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## COMMERCE ACT (DECISION NOT TO DECLARE CONTROL: TRANSPOWER NEW ZEALAND LIMITED) NOTICE 2008

PURSUANT TO PART 4A  
OF THE COMMERCE ACT 1986

## COMMERCE ACT (DECISION NOT TO DECLARE CONTROL: TRANSPOWER NEW ZEALAND LIMITED) NOTICE 2008

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 of the Act 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 of the Act, 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 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 30 June 2004 for Transpower. 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 Transpower for a one-year regulatory period from 1 July 2004 to 30 June 2005. These reset thresholds were set by the *Commerce Act (Transpower Thresholds) Notice 2004* published as a Supplement to the *New Zealand Gazette*, 30 June 2004, No. 81, page 2019.

Before making a declaration of control, the Commission is required under section 57I(1) of the Act 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 Transpower's threshold breaches**

Transpower New Zealand Limited (Transpower) is the state-owned enterprise that operates New Zealand's high-voltage transmission grid (the grid) which transmits electricity throughout the country. The grid comprises approximately 11,800kms of transmission lines and 170 substations and switchyards and links generators to distribution companies and major industrial users. The grid is, therefore, a significant infrastructure asset for the New Zealand economy. In 2007, Transpower had revenue of \$585 million, an after-tax net profit of \$126 million and total fixed assets worth approximately \$2,376 million.

The Commission has assessed Transpower against the initial thresholds set from 6 June 2003, and has identified Transpower as having breached the price path threshold at the first assessment date (6 September 2003). In addition, the Commission has assessed Transpower against the reset thresholds, and has identified Transpower as breaching the price path threshold at the second (30 June 2004), third (30 June 2005), fourth (30 June 2006) and fifth (30 June 2007) assessment dates. In addition, Transpower breached its quality threshold at the fourth assessment date of 30 June 2006 and the fifth assessment date of 30 June 2007.

### **Intention to declare control of Transpower**

On 22 December 2005, the Commission published in the *New Zealand Gazette*, No. 210, page 5382, its intention to make a declaration of control under Part 4A of the Commerce Act 1986, in respect of transmission services supplied by Transpower (*Commerce Act (Intention to Declare Control: Transpower New Zealand Limited) Notice 2005*). A paper explaining the reasons behind the Commission's decision was released on 16 February 2006.

In March 2006, Transpower's Board indicated a preference to resolve the post-breach inquiry with an administrative settlement. In response, the Commission indicated that it would be prepared to delay its decision on whether to declare control, only if Transpower offered to suspend its announced 19% price increase which was to become effective on 1 April 2006.

On 27 March 2006, Transpower formally agreed to suspend the 19% price increase, and established a rebating system that backdated increases to the date the increase was initiated (1 April 2006). This did not cancel the increase, but suspended it pending the outcome of the Commission's investigation. The Commission accepted this interim measure and announced on 31 March 2006 its decision to postpone publishing its final determination pending settlement discussions.

### **Draft decision not to declare control of Transpower**

On 5 October 2007, the Commission published a paper titled *Commerce Commission, Regulation of Electricity Lines Businesses, Targeted Control Regime, Draft Decisions and Reasons for Not Declaring Control & Draft Decision on Resetting Transpower's Thresholds, Transpower New Zealand Limited* which contained the Commission's preliminary view to accept the administrative settlement proposal made by Transpower dated 31 August 2007 (Proposal) and not to make a declaration of control under Part 4A of the Act in respect of transmission services supplied by Transpower. The Commission also published a copy of Transpower's Proposal. The Commission invited interested persons to give their view on the matter by 9 November 2007. The Commission requested that cross-submissions be received by 30 November 2007.

### **Revised Offer**

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

In response to points raised in submissions, and following discussion with the Commission, on 11 April 2008 Transpower submitted a revised offer of administrative settlement (Revised Offer). This incorporated a number of changes to its previous proposal to address those matters raised during consultation.

### **Decision not to declare control**

The Commission has determined not to make a declaration of control under Part 4A of the Act in respect of transmission services supplied by Transpower, 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 regime in Part 4A of the Act;
- the Proposal sets out three new thresholds that replace the existing price path threshold. The constraints applied under these new thresholds are appropriate going forward, considering Transpower's investment profile will be significantly increased over the near future;
- the quality threshold continues to apply under the Proposal;
- the Proposal applies both appropriate constraints to the inputs to Transpower's revenue requirement and provides appropriate efficiency incentives going forward;
- having evaluated the proposal and taken into account the views of interested parties, the Commission has decided that control is not necessary, as acceptance and implementation of Transpower's offer addresses the Commission's concerns regarding section 57E of the Act. Accordingly, a declaration of control in respect of Transpower's transmission services is not necessary to ensure the objectives of the targeted control regime are achieved;
- implementation of the settlement proposal will provide appropriate constraints on Transpower's prices;

- the net benefit of settlement outweighs the benefits of control; and
- Transpower has formally recorded its Revised Proposal in a deed, which has been signed and executed by Transpower and the Commission.

A more comprehensive explanation of the reasons for the Commission's decision not to declare control of Transpower is contained in the paper titled *Commerce Commission, Regulation of Electricity Lines Businesses, Targeted Control Regime, Decision and Reasons for Not Declaring Control of Transpower New Zealand Limited, and Decision to Reset Transpower's Thresholds*, dated 13 March 2008. A copy of this paper can be located on the Commission's website:

[www.comcom.govt.nz](http://www.comcom.govt.nz).

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