



COMMERCE COMMISSION

PROCESS FOR AMENDMENTS AND CLARIFICATIONS OF PART 4 DETERMINATIONS

8 March 2011

Purpose

1. The purpose of this memorandum is to notify interested parties of the process:
 - for requesting clarifications of, or amendments to, determinations that the Commission made on 22 December 2010, pursuant to Part 4 of the Commerce Act 1986 (the Act); and
 - that the Commission will follow in considering any such requests.

Background

2. On 22 December 2010, pursuant to Part 4 of the Act, the Commission made the following determinations:
 - Commerce Act (Specified Airport Services Input Methodologies) Determination 2010 (*Decision 709*)
 - Commerce Act (Electricity Distribution Services Input Methodologies) Determination 2010 (*Decision 710*)
 - Commerce Act (Gas Distribution Services Input Methodologies) Determination 2010 (*Decision 711*)
 - Commerce Act (Gas Transmission Services Input Methodologies) Determination 2010 (*Decision 712*)
 - Commerce Act (Transpower Input Methodologies) Determination 2010 (*Decision 713*)
 - Commerce Act (Transpower Individual Price-Quality Path) Determination 2010 (*Decision 714*)
 - Commerce Act (Specified Airport Services Information Disclosure) Determination 2010 (*Decision 715*)
3. These determinations, with accompanying Reasons Papers are available on the Commission's website at:

<http://www.comcom.govt.nz/input-methodologies-2/>

<http://www.comcom.govt.nz/price-quality-regulation-that-applies-to-transpower/>

<http://www.comcom.govt.nz/airports-information-disclosure/>

Amendments to Part 4 Determinations

4. The December 2010 determinations were made pursuant to new statutory requirements that were introduced by the Commerce Amendment Act in October 2008. An important feature of Part 4 of the Act (as amended), particularly for the input methodologies, is promoting certainty for suppliers and consumers. The Commission considers that amendments to the determinations should therefore be generally avoided, and where an amendment is required, be made as infrequently as possible.
5. Prior to making these determinations, the Commission undertook a significant amount of consultation with interested parties, including by consulting on the wording of the determinations. However, the Commission recognises that these determinations are being applied for the first time and are complex. Amendments to the determinations, for example to correct errors, may be required.
6. A regular annual amendment process, consolidating all amendments, should be sufficient. However, more frequent amendments may be necessary during the first year that the determinations are in effect.
7. The Commission has scheduled amendments to the Part 4 determinations for 2011 (if necessary) on or about:
 - 1 July 2011; and
 - 1 November 2011 (except Transpower IPP).
8. The Transpower IPP Determination is scheduled for 30 November instead of 1 November 2011 to take account of the annual MAR update.
9. Amendments to the determinations are not likely to be made outside of these dates unless an amendment is urgently required. The Commission will advise the annual review date for the determinations from 2012 onwards before the end of 2011. The date may differ for different types of regulated services.

Process for Amendments or Clarifications

Making a request for amendment or clarification

10. If a party is seeking an amendment or clarification for interpretation purposes, the information contained in Appendix A of this memorandum must be provided by email to the Commission's Regulation Branch (regulation.branch@comcom.govt.nz).

Commission's process

11. The Commission will publish any request for clarification or amendment on the Commission's website once it is received. Any confidential information contained in the request must therefore be clearly identified and a public version provided, if relevant.
12. The Commission will maintain a summary spreadsheet of such requests that also indicates the status of the request and any response from the Commission. The

Commission may also identify matters that it considers warrant clarification or amendment and these would also be summarised in the spreadsheet.

13. Section 52X (for input methodologies) and section 52Q (for section 52P determinations i.e. those that set information disclosure and price-quality regulation) outline the statutory processes that the Commission must follow when amending the relevant determinations. In both cases, where an amendment is 'material', the Commission is required to consult with interested parties.
14. As soon as practicable after receiving the request, the Commission will advise interested parties:
 - whether it considers that an amendment or clarification is required;
 - when the amendment or clarification is expected to be made; and
 - (for amendments) the form and timing of consultation on the proposed amendment (if applicable) that is expected to be undertaken.
15. In deciding on its process, among other things, the Commission will take into account:
 - whether the amendment is urgently required and should be made ahead of the regular amendment date;
 - whether the amendment is material and hence must be the subject of consultation with interested parties;
 - whether the amendment is likely to be contentious; and
 - regardless of the materiality of the proposed amendment, whether a consultation process should be undertaken as there are options for amending the determination that would be helpful to test with submitters.

Appendix A: Information required as part of request for clarification or amendment of Part 4 determination

Part 4 Determinations: Request for Clarification and/or Amendment

Please complete the table below and email to:

regulation.branch@comcom.govt.nz – Attn: Karen Murray

Date of request	
Party requesting clarification or amendment	
Relevant determination (Decision number)	
Clause reference	
Description of clarification or amendment sought. If an amendment is proposed, provide the suggested wording of the determination.	
Reason why clarification or amendment is required	
Reasons Paper reference (if applicable)	
Date amendment is required to be made by and why (if applicable)	