



2 September 2016

Telecommunications Review Team
Communications Policy
Ministry of Business, Innovation & Employment
Wellington

By email: telcoreview@mbie.govt.nz

Telecommunications Act Review: Options Paper

Transpower welcomes the opportunity to submit on the Ministry of Business, Industry and Employment (MBIE) Telecommunications Act Review: Options Paper, July 2016.

Broader application of the principles being applied to the Telco Act review

We support the vision for a *vibrant communications environment that provides high quality and affordable services for all New Zealanders, and enables our economy to grow, innovate and compete in a dynamic global environment*. We consider it applies to all network infrastructure sectors, not just telecommunications. The same is also true for the specific objectives including "regulatory best practice"; and the principles of "clear necessity", "predictability", "proportionality", "transparency and accountability" and "flexibility and technology". All are relevant to network sector regulation and to application by the Commerce Commission under Part 4 of the Commerce Act, and the Electricity Authority under the Electricity Industry Act.

Similarly, we consider concerns about managing "the risk of end-users facing material price increases", "sudden changes in revenue and/or prices can be highly destabilising in the short-term" and "a clear focus on protecting end-users" are principles which also have wider application to distribution and transmission pricing reform.

Convergence of regulatory regimes should help promote regulatory certainty and predictability

We consider that the operation of Part 4 style price regulation for copper and fibre access services has the potential to provide precedent for regulation of regulated suppliers under Part 4 Commerce Act, and vice versa. The proposal to adopt Part 4 style price regulation for fibre and copper access services, modelled on the IPP arrangements currently in place for Transpower, is consistent with our previous submission.

The Commerce Commission already draws on precedent from regulation under one Act for decisions under the other. For example, the UCLL and UBA TSLRIC price determination drew heavily on the Part 4 WACC Input Methodologies.

Similarly, we have referred favourably to aspects of the UCLL and UBA price determinations as a precedent for the regulation of Transpower. The individualised nature of the UCLL and UBA price

determinations means some aspects of the Commission's decisions are more relevant to IPP regulation of Transpower, than the decisions on DPPs and IMs for other regulated suppliers in the electricity and gas sectors.

The closer the proposed new Part 4 style regulation for copper and fibre access services is to Part 4 regulation (and the specific IPP provisions, including grid upgrade approval) the greater the precedent value of decisions in each regime to other, enhancing the level regulatory certainty and predictability over time. The revised IMs (following completion of the current statutory IMs review) would also provide useful precedent for any IMs the Commission would be required to development for copper and fibre access services.

We agree that "*the design of the new fixed line regulatory framework should be consistent with utility-style regulation under Part 4 of the Commerce Act 1986 (the Commerce Act), unless there is a compelling reason to deviate from that framework*". In this respect, we think it is worth considering whether industry-specific factors warrant the Government determining certain matters in legislation, such as the form of control, that have been left to the Commerce Commission under Part 4 of the Commerce Act. Getting the right balance between the roles of Parliament, in setting legislation, and the Commerce Commission, responsible for applying the legislation, is an important component of ensuring a stable and predictable regulatory environment.

Consideration should be given to how well Part 4 works

While we consider that the current Part 4 is operating well we suggest three areas below where improvements could potentially be made.

1. Reviewing the current Merit Appeal provisions in the Commerce Act in light of experience with the High Court Merit Appeal decision.
2. Better articulation of any provisions for IMs. For example, the Courts were critical of a "such as" provision as part of a mandatory requirement (section 52T (1) (c), and the wording created uncertainty about what had to be included in IMs, i.e. whether the Commission needed to establish a Starting Price Adjustment IM. The result was litigation.
3. The Commerce Commission presently holds the view that it cannot introduce new IMs. This would seem like an unnecessary, and unintended, restriction which could be readily resolved through clarification to the existing Part 4 legislation.

It may be desirable, as part of the Telecommunications Act review, for MBIE to broaden its consultation to include engagement with stakeholders in the airports, electricity and gas sectors to establish how well current Part 4 arrangements are working, rather than just transferring them over to the Telecommunications Act.

Please do not hesitate to contact me if you have any queries or would like to discuss the content of this submission.

Yours sincerely



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