



**TRANSPOWER**

Transpower House, 96 The Terrace,  
PO Box 1021, Wellington,  
New Zealand  
Telephone +64-4-495 7000  
Facsimile: +64-4-495 7100  
[www.transpower.co.nz](http://www.transpower.co.nz)

Jeremy Cain  
[jeremycain@transpower.co.nz](mailto:jeremycain@transpower.co.nz)

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Dr John Hamill  
General Manager, Regulation  
Commerce Commission  
44 The Terrace  
PO Box 2351  
Wellington 6140

By email: [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz)

Dear John

## **Review of Part 4 Funding**

Thank you for the opportunity to comment on the Commerce Commission's (the Commission) consultation paper, *Commerce Act Part 4 Funding Review*, published 11 June 2013.

Our interest in this matter lies as a regulated supplier under Part 4, subject to individual price-quality regulation and information disclosure. I briefly touch on a few points that we wish to emphasise and respond to the Commission's specific questions in the attachment to this letter.

## **Part 4 regulates some of New Zealand's most important infrastructure**

Under the Part 4 regime the Commission regulates more than \$14bn in assets owned and operated by over 30 entities providing services that are essential to the economic and social wellbeing of New Zealanders. It is essential that the Commission has clarity of purpose and priorities and the resources it needs to effectively operate the Part 4 regime – including some functions beyond the mandatory minimum. It goes without saying that the Commission should operate efficiently and transparently.

## **Fine tuning the IMs is appropriate and beneficial**

We support the Commission being resourced to perform some incremental improvements to the regime beyond its mandatory requirements, for example to assist regulated entities in complying with their obligations and to ensure that product of the information disclosure regime is meaningful for consumers.

While Part 4 implementation is largely complete, the overall regime remains in its infancy. As a large investor in very long lived assets we place particular value on stability and predictability - yet we appreciate that some fine tuning of the IMs is in the interests of regulated entities and consumers. This fine tuning should improve the operation of the regime and eliminate unnecessary compliance costs (it does not extend to making substantive changes outside of formal reviews). We do not consider that this should be particularly onerous or resource intensive for the entities affected or for the Commission.

We acknowledge the Commission's current IM amendment programme. We encourage the Commission to adopt a pragmatic approach when considering the type of IM change proposals described above. For example, if a regulated entity proposes a change that is economically neutral for consumers but reduces costs then the Commission should entertain it – including outside of formal reviews.

### **General observations**

We support the Commission's preferred approach as articulated in paragraphs 4-6 and elaborated on in the body of the document. We note reference to the Treasury guidance on best practice for regulation and support the Commission's adherence to this.

We would expect the future baseline to be lower than during the establishment period – reflecting the post establishment reduction in the scale and complexity of its Part 4 work. That said, the Commission's task remains challenging and requires capable, specialised staff. We consider that the consumer is best served by a Commission which is adequately, but not excessively, resourced.

We do not have specific comments on the detail of the Commission's budgetary or headcount requirements.

If you wish to clarify or discuss any of the points raised in this submission you contact me on 04 590 7544.

Yours sincerely

A handwritten signature in black ink, appearing to be 'JC' followed by a long horizontal stroke.

Jeremy Cain  
**Chief Regulatory Advisor**

## Attachment – Transpower Responses to Consultation Questions

Question No.	Question	Response
1	<p>How important is it that the Commission continues to develop its approach to setting price quality paths? Indicate which of the following areas you think the Commission should prioritise:</p> <ul style="list-style-type: none"> <li>• Developing incentive schemes to promote the long term benefits of consumers. For example, incentive schemes to promote operating efficiency, demand side management, energy efficiency and/or network losses.</li> <li>• Developing improved approaches to forecasting e.g. capital expenditure, operating expenditure, demand, and CPI.</li> <li>• Developing improved approaches to setting quality standards for gas pipelines and/or electricity lines businesses</li> </ul>	<p><u>General comment:</u></p> <p>As a general principle it is desirable for the Commission to strive to improve its approach to price quality regulation and to carry forward lessons from earlier periods.</p> <p>This needs to be balanced against the need for stability and predictability for regulated companies and their shareholders and debt holders. Except where agreed to by the regulated entity the Commission should avoid unnecessary reform – in particular during a price control period (as the Commission appreciates) but also, except where there are demonstrable benefits associated with the change in question, between RCPs.</p> <p>We recognise that for many of the matters the Commission regulates, including those identified in question one, there may be no practically perfect answer – or that the optimal solution changes over time. We accept and support that the framework should evolve over time however we know that regulatory change can be unsettling for investors and distracting for management and therefore should not be undertaken lightly.</p> <p>We comment in response to question 2 on the desirability of ongoing work to address errors and reduce unnecessary regulatory burdens / compliance costs.</p> <p><u>Prioritisation</u></p> <p>We can only make general comments on the prioritisation of incentive schemes, forecasting and quality standards. Our view is that all three are important components of the economic regulation framework. The relative priority of each will depend on the presence and or performance of the existing regime in each regulated sector at a given point in time.</p> <p>In relation to energy efficiency incentives the Commission should give effect to its obligations primarily through its general decision making – in developing the IMs, setting price paths and approving capital expenditure. To the extent that it takes additional steps it should ensure consistency with the Part 4 purpose and coherency with relevant government policy and the activity of other public sector bodies, for example, the Electricity Authority (EA) and Energy Efficiency and</p>

Question No.	Question	Response
		Conservation Authority (EECA).
2	How important is on-going work amending information disclosure and input methodologies requirements to correct errors, or help suppliers manage compliance risk?	<p>Our comments in response to question one relate to substantive and typically value impacting changes whereas our comments below in response to question two relate to changes which are typically economically neutral for consumers but will reduce unnecessary compliance costs.</p> <p>The Commission's work to address errors and to help suppliers manage compliance risk are both important:</p> <ul style="list-style-type: none"> <li>• The Commission should correct errors as a matter of course (we understand that this is current practice). We expect that this is a low cost and non-contentious activity.</li> <li>• The Commission should also progress, as a matter of course, procedural or administrative changes to the IMs and ID that reduce ambiguity for suppliers and or reduce unnecessary regulatory burdens on suppliers. Implementation of any changes should be set against practical constraints for supplier, for example, lead times for systems changes.</li> </ul> <p>We support the Commission's current IM amendment programme<sup>1</sup> and, from a process perspective consider that a regular and structured approach will help suppliers to understand what is changing, when, why and how this affects them and provides an appropriate opportunity for comment.</p> <p>We encourage the Commission to adopt a pragmatic approach when considering IM change proposals including during control periods where proposed by or agreed to by the regulated entity.</p>
3	How important is it that we review information disclosure requirements for airports in the light of what we have learnt from the review of airports information disclosure?	No comment

<sup>1</sup> The process described at <http://www.comcom.govt.nz/assets/Pan-Industry/Input-Methodologies/Correspondence-and-Process-Updates/Process-for-Amendments-and-Clarifications-of-Part-4-Determinations-8-March-2011.pdf> broadly reflects this structured, regular approach.

Question No.	Question	Response
4	<p>What approach should the Commission take to the required review of input methodologies? Should reviews for the different methodologies be staggered? Should the Commission continue to take a cross industry approach or separate by sectors? Are there input methodologies that should be given higher priority within the review?</p>	<p>We do not have a developed view at this point on how the Commission should approach the reviews. Our initial thoughts on approach are:</p> <ul style="list-style-type: none"> <li>• Consider IMs at a sector by sector level (no comment at this stage on within sector prioritisation)</li> <li>• Adopt a programmatic approach with parallel work streams</li> <li>• Coordinate across the work streams to ensure coherency and, where appropriate, consistency (ref section 54T(2)).</li> </ul> <p>Between June and October 2011 the Commission was required to review the Standard Terms Determinations that operate under the Telecommunications Act to make changes necessary to reflect the demerger of Chorus from Telecom. While the changes were largely 'consequential' and generally not contentious the process, which was by necessity multi-lateral and fast moving, was very effective and the result was a success. This may be a useful reference in planning the IM reviews.</p>

Question No.	Question	Response
5	<p>How important do you think the following activities are in providing assistance to suppliers to comply with the Part 4 requirements?</p> <ul style="list-style-type: none"> <li>• Education programmes and workshops.</li> <li>• Written guidance and clarification.</li> <li>• Compliance advice from Commission staff.</li> <li>• Compliance assessments.</li> <li>• Investigations of breaches to decide the most appropriate response.</li> <li>• Non-court remedies (e.g. refunds to consumers of over-recovery).</li> <li>• Enforcement action.</li> </ul>	<p>In practice the requirements of different parties will depend on the nature and extent of their compliance obligations and their capacity to effectively manage these using internal resources.</p> <p>We consider that, conceptually, all the activities identified could be of assistance to suppliers in complying with Part 4 requirements.</p> <p>We do not have specific comments on the individual activities at this point however would expect to comment on any compliance assistance framework if the Commission progressed this work.</p>

Question No.	Question	Response
6	What is the most effective way of promoting an improved understanding of the performance of electricity lines businesses, gas pipeline businesses and/or airports?	<p>A consistent and pragmatic analytical and reporting framework suitable for analysts / professional observers (akin to current practice) coupled with Plain English explanations that are meaningful to consumers.</p> <p>With reference to the latter, the Electricity Authority produces a series of “fact sheets” focused on different aspects of the electricity industry, the businesses involved and issues of relevance to electricity consumers. These 2-4 page documents are more relevant to and easier to understand for many end consumers than spread sheets or lengthy reports, however well produced.</p> <p>EA fact sheets can be found at: <a href="http://www.ea.govt.nz/consumer/factsheets/">http://www.ea.govt.nz/consumer/factsheets/</a></p> <p>The Commission’s reporting has a different purpose however the EA fact sheets provide a good example of a regulatory authority communicating relatively complex issues in a consumer friendly way.</p>
7	How important is it that the Commission be resourced to provide advice to and share knowledge with Ministers, officials and other regulators?	This is important (and the Commission should already be resourced to provide advice to the Minister’s office, officials and other regulators).

Question No.	Question	Response
8	<p>What is your view of the options for improving funding structures to increase predictability for levy payers and promote flexible deployment of Commission resources? (para 96)</p>	<p>While fluctuations in levy costs may be material in the scheme of Commission funding it is a relatively small component of most levy payers operating costs and in some cases (including Transpower's) will be a recoverable or pass through cost.</p> <p>With that in mind we consider that the priority should be obtaining the most efficient and flexible funding structure for the Commission. We recognise the variability of workload from year to year and agree the Commission should have some flexibility to respond to peaks.</p> <p>We do not have a view on which of the options identified (or potential alternatives) will best meet the Commission's needs and be the most administratively efficient in terms of public sector rules.</p> <p>We note in relation to the single pool option (and possibly other options) there is no obvious reason why the work needed for regulation of businesses in each sector should be proportionate to suppliers' asset bases.</p>
9	<p>Should the periodic reviews of input methodologies be funded as:</p> <ul style="list-style-type: none"> <li>• A specific funding stream in its own right and recovered by a levy apportioned across all regulated suppliers based on the respective value of their regulated asset base (i.e. the status quo); or</li> <li>• Part of the sector specific funding streams with the Commission using internal cost allocations to apportion joint or shared costs between the sectors?</li> </ul>	<p>We do not have a strong view on which of the options identified (or potential alternatives) will best meet the Commission's needs and be the most administratively efficient</p> <p>Please refer to our response to question 8.</p>