



23 March 2005

David Ainsworth
Investigator
Commerce Commission
PO Box 2351
WELLINGTON

By Email: david.ainsworth@comcom.govt.nz

Dear Mr Ainsworth

DRAFT DETERMINATION 23 FEBRUARY 2005: PROPOSED REVOCATION OF AUTHORISATION DECISION 505

We refer to the Commerce Commission's ("**Commission**") draft determination in respect of its proposed revocation of authorisation in Decision 505 ("Draft Determination"). The Commission has invited submissions from interested parties in respect of the Draft Determination by 23 March 2004.

Genesis Energy's submission on the Commission's Draft Determination follows.

Basis of revocation

Genesis Energy submits that the Commission should make it very clear that any revocation of Decision 505 relates specifically to the Pohokura Joint Venture and the facts and circumstances outlined in Decision 505, and that in the future, the competitive impacts of joint selling and marketing arrangements will be assessed on a case by case basis in light of relevant surrounding circumstances at the time.

In Genesis Energy's view, joint selling and marketing of petroleum by joint venture parties will not always lead to price fixing and/or a lessening of competition in a market.

Joint selling and marketing by joint venture parties may or may not fall within section 30 of the Commerce Act 1996 ("**the Act**"). Where arrangements do fall within section 30, section 31 of the Act, which relieves joint venture parties from the deeming provision in section 30, may still apply and in this case an investigation pursuant to section 27 is required. The Commission has consistently approached scenarios under section 27 on a case by case basis as a matter of assessment and judgement of the likelihood of anti-competitive impacts based on relevant surrounding circumstances at the time.

Grounds for revocation

Genesis Energy submits that it would be helpful if the Commission clearly distinguished between the requirements for a finding of false and misleading information and those for a finding of a material change in circumstances. From an evidential perspective, it could prove difficult for applicants if analysis that is based on facts that are true and correct at the time of the application, could later be said to be false and misleading because the analysis subsequently proves to be incorrect. Genesis Energy does not understand the Draft Determination to be suggesting that the change in circumstances in this case necessarily

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throws in to doubt the basis of the submissions and arguments made by the applicants, and simply suggests that this is made clearer if the authorisation is revoked.

We would be happy to discuss any part of this letter further with you if necessary.

This letter does not contain any confidential information.

Genesis Energy would not seek to participate in any conference that may be held in relation to this matter.

Yours faithfully



Maureen Shaddick
General Counsel & Company Secretary