
Attachment 4

ELECTRICITY INQUIRY AND TELECOMS INQUIRY

Electricity Inquiry

1. The initial draft report ("E-Report") that was published by the Electricity Inquiry sought, amongst other objectives, to design a package that built on existing institutions and industry protocols (as a way of avoiding major industry upheaval and dislocation) while also seeming like familiar ground to all parties (albeit with a few new landmarks).
2. Broadly, the E-Report emphasises on industry self-regulation, proposing that decision-making be "pushed as close as possible to those with the relevant knowledge, capacity and accountability".
3. The E-Report also recommended:
 - The development of four different types of regulation already in use in the market, namely:
 - Regulation by multi-lateral agreement within the industry, subject to endorsement by the Government;
 - Regulation through ownership, especially ownership by public bodies, including the State, local government and trusts, developing existing controls and direction available to owners, such as Statements of Corporate Intent and trust deeds;
 - Regulation by comparative competition by peer pressure and public opinion, based on improved information disclosure regulations; and
 - Regulation by targeted price control with a comprehensive statutory scheme, building on the Commerce Act.
 - That existing industry governance structures for the wholesale market be replaced with a single industry organisation, in which membership should be compulsory. This organisation must operate against a set of over-arching objectives and principles against which industry rules and decisions could be formulated.
 - The establishment of a body largely independent of the industry in see that the industry operates inline with those objectives and principles.
 - Mechanisms allowing the views of all industry participants, including end-users, to be taken into account.
 - The industry establish an Electricity Ombudsman scheme to apply to retail and distribution companies.
 - The administration of any price controls be undertaken by the Commission which would have the power to impose time-limited price controls on individual distribution companies and Transpower, where it was deemed necessary.
4. The E-Report did however consider it to be unreasonable and unnecessary to apply a universal regulatory regime.
5. In order for the Commission to have the ability to impose price control on individual distribution companies of Transpower, the E-Report further recommended that:
 - The Commerce Act be amended to provide for:
 - The potential application of CPI-X regulations;
 - The necessary procedures to impose price control; and
 - A maximum price control period of five years.
 - The Commission be given the responsibility for developing the criteria and thresholds upon which price control should be imposed.
6. The Government has recently announced its decisions on the Electricity Inquiry, which largely reflect the recommendations contained in the E-Report, namely:
 - Amendments will also be made to the Commerce Act to:
 - Enable the Commission to put Transpower and individual distribution companies under price control if they breach thresholds or criteria determined by the Commission;

- Require the Commission to undertake a re-calibration of asset values for electricity lines and determine its preferred asset valuation methodology;
- Require the Commission to review companies under price control before the end of five years to determine whether price control should be re-imposed; and
- Enable the Commission to use price control techniques such as CPI-X.
- In addition, new legislation will be introduced to provide the Government, if required, with the power to:
 - Empower the Commerce Commission to determine transmission pricing methodologies;
 - Limit fixed charges in the bills of domestic consumers; and
 - Require retailers to offer pre-payment meters at reasonable prices.
- The Government will only use these powers if it is not satisfied that sufficient progress is being made by the industry.
- Electricity lines companies and Transpower are to be placed under price control only if they breach thresholds or criteria to be developed by the Commission.
- The Commission will recalculate distribution and transmission asset valuations on a common basis.

Telecoms Inquiry

7. The corresponding Telecoms Inquiry presented its final report last year ("T-Report").
8. One of the notable features of the T-Report is the recommendation of the establishment of an industry-specific (Electronic Communications) Commissioner, with power to regulate "designated" electronic communications services where general competition law and industry self-regulation cannot provide effective solutions. The Commissioner's recommended functions, which should form part of the regulatory regime, include responsibility for a dispute resolution procedure.
9. The T-Report mirrors to a large extent an earlier draft report, which was released on 29 June 2000 (and, in turn seems to bear a large number of similarities to the changes proposed by the Electricity Inquiry).
10. The T-Report recommends:
 - The establishment of a broad-based Electronic Communications Industry Forum to allow the industry to "self-manage" solutions to common problems.
 - That the Forum be established as an Incorporated Society and operate under general statutory guidelines to promote the long-term interests of existing and potential end-users. A key function of the Forum will be to develop industry standard codes of practice either upon the direction of the Electronic Communications Commissioner or on its own initiative. Codes must be approved by the Commissioner as being consistent with the access objective and may also be subject to review by the Commission.
11. A service would become "designated" and subject to the Commissioner's jurisdiction if it meets certain "designation criteria" - basically where the involvement of the Commissioner would be consistent with facilitating competition, promoting efficient connectivity, and encouraging economically efficient investment in, or use of, infrastructure. The responsibility for making designations would rest ultimately with the Minister of Communications.
12. The Commissioner will be expected to encourage commercial negotiation as the optimal solution. The draft report suggested that the Commissioner may, however, intervene in commercial negotiations where:
 - The Commissioner considers that a commercial agreement between two parties is not consistent with facilitating competition, promoting efficient connectivity, and encouraging economically efficient investment in or use of infrastructure (the "designation criteria"); or
 - One of the parties requests the intervention.