



Takeovers Code (Prime Infrastructure Networks (New Zealand) Limited) Exemption Notice 2004

Pursuant to section 45 of the Takeovers Act 1993, the Takeovers Panel gives the following notice (to which is appended a statement of reasons of the Takeovers Panel).

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Notice

- 1 Title**
This notice is the Takeovers Code (Prime Infrastructure Networks (New Zealand) Limited) Exemption Notice 2004.
- 2 Application**
This notice applies to acts or omissions occurring on or after 20 September 2004.
- 3 Expiry**
This notice expires on the close of 31 March 2005.
- 4 Interpretation**

 - (1) In this notice, unless the context otherwise requires,—
Act means the Takeovers Act 1993

capital bond cash consideration means a cash sum offered to foreign exempt security holders and small security holders as consideration for Powerco capital bonds under the offer

Code means the Takeovers Code approved by the Takeovers Code Approval Order 2000 (SR 2000/210)

foreign exempt security holder means a holder of Powerco shares or Powerco capital bonds whose address on Powerco's share register or on Powerco's capital bond register, as applicable, is not in New Zealand or the United Kingdom

offer means the scrip and cash full takeover offer by Prime Infrastructure NZ for Powerco

Powerco means Powerco Limited

Powerco capital bond means an unsecured subordinated capital bond of Powerco

Powerco share means an ordinary share in Powerco

Prime Infrastructure NZ means Prime Infrastructure Networks (New Zealand) Limited

Prime Infrastructure NZ SPARCS means the subordinated prime adjusting reset convertible securities issued by Prime Infrastructure NZ and offered as consideration under the offer

share cash consideration means a cash sum offered to foreign exempt security holders and small security holders as consideration for Powerco shares under the offer

small security holder means a person who would receive an unmarketable parcel of Prime Infrastructure NZ SPARCS if the person—

- (a) was offered Prime Infrastructure NZ SPARCS under the offer; and
- (b) accepted the offer of those Prime Infrastructure NZ SPARCS

takeover notice means the notice of the offer given by Prime Infrastructure NZ to Powerco under rule 41 of the Code on 20 September 2004

unmarketable parcel means a number of Prime Infrastructure NZ SPARCS that is less than the minimum holding of Prime Infrastructure NZ SPARCS required by Rule 7.1.11 of the NZX Listing Rules, or otherwise determined by New

Zealand Exchange Limited, if the Prime Infrastructure NZ SPARCS were listed on the NZDX Market.

- (2) Any term or expression that is defined in the Act or the Code and used, but not defined, in this notice has the same meaning as in the Act or the Code.

5 Exemption from rule 20 of Code for foreign exempt security holders

Prime Infrastructure NZ is exempted from rule 20 of the Code to the extent that the consideration offered to foreign exempt security holders under the offer is cash only.

6 Condition of exemption in clause 5

The exemption in clause 5 is subject to the condition that the takeover notice and the offer are accompanied by a report from an independent adviser approved by the Panel certifying that, in the independent adviser's opinion,—

- (a) the share cash consideration offered to foreign exempt security holders has an equivalent value to the consideration offered to the holders of Powerco shares who are not foreign exempt security holders; and
- (b) the capital bond cash consideration offered to foreign exempt security holders has an equivalent value to the consideration offered to the holders of Powerco capital bonds who are not foreign exempt security holders.

7 Exemption from rule 20 of Code for small security holders

Prime Infrastructure NZ is exempted from rule 20 of the Code to the extent that the consideration offered to small security holders under the offer is cash only.

8 Condition of exemption in clause 7

The exemption in clause 7 is subject to the condition that the takeover notice and the offer are accompanied by a report from an independent adviser approved by the Panel certifying that, in the independent adviser's opinion,—

- (a) the share cash consideration offered to small security holders has an equivalent value to the consideration

- offered to the holders of Powerco shares who are not small security holders; and
- (b) the capital bond cash consideration offered to small security holders has an equivalent value to the consideration offered to the holders of Powerco capital bonds who are not small security holders.

Dated at Wellington this 28th day of September 2004.

The Common Seal of the Takeovers Panel was affixed in the presence of:

[L.S.]

J. C. King,
Chairperson.

Statement of reasons

This notice applies to acts or omissions occurring on or after 20 September 2004 and expires on 31 March 2005.

The Takeovers Panel has exempted Prime Infrastructure Networks (New Zealand) Limited (**Prime Infrastructure NZ**), subject to conditions, from compliance with certain aspects of rule 20 of the Takeovers Code (the **Code**). Rule 20 requires an offer to be made on the same terms and provide the same consideration for all securities of the same class.

The exemptions in this notice relate to a full takeover offer by Prime Infrastructure NZ for all the ordinary shares and unsecured subordinated capital bonds in Powerco Limited (**Powerco**). As consideration for the securities in Powerco, Prime Infrastructure NZ proposes to offer—

- for Powerco shares, one of the following alternatives, at the election of the shareholder:
 - 100% subordinated prime adjusting reset convertible securities (**Prime Infrastructure NZ SPARCS**) to be issued by Prime Infrastructure NZ; or
 - 62.5% cash and 37.5% Prime Infrastructure NZ SPARCS (subject to a cash cap and scaling); or

- 100% cash (subject to a cash cap and scaling); and
- for Powerco capital bonds, 100% Prime Infrastructure NZ SPARCS.

The first exemption from rule 20 of the Code applies to offers to Powerco shareholders and Powerco capital bondholders whose address on the Powerco share or Powerco capital bond register, as applicable, is outside New Zealand or the United Kingdom. The exemption allows the consideration offered to those security holders to be limited to cash only.

The Takeovers Panel considers that it is appropriate to grant the first exemption from rule 20 for the following reasons:

- it is not practicable for Prime Infrastructure NZ to make an offer to all Powerco shareholders and Powerco capital bondholders on the Powerco registers on the same terms, as required by rule 20, because of the costs of complying with the securities laws that apply in various jurisdictions; and
- the conditions of the exemption require that the exempt security holders are offered equivalent cash consideration and accordingly they are not disadvantaged by not being able to accept an offer of the Prime Infrastructure NZ SPARCS.

The Takeovers Panel considers that the first exemption from rule 20 is consistent with the objectives of the Code because—

- the exemption is consistent with the principle of providing equal consideration to all security holders of the same class, while recognising the unreasonable costs of having to comply with the securities laws that apply in various jurisdictions in circumstances in which securities are offered as consideration and security holders have addresses outside of New Zealand; and
- it is important for competition for the control of code companies that offerors are not precluded from offering securities as consideration in takeover transactions.

The second exemption from rule 20 of the Code allows the consideration offered to small security holders who would receive an unmarketable parcel of Prime Infrastructure NZ SPARCS to be limited to cash only. In the absence of a specific exemption from rule 20, Prime Infrastructure NZ would be required to allow persons who accept the offer who are small security holders in Powerco to

elect to receive, or to receive, Prime Infrastructure NZ SPARCS as consideration. If the Takeovers Panel allowed a small security holder to be issued with a parcel that would be an unmarketable parcel once the Prime Infrastructure NZ SPARCS are quoted on the New Zealand Debt Exchange, Prime Infrastructure NZ may breach the NZX Listing Rules.

The Takeovers Panel considers that it is appropriate to grant the second exemption from rule 20 in respect of the offer to small security holders in the interests of market efficiency.

The Takeovers Panel considers that the second exemption from rule 20 is consistent with the objectives of the Code because it retains the principle of providing equal consideration to all security holders in the target company, while at the same time promoting efficiency in the market and reducing costs for offerors and target company security holders.

Issued under the authority of the Acts and Regulations Publication Act 1989.
Date of notification in *Gazette*: 30 September 2004.
This notice is administered by the Takeovers Panel.
