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**COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL –
6 JUNE 2003 TO 31 MARCH 2007: ELECTRICITY
DISTRIBUTION BUSINESSES: HORIZON ENERGY
DISTRIBUTION LIMITED AND
WESTPOWER LIMITED) NOTICE 2009**

PURSUANT TO
PART 4A OF THE COMMERCE ACT 1986
AND
SECTION 13 OF THE INTERPRETATION ACT 1999

COMMERCE ACT
(DECISION NOT TO DECLARE CONTROL – 6 JUNE 2003 TO
31 MARCH 2007: ELECTRICITY DISTRIBUTION BUSINESSES: HORIZON
ENERGY DISTRIBUTION LIMITED AND WESTPOWER LIMITED)
NOTICE 2009

Pursuant to Part 4A of the Commerce Act 1986 and section 13 of the Interpretation Act 1999, the Commerce Commission (the “Commission”) gives the following notice.

NOTICE

1. Title

- (1) This notice is the Commerce Act (Decision Not to Declare Control – 6 June 2003 to 31 March 2007: Electricity Distribution Businesses: Horizon Energy Distribution Limited and Westpower Limited) Notice 2009.
- (2) This notice supersedes the Commerce Act (Decision Not to Declare Control – 8 August 2001 to 31 March 2007: Electricity Distribution Businesses: Horizon Energy Distribution Limited and Westpower Limited) Notice 2008 (*New Zealand Gazette*, 4 August 2008, No. 121, page 3169).

2. Background

Part 4A of the Commerce Act 1986 (“the Act”) came into effect on 8 August 2001 and, among other things, required 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.

Section 57E of the Act provided 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 was required to set thresholds for the declaration of control in relation to lines businesses.

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.

The process for making decisions on declarations of control was set out in section 57H, which provided 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 *New Zealand Gazette*, on the Internet, and in any other manner (if any) that the Commission considers appropriate.

Before making a declaration of control, the Commission was 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.

In August 2008, the Commission published decisions in relation to breaches of the Thresholds Notice under Part 4A of the Act. The decisions were published in the *New Zealand Gazette*, 4 August 2008, No. 121, page 3169, as the *Commerce Act (Decision Not to Declare Control – 8 August 2001 to 31 March 2007: Electricity Distribution Businesses: Horizon Energy Distribution Limited and Westpower Limited) Notice 2008* (the 2008 Notice). This notice supersedes the 2008 Notice to correct errors (in respect of price path breaches) in the 2008 Notice, in accordance with section 13 of the Interpretation Act 1999.

3. Assessment and identification of threshold breaches

The Commission has assessed Horizon Energy Distribution Limited and Westpower Limited, and their respective threshold breaches, during the assessment periods ended 31 March 2004, 31 March 2005, 31 March 2006 and 31 March 2007.

The Commission has assessed Horizon Energy Distribution Limited against its thresholds, and has identified Horizon Energy Distribution Limited as breaching the quality threshold during the assessment periods ended 31 March 2005 and 31 March 2006.

The Commission has assessed Westpower Limited against its thresholds, and has identified Westpower Limited as breaching the quality threshold during the assessment periods ended 31 March 2004, 31 March 2005, 31 March 2006 and 31 March 2007.

4. Decisions Not to Declare Control

The Commission has determined that it is consistent with section 57E of the Act to not make a declaration of control under Part 4A in respect of electricity distribution services supplied by Horizon Energy Distribution Limited and Westpower Limited, for the following reasons:

Horizon Energy Distribution Limited

- The Commission's review of Horizon, in response to breaches of the quality threshold, found no evidence of inappropriate engineering, management practices, or poor network condition;
- During the engineering review the Commission assessed the circumstances of the breach, and found there were extraordinary impacts on system reliability experienced in 2004 and 2005;
- Horizon's reliability results since the 2005 assessment do not indicate a deterioration in its performance against its thresholds; and
- The Commission has no other section 57E concerns.

Westpower Limited

- The Commission's review of Westpower, in response to breaches of the quality threshold, found no evidence of inappropriate engineering, management practices, or poor network condition;
- During the engineering review, the Commission assessed the circumstances of the breach, and found there were extraordinary impacts on system reliability experienced in 2004 and 2005;
- Westpower's reliability results do not indicate deterioration in its SAIDI performance against its threshold. However, the Commission will continue to monitor both Westpower's SAIFI and SAIDI statistics to identify any long term decline in reliability; and
- The Commission has no other section 57E concerns.

A more comprehensive explanation of the reasons for the Commission's decisions not to declare control is contained in the paper titled *Commerce Commission, Regulation of Electricity Lines Businesses, Targeted Control Regime, Reasons for Not Declaring Control of the Electricity Distribution Businesses: Horizon Energy Distribution Limited and Westpower Limited* dated 4 August 2008 (updated to reflect this notice as at 14 December 2009). 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.