Notice under s66 of the Commerce Act 1986 by Vector Limited

COMMERCE ACT 1986: BUSINESS ACQUISITION

SECTION 66: NOTICE SEEKING CLEARANCE

11 October 2004

The Registrar
Business Acquisitions and Authorisations
Commerce Commission
PO Box 2351
Wellington

Pursuant to s66(1) of the Commerce Act 1986 notice is hereby given seeking **clearance** of a proposed business acquisition.

CONTENTS

CERTIFICATE

Schedule 1: Structure diagram of Vector Group

Schedule 2: Structure diagram of NGC Group

Schedule 3: Map of natural gas distribution networks in greater Auckland

Schedule 4: List of approved data administrators

Schedule 5: Proposed new regulation making powers under the Gas Amendment Bill

Appendix 1: Vector Limited Annual Report for the year ended 30 June 2004

Appendix 2: NGC Holdings Limited Annual Report for the year ended 30 June 2004

Appendix 3: Extracts from the Electricity Governance Rules and proposed amendments to the Electricity Act

Appendix 4: Extracts from the Gas Measurement Standard NZS 5259:1991

Appendix 5: Information on new meter technology

Appendix 6: Information on international trends for electricity meters

GLOSSARY

Acquirer means Vector Limited or an interconnected body corporate

AGL means The Australian Gas Light Company Limited

ICP means installation control point

NGC means the relevant member of the NGC Group

NGC Holdings means NGC Holdings Limited

NGC Group means NGC Holdings and its interconnected bodies corporate and associated persons as set out in Schedule 2

Vector means Vector Limited

Vector Group means Vector Limited and its interconnected bodies corporate and associated persons as set out in Schedule 1

Stream means Stream Information Limited

EXECUTIVE SUMMARY

Proposal

1 As the Commerce Commission will be aware from media reports, AGL, as part of its ongoing portfolio management, has been exploring alternative options for its 66.05% investment in NGC Holdings Limited which it holds through AGL NZ Limited (64.25%) and AGL NZ Investments Pty Limited (1.8%).

2 AGL has entered into an agreement with Vector Limited for the sale of its investment in NGC Holdings Limited. The agreement is conditional (amongst other things) on Vector receiving clearance from the Commerce Commission under section 66 of the Commerce Act.

3 Accordingly, clearance is sought for Vector Limited or an interconnected body corporate (the "Acquirer"), to acquire, whether directly or indirectly, up to and including 100% of the shares in NGC Holdings Limited (the "proposed acquisition"). Any such acquisition by Vector will involve the acquisition of AGL's interest and a full takeover offer for the balance of the shares in NGC Holdings.

Business Activities of Vector and NGC

4 The core business activities of the Vector Group include an electricity distribution business (in Auckland and Wellington), a natural gas distribution business (in Auckland), and a telecommunications network business (in Auckland CBD and Wellington CBD and in other parts of Vector's electricity network area). In addition, Vector operates a training business for people working in the electricity and gas industries, has a 70% interest in an electricity metering services business, and a 50% interest in a tree and vegetation management company.

5 The core business activities of the NGC Group include the purchase and sale of natural gas, a natural gas transmission business in the North Island and various natural gas distribution businesses in towns and cities throughout the North Island. NGC also operates a natural gas treatment plant and has a 50% interest in a joint venture which owns a steam and electricity co-generation plant at Kapuni. In addition NGC is involved in the distribution and sale of LPG, and has electricity and natural gas metering businesses.

Markets Affected

6 In this Notice, Vector has assessed the impact of the proposed acquisition against the following market definitions:

Horizontal aggregation:

- the market for the distribution of natural gas in the greater Auckland area[1];

- the national market for the leasing[2] of electricity meters to electricity metering services providers;

- the national market for the supply of electricity metering services;

Vertical integration:

- the market for the transmission of natural gas in the North Island;

- the market for the retailing of natural gas to industrial and commercial consumers in the North Island.

7 Vector has also considered the impact of the proposed acquisition on vertical integration in the electricity and gas sectors through the aggregation of (a) NGC's involvement in the supply of electricity and gas meters and metering services with (b) Vector's ownership of electricity networks in Auckland and Wellington, and a natural gas network in Auckland.

8 As outlined in its submissions on the Gas Control Inquiry, Vector considers that the relevant gas distribution market includes both natural gas and LPG. However, as it is unclear at this point whether the Commission will adopt that wider gas market definition, Vector has taken the approach adopted by the Commission in its previous decisions and assessed the competition impact of the proposed acquisition by reference to a natural gas distribution market. This narrow market definition will also enable the most stringent testing of any competition effects from the proposed acquisition. However, this Notice includes discussion on how the proposed acquisition would impact on competition if a wider 'gas distribution' market (including natural gas and LPG) were to be adopted.

9 Vector also considers that there is a good case for adopting broad energy metering markets, encompassing both electricity and gas. However, for the purposes of this Notice and since Vector is not involved in gas metering, Vector has adopted a conservative approach and analysed the markets from the perspective of electricity only.

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1 While Vector has adopted this narrow market definition in this instance for the purpose of identifying any competition effects from the proposed transaction, it does not adopt this narrow market definition for the Gas Control Inquiry where the Commission's competition assessment must consider competition to reticulated natural gas more broadly.

2 For the purposes of this Notice, references to the 'leasing' of electricity meters includes the lease or licence of the meter and other arrangements for rights of access to or use of the meter.

Competition Effects

10 Vector considers that the proposed acquisition will not result in a substantial lessening of competition in any of the markets affected. In particular:

(a) In the market for the distribution of natural gas in the greater Auckland area (or the wider 'gas distribution' market) the aggregation is *de minimis*. In any event, the merged group will continue to be constrained by the Gas (Information Disclosure) Regulations 1997; the threat of further regulation (from both the Commerce Commission and gas governance processes (whether industry-led or those of the Energy Commission, if established), as well as other regulations, if required, over time); the non-discriminatory open access regime under which both Vector and NGC operate; the threat of bypass in some areas; and competition from other fuels.

(b) Within electricity metering:

- NGC owns electricity meters at approximately 800,000 residential, commercial and industrial sites throughout New Zealand, or about [ ]% of ICPs in New Zealand. Vector's subsidiary, Stream, owns around [ ] electricity meters at large commercial and industrial sites throughout New Zealand, or around [ ]% of the ICPs in New Zealand. Any aggregation in terms of ownership of electricity meters will be de minimis.

- Vector understands that NGC leases the majority of its electricity meters to third party providers of electricity metering services (in particular, electricity retailers). The nature of Stream's business is such that, with the exception of historical lease-only arrangements in respect of 300 electricity meters, it does not lease meters to third party metering services providers.

- Vector understands that NGC provides metering services to around [ ] of the sites (mostly large commercial and industrial sites) where it owns the meters. Stream supplies electricity metering services to the majority of the [ ] sites where it owns the meters. In the national market for the supply of electricity metering services, the aggregated market shares of NGC and Vector (through Stream) is estimated to be less than [ ]%.

- The proposed acquisition has limited vertical integration effects across the electricity and gas sectors. It will not facilitate foreclosure of entry to any market or increase barriers to entry into any market nor will it enable the merged group to discriminate in favour of its own distribution or retail activities.

Previous Commission Decisions

11 Vector observes that the Commission has already considered the section 47 implications of a merger of ownership of the gas assets owned by NGC and Vector. In Decision 470 in August 2002, the Commission granted clearance for NGC to acquire the gas pipeline assets of UnitedNetworks.

12 The gas industry involvements of NGC and Vector that require consideration under this Notice are largely the same as the gas industry involvements of NGC and UnitedNetworks considered in Decision 470. Key differences are the sale by NGC of its customers consuming less than 10TJ per annum; its interests in the Taranaki Combined Cycle Power Station and in Cobb Power; and the sale by UnitedNetworks of its central North Island gas networks to Powerco.

13 The Commission has also considered the implications of the merger of electricity and gas businesses in a number of decisions. In particular, in Decision 471 in August 2002, the Commission granted clearance for Vector to acquire up to 100% of the shares in UnitedNetworks and in Decision 380 in December 1999 the Commission granted clearance for UnitedNetworks to acquire the gas distribution assets of Orion New Zealand Limited. Both of those decisions involved aggregation of electricity and gas networks in the Auckland region. Similarly, in Decision 345 in March 1999, the Commission granted clearance for UnitedNetworks to acquire the gas distribution networks of Transalta New Zealand Limited in areas of Wellington where UnitedNetworks owned the electricity network.

14 Accordingly, the Commission has largely already considered both the horizontal aggregation and vertical integration implications of the proposed transaction. The only aspect of the proposed acquisition that the Commission does not appear to have considered in the context of a clearance application is electricity metering. The degree of aggregation in this respect is minimal.

PART I: TRANSACTION DETAILS

1 What is the business acquisition for which clearance is sought?

Clearance is sought for Vector Limited or an interconnected body corporate (the "Acquirer") to acquire, whether directly or indirectly, up to and including 100% of the shares in NGC Holdings Limited. Any such acquisition by Vector will involve the acquisition of AGL's interest and a full takeover offer for the balance of the shares in NGC Holdings.

2 Who is the person giving this notice?

2.1 This notice is given by:

Vector Limited
101 Carlton Gore Road
Newmarket
Auckland

Telephone: (09) 978 7788
Facsimile: (09) 978 7500

Attention: Mark Franklin, Chief Executive Officer

2.2 All correspondence and notices in respect of this application should be directed in the first instance to:

Chapman Tripp Sheffield Young
Level 35
ANZ Tower
23-29 Albert Street
Auckland

Telephone: (09) 357 9000
Facsimile: (09) 357 9099

Attention: Lindsey Jones/Jackie Floyd

3 Confidentiality

3.1 Do you wish to request a confidentiality order for the fact of the proposed acquisition?

No. Confidentiality is not required for the fact of the proposed acquisition.

3.2 Do you wish to request a confidentiality order for specific information contained in or attached to the notice? If so, for how long? Why?

(a) Yes. Confidentiality is sought in respect of the information deleted in the "Public Copy" of this notice until Vector confirms in writing to the Commission that the particular information is no longer confidential. The confidential information is contained in paragraphs 10 of the Executive Summary, 11.25, 18.5, 18.7, 20.4 and in Tables 5, 6 and 7.

(b) Confidentiality is sought under section 100 of the Commerce Act 1986 and under section 9(2)(b) of the Official Information Act 1982 on the grounds that:

(i) the information is commercially sensitive and contains valuable information which is confidential to the participants; and

(ii) disclosure of it is likely to give an unfair advantage to the participants' competitors and unreasonably prejudice the commercial positions of the participants and of those customers and suppliers.

(c) Vector also requests that it is notified of any request made to the Commission under the Official Information Act for the confidential information, and that the Commission seeks Vector's views as to whether the information remains confidential and commercially sensitive at the time those requests are being considered.

4 Who are the participants (ie the parties involved)?

4.1 The 'acquirer' is:

Vector Limited (or an interconnected body corporate)
101 Carlton Gore Road
Newmarket
Auckland

Telephone: (09) 978 7788
Facsimile: (09) 978 7500

4.2 The 'targets' are:

AGL NZ Limited & AGL NZ Investments Pty Limited
c/o The Australian Gas Light Company Limited
AGL Centre
111 Pacific Highway
North Sydney NSW 2060
Locked Bag 944
North Sydney NSW 2059
Australia

Telephone: (612) 9921 2979
Facsimile: (612) 9922 8227

NGC Holdings Limited
The NGC Building
44 The Terrace
Wellington

Telephone: (04) 462 8700
Facsimile: (04) 462 8700

4.3 All communications with Vector in relation to this Notice should be directed in the first instance to:

Chapman Tripp Sheffield Young
Level 35
ANZ Tower
23-29 Albert Street
Auckland

Telephone: (09) 357 9000
Facsimile: (09) 357 9099

Attention: Lindsey Jones/Jackie Floyd

4.4 All communications with AGL, AGL NZ Limited & AGL NZ Investments Pty Limited in relation to this Notice should be directed in the first instance to:

The Australian Gas Light Company Limited
AGL Centre
111 Pacific Highway
North Sydney NSW 2060
Locked Bag 944
North Sydney NSW 2059
Australia

Telephone: (612) 9921 2979
Facsimile: (612) 9922 8227

Attention: Sam Pearce, General Manager Mergers & Acquisitions

4.5 All communications with NGC in relation to this Notice should be directed in the first instance to:

NGC Holdings Limited
The NGC Building
44 The Terrace
Wellington

Telephone: (04) 462 8787
Facsimile: (04) 462 8600

Attention: Steve Bielby, Director Corporate Services

5 Who is interconnected to or associated with each participant?

Vector Group

5.1 Vector is 100% owned by the Auckland Energy Consumer Trust (AECT). The AECT is managed by five trustees, publicly elected every three years in local body elections.

5.2 A structure chart of the Vector group, including companies in which Vector or its interconnected bodies corporate own 10% or more of the shares, is provided in Schedule 1.

5.3 Of those companies, the operating companies are:

Table 1: Vector Group Operating Companies

Company (% interest)	Operations
Vector Limited	Owns and operates electricity networks in Auckland and Wellington and natural gas distribution networks in Auckland. Also runs a training business under the name Utilitech for people working in the electricity and natural gas industries.
Vector Communications Limited (100%)	Owns and operates open-access fibre optic networks in Auckland and Wellington.
Stream Information Limited (70%)	Provides meters and metering services. The remaining 30% is owned by TML Stream Limited of Wellington, which is a wholly owned subsidiary of Energy Intellect Limited. NGC, through NGC Metering Data Services Limited has a 25% interest in Energy Intellect Limited.
Treescape Limited (50%)	A tree and vegetation management company. The remaining shares are held by the following individuals: Shelley Ann Chignell, Edward Graham Chignell and Brandon Lee Whiddett (25%), and Kim Whiddett, Edward Graham Chignell and Brandon Lee Whiddett (25%).

AGL Group

5.4 The AGL group of companies is involved in most facets of the gas industry in Australia, including the ownership and operation of gas pipelines and the distribution and marketing of gas to residential, commercial and industrial consumers. AGL, through AGL NZ Limited and AGL NZ Investments Pty Limited, holds 66.05% of the total shares in NGC Holdings. So far as Vector is aware, the AGL Group is not presently involved in any other business activity in New Zealand.[3]

5.5 Vector understands that AGL NZ Limited and AGL NZ Investments Pty Limited are special purpose companies whose only New Zealand involvements are the holding of shares in NGC Holdings.

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[3] Vector understands that there is presently a management arrangement in place between AGL and NGC which is unlikely to continue if the proposed acquisition proceeds.

NGC Group

5.6 NGC Holdings is a company incorporated in New Zealand and listed on the New Zealand Stock Exchange. As noted above, AGL, through AGL NZ Limited and AGL NZ Investments Pty Limited, holds 66.05% of the total shares in NGC Holdings. New Zealand Central Securities Depository Limited[4] holds 16.33% of the total shares in NGC Holdings on behalf of a number of institutions. The public and institutions hold the remaining 17.62% of the total shares of NGC Holdings[5]. All NGC Holdings shares are ordinary voting shares.

5.7 A structure chart of the NGC Group, including companies in which NGC or its interconnected bodies corporate own 10% or more of the shares, is provided in Schedule 2.

5.8 Of those companies, the principal operating companies are:

Table 2: NGC Group Principal Operating Companies

Company (% interest)	Operations
NGC New Zealand Limited (100%)	Natural gas wholesale business which purchases natural gas from the Maui and Kapuni gas fields which it sells to electricity generators, wholesale customers and industrial customers.
NGC Kapuni Limited (100%)/Kapuni Energy Joint Venture (50%)	NGC Kapuni Limited has a 50% interest in the Kapuni Energy Joint Venture which owns the Kapuni Co-generation Plant located at NGC's Kapuni Gas Treatment Plant. The remaining 50% interest is held by Bay of Plenty Electricity Limited. NGC New Zealand also operates the Kapuni Co-generation Plant.
On Gas Limited (100%)	LPG retail business that distributes LPG and supplies bulk and cylinder LPG at over 190 BP Service Stations in New Zealand.
Liquigas Limited (60.25%)	Tolls export LPG through its storage and loadout facilities at Port Taranaki, and provides storage and loadout services through its Christchurch Dunedin and Wiri facilities for distribution by wholesalers throughout New Zealand. The remaining shares are held by Shell, Todd and Rockgas.
NGC Gas Networks Limited (100%)	Natural gas pipeline owner and operator that operates high pressure transmission pipelines and owns and operates low and medium natural gas distribution pipeline networks in over 30 towns and in cities the North Island.
NGC Metering Limited (100%)	Owns energy meters and supplies metering services.
NGC Australia Metering Data Services Limited (100%)	Provides integrated energy meter asset and information services to primary energy retailers in Australia.
NGC Management Limited (100%)	Provides management services to other companies in the NGC Group.

4 New Zealand Central Securities Depository Limited (NZCSD) is the nominee for the Austraclear clearing and settlement system which is administered by the Reserve Bank of New Zealand.

5 NGC 2003 Annual Report, page 66

Company (% interest)	Operations
Wanganui Gas Limited (25.1%)	Natural gas retailer and network owner in the Wanganui/Rangitikei areas. The remaining 74.9% shares are held by Wanganui District Council.
Energy Intellect Limited (25%)	Provider of energy information technology and solutions.

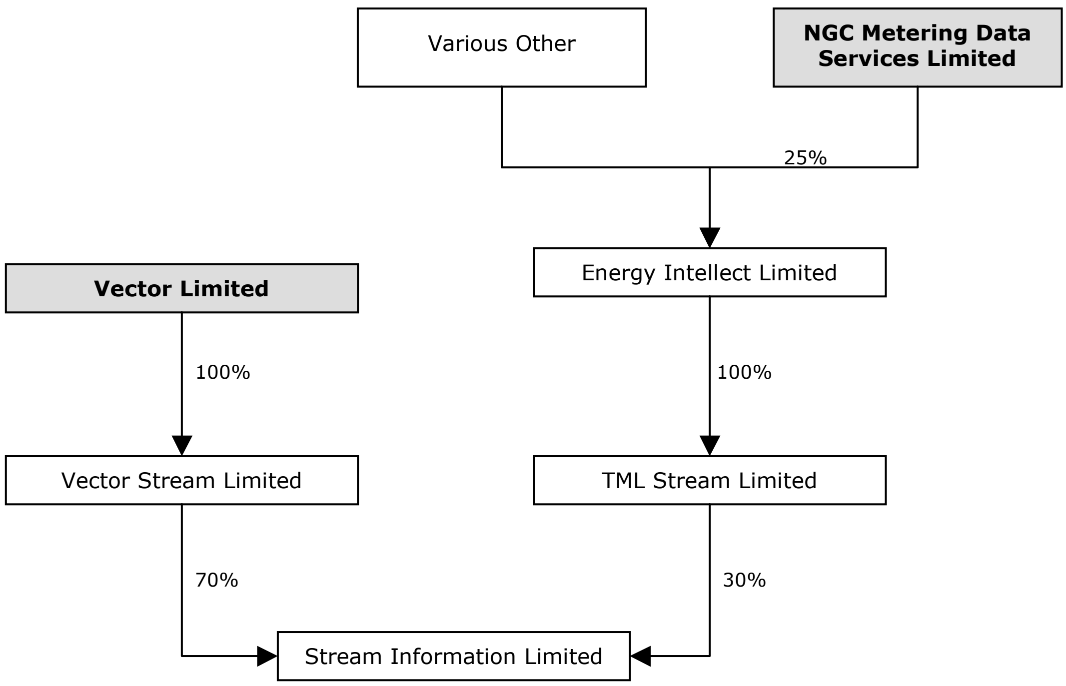
6 Does any participant, or any interconnected body corporate thereof, already have a beneficial interest in, or is it beneficially entitled to, any shares or other pecuniary interest in another participant?

6.1 Except as set out in paragraphs 6.3 and 6.4, neither Vector, nor any of its interconnected bodies corporate, has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in the NGC Group.

6.2 Except as set out in paragraphs 6.3 and 6.4, as far as Vector is aware, neither AGL, NGC, nor any of their interconnected bodies corporate, has a beneficial interest in, or is beneficially entitled to, any shares or other pecuniary interest in Vector.

6.3 Both Vector and NGC have an interest in Stream Information Limited, as illustrated by the shaded boxes in the following diagram.

Diagram 1: Stream Information Limited



6.4 Both Vector and NGC have an interest in Pacific Energy Limited, which is in the process of being wound up and is expected to be removed from the Companies Office register ver y shortly.

7 Identify any links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market.

7.1 As far as Vector is aware, the only links, formal or informal, between any participant/s including interconnected bodies corporate and other persons identified at paragraph 5 and its/their existing competitors in each market are:

(a) Vector connects to NGC's natural gas transmission pipeline;

(b) Vector has connected to NGC's distribution system at Whangaparaoa in order to provide for the distribution of natural gas from the transmission pipeline at the Waitoki gate station[6];

(c) Vector and NGC are parties to a use of network agreement under which Vector provides natural gas distribution services to NGC's retail division;

(d) Vector owns 70% of Stream Information Limited. The remaining 30% is owned by TML Stream Limited of Wellington, which is a wholly owned subsidiary of Energy Intellect Limited. NGC has a 25% interest in Energy Intellect Limited (refer to the structure charts provided in Schedules 1 and 2);

(e) Vector and Stream Information Limited are party to a variety of arrangements with electricity retailers some of whom are also competitors for the supply of electricity metering services;

(f) Stream Information Limited has an equipment supply agreement, software licence and support agreement and a meter reading arrangement with Energy Intellect Limited;

(g) NGC has a wholesale natural gas supply contract, a natural gas transmission contract and a distribution services contract with Wanganui Gas Limited;

(h) NGC has business premises connected to Vector's electricity network in Wellington and Auckland;

(i) NGC and Vector and other gas industry participants are members of the Gas Association of New Zealand;

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6 This arrangement replaces Vector's previous system of taking gas off the transmission system at Albany, transporting it by truck to Silverdale and injecting it into Vector's distribution system.

(j) NGC is a signatory to various allocation and reconciliation agreements in accordance with the Reconciliation Code;

(k) NGC and Vector have representatives on the Retail Market Advisory Group associated with the New Zealand Electricity Commission. Vector also has representatives on the Transmission Pricing, Security and Common Quality Advisory Groups;

(l) NGC and Vector are also members of various gas and/or electricity committees, including those associated with the establishment of a gas industry governance structure and both NGC and Vector are members of the Establishment Board for that structure;

(m) Vector, as the owner and operator of various natural gas distribution networks in the North Island, is party to a range of network related contracts with natural gas retailers and others connecting to those networks;

(n) NGC, as the operator of the high pressure natural gas transmission system in the North Island is a party to a number of transmission and other contracts with users connecting to NGC’s transmission pipeline;

(o) NGC is the operator of the Maui pipeline owned by Maui Development Limited;

(p) NGC, as the owner and operator of various natural gas distribution networks in the North Island, is party to a range of network related contracts with natural gas retailers and others connecting to those networks;

(q) As a natural gas wholesaler, NGC is party to many upstream and downstream gas contracts, including for the supply of natural gas to large industrial customers;

(r) NGC is party to a range of arrangements in the LPG industry, including LPG supply and distribution in New Zealand and reticulation arrangements in Wanaka;

(s) NGC owns and operates the Kapuni Gas Treatment Plant in Taranaki, at which the Kapuni Co-generation Plant is located which NGC has a 50% interest in (Bay of Plenty Energy Limited holds the remaining 50% and purchases the bulk of the electricity produced);

(t) NGC is party to a range of arrangements in the natural gas and electricity metering markets, including arrangements with electricity retailers under which the retailers lease NGC meters; and

(u) NGC and Vector are also party to informal discussions, at various times, on various issues affecting the industry environment in which they operate.

8 Do any directors of the 'acquirer' also hold directorships in any other companies which are involved in the markets in which the target company operates?

8.1 As far as Vector is aware, except as outlined below, none of the directors of companies in the Vector Group hold directorships in any of the companies in the NGC Group or any other companies which are involved in the markets in which companies in the NGC Group operate:

(a) Mark Franklin, the Chief Executive of Vector and a director of Vector and other companies in the Vector Group is also a director of Pacific Energy Limited;

(b) Mark Franklin is also a director of Stream Information Limited. Simon Mackenzie, a senior executive of Vector (but not a director) is on the Board of Stream Information Limited; and

(c) Brian Leyland, one of the directors of Vector, is a director of Onekaka Energy Limited (which owns a small generation plant in Golden Bay), and Electric Waters Limited (which holds the water rights used in relation to that generation plant).

8.2 Vector also notes that, as far as it is aware, none of the directors of companies in the NGC Group hold directorships in any of the companies in the Vector Group or any other companies which are involved in the markets in which companies in the Vector Group operate other than:

(a) two of the directors of companies in the NGC Group (Kevin Baker and Steven Bielby) are on the Board of Wanganui Gas Limited;

(b) one of the directors of companies in the NGC Group (Phillip James) is on the Board of Energy Intellect Limited;

(c) three of the directors of companies in the NGC Group (Kevin Baker, Steven Bielby and Owen Coppage) are on the Board of Liquigas Limited; and

(d) one of the directors of companies in the NGC Group (Steven Bielby) is on the Board of Pacific Energy Limited.

9 What are the business activities of each participant?

Vector Group

9.1 Vector is a major infrastructure provider in New Zealand, owned by the Auckland Energy Consumer Trust. Vector has total assets of approximately $3 billion comprising the following businesses:

(a) **Electricity Distribution:** electricity distribution businesses in Auckland, North Auckland and Wellington with around 642,000 end-consumers;

(b) **Natural Gas Distribution:** a natural gas distribution business in the Auckland region with around 71,000 end-consumers. A map showing the location of Vector's natural gas distribution network is set out in Schedule 3;

(c) **Telecommunications Networks:** a telecommunications network business, (through Vector Communications Limited), operating in parts of the Auckland and Wellington CBD and in other parts of Vector's electricity network area, providing high speed data and broadband services to business customers;

(d) **Training:** a training business under the name Utilitech for people working in the electricity and natural gas industries;

(e) **Metering:** a 70% interest in Stream Information Limited, a supplier of electricity metering services. The remaining 30% interest in Stream Information Limited is owned by TML Stream Limited of Wellington;

(f) **Other Interests and Activities:** Vector has a 50% interest in Treescape, a tree and vegetation management company. Vector also hosts a demand exchange, offers controllable load to the reserves market, has a small ICP data management service[7], and has various arrangements under which it leases space at substations and on other assets to telecommunications and other businesses.

9.2 Vector contracts out its network maintenance and capital work on both its electricity and natural gas networks. The main contractors are Siemens, Energex and North Power. Vector also uses contractors to extend and maintain its communications network.

9.3 A copy of Vector's Annual Report for the year ended 30 June 2004 is attached as Appendix 1.

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[7] This service is to assist independently owned embedded networks to comply with their data management obligations under the Electricity Governance Rules.

AGL Group

9.4 Vector understands that AGL NZ Limited and AGL NZ Investments Pty Limited are special purpose companies whose only activities are the holding of shares in NGC Holdings. The activities of the remainder of the AGL group are not relevant to this Notice as AGL will cease to have any interest in the NGC Group if the proposed acquisition proceeds.

NGC Group

9.5 Business activities of the NGC Group include the purchase, transmission, distribution and marketing of natural gas and associated co-products. NGC is the owner and operator of all of the North Island's high pressure transmission pipelines carrying natural gas meeting NZS 5442 specification for reticulated natural gas (apart from the Maui pipeline, where it is the operator). It is a distributor and retailer of natural gas in Northland, Waikato, Bay of Plenty, Taupo, Gisborne and Kapiti and a retailer of natural gas in Taranaki, although it retails only to larger industrial customers (being in excess of 10 TJ per annum). NGC has a 50% interest in the joint venture which owns the Kapuni Co-generation Plant, the other 50% being held by Bay of Plenty Electricity Limited.

9.6 Vector understands that the operational structure of the NGC Group is as follows:

(a) **Energy Acquisition and Sales:** NGC:

- holds long term entitlements to natural gas resources from the Maui, Kapuni, Pohokura, Surrey and Kahili gas fields;
- sells natural gas to gas retailers, independent power producers, its own industrial retail business and other internal users in the North Island; and
- sells processing services and gas by-products produced at the Kapuni plant.

(b) **Natural Gas Treatment:** NGC owns and operates gas treatment, processing and conditioning facilities at the Kapuni Gas Treatment Plant in Taranaki and sells LPG, natural gas and carbon dioxide produced at the plant.

NGC also has a 50% interest in the Kapuni Energy Joint Venture which owns the Kapuni Co-generation Plant. This is located within the Kapuni Gas Treatment Plant and supplies steam and electricity to the Kapuni Gas Treatment Plant and to the nearby milk factory of The Lactose Company of New Zealand Limited, with surplus electricity being sold to Bay of Plenty Electricity Limited.

A separate application is being made to the Commission for an exemption from the cross-involvement restrictions in the Electricity

Industry Reform Act 1998 in relation to the interest in the Kapuni Energy Joint Venture.

(c) **Natural Gas Transmission Operations:** NGC owns and operates over 2,187 kilometres of high pressure natural gas transmission pipelines and associated equipment in the North Island. NGC also operates the 313 km Maui natural gas pipeline on behalf of Maui Development Limited and manages 780 km of easements for petroleum product pipelines owned by others.

(d) **Natural Gas Distribution Operations:** NGC owns and also operates more than 2,800 km of intermediate, medium and low pressure distribution pipelines in the central North Island, Gisborne, Bay of Plenty/Whakatane, Northland and Kapiti Coast.

(e) **LPG:** NGC is involved in the sale and tolling of approximately 190,000 tonnes of gas liquids per annum through its wholly owned subsidiary On Gas Limited[8], Liquigas Limited (in which it has a 60.25% shareholding) and through the Kapuni Gas Treatment Plant, supplying LPG to industrial customers, service stations, and other commercial resellers throughout New Zealand and supplying niche markets with propane and butane.

(f) **Metering services:** NGC, through NGC Metering Limited, owns electricity meters and associated equipment at around 800,000 residential, commercial and industrial sites throughout New Zealand and 55,000 natural gas meters in the North Island[9]. NGC also provides energy metering services.

(g) **Other Investments:** NGC owns 25.1% of the retail distributor and natural gas network owner/operator Wanganui Gas Limited and 25% of the (soon to be wound up) energy trading company, Pacific Energy Limited.

9.7 A copy of NGC's Annual Report for the year ended 30 June 2004 is attached as Appendix 2.

9.8 The following tables summarise the business activities of NGC and Vector.

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[8] On Gas Limited was launched in November 2001 and brought together Propane Gas Limited which had operated in the North Island, and Southpower Port-A-Gas which had operated in the South Island.

[9] These figures are as published on NGCs website.

Table 3A: Key Energy Sector Activities/Interests of NGC and Vector

	NGC			Vector	
	Natural Gas	**Electricity**	**LPG**	**Natural Gas**	**Electricity**
Production and processing	Owns and operates gas treatment, processing and conditioning facilities at Kapuni and Taranaki.	Electricity and steam generation at Kapuni gas treatment plant through 50% interest in Kapuni Energy joint venture.	Produces LPG and owns and operates gas treatment, processing and conditioning facilities at Kapuni and Taranaki.		
Wholesaling	Holds long term entitlements to natural gas from the Maui, Kapuni, Pohokura, Kahili and Surrey gas fields.		Sells LPG but significant proportion is contractually committed to Shell and Todd for life of Kapuni field. (See CC Decision 411, para 194).		
Transmission/ Bulk Transport	Owns and operates the high pressure natural gas transmission pipelines in the North Island. Operates Maui gas pipeline on behalf of Maui Development Limited.		Has a 60.25% interest in Liquigas Limited which transports/bulk distributes LPG by ship to load out facilities at Wiri, Christchurch and Dunedin.		
Distribution	Owns and operates natural gas distribution pipelines in: Northland		Transports/distributes LPG in New Zealand including:	Owns and operates natural gas distribution pipelines in:	Owns and operates electricity distribution networks in
	Auckland (Whangaparaoa, Papakura, Drury, Ramarama only)		Auckland	Auckland	Auckland
	Waikato Bay of Plenty Taupo Gisborne Kapiti Wanganui/Rangitikei (through 25.1% interest in Wanganui Gas Limited)		Distributes reticulated LPG in parts of South Island.		Wellington
Retailing	Retails natural gas in Northland, Waikato, Bay of Plenty, Taupo, Gisborne, Kapiti, Taranaki and Wanganui (through interest in Wanganui Gas Limited).		Retails LPG in the same areas as transportation/distribution.		
Metering	Owns natural gas meters and provides metering services in the North Island.	Owns electricity meters and provides metering services nationally.	[May have meters on South Island reticulated LPG network].		Supplies electricity metering services nationally.

Note: Shaded parts identify areas of aggregation.

Table 3B: Natural Gas Industry activities/interests of NGC & Vector

Functional level	NGC	Vector
Production and processing	Yes	No
Wholesaling	Yes	No
Transmission/ Bulk Transport	Yes	No
Distribution	Yes (but only a minor overlap)	Yes (but only a minor overlap)
Retailing – over 10 TJ	Yes	No
Retailing – mass market	No	No
Metering	Yes	No

Table 3C: Electricity Industry activities/interests of NGC and Vector

Functional level	NGC	Vector
Generation	Yes (but minor involvement)	No
Wholesaling	No	No
Transmission/ Bulk Transport	No	No
Distribution	No	Yes
Retailing	No	No
Metering	Yes	Yes (but minor involvement)

Table 3D: LPG Industry activities/interests of NGC and Vector

Functional level	NGC	Vector
Production and processing	Yes	No
Wholesaling	Yes	No
Transmission/ Bulk Transport	Yes	No
Distribution	Yes	No
Retailing	Yes	No
Metering	[Possibly SI]	No

10 What are the reasons for the proposal and the intentions in respect of the acquired or merged business?

10.1 Vector is one of New Zealand's major multi-utility network infrastructure companies, predominantly operating in the electricity sector, but with significant interests in natural gas and telecommunications. The NGC Group is also a significant energy infrastructure and services group, predominantly operating in the gas sector. The acquisition of NGC by Vector is aligned with Vector's aims of being a leading multi-utility infrastructure and services provider in Australasia.

10.2 Whilst the majority of the assets and businesses owned by the two companies are not in the same markets, they are highly complementary from an operational and industry perspective. Consequently, an acquisition of NGC by Vector will produce a wide range of benefits, including:

(a) A larger, more diversified portfolio of businesses provides an improved risk profile, making the organisation less exposed to weather, regional economic and other industry cycles.

(b) Combining the resources of the two groups' businesses provides a greater opportunity to invest in best practice and new technologies.

(c) Leverage of existing competencies (including asset management, partnering, contract management, gas marketing and distribution, and metering) provides significant synergy opportunities which would lead to improved operational efficiencies, helping maintain the energy industry in New Zealand at world class standards as new technologies and challenges emerge.

(d) Technologically, an acquisition will bring together opportunities to introduce new products and services (including new methods of delivery) to the energy and communications industries. This will improve the provision of services to the energy industry, and establish a platform for further growth in telecommunications activity. The new group, given its scale, competencies and diversified interests, would also have the resources and capabilities to take these new technologies to markets overseas.

(e) The new group would be well positioned to deliver Vector's strategic growth objectives beyond New Zealand (predominantly Australasia) due to the level of expertise and access to capital that would exist across the group.

PART II: IDENTIFICATION OF MARKETS AFFECTED

Horizontal Aggregation

11 **Are there any markets in which there would be an aggregation of business activities as a result of the proposed acquisition?**

Please identify for each market:

- **the product(s), functional level, geographical area and (where relevant) timeframe;**
- **the specific parties involved;**
- **the relationship of those parties to the acquirer or the target company as the case may be.**

Introduction

11.1 The only aggregation of business activities that would result from the proposed acquisition would be in the following areas[10]:

(a) distribution of energy:

(i) Vector distributes electricity in Auckland and Wellington and natural gas in Auckland;

(ii) NGC, through NGC New Zealand Limited distributes natural gas in Auckland (but only in Whangaparaoa, Papakura, Drury and Ramarama) and 30 other towns and cities in the North Island; and

(iii) NGC, through On Gas Limited, distributes LPG in Auckland and throughout the rest of New Zealand.

(b) electricity meters and metering throughout New Zealand.

11.2 In terms of horizontal aggregation, for the reasons set out below, Vector considers the Commission should analyse the competitive impact of the proposed acquisition against the following market definitions:

(a) the markets for the distribution of natural gas in the greater Auckland area[11];

(b) the national market for the leasing[12] of electricity meters to electricity metering services providers; and

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[10] Refer to Table 3: Business Activities of NGC and Vector

[11] While Vector has adopted this narrow market definition in this instance for the purpose of identifying any competition effects from the proposed transaction, it does not adopt this narrow market definition for the Gas Control Inquiry where the Commission's competition assessment must consider competition to reticulated natural gas more broadly.

(c) the national market for the supply of electricity metering services.

11.3 Vector's view, as expressed in the Gas Control Inquiry, is that the distribution market is more properly defined as the market for the distribution of 'gas' (including natural gas and LPG). However, as the Commission has yet to express a final view on market definition in the Gas Control Inquiry, Vector has elected to adopt a conservative approach to market definition (which, given its narrow definition, will also enable the most stringent testing of any competition effects from the proposed acquisition) but has addressed the implications of NGC's involvement in LPG in the competition section of this Notice.

11.4 In addition, as detailed below, there is evidence to support broad 'energy metering' markets encompassing both electricity and gas. However, for the purposes of this Notice, Vector has adopted a conservative approach and has analysed metering from the perspective of electricity only.

[12] For the purposes of this Notice, references to the 'leasing' of electricity meters includes the lease or licence of the meter and other arrangements for rights of access to or use of the meter.

Distribution

Energy Distribution

11.5 The Commission has considered a number of clearance applications for mergers and acquisitions in the energy sector over recent years. The approach of the Commission to date has been to adopt discrete natural gas, electricity and LPG product markets, rather than a single 'energy' product market (refer Decisions 270, 323, 330, 333, 340, 345, 362, 380, 387, 408, 435, 470, 475, 505).

11.6 More recently, in its draft report on the Gas Control Inquiry, the Commission confirmed its approach to energy market definition and defined the relevant product market as that for natural gas alone.

11.7 Against this background, Vector expects that the Commission will see no need to consider the ownership within the same corporate group of:

(a) NGC's small natural gas distribution networks in Auckland (Whangaparaoa, Papakura, Drury, and Ramarama) and Vector's electricity distribution network in the same areas; and

(b) NGC's LPG activities in the same area as Vector's Auckland natural gas distribution and electricity distribution networks.

11.8 Vector notes however, that in its submission on the Commission's draft report on the Gas Control Inquiry, it advocated that:

> *"the Commission adopt a product market definition for 'gas', which includes delivered natural gas and LPG (and potentially other types of gas). Competition for gas in the product market gives rise (by way of a derived demand) to an input/functional market for the provision of gas transport services."*[13]

11.9 As it is unclear at this point whether the Commission will adopt a wider gas market definition (including natural gas and LPG), Vector has taken the approach to market definition adopted by the Commission in its previous decisions. However, in the discussion on competition in natural gas distribution markets later in this Notice, there is discussion on how the proposed acquisition would impact on competition if a wider 'gas distribution' market (including natural gas and LPG) were to be adopted (refer paragraphs 17.30 to 17.36).

Natural Gas Distribution Markets

11.10 In previous decisions, the Commission has determined that:

> *"Gas distribution networks have historically been viewed as discrete natural monopolies… The Commission remains of the view that bypass and potential bypass gives rise to pockets of competition and contestability but do not alter the*

13 Vector Limited - Submission on the Commerce Commissions Gas Control Inquiry Draft Report, 2 July 2004, paragraph 5.10.

overall framework, distribution networks being geographically discrete monopolies." (Refer Decision 470, paragraphs 28 and 30)

11.11 More recently, in its draft report on the Gas Control Inquiry, the Commission concluded (at paragraph 5.52) that the relevant markets for gas distribution were defined by the geographic regions identified for each natural gas distributor. In the case of NGC and Vector, those areas were identified in Table 2 at paragraph 5.8 of the draft report as:

> *"NGC: Northland, Whangaparaoa, South Auckland, Waikato, Bay of Plenty, Rotorua Taupo, Gisborne, Kapiti Coast;*
>
> *Vector: Greater Auckland, Tuakau, Ramarama"*

11.12 From this, Vector has concluded that the Commission sees the different regions outside of Auckland in which NGC has natural gas distribution networks as separate geographic markets but Vector is less clear how the Commission would treat networks within the greater Auckland region (Whangaparaoa, South Auckland, Greater Auckland, Tuakau, Ramarama).

11.13 Vector considers that the appropriate approach to market definition in this instance is to consider the greater Auckland area (including Whangaparaoa, Tuakau and South Auckland) as a single geographic market for natural gas distribution.

Area of overlap

11.14 The only area where both NGC and Vector have natural gas distribution networks is in small pockets of the greater Auckland area. NGC's networks are disparate networks in Whangaparaoa, Papakura, Drury and Ramarama.

11.15 A map showing NGC and Vector's natural gas distribution networks in greater Auckland is provided in Schedule 3.

Whangaparaoa

11.16 In Decision 470, the Commission said:

> *"NGC and UNL both own gas distribution pipelines at Whangaparaoa. UNL's pipelines in this area are not connected to NGC's transmission pipeline, rather UNL trucks gas to Silverdale on behalf of retailers supplying customers in the Whangaparaoa region, and connects to its distribution network at that point." (Refer paragraph 32)*
>
> *"…Whangaparaoa has particular features which distinguish it from the rest of the Auckland region. In addition, UNL's network at Whangaparaoa is not connected to its Auckland network." (Refer paragraph 33)*
>
> *"For these reasons, the Commission proposes to treat Whangaparaoa as a discrete market in respect of this application as the market characteristics of Whangaparaoa are quite different from those of Auckland." (Refer paragraph 34)*

11.17 In its draft report on the Gas Control Inquiry, the Commission noted:

> *"NGC and Vector both have pipelines in Whangaparaoa….Because the Whangaparaoa market situation is different from that applying in bypass areas, Whangaparaoa has not been treated as falling within "bypass markets" for the purpose of the competition analysis." (Refer paragraphs 3.70 and 3.71)*

11.18 In its submissions on the Commission's draft report on the Gas Control Inquiry Vector suggested[14] that Whangaparaoa should be included as a 'bypass' market. However, in its cross-submission following the Conference in July 2003,[15] Vector noted that the increase in competitive activity in Whangaparaoa has simply been NGC increasing the numbers of mains-fronted connections where its pipeline already exists. NGC has not extended its network and, as the Commission concluded in Decision 470, because of the physical path their respective networks take, there in fact remains little competition for customers between NGC and Vector in this area (albeit strong competition for customers on each pipeline from other energy options, particularly LPG).

11.19 Since Decision 470, one aspect of the situation in Whangaparaoa has changed. Vector now connects to NGC's distribution system at Whangaparaoa in order to provide for the distribution of natural gas from the transmission pipeline at the Waitoki gate station. This arrangement replaces Vector's previous system of taking natural gas off the transmission system at Albany and transporting it by truck to Silverdale where it was injected into Vector's distribution system.

11.20 In addition, Vector does not consider that the features of gas supply to the Whangaparaoa area are sufficiently different from any other part of Auckland (other than the fact that NGC has a natural gas distribution network in the area) to warrant Whangaparaoa being distinguished as a separate market. Whangaparaoa is (primarily) a residential area like any other residential area in Auckland.

11.21 Vector's view is that, for the purposes of this Notice, it is appropriate to treat Whangaparaoa as part of the greater Auckland natural gas distribution market.

Papakura, Drury and Ramarama

11.22 In its draft report on the Gas Control Inquiry, the Commission noted:

> *"….in limited areas, competition for distribution to large customers has developed over recent years principally through the use of bypass pipelines." (Refer paragraph 3.56)*
>
> *"…[the Commission] has placed bypass pipelines in a discrete market." (Refer paragraph 3.63)*

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[14] Vector Limited - Submission on the Commerce Commissions Gas Control Inquiry Draft Report, 2 July 2004, paragraph 5.32.

[15] Vector Limited – Gas Pipelines Inquiry Cross Submission, 13 August 2004, footnote 1.

"NGC Distribution has a small length of bypass pipelines in South Auckland which competes with Vector's distribution network in that area." (Refer paragraph 3.66)

11.23 In its submission on the Commission's draft report on the Gas Control Inquiry Vector noted[16] that it generally agrees with the Commission that reticulated bypass opportunities tend to be limited to areas where there is a concentration of medium to large industrial and commercial customers. Vector concurred with the Commission that the bypass market comprised areas where Nova's network and NGC's network in South Auckland bypasses Vector's network.

11.24 However, Vector considers that it is appropriate to treat Papakura, Drury and Ramarama as part of the greater Auckland natural gas distribution market for the purposes of this Notice since Vector and NGC's networks in these areas overlap to a minimal degree and take different directions from the gate station. As is the case in Whangaparaoa, competition between the Vector and NGC pipelines in these areas is very limited - although there is strong competition for each pipeline from other energy options, particularly LPG.

[16] Vector Limited - Submission on the Commerce Commissions Gas Control Inquiry Draft Report, 2 July 2004, paragraph 5.32.

Electricity Meters and Metering Services

Business Activities of Vector and NGC

Vector

11.25 Vector has a 70% interest in Stream, the core business of which is the supply of electricity metering services to large industrial and commercial sites throughout New Zealand. Stream's major customers for electricity metering services are large commercial and industrial end-consumers including [ ]. However, Stream also supplies electricity metering services in respect of some sites to electricity retailers, who then enter into arrangements with end-consumers for the supply of electricity metering services. Stream also has historical arrangements (which it acquired when it purchased the 'time of use' meters of Metrix in April 2002) under which it leases 300 electricity meters to electricity retailers, but in respect of which it does not provide metering services[17].

11.26 Stream itself funds the purchase of its electricity meters under finance lease arrangements with a financier.

11.27 Neither Vector nor Stream supplies natural gas meters or metering services to natural gas customers.

NGC

11.28 Vector understands that:

(a) NGC, through NGC Metering Limited, owns electricity meters and associated equipment at approximately 800,000 residential, commercial and industrial sites throughout New Zealand.

(b) NGC leases a large number of those meters to electricity retailers (mostly at residential and commercial sites) who enter into arrangements with end-consumers for the supply of the meter and the associated metering services, NGC having no other involvement with those meters other than ownership of the meter.

(c) NGC provides electricity metering services in relation to large industrial and commercial installations.

11.29 Vector also understands that NGC Metering Limited owns approximately 55,000 natural gas meters used at residential, commercial and industrial sites in the North Island. For the most part, these gas meters are at sites which are connected to NGC's gas distribution networks. However, Vector is aware that NGC also has gas meters on Vector's natural gas networks and on networks owned by Powerco Limited. NGC also provides natural gas metering services in

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[17] These arrangements do not fit with Stream's business model which is to provide electricity metering services including the supply of meters. Stream does not actively seek to lease its meters separately from the provision of metering services.

relation to residential, commercial and industrial installations, primarily to natural gas retailers.

Area of aggregation

11.30 If Vector's understanding of NGC's metering business is correct, the only area in which the metering business activities of NGC and Vector intersect is in the provision of electricity metering services to large industrial and commercial sites. Those services include the supply of the meter, maintenance and repair of the meter, and the supply of associated services required to provide consumption data.

11.31 Unlike NGC, the nature of Stream's business is such that, with the exception of the historical lease arrangements referred to in paragraph 11.25, it does not lease meters separately from the provision of metering services. Stream does not actively seek to lease its meters separately from the provision of metering services.

Market Definition

Introduction

11.32 To Vector's knowledge, the Commission has not, to date, considered an acquisition involving the aggregation of businesses involved in electricity metering. However, in its draft report on the Gas Control Inquiry, the Commission considered it:

> *"appropriate to treat metering as one component of the gas services markets, rather than placing it within a discrete market."(Refer paragraph 3.30)*

11.33 While Vector noted in its submission[18] to the Commission that gas metering (where owned by a pipeline operator) was likely to be covered by the Inquiry given the details of the terms of reference for the Inquiry, Vector does not consider that this is the appropriate approach to market definition. Metering is a separate function from distribution. Vector is also aware that NGC has commented on the Commission's approach in its submission on the draft report.[19]

11.34 In Vector's view, the contractual structure of the market, the nature of the various services provided in relation to energy meters, and the variety of providers of those services is such that the market boundaries are not easily defined. However, for the reasons discussed further below, Vector considers that it is appropriate to consider the competition implications of the proposed acquisition in the metering sector against the following market definitions:

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[18] Vector Limited - Submission on the Commerce Commissions Gas Control Inquiry Draft Report, 2 July 2004, paragraph 4.62.

[19] NGC Holdings Limited – Commerce Commission Gas Control Inquiry Submissions In Respect of the Draft Report, paragraphs 24.4, 77-78.

(a) the national market for the leasing[20] of electricity meters - being the lease of the meter only, to suppliers of electricity metering services; and

(b) the national market for the supply electricity metering services, to end-consumers (and in some instances to electricity retailers). Metering services here includes the supply of the meter, the repair and maintenance obligations and the supply of associated services required to provide consumption data.

11.35 The above transactions occur at separate functional levels of the market.

11.36 Vector considers that a market definition that draws no distinction between electricity and gas with regard to the leasing of meters or the supply of metering services would be appropriate given that the relevant activities within each sector are very similar. However, Vector has adopted a conservative approach in this Notice by analysing the leasing of meters and the supply of metering services from the perspective of electricity only, rather than combining electricity and gas. (See paragraphs 11.50-11.57 below for further discussion.)

11.37 The metering services under consideration in this Notice relate only to meters installed at, and metering data produced at, the point of consumption (ie not meters at the electricity grid exit points or gas gate stations).

Leasing of meters

11.38 Owners of electricity meters can be divided into three categories: electricity network operators; electricity retailers and specialist suppliers.

11.39 Frequently, the party that owns the meter at a particular site will have no contractual relationship with the end-consumer at the site. This situation arises in a number of instances, for example:

(a) where the meter owner simply leases some or all of its meters to electricity retailers, leaving it to the retailers to contract for the supply of the meter and associated services with the end-consumer;

(b) where the meter owner was originally the energy retailer but has lost the energy supply contract to another retailer, and has entered into an arrangement to lease the meter to the new retailer.

11.40 Vector understands that NGC, for example, leases the majority of the meters that it owns to electricity retailers who then enter into metering arrangements with end-consumers as part of their electricity supply contract. Those metering arrangements include the obligation to supply and maintain the meter, read the meter and provide the associated data management services.

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[20] For the purposes of this Notice, references to the 'leasing' of electricity meters includes the lease or licence of the meter and other arrangements for rights of access to or use of the meter.

11.41 Accordingly, there is a separate functional level of the market which involves the leasing of the meter to suppliers of metering services. The customers at this level of the market are mostly also electricity retailers (but could potentially include other suppliers of metering services). The nature of the obligations of the meter owners will vary according to the 'lease' arrangement. In some instances, as between the owner and the lessee, the owner may be responsible for maintenance and repair. In other instances, those obligations may be assumed by the lessee.

11.42 For the most part, the meters in this market are at residential and commercial sites (ie 'mass market'), where switching of meters is not generally cost-effective, but where access to installed meters is essential to enable competition to occur at the retail level of the electricity market.

11.43 Unlike NGC, the nature of Stream's business is such that (with the exception of the 300 historical lease arrangements referred to above) it does not lease meters separately from the supply of metering services. Stream's business is focused on the large commercial/industrial end of the market where meters can be replaced if the party that physically supplies metering services is changed.

11.44 There is a separate functional level of the market that involves the supply of the meter bundled together with associated functions, including maintenance and repair obligations and data management services. Vector has described this market as 'metering services'.

Metering services

11.45 The term 'metering services' comprises a range of functions, including:

(a) the installation, supply and maintenance of the meter (or if the meter is already installed, the on-going supply and maintenance of the meter);

(b) associated services, including data collection (meter reading) and other services necessary to ensure compliance with the industry rules relating to energy data reconciliation.

11.46 In addition, some metering services providers also supply data analysis services for the purposes of energy management. These services include web-enabled access to profile and energy consumption data.

11.47 Individual components of the above metering services may be physically provided by different parties. However, viewed from the perspective of end-consumers, it is likely they will deal with only one party. That party may sub-contract different parties to provide different aspects of the service.

11.48 For example:

(a) many energy retailers and most specialist metering services providers (such as NGC or Stream) will sub-contract out the installation and maintenance of the meter;

(b) some suppliers carry out their own data collection or meter reading; others sub-contract meter reading to a third party meter reading businesses;[21]

(c) electricity retailers that are approved data administrators for the purposes of the Electricity Governance Rules (EGRs) [22] can carry out the data administration function themselves. Specialist metering services providers that are not approved data administrators (such as Stream), will arrange for the data to be sent to the data administrator nominated by the end-consumer's retailer;

(d) where an end-consumer also wishes to obtain data analysis for the purposes of energy management but its metering services provider does not itself have the facility to provide that service, that provider will outsource the service.

11.49 In some instances, particularly in relation to large industrial and commercial electricity end-consumers, a retailer may sub-contract the entire metering services function to a specialist services provider such as Stream.

Electricity and gas metering services

11.50 As noted above, it could be fairly argued that the supply of electricity metering services and gas metering services comprise a single market. Vector considers that this is likely to be the case internationally where it is common for metering businesses to provide services across multiple utilities including electricity, natural gas and water.

11.51 Supply-side substitutability is high. Although some suppliers (such as Stream and Trustpower) currently only supply electricity metering services, others (such as NGC and Contact Energy) currently supply both electricity and gas metering services. There are no barriers preventing a supplier of electricity metering services from expanding into the supply of gas metering services, or vice versa, or preventing a new entrant from supplying both. Rather, the skills and capabilities required are very similar. There may be significant economies to be captured by supplying both (and indeed other similar metering services).

11.52 Demand-side substitutability is currently limited, but may increase over time. The latest generation of 'time of use' meters are technically capable of recording electricity, gas or water consumption. The time of use meter contains a measuring device and a data logger. The data logger simply records a 'pulse' sent to it by the measuring device. In the case of electricity, the measuring device will be current and voltage transformers. In the case of gas, the measuring device is a transponder. The data loggers on these time of use meters also have the capacity to receive multiple 'pulses' of information. In

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[21] In the case of meters which require a manual read, data collectors can be a separate entity from the data administrator but they must be able to show clear audit trails and cannot alter or manipulate the data they collect

[22] The EGRs came into effect on 1 March 2004. Relevant extracts from the EGRs are set out in Appendix 3. A list of approved data administrators is set out in Schedule 4.

other words, one time of use data logger could potentially record all of the electricity, gas and water consumption at one site and at separate places within one site – for example, separately for different production lines within manufacturing premises.

11.53 There are no regulatory or commercial impediments to new entrants supplying both electricity and gas metering services.

11.54 However, there are some differences between electricity and gas metering services, specifically:

(a) Electricity meters and gas meters are currently different in both design and function. Electricity meters measure the power used at the end-consumer's premises. Gas meters measure the flow and pressure of gas which is converted into a reading of consumption. In New Zealand, even the large industrial end-consumers still have separate meters for electricity, gas and water consumption. While the use of time of use meters to record electricity, gas and water consumption in the way just described is more common internationally, it is not yet the case in New Zealand (although Vector expects to see convergence occurring over time).

(b) There are different regulatory requirements for electricity and gas meters:

- Electricity meters are subject to various rules set out in the Electricity Governance Rules. These rules set out technical requirements for electricity meters falling into 6 different categories.[23]

- Gas meters are required to meet the Gas Measurement Standard NZS5259:1991 under the Gas Regulations 1993. This Standard sets out requirements for testing gas meters and correctors and for the installation and operation of gas measurement systems.[24]

(c) In terms of data services, gas metering services are essentially limited to a periodic meter read[25] and data administration for reconciliation purposes. So far as Vector is aware, as yet there are no suppliers supplying data analysis services for energy management purposes in relation to gas consumption.

11.55 In addition, there are no commercial or regulatory impediments to a new entrant supplying only electricity metering services or gas metering services.

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23 Relevant extracts from the EGRs are set out in Appendix 3.

24 Relevant extracts from the Gas Measurement Standard are set out in Appendix 4.

25 At larger industrial and commercial sites, the periodic meter read will be more frequent than in residential and commercial applications as most gas supply contracts for larger end-consumers typically include limits on the maximum hourly quantity (MHQ) and the maximum daily quantity (MDQ) that can be off taken at the site.

11.56 Having regard to the above and the fact that Stream does not provide gas metering services, for the purposes of this Notice, Vector has adopted a conservative approach to this aspect of market definition. That approach involves analysing a market for the supply of electricity metering services only.

11.57 The above factors are also relevant in relation to the market for the leasing of meters. That market could equally be analysed by reference to a single market for the leasing of electricity and gas meters.

Geographic market definition

11.58 Vector considers that the geographical market for the supply of electricity metering services is national.

11.59 Suppliers of electricity metering services are largely electricity retailers or specialist suppliers.

11.60 The electricity retailers that supply electricity metering services are Bay of Plenty Electricity Limited, Contact Energy Limited, Meridian Energy Limited, Mighty River Power Limited (through its Metrix business), Trustpower Limited, and Genesis Power Limited. Most of these retailers also own meters. However, Vector understands that Contact, Meridian and Genesis do not own all (or in the case of Genesis, any) of the electricity meters in respect of which they provide electricity metering services.

11.61 As noted earlier, at residential and commercial sites, where an end-consumer switches retailer, the new retailer will enter into an access/lease arrangement with the owner of the meter at the site. This enables the retailer to supply metering services without switching the meter. At large industrial and commercial sites, a switch of retailer may also result in the installation of a new meter.

11.62 On the basis that the Commission has previously concluded that the electricity retail market is a national one[26], it would follow that the electricity metering services market would also be national.

11.63 The specialist metering services suppliers include Energy Direct, NGC Metering, Stream and Alstom. These businesses all operate on a national basis, with the exception of Energy Direct, which operates in the Auckland area only.

11.64 The above factors are also relevant in relation to the market for the leasing of meters. However, as the proposed transaction would not give rise to any aggregation in this market, the point is not discussed further.

Conclusion on market definition

11.65 Having regard to the contractual structures in the market, the nature of the services provided and the varying types of services providers, Vector considers

[26] Refer Decisions 490 (Genesis Power/NGC) and Decision 491 (Contact Energy/NGC).

that the competition implications of the proposed acquisition are best assessed against the following market definitions:

(a) the national market for the leasing of electricity meters to electricity metering service providers;

(b) the national market for the supply of electricity metering services.

Differentiated Product Markets

12	**Please indicate whether the products in each market identified in question 11 are standardised (buyers make their purchases largely on the basis of price) or differentiated (buyers make their purchases largely on the basis of product characteristics as well as price).**

12.1 The markets identified in question 11 are:

(a) the market for the distribution of natural gas in the greater Auckland area; and

(b) the national market for the leasing[27] of electricity meters to electricity metering service providers; and

(c) the national market for the supply of electricity metering services.

12.2 The question of product differentiation is largely irrelevant to the natural gas distribution market. While there appears to be areas of network overlap in Whangaparaoa, Papakura, Drury and Ramarama, the actual area of overlap is minimal and, for the most part, NGC and Vector's networks take different routes or are on opposite sides of the road within those localities. To the very limited degree that they do overlap, as between the natural gas distribution services offered by Vector and NGC, purchasers are likely to make decisions based on price, rather than any differentiation in the distribution service offered. Natural gas distribution is widely regarded as an homogenous product. Relevant to price will be whether NGC is also offering natural gas supply in addition to the distribution service.

12.3 Certain characteristics of electricity meters and metering services suggest that there is a degree of differentiation in the electricity metering markets.

[27] For the purposes of this Notice, references to the 'leasing' of electricity meters includes the lease or licence of the meter and other arrangements for rights of access to or use of the meter.

13 **For differentiated product markets:**

- **Please indicate the principle characteristics of products that cause them to be differentiated one from another.**
- **To what extent does product differentiation lead firms to tailor and market their products to particular buyer groups or market niches?**
- **Of the various products in the market, which are close substitutes for the products of the proposed combined entity? - which are more distant substitutes?**
- **Given the level of product differentiation, to what extent do you consider that the merged entity would be constrained in its actions by the presence of other suppliers in the market(s) affected*?***

13.1 As noted above, the Electricity Governance Rules (EGRs) define 6 different categories of electricity metering installation according to voltage and current. As illustrated in the following table, these range from Category 1 (typically used at residential and small commercial) to Category 6 (typically used at large end-consumer sites such as pulp and paper mills and dairy processing factories). Meters in Categories 3-6 can be either low voltage (400v), or high voltage (usually 11kV).

Table 4:
Meter Installations and Typical Sites

Metering Installation Category	Voltage* & Current	Measuring Transformers	Maximum Permitted Error (Including Uncertainty)
1	1Ø & 3Ø, V ≤ 400V I ≤ 100A	None (Whole current metering)	± 2.5%
2	3Ø, V≤ 400V I ≤ 500A	CT	± 2.5%
3	3Ø, V ≤ 400V I ≤ 1200A 3Ø, 400V < V ≤ 11kV I ≤ 100A	CT VT & CT	± 1.25%
4	3Ø, V ≤ 400V I ≤ 2000A 3Ø, 400V < V ≤ 11kV I ≤ 100A	CT VT & CT	± 1.25%
5	3Ø, 400V < V ≤ 11kV I ≤ 300A	VT & CT	± 0.75%
6	3Ø, 400V< V ≤ 11kV I ≥ 300A; 3Ø, V > 11kV	VT & CT	± 0.75

Typical Installations

Metering Installation Category	
1	Domestic Home, Office, Small Commercial, Workshop
2	Commercial Building, Medium Hotel, Irrigation Pump, Small Industrial, Engineering or Joiners Workshop
3	Large Commercial Building, Large Hotel, Medium Process Factory
4	Large Process Factory, Small to Medium Dairy Company, Casting Factory
5	Large Scale Fabricating Engineers, Medium Dairy Company
6	Pulp & Paper Mill, Large Dairy Factory, Large Direct Connect End Users

13.2 Further, meters can be 'time of use' meters or 'non-time of use' meters.

(a) Time of use meters record electricity consumption in half-hourly units, which is stored electronically on a data logger together with the date and time of the half hour unit[28]. These records can be retrieved by cell phone, landline or by manual reading.

(b) Non-time of use meters record usage cumulatively on a register on the front of the meter. There are several variations of non-time of use meter, but the characteristics are the same in that all are read manually, or downloaded on site to a portable reading unit on a periodic basis (eg bi-monthly) at the site where the meter is installed.

13.3 Meters in Category 1 are usually non-time of use; meters in Category 2 can be time of use or non-time of use; meters in Categories 3-6 are required under the EGRs to be time of use.

13.4 For these reasons, different sites, and in some cases, individual connection points within a single site, will require different meters.

13.5 The functional differences between meters flow through to two aspects of electricity metering services: data collection and data analysis.

(a) Data collection includes a range of methods of gathering information from the meter - from the simple reading of consumption data on a manual periodic basis in the case of residential and small commercial sites to automatic remote daily reads of half hourly data at large commercial and industrial sites where time of use meters are installed.

(b) Data analysis services for energy management purposes can only be provided in relation time of use meters as they use half hourly consumption data. These services include:

- web-enabled access to profile and energy consumption data providing timely and accurate energy consumption information for control, monitoring and analysis; and

- specific services developed to meet the specific needs of particular customers.[29]

13.6 Vector estimates that less than 1% of the electricity meters in New Zealand are currently time of use meters. However, emerging technology, together with

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[28] The use of time of use meters in New Zealand essentially started with the development of the electricity wholesale market in 1996 and the pricing and sale of electricity at half hourly intervals.

[29] Examples of the valuable information these services can provide include:

- the ability to manage the electricity demand of a site to an efficient level through the monitoring of power factor correction equipment installed at large end-consumer sites;
- the analysis of energy consumption on different lines at a sawmill identified the need for blade sharpening on one of the lines.

decreasing costs of time of use meters and communications technology (and consistent with international trends), is likely to result in time of use meters becoming more widely supplied in Categories 1 and 2. Further information about some of the new types of technology available is contained in Appendix 5.

13.7 Vector anticipates that demand for time of use meters (and associated data analysis services) will increase and, as with overseas trends,[30] time of use meters will be installed in a wider range of installations.

13.8 Stream's business model is to develop relationships (either directly or through electricity retailers) with large industrial and commercial end-consumers with a view to offering data analysis services that can improve the management of their electricity consumption and energy costs - in addition to the supply of the meter and the other associated services.

13.9 In contrast, under NGC's business model, as Vector understands it:

(a) NGC leases a large number of its electricity meters to electricity retailers who then enter into contracts to supply metering services (including the meter itself) to end-consumers;

(b) NGC provides electricity metering services (predominantly through electricity retailers) to large industrial and commercial end-consumers.

13.10 Vector considers that product differentiation in the markets for the leasing of electricity meters and the supply of electricity metering services will have no impact on the extent to which the merged group would continue to be constrained by the presence of actual and potential competitors in this market following the proposed acquisition for the following reasons:

(a) Stream has lease-only arrangements in respect of only 300 electricity meters. Lease-only arrangements are not part of Stream's ongoing business model. Any aggregation in the market for the leasing of electricity meters to electricity metering services providers will be insignificant, without any noticeable effect in the market;

(b) the degree of aggregation in the market for the supply of electricity metering services that would arise from the proposed acquisition is de minimis;

(c) there are other suppliers of electricity metering services (refer section 18);

(d) a number of participants in the market do not provide all the component functions of metering services themselves but rather sub-contract

[30] Internationally there is a trend toward using time of use meters in a wider number of applications including mass market. For example, Vector understands that in Victoria (Australia) there is increasing use of time of use meters, and in Italy non-time of use meters have been replaced nationally with time of use meters. (See further information in Appendix 6)

various component parts, suggesting that the resources required to become a provider of electricity metering services can readily be purchased by a new entrant;

(e) new technologies are widening the scope for the development and use of time of use meters, indicating that the market is at a point of change that is likely to create new opportunities for new market participants.

Vertical Integration

14 **Will the proposal result in vertical integration between firms involved at different functional levels**

Natural Gas

14.1 Vector is not involved at different functional levels of the natural gas product market. Its involvement is limited to natural gas distribution in greater Auckland.

14.2 NGC is vertically integrated in the natural gas sector, operating at the following relevant[31] functional levels:

(a) *Natural Gas Transmission:* NGC owns and operates the high pressure natural gas transmission system in the North Island, through NGC New Zealand Limited. NGC Contracts Limited also operates the Maui pipeline running between Oaonui and Huntly. There is no contract between Vector and NGC for transmission services as natural gas retailers contract directly with NGC for these services.

(b) *Natural Gas Retailing:* NGC retails natural gas to a number of commercial and industrial consumers connected to Vector's gas distribution network in Auckland. NGC is a party to a use of network agreement with Vector relating to the provision of natural gas line services by Vector to NGC.

(c) *Gas Metering:* Vector understands that NGC owns/leases 55,000 gas meters in the North Island and provides metering services in relation to those meters.

14.3 Accordingly, the proposed acquisition will result in a minorincrease in the degree of vertical integration in the natural gas sector through the aggregation of Vector's natural gas distribution network in Auckland with NGC's natural gas transmission, retailing and metering activities. However, in practice, given NGC is already a natural gas distributor as well, the practical effect of the proposed acquisition is that there would be no increase in the nature of vertical integration within the natural gas industry.

14.4 Vector notes that in Decision 470 (paragraph 124) in the context of NGC acquiring the natural gas pipeline assets of UnitedNetworks Limited[32], the Commission concluded that the greater level of vertical integration would not result in a substantial lessening of competition in any market.

[31] NGC also processes gas. However the proposed merger would not have any effect on competition in that market.

[32] Vector acquired all of the shares in UnitedNetworks in October 2002. At the same time UnitedNetworks sold its Wellington and central North Island gas networks to Powerco.

Electricity

14.5 Vector and NGC are involved at different functional levels of the electricity sector:

(a) Vector operates electricity distribution networks in Auckland and Wellington;

(b) Vector supplies electricity meters and electricity metering services to large industrial and commercial end-consumers and retailers on a nationwide basis;

(c) NGC, through its 50% interest in the Kapuni Energy Joint Venture which owns the Kapuni Co-generation Plant, generates electricity[33]; and

(d) NGC leases electricity meters to electricity retailers, and supplies electricity metering services to large industrial and commercial sites throughout New Zealand.

14.6 Accordingly the proposed acquisition would result in an apparent increase in vertical integration in the electricity sector through:

(a) the involvement of the merged group in electricity distribution and a small level of electricity generation; and

(b) the aggregation of NGC's involvement in the leasing of meters and the supply of electricity metering services with Vector's ownership of electricity networks in Auckland and Wellington.

14.7 However, for the reasons outlined later in this Notice, Vector considers the impact of the increase in the level of vertical integration to be weak at best.

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[33] Electricity produced at the Kapuni Co-generation Plant is supplied to the Kapuni Gas Treatment Plant, a nearby milk factory - The Lactose Company of New Zealand Limited, and the surplus is sold to Bay of Plenty Electricity Limited.

15 **In respect of each market identified in questions 11 and/or 14 identify briefly:**

- **all proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years and, in each case,**
  - **the outcome of the notification (eg cleared, authorised, declined, withdrawn)**
  - **whether the proposed acquisition has occurred.**
- **any other acquisition of assets of a business or shares which either participant (or any interconnected body corporate) has undertaken in the last three years.**

15.1 Proposed acquisitions of assets of a business or shares involving either participant (or any interconnected body corporate thereof) notified to the Commission in the last three years are:

(a) Decision 490: Genesis Power Limited/Natural Gas Corporation Holdings Limited (cleared and proceeded);

(b) Decision 491: Contact Energy Limited/Natural Gas Corporation Holdings Limited (cleared and proceeded);

(c) Decision 475: Genesis Power Limited/Natural Gas Corporation Holdings Limited (cleared and proceeded);

(d) Decision 471: Vector Limited/UnitedNetworks Limited (cleared and proceeded);

(e) Decision 470: Natural Gas Corporation Holdings Limited/UnitedNetworks Limited (cleared but did not proceed).

15.2 In April 2002, Vector purchased the time of use meters and associated contracts owned by Metrix (a division of Mighty River Power). With that exception, neither Vector, nor any interconnected body corporate, has undertaken any other acquisitions of assets of a business or shares in the last three years.

15.3 Vector is aware of the following other acquisitions of assets of a business or shares undertaken by NGC (or any interconnected body corporate) in the last three years.

(a) In August 2002, NGC:

(i) entered an agreement with Shell under which Shell agreed to transfer to NGC at no cost, entitlements to 78.9 PJ of gas; and

(ii) acquired from Shell two contracts to supply natural gas from the Kapuni field to Methanex New Zealand Limited.

(b) In October 2003, NGC purchased 1200 electricity meters from d-Cypha and 6,740 electricity meters from Trustpower.

PARTS III, IV AND V: CONSTRAINTS ON MARKET POWER BY EXISTING AND POTENTIAL COMPETITION

Overview

16.1 The following sections of this Notice address the relevant questions in Parts III, IV and V of the Commission's application form in respect of each of the markets identified in paragraphs 11 and 14, that is:

(a) **Natural Gas Distribution:** the market for the distribution of natural gas in the greater Auckland area;

(b) **Metering:**

- the national market for the leasing of electricity meters to electricity metering service providers;
- the national market for the supply of electricity metering services;

(c) **Natural Gas Transmission:** the market for the transmission of natural gas in the North Island;

(d) **Natural Gas Retailing:** the market for the retailing of natural gas to industrial and commercial consumers (over 10 TJ) in the North Island.

16.2 In addition, the Natural Gas Distribution section addresses the implications of the proposed acquisition on the market for distribution of gas in the greater Auckland area if the wider 'gas' product market, including both natural gas and LPG, applied (as advocated by Vector in its submission on the Gas Control Inquiry).

Natural Gas Distribution

Introduction

17.1 Consistent with the Commission's decision in Decision 470, Vector considers that the proposed acquisition will not result in a substantial lessening of competition in the market for the distribution of natural gas in Auckland. In Decision 470, the Commission granted NGC clearance to acquire UnitedNetworks' pipeline assets[34], concluding that the proposed acquisition:

> *"will have no, or a de minimis, effect on competition in the market for gas distribution in Whangaparaoa [and Auckland]" (Refer paragraphs 66 and 67)*

17.2 There has been little change in the nature and extent of the networks in those areas, or in the circumstances that applied 2 years ago that would alter the Commission's propositions and conclusions in Decision 470.

17.3 As discussed at the end of this section, Vector also considers that the proposed acquisition will not result in a substantial lessening of competition in this market if the wider gas product market definition including both natural gas and LPG were to be adopted (as Vector has advocated in the context of the Commission's Gas Control Inquiry).

Auckland

17.4 As noted earlier, the only areas within greater Auckland where both NGC and Vector have natural gas distribution networks are Whangaparaoa, Papakura, Drury and Ramarama.

Whangaparaoa

17.5 In Decision 470 the Commission concluded that:

> *"Due to the relatively small numbers of customers in the areas where duplication of distribution pipelines occurs, the absence of switching, and the fact that distribution prices in those areas of overlap are consistent with those across the wider region, compared to the counterfactual, it is likely the current proposal will have no, or a de minimis effect on competition in the market for gas distribution in Whangaparaoa." (Refer paragraph 66)*

17.6 The Commission noted the following features of NGC and Vector's networks in Whangaparaoa:

> *"one third of the area has an overlap of UNL and NGC pipelines…" (Refer paragraph 59)*
>
> *"In the area of overlap at Whangaparaoa, NGC and UNL have pipelines running down the same streets in some instances. Although NGC has some connections on both sides of these streets, NGC contended that in many areas in which the networks overlap, it is uneconomic to lay a service across the road."(Refer paragraph 61)*

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[34] As the Commission will be aware, Vector acquired the business and assets of UnitedNetworks Limited on 31 October 2002. At the same time, UnitedNetworks gas pipeline assets in Wellington and the central North Island were sold to Powerco.

"distribution prices at Whangaparaoa are in line with distribution prices in the Greater Auckland region, which suggests that competition for distribution customers in Whangaparaoa has not had any noticeable impact on distribution prices." (Refer paragraph 64)

"NGC advised the situation of both NGC and UNL (previously Enerco) duplicating pipeline in the Whangaparaoa region is largely historic and "a ludicrous and expensive" exercise which is unlikely to continue. UNL confirmed this view." (Refer paragraph 65)

17.7 Considering the Commission's statements in Decision 470 against the circumstances applying at the date of this Notice:

(a) There has been no increase in the area of overlap of the NGC and Vector pipelines in Whangaparaoa since that Decision. The overlap remains about 1/3 of the area.

(b) In the areas of overlap, NGC and Vector's pipelines are on opposite sides of the street. In many areas it is not economic to lay a service across the road, because of high local contractor costs, and because of the hard rock that separates each side of the street. Further, irrespective of what those costs are, they will be additional to the costs for the pipeline on the other side of the street and, therefore, an impediment to services being taken up by a consumer.

(c) Consequently, Vector is not aware of any customer switching between Vector and NGC's networks (noting, however, that there is switching to/from both networks from/to other energy options).

(d) There has been a small increase in the number of new customers connecting to Vector and NGC's networks in Whangaparaoa. However, this is generally a result of infilling. NGC has recently increased its marketing activity in Whangaparaoa which Vector understands to be targeted at increasing the numbers of mains-fronted connections where its pipeline already exists, not to attract customers currently connected to Vector's network. The practical effect of this is that it will be even more difficult for Vector to cross the road to overlay pipelines in areas where NGC already has pipelines, and will result in a further demarcation of the two networks.

(e) Vector's distribution prices in Whangaparaoa remain consistent with its distribution prices in the greater Auckland region across all groups.[35]

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[35] Since Decision 470, Vector has introduced zonal pricing across its Auckland network to:

- better reflect the fact that it is relatively less expensive to distribute natural gas to larger consumers (load groups G23 and G24) that are in proximity to a transmission gate station and relatively more expensive to distribute natural gas to larger consumers that are further from a transmission gate station;
- provide a competitive response to other natural gas distribution companies that have constructed or threaten to construct natural gas distribution pipelines to larger consumers in areas that are already serviced by Vector's natural gas distribution network.

NGC's prices (as published in its Distribution Code) are the same across all of its North Island distribution areas, including Whangaparaoa.

17.8 Vector now connects to NGC's distribution system at Whangaparaoa in order to provide for the distribution of natural gas from the transmission pipeline at the Waitoki gate station. This arrangement replaces Vector's previous system of taking gas off the transmission system at Albany and transporting it by truck to Silverdale where it was injected into Vector's distribution system.

17.9 Since Decision 470, there have been new subdivisions in Whangaparaoa. However, given the location of Vector and NGC's networks relative to the new subdivisions, Vector has not found itself competing with NGC for the right to reticulate those subdivisions. This is illustrated in the map at Schedule 3. In any event, the proposed acquisition would not prevent another party bidding to reticulate new subdivisions in the area.

17.10 Having regard to the above, Vector considers that the conclusion reached by the Commission in Decision 470 remains applicable in the context of the proposed acquisition. Furthermore, in adopting the "greater Auckland market" definition proposed by Vector (as opposed to the separate "Whangaparaoa" market adopted by the Commission in Decision 470), any impact on competition would be *de minimis*.

Papakura, Drury and Ramarama

17.11 In Decision 470 the Commission concluded that:

> *"there is minimal competition either at Papakura or at Drury and that the proposed acquisition would have no, or a de minimis effect on competition in the market for gas distribution in Auckland" (Refer paragraph 66)*
>
> *"the overlap in Ramarama is an overlap in theory only and does not exist in practice."(Refer paragraph 68)*

17.12 The Commission also made the following observations in Decision 470:

> *"the overlap in Papakura and Drury represents a small proportion of the market in terms of load, connection and area served. In these areas, retailers have contracted with NGC or UNL for longer terms (of approximately 5 to 10 years) for the predominantly horticultural commercial loads." (Refer paragraph 68)*
>
> *"NGC's and UNL's networks in these areas overlap for a short distance (no more than 400 metres) and then diverge." (Refer paragraph 68)*
>
> *"the overlap in Ramarama is an overlap in theory only and does not exist in practice. The length of network pipeline that NGC inherited from WEL in this area has never been commissioned nor used to supply any consumer, nor connected*

Given the location and nature of the network in Whangaparaoa, the Whangaparaoa region is classed as Zone C. However, Vector has only 2 G23 customers in Whangaparaoa who would have been affected by zonal pricing.

to the Ramarama transmission delivery point. This length of pipeline is damaged and considered by NGC to be obsolete." (Refer paragraph 68)

"In Papakura, UNL's principal bypass line is the 300mm steel ex-transmission line running north to Otahuhu in Auckland. UNL also has a local distribution network in the area. NGC's distribution pipe running west from Papakura along Hingaia Rd runs parallel to UNL's network for approximately 400 metres. NGC does not currently supply any consumers from this stretch. It built its line to supply [ ], which represents less than [ ] of the estimated number of connections in the Auckland market. NGC's network load in Papakura is [ ] GJ/pa, [ ] of the load in the Auckland market which is [ ] GJ/pa, excluding the power generation demand at the Otahuhu and Southdown Power Stations." (Refer paragraph 65)

"In Drury, NGC has a distribution network running west along Karaka Rd (SH 22). There is no UNL network which overlaps with this network. NGC has also built a network extension east from Drury along Waihoehoe Rd to supply a greenhouse operation. This runs in parallel with a UNL line for 200-300 metres, before the UNL line branches off. No consumers exist in the area of overlap, as the lines run past farmland. NGC supplies gas to [ ] consumers in this area, [ ], representing less than [ ] of the estimated number of connections in the Auckland market. NGC's network load in Drury is [ ] GJ/pa, [ ] of the load in the Auckland market." (Refer paragraph 66)

17.13 Considering the above statements against the circumstances applying at the date of this Notice:

(a) In Papakura, as the Commission will see from the map in Schedule 3, there is no real overlap between Vector and NGC's pipelines. NGC's Hingaia Road pipeline still runs parallel to Vector's network for only 400 metres. NGC's pipeline runs west from the transmission line, while Vector's network runs east. Although both Vector and NGC have new customers, none of these are due to customer switching between NGC and Vector.

- Vector has reticulated new subdivisions in Takanini, Weymouth, Homai and Totara Heights as extensions to its Papakura network. However, these subdivisions are some distance from NGC's network and the gate station.

- Vector understands that NGC now services some additional horticultural end-consumers from its Hingaia Road line. These are all west from the 400 metre overlap area and could not be served by Vector's network in any event.

(b) In Drury there has been no increase in the overlap between the networks. NGC's Karaka Road pipeline does not overlap with Vector's network at all. NGC's Waihoehoe Road pipeline still runs parallel to Vector's network for only 200-300 metres through farmland. There is still no evidence of customer switching in the area of overlap.

(c) In Ramarama, NGC's pipeline is still damaged and is not connected to the transmission system or commissioned. As Vector understands it, this pipeline is still regarded by NGC as obsolete. This remains an overlap in theory only.

17.14 Therefore, the Commission's statements in Decision 470 are still applicable as at the date of this Notice.

17.15 Vector notes the Commission's comment in paragraph 68 on page 12 of Decision 470 that:

> *"A possible issue arises with respect to the removal of potential cross-border competition between NGC and UNL. In the present case the geographic borders of the two gas distribution companies intersect in some parts of the Auckland market. In some instances there is a potential for some limited cross-border competition on the geographic fringe of markets although, it is noted that the High Court in PNZ v Mercury was extremely sceptical of the degree of cross-border competition, with respect to electricity. The Applicant and UNL advised the Commission that in reality, distribution customers on the borders of their respective networks in the Auckland market do not switch networks. Therefore, consistent with the view of the High Court, the Commission has concluded that any loss of cross-border competition in this instance would be minimal at most." (Refer paragraph 68)*

17.16 There is no reason to expect that the Commission's view on potential cross border competition between NGC and Vector would be any different today.

17.17 Having regard to the above, the Vector considers that the conclusion reached by the Commission in Decision 470 remains applicable in the context of the proposed acquisition.

Constraints

17.18 In addition, Vector considers that the actual or possible constraints discussed below (which have been recognised by the Commission in Decisions 302, 345, and 470) would not be affected by the proposed acquisition.

Gas (Information Disclosure) Regulations 1997

17.19 The Gas (Information Disclosure) Regulations 1997 require:

(a) NGC to issue separate financial statements for its transmission, distribution, wholesale and retail businesses; to disclose contract prices, terms and conditions, pipeline capacity information, and line charge methodologies; and to publish financial efficiency and reliability performance measures; and

(b) Vector to issue financial statements for its distribution business; to disclose contract prices, terms and conditions, pipeline capacity information, and line charge methodologies; and to publish financial efficiency and reliability performance measures.

17.20 These regulatory requirements means that government and regulatory officials, major customers and competitors can monitor the financial and operational performance of NGC and Vector's network businesses. The purpose of information disclosure is, through transparency of information, to try to ensure performance is consistent with the long term interests of consumers. Where it is not, interested parties can make public comment on this, or draw it to the attention of policy-makers or regulatory authorities. Additional threats of regulation, discussed below, further work to ensure "acceptable" performance over time.

Threat of further regulation

17.21 If the natural gas pipeline activities of NGC and Vector are subjected to price control, as a consequence of the current Gas Control Inquiry, the pricing and performance standards of those businesses will be controlled.

17.22 If the outcome of the Gas Control Inquiry is that control is not recommended in respect of either Vector or NGC, the threat of control remains. Further, given the Inquiry has run its course (with well-established analytical frameworks and models), the threat of control would be enhanced in future given that the 'line in the sand' for control would be clearer.

17.23 Furthermore, the Gas Amendment Bill (formerly comprised in the Electricity and Gas Industries Bill and expected to become law in early October) contains powers for the Government, if required, to expand the Electricity Commission to govern natural gas as well as electricity. If the Government decides that the natural gas industry (through the proposed co-regulatory regime provided for in the Bill) has failed to deliver industry rules that meet its expectations, the Government can establish the 'Energy Commission' (an extended Electricity Commission). If established, the Minister will be able to make regulations for a number of purposes including prescribing reasonable terms and conditions for access to transmission and distribution pipelines. To avoid the establishment of the Energy Commission, the industry-led co-regulatory approach to governing the industry will need to establish and deliver (either through self-regulation, or regulations recommended to the Minister) on a wide range of government objectives, many of which are targeted, either directly or indirectly, at pipeline performance.[36]

17.24 Also, under the Bill, the Governor General may, on the recommendation of the Minister at any time, make regulations for a number of purposes (further underscoring the constraint on behaviour), including:

(a) providing for the establishment of, and participation by natural gas distributors and retailers in, a complaints resolution system to address complaints by any person relating to natural gas distributors and retailers;

[36] Further detail on the gas industry governance regime proposed by the Gas Amendment Bill is contained in Schedule 5.

(b) providing for the disclosure of information by natural gas transmitters, distributors, and retailers on tariff and other charges;

(c) providing for minimum terms and conditions in contracts between domestic end-consumers and natural gas distributors or gas retailers.

Non-discriminatory open access regime

17.25 Both NGC and Vector operate under a voluntary non-discriminatory open access regime:

(a) The agreements under which retailers and direct connect customers use Vector and NGC's natural gas distribution networks (and in NGC's case also the NGC Information Memorandum) are standard agreements which govern the conduct, rights and obligations of all network users.

(b) The Reconciliation Code of 1 July 2000 provides for a uniform approach to reconciliation and customer switching protocols. It sets out the rights and responsibilities of parties to arrangements relating to ownership of natural gas at points where it is exchanged or passed from one network to another and sets out procedures for dealing with disputes. The switching protocol included in the Code allows users to switch from one retailer to another in a fair, equitable and efficient manner at low cost.

Bypass

17.26 The threat of bypass will not be affected by the proposed acquisition because both Vector and NGC operate under an "open access" regime.

17.27 Nova Gas Limited, the current bypass competitor, has established the credibility of bypass over the past years. Although no other company has built a bypass network to date, Nova has proven that the technical entry requirements are not high and large end-consumers could bypass any natural gas distribution network by linking directly to NGC's national transmission system[37]. Any part of a natural gas network is potentially a bypass area if the consumption of a single natural gas customer is large enough, or if a group of larger customers can be assembled into a "cluster".

Interfuel competition

17.28 The Commission stated in its draft report on the Gas Control Inquiry, that:

> *"The Commission accepts that competition to supply new energy users or users whose plant or appliances have come to the end of their economic life does provide an on-going competitive constraint on energy suppliers. Further, it accepts that while there continues to be a reasonable proportion of energy users in a position to make a switch at any time, and it is not possible for a gas supplier to distinguish between them and other users, competitive benefits will flow to all users." (Refer paragraph 3.89)*

[37] Nova Gas has laid pipes in Hutt/Wellington, Hunua, Hastings, Hawera and areas of Auckland from NGC's transmission system to supply large consumers previously connected to the incumbent owner's network.

17.29 Vector considers that the extent of interfuel competition is wider than recognised by the Commission. However, whatever the level of interfuel competition, the proposed acquisition will not affect the degree to which it would represent a constraint on the merged group's natural gas distribution activities.[38]

LPG

17.30 As noted in section 11 above, in its submission on the Commission's draft report on the Gas Control Inquiry, Vector recommended that:

> *"the Commission adopt a product market definition for 'gas', which includes delivered natural gas and LPG (and potentially other types of gas). Competition for gas in the product market gives rise (by way of a derived demand) to an input/functional market for the provision of gas transport services."*[39]

17.31 Although the Commission has not to date accepted this product market definition, this section addresses how the proposed acquisition would impact on competition in the market for gas distribution in the greater Auckland area if the wider 'gas' market were to include both natural gas and LPG.

17.32 Vector considers that even if LPG distribution is regarded as a constraint on gas distribution, the proposed acquisition will not involve a substantial lessening of competition. As discussed below, the LPG industry is strongly competitive and entry barriers are relatively low.

LPG Industry Structure Overview

17.33 The diagram on the following page illustrates the structure of the LPG industry in New Zealand and identifies the key participants.

17.34 It is at the secondary (or local) distribution level of the market that LPG represents a constraint on Vector's natural gas distribution business.

17.35 However:

(a) Vector understands that NGC has a relatively small share of the secondary distribution market.

(b) There are three other wholesale distributors: Shell, Todd and Rockgas, all of which are significant, well–resourced, commercially savvy and competitive organisations.

(c) There are also a variety of resellers, ranging from:

- Air Liquide, a multinational supplier of oxygen, nitrogen, hydrogen and other gases with subsidiaries in more than 65 countries; to

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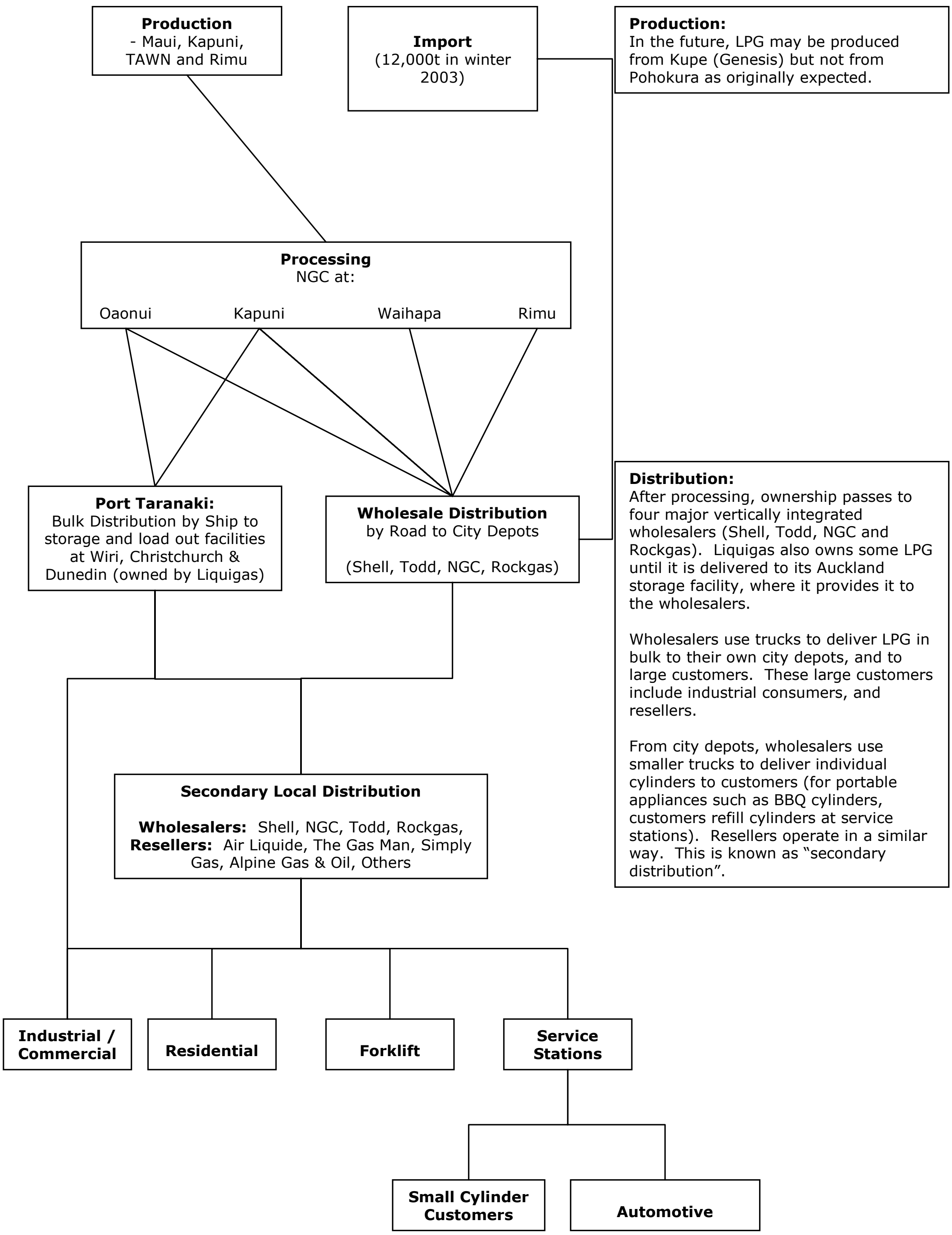
38 Further information on interfuel competition can be found in Vector's submissions on the Gas Control Inquiry dated 2 July 2004.

39 Vector Limited - Submission on the Commerce Commissions Gas Control Inquiry Draft Report, 2 July 2004, paragraph 5.10.

- o Simply Gas, a 100% New Zealand owned distributor of LPG, which offers a unique purchasing system known as 'dual flow' to domestic and small business users in the Auckland region.

17.36 Vector considers that any attempt to raise delivered prices would be met aggressively by existing competitors. Furthermore, given that LPG is readily transported and transportable to any destination, Vector considers that a price rise would encourage entry into secondary distribution by new competitors who can readily source LPG from Shell, or Rockgas. Further, a price rise could encourage increased delivery in bulk to industrial consumers.

Diagram 4:
LPG Industry Structure



Summary

17.37 In summary, the level of competition between Vector and NGC's natural gas distribution networks in the greater Auckland area is *de minimis*. The only areas in Auckland where both Vector and NGC have natural gas distribution networks, albeit with minimal overlap, are:

(a) Whangaparaoa; and

(b) Papakura, Drury and Ramarama.

17.38 In relation to all of these areas, Vector considers that the conclusion reached by the Commission in Decision 470 remains applicable in the context of the proposed acquisition which is the subject of this Notice.

17.39 In addition, Vector considers that, whether or not the relevant market is defined to include LPG, the merged group would continue to be constrained in its pricing and other aspects of its service delivery by the following:

(a) the Gas Information Disclosure Regulations 1997;

(b) the ongoing threat of further regulation, including:

(i) regulatory control (either directly through the existing Gas Control Inquiry or, in future, through the 'line in the sand' for control being clearer as a result of the inquiry process, and the possibility of new inquiries over time);

(ii) via the industry-led approach to regulating the gas industry, or the Energy Commission alternative;

(c) the non-discriminatory open access regime under which both Vector and NGC operate;

(d) bypass competition in certain areas; and

(e) inter-fuel competition.

Metering

Introduction

18.1 This section proceeds on the basis that the relevant metering market against which to assess the competition effects of the proposed acquisition are:

- the national market for the leasing[40] of electricity meters to electricity metering service providers; and

- the national market for the supply of electricity metering services.

18.2 This section also addresses the competition effects of vertical integration across the electricity and gas meter and metering services markets outlined in paragraph 14.

Leasing of electricity meters

18.3 Vector does not have any specific information about the numbers of meters that are leased to electricity metering services providers. As noted earlier, Stream's business is focused on large industrial and commercial end-consumers, where meters can be switched. Stream has lease-only arrangements in relation to only 300 electricity meters.

18.4 However, Vector has estimated the numbers of ICPs at which various meter owners have meters. These estimates are listed in the table below.

Table 5:
Electricity Meter Ownership as at September 2004

Owner	No. of ICPs[1]	% of total meters
NGC	[ ]	[ ]
Contact Energy Limited	[ ]	[ ]
Mighty River Power Limited	[ ]	[ ]
Trustpower Limited	[ ]	[ ]
Aurora Energy Limited	[ ]	[ ]
Northpower	[ ]	[ ]
The Power Company	[ ]	[ ]
Counties Power Limited	[ ]	[ ]
Alpine Energy Limited	[ ]	[ ]
Todd (and related companies)	[ ]	[ ]
The Lines Company Limited	[ ]	[ ]
Meridian	[ ]	[ ]
Electricity Invercargill Limited	[ ]	[ ]
Network Waitaki Limited	[ ]	[ ]
Stream	[ ]	[ ]
EDL	[ ]	[ ]
Total	[ ]	**100**

Source of data: Stream management best estimates.

[1] Data is by ICP, not the number of actual meters at an ICP. In some cases there may be more than one meter per ICP.

[40] For the purposes of this Notice, references to the 'leasing' of electricity meters includes the lease or licence of the meter and other arrangements for rights of access to or use of the meter.

18.5 Of the total number of ICPs where electricity meters are installed, NGC's market share is estimated at [ ]%. Vector's subsidiary, Stream, owns meters at only [ ]% of ICPs. Even if these figures were to be used as a proxy for meters that are leased to suppliers of electricity metering services, the level of aggregation would be de minimis.

Electricity metering services

18.6 Estimated market shares in the national market for the supply of electricity metering services (by number of ICPs) are outlined below:

Table 6[41]:
Electricity metering services

Supplier	2003	
	No. of ICPs[1] in respect of which data services are supplied	Mkt share %
Contact	[ ]	[ ]
Genesis	[ ]	[ ]
Might River Power	[ ]	[ ]
Trustpower	[ ]	[ ]
Meridian	[ ]	[ ]
Todd (and related companies)	[ ]	[ ]
Stream	[ ]	[ ]
NGC	[ ]	[ ]
EDL	[ ]	[ ]
EMS (formerly d-cypha)	[ ]	[ ]
Counties	[ ]	[ ]
Total	[ ]	**100**

Source of data: Stream management best estimates.

[1] Data is by ICP, not the number of actual meters at an ICP. In some cases there may be more than one meter per ICP.

18.7 The aggregated market shares of NGC and Stream account for less than [ ]% of the market. It is self-evident from market share alone that the proposed acquisition will have no impact on competition in this market. Accordingly, Vector has not taken its analysis of competition in this market any further.

Vertical Integration

18.8 For the reasons outlined below, Vector considers that:

(a) the aggregation within the merged group of the activities of NGC in the markets for the leasing of electricity meters and the supply of electricity metering services would not result in the merged group having an increased ability to leverage power in the market for the distribution of electricity in Auckland and Wellington; and

[41] The total number of ICPs in this table differs from the total number of ICPs in Table 5 by 760. This has arisen as a result of estimating the numbers of ICPs in respect of which electricity retailers provide metering services where they do not own the meters.

(b) the aggregation within the merged group of the activities of NGC in the gas metering markets and the natural gas distribution activities of Vector would not result in the merged group having an increased ability to leverage power (to the extent it has any) in the market for the distribution of gas in the greater Auckland area.

18.9 As outlined in the *Mergers and Acquisitions Guidelines*, the Commission considers that vertical integration is unlikely to result in a substantial lessening of competition in a market unless market power exists at one of the functional levels.

18.10 The merged group would not have market power in any of its markets given:

(a) the regulatory environment in the electricity market, including the Commerce Act Part 4A regime, the Electricity Commission and the threat of further regulation;

(b) the regulatory environment in the gas industry, including the threat of control under the Gas Control Inquiry (and any future inquiry) and new regimes proposed in the Gas Amendment Bill; and

(c) in relation to gas distribution, competition from other fuels (and, in particular, from LPG).

18.11 To the extent the Commission did consider there was market power (which Vector considers unlikely), there is no reason to suggest that the merged group could utilise that to deter competition in the markets for the supply of electricity or gas meters or metering services. In particular:

(a) There are no access issues. Both Vector and NGC, in their respective electricity and natural gas network businesses, operate non-discriminatory open access regimes.

(b) The disclosure and regulatory obligations on electricity lines companies under Part 4A of the Commerce Act and on gas distribution businesses under the Gas (Information Disclosure) Regulations will create an open book on the services and pricing policies of the merged group in relation to its distribution activities.

(c) Behaviour will be constrained by the threat of further regulation in both the electricity and gas industries (as discussed elsewhere).

(d) In relation to electricity, the current structure of the electricity industry, with separation between lines businesses and supply businesses means that Vector has limited ability to offer electricity retail services. Electricity retailers therefore have direct access to end-consumers on Vector's networks and are well placed to supply electricity metering services in conjunction with their energy supply. Even in the absence of industry separation rules, the control provisions of Part 4A of the Commerce Act effectively ring-fence electricity distribution from other activities, such that any attempt to utilise ownership of an electricity network to advantage downstream activities would be detected and disciplined.

(e) Vertical integration could not therefore give rise to foreclosure issues or an increase in barriers to entry.

18.12 In any event, given NGC is already a natural gas distributor as well, the practical effect of the proposed acquisition is that there would be no increase in the nature of vertical integration within the natural gas industry.

Natural Gas Transmission

19.1 As noted above in paragraph 14.3, the proposed acquisition will result in a minor increase in the degree of vertical integration with the inclusion of Vector's natural gas distribution network in the same group owning the natural gas transmission system and other natural gas distribution networks. Although the increase is minimal, it is addressed in this section.[42]

19.2 For the reasons outlined below, Vector considers that the increase in vertical integration would not result in the merged group having an increased ability to leverage what power[43] it may have in the North Island market for the transmission of natural gas to affect any downstream markets.

19.3 NGC owns and operates all transmission pipelines which transport natural gas for reticulation to the various distribution networks in the North Island (other than the Maui pipeline running between Oaonui and Huntly). NGC also operates the Maui pipeline, but it is owned by the Maui joint venture partners.

19.4 In Decision 387 and 330, the Commission determined that the high pressure natural gas transmission market is a natural monopoly. The network is characterised by high capital costs, large sunk costs and surplus capacity in most parts of the system. New entry is considered to be unlikely.

19.5 NGC operates a fully open transmission system offering a non-discriminatory service to all its customers in compliance with the voluntary pipeline access code and its Information Memorandum.

19.6 In Decision 470, the Commission noted that its concerns in relation to vertical integration were that:

> *"vertical integration may facilitate co-ordination effects. However in the present case this is considered unlikely as NGC is the only party increasing its vertical integration. Therefore, there does not appear to be any increase in the risk of collusive behaviour, compared to the counterfactual."(Refer paragraph 105)*
>
> *"the ability of the merged entity to foreclose entry into the regional gas retail markets or to discriminate in favour of its own retail operations will depend on the provision of access to the transmission and distribution networks at a reasonable price." (Refer paragraph 106)*

19.7 The Commission also noted that:

> *"most parties spoken to by the Commission staff did not raise concerns that non-contestable charges such as those for transmission and distribution may be used to cross-subsidise NGC's contestable residential retail operation….However, Todd expressed concerns about the potential cross-subsidisation of the commercial and industrial retail customers." (Refer paragraph 108)*

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[42] Given that NGC is already a natural gas distributor, the practical effect of the proposed acquisition is that there would be no increase in the nature of vertical integration within the natural gas industry.

[43] But refer discussion at paragraph 18.34 as to whether the merged group would in fact have market power.

19.8 In relation to this, the Commission concluded that:

> *"It considers that it would be a matter of concern if the threat of bypass was lessened by an actual or perceived increase in NGC's market power. However it considers that Todd has not demonstrated that this would necessarily occur for the reasons discussed below." (Refer paragraph 117)*
>
> *"it is not just actual bypass which provides a constraint on distributors, but also the extent to which bypass threat is perceived to be real. Anything which reduces the perception of bypass threat could have some competitive impact. However in this case the Commission consider that some threat would continue to exist post acquisition, it currently affects only a limited number of customers, and while the acquisition would have some impact it would not be such as to materially change the market power held by the network owner." (Refer paragraph 123)*
>
> *"The greater level of vertical integration arising from the acquisition would not result in a substantial lessening of competition in any market." (Refer paragraph 124)*

19.9 The proposed acquisition does not give rise to any change in the nature or circumstances of the markets that would alter the Commission's conclusions.

19.10 Furthermore, Decision 470 involved the acquisition by NGC of all of UnitedNetworks' pipeline assets. Since then, the pipeline assets in Wellington, Horowhenua, Manawatu, Palmerston and Hawkes Bay have been sold to Powerco Limited. Consequently, the proposed acquisition would have even less impact on vertical integration than that considered in Decision 470.

19.11 In addition to the threat of bypass, Vector considers that the following actual or potential constraints (discussed in more detail in the previous section on Natural Gas Distribution) would not be affected by the proposed acquisition:

(a) the Gas (Information Disclosure) Regulations 1997;

(b) the threat of further regulation, including proposed amendments to the Gas Act set out in the Gas Amendment Bill[44];

(c) the open access regime under which Vector and NGC operate; and

(d) interfuel competition.

19.12 Accordingly, Vector considers that the minor increase in vertical integration would not result in the merged group having an increased ability to leverage its power in the North Island market for the transmission of natural gas to affect any downstream markets.

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[44] Refer Schedule 5 for further details.

Natural Gas Retailing

20.1 As with natural gas transmission, the proposed acquisition will result in a minor increase in the degree of vertical integration with the inclusion of NGC's activities in the market for the retailing of natural gas to industrial and commercial consumers (being consumers of greater that 10 TJ/pa) in the North Island in the same group as the natural gas distribution network in the greater Auckland area. Although the increase is minimal, it is addressed in this section.[45]

20.2 For the reasons outlined below, Vector considers that this increase in vertical integration would not result in the merged group having an increased ability to leverage any power it may have in the market for the distribution of natural gas in the Auckland area[46] to impact on competition in the market for the retailing of natural gas to industrial and commercial consumers.

(a) There are no access issues. Both Vector and NGC, operate non-discriminatory open access regimes on their gas distribution networks.

(b) The disclosure obligations on gas distribution businesses under the Gas (Information Disclosure) Regulations will create an open book on the services and pricing policies of the merged group in relation to its distribution activities.

(c) The conduct of the merged group will be constrained by the threat of further regulation (discussed further in Schedule 5).

20.3 In Decision 470 (paragraph 99), the Commission concluded that the acquisition by NGC of UnitedNetworks' gas pipeline assets would not result in a substantial lessening of competition in this market. While Vector is not privy to market share data of gas retailers in this market (other than with respect to customers on its own network) or of any changes there may have been to those market shares since Decision 470, Vector is aware that there is strong competition in this market (from Contact Energy, Nova Gas, E-gas and Wanganui Gas) and can conceive of no reason why that would change as a result of the proposed acquisition.

20.4 In relation to customers on Vector's own network, of the approximately [ ] >10TJ per annum end-consumers/ICPs on Vector's network, the distribution across natural gas retailers is as follows:

45 Given that NGC is already a natural gas distributor, the practical effect of the proposed acquisition is that there would be no increase in the nature of vertical integration within the natural gas industry.

46 But refer discussion at paragraph 18.34.

Table 7: >10TJ End-Consumers on Vector's network by retailer

Retailer	Number of ICPs[1]	%
Contact Energy	[ ]	[ ]
NGC	[ ]	[ ]
Nova Gas	[ ]	[ ]
Wanganui Gas	[ ]	[ ]
E-Gas	[ ]	[ ]
Genesis Energy	[ ]	[ ]
TOTAL	**[ ]**	**100**

[1] Sometimes there is more than one ICP at an end-consumer site. Accordingly, the number of ICPs may be slightly more than the actual number of end-consumers

20.5 NGC is prevented from offering discriminatory prices under its voluntary pipeline access code. Similarly, Vector's policy is to offer all retailers the same line charge for any site on its network. Vector has also introduced a Line Charge Agreement (under which it agrees the line charges for a site directly with the end-consumer) to facilitate price transparency to the end-consumer.

20.6 Natural gas retailers competing for commercial and industrial consumers approach the owner of the network in their vicinity. It makes no difference in competition terms whether the network owner is Vector or NGC.

20.7 Furthermore, as the Commission noted in Decision 470, bypass pricing has lead to an increased level of competition in this market. (Refer paragraph 96). Also the Commission has previously determined that there are no major barriers to entry or expansion by existing players in this market (Refer Decisions 387, 435).

20.8 In summary, Vector considers that the proposed acquisition will not facilitate coordination, foreclose or increase barriers to entry into this market or enable the merged entity to discriminate in favour of its distribution or retail activities. Consistent with the Commission's decision in Decision 470 (paragraph 99), Vector considers that the proposed acquisition will not result in a substantial lessening of competition in this market.

THIS NOTICE is given by Vector Limited

Vector Limited hereby confirms that:

- All information specified by the Commission has been supplied;
- All information known to Vector which is relevant to the consideration of this application/notice has been supplied;
- All information supplied is correct as at the date of this application/notice.
- Vector undertakes to advise the Commission immediately of any material change in circumstances relating to the application/notice.

Dated this day of October 2004

Signed by Vector Limited:

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Mark Franklin

I am the Chief Executive Officer of the company and am duly authorised to make this notice.