

Public Version

CENTRO PROPERTIES GROUP

**APPLICATION FOR EXEMPTION UNDER
SECTION 81 OF THE ELECTRICITY
INDUSTRY REFORM ACT 1998**

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Date of Application

1. 1 April 2005.

Applicant

2. The applicant is the Centro group of companies and the other entities specified in this application and referred to in Appendix 1 (collectively referred to as “**Centro**”).

Introduction

3. Centro NZ Shopping Centre Fund Limited (“**Centro NZ**”) proposes to acquire:

(a) [

]; and

(b) [

],

(collectively referred to as the “**Properties**”, each individually a “**Property**”).

4. The Properties are leased to third party tenants and Centro entities either supply or propose to supply in future electricity to these tenants. All of the Properties comprise retail shopping outlets.
5. [] operates as a partially embedded network. This allows anchor tenants, [], to obtain electricity from the retailer of their choice. The remaining [] tenants operate as part of a customer network. [] operate as a customer network.

Application

6. Pursuant to section 81 of the Electricity Industry Reform Act 1998 (“**EIR Act**”), application is hereby made to the Commerce Commission for an exemption from the application of the EIR Act, in particular the ownership separation provisions of the EIR Act, as described in this application.
7. This application explains the relationship of the EIR Act to Centro group's business and specifies the conditions on which Centro will conduct its business if the exemption is granted.

Ownership Structure

8. The Centro group is an Australian retail property investment and services organisation that is a stapled vehicle combining Centro Properties Limited (“**CPL**”), a publicly-listed Australian company, and a trust, Centro Properties Trust (“**Centro Trust**”). Each unit in the Centro Trust is “stapled” to a share in CPL and each investor holds a share in CPL and a unit in Centro Trust and cannot deal separately with them. CPT Manager Limited (“**CPT Manager**”) is the responsible entity for the Centro Trust.
9. Centro NZ, the company acquiring legal title to the Properties, is a wholesale unlisted fund incorporated in New Zealand which will be managed by Centro Fund Manager (NZ) Limited (“**Fund Manager**”). Fund Manager is wholly owned by CPT Custodian Pty Limited (“**CPT Custodian**”), as trustee of the Centro Property Management Trust (“**Centro PMT**”). Centro PMT is wholly owned by Centro MCS Manager Limited (“**Centro MCS**”) which is in turn owned by Centro (CPL) Limited (“**Centro CPL**”), a wholly owned subsidiary of CPL.

10. The securities in Centro NZ will be shares stapled to convertible debt notes ("**Securities**"). The debt notes issued to investors as part of each stapled security will be convertible to shares in Centro NZ at the option of the issuer.

11. []
[]

12. []
[] is the current owner of the []. We understand that [] already has an exemption from the cross-involvement provisions of EIR Act and assume that no further information is required in respect of []. For the sake of completeness, we request that if this application is granted, it be granted to the Centro entities set out in this application and to the [] entities set out in Commerce Commission EIR Act Decision [].

13. At the time of settlement of the purchase of the Properties by Centro NZ, the Securities will be held by the following entities:

(a) []
[]

14. A diagram of the ownership structure as described above is attached as Appendix 1.

15. [] was granted an exemption under the EIR Act pursuant to Commerce Commission Decision [] in respect of its supply of electricity to tenants as specified in that Decision. As [] already enjoys the benefit of an exemption we are proceeding on the basis that only members of the Centro group require exemption as a result of the cross-involvements created by this transaction.

Electricity supply

16. The electricity supplied to tenants of the Properties exceeds 2.5 GWh per annum. The current per annum electricity supply for each Property is approximately:

- (a) [] in respect of [];
- (b) [] in respect of [];
- (c) [] in respect of []; and
- (d) [] in respect of [].

17. [] currently employs [] to act as its property manager for the Properties. [] are likely to be retained as property manager for a finite time following settlement after which Centro NZ will enter into a property management agreement with Centro Property Manager (NZ) Limited ("**Centro Manager**") which will manage all of the Properties.

18. All tenants at the Properties are charged based on their actual electricity consumption, plus an apportionment of common area electricity cost for the buildings, on a monthly basis via readings taken by [], who are engaged by []. The tenants will not be charged a fee by Centro in addition to their electricity consumption and apportionment of common area electricity cost, but a margin is made out of the ability to bulk purchase the energy and network at the gateway meter. The rates charged to the tenants are based at a level lower than what tenants would expect to pay if they were a customer located outside of the Properties. Typically this is 1-2 c/kWh cheaper than the going market rate.

19. [] has entered into a three year contract with Mercury Energy in respect of [] that commenced on 1 January 2005. [] is currently supplied by Meridian Energy however this will change to Contact Energy from 1 April 2005 for a 5 year period.

Embedded Electrical Wiring Systems

20. Electricity supplied to the Properties is conveyed by means of the existing embedded electrical wiring systems within the Properties. No charge is levied on the tenants for the use of the embedded wiring.

Common Services

21. Centro will purchase electricity to run services in the common areas of the Properties such as lighting and central air conditioning systems. The cost of this electricity, along with general running expenditure (such as cleaning common areas), is and will continue to be recovered from the tenants as part of the operating expenditure charge.

Lease Clauses and Arrangements Relating to Electricity Supply

22. The majority of the individual tenancy leases of the Properties allow the landlord to take over the supply of electricity to tenants at the landlord's election. As part of any exemption granted by the Commerce Commission, Centro will agree not to enforce this provision and to advise the tenants accordingly.
23. Centro's policy with tenants is to continue to act fairly and reasonably and provide the best service possible. Centro believes it will be offering the best service it can to tenants by negotiating with electricity retailers for lower electricity prices, and then passing on these savings to its tenants.

Application of the EIR Act

Electricity Lines Businesses

24. Section 4 provides that:
- (1) For the purposes of this Act, "electricity lines business":
 - (a) means a business that conveys electricity by line in New Zealand; and
 - (b) includes the ownership or operation, directly or indirectly, of lines in New Zealand or any other core assets of an electricity lines business.
 - (2) None of the following activities brings a person within subsection (1):
 - (a) conveying, together with its associates (if any), less than 2.5 GWh per annum; ...
25. The following entity is an electricity lines business under section 4 of the EIR Act:
- (a) Centro NZ Shopping Centre Fund Limited because it:
 - (i) owns, or intends to own lines that convey electricity in New Zealand, being the embedded electrical wiring systems at the Properties (section 4(1)(a) and(b)); and
 - (ii) is not exempt from the meaning of "electricity lines business" through section 4(2).

26. Section 7 provides that:

- (1) For the purposes of this Act, a person is involved in an electricity business if the person:
 - (a) carries on that business, either alone or together with its associates and either on its own or another's behalf; or
 - (b) exceeds the 10% threshold in section 8 in respect of that business; or
 - (c) has material influence over the business;
 and "involvement" has a corresponding meaning.

27. The electricity lines business identified in paragraph 24 above is involved for the purposes of section 7 of the EIR Act because it:

- (a) carries on its electricity lines business, either alone or together with its associates and either on its own or another's behalf (section 7(1)(a));
- (b) exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights in the electricity lines business;
- (c) has material influence over the electricity lines business.

28. The following entities are also involved in the above electricity lines businesses:

- (a) Centro SCF Sub Trust because as beneficial owner of Securities in Centro NZ it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b));
- (b) Centro Trust because as owner of 100% of the units in Centro SCF Sub Trust and beneficial owner of Securities in Centro NZ it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ;
- (c) CPT Custodian because as holder (in its capacity as trustee of Centro SCF SubTrust) of Securities in Centro NZ, and trustee of the Centro Property Management Trust, it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ (section 7(1)(c));
- (d) CPL because, as the 100% shareholder in Centro (CPL) Limited, 100% shareholder in CPT Manager Limited (the responsible entity of the Centro Trust), and 100% shareholder in Centro MCS Manager and CPT Custodian Limited it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ (section 7(1)(c));
- (e) CPT Manager Limited because, as responsible entity of Centro Trust exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ (section 7(1)(c));
- (f) Fund Manager because, as fund manager of Centro NZ it has a material influence over Centro NZ (section 7(1)(c));
- (g) Centro Manager because as the manager of the Properties pursuant to a management agreement with Centro NZ it has a material influence over Centro NZ (section 7(1)(c));

- (h) Centro PMT because as beneficial owner of Fund Manager and Centro Manager it has a material influence over Centro NZ (section 7(1)(c));
- (i) Centro MCS because as beneficial owner of Centro Property Management Trust it has a material influence over Centro NZ (section 7(1)(c)); and
- (j) Centro CPL because as 100% shareholder in Centro MCS Manager Limited it has a material influence over Centro NZ.

Electricity Supply Businesses

29. Section 5 provides that:

- (1) For the purposes of this Act, "electricity supply business":
 - (a) means a business that:
 - (i) sells electricity in New Zealand ...
 - (c) includes the ownership or operation, directly or indirectly, of any core assets of an electricity retail business, which include:
 - (i) the customer data base relating to and used for the purposes of an electricity retail or electricity trading business; and
 - (ii) the benefit of a contract to sell electricity; ...
 - (2) None of the following activities brings a person within subsection (1):
 - (a) selling or generating less than 2.5 GWh per annum;
 - (b) generating or selling electricity solely for its own consumption or for the consumption of its associates: ...

30. The following entity is an electricity supply business under section 5 of the EIR Act:

- (a) Centro NZ because it:
 - (i) sells electricity in New Zealand (section 5(1)(a)(i));
 - (ii) owns, directly, a customer data base relating to and used for the purposes of an electricity retail business (section 5(1)(c)(i)); and
 - (iii) owns, directly, the benefit of a contract to sell electricity (section 5(1)(c)(ii)); and
 - (iv) is not exempted from the meaning of "electricity supply business" through section 5(2);

31. The electricity supply business identified in paragraph 26 above is involved for the purposes of section 7 of the EIR Act because it:

- (a) carries on its electricity supply businesses, either alone or together with its associates and either on its own or another's behalf (section 7(1)(a));
- (b) exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights in its electricity supply businesses (section 7(1)(b));

(c) has material influence over its electricity supply business (section 7(1)(c)).

32. The following entities are also involved in the above electricity supply businesses:

- (a) Centro SCF Sub Trust because as beneficial owner of Securities in Centro NZ it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b));
- (b) Centro Trust because as owner of 100% of the units in Centro SCF Sub Trust and beneficial owner of Securities in Centro NZ it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ;
- (c) CPT Custodian because as holder (in its capacity as trustee of Centro SCF Sub Trust) of Securities in Centro NZ, and trustee of the Centro Property Management Trust, it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ (section 7(1)(c));
- (d) CPL because, as the 100% shareholder in Centro (CPL) Limited, 100% shareholder in CPT Manager Limited (the responsible entity of the Centro Trust), and 100% shareholder in Centro MCS Manager and CPT Custodian Limited it exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ (section 7(1)(c));
- (e) CPT Manager Limited because, as responsible entity of Centro Trust exceeds the 10% threshold in section 8 of the EIR Act in terms of control and equity return rights (section 7(1)(b)) and has a material influence over Centro NZ (section 7(1)(c));
- (f) Fund Manager because, as fund manager of Centro NZ it has a material influence over Centro NZ (section 7(1)(c));
- (g) Centro Manager because as the manager of the Properties pursuant to a management agreement with Centro NZ it has a material influence over Centro NZ (section 7(1)(c));
- (h) Centro PMT because as beneficial owner of Fund Manager it has a material influence over Centro NZ (section 7(1)(c));
- (i) Centro MCS because as beneficial owner of Centro Property Management Trust it has a material influence over Centro NZ (section 7(1)(c)); and
- (j) Centro CPL because as 100% shareholder in Centro MCS Manager Limited it has a material influence over Centro NZ.

Prohibited Cross-Involvements

33. Accordingly Centro seeks an exemption from the application of section 17 of the EIR Act in respect of the following entities with prohibited cross-involvements in relation to the Properties:

- (a) Centro NZ Shopping Centre Fund Limited;
- (b) CPT Custodian Pty Limited;
- (c) Centro NZ Shopping Centre Fund Sub Trust;
- (d) CPT Manager Limited;
- (e) Centro Property Trust;

- (f) Centro Properties Limited;
- (g) Centro Fund Manager (NZ) Limited;
- (h) Centro Property Manager (NZ) Limited;
- (i) Centro Property Management Trust;
- (j) Centro MCS Manager Limited; and
- (k) Centro CPL Limited.

34. In the case of CPL and Centro Trust, as its stapled securities are traded on the ASX, such persons holding over 10% of the stapled securities in CPL and Centro Trust will change from time to time.
35. It seems outside the contemplation of the EIR Act that an exemption will need to be sought, from time to time, for every person acquiring more than 10% of the securities in a publicly listed entity.
36. Any opportunities for parties who acquire more than 10% of securities in CPL and Centro Trust to defeat the purposes of the EIR Act would be significantly restricted if the conditions listed in paragraph 41(b) below were adopted. Centro considers that, given these conditions, the granting of an exemption from section 17 of the EIR Act in respect of parties who may in the future acquire more than 10% of the securities in CPL or Centro Trust would not provide Centro with opportunities to inhibit competition in the national electricity market.¹
37. Accordingly, Centro requests that the Commission grants a "blanket" exemption to all holders, from time to time, of over 10% of the units in CPL and Centro Trust.²

Scope of the Application for Exemption

Part A: Permanent Exemption

38. Centro seeks a short term exemption under section 81 of the EIR Act from the application of section 17 of the EIR Act until such time as the Commission determines the substantive grounds for a permanent exemption.
39. Pursuant to section 81 of the EIR Act, Centro seeks a permanent exemption from the application of section 17 of the EIR Act.
40. In considering applications for an exemption under section 81 of the EIR Act, the Commission has stated that it will consider the following three questions. We address each question.

Question 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?

41. Centro makes the following points:
- (a) Centro considers the relevant market is the national electricity retail market.
 - (b) If the Commission is prepared to grant the application for exemption, Centro accepts that it should be on the following conditions:

¹ Multiplex relies on the Commission's reasoning in decision number 514.

² Multiplex relies on the Commission's reasoning in decision number 514.

- (i) Centro will not introduce a lines charge for use of, or related to, an electricity lines business (being the embedded wiring system) in relation to the supply of electricity to tenants of the Properties;
- (ii) Centro will provide all tenants of the Properties with sufficient information to enable them to assess competitive electricity supply options;
- (iii) If the majority of tenants at the Properties (by electricity usage) request a change in electricity supplier Centro will use its best endeavours to change supplier;
- (iv) In future, when negotiating electricity supply agreements for the Properties, Centro will use its best endeavours to include a clause in the agreement providing that the supplier will meet the best price available for similar supply terms, failing which, Centro would have the right to terminate and change to an electricity supplier of the majority of the tenant's choice; and
- (v) if Centro materially changes the contracts or arrangements with the tenants of the Properties in relation to the supply or conveyance of electricity, it will notify the Commission.

These steps will ensure that there is no opportunity for Centro to inhibit competition in the relevant electricity retail market. While tenants and other customers supplied via a customer network are not free to unilaterally choose their supplier, competition is promoted between electricity suppliers, for the right to supply the tenants and other customers.³

- (c) Granting an exemption will also not create any real incentive for Centro to inhibit competition in the electricity retail market. Any perceived incentives are either extremely minimal and/or theoretical. The nature of competition in the commercial properties market is such that Centro is, and will continue to be, motivated to keep tenants' and other customers' electricity costs as low as possible. Centro will want to promote competition which generally leads to lower prices. Centro also has a policy of acting fairly and reasonably in relation to its tenants and to inhibit competition is not in accordance with that policy.

Question 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 activities from electricity lines businesses?

42. There is no threat of this occurring, because Centro is not involved in any generation activities.

Question 3: Would the Commission permit, by granting an exemption in respect of a business or involvement or interest, a relationship between an electricity lines business and an electricity supply business which is not at arms length?

43. Centro accepts that if an exemption is granted the relationship between the electricity supply businesses and the electricity lines businesses will not be at arms length. Centro considers that if the Commission grants the application on the terms mentioned above, no anti-competitive consequences will arise from the absence of an arms length relationship because of the conditions that would form part of the exemption and the strong incentive on Centro as a property owner to minimise its costs to tenants and other customers.

³

Multiplex relies on the Commission's reasoning in decision number 351A.

Part B: Three month exemption to comply with ownership separation rules

44. If the application for a permanent exemption is declined, Centro applies for a three month exemption from the application of section 17 of the EIR Act (from the date of the Commission's decision to decline Part A of this application) to enable Centro to comply with the ownership separation rules of the EIR Act.
45. In order for Centro to cease being involved in either the electricity supply business or the electricity lines business, it will need time in which to:
- (a) restructure its current arrangements with electricity retailers, tenants and other customers so that it does not breach any relevant contracts; and
 - (b) ensure that the tenants or new electricity retailers alter the relevant electricity supply equipment if necessary (such as meters) to accommodate the change in electricity operations.
46. Centro expects that it will take three months to carry out these actions from the date of the Commission's decision to decline Part A of this application.

Part C: Future Business

47. Centro's property investment business involves the ongoing development, sale and purchase of retail properties and/or companies owning retail properties.
48. Section 30 of the EIR Act prohibits a person from increasing its involvement in an electricity business, which includes the lines and supply businesses. So, each time Centro acquires or develops a new retail property and/or company it will increase its involvement in an electricity lines business. In some circumstances Centro, by acquiring or developing a new retail property and/or acquiring a new company, may also be in breach of section 18 of the EIR Act (20% aggregate cross-ownership prohibition).
49. Secondly, if the newly acquired retail property and/or company sells electricity, Centro will have increased its involvement in the electricity supply business.
50. In either scenario Centro would need to seek an exemption from the Commission each time it acquires or develops another retail property and/or company, large or small.
51. Centro wishes to avoid having to seek an exemption each time it purchases or develops a new retail property and/or acquires a new company because of the compliance costs involved, and potential transactional delays, which could otherwise result.
52. Centro seeks an exemption in respect of any business or involvement or interest in relation to any future property investment, development and management activities that Centro might undertake and for that exemption to extend to any companies or entities related to Centro. If the Commission is prepared to grant the application for exemption, Centro accepts that it should be on the following conditions:
- (a) the terms and conditions as set out in paragraphs 41(b)(i)-(vi) above in relation to the exemption given to the cross-involved entities; and
 - (b) that Centro informs the Commission of the details of any future property investment and/or management activity, within 20 working days (as that term is defined in the Commerce Act 1986) from the day following the day it undertakes the activity, that is likely to breach the EIR Act and for which Centro and/or any other persons are likely to rely on the exemption.

Further Information

53. If the Commission requires any further information in relation to this application for exemption please contact either Russell McVeagh or Centro. The relevant contact details are listed below.

54. **Russell McVeagh contact details**

Solicitor acting: Greg Thompson/Dan Arapere
Telephone: (09) 367 8083/(09) 367 8285
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55. **Centro contact details**

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Russell McVeagh
1 April 2005

DECLARATION

THIS APPLICATION is made by **Centro NZ Shopping Centre Fund Limited**

We hereby confirm that:

- (a) all information requested by the Commerce Commission has been supplied;
- (b) all information known to the applicant(s) which is relevant to the consideration of this application has been supplied to the Commerce Commission; and
- (c) all information supplied by the applicant(s) to the Commerce Commission is correct as at the date of this application.

The company undertakes to advise the Commerce Commission immediately of any material change in circumstances relating to the application.

Date: 2005

Signed by:

Director/Chief Executive Officer/Other (specify)

I am a Director/Officer of the company and am duly authorised to make this application.

APPENDIX 1 - Centro Structure Diagram



