

PRESENTATION FOR TUANZ Telecommunications Day

8 May 2008, Wellington, New Zealand

I took up the position of Telecommunications Commissioner almost 10 months ago. In an early interview I was asked what my priorities were. I said that I was getting on an express train that was running to a tight timetable, and even if I had my own priorities I couldn't change the timetable. Looking back, I think my analogy was right, although I underestimated the speed of the train and the number of stops along the way.

It is hard to believe that we could have achieved so much in such a short period of time. We have made final determinations on local loop unbundling and co-location, and unbundled bitstream access for basic and three enhanced variants. We have completed the Schedule 3 mobile investigation. We have issued draft determinations for local loop and bitstream backhaul, and are soon to release revised draft TSO determinations. We have held 5 conferences (for UCLL, UBA, Backhaul, Mobile Roaming and Co-location and the TSO Mobile Technologies Radio Cap) and have a role in overseeing the implementation of Telecom's operational separation.

It is appropriate in this forum to acknowledge the contribution of so many of you to this very heavy work programme, which ensured that the train stayed on the rails, and reached the various stations on time.

- Firstly the industry, through the TCF, has made an invaluable contribution to the various STD processes. I have publicly acknowledged this on a number of occasions, and do so again today. The setting of non price terms for these complex services would have been incredibly difficult without industry participation.
- Secondly Telecom, which has borne the brunt of preparing most of the STP's during a period of great change, at the same time as they were working on the operational separation undertakings.

- And lastly the Telecommunications team of the Commission, and my fellow Commissioners Anita Mazzoleni and Donal Curtin. What has been achieved has been very much a team effort, for which I am very grateful.

The 2006 amendments to the Telecommunications Act have fundamentally changed the role of the Commission, and the manner in which we engage with the industry, other stakeholders and the wider community. Under the 2001 regime, the Commission was essentially an arbitrator of inter-carrier disputes. This dispute resolution role, of necessity, required a certain degree of detachment. Moreover, matters would come to the Commission only after a dispute had arisen, meaning that the process was inevitably adversarial, with polarized entrenched positions, and the Commission conferences were very serious, (some would say grim) affairs.

Under the new regime, the Commission sets non price, and where appropriate price, terms for regulated services on an industry wide basis. Instead of dealing with inter carrier disputes, the Commission is engaged with industry (through the TCF process) to reach, where possible, consensus on technical and operational matters. This has occurred in a very constructive manner.

Because the process involves the entire industry, the nature of the conferences is also very different from the previous regime. They are more akin to industry workshops than dispute resolution forums, and I have certainly endeavored to run them in that way. The Commission has certainly appreciated the way that participants have dealt with matters at the conference, and generally sought to reach consensus with a view to reaching an outcome that would benefit the entire industry. We have had our lighter moments. I am sure that Chorus' Chris Dyhrberg's immortal words "I have lost the will to live" will some day be enshrined in the history of New Zealand telecommunications.

The other thing that has changed is the nature of the draft determination. When dealing with inter carrier disputes, the issues are very clearly established and fought out, and in that context a draft determination is likely to be very close to the final determination. Under the new regime this is not the case. I was asked at an

interview after the release of our draft UCLL determination whether there would be any changes in the final determination. My answer (it was just before the World Cup) was that it was like asking at half time in a game of rugby whether the score would be different at full time. It all depends on what happens in the second half.

Our experience is that the quality of information that is received in the second half (the submissions and cross submissions on the draft determination, and more particularly the discussions at the conference) is of far higher quality, and far more focused, than is received in the first half of the process. As a consequence the final determination is informed by far better information than was available to the Commission at an earlier stage. Certainly the approach that we have taken, when faced with imperfect information, is to give a preliminary view, on the basis that if parties don't agree with it they won't be slow in letting us know. We weren't wrong in that assumption.

My favourite submission, (I won't name the party), reads:

“The Commission is going too far in its Draft Report...[What] the Commission is saying.....seems highly unreasonable.... But it gets worse... Even more concerning...Perhaps worst of all...All in all we think this regulatory proposal is a recipe for disaster.... The Commission can do much better than its current Draft Report in its analysis of the issues.”

There should be no doubt that we will review our position if better quality information is provided. In the UBA backhaul determination, we sent out with the conference agenda a memorandum explaining where, having read the submissions and cross submissions, our views had changed from the draft determination.. This was designed to ensure that parties knew clearly where we had revised our thinking, so they could target their submissions more accurately. The feedback has been that participants found this very helpful.

I want to now touch on our current work.

We are preparing for a June release of the final backhaul STDs. We have just received the mobile co-location standard terms proposal , and expect to receive the sub loop unbundling standard terms proposal in June. We are on schedule to release the final 04/05 and 05/06 TSO determinations at the end of June, and will soon be releasing a draft discussion document on the accounting separation framework for Telecom. The Commission is also overseeing the implementation of the Operational Separation undertakings.

In the Commission's 2007 Telecommunications Market Monitoring Report, we noted that with the imminent entry of a third mobile operator into the New Zealand market, we would be paying close attention to mobile termination rates for voice and text messages. We commented on the emergence of calling plans which provide substantial price reductions for intra network calling, compared with calls between networks, and observed that if mobile termination rates were set significantly above cost, this would reduce the ability of a new entrant to compete effectively in the market.

Just last month Germany's Federal Cartel Office announced that it was investigating two mobile operators for abuse of dominance in the German mobile telecommunications market. The Cartel Office is looking at whether different on-net and off-net tariffs by dominant market leaders could be an infringement of competition law. The complaint was that the two market leaders were offering extremely low prices for calls made between customers on their own networks, which, combined with their market shares, threatened the smaller operators' ability to compete.

The Commission is considering commencing a Schedule 3 investigation into whether or not mobile to mobile termination rates for voice and SMS should be subject to regulation. As a first step in the process, I have today written to industry representatives asking them for their views on this issue.

The Commission is also instigating a study into telecommunication numbering administration. Currently, number administration is self regulated under a Number Administration Deed that was entered into on the 1st of May 2000. The parties to the

Deed and the TCF are currently reviewing its structure, and considering the possibility of transferring responsibility for numbering to the TCF. The Commission for its part intends to carry out a study on international best practice for numbering, comparing best practice with the current NAD structure.

In March we commenced a Section 9A study on Next Generation Networks. Many of you will have submitted on the Commission's draft terms of reference. The study is the first under the Commission's new sector monitoring powers. Unlike our investigation powers under Schedule 3 of the Act, the Section 9A powers allow the Commission to take a strategic view with no particular bias, for, or against, regulation.

The response to the study from industry has been very positive, and submissions have assisted us to develop our terms of reference

We are conscious of the considerable workload on the industry in general, and the smaller players in particular. We aim to be flexible in our approach. The revised terms of reference will be available by the end of this week. We anticipate separate work streams on technical, commercial and regulatory issues, via a workshop approach, and a Commission sponsored conference with international speakers in the final quarter of this year.

Several submissions commented on the desire for stakeholder engagement to be wider than just the TCF. While we are engaging with the TCF about technical issues, our intention is to ensure the study provides a broad strategic overview, and we see consultation with the wider industry as essential.

It was very clear from your submissions that there was a desire to look at VoIP as an urgent priority, that the study should not focus solely on the issues arising from Telecom's cabinetisation plans, and should be technology neutral. For the study we will be adopting the current ITU definition of NGN:

A Next Generation Network (NGN) is a packet-based network able to provide Telecommunication Services to users and able to make use of multiple broadband, QoS-enabled transport technologies...

The study will be looking at both core and access network issues. This includes consideration of the potential of different fixed and wireless technologies, how they are being adopted overseas, and where we may be able to build on that experience in New Zealand.

It is interesting to note that in Europe, fibre to the cabinet, and VDSL over the copper subloop, is the dominant broadband technology.

The Netherlands describes itself as the 'broadband capital of Europe' based on its penetration and usage figures. There the incumbent KPN has embarked on a 0.9 billion Euro (approx \$NZ1.8 billion) 4 year "All IP Network Transition" to deliver 30-100 Mbps to suburban residents by rolling out street cabinets to every street in the Netherlands and using VDSL2 technology

In Germany, Deutsche Telekom (DT) is engaged in a 2 year, 3 billion Euro (approx \$NZ6 billion) "next generation access network" rollout, deploying street cabinets and VDSL. The German regulator has stated that "VDSL will be an important access scenario in Germany in the next few years".

Swisscom has a VDSL2 rollout strategy, aimed at 75% of the population. What we call cabinetisation will be the major source of fast broadband access in Europe for many years to come

Fibre to the home is being deployed in heavily populated cities, with multi unit dwellings. It is significant that outside of new subdivisions, it is being deployed not by the incumbent, but by alternative networks, often in partnership with local authorities. The reason for this is, on reflection, self-evident. The incumbent already has a ubiquitous copper network, and can use vastly cheaper FTTC/VDSL to deliver significant bandwidth to residential consumers. To invest significant further funds to

cannibalise their existing network makes no economic sense. Conversely, it makes a lot of sense for a new entrant to bypass the incumbent's existing network.

Wireless broadband is developing at a fast rate, with speeds in excess 100 Mbps already achieved under laboratory conditions. When you consider there are 1 billion PCs in the world, and 3.3 billion mobile phones (expected to reach 5 billion by 2012), and that consumers identify mobility as their number one issue, it is clear that wireless broadband has a very important role to play as one of a number of technologies that will be able to deliver high speed broadband services to users.

The reality is that all technologies have a role to play, and will vary according to location, demographics, costs and benefits, and consumer preference. The broadband solution will not be a national 'one size fits all' solution. Each community has its own unique set of factors to take into account.

And that is where competition comes in. The best solutions are arrived at when a number of telecommunications service providers can offer a variety of technology, services and prices, pitching their offers to satisfy the requirements of customers. It is the promotion of competition which will best deliver the right services at the right price for the long term benefit of end users.