

CONSUMER COALITION ON ENERGY (CC93)

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Hon Lianne Dalziel
Minister of Commerce
Parliament
WELLINGTON

C/- Mr Wolfgang Freitage, Office of the Minister of Commerce
Delivered by email to wolfgang.freitage@parliament.govt.nz

Dear Minister

Request for second round of consultation on proposed changes to the Commerce Act following regulatory control review

The Consumer Coalition on Energy (CC93) recently made a submission on the *Review of Regulatory Control Provisions under the Commerce Act 1986* discussion paper published April 2007. There were 44 submissions on the discussion paper from parties involved in a wide range of sectors of the economy. This high level of interest and the detail in some of the submissions reflects the complexity of the issues and options. It's probably fair to say CC93 and all submitters agreed that a review is timely although we all have different views on what changes are necessary.

The consultation process on the review to date has been very good. We do though see a risk of final decisions being made without adequate testing of the package as a whole with affected parties. The phrase "the devil is in the detail" quite aptly applies in this case. Some of the options considered in the discussion paper could be far-reaching and there is far from agreement by affected parties on those points. While the first consultation round provided a comprehensive list of options for issues identified, it did not provide parties with a view of how a final package might fit together.

For example on 4 ½ pages of the discussion paper (between paragraph 162 and 181) is a discussion on options for firms to propose their own control terms to the Commerce Commission and whether the Commission should have legislative criteria constraining how it should respond. This is a very complex topic and the discussion paper coverage was at a very high level. CC93 is familiar with and support the current practice of firms offering specific control terms by way of administrative settlements for threshold breaches in lieu of control. Current practice will be improved if some of the important assumptions, such as the weighted average cost of capital, are periodically published by the Commission as proposed in the discussion paper.

The discussion paper also suggests an option to amend the Act to set specific criteria against which the Commerce Commission must accept a control regime proposed by the firm, ie the “propose/respond” model. This is a significant change from the status quo. Several of the submissions, that is from line monopolies, support the propose/respond model. Their motives do not necessarily align with the best interest of consumers. If government were considering such a significant change we believe it would be reasonable to test that with other affected parties. As noted this is a hypothetical example as CC93 does not know the progress by officials in considering this or other issues and options; rather the purpose was to illustrate that there are significant matters of detail that need to be worked through if significant changes are proposed.

A measured approach by way of a second consultation round on the near to complete package before making final decisions would, we believe, be appropriate. Even if this only results in fine tuning, the delay will still be worthwhile because of the value in double checking that there are no material effects not adequately identified in the first consultation round or when drafting the final package.

We would welcome an opportunity to discuss this further if you wish.

Yours sincerely



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