



# MAJOR ELECTRICITY USERS' GROUP

6 December 2007

Mr Geoff Connor  
Commerce Act review  
Ministry of Economic Development  
WELLINGTON  
By email to [commerceactreview@med.govt.nz](mailto:commerceactreview@med.govt.nz)

Dear Geoff

## **Submission on Appendix B relating to implementation of policy decisions following review of Regulatory Control Provisions under the Commerce Act**

1. This is a submission by the Major Electricity Users' Group (MEUG) on Appendix B, *Detailed Specifications*, of the paper tabled by the Ministers of Commerce and Energy to the Cabinet Economic Development Committee titled "*Review of Parts 4 and 4A of the Commerce Act*" (the "Cabinet paper"). The Cabinet paper was released 22<sup>nd</sup> November 2007, the same day that government announced the overall policy decisions. A revised version with previously withheld information relating to expected financial costs of administering the new policy was released 27<sup>th</sup> November.
2. MEUG welcomes the opportunity to participate in this informal consultation round on a complex and important area of regulatory design.
3. Comments on two design specifications under section H, Default/customised price-quality path, follow. Both comments relate to paragraph 2 of section H.
  - a) Bullet point one states, "*The default path(s) should be based on factors such as productivity/efficiency trends and comparative benchmarking (domestic or international). The Commission may not undertake a building blocks or detailed forward-looking investigation of firms in setting default paths.*" The last sentence MEUG believe is:
    - i) An unnecessary impediment to the Commission deciding the best outcome for consumers, Electricity Lines Businesses (ELB) and the economy; and
    - ii) Was not agreed by Cabinet and therefore should not be included in the specification.

Paragraph 96 of the Cabinet paper set out the recommendations (that MEUG assumes were agreed). Recommendation 16.1 states: "*the Commerce Commission should set a default price-quality path for a regulatory period based on information like productivity trends and comparative benchmarking.*" MEUG has emphasised the word "like" because it plainly does not restrict the Commission using building blocks or forward projections, in whole or part. Allowing the Commission to use a range of tools and sources of information is likely to result in a better outcome than otherwise.

- b) Bullet point two states, "*The Commission may specify price-quality paths in any form or in any way it sees fit, but may not include a  $P_0$  adjustment except on the basis of information disclosed pursuant to the information disclosure requirements.*"

The same points made in paragraph 3 a) apply to this bullet point, ie there is no apparent reason why the Commission should be constrained in the source of information used to set a  $P_0$  because it will still be accountable for decisions that meet the proposed new Part 4 purpose statement. For example there may be a solution involving a trade-off between a  $P_0$  adjustment (this can be positive or negative) and the annual rate of change "X" in the CPI-X formula that is "better" in terms of meeting the purpose statement than being bound only to apply a much higher rate of "X." That solution may only emerge from access to information that is not part of the information disclosure requirements. The Commission should retain the flexibility to consider information from all sources in considering a  $P_0$  adjustment.

4. Finally, while comments were not requested on the final policy decisions, MEUG would like to note the following on two of the announced policies:

- a) The Ministry of Justice (paragraphs 38 and 39 of the Cabinet paper) notes concerns with the proposal for the High Court to consider appeals on the input methodology decisions of the Commerce Commission. MEUG suggests the view of the Ministry of Justice may be correct on this point. Deciding input methodologies is by the nature of the task somewhat subjective although the Commission should be held accountable if it fails to follow reasonable process in reaching a decision. That seems to be more a question of parties having the right to a judicial review or the process rather than a merits review.
- b) The announcements propose ELB that are locally owned and elected by most consumers will automatically be subject to an information disclosure regime. The assumption being that locally owned and controlled Trusts have and will continue to have strong incentives to meet local consumer requirements.

MEUG is unsure if that assumption can be accepted as a given. Locally elected entities do not always serve their constituents well as is illustrated recently with the activities of the Wellington District Health Board. In February 1998 the largest Trust owned electricity company in New Zealand was responsible for the Auckland CBD blackouts. This was the most prolonged and costly electricity supply failure ever in New Zealand.

MEUG also notes that no analysis has been undertaken on the relative performance of Trust owned companies to check the assumption that they are indeed serving their customers well in terms of price and quality to support this policy decision. MEUG believes some ELB probably should be subject to an information disclosure regime. To qualify for that lighter-handed regime ELB should be subject to a set of pre-determined set of requirements based on performance rather than what appears to be a political decision based on the assumption Trust owned ELB can do no harm.

5. We look forward to participating in the Select Committee consideration of a Bill on these proposed changes.

Yours sincerely



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Executive Director