

Comments on Detailed Specifications for Changes to the Regulatory Provisions of the Commerce Act

6 December 2007

Castalia was asked by a group of consumer trust-owned electricity distributors—WEL Networks, Counties Power, Electra, Network Tasman, Northpower and the Power Company (Group)—to comment on the detailed specifications of the proposed changes to the Commerce Act 1986 (Act), to the extent that the changes impact specifically on consumer-owned distributors. The changes are set out in Appendix B of the paper titled “Review of Parts 4 and 4A of the Commerce Act” and Clause L deals with the provisions for consumer-owned distributors. We therefore comment only on Clause L.

The Group appreciates and agrees with the policy intent of Clause L. However, there are minor matters of detail that we believe need to be addressed in order to ensure that the policy intent is fully implemented. These matters relate to the definition of “customer” and “consumer”.

The Group’s main concern is that Clause L refers interchangeably to “customer” and “consumer”. It is important to note that the two terms are not the same. Most electricity distributors operate an interposed model, under which technically their customers are electricity retailers, rather than end consumers. We therefore suggest that the term “consumer”, which is already defined in Part 4A of the Act, be used throughout Clause L for clarity.

We also suggest that clause L1.c. be amended to read (changes from original tracked):

all of the ELB’s ~~consumers, as at the date when a decision is made~~ by the ELB or the entity that owns the ELB ~~to make profit or fund distributions, benefit from those distributions~~

Deleted: customers

Deleted: benefit from profit or fund distributions

This amendment is necessary to add a time dimension to the requirement for all consumers to benefit. Without this amendment, it will not be clear whether past consumers must also benefit from any distributions. Administratively, it is difficult to define a set of consumers without using a specific timeframe. This is why consumer-owned electricity distributors generally have to use a consumer list as at a particular date to determine the recipients of any profit or fund distributions.

We hope the amendments proposed above are acceptable to the Ministry. We would be happy to provide additional information and to discuss our proposed amendments, if that would be useful. In the first instance, please contact Anton Murashev (021 2730709, anton.murashev@castalia.fr).