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COMMERCE ACT (DECISION NOT TO DECLARE CONTROL: BULLER ELECTRICITY LIMITED) NOTICE 2008

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 *New Zealand 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 Buller's threshold breaches

Buller Electricity Limited (Buller) owns and operates network assets for the provision of electricity distribution services to 4,500 consumers in the Buller Region, just over half of which are in the urban Westport area. It is the smallest of New Zealand's 28 distribution businesses in terms of number of customers, volume of electricity supplied and value of assets and the second smallest in terms of system length.

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

The Commission is currently assessing Buller with the other distribution businesses against the 2007/08 price quality thresholds.

Post-Breach Inquiry

On 13 May 2004, the Commission initiated a post-breach inquiry into Buller's breaches of the price path threshold in September 2003 and March 2004.

Since initiating the post-breach inquiry, Buller has submitted three offers of administrative settlement to the Commission, the last in June 2006. The Commission has considered whether a settlement might provide a satisfactory resolution to the Commission's initial section 57E concerns.

Decision not to declare control

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

- Having evaluated Buller's recent and planned performance, the Commission considers that the likely outcomes associated with taking no further action are consistent with the purpose in section 57E of the Act;
- A declaration of control in respect of Buller's electricity distribution services is not necessary to ensure the objectives of the targeted control regime are achieved if no section 57E concerns exist;
- The Commission's concerns regarding the initial price path breach in 2003 have been resolved, and considers that the primary cause of the 2004 breach was the difference between actual and budgeted transmission charges, which has been appropriately dealt with; and
- Buller has remained within its price path threshold at every assessment year since 2004 to 2006/07 and has not breached its quality threshold during those years.

A more comprehensive explanation of the reasons for the Commission's decision not to declare control of Buller is contained in the paper titled *Commerce Commission, Regulation of Electricity Lines Businesses, Targeted Control Regime, Reasons for Not Declaring Control, Buller Electricity Limited* dated 30 September 2008. 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.