
International developments

From New Zealand

This item was extracted from the October 1998 edition of the New Zealand Commerce Commission's publication Compliance, all of which was devoted to the new Electricity Industry Reform Act (1998).

Electricity Industry Reform Act 1998: Commission's role and processes

The Electricity Industry Reform Act 1998 (EIR Act) was enacted by Parliament on 3 July 1998. The EIR Act is a major Government reform targeting the generation, local distribution and retail sectors of the electricity industry. The aim of the reform is to benefit all electricity consumers by making these sectors more efficient through the promotion of effective competition in generation and retail markets, and by curtailing the natural monopoly powers of local distribution networks.

The purpose of this article is to give assistance to those parties likely to be affected by the EIR Act, and to their advisers, by:

- identifying those areas of the EIR Act which provide for the Commission to have a role, and which bear upon that role; and
- indicating the processes the Commission will apply in fulfilling that role.

While this article will not cover every eventuality and permutation which might arise in respect of the Commission's role under the EIR Act, it should provide a useful, general guide.

The purposes of the Electricity Industry Reform Act 1998

The purpose of the EIR Act is to reform the electricity industry to better ensure that:

- costs and prices in the electricity industry are subject to sustained downward pressure; and
- the benefits of efficient electricity pricing flow through to all classes of consumers; by
 - effectively separating electricity distribution from generation and retail; and
 - promoting effective competition in electricity generation and retail.

The EIR Act is split into eight parts, arranged as follows.

Parts 1 to 5, which, in accordance with the ownership separation rules, provide for the separation of electricity distribution (electricity lines businesses) and generation and retail (electricity supply businesses). The particular purpose of Parts 1 to 5 is:

- to prohibit certain involvements in electricity lines businesses and electricity supply businesses which may create incentives or opportunities –
 - to inhibit competition in the electricity industry; or
 - to cross-subsidise generation activities from electricity lines businesses; and
- to restrict relationships between electricity lines businesses and electricity supply businesses which may otherwise not be at arm's length.

Part 6, which enables regulations to be made in respect of charges relating to line function services to domestic premises and to consumers in sparsely populated areas.

Part 7, which enables regulations to be made to facilitate competition among electricity retailers and choice for consumers.

Part 8, which enables the split of Electricity Corporation of New Zealand Ltd.

Commission's role under the EIR Act

The Commission considers that its role under the EIR Act can be accommodated within the existing approaches and operations of its Commerce Act Division. The Division is responsible for encouraging compliance with the Commerce Act 1986, and seeks to achieve that in two main ways:

- Commerce Act enforcement, which relates to the enforcement of statutory prohibitions in respect of restrictive trade practices, business acquisitions and goods and services which are subject to price control; and
- Commerce Act adjudication, which relates to the operation of the statutory schemes by which business acquisitions may be cleared or authorised, and restrictive trade practices and prices for controlled goods or services may be authorised. The Commission sees its role under the EIR Act neatly falling into enforcement and adjudication areas in a similar way.

The table shows the key sections of the EIR Act in which the Commission has a potential role, and whether the Commission would carry out that role as an enforcement matter or an adjudication matter. In this context:

- enforcement refers to the Commission dealing with a potential or alleged contravention of a relevant section of the EIR Act; and
- adjudication refers to the Commission considering and adjudicating on a matter under a relevant section of the EIR Act.

Other government agencies, including the Ministry of Commerce and the Inland Revenue Department, also have responsibilities in implementing and enforcing the EIR Act. For example, the Ministry of Commerce has responsibility for particular regulations, for implementation of the information disclosure regime, and for monitoring of involvements and interests.

Summary of the Commission's responsibilities under the Electricity Industry Reform Act

| Section of the Act | Description | Enforcement | Adjudication |
|---------------------------|--|-------------|--------------|
| 17, 18, 19 | Ownership separation rules | ✓ | |
| 24 Part 2 | Requirement for corporate separation | ✓ | |
| 25 Part 2 | Requirement for compliance with arm's length rules | ✓ | |
| 30 Part 2 | Ban on expansion in cross-involvements | ✓ | |
| 35 Part 2 | Expansion option requiring notification to Commission and ownership separation by 1 July 1999 | ✓ | |
| 36 Part 2 | Compliance process for existing 205 aggregates | ✓ | |
| 38, 39, 40, 41, 42 Part 2 | Rules and compliance options for mirror trusts and mirror cooperatives | ✓ | |
| 45 Part 2 | Trusts that cease to be mirror trusts | ✓ | |
| 46 Part 2 | No expansion of control by trust-like agencies in electricity supply (except where section 44 applies) | ✓ | |
| 68 Part 5 | Duty not to defeat purposes of parts 1 to 5 | ✓ | |
| 80 Part 5 | Extensions | | ✓ |
| 81 Part 5 | Extensions | | ✓ |
| 87 Part 5 | Recommending regulations | | ✓ |

From Canada

The following media was issued by the Department of Finance Canada on 14 December 1998.

Minister of Finance announces decision on bank merger proposals

Finance Minister Paul Martin today announced that the bank mergers proposed by the Royal Bank of Canada and the Bank of Montreal, and by the Toronto-Dominion Bank and the Canadian Imperial Bank of Commerce will not be allowed.

The Minister based his decision, in part, on information the government received from the Competition Bureau and the Office of the Superintendent of Financial Institutions (OSFI), as well as the MacKay Task Force report recommendations and input from parliamentarians and public consultations.

The Minister said the mergers were not in the best interests of Canadians and will not be allowed to proceed because they would lead to:

- an unacceptable concentration of economic power in the hands of fewer, very large banks;
- a significant reduction of competition; and
- reduced policy flexibility for the government to address potential future prudential concerns.

'This is a decision,' the Minister said, 'that reflects the government's commitment to ensuring strong competition in the financial services sector.'

'Quite simply, allowing the mergers would further concentrate a very high level of economic power in the hands of an even smaller number of very large institutions.'

'Looking forward, we believe that our immediate priority must now be to focus on establishing an appropriate policy framework for the financial sector for the 21st century.'

'Whereas the merger proponents wanted the mergers to be allowed in order to change the status quo, we believe the status quo must be changed before any merger can be considered.'

'The government will not consider any merger among major banks until the new policy framework is in place.'

'But even then, new proposals will first have to demonstrate, in the light of the circumstances of the day, that they do not unduly concentrate economic power, significantly reduce competition or restrict our flexibility to address prudential concerns,' he said.

ACCC to aid development of South Africa's competition regime

On 9 December 1998, ACCC Chairman Professor Allan Fels signed an agreement with Dr Zavareh Rustomjee, Director General, Department of Trade and Industry, Republic of South Africa with the purpose of aiding the development of an effective competition regime in South Africa.

The aim of the technical assistance program, funded by the Australian Government through its overseas aid program, is to help public and private sector institutions in South Africa to become nationally and internationally competitive.

The program includes seminars, training programs, workshops and work placements in Australia and South Africa during the next 18 months, which aim to train South African government officials in the skills and techniques necessary to enforce their newly enacted legislation.

The signing of the plan was an important outcome of the Australia-South Africa Joint Ministerial Commission held in December 1998 in Canberra, and marks a significant milestone in the development of Australian-South African relations.