

5 July 2024

s9(2)(a)

Tēnā koe s9(2)(a)

Thank you for your request, received on 9 April 2024, and clarified on 16 April 2024, for the following information under the Official Information Act 1982 (the OIA):

“Updates/briefings/correspondence in relation to discussions the EA has had with the Commerce Commission and MBIE in relation to the s 36 complaints made from independent retailers (including Electric Kiwi’s complaint), as well as any internal EA briefing reports on the matter, and extends to not only where there were specific references in those documents to s 36 of the Commerce Act but also where those documents included the following matters:

- (i) gentailer wholesale market power and conduct*
- (ii) retail price/margin squeezes*
- (iii) wholesale access (and pricing) to hedge products (OTC)*
- (iv) internal transfer payments*
- (v) the terms of reference/programme initiation document for the review of risk management contracts.”*

We note that you also confirmed that:

- a) The timeframe of the request is consistent with the start date of your OIA request of 25 January 2024 (i.e. from the date of the first independent retailer’s complaint to the Commission) and up to 9 April 2024.
- b) The context of this request is still focused on seeking documents related to the independent retailers’ section 36 complaints to the Commerce Commission last year, the Commission’s assessment of those complaints, and Authority/MBIE/Commission communications, and Authority briefing reports, related to them. The request is not intended to capture documents or discussions related to the Authority’s general work on, for example, wholesale market power and conduct. You have confirmed that you are not seeking our weekly trading conduct reports.

The Authority has identified 81 documents within the scope of your request. The Authority intends to release 74 documents in full or part, with redactions clearly marked where require a list of which

is included in Appendix A. We note that this list does not include documents that have been released to you under previous requests.

Some documents being released have sections redacted under:

- a) section 9(2)(a) of the OIA to protect the privacy of natural persons.
- b) section 9(2)(b)(ii) of the OIA to protect information where the making available of the information would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the information.
- c) section 9(2)(f)(iv) of the OIA to maintain the constitutional conventions that protects the confidentiality of advice tendered by officials.
- d) section 9(2)(g)(i) of the OIA to maintain the effective conduct of public affairs through the free and frank expression of opinions.
- e) section 9(2)(h) of the OIA to maintain legal professional privilege.

The Authority is withholding 7 documents:

- a) one document in its entirety under section 9(2)(b)(ii)
- b) one document in its entirety under section 9(2)(b)(ii) and section 9(2)(h)
- c) three documents in their entirety under section 9(2)(g)(i)
- d) one document in its entirety under section 18(d)
- e) one document in its entirety under section 9(2)(f)(iv)

I am satisfied, in terms of section 9(1) of the Act, that the need to withhold the information referred to above is not outweighed by other considerations that render it desirable, in the public interest, to make the information available.

You have the right to seek an investigation and review by the Ombudsman of this decision. Information about how to make a complaint is available at www.ombudsman.parliament.nz or freephone 0800 802 602.

Please note that it is our policy to proactively release our responses to official information requests (with personal information removed) where possible. If there are other parts of this response that you would like redacted (see for example document number INTERNAL.00029), please let us now as soon as possible and we can consider your request.

If you wish to discuss this decision with us, please feel free to contact us by emailing uia@ea.govt.nz.

Nāku noa, nā,



Airihī Mahuika
GM Legal, Monitoring and Compliance

Appendix A

Date	Category	Description	Redaction grounds
07 May 2023	Communications Dashboard	Communications Dashboard prepared in relation to 31 March – 4 May 2023	Redactions: Commercially sensitive (s 9(2)(b)(ii)); Out of scope
01 Feb 2024	Communications Dashboard	Communications Dashboard prepared in relation to December 2023 and January 2024	Redactions: Out of scope
13 Feb 2024	CE Report	CE Report for February board meeting	Redactions: Out of scope
13 Feb 2024	Report	Legal, monitoring and compliance report for February board meeting	Redactions: Legal professional privilege (s 9(2)(h)); Out of scope
30 Apr 2024	Presentation	Risk Management Review – Update to the board	Redactions: Free and frank (s 9(2)(g)(i))
31 Mar 2023	Email	Email exchange between Tim Hewitt (Commission) and Louise Stumbles (EA) to set agenda for next Commission/EA meeting	Redactions: Privacy (s 9(2)(a)); out of scope
03 Apr 2023	Email	Email exchange between John Small (Commission), Sarah Gillies (EA) and Doug Watt (EA) about publication of gentailers' ITPs	Redactions: Privacy (s 9(2)(a)); out of scope
18 Apr 2023	Email	Email exchange between Doug Watt (EA) and Luke Archer (Commission) arranging meeting to discuss the complaints and gross margins data	Redactions: Commercial prejudice (s 9(2)(b)(ii)); Privacy (s 9(2)(a))
27 Jun 2023	Email	Email exchange between Tamara Linnhoff (MBIE), Andrew Millar (EA) and Mia Kingsley-Smith (EA) arranging meeting to discuss independent retailer complaints about ITPs and access to contracts	Redactions: Commercial prejudice (s 9(2)(b)(ii)); Privacy (s 9(2)(a))
06 Jul 2023	Email	Email exchange between Tamara and Jo Goudie (EA) to set agenda for meeting on independent retailer concerns around ITPs and access to contracts	Redactions: Commercial prejudice (s 9(2)(b)(ii)); Privacy (s 9(2)(a))
14 Aug 2023	Email	Email exchange between John McCabe (MBIE) and James Goodchild (EA) about gentailer's ITP disclosures.	Redactions: Privacy (s 9(2)(a)); Free and frank (s 9(2)(g)(i)); Commercial prejudice (s 9(2)(b)(ii))
06 Sep 2023	Email	Email from Sean Martin (EA) to Jolene Williams (MBIE) about media response about s 36 complaint	Redactions: Privacy (s 9(2)(a))
08 Sep 2023	Email	Email exchange between Charlotte Rosier (Commission) and Sean Martin (EA) about communications approach to s 36 complaint queries	Redactions: Privacy (s 9(2)(a))
15 Sep 2023	Email	Email exchange between Murray Nash (EA) and Luke Archer (Commission) about OTC and ASX issues in relation to s 36 complaints	Redactions: Free and frank (s 9(2)(g)(i)); Legal professional privilege (s 9(2)(h)); Obligation of confidence (s 9(2)(ba)); Privacy (s 9(2)(a)); Commercial prejudice (s 9(2)(b)(ii))
21 Sep 2023	Email	Email exchange between Brent Lewers (EA) and Wendy MacLucas (Commission) about draft discussion paper about Commission/EA joint aspirations	Redactions: Privacy (s 9(2)(a))
21 Sep 2023	Draft	Attachment to 21 September 2023 email	Redactions: Out of scope

Date	Category	Description	Redaction grounds
26 Sep 2023	Email	Email exchange between Murray Nash (EA) and Luke Archer (Commission) about OTC and ASX issues in relation to s 36 complaints and arranging corresponding meeting	Redactions: Free and frank (s 9(2)(g)(i)); Legal professional privilege (s 9(2)(h)); Obligation of confidence (s 9(2)(ba)); Privacy (s 9(2)(a)); Commercial prejudice (s 9(2)(b)(ii))
01 Nov 2023	Email	Email exchange between Doug Watt (EA) and Reuben Irvine (Commission) about the Authority's price squeeze project	Redactions: Privacy (s 9(2)(a))
08 Nov 2023	Email	Email exchange between Tamara Linnhoff (MBIE) and Andrew Millar (EA) arranging meeting to discuss cross-agency OTC/competition work	Redactions: Privacy (s 9(2)(a)); Confidentiality of advice (s 9(2)(f)(iv))
08 Nov 2023	Email	Meeting invitation between Tamara Linnhoff (MBIE) and Andrew Millar (EA) to discuss cross-agency OTC/competition work forwarded to Doug Watt (EA)	Redactions: Privacy (s 9(2)(a)); Confidentiality of advice (s 9(2)(f)(iv))
08 Nov 2023	Email	Email exchange between Tamara Linnhoff (MBIE), Andrew Millar (EA) and Doug Watt (EA) about meeting to discuss cross-agency OTC/competition work	Redactions: Privacy (s 9(2)(a)); Confidentiality of advice (s 9(2)(f)(iv))
08 Nov 2023	Email	Email exchange between Sean Martin (EA) and Luke Archer (Commission) about key points about OTC and monitoring activity from October EA stakeholder update	Redactions: Privacy (s 9(2)(a))
17 Jan 2024	Email	Email exchange between Doug Watt (EA), Luke Archer (Commission), Ritchie Hutton (Commission) and Rob Bernau (EA) about risk management review	Redactions: Legal professional privilege (s 9(2)(h)); Privacy (s 9(2)(a)); Free and frank (s 9(2)(g)(i)); Out of scope
25 Jan 2024	Email	Email exchange between Rob Bernau (EA) and John McCabe (MBIE) about risk management review	Redactions: Privacy (s 9(2)(a))
14 Feb 2024	Email	Email exchange between Rob Bernau (EA) and John McCabe (MBIE) arranging meeting about risk management review and setting agenda	Redactions: Privacy (s 9(2)(a))
16 Feb 2024	Email	Email exchange between Rob Bernau (EA) and Luke Archer (Commission) about risk management review	Redactions: Privacy (s 9(2)(a))
19 Feb 2024	Email	Emails from Geoff Parr (EA) and Rob Bernau (EA) to Commission staff about OIA request in relation to PID for risk management review	Redactions: Privacy (s 9(2)(a))
20 Feb 2024	Email	Email exchange between Sean Martin (EA) and Laurie Boyce (Minister for Energy's Office) providing update about risk management review	Redactions: Privacy (s 9(2)(a))
21 Feb 2024	Email	Email from Rob Bernau (EA) sending copy of PID for risk management review to John McCabe (MBIE)	Redactions: Privacy (s 9(2)(a)) Attachment withheld in full under s 18(d)
22 Feb 2024	Email	Email from Julia Hall (EA) sending draft email to gentailers requesting information to Commission staff	None
20 Feb 2024	Spreadsheet	Attachment to 22 Feb 2024 email.	None

Date	Category	Description	Redaction grounds
22 Feb 2024	Letter	Attachment to 22 Feb 2024 email – draft template email for requests for information	None
22 Feb 2024	Email	Email exchange between Sean Martin (EA) and Jolene Williams to arrange meeting about communications for risk management review	Redactions: Privacy (s 9(2)(a))
23 Feb 2024	Email	Email exchange between Geoff Parr (EA), Luke Archer (Commission), Rob Bernau (EA) about PID for risk management review	Redactions: Privacy (s 9(2)(a))
23 Feb 2024	Email	Email exchange between Julia Hall (EA) and Luke Archer (Commission) about gentailer information request	Redactions: Privacy (s 9(2)(a))
26 Feb 2024	Email	Email exchange between Luke Archer (Commission), Rob Bernau (EA) and Kirsty Hutchinson (EA) about communications with Electric Kiwi about PID for risk management review	Redactions: Privacy (s 9(2)(a))
26 Feb 2024	Email	Email exchange between Luke Archer (Commission), Rob Bernau (EA) and Kirsty Hutchinson (EA) about communications with Electric Kiwi about PID for risk management review	Redactions: Privacy (s 9(2)(a))
26 Feb 2024	Email	Email exchange between Luke Archer (Commission), Rob Bernau (EA) and Kirsty Hutchinson (EA) about communications with Electric Kiwi about PID for risk management review	Redactions: Privacy (s 9(2)(a))
26 Feb 2024	Email	Email exchange between Luke Archer (Commission), Rob Bernau (EA) and Kirsty Hutchinson (EA) about communications with Electric Kiwi about PID for risk management review	Redactions: Privacy (s 9(2)(a))
06 Mar 2024	Email	Email exchange between Rob Bernau (EA) and Laetitia Leroy De Morel (MBIE) about agenda for meeting about risk management review	Redactions: Privacy (s 9(2)(a))
11 Mar 2024	Email	Email exchange between Luke Archer (Commission) and Rob Bernau (EA) discussing meeting with independent retailers and arranging meeting to discuss PID for risk management review	Redactions: Privacy (s 9(2)(a))
19 Mar 2024	Email	Email exchange between Luke Archer (Commission) and Rob Bernau (EA) about PID for risk management review and letters from independent retailers	Redactions: Privacy (s 9(2)(a))
28 Jul 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 1 August 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
03 Aug 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 8 August 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
14 Aug 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Monday 14 August 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
15 Aug 2023	Briefing	CE Report for August board meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))

Date	Category	Description	Redaction grounds
22 Aug 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 22 August 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
29 Aug 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 29 August 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
05 Sep 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 5 September 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
12 Sep 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 5 September 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
19 Sep 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 19 September 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
26 Sep 2023	Agenda and Weekly Report for the Chair	Draft agenda and weekly report for the Chair of the Board for Tuesday 26 September 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
03 Oct 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 3 October 2023 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
05 Oct 2023	Briefing	Briefing prepared by Authority staff to support the Chair in discussions with Commissioners	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
08 Oct 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Monday 16 October 2023 meeting	Redactions: Out of scope
09 Oct 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Monday 9 October 2023 meeting	Redactions: Out of scope
10 Oct 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 10 October 2023 meeting	Redactions: Out of scope
16 Oct 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Monday 16 October 2023 meeting	Redactions: Out of scope
24 Oct 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 24 October 2023 meeting	Redactions: Out of scope
27 Oct 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 31 October 2023 meeting	Redactions: Out of scope
07 Nov 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 7 November 2023 meeting	Redactions: Out of scope
14 Nov 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 14 November 2023 meeting	Redactions: Out of scope
16 Nov 2023	Timeline	Potential timeline for OTC Code of Conduct Data Request and RMR Request prepared by EA staff	Redactions: Commercial prejudice (s 9(2)(b)(ii))
21 Nov 2023	List of board papers	List of board papers going to November 2023 board meeting	Redactions: Out of scope

Date	Category	Description	Redaction grounds
28 Nov 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 28 November 2023 meeting	Redactions: Out of scope
05 Dec 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 5 December 2023 meeting	Redactions: Out of scope
07 Dec 2023	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 12 December 2023 meeting	Redactions: Out of scope
10 Jan 2024	Briefing	Memo to CE from EA staff about risk management review engagement approach	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
30 Jan 2024	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 30 January 2024 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
05 Feb 2024	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Monday 5 February 2024 meeting	Redactions: Out of scope
12 Feb 2024	Briefing	Briefing for meeting with Electric Kiwi	Redactions: Confidentiality of advice (s 9(2)(f)(iv)); Free and frank (s 9(2)(g)(i)); Commercial prejudice (s 9(2)(b)(ii))
18 Feb 2024	Agenda and Weekly Report for the Chair	Agenda and weekly report for the Chair of the Board for Tuesday 20 February 2024 meeting	Redactions: Out of scope; Commercial prejudice (s 9(2)(b)(ii))
04 Mar 2024	Briefing	EA high level key messages	Redactions: Out of scope
09 Apr 2024	Briefing	Back pocket talking points for the CE on the review of risk management options	Redactions: Commercial prejudice (s 9(2)(b)(ii)); Confidentiality of advice (s 9(2)(f)(iv))