



26 February 2003

Rachel Owens
Investigator
Commerce Commission
44-52 The Terrace
PO Box 2351
Wellington
New Zealand

Dear Rachel

Commerce Act 1986: Application for authorising of a restrictive trade practice – Preussag/Shell/Todd

Thank you for your letter of 14 February inviting Mighty River Power Limited to comment on the above application.

Mighty River Power is a generator of electricity utilising a variety of fuel sources including gas and a retailer of both electricity and gas through the Mercury Energy brand.

The authorisation sought by the applicants would on the surface appear to have the effect of reducing the prospect of the development of a competitive supply option in the gas sector. Mighty River Power has a clear preference for securing its future gas requirements in a competitive environment.

However, as a relatively small and recent participant in the New Zealand gas sector, Mighty River Power does not have the depth of experience to comment in any great detail about the pros and cons of joint marketing arrangements in the context of the application and as applicable under the Commerce Act.

We do believe that the recent energy sector review in Australia as commissioned by the Council of Australian Governments (COAG), titled “Towards a Truly National and Efficient Energy Market”, provides some potentially interesting insights.

Chapter 7 page 199 to 204 of the above document has considered at some length the issue of separate marketing agreements and provides some more recent and countervailing ideas, relative to those of past Australian Competition and Consumer Commission decisions.

In particular it is worth noting one of the Panel’s conclusions on page 199.

“The Panel has concluded that not all of the features of a mature market need to be present for separate marketing from joint facilities to be feasible. If they were, separate marketing itself would probably be of academic interest, as a high degree of competition would already be achieved. The existence of secondary markets with associated financial



products are outcomes of a mature market, rather than prerequisites for separate marketing. For each gas producing joint venture, some market features will be more important than others in considering the feasibility of separate marketing.”

In addition the Panel has stated that,

“Separate marketing itself should be regarded as one of the ingredients that in the appropriate circumstances helps to create competition and thereby a more mature market.” (Page 200)

Mighty River Power is not suggesting that joint marketing agreements are per se bad, as this is directly a function of context and timing. Rather that as has been discussed in the Australian context, that the progressive evolution and reform of the gas industry and the energy sector in general, necessitates that the basis of past decisions should be reviewed when considering new proposals.

Additionally, in considering how a market may evolve towards a more competitive outcome, few competitive markets exhibit all of what maybe considered “ideal” characteristics and this is especially true in small economies. However, even in these small economies, some competition is better than no competition at all.

Mighty River Power hopes that these comments are of some interest to the Commission and looks forward to its receiving the outcome of the Commission’s draft consideration of this issue.

Yours sincerely,

Neil Williams
General Manager External Affairs

