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COMMERCE ACT (INTENTION TO DECLARE CONTROL: UNISON NETWORKS LIMITED) NOTICE 2005

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

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.

As part of the targeted control regime, the Commission must set thresholds for the declaration of control in relation to lines businesses, assess those businesses against the thresholds it has set, identify any business that breaches the thresholds, and determine whether or not to make a declaration of control in relation to all or any of the goods or services supplied by a lines business identified as having breached a threshold.

The thresholds are effectively a screening mechanism for the Commission to identify lines businesses whose performance may warrant further examination and, if necessary, control.

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 to:

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

Intention to declare control

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).

The Commission has now formed an intention to make a declaration of control in respect of electricity distribution services supplied by Unison and is inviting interested persons to give their views on the matter.

Time and manner for interested persons to give their views

The Commission notes that this is the first occasion that this step in the regulatory process for electricity lines businesses has been reached (i.e. the publication of an intention to make a declaration of control) and has therefore provided a timetable to provide interested persons with sufficient time to prepare to give their views.

The Commission will shortly release a paper setting out the reasons for its intention to declare control, which will be based on the Commission's preliminary conclusions from the inquiry and analysis undertaken to date. There will be a submission period on the paper and a conference following its release, in order to give interested persons a reasonable opportunity to give their views. The due date for written submissions is **5pm, Friday 21 October 2005**, with a conference planned for the week commencing **Monday 7 November 2005**. Cross-submissions following the conference will be due by **5pm, Friday 25 November 2005**.

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

Submission requirements are:

- electronic copies of submissions should ideally be sent in PDF format, although Word is equally acceptable. Written or non PC-generated submissions will be scanned by Commission staff and converted to PDF;
- a single hard copy should only be supplied if it is not possible to provide submissions electronically. Submitters need only staple in the top left corner, as spiral or spine bound copies will be unbound for ease of producing additional copies if required;
- all submissions will be published on the Commission's web site (the Commission recognises that there will be instances where information may genuinely be confidential. The Commission requires parties to provide a "public version" of confidential material, which at least conveys the thrust of the material (or

argument) without disclosing sensitive information. This public version should be given to the Commission when an application for confidentiality of that information is sought); and

- submissions must show the organisation's name and address, date and be duly signed. In the case of personal submissions, a contact address and telephone number is required, and the submission is to be signed with the submitter's name printed beneath the signature. Personal submissions will have their contact address and telephone number removed for the purpose of publishing on the Commission's web site, as only their name will be disclosed.

Electronic copies of submissions should be emailed to:

electricity@comcom.govt.nz

Hard copies of submissions should be mailed to:

Unison Intention to Declare Control
Network Performance Group
Networks Branch
Commerce Commission
P.O. Box 2351
Wellington.