



COMMERCE COMMISSION

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*Strategic Alliances and Joint Ventures*  
*in Telecommunications and Utilities Conference*  
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**ALLIANCES, STRATEGY  
AND COMPETITION — THE STATE OF FAIR PLAY  
IN NEW ZEALAND**

*by*

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## **Introduction**

### **Overhead 1**

My objective today is to discuss in general terms the regulation of competition in the telecommunications and utility markets. I will outline:

- the general role of the Commerce Commission and its specific approach to telecommunications and utility markets;
- the provisions of the Commerce Act and how they apply to strategic alliances and joint ventures; and,
- a brief look at current issues before the Commission.

It is particularly pleasing to have the opportunity to speak to those involved in industries which have such a major impact on the New Zealand economy.

Rather than referring to the telecommunications industry and industries involving utilities, I will refer to 'network industries' throughout this address.

## **The Commission's General Role**

### **Overhead 2**

The Commission is an enforcement agency established under the 1986 Commerce Act whose primary role is to bring about awareness, acceptance and compliance with the Commerce and Fair Trading Acts. The Fair Trading Act promotes fair trading by prohibiting misleading and deceptive trading conduct. It also provides for the creation of product safety and consumer information standards.

The Commerce Act promotes and protects competition in New Zealand markets. It does this in two ways - by preventing restrictive trade practices, and by preventing business acquisitions which allow any person to reach a dominant position.

The Commission has a role in monitoring structural changes in, and behaviour of, markets in New Zealand. The Commission is not a policy body. It does not tell firms how to behave or how to organise themselves within a market.

### **Overhead 3**

Specifically the Commission:

- assesses business acquisitions
- attacks anti-competitive behaviour, and
- monitors "monopoly" pricing.

## Business Acquisitions

### Overhead 4

Section 47 of the Act states that no person can acquire the assets or shares of a business if it will result in:

- the acquisition of a dominant position in a market; or
- the strengthening of a dominant position in a market.

This section of the Act is premised on the view that acquiring or strengthening dominance reduces competition and disadvantages consumers.

Section 47 does not apply to a business acquisition where there is a bare transfer of market dominance; that is, where dominance is transferred from one party to another without being strengthened in the process.

### Overhead 5

An assessment of dominance involves the use of the concept of a 'market'. The Commission defines a market in economic terms rather than in marketing terms. A market has been defined as "a field of actual or potential transactions between buyers and sellers amongst whom there can be strong substitution, at least in the long run, if given a sufficient price incentive."

### Overhead 6

The Commission will seek to define relevant markets in terms of:

- the goods or services supplied and purchased (product or service type),
- the geographical area from which the goods or services are obtained or within which they are supplied, and
- the level in the distribution chain (the functional dimension).

Market definition is particularly interesting in network type markets. In telecommunications, the markets as traditionally defined (eg. fixed line telephony, cellular telephony, network access and numerous others) are all being challenged by rapidly changing technology. The Commission, realising this, has instituted a pro-active investigation into the effects of emerging technology on market definition, and more particularly, the effects of the development of broader product markets on current levels of market power.

In utility markets, the major product market definition issue facing the Commission in recent years has been whether electricity and natural gas are part of the same market. In the recent *Powerco/Egmont* merger case, the Commission concluded that inter-fuel competition provides **some** constraint on natural gas suppliers, and **less** constraint on electricity suppliers. The difference is due to the fact that demand for electricity is less elastic than that for natural gas (possibly because no one

has invented a natural gas powered television ... yet!).

The geographic extent of a market depends upon the distance over which customers would search to find an alternative product or service if there was a significant, sustained price increase for the service in question. If widespread switching would occur nation-wide, then the geographic market is nation-wide. This is often the case in telecommunications markets. In electricity markets, the geographic markets have been defined by the High Court in *PNZ/Mercury* as represented by this table.

## Overhead 7

**Table of Relevant Electricity Markets**

| <b>Functional Level</b>                               | <b>Geographical Level</b> | <b>Consumption Level</b> |
|---|---------------------------|--------------------------|
| wholesaling   | national                  | all levels               |
| transmission  | national                  | all levels               |
| construction of new networks                          | national                  | all levels               |
| distribution  | local/regional            | medium and large         |
| distribution and retailing<br>(delivered electricity) | local/regional            | small                    |
| retailing   | national                  | medium and large         |

The Court of Appeal approved these markets. Perhaps the most interesting aspect of market definition in this case was that the Court found that there was not a separate market in the Auckland area for retailing to medium-sized consumers. In other words, competition for supply has yet to reach even relatively large commercial entities.

Once the relevant market(s) have been defined, dominance may be assessed. In *Port Nelson Ltd v Commerce Commission*, the Court of Appeal approved the following dominance standard adopted by the High Court (McGechan J):

## Overhead 8

... [“dominance”] involves more than “high” market power; more than mere ability to behave “largely” independently of competitors; and more than power to effect “appreciable” changes in terms of trading. It involves a high degree of market *control*.

Section 3(9) of the Act states that a person is in a dominant position in a market if:

“... that person as a supplier or an acquirer, or those persons as suppliers or acquirers, of goods or services, is or are in a position to exercise a dominant influence over the production, acquisition, supply, or price of goods or services in that market...”

## Overhead 9

That section also states that a determination of dominance shall have regard to:

- market share, technical knowledge and access to materials or capital;
- the constraint exercised by competitors or potential competitors; and
- the constraint exercised by suppliers or acquirers.

In reaching a view on whether a person is in a position to exercise a dominant influence in a market, the Commission considers the foregoing non-exhaustive factors and any other relevant matters that may be found in a particular case.

#### **Overhead 10**

Prior to a business acquisition, clearance or authorisation can be sought from the Commission. Once an acquisition is in progress, applications for clearance or authorisation cannot be approved.

The Commission will grant an authorisation for a business acquisition if it is satisfied that the dominance gained or strengthened through the acquisition is outweighed by benefits to the public.

#### **Overhead 11**

The Act sets out specific procedures which the Commission must follow prior to issuing a final determination on an application for authorisation. These steps include:

- notifying interested parties,
- inviting submissions,
- producing and distributing a draft determination, and
- holding a conference of interested parties.

#### **Overhead 12**

The Act affords the Commission 60 working days to make a final determination on an application for authorisation. In cases where an acquisition is unlikely to lead to a gaining or strengthening of dominance businesses can apply for a clearance. The clearance process is a much abbreviated procedure by comparison. The Commission has 10 working days to make a decision. Both time periods may be extended by agreement between the Commission and the applicant.

#### **Overhead 13**

A clearance or an authorisation protects a proposed acquisition from being challenged under the Act by the Commission or by private individuals. If clearance or authorisation is not sought prior to an acquisition the Commission may bring a High Court action to “strike down” the acquisition if it believes that dominance may have been acquired or strengthened in a market. The High Court may order the divestment of specified shares or assets, grant injunctions and impose pecuniary penalties.

The Commission therefore, has an adjudication role in deciding on applications for clearance or authorisation and a surveillance and enforcement role to ensure that any unnotified acquisition which leads to dominance is “struck down”.

To assist the business community and its advisers in determining when an application for clearance or

authorisation is appropriate, the Commission has published a set of guidelines which are available from the Commission's offices. The Commission's *Business Acquisition Guidelines* explain how the Commission defines markets and what factors it considers when determining whether an acquisition raises dominance concerns in a market. Factors which the Commission consider when assessing dominance include:

- constraints from rivalry within the market, an analysis which entails identification of market participants, market concentration, and imports;
- constraints from market entry, which includes a look at barriers to entry and the likelihood, extent, timeliness and sustainability of entry (what we call the "lets" test); and
- constraints from buyers or suppliers.

The *Guidelines* also identify "safe harbours" based on market shares which indicate whether an acquisition may raise dominance concerns. In brief, if the merged company has a market share of less than in the order of 40 percent then it is unlikely to be dominant. Likewise, if it has a market share of less than in the order of 60% and faces competition from at least one other market participant having no less than in the order of a 15% market share, then the Commission is unlikely to intervene in the business acquisition.

## **Anti-Competitive Behaviour**

Section 36 of the Act prevents a dominant firm from using its market power for the purpose of:

- restricting the entry of any person into a market;
- preventing or deterring any person from engaging in competitive conduct in a market; or
- eliminating any person from a market.

Given the nature of network industries, section 36 is particularly relevant. The 'classic' cases, such as *Clear v Telecom's* interconnection case, and the Commission's current *Southpower* litigation, have been brought under s 36.

Trade practices which might in certain circumstances constitute an abuse of a dominant position by a company and therefore breach s 36 of the Act include:

- charging below cost (however that is defined) for a good or service for the purpose of eliminating competition;

- restricting the supply of a good or service;
- requiring customers to deal exclusively with it; and
- refusing to deal with suppliers who sell to competitors.

Section 36 of the Act prohibits unilateral anti-competitive conduct by a dominant firm. Other sections of the Act prohibit restrictive trade practices (“RTPs”) involving collective behaviour. The key sections of the Act dealing with anti-competitive behaviour involving two or more persons are:

#### **Overhead 14**

- section 27, which prohibits any contract, arrangement or understanding which has the purpose or effect of substantially lessening competition in a market. This section covers such practices as market sharing, price-fixing and other collusive behaviour among competitors;
- section 29, which prohibits arrangements between competitors that reduce the competitiveness of another rival; and,
- section 30, which deems that arrangements that lead to prices being fixed among competitors are in breach of section 27. Section 31, however, exempts certain agreements between parties to a joint venture from actions under s 30.

There are also other exceptions to the RTP provisions. None are industry specific. Some are, however more relevant to the subject of this conference, than others.

#### **Overhead 15**

For example s 44(1)(a) of the Act removes certain agreements between partners from the jurisdiction of the RTP provisions of the Act, and

#### **Overhead 16**

s 44(1)(b) exempts agreements between interconnected bodies corporate. I will come back to these, and the s 31 exemption.

Like business acquisitions which exceed the dominance threshold, RTPs, (with the exception of a practice under section 36 of the Act), can be authorised by the Commission, if the public benefits outweigh the detriments to competition. Applications for a RTP authorisation have to be made before commencing such a practice or entering into such an arrangement.

If an authorisation is granted, the prohibitions in the Act do not apply to that practice and the practice is protected from legal action. An example of an RTP recently authorised by the Commission was the New Zealand Rugby Football Union’s player transfer system, which was found to lessen competition, but to be justified on public benefit grounds.

## **Price Control**

### **Overhead 17**

Under Part IV of the Act, the Government may control the prices of goods or services when competition is limited or likely to be lessened, and when it is necessary or desirable to control prices in the interests of users, consumers or suppliers. The Commission can recommend the imposition of price control or, alternatively, may be asked by the Government to report on the necessity or desirability of such a step.

### **Overhead 18**

Charging monopoly prices does not constitute an abuse of a dominant position. The threat of price control may be the only means of restraining a dominant firm in its pricing. At present there are no goods or services under price control.

## **The Commission's Procedures**

### **Overhead 19**

An assessment of the competitiveness of markets and the need for the Commission to act is undertaken on a case by case basis in light of the prohibitions spelled out in the Act.

As an enforcement body, there is not normally a role for the Commission as an arbiter or mediator in disputes between parties involving practices which may breach the Act. The Commerce Act does not include the concept of fairness or protection of individuals. It is the competitive process, not individual competitors, that are protected by the Act and, accordingly, there are those who suffer at the hands of their competitors without a breach of the Act having occurred.

Ultimately it is the choices made by customers, competitors and suppliers that determine the shape of New Zealand's economy.

The Commission has been criticised for not doing enough, for not investigating some particular matter and for not having enough resources.

We do not investigate every matter brought to our attention, even if it may involve a possible breach of the Act.

A discussion of the Commission's procedures may assist in clearing up any misconceptions about the Commission's approach to its enforcement role.

The Commission may act on information received from complainants, but it can also act on information it receives from any other source.

### **Overhead 20**

When the Commission receives information, it passes it through a screening process to determine what action, if any, is appropriate. In terms of the Commerce Act, the first stage of that screening process (which occurs within five days of most information being received) is whether there is a prima facie breach of the Act. If the complaint doesn't pass that test, then the Commission takes no further action. The vast majority of complaints received by the Commission are screened out on the basis that they do not disclose evidence of a likely breach.

Even if the information reveals a prima facie breach of the Act, the Commission may take no further action if the investigation criteria employed by the Commission during the screening process are not met. These investigation criteria include the following:

#### **Overhead 21**

- Whether the complainant is taking, or is likely to take, private action.
- The economic significance of the alleged breach of the Act, and the market in which it is claimed to have occurred.
- The precedent value of any penalty action which may result from a successful investigation is also considered as are the level of publicity expected from an investigation and its educative impact on the industry being examined.
- The reliability and level of co-operation of the complainant and other witnesses.
- Whether the alleged 'offender' has continued to behave in an allegedly anti-competitive manner when it became aware of the allegation against it. This will be taken into account in mitigation of a complaint.

In short, the Commission focuses on areas where the law needs to be reinforced or developed.

#### **Overhead 22**

Should a complaint pass the screening process, it goes to investigation. If, at the end of the investigation, the Commission finds that there is likely to have been a breach of the Act, it has a number of options, the most obvious of which is taking court action in the High Court. The penalties for a breach are significant (up to \$5 million for an organisation and up to \$500,000 for an individual) and the Courts are showing an increasing tendency to impose higher penalties on offenders.

#### **Overhead 23**

However, where appropriate, the Commission also considers giving warnings, or entering into settlements, with persons who appear to have breached the Act.

A warning is a written indication to a person that, if they continue to behave in a certain manner, they will be at risk of breaching the Act. A settlement usually involves a party formally agreeing with the Commission that it will alter particular elements of its behaviour to ensure that it is no

longer at risk under the Act. The effects of all warnings and settlements are monitored, and a second chance is not usually offered.

## **Commission's Approach to Network Industries**

Having provided a background to the Commerce Act and to the role and procedures of the Commission, I would now like to discuss how the Commission applies the Act to network industries.

The Commission realises that network industries represent a significant challenge to competition law authorities. For this reason, it has, since the deregulation of those industries, had a specialised unit of investigators within the Commerce Act Division that deals exclusively with networks. This unit is staffed by people with specific industry knowledge in the energy and telecommunications fields, and also draws heavily on the Commission's Analysts. These Analysts are expert staff with high levels of economic or accounting experience. They are available to consider any Commerce Act matter, but in practice spend most of their time on network industry issues.

At the Commission member level, the Chairman has set up groups of members that meet regularly to consider specific issues in the respective network industries, and to be updated on more general developments in those industries. Currently, the Commission has three such groups, the Energy Group, the Telecommunications Group and the Health Group.

The Commission's approach to these industries has also varied from that adopted in other industries. The Commission offered a 'honeymoon period' to these industries for a year or so after their deregulation, during which they were assisted to familiarise themselves with the new environment. Penalty action instituted by the Commission was not considered except in exceptional circumstances.

Following those periods, the Commission endeavoured to treat network industries in the same manner as any other industry, at least in terms of investigation and enforcement criteria. However, the nature of the industries means that, more than any other area of the economy, they are faced with difficult network access issues, and vulnerability to section 36 actions. This, combined with the country's lack of familiarity with the effects and incentives of de-regulated markets (particularly in telecommunications markets), led to a spate of competition litigation that has been very costly both to the parties and to the economy.

Perhaps this was inevitable. Certainly other countries have experienced, and are continuing to experience, difficulties with the promotion of competition in these markets. And while it is disappointing to note that the major players in the telecommunications industry, for example, continue to be in dispute over such fundamental issues as interconnection, bundling and so-called 'predatory' pricing, the Commission concurs with the Minister of Communications' view that there has been progress in that industry.

The electricity and gas industries provide a different set of challenges for the Commission. These industries were deregulated later than telecommunications, and the players may have been better prepared for it than were the players in the telecommunications industry. Certainly, the gas and electricity industries appear to have fought some well-run rear guard actions to protect their rather cosy set-ups. This has led at one stage to the Commission's having to seriously consider the prosecution of all the parties to the 1980 wholesale gas supply contracts between NGC and the gas utilities (after a lengthy period spent promoting an out-of-court settlement). This action occurred as a result of the Commission's view that the 1980 contracts restrictions on NGC competing with the utilities along with the exclusive nature of NGC gas supply to the utilities were *prima facie* breaches of section 27 of the Commerce Act.

A second example is the Commission's currently on-going prosecution of Southpower. This action has been brought by the Commission as the result of its view that Southpower is erecting entry barriers to competition in electricity retailing by imposing unreasonable network access charges and by cross-subsidising its own retailer from its monopoly network business.

Perhaps the best way to show how the Commission deals with network industries is to discuss particular practices and how the Act, and the Commission, approaches them. Having outlined the general provisions of the Commerce Act, I intend now to concentrate on the subject of this address which is "Alliances, Strategy & Competition".

It is important at this time to explain, in terms of the Commerce Act, that the name given to describe a business venture is irrelevant. The Act is interested solely in the substance of any venture and not the form of it, so whether a venture is called a strategic alliance, a joint venture or a co-operative arrangement will not alter the way the Commission assesses it.

This is indicated by section 31 which provides certain exemptions for joint ventures. This section defines "joint ventures" in very broad terms, based on the nature of the arrangement between parties and not on the name given to any arrangement. I will discuss the exemptions contained in section 31 in more detail later.

I would like now to focus on three general types of strategic alliances and the application of the Commerce Act to those alliances, as follows:

- the merger of assets;
- arrangements between complementary service providers; and
- arrangements between competitors.

I will turn first then to the type of strategic alliance which involves the merger of assets of the parties

to that alliance. As I explained earlier, section 47 of the Act prohibits a person from acquiring the assets or shares of a business if that acquisition results in the acquisition or strengthening of a dominant position in a market. Regardless whether the merger of assets is the result of ‘friendly’ arrangement as part of a joint venture or the result of an aggressive takeover, it will be assessed under this section.

The second and third types of arrangement I have listed, that is arrangements either between complementary service providers or between competitors, are subject to the restrictive trade practices (or RTP) provisions of the Act contained in sections 27 to 46. Sections 27 and 30 present the principal concern to the Commission in assessing strategic alliances. As I discussed earlier, section 27 prohibits contracts, arrangements or understandings with the purpose or effect of substantially lessening competition. Please take note that it is either the purpose *or* the effect of substantially lessening competition which is at issue here. Section 30 prohibits price fixing.

I will turn now to how sections 27 and 30 might apply to arrangements between complementary service providers.

A telecommunications company and an electricity utility are clearly complementary service providers. They do not compete in any area. Suppose those companies agree on a strategic alliance so that the electricity utility contracts to provide all network servicing for the telecommunications company. The first issue to address is what are the markets affected by this agreement. Here, the most obviously affected market is the network servicing market. It is therefore necessary to assess whether this arrangement has the purpose or effect of substantially lessening competition in that market.

The purpose of the telecommunications company is likely to be to focus on its core business and that of the electricity utility is to increase its revenue through new work. However if the purpose of either party was to eliminate the potential for another party to enter the network servicing market, that might be a purpose of substantially lessening competition. If this were the case, the arrangement might be at risk under the Act. Similarly, if this arrangement raised the barriers to entry to the network servicing market and thereby prevented another party from entering the market or from competing in this market, that might be an *effect* of substantially lessening competition, which could also place the arrangement at risk of breaching the Act.

Section 30 is unlikely to apply to arrangements between complementary service providers since that section prohibits only arrangements between competitors.

The last category of strategic alliances I wish to discuss is arrangements between competitors.

Again, the relevant issues are to determine the relevant market definition and then to assess whether the joint venture will have the purpose *or* effect of substantially lessening competition in any market.

As I have already discussed, in the telecommunications industry, technological progress is occurring at such a rate that the traditional market definitions require frequent review. It is possible for example, with the increasing convergence of technologies that a number of once narrow markets, for example cellular telephony and fixed line telephony, to become one market. This can have significant implications for any agreement affecting such markets. Generally speaking, an arrangement between two competitors in a broad market where there are a number of competitors is less likely to have the purpose or effect of substantially lessening competition than a similar arrangement in a narrow market with a limited number of competitors.

Strategic alliances between competitors are more likely to result in a breach of section 30 of the Act which prohibits price fixing. It should be noted that section 30 will be breached if as few as two competitors agree on a price, regardless of how minimal the effect on the market is.

The creation of EMCO, and its members' commitment to be bound by majority vote when establishing the rules of the wholesale electricity market (or NZEM as it is known), amounted to a strategic alliance which might have breached the price fixing provisions of the Act. Last year, EMCO came to the Commission for authorisation of NZEM Rules, because it was concerned that the Commission might regard the Rules as an attempt to fix electricity prices. As it transpired, the Commission's final determination on the NZEM Rules determined that the Rules did not breach the Act, so authorisation was not required.

Section 31 provides an exemption from section 30 for some aspects of a joint venture's activities.

#### **Overhead 24**

Section 31(1) contains a definition of a joint venture (for the purposes of the section) as an activity in trade carried out by two or more persons.

#### **Overhead 25**

Section 31(2) provides that agreements for the prices of goods or services which are *jointly* acquired or supplied by parties to a joint venture are exempt from section 30. The key point to note here is that this will prevent only those activities which are jointly undertaken from being caught under s 30. Also it should be noted that the exemption applies to only s 30, leaving joint ventures exposed to all the other provisions of the Act.

As mentioned, the Commission does not come across many joint ventures in its day-to-day operations. This is due largely to the fact that there are other business structures that firms wishing to cooperate appear to prefer. Most commonly, companies set up a series of inter-related companies to perform different tasks. An example is the Telecom group of companies, where completely different activities are carried out by interconnected bodies corporate. The necessary co-operation between the companies is (as I mentioned earlier) protected by the exception to the entire range of restrictive

trade practices prohibitions that is provided by s 44(1)(a).

Similarly, some business activities are carried out by partnerships, often entered into by people who would otherwise be competing with each other. This style of doing business, exemplified by large law or accounting firms, is exempted from the Act by s 44(1)(b).

The solution for those considering a joint venture, either with a competitor or in a situation where the result of the joint venture might impact on competition, is to seek authorisation from the Commission prior to entering the joint venture. The Commission has received only a handful of applications for authorisations of strategic alliances, including:

- the Weddel application, where a consortium of meat processors wished to collectively acquire and close the meat processing plants previously operated by Weddel;
- the application by the four RHAs to jointly purchase all services for liver transplants in New Zealand; and
- the EMCO application, as discussed above.

More typically, companies who wish to work together merge completely, and are subject to the prohibition in section 47 - but we expect more joint venture applications as companies involved in formerly disparate industries, such as electricity distribution and telecommunications, attempt to take advantage of the synergies available through working together. The Act's authorisation process, and recognition of the potential usefulness of large business structures through exceptions to the Act, is all part of its attempt to allow economies of scale and scope to be gained, while prohibiting more covert agreements that seek to exploit market power.

If any of you are considering entering into any type of strategic alliance I would say two things. Firstly, anti-competitive behaviour is not a good strategy. It will restrict your own opportunities, as well as your competitors'; it will invariably fail or be caught; and enforcing your alliance will probably be more costly than any benefits received from it.

Secondly, remember the penalties available under the Act. The Court is increasingly willing to use those penalties, as was shown by the *Port of Nelson* case, where penalties and costs imposed on the port company were \$825,000. In addition, I would confidently expect that the cost to the port company of running the litigation was well in excess of that. Add to that the cost to your firm's reputation, and it should be clear that the smart strategy is to avoid alliances that might lead to allegations of anti-competitive collusion.

Of course, the main reason you are at this conference is to examine the possibilities opening up for

alliances or joint ventures between utilities and telecommunications companies. As I mentioned earlier, such alliances are less likely (at least on the face of it) to cause competition problems, than those between companies already operating in the same markets, and therefore, at least in theory, less likely to require Commission attention.

However, the issues surrounding convergence, in all its forms, are of particular interest to the Commission, and we will be focusing on those issues over the next six months. At this stage we are unclear as to how convergence is going to affect markets in the future that will affect our views of levels of market power, and the effects of certain types of agreement. The Commission is working on establishing a theoretical framework to approach these issues, but I would strongly recommend that if you are contemplating entering into any strategic alliances seek legal advice and, if appropriate, Commission clearance or authorisation. The alternative, being subject to a Commission investigation, is costly and generally regarded as unpleasant.

There are several other issues involving utilities before the Commission at present, aside from the impact of convergence. The rapid development of new technology allowing for voice technology without resort to the local loop is one. As this develops, the Commission is constantly reassessing its view of the market power of Telecom, and the ramifications that the reduction of that power has on various markets.

We have also watched with interest, and some satisfaction, the series of interconnection agreements signed lately, in particular that between Telstra and Telecom and Saturn and Telecom. Local call competition is finally arriving, and the Commission intends to ensure that it brings the benefits that it should.

Number portability continues to be an issue, and the Commission is monitoring progress on this, together with the Ministry of Commerce.

In electricity, the major issues of access to power companies' distribution networks is set to be addressed by the *Southpower* litigation. We are hopeful that the precedent established by that case will clarify the law as it applies to all power companies, and, if the Commission is successful in that case, promote competition in the retail electricity market.

The remaining 1980 NGC/utility contracts (between Enerco and NGC and Wanganui Gas and NGC) still cause us problems. On a more positive note, the Commission was interested to see how the issues surrounding the Kapuni gas field were resolved. This was a case where competition principles emphatically won over contractual principles, albeit in a manner that would not have pleased all players or commentators. As the judgment is still not sealed, and hence appeal is still possible, I cannot comment further on this matter.

Still on gas, Fletcher Challenge Energy's shareholding in the Kupe gas field has recently increased to a level that caused the Commission concerns under s 47 of the Act. To alleviate that concern, Fletcher has given an undertaking to the Commission that it will not make any use of its additional shareholding until either the Commission concludes that the acquisition does not breach the Act, or any Court action is resolved. Obviously, the Commission would have preferred to have gone down the usual authorisation process, rather than having to determine what action is appropriate after the fact. This less than satisfactory situation apparently arose due to the urgency that surrounded the acquisition. The Commission has almost completed its detailed consideration of the issues involved, and will announce its conclusions shortly.

Those are the major network issues before the Commission today. In conclusion, I'd like to tell you how lucky I think you are to be involved in industries where there is such a rapid pace of change, with new opportunities opening for most of you every day. I believe that a great many of those opportunities have come about because of healthy competition, and I am committed to ensuring that that competition continues and intensifies.