

Telecommunications industry review across the board

February 2013

The must-do list in the legislation requires nearly everything to be reviewed.

The list of things that the Minister is to review runs to 2 pages in the Telco Act, with multiple line items. Everything from mobile to fibre must be reviewed. And the Act repeatedly says the Minister **must** review all those line items.

This is not about picking out particular issues such as copper pricing relative to UFB pricing, the issue that seems to have brought forward the review. Everything must be reviewed, and reviewed in overall context: for example, there is a specific obligation to look at convergence of traditional telecommunications markets. The interplay of platforms (fixed and wireless, etc.), the converging markets and so on make reviewing aspects in silos too difficult and risky. The debate about copper and fibre relative pricing is not a standalone issue for copper and fibre for example.

So, managing this review will be a big challenge. A salami-sliced approach of dealing with and resolving things one aspect at a time looks to be difficult save where issues really can be carved off separately. But the interdependencies will also make managing this process as a single “big bang” very difficult too.

The trick may be to find a way to incrementally build the approach, via consultation, making increasing granular decisions as things progress (preserving the ability to deviate from earlier broad views). This is something that Ofcom, for example, does very well. See for example its increasingly granular consultations and reports on NGN, starting at the high level and moving to the detail of various facets of NGN. Another good example is the EU regulatory group’s (BEREC’s) series of reports on net neutrality, moving from the general to the specific. It’ll be tempting to carve things off separately but that may end in tears.

Mobile operators are unlikely to emerge from this debate unscathed by the fixed line issues. Plus, the TSO review, running in parallel, is another consideration that inevitably pulls all Telcos into

the net. We’ve commented on that review in our article today, *TSO Review: who will be the winners and losers?*¹

There’s the usual list of factors the Minister must consider including the long-term interest of end-users. Quite a few line items are devoted to investment concerns around new technologies. Whether or not services should be regulated must be reviewed. Alternative regulatory models must be addressed. The Minister must look to overseas experience, with particular reference to economic relations with Australia.

For a first port of call, Australia chose to go down a different path on its FTTP roll out model, the NBN. But there are other developments there of relevance, such as the move from a price model similar to ours (usually, TSLRIC) to a building blocks model.

Specifically singled out as a regulatory alternative is price control.

Also singled out are developments in wireless solutions and whether they should be part of telco regulation. That highlights the increasingly out-moded dislocation between the treatment of spectrum and telecommunications.

Many countries overseas are grappling with the challenges brought about by NGN and other market developments. So, New Zealand has plenty of material from offshore to assist the decision-making, from the EU to Asia and Australia.

While not required by the review, this is a golden opportunity to address wider convergence issues and the increasing artificiality of not having converged and/or consistent treatment of regulation across content, telecommunications and spectrum. While the review is a big exercise, and scope creep will be a concern, it’s hard to see how telco can be treated as a silo.

1. <http://www.wigleylaw.com/assets/Uploads/TSO-Review-who-will-be-the-winners-and-losers.pdf>

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