

16 February, 2009

David Healy
Chief Advisor
Network Performance Branch
Commerce Commission
PO Box 2351
Wellington

By email to: NPB@comcom.govt.nz

Dear Sir

Regulatory Provisions of the Commerce Act 1986 Discussion Paper

The New Zealand Council for Infrastructure Development ¹ wishes to make the following submission in respect of the Commerce Commission's implementation of the Commerce Amendment Act 2008. While individual member organisations will be responding on issues of specific relevance to them, NZCID wishes to make the following overarching comments in respect of the purpose of regulation as it affects infrastructure investment.

Need to ensure timely investment in infrastructure

NZCID's primary concern with the previous regulatory regime has been its apparent focus on price minimalisation, largely driven by CPI-X price thresholds, which we consider have had an adverse impact on long term infrastructure investment.

While price reductions can be of immediate benefit to consumers, if the pricing structure and the associated rate of return to investors are insufficient to incentivize long term infrastructure investment, customers will be the ultimate losers. We consider the regulatory regime requires more emphasis on promoting timely infrastructure investment than has been the case in the past. This was a central theme of amendments included in the Commerce Amendment Act 2008 and in our view should be given significant weight by the Commission when implementing the requirements of the Act.

Any decision to regulate requires extensive information and technical input by the Commission, such as calculation of the costs and benefits of regulation versus no regulation. However, while being based on technical analysis, the decision often comes down to 'policy-type' judgments on how to trade-off conflicting

¹ NZCID is a non profit organisation. Members comprise a diverse range of leading private and public organisations including infrastructure equity owners, financiers, constructors, service providers, public sector agencies, and major infrastructure users. Information on the Council, its members, policy and work can be found at www.nzcid.org.nz. In developing its policy position on infrastructure issues, NZCID consults extensively with its member organisations, undertakes workshops and seminars on policy and undertakes independent research. This submission represents the views of NZCID as a collective whole, and may not necessarily represent the views of individual member organisations, some of whom will be making their own individual submissions.

policy objectives. For example, regulation may be expected to limit monopoly rents and hence improve or maintain consumer welfare, but may come at a net cost to the economy. There may be wider factors that need to be considered, such as effects on business confidence, effects on overseas investors, and the credibility of the overall regulatory regime and so forth. NZCID considers that all such factors must be balanced in any decision to impose regulation.

Need to minimise cost of regulation and reduce complexity

The imposition of regulatory control is warranted only when the benefits clearly exceed the costs. Where possible the relative cost benefits should be quantitatively assessed. However qualitative analysis may be appropriate for lighter handed types of regulation where a clear prima fascia case for regulation can be demonstrated.

We note the extensive discussion on input methodologies detailed in Chapter 5 of the discussion paper as an example of the complex nature of valuation processes. In view of the complexities and technical difficulties associated with valuation of assets, return on asset base, and so forth, NZCID favours more extensive use of price monitoring linked to international and national benchmarking as the preferred method for regulatory oversight. This provides for much less complexity and potentially provides for improved transparency about pricing decisions, lower costs and more proactive engagement by parties.

Need to reduce regulatory complexity for lines companies

It is the Council's view that current regulatory processes for transmission upgrades involving Commerce Commission approval for pricing thresholds, Electricity Commission approval for transmission upgrades and RMA consents are complex, circuitous and often contradictory.

For example, Local Authorities are responsible to issue consents under the RMA but are requiring increasingly higher standards of mitigation in favour of their local communities. These processes are often inconsistent between local authority jurisdictions, time consuming, tend to favour local issues over national interests, and add significantly to cost.

Neither the Commerce Commission nor the Electricity Commission have any statutory requirement to consider RMA cost drivers in significant depth within their respective regulatory regimes, although the Electricity Commission is required to consider sustainability issues. Rather, the statutes controlling both agencies including the CPI-X pricing threshold and the Grid Investment Test emphasise cost minimisation.

The Commerce Commission will generally not approve price increases to fund transmission investment until grid upgrades have been approved by the Electricity Commission and, even then, price increase will be subject to CPI-X price thresholds set in advance of investments which may or may not conform to the level of investment approved by the Electricity Commission. The Electricity Commission approval processes are normally considered in advance of RMA approval processes.

The result of this circuitous "chicken and egg" approval process means that timely investments in transmission capacity may not occur or conversely, generation investment may be constrained by lack of transmission capacity and or access.

NZCID therefore favours a more light handed approach to the regulation of essential services as described in the preceding section, together with rationalisation of the regulatory structures and processes.

Concern at regulatory creep in respect of regulation of airport services

NZCID is concerned at the potential for regulatory creep in respect of airport services. We note the significance of key infrastructure such as airports and are concerned that ongoing investment should not be impeded through excessive regulation.

Airports are one of the few sector examples where adequate infrastructure investment on a commercial privately financed model has been made. We note that the regulatory “noise” tends to come from the airlines, whereas the wider public perception of airports is more influenced by quality of service and facilities. There is a risk that excessive emphasis may be placed on airport charges at the behest of airlines as an intermediate customer. The key focus however should be on the final customer, the passenger or freight shipper, and the overall quality of the service experience. Greatest emphasis needs to be given to the adequacy of infrastructure to support tourism, cargo and volume growth through the gateway airports together with the consequential adverse economic impact of any failure to provide for adequate infrastructure. In our view these are more critical outcomes and are of more immediate relevance to passengers, tourists, air freight shippers and New Zealanders at large.

Airports should have no difficulty in being able to demonstrate that their charges are reasonable and compare favourably with counterparts in New Zealand and overseas. NZCID considers that this should be the preferred form of regulatory oversight.

Conclusion

NZCID appreciates this opportunity to comment. We trust that the need to incentivize investment in infrastructure is given appropriate weight by the Commission as it determines the best means to implement the new regulatory framework required by the passing of the Commerce Amendment Act 2008.

Yours faithfully

A handwritten signature in blue ink, appearing to read 'Stephen Selwood', is written over a horizontal line.

Stephen Selwood
Chief Executive