

The International Comparative Legal Guide to Telecoms, Media and Internet Laws and Regulations 2014

November 2013

Speedread

This annual guide is now out and it includes our contribution on the New Zealand scene which is at <http://tinyurl.com/p45npuk>.¹ We add below some developments in the last few weeks in Australia and New Zealand.



The Guide overviews key laws and regulations in the numerous countries it covers. The major update for New Zealand, since the guide was finished, is the debate on how FTTP roll out should be funded, and what regulatory conditions should be in place. Government is seeking to change the regime it put in place in 2011 which had copper at cost based pricing competing with the wholesale pricing for FTTP. Government seeks to increase the copper price and, depending on the solution adopted, enable forced migration customers away from copper to fibre.

Both Australia and New Zealand are like lab experiments in the world of rolling out fibre-based networks (FTTN and FTTP), and the funding issues that raises, with both countries looking at major changes away from earlier decisions.

Ironically, Australia and New Zealand are moving in reverse directions:

- Australia started with a massive Government funded FTTP roll-out, involving shutting down competition from other networks (including cable) to force migrate customers. The new incoming Government is reversing this by replacing the FTTP model with FTTN, and by encouraging competition with the new fibre network.
- NZ started with FTTN, which was installed, and then moved to FTTP funded by PPPs. For FTTP it started with copper pricing being set at cost (after a transitional period) to compete with FTTP. It now wants to move to increase the copper pricing

above cost and, depending on the solution adopted, to stop competition by enabling forced migration; increasing copper pricing above cost inhibits the competitive constraint anyway.

The NZ Government plans are strenuously opposed. It claims that it is not moving the copper price above cost as it is using the FTTP commercially negotiated price as a proxy in the cost methodology. That claim is not correctly made. The proposed approach also has Government overriding the regulator's decision on copper pricing.

In Australia, the incoming Government is reviewing how to make changes to transition the approach from FTTP to FTTN. In parallel, the regulator, ACCC, is finalising the regulatory regime in which the separated fibre network company (for FTTP and now FTTN) will operate. This month sees the final stanza in a contentious debate around the key regulatory document: NBN's Special Access Undertaking. On 20 November, an all but final draft has been released: it is likely to go fully final in December. ACCC consider that the Undertaking is sufficiently technology neutral to work with FTTN even though it was developed in the expectation that FTTP would be the network.

Disclosure: We act for parties which are opposing the proposed New Zealand changes.

1. <http://www.iclg.co.uk/practice-areas/telecoms-media-and-internet/telecoms,-media-and-internet-laws-and-regulations/new-zealand>

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

Wigley+Company

PO Box 10842

Level6/23 Waring Taylor St, Wellington

T +64(4) 472 3023 E info@wigleylaw.com

and in Auckland

T +64(9) 307 5957

www.wigleylaw.com