



High Court of New Zealand

Friday 22 February 2019

COMMERCE COMMISSION V FIRST GAS LIMITED
[2019] NZHC 231

MEDIA RELEASE

This summary is provided to assist in the understanding of the Court's judgment. It does not comprise part of the reasons for that judgment. The full judgment with reasons is the only authoritative document. The full text of the judgment and reasons can be found at www.courtsofnz.govt.nz.

First Gas Ltd provides reticulated gas transmission and distribution services in the North Island. It entered the Bay of Plenty market in mid 2016 by buying existing assets. Around the same time, GasNet Ltd was also expanding there and this gave rise to competitive benefits for subdivision developers in Papamoa, Bay of Plenty.

First Gas then engaged in a concerted effort on a reluctant seller to remove a competitor and this ultimately resulted in First Gas acquiring GasNet's gas assets in the Papamoa area. The agreement contained a restraint of trade which prohibited GasNet from engaging in gas distribution business in the Bay of Plenty region for five years.

The parties informed the Commission of their agreement because of its relevance to the Commission's gas price-quality regulations. The Commission, however, advised it had concerns about the anti-competitive effects of the agreement which, by this time, could not be unwound.

First Gas cooperated in the Commission's investigation and admitted that it had breached sections 47 and 27 of the Commerce Act. It agreed with the Commission that a pecuniary penalty of \$3.4 million should be paid under sections 80 and 83 of the Commerce Act. It also agreed to an order under section 81 preventing it from giving effect to the restraint of trade. The Commission and First Gas then applied to the High Court to approve the penalty and injunction.

The Court agreed that the proposed penalty was within range of what is appropriate for satisfying the objectives of the Commerce Act in light of the circumstances of the case. It approved the \$3.4 million penalty and injunction order.