



9 February 2016

Targeted Commerce Act Review
Competition and Consumer Policy
Ministry of Business, Innovation and Employment
PO Box 1473
WELLINGTON

By email: commerceact@mbie.govt.nz

Submission on MBIE's November 2015 Issues Paper: "Targeted Review of the Commerce Act 1986"

Meridian welcomes the opportunity to provide feedback on the above Issues Paper.

Market studies

This submission only addresses questions 45 and 46 of MBIE's paper relating to market studies and whether the Commerce Commission should have a broader power to carry out such studies. Further Meridian's response is confined to the electricity industry.

Electricity Authority already has the power to conduct market studies

As the Issues Paper notes, the Electricity Authority ('the Authority') already has the power to carry out market studies. The Authority's power is broad. Section 16(1)(g) of the Electricity Industry Act 2010 ('the Act') provides:

16 Functions of Authority

(1) The Authority's functions are as follows:

...

(g) to undertake industry and market monitoring, and carry out and make publicly available reviews, studies, and inquiries into any matter relating to the electricity industry:

In order to discharge this function it has powers under section 46 of the Act as follows:

46 Authority's monitoring, investigation, and enforcement powers

...

(2) The Authority may require an industry participant to do any of the following:

(a) provide, within any reasonable time specified by the Authority, any information, papers, recordings, and documents that are in the possession, or under the control, of the participant and that are requested for the purpose:

- (b) permit its officers or employees to be interviewed (which interview may be recorded) and ensure as far as possible that they are made available for interview and answer truthfully and fully any questions put to them:*
- (c) give all other assistance that may be reasonable and necessary to enable the Authority to carry out its functions and exercise its powers.*

In the light of this power, Meridian's responses to questions 45 and 46 are:

45 Do the approaches to market studies described in the Issues Paper align with a gap in New Zealand's institutional settings for promoting competition?

Meridian response: In the case of the electricity industry, no. The introduction of a market studies power for the Commerce Commission in relation to the electricity industry would be a duplication of the power already held by the specialist industry regulator, the Electricity Authority. Further, given that the objective of the Authority, as set out in section 15 of the Act is "...to promote competition in, reliable supply by, and the efficient operation of, the electricity industry for the long-term benefit of consumers", it is Meridian's submission that any competition concerns relating to the electricity industry are appropriately addressed, in the first instance, by the Authority. Meridian submits that, if a broad market studies power is to be introduced, it should include a carve-out for industries already subject to a market studies power held by a specialist regulator.

46 If there is a gap, what procedural settings for a market studies power would best fit the identified gap, in terms of:

- a. The appropriate body to conduct market studies;*
- b. Who may initiate a market study;*
- c. Whether mandatory information-gathering powers should apply;*
- d. The nature of recommendations the market studies body could make; and*
- e. Whether the government should be required to respond*

Meridian response: Meridian does not consider there is a gap in relation to electricity. The appropriate body to conduct such studies is the Authority and they already hold mandatory information-gathering powers.

Please contact me if you have any questions relating to this submission.

Yours sincerely,