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## **Submission to Productivity Commission on the Australian and New Zealand competition and consumer protection regimes**

### **Introduction**

Transpower New Zealand Limited (“Transpower”) is the owner and system operator of New Zealand’s high-voltage electricity transmission grid, linking generators to distribution companies and major industrial users. Transpower plays a central role in New Zealand’s electricity industry and provides essential support services for the electricity market.

As a monopoly provider of transmission services, Transpower is currently regulated by the Commerce Commission under Part 4A of the Commerce Act 1986 (the “Commerce Act”) and is subject to the other provisions of the Commerce Act. Transpower is also subject to the Electricity Governance Regulations 2003.

Transpower is a state-owned enterprise and is subject to the New Zealand State Owned Enterprises Act 1986.

For the purposes of the Australian Productivity Commission (the “Commission”) study, Transpower is primarily concerned with any proposals for harmonisation that will affect Part II of the Commerce Act, especially section 36 (misuse of substantial market power).

In **summary**, Transpower:

- a. Supports further harmonisation of trans-Tasman competition laws (as long as benefits outweigh costs for the proposed changes).
- b. Emphasises that any changes to the competition or consumer protection regimes should be aimed at achieving:
  - i. efficient outcomes;
  - ii. low transaction costs; and
  - iii. limited costs associated with regulatory intervention.

- c. Submits that any changes made to the Trade Practices Act 1974 (the “TPA”), be assessed and scrutinised before being implemented in New Zealand.
- d. Supports the policy options and the division of those options proposed by the Commission in the Issues Paper.

## **Policy Objectives**

Transpower supports the aligning of the policy objectives between the Australian and New Zealand competition and consumer regimes.

In particular, insofar as the two regimes have a policy objective of protecting competition and the competitive process, rather than competitors, this should continue to be the key objective of both regimes. This will ensure the focus remains on efficiency which achieves the greatest long term benefits to consumers.

## **Substantive Laws**

The Commerce Act is primarily based on the TPA, with amendments being made to the Commerce Act overtime that have harmonised the language and form of many provisions. Transpower submits that there should be careful assessment as to whether any further changes made to the TPA are appropriate to implement in New Zealand and not “harmonise” the regimes simply for the sake of it.

The Australian Government has recently announced a major package of amendments to the TPA, to improve the operation of fundamental provisions in the TPA and to enhance administrative processes that have a major impact on business. These amendments are a direct response to the Dawson review of the competition provisions of the TPA. These proposed changes to the competition regime in Australia, along with any future amendments, should be considered and implemented in New Zealand only if they will provide efficient outcomes and reduce the compliance and the transaction costs of the competition law and regulatory regimes.

The recent Senate Report on the effectiveness of the TPA in protecting small business, along with the Australian Government’s response to that inquiry, propose changes to s 46 of the TPA to give guidance to the courts in their consideration of predatory pricing cases. A study should be undertaken in New Zealand, similar to the Senate Report, before these changes are contemplated in New Zealand.

Substantive competition laws should protect the competitive process as the means for an efficient market, rather than provide protection for any particular group of competitors.

There should be harmonisation to the maximum extent of the provisions prohibiting anti-competitive practices and those provisions/processes relating to clearances and authorisations. Transpower believes that harmonisation of the substantive laws between the two countries will provide greater certainty and lower transaction costs for businesses involved on both sides of the Tasman (i.e. development of common case law should lead to greater certainty, and, therefore, lower transaction and compliance costs).

## **Policy Options**

Transpower supports the Productivity Commission’s analysis of the available policy options. The Commission has made an appropriate division of the options.

## **Conclusion**

Transpower's primary interest is in the possible increased cooperation, coordination and integration of industry-specific regulatory regimes. Nonetheless, despite the fact that the terms of reference of this study do not extend to the consideration of industry-specific regulatory regimes, the issues raised in the study are of relevance and importance to Transpower's business. In particular, any proposed changes to section 36 of the Commerce Act should be carefully considered before being implemented in New Zealand.

Transpower appreciates the opportunity to submit our views on these issues and looks forward to attending one of the Commission's workshops when it visits New Zealand later in the year.

Yours sincerely

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