



11 Chews Lane
PO Box 10568
The Terrace
Wellington 6143
New Zealand

Genesis Power Limited
trading as Genesis Energy

Fax: 04 495 6363

22 July 2011

Cartel Criminalisation
Ministry of Economic Development
PO Box 1473
WELLINGTON 6140

By email: cartels@med.govt.nz

Dear Abbe

Draft Exposure of the Commerce (Cartels and Other Matters) Amendment Bill

Genesis Power Limited, trading as Genesis Energy, welcomes the opportunity to provide a submission to the Ministry of Economic Development ("MED") on the exposure draft of the "Commerce (Cartels and Other Matters) Amendment Bill" dated June 2011.

We support the views put forward in Russell McVeagh's submission,¹ in particular:

- we endorse the view that MED has not presented a convincing case to justify introducing criminal sanctions for cartel behaviour (section 8 of Russell McVeagh's submission). We are concerned about the chilling effect this will have on pro-competitive behaviour and the increased costs of doing business;
- we agree that before any amendments to the Commerce Act 1986 take effect, the Commerce Commission should consult upon and publish detailed guidelines on:

¹ Submission to the Ministry of Economic Development on the *Exposure Draft Commerce (Cartels and other matters) Amendment Bill*, Russell McVeagh, 22 July 2011.

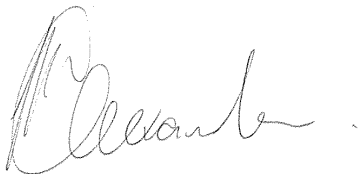
- the application of the proposed new price fixing and “collaborative activities” provisions, with examples of conduct or circumstances that would fall under these new provisions; and
- the circumstances in which criminal prosecutions will be taken.

We support Russell McVeagh’s initial views on the appropriate factors that should be included in the prosecutorial guidelines (as set out in schedule one of their submission); and

- we agree that any clearance regime should not involve full-scale public notification and public inquiry into parties’ commercial arrangements, with published written reasons.² Rather, we recommend that New Zealand’s clearance regime be broadly aligned with the Australia’s notification process for exclusive dealing and collective bargaining (as defined by section 93AB of the Competition and Consumer Act).

If you would like to discuss any of these matters further, please contact me on 04 495 6353.

Yours sincerely



Malcolm Alexander
General Manager Corporate Affairs

² As suggested by the MED and modelled on the current merger clearance process.