy are reliant on suitable weather conditions (ie, solar generation requires the sun to be shining and wind generation requires it to be windy).
 - 38.2. At the same time as supply is becoming more variable, demand for electricity is forecast to increase due to increased demand from commercial and industrial sectors, the rise in electric vehicles, the switch from fossil fuel usage to electricity and a rise in residential demand for heating.⁶⁴
39. Further, with the industry in transition, there is the potential for new products and new technologies to be introduced to the industry.⁶⁵
 - 39.1. For example, last year Genesis introduced its Huntly Firming Option which enables industry participants to call on some flexible generation capacity at its Huntly power plant. This option will serve as a risk management tool similar to a hedge contract.⁶⁶
 - 39.2. Battery capacity is being introduced in New Zealand, which may enable electricity from existing generation assets to be stored during off peak periods and then deployed during super-peak periods.⁶⁷ If introduced at scale, battery technology may impact on the existing demand and supply of hedge products.

⁶³ We note that, while the Proposed Acquisition would remove Manawa from the pool of potential investors in new generation, Manawa does not appear to be an important player in new generation development and, as such, removing it is unlikely to affect rivals' incentives to invest. Accordingly, we do not consider that the Proposed Acquisition is likely to cause a substantial lessening of competition in relation to new investment in electricity generation in New Zealand.

⁶⁴ The results of the Ministry of Business, Innovation and Employment's Electricity Demand and Generation Scenarios show that electricity demand is expected to rise in all forecast possible future demand scenarios. See Ministry of Business, Innovation and Employment – 'Electricity Demand and Generation Scenarios: Results summary' (July 2024), at p 1.

⁶⁵ For example, see Electricity Authority – 'Reviewing risk management options for electricity retailers – issues paper' (7 November 2024), p. 2, Commerce Commission interview with [] (31 October 2024), Commerce Commission interview with [] (7 November 2024) and Commerce Commission interview with [] (31 October 2024).

⁶⁶ See Genesis Energy – Huntly Firming Options (May 2024) (https://media.genesisenergy.co.nz/genesis/investor/2024/genesis_huntly_firming_options.pdf).

⁶⁷ See Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [8.81]; and Meridian – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [17(e)].

40. However, at the time of this determination, it is unclear the extent to which new products and new technologies will impact on the options available to wholesale electricity customers.

Recent regulatory reviews and the Energy Competition Task Force

41. With the industry transitioning to intermittent renewable energy, supplying electricity is likely to become riskier for both generators and retailers and so the demand for risk management products to manage variability in the industry is also expected to grow. Given this, risk management products have been the subject of recent industry reviews.⁶⁸ In addition, the Energy Competition Task Force was established last year to investigate ways to improve the performance of the electricity industry for the long-term benefit of New Zealand consumers.⁶⁹
- 41.1. The Energy Competition Task Force's work programmes focus on enabling new generators and independent retailers to enter and better compete in the industry, and providing more options for end-users of electricity.
- 41.2. The Energy Competition Task Force's outcomes are aimed at encouraging more and faster investment in new electricity generation, boosting competition, enabling participants to better manage their own electricity use and costs and put downward pressure on prices.
42. At the time of this determination, the Energy Competition Task Force's work programmes are ongoing and the nature, extent and impact of any future regulatory changes stemming from its work are currently uncertain.

Market definition

43. We define markets in the way that we consider best isolates the key competition issues that arise from an acquisition. The Commission focused its assessment of the possible competitive effects of the Proposed Acquisition in relation to the two main areas of overlap between Contact and Manawa, which are:
- 43.1. the wholesale supply of physical electricity: Contact and Manawa both generate and wholesale electricity to electricity retailers and commercial customers (ie, large commercial and industrial end users of electricity); and
- 43.2. the supply of Shaped Hedges: Contact and Manawa both supply Shaped Hedges which generally reduce financial exposure during certain peak time periods such as the morning and the evening when there is high demand. We understand that these products are of particular importance to independent electricity retailers.

⁶⁸ For example, see Market Development Advisory Group – 'Price discovery in a renewables-based electricity system' (11 December 2023) and Electricity Authority – 'Reviewing risk management options for electricity retailers – issues paper' (7 November 2024).

⁶⁹ <https://www.ea.govt.nz/projects/all/energy-competition-task-force/>.

44. Contact submitted there is a single national market for the wholesale supply of electricity, which would include contractual mechanisms such as Shaped Hedges, but we have considered the two separately. Given our clearance decision was made assuming a narrow approach to market definition, it has not been necessary for us to reach a final view on market definition.
45. Our reasoning for our approach to market definition in this case is outlined below and sets out:
 - 45.1. our approach to defining markets;
 - 45.2. what the Applicant submitted is the appropriate approach to assessing wholesale electricity products;
 - 45.3. whether hedge contracts are substitutes for the wholesale supply of physical electricity;
 - 45.4. whether the different types of hedges are substitutes for one another;
 - 45.5. the geographic dimension for assessing wholesale electricity products; and
 - 45.6. the customer dimension for assessing wholesale electricity products.

Our approach to market definition

46. Market definition is a tool that helps identify and assess the competitive constraints a merged firm is likely to face. Determining the relevant market requires us to judge whether, for example, two products are sufficiently close substitutes as a matter of fact and commercial common sense to fall within the same market.⁷⁰
47. We use the hypothetical monopolist concept to help identify a relevant market. We ask if a hypothetical monopolist of the product in question could profitably impose a small but significant non-transitory increase in price (a 'SSNIP'). A hypothetical monopolist will be unable to profitably impose a SSNIP on the product in question if there is sufficient demand-side substitution to alternative products and/or sufficient supply-side substitution from alternative products.
 - 47.1. Demand-side substitution is the extent to which buyers of the product in question would switch to alternative products in response to a SSNIP.
 - 47.2. Supply-side substitution is the extent to which rival firms would easily, profitably and quickly (generally within one year) switch production to the product in question in response to a SSNIP.
48. If the hypothetical monopolist could not profitably impose a SSNIP on the product because of demand or supply side substitution, the boundaries of the market are expanded to include the next closest substitute. The process is repeated, and the

⁷⁰ *Mergers and Acquisitions Guidelines* above n18 at [3.7]-[3.8].

group of products included in the market expanded, until the hypothetical monopolist supplier could profitably impose a SSNIP.

49. The purpose of defining a market is to help identify the constraints on the merged entity in areas where competitive harm may occur. The ‘product in question’ at which we start the hypothetical monopolist test is normally the product(s) where there is competitive overlap between the parties.
50. We define markets in the way that we consider best isolates the key competition issues that arise from the Proposed Acquisition. In many cases this may not require us to precisely define the boundaries of a market. What matters is that we consider all relevant competitive constraints, and the extent of those constraints. For that reason, we also consider products which fall outside the market, but which still impose some degree of competitive constraint on the merged entity.⁷¹

The Applicant’s submissions

51. Contact submitted there is a single national market for the wholesale supply of electricity, which it considers is consistent with past approaches by the Commission.⁷² Contact’s view is that the relevant market includes the supply of physical electricity and all types of contractual mechanisms.⁷³
52. In considering the relevant product dimension for the wholesale supply of electricity, Contact submitted that wholesale customers manage their electricity requirements by substituting between unhedged electricity (being electricity supplied and/or acquired from spot trading) and hedged electricity (being electricity supplied and/or acquired via the trading of risk management products).⁷⁴ Given this substitution, Contact considered there is no need to separate them for market definition purposes because market participants choose from a range of risk management products and these are not limited to any particular category (such as a particular type of hedge).⁷⁵
53. Nevertheless, Contact submitted that no competition issues are likely to arise if the Commission was to adopt what it considers would be a hypothetical narrow product market (such as one that defined a product market for a particular type of hedge) and therefore no competition issues would arise if Contact’s proposed market definition for the national market for the wholesale supply of electricity was adopted.⁷⁶

⁷¹ Section 3(1A) of the Commerce Act 1986. See also *Brambles v Commerce Commission* (2003) above n21 at [81] and *Mergers and Acquisitions Guidelines* above n18 at [3.10]-[3.12].

⁷² The Application at [16.1]-[16.2]. The previous approaches are set out in *Contact Energy Limited and Natural Gas Corporation Holdings Limited*, 2003 (Decision No. 491) and *Mercury NZ Limited and Trustpower Limited’s retail business*, [2021] NZCC 16.

⁷³ The Application at [15.1].

⁷⁴ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [7.7].

⁷⁵ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [7.16]-[7.17].

⁷⁶ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [7.33].

Wholesale product dimension – physical electricity and hedges appear to be complementary

54. In assessing the wholesale supply of electricity, the key issue we need to consider is what product, or products, should be included in the same market.
55. For the purposes of assessing the Proposed Acquisition, we consider it appropriate to assess the wholesale supply of physical electricity (sold at the spot price) separately from the supply of electricity hedge contracts (sold as a type of insurance against future spot price fluctuations). This is primarily because we consider that purchasing physical electricity and acquiring hedge contracts appear to be complements for many market participants, rather than substitutes. We also note that the trading mechanisms for physical supply and price-hedging are very different.
56. We explain below our reasoning for this approach from both a demand side perspective and a supply side perspective.

Demand side considerations in assessing wholesale electricity products

57. By definition, all wholesale customers purchase physical electricity at the spot price. Some customers also enter into a portfolio of hedging contracts.
58. In this section, we consider whether a hypothetical monopolist of electricity could profitably increase the spot price of wholesale electricity, or whether that strategy would be defeated by customers switching away from paying the spot price in favour of hedge contracts. If such a strategy is unprofitable, the purchase of physical electricity and the supply of hedge contracts are likely to be in the same market.
59. We received contrasting views from industry participants on the most appropriate way to assess the supply of wholesale electricity.
 - 59.1. Some agreed with the Applicant's single market approach because they consider that customers regularly switch between paying the spot price for a particular amount of electricity and entering into a hedge contract for the same amount of electricity. In their view, customers take a portfolio approach to sourcing electricity,⁷⁷ which may reduce the need to assess the supply of hedges separately to the physical supply of electricity.
 - 59.2. However, others disagreed, noting that hedging is used by customers to manage risks around spot price volatility, and so should be assessed separately from the purchasing of physical electricity. In their view, hedge prices, particularly for hedges that relate to peak trading periods, can attract a premium and do not closely correlate to the spot price,⁷⁸ which may mean

⁷⁷ For example: see Commerce Commission interview with [] (1 November 2024), Commerce Commission interview with [] (1 November 2024), Meridian - Submission on Contact and Manawa Statement of Issues (7 March 2025) and Anonymous B [] - Submission on Contact and Manawa Statement of Issues (19 February 2025).

⁷⁸ For example, see Commerce Commission interview with [] (25 October 2024); Electric Kiwi - Submission on Contact and Manawa Statement of Issues (5 March 2025); 2degrees - Submission on Contact and Manawa Statement of Issues (5 March 2025).

it is appropriate to assess hedging contracts separately to the physical supply of electricity.

60. We are of the view that, from a demand perspective, the purchase of physical electricity and the acquisition of hedge contracts serve different purposes such that they are unlikely to be close substitutes for one another.
 - 60.1. Purchasing electricity on the spot market involves the purchase of physical electricity (for example, retailers will typically purchase the amount of electricity needed to match the demand from their customers), whereas hedges do not involve the purchase of physical electricity, but instead involve the acquisition of what is effectively an insurance product to protect against high spot prices. Only money changes hands under a hedge contract, not physical electricity.
 - 60.2. Functionally, hedges offer the ability for wholesale customers and suppliers to manage the risk of price volatility, while purchasing on the spot market (and paying the spot price) does the opposite and exposes the customer and supplier to potentially volatile spot prices.
61. It is also relevant that most of the electricity purchased through the spot market is sold to the retail division of generators who have much less need for price insurance than independent retailers and large consumers. These retail divisions have significant supply commitments, so they need to acquire electricity. However, the spot price of that electricity acts like an internal transfer price for most of their demand, so they have little need for hedge contracts. Thus, if a SSNIP in the spot market is to be defeated by trading in the hedge market, the burden of doing so will fall primarily on independent retailers and large customers. These are exactly the customers who most need price insurance, and are most likely to already have it.
62. We therefore consider it is unlikely that a small increase in the spot price of wholesale electricity would result in customers switching from purchasing physical electricity to hedge contracts. At the relevant margin, the purchasing of physical electricity and the acquisition of hedges by wholesale customers are complements rather than substitutes. Specifically:
 - 62.1. If, all else being equal, a hypothetical monopolist was to increase the spot price of wholesale physical electricity by a SSNIP, the volume demanded by customers is likely to decline (albeit slightly). Due to lower purchases of wholesale physical electricity, customers' exposure to spot price volatility would also decrease. To manage the lower exposure, demand for hedges would shrink.
 - 62.2. Conversely, in response to a lower wholesale electricity price, customers are likely to purchase more physical electricity and consequently will require higher levels of protection against spot price volatility which would increase the demand for hedges as well.

63. Accordingly, from the demand side, for the purposes of assessing the Proposed Acquisition we consider it appropriate to assess the supply of hedge contracts separately from the wholesale supply of physical electricity.

Supply side considerations in assessing wholesale electricity products

64. As discussed above, only a small proportion (by volume) of wholesale electricity customers tend to complement their purchases of physical electricity by entering into hedge contracts and so we are of the view it is appropriate to assess competition for these contracts separately.
65. For completeness, we have also considered whether there are any supply side considerations that could suggest it would be appropriate to assess the supply of physical electricity and hedge contracts together.
66. When assessing supply side considerations, we assess whether rival hedge contract providers, having observed an increase in the price of physical electricity, can easily, profitably and quickly (generally within one year) switch to producing electricity without incurring significant costs so that a SSNIP by a hypothetical monopolist of physical generation is not profitable. In this scenario, rival hedge contract providers are financial institutions who would not be able to increase their supply of electricity in response to a rise in price given that they do not currently supply electricity and would require a relatively long lead time to become a supplier.
67. Accordingly, we consider it is appropriate to assess the supply of hedge contracts and the supply of physical electricity separately.

Product dimension – unclear whether different types of hedges are substitutes

68. We have considered whether there is a broad product market that includes all hedge contracts or whether any particular type of hedge contract should be assessed separately from other types. This is because industry participants advised there is a wide variety of hedge types and the degree to which different market participants trade in the different type of hedges also varies. The starting point of this assessment is to ask if a hypothetical monopolist of Shaped Hedges could profitably impose a SSNIP. We consider this to be the narrowest possible market in which the merged entity would supply at least one product.

Demand side considerations in assessing hedges

69. On the demand side, we considered how likely it is for a customer to switch to purchasing baseload hedges, PPAs or alternative products in the face of a SSNIP in Shaped Hedges.
70. There is mixed evidence as to whether customers might consider switching to baseload hedges in the event of a SSNIP in Shaped Hedges.⁷⁹ On the one hand, the two products may not be sufficiently close substitutes due to the different levels of protection from spot price volatility they each provide (with Shaped Hedges

⁷⁹ And we note that the extent of switching (and therefore the level of constraint) might differ across different types of Shaped Hedges.

providing targeted protection for specific time periods and baseload hedges providing a consistent level of protection throughout duration of the contract).⁸⁰ Further, a baseload ASX Hedge is likely to be less substitutable for a Shaped Hedge (particularly inter- or intra-day Shaped Hedges) given that the former is standardised while the latter is often bespoke. However, in some circumstances, Shaped Hedges might be somewhat substitutable for baseload hedges. For example, a customer may substitute an inter-day or an intra-day Shaped Hedge for a baseload hedge to the extent that it is willing to be overhedged or underhedged at certain times.⁸¹ Additionally, a baseload hedge could act as a substitute for inter-seasonal Shaped Hedges given purchasing several different baseload hedges could provide similar levels of protection from spot price volatility.⁸²

71. Similarly, we consider that while it is possible that customers could switch to purchasing PPAs in the event of a SSNIP in Shaped Hedges, PPAs will not always be a direct substitute for a Shaped Hedge. This is because Shaped Hedges provide customers with certainty that the generation they demand will be provided (whereas PPAs do not tend to, given they are often backed by intermittent generation which is reliant on certain types of weather). However, some PPAs that incentivise generation volumes during higher spot prices may offer similar protection to a Shaped Hedge, although certainty of generation is not guaranteed compared to a Shaped Hedge.⁸³ As such, there will be times when a PPA can act as an effective substitute for a Shaped Hedge and times when one cannot.
72. While Contact has submitted that alternatives for Shaped Hedges include batteries, demand responses and new products such as the Huntly Firming Options,⁸⁴ these alternatives are in their infancy. The EA noted last year that as these alternatives are only starting to be utilised in New Zealand they might not be able to discipline the price of Shaped Hedges now, or for a few years.⁸⁵ As such, it is not clear that sufficient customers would be able to switch to using these to defeat the SSNIP on Shaped Hedges.

⁸⁰ Although one customer advised that it purchases a bit more baseload hedges if Shaped Hedges are too expensive, that customer also noted that Shaped Hedges are critical. Commerce Commission interview with [] (31 October 2024).

⁸¹ For example, an intra-day Shaped Hedge may give a customer price security for a given electricity volume for peak trading periods in a given quarter. Instead of purchasing such a Shaped Hedge, a customer may buy a baseload hedge for the same volume of electricity. That would give the customer the same level of protection against high spot prices at peak trading periods as buying an intra-day Shaped Hedge, but it would also make the customer overhedged in the off-peak trading periods.

⁸² For example, customers seeking greater protection during winter months could either buy a Shaped Hedge that has seasonal shape or purchase a baseload hedge to achieve a similar effect (see [33.1] above).

⁸³ For completeness, we note that Manawa disagrees with this proposition and does not consider this type of PPA to be functionally similar to a Shaped Hedge (Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [152]-[156]).

⁸⁴ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [7.16(i)].

⁸⁵ Electricity Authority – ‘Reviewing risk management options for electricity retailers – issues paper’ (7 November 2024) p 2.

Supply side considerations in assessing hedges

73. On the supply side, we considered whether there are any constraints on the ability of a generator to quickly, easily and profitably increase their supply of Shaped Hedges in the face of a SSNIP in Shaped Hedges.
74. A generator with a portfolio of flexible generation assets is likely to have the ability to supply different hedge products.⁸⁶ The flexibility of assets is a function of their storage capacity and fuel type (eg, hydro, thermal) which enables the generator to shift output between trading periods.⁸⁷ A generator with flexible assets would therefore likely be able to relatively easily switch to supplying Shaped Hedges in response to a SSNIP, although we note that the generator's particular risk appetite, alongside the extent to which their generation volumes are constrained by their contractual position, would factor into how willing it is to provide these products. Therefore, even if the price of Shaped Hedges was to rise, not all generators would be able to respond accordingly.
75. Further, not all generators have the type of flexible generation assets needed to supply Shaped Hedges. Generators that do not have any flexible generation assets will likely have a very limited ability to supply a Shaped Hedge. To this extent, a generator with inflexible assets (that may be supplying baseload hedges and/or PPAs) may not be able to relatively easily switch to supplying Shaped Hedges in response to a price increase because of the type of generation assets they have.⁸⁸
76. Battery owners may be able to use some of their battery output to produce Shaped Hedges, although we note that any Shaped Hedges would likely be short term hedges (intra-day) rather than longer term hedges (such as intra-week) due to the inability of batteries to store energy for significant periods of time. Further, as batteries are a relatively new product to market, and any evidence around their substitutability to Shaped Hedges is likely to be speculative, we do not consider we can put much weight on their level of potential constraint.

Conclusion on the product dimension for the different types of hedges

77. In conclusion, the precise boundaries of the potential market for the supply of Shaped Hedges are not clear. This is because the extent to which the various types of hedges and other products are substitutes for Shaped Hedges depends on specific factors, and as such there are times when they will be substitutes and times when they will not be. However, for the purposes of assessing the Proposed Acquisition we have not needed to conclude on the exact boundaries of the potential market given

⁸⁶ For example, see Commerce Commission interview with [] (1 November 2024), Commerce Commission interview with [] (1 November 2024) and Commerce Commission interview with [] (30 October 2024).

⁸⁷ For example, see Commerce Commission interview with [] (17 March 2025).

⁸⁸ For example, see Commerce Commission interview with [] (7 November 2024) and Commerce Commission interview with [] (11 November 2024). The EA also notes that as baseload generation must run consistently all the time, it is only suited to underwriting baseload contracts (Electricity Authority – 'Reviewing risk management options for electricity retailers – issues paper' (7 November 2024) at Chapter 4, [6.4(b)]).

that, regardless of the scope of the relevant product market for the supply of hedges, the Proposed Acquisition is unlikely to raise competition issues.

- 77.1. If a narrow hypothetical market for Shaped Hedges is used, our analysis in the following counterfactual section shows that there are unlikely to be competition issues arising from the Proposed Acquisition.
- 77.2. Alternatively, if a wide approach to defining the scope of the relevant product markets is used so that all different types of hedge contracts are assessed together, the resulting aggregation would be relatively low and there would be the presence of other established competitors and products. Given we have not found competition concerns in relation to a more narrowly defined market, no competition concerns would arise in this broader market.

Geographic dimension for wholesale electricity markets

- 78. Although electricity generators have assets located in different parts of the country, all the different wholesale market participants advised that they compete on a national basis. We therefore consider that the appropriate geographic market for all relevant wholesale electricity product markets is a national market.
- 79. The physical electricity that generators produce and supply occurs on a national basis as does the trading of electricity hedges.
 - 79.1. The spot price reflects nation-wide matching of the supply of electricity from power stations with real-time consumption by households and businesses.
 - 79.2. Generators producing electricity over a certain minimum volume are required to supply their electricity into the electricity system.
 - 79.3. Transpower is the system operator and manages the electricity system so that electricity supply and demand is matched simultaneously.
 - 79.4. Spot prices are determined via a process whereby Transpower chooses the cheapest combination of offers from generators to meet the nation-wide demand for electricity.
 - 79.5. In offering electricity to the system, generators must comply with the Code. The EA is responsible for monitoring participants in the wholesale supply of physical electricity for compliance with the Code.
 - 79.6. Hedges are sold nationally either through the ASX channel or the OTC channel via bilateral negotiations between buyers and sellers.

Customer dimension for wholesale electricity markets

- 80. For the purposes of assessing the Proposed Acquisition, we have not needed to define separate markets for any particular customer group when assessing any relevant wholesale electricity market.

81. There are three main types of wholesale customers but assessing the product markets identified above likely captures any differences in requirements that these customers might have.⁸⁹
- 81.1. Generators (including both independent generators and gentailers) produce physical electricity and supply this to other wholesale market participants. However, while generators also buy and sell hedges from their rivals to complement their own generation they typically have no need to do so unless they are short on generation.
- 81.2. Independent retailers purchase physically electricity as well as hedges to protect themselves from fluctuations in the spot price of electricity. Because their end-consumers' demand for electricity varies within a day and across seasons, independent retailers typically buy a portfolio of baseload hedges and Shaped Hedges.
- 81.3. C&I customers purchase hedges to protect themselves from fluctuations in the spot price of electricity. Because their energy consumption is generally predictable and stable – often limited to standard working hours on weekdays – C&I customers tend to predominantly buy baseload hedges or PPAs.
82. All wholesale physical electricity is supplied by generators to the grid if their offers are accepted. Under the Code, the price paid by all customers for physical wholesale electricity is the same (apart from location-specific factors) and generators cannot price discriminate between any particular type of customer.
83. Although independent retailers and C&I customers tend to purchase different types of hedges, the purchase decisions are closely related to their electricity requirements. For example, independent retailers tend to demand Shaped Hedges more than C&I customers because, unlike a C&I customer whose demand is stable and predictable during the daytime, independent retailers are more exposed to high spot prices during morning and evening peaks.

The Commission's approach to market definition and implications for our competition assessment

84. Contact and Manawa both generate and wholesale electricity, and we consider there is a national market for the wholesale supply of physical electricity. In the competition analysis sections below, we assess the potential for unilateral effects and coordinated effects from the Proposed Acquisition in this market.
85. Separately to the wholesale market for physical electricity, the merging parties overlap in the supply of hedge contracts. Hedge contracts are differentiated to some extent. Relative to demand, there is ample supply of generation-following PPA

⁸⁹ In addition, there are financial institutions that buy and sell hedges speculatively. These financial institutions do not physically supply any electricity; rather they provide liquidity in hedge trading to all the other wholesale market participants and so they do not face the additional requirements of the other market participants.

contracts and baseload hedges. We therefore focus on Shaped Hedges because these contracts trade at a premium to baseload hedges, indicating that suppliers have some market power.

With and without scenarios

86. In this section, we outline our approach to our competitive assessment, which requires us to compare the state of competition with the Proposed Acquisition (the factual) with the state of competition without the Proposed Acquisition (the counterfactual). We then discuss the factual scenario before turning to the relevant counterfactual scenario for the supply of Shaped Hedges and the relevant counterfactual scenario for the national market for the wholesale supply of physical electricity.
87. We acknowledge that there are concerns about whether competition in the electricity industry is working as well as it could, and that the Commission has expressed such concerns in the past. There are a range of initiatives underway to address these concerns, including a government review of the electricity industry, and the work of the Energy Competition Task Force (of which the Commission is a member). However, the law requires us to only look at such broader factors to the extent they affect whether or not the Proposed Acquisition would lead to a substantial lessening of competition. So, we take the current state of competition as given and focus on whether or not the Proposed Acquisition is likely to substantially lessen that competition.

Our approach to considering what is likely without the merger

88. Assessing whether a substantial lessening of competition is likely requires us to:
 - 88.1. compare the likely state of competition if a merger proceeds (the scenario with a merger, often referred to as the factual) with the likely state of competition if it does not (the scenario without a merger, often referred to as the counterfactual); and
 - 88.2. determine whether competition is likely to be substantially lessened by comparing those scenarios.
89. As noted by the High Court in *Woolworths*, the Commission is required to consider each of the counterfactuals that are real and substantial prospects. A relevant counterfactual involves more than a possibility, but the effect does not need to be “more likely than not”.⁹⁰
90. We do not choose a counterfactual that we consider has the greatest prospects of occurring (ie, is the ‘most likely’). Rather, a likely counterfactual is something that has a real chance of occurring.⁹¹

⁹⁰ *Woolworths & Ors v Commerce Commission (HC)* above n23 at [111].

⁹¹ *Woolworths & Ors v Commerce Commission (HC)* above n23 at [111].

91. As a practical matter, we usually focus our analysis on the likely counterfactual we consider is the most competitive. Doing so means our analysis is based on a worst-case scenario, in the sense that it is the scenario that would give rise to the greatest competition concerns. If we are satisfied that the acquisition would not be likely to substantially lessen competition compared to this worst-case scenario, then it is unlikely to substantially lessen competition when compared to any other likely scenario.⁹²
92. We make a pragmatic and commercial assessment of what is likely to occur in the future without the merger. This assessment is based on the information we obtain through our investigation and takes into account factors including market growth and technological changes.
93. Often the best guide of what would happen without a merger is what is currently happening (ie, the status quo). However, where a market is likely to undergo changes that will affect competition in the counterfactual, we take these changes into account.⁹³

The factual

94. With the Proposed Acquisition, Contact would acquire Manawa, and the electricity that Manawa currently generates/supplies, thereby increasing Contact's share of New Zealand electricity generation. As a result, Manawa would cease to exist as an existing competitor:
 - 94.1. in the national market for the wholesale supply of physical electricity; and
 - 94.2. in the supply of Shaped Hedges.
95. Contact submitted that, post-acquisition, it would continue to offer customers a range of hedge contracts. Rather than a reduction in the volume, or the type, of hedge contracts offered to the industry, Contact stressed that the merged entity would be able to offer more hedges than what Contact and Manawa could offer as independent entities and so there would be substantial benefits to customers from the Proposed Acquisition.⁹⁴
96. While it is difficult to estimate the specific volumes and types of hedges that the merged entity would likely offer potential customers, there is no evidence to indicate that Contact would have an incentive to depart from its past behaviour and offer fewer hedges to customers than it does currently. The Proposed Acquisition would increase Contact's generation portfolio, including its level of flexible assets, and we consider that Contact, like most generators, would continue to have the incentive to offer a proportion of its generation to customers in the form of hedge contracts,

⁹² *Mergers and Acquisitions Guidelines* above n18 at [2.33].

⁹³ *Mergers and Acquisitions Guidelines* above n18 at [2.36].

⁹⁴ The Application at [1.8]-[1.12] and [14.1] and Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [5.4].

including because of the revenue surety that such contracts can provide generators if they are sufficiently confident they have the generation to service the contracts.

97. To this extent, while we have not attempted to estimate any potential benefits of the Proposed Acquisition from any increase in the supply of hedges, we are satisfied that, in the factual, Contact is unlikely to significantly reduce the volume of hedges it supplies to customers. It may however be the case that Contact chooses to use the flexible generation it gains from Manawa differently to how Manawa has been utilising those assets.

The counterfactual – the supply of Shaped Hedges

98. At present, Manawa has some existing contractual commitments to supply Shaped Hedges, which suggests on its face that in the absence of the Proposed Acquisition Manawa may continue to offer these hedges in the future.⁹⁵ If that were so, the Proposed Acquisition would remove Manawa as an ongoing independent supplier of Shaped Hedges.
99. However, based on the evidence we obtained, we consider that if the Proposed Acquisition did not go ahead, Manawa would have limited ability and incentive to supply new Shaped Hedges over and above its existing contractual commitments. We discuss our reasoning for this below.

The Parties' submissions

100. Contact submitted that, due to the commissioning and decommissioning of various plants, its overall generation flexibility would decrease in the counterfactual meaning that its ability to supply Shaped Hedges would also decrease.⁹⁶
101. However, of most relevance to our assessment is what Manawa would likely do, absent the Proposed Acquisition, in the supply of Shaped Hedges. Manawa submitted that, absent the Proposed Acquisition, there is no real chance it would supply Shaped Hedges because:⁹⁷
- 101.1. only assets with long-term flexibility are able to underpin the supply of Shaped Hedges, and Manawa has limited assets with this capacity;
 - 101.2. factors such as plant outages, resource consents and inflow volatility also affect Manawa's ability to offer Shaped Hedges;
 - 101.3. Manawa's future strategy for the business is to transition to an independent power producer (IPP) focused on delivering its development pipeline. As part of this strategy, Manawa said it would likely focus on securing long-term, generation following PPAs for a substantial portion of its generation. The

⁹⁵ This was the counterfactual against which we assessed the Proposed Acquisition in our Statement of Issues.

⁹⁶ The Application at [13.15].

⁹⁷ Commerce Commission interview with Manawa ([]), Manawa - Submission on Contact and Manawa Statement of Issues (7 March 2025) and Commerce Commission interview with Manawa ([]).

PPAs will provide Manawa with the surety of revenue to fund the proposed development pipeline and provide value for shareholders;

- 101.4. as part of this expansion strategy, Manawa will be highly geared and as such will need to reduce any potential earnings volatility. Manawa says that selling Shaped Hedges would be inconsistent with this aim given the risk involved in selling these products;
- 101.5. the existence of the Mercury Hedge (and other hedges supplied by Manawa) do not indicate that Manawa would be likely to sell Shaped Hedges in the counterfactual;
- 101.6. Manawa's recent decisions and actions are inconsistent with the supply of Shaped Hedges. For example, Manawa has not expressed any interest in supplying Shaped Hedges since the end of 2022; and
- 101.7. while Manawa says that it could 'never say never' to selling Shaped Hedges, in the event that it was to sell Shaped Hedges, any volumes would be minimal, at a relatively high price, and would only be supplied to buyers that meet its credit and risk criteria.

Manawa would only have limited ability to supply Shaped Hedges in the counterfactual

- 102. For Manawa to have the ability to supply Shaped Hedges in the counterfactual, it must have sufficient flexible generation assets which can be deployed on short notice to meet demand.
- 103. Based on the evidence we obtained, including Manawa's internal business documents, we are satisfied that in the future without the Proposed Acquisition, Manawa would have limited ability to supply new Shaped Hedges over and above its existing contractual commitments.
- 104. Attachment A sets out how we assessed Manawa's ability to supply new Shaped Hedges in the counterfactual. In summary:
 - 104.1. while Manawa operates 26 plants, only four of these plants have the requisite level of generation flexibility that enables them to support the supply of Shaped Hedges so only a small proportion of the total volume of electricity that Manawa generates each year can be used to support the supply of Shaped Hedges; and
 - 104.2. taking Manawa's existing contractual commitments into account would mean that, until 2028, it would have almost no ability to supply any additional volumes of electricity as Shaped Hedges in the counterfactual though it would be able to supply small volumes thereafter.

Manawa is unlikely to have an incentive to supply Shaped Hedges in the counterfactual

- 105. Manawa has been willing to supply Shaped Hedges in the past and its ability to offer new Shaped Hedges will increase as its contractual commitments to Mercury roll off.

As such, assessing the extent to which Manawa would have the incentive to supply Shaped Hedges is a critical part of the Commission's assessment of the Application.

106. Based on the evidence we obtained, which included Manawa's submissions in response to the Sol and its internal business documents including board and strategy papers, we are satisfied that, in the future without the Proposed Acquisition, a stand-alone Manawa would have very little incentive to offer new Shaped Hedges.
107. Attachment A also sets out how we assessed an independent Manawa's incentive to supply any of its available flexible generation volumes as Shaped Hedges. In summary:
 - 107.1. Manawa's strategy is to transition to an independent power producer (IPP) focused on delivering its development pipeline. As part of that strategy Manawa will be likely to focus on securing long term, generation following PPAs for a substantial portion of its generation, including the volumes that will become available as the contractual commitments to Mercury roll off. The PPAs will provide it with surety of revenue to fund the development pipeline;
 - 107.2. this strategy will result in Manawa being highly geared and as such it will need to reduce any potential earnings volatility. Supplying Shaped Hedges (with their attendant risks) would run counter to this;
 - 107.3. while Manawa says it could "never say never" to selling Shaped Hedges, any volumes it did sell would be minimal, at a relatively high price and would only be supplied to prospective buyers which meet its credit and risk criteria;
 - 107.4. rather than sell any leftover generation volumes as Shaped Hedges, Manawa is more likely to sell through other safer channels (eg, ASX Hedges or selling on the spot market when the price of electricity is high); and
 - 107.5. Manawa's recent decisions, reflected in its internal documents and its recent actions with external parties in the electricity industry are inconsistent with the theory that it will continue to supply Shaped Hedges. For example, in response to multiple invitations, Manawa has, for some time, not expressed any interest in supplying Shaped Hedges.

Conclusion on likely effect of the Proposed Acquisition in the supply of Shaped Hedges

108. Based on the evidence before us, we are satisfied that the Proposed Acquisition will not substantially lessen competition in relation to the supply of Shaped Hedges.
109. In summary, while the Proposed Acquisition would remove Manawa as an independent supplier of Shaped Hedges, the prospect of Manawa continuing to be an independent supplier of Shaped Hedges if the Proposed Acquisition did not go

ahead is, in our assessment, no more than a mere possibility.⁹⁸ Accordingly, as there would be no material difference in the supply of Shaped Hedges with and without the Proposed Acquisition, we are satisfied that the Proposed Acquisition will not substantially lessen competition in the supply of Shaped Hedges. More specifically:

- 109.1. the Proposed Acquisition is unlikely to create any unilateral effects because it would not be removing a competitor that would otherwise have been providing a constraint in the supply of Shaped Hedges. Even if, post-acquisition, Contact was to supply no additional Shaped Hedges using the assets acquired from Manawa, this would not substantially lessen competition compared to the counterfactual; and
 - 109.2. further, because Manawa would not be a supplier of Shaped Hedges in the counterfactual, there is limited potential for vertical effects in the supply of Shaped Hedges. This is because the Proposed Acquisition does not change any ability or incentive Contact may have to foreclose any of its generation or retail electricity competitors.
110. We note that Contact submitted that the Proposed Acquisition would be “pro-competitive” because the addition of Manawa’s flexible generation assets would increase Contact’s ability to offer hedge contracts to wholesale customers. Given we consider that Manawa would have limited ability and incentive to supply Shaped Hedges, over and above its existing contractual commitments, it has not been necessary to estimate any potential increase in the volume of hedge contracts that Contact might supply, post-acquisition. We are, however, satisfied that Contact is unlikely to significantly reduce the volume of hedges it supplies to customers as a result of the Proposed Acquisition. This reinforces our conclusion that the acquisition is unlikely to substantially lessen competition in the supply of Shaped Hedges.

Counterfactual – national market for wholesale supply of physical electricity

111. In the national market for wholesale supply of physical electricity, the most competitive real chance counterfactual scenario is likely to be similar to the status quo, with both Contact and Manawa independently pursuing their respective development portfolios. In our view, Contact and Manawa would likely each generate a similar amount of electricity as they currently do although their total volumes will likely increase as their respective pipeline projects are built.
- 111.1. Contact submitted that, absent the Proposed Acquisition, while it expects to decommission its thermal generation plants, it expects its other existing plants to become fully operational shortly meaning its total supply of physical electricity will increase from 2025 onwards.⁹⁹

⁹⁸ Given that there is no more than a mere possibility of Manawa supplying Shaped Hedges in the counterfactual, this falls below the “real chance” threshold which the Commission is required to use when assessing relevant counterfactual scenarios.

⁹⁹ The Application at [13.15].

- 111.2. Manawa advised that, consistent with its public statements, absent the Proposed Acquisition it would continue to own and operate its generation portfolio as it currently does, along with developing its pipeline of renewable generation assets.¹⁰⁰ To this extent, Manawa's total supply of physical electricity would likely increase when any new plants are commissioned.

Unilateral effects – wholesale supply of physical electricity

112. Horizontal unilateral effects arise when a firm acquires a competitor that would otherwise provide a significant competitive constraint. The merged firm can therefore profitably increase price above the level or reduce quality below the level that would prevail without the acquisition, without being thwarted by rival firms' competitive responses.¹⁰¹
113. In this unilateral theory of harm we consider whether the merged entity would be able to engage in a strategy that would allow it to profitably increase the average level of wholesale electricity spot prices to the extent that, after the Proposed Acquisition:
- 113.1. it would be 'net pivotal' more often (that is, there would be more trading periods when the merged entity's generation would be required to meet demand for wholesale electricity and when the merged entity's contractual position would be such that it would benefit from higher spot prices); and
- 113.2. it would be more able or more incentivised to engage in shifting output away from periods when spot prices are sensitive to changes in supply to periods when they are not, resulting in a higher average level of spot prices ('temporal output optimisation').
114. At the Sol stage we concluded that we could not rule out that, after the Proposed Acquisition, the merged entity's net pivotality might increase and that it might have the ability and incentive to engage in temporal output optimisation, resulting in higher average spot prices.

Gross and net pivotality

115. A gross pivotal generator has market power over the level of the spot price. This is because without its (total or partial) output, demand for wholesale electricity would not be met. As a result, a gross pivotal generator becomes an effective monopolist on the proportion of output that could not be met without it. The ability of a

¹⁰⁰ Manawa: 'Follow up information on Manawa's strategy absent the Contact acquisition' (6 December 2024).

¹⁰¹ For simplicity, when we refer to concerns that the acquisition may result in an increase in price, this also includes the possibility that the impact of the acquisition is a reduction in quality or some combination of a price and quality effect.

generator to become gross pivotal depends on the level of its output, output of other generators, level of demand, as well as the flexibility of its assets.¹⁰²

116. A gross pivotal generator might choose not to exercise its market power if it cannot gain from higher spot prices due to its contractual obligations (both in the form of hedges and retail commitments). To the extent that a gross pivotal generator is short on electricity,¹⁰³ higher spot prices would be detrimental because that generator would be exposed to the spot market to meet its contractual obligations. The relative size of a generator's gross output and contractual commitments determine its incentive to exercise market power. A gross pivotal generator who has that incentive becomes net pivotal.
117. In the Sol we set out some calculations of the proportion of time when, following the acquisition of Manawa, Contact might have the ability and incentive to raise the spot price of electricity. We preliminarily concluded that, after the Proposed Acquisition, Contact's net pivotality is likely to grow from approximately 0.1% to between 0.1% and 7% of all trading periods. It was not clear at the Sol stage whether the merged entity's net pivotality would likely be closer to 0.1% or 7%. Additional evidence we have since received, and discussions with the EA, have led us to refine our calculations.

The Applicant's submissions

118. Contact disagreed with the preliminary conclusion in the Sol that the frequency of the merged entity's net pivotality might be as high as 7% of trading periods. According to Contact, that result relies on an implausible assumption that, after the Proposed Acquisition, none of the electricity generated by Manawa's assets would be sold in the form of hedges or used by Contact's retail arm.¹⁰⁴
119. Contact argued that, historically, it has had a target of []% merchant length – that is, it aimed to leave []% of its generation not committed via retail or hedge obligations (and exposed to the spot market).¹⁰⁵ Contact also informed us that in recent years, its actual merchant length was at []%.¹⁰⁶ Finally, Contact argued that it does not intend to change its target merchant length as a result of the Proposed Acquisition.¹⁰⁷

¹⁰² If electricity demand increases and/or rival generators' supply decreases, then a generator's instances of net pivotality will likely increase as it becomes more likely that in a given trading period rivals' supply is insufficient to meet demand – requiring generation from the generator in question to clear the market. Flexible assets are required to exercise a gross pivotal position as the strategy requires that some portion of supply be withheld. If a must-run plant's generation is not cleared, a generator faces the opportunity cost of any fuel that is spilled.

¹⁰³ A generator is short on electricity if its contractual obligations (in the form of hedges or retail commitments) exceeds its level of generation. Conversely, a generator is long on electricity if the reverse is true.

¹⁰⁴ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [11.14].

¹⁰⁵ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [11.14].

¹⁰⁶ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [11.14].

¹⁰⁷ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [6.22] & [11.16].

120. Contacted submitted that, based on the assumption that after the Proposed Acquisition it would contract out []% of generation from Manawa's assets, the merged entity would be net pivotal 0.14% of the time, marginally more frequently than Contact expects to be net pivotal at present (0.12%).¹⁰⁸

Our assessment on pivotality

121. The likely frequency of the merged entity's net pivotality (whether it is closer to 0.1% or 7% - the range which we found at the Sol stage) depends on expectations around the likely merchant length of the merged entity after the Proposed Acquisition. The greater the proportion of generation from Manawa's assets that the merged entity decides to contract out, the lower its net pivotality will be.
122. Based on Contact's generation, hedge, and retail data, we calculated that Contact's actual merchant length between October 2021 and October 2024 was approximately []%. This is consistent with Contact's estimates of its merchant length.
123. We have seen no evidence in Contact's internal documents that would indicate that Contact intends to change its target merchant length after the Proposed Acquisition. If Contact wanted to increase its merchant length, it could do so currently, or absent the Proposed Acquisition, for example by reducing volumes committed in the form of hedges or to its retail business.
124. Therefore, we consider that, post-Acquisition, the merged entity is likely to keep Contact's pre-existing merchant length target.
125. Assuming that the merged entity would contract out []% of generation from Manawa's assets (keeping a []% merchant length), the frequency of the merged entity's net pivotality is likely close to Contact's current net pivotality of c. 0.1%. This is because – under that scenario – only []% of Manawa's generation would contribute to extending the merged entity's net pivotality. That is consistent with Contact's calculations indicating that its net pivotality would grow after the Proposed Acquisition to 0.14% of all trading periods. We understand this level of increment is reasonable given the assumption that the merged entity would contract out []% of generation from Manawa's assets.
126. Based on that assessment, acquiring Manawa's generation assets would only have a negligible impact on Contact's current level of net pivotality. We consider that it is unlikely that – being net pivotal only in an additional <0.1% trading periods – the merged entity would be able to exercise its market power materially more often than Contact could now, and consider that this negligible change is unlikely to increase Contact's ability and incentive to impact the wholesale spot price for electricity by itself.

¹⁰⁸ Contact - Submission on Contact and Manawa Statement of Issues Appendix 2 – Updated Concept Consulting Report (8 April 2025) at p. 15.

Conclusion on pivotality

127. Based on the evidence set out above, we are satisfied that the increase in the merged entity's net pivotality is unlikely to lead to unilateral effects in the market for the wholesale supply of physical electricity.

Temporal output optimisation

128. We consider that a generator might hold a degree of market power and be able to affect spot prices without being gross or net pivotal. This is a consequence of the price determination mechanism in the wholesale supply of physical electricity, where – if a supplier was to lower its offered output – Transpower may need to choose the next best available offer, resulting in a higher electricity spot price. Conversely, if a supplier increased its volume offering in a trading period (and its price was below the clearing level), the least competitive offer could be discarded, potentially resulting in a lower electricity spot price.
129. In principle, a supplier could increase its profits by reducing its volume offering when the spot price is very sensitive to the volumes offered by generators (known as 'economic withholding') and expanding it when the spot price is not sensitive. We refer to that combined strategy as 'temporal output optimisation'. As a result of that action, the spot price might increase materially in the first period and would decline only slightly in the second period. To the extent that the average level of spot price increased as a result, the temporal output optimisation strategy would harm customers.
130. Large generators like Contact appear to have the ability to withhold some of their output to optimise their overall revenues, and the acquisition of Manawa would increase the proportion of flexible generation assets available to Contact to do this. At the Sol stage, we considered that the merged entity might have the ability and incentive to engage in temporal output optimisation. We also expressed a concern that, if employed, that strategy might result in higher average spot prices.
131. However, our further analysis indicates that, after the Proposed Acquisition, Contact's payoff from the temporal output optimisation strategy is unlikely to be material. Therefore, the Proposed Acquisition is unlikely to impact the wholesale spot price for electricity through temporal output optimisation. We explain our reasoning for this below.

The Applicant's submissions

132. Contact recognised that the strategy of temporal output optimisation may in principle be employed by a generator who is not gross or net pivotal and that – if employed – it might result in higher average spot prices.¹⁰⁹

¹⁰⁹ Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [151].

133. Contact agreed with us that – to confirm whether a generator is likely to engage in that strategy – it is relevant to consider its ability and incentive to shift output across periods and to establish the resulting effect on spot prices.¹¹⁰
134. Contact submitted that the merged entity is unlikely to have the ability or incentive for temporal output optimisation and the effect would be small.¹¹¹
135. Contact agreed with our assessment in the Sol that the ability of a generator to engage in the temporal output optimisation strategy depends on how well it can predict the sensitivity of the spot price to demand and supply.¹¹²
136. According to Contact, the sensitivity of the spot price to supply and demand is highly volatile and cannot be predicted. To support its argument, Contact submitted an analysis of the sensitivity of the spot price to changes in demand and supply based on the EA’s simulation.¹¹³
137. Based on that analysis, Contact argued that the median sensitivity of the spot price to a 1% increase in demand (or decrease in supply) during the morning and evening super peaks is not materially higher than in other periods in a day. Contact found that the highest median sensitivity to a 1% increase in demand is approximately \$10 (around 10am) and the lowest – approximately \$3 (around 1am).¹¹⁴
138. In relation to generators’ incentives to engage in temporal output optimisation, Contact agreed with our assessment in the Sol that it depends on spot price sensitivity fluctuations, the risk of enforcement by the EA, potential rivals’ response, and the merged entity’s exposure to the spot market.¹¹⁵
139. To verify whether the merged entity would have the incentive to engage in that strategy, Contact submitted an economic model in which it calculates the profit (or loss) that the merged entity would accrue if it engaged in temporal output optimisation.¹¹⁶ Contact modelled a scenario in which the merged entity – for every day between 1 October 2023 and 30 September 2024 – shifts 1% of the total output supplied by all generators from one trading period to another in such a way that, in

¹¹⁰ Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [143].

¹¹¹ Letter received from Bell Gully on behalf of Contact Energy (3 December 2024), p. 2. Summarised in the Sol at [218] and Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [178].

¹¹² Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [11.21].

¹¹³ The EA considers price sensitivity with respect to volume changing by -5%, -4%, -3%, -2%, -1.5%, -1%, -0.5%, 0.5%, 1%, 1.5%, 2%, 3%, 4%, and 5%. See: www.emi.ea.govt.nz/r/cjpgl.

¹¹⁴ Contact – Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [Figure 5.3].

¹¹⁵ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [11.20], [11.21] and [11.31].

¹¹⁶ Contact – Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [173]-[180].

each day, it maximises the merged entity's profits.¹¹⁷ This assumes that the merged entity would have perfect foresight into future price sensitivity. In its modelling, Contact used the EA's price sensitivity data and historical spot prices, and assumed that the merged entity's merchant length is always at []%.¹¹⁸

140. Based on that modelling, Contact estimated that shifting output away from high to low price sensitivity periods is the profit maximising strategy for 116 days. It also found that shifting output from low to high price sensitivity periods – which is beneficial to consumers – would be a more profitable strategy in the remaining 250 days.¹¹⁹
141. Contact estimated that – based on the assumption set out above – the merged entity would make an annual gain of approximately \$1.3m from shifting output from high to low price sensitivity periods and approximately a \$1.5m gain from shifting output in the opposite direction.¹²⁰ Further, Contact estimated that those gains would amount to \$0.4m and \$0.9m, respectively, if the merged entity's merchant length was at []% – in line with Contact's historical length.¹²¹
142. According to Contact, the merged entity would not have the incentive to engage in a temporal output optimisation strategy because it is often not the profit maximisation strategy and the merged entity would frequently be better off to shift output from low to high price sensitivity periods.¹²² Contact argued that, to the extent that there are periods in which the merged entity might have the incentive to engage in the temporal output optimisation, it would be counteracted by countervailing rival response and potential enforcement by the EA.¹²³
143. Notwithstanding that caveat, Contact's modelling found that, as a result of the merged entity hypothetically shifting output from high to low price sensitivity periods, the average spot price would increase by 1% – 1.16%.¹²⁴

Our assessment of the merged entity's ability to carry out temporal output optimisation

144. Contact's view that the merged entity would not have the ability to engage in temporal output optimisation differs from our view expressed in the Sol. This is

¹¹⁷ In other words, Contact's modelling assumes that the merged entity does not necessarily adopt the same temporal output optimisation every day. Instead, Contact assumed that, in every day in the sample, the merged entity would decide on the trading periods between which to shift output.

¹¹⁸ Contact – Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [173].

¹¹⁹ Contact – Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [174], [176] and Table 5.1.

¹²⁰ Contact – Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at Table 5.1.

¹²¹ Contact – Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [177] and Table 5.1.

¹²² Contact – Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [176].

¹²³ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at [11.20] and [11.31].

¹²⁴ Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [178].

because Contact considered that the level of spot price sensitivity cannot be easily predicted, in contrast to our position set out in the Sol.

145. That discrepancy results from different choices of statistical metrics used to describe the volatility of the spot price sensitivity. In the Sol, we considered the mean values of the spot price sensitivity, whereas Contact assessed the median.
146. The mean spot price sensitivity appears to be more predictable – and have a more discernible shape across trading periods – than the median. In particular, the mean sensitivity of the spot price to demand in supply appears to have a pronounced spike during the morning and evening super peak periods. The median sensitivity has a much less pronounced spike in the morning and has no discernible spike in the evening.
147. That difference between the two metrics appears to be driven by a small number of outliers – data points when spot price sensitivity is abnormally high or low – particularly in May 2024 when the spot price sensitivity during the super peak times was materially higher than the average.¹²⁵
148. Both metrics have their merits in assessing the expected volatility of spot price sensitivity. Median provides information on how often a generator could expect the spot price sensitivity to be below or above a certain threshold, whereas the mean identifies the simple average value. Median is also less influenced than the mean by outliers. In case of spot price volatility, because the spot price cannot fall below zero, there are more positive than negative outliers, which explains why the mean spot price volatility has more upward spikes in a day than the median.
149. We consider that any metric used to assess the volatility of the spot price should account for outliers. A generator who is long on electricity would expect to make material gains if it was to engage in temporal output optimisation and shift output away from trading periods with abnormally high spot price volatility (which can be considered outliers). Therefore, being able to predict trading periods when such outliers occur is beneficial to a generator wishing to optimise output temporally. Consequently, we consider the mean to be a more useful metric in assessing a generator's ability to predict spot price volatility than the median.
150. Based on that assessment, we consider that the merged entity would be able to form expectations about the expected volatility of the spot price sensitivity across different trading periods. We also consider that it would be able to identify, with some confidence, the trading periods where the expected sensitivity is the highest and trading periods when it is the lowest, and devise a temporal output optimisation strategy based on that.

¹²⁵ In May 2024 there are four super peak trading periods where the change in price in response to a 1% increase in demand (or decrease in supply) was greater than \$2,000. These outlier periods are 8 May 2025 at 8am, 8 May 2025 at 6pm, 9 May 2025 at 7pm, 10 May 2025 at 6pm.

Our assessment of the merged entity's incentive to carry out temporal output optimisation

151. Our preliminary conclusion at the Sol stage was that we could not rule out that the merged entity would have the incentive to engage in temporal output optimisation because spot price is often highly sensitive to changes in supply and because the merged entity is likely to be exposed to the spot market to some extent and profit from higher spot prices.
152. To complement that qualitative assessment, we carried out a modelling of the profits that the merged entity might expect if it was to follow a temporal output optimisation strategy. The greater the expected profitability, the greater the incentive to engage in that strategy (and vice versa).
153. Temporal output optimisation modelling relies on a number of parameters and assumptions. We therefore first built a simple central modelling scenario and then constructed several sensitivities around that scenario to test the robustness of our modelling.
154. In the central scenario, we calculated the merged entity's hypothetical payoff from shifting 25MWh from a trading period with highest price sensitivity to the one with lowest price sensitivity each day over a nine-month period (for which data was readily available). In that analysis, we relied on actual historical spot prices, spot price sensitivities, as well as Contact's and Manawa's volume commitments. We also constructed eight sensitivities, in which we tested the merged entity's payoff from temporal output optimisation based on different sets of assumptions.¹²⁶ We discuss our methodology behind the central scenario and the sensitivities in more detail in Attachment B.
155. Based on the central scenario and sensitivity modelling we find that the merged entity's hypothetical payoff from temporal output optimisation might range from a [] to a [].
156. We expect that the true value of the profit from temporal output optimisation is likely to be closer to the lower end of that range because:
 - 156.1. The assumptions which led us to estimate a [] profit are relatively aggressive. In particular, the level of profit from temporal output optimisation depends on the merged entity's decision on whether to recontract Manawa's Mercury Hedge (via any type of volume commitment).

¹²⁶ 1) A scenario in which the merged entity shifts output across the day of the week when price sensitivity is highest to the one when it is lowest (instead of shifting output across trading periods within a day). 2) A scenario in which we assume the merged entity's volume commitments would be lower than the sum of Contact's and Manawa's current commitments (as a result of Manawa's Mercury hedge gradually rolling off). 3) A scenario where we assume a lower volume of output shifted across time. 4) A scenario in which we assume a higher spot price sensitivity during the trading period from which the merged entity withdraws volume. 5) A scenario in which we assume a lower spot price sensitivity during the trading period to which the merged entity adds volume. 6) A scenario in which we assume a lower spot price during the trading period from which the merged entity withdraws volume. 7) A scenario in which we assume a higher spot price during the trading period to which the merged entity adds volume. 8) A scenario which combines assumptions from sensitivities 2-7.

[]. As set out in more detail above, we consider that it is more likely that the merged entity would contract out approximately []% of Manawa's generation, in line with Contact's existing merchant length target of []%.

156.2. None of our modelling accounts for rivals' responses. To the extent that Contact's rival gentailers have spare flexible capacity, they could counteract the merged entity's temporal output optimisation by increasing their output at 8am and decreasing it at 10pm. This would likely increase their profit and could leave the 8am and 10pm spot prices unchanged.

156.3. None of our modelling accounts for any enforcement from the EA. In some cases, as a result of the merged entity's hypothetical shifting of 25MWh, the spot price at 8am would increase by more than \$100/MWh. On four occasions, the increased would be greater than \$500. It is likely that such a large increase in the spot price would attract the attention of the EA who might choose to take enforcement action against the merged entity.

157. Consequently, we consider that the merged entity is unlikely to have the incentive to engage in temporal output optimisation.

Our assessment of the effect of any successfully implemented temporal output optimisation

158. Because we consider that the merged entity would not have the incentive to engage in temporal output optimisation, we have not reached a firm view on the likely effect of that strategy.

159. Nevertheless, based on our central scenario and sensitivity modelling, we estimate that – if the merged entity was to engage in temporal output optimisation – the average spot price might increase between \$1.05-\$1.31. Further, the average spot prices during peak hours (between 7am and 9pm) might increase by \$1.96-\$2.35, and the average spot price in super peak hours (between 7am and 10:30am, 5pm and 9pm) might go up by \$3.33-\$4.00.¹²⁷

160. Consequently, even if we were to consider that the merged entity would have the incentive to engage in temporal output optimisation, the resulting effect on the average level of spot prices does not appear to be material.

Conclusion on temporal output optimisation

161. We are of the view that the merged entity likely has the ability to engage in temporal output optimisation. The merged entity could use past price sensitivity data to form an expectation of which periods are likely to be most and least responsive to a

¹²⁷ The range of potential spot price increases, as a result of temporal output optimisation are lower than the \$18 put forward in the Sol. \$18 is the average increase in price given a 1% decrease in supply across all super peak periods. Whereas the modelling above considers an increase in price at 8am and a decrease in price at 10pm which are then averaged out over the remaining trading periods.

change in volumes supplied and form a temporal output optimisation strategy on that basis.

162. However, we also consider that the incentives of the merged entity to engage in temporal output optimisation is – at most – limited. In many cases, such a strategy would result in a financial loss. The merged entity can be expected to make a small level of profit over a nine month period considered by us – up to [] – only if aggressive and potentially implausible assumptions are made. Even then, the merged entity might face a response from rivals and the EA, each of which could nullify any potential gains from the strategy.
163. Even if the merged entity had that incentive, the likely effect of that strategy appears to be limited – potentially increasing average spot prices by approximately 1%.
164. We are therefore satisfied that that the Proposed Acquisition is not likely to result in a substantial lessening of competition in the market for the wholesale supply of physical electricity due to temporal output optimisation.

Coordinated effects – wholesale supply of physical electricity

165. An acquisition can substantially lessen competition if it increases the potential for the merged entity and all or some of its remaining competitors to coordinate their behaviour and collectively exercise market power or divide up the market such that output reduces and/or prices increase. Unlike a substantial lessening of competition which can arise from the merged entity acting on its own, coordinated effects require some or all of the firms in the market to act in a coordinated way.¹²⁸
166. Successful coordination requires market participants to reach at least an implicit agreement to act in a coordinated way (eg, by coordinating their pricing behaviour, or by allocating customers or geographic areas), and then to maintain that agreement by detecting and punishing any party that deviates from the agreement.¹²⁹
167. We assess both whether the relevant market is vulnerable to coordination, and whether the transaction results in coordination being more likely, more complete or more sustainable.¹³⁰
168. Post-acquisition, Manawa would no longer be an independent generator of electricity.
169. At the Sol stage, we expressed a preliminary view that we were not satisfied that the Proposed Acquisition would not be likely to increase the potential for coordination in the wholesale supply of physical electricity. We reached that view based on the following reasoning:

¹²⁸ *Mergers and Acquisitions Guidelines* above n18 at [3.84].

¹²⁹ *Mergers and Acquisitions Guidelines* above n18 at [3.85] and [3.88].

¹³⁰ *Mergers and Acquisitions Guidelines* above n18 at [3.86].

- 169.1. We considered that there are features of the wholesale market that make it vulnerable to coordination.
- 169.2. We considered that the removal of Manawa as an independent generator may change conditions in the market such that coordination is more likely, more complete or more sustainable.
170. At the Sol stage, we considered that those factors likely outweigh the fact that the coordination mechanism appears complex in the wholesale market.¹³¹
171. However, based on further analysis conducted post-Sol, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition through coordinated effects in the wholesale market for supply of physical electricity.
172. We summarise the reasoning for our assessment – as well as Contact’s view on coordinated effects – in the section below.

Our assessment

173. To assess the likelihood of a substantial lessening of competition in the market for the wholesale supply of physical electricity due to coordinated effects, it is relevant to consider:
- 173.1. whether the market is currently vulnerable to coordination;
- 173.2. to what extent the Proposed Acquisition would make coordination more likely, complete or sustainable; and
- 173.3. the mechanism by which potential coordination might be reached (and whether it is realistic).
174. In the remainder of this section, we consider each of the abovementioned elements – taking into account our analysis set out in the Sol as well as the relevant new information and evidence provided by the parties in response to the Sol.

The market’s current vulnerability to coordination

175. We first discuss whether the market for the wholesale supply of physical electricity is currently vulnerable to coordination. To answer that question, we consider market features which might affect the likelihood, completeness or sustainability of coordination.
176. Our preliminary view at the Sol stage was that, on balance, the wholesale market is currently vulnerable to coordination. Although we have seen evidence that the

¹³¹ Participants in coordination in the wholesale market would need to agree on the volumes and prices they offer for particular trading periods and injection points. There are 52 injection points and 48 trading periods in a day. Generators’ volume and price offers can be granular – they can offer up to five volume and price brackets per plant.

market contains some characteristics that might make coordination less likely, complete or sustainable, it contained more characteristics that indicated otherwise.

176.1. On the one hand, we recognised that high levels of market concentration (and especially, concentration in the supply of flexible generation) and a large degree of symmetry in terms of vertical integration across suppliers might make coordination more likely. We also consider that transparency of suppliers' wholesale prices, the frequency of interaction between gentailers and the lack of demand lumpiness might make deviation from a coordinated agreement less likely, potentially increasing the sustainability of coordination.¹³²

176.2. On the other hand, we consider that differences in cost structures of generators, credible threat of new entrants, and a potential enforcement action from the EA might decrease the ability of generators to coordinate.¹³³

177. In its response to the Sol, Contact did not dispute the effect of those factors on the vulnerability of the wholesale market to coordination – neither those increasing nor those decreasing the coordination risk. However, Contact submitted that the wholesale market contains other features – not discussed in the Sol – which make coordination unlikely and unsustainable. We discuss each in turn below.

Uncertainty and volatility of supply and demand

178. We agree with Contact that uncertainty and volatility of supply and demand are relevant factors to consider when assessing the vulnerability of a market to potential coordination.¹³⁴ In principle, the opportunity cost of not deviating from a coordinated agreement is higher when demand is high relative to supply than when the reverse is true. This is because – during a period of high demand relative to supply – a supplier who intends to adhere to a coordinated agreement needs to forego a greater level of profits than in a period of low demand. A coordinated agreement is therefore less likely when demand and supply are highly volatile than when they are stable.

179. Although demand for wholesale physical electricity in New Zealand appears to be relatively predictable, supply can be highly volatile and uncertain.¹³⁵ This is because most of the energy in New Zealand is generated by hydro plants (whose output is affected by weather patterns) and thermal gas plants (whose cost of production is affected by local gas prices). This dynamic translates into high volatility of spot prices. As seen in Figure 1 below, since 2018, the quarterly median spot price has seen large variation – for example, it decreased by more than 50% from approximately \$300/MWh in Q2 2021 to approximately \$130/MWh in the following

¹³² Contact and Manawa Statement of Issues (5 February 2025) at [240].

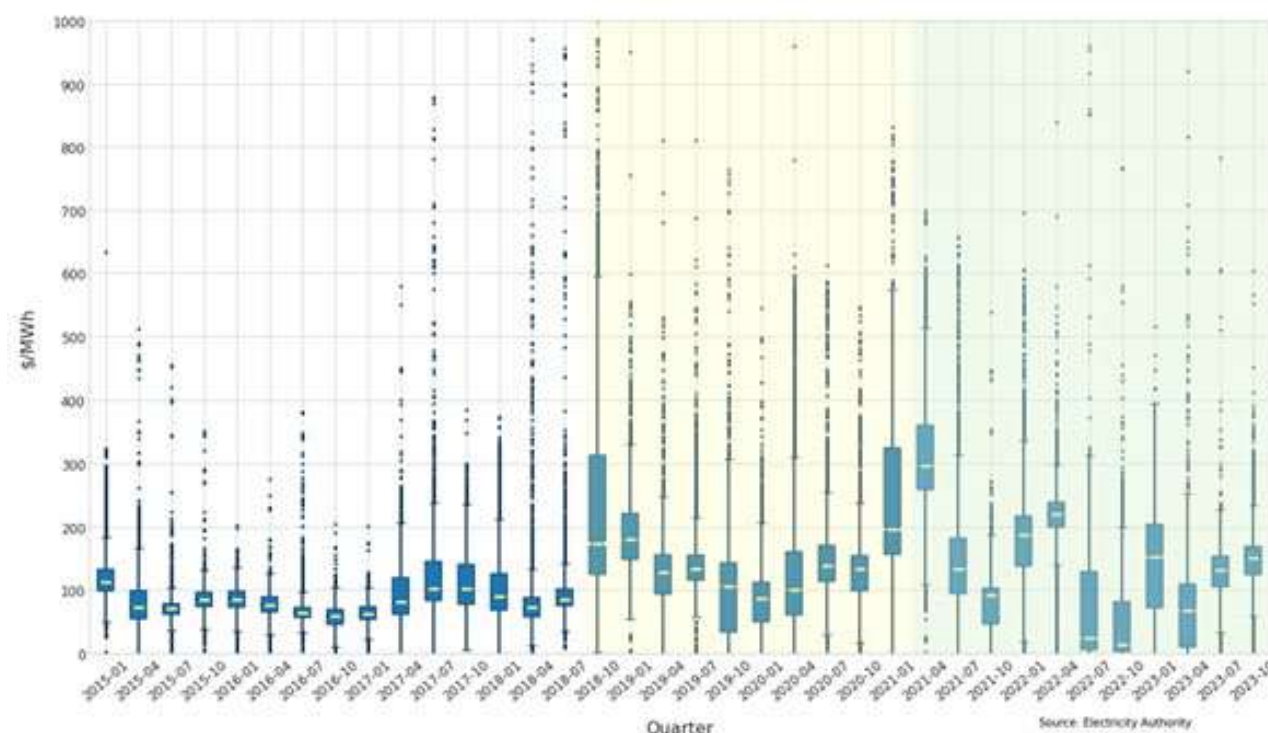
¹³³ Contact and Manawa Statement of Issues (5 February 2025) at [241].

¹³⁴ Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [122]-[127].

¹³⁵ For example, demand for wholesale electricity is predictably higher during peak periods than off peak periods and during winter than summer.

quarter. Based on that evidence, we consider that – all else equal – the uncertainty and volatility of supply makes the wholesale market less vulnerable to coordination.

Figure 1: Distribution of spot prices (inflation-adjusted), 2015-2023



Source: EA, “Past and future spot market volatility”, 8 April 2024, Figure 1

Asymmetry of net positions

180. We agree with Contact that an assessment of generators’ net positions (that is the relative size of their generation and contractual commitments) is relevant when evaluating the vulnerability of the wholesale market to potential coordination.¹³⁶ A generator who is long on electricity would profit if coordination on volumes or prices offered by generators is achieved and the spot price increases as a result. In contrast, a generator who is short would accrue losses in that scenario because it would need to pay the elevated spot price to cover its contractual commitments on the spot market. As such, there are instances where a coordinated agreement would not benefit all of the market participants. The asymmetry in net positions is therefore likely to reduce the sustainability of a potential coordination.
181. We acknowledge that in recent years Manawa has [] short on electricity.¹³⁷ Based on the data provided by Manawa, we estimated that, between May 2022 and January 2025, it was short on electricity in []% of the trading periods.¹³⁸ Manawa’s [] short position appears to have been caused by

¹³⁶ Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [130]-[136].

¹³⁷ Based on the information provided by Contact it is not possible to determine the historical net position of other generators. As such, we cannot confirm whether Genesis – as argued by Contact – is frequently switching between being short to long (and vice versa).

¹³⁸ Commerce Commission analysis of Manawa net length data.

unpredictable weather patterns (in particular lower than expected rainfall) which lowered Manawa's output. Other generators who rely on weather-dependent energy – hydro, wind and solar plants – are also subject to that uncertainty. The higher the proportion of weather-dependent energy in a generator's portfolio, the greater the likelihood that it may inadvertently become short on electricity during adverse weather conditions. We estimated that between March 2020 and March 2024, 68% of the entire generation in New Zealand was weather dependent. Some generators – such as Manawa and Meridian – are entirely dependent on weather, as 100% of their output is generated in hydro plants.¹³⁹ We therefore consider that generators – like Manawa – may regularly face a risk of being short on electricity due to adverse weather conditions. That dynamic is likely to reduce the sustainability of potential coordination.

182. Moreover, we expect that the reliance of generators on output from weather-dependent plants is likely to grow in the future as generators invest in new wind and solar assets in the next 5-10 years.¹⁴⁰ Due to the growing importance of weather-dependent plants, generators' merchant lengths may become more variable, further diminishing the risk of potential coordination.
183. We also agree with Contact that coordination in the wholesale market is less likely if a generator cannot determine if its rivals are short or long in a given moment. In such a setting it is not possible to establish if a deviation from a coordinated agreement by a rival is driven by its desire to reduce losses from a short position or by a decision to undermine coordination. As a result, the punishment mechanism disciplining coordination participants – a common feature of coordinated agreements – might not be well-targeted. This is likely to lower the sustainability of coordination.

Conclusion on vulnerability to coordination

184. It appears that the evidence about the wholesale market's vulnerability to coordination is mixed.
185. High levels of market concentration (and especially, concentration in the supply of flexible generation) and a large degree of symmetry in terms of vertical integration across suppliers might make coordination more likely and sustainable. However, differences in cost structures of generators, the credible threat of new entrants and a potential enforcement action from the EA might decrease the ability of generators to coordinate. Further, the uncertainty and volatility of generation combined with the asymmetry of net positions among generators make coordination less sustainable.

¹³⁹ While Manawa does operate the Bream Bay thermal plant, it generated 0GWh of electricity in FY2024. Manawa Energy - Integrated Report FY24 (20 May 2024) at p. 11.

¹⁴⁰ Contact and Manawa Statement of Issues (5 February 2025) at [41]-[42].

186. We therefore consider that, whilst the wholesale market has some features that make it vulnerable to coordination, they are likely to be balanced – at least to some extent – by the characteristics which have the opposite effect.

Merger-specific effect on the market's vulnerability to coordination

187. In this section, we consider the extent to which the Proposed Acquisition would make coordination more likely, complete or sustainable. A merger might have that effect if it changes market characteristics in a way that materially increases the risk of coordination. At the Sol stage we identified three ways in which the Proposed Acquisition might change market characteristics that could increase the risk of coordination.¹⁴¹
- 187.1. After the merger, Contact's asset flexibility would increase, making the merged entity the second most flexible generator, potentially enhancing Contact's ability to adhere to any agreements with other generators.
- 187.2. Greater geographic spread of assets would give the merged entity greater control over volumes and prices at specific nodes, potentially simplifying attempts to coordinate on volumes and prices across nodes.
- 187.3. The degree of generators' symmetry – in terms of vertical integration – would be greater, potentially increasing the stability of a coordinated agreement.
188. Contact disagreed with our assessment at the Sol stage and submitted that the Proposed Acquisition would not result in any material changes in market conditions for coordination.¹⁴²

Asset flexibility

189. Firstly, Contact submitted that – by acquiring Manawa – its generation flexibility would not materially increase.¹⁴³
- 189.1. Contact disagreed with our analysis of generators' flexibility set out in the Sol which estimated that the merged entity would be the second most flexible gentailer in New Zealand.
- 189.1.1. In relation to our assessment of generators' distribution of output (Table 2 of the Sol), Contact argued that it captured seasonal variation and not flexibility.¹⁴⁴
- 189.1.2. In relation to our assessment of shares of supply of flexible generation (Table 3 of the Sol), Contact submitted that it relied on outdated data, applied an inconsistent methodology for hydro plants

¹⁴¹ Contact and Manawa Statement of Issues (5 February 2025) at [243].

¹⁴² Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [12.14].

¹⁴³ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [12.16].

¹⁴⁴ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [8.43]-[8.45].

and wrongly included Contact's Taranaki Combined Cycle (TCC) plant in the analysis.

- 189.2. Contact argued that – based on the degree of intra-week flexibility – it is currently the least flexible gentailer capable of adjusting its output by 1GWh on average between weekdays and weekends.¹⁴⁵ Contact estimated that the second least flexible gentailer is Genesis which can adjust its output by 2.1GWh on average, and the most flexible gentailer is Meridian (4.3GWh). According to Contact, after the merger, the merged entity would only be able to adjust its output across days by 1.6GWh, so Contact would remain the least flexible gentailer.
- 189.3. Contact also submitted that – based on the degree of inter-month and inter-seasonal flexibility – it is currently the least flexible gentailer with the lowest controlled hydro storage and second lowest seasonal storage (including both hydro and thermal).¹⁴⁶ According to Contact, after the Proposed Acquisition, the merged entity would remain one of the least flexible gentailers in New Zealand.
- 189.4. Finally, Contact told us that – based on assets with any flexibility – it is currently the third most flexible generator with 16% share of the total flexible hydro generation on the market and 14% share of combined flexible hydro and thermal generation.¹⁴⁷ According to Contact, after the Proposed Acquisition, the merged entity would become the second most flexible generator based on flexible hydro generation (21% share) and would be third based on combined flexible hydro and thermal generation (18% share).
190. We agree with Contact's submission that our Sol assessment of generators' distribution – where we subtract the 95th percentile of a generator's output distribution from the 5th percentile – captures not only the generator's flexibility but also the seasonal variation of output. As a result, that analysis might overstate the flexibility of generators whose output varies materially depending on weather conditions and seasonal patterns. Because Manawa's output is based almost exclusively on hydro plants, the distribution analysis set out in the Sol likely overestimates its level of output flexibility. As such, we place limited importance on the generation distribution analysis in our updated assessment of Contact's and Manawa's flexibility.
191. We also agree with Contact's comments in relation to Table 3 from the Sol, which showed the share of flexible generation based on output from hydro assets and combined hydro and thermal assets. In particular:

¹⁴⁵ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at Figure 11.

¹⁴⁶ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at Figure 9 and Figure 10.

¹⁴⁷ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at Figure 8.

- 191.1. We agree that the output data based on the 2019-2024 periods – presented by Contact in its response¹⁴⁸ – is likely to be more informative than the data from 2015 used in Table 3 in the Sol. Although few assets have been added or removed since 2015, the 2018 gas outage appears to have had a material impact on the gas prices and, consequently, on output from thermal gas plants.
- 191.2. We agree that – to consider generators’ flexibility in the future – it is sensible to remove from the analysis the assets which are expected to be retired in the next few years (eg, Contact’s TCC plant which is set to retire in 2025).
192. Taking into account the abovementioned corrections in the methodology underpinning Table 3 from the Sol, it appears that Contact’s and Manawa’s flexibility is slightly lower than that set out in the Sol. Whilst in the Sol we estimated the merged entity’s share of flexible generation to be between 22% (flexible hydro output) and 24% (flexible hydro and thermal), the updated analysis yields the result of between 18% (flexible hydro and thermal) to 21% (flexible hydro). The updated analysis also finds Manawa’s flexibility – which corresponds to the merger-specific increment of Contact’s flexibility – to be between 3.9%-4.7%, slightly lower than the 4.1-5.6% increment estimated in Table 3 of the Sol.
193. We also accept Contact’s analysis of its intra-week and intra-seasonal flexibility.
- 193.1. Demand for wholesale electricity is typically lower on weekends than on weekdays, so generators with flexibility are likely to adjust their output to a greater degree between weekends and weekdays than those with little flexibility. As such, evidence that the merged entity would have low ability to adjust output between weekends and weekdays indicates that its flexibility would likely be limited.
- 193.2. At the Sol stage, we expressed a concern that Contact’s intra-seasonal flexibility analysis may incorrectly exclude assets with medium-term flexibility and exclude flexible output from its Roxburgh plant.¹⁴⁹ Those concerns have now been addressed.
- 193.2.1. In relation to the first concern, we have come to the view that assets with long term flexibility (across months) are more appropriate for adherence to a potential coordination than assets with short and medium-term flexibility (within days and weeks). This is because generators owning assets with long-term flexibility would be better equipped to adhere to a coordinated agreement over longer periods of time. As such, we consider that Contact’s intra-seasonal flexibility

¹⁴⁸ Contact – Submission on Contact and Manawa Statement of Issues (9 March 2025) at Figure 8.

¹⁴⁹ Contact and Manawa Statement of Issues (5 February 2025), at [133].

analysis¹⁵⁰ correctly excludes assets with short and medium-term flexibility.

193.2.2. In relation to the second concern, Contact provided us with data underpinning its analysis and explained that it calculated its flexible generation at the lake-level, not plant-level. As such, Contact's analysis captures flexible generation from both of its hydro plants – Clyde Dam and Roxburgh. Based on that analysis, Contact's maximum hydro storage (a measure of maximum output flexibility at any given time) and annual storable inflows (a measure of average usable flexible generation within a year) are the lowest among gentailers – and would remain the lowest after the Proposed Acquisition.

194. Based on the above assessment, it appears that the merged entity would remain one of the least flexible generators – regardless of the timeframe of output flexibility considered (eg, intra-week or intra-seasonal). In particular, the Sol analysis which indicated the greatest increment in flexibility of Contact as a result of acquiring Manawa – the analysis of generators' output distribution – contained methodological flaws which limited the usefulness of its conclusions. Other analyses, such as intra-week and intra-seasonal analysis as well as shares of supply of hydro storage and thermal assets – suggest that the merger-specific increment in Contact's output flexibility is not material.

Geographic spread of assets

195. Secondly, Contact argued that a greater geographic spread of assets is unlikely to increase the risk of coordination if the assets in question have limited ability to affect prices.¹⁵¹ Contact submitted that – out of the seven regions in which Manawa currently injects energy but Contact does not – only in one (Cobb, in Nelson) does Manawa own an asset with any material flexibility.¹⁵² Contact argued that in the remaining six regions¹⁵³ Manawa does not own any flexible plants.

196. In principle, we agree with Contact that a wider geographic spread of assets might only enhance its ability to affect prices if the assets in question are flexible. Output from non-flexible assets cannot be easily reduced or expanded, so electricity from those plants tends to be supplied at low prices to ensure it is dispatched to the system.

197. We have confirmed that only one of Manawa's hydro storage assets – Cobb, in Nelson – is located in a region where Contact currently does not own any assets.

¹⁵⁰ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at Figure 9 and Figure 10.

¹⁵¹ Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [142].

¹⁵² Contact - Submission on Contact and Manawa Statement of Issues Appendix 1 – NERA Report (9 March 2025) at [142].

¹⁵³ Waikato/Bay of Plenty, Manawatu/Wanganui, Ruapehu, Marlborough, West Coast and Northland.

Whilst Manawa owns plants in six other regions where Contact does not currently inject any electricity, those plants have limited flexibility. Consequently, the Proposed Acquisition does not materially extend Contact's control over the volumes and prices of wholesale electricity across a wider set of injection points. Therefore, we consider it unlikely that the risk of coordination in the market for the wholesale supply of physical electricity would increase as a result of Contact acquiring plants in regions where it currently does not own assets.

Symmetry in firm structure

198. Thirdly, Contact argued that the symmetry between generators in terms of their cost structures is more relevant for the assessment of coordinated effects than the symmetry in relation to firm structure (vertical integration). Contact submitted that variations in business strategies of generators are driven by distinct cost structures.
199. We agree that differences in cost structures are relevant for the assessment of coordinated effects, and we considered them in the Sol. However, we have not seen any evidence or arguments that would suggest that the symmetry of firm structure is not relevant for the assessment of coordinated effects.
200. We consider that the effect of greater firm structure symmetry in the market for wholesale physical electricity is likely ambiguous.
 - 200.1. Compared to independent generators, vertically integrated generators (gentailers) need to offload a lower proportion of their generation because a portion of it is used for retail obligations. Consequently, output decisions of vertically integrated generators would be more affected by changes in demand for retail electricity than output decisions of independent generators. From that perspective, greater symmetry across generators in terms of firm structure is likely to increase the risk of coordination.
 - 200.2. However, vertically integrated generators are less exposed to spot prices than independent generators because they offload a proportion of their generation to their retail arms. As such, vertically integrated generators would expect relatively lower payoffs from coordination than independent generators, so their incentive to engage in such practices would be lower. From that perspective, an increase in the share of generation supplied by vertically integrated generators might lower the risk of coordination.
201. At any rate, as a result of the Proposed Acquisition, the proportion of generation that would be produced by vertically integrated generators would grow from 92% to 97%. This is a small increment and – on its own – it is unlikely that it would materially change the ability, completeness or sustainability of potential coordination.
202. In summary, based on our assessment we consider that, as a result of the Proposed Acquisition:
 - 202.1. Contact's flexibility is unlikely to grow materially, so its ability to adhere to a potential coordinated agreement is unlikely to grow substantially;

202.2. Contact's increased geographic spread of assets would be limited to mostly inflexible plants, so its ability to affect volumes and prices at various injection points would not increase materially; and

202.3. the extent of vertical integration among generators would increase to a small extent.

203. Consequently, we are satisfied that the Proposed Acquisition is unlikely to materially increase the risk of coordination in the market for the wholesale supply of physical electricity.

Coordination mechanism

204. Finally, we consider the extent to which the potential coordination mechanism would be plausible. At the Sol stage, we expressed a view that the coordination mechanism appears complex. Coordination between generators would require an agreement on the volumes and prices offered in individual injection points for a specified number of trading periods. There are 52 injection points across New Zealand and 48 trading periods in a day. Generators' volume and price offers can be granular – they can offer up to five volume and price brackets per plant.¹⁵⁴ Any coordination – with or without the Proposed Acquisition – would require a shared understanding on the level of volumes and prices offered to the grid for a particular time period and location. This is likely to be difficult in practice.
205. In its Sol response, Contact submitted that a potential coordination mechanism could only rely on flexible assets, because output from must-run assets always needs to be dispatched.¹⁵⁵ According to Contact, this imposes a further complication to achieving and sustaining a coordinated agreement.
206. We agree with Contact's argument. Must-run plants – such as geothermal assets, run-of-river hydro, or wind farms – give owners limited flexibility to change output levels. Consequently, any potential coordination – if implemented – would likely only extend to output generated in flexible plants. We consider that this consideration likely adds further complexity to the potential coordination mechanism.
207. Based on the assessment set out in the Sol and the additional evidence from Contact, we have concluded that a potential coordination mechanism in the market for the wholesale supply of physical electricity appears difficult to achieve.

Conclusion on coordinated effects

208. On balance, we do not consider that the Proposed Acquisition would make potential coordination more likely, complete or sustainable. This is based on the fact that:

¹⁵⁴ For example, a generator could offer three brackets: 0.1MWh of electricity from its plant for \$0.01/MWh, another 0.2MWh for \$1, and another 0.2MWh for \$5.

¹⁵⁵ Contact - Submission on Contact and Manawa Statement of Issues (9 March 2025) at [12.10].

- 208.1. there is mixed evidence about the extent to which the market for the wholesale supply of physical electricity is currently vulnerable to coordination;
 - 208.2. it is unlikely that the Proposed Acquisition would make coordination materially more likely, complete or sustainable; and
 - 208.3. the coordination mechanism appears to be highly complex – all generators participating in a coordinated agreement would need to agree on a large number of parameters across multiple trading periods each day.
209. Consequently, we are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition through coordinated effects because the Proposed Acquisition would not increase the likelihood, completeness or sustainability of coordination.

Overall conclusion

210. The preceding sections have considered the likely effects of the Proposed Acquisition. While it is necessary to examine each of the potential effects in turn, the ultimate question we are required to consider is whether we are satisfied that the acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in any market.
211. For the reasons outlined above, we are satisfied that the Proposed Acquisition would not have, or would not be likely to have, the effect of substantially lessening competition in any relevant market in New Zealand.

Determination on notice of clearance

212. We are satisfied that the Proposed Acquisition will not have, or would not be likely to have, the effect of substantially lessening competition in a market in New Zealand.
213. Under section 66(3)(a) of the Commerce Act 1986, the Commerce Commission determines to give clearance to Contact Energy Limited to acquire up to 100% of the shares of Manawa Energy Limited.

Dated this 6th day of May 2025

Dr John Small
Chair

Attachment A: Assessing Manawa's ability and incentive to supply Shaped Hedges absent the Proposed Acquisition

Assessing Manawa's ability to supply Shaped Hedges

A1. Set out below is our assessment of Manawa's ability to supply Shaped Hedges in the counterfactual. In making this assessment, we have:

- A1.1 assessed the flexibility of Manawa's generation assets;
- A1.2 considered Manawa's contractual obligations; and
- A1.3 set out the timeframe for assessing the counterfactual.

The flexibility of Manawa's generation assets

A2. To test the extent of Manawa's ability to supply Shaped Hedges we have assessed the level of flexibility its assets would have in the counterfactual. Generators that supply Shaped Hedges require some level of asset flexibility to ensure they can meet the volume commitments specified in their hedge contracts – the greater a generator's level of flexible generation, ie, the level of output that it can easily and quickly change, the lower the risk associated with supplying Shaped Hedges. Because Shaped Hedges are often multi-year contracts, suppliers also need to be confident they have sufficient flexibility for the duration of the contract.

A3. Asset flexibility differs across plant types.

- A3.1 All thermal plants are flexible over the long term – their output can be adjusted by changing the amount of inputs fuelling them (eg, diesel, gas or coal). They can be used to support multi-year Shaped Hedges.
- A3.2 Hydro plants that are run-of-river have little or no water storage, so their output is predominantly determined by the amount of rainfall and snow melt. Output from such plants can only be adjusted – to some extent – over a very short time, eg, during a day. By itself, a run-of-river plant is unlikely to be useful in supporting multi-year Shaped Hedges.
- A3.3 Hydro plants with storage give generators a degree of flexibility, because output from such plants – while still influenced by rainfall – can be adjusted by draining or filling up the storage. The greater the level of storage, the more long-term flexibility a generator has. Hydro plants with greater storage capacity are more likely to be used to support multi-year Shaped Hedges than assets with a smaller storage capacity.

A4. To assess the level of flexible generation that Manawa would have at its disposal in the counterfactual in order to support the potential supply of Shaped Hedges we:

- A4.1 identified Manawa's plants that have a sufficient degree of flexibility to support the supply of Shaped Hedges; and

- A4.2 calculated the level of output from the identified plants. In doing so, we considered the entire distribution of annual generation from those plants to account for uncertainty around the variation of generation over time.
- A5. Manawa's electricity is currently generated at 25 hydro plants and one diesel-fuelled thermal plant. In our view, Manawa would have four plants – one thermal and three hydro – which are likely to have a sufficient degree of flexibility to support Manawa's ability to sell Shaped Hedges in the counterfactual.
- A5.1 Given its nature, the thermal plant (Bream Bay) is likely to be flexible and capable of supporting Shaped Hedges. This facility is capable of generating approximately up to []GWh per annum.¹⁵⁶
- A5.2 Eighteen of Manawa's hydro plants are run-of-river, that is, they have no water storage that could support Shaped Hedges over a longer period.¹⁵⁷ These hydro plants generated []GWh of electricity in the 2024 financial year.
- A5.3 Seven of the hydro plants have some storage. We agree with Manawa that it is more likely that only long-term storage plants would be used to support multi-year Shaped Hedges.¹⁵⁸ Manawa has three plants with long-term storage – Cobb, Coleridge and Waipori.¹⁵⁹ Those plants generated []GWh of electricity in the 2024 financial year.¹⁶⁰
- A6. Using the plant-level generation data provided by Frontier Economics on behalf of the Applicant, we calculated the distribution of annual generation from Manawa's four plants with sufficient flexible generation between 1998 and 2023. We estimate that, in this period, Manawa's flexible generation output ranged between []GWh and []GWh per annum, with a median of []GWh. In other words, Manawa can expect to generate more than []GWh per annum 50% of the time (equally, it would generate less than that 50% of the time).

¹⁵⁶ In 2024, Bream Bay did not generate any electricity and so the []GWh figure represents the year where Bream Bay produced the largest volume of electricity in our dataset. Between 2011 and 2023 Bream Bay generated []GWh per annum on average.

¹⁵⁷ This includes the Kaimai, Wheao, Hinemaiaia, Esk, Mangorei, Motukawa, Branch, Waihopai, Arnold, Wahapo, Kanerie/Mckays Creek, Highbank/Montalto, Deep Stream, Paerau/Patearoa, Kuratau, Wairere, Mokauiti and Piriaka hydro plants/schemes.

¹⁵⁸ While in the Sol we were of the view that plants with medium-term storage had sufficient storage to support Shaped Hedges, we now consider that they do not as they are only able to provide intra-day or intra-week flexibility, rather than long term flexibility.

¹⁵⁹ Manawa submitted that assets with intra-day and intra-week storage (which Manawa considers to be the level of storage its remaining plants have) are not sufficiently flexible to provide firm volumes necessary for Shaped Hedges (Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [69]-[75]). We agree with Manawa on this point.

¹⁶⁰ The flexibility of any hydro assets is constrained by plant maintenance (when assets do not operate at full capacity), resource consents (ie, inability to use the full hydro storage to supply electricity) and water availability (during dry years Manawa's flexibility is lower than in wet years). Such constraints have impacted on the output from the Cobb, Coleridge, and Waipori plants respectively in recent years. See Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [73]-[75] and [89].

- A7. If Manawa was to supply a given level of Shaped Hedges, it would need to be confident that its flexible generation is capable of meeting (or exceeding) that volume for most, if not all, of the contract duration. As such, it is likely that the actual volume that Manawa's flexible assets are capable of supporting is significantly less than the median flexible generation estimate of [] GWh per annum. For example, to have 90% certainty that its flexible generation would be sufficient to support its Shaped Hedges, Manawa could supply no more than [] GWh of Shaped Hedges per year, and, to have 80% certainty, no more than [] GWh.
- A8. The exact level of certainty that Manawa would be comfortable with in the counterfactual is unclear, although Contact suggests that a 90-95% certainty level is a reasonable range for its own contracting strategy.¹⁶¹ We have no reason to believe that Manawa's strategy in the counterfactual would be materially different. Consequently, and given that Manawa's Shaped Hedges have [], we consider that the 80-90% range of certainty is likely to be the lower limit that Manawa would require.¹⁶² Accordingly, we estimate that Manawa would likely be able to supply approximately [] GWh of Shaped Hedges per annum in the counterfactual.
- A8.1 Manawa submitted that any estimates about its ability to supply Shaped Hedges should account for the risk of adverse hydrological conditions, resource consents (which limit the degree of flexibility of hydro storage) and plant maintenance.¹⁶³
- A8.2 However, our approach to assessing ability accounts for these factors because the generation data provided by the Applicant includes years in which each of these factors played a role in affecting generation, both positively and negatively.

Manawa's contractual obligations

- A9. Manawa's existing contractual obligations – ie, the shaped, baseload and PPA hedges that it currently supplies – would likely impose a constraint on Manawa's ability to enter into new Shaped Hedges, absent the Proposed Acquisition.
- A10. Taking this into account, we estimated the potential constraint, and the level of Manawa's flexible generation that could be supplied to customers given that constraint, by:
- A10.1 comparing Manawa's flexible generation to its uncontracted volumes taking into account any buffer it might include.¹⁶⁴ If Manawa's uncontracted

¹⁶¹ The Frontier report accompanying Contact's application identified 90-95% certainty over the expected generation as the likely threshold to supply hedges in general. The Application at [27.7] and Appendix 1 [17].

¹⁶² Based on the assumed 80-90% level of certainty, Manawa would expect to be exposed to the spot market in one to two years of the contract duration.

¹⁶³ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [73]-[75].

¹⁶⁴ We understand that buffers can be met by flexible or inflexible output. Therefore, the volume of the buffer – in itself – is not a constraint on the volume of Shaped Hedges a generator can supply.

available volumes (less the buffer) exceed its flexible generation, then Manawa might be able to supply more Shaped Hedges without risking being short on electricity. If the reverse is true, then Manawa is unlikely to supply more Shaped Hedges; and

A10.2 comparing Manawa's flexible generation to the volume of its existing Shaped Hedges. To the extent that the former exceeds the latter, it would mean that Manawa still has some uncontracted flexible generation which could support more Shaped Hedges. If the reverse is true, then Manawa is unlikely to supply more Shaped Hedges. We also consider Manawa's Shaped Hedge commitments in the future, given that the Mercury Hedge – Manawa's single largest Shaped Hedge – will continue to roll off, freeing up some capacity to supply new Shaped Hedges.

A11. Given this, Table A1 estimates Manawa's contractual position in 2024. It indicates that, despite having access to [] GWh of flexible generation per annum, Manawa's contractual constraints mean that it could only sell approximately [] GWh of Shaped Hedges (or any other contract) without potentially exposing itself to the spot market.

Table A1: Estimated contractual position of Manawa in 2024 (GWh)

Manawa	FY2024
Generation	[]
Net hedge position (hedges sold less hedges bought)	[]
Generation less contracted volume	[]
Buffer	[]
Generation able to be contracted out	[]
Estimate range of flexible generation per annum	[]

Source: Manawa's data, Commission estimates

A12. Table A2 below shows Manawa's predicted levels of Shaped Hedges contracted out, assuming no replacement to existing contracts in FY2025 and over the next three years. Comparing the volumes in Table A2 to the volumes that are able to be contracted out in Table A1 indicates that Manawa has already contracted out most of its flexible generation for the next few years. No buffer is available for the next two years if we compare against the lower end of the range of flexible generation.

Table A2: Predicted level of Manawa's volume of Shaped Hedges sold, FY2025-2028 (GWh)

	FY2025	FY2026	FY2027	FY2028
[				
Total				]

Source: Manawa's data.

A13. Given its current commitments in terms of Shaped Hedges, Manawa would likely be able to support new Shaped Hedges with its flexible generation if it is comfortable with at least a [] % chance that its total flexible generation would fall short of total

Shaped Hedge commitments in a given year¹⁶⁵ (or []% level of certainty). This certainty level is lower than the 80-90% range we consider appropriate for generators and materially lower than the 90-95% range that Contact considers to be reasonable. As such, it appears unlikely that Manawa would be comfortable to sell new Shaped Hedges given the potentially insufficient level of certainty over its extent of flexible generation.

Timeframe for assessing the appropriate counterfactual

- A14. However, we recognise that Manawa's ability to offer new Shaped Hedges is likely to increase in the future as the Mercury Hedge rolls off. As indicated in Table A2, Manawa could supply – on average – an additional []GWh in the form of Shaped Hedges in every consecutive year until FY2032.
- A15. The timeframe we use to assess the appropriate counterfactual is context-dependent but generally matches the timeframe we use for competitive effects (which in most instances is 2-3 years). Where we anticipate that competitive conditions may be materially different beyond that time, that may justify consideration of a longer period.
- A16. As indicated above, the electricity industry is in a period of change, which is likely to have an impact on the competitive conditions in the future, and so accurately predicting the competitive constraint from Manawa in the counterfactual beyond the next 2-3 years is difficult given the increased potential for uncertainty.
- A17. Therefore, in assessing the counterfactual for the supply of Shaped Hedges, we have considered Manawa's Shaped Hedge contractual commitments for the next three years up to FY2028. Because Manawa's ability to supply new hedges grows as the Mercury Hedge rolls off, the counterfactual at FY2028 will represent a more competitive scenario than in the preceding years.
- A18. By FY2028, Manawa's volume commitments from Shaped Hedges will likely amount to []GWh (as per Table A2). Assuming Manawa would be comfortable with the risk that its flexible generation would fall short of its Shaped Hedges commitments 10% of the time, Manawa could supply new Shaped Hedges amounting to []GWh in FY2028 (and []GWh if it is comfortable with a 20% risk).

Conclusion on Manawa's ability to supply Shaped Hedges in the counterfactual

- A19. In summary, we consider that as Manawa would have access to a small number of flexible assets in the counterfactual it would have some ability to supply new Shaped Hedges, although this ability would be relatively limited.

A19.1 We note that, given its current contractual commitments, Manawa at present has no spare flexible generation meaning it has almost no ability to increase its supply of Shaped Hedges in the immediate short term.

¹⁶⁵ Estimate based on time series data between 1998-2023.

A19.2 However, as these contractual commitments change over time Manawa could have some ability to use its flexible generation to supply Shaped Hedges to new customers in the next 2-3 years. We estimate this supply would likely be in the range of no more than []GWh per annum.

Assessing Manawa's incentive to supply Shaped Hedges

A20. Set out below is our assessment of whether Manawa would have an incentive to supply any of its available flexible generation volumes as Shaped Hedges in the counterfactual.

Manawa's views on its incentive to supply Shaped Hedges

A21. According to Manawa, central to its strategy is taking on debt – [] – to facilitate investment in its pipeline of new, intermittent energy plants.¹⁶⁶ We understand that higher levels of debt would likely lower Manawa's risk appetite in relation to the products it seeks to sell and the counterparties with which it intends to trade.¹⁶⁷ There are likely to be the following flow on effects from Manawa increasing its level of debt.

A21.1 A significant increase in the level of debt would require Manawa (or any other generator in a similar position) to reduce its appetite for risky contracts such as Shaped Hedges, as it would need to have confidence that it can generate the required revenue needed to service the increased debt. According to Manawa, while Shaped Hedges might attract a higher premium than PPAs or baseload hedges, they would involve higher levels of risk due to exposure to potentially high spot prices during peak and super peak periods.¹⁶⁸

A21.2 Rather than sell any leftover volume as Shaped Hedges, Manawa is more likely to sell through other, safer channels (eg, baseload ASX Hedges or through selling on the spot market when prices are high). These options are considered less risky as Manawa can choose when (and whether) to offer them, meaning it can wait until it has the surety of generation to underpin supply, rather than committing to providing a product that it might not be able to fulfil.¹⁶⁹

A21.3 Since adopting its new commercial strategy in mid-2023, Manawa has been approached by potential customers to supply Shaped Hedges and has refused all requests for these products.¹⁷⁰ We understand that the responses to some of these requests occurred prior to the negotiations around the Proposed Acquisition, which indicates that at least some of the decisions were not influenced by the Proposed Acquisition.

¹⁶⁶ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [116].

¹⁶⁷ Commerce Commission interview with Manawa ([]) and Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [16] and [218].

¹⁶⁸ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [151].

¹⁶⁹ Commerce Commission interview with Manawa ([]).

¹⁷⁰ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [21].

A22. Manawa also submitted that, even if it was to supply Shaped Hedges, the volume would be minimal because:

A22.1 Manawa’s assessment of counterparty risk has recently become stricter. According to Manawa, its financial health – including the value and riskiness of its contracts – would be examined by lenders should Manawa take on higher levels of debt.¹⁷¹ As such, Manawa submitted that it would only seek counterparties with

[].¹⁷²

Manawa also indicated that its counterparty risk assessment has become more important to it in the recent months, after the default of Prime (an independent retailer who traded with Manawa)¹⁷³ contributed to Manawa downgrading its earnings forecast by \$35m.¹⁷⁴

A22.2 Manawa would be a high-cost supplier of Shaped Hedges because it does not have access to firm thermal generation which could be relied upon during dry years. According to Manawa, its risk of supplying Shaped Hedges is higher than generators that have access to more flexible generation, so the premium it would demand would likely be proportionately higher than the other gentailers.¹⁷⁵ Manawa says that as a result, it would not be a competitive constraint in the supply of Shaped Hedges, and it is unlikely that customers seeking Shaped Hedges would purchase them from Manawa.¹⁷⁶

Why Manawa is unlikely to have an incentive to supply Shaped Hedges in the counterfactual

A23. Based on the evidence before us, we consider that Manawa is unlikely to have any commercial incentive to supply Shaped Hedges in the counterfactual. Set out below are the three main reasons for this assessment.

A24. First, Manawa’s preference for low-risk products and counterparties appears to be credible and commercially sensible given its commercial strategy.

A24.1 Absent the Proposed Acquisition, we consider it likely that Manawa would increase its levels of debt to fund its development pipeline. Manawa’s publicly available FY24 Annual Results Presentation (dated 20 May 2024) notes that Manawa focusing “on long-term, large volume offtake agreements for a significant portion of the portfolio is a lower-risk contracting approach

¹⁷¹ Manawa expects that entering into Shaped Hedges would increase lenders’ views of Manawa’s WACC, given the additional risk borne and greater revenue variability (Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [139]).

¹⁷² Manawa’s credit and counterparty policy sets out that
[
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¹⁷³ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [218].

¹⁷⁴ Manawa NZX announcement – Manawa Energy Limited provides updated earnings guidance (8 August 2024).

¹⁷⁵ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [213]-[214].

¹⁷⁶ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [214].

which allows for access to greater levels of debt to fund new developments".¹⁷⁷ Internal documents created after the IPP strategy decision in November 2023 but before the existence of the Proposed Acquisition state that

[
] ¹⁷⁸ and
[

].¹⁷⁹ These internal documents are consistent with the public statement that Manawa has made about its approach to debt, absent the Proposed Acquisition.

A24.2 Higher levels of debt translate into higher interest payments. Consequently, it is reasonable to expect that Manawa would require a greater degree of certainty around revenue streams relative to its current position. Whilst Manawa could earn a higher premium if it was to supply Shaped Hedges (or contracts to high-risk counterparties) compared to safer instruments, it might face significant financial consequences if the spot price during peak times was at an elevated level for a long period.

A24.3 Further, Manawa's preference for counterparties with [] credit ratings appears to be credible considering the recent default of Prime – an independent retailer who traded with Manawa – which contributed to Manawa downgrading its earnings for the financial year.¹⁸⁰ Manawa told us []¹⁸¹ We understand that []
[]. To this extent, to supply any contracts – Shaped Hedges, baseload or PPAs – to independent retailers or generators [], Manawa would need to [].

A25. Second, Manawa's internal documents are consistent with Manawa's submission to us about its preference for low-risk products over riskier contracts and its intention to trade with creditworthy counterparties.

A25.1 A board paper from August 2023 notes that
[]

¹⁷⁷ See Manawa Energy – FY24 Annual Results Presentation (20 May 2024) p. 7.

¹⁷⁸ [].

¹⁷⁹ [].

¹⁸⁰ Manawa NZX announcement – Manawa Energy Limited provides updated earnings guidance (8 August 2024).

¹⁸¹ Manawa – Submission on Contact and Manawa Statement of Issues (7 March 2025) at [12.3.3].

182

A25.2 A board paper from September 2023 notes that

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A25.3 An October 2023 report commissioned by Manawa states

[

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A25.4 In its presentation from the board strategy day from November 2023

Manawa explains

[

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A25.5 A board paper from March 2024 notes that

[

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A26. Third, Manawa's actions with customers seeking Shaped Hedges are consistent with Manawa's submission to us about its preference for low-risk products and its intention to trade with creditworthy counterparties.

A26.1 In September 2023 Manawa

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182 [].

183 [].

184 [].

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186 [].

187 [].

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A26.2 In May 2024

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A26.3 In April 2023,

[

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A26.4 In January 2024,

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A26.5 In February 2024,

[

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A26.6 In April 2024,

[

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A26.7 Between Q4 2022 and Q2 2024, Manawa did not respond to requests for approximately [] tranches of Shaped Hedges. By our calculations, the winning bids on those tranches made – on average – a []% premium over and above the risk-adjusted ASX baseload price and so, by not participating in the sale process, Manawa potentially forwent profit of [] over the lifetime of the contracts.¹⁹⁴

A26.8 Some retailers told us that Manawa's willingness to provide Shaped Hedges has decreased (even prior to the Proposed Acquisition) and that Manawa has not helped with the supply of Shaped Hedges for the last two years.¹⁹⁵

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¹⁹⁰

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¹⁹²

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¹⁹⁴ Estimates based on hedge data supplied by the EA.

¹⁹⁵ For example, see Commerce Commission interview with [] (31 October 2024), Commerce Commission interview with [] (31 October 2024) and Commerce Commission interview with [] (30 October 2024).

The conditions required before Manawa would likely supply Shaped Hedges

- A27. For completeness, as noted above, Manawa does not entirely rule out selling Shaped Hedges in the counterfactual.¹⁹⁶ However, we consider that it would only do so if all of the following four conditions were met:
- A27.1 Manawa's access to safer channels (PPAs or baseload) would need to be restricted for some reason. Demand for PPAs may increase as the need for new generation rises¹⁹⁷ and baseload hedges can always be supplied via the ASX, so it is unclear why those channels might be unavailable to Manawa;
 - A27.2 the premium on the Shaped Hedges would need to be commensurate to the risks that Manawa would take on in supplying the product. We understand that there is a limit to the price independent retailers are willing to pay for Shaped Hedges, meaning that Manawa's prices could be higher than potential customers are willing to pay;
 - A27.3 Manawa would need to expect the future hydrological conditions to be favourable enough to allow it to supply Shaped Hedges. The EA notes that climate change may mean extreme weather events become more common in the future,¹⁹⁸ which could mean it becomes increasingly difficult to predict future hydrology levels with any confidence; and
 - A27.4 Manawa would need to be comfortable with the counterparty risk involved. Given its recent experience with the default of Prime, we do not consider it particularly likely that Manawa would relax its counterparty risk policy in the coming years.
- A28. Although it is not impossible that all these conditions could be met, in our view the likelihood of all of them occurring is no more than a mere possibility.

¹⁹⁶ For example, Manawa accepts that it cannot say that it would be impossible for it to sell Shaped Hedges or that it would never sell Shaped Hedges (Manawa - Submission on Contact and Manawa Statement of Issues (7 March 2025) at [12.2]).

¹⁹⁷ See Electricity Authority – 'Entrant generators – context, headwinds and options for power purchase agreements – Working paper' (17 January 2025) at [4.11].

¹⁹⁸ See Electricity Authority – 'Eye on electricity: The impact of our climate on hydro generation' (27 February 2023).

Attachment B: Temporal output optimisation – Commission’s modelling

- B1. In the central scenario, we assumed that:
- B1.1 the merged entity would attempt to shift the same level of volume between two trading periods in a given day, every day between 1 April 2023 to 31 December 2024;¹⁹⁹
 - B1.2 the volume shifted would amount to 25MWh – approximately 1% of the average total supply of wholesale electricity in a given trading period. We have estimated that, based on historical data of Contact’s and Manawa’s flexible assets, the merged entity would [],²⁰⁰
 - B1.3 the trading periods between which output is shifted are always the same. As a result, we do not assume that the merged entity needs to have perfect foresight into the volatility of the spot price. We assume that – in each day included in our sample – the merged entity would shift output away from the trading period when the average spot price volatility is the highest (8am) to the trading period when it is the lowest (10pm); and
 - B1.4 the merged entity’s exposure to the spot market (that is its net position in MWh) would be a simple combination of Contact’s and Manawa’s exposure in the assessed period.²⁰¹
- B2. We used the EA’s price sensitivity data²⁰² – which identified the simulated spot price change in response to 1% change in load – to calculate the hypothetical spot price at 8am and 10pm if the merged entity was to engage in temporal output optimisation. We then calculate the profit (or loss) that the merged entity would incur in those two trading periods given the merged entity’s assumed exposure to the spot market.
- B2.1 Shifting output away from the high sensitivity period (8am) would result in a higher spot price, which would be applied to the merged entity’s generation that was not shifted away. However, the merged entity would need to forego a profit from the volumes that had been shifted away. All else equal, a high

¹⁹⁹ The assessment period has been limited to after April 2023 as the EA does not have simulation data before April 2023, and before December 2023 as we do not have generating data after December 2023.

²⁰⁰ The parties identified their plants with flexible generation. For the calculation of generation volumes, we have used the figures set out in Frontier Economics’ report accompanying the Application. The merged entity’s flexible generation is the sum of Contact and Manawa’s flexible generation. The merged entity’s flexible generation is then compared against 25MWh.

²⁰¹ Both Contact’s and Manawa’s net positions (as a percentage of generation) are calculated at a monthly level which we extrapolate to every trading period within that month, by applying it to each trading periods generation. For Contact’s net position, we have used the net position provided online in its operational reports. For Manawa’s net position we have used the hedge data provided to us and the figures set out in Frontier Economics report accompanying the Application.

²⁰² EA price sensitivity, see: www.emi.ea.govt.nz/r/cjpgl.

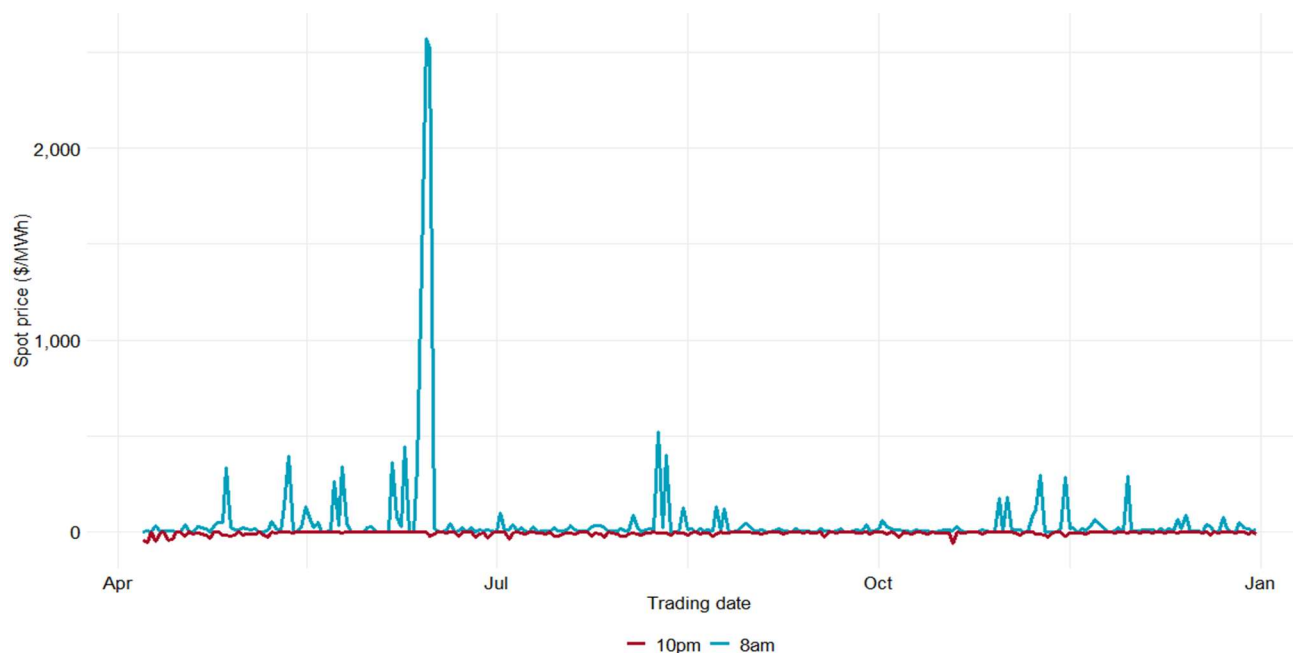
spot price sensitivity at 8am would benefit the merged entity if it was to engage in temporal output optimisation.

B2.2 Shifting output to the low sensitivity period (10pm) would result in a lower spot price, which would be applied to the sum of the merged entity's original generation in that period plus the 25MWh that had been shifted. However, the merged entity would forego a higher price on its volumes. All else equal, a low spot price sensitivity at 10pm would benefit the merged entity if it was to engage in temporal output optimisation.

B2.3 Consequently, shifting output between trading periods involves a trade-off between higher prices and lower volumes in the high price sensitivity period and lower prices and higher volumes in the low sensitivity period.

B3. Figure B1 below shows how the spot price at 8am and 10pm changes as a result of the merged entity's hypothetical temporal output optimisation. As expected, the spot price increases – sometimes by a large margin – at 8am when the merged entity is assumed to shift away output from and decreases – by a smaller margin – at 10pm. Instances, where the spot price sensitivity is high at 8am and low at 10pm (eg, in July) are likely to benefit the merged entity if its merchant length is positive.

Figure B1: Simulated change in spot prices at 8am and 10pm as a result of the merged entity's hypothetical temporal output optimisation (April 2023 to December 2023)



Source: Commission's calculations based on EA's data.

B4. The extent to which the merged entity would make a gain from price changes at 8am and 10pm due to temporal output optimisation depends on its exposure to the spot market. The greater its merchant length, the more it would gain from higher spot prices (and vice versa). If the merged entity's merchant length is negative (ie, it is short on electricity) it would make a loss if spot prices were to increase.

- B5. Figure B2 below shows the evolution of the merged entity's net position before (black) and after (red) it shifts 25MWh of electricity between the two identified trading periods.

[

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Figure B2: the merged entity's hypothetical merchant length before and after temporal output optimisation, at 8am and 10pm (April 2023 to December 2023) [

]

Source: Commission's calculations based on EA's and parties' data.

- B6. We combined the information set out above on the magnitude of the spot price sensitivity and the merged entity's merchant length to calculate the cumulative level of profit (or loss) that the merged entity would incur from temporal output optimisation. Figure B3 shows the evolution of that cumulative profit/loss (black line), also split into the profit/loss from shifting away from the 8am period and the profit/loss from shifting to the 10pm period.

Figure B3: Merged entity's hypothetical profit from temporal output optimisation (April 2023 to December 2023) [

]

Source: Commission's calculations based on EA's and parties' data.

- B7. Based on the central scenario modelling, we estimated that the merged entity would [] from temporal output optimisation in the nine-month period considered.
[

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- B8. Based on the central scenario set out above, we conclude the merged entity would not have the financial incentive to engage in this temporal output optimisation strategy.
- B9. In addition to calculating the merged entity's profit (or loss) from temporal output optimisation based on the central scenario, we have run eight sensitivities, in which we changed our assumptions.²⁰³
- B9.1 A scenario where the merged entity shifts output between two days in a week instead of between two trading periods in a day. We found, on average, the spot price sensitivity is highest on Thursday and lowest on Sunday. We therefore calculated the merged entity's profits (or losses) if it was to shift

²⁰³ For six of the eight sensitivities either a +20% or -20% variation was applied to key inputs. This variation was selected to provide a comprehensive understanding of how changes in these inputs increase the model's outputs, ensuring that the results are robust and reliable under different scenarios. We did not use a higher percentage variation on inputs to avoid excessive, extreme scenarios.

25MWh in each trading period on each Thursday in the sample to the equivalent trading period on Sunday.

- B9.2 A scenario in which the merged entity extends its merchant length by not replacing Manawa's Mercury Hedge with any other volume commitment. This increases the merged entity's merchant length from the average of []% in the central scenario to []% in this case, increasing the merged entity's potential gains from higher spot prices.²⁰⁴
- B9.3 A scenario in which the merged entity chooses to shift 20MWh between 8am and 10pm instead of 25MWh considered in the central scenario (a 20% decrease). This reduces the trade-off the merged entity faces, as it increases the volumes that are sold at 8am (at a higher price) and decreases the volumes sold at 10pm (at a lower price).
- B9.4 A scenario in which the price sensitivity at 8am increases by 20% across the sample considered. This further increases spot prices in 8am periods after output is shifted, which expands the profits the merged entity could make from the volumes that had not been shifted.
- B9.5 A scenario in which the price sensitivity at 10pm decreases by 20% across the sample considered. This lowers the impact that shifting output to the 10pm period has on spot prices at that time, thereby increasing the profits the merged entity could make from the total volume supplied at 10pm.
- B9.6 A scenario in which the original price level at 8am (before output shifting) is lower by 20%. This lowers the opportunity cost of shifting output away from the 8am period and increases the merged entity's potential profits from the strategy.
- B9.7 A scenario in which the original price level at 10pm (before output shifting) is higher by 20%. This increases the gain that the merged entity could make from shifting output to the 10pm period.
- B9.8 Finally, a scenario which combines assumptions from the sensitivities set out in [B9.2] – [B9.7].
- B10. Table B1 below sets out the estimated total profit (or loss) that the merged entity would incur from temporal output optimisation based on our sensitivity modelling set out above.²⁰⁵

²⁰⁴ The net position range of [] to []% is calculated over the period April 2023 to December 2023, the same period as our modelling of incentive. The net position range of []% to []% discussed in the Sol and presented in Sol Figure 2, is calculated over the period May 2022 to December 2023. The incentive modelling covers a shorter period due to data availability.

²⁰⁵ Based on a nine-month period between April 2023 and December 2023.

Table B1: Merged entity's hypothetical profit from temporal output optimisation based on various sensitivities

	Scenario	Sensitivity	Profit (\$M)
1	a) Intra-day shifting (08:00 to 22:00)		[]
	b) Inter-day shifting (Thursday to Sunday)		[]
2	Intra-day shifting (08:00 to 22:00)	Increase merchant length by not replacing Mercury Hedge	[]
3	Intra-day shifting (08:00 to 22:00)	Decrease volume shifted by 20%, to 20MWh	[]
4	Intra-day shifting (08:00 to 22:00)	Increase price sensitivity at 8am by 20%	[]
5	Intra-day shifting (08:00 to 22:00)	Decrease price sensitivity at 10pm by 20%	[]
6	Intra-day shifting (08:00 to 22:00)	Decrease original price at 8am by 20%	[]
7	Intra-day shifting (08:00 to 22:00)	Increase original price at 10pm by 20%	[]
8	Intra-day shifting (08:00 to 22:00)	Combined scenarios 1a,2, 3, 4, 5, 6,7.	[]

Source: Commission's calculations.