

IN THE SUPREME COURT OF NEW ZEALAND

SC 46/2012
[2012] NZSC 74

BETWEEN VECTOR LIMITED
 Appellant

AND COMMERCE COMMISSION
 Respondent

Court: Tipping, McGrath and William Young JJ

Counsel: A R Galbraith QC, A S Butler, J D Every-Palmer and C M Marks for
 Appellant
 B W F Brown QC, V E Casey and K C Millard for Respondent

Judgment: 14 August 2012

JUDGMENT OF THE COURT

- A Leave to appeal is granted.**
- B The approved grounds are whether under the Commerce Act 1986 the s 54K(3) power:**
- (i) is able to be exercised in the manner provided for in s 53P(3)(b) in the absence of a published input methodology (or methodologies) specific to starting price adjustment under s 53P(3)(b); and, if so:**
 - (ii) permits change only to the extent necessitated by the newly published input methodology relied on by the Commission.**

REASONS

[1] We draw to the attention of counsel our preliminary view that the first question raises three issues:

- (a) Is the Commission required by s 52T(1) to set an input methodology for starting price resets under s 53P(3)(b)?
- (b) Alternatively, is the Commission required by s 52T(2) to set out in each relevant input methodology determined under s 52T(1) how that input methodology is to be applied to starting price resets under s 53P(3)(b)?
- (c) If the answer to one or other of issues (a) and (b) is “yes”, does the absence of a specific input methodology, or specific provision in input methodologies, addressed to s 54P(3)(b), constrain the ability of the Commission to exercise its transitional s 54K(3) power in the manner provided for in s 53P(3)(b)?

[2] In their written submissions, counsel for Vector did not provide preferred dates for the hearing of the appeal.¹ Counsel for the Commission, in response, sought urgency so that the final judgment of this Court can be available before 30 November 2012. We are conscious of the risk that a grant of leave might have adverse practical effects on the ability of the Commission to implement the regulatory scheme provided for by Part 4 of the Act given the legislatively imposed timing constraints. For this reason we direct that the appeal is to be heard on 9 and 10 October 2012. We accept that input methodology appeals will then be underway and that a fixture in this Court that week will pose logistical problems. But the parties will have to resolve those problems, if necessary by instructing additional or alternative counsel.

Solicitors:
Russell McVeagh, Wellington for Appellant
Crown Law Office, Wellington for Respondent

¹ Instead there is a statement that if leave is granted, “counsel will liaise with the Registrar and other parties as to an appropriate date for a fixture”. This is not in conformity with r 20(4) of the Supreme Court Rules 2004.