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COMMERCE ACT (DECISION NOT TO DECLARE CONTROL: UNISON NETWORKS LIMITED) NOTICE 2007

PURSUANT TO PART 4A
OF THE COMMERCE ACT 1986

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Part 4A of the Commerce Act 1986 (the Act) came into effect on 8 August 2001 and, among other things, requires the Commission to implement a targeted control regime for the regulation of large electricity lines businesses (lines businesses)—namely electricity distribution businesses (distribution businesses) and Transpower New Zealand Limited.

The targeted control regime

Section 57E of the Act provides that the purpose of subpart 1 of Part 4A is to promote the efficient operation of markets directly related to electricity distribution and transmission services through targeted control for the long-term benefit of consumers by ensuring that suppliers—

- (a) are limited in their ability to extract excessive profits; and
- (b) face strong incentives to improve efficiency and provide services at a quality that reflects consumer demands; and
- (c) share the benefits of efficiency gains with consumers, including through lower prices.

Under section 57G(1)(b) of the Act, the Commission must set thresholds for the declaration of control in relation to lines businesses.

The process for making decisions on declarations of control is set out in section 57H, which provides that the Commission must:

- (a) assess large electricity lines businesses against the thresholds set under this subpart; and
- (b) identify any large electricity lines business that breaches the thresholds; and
- (c) determine whether or not to declare all or any of the goods or services supplied by all or any of the identified large electricity lines businesses to be controlled, taking into account the purpose of this subpart; and
- (d) in respect of each identified large electricity lines business,—
 - (i) make a control declaration; or
 - (ii) publish the reasons for not making a control declaration in the Gazette, on the Internet, and in any other manner (if any) that the Commission considers appropriate.

On 6 June 2003, after consulting with interested parties as to possible thresholds, the Commission set two thresholds—a CPI-X price path threshold and a quality threshold—applicable until 31 March 2004 for distribution businesses. These initial thresholds were set by the *Commerce Act (Electricity Lines Thresholds) Notice 2003* published as a Supplement to the *New Zealand Gazette*, 6 June 2003, No. 62, page 1685.

The Commission reset the thresholds for all distribution businesses for a five-year regulatory period from 1 April 2004. These reset thresholds were set by the *Commerce Act (Electricity Distribution Thresholds) Notice 2004* published as a Supplement to the *New Zealand Gazette*, 31 March 2004, No. 37, page 927.

Before making a declaration of control, the Commission is required under section 57I(1) to:

- (a) publish its intention to make a declaration and invite interested persons to give their views on the matter; and
- (b) give a reasonable opportunity to interested persons to give those views; and
- (c) have regard to those views.

Assessment and identification of Unison's threshold breaches

Unison Networks Limited (Unison) is a distribution business which owns and operates distribution networks in the Hawke's Bay, Taupo and Rotorua regions. Unison is a limited liability company wholly owned by the Hawke's Bay Power Consumers' Trust.

The Commission has assessed Unison against the initial thresholds set from 6 June 2003, and has identified Unison as having breached the price path threshold at the first assessment date (6 September 2003) and both thresholds at the second assessment date (31 March 2004).

In addition, the Commission has assessed Unison against the reset thresholds set from 1 April 2004, and has identified Unison as having breached both the price path and quality thresholds at the first assessment date under the reset thresholds (31 March 2005 and both thresholds at the second assessment date (31 March 2006).

Intention to declare control of Unison

On 9 September 2005, the Commission published in the *New Zealand Gazette* its intention to make a declaration of control under Part 4A in respect of electricity distribution services supplied by Unison. On the same day, the Commission published a paper titled *Commerce Commission, Regulation of Electricity Lines Businesses, Targeted Control Regime, Intention to Declare Control, Unison Networks Limited* which contains the Commission's reasons for its intention to declare control of Unison. The Commission invited interested persons to give their views on the matter by 21 October 2005 and submissions were received on this date. A conference was held in Wellington on 17-18 November 2005 and 5-6 December 2005 in relation to the submissions. In addition, some sessions of the conference were held in Hawke's Bay, Rotorua and Taupo during 14-15 December 2005. Cross-submissions were requested and received on 21 December 2005.

Draft decision not to declare control of Unison

On 9 November 2006, the Commission published a paper titled *Commerce Commission, Regulation of Electricity Lines Businesses, Targeted Control Regime, Draft Decision: Reasons for Not Declaring Control, Unison Networks Limited* which contains the Commission's preliminary view to accept the administrative settlement proposal made by Unison on 31 August 2006, as amended on 13 September 2006 and 18 October 2006 (Proposal) and not to make a declaration of control under Part 4A in respect of electricity distribution services supplied by Unison. The Commission also published a copy of Unison's Proposal. The Commission invited interested persons to give their view on the matter by 29 November 2006 and submissions were received on this date. Cross-submissions were requested and received on 11 December 2006.

Decision not to declare control

The Commission has had regard to all views expressed by interested parties at the conference and in written submissions, in relation to this matter.

The Commission has determined not to make a declaration of control under Part 4A in respect of electricity distribution services supplied by Unison, for the following reasons.

- The Commission has the ability to enter into an administrative settlement with a business that has breached the thresholds in order to further the objectives of the targeted control regime in Part 4A of the Act.
- Unison's Proposal involves the company voluntarily reducing its average prices from 1 December 2006 to comply with the price path threshold set by the Commission on 31 March 2004 for a five-year regulatory period from 1 April 2004 to 31 March 2009. Unison's Proposal also involves rebalancing its line charges to different regions and customer groups, so that the prices paid by consumers better reflect the costs of supplying them.
- Having evaluated Unison's Proposal and taken into account the views of interested parties, the Commission considers that the likely outcomes associated with the implementation of Unison's Proposal are consistent with the purpose in section 57E of the Act. Therefore a declaration of control in respect of Unison's electricity distribution services is not necessary to ensure the objectives of the targeted control regime are achieved.
- In accordance with the Proposal, Unison has already implemented price changes on 1 December 2006 and 1 April 2007 which rebalance tariffs between regions and customer groups.
- Unison has formally recorded its Proposal in a deed, which has been signed and executed by Unison and the Commission.

A more comprehensive explanation of the reasons for the Commission's decision not to declare control of Unison is contained in the paper titled *Commerce Commission, Regulation of Electricity Lines Businesses, Targeted Control Regime, Reasons for Not Declaring Control, Unison Networks Limited* dated 11 May 2007. A copy of this paper can be located on the Commission's website: www.comcom.govt.nz.

Any comments and questions on this notice may be sent by email to: electricity@comcom.govt.nz; or by mail to Network Performance Branch, Commerce Commission, P.O. Box 2351, Wellington; or by facsimile (04) 924 3700.