



**NEW ZEALAND INSTITUTE FOR THE STUDY
OF COMPETITION AND REGULATION INC.**

A PENDULOUS PROGRESSION: New Zealand Telecommunications Regulation 1987-2007

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CORPORATE MEMBERS

Auckland International
Airport Limited
Contact Energy Ltd
Fonterra Co-operative
Dairy Group Limited
Meridian Energy
New Zealand Post Ltd
NGC
Powerco
Telecom Corporation
of New Zealand Ltd
Transpower New Zealand Ltd
Vector Ltd
Victoria University of Wellington
WestpacTrust Institutional Bank

CONTEXT

1984

- constitutional and foreign currency crisis
- led to “one of the most notable episodes of liberalisation that history has to offer” Henderson (1995)

Political and public policy consensus

- stable, credible, mutually consistent macroeconomic policies
- efficient allocation of resources
- achieving a competitive environment “wherever possible”
- markets operating relatively free from government intervention



NEW ZEALAND'S ECONOMY

Small size, small population, low population density, geographical isolation, challenging terrain, thin capital markets, highly-concentrated industries

Predominant competition issue:

- elimination of market power *per se* not feasible
 - pursuit of scale & scope economies makes it inevitable
- ex ante regulation costly per capita/per account
 - also, negative effect on private sector investment incentives
- challenge is to design framework where dominant parties can trade, but discourages exertion of dominance



COMMERCE ACT 1986 (First version)

Purpose

- promotion of competition in markets “for the long term benefit of consumers in New Zealand”

Section 36

- no person who has a dominant position in a market shall use that position for the purpose of restricting entry or preventing competitive conduct in any market, or eliminating any person from any market

Section 27

- constrains opportunities for two or more firms to jointly exercise dominance

Section 47

- Terms under which firms can merge



‘LIGHT-HANDED’ REGULATION

Natural monopoly characteristics of former state-owned utilities required further safeguards

Specific information disclosure

- transparency of performance
- facilitates negotiations with businesses

Threat of further regulation if market dominance is abused

- Part IV of the Commerce Act

‘Lightly regulated’ but far from ‘unregulated’



TELECOMMUNICATIONS 1984

State-owned

- bundled with post and savings bank

Substantial inefficiencies

- productive
 - substitute for unemployment welfare
 - politically-motivated investment decisions
- poor service quality
 - 6-8 week queues for connections; waits for of several hours during peak times for national/international connections

Insulated from competition

- legislative protection for government provision
- monopoly for provision of equipment



TELECOMMUNICATIONS ACT 1987

Telecommunications separated from post and banking into arms-length state-owned corporation 1 April 1989

- with view to privatisation

Consistent with ‘light-handed’ principles

Using an industry-specific regulator (e.g. Australia) or structural separation (e.g. United States) rejected on efficiency grounds

Legislative protections removed

Reporting obligations

- transparent financial statements; regular reports to Ministry of Commerce; contracts offering discounts of more than 10% of listed prices to be disclosed



PRIVATISATION 1990

Consortium – Bell Atlantic & Ameritech 12 September
(\$4.25 billion)

- requirement to sell majority of shares to private investors – achieved 19 July 1991
- NZ's largest listed company (20-25% NZX capitalisation)

Reporting obligations transferred

'Kiwi Share' obligations

- 'price cap' on residential rentals
 - $CPI - x$ where $x = 0$
- residential 'free local calling'
 - some of largest local calling regions in the OECD
- residential 'universal service'
 - rural rentals no higher than urban rentals



COMPETITION FROM 1991

Clear Communications 1991

- long distance, international
 - 20% market share in national; 23% international in first 5 years
- attempted entry into local calling in 1991
- purchased by TelstraSaturn in 2001 to form TelstraClear

Saturn Communications 1991

- regional fibre-optic cable; cable internet from 1999 (Kapiti, Wellington, Christchurch)

BellSouth (mobile) 1994

- GSM network established Telecom TDMA/CDMA network originated in 1988
- purchased by Vodafone in 1998

Telstra New Zealand 1996

- purchased Saturn, 1999; Clear, 2001 forming TelstraClear



COMPETITION (cont)

CityLink 1995

- regionally-focused Ethernet LAN, WLAN hotspots (Wellington, Auckland)

iHug 1996

- ISP, nationwide satellite internet from 1998

Walker Wireless (subsequently Woosh) 2001

- wireless services in 10 urban areas

Wired Country (subsequently Compass) 2002

- fibre-optic cable and wireless, greater Auckland area
- based on electricity lines company rights of way

Many regional wireless operations post 2002

- e.g. The PacificNet, Nelson/Marlborough
- many allied with Fonterra dairy farm connection contracts

Kordia

- broadcasting transmission - trunk



LITIGATION 1991-4

Telecom – Clear Interconnection Agreement (ICA) 1991

Telecom charged Clear using Efficient Component Pricing Rule

- rationale = recovery of ‘Kiwi Share’ costs

Clear claimed ECPR prices a breach of Section 36

Litigation

ECPR

- efficient in some circumstances as enables recovery of costs of social obligations
- but may deter efficient entry in some circumstances



RULINGS

High Court 1993

- S36 precludes monopoly pricing only when used to restrict, prevent or eliminate competition from market

Court of Appeal 1993

- cannot lawfully charge an interconnection price including a component of monopoly rent

Privy Council 1994

- charging based on opportunity cost exactly what occurs in competitive markets
- ECPR allows Clear to compete away monopoly retail prices over time
- Clear had not proved Telecom's price included rent over and above that required to recover universal service costs



CHALLENGES TO 'LIGHT-HANDED' REGIME

Long time taken to reach settlement

- interim uncertainty prevented further entry occurring

Narrow interpretation of 'use' under S36

- what is deemed a legal competitive action under 'use' may lead to an inefficient outcome in the market

Courts can adjudicate only the behaviour contested

- cannot consider other factors (e.g. counter-offers)

'Kiwi Share' retail obligations create pricing dilemmas in upstream markets

- how to price upstream elements so
 - a) Telecom can recover fair costs of social obligation
 - b) efficient competitive entry in downstream markets is facilitated



INQUIRY 1995

Led by The Treasury & Ministry of Commerce

Efficiency is paramount objective

Examined options w.r.t. ownership, pricing and regulatory restrictions

Recommended

- no restraints on ownership
- a pricing rule be adopted that would be ‘efficient’
 - but did not recommend a specific rule



MEANWHILE

Telecom offered Clear a contract based on Court of Appeal decision

- elimination of rents from ICA price
- separate contribution to 'Kiwi Share' obligations
- varying scale of IAC charges decreasing over time
- audit of charges set by mutually-agreed independent auditor

Clear rejected offer

- did not recognise reciprocity, take account of differences in call volumes
- counter-offered with contract equalising per-minute charge

Minister threatened to intervene if a satisfactory agreement not reached quickly



AGREEMENT 1996

Terms agreed March 1996

- 5 year contract
- Clear pays Telecom 2c/min for calls terminating on Telecom
- Telecom pays Clear from 1c to 2c per minute (scaled over time) for calls terminating on Clear
- all interconnect charges discounted 75% for off-peak
- Clear pays Telecom 1c per minute for all calls in recognition of 'Kiwi Share' obligations
- all past disputes as at September 4 1995 considered settled

Minister reaffirms reliance upon existing regime June 1996

- no changes are to be made



AUGUST 1996 (5 months after contract signed)

Clear requested variation to ICA

- Telecom making capped-price retail offers – uncompetitive???

Telecom refused

- capped-price offers trialled pre March (Clear had knowledge)
- only 5 months into 5 year agreement

Clear began withholding a percentage of ICA payments from February 1997

Telecom refrained from withholding service (as allowed by contract)

- feared another S36 action
- pursued debt through courts



CONFIDENCE IN COURT DECISIONS ERODING

Telecom sued for payment

Clear counterclaimed, alleging capped-price offers breached s36

Both High Court and Court of Appeal found that Clear could withhold payments pending settlement of the S36 dispute via separate proceedings

Another 'inefficient' court decision

- Telecom must supply services to Clear for an indeterminate period with no certainty of compensation
 - Telecom is 'underwriting' Clear's competitive activities
 - implications for Telecom's forward-looking investment plans (dynamically inefficient)
- inconsistent with a similar decision in the gas industry



NO SECTION 36 CAPPED-PRICE LITIGATION

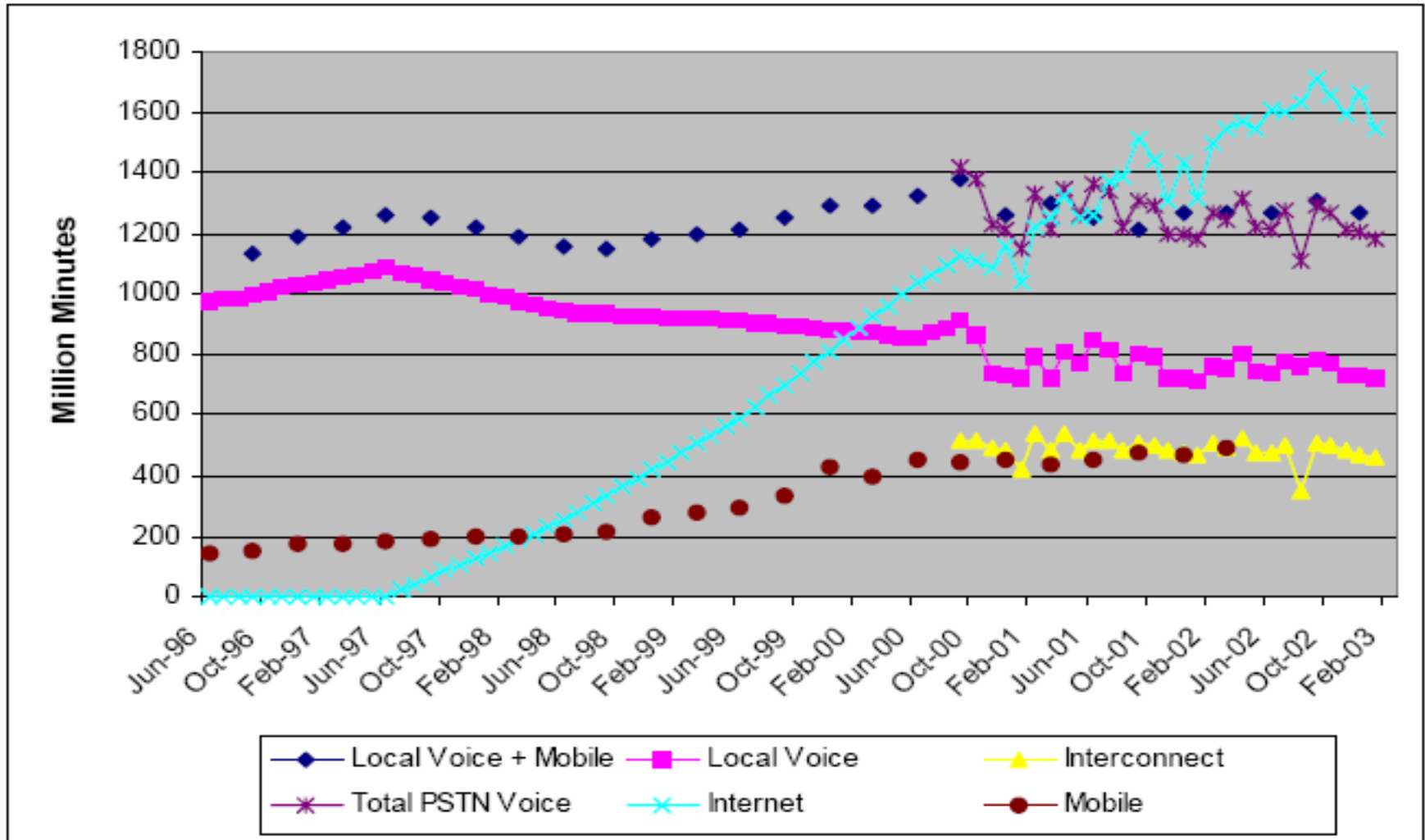
Competitive forces overtake it

Dial-up internet calls

- unmetered local calling under ‘Kiwi Share’
- exponential increase in
 - dial-up ISP consumers
 - PSTN data call volumes and call lengths



TELECOM PSTN TRAFFIC 1996-2003



THE 'ISP WARS'

Clear, other entrants, can arbitrage on ICA by signing up ISPs to their networks

- share ICA cash flows from Telecom with ISPs

ISPs share cash flows with customers by discounting ISP subscriptions

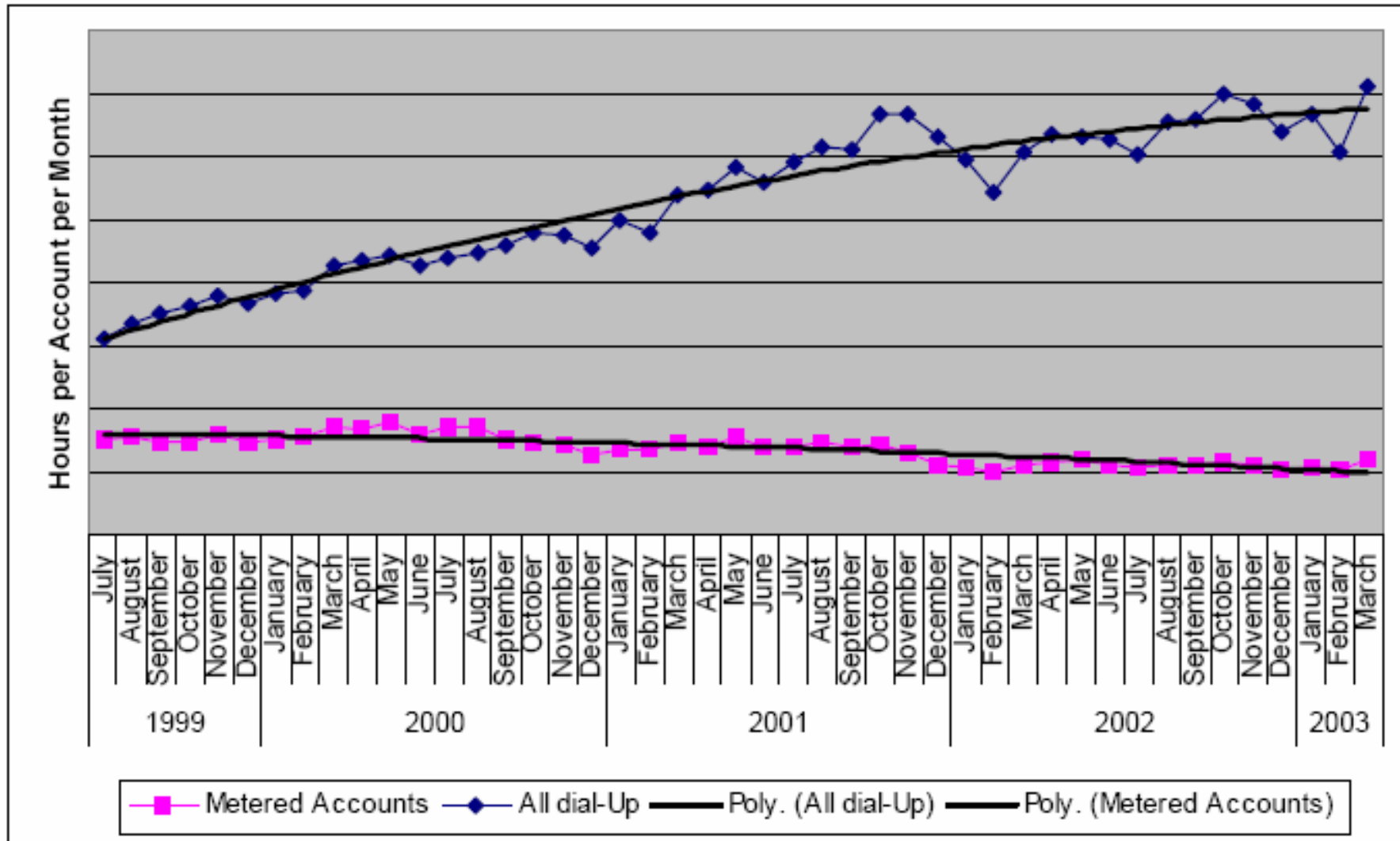
- highly competitive ISP market
 - fuels rapid increase in ISP uptake, usage
 - Telecom's ISP Xtra aggressively markets flat-rate ISP charges
 - 'free' ISPs emerge
 - prices 30% lower than Australia; subscription numbers 13% higher in 1999, despite only 1/3 the number of ISPs

Huge increase in consumer welfare

- transfer from Telecom (unmetered usage to all dial-up users plus ICA/ISP arbitrage payments to non-Telecom ISPs)
- dynamic gains from new technology



DIAL-UP USAGE PER ISP ACCOUNT



TELECOM RESPONSE

1. Stop the cash flows to non-Telecom ISPs

- 'average' non-Telecom ISP customer generating higher monthly ICA liability than monthly line rental paid (rivals had 50% market share)
- 0867 package
 - unmetered dial-up only on Telecom-terminating 0867 ISPs
 - first 10 hours only unmetered on non-0867 numbers; 2c per minute thereafter

2. Migrate internet users off the PSTN as soon as possible

- early and rapid implementation of ADSL
 - January 1999 – 3rd in the OECD
 - nationwide – 85% of customer lines by 2002
 - high quality (2Mbps base offering)
 - low prices (3rd-lowest in the OECD in 2000, taking into account speed etc.)
 - universal pricing



RESPONSES

Government satisfied with 0867 package as long as service quality maintained

- long-run threat to market if Telecom financially unviable

Commerce Commission lays charges under Section 36

- “in introducing 0867 Telecom sought to prevent or deter competitive conduct by other telecommunications network operators and Internet service providers”
- to date, still not settled
- interesting issue is market definition: internet or interconnect?

ICA runs its full five years

- ‘bill and keep’ agreed in 2001
- end result a draw?

Dynamic efficiency potential in the broadband market



AT THE TURN OF THE CENTURY

NZ one of the world's leading internet-using populations

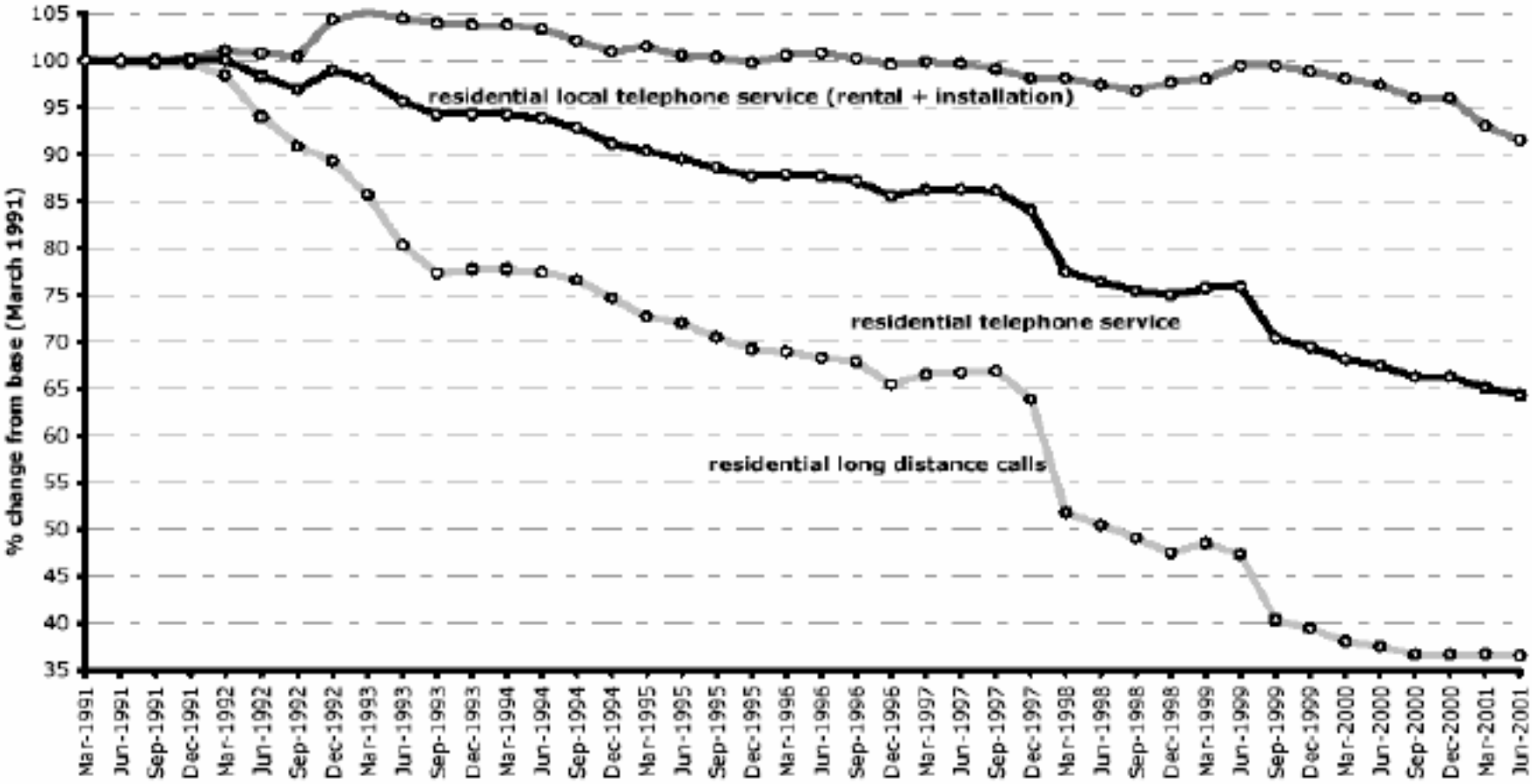
- users per capita
- secure servers per capita
- hours of usage per month
- low prices, universal pricing
- wide availability, multiple technologies
- high quality services
- highly competitive ISP market (low margins, prices)

No evidence that the 'light-handed regime had performed worse than any other regime

- telephone price index fallen by more than the OECD average
- plus dynamic efficiencies of early internet adoption and use
- competitive entry



NZ REAL RESIDENTIAL TELEPHONE PRICE INDEX 1991-2001



OECD TELEPHONE CHARGE TIME SERIES

	1990	1991	1992	1993	1994	1995	1996	1997	1998	1999	2000
<i>Residential</i>											
Fixed	100.0	109.18	112.66	112.76	112.82	122.39	125.91	112.97	115.50	119.27	124.08
Usage	100.0	104.17	98.45	96.77	94.05	98.56	90.09	81.29	78.69	70.54	57.80
Total	100.0	106.17	104.13	103.16	101.56	106.09	104.42	93.97	93.42	90.03	83.31
<i>Business</i>											
Fixed	100.0	104.30	107.45	107.59	107.99	108.07	106.37	113.07	118.68	123.37	118.55
Usage	100.0	103.50	96.88	94.18	91.29	92.52	83.26	86.46	84.31	75.18	55.50
Total	100.0	103.66	98.99	96.86	94.63	95.63	87.88	91.78	91.18	84.82	68.11

Source: OECD, Tellgen



A TRIUMPH FOR 'LIGHT-HANDED' REGULATION?

Procedural concerns still remained

- court cases took long time to be resolved/create uncertainty
- tension between 'increased competition' and 'increased efficiency' remains unresolved

Telecom still had a dominant position in the market

'Kiwi Share' obligations still causing distortions

- who should bear costs?
- how is it distorting entry decisions?
 - accusations of predatory pricing when Telecom matched Saturn prices in Wellington
 - 'ISP wars' would have been muted by per-minute charging



POLITICAL INTERVENTION

Labour coalition-led government elected November 1999

- differentiate from historic Labour (1984) government
- promised tightening of the Commerce Act and reviews of Electricity and Telecommunications markets

Commerce Act 2001

- alignment with Australian Trade Practices Act
- s36 ‘use’ replaced by ‘take advantage of’
- extend application to “major participants in an oligopolistic market”
- “signal to the courts some dissatisfaction with the focus on ‘use’ tests as a basis of interpretation of this section”



MINISTERIAL INQUIRY INTO TELECOMMUNICATIONS 2000

Government policy “to ensure that the regulatory environment delivers cost-efficient, timely and innovative telecommunications services on an ongoing fair and equitable basis to all existing and potential users”

Interpretation:

- ‘cost-efficient’ = “at the lowest cost and delivered to consumers at the lowest sustainable price” (i.e. perfect productive and allocative efficiency)
- ‘timely’ = “the absence of barriers that would impede the implementation and uptake of innovative services” (i.e. dynamic efficiency)
- ‘ongoing’ = “regulation should be forward-looking, robust, reliable and consistent over time, and not sacrifice long-term gains for short-term considerations (i.e. trade-off between static and dynamic efficiency)



PERFECT STATIC & DYNAMIC EFFICIENCY PLUS PERFECT CONSUMER AND COMPETITOR EQUITY

Interpretation (cont)

- ‘fair and equitable’ = ensuring that all existing and potential users have affordable access to a minimum level and standard of services”
- ‘fair and equitable to all existing and potential users’ also means “the way in which services are provided, the conduct of the industry players and their interactions” (i.e. competitor equity)

An impossible hurdle?

- no indication given of priorities/weights given amongst competing objectives



RECOMMENDATIONS

No convincing evidence was found using efficiency-based criteria that New Zealand's regime had performed worse than any other regime form during the 1990s

Yet industry-specific regulation was recommended, because the regime had failed the 'perfection' test

- cost-based pricing principles (ultimately TSLRIC) for 'designated' services (Telecom fixed line and data tail services – excluding ADSL)
- retail minus pricing for 'specified' services (wholesaled Telecom services, mobile roaming, co-location)

But specification, designation to be “based on efficient competition, connectivity and investment, where efficiency takes into account all of its productive allocative and dynamic contexts”



RECOMMENDATIONS (cont)

LLU not to be either designated or specified

- “any regulatory erosion of producer surplus related to enhanced services such as ADSL is likely to have an adverse impact on dynamic efficiency by dampening incentives for investment in competing infrastructure

‘Kiwi Share’ to remain Telecom’s responsibility alone

- “interconnection prices should not include a contribution to any losses arising from the ‘Kiwi Share’ obligations”
- no compensation other than by applying to the Minister to raise prices as a consequence of financial losses

=> Inherent tension between Regulator and Minister



TELECOMMUNICATIONS ACT 2001

Followed most of recommendations except:

Commission within Commerce Commission

- not independent

‘Kiwi Share’ costs to be reported annually by Telecom and apportioned across the industry by the Commission (renamed ‘Telecommunications Service Order – TSO)

- removed obligation from Telecom’s upstream prices to rivals
- but Telecom must bear costs until compensated

Inquiry into LLU and recommendations by end of 2003



COMMISSIONER APPOINTED 2002

March – took up duties

May - first application for determination (Telecom and TelstraClear)

July – TSO, price benchmarking and TSLRIC conferences

November

- 5th - first draft ‘designated service’ determination
 - Telecom/TelstraClear ICA 1.13c/minute, backdated to 1 July
- 29th – first ‘specified service’ determination
 - between 14% and 18% discount on Telecom’s wholesale services



WAS THE REGIME WORKING?

Access to Telecom wholesale products dilutes incentives to invest in alternative platforms

- TelstraClear CEO (welcoming the November 29 wholesale agreement, shortly after TCL's rollout of fibre-optic cable network in Christchurch had been suspended): “we believe it is more efficient for TelstraClear to buy from Telecom rather than build duplicate networks to reach consumers who are widely spread throughout New Zealand”

Easy access to a regulatory determination removes most of the incentives for the parties to commit effort to resolving the issues independently



2003

Determinations sought by TelstraClear, iHug, CallPlus, Compass, WorldXChange

Each determination required:

- issues paper; responses; conference; draft ruling; responses to draft ruling; final ruling
- each one an identical process to court-contested contract
- except every contract appears to have been contested rather than merely one or two

Most determinations for 12 month period only

- redeterminations sought almost as soon as determinations given

Simultaneously:

- the first TSO determination
- LLU Inquiry

Second year Commission expenses double the 2000 Inquiry projections



IMPROVED TIMELINESS?

TSO determinations

Period 21 December 2001 to 30 June 2002

- begun March 2002
- delivered December 18 2003 (21 months)

Period 1 July 2002 to 30 June 2003

- finalised 24 March 2005 (34 months)

Period 1 July to 30 June 2004

- still not finalised (36+ months)

2005? 2006? 2007??????

Mobile termination decision

- begun April 2004, not resolved until April 2007

The 1990s court case took only 3 years



DYNAMIC EFFICIENCY CONSEQUENCES

TSO delays - huge uncertainty for both incumbent and new entrants

- what retail prices to charge/entry decision to make when tax for social obligations unknown?
- more uncertain than in 1991, as Clear then at least knew Telecom's price expectation (however contested) was an upper bound on obligation – entry decision could be based on it

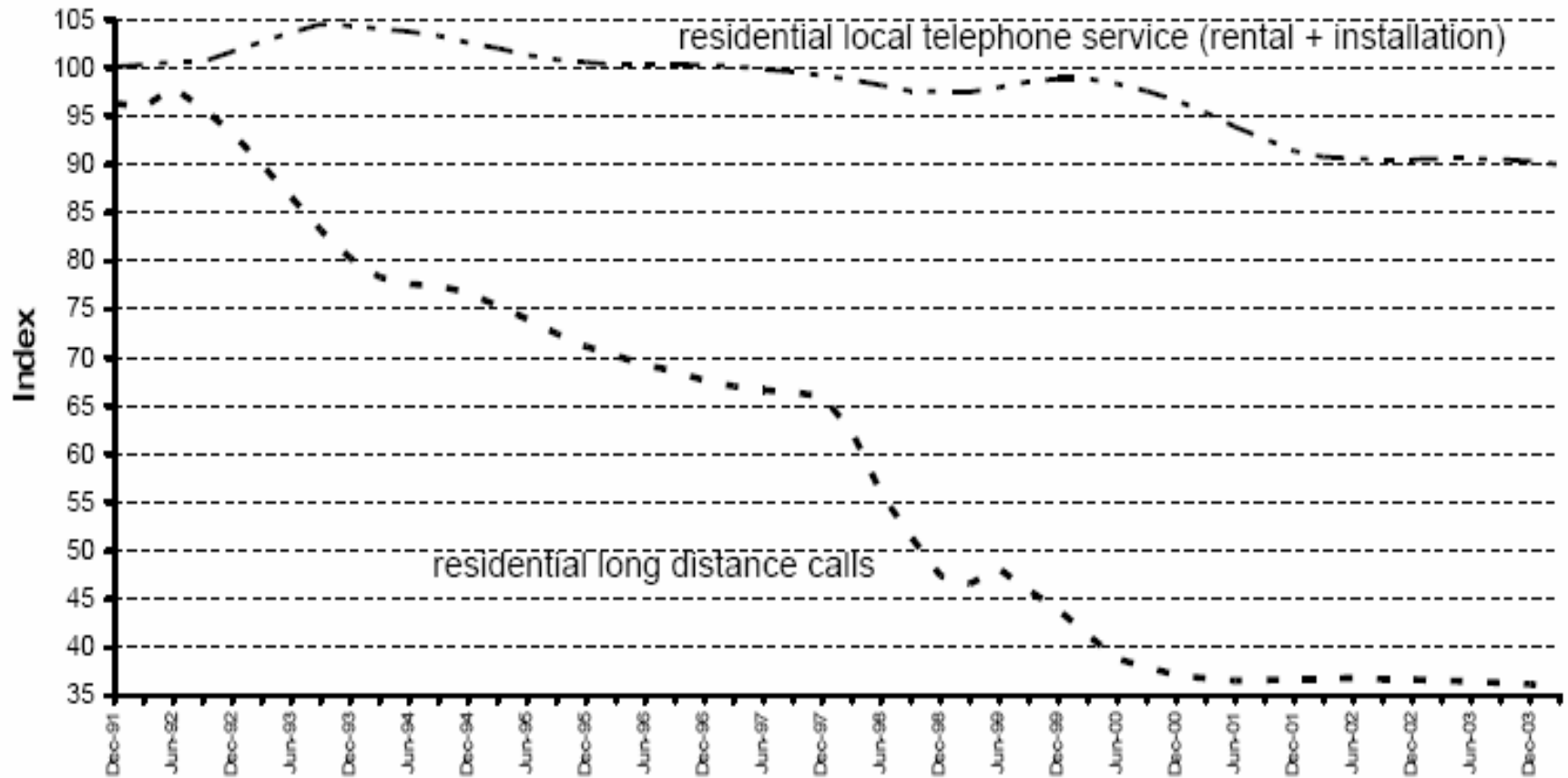
No competing services of the contested type provided until determination finalised

- unlike the 'ISP Wars' when Telecom and TelstraClear were fighting simultaneously in the market and the courtroom
- could efficiency gains of the magnitude of the 'ISP Wars' arise under the current arrangements?



A STATIC MARKET??

Statistics NZ Real Residential Telephone Service Price Index: March 1991 Base = 100



LLU REVIEW 2003-4

Change of recommendation between draft and final

Key issues came down to dynamic efficiency

- static benefits based on highly contested cost-benefit analysis small
- risks to Telecom's investment in Next Generation Network substantial
 - agreement with Alcatel in 2002 to roll out world's first fully fibre-based network
- so Commission finally recommended against full LLU

Instead recommended limited bitstream unbundling

- based on Telecom offer brought to conference
- would enable competition in DSL without risk of stranding entrants' assets (e.g. DSLAMs) when NGN rolled out
- specifically addressed residential, provincial and SME market (already extensive platform competition in most urban CBDs)



BITSTREAM OPERATIONALISATION

May 24 2004 – Minister accepts recommendation;
formally regulated July 13.

June 25 – Telecom agrees to have product available
from September 30

- targets set – 250,000 broadband connections by end of 2005; 1/3 new entrants (Dec 2003 – entrants have 35% market share under existing wholesale agreements)

September 3 – Commission releases price
benchmarking report

- TSLRIC based on comparable markets (density, geography, market size, distances from exchange etc).

September 30 – product launched according to plan

October 8 – Commission satisfied Telecom meeting
obligations



THE DETERMINATION DANCE RESUMES

Nov 4 2004 – TCL applies for wholesale access to Telecom VPN services

Nov 4 – TCL applies for determination on access to bitstream as fast as the line allows

Nov 9 – iHug makes similar bitstream request

Dec 23 2004 – iHug withdraws

- has come to satisfactory arrangement with Telecom

December 8 2005– VPN decision announced

- retail less 16% (13 months)

December 20 2005 – TCL determination announced

- best available speed on line for \$27.87



PAS DE DEUX (ET TROIS, ET QUARTRES)

Jan 3 2006 – TCL applies for redetermination of Dec 8 ruling

Jan 10 – Telecom applies as well

Jan 17 – both withdraw

March 29 – iHug and CallPlus apply for nationwide best-offers bitstream determination

June 22 – iHug/CallPlus determination \$28.04

October 20 – iHug/CallPlus revised determination \$27.76

December 12 – iHug requests reconsideration of October 20 ruling

December 18 – CallPlus follows suit

.....



New Zealand ADSL Market 2003-2006



MOBILE TERMINATION 2004-6

Telecom CDMA, Vodafone GSM; Evidence of high prices
Commission investigates fixed-mobile termination from April 2004

Decision process

1. LLU decision based on increase on total welfare (small => recommended against regulation)
2. Mobile termination decision based on consumer welfare gain (total welfare plus transfers) – significant => regulation recommended with proviso – only 2G networks (dynamic efficiency considerations)
3. Minister sends issue back for reconsideration – can distinction in technologies be justified?
4. Commission reviews – April 2006 satisfied that 3G network investment decisions now irreversible – recommends regulating all fixed-mobile termination



REVISED RULING A WATERSHED

Telecommunications Act uses different standard of test (consumer welfare) from Commerce Act (total welfare)

- based on Commerce Act Part IV – regulation of existing market power

Primacy of competition over efficiency

“Where there is a tension between the net public benefits and promotion of competition, the statutory context indicates that the primary consideration is the promotion of competition ... the Telecommunications Act is focused on regulating access to promote competition. It does not provide a mechanism that specifically allows for efficiency considerations to take precedence over the promotion of competition. Nor is there anything in the statutory scheme to suggest that this is the case”



'COMPETITION' IS NOW THE END IN ITSELF

No longer a means to the end of efficiency

- efficiency outcomes now collateral by-products in the pursuit of 'competition'

But what is 'competition'?

- a process?
- an end-state?
- how is it measured?
- which form? – price? non-price?

What does it mean in a small market such as New Zealand?

- where are scale/scope economies relevant?



POLITICISATION OF ‘COMPETITION’

September 17 2005 – triennial general election

Labour Party manifesto

- “this Labour-led government has ended the destructive period of ultra-light handed regulation that stifled competition, growth and consumer choice in ICT markets”
- Will ‘closely monitor and enforce commitments made by Telecom New Zealand under the local loop unbundling decisions and ensure targets for broadband uptake for the next three years as outlined in the Digital Strategy are met”

Speech from the Throne November 9

- “with respect to ICT, my government will be advancing policies to ensure that the telecommunications sector becomes more competitive and that we achieve faster broadband uptake in line with our competitors”



'STOCKTAKE'

Begun December 2

- focus on broadband uptake

February 2, 2006

- Commissioner reports Telecom has exceeded broadband account target by 11.6%, but only 24.5% sold by competitors
- note from previous graph – this is the most 'competitive' the market has been for at least 12 months (low point 19% in Q4 2005)
- NZ is now on the third-highest broadband growth trajectory in the OECD (confirmed by OECD figures, Dec 2006 – slope of curve unchanged since Q3, 2004)

May 2, 2006

- report released (amidst controversy)



STOCKTAKE REPORT

Finds low broadband uptake a ‘competition problem’ that can only be ‘solved’ by full LLU, structural separation of Telecom

- based on rudimentary, unscientific analyses
 - no literature review of linkage between unbundling and broadband uptake; misuses small amount of literature actually cited
 - only Telecom’s historic investment scrutinised (no observation of other parties reducing investment under bitstreaming); investment ‘problem’ determined principally from slippage in NGN project investment plan 2003 targets
- cost-benefit analysis deemed unnecessary
 - competition benchmark (market shares) now prevails over efficiency benchmarks (either consumer or total welfare)
- broadband uptake and sector investment will increase under LLU because OECD officials said it will; and some entrants said they would invest more if unbundling occurred
 - Government officials voice concerns about the OECD’s ‘cavalier attitude’ to investment
 - suggest it warrants further consideration



MARKET RESPONSE

Telecom shares plummet 23%

- 5% decline in NZX capitalisation
- \$3-4 billion dollars of shareholder wealth destroyed
 - but as efficiency does not matter any more, this is a justified price to be paid in the pursuit of competition?

Structural separation plans announced April 2007

- no evidence offered of Telecom favouring its own ISP
 - very difficult to conclude any favouritism given cost-based bitstream prices claimed by entrants to be too small to make a viable entry case upon
- Telecom pronounces government plans ‘unworkable’
 - can justify investing only \$0.5 billion of \$1.5 billion needed to deliver network as specified by government
 - credible commitment to claim – returns \$1.1 billion of sale of directories business to Shareholders in May



CODA

February 28, 2006:

- the Economic Development Minister (not Minister of Communications) announces that the mobile termination decision is being deferred whilst the Crown engages in a negotiation with Vodafone and Telecom

April 30 2007:

- 5 year agreement announced (Minister of Economic Development)
- effectively same outcome as Commission's April 2006 (revised) recommendation

May 31 2007:

- Minister of Communications announces (in a speech) that he, not the Commissioner, will lead unbundling and separation processes
- new Commissioner announced in same speech



359 DEGREE SWING OF PENDULUM?

1984

- Government controls decisions about application of Telecom's capital
- capital provided by taxpayers who are compelled to provide funds for core network enhancement withdraw

2007

- Government controls decisions about application of Telecom's capital
- capital provided by shareholders who cannot be compelled to provide capital for core network enhancement

Who will invest if Telecom does not?



LESSONS FOR OTHER COUNTRIES

1. It cannot be concluded from the New Zealand changes that ‘light-handed’, competition law-based regulation has ‘failed’
 - no tests yet on new Commerce Act (precluded by resort to regulatory determination)
 - the available evidence cannot discount hypothesis that it has performed equally well on most dimensions, with significant advantages in dynamic efficiency elements
2. It is not possible to have ‘just a little bit of regulation’
 - regulatory processes make determinations ex ante; competition law decides on validity of actions ex post
 - all of the predictions for the inefficient consequences of ex ante regulation came to pass in New Zealand (higher costs, not more timely, delays in new implementations)
 - whilst counterfactuals difficult to project, the welfare outcomes post 2000 appear substantially smaller than prior



LESSONS FOR OTHER COUNTRIES (cont)

3. Universal service obligations are problematic no matter which regime form is adopted
 - efficiency and equity objectives are fundamentally incompatible
4. The tension between competition and efficiency is significant
 - competition law regimes require very careful specification of the laws/tests of acceptable behaviour and relationship to efficiency
 - regulation-based regimes enable efficiency to be considered, but the relationship to competition must be carefully specified in the enabling legislation



LESSONS FOR OTHER COUNTRIES (cont)

5. Independence from political involvement is imperative

- competition and regulation are too important and too complex to be bound up in short-term populist politics

6. Size and context matter

- small markets are different
- who makes the investments matters
- dominant firm-competitive fringe equilibria may be 'as good as it gets' in small markets with high fixed/sunk costs

7. The telco world is changing

- consolidation into a smaller number of vertically integrated content/service/infrastructure providers becoming more common – effective management of oligopoly may be valuable knowledge in tomorrow's markets

