



MAJOR ELECTRICITY USERS' GROUP

9th February 2016

Robert Clarke
Targeted Commerce Act Review
Competition and Consumer Policy
Ministry of Business, Innovation and Employment

By email to commerceact@mbie.govt.nz

Dear Robert

Targeted Commerce Act Review

1. This is a submission by the Major Electricity Users' Group (MEUG) on the Ministry of Business, Innovation and Employment (MBIE) issues paper¹ "Targeted Review of the Commerce Act 1986" dated November 2015.
2. MEUG members have been consulted in the preparation of this submission. This submission is not confidential. Some members may make separate submissions.
3. This submission does not comment on whether there are any issues in relation to anti-competitive exclusionary conduct or alternative enforcement mechanisms. From an economy wide perspective those are important topics. In relation to the electricity sector the establishment of the Electricity Authority (EA) and governance of the competitive part of the electricity sector through the Electricity Industry Participant Code 2010 (the "Code") with the introduction of the Electricity Industry Act in 2010 (the "EI Act 2010") has reduced issues of sustained anti-competitive exclusionary conduct.
4. MEUG has experience with the EA implementation of its enquiry and market study activities pursuant to its function set out in cl.16(1)(g) of the EI Act "to undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry." That experience may assist MBIE in terms of considering whether there are wider market study related issues for the economy as a whole.

¹ Document URL <http://www.mbie.govt.nz/info-services/business/competition-policy/targeted-commerce-act-review/issues-paper.pdf> at <http://www.mbie.govt.nz/info-services/business/competition-policy/targeted-commerce-act-review/?searchterm=Targeted%20review%20of%20Commerce%20Act%20>

5. The non-competitive part of the electricity sector is governed largely² by Part 4 of the Commerce Act. MEUG understands this targeted review of the Commerce Act excludes a review of Part 4 other than noting under other matters not explored at this time³ “the case for a generic access regime”. That topic could be worth exploring because it may be a longer term alternative to consider for both electricity and gas monopoly line services. MEUG notes another existing Part 4 work stream underway by MBIE has been to assess the effectiveness of the merit review provisions.
6. Another policy issue is whether there is an “optimal level” of end consumer participation in the evolution and implementation of energy line and airport regulation and if not what options could be considered. “Optimal level” means where the incremental benefits to New Zealand of additional consumer participation equals the incremental cost of that participation. Given the level of information and resource asymmetry between regulated entities and end consumers MEUG suspects we are not at an optimal level. MEUG has in the past raised this topic without success with Ministers. Assuming the status quo is optimal without testing or analysis is a policy shortcoming. MEUG notes the Commerce Commission is proposing a work stream on consumer engagement as part of its review of Input Methodologies⁴. That may, depending on its final form, be useful work for the narrow topic of the Input Methodologies; nevertheless it doesn’t remove the need for MBIE to consider the issue not just for the wider Part 4 regime but also best practice across a range of other sectors where effective consumer participation is important.
7. The competitive part of the electricity sector has been the subject of numerous reviews initiated by Ministers since the review into the 1992 crisis that led to the commencement of the electricity market⁵ in October 1996. In effect these have been market studies commenced by Ministers as the need arose; usually a dry year crisis and failure of the structure and governance as at that date to manage those. Progressively the competitive industry has evolved to its current and most stable form with the governance arrangements of the EI Act 2010 coupled with other changes such as the partial listing of three electricity supplier SOE’s and with that improved scrutiny and accountability by capital and debt markets of their performance, requiring the SOE’s to have virtual hedges plus some re-allocation of generation assets, and market led developments such as more products and liquidity in the ASX New Zealand futures market.
8. An important part of the governance arrangements in the EI Act 2010 was the ability for the EA to conduct market reviews and studies pursuant to the function set out in cl cl.16(1)(g). The EA implements that function with specialist staff integrating real time market conduct activities with broader metrics monitoring overall market performance. Based on information from these multiple sources the EA can identify, prioritise and make amendments to the Code for the long-term benefit of consumers.

² Some aspects of monopoly line services are governed by the EA through the Code, eg transmission and distribution pricing and contracts.

³ Issues paper section 1.2, p12

⁴ Commerce Commission, Input methodologies review, process update paper, paragraphs 17 and 18, 30th October 2015, document URL <http://www.comcom.govt.nz/dmsdocument/13833> at <http://www.comcom.govt.nz/regulated-industries/input-methodologies-2/input-methodologies-review/>

⁵ Prior to October 1996 there were some parts of the market that were open for competition. It was only at that date that wholesale and retail competition under a common set of rules began.

9. The issues paper seeks⁶ information on whether there is a gap for implementing market studies. MEUG believes there is no material gap in relation to the competitive part of the electricity sector at this time. Electricity consumers are well served by the EA in relation to market enquiries, analysis and reporting progress in improving competition. The one caveat on this view is the influence of the gas market on the electricity market. The extent of the EA enquiry and analysis functions in cl.16(1)(g) of the EI Act 2010 are not, as far as we are aware, available to conduct equivalent market studies on the gas market. If that is an issue then there are regulatory structural and or governance solutions that could be considered as well as the benefits and costs of any new generic market studies function undertaken by an existing or new entity as canvassed in the issues paper.

Yours sincerely



Ralph Matthes
Executive Director

⁶ Issues paper paragraph 45.