

22 November 2018

Mr Geoff Evans
General Manager
GasNet Limited
8 Cooks Street
PO Box 7149
Whanganui, 4541
Email: [REDACTED]

By email

Dear Geoff

GasNet Limited - Warning for non-compliance with Information Disclosure for 2018 Asset Management Plan

Purpose

1. The purpose of this letter is to advise you of our decision on GasNet Limited's (*GasNet*) 2018 non-compliance with the Information Disclosure requirements in relation to Asset Management Plans (*AMP*) under the Gas Distribution Information Disclosure Determination 2012, as amended (*GDB ID*).

Warning for failing to comply with the Information Disclosure requirements

2. In June 2018, GasNet submitted an AMP update to the Commerce Commission (*Commission*). Providing an AMP update, rather than a full AMP, meant that GasNet did not comply with the requirements of the GDB ID, because GasNet was required to complete and publicly disclose a full AMP before 1 July 2018.¹ Accordingly, we consider that GasNet has contravened an information disclosure requirement, as defined in s 86(2) of the Commerce Act 1986 (*Act*).
3. In our view, it would be open to the Commission to bring proceedings in the High Court seeking the imposition of a pecuniary penalty on GasNet under s 86(1) in respect of the alleged contravention of an information disclosure requirement (*Alleged Contravention*).²

¹ GDB ID, clause 2.6.1.

² Only a court can decide whether a contravention of an information disclosure requirement has occurred, and whether the imposition of a pecuniary penalty would be appropriate. This warning letter does not represent a ruling of law. Under s 86(3) of the Act, the High Court may order a person to pay a pecuniary penalty to the Crown which must not, in respect of each act or omission, exceed \$500,000 in the case of an individual, or \$5,000,000 in the case of a body corporate.

4. However, in this instance, rather than seeking a penalty, we have decided to issue this warning letter.

Our decision to issue a warning letter

5. In deciding on our enforcement response, we analysed GasNet's Alleged Contravention using our enforcement criteria:³
 - 5.1 seriousness of conduct;
 - 5.2 extent of detriment; and
 - 5.3 public interest.
6. Based on our assessment of the Alleged Contravention against these enforcement criteria, we decided to exercise our enforcement discretion to issue a warning letter and to not bring proceedings against GasNet.
7. In terms of conduct, having assessed the circumstances of the Alleged Contravention, we consider that it arose through a misunderstanding of the GDB ID requirements, rather than through intentional non-compliance.
8. The detriment to interested persons caused by the Alleged Contravention has been limited, as GasNet completed and publicly disclosed a full AMP at the start of November 2018, after being contacted by the Commission.
9. In considering public interest, we note that information on how the network is being managed, including forward looking information on planned investment, and information on asset management processes, is necessary to allow interested persons to assess whether the purpose of Part 4 of the Act is being met.⁴ In this instance, full AMP information was not readily available from 1 July 2018 until the start of November 2018 for interested persons to assess whether the purpose of Part 4 of the Act was being met. However, as this is the first occasion on which GasNet has potentially contravened the information disclosure requirements, and the Alleged Contravention has not significantly impacted on interested persons, we consider that it would not be in the public interest for us to seek a pecuniary penalty to deter GasNet in this instance.
10. After analysing the seriousness of conduct, extent of detriment, and public interest, we do not consider that the Alleged Contravention warrants us seeking the imposition of a pecuniary penalty on GasNet. However, we consider that a warning letter is appropriate to reinforce the importance of suppliers complying with the requirements of the GDB ID.

³ <https://comcom.govt.nz/about-us/our-policies-and-guidelines/investigations-and-enforcement/enforcement-criteria>

⁴ Commerce Commission "Information Disclosure for Electricity Distribution Businesses and Gas Pipeline Businesses: Final Reasons Paper" (1 October 2012), para 2.30-2.46

Improvement plan created by GasNet

11. Given the apparent breakdown in GasNet’s governance regarding compliance with the GDB ID, we requested that GasNet prepare and submit an improvement plan covering how GasNet intends to ensure staff, management and the Board of directors are aware of their roles in meeting the requirements of the GDB ID, and which shows how GasNet will prevent such non-compliance from recurring.
12. GasNet provided this plan to us on 13 September 2018, and it is included as an attachment to this warning letter.

Our expectations regarding GasNet’s future performance

13. We expect GasNet to undertake the initiatives outlined in the improvement plan, as well as all other appropriate steps, to mitigate the risk of future non-compliance with the GDB ID requirements.
14. If GasNet were to contravene an information disclosure requirement in the future, then the Alleged Contravention would be a relevant factor when judging the seriousness of the conduct, which may lead us towards a stronger enforcement response (eg, proceedings seeking a pecuniary penalty).

Further information

15. This warning letter and GasNet’s improvement plan will be published on our website. We may also issue a media release or make public comment about our decision.
16. Please contact Stephen Bass on [REDACTED] or by email at [REDACTED] if you have any questions about this letter.

Yours sincerely



Sue Begg
Deputy Chair

Encl.

- *Improvement plan, GasNet letter to Commerce Commission, 13 September 2018.*