

# CONSUMER COALITION ON ENERGY (CC93)

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**The Coalition:** Business NZ Inc  
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Commerce Act Review  
Ministry of Economic Development  
PO Box 1473  
WELLINGTON  
Delivered by email to [commerceactreview@med.govt.nz](mailto:commerceactreview@med.govt.nz)

Dear Madam/Sir

## **Comments on discussion paper Review of Regulatory Control Provisions under the Commerce Act 1986**

The Consumer Coalition on Energy (CC93) represents a diverse and significant number of electricity end consumers. Having an effective regulatory framework for those parts of the electricity supply chain that are prone to being monopolistic is important for ensuring the total delivered price for power paid by consumers is as low as possible taking into account that inevitably there will be unplanned outages that are not worth the additional cost of insuring against.

Achieving this in practice in the electricity market with so much of the supply chain either natural monopolies or with very restricted opportunities for competitive entry is difficult. Overlaying this has also been a tendency recently for key regulatory decisions to be driven by political rather than impartial regulatory criteria. The latter is a comment on the increasingly politicised decision making of the Electricity Commission particularly on transmission investment approvals. This latter issue is not directly relevant to this review however the risk of political interference remains a risk for the electricity sector as a whole.

With respect to the review of the Commerce Act parts 4, 4A and 5 dealing with regulatory control, CC93 welcome the review. Some members of CC93 will be separately submitting more detailed commentaries.

CC93 have a preference for the Commerce Act to have one generic approach for any sector or company with monopolistic characteristics rather than have a separate approach for electricity lines businesses. That is we support further investigation into the option to collapse the current Part 4A coupled with Part 5 provisions for thresholds and control on electricity lines businesses into amended general provisions of Part 4 and 5 to cover any sector of the economy with monopolistic characteristics. This should not preclude the Commerce Commission as part of an expanded regulatory tool-box retaining the thresholds approach for the electricity lines business sector as a whole, but neither would it restrict the Commission from choosing other approaches if they are more effective.

CC93 have assumed that collapsing Part 4A and 5 as applied to electricity lines businesses into a revised Part 4 and 5 of the Act will take some time to consider and implement through changes to the Act. A cautious and considered approach seems appropriate given these are not trivial changes and there is a risk of unintended consequences affecting consumer and industry confidence and economic welfare. As a result CC93 assume investigation and any implementation of this option would not impact on the just commenced review of thresholds for electricity lines businesses to apply from 1 April 2009. If the intention is otherwise then CC93 recommend the Ministry notify all interested parties promptly because this will be a significant change from the timing for changes to the Act expected by consumers and the industry.

One of the possible outcomes of collapsing Part 4A into Part 5 might be that some electricity lines businesses will be subject to a relatively light-handed regulatory control regime after the next threshold period ends on 31 March 2014. CC93 would not be adverse to this outcome if the objectives of a revised purpose statement for Part 4 were being met for the best long-term interest of consumers.

CC93 recognise that regulatory control needs to accommodate the needs not just of end consumers, but also of the monopoly suppliers, the Commerce Commission and Ministers. There is a balance between flexibility and consistency. As a very small nation highly dependent on being as efficient as possible to facilitate our export trade (and hence employment), we should give the Commission as many options in the regulatory tool-box as possible. Being innovative in regulatory design is potentially a competitive advantage for New Zealand.

As part of keeping innovative options on the table CC93 are very supportive of the Ministry further investigating means for end consumers and electricity line businesses to reach mutual agreement on terms and conditions for line services. This would avoid the risk of the Commission deciding terms and conditions that might suit pre-defined statutory or regulatory criteria but miss an opportunity for a solution where both consumers and the regulated entity would have been better-off. There are also problems using this approach and hence CC93 recommend further work is needed.

One of the problems is how to offset the overwhelming technical skills and other resources the line companies can use in negotiations compared to those of consumers. This is the so called “information and resource asymmetry problem.” The discussion paper usefully considers options such as information disclosure and presetting key components (eg the Weighted Average Cost of Capital) to better equip consumers in such negotiations. But even armed with the same information consumers lack technical skills. In Australia the National Electricity Consumer Advocacy Panel (refer <http://www.advocacypanel.com.au/default.htm>) has been providing funding since 2002/03 for bona fide consumer groups on specific work related to their regulatory regime. For 2006/07 funding totalled Au\$1.925m. CC93 suggest the Ministry consider a similar mechanism might be useful to facilitate effective negotiations with the benefit being lower Commission related costs and better outcomes for consumers and line companies.

We would welcome an opportunity to discuss this further with the Ministry. This submission is not confidential.

Yours sincerely



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