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#### POST-CONFERENCE CROSS-SUBMISSION ON INPUT METHODOLOGIES

1. Orion New Zealand Limited (**Orion**) welcomes the opportunity to make a cross-submission on several matters that arose during the Commerce Commission's (**Commission's**) recent conference<sup>1</sup> (**IM conference**) on its Input Methodologies Discussion Paper<sup>2</sup> (**IM paper**). This cross-submission addresses questions raised by the Commission and by other electricity distribution businesses (**EDBs**) that were subsequently identified in the conference transcript.
2. Our cross-submission is in three parts:
  - 2.1 summary;
  - 2.2 matters arising from the IM conference<sup>3</sup>; and
  - 2.3 an appendix which contains a NERA report on asset valuation in workably competitive markets.

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<sup>1</sup> On 14 and 15 September 2009, the Commission held a conference on the development of input methodologies for application or potential application in determining default and/or customised price paths for certain services provided by electricity lines and gas pipelines, and information disclosure in respect of airports.

<sup>2</sup> Commerce Commission, *Input Methodologies Discussion Paper*.

<sup>3</sup> Including our response to question's 53,58 and 72 addressed specifically to Orion

## 1. Summary

3. The purpose statement requires the Commission to develop its input methodologies with the benchmark of a workably competitive market in front of mind. In particular, it is not open to the Commission to design input methodologies in such a way as to deliver a certain balance of s 52A(1)(a) – (d) factors if those methodologies ultimately do not reflect a workably competitive market outcome. Put simply, the workable competition standard is not negotiable. It was pleasing to see the Commission's broad recognition at the IM conference of the paramount importance of the s 52A purpose statement.
4. We continue to hold the view that there is good reason to begin the new regulatory period with an up-to-date 2010 ODV that is then rolled forward using an indexed historic cost (**IHC**) approach, since this will best reflect the costs faced by a hypothetical new entrant (**HNE**) in a workably competitive market.
5. We would also support a principles-based ODV handbook and an approach that permits the use of independent valuers to assess the replacement value of assets based on local conditions – as opposed to striving for national consistency merely to allow greater comparability in the context of the information disclosure regime.
6. Consistent with the workable competition standard, we believe that a coherent regulatory package based on the HNE principle is properly supported by an up to date ODV, roll forward based using an IHC approach, a tax expense approach (which is simple to implement and consistent with a low cost DPP) and a cost allocation methodology based on ACAM. The Commission could also consider ODV updates on a regular basis say every 5 or 10 years<sup>4</sup>.
7. Such a regulatory design, when taken as a whole, in our view best delivers against the workable competition standard and the criteria in s 52A. If various elements are removed or altered, however, such a regulatory design may fall short of the workable competition standard, and for this reason we urge the Commission to consider our proposal not as a variable mix of components but as a principled and coherent package.
8. We disagree with a number of the contentions put forward by several of the Commission's experts at the IM conference, and have sought to highlight

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<sup>4</sup> The use of an ODV based approach also lessens the need for any prudency reviews.

these matters throughout this cross-submission. In particular we consider that:

- 8.1 there is a strong link between the ODRC/HNE concepts and the outcomes one might expect to observe in workably competitive markets;
  - 8.2 there are no legislative constraints that would preclude the inclusion of an efficiency carryover mechanism (**ECM**) in the DPP, although we recognise that several practical challenges will first need to be overcome before such a mechanism could be implemented; and
  - 8.3 the Commission's proposed approach to allocating costs that are common between regulated and unregulated activities only *partially* reflects a workably competitive market outcome and is in need of refinement, and the Ofgem proposal to which it refers also exhibits several material deficiencies.
9. We look forward to working with the Commission on the following points:
- 9.1 the circumstances in which a CPP proposal might require a 'less-than-full building blocks approach', and the detail which might be included in such a proposal;
  - 9.2 the practical challenges of designing an ECM in the atypical New Zealand context; and
  - 9.3 an appropriate regulatory tax approach that results in consistent and easily-applied tax expense values.

## **2. Regulatory framework**

### *Section 52A purpose statement (Question 42)*

10. We agree with the Chair's comments at the IM conference on the construction of s 52A and, in particular, the paramount importance of the purpose statement.<sup>5</sup> We agree that the primary objective in setting input methodologies is to promote the long-term benefit of consumers by promoting outcomes consistent with those expected in workably competitive markets.

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<sup>5</sup> Conference transcript, remarks of the Commission Chair, p 140 and p 271.

11. The workably competitive standard is non-negotiable. It is not open to the Commission to adopt an approach to the design of the input methodologies that falls outside the boundaries of that which is workably competitive, even if such an approach is considered to deliver a different and preferred balance of s 52A(1)(a) – (d) factors. Parliament has signalled that workable competition is the standard that best delivers against the criteria listed in section 52A(1)(a) – (d). In this sense it is not dissimilar to the purpose statement in the Commerce Act (s 1A) which identifies competition as the best means by which to safeguard the long-term benefit of consumers.
12. As we have previously submitted,<sup>6</sup> it would be a mistake to seek to deploy specific regulatory devices with a view to achieving an optimal balance of the s 52A(1)(a) – (d) criteria, rather the Commission should use criteria as a checklist to ensure any particular application of the workably competitive standard does not (taken as a whole in the wider context of the regulatory design) somehow generate an outcome which fails completely to address these specific concerns.
13. We believe that the Commission should assume that the criteria listed at s 52A(1)(a) – (d) are outcomes one would ordinarily expect to see from the proper application of the long-term benefit/workable competition approach. In other words if the workably competitive standard is used as the Commission's starting point, each of the s 52A(1)(a) – (d) criteria flow as a matter of course.

*Link between s 52A and asset valuation*

14. In setting the input methodologies the Commission must always keep in mind the outcomes that would be produced in the long term in a workably competitive market. In particular (and as discussed in detail at the IM conference) the Commission must consider how the outcomes produced in a workably competitive market can be used to inform the initial asset value of a regulated EDB.
15. As we explained at the IM conference in a workably competitive market the value of assets required to compete in that market is the cost faced by a hypothetical new entrant (**HNE**). During the conference, the relationship between the ODV/HNE concepts and the outcomes produced in workably competitive markets was discussed by a number of experts, with doubt

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<sup>6</sup> Orion New Zealand Ltd, *Submission on the Regulatory Provisions of the Commerce Act 1986*  
16 February 2009 Para 9 et seq.

about the consistency of any such relationship being expressed in particular by:

- 15.1 Professor Yarrow and Dr Small, who suggested that there may be *little correlation* between asset values derived on the basis of ODV/HNE principles, and the values that might be observed in a workably competitive market;<sup>7</sup> and
  - 15.2 Dr Layton, who suggested that prices derived on the basis of the HNE/ODV concepts would be *systematically above* the price levels one would expect to observe in a workably competitive market.<sup>8</sup>
16. Following the IM conference Orion engaged its economic advisors, NERA Economic Consulting (**NERA**), to prepare an expert report on asset valuation in workably competitive markets. NERA concludes in its attached report that the reservations expressed by Professor Yarrow and Drs Small and Layton are misplaced. In short:
- 16.1 In a workably competitive market there is a strong relationship between prices, costs and the underlying asset values. Although market fluctuations can result in prices departing from costs, and asset values departing from ODV, the resulting disequilibria are only temporary. In the long-run, a supply-side adjustment can be expected that realigns prices with the underlying costs of supply, and asset values with their ODV, such that normal returns are earned by market participants.
  - 16.2 There is no reason to think that short-term fluctuations above or below ODV that occur during periods of disequilibrium will be biased in either direction – periods of excess demand and supply are equally likely. It is also incorrect to suggest that application of a HNE test will somehow deliver above normal profits to an incumbent, since the test is designed so as to preclude this possibility. Rather, the HNE test will produce asset values that will, on average, result in normal economic profits.
17. In other words, there is no doubt as to the consistency between the ODV/HNE concepts and the outcomes produced in workably competitive markets. Put simply, when a workably competitive market is in long-run equilibrium, the value of capital assets implied by the market price will

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<sup>7</sup> See for example, Professor Yarrow, *Input Methodologies Conference, Electricity Distribution Services*, pp.350, 353 and Dr Small, *Input Methodologies Conference, Electricity Distribution Services*, p.350.

<sup>8</sup> Dr Layton, *Input Methodologies Conference, Airport Services*, p.79.

reflect their current market value (for new assets) or the depreciated equivalent (for second hand assets), ie, their ODV.

18. For these reasons, Orion continues to hold the view that there is good reason to begin the new regulatory period with an up-to-date 2010 ODV that reflects the costs faced by a HNE at that time.<sup>9</sup>
19. In our view the time required to develop a new detailed 2010 handbook should not be considered by the Commission as a barrier. We do not consider that the Commission needs to develop a new detailed 2010 handbook, rather, it should consider the development of a principles based ODV handbook together with the maximum level of disclosure and transparency.
20. The previous approach under the threshold regime of a handbook with a standard table of costs is no longer appropriate under the new regime i.e. standard costs cannot be the used across the entire spectrum of EDBs but must be based on local conditions. We would support an approach that permits the use of independent valuers to assess the replacement value of assets based on local conditions – as opposed to striving for national consistency merely to allow greater comparability in the context of the information disclosure regime.

### **3. Level of Prescription for CPPs**

21. At the IM conference there was some discussion about the level of detail required in any application for a customised price-quality path (**CPP**). In particular, questions arose as to whether CPP applications will always necessitate a 'full building blocks' approach, or whether an application may be less detailed in some circumstances.
22. In short, Orion recognises the customised nature of CPP applications will increase the cost for an EDB, but considers that the Commission should not design a regime more costly than is necessary to meet the s 53M requirements. In some circumstances a 'less than full building blocks' analysis might be appropriate, and this should be encouraged where feasible.
23. The fundamental purpose for introducing the option to submit a customised proposal was to provide those EDBs with large forward-looking capital expenditure requirements with an opportunity to obtain a CPP in circumstances in which the DPP would not adequately cover those

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<sup>9</sup> Orion New Zealand Ltd, *Submission on Input Methodologies* 14 August 2009 at para 10.

requirements. An EDB that seeks a CPP in these circumstances should in most instances anticipate preparing an application that involves a full forward-looking building block analysis, including capital and operating expenditure forecasts. All facets of the proposal would then be expected to be carefully reviewed by the Commission. As Orion has noted previously, such a process is likely to be time-consuming and expensive.<sup>10</sup>

*When a CPP proposal might not require full building blocks (Question 66)*

24. There are conceivable circumstances in which a 'less-than-full building blocks' analysis might be appropriate. For example, if an EDB had consulted with its customers and determined that they were prepared to pay higher prices for a superior level of service, then it may in those circumstances be possible to make a specific adjustment to the default quality path 'holding everything else constant'. Specifically, it may be reasonable to allow an EDB to eschew a full building block analysis (and thus avoid considerable expense) and to focus only on those components of relevance, namely quality.
25. Of course, we recognise that this may create an incentive for EDBs when preparing their applications to draw the Commission's attention to those building block components that they believe will lead to a higher price, and to avoid broaching unfavourable matters. However, we consider that this incentive to 'cherry-pick' can be managed by the Commission using its discretion (under s 53V) to impose any CPP it sees fit and its residual discretion under s 53ZD to request information and examine matters not raised by a business in its application. For example, if an EDB chooses to lodge a less-than-full building blocks application, it remains open to the Commission to examine components not addressed in that application that may be unfavourable to the EDB and then to determine a CPP based on those components, provided it considered them to be of relevance.
26. The Commission's discretion to determine any CPP it considers appropriate means that any EDB that lodged a less-than-full building blocks proposal would first need to be confident that it had addressed all pertinent matters. We suspect that this discretion alone may provide sufficient discipline to an EDB applying for a CPP, and obviate the need for more explicit mechanisms to identify and define a subset of requirements for such proposals. However, we are happy to discuss other potential mechanisms with the Commission if it considers that they are necessary and look forward to the opportunity to workshop possible mechanisms with the Commission.

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<sup>10</sup> Orion New Zealand Ltd, *Submission on Input Methodologies* 14 August 2009 at para 115.

27. The Commission has subsequently raised the possibility<sup>11</sup> that a business may apply for a CPP due to inefficient behaviour while it is subject to the DPP. We are not yet convinced that it is either necessary or appropriate for the Commission to examine the efficiency of past conduct when assessing a customised proposal. Nonetheless, if it did wish to satisfy itself that an application had not been motivated by, say, past capital expenditure inefficiencies during a regulatory period in which the EDB was subject to a DPP, then the Commission's first line of inquiry might be to assess whether a EDBs' outturn performance since the last reset would have been likely to result in a negative  $P_0$  adjustment at the next reset.
28. Indeed, in many cases a negative  $P_0$  adjustment will be the adverse consequence of past inefficiencies that an EDB might be seeking to avoid by applying for a CPP. Accordingly, if such an adjustment would have been unlikely, or modest, then this would imply that inefficient conduct was not the motivating factor for the CPP application. If such an adjustment was likely, then this may necessitate a closer examination of past capital expenditure by the Commission and, potentially, external experts. That said, given the significant costs associated with such an exercises, it should in our view be considered as a last resort. Moreover, any analysis of the efficiency of past expenditure should be done in light of the presumption against retrospectivity (discussed below) and keeping firmly in mind that in hindsight investment decisions may appear less prudent.<sup>12</sup>

#### **4. Re-openers**

29. Re-opening a price-quality path is not something that should be done lightly. The Commission indicated at the IM conference that, contrary to its views in the IM discussion paper, it was considering the circumstances in which a DPP could be re-opened.<sup>13</sup>
30. We welcome, in principle, the inclusion of a provision allowing for the DPP to be re-opened, but consider that because this will require reassessing the DPP in its entirety, some unforeseen and uncontrollable events are better dealt with as additional nominated pass-through events.

#### *Re-openers compared to nominated pass-throughs (Question 67)*

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<sup>11</sup> Commerce Commission, *Invitation for Post-Conference Cross-Submissions* 22 September 2009, question 66.

<sup>12</sup> Specifically, if the Commission is to evaluate the efficiency of past expenditure it should do so on the basis of the information that was available to the business at the time, not with the benefit of perfect hindsight.

<sup>13</sup> See Conference transcript, p 288.

31. Because of the costs and inconvenience involved, the circumstances under which a re-opening might occur should be very limited. One means of reducing the scope for re-openers is to ensure that those events that are best managed by way of cost pass-through arrangements are dealt with in this way. Pass-through events have the advantage of affecting only *certain categories* of costs, and do not necessitate revisiting a price reset in its entirety.
32. The Commission has proposed that pass-through costs for EDBs include transmission charges, local authority rates, Commerce Commission levies and Electricity Commission levies. To narrow the scope for re-openers, we propose that in addition to these specific costs, the Commission also allows for additional nominated pass-through events in appropriately prescribed circumstances.
33. The Australian Energy Regulator (**AER**) recognised recently that it is possible that events may occur during a regulatory period that are uncontrollable, unforeseen, and have a material impact on costs. Examples of such an event may include a major natural disaster such as an earthquake, and liability for claims relating to asbestos or electric and magnetic fields. In these situations, although the occurrence of the event may be a possibility, it is nonetheless unexpected. It concluded that where an event is of such an unusual and unexpected nature, and the associated costs are likely to have such an effect on the returns of the business that services would be jeopardised, it may be appropriate that the associated costs to be eligible for immediate pass-through.
34. We encourage the Commission to adopt a similar approach and noted this point in our recent submission on its initial DPP decision. Specifically, consistent with the conclusion of the AER, we consider that an event should be eligible for immediate pass-through in limited circumstances as follows:
  - 34.1 the change in costs of providing distribution services as a result of the event is material; and
  - 34.2 if it is an uncontrollable and unforeseeable event that falls outside of the normal operations of the business, such that prudent operational risk management could not have prevented or mitigated the effect of the event.
35. Even with a nominated pass-through mechanism, a narrow range of exogenous factors may lead to widespread consequences for lines businesses that cannot be readily or equitably dealt with by means of cost pass-through arrangements, or customised proposals. For example, re-

openings may be necessary to correct errors or deficiencies that went undetected in an earlier price reset. The National Electricity Rules allow the AER to re-open a distribution pricing determination during a regulatory period if the determination has been affected by a material error or deficiency of one or more of the following kinds:

- 35.1 a clerical mistake or an accidental slip or omission;
  - 35.2 a miscalculation or misdescription;
  - 35.3 a defect in form; or
  - 35.4 a deficiency resulting from the provision of false or materially misleading information.
36. These categories accord with the general legal rule which permits a decision-maker to revisit (and amend) his or her decision if there is a defect in form which affects the result but does not affect the reasoning underpinning it. There is no reason in principle (nor is there any reason contained in or readily inferred from the Act) why the same power should not be available to the Commission.
37. In these circumstances it may be impracticable – and inequitable given the associated expense – for businesses to address the resulting consequences by lodging customised proposals. Moreover, if the consequences are widespread, it may prompt multiple simultaneous CPP applications, which is unlikely to be a ‘least cost’ solution, or manageable from the Commission’s perspective. Nor in such circumstances should s 53Z(2) (which provides for a limit of four CPP proposals a year) prevent EDBs obtaining relief if the event was truly uncontrollable. Accordingly, we consider that the Commission should contemplate a re-opening in such circumstances.

## **5. Efficiency gains**

38. Orion would support the incorporation of an efficiency carry-over mechanism (**ECM**) in the DPP (and potentially within CPPs), if it could be practicably implemented. Below we first consider whether there are any legislative constraints that might prevent the introduction of an ECM. We then consider how such a mechanism might be designed, including the potential difficulties that would need to be overcome, and propose a process for working through those challenges.

*No legislative restriction on carry-over*

39. There is no legislative constraint on carrying over efficiencies from one regulatory period to another, or between DPP and CPP paths. Nor should a restraint be implied. We say this because:
- 39.1 section 54Q expressly requires the Commission to promote incentives and avoid disincentives for EDBs to invest in energy efficiency mechanisms, and if efficiency gains cannot be carried-over from one regulatory period to the next, this may create a disincentive to invest in energy efficiency mechanisms;<sup>14</sup>
- 39.2 a DPP or CPP must specify maximum revenues with respect to a particular regulatory period, but does not preclude taking into account efficiencies arising from investments undertaken in previous regulatory periods; and
- 39.3 the prohibition against comparative benchmarking in s 53P(10) is not relevant because it is a prohibition against comparisons *between firms* in the same market, whereas under the DPP an ECM is likely to reflect an EDB's performance relative to an estimate of *industry-wide* total factor productivity;
40. For these reasons, we do not agree with the view (expressed by Commission staff at the IM conference) that there are legislative constraints on the Commission's ability to implement an ECM.<sup>15</sup> Rather, any impediments are likely to surround the *practicalities* of implementing such a mechanism within the atypical New Zealand context.

*Objectives of carry-over mechanisms (Question 68)*

41. It is the ability to retain the profits stemming from efficiency improvements for a reasonable period that provides EDBs with their principal incentives to innovate and invest. In the context of the DPP, this will be achieved by encouraging regulated EDBs to outperform the X-factor by allowing them to retain all or part of the benefit from doing so for a period of time. The Commission's current proposal is for efficiency gains to be shared immediately with consumers at the end of the relevant regulatory period. Specifically, at the conclusion of a period those EDBs with an estimated return on investment above the 'upper bound' of the relevant return band

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<sup>14</sup> Section 52A(1)(b) also charges the Commission to ensure that EDBs have incentives to improve efficiency.

<sup>15</sup> Conference transcript, p 292-293.

(eg, a WACC range) will receive a starting price adjustment to take them back down to the upper bound.

42. In other words, a business that improves its capital or operating efficiency (and consequently its return on investment) may be subjected to a  $P_0$  adjustment at the end of the regulatory period whereby those gains are shared with customers. What appears to be implicit in the Commission's approach is that only being brought back to the upper bound (eg, the 75th percentile of the WACC range rather than, say, the mid-point) will allow the EDB to continue to share in those efficiency gains beyond that regulatory period. However, this proposal may nonetheless discourage businesses from pursuing efficiency gains:
  - 42.1 Firstly EDBs will not have a consistent incentive to improve their efficiency across the entire regulatory period, because efficiency gains that are made towards the end of a regulatory period may be shared with consumers shortly thereafter. These timing problems potentially give rise to significant dynamic inefficiencies.
  - 42.2 Secondly, the approach relies on a particular characterisation of the WACC band, ie, that businesses will be prepared to invest in the pursuit of efficiency gains if it is only being brought back to the upper bound of the WACC range.
43. As the Commission has acknowledged, in order to provide regulated businesses with ongoing incentives to operate efficiently across a regulatory period regulators elsewhere (including in Australia) have introduced ECMs. Although designs differ across jurisdictions, the common feature of such mechanisms is that a business that makes efficiency gains relative to a benchmark set at the outset of a regulatory period is able to carry those gains over into a following regulatory period. In principle, Orion would support the introduction of such a mechanism to promote incentives to share efficiencies between regulatory periods.
44. However, we recognise that the atypical New Zealand context presents many practical challenges for the introduction of an ECM, many of which the Commission has highlighted. Two key practical challenges are:
  - 44.1 the absence of explicit expenditure forecasts against which to measure individual businesses efficiency performance; and
  - 44.2 the potential for businesses to switch between the DPP and a CPP over time.

45. We also acknowledge that the DPP is intended to be a relatively low cost form of regulation and that developing a 'low cost ECM' for the DPP will be difficult. However we do not necessarily consider these obstacles to be insurmountable. Indeed, we note that Vector has set out a preliminary proposal in an earlier submission<sup>16</sup> of two possible approaches which may have some merit. We consider that further engagement with the Commission – including in workshops – to explore this issue would be useful.
46. It is possible that such a process may conclude that it is impracticable to introduce a low cost ECM for the DPP. In that event, we consider that it will be necessary to investigate other ways to better allow businesses to share in the fruits of efficiency gains. One possibility might be for the Commission to explore the reasons for a firm's return on investment exceeding the upper bound before undertaking a  $P_0$  adjustment, eg, if it was precipitated by efficiency gains, then an adjustment might be reduced or deferred.

## **6. Allocation of common costs**

47. In this section we discuss the manner in which costs that are common across multiple business activities are allocated in workably competitive markets, and the resulting implications for the Commission's approach to allocating costs that are common between regulated and unregulated activities. We also examine the treatment of economies of scope arising from mergers between regulated businesses.

### *Cost allocation in workably competitive markets*

48. In a workably competitive market, a company which is able to obtain economies of scope by making investments in other activities will benefit from higher profits. In time, a rival will generally be able to also attain those scope economies, so that those efficiencies are passed through to customers. However, 'first movers' will benefit from higher profits in the interim. Moreover, in some circumstances, rivals will be unable to 'catch up', allowing first movers to retain those additional profits in perpetuity. The long-term market outcome will be determined by:

- 48.1 whether the synergy in question is 'overwhelming', such that all businesses in an industry can be expected to restructure to achieve it; and

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<sup>16</sup> Vector Ltd, *Submission to the Commerce Commission on the Reset of Default Price-Quality Path for EDBs Discussion Paper*, 17 July 2009, paras 35 – 45.

- 48.2 the length of time that other businesses can be expected to take to replicate that synergy, with attendant effects on prices.
49. For example, it was observed at the IM conference that some New Zealand supermarkets decided to offer banking services.<sup>17</sup> Assuming that the relevant markets are workably competitive, one might expect the following outcomes:
- 49.1 in the short-term, grocery prices would continue to be set by ‘stand-alone’ supermarkets, and for ‘first mover’ supermarkets that offer banking services to benefit from the resulting economies of scope; and
- 49.2 in the longer-term, either:
- (a) the synergies from supplying bank services will be overwhelming, in which case most (possibly all) other supermarkets would begin also to supply banking services, putting downward pressure on grocery prices; or
  - (b) banking services will *not* become ubiquitous in supermarkets (ie, if the synergies are not overwhelming), in which case grocery prices would continue to be set by ‘stand-alone’ supermarkets, and ‘joint’ providers would continue to accrue greater profits.
50. In other words, the ways in which economies of scope are shared with consumers in workably competitive markets do not translate readily into a set of principles that the Commission can employ to allocate such efficiencies between regulated and unregulated activities.
51. Indeed, the Commission’s proposed ‘two-stage’ materiality threshold for allocating common costs is only *partially* reflective of a workably competitive market outcome. The proposal’s appeal is that it enables the avoidable cost allocation methodology (**ACAM**) to be retained where unregulated activities are peripheral. However, its potential weakness is that when unregulated activities result in a material level of common costs and unregulated revenue (however defined), no consideration is given to whether:
- 51.1 the unregulated activity in question involves an overwhelming synergy that is expected to become widespread in the industry; or

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<sup>17</sup> Conference transcript, pp 295 – 300.

- 51.2 whether it represents a bespoke activity that is unlikely to be replicated on a wide-scale.
52. This distinction is important because, in a workably competitive market, only the former would be expected to translate into lower prices for the 'primary' activity for the reasons described above. In consequence, investments in bespoke or 'idiosyncratic' investment activities that are unlikely to become commonplace in the lines sector should not necessitate any common cost allocation methodology other than ACAM. The Commission's two-step approach does not account for this important subtlety. A third step should therefore be added. Specifically, if the materiality threshold is met, before contemplating any departure from ACAM, the Commission should also satisfy itself that the activity in question is likely to become widespread in the industry. If it is not, then:
- 52.1 a workably competitive market outcome is unlikely to involve those economies of scope being shared with the consumers of the regulated service; and
- 52.2 there is no cause to deviate from ACAM, notwithstanding the material scale of the unregulated activity.
53. Finally, even if an unregulated activity is anticipated to become widespread, a workably competitive market outcome would not involve returns from unregulated activities being immediately expropriated. Rather, businesses could reasonably expect to retain scope economies for a period (potentially an extended period). For this reason, there should also be a fourth step in the methodology that allows suppliers of regulated and unregulated services to retain the economies of scope from joint service provision for a period before passing them through to consumers.

*Common costs following mergers and acquisitions (Question 53)*

54. We anticipate that a similar methodology will also be needed to enable the synergies resulting from mergers between regulated businesses to be retained for a period. Specifically, newly merged suppliers of regulated services should be permitted to retain the resulting economies of scope for a period before passing them through to consumers so as to provide appropriate incentives for efficient industry consolidation.
55. In our view, any common cost methodology which does not include these (or similar) additional steps risks unduly deterring investment in unregulated goods and services in a manner inconsistent with s 52T(3) of the Act. This deterrent effect is likely to be acute in the electricity distribution sector, where many investments will be distinct from core

regulated services, and will often be specific to a particular lines business. In these circumstances, any reduction in the anticipated return on investment may be sufficient to prevent a potentially beneficial investment from occurring. For example, if a lines business did not anticipate a reasonable return on any broadband-based initiative, it will not invest. The result is a potential reduction in dynamic efficiency.

56. For these reasons we would urge the Commission to exercise caution before employing a methodology that involves any other off-setting reduction in regulated revenue to account for profits earned from unregulated activities.

*Views on Ofgem proposal for cost allocation (Questions 69, 70, 71)*

57. In particular, the approach proposed by Ofgem that is cited by the Commission exhibits a number of significant problems. The Ofgem proposal is for a proportion (eg, 50 per cent) of profits from unregulated activities to be deducted from the allowable revenues from regulated activities. Although this is certainly preferable to an approach that involved fully off-setting profits from unregulated activities against regulated revenues, the Ofgem proposal still has significant shortcomings:
- 57.1 it does not contain a materiality threshold, and so may impose significant additional regulatory costs in order to account for what may be only peripheral unregulated activities;
  - 57.2 it may discourage businesses from investing in unregulated activities, because it reduces the overall return that can be expected from those activities, which may reduce dynamic efficiency;
  - 57.3 it contemplates potentially reducing regulated prices to a level below the efficient costs of providing regulated services, which may reduce allocative efficiency, ie, in the context of electricity lines businesses it may result in either in increased demand for electricity by end consumers, or higher profits for electricity retailers if those cost reductions are not passed through;
  - 57.4 it contemplates an immediate reduction in regulated revenues, when businesses in workably competitive markets may be able to retain all the additional profits for an extended period of time, ie, the Ofgem proposal is not necessarily consistent with a workably competitive market outcome; and
  - 57.5 it is possible that an investment in an unregulated activity will not make a positive return in its early years, but will be profitable in later

years, eg, an investment in broadband technologies is likely to be heavily reliant on customer uptake, which may be modest at first and pick up in later years, yet the proposal does not involve any adjustment for past losses.

58. For these reasons, we have significant reservations about the appropriateness of the Ofgem proposal.
59. If such an approach was to be seriously considered by the Commission, we believe that it would need to be modified so as to:
  - 59.1 incorporate a materiality threshold;
  - 59.2 apply only to unregulated activities characterised by overwhelming efficiencies, that are anticipated to become widespread;
  - 59.3 allow businesses to retain 100 per cent of the benefits from unregulated activities for a period, consistent with outcomes in workably competitive markets, noting that this may be a significant period of time; and
  - 59.4 recognise any past losses that have been incurred in the provision of the activity.
60. Given the complications involved in making such modifications, the better approach in our view would be for the Commission not to allocate any proportion of profits from unregulated activities to the regulated revenue requirement. This would ensure that no investments were unduly deterred, and that allocative inefficiencies did not result from over-consumption of the regulated service. Moreover, given that the Commission is required to produce a common cost allocation methodology it is not clear to us why it would need to consider other ways of accounting for the profits arising from unregulated activities.

## **7. Asset valuation**

61. We turn now to the issues raised at the IM conference regarding asset valuation, ODV, and the hypothetical new entrant (**HNE**) standard.
62. As we noted in its submission on the IM discussion paper, the approach to asset valuation which is most consistent with outcomes produced in workably competitive markets is “an up-to-date 2010 ODV ... [which] would reflect the cost that would be faced by a hypothetical new entrant

supplanting an incumbent by deploying modern equivalent infrastructure".<sup>18</sup>

63. It was contended by one of the experts assisting the Commission at the IM conference that there is little, if any, correlation between HNE costs and market value of assets in a workably competitive market.<sup>19</sup> For the reasons set out in paragraphs [16] to [18] and in more detail in the accompanying NERA report, this contention is incorrect. Rather, in workably competitive markets, asset values either will already correspond to the ODRC of an HNE or, to the extent a market is in temporary disequilibrium, a re-alignment process will be under way. In either event, the long-run equilibrium outcome is one that is characterised by asset values that reflect the applicable ODRC, and the related HNE concept.

#### *Retrospectivity*

64. We turn next to the questions raised at the IM conference by the Commission about retrospectivity and the proper role of s 53ZD, and address in particular Question 56: whether it would be impermissibly retrospective to use a 2004 ODV and update it by inflating it on the basis of an index such as the CPI.
65. In short, it would not be illegally retrospective to update a 2004 ODV using an index. No general legal principle or provision of the Act would deem this use of historic information to be retrospective if it was used for a proper purpose under Part 4, ie, setting an opening asset value and, in turn, starting prices to apply from 2010.
66. However, it would be impermissibly retrospective for the Commission to identify revaluation gains that it does not consider were properly booked as income in a *previous* regulatory period and to seek to reflect those gains in the DPP, eg, by resisting updates to the initial regulatory asset base or setting a lower starting price.
67. We explain the detail of these conclusions below.
68. At a high level, there is a legal presumption that legislation will not have retrospective effect, i.e. impose burdens or remove benefits. For example, if Parliament enacts a law creating a new criminal offence it is presumed that only applies to conduct done *after* the law is enacted. This is a strong

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<sup>18</sup> Orion New Zealand Ltd, *Submission on Input Methodologies Discussion Paper* 14 August 2009 at para 10.

<sup>19</sup> Conference transcript, pp 350 – 353.

presumption but ultimately it is no more than a presumption – if Parliament uses clear words then it may legislate retrospectively.

69. This general legal principle is specifically reinforced in Part 4 of the Act: the Commission is forbidden from using the starting price to recover past excessive profits (s 53P(4)). Rather than overriding the general presumption against retrospectivity the Act reinforces it.
70. The Act does, however, expressly permit the Commission to consider any costs, revenue, and asset valuation during the last 7 years through the application of s 53ZD. In other words, the Commission is expressly allowed to look at any activity, revenue or asset valuation information from the past 7 years when considering things such as the appropriate RAB or x-factor, but it may not reduce starting prices simply to punish EDBs perceived to have historically overcharged.
71. To use a specific example which was raised at the IM conference, the effect of s 53ZD is that, as a matter of logic, one would expect identical firms with identical RABs to be regulated in the same way regardless of past pricing behaviour.<sup>20</sup>

*Things which are not retrospective*

72. We see the legislation as being clear on this point. The Act permits the Commission to take into account prior pricing and valuations (we assume “activity” is broad enough to include pricing data) when considering things such as RAB, starting price, and X-factor, so long as:
- 72.1 prior pricing information is used only for a *proper purpose* under Part 4 (i.e. setting a forward-looking DPP); and
- 72.2 the Commission always has regard to the explicit limit contained in s 53P(4).
73. If those two statutory restrictions are respected then, in Orion’s view, there is no risk of illegal retrospectivity if Commission uses historical information when setting a future price-path.

*Risk of retrospectivity*

74. The Commission is not permitted to use historic information for an improper purpose – such use is impermissible and constitutes an error of

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<sup>20</sup> See Conference transcript p 358, in particular Andy Nicholls’ exchange with David Boldt.

law. By “improper purpose” we mean a purpose which contravenes s 53P(4) or which contravenes the general legal rule against retrospectivity. In particular, it would be an improper purpose for the Commission to look back, seek to identify revaluation gains (which in any event is an exercise fraught with risk because of the different statutory context in which those prices were set), and then to assess whether those were reflected in historical pricing in order to set starting prices. Section 53P(4) explicitly prohibits such an exercise.

*Conclusion on retrospectivity (Question 56)*

75. In short, while it would be permissible for the Commission to look to 2004 ODV (and, in rolling it forward, to take into account revaluation gains), if the Commission then analyses the extent to which those revaluation gains were booked against income prior to 2009 and – if it concludes not all gains were booked – the Commission reduces the DPP starting price, then the principle against retrospectivity is infringed.

*Problems with 2004 ODV (Question 72)*

76. We turn now to the purpose and methodology underpinning the 2004 ODV, and specifically to the deficiencies of the 2004 ODV. At the IM conference several EDBs and their advisors referred to the concerns<sup>21</sup> expressed by EDBs at the time about the 2004 ODV and the recognition by the Commission of the potential limitations of the 2004 ODV.
77. In summary, and as we have previously submitted:
- 77.1 the 2004 ODV was determined under a different statutory context and for a different statutory purpose;
  - 77.2 there were substantial discrepancies between the valuations yielded by the 2004 ODV and valuations under other accepted valuation methodologies such as FRS-3;
  - 77.3 the Commission recognised that the emphasis on *consistency* of ODV valuations under the information disclosure regime would come at the expense of accuracy in the 2004 ODV;
  - 77.4 the Commission stated that 2004 ODV would only be the *starting point* for valuation in any post-breach enquiry; and

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<sup>21</sup> Conference transcript, pp 334-343

- 77.5 it was always intended for an EDB to have the opportunity to provide during post-breach processes evidence of asset replacement values where those values differed from the 2004 ODV in light of business-specific circumstances.
78. The Commission must not now ignore these deficiencies and potential inaccuracies resulting from the 2004 ODV handbook. The concerns are well documented in the Commission process in developing the 2004 ODV handbook. The statutory context under Part 4 is different and the 2004 ODV is (as we have previously submitted) not fit for the purpose that has been suggested for it under the new DPP regime.
79. We explain below the historical context of the 2004 ODV and the Commission's recognition of its deficiencies and inaccuracies.

*Historical context of 2004 ODV*

80. On 11 September 2003, the Commission issued a paper (Issues Paper) commencing the consultation process in relation to the development of an ODV Handbook that would specify the details and application of the ODV methodology for valuing certain assets for the purposes of Part 4A of the Act.<sup>22</sup> The Commission engaged Parsons Brinckerhoff Associates (PBA) as its principal consultant to prepare an ODV Handbook.
81. On 23 December 2003, the Commission issued its draft ODV Handbook<sup>23</sup> and an associated draft report<sup>24</sup> by PBA, and invited written submissions on both documents from interested parties<sup>25</sup>. The Commission proposed to use valuations prepared under the ODV Handbook in relation to both the targeted control regime (under subpart 1 of Part 4A of the Act) and the information disclosure regime (under subpart 3 of Part 4A).
82. Orion and other EDBs produced comprehensive submissions on the extensive problems with the proposal. In our submission of 11 February 2004 in response to the 23 December 2003 consultation on the draft handbook, we noted that:

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<sup>22</sup> Commerce Commission, *Regulation of Electricity Lines Businesses, Development of a Handbook for Optimised Deprival Valuation of Electricity Lines Business System Fixed Assets, Issues Paper* 11 September 2003.

<sup>23</sup> Commerce Commission, *Handbook for Optimised Deprival Valuation of System Fixed Assets of Electricity Lines Businesses, Draft*, 23 December 2003.

<sup>24</sup> Parsons Brinckerhoff Associates, *Development of a Handbook for Optimised Deprival Valuation of System Fixed Assets of Electricity Lines Businesses, Draft Report Prepared for the Commerce*

<sup>25</sup> Commerce Commission, *Regulation of Electricity Lines Businesses, Invitation for Submissions on Draft Handbook for Optimised Deprival Valuation of System Fixed Assets*.

*“the application of the Handbook must result in a credible and realistic ODV, taking full account of the real costs faced by Orion and other ELBs in constructing their distribution networks. If this is not achieved, there will be cost and value distortions in the electricity industry that will impinge on the NZ economy, and there is likely to be a negative reaction by investors to investing in and maintaining electricity distribution assets. These assets are a vital component of the NZ economy.*

*In Orion’s view, the proposed Handbook will not meet the purpose requirements in a number of respects, particularly with respect to many of the per-kilometre replacement costs proposed for lines and cables. They are too low.”<sup>26</sup>*

83. We also provided the Commission with our ODRC, done in accordance with FRS-3, and compared our FRS-compliant valuation to that derived with the ODRC in the proposed handbook. We reproduce this comparison.

Table 1

Asset class	ODRC per proposed Handbook	Discrepancy	ODRC per FRS-3
	\$m	\$m	\$m
11kV cables	131.6	45.0	176.6
11kV district substations	13.6	3.8	17.4
LV building substations	2.3	1.3	3.6
LV cables	68.7	26.7	95.4
33kV lines	9.4	2.5	11.9
Distribution transformers	50.0	(5.2)	44.8
All other assets, including land	<u>247.9</u>	<u>(0.9)</u>	<u>247.0</u>
<b>Totals</b>	<b>523.5</b>	<b>73.2</b>	<b>596.7</b>

84. The table clearly shows substantial differences in the valuation under different methodologies, with a particularly significant discrepancy in the 11kV cable valuation.
85. On 12 March 2004, in response to issues raised by EDBs, the Commission announced it would hold a three-day conference in April 2004 on the ODV Handbook, to provide an opportunity for interested parties to present their

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<sup>26</sup> Orion New Zealand Ltd, submission on *Handbook for Optimised Deprival Valuation of System Fixed Assets of Electricity Lines Businesses*, 11 Feb 2004, page 4.

submissions on the draft ODV Handbook and on PBA's associated draft report.

86. Prior to the April conference, on 24 March 2004 the Commission issued a process paper<sup>27</sup> which advised it intended to issue an ODV Handbook *after* mid-May 2004 (being the finalised version of the draft ODV Handbook), and at the same time (or soon after) a companion report supporting the ODV Handbook. The ODV Handbook was intended to take into account matters raised by interested parties in submissions, during the Conference, and in cross-submissions following the Conference. The process paper also signalled that all EDBs would be required to prepare an ODV valuation as at the end of their 2003/04 disclosure year using this Handbook.
87. Orion, like other EDBs, put considerable effort into articulating the problems with the proposed valuation handbook at the April conference and in subsequent post-conference submissions.
88. On 19 May 2004 the Commission issued a revised process paper.<sup>28</sup> The purpose of the paper was to outline revisions to the previously proposed process and timetable for completing the ODV Handbook. The Commission then decided to undertake *another* consultation round on the draft ODV Handbook. This revised ODV handbook process was in response to the matters raised in submissions, during the conference, and in post-conference submissions.
89. As a result, of this additional consultation, the planned publication of the new ODV handbook for EDBs was delayed from May 2004 to August 2004.
90. In July 2004 Orion responded to the Commission on the revised draft handbook and the replacement cost report. While we welcomed many of the changes proposed in the handbook there remained a number of significant points of difference.

#### *Principal purpose of the 2004 Valuations*

91. The principal purpose of the 2004 estimates was to produce *consistent and comparable valuations* to assist the implementation of *non-binding*

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<sup>27</sup> Commerce Commission, *Regulation of Electricity Lines Businesses, Information Disclosure Regime, Updated Process Paper* 24 March 2004.

<sup>28</sup> Commerce Commission, *Regulation of Electricity Lines Businesses, Optimised Deprival Valuation Handbook, Process Paper* 19 May 2004.

*price thresholds* – an entirely different set of arrangements to the currently proposed use.

92. The issue of departing from the ODV valuation where an EDB was subject to a post-breach inquiry, was discussed by the Chair<sup>29</sup> of the Commission and Orion's economic advisor, Greg Houston, at the April 2004 conference.<sup>30</sup>
93. The inaccuracies in the resulting ODV values based on the 2004 handbook were readily acknowledged by the Commission, but were considered to be acceptable for the limited purpose of deriving *thresholds* under the Part 4A regime.

*"The consistency of valuations is a particularly important principle for the purpose of information disclosure, the requirements of which apply to all lines companies. However the Commission recognises that additional prescription to achieve consistent valuations may come at the expense of allowing business-specific circumstances to be more accurately taken into account. Consequently, the Commission may take business-specific circumstances into account for the smaller number of lines businesses subject to a post-breach inquiry. For instance, during a post-breach inquiry, the Commission intends – where appropriate and relevant – to use the opening ODV valuations prepared using the ODV Handbook as the **starting point** for deriving the valuation of the system fixed assets component of the regulatory asset base. **Nevertheless, lines businesses could provide the Commission with robust evidence to support asset replacement costs, asset lives or adjustment factors that are materially different from the standard values or procedures prescribed in the ODV Handbook, although the burden of proof will remain with the business.**"<sup>31</sup> (Emphasis added)*

94. The Commission was clear that business-specific circumstances would be taken into account during a post-breach inquiry, before a decision was made to implement *control*.
95. Orion was not investigated following a breach of its price threshold, and therefore was never afforded the opportunity to challenge the efficacy of our 2004 ODV estimate in the context of a post-breach inquiry.

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<sup>29</sup> Ms P Rebstock

<sup>30</sup> Transcript of Commerce Commission conference, 14-16 April 2004, pages 347 to 354.

<sup>31</sup> Commerce Commission, *Regulation of Electricity Lines Businesses – A Companion Report to the Handbook for Optimised Deprival Valuation of System Fixed Assets of Electricity Lines Businesses*, 31 August 2004, page 6.

96. The Commission conveyed a similar message in 2003. It indicated that because price thresholds were only ‘screening mechanisms’, there would be sufficient opportunity to correct any potential deficiencies in underlying methodologies during post-breach investigations:

*“[A]t the investigation stage of the targeted control regime, **lines businesses will have the opportunity to explain such issues ...***

*... “[I]t is likely to be less important to ensure that the parameters derived are precise and correct in a thresholds regime. **Distribution businesses that were wrongly caught by the threshold would have an opportunity to explain their position to the Commission during an investigation.**”*

<sup>32</sup> (Emphasis added)

97. In other words, although the 2004 ODVs were thought to provide a reasonable foundation for determining *non-binding price thresholds*, they were repeatedly acknowledged as being unsuitable for a binding control path. At best, they would form a ‘starting point’ for any opening asset valuation. These repeated assurances created the legitimate expectation that before implementing control, the Commission would undertake to revisit the parameters underpinning a business’s asset value (and other parameters comprising its price threshold), and to correct material deficiencies.
98. The Commission recognised the deficiencies in 2004 ODV but considered consistency was a more important objective under the thresholds regime. It would be inappropriate now to use the inaccurate 2004 ODVs as the basis for a new control regime. If the Commission remains minded to roll forward the 2004 ODV estimates to establish opening asset values for the implementation of control it must first address those deficiencies.

## **8. Tax**

99. In this section we address the issues raised at the IM conference regarding the selection of an appropriate regulatory tax approach and whether some EDBs are disadvantaged by a tax expense approach if the tax expense allowance is insufficient to cover actual tax payable amounts.

*Appropriate regulatory tax approach (Question 58)*

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<sup>32</sup> Commerce Commission, *Regulation of Electricity Lines Businesses, Targeted Control Regime, Resetting the Price Path Threshold, Discussion Paper*, 30 May 2003, paragraphs [14] and [7.12].

100. As we submitted in our response to the IM discussion paper, we consider a tax expense approach is preferable to tax payable. We say this because:

100.1 a tax expense approach is much simpler than a tax payable methodology;

100.2 a tax expense approach smooths revenues over time and incentivises investment;

100.3 a tax expense approach permits the Commission to be “agnostic” about the actual tax position of an EDB;

100.4 tax payable is contingent on often-changing accounting standards;

We also prefer tax expense despite any “disadvantages” which may accrue to EDBs if the tax expense allowance is insufficient. However it is important to note that our support for tax expense is conditional on tax expense being part of a coherent HNE-based regulatory framework as we have outlined elsewhere in this cross submission.

101. We explain below the reasoning underpinning these conclusions.

*Why tax expense is the appropriate regulatory tax approach*

102. The tax expense approach facilitates the pursuit of tax efficiencies because each EDB is free to pursue those efficiencies and keep them. Likewise any tax inefficiencies (for example any inefficiencies as a result of overseas ownership) will be borne by each EDB.

103. Using tax expense, consistent with the HNE principle, enables the Commission to be agnostic about each EDB's actual tax position. In concept, this is a very similar principle to the Commission being agnostic about each EDB's actual financing arrangements.<sup>33</sup>

104. In broad terms, we consider that the treatment of regulatory taxation is less important (material in terms of size) than certain other elements of building blocks. In particular we consider that the opening RAB and the WACC are much more important than regulatory taxation. Regulatory taxation should flow naturally and simply from the fundamental building blocks of the framework. In particular, we consider that the regulatory expense taxation calculation should be built up from a consistent asset base, particularly in relation to depreciation expense, so that all EDBs are treated consistently.

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<sup>33</sup> See Greg Houston's comments, Conference transcript at p 363.

105. Depreciation expense is generally the most significant area where taxable profits may vary from reported financial profits. This variation is driven largely by the different depreciation rates applicable for taxation purposes as compared with the rates commonly adopted by EDBs for financial reporting purposes. Another significant contributor to the difference between taxation depreciation for otherwise comparable networks is whether an EDB's network has been recently acquired, is a long held asset and/or has been revalued (for financial reporting purposes). In order to achieve consistency between EDBs for regulatory purposes, we consider that regulatory taxation should be calculated by treating all EDBs as HNEs.
106. Further, simplicity can be achieved by utilising the regulatory depreciation as a proxy for the taxation depreciation. Actual tax depreciation (as per an EDB's filed tax return) has little relevance to current reported profitability where deferred taxation is adopted. In these circumstances, the timing differences between taxation depreciation and financial or regulatory depreciation are taken up in the deferred tax liability for reporting purposes, leaving the taxation expense to reflect taxation on reported profits plus or minus the taxation effect of permanent differences.
107. We note also that the IAS 12 income tax standard is itself currently under review and that even the measurement and treatment of "temporary differences" for carrying values above the original tax cost base may change in the medium term under IFRS and we note that the industry and FRSB has recently submitted to the IASB on this very issue. In short, the underlying assumptions of what deferred tax accounting actually is cannot be said to be stable and enduring.
108. Given that any updated RAB value is likely to be (but might not be) based on straight-line depreciation, from a simple and practical perspective, using the same regulatory depreciation basis as a proxy for regulatory taxation depreciation should be acceptable for regulatory purposes.

*Tax expense preferable despite risk of disadvantaging some EDBs (Question 59)*

109. Utilising the tax expense approach as opposed to the taxation payable approach may "disadvantage" some EDBs. EDBs, such as Orion, which have networks that have been held for many years, will have lower taxation asset bases than the updated ODV values of their networks. Utilising the taxation expense method will therefore produce a lower regulatory taxation cost and therefore a higher regulatory ROI than would be the case under the taxation payable approach. Such an outcome would leave Orion and other similar EDBs more exposed to price control mechanisms.

110. Alternatively, EDBs that have purchased their networks based on multiples of updated ODVs greater than 1 will be "advantaged". The regulatory taxation expense would be greater than a taxation payable approach and therefore would give rise to a lower regulatory ROI and a lesser exposure to price control mechanisms. Of course this needs to be seen in light of a bigger picture - that these EDBs paid more for those assets than their regulatory values and so they would be "disadvantaged" to a far greater extent on the more important items (RAB, WACC, regulatory depreciation expense) in any building blocks analysis.

*Conclusion on tax*

111. Notwithstanding the variations described above, we consider that the taxation expense method is the most appropriate regulatory tax approach. We believe this because tax expense can be utilised to treat all EDBs as HNEs - with taxation calculations that are consistently based on the same updated ODV values utilised elsewhere in the regulatory framework and regardless of any particular circumstances of individual EDBs. We also note that the Commission's preliminary view that the partial building blocks approach is not designed to be exact (for example the use of safe harbour ROI "bands") - and so the preferred regulatory tax approach should be seen in this light.

**Concluding remarks**

112. Thank you for the opportunity to make this submission. Orion does not consider that any part of this submission is confidential. If you have any questions please contact: Dennis Jones (Industry Developments Manager), DDI 03 363 9526, email [dennis.jones@oriongroup.co.nz](mailto:dennis.jones@oriongroup.co.nz).

Yours sincerely



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