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28 February 2003

Rachel Owens
Investigator
Business Competition Branch
Commerce Commission
PO Box 2351
WELLINGTON

Dear Rachel

Initial Comments regarding Commerce Act 1986: Application for authorisation of a restrictive trade practice – Preussag / Shell / Todd

Thank you for your letter dated 14 February 2003 in respect of the application by the Pohokura JV partners to jointly market the gas from the Pohokura field. In accordance with your first deadline of 28 February 2003, Genesis submits in this letter its initial comments regarding the application.

On the whole Genesis does not oppose the concept of joint marketing of gas reserves. However, we would be concerned at any delay in the development of the Pohokura field.

We understand the concerns, raised by the JV partners, relating to the potential delays in the development of the Pohokura field. However, we question the appropriateness of some aspects of the document which are used to support the application. For example, Genesis has some doubts regarding:

- The relevance of the comparisons with Australian markets; and
- The accuracy of the counterfactual.

Whilst these concerns are not insignificant, Genesis does not believe they outweigh the need for a timely development of the Pohokura field.

Of greater concern to Genesis is the position now held by the JV partners in the upstream gas exploration & production sector. Shell, Todd and Preussag (now OMV) possess a controlling interest, total ownership in some cases, in a large proportion of established non-contracted gas reserves. At a time when New Zealand is facing a potential gas shortage it is an unfortunate ownership structure going forward. No doubt the Commission will be comparing the information supplied in support of the application for joint selling with the information supplied in support of the previous application made by Shell when it acquired the business of Fletcher Challenge to assess any changes in behaviour or market position.

The supporting documentation to the Application, prepared by Charles River Associates (CRA), devotes considerable attention to the issue of market power, in an

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attempt to dispel fears of anti-competitive behaviour. However, the constraints on the ability of joint marketers to exercise market power (listed on page 23 of the CRA report) may be overshadowed by the market position of the JV partners in this instance.

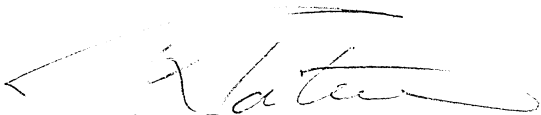
Unfortunately, other key pieces of information which could potentially alleviate our concerns about market behaviour of the JV partners are not publicly available. Of particular interest to Genesis are some of the prices used for CRA's base modelling (Table 10, page 59), as these would give an indication of the price that the JV partners are expecting to charge for Pohokura gas. As the operator of New Zealand's only current coal-capable generating plant (Huntly), Genesis is best-placed to assess the accuracy of the gas price cap derived by CRA from its evaluation of coal prices and coal-fired generation costs. This is certainly an area where further information would assist our evaluation of the application.

In summary, therefore, Genesis is of the view it is imperative that the Pohokura gas field is developed in a timely manner. In principle, we do not oppose the concept of joint marketing of gas reserves, but we have raised a number of concerns regarding the industry participants involved in this application. However, the provision of additional information may lessen / eliminate these issues.

As you are aware under the Commerce Act the Commission can impose conditions in the event it grants the application. Given that the JV partners would essentially control the gateway to a scarce resource we would anticipate appropriate safeguards are put in place to ensure gas is made available to more than one party.

I look forward to meeting with you shortly. In the meantime, if you have any queries, or would like to discuss our initial comments further, please do not hesitate to contact me.

Yours faithfully



Karen Paterson
General Manager Legal/Company Secretary