

Executive summary to determination

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

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 (Sol), 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.