

16 November 2022: SUBMISSION TO COMMERCE COMMISSION REGARDING DRAFT MISUSE OF MARKET POWER GUIDELINES

Entrust supports the draft Misuse of Market Power Guidelines

Entrust welcomes the development of draft Misuse of Market Power Guidelines.

Entrust hopes the Guidelines will help make it clear to suppliers, including electricity gentailers with substantial market power what is and is not acceptable conduct, resulting in more competitive outcomes for Kiwi households and businesses.

Summary of Entrust's views

- There is a need to be particularly vigilant about anti-competitive conduct in a country like New Zealand which has a small population and more concentrated markets compared to other larger countries.
- Entrust has had a long-standing concern that the electricity market is highly concentrated, and this has resulted in higher prices and less affordable electricity than in a competitive market.
- The Electricity Authority's wholesale market review confirms our concerns.
- The Commission's draft Guidelines make clear the types of conduct that could fall foul of the new Commerce Act rules. This includes refusal to supply competitors, margin/price squeezing and exclusive dealings. These can all result in less choice and higher prices for Kiwi households and businesses.
- Entrust considers the Guidelines should detail the compliance implications of the new rules. In Entrust's view there will be a need for gentailers and other suppliers to have a greater focus on compliance assurance as it will no longer be a defence that anti-competitive conduct was not intentional.

Entrust's submission

The electricity industry is characterised by market power

Entrust has had a long-standing concern that the electricity market is highly concentrated, and this has resulted in higher prices and less affordable electricity than would be expected in a competitive market.

The Commerce Commission previously confirmed Contact, Genesis, Mercury and Meridian each have substantial market power particularly when supply conditions are tight. That has not changed.

The Herfindahl-Hirschman Index [HHI] for generation is around 2,000. The Electricity Authority's latest wholesale market review consultation indicates the HHI could

potentially increase over the next decade to 2,300 by 2030. An HHI above 1,500 is typically considered to indicate the market is concentrated.

Persistent concerns about misuse of market power in electricity

The types of conduct issues the Commerce Commission has identified in the Guidelines, such as the impact of high wholesale prices and how these can erode the margins of downstream competitors, mirror the types of issues and concerns that have been raised by Entrust in previous submissions. Wholesale electricity prices and gentailer profits have been at record highs for a persistently long-time.

If market power issues are not well managed consumers could suffer from higher electricity prices and weaker competition.

Entrust has raised competition concerns with the Commerce Commission previously. Our concerns about the arrangements to supply Tiwai Aluminium Smelter with artificially low-cost electricity at the expense of consumers across the country, for example, is now being addressed by the Electricity Authority. The Authority found these arrangements are costing other consumers over \$860m per annum and is introducing a Code change to ban large, discriminatory supply contracts.¹

Concluding remarks

Consumers will benefit from the stronger and more rigorous competition laws. It is consumers who have the most to gain from reforming section 36.

It is fundamentally important that the interests of energy corporates and clients of large law firms are balanced with interests of consumers, including Kiwi households and businesses – big and small.

Entrust has observed the loud opposition from vested interests through the reform process. We see the changes as advancing international best practice for competition law.

Entrust has more than 351,000 beneficiaries comprising of households and businesses in central, east and south Auckland, who make up almost 60% of Auckland's energy consumers. It is vital the market supplies all consumers with efficient, affordable and reliable energy.

The new section 36 Commerce Act and Market Abuse Guidelines should help to stamp out or curtail activity which harms consumers and results in prices above competitive levels.

Kind Regards,



Alastair Bell
Chair of Regulation and Policy Committee

¹ <https://www.entrustnz.co.nz/news/news-and-media-releases/entrust-calls-on-commerce-commission-to-investigate-potential-restrictive-trade-practices-and-collusion-by-electricity-generators/>

About Entrust

Entrust (formerly Auckland Energy Consumer Trust) is a consumer trust that owns the majority of Vector on behalf of its 351,000 beneficiaries.

Entrust owns 75.1% of shares in Vector. The shares are held in trust for energy consumer beneficiaries in the Entrust District of central, east and south Auckland who are paid a cash dividend each year.

The organisation was created in 1993 to make sure power lines remained in the control of electricity consumers and was established under a trust deed on behalf of electricity consumers in the area previously served by the Auckland Electric Power Board.