

REVIEW OF THE REGULATORY CONTROL PROVISIONS OF THE COMMERCE ACT 1986 REGULATORY IMPACT STATEMENT

Executive Summary

- 1 The discussion document released earlier this year and subsequent submissions have identified a number of problems with the current legislation, including, unclear policy objectives, inefficient decision making processes, regulatory uncertainty, constraints on regulatory approaches, lack of certainty for efficient and timely investment for electricity lines businesses under Part 4A, and a relatively weak accountability regime for the Commerce Commission as regulator.
- 2 To address these problems the following key amendments are proposed:
 - i Specifying a regulatory specific purpose statement for Part 4;
 - ii A more conventional, qualitative test for when regulation may be imposed;
 - iii Broadening the range of forms of regulation available under the Act to include information disclosure, a negotiate/arbitrate regime, and a 'default/customised price-quality path' regime to replace Part 4A;
 - iv A requirement that "input methodologies" (how to determine the weighted average cost of capital, value assets, allocate common costs etc) should be set as soon as possible by the Commission with the aim of improving certainty and predictability for businesses; and
 - v Providing for merits review of Commission decisions on input methodologies.
- 3 It is also proposed that 100% trust-owned electricity lines businesses be subject to information disclosure only, while the 'default/customised price-quality path' regime would apply to non-trust electricity lines businesses, and to gas pipeline businesses.

Adequacy Statement

- 4 The Regulatory Impact Analysis Unit has reviewed the RIS and considers the RIS is adequate according to the adequacy criteria.

OBJECTIVES

- 5 The objectives are to provide for a regulatory regime for businesses not subject to competition that:
 - i Is credible and coherent, provides sufficient disciplines on firms in markets with natural monopoly characteristics and provides for incentives to invest in infrastructure;
 - ii Provides clarity, certainty, transparency, timeliness and predictability for businesses and appropriate accountability mechanisms; and
 - iii Is appropriate for New Zealand's small size (with small firms and limited resources).

STATUS QUO AND PROBLEM

- 6 Electricity lines businesses (ELBs) have argued that the Part 4A regime has increased uncertainty in the sector. This uncertainty can affect their cost of capital, thereby deterring investment. While industry complaint is not by itself proof of a problem, analysis of the current regulatory mechanisms indicates that the current regulatory model in Part 4 and 4A has not kept pace with changes in the regulatory environment and international best practice. For instance, Part 4A devolves a significant amount of discretion and flexibility to the regulator, but that has come at the cost of increased uncertainty for business.
- 7 The purpose of the review was to identify whether the regulatory control provisions within the Act were achieving the intended regulatory objectives (outlined in paragraph 4). The following issues were identified as part of the Review:

Unclear regulatory objectives

- 8 Currently there is no specific purpose statement for the generic regulatory control provisions in Part 4 of the Act, while the overall Commerce Act purpose statement is to promote competition (which is not feasible in natural monopoly markets). Submissions on the Commission's two draft price control inquiry reports to date indicate that the purpose of the regulatory provisions may be unclear. In particular, there has been debate around whether Part 4 requires consideration of economic efficiency only, or whether consumer protection/distributional considerations should also be taken into account in the context of regulating firms, and if so what the relative weighting between these objectives should be. There is also debate about whether the current purpose statement for Part 4A of the Act is appropriate given that there is no explicit reference to a key regulatory objective of providing for incentives to invest. Such debate and uncertainty does not fit well with the key regulatory objectives of clarity, certainty, transparency and predictability.

Inefficient decision making processes

- 9 The review identified weakness with the current tests for whether or not to impose regulation. The existing competition test is relatively low and it is likely that it applies to many markets in New Zealand including where control is clearly undesirable, and thereby fails to provide business certainty for when regulation is likely to be imposed.
- 10 The current acquirers benefit test (whether there are net benefits to acquirers from control) may not be appropriately targeted as it does not require explicit consideration of efficiency effects.
- 11 Currently the Act requires separate processes for decisions on *whether* and *how* control should be imposed. This means that a Ministers decision taken on whether to regulate will be based on incomplete information with regards to how control would be applied. If a Minister decides to regulate the Commission is charged with doing the analysis again in order to identify how to regulate. This largely duplicative process can be costly and time consuming.

- 12 The Act currently does not require that the key technical decisions (“input methodologies) relating to how regulation will be imposed be set in advance of control inquiries and the imposition of control. This has resulted in uncertainty and dispute throughout the regulatory process (such as the airports and gas inquiries).

Inadequate accountability arrangements

- 13 The Commission’s regulatory decisions are subject to judicial review only. There is a general perception that the accountability regime for the Commission is weak, as judicial review applies to questions of law and process only and not the substance of a decision. Thus the regime is less capable of correcting regulatory error or improving the regulator’s decision making over time. This can impact on business/investor confidence in the regime.

Constraints on regulatory approaches.

- 14 The Act only allows a choice between no control or conventional price control. Broadening the choice of regulatory options provides a wider range of regulatory tools to ensure that the most ‘fit for purpose’ form of regulation is implemented in a given circumstance.

Part 4A failing to achieve policy objectives

- 15 Part 4A is generally regarded by electricity lines businesses as unsatisfactory. The key weaknesses include:
- a Uncertainty for firms over what happens in the event of a breach and the process, timeframes and criteria for assessing administrative settlement processes;
 - b Absence of a mechanism for ex ante approval for major capital expenditure;
 - c Lack of timeliness in decision making. There is no set timeframe for when the Commission can open an inquiry following a breach or for making decisions. Once a firm has breached a threshold they can remain open to Commission action for a number of years ;
 - d Unusual penalties for a breach. Breaches may be minor, technical and historic while the consequences can relate to any aspect of a firm’s activities; and
 - e Administrative settlements do not provide sufficient transparency, consistency or precedent for the sector going forward.
- 16 Investors are less likely to make long-term investments spanning multiple regulatory periods under a regime where the rules are unclear or applied inconsistently.

ALTERNATIVES

- 17 Various options were considered for addressing the specific problems identified above. Individual proposals could be packaged in several different ways. For example, retaining the Part 4A thresholds while improving regulatory certainty by including the feature of input methodologies set in advance. The different options and the associated costs, risks, benefits and opportunities are discussed below.

STATUS QUO

- 18 The status quo was considered for each of the proposed changes outlined below. In each case the failure of the current arrangements to meet the quality of regulation objectives listed above has counted against retaining the status quo. It is considered that the short term regulatory uncertainty resulting from change is mitigated by the long term benefits of a well functioning regulatory environment.

PREFERRED OPTION

- 19 The preferred option contains the following features:
- a A regulation specific purpose statement for Part 4;
 - b A more conventional qualitative test for when regulation may be imposed;
 - c Provision for additional forms of regulation, including a default/customised price-quality path regime for sectors to replace Part 4A;
 - d A requirement that “input methodologies” should be set upfront of any major decision-making, as a stand-alone process; and
 - e Providing for merits review of Commission decisions on input methodologies.

A purpose statement for Part 4

- 20 The following options were considered:
- a No purpose statement for Part 4 (status quo);
 - b A purpose statement that focuses only on improving efficiency upfront, with the implicit expectation that overtime all consumers will benefit; and
 - c A purpose statement that explicitly states that the objective of regulation is to improve efficiency and to protect consumers from excessive prices - similar to the Part 4A purpose statement (preferred approach).

Analysis

- 21 It is considered unsatisfactory for there to be insufficient clarity about the objectives of economic regulation so option (a) was discarded.
- 22 Option (b), on balance, is problematic in the context of natural monopoly sectors. A key objective of economic regulation in New Zealand is the protection of consumers from excessive prices over the long term. This is achieved by explicitly providing for this objective in regulation. Thus, variants of the purpose statement developed in the context of option (b) were not considered appropriate and were discarded.

23 Option (c) includes both efficiency and distributional objectives, to provide for an appropriate balance between the protection of consumers and that of producers and investors. The proposed purpose statement is similar to the Part 4A purpose statement. Building on the Part 4A purpose statement will mitigate the risk of losing case law.

A new test and process for imposing regulation/new processes

24 Several options were considered:

- For the test when regulation may be imposed: status quo, competition/market power only, or both market power and distributional considerations and net benefits (preferred option);
- For the form of analysis: status quo, quantitative cost benefit analysis, qualitative assessment only, or qualitative with quantitative analysis where possible and practical (preferred option); and
- On the number of inquiries: A separate inquiry for whether to control/regulate and a separate inquiry for how control will be imposed (status quo), or one inquiry only (preferred option).

Analysis

25 The benefit of the preferred options for the test for when control may be imposed is that they improve clarity and certainty for business. They also move away from the more controversial net acquirers benefit test which requires a trade off between two things (i.e. net economic cost against benefits to consumers) that cannot be compared in a meaningful way.

26 Providing guidance to the Commission provides comfort that qualitative analysis (with quantification wherever possible) is appropriate and will allow for timely and transparent analysis.

27 The main argument against a single process for the decision on whether and how to regulate is that it risks predetermining the processes and outcomes relating to control before a decision has been made to regulate. It could also result in the initial inquiry being more intrusive than if the two processes are considered separately. This risk is considered relatively low and is outweighed by the benefits of having more complete information for the decision on whether to control and the avoidance of costly and largely duplicative processes, i.e. essentially two separate inquiries into the activities of firms.

Providing additional forms of regulation

28 It is proposed that a range of regulatory tools be provided for under the Act.

Analysis

29 The availability of different regulatory options will enable the Commission to ensure that the most cost effective, 'fit for purpose' form of regulation is recommended in a given circumstance.

30 A number of submitters were concerned that providing specifically for less costly, 'lighter' handed forms of regulation may lower the threshold for intervention, noting that even 'lighter' forms also impose additional costs on business. This risk is mitigated by the legislative test for whether to impose regulation. The test will require the Commission to conduct an analysis to ensure that regulation is both necessary and is the least intrusive necessary to meet the objectives of the purpose statement and should also take into account the effectiveness of existing regulatory arrangements.

31 The exact cost of enhanced information disclosure and negotiate/arbitrate options will depend on the final design detail. While there is general agreement regarding the benefits of information disclosure as a low cost tool to constrain the abuse of market power, the case for negotiate/arbitrate is more contentious. The costs and benefits for negotiate/arbitrate are outlined in the table below.

Arguments in favour	Arguments against
<ul style="list-style-type: none"> • Provides incentive for parties to negotiate a settlement • Less costly for regulator • Parties able to customise settlement to meet own circumstances • May improve relationships between suppliers and customers (some evidence from overseas) • Arbitrator/regulator only involved if parties fail to agree • Over time, parties get better at predicting arbitrated outcomes, speeding up settlement processes 	<ul style="list-style-type: none"> • Parties look to the end-game (i.e. arbitration/regulation) and position themselves to get the best outcome from arbitration/regulation • Some submitters argue it could stall and frustrate investment • Arbitration can be complicated where there are multiple services and parties • Very difficult to get agreement of all parties, so arbitration is inevitable • May be less efficient than price control

32 It is accepted that the negotiate/arbitrate model will not suit all circumstances. But as there may be cases where the benefits outweigh the risks (e.g. where there are a few large parties) it is considered that the regime would be strengthened by providing specifically for this form of regulation.

Default/customised price quality path regime (within Part 4)

- 33 A key feature of the new regime is the replacement of Part 4A with a default/customised price quality path regime (within Part 4). It is proposed that ELBs (except for 100% consumer trust owned businesses) and all gas lines business, except Nova Gas and the Taranaki pipelines, will transfer to this regime.²²
- 34 The two options considered were to:
- a *Retain the Part 4A threshold regime with a few changes* such as requiring the Commission to set input methodologies in advance of the reset of price-quality paths; or
 - b *Replace Part 4A threshold regime with a 'default/customised price-quality path' regime (within Part 4)*. This would provide for the Commission to set a default price-quality path for a sector (similar to the setting of sector-wide thresholds under Part 4A), and in addition would provide an ex ante, time-bound opportunity for an individual firm to seek a customised path. Under this regime, any 'breach' of a firm's customised price-quality path (or the default price-quality path if a firm remains on it) would be subject to conventional Part 5 penalties and remedies that are proportionate to the breach (preferred option).
- 35 The arguments that have been made in favour of retaining the status quo and for option (a) above are broadly the same. These are that:
- Much of the current uncertainty for businesses with the Part 4A regime is due to the current regulatory regime still bedding in (the current regime was introduced in 2001 and has only been through one five year regulatory period). It has been argued that certainty will evolve over time, as precedent is set, for example as the Commission makes more decisions on administrative settlements;
 - As the Commission develops the regime further, future threshold resets under Part 4A could take into account future investment requirements to address the need for firms to have certainty around making substantial capital investment.
- 36 The main disadvantages with the retention of Part 4A are listed in paragraph 110 above. Most submitters thought that these flaws were inherent features of the regime rather than issues that could be resolved over time. For these reasons option (a) was discarded.

²² Note: the gas pipelines of Powerco and Vector will be transferred to this regime at the end of their current regulatory period.

- 37 There will be little additional cost to those firms that decide to remain on the default path as the default price-quality path will be set in a similar way to the current thresholds. For customised proposals the firm may choose whether or not to put forward a proposal. Firms that choose to put forward a proposal will face costs in the form of management/staff time and external expertise. Many of these costs are evident in the status quo, for instance, the cost incurred as part of an administrative settlement process. To minimise costs and potential for delay the proposal includes strict timeframes, input methodologies set upfront, preset criteria for proposals, and statutory timeframes.
- 38 There is a risk that the Commission may be overwhelmed by proposals. To address this risk the Commission will only be obliged to make determinations on four proposals a year, and prioritise its work. Other proposals would be deferred to the following year, with the affected firms having to comply with the default price path in the meantime.
- 39 This creates a risk that some firms might make losses whilst their proposal is being considered because the default price path will apply. This risk has been addressed through allowing the Commission to provide for revenue recovery by the firm where the Commission subsequently sets a higher price path.
- 40 There will be additional costs to the regulator of administering the new regime, relating to:
- i The preparation of input methodologies. However, the Commission already does much of this work anyway.
 - ii Administering a default/customised price-quality path regime for gas pipelines. In this area, the Commission should also be able to use the extensive information gathered during the inquiry.
 - iii Processing proposals for customised price-quality paths for electricity lines businesses. The additional costs from this compared to the current regime will be offset by Part 4A no longer applying to 17 trust-owned electricity lines businesses, and the Commission and firms no longer needing to negotiate administrative settlements.
 - iv Defending merits review on input methodologies. The additional costs from this should also be partially offset by fewer judicial reviews.
- 41 The benefit of option (b) is that it builds on the strengths of the Part 4A regime (namely setting sector wide price paths based on comparative information) while addressing its main weaknesses through providing an opportunity for firms to seek Commission approval of a customised path. The proposal will provide an effective regime that over time provides more timeliness, certainty and incentives for investment. Almost all submitters supported some sort of replacement for the Part 4A regime. On balance, these benefits are considered to outweigh the incremental regulatory and business costs and short term costs of uncertainty for regulated firms arising from changes to the status quo.

Input methodologies set in advance

42 It is proposed that input methodologies be set up front in a stand alone process at the start of an inquiry and any reset of price quality paths. The purpose is to provide greater certainty, transparency and predictability to business.

Analysis

43 A statutory provision that would require input methodologies to be set up front as a stand alone process is consistent with approaches adopted in other jurisdictions such as Australia. There was support from almost all submitters for this proposal.

44 Setting input methods in advance will reduce the flexibility that is inherent in the current regime. It is considered that this risk is outweighed by the significant increase in business certainty. The replicability of the input methodologies will also benefit those in non-regulated sectors. For instance, it will ensure that those negotiating with monopolies can point to a standard model. It will also reduce the number of disputes and areas of contention when considering the appropriate control terms.

45 There is a risk that having to set input methods in advance will delay the decision making process. To ensure input methods are developed in a timely, cost effective manner the body responsible for preparing the input methodologies will be able to adopt, with modifications where required, methodologies used by other regulatory bodies in similar overseas jurisdictions. Any delay in setting input methodologies will likely be offset by the reduction of delays and disputes later on in the process of setting control terms.

46 Two main options have been considered for who should prepare the input methodologies:

- a Prepared and set by the Commerce Commission;
- b Prepared by an independent expert panel, and set as regulations/rules.

47 There are specific benefits and risks associated with each of the options relating to who prepares the inputs methodologies. The performance against key criteria is outlined in the table below.

Criteria	The Commission(Option (a))	Independent Panel (Option (b))
Availability of expertise	Uses the Commission's expertise and integrates well with the Commission's current work streams.	It will be necessary to recruit the appropriate expertise to sit on the panel.
Quality of outcomes	The Commission is experienced at developing input methodologies and has extensive knowledge of the electricity sector. However, the Commission is likely to have a more conservative approach to developing input methodologies than an independent panel. The availability of merits review of input methodologies provides a check	Would enable a fresh look to be taken at input methods and this approach is more likely to pick up suitable overseas examples. There is a trade-off between striving for 'best practice' and certainty and timeliness, and this option improves the chances of striking a good balance. It provides for separation of rule

	of the quality of the proposed methodologies.	making from rule implementation, thereby limiting conflicts of interest.
Political Independence	No Ministerial/political involvement.	The Minister would be involved in appointing the panel and accepting or rejecting the recommendation of the Panel.
Cost	The Commission has estimated that the cost of developing the input methodologies will be \$4 million over three years, depending on whether a form of merits review is available and the level of specificity required.	It is estimated that the work would cost \$3 million (over two years).
Timeliness	The Commission estimates a timeframe of over three years to develop methodologies and frameworks. Appeals to the High Court would involve additional time delays and costs to the Commission.	It is expected a Panel could make a recommendation by the end of 2009.

- 48 An independent panel has the advantage of separating rule making from rule implementation thereby reducing the likelihood of regulatory bias. However, a robust accountability arrangement (merits review) for the Commission is proposed. There is also a reduced risk of undue political interference under option (a). It would be more difficult to ensure the neutrality and quality of decisions issued by an independent panel.
- 49 On balance, the advantages of the Commission's sector specific knowledge, expertise in developing input methodologies, political independence and proposed accountability arrangements outweigh the advantages of option (b).
- 50 The cost of the developing input methodologies could either be government funded (i.e. tax) or levy funded. As consumers will be the direct beneficiary of the proposed changes the use of levy powers is most the most appropriate option.

Accountability mechanisms

- 51 In addition to the status quo the review considered the whether to make available limited merits review by way of appeal to the High Court for a re-hearing. Consideration was given to whether to provide merits review for decisions on input methodologies **and** control terms or for decisions on input methodologies only (preferred option).

Analysis

- 52 Businesses submitters generally supported the introduction of merits review of the Commission's decisions, noting the importance and far-reaching effects of regulatory decisions. The main arguments for and against merits review can be summarised as follows:

For	Against
<ul style="list-style-type: none"> a) Improves accountability for the regulator <ul style="list-style-type: none"> i. Likely better quality decisions over time b) Allows for correction of errors of fact or judgement c) Improves business confidence in the regulatory regime d) Consistency with the rest of the Commerce Act <ul style="list-style-type: none"> i. Merits review is available on clearances and authorisations 	<ul style="list-style-type: none"> a) Gaming risk. Though can be mitigated by providing for full implementation of decisions pending conclusion of appeals b) Cost (most likely recovered by way of a levy on regulated parties) c) Ties the Commission up (time, resource and management focus) in the courts d) Courts lack the specialist expertise of the regulator (notwithstanding lay members) and decisions may be different as opposed to better e) Results in delays and uncertainty f) Likely pressure to extend to other sectors, such as telecommunications and electricity g) Judicial review provides an effective discipline on Commission processes and ensures that decisions are not unreasonable.

53 For accountability and transparency purposes some jurisdictions separate the rule-maker from the rule-enforcer. For example, in Australia, where the rule maker for the energy market is the Australian Energy Market Commission while the rule enforcer is the Australian Energy Regulator (AER). Decisions on the rules are not merits reviewable, though Australia is in the process of introducing limited merits review on AER decisions. In other jurisdictions merits review is often available on regulatory decisions at the end. For example, in the UK they do not separate the rule maker from the rule enforcer, but have merits review by the Competition Commission on regulatory decisions.

54 The associated risks of delay and gaming can be mitigated though careful design, for instance, by allowing the Commission's decision to stand while the courts are considering the case. The overall improvements to the decision making process outlined above may have the effect that relatively few decisions would go to appeal, thereby limiting the costs of making merits review available. Taking into account the ability to mitigate the risks of merits review and the high cost associated with regulatory error, there is a strong case for providing for merits review of Commission decisions relating to specific matters.

- 55 The proposals being recommended as part of this review, i.e. clearer regulatory objectives, the ability for firms to propose control terms, and the provision of merits review of input methodologies will strengthen the regulatory process and will limit the scope for error and dispute. The resulting stronger regulatory process weakens the case for merits review.
- 56 The case for having merits review of input methodologies, before a decision on whether and how to regulate is made, is stronger than for review at the end for decisions on the control terms. Decisions on input methodologies are considered integral to the regulatory process as a whole as they have a significant impact on the final outcome.
- 57 Different options for who should review input methodologies were considered. The two main options considered were:
- a An independent expert panel appointed by the Minister chaired by a person with significant legal experience; and
 - b Appeal to the High Court (with specialist lay members) (preferred option).
- 58 The pros and cons of each option are outlined below.

High Court	Independent Panel
<p><i>Pros</i> Established processes and procedures</p> <p>Low risk of further appeals (process or proper interpretation of law)</p> <p>No suggestion of 'political' involvement</p> <p><i>Cons</i> Timeliness issues (may take up to 2 years)</p> <p>Courts may prefer to deal with case-specific applications rather than methodologies in the 'abstract'</p> <p>May be difficult to assign judge with specialist expertise</p>	<p><i>Pros</i> Faster decisions than High Court</p> <p>May allow for more tailored expertise</p> <p>Costs met by affected parties (levy)</p> <p><i>Cons</i> Higher risk of further appeals</p> <p>Slightly higher risk of further appeals</p> <p>Perception of political involvement</p> <ul style="list-style-type: none"> • More difficult to manage conflict of interest issues <p>Need to develop rules for processes and procedures</p> <p>Levy design may be difficult ('fairness' issues)</p> <p>Costs of members may be high</p>

- 59 There is a risk that the review of decisions about input methodologies are not suited for judicial decision-making since they relate to fact, rather than interpretation and application of the law. There may also be difficulties in assigning judges with specialist knowledge in this area. While many judges have particular areas of interest and particular specialist knowledge, their role is to interpret and apply the law to a particular factual situation, rather than be the principal decision-maker in matters which require highly specialised knowledge about input methodologies.
- 60 It can be argued that an independent body made up of specialists would have access to a greater level of expertise in this field as an independent panel will enable the appointment of people with the appropriate technical knowledge and skills. To mitigate this risk the proposal allows for the High Court to appoint lay members with specialist knowledge.
- 61 An appeal to the High Court is likely to take more time than an independent panel which could dedicate resource to such reviews. This could impact on the timeliness of inquiries under the Commerce Act as well as implementing regulation. However, establishing a panel is also likely to be a costly and time intensive process, with the increased risk of subsequent appeal, when compared to the High Court option.
- 62 On balance, the consideration of appeals by the High Court is a more conventional approach, minimises the risk of further appeals and reviews (because processes are likely to be better) and minimises the difficulties of managing conflict of interest problems. There is also a reduced risk of undue political interference.
- 63 It is difficult to estimate the likely costs which will be demand driven. However, it is likely that there will be appeals for the first set of input methodologies with the number and extent of appeals reducing over time.

100% consumer trust-owned electricity lines businesses (ELBs) subject to information disclosure only

- 64 The following options were considered for regulating 100% consumer trust owned ELBs:
- a 100% consumer trust owned business subjected to the same form of regulation as other ELBs;
 - b 100% consumer trust owned business subjected to lighter handed regulation (such as information disclosure) (preferred option).

Analysis

- 65 With respect to option (a), in principle the case for economic regulation is relatively weak where the customers are the owners of the firm. This is because the incentives of trusts to charge excessive prices is relatively low because excess profits are returned to the customer. Their relatively small size means that the cost of heavier handed regulation may outweigh the benefits.

- 66 A number of risks were identified for option (b) including:
- the risk of cross subsidies where voters may vote for trustees favouring lower prices for residential consumers subsidised by business;
 - voters/consumers may favour lower price at the expense of long-term security of supply;
 - increased cross subsidy to other activities or investments;
 - discourages efficiency improving amalgamations (though there is little incentive to do so under option a or the status quo);
- 67 The availability of information disclosure under option (b) will provide pressure on prices and efficiency. The Commission will be able to make a recommendation to the Minister that the default/customised price quality path regime be imposed on a trust firm under certain conditions, for instance where it no longer qualifies for the lighter regime or where a substantial proportion of its customers have petitioned the Commission and the Commission concludes that a change in the form of regulation would better meet the purpose statement.
- 68 The ability for consumers to respond to increased prices or quality concerns by replacing trustees also mitigates the above risks.

IMPLEMENTATION AND REVIEW

- 69 Implementation of the proposals above requires amendment to the Commerce Act 1986. It is proposed that the Commerce Act Amendment Bill will be passed by mid 2008.
- 70 There will be a transition period for electricity lines businesses. The following transitional arrangement is proposed:
- The Commission should continue its current work programme to re-set thresholds from 1 April 2009 (this includes updating its non-statutory Guidelines, which can be regarded as a pre-cursor to statutory 'input methodologies');
 - the 'default/customised price-quality path' regime should apply from 1 April 2009 with the thresholds becoming the default path;
 - Until the input methodologies are ready, any proposals by firms for a customised path should be based on the Commission's Guidelines. Conventional Part 5 penalties/remedies would apply to breaches;
 - Any administrative settlements in place at 31 March 2009 would continue for their term;
 - Breaches older than six months will expire when the legislation comes into force (except where the Commission has notified the company of its intention to undertake an inquiry).

- 71 The Commission is currently developing guidelines on input methodologies. Until statutory input methodologies are ready under new legislation it is proposed that any proposals from firms be based on the Commission's Guidelines. This will ensure that the transition from Part 4A to the new default/customised price quality path regime is not unnecessarily delayed.
- 72 The Commerce Commission will be responsible for implementing and giving force to the proposed regime. Officials from the Energy and Communications Branch will monitor the implementation and outcomes from the new regime as part of regular monitoring of the effectiveness of policy outcomes.

CONSULTATION

- 73 Ministry officials undertook extensive consultation with industry and consumer representatives. This included running an expert advisory group process to identify the key issues that should be addressed in the discussion document. A discussion paper was released in April 2007 with a three month consultation period. Submissions were received from 45 submitters. Opportunity was provided for those submitters who wanted to convey their key messages verbally to meet with MED officials. The key messages relating to each of the proposals is discussed in the main body of the RIS. Detailed consultations on design issues have been held with the Treasury and the Commerce Commission.
- 74 In the light of the complexity of some of the design issues, a brief and informal period of consultation on design detail is proposed in concert with the legislative drafting process.