

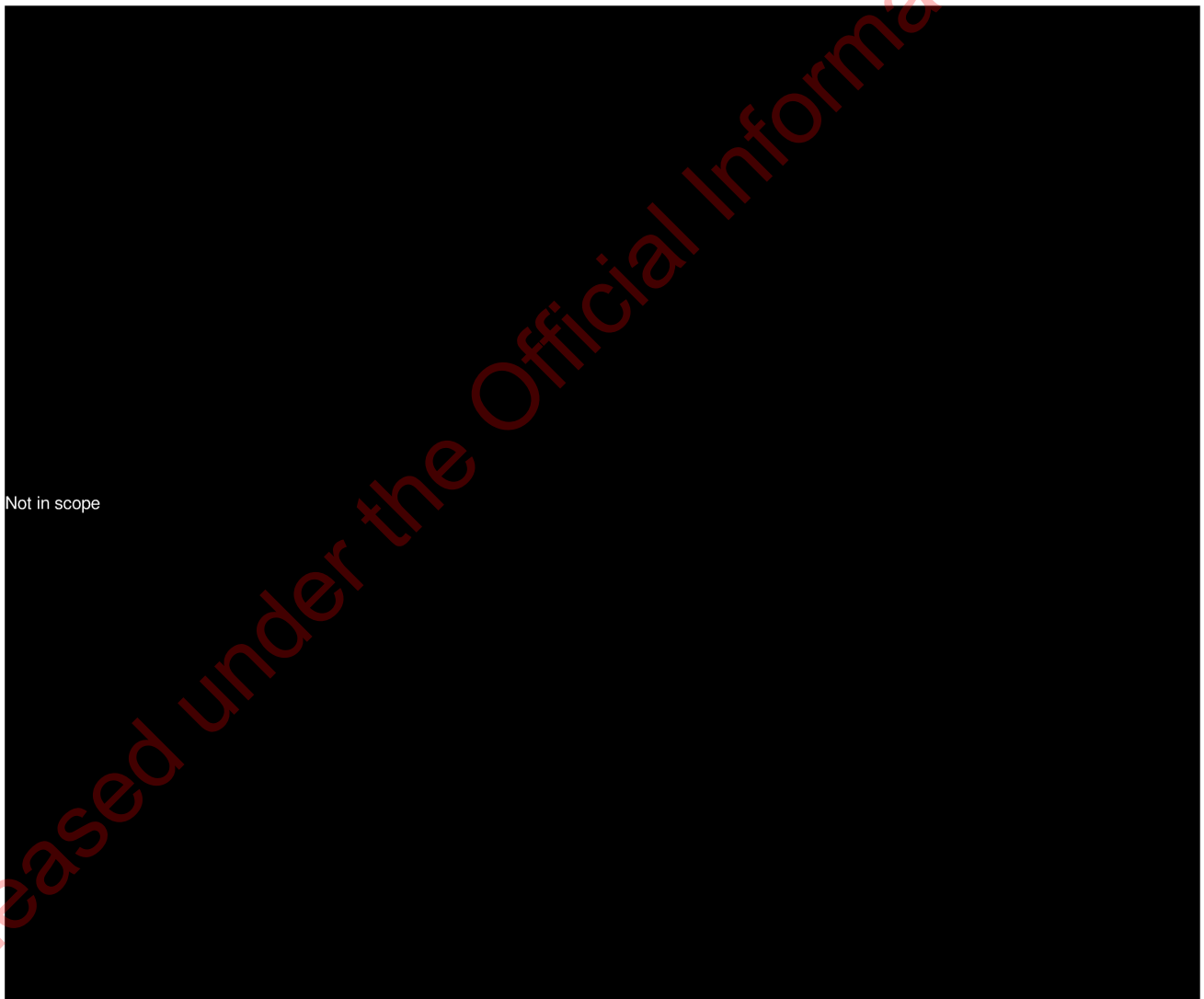
Title

5 October 2023

1. Purpose

- 1.1. This briefing has been prepared by Authority staff to support the Chair with background and talking points for the discussion planned at the 5 October meeting with Commissioners, on the section '*Supporting retail competition is a potential area of joint interest*'.

Not in scope



Not in scope

Recent complaints to Commerce Commission by electricity retailers

- 3.10. Section 9(2)(b)(ii) complained to the Commission about pricing behaviours by “dominant, vertically integrated players” in the electricity retail market breaching section 36 of the Commerce Act 1986 on 23 March 2023. Both Section 9(2)(b)(ii) and the Commission included Authority staff in correspondence on the matter.
- 3.11. The Commission advised Section 9(2)(b)(ii) on 18 July 2023 that it had decided not to open an investigation into one or more gentailers’ conduct at this time. This information is not public knowledge.
- 3.12. The Commission’s views regarding Section 9(2)(b)(ii) allegations of anti-competitive behaviour were that there was no evidence:
- (a) of substantial market power (SMP) in the relevant wholesale or retail electricity markets under both the old section 36 test (purpose) or the new 36 test (purpose and effect on

the market). There needs to be SMP held by the gentailers to rely on the section 36 misuse of market power prohibition. Although the Commission said it didn't need to form a firm view on the SMP point for the reasons set out below.

- (b) to support a price squeeze or predatory pricing (as above this requires a pre-condition of SMP).

3.13. Electric Kiwi complained to the Commission on 6 September 2023 alleging abuse of market dominance by Meridian, Mercury, Genesis and Contact.

The Authority is considering whether more work is required on the retail market

3.14. It is important that the retail market delivers good outcomes for all consumers. The Authority has been considering whether more work is required in response to recent changes in the retail market such as:

- (a) the disclosure by generator retailers of all internal transfer pricing information as result of improved transparency measures,
- (b) higher hedge market prices, and
- (c) concerns of the independent retailers.

3.15. Based on current concerns expressed about retail competition we are undertaking work to look at competition in the retail market, including:

- (a) recent trends in the retail market generally,
- (b) the specific issues raised by independent retailers about competition in the retail market, and
- (c) what interventions (if any) may be required to address these.

3.16. A starting point for this review is to understand what is happening in the contracting market between gentailers and independent retailers. We have some data from this market, but it is not comprehensive, so we will build a comprehensive data set of what is happening now.

3.17. We may discover other areas we want to look into as we progress, and we may find that the data we can get does not support all this analysis and we will have to adapt.

3.18. The evidence gathering process includes the following steps:

- (a) Create a set of arbitrage free prices based on various methods. At this point these could range from one extreme the cost of building infrastructure to substitute for contracting (for example building a battery and buying a baseload ASX contract would allow the investor to self-provide spot price risk). To the other end simply using an average cost of energy. In between we will use a set of ways to estimate a reasonable contact price, such as using an ASX hedge and the spot market, using an ASX hedge and a peak hedge.
- (b) Use the data we collect on over-the-counter contracts and ASX prices to find prices for shape, location and institutional differences like credit risk, transaction costs and liquidity (this is conditional on whether our dataset will support this analysis).
- (c) Use gentailer credit policies and limits management frameworks, the most recent credit assessment of a list of independent retailers and their current approvals for this list, to investigate whether they differentially price in the over-the-counter market on the basis of credit standing.
- (d) Use the 2023 retail gross margin data from retailers to identify whether the cost of electricity is different between integrated and independent retailers.
- (e) Use our existing data and MBIE's Quarterly Survey of Domestic Electricity Prices (QSDEP) to understand the relative rates that wholesale and retail prices have changed over recent years.

- 3.19. The proposed Retail Data Project will also improve the quality and quantity of retail data that the Authority receives and analyses. This information will enhance the Authority's evidence base to assess the effect of policy changes in the retail sector. Authority staff will present a paper on the Retail Data Project at the October Board meeting.

4. Talking points for the meeting with the Commerce Commission

- 4.1. Any further regulatory response to concerns raised by stakeholders about retail market competition requires consideration not only of the promotion of competition in the relevant markets, but the interrelationship with reliability and efficiency – including sufficient investment in renewables to ensure a low-cost transition.
- 4.2. We need to ensure any regulatory action is also balanced with our objectives of a smooth transition to renewables at low cost and consumers being able to access reliable services.
- 4.3. As outlined in the joint meeting material, the Authority is scoping work to assess whether any changes are needed to better support competition in the retail market.

Market competition

- *We have listened to the concerns raised by independent retailers on market competition, and access to 'fairly priced' wholesale electricity, and we continue to engage with them.*
- *The question is whether the market is operating efficiently.*
- *In the wholesale market, our view is that it generally operates efficiently and in a way that is of long-term benefit to consumers.*
- *The market is not perfect, and improvements are possible as reflected in our past and future work programmes.*
- *We think the threat of entry to the market is the best way to promote competition and/or disincentivise anti-competitive behaviour, and there is a large pipeline of investment in new generation.*
- *Our views on market competition are informed by the Wholesale Market Review which concluded in May of this year.*

The Authority's current focus in the wholesale market

- *We are busy implementing the findings of the wholesale market review. We are improving market making on the ASX which will improve liquidity.*
- *We are also making improvements to the over-the-counter market with a new code of conduct to ensure the pricing of all contract requests with a clear intent to trade.*
- *We are making sure the settings for financial transmission rights are fit-for-purpose so that participants can continue to manage locational price risk.*
- *We are improving forecasting of intermittent generation (such as wind and solar) for more efficient resource allocation.*

Consideration of work on the retail market

- *With the Wholesale Market Review implementation in flight, we are now turning our attention to the retail market.*
- *This work is in response to a range of factors including:*
 - *the disclosure by generator retailers of all internal transfer pricing information as result of improved transparency measures,*
 - *higher hedge market prices, and*
 - *the concerns of the independent retailers.*

- *It is important that any changes in the retail market are evidence based and carefully considered to avoid the risk of creating unintended consequences.*
- *Our approach to assessing changes in the retail market is focused on:*
 - *recent trends in the retail market generally,*
 - *the specific issues raised by independent retailers about competition in the retail market, and*
 - *what interventions (if any) may be required to address these.*
- *We have a range of evidence sources we are exploring as we scope up this work.*
- *This work is still in its early stages, but we intend to communicate with the sector once it has been fully scoped.*
- *We also have a project underway to improve the quality and quantity of retail data that the Authority receives and analyses.*
- *This information will enhance the Authority's evidence base to assess the effect of policy changes in the retail sector. The next key milestone is a public consultation, which is expected to start in mid-November and finish prior to the Christmas holiday break.*
- *As we initiate this project, we are keen to ensure that the Commission is kept well abreast of this work.*
- *The Authority would like to invite the Commission to participate in scoping the indicative work programme.*
- *Are there any issues of interest to the Commission where the Authority can provide more information?*