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SUBJECT: Input methodology review: Advice on legal questions and decision-making framework

Introduction

1. The Commerce Commission has commenced its review of all input methodologies ("IMs") under s 52Y of the Commerce Act 1986 ("Act"). As part of that process, it released a paper, *Invitation to contribute to problem definition*, dated 16 June 2015 ("problem definition paper"), and a discussion paper on the decision-making framework dated 22 July 2015 ("framework paper").¹
2. We have been asked by the Electricity Networks Association and the New Zealand Airports Association to provide:
 - (a) advice on the two legal questions raised by the Commission in the problem definition and framework papers; and
 - (b) in light of the above, comments on the decision-making framework and the consultation process going forward.

Summary and overview

3. In our view, the framework set out by the Commission provides a helpful basis for developing an effective decision-making process. We understand that this framework is intended as a starting point and that views of parties will further inform the process. In this respect we have provided suggestions about how the usefulness of the draft frameworks could be improved and why the improvements would be useful.
4. Given the benefits in developing a clear process in advance of decisions made, we also recommend further engagement with the Commission on the decision-making framework and the broader consultation process. This could draw on the now considerable experience derived from the first IM consultation process, the subsequent WACC IM amendment process and the merits review appeals.
5. In relation to the two legal questions, we consider that:
 - (a) The absence of an explicit statutory threshold for amendment or review does not mean the complete absence of any statutory threshold. As recognised by the Commission, the purpose statements for Part 4 and IMs (and operation of Part 4 as a whole) play an important role at the IM review and amendment stage, particularly where the regime is intended to become increasingly certain

¹ Commerce Commission: *Covering note: Developing decision-making frameworks for the current input methodologies review and for considering changes to the input methodologies more generally – DISCUSSION DRAFT*, dated 22 July 2015.

over time. In order for the statutory purposes to be met, minimum thresholds must necessarily be applied.

- (b) Any difference with the Commission in this respect may be semantic. We note the Commission agrees that the IMs are the starting point for considering any amendment and then sets out principles and questions as a threshold for change.
- (c) In our view, applying a purposive approach to statutory interpretation, the Commission can include "new matters" when amending or reviewing the IMs. It would still need to be established that the minimum thresholds for meeting the purpose statement are met. However, it would be helpful if the Commission could provide further explanation of what is meant by a "new matter".

6. In relation to the decision-making framework, our key recommendations are:

- (a) To further develop the principles to be applied before a current IM (the starting point) is changed. We agree with the Commission that the framework will necessarily be high level so it can be generally applied (that is, it cannot be formulaic or a "tick box" exercise). However, in order to be capable of meaningful application, the principles need to be sufficiently defined and understood.
- (b) We agree that the IMs should only be changed if it can be demonstrated that doing so would be better at meeting the relevant purpose statements. A key consideration will be *the impact of change* on the Part 4 purpose statements.
- (c) We agree that defining the policy intent underpinning the IMs should provide the starting point for review, where changes in reasoning and approach can undermine regulatory certainty and the Part 4 purposes.
- (d) At a minimum, we consider it would be helpful for the Commission to further develop the framework for assessing the impact of change against the Part 4 purposes as follows:
 - (i) clearly define the "policy intent" underlying the IMs, as the core economic principles underlying the IMs when they were determined and the reasoning set out in applicable IM reasons papers;²
 - (ii) restate and set out (as the starting point for the consultation);³
 - (aa) the core economic principles that applied when the IMs were determined (representing the basis of the regulatory compact); and
 - (bb) the key reasons underlying an IM that is a focus of the review (from the IM reasons paper / IM consultation process).

² Commerce Commission, *Input Methodologies (Electricity Distribution and Gas Pipeline Services) Reasons paper*, December 2010 and Commerce Commission, *Input Methodologies (Airports) Reasons paper*, December 2010.

³ This would also provide a common background and context for experts instructed by the parties.

- (e) Clarify that any change to an IM should be consistent with the core economic principles (such as the expectation of at least normal returns over the life time of an asset), if necessary by making adjustments to other IMs.
 - (f) Set out when a higher or lower threshold should apply before any change is made - for example, a higher threshold should apply to a change that will have a material impact on revenue (given the potential negative impact of such change on regulatory certainty, and incentives to invest and innovate in the long term interests of the consumer).
 - (g) Clearly identify how each of the s 52A objectives (and certainty) will be better promoted for the long term benefit of consumers (rather than relying on broad judgements as to whether the purpose statement is promoted or not).
7. Overall, to promote the certainty principles, parties need to have confidence that the Commission will exercise judgment with reference to its previous decisions and reasoning. Previous decisions reflect the regulatory compact on how the purpose of Part 4 would be promoted, and suppliers' expectations when investment decisions in long life assets were made. Certainty in the regime going forward depends on the value placed on principled approaches in the past.
8. In relation to the categories for change set out by the Commission:
- (a) The focus of this advice is on the review process. We consider that the same factors should also apply to an amendment process under s 52X but with a higher threshold applying for any fundamental change between review cycles.
 - (b) We are unclear whether distinction between category 2 and 3 is helpful. In relation to changes made prior to a price reset, it would be helpful to clarify that category 2 covers changes to facilitate implementation / innovations between regulatory periods rather than fundamental changes to the IMs (such as amendments to the WACC).
9. In relation to the IM Review consultation process, we recommend there is further engagement by the Commission around the detail of next steps. The focus should be on:
- (a) Workshops: these can be an effective way to understand and develop an approach to a particular issue and, accordingly, should be built into the consultation process where appropriate.
 - (b) Experts: There are a number of options for ensuring experts are more effectively and efficiently used based on experience to date (as touched on below). This should reduce costs (which ultimately fall on consumers), improve transparency and increase confidence in decisions. It would also assist the court in any merits review (given the frozen record).

Invitation to respond to legal questions

10. The Commission has invited written legal submissions on two points raised in the problem definition paper and framework paper, namely, the Commission's preliminary view that:
- (a) there is no specific statutory threshold for changing the IMs as part of the IM review; and

- (b) it cannot create an IM on a matter not covered by a published IM as part of the IM review.

11. We provide our view on each in turn.

Statutory threshold

- 12. We agree with the Commission that there is no specific or explicit threshold for amending IMs.
- 13. However, this does not mean no statutory threshold applies. Applying accepted principles of statutory interpretation, any threshold applicable to the review must be considered in light of the statutory purposes of Part 4 and the broader statutory scheme.
- 14. For this reason, the question could perhaps more helpfully be framed as: is there a statutory threshold for changing the IMs? To that question the answer is yes, for the reasons set out below. This question is an important one as it informs the detail of the decision-making framework.
- 15. As noted by the Commission, the review of the IMs is constrained by the relevant Part 4 purposes, both of which apply to the review process.⁴
- 16. The Part 4 and IM purposes were intended to be complimentary and should be interpreted accordingly. Certainty provided by IMs was intended to promote incentives to invest, in the long-term interests of consumers. That is, if the purpose of IMs is undermined, the Part 4 purpose is also likely to be adversely impacted in relation to incentives to invest.
- 17. Certainty does not mean IMs cannot be amended or reviewed. Part 4 clearly envisaged IMs might change over time. Indeed, a review of the IMs is mandatory, reflecting the importance of ensuring the IMs are operating effectively and reflecting market developments.
- 18. However, in order to promote certainty under s 52R and incentives to invest under Part 4, we consider there are threshold requirements that must apply. If IMs are changed on an arbitrary basis and / or without principled and evidenced reasoning, the certainty principles underpinning both purpose statements would be fundamentally undermined. In circumstances where there must be some flexibility to change IMs, the decision-making process, and consistency and quality of reasoning for any change, will be important to promote the certainty and predictability that IMs are meant to provide. In our view, the implicit threshold requirements in order to change IMs on review are:
 - (a) As the Commission sets out, current IMs and the status quo provide the starting point for the review. In our view, this necessarily requires that any change should only be made where there is good reason in order to ensure that the change will not undermine the purpose of Part 4 and / or IMs (discussed further below).
 - (b) Overall, the Commission should seek to avoid exercising judgement without reference to its previous decisions and in the absence of evidence.

⁴ In addition, we note that for airports, consideration of changes to the s 52P determination is proposed to be incorporated in the review. This means the purpose of information disclosure (s 53A) will also constrain the review (of both IMs and ID requirements).

- (c) Ensuring that change does not undermine the certainty purpose and incentives to invest and innovate requires that:
 - (i) The starting point for the review of the IM is clearly restated and articulated. This would comprise of:
 - (aa) the core economic principles relied upon by the Commission when the IMs were determined (which are the foundation of the regulatory compact); and
 - (bb) in relation to a specific IM under consideration, the reasons in support as set out in the applicable IM reasons paper / IM Review consultation process.
 - (ii) Core economic principles should not be abandoned or changed unless the weight of the evidence / economic rationale is compelling (because of the regulatory compact).
 - (iii) Any change to an IM should be consistent with the core economic principles (for example, the expectation of at least normal returns over the life time of an asset), by way of adjustment to other IMs if necessary.
 - (iv) A high threshold for change should apply where the change is likely to have a material impact on regulated revenue (given the potential adverse impact of change on regulatory certainty and incentives to invest). Such changes should be supported by weight of the evidence and / or analysis (demonstrating that the change is necessary to better meet the specific objectives in the Part 4 purpose for the long term benefit of consumers).
 - (v) Changes that are unlikely to impact on regulatory certainty, for example amendments to improve compliance costs or reduce complexity, would have a lower threshold for change.

- 19. We discuss the threshold for change further below in relation the proposed decision-making framework.

New matters

- 20. The Commission's position is that it is unable to create IMs in relation to "new matters".
- 21. The Commission's position appears to be that it was required to determine the first IMs by 2010 and, once those IMs were determined, it has no power to create any IMs in relation to new matters. We are currently unclear what is meant by "new matters". We assume for the purpose of this advice that the Commission is referring to new *subject* matter, that is, a subject matter not covered in the s 52T list or otherwise determined by the 2010 IMs.
- 22. As a starting point, the Commission was required to determine IMs for the subject matters set out in s 52T of the Act. However (and importantly for present purposes), the Commission had a power to determine additional IMs not specified in s 52T. This was

accepted by the Commission, and noted by the Court in the *Vector v Commerce Commission* judicial review proceedings⁵ and in the merits review High Court judgment.⁶

23. The Commission determined IMs for all the matters set out in s 52T as was required, save for pricing methodologies where responsibility was moved to the Electricity Authority before the IMs were finally determined.⁷ In our view, the Commission is able to amend, or change on review, these IMs, subject to the statutory restraints referred to above. An amendment must necessarily include "new matters" within the broad subject matter listed. Accordingly, rules and processes could be amended to include additional matters relevant to the DPP (such as the IRIS).
24. The next question is whether the Commission can determine IMs for subject matters not otherwise determined in 2010. The Commission's position appears to apply a narrow view of what is an amendment or review of an existing IM under ss 52X or 52Y and / or of the requirement to set all IMs by December 2012.
25. We consider the better interpretation is that the Commission can introduce new subject matters as part of a review (or amendment) process. However, introducing a new IM would still be a change to the existing regime, so the certainty constraints as set out above would need to be carefully applied. Our view is that, applying a purposive and workable approach, the following factors together support a broader interpretation:
 - (a) The 2010 deadline was intended to ensure the first set of IMs were determined as soon as possible after the Act was passed in order to avoid delay in the transition to a new regime. It is inconsistent with the Part 4 purposes to read into the Act a prohibition on any subsequent "new matters", even where doing so may prevent the purpose of IMs or Part 4 being achieved.
 - (b) The Act does not explicitly prohibit "new matters" to be included in the IM under the review or amendment processes. To the contrary:
 - (i) In relation to the s 52Y review process:
 - (aa) it requires the same process to be applied as for new input methodologies, so contemplates and enables full consideration of "new" issues".
 - (bb) refers to IMs which are amended or "replaced" which suggests new matters may be determined as part of the review process; and
 - (cc) the review mechanism itself indicates that Parliament intended that IMs may need to be updated as markets or understanding changes (subject to the constraints referred to above). It is artificial to argue that Parliament intended to prohibit a "new" IM where one was warranted.⁸

⁵ *Commerce Commission v Vector Limited* [2012] NZCA 220, at [7]; *Vector Limited v Commerce Commission* [2012] NZSC 99, at [72].

⁶ *Wellington International Airport Limited v Commerce Commission* [2013] NZHC 3289, at [53].

⁷ s 52T(1)(b) being amended by s 147 of the Electricity Industry Act 2010 on 1 November 2010.

⁸ Courts will generally seek to apply an interpretation that achieves workability and / or avoids futile, artificial or *anomalous* outcomes (in order to best accords with the general intention of Parliament as embodied in the Act).

- (ii) The definition of "IM" is broad enough to mean the 2010 determination as a whole package, where the introduction of a "new matter" is an amendment to that determination.
 - (iii) The Commission is under an ongoing duty to ensure, as far as is reasonably practicable, IMs are consistent with other IMs that relate to the same goods and services and set out how they will apply in sufficient detail. A technical view of whether or not a particular approach is "new" should not prevent the Commission from complying with these requirements.
 - (c) Applying a narrow approach may result in the Commission having no option but to determine a method or rule by way of information disclosure or DPP determinations (rather than in an IM). This could circumvent the intended IM scheme which sets out a rigorous detailed process. That is, if there are methods, rules or processes that determine how a supplier is to be regulated, then they should be determined within the IM framework as far as possible. The narrow interpretation is inconsistent with the scheme of the Act if it requires the Commission to determine any new methods, rules and processes other than as IM determinations.
26. Overall, it is unclear what precisely the Commission means by "new matter" and how it might relate to the current review. Given this, it would be helpful to be provided with additional information (including additional specific examples and legal analysis which underpins the Commission' review) and to receive a further opportunity to respond at that point.
27. In our view, the more important matter at this stage is to develop a meaningful framework for ensuring interested parties are provided with confidence that IMs are not amended or changed without good reason in order to ensure change is consistent with, and better meets, the relevant purpose statements. This is necessary in order to ensure the regime provides certainty about the rules and processes that apply over time. The Commission has set out its initial framework which we comment on below.

Decision-making framework

28. Under the proposed framework, the Commission proposes to only change current IMs where this appears likely to promote high level objectives as set out in paragraph 24 of the framework paper. The Commission has then helpfully set out a series of questions it considers should be asked of each IM (and provides further explanation in relation for each), specifically:
- (a) Is the policy intent behind the IM still relevant and appropriate?
 - (b) Is the current IM achieving that intent?
 - (c) Could the current IM achieve the policy intent better?
 - (d) Could the current IM achieve the policy intent as effectively, but in a way that better promotes s 52R or reduces complexity or compliance costs?
 - (e) Do changes to other IMs require any consequential changes to the IM in question for internal consistency or effectiveness reasons?

29. We consider these questions provide a useful starting point. However, further definition and refinement would help provide clarity of how the framework will be applied and therefore help to ensure the regime promotes certainty over time.
30. A key challenge is to avoid a framework that is too high level so that it does not effectively constrain the ability to exercise judgement and discretion when changing IMs. Broad phrases and terminology should be explained and defined as far as possible (such as references to "policy intent").

High level principles

31. The Commission proposes to only change IMs where it would:
 - (a) promote the Part 4 purpose in s 52A more effectively;
 - (b) promote the IM purpose in s 52R more effectively (without detrimentally affecting the promotion of the s 52A purpose); or
 - (c) significantly reduce compliance costs, other regulatory costs or complexity (without detrimentally affecting the promotion of the s 52A purpose).
32. We make the following points:
 - (a) In relation to (a) and (b) the words "more effectively" are ambiguous. "More effective" is open to a range of possible interpretations and does not necessarily mean the proposed change would be better at meeting the purpose statement. We consider a simpler, clearer and more understandable term is "better". Ultimately, whatever the terminology, it needs to be demonstrated that changing the existing IM will promote the purpose statements (taking account of the impact of change on the Part 4 purposes).
 - (b) The form of regulation will also influence whether a change to an IM is necessary in order to better promote the purpose statements. For example, an IM for DPP regulation will have a direct impact on incentives, whereas an IM for information disclosure regulation has a more indirect impact, as it only establishes how information must be disclosed. This may mean that greater precision or specificity is required under a DPP (which may require change to an existing IM to be considered), compared to information disclosure where more generality and flexibility could be appropriate (and therefore less reason for change may exist).
 - (c) More generally, we consider these principles should be developed to reflect minimum thresholds in order to promote the statutory purposes as set out in paragraph 18 above.
 - (d) We consider the high level framework should include reference to s 54Q (noting this is not relevant to airports). For example, one of the circumstances where changes would be sought would include where it promotes the energy efficiency requirements in s 54Q (without detrimentally impacting on the purposes in ss 52A and 52R). The energy efficiency principles in s 54Q are mandatory requirements under Part 4 where the IMs likely provide the most effective means of implementation.

- (e) The framework should also include reference to the purpose of information disclosure (s 53A) which is a key consideration in relation to information disclosure only regulation.

Policy intent

- 33. The Commission's first four questions largely focus on the "policy intent" behind the IM (is the policy intent still relevant and appropriate, is the IM achieving that policy intent, and could it be better achieved or better promote s 52R or reduce complexity?).
- 34. Given the centrality of "policy intent" to the questions posed, we consider the concept needs to be carefully explained by the Commission.
- 35. We assume that policy intent behind the IMs is the core economic principles that were applied (consistently with the purpose of Part 4) when the IMs were determined and the reasons for the adoption of a particular IM or approach as set out in the applicable IM reasons paper.
- 36. In line with the minimum requirements set out in paragraph 18 above, the decision-making framework should clarify that this is what the policy intent means and that it provides the starting point for consultation. We note that it would be contrary to certainty if the Commission was able to retrospectively assign a policy intent to a particular IM that was not understood at the time and / or was inconsistent with the IM reasons.
- 37. We consider that the core economic principles should be separately identified in the decision-making process (from the more detailed reasons applied within these principles). These are the core regulatory principles that have been applied over time, and which parties have relied on when making investment and business decisions. As noted above, a very high threshold should apply before these are changed or abandoned.
- 38. By way of example, the Commission's position throughout the development of the IMs in relation to the Part 4 purpose has consistently been that:
 - (a) when faced with a trade off, the Commission should err on the side of risking over compensation given the asymmetric social costs to consumers of under compensation over the long-term; and
 - (b) where there is a trade off between dynamic efficiency and allocative efficiency it would always favour outcomes that promoted dynamic efficiency.⁹
- 39. This approach taken by the Commission is consistent with the text and intent of the Part 4 purpose. Where there is a trade-off between incentives to invest and limiting the ability of regulated suppliers to earn excess profits, the over-arching objective is the long-term benefit of consumers. The asymmetry of social costs associated with under-recovery was the policy reason for referring to limiting, rather than eliminating, excess profits in objective (d).¹⁰
- 40. Another example of a core economic principle underlying the current IMs is the concept that suppliers should expect to earn at least a normal return over the life time of the

⁹ For example, see where this is discussed in *Major Electricity Users' Group Inc v Commerce Commission* [2014] NZHC 1765, at [14].

¹⁰ See Ministry of Economic Development, *Review of Regulatory Control Provisions under the Commerce Act 1986: Discussion Document*, April 2007 para 87.

asset. The "at least" is reflected in the purpose statement at s 52(A)(1)(d) which refers to suppliers being "limited" in their ability to earn excess profits.

41. The points above could be built into the Commission's framework prior to the question "Is the policy intent behind the IM still relevant and appropriate?". That is, the first question must be: "what is the policy intent for the IM?". Under this heading, it should be made clear that the Commission will set out the relevant core economic principles together with the specific reasons underpinning the IM in question (taken from the IM reasons paper / IM consultation documents).

Further comments in relation to remainder of questions and steps

42. *Is the policy intent behind the IM still relevant and appropriate?* The purpose statements are only briefly referred to at this stage of the decision-making framework (the purpose statements mainly feature at the change of an IM stage). For the reasons set out above, the purpose statements should underpin all stages. In relation to this heading:
 - (a) The purpose statements (and associated thresholds for change) are particularly relevant when considering whether or not to change the policy intent. Application of the purpose statements is as important for a change in policy as it is to a change in an IM, and for determining the threshold for change that should apply before departing from a previously held policy position.
 - (b) For example, it is difficult, at this point, to envisage a scenario where a change in policy intent that is inconsistent with the core economic principles discussed above would be appropriate.
 - (c) In relation to core economic principles, consideration of any change in economic theory or practice should require clear evidence across a number of experts, given there are often different economic views on any particular issue. That is, it should not be sufficient for the Commission to prefer a different economic view as a matter of discretion or judgment.
 - (d) The criteria for changing policy intent more generally should include consideration of whether the change better promotes the purpose statements.
 - (e) These points could be built into the list of questions with reference to the suggested "what is the policy intent?" heading. If the issue concerns a core economic principle a question would be: "is the weight of the evidence sufficiently compelling to justify a change". Other questions are: "What is the impact of change on certainty and confidence in the regime?"; and "Would the change be contrary to parties' expectations at the time the IM were determined?".
43. *Is the current IM achieving that intent? Could the current IM be improved to achieve the policy intent better?* The questions under this heading are clear and helpful. As noted above, the nature of the policy intent and associated thresholds for change should also be reflected under these headings. Clarification of policy intent and identification of core economic principles is critical in order to meaningfully assess whether a change to an IM could better meet that policy intent.
44. *Do changes to other IMs require any consequential changes to the IM in question?* Again, the questions appear well considered and helpful. However, the examples listed

should also cover consequential changes required in order to be consistent with core economic principles. Specifically:

- (a) A change to one IM may require a change to another in order to be consistent with core economic principles.
- (b) For example, an approach in the asset valuation IM may have been a reason for a lower WACC setting. If the approach in the asset valuation is changed, there may need to be a consequential amendment to the WACC IM in order to be consistent with expectations of at least a normal return over the life of an asset.

45. *Change stage: Should we change the IMs and if so how?* As a general comment, this s could be developed to reflect the factors set out in paragraphs 18 and 32 above. We agree the Commission will need to exercise judgement when assessing the pros and cons. However, such an exercise is not without statutory constraints for the reasons set out above. To better clarify this, the following factors could be specified as relevant to the assessment of pros and cons:

- (a) the impact of change on certainty and incentives to innovate and invest;
- (b) whether a high or lower threshold for change should apply given the underlying reasons and / or the potential impact on revenue;
- (c) where a high threshold applies, whether the weight of the evidence / analysis demonstrates that the change outweighs the negative impacts of departing from the status quo; and
- (d) whether the change impacts on the ability to earn at least a return over the life time of the asset and other expectations of regulated suppliers at the time.

46. Finally, assessment against the Part 4 purpose and s 52R should clearly identify how each of (a) to (d) and certainty will be better promoted or otherwise in order to promote the long term interests of consumers (rather than relying on broad judgements as to whether the purpose statement is promoted or not).

Categories for change

- 47. The focus of our paper has been on changes to IMs as part of the review under s 52Y.
- 48. We consider the same decision-making process as outlined above should apply to changes to the IMs under s 52X. As with changes under the review, the policy intent should be clearly restated as the starting point for any amendment process.
- 49. Further, the threshold for change under s 52X should arguably be higher than under the review process in relation to fundamental changes to the IMs. Frequent changes between reviews are unlikely to promote a more certain and predictable regime. This should weigh heavily in the balance when considering the pros and cons of change. As the Commission noted, the WACC IM amendment process resulted from extraordinary circumstances, that is, it would not usually be undertaken midway through a review cycle.
- 50. We are unclear whether categories 2 and 3 for the s 52X process are helpful. In particular, the proposal to re-open IMs prior to price setting as a matter of course risks undermining the certainty objectives in the regime, for example if changes such as the

WACC amendment are regularly undertaken in advance of a DPP reset. As noted above, the Commission has indicated the WACC amendment process was unlikely to be repeated.

51. If the Commission considers category 2 is necessary, it should at least clarify that changes would be limited to implementation / innovation changes from one regulatory period to the next and would not include fundamental changes of core IMs.

Process including workshops and use of experts

52. In our view, the process for considering change is an important component of the decision-making framework.
53. In relation to the IM Review consultation process going forward, we recommend there is further engagement by the Commission around the detail of next steps.
54. Workshops have proved to be an effective way to understand and develop an approach to a particular issue, for example in relation to WACC in the initial IM consultation process. Accordingly, consideration should be given to building this into the consultation process where appropriate and at an early stage.
55. One area that could be improved is the use of independent experts in the consultation process. There is considerable room for adopting more efficient processes in terms of how experts are used, for example by agreeing terms of reference and providing for experts to issue joint statements of what is agreed or not agreed. This will enhance their independence.
56. Adopting better processes around the use of experts should also reduce costs (which ultimately fall on consumers), improve transparency, increase confidence in decisions and result in better quality decisions. It would also assist the court in any merits review (given the frozen record). Further engagement between the Commission, stakeholder representatives / lawyers involved in the IM hearings, and MBIE could be an effective next step in improving processes for experts under the current IM consultation round.