



21 December 2004

Mobile Termination Inquiry
Network Access Group
Commerce Commission
Level 6, 44-52 The Terrace
WELLINGTON

Dear Sir/Madam

Mobile Termination Inquiry – Cross Submission

1. NGC welcomes the opportunity to comment on the public submissions in relation to the Commerce Commission's Inquiry into mobile termination rates.
2. NGC is an infrastructure-focussed energy services company which is listed on the New Zealand Stock Exchange. Its business activities include:
 - Gas transmission and distribution;
 - Gas processing and wholesaling;
 - LPG supply; and
 - Energy metering and data administration.
3. NGC's comments are made in relation to submissions on the analytical framework adopted by the Commission and the coverage of the proposed regulation. NGC is concerned that the views expressed by some industry participants may have broader implications for investment in infrastructure and infrastructure-focussed companies.
4. There are two broad areas of concern about the submissions, namely:
 - Wealth transfers being considered a benefit of regulation; and
 - Promotion of regulation of new infrastructure investments.

Analytical Framework

5. NGC believes the long term benefits of consumers is the appropriate objective for regulation and for the Commerce Commission. In NGC's experience, the Commission has generally adopted a longer term perspective and given consideration to the need to promote economic efficiency. To this end a net public benefits approach is the appropriate test for intervention.
6. It is with some concern that NGC notes the support in some submissions for the proposal that wealth transfers from producers to consumers should be treated as a benefit of regulation. Such an approach could have major implications for the future of all infrastructure builders in New Zealand, resulting in a serious dampening in investment.

7. It appears that some of these submissions are predicated on the assumption that the benefits are passed through to the consumer rather than be captured by the competitors. The robustness of this assumption should be tested carefully. NGC notes that the Commission itself raised concerns with the Government in relation to the potential for electricity retailers to capture the benefits of any price reductions by electricity lines businesses.
8. NGC's over-riding concern in relation to the analytical framework, however, is that the Commission has departed from the accepted framework of assessing regulatory options and has introduced a focus on distributional considerations. NGC notes that in the Gas Control Inquiry the Government requested that the Commission provide advice on the net public benefits of price control in addition to the acquirers' benefits it was legally obliged to consider. In NGC's view, this expanded terms of reference indicates that economic efficiency is the appropriate objective for the Commission.
9. NGC believes addressing distributional issues is the concern of the Government, with a number of specialist agencies providing advice on these matters. If the Commission maintains a focus on the economic efficiency of New Zealand industry, the country will benefit most by having its agencies providing advice in their respective areas of core responsibility and expertise.
10. The risk of mixing distributional and efficiency objectives is that the Commission will impose unnecessary regulation that could have a negative impact on New Zealand. In NGC's view, attempts to lower the thresholds for regulatory intervention will only serve to hinder New Zealand in the future.
11. NGC suggests that the Commission should use a test of net public benefits when making regulatory decisions. This is an established test under the Commerce Act and meets the Commission's purpose. To not use such a test risks regulatory interventions that appear to provide short-term benefits, but result in long-term detriments to consumers. Consequently, submissions which seek to have wealth transfers considered as benefits of regulation should, in NGC's view, be discounted by the Commission.
12. It is essential for New Zealand's infrastructure investors to have some certainty around the principles of the Commission's approach to long-term benefits if they are to continue to invest.

Extent of Regulatory Intervention

13. NGC notes that the Commission's Draft Report proposes that the future 3G networks should not be subject to regulation. NGC agrees with this approach and is concerned that some submissions seek to expand the proposed regulation to these new investments.
14. The proposition that a company's investment in a new capability or functionality should be immediately regulated is likely to have an impact on the incentives to invest and innovate far wider than the telecommunications sector. NGC believes the Commission's proposal to exclude the 3G networks sends a positive signal to infrastructure providers that those companies which are prepared to invest are providing long-term benefits to consumers.

15. There is a risk, however, that the proposal to overlay the Commission's usual efficiency assessments with distributional matters may be interpreted by infrastructure investors as increasing the chances of new investments being regulated once they are sunk. In NGC's view, this concern may be allayed to some extent by a clear commitment from the Commission to its usual long-term view and a net public benefits analytical approach.

Conclusions

16. Overall, NGC is concerned that the analytical framework in the Commission's Draft Report sends worrying signals to other infrastructure industries in relation to a loss of focus on economic efficiency in favour of distributional considerations. NGC suggests the Commission utilise a net public benefits analysis in this Inquiry.

17. NGC is pleased that future investments have been excluded from the Commission's proposed regulation and views this a positive signal to infrastructure investors.

18. NGC does not wish to appear at the Commission's conference.

19. NGC would be happy to answer any questions the Commission or its staff have in relation to this submission. Please contact me in the first instance (462-8777 or 027 292 0050).

Yours sincerely

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