

Discussion Paper
On
Next Generation Networks
(NGN)

Submission from

New Zealand Communications Ltd
(NZCL)

:

NZ Communications Ltd



Introduction:

NZ Communications (NZCL) is investing a very substantial block of new capital to build physical access network infrastructure in New Zealand. Its plans include a significant regional and provincial deployment of access network. It's the first new national network build since the Saturn project was stopped by the competitive reaction of "*pocket pricing*" by the incumbent Telecom, a practice that is illegal in many OECD countries. The impact of the NZ Communications infrastructure investment will be to create real infrastructure, price and innovation competition for the first time in mobile in New Zealand.

The infrastructure deployment qualifies as a Next Generation Network (NGN) using most definitions. The biggest concern that NZCL has is that the Significant Market Power (SMP) that Vodafone and Telecom have is abused to the extent that NZCL cannot compete effectively or efficiently.

Mobile competition is long overdue in NZ. Its 10 years later than in comparable markets due to the woefully inadequate regulatory environment (which has now been adjusted by the 2006 Telecommunications Amendment Act). However there is ongoing concern by investors that the incumbents still have the ability to abuse their Significant Market Power (SMP) and quarantine competition.

The objective of the NZCL contribution to the discussion paper is to ensure that potential and probable abuse of Significant Market Power is addressed during the course of the enquiry and if justified a schedule 3 investigations into SMP is commenced into the problem.

Question 1

What are your views on the approach to development of the market framework and industry consultation that should be considered in New Zealand?

The Commerce Commission quarterly market monitoring illustrates the NZ position in the international telecommunications rankings globally. There is no confusion that the present telecommunications industry structure in NZ is not serving the public well. Internationally Kiwis have been only too aware of the high cost, poor service, lack of innovation and competition in the industry. This is during a period in history where most telecommunications markets have delivered better value, greater innovation, and improved services which have become a catalyst for economic growth.

The purpose of the NGN conference and study by the Commerce Commission is to review what can be improved and what can be done differently so that the Industry structure can serve the NZ public better.

NZCL thanks the Commission for making time to receive the perspective of a new investor in NZ infrastructure and listen to an organization that is building not only a new generation wireless network but also is building a new business, which has the potential to ignite a fresh competitive dynamic in the industry.

The NZCL position on development of the market framework is that the missing ingredient is sometimes infrastructure or incentives to invest, but more often it is lack of competition or environment to facilitate efficient competition. We urge the Commission to review the competition rules that exist in NZ and use this review to compare and contrast what it is about the NZ 1986 Commerce Act (specifically section 36) that is different from other international frameworks. The approach to the market framework needs more consultation on competition rules.

It is NZCL's view that the approach to market framework must place equal emphasis on competition as it does infrastructure. To date NZ has focused on ensuring NGN network deployment per se, rather than looking at ways to increase competitive investment.

We encourage the Commission to learn all it can reasonably can from best practice and experience overseas. The industry consultation should not be restricted to NZ, as an inward looking review of the NZ telecommunications industry may not provide adequate inputs to ensure a robust approach is taken. NZCL urge the Commission to seek general submissions from organizations such as ECTA, Ofcom, the European Commission and ACCC. Then, review what is different about their competition rules, specifically regarding the handling and potential abuse of market power, and the impact they may have on NGN strategies.

The NGN review must consider the formula in which competition can flourish

The requirement not to focus on the type of technology but the competitive dynamic is imperative in this study of the NGN, and NZCL submits to the Commission, that previous NGN deployments have merely been a change of technology and not a change in competitive dynamic.

The NGN conference should review the history that the last time a new network was built in New Zealand its deployment was foreclosed by the pocket pricing techniques of the incumbent network Telecom. Saturn deployment ambitions in Wellington and Christchurch were halted by an anti-competitive pricing technique and a blatant abuse of market power which is banned in most of the OECD but upheld in NZ by the Privy Council. (See Appendix) NZCL submit that it is essential that as part of this process, a recommendation is made to review section 36 of the Commerce Act and review specific anti-competitive behaviors which stall or foreclose other network deployment initiatives and inhibit effective competition.

For any NGN to succeed, better competition rules need to be implemented.

Without banning abuse of SMP or implementing similar rules to the best practices of the EU, no new networks will be successfully deployed in NZ and no competitive vibrancy will enhance the NZ consumer experience or the NZ economy

Lessons from previous enquiries, reviews, studies and major overhauls are insightful and worth reviewing, to see what can be learnt from the outcome of them.

- 1) 1999 Ministerial enquiry (Fletcher report) into telecommunications
- 2) 0867 abuse of market power case
- 3) Clear Telecom interconnection dispute
- 4) Saturn/ Telecom Competitive reaction precedent
- 5) Knowledge wave conference
- 6) 2001 Telecommunications Act
- 7) 2006 Telecommunications Act

We urge the enquiry into the NGN to re-examine the previous reviews into Telecommunications, understand what was learnt and note what changed as a consequence of those reviews. There are some failings such as the 2000 Spectrum auctions and the 2001 Telecommunications Act, which are worthy of industry study.

NZCL's view is that industry consultation should include a foreign regulatory or policy agency. It is essential the scope is widened to review and profile the appropriate market behavior protocols and rules to re-align NZ with international best practice specifically on the matters of pocket pricing and abuse of SMP.

The Market Framework for the capitalization of the NGN

NZCL believes that this NGN enquiry must consider the question “What attracts new private capital to Telecommunications Markets?” The scar tissue in NZ capital markets for Telecommunications in New Zealand is well recognized. International telecommunication bankers have used NZ as a case study of what not to do “*widely regarded as having been a disaster (Ian Walden & John Angel in Oxford – Telecommunications Law and Regulation)*”²

New Zealand has housed two of the most profitable telecommunications companies in the world (Telecom NZ and the NZ unit of Vodafone) but no meaningful new entrants are able to get started or capitalized as a consequence of weak competition law and a poor regulatory environment. Investors globally have extolled the virtues of Telecom NZ as a profitable company, but recognizing that its valuation and large dividend flow were a direct result of a benign regulatory environment.

The Saturn dispute in itself put the NZ industry back 10 years as no new companies were able to finance themselves to take on the incumbents which such a weak framework. Whilst the 2006 Telecommunications Act addresses 50% of the issues specifically access and investigations, it does nothing to address the weakness in the Commerce Act.

Without leveling regulatory matters associated with market behaviors incumbents will continue to dominate and there will be no real benefits of competition to NZ consumers.

² [2nd edition Oxford Press, Textbook Telecommunications Law and Regulation]

This enquiry should compare and contrast the usual range of competitive reactions to new competition by incumbents and compare those against international regulatory regimes- specifically addressing issues such as

- 1) Bundling
- 2) Handset subsidies
- 3) Long contract durations
- 4) Closed net pricing
- 5) Pocket pricing
- 6) Geographic de averaging
- 7) 0867 precedent
- 8) Abuse of market power

NZCL believe that the NGN inquiry should review the concentration of traffic flows & high market shares of the telecommunications companies in NZ. Then consider if there are any significant behaviour difficulties which impact the capital attractiveness of the NZ Teleco market to new operators.

Question 2

Do these core principles provide a useful underpinning for considering NGN issues, or whether they should be modified or supplemented?

NZCL communications believes that all of these core principles need reviewing during the forthcoming conference, but other principles should be added.

Comments on the principles

- 1) ***“the scope for competition for the long term benefit of end users should be preserved and enhanced where possible in a next generation environment “***
 - a. NZCL believes that there is no real competition in New Zealand to be preserved, in comparison with the 4 other countries profiled, in the study, NZ has a completely entrenched market. There are no ratios presented in the discussion document highlighting the absurd concentration of market power with the incumbents in the NZ Market relative to the 4 countries highlighted in the study.

NZ has a highly concentrated market with voice minutes on the land line dominated by Telecom and Vodafone on mobile. No where else in the world is their such concentration whereby the dominant mobile operator has 73% market share by minutes and the Incumbent land line operator still has over 85% market share.* (source 2008 Investor Websites and F20 SEC Filings)

The defining part of a NGN enquiry for a new entrant is how will the Dominance of the incumbents be managed, Equal access does not mean equal opportunity or a level playing field. Incumbents must not be allowed to abuse their SMP from one technology to the next. A new network dominated by incumbents absent efficient competition is a risk to be considered when evolving a NGN Strategy.

NZCL has the following ideas on how competition can be enhanced as the NGN evolved in NZ

- 2) Strengthen the NZ rules on abuse of SMP
- 3) Issue Licenses to compete to ensure well capitalised enterprises
- 4) Look for interim market share targets by efficient new operators
- 5) Review the 1986 Commerce Act

2) Incentives to invest in next generation infrastructure, including access networks as well as applications and services should be preserved.

The problem with this principle is that too often the incentive is only given to the incumbent so it must be available to all and appropriate incentives should be available to all willing and capable potential investors.

Competition is needed. In mobile competing access networks can fragment the dominance of the incumbents if the right regulatory framework is agreed.

Without appropriate protections and incentives in place there will merely be a transfer of dominance from one technology to another by the same incumbents.

3) Industry self regulation should be encouraged where this mechanism can deal effectively with next generation network issues, particularly in relation to network issues

Self regulation has been an outstanding and consistent failure in NZ with regard to many competitive issues, specifically co-location of cell sites, co-siting, numbering and Mobile number Portability. With the self regulatory co-location code eventually being revoked, it held up competitors for over 6 years. The NGN process needs to be more analytical and discriminating of when self regulatory is appropriate.

A negative feature of self regulatory processes in NZ is that it has meant small operators are swimming in a plethora of committees and workshops instead of raising capital, building networks and serving customers. Incumbents have gamed the self regulatory protocol to waste the time of new entrants and stifle their ability to make meaningful progress.

Self regulatory procedures will not attract new capital (and likely deter its entry), or make it easy for competition to be generated. The self regulatory body in NZ the TCF is largely influenced (controlled) by Telecom and Vodafone, few new entrants have the resources to fully participate and representatives are ultimately self-serving. NZCL believes that the role of self regulatory should be reviewed after the embarrassing, expensive and frustrating failure of the co-location code (subsequently revoked by the Commission) a problem which delayed mobile competition – and worked in the interests of both Telecom and Vodafone.

A 3rd party review of what network issues should be delegated to the gambit of self regulatory. – Self regulatory has been used to develop substantial parts of unbundling – but where are the new entrants? – The anticipated new private sector investment has not happened.

4) Regulation should be considered only where necessary to constrain market power where for example it is conferred by control over bottlenecks.

NZCL agrees. Unnecessary Regulation should be avoided; however, over regulation is not a problem that is likely to cause harm in NZ any time soon. The issue is that the NZ fear and reluctance to make any regulatory interventions in a timely manner – even when the evidence is overwhelming has meant that incumbents have been able to stave off competition for many, many years. Their two greatest tools are 1) scaremongering about what they would do if regulation were to be introduced (recently threats to raise the prices for long suffering consumers further if Mobile Termination Rates are regulated) and 2) delay – by endlessly debating the merits of regulation plays on the Regulator's sensibilities to the extent that NO

new competition has entered either the mobile or fixed markets in any meaningful way and customers are suffering as a result (as are NZ finances).. Market power in NZ has prevented any new networks from being built for over 10 years. There is no evidence that there is any industry specific regulation to constrain market power in New Zealand. Its not just bottlenecks where regulation is needed.

NZCL would like to see the outcome of the NGN research to come up with some recommendations to constrain market power in NZ which sit inside the specialist telecommunications act. We believe this principle is poorly constructed and doesn't emphasis enough the problems created by a legacy of having weak SMP laws in NZ. It is outrageous to think that only bottlenecks need regulation, the abuse of market power in closed network pricing, the issue of customers being asked to sign up to the longest mobile contracts on the planet (up to 3 years) foreclosing them from the benefits of competition and SAC abuses need to be considered in the course of the NGN enquiry.

4) Regulation should be scaled back as workable and effective competition develops

In principle, NZCL agree, however proceed with extreme caution and ensure that SMP rules are maintained throughout, during and after scaling back regulation. Dominant positions combined with scaled back regulation can lead to unintended consequences when SMP is abused. KPIs must be set for regulation to be contemplated being scaled back. The regulator must publish at what milestones it is suitable to reduce regulation. Incumbents versus new entrants have differing motivations on regulation. KPIs must be published well in advance of any regulation being reduced. Smaller players and smaller investors must have a contribution to development of these KPIs.

Question 3

Are there additional elements that have to be taken into account when defining NGN? If so, what are the additional elements, why should they be taken into account and what impact do they have?

Yes, we believe the following should be considered

Mobile Broadband must be included in the definition of an NGN; they provide wide area coverage at speeds that will far exceed many available on fixed services today. They must be included.

Consumer Preference; Wireless broadband must be included in NGN definitions to achieve true access mobility – a stated consumer preference. NGN should review the conditions that stimulate the most competition.

Innovation is created by competition; one principal of the current high speed national fibre network is that it is only one network with open access, the competition settings must be skewed to ensure competition, not merely a transfer of market power.

Convergence strategies must be considered, with a better understanding of converged market structures of the future, this assists in lowering the cost across all markets.

For a competitive market to exist there needs to be a defined interface between each of the layers involved in an end to end service. E.g. User A \leftrightarrow Access provider A \leftrightarrow Service provider A \leftrightarrow Backhaul provider \leftrightarrow Service provider B \leftrightarrow Access Provider B \leftrightarrow User B.

This should ensure that all traffic is handled in a standard way and that end to end services can be built using a multitude of different provider options.

The impact of them is

- 1) Backhaul rules
- 2) Significant market power rules

Question 4

What do you think IMS fulfils? Is it necessary, or are there other ways of fulfilling its function? What are the implications of this layer for the future of NGNs?

IMS is ONE developed option for NGNs, there will obviously be others proposed. However, IMS solutions have been in development within all major Telco vendors for a number of years and so would seem the easiest migration.

Question 5

Where and how should the balance between coverage and speed be struck?

The major centers will likely get higher speeds than someone in a rural area. However with standardized interfaces into various access technologies the speed/coverage issue can be better addressed as no single access method will fit all circumstances. The best technology to deliver the highest speed can be used in different areas to access the same common services provider.

Question 6

Is industry consultation necessary on network design for NGN?

Yes, all anchor tenants should be consulted along with potential tenants and new operators. Its NZCL's experience that some of the most valuable people to consult with will be local councils, because those parties will be strategic to make RMA approvals (unless government changes are more radical than anticipated). The case for lines companies or those utilities that have similar infrastructure requirements will be useful. To get the best innovative outcome for the benefit for the country, some level of local participation and idea sharing needs to occur. The impact of consultation is increased utility, lower costs and faster deployment. It is instructive to review previous industry consultations to see the impact that vested interests had within them, to remove

vested interests, a conflict register must be maintained during this consultation program, recording the size and strategic impact of any conflicts that may exist.

Question 7

i. How does the deployment of NGN change bottleneck characteristics?

The change of technology from circuit switched calls to a packet based service changes the way traffic can flow in and between networks, with that NGN networks also inherently bring higher bandwidth access and so the amount of traffic being handled goes up considerably. The bottlenecks of any future NGN's will follow a similar pattern as the internet traffic bottleneck's. Basically the pipe to each user is reaching the point that the backhaul of the access provider or the service provider becomes the limiting factor – i.e. CAPACITY becomes the bottleneck. Access to intra-city and inter-city high capacity bandwidth such as dark fibre are essential.

ii. Is access to the infrastructure still an issue? If not, what other elements could become important?

Access to last mile copper is getting better and we have seen this with the rollouts of Vodafone and Orcon, the next access question will be around access to mobile access networks. This is where backhaul regulation and MTR is important. It makes sense to discuss whether there should be some more co-ordinated policy on wireless backhaul. NZ needs competition; it does not need consumers paying for backhaul 3 times over. The prospect of having to dig the road up 3 times versus just once means that just like cell tower co location, it makes sense to have a more co-ordinated approach. There is evidence to suggest that there are some problems in backhaul markets for new wireless infrastructure providers. We suggest this should be tabled at the NGN conference as an area for potential review.

Question 8

Part of the BIF is targeted at deploying open access urban fibre networks and the Government has indicated that it will set aside \$1.5 billion for open access FTTH rollout that will reach 75% of the population. What is your understanding about what is meant by open access?

Open access is like for like pricing and availability to any tenant, similar to motorways and airports and other government infrastructure. What concerns us is that if there are no SMP rules then although an incumbent operator may pay the same price as any other operator to access the network, they could still use their market power (they have all the customers and the EBITDA free cash) to destroy and alter the competitive outcome of the new infrastructure. Open access has a different meaning with many groups, the NZCL perspective is non discriminatory access (with no big carrier exclusions).

Question 9

What are the areas that are not likely to be commercially funded?

It depends on the incentives for investment in any particular area and the appetite of councils to encourage infrastructure investment in their communities (unless RMA rules are managed centrally).

Question 10

i. What do you believe is needed to drive broadband penetration and speed in the future in New Zealand?

Ownership Separation of Telecom .There is no real evidence to suggest that operational and accounting separation has worked. Cell sites should be placed into the Chorus business (to alter cost and send a signal to new investors that they are open for business).

New Competition rules would also help broadband penetration to ensure smaller operators aren't abused by larger operators. It is critical that the NGN study reviews that there is no new private investment in broadband deployment. Only Vodafone has been a serious investor in D-Slam unbundling. Orcon, as a SOE is not privately funded. As a consequence further investigation needs to be considered why there is no new private capital attracted to build infrastructure, and what is it that would create a difference.

Further enquiry into capital markets: Why there is no new private capital invested in infrastructure, other than a reinvestment by the incumbents of their depreciation allowances?

Backhaul for mobile operators should be reviewed as part of the NGN review regulated as this will benefit consumers who want wireless broadband at international comparable prices.

ii. Do you agree that cost savings are one of the core drivers for NGN deployment in New Zealand?

Yes, cost savings are an important component, but in real terms it's an opportunity to review the structure of the NZ industry and work on making it more competitive. All potential anchor tenants need to participate so as their revenue streams can be considered to drive not just cost savings but revenue maximization. However the improved cost should not be subordinated to the improved competition and innovation dynamic.

iii. How will competition enable innovation?

It is a natural phenomenon, because ideas are only available to solve problems, it's a natural instinct that people would rather be at the beach than solving problems. When there is unsold empty infrastructure, with an overhead eating away, then it's natural that competition on usage solves the problem either through pricing or innovation.

What actually happens is that the more broadband becomes penetrated and the more applications become available, the bigger the market for bespoke services. Additionally if broadband can be sold through organizations other than incumbents at appropriate pricing, then the value chain changes and new ideas are thought of as 3rd party groups participate in the industry.

Question 11

Many are of the view that the pipes should be built first and services will then follow. Others believe that a lack of services and demand for broadband services are an issue. What is your view?

There is no point building a service if the pipes aren't there. The pipes take months or years to build while a service can be done in a week. Also once the service is delivered to one set of pipes the same service can be delivered to a second set of pipes for minimal extra cost. The problem in NZ is competitive framework on the pipes, to date there is substantial confusion on who has built what and what the actual costs are. The infrastructure must be built with demand projections in place, in which case there needs to be some vision for the environment of the future.

A new level of co-ordination needs to be manufactured by the NGN study in the enquiry and some material international benchmarking needs to be conducted as to what infrastructure builds should be co-coordinated. This should be a feature of the NGN work by the Commission.

Question 12

Is content ownership or access to content a hindrance to the development of broadband in the New Zealand market?

Yes. NZCL believes content owners are not driving any aggressive broadband initiatives to deliver their services; it would help if there were several content owners or (aggregators), who aggressively drove a position to be anchor tenants in fibre deployments. However because there is only one dominant Pay TV operator in NZ, there is little incentive in them pursuing or underwriting a delivery mechanism that would create aggressive price competition in the pay TV market. – The structure of the TV market needs to be reviewed simultaneously to the NGN. It doesn't make sense that there is no convergence of regulatory frameworks, because the TV market today is the broadband market tomorrow. If the Government is considering building and paying for fibre, it must consider the pay TV operator as an anchor tenant.

Question 13

How is the nature of New Zealand's subscription TV market likely to impact the development and take up of NGN in New Zealand?

It makes sense to prepare for a restructure of the Pay TV market simultaneously to delivering fibre to the premise during the central Government's investment into the industry.

Similar to the Telecommunications industry the TV industry is littered with self interest and commercial baggage from the old pre 2006 Telecom act & pre regulator period. We believe a broad reaching review of Media delivery is a part of a constructive formula to review mechanisms on how to work as common tenants for this new NGN delivery mechanism. For example *Despite there being many Trucking companies the NZ trucking business lobby always have a common position when it comes to road user charges and toll roads.* A similar position would be adopted in NZ by NGN tenants on a new fibre network . If subscription TV can be sold via the NGN on an access basis, the adoption of the services will speed up, as pricing pressure on the content aggregators using the NGN creates a positive outcome for consumers and bespoke media services.

Question 14

Is the service scenario approach seen as a useful one for the purpose of studying the New Zealand NGN market, and if so what would be the elements of practical and relevant scenarios?

The scenarios approach is useful, however because NZ is behind the rest of the world in mobile investment, due consideration needs to be given to the impact on ongoing roll out obligations of new operators. NZCL believes that any 4th scenario of subsidized roll out of broadband infrastructure should consider the impact of backhaul on the mobile operators and look to use mobile demand to be anchor tenants.

Question 15

What other implications for the value chain of traditional operators and suppliers can be expected when moving towards an all-IP environment?

In an NGN environment, the value chain of the traditional operators will change. More competition may occur but it highlights the requirement for behavioral regulation to facilitate a real change in the value chain. Because current operators who have significant market power will “buy their way” into the new market using subscriber acquisition subsidies as a way of transferring their market influence from one technology to the next. The NGN enthusiasm in NZ for new operators is similar to the enthusiasm generated when spectrum was sold in 2000, many thought it would herald a new era. However legacy competition problems prevented investment.

An All IP environment will create a different technology but unless the Commission reviews SMP rules the value chain of this decade will be the same as the next decade. Without SMP rules adapted simultaneously to new IP protocols associated with the NGN the value chain will not alter.

Question 16

What other effects on the competitive environment could be expected when rolling out next generation networks?

There will be no new scalable material competition with NGN unless significant market power rules are adopted by the Commission.

When GSM (arguably the NGN of the 90s) was introduced to NZ there was no material impact relative to the impact experienced in other countries because there was only one operator, -the entire 900 MHz spectrum was owned by one operator. Consumers in NZ continued to pay CDMA pricing because no other operators could get the bundle of inter carrier agreements to build a competitive GSM network, as a consequence of no rules to stall an oppressive competitive reaction (as illustrated by Saturn) then no funding was available to potential entrants . The NGN will only have a noticeable impact if competition occurs as a result of it.

Question 17

How do these effects influence the roll out of next generation networks and innovative services?

The effects mentioned in diagram 9 of the development of the NGN reduce the barriers to entry to building like for like infrastructure, but whether or not they have any impact on retail competition will be impacted by whether there is any regulation on market power of the incumbents. Unfortunately NZ law (specifically section 36 of the commerce Act) fails to deliver a quality SMP environment that is benchmarked with the OECD. No material innovation will take place until this historical problem is fixed.

Question 18

To what extent is symmetric speed or capacity necessary to provide future services to customers?

Previously the internet and other packet based systems have been very “server to client” based however, now that peer to peer traffic is becoming the norm the customer will become both the source of information as well as the destination.

Question 19

What are the most important and significant drivers of bandwidth demand?

Accessibility and cost, if it is hard to use or hard to get hold of the demand will not be there, in terms of cost that could make it hard to use or hard to access and have the same effect.

Question 20

Is a differentiation of classes of services an appropriate approach for solving Quos degradation for end-to-end services?

It is not a silver bullet but provides the framework for higher level control systems to maintain QuoS on an end-to-end basis.

Question 21

What issues and effects could possibly arise due to a differentiation of services classes?

Interconnection and standardization, lack of support for common standards, and differing interpretation of classes of service will make it more difficult, more expensive or less reliable in achieving end-to-end class of service.

Question 22

Will the approaches to pricing change for NGN, particularly where different classes of service are offered?

Different classes of service must utilize infrastructure in different ways, therefore pricing must be appropriate for each class of service, otherwise risk some services (and therefore some customers) subsidizing others.

Question 23

Beyond the costs for NGN core, access, CPE and drop lead, are there additional costing elements to be taken into account? If so, what is their likely impact?

Yes, these are associated with Customer deployments and should be subject to another working paper

Question 24

Do you agree that in an NGN environment, a higher proportion of cost of the network is shared in common cost? What in your view is the best method for allocating costs, i.e., should it be based on volume, minutes or new drivers such as capacity?

More study is needed on this question, the Commission must reflect on the SMP environment first.

Question 25

What is your view on the benefits and constraints of PON (Passive Optical Network) and P2P (Point to Point)?

We don't have a position on this subject

Question 26

Do you agree with the generic definition of the terms interconnection and access? If not, what would be the alternative definitions?

Yes

Question 27

Do you agree with the pricing concepts outlined for NGN? What other pricing mechanisms could be applied?

Yes,

Question 28

What additional factors have to be taken into account with regards to point of interconnection in an NGN environment and what is their effect?

This is a very hot topic in the IP interconnect working party, as the Commerce Commission has stated in NGN networks the point of application or control interconnect may be very different to transport interconnect. In some ways this could be seen the same way we have many voice channel interconnects however we will have a smaller number of signaling interconnects with the same parties. Each service provider only needs a pair of redundant links between them for control channels, however at the traffic level the interconnect needs to be treated on a capacity and cost basis.

Question 29

What are the implications for these issues in New Zealand? Are there specific regulatory issues anticipated?

The main feature of the migration to the NGN is managing the motivation of the incumbents to maintain their market share in the new technology. However there are other issues.

- 1) **Numbering** – this is a scarce resource–the NGN study should review whether its time for the regulator to assume responsibility for numbering.
- 2) **SMP rules** As per our earlier point, NZCL would like to see an action point on SMP review during the NGN study.
- 3) **Access:** termination services on NGN should be reviewed alongside SMP designations.

Question 30

What additional factors have to be taken into account and what is their effect?

No new nationwide operators have come to NZ as a consequence of the 2006 Telecommunications Act. Telstra's retrenchment from further investment in NZ should be case studied during the NGN review. It would not be a success for New Zealand Incorporated, if the only outcome of the 2006 Telecommunications Act was Vodafone swapping its large mobile market share for a smaller share of mobile and a chunk of the land line revenues, and Telecom swapping its land line and broadband dominance for a larger share of mobile revenues.

The NGN study needs focus on what attracts capital to NZ Telecommunications and how that needs to occur.

Matters not addressed in the NGN discussion to date

1. Attracting 3rd party capital to the NZ Telecommunications market
2. Exposing the dominance of the current operators – Without regulatory accounts for Vodafone the Commission is driving blind on understanding what SMP problems would or could occur.
3. A comparison of the regulatory environments with the OECD for NGN along with a review of the market share for all services and revenues of incumbents
4. A review of the other previous reviews completed of the industry in the last 10 years. There has been no survey highlighting which are the most successful or least successful projects or reviews or analysis of what exactly went wrong relative to the OECD.
5. There has been no discussion of what the EBIDTA pool in the NZ telecommunications industry is to figure out whether it is possible the private sector could finance this NGN deployment. It is NZCL's view that Vodafone should be subject to accounting separation similar to that of Telecom. This exposure may assist in a full understanding of monopoly profits and ensure more competition and investment in NZ.
6. Review of the dominance and profitability of the Pay TV market in NZ and what impact NGN infrastructure has on its viability.

NZ Communications Ltd



Summary

NZCL is delighted to be participating in the NGN conference, NZCL is rolling out nationwide infrastructure which will evolve into a nationwide voice and data network using 2G and 3G GSM/UMTS family based technologies. NZCL deployment program will last for another few years. The objective is to compete with the 2 incumbent mobile operators on a like for like basis. To execute this deployment for the benefit of New Zealand, we must have a framework that is benchmarked to international best practice for behavioral competition rules.

It is NZCL view that the current NGN enquiry needs a larger portion of its mandate to assist in developing a new section 36 of the Commerce Act which addresses the huge market behavior failings of the past decade. Without this review kiwis will again not capture the full pricing and innovation benefit of a new technology which is currently sweeping the NGN world.

We urge the Commission to insert a Controlling Market power section to their final report

Thank you for considering our position

Tex Edwards

NZ Communications Ltd

NZ Communications Ltd



Background to NZ Communications Ltd

New Zealanders currently pay some of the highest mobile calling rates in the developed world. NZ Communications Ltd is a New Zealand company building a third mobile phone network for New Zealand so Kiwis will have real choice and true competition in the mobile phone market.

As a competitive new entrant NZ Communications Ltd will bring all the benefits consumers would expect of increased competition – more choice, better value and more innovation.

The company is lead by CEO, Mike Reynolds. Mike came to NZ Communications Ltd from Starhub, a SG\$2billion Singapore-based Telco, where he was President. Formerly Mike held senior roles at Bell South China, Bell South Latin America and US, and Bell South New Zealand.

Chair of NZ Communications' Board of Directors is Bill Osborne; Bill is also a director of the Hautaki Trust, a founding shareholder in NZ Communications.

Twenty-percent of NZ Communications Ltd is owned by Maori interests via the Hautaki Trust. The company's other major share holders are: General Enterprise Management Services International Ltd (GEMS), Communication Venture Partners (CVP) and Trilogy International Partners (Trilogy). Together, the Hautaki Trust and these backers have a depth of Telco start-up experience ranging from Ireland to Hong Kong and the US.

Hautaki Trust

Hautaki Trust was created to enable Maori to participate in the knowledge economy through management and development of the 3G spectrum allocated to Maori. It is the commercial arm of Te Huarahi Tika Trust.

Te Huarahi Tika Trust, formerly known as the Maori Spectrum Charitable Trust, was formed in July 2000 by the Crown 'to increase participation of Maori in the knowledge economy, in particular, the information and telecommunication sectors of New Zealand'.

Returns from Hautaki's investment in NZ Communications Ltd are reinvested in the community through a number of the Trust's initiatives.

(www.thtt.co.nz)

NZ Communications Ltd

Trilogy International Partners (Trilogy)

Trilogy International Partners, LLC, ("Trilogy") invests in wireless telecommunication operations in international markets that exhibit strong opportunities for significant growth. A privately held company, Trilogy's corporate headquarters are in Bellevue, Washington. Key executives involved with NZ Communications are Trilogy's CEO Bradley Horwitz, and Stewart Sherriff, Trilogy's Chief Technical Officer. Between them, they have 45 years combined experience in telecommunications.

Trilogy currently has controlling interests in mobile communications companies in Bolivia, Haiti and the Dominican Republic. These businesses hold licenses to provide wireless communications services to over 31 million people. In addition to wireless services, the operating companies are also authorized to provide termination and origination of international long distance, public telephony and mobile data services.

(www.trilogy-international.com)

Communication Venture Partners (CVP)

CVP invests in and manages telecommunications companies in both developed and emerging markets. The company's main focus is on mobile communications and communications-related technologies.

The founders, Austrian Claudia Mayr-Dobin and Kiwi Andy Scott have worked together in the telecommunications sector for the past sixteen years. They have extensive investment expertise and a wide range of contacts in the telco sector across Asia, Europe and the US. Prior to establishing CVP, Claudia and Andy worked together at the European Bank.

General Enterprise Management Services International Ltd (GEMS)

GEMS are a private equity fund management group based in Asia, with investments in a wide range of industries and countries. The key GEMS executives involved with NZ Communications Ltd are Geoff Spender, GEMS' Chief Investment Officer, and Fergus Wilmer, a Senior Partner. Geoff was formerly CFO of the Deutsche Bank Group in Asia, while Fergus has held senior positions for Reconstruction and Development at mobile phone operators, including Orange (France), Spice Telecom (India) and Sunday (Hong Kong).