

**COMMERCE ACT 1986: BUSINESS ACQUISITION SECTION 66: NOTICE SEEKING
CLEARANCE**

Date: 15 November 2002

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
WELLINGTON

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

PART I: TRANSACTION DETAILS

1. THE ACQUISITION FOR WHICH CLEARANCE IS SOUGHT

- 1.1 The proposed acquisition by Genesis Power Limited ("**Genesis**") of the shares in Stratford Power Limited and/or the acquisition of all assets related to or connected with the Taranaki Combined Cycle Thermal Generation plant situated at Stratford (**the "TCC plant"**).
- 1.2 As the TCC plant is being sold by a competitive tender process, Genesis presently has no agreement to purchase it.

2. THE PERSON GIVING NOTICE

- 2.1 This notice is given by:

Murray Jackson
Chief Executive
Genesis Power Limited
Level 3
The Genesis Building
602 Great South Road
Greenlane
AUCKLAND

- 2.2 All communications should be addressed in the first instance to:

Matthew Dunning/Nick Flanagan
Russell McVeagh
Royal & SunAlliance Centre
48 Shortland Street
P O Box 8
AUCKLAND

Telephone: (09) 367 8275/367 8057
Facsimile: (09) 367 8591

3. CONFIDENTIALITY

- 3.1 Confidentiality is not sought for the fact of the application.
- 3.2 Confidentiality is sought for the commercially sensitive information marked in this version of this clearance application in bold square brackets, and omitted from the public version of the application.

4. DETAILS OF THE PARTICIPANTS

Acquirer

Genesis Power Limited
Details as above

Vendor

Natural Gas Corporation Holdings Limited
Western Entrance
10 Hutt Road
Petone
Private Bag 39-980
Wellington Mail Centre

WELLINGTON

In the first instance, all communications should be directed to:

Andrew Brown / Peter Castle
Bell Gully
IBM Centre
171 Featherston Street
PO Box 1291
WELLINGTON
Telephone: (04) 473 7777
Facsimile: (04) 473 3845

5. INTERCONNECTED AND ASSOCIATED PERSONS

- 5.1 The Commission is aware of the companies interconnected and associated with both Genesis and NGC from previous applications, in particular Decision 475, a very recent Commission decision involving both parties.

6. BENEFICIAL CROSS ENTITLEMENTS

- 6.1 None exist.

7. LINKS WITH COMPETITORS

- 7.1 The extent of any current agreements between Genesis and NGC are already known to the Commission, being considered in Decision 475.

8. CROSS DIRECTORSHIPS

8.1 None exist.

9. THE BUSINESS ACTIVITIES OF THE PARTICIPANTS

9.1 The business activities of Genesis are well known to the Commission, and were very recently considered in Decisions 475 and 476. Genesis is only the third largest of the four companies created by the split of ECNZ. It generates electricity, owning seven power stations throughout New Zealand, and retails electricity and gas to 550,000 customers throughout New Zealand.

9.2 The TCC plant is owned by NGC and is a combined cycle thermal generation plant situated at Stratford. It is capable of generating 357 MW. It receives a supply of gas from []. As a result of this gas contract and the plant's technical characteristics (whereby maintenance costs are increased and reliability reduced if it were to attempt to respond to price signals), it must run constantly at base load. This will not change. NGC's business activities are also well known to the Commission, and were most recently considered in Decision 475.

10. THE REASONS FOR THE PROPOSAL

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PART II: IDENTIFICATION OF MARKETS AFFECTED

11. MARKET DEFINITION

- 11.1 The established market definition is the national electricity generation and wholesaling market. That market definition has been adopted by the Commission on a number of occasions, recently confirmed in Decision 476.
- 11.2 Accordingly, Genesis proceeds for the purposes of this application on the basis that the appropriate market is the national market for the generation and wholesaling of electricity.

12. AGGREGATION BY THE PROPOSAL

- 12.1 Genesis estimates that it presently contributes approximately 14% of New Zealand's electricity supply. The electricity supply of the TCC plant is approximately 6% of New Zealand's electricity supply.

13. VERTICAL INTEGRATION

- 13.1 The proposal is a horizontal acquisition. As the Commission is aware, Genesis is already a vertically integrated company and involved in the retailing of electricity and gas throughout New Zealand in addition to its generation interests. There is no change in this regard by virtue of the acquisition.

14. PREVIOUS ACQUISITIONS INVOLVING THE PARTICIPANTS

- 14.1 Both Genesis and NGC (and related parties) have received a number of clearances from the Commission in the previous three years. They are:
- (a) Decision 476 (acquisition by Genesis of Energy Online's retail electricity business);
 - (b) Decision 475 (acquisition by Genesis of NGC's retail gas customers);
 - (c) Decision 470 (acquisition by NGC of the gas pipeline assets of UnitedNetworks Ltd);
 - (d) Decision 435 (acquisition by NGC of the low pressure gas distribution system (excluding meters and regulator sets) owned by AGL NZ Energy Ltd in the Hutt Valley, Tawa and Porirua areas);
 - (e) Decision 387 (NGC acquisition of majority shareholding in TransAlta NZ Ltd);
 - (f) Decision 362 (Australian Gas Light Company acquisition of 100% shareholding in NGC).
- 14.2 On 1 August 2001 Genesis acquired 288,000 On energy retail customers from NGC. An application for clearance was not made on the basis it was considered unnecessary. Apart from those notified to the Commission, Genesis is not aware of what other acquisitions NGC has undertaken in the last three years.

PART III: CONSTRAINTS ON MARKET POWER BY EXISTING COMPETITION

15. CONSTRAINT FROM EXISTING COMPETITORS

- 15.1 Genesis will continue to face significant constraint from existing competitors following the acquisition. Meridian Energy and Contact Energy will continue to have significant market share (of the electricity supply market), approximately 33% and 24% respectively. That contrasts to Genesis's post acquisition market share of 20%. In addition, Mighty River Power has (before acquisition of Southdown CCGT and Rotokawa Geothermal Station) approximately 12% market share, and a number of other, smaller participants have the remainder.
- 15.2 On the basis of those market shares, the acquisition is on the cusp of the second safe harbour. While all market participants are viable competitors, the three major rivals to Genesis noted above in particular will remain especially vigorous, effective competitors. They have ample ability to constrain Genesis, because they are substantial, profitable companies with significant resources and generation capacity.
- 15.3 Following the acquisition, Genesis will (like the other vertically integrated companies operating within the new market framework) operate as two separate companies rather than an integrated one (from Genesis' current point of view, by virtue of the operation of the NZEM and the new rules, any advantages in off market trading that may have existed before are no longer apparent, and the incentives are to conduct all transactions on the market). Hence, it will be a generator selling into the market and a retailer buying from the market, in each case in competition with others at the same functional level. As noted above, the strong competition at the generation/wholesale level will remain. In respect to retail, the strong competition in the retail electricity market was noted in Decision 476 (and is a consequence of the strong competition that exists also at wholesale). That competition will not allow Genesis to exercise market power against its retail customers by use of its generation capacity.

16. CONDITIONS OF EXPANSION

- 16.1 Although Genesis accepts that there may be barriers to entry in the generation market, they are not insurmountable. If they were, no new generation capacity would ever be built in New Zealand, whereas in fact there are currently firm proposals for at least three large new plants that will significantly increase capacity. Genesis's proposal to construct a 360MW high efficiency combined cycle gas turbine plant at Huntly is well advanced; tenders for construction having already been received. Secondly, Contact Energy is to construct a generation plant in Otahuhu in Auckland and has resource consents for a plant at Whirinaki and another plant at Tauhara. Thirdly, Meridian Energy are well advanced with the development of a large hydro project in the South Island.

17. CO-ORDINATED MARKET POWER

- 17.1 An existing generator/wholesaler is a likely buyer of the TCC plant, because such a company is in the best position to manage the risks of generation and achieve the greatest synergy benefits. As a sole and somewhat unreliable plant, management of risk associated with planned and forced outages is greater than it would be if the asset was part of a larger portfolio. An acquisition by a new entrant is less likely. Moreover, given the consolidation in the market noted by the Commerce Commission in Decision 476 towards vertically integrated generators/wholesalers/retailers, it must be likely that the successful acquirer will also be an electricity retailer. Given NGC's stated decision

to exit the electricity generation and wholesaling market, the appropriate likely counterfactual in this case is acquisition of TCC by another vertically integrated generator.

- 17.2 In that case, there can be no greater scope for collusion in the market by Genesis's proposed acquisition, because market concentration will be similar whether or not Genesis or some other generator is successful in acquiring TCC. It is therefore not necessary or helpful to examine the usual checklist of factors that may indicate potential for collusion that are set out in Practice Note Four, as there is no material difference in the potential for collusion between the counterfactual and the situation if the proposed acquisition proceeds.

PART IV: CONSTRAINTS ON MARKET POWER BY POTENTIAL COMPETITION

18. CONDITIONS OF ENTRY

- 18.1 Please see paragraph 16 above.

PART V: OTHER POTENTIAL CONSTRAINTS

19. CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF SUPPLIERS

- 19.1 Not applicable.

20. CONSTRAINTS ON MARKET POWER BY THE CONDUCT OF ACQUIRERS

- 20.1 Not applicable.

THIS NOTICE is given by

Murray Jackson
Chief Executive
Genesis Power Limited
Level 3
The Genesis Building
602 Great South Road
Greenlane
AUCKLAND

Genesis hereby confirms that:

- * all information specified by the Commission has been supplied;
- * all information known to the applicant which is relevant to the consideration of this application has been supplied; and
- * all information supplied is correct as at the date of this application.

Genesis undertakes to advise the Commission immediately of any material change in circumstances relating to the application.

Dated this day of November 2002

*Signed by Genesis Power Limited

Chief Executive

*I am the Chief Executive of the company and am duly authorised to make this application.