



## COMMERCE COMMISSION

### **Decision No. 683**

Determination pursuant to the Electricity Industry Reform Act 1998 (EIR Act) in the matter of an application for exemption of prohibited involvements in an electricity lines business and an electricity generation and sales business, from the application of EIR Act. The application is made by:

**MARKO BOGOIEVSKI**

**The Commission:** **M N Berry**  
**PJM Taylor**

**Summary of Application:** Application by Marko Bogoevski for exemption from the application of the EIR Act in respect of certain prohibited involvements that would result from his position as a Director of TrustPower Limited and his appointment to the position of Director of Auckland International Airport Limited.

**Determination:** The Commission, pursuant to s 81 of the EIR Act, determines to grant an exemption from compliance with s 17(2)(b) of the EIR Act on the conditions specified in the Notice of Exemption.

**Date of Determination:** 22 October 2009

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## **INTRODUCTION**

- 1 On 23 September 2009, the Commerce Commission (the Commission) registered an application (the Application) from Marko Bogoevski (the Applicant) for exemption from the application of the Electricity Industry Reform Act 1998 (the EIR Act).
- 2 In February 2009, the Applicant was appointed as an alternate director to Lloyd Morrison of TrustPower Limited (TrustPower), an electricity generator and retailer, while Mr Morrison is on medical leave of absence from that position.
- 3 Recently, the Applicant was provisionally appointed (subject to an exemption from the application of the EIR Act) as an alternative director to Mr Morrison, of Auckland International Airport Limited (AIAL), an electricity lines business.
- 4 Lloyd Morrison was also a director of TrustPower at the time of his nomination as a director of AIAL. His appointment to the board of AIAL followed the granting to him of an exemption under section 81 of the EIR Act by the Commission (Decision 629).

## **COMMISSION PROCEDURES**

### **General**

- 5 For the purposes of considering this application for exemption, the Commission, in terms of section 73 of the Crown Entities Act 2004, has delegated its powers under section 81 of the EIR Act to M N Berry and P J M Taylor, Commission members.

### **Criteria Used by the Commission to Consider Exemption Applications**

- 6 The EIR Act was amended in October 2008 by the Electricity Industry Reform Amendment Act 2008 (the Amendment Act).
- 7 The EIR Act provides for the Commission to make exemptions in terms of section 81 of the EIR Act. In considering applications for exemptions, the Commission will have specific regard to the particular purpose of Parts 1 to 3 and 5 of the EIR Act as defined in section 2(2) of the EIR Act. The Commission is likely to grant an exemption in respect of a business or involvement or interest only where doing so:
  - (a) would not result in certain involvements in electricity lines and electricity generation and sales that may create incentives or opportunities:
    - i. to inhibit competition in the electricity industry; or
    - ii. to cross-subsidise generation or retail activities from electricity lines activities; and
  - (b) where applicable, would not result in relationships between a business that has involvement in electricity line and a business that has involvement in certain electricity generation connected to that line, where those relationships may not be carried out otherwise in separate companies or be at arm's length.

- 8 In determining exemption applications, the Commission will also have regard to the overall purpose of the EIR Act as set out in section 2(1) of the Act. That is, the purpose of the EIR Act is to reform the electricity industry to better ensure:
- that costs and prices in the electricity industry are subject to sustained downward pressure; and
  - that the benefits of efficient electricity pricing flow through to all classes of consumers; and
  - new investment in generation from renewable energy sources by –
  - effectively separating electricity lines from generation and retail where those activities are co-located; and
  - promoting effective competition in electricity generation and retail; and
  - limiting barriers to new investment in generation from renewable energy sources.
- 9 On receipt of an application in the prescribed form, the Commission will determine whether granting an exemption would be contrary to any element of the particular purpose of Parts 1 to 3 and 5 of the EIR Act or the overall purpose of the EIR Act.
- 10 The Commission's test necessitates obtaining and evaluating objective answers to the following questions in relation to the particular purpose of Parts 1 to 3 and 5 of the EIR Act:
1. Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to inhibit competition in the electricity industry?
  2. Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to cross-subsidise generation or retail activities from electricity lines activities?
  3. Where applicable, would the Commission permit, by granting an exemption in respect of a business or involvement or interest, a relationship between a business that has involvement in electricity line and a business that has involvement in certain electricity generation connected to that line, where those relationships may not be carried out otherwise in separate companies or be at arm's length?
- 11 In relation to these questions, the Commission will consider such factors as:
- The relevant market(s)<sup>1</sup> within the electricity industry;
  - The nature of any incentives or opportunities created;
  - The temporal nature of any incentives or opportunities created;
  - The nature of any relationship that is not in separate companies or at arm's length; and
  - The temporal nature of any relationship that is not in separate companies or at arm's length.

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<sup>1</sup> Defined using the same market definition process as applied in Commerce Act matters. See also Commerce Commission, *Mergers and Acquisitions Guidelines*, 1 January 2004.

## **THE PARTIES**

### **The Applicant**

*Marko Bogoievski*

- 12 Marko Bogoievski is currently the Chief Executive Officer of HRL Morrison & Co Group Ltd (HRL Morrison) and Infratil Ltd (Infratil).
- 13 Infratil is a specialist investor in infrastructure and utility assets, managed by a wholly-owned subsidiary of HRL Morrison. Infratil has a number of investments in New Zealand and is the major shareholder in Wellington International Airport Ltd and TrustPower. Infratil is also a minority shareholder in AIAL.
- 14 Additionally, through its wholly owned subsidiary Morrison & Co Funds Management Ltd (MCFM), HRL Morrison manages part of New Zealand Super Fund's investment in AIAL. MCFM's management of this investment was the subject of an exemption granted by the Commission under section 81 of the EIR Act (Decision 675).
- 15 In February 2009, the Applicant was appointed as an alternate director to Lloyd Morrison of TrustPower Limited while Mr Morrison is on medical leave of absence from that position.
- 16 The Applicant has been provisionally appointed as an alternative director of AIAL, an electricity lines business, subject to the granting of an exemption under section 81 of the EIR Act. The Applicant's appointment to this position is also to replace Lloyd Morrison.
- 17 Lloyd Morrison was also a director TrustPower at the time of his nomination as a director of AIAL. His appointment followed the granting to him of an exemption under section 81 of the EIR Act by the Commission.

### **Other Parties**

*AIAL*

- 18 AIAL owns and operates the Auckland Airport. AIAL is a public company listed on the New Zealand Stock Exchange and the Australian Stock Exchange. Apart from the NZ Super Fund, AIAL's other large shareholders include the Auckland City Council (12.74%) and the Manukau City Council (10.04%).
- 19 AIAL owns an electricity distribution network at the airport. The network operates at 11,000 and 400 volts and comprises transformers, switchgear and underground cables. The network connects to Vector Limited's citywide network at the perimeter of the airport.
- 20 AIAL distributes electricity to approximately 366 consumers at the Auckland International Airport. Of the approximately 90 gigawatt-hours (GWh) per annum distributed, 29 GWh is for AIAL's own use. AIAL levies a line charge on the consumers for the provision of line function services.
- 21 Electricity retailers TrustPower, Genesis Power Limited, Contact Energy Limited, Meridian Energy Limited and Mighty River Power Limited each have access to AIAL's network in accordance with Use of System Agreements in order that they may retail electricity to consumers connected to Auckland International Airport's network. AIAL is not itself a seller of electricity either on its own network or any other. AIAL is supplied with electricity by [ ].

- 22 AIAL currently has seven other directors. The Applicant has confirmed that, to the best of his knowledge, with the exception of Mr Morrison, who the Applicant is replacing, the other AIAL directors are entirely independent of the Applicant, Infratil, TrustPower or any other party relevant to the Application.

*TrustPower Ltd*

- 23 TrustPower is listed on the NZX. There are currently two large shareholders in TrustPower. The largest shareholder is Infratil, which currently owns 50.5%. The second largest shareholder is the Tauranga Energy Consumer Trust, whose beneficiaries are electricity consumers with a TrustPower account situated in Tauranga and the Western Bay of Plenty.
- 24 TrustPower operates in the electricity generation and sale sectors in New Zealand. It is currently the fourth largest electricity retailer in New Zealand. TrustPower owns 34 hydro power stations and the Tararua Wind Farm. TrustPower retails approximately 4,032 GWh of electricity per annum to around 227,000 customers.
- 25 [ ]

**MARKO BOGIEVSKI'S APPLICATION**

- 26 The Applicant has applied, under section 81 of the EIR Act, for exemption from the requirement to comply with the EIR Act in respect of the potential prohibited involvements that would arise from his directorships of TrustPower and AIAL and TrustPower's sale of electricity to customers connected to AIAL's network.

**APPLICATION OF THE EIR ACT**

**Requirements of the EIR Act**

- 27 Since the Commission granted Lloyd Morrison an exemption from certain provisions of the EIR Act in 2007, the EIR Act has been amended. Prior to the amendment, a person was prohibited from being involved in both an electricity lines business and an electricity supply business.
- 28 Now, section 17(2) of the EIR Act makes it a contravention of Part 2 of the Act for a person to breach the connected generation cap or connected customers selling cap.
- 29 The connected generation cap is not relevant to Mr Bogoevski's application because TrustPower does not have any generation connected to AIAL's network (nor is it likely to in the future). To this extent, in respect of this application, the Commission will not consider the connected generation cap further.
- 30 The connected customers selling cap rule is set out in section 17C of the EIR Act. Section 17C provides that the rule is breached if a person is involved in selling more electricity to connected customers within a local network area than the person's qualifying generation within that local network area. The person's qualifying generation is the sum of the total annual nominal MWh capacity of the generation listed in section 17C(2) of the EIR Act but is essentially the total of the person's generation that is connected to the relevant lines network. As stated TrustPower has no connected or qualifying generation in respect of AIAL's local network area.

- 31 The term “sell” is defined in section 3 of the EIR Act to mean “any arrangement under which any electricity is bought and sold, except financial hedge contracts”.
- 32 The term “connected customer” is defined in section 3 of the EIR Act to mean a consumer to whom a person sells electricity, if:
- the electricity is conveyed to that consumer on a line in which the person is involved; and
  - the consumer and the line are within the same local network area.
- 33 Under section 7 of the EIR Act, “involved” means that a person is involved:
- in a line if the person conveys electricity by the line, or owns or operates, directly or indirectly, the line or any other assets used in connection with the line, either alone or together with associates and either on its own or another’s behalf;
  - in any generation if the person generates electricity from the generator, or owns or operates, directly or indirectly, the generator or any other assets used in connection with the generator, either alone or together with its associates and either on its own or another’s behalf;
  - in selling electricity to a customer if the person sells to a customer either on its own or another’s behalf;
  - in either of the things referred to in the above subparagraphs, if the person:
    - i. carries on a business that does any of those things, either alone or together with its associates and either on its own or another’s behalf; or
    - ii. exceeds the 10% threshold in section 8 of the EIR Act in respect of a business that does any of those things; or
    - iii. has material influence over a business that does any of those things.
- 34 Material influence is defined in Section 11 of the EIR Act as including the following people who are deemed to have material influence:
- a director or manager of a person that carries on the business (section 11(1)(a)); and
  - a person that exercises or is entitled to exercise, or who controls or is entitled to control the exercise of powers which would ordinarily fall to the person described in section 11(1)(a) (section 11(1)(d)).
- 35 Section 19 of the EIR Act describes the businesses and involvements to be disregarded under the EIR Act. In particular:
- section 19(1)(ge) of the EIR Act states that no account is to be taken of a person’s business, or involvement or interest in a business, if that person is involved in selling no more than 5 GWh of electricity to connected customers within a local network area, in total, in a financial year; and
  - section 19(1A)(c) of the EIR Act states that no account is to be taken of a person’s involvement in a line that conveys less than 5 GWh per annum.

**Applicant's Involvements under the EIR Act**

- 36 TrustPower sells electricity as defined under section 3 of the EIR Act. The Applicant has been appointed as an Alternate Director of TrustPower. Under TrustPower's constitution, an Alternative Director has the same rights, powers and privileges as the director in whose place they act (in this case, Mr Morrison). Therefore the Applicant falls within the definition of "material influence", as he is entitled to exercise the powers that would ordinarily fall to the director, Mr Morrison (s 11(1)(d)). Accordingly, Mr Bogoievski is deemed to have material influence over the electricity business carried on by TrustPower and is therefore "involved" in the sale of electricity by TrustPower as defined in section 7 of the EIR Act.
- 37 This involvement is not disregarded under section 19(1)(ge) of the EIR Act because TrustPower, the business that the Applicant is involved in, sells more than 5GWh per annum of electricity to connected customers within the AIAL electricity network, in total, in a financial year.
- 38 As noted above, AIAL owns and operates the lines and other assets comprising the electricity network at Auckland International Airport.
- 39 Under the AIAL constitution, an Alternate Director is entitled to exercise the same rights, powers and privileges as the director who appointed them (in this case, Mr Morrison). Therefore, the Applicant, if appointed, would fall within the definition of "material influence", as he would be entitled to exercise the powers that would ordinarily fall to the director, Mr Morrison. As such, the Applicant would be deemed to have "material influence" over the electricity business carried on by AIAL and would therefore be "involved" in the lines owned and operated by AIAL for the purposes of the definition of "connected customers" in section 3 of the EIR Act.
- 40 This involvement would not be disregarded under section 19(1A)(c) of the EIR Act because AIAL conveys more than the 5GWh per annum threshold at which no account is taken of a persons involvement in a line.
- 41 Accordingly, as an Alternate Director of AIAL, the Applicant would breach the connected customers selling cap rule through his collateral involvements in TrustPower's sales to customers connected to AIAL's local network (there is no qualifying generation to net off TrustPower's sales) and in AIAL's line. At that point, section 17(2)(b) of the EIR Act would apply to the Applicant who, without exemption, would be in contravention of Part 2 of the EIR Act.

**MR BOGOIEVSKI'S SUBMISSIONS IN SUPPORT OF HIS APPLICATION**

- 42 Mr Bogoievski submitted that his potential prohibited involvements are almost identical to those of Lloyd Morrison, to whom the Commission granted an exemption in November 2007, and that there are also a number of similar aspects in the situation of HRL Morrison, to which the Commission granted an exemption in June 2009. On this basis, Mr Bogoievski contended that the Commission should grant him an exemption subject to conditions similar to those imposed on Lloyd Morrison and HRL Morrison.



## **Incentives or Opportunities to Inhibit Competition in the Electricity Industry**

- 43 The Applicant submitted that the granting of an exemption would not create incentives or opportunities to inhibit competition in the electricity industry because:
- TrustPower’s generation assets are neither directly connected to AIAL’s local network nor are they likely to be in the future;
  - while TrustPower has a Use of Systems Agreement (UoSA) with AIAL, TrustPower supplies electricity only to AIAL’s tenants, not to AIAL itself. Accordingly there is no current supply agreement between TrustPower and AIAL. The Applicant noted that because TrustPower is one of a number of electricity retailers supplying AIAL’s tenants, that competition limits TrustPower’s opportunities to act in an anti-competitive way; and
  - his ability, as a director of AIAL, to act in a way that could favour TrustPower or influence the way the AIAL deals with TrustPower is very limited as there will still only be one Infratil director on the AIAL Board and Infratil only has a small shareholding in AIAL.
- 44 Further, Mr Bogoievski noted the Commission’s previous Decisions 629 and 675 relating to Mr Morrison and HRL Morrison and their respective involvements in both TrustPower and AIAL. In both instances the Applicant noted that the Commission decided that a prohibition on TrustPower supplying electricity to customers connected to AIAL’s network was inappropriate because:
- TrustPower and AIAL have a relationship which commenced prior to any cross-involvement by the applicants which had already introduced the potential to create opportunities for competition to be affected;
  - there are five retailers supplying customers on AIAL’s network. Barring TrustPower from supplying those customers would reduce the choice of retailers available to customers on the network;
  - the constitutions of both AIAL and TrustPower and the NZX listing rules (which apply to both AIAL and TrustPower) prevent interested directors from voting on a matter related to an interested transaction accept in limited circumstances. In relation to the applicants, these provisions apply to a transaction involving both AIAL and TrustPower. It was submitted that these provisions mitigate any incentives or opportunities to inhibit competition;
  - the applicants’ ability to influence AIAL’s actions through the director voting process could also be more directly addressed by prohibiting the applicants’ involvement (or perceived involvement) in any matters that relate to, or could affect or favour, the supply of electricity by TrustPower (or disadvantage other retailers) on AIAL’s network or the provision of electricity lines services by AIAL to TrustPower.
- 45 The Applicant submitted that his situation is functionally identical to that considered in respect of Mr Morrison in Decision 629 and that that the same reasoning applied by the Commission in that decision should be applied in the present application.

## EXAMINATION IN TERMS OF THE COMMISSION'S CRITERIA

### Relevant Markets

46 The Commission is of the view that the relevant markets<sup>2</sup> in this instance are the national electricity generation and wholesale market;<sup>3</sup> the electricity distribution market that corresponds with AIAL's electricity distribution network; and the electricity retail market comprising the 366 consumers connected to AIAL's distribution network at Auckland International Airport,<sup>4,5</sup>.

### Question 1: Incentives or Opportunities to Inhibit Competition in the Electricity Industry

Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to inhibit competition in the electricity industry?

- 47 In respect of the potential prohibited involvements of AIAL and TrustPower, TrustPower's generation assets are neither directly connected to AIAL's distribution network nor is it likely that they will be in the future. Therefore, the granting of an exemption would not create incentives or opportunities to inhibit competition in the national electricity generation and wholesale market.
- 48 Local electricity distribution networks are characterised by being local natural monopolies. As such, the Commission considers that the granting of this exemption would not affect the level or existing competition or scope for potential competition with the distribution market corresponding to AIAL's network.
- 49 The Commission accepts Mr Bogoevski's submission that there is little or no difference between Mr Morrison's situation in Decision 629 and the Applicant's situation in the present application<sup>6</sup>. Therefore, the Commission considers that, providing Mr Bogoevski does not participate in any future discussion or decision making that relates to or could affect or favour the supply of electricity by TrustPower (or disadvantage any other electricity supply business other than TrustPower) on AIAL's electricity distribution network or the provision of electricity lines services by AIAL to TrustPower, AIAL would have no incentives or opportunities to cross-subsidise TrustPower's generation or retail activities from its lines business.

<sup>2</sup> Other markets in the electricity industry, for example the electrical construction and maintenance market and the market for reticulation of new subdivisions, do not appear to be relevant to this application for exemption.

<sup>3</sup> For a discussion of electricity generation market definition see Commerce Commission, *Decision 340: Transalta Corporation of Canada / Contact Energy*, 12 February 1999 and Commerce Commission, *Decision 491: Contact Energy Limited / Natural Gas Corporation Holdings Limited*, 04 February 2003.

<sup>4</sup> For a discussion of relevant electricity retail markets definition see Commerce Commission, *Decision 517: Dr Keith Turner*, 17 March 2004 and Commerce Commission, *Decision 547: Mr Wayne Boyd*, 31 March 2005.

<sup>5</sup> For discussion of electricity distribution market definition see Commerce Commission, *Decision 345: United Networks Limited / Transalta New Zealand Limited*, 11 March 1999 and Commerce Commission, *Decision 299: Holdco (Mercury Energy Ltd and Utilicorp) / Power New Zealand Ltd*, 27 June 1997.

<sup>6</sup> For completeness the Commission notes that in Decision 629 Mr Morrison had a further involvement with Wellington International Airport Ltd, that does not exist in the case of the Applicant.

*Conclusion on Question 1*

- 50 The Commission is of the view that, in respect of the national electricity generation and wholesale market, the local electricity distribution market corresponding to AIAL's network, and the relevant electricity retail market, the granting of an exemption in this case, subject to certain conditions, is unlikely to create incentives or opportunities to inhibit competition.

**Question 2: Incentives or Opportunities to Cross-subsidise Generation or Retail Activities**

Would the Commission, by granting an exemption in respect of a business or involvement or interest, create incentives or opportunities to cross-subsidise generation or retail activities from electricity lines activities?

- 51 The Commission considers that the potential for cross-subsidisation of generation activities is of particular concern where a generator has the potential to connect generation to a local distribution network. However, no connection of TrustPower's generating assets to AIAL's distribution network exists nor is it proposed in the future and, therefore, there is no potential for cross-subsidisation of generation activities.
- 52 In respect of the cross-subsidisation of retail activities, TrustPower currently sells approximately [ ] of the total electricity distributed across AIAL's network under an existing UoSA.
- 53 The Commission considers that, as above, providing any exemption granted is subject to a condition, that prohibits the Applicant from participating in any future discussion or decision making between TrustPower and AIAL in respect of electricity supply or electricity lines services, the granting of an exemption is unlikely to create incentives or opportunities for AIAL to cross-subsidise TrustPower's electricity retail activities.

*Conclusion on Question 2*

- 54 The Commission considers that, in this case, the granting of an exemption from the EIR Act, subject to certain conditions, is unlikely to create incentives or opportunities to cross subsidise between lines activities and generation or retail activities.

**Question 3: Requirement for Corporate Separation and Compliance with Arm's Length Rules**

Where applicable, would the Commission permit, by granting an exemption in respect of a business or involvement or interest, a relationship between a business that has involvement in electricity lines and a business that has involvement in electricity generation, where those relationships may not otherwise be in separate companies or at arm's length?

- 55 The EIR Act requires that, where a business is a "connected electricity business", it must operate the lines and the generation businesses in separate companies and also must comply with the Arm's-Length Rules.
- 56 Section 17D states that a business is a connected electricity business if the business, or a person involved in the business, has an involvement in more than 10 MW of connected generation. Section 3 defines connected generation as meaning generation in which a person is involved that is connected to a line in which the person is involved, if the generation and the line are in the same network area.

- 57 In this case, TrustPower has no generation connected to AIAL's network and, therefore, the Applicant has no connected generation and is not a connected electricity business. As the Applicant is not a connected electricity businesses, the requirement for corporate separation and the Arm's-Length Rules do not apply.

*Conclusion on Question 3*

- 58 The Commission considers that, as the Applicant is not a connected electricity businesses, there is no requirement for compliance with corporate separation and the Arm's-Length Rules.

**Conclusion in Respect of the Commission's Criteria**

- 59 The Commission considers that providing Mr Bogoevski complies with the conditions in the Notice of Exemption, the granting of an exemption to him from the application of section 17(2)(b) of the EIR Act is unlikely to inhibit competition in the electricity industry and is unlikely to result in any material increase in the opportunities or incentives to cross-subsidise electricity generation or sales from electricity lines activities.
- 60 Accordingly, the Commission determines to grant such an exemption to Marko Bogoevski.

**THE COMMISSION'S DETERMINATION**

61 The Commission determines to grant an exemption to Marko Bogoevski from the application of section 17(2)(b) of the EIR Act, in respect of the prohibited involvements outlined in this Decision, subject to the conditions stated in the attached Notice of Exemption.

Dated this 22<sup>nd</sup> day of October 2009

Peter JM Taylor

Comissioner

## NOTICE OF EXEMPTION

The Commerce Commission (Commission), pursuant to section 81 of the Electricity Industry Reform Act 1998 (the EIR Act), exempts Marko Bogoievski from compliance with section 17(2)(b) of the EIR Act in respect of his involvements (as that term is defined in the EIR Act) with TrustPower Limited and Auckland International Airport Limited as outlined in the Commission's Decision 683 on his application for exemption.

1. Whilst Marko Bogoievski is involved with both TrustPower Limited and Auckland International Airport Limited, he shall not participate in any discussions or decision making by TrustPower Limited and/or Auckland International Airport Limited regarding matters that relate to or could affect or favour the supply of electricity by TrustPower Limited (or disadvantage any other business selling electricity on Auckland International Airport Limited's network other than TrustPower Limited) on Auckland International Airport Limited's electricity distribution network or the provision of electricity lines services by Auckland International Airport Limited to TrustPower, including:
  - the selection of, and any negotiation with, any electricity retailer for the supply, or intended supply, of electricity to Auckland International Airport Limited; and
  - the supply, or intended supply, of electricity by TrustPower Limited to any new, or existing, consumers on Auckland International Airport Limited's electricity distribution network.

In addition, he shall not disclose the outcomes of any discussions or decision making by Auckland International Airport Limited to TrustPower Limited (and vice versa) on those matters.

2. Marko Bogoievski will confirm to the Commission, in writing, that the prohibited involvements to which this exemption applies have ceased within one calendar month of the prohibited involvements ceasing to exist;
3. This exemption expires when the Commission publishes on its website Marko Bogoievski's written confirmation that his prohibited involvements have ceased, unless any variation or earlier revocation in terms of section 81(5) occurs before that event; and
4. This exemption is specific to the prohibited involvements created through Marko Bogoievski's involvements in TrustPower Limited and Auckland International Airport Limited. It does not extend to any other interest or existing or future prohibited involvements of Marko Bogoievski.

The exemption takes effect from the date of publication of this notice in the *New Zealand Gazette*.

The Commission may vary or revoke the exemption in accordance with section 81(5) of the EIR Act.

Dated this 22<sup>nd</sup> day of October 2009

Peter JM Taylor  
Commissioner