

Dear Sirs/Madames

Please accept this final submission to which I trust you will give your earnest consideration.

The theme directly focuses on Section 4 of the Commerce Act which you tell the concerned public is the framework within which you must operate.

The submission is primarily directed in a case for the Commissioners to present a recommendation to the Minister of Commerce to regulate a change for the Central Otago Lines Network back to a Community based lines management network for the future eventual benefit of the Central Otago Consumers. This change to be recommended along side their current proposed investment plan modifications

Having read your statement “ THE COMMISSIONS ROLE’

I note :

— You are the Nations authority to regulate Government condoned Monopoly providers

— That you have the role of monitoring such monopolies to check that they operate their privileged business position in the long term interests of their customers

Para. 2

— That you consider the preferences of customers and while you give a couple of examples ,those examples are not exclusive such that other preferences of the consumers must be considered.

Para. 3

— Having read section 4 of the act there is no reference in the Act to support your claim  
“It is up to the Monopoly how much the customers will pay for the service”

Para. 4

— Again while there is no formal written direction in the Act, you claim, that according to the Act that you do not ( or cannot) regulate a monopolies electricity line charges.

This interpretation is at variance with the basic Commissions Role

“ To regulate the monopoly’s privileged business position in the long term interests of their customers” —

One of the implications of your view, is that this Monopoly could charge highly inflated charges and neither the Consumers nor the Commission could do anything about it. If the Consumers refused or couldn’t pay then the lines company monopoly would simply remove the poll fuses of those consumers.

Further, reading the Commissions Forward in:

“Summary of our proposed decisions on Aurora’s investment plan”

Para1

— “ It is vitally important that any infra structure is maintained and renewed at the *right time* so that it can be used reliably and safely for as long as necessary. Where this does not happen, the cost of restoring the infra structure will be higher than otherwise and those dependent on it will not receive the level of service they need”

— Te Commission focus starts around 2017 . The ‘*right time*’ started in 2007 when the OCEPB was forced by the Government to separate energy and lines operations. At that time the DCC sold its energy company and amalgamated the Dunedin lines company (which they already owned) with their new purchase of the OCEPB Lines division.

— What the Commissioners have failed to do is recognise that the DCC failed from this point of 2007 acquisition ‘ to maintain and renew at the right time —’

— It is the Community's view that according to Section 4 of the Act Para. 3 and 4 under ‘Inquiry’ it states “ considering a monopoly having substantial marketing power’ — that consideration must be given to “ The benefits of regulation materially exceeds the costs— which means in practice that the benefits to consumers through lower prices and/or improved

service would be greater than the costs of regulation which includes the cost of setting up and administering a new regulatory regime ( which consumers would ultimately pay for)

This means that Section 4 of the Act does give the Commission the right to evaluate the behaviour efficiency and future consumer costs and ownership of the Lines network which serves them.

Thus the Question now posed is:

- a) — Do the Benefits of Regulation exceed the costs?
- b) — Can the Consumers ultimately pay for the setting up and administering a new regulatory regime?

The following evidence confirms that the answers to those questions is clearly YES.

For a)

— From the procedural format set by Section 4 or the ACT which the Commissioners are following, the conclusion they came to, is that following their preliminary assessment of this Monopoly it was necessary for them to undertake a ‘ Formal part 4 which could result in recommending Regulation change to the Minister of Commerce’  
So the Commission can undertake alternative action as currently presented to the Public. In fact the Commissioners can take the action as sought by the community Consumers ie return the lines ownership to a modified pre 1998 structure.

( Following the outcome of the inquiry the Commission makes recommendations to the Minister of Commerce on whether and if so how the goods and services should be regulated.)

— That some 300 issues of all facets of Auroras recent administration as identified by the report from the Commissioner’s independent business consultants, places an extreme lack of confidence that any future management will be any different. The Commission has no control on charges or management decisions such that once the loan money is accessed meaningful amounts could be redirected on unrelated projects such as the ‘ Clam Shell’ Hotel Tourist Centre on the Dunedin Foreshore similarly to what happened to lines network income being redirected to building a Stadium and trying to develop real estate ventures at Jack’s Point. Compare the past and future activity of this Monopoly with the Community proposal and the best decision in the best interests of the Consumers is to recommend to the Minister for a change to a new Regulatory regime to be established

Para.2 (of the Forward)

The Commissioners recognise “under investment and replacement for many years”

Yet they continue to state that past failure cannot be litigated (para 9)

The Community maintain that the problem of this Monopoly started in 2007 and that is when the the behavioural analysis must start to give a fair and balanced appraisal as to why a change in regulation should be made.

Para. 3

That this Monopoly chose not to start showing concern until 2017 ( some 10 years after being granted special monopoly status is simply unconscionable. And must be added to the argument for change

Para 4

I don’t know what the Commissioners think the public can do when they state “ —-known community concern— — — means that public engagement with this process has been and will continue to be vital”

After hundreds of submissions of concern and request for change the only response from the Commissioners is “ We can only work within the Act”. No change to their draft has occurred — what else can the helpless public do?

Their only hope is for the Commissioners to build a case; present the evidence and recommend to the Minister to change to a New Regulatory Regime.

Para. 6

Can the Consumers afford to pay for it.?

The way it stands they are going to have to pay for it . The Consumers are going to have to front up with over \$600M+ in the next 5 years ,in the short term if Aurora plan is endorsed or the long term if the Commission programme is endorsed. Not mentioned is the following 5 years when a further \$600M will be demanded. So it is not an \$870 /Y additional charge but eventually an increase of the order of \$2000 /y

What will happen is that the wealthy will do their sums and reinvest in alternative technology (Solar plus Battery with some currently sinking deep bores and extracting earth heat. The technology is changing very rapidly and will become viable for them)

They will come off the grid and the rest of the public masses energy lines bills will go further up. The Irony is this.

Since 2007 the Monopoly has collected lines income and spent it considerable amounts of it on other unrelated activities. —and not on the network

The Network and its infrastructure which they own has been allowed to deteriorate. As has the value of their original purchase

Now they wish to reinstate it back to a pristine state and get the Consumers to pay for it. Thus the Community will pay for a refurbished network but they still won't own it. The Monopoly will have reestablished their original asset at no cost to the owners.

The owners will have in essence arranged for the network users to pay for all the past unrelated investments; will be able to recover all losses from their failed ventures and will in the future now have further future income to build more ventures they and the DCC come up with.

That is why the Commissioners must protect the interests of the consumers by recommending to the Minister that a change in regulation is the fairest on the Consumers because after admin costs all the income would be spent on the lines. Further after the network was sorted the community could eventually pay off the costs of the regulatory change. Once that was done the line charges would be as cost effective as possible to achieve, because no private organisation or Monopoly would be accessing their ownership profit margin.

That the current consumers would be paying to fix a system that they didn't break and that future community members would clearly gain a benefit maybe thats just Life. Whatever it is it is profoundly better than what we currently have and will all have in the future

Para.8

It is pleasing that the Commissioners recognise consumers concerns in Central Otago.

What we do not understand is how a \$5M fine on Aurora as a monopoly does not aggravate the financial plight of the consumers.

The only source of Income for Aurora is from the Consumers.

The owners of the Company -the DCC- only has income from ratepayers

The Commissioners are treating Aurora as if it was a private company.

Such a fine is not going to make any difference to the management team of Aurora but it is going to have a large impact on the innocent consumers.

The system is not unlike that of Government ministers ( plus the Speaker) where litigation costs that they get involved in are paid by the tax payer.

Para.9

The Commissioners are quite wrong when they write “ The CPP Process cannot re-litigate historical failings, decide who can and cannot own Aurora’s assets.”

Consider the process of Section 4 of the Act and the Decision to undertake a Part4 Formal Inquiry

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First the Commission undertook a preliminary inquiry

After that they found it was necessary to undertake a Part 4 Formal Inquiry. A recommendation must now go to the Minister

Arising from their Part 4 Formal Inquiry investigations they found out:

- That since the 2007 inception and formation of this Monopoly Company over 300 serious management issues as to the past and current management was received from an independent Business analyst. ( Which the Commission contracted)

- An overwhelming body of public submissions seeking a regulatory change .

- that the public had the financial capability to ultimately pay for as required by Section 4. (The public are going to pay the bill one way or another.) In terms of the Act (should there be a regulatory change) the public are going to benefit for they will eventually own it as a Community Trust and that is preferentially better than a Monopoly Company owning it and having free unlimited rights to funds and how they are spent.

- The threat from Aurora senior executives that should the Commissioners refuse their request to borrow over \$600M to repair the network they allowed to deteriorate since 2007 then they have threatened to hold the Commerce Commission Liable for any future lines failures and potential disasters ODT 12/1/21

Part 4 of Section 4 of the ACT states under the heading INQUIRY

“ Following a Part 4 Formal Inquiry the Commission must make a recommendation to the Minister of Commerce if they have found:

- there is little or no competition
- no chance for increased competition
- scope for substantial market power
- the benefits of regulation materially exceed the costs

The Commissioners have sufficient information to recommend to the Minister of Commerce that all the above criteria have been met and that a change in the regulatory regime for this case should be considered and pursued.

One possibility would be for an interim Commissioner or management team to be installed to manage the network until a Community oriented strategy is set up so that all the income is spent on repairing the network and that the Community Trust will eventually own it.

Para. 10

There is nothing formally in the part 4 criteria which demands that an assessment of a Monopoly’s investment plan is well justified. As the Commission point out in their statement on ‘The Commissioner’s role’ quote “ The Commission does not — — get involved with the day to day running of the Company”

The first ‘Role’ criteria in such an analysis is to decide if the Management operations and decisions since the Companies formation in 2007 have been made in the interest of the Consumers as was the original condition which the Government made to allow a monopoly to trade at all within the countries policy of making all monopolies illegal

The Commission have found that this Company has not acted in the interests of the Community for the past 17 years. There is every possibility that the next 17 years will be no different for as they state in their Commissioner's role " The Commission does not regulate Aurora's owners ,set prices, or get involved in the day to day running of the Company"

That is why the Commission must evaluate the fundamental past present and future integrity of this Monopoly.

If after all the evidence and views available to them have been evaluated ; that they consider this Company has behaved in the best interests of their consumers and that they have not taken advantage of their privileged Monopoly position then they could consider a comment on the companies investment plan.

It is very clear to the public that this company has not acted in their Consumers interests; they have acted as if they were a private Monopoly Company and according to the Act the Commission, in the light of the evidence, must recommend that the Minister of Commerce change the Regulation to protect the Interests of the Consumers which is the fundamental purpose of Section 4.

Alternatively:

Once the Commission confirm their current decision exactly what are the Consumers to do ?

Para. 13/14

It is not Aurora's money being spent wisely but the consumers' money. As the community have already and repeatedly communicated to the Commission they do not trust this Company and any annual delivery report is not going to change that. While the Lay public quite accept that Companies must make a profit on their investment any annual report will never deliver the profit margins taken and will never know how much of their lines payment money is actually being spent on the lines

Para 16

This is my last attempt to encourage Elizabeth Welson; Sue Begg; John Crawford and Derek Johnston to rethink the order of their analysis.

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What I would really encourage is:

Write an argument to advise the Minister of Commerce to consider changing the Regulation for delivery of these goods and services on the grounds that the benefits of Regulation would materially exceed the costs .— — — — If the current evidence does not ( in your opinion) meet that threshold

Then:

Describe to the public the kinds of behaviours and what you would need to observe to be serious enough to actually advise the Minister to regulate a change that would materially benefit the consumer and exceed the cost.

Then write an argument of all the factors you are relying on and have observed after considering the Business analysts report; the hundreds of consumers submissions; the kinds of things that give you confidence that all will be well for the consumers in spite of the threats and the past behaviour of Aurora management

Then write an argument as to whether Aurora's Investment plan is well justified. And this approach is the superior option that will give the optimum benefits for the consumer both now and for the foreseeable future (even though the Community won't own anything after investing \$600M+)

Compare the above then:

Publish your arguments for the public to consider.

In the light of the response you receive:

Then submit the recommendations to the Minister with your view and the public's view as to what best benefits the consumers and as you have faithfully followed the confines of the Act you will discover what is the best deal for the people — the whole purpose of this exercise .

Cheers. Stan Randle

Stan Randle