

Commerce Commission

Telecommunications 2002/2003

This publication is derived from the Commerce Commission's (the Commission's) Annual Report for the year ended 30 June 2003 and relates to work undertaken by the Commission under the Telecommunications Act 2001 (the Telecommunications Act).

Introduction: Douglas Webb – Telecommunications Commissioner



The Telecommunications Act came into force in December 2001. The legislation introduced industry-specific regulation for the supply of telecommunications services between telecommunications carriers in New Zealand. It also created a mechanism for the identification and allocation of the net cost incurred by Telecom New Zealand Limited (Telecom) in meeting its obligations under the Telecommunications Service Obligations (TSO) Deed for Local Residential Telephone Services.

The Commission's three principal functions under the Telecommunications Act are to:

- resolve access disputes between carriers;
- oversee the TSO regime and apportion the annual net cost between Telecom and liable carriers; and
- monitor the regulatory regime and recommend to the Minister of Communications changes to the list of regulated services.

During the period July 2002 to the end of June 2003, the Commission implemented key aspects of the legislation, including significant access determinations, determining the TSO net cost and commencing inquiries into other major issues such as local loop unbundling.

The Commission's key achievements were:

- the determination of interconnection terms and conditions between the fixed networks of Telecom and TelstraClear Limited (TelstraClear);
- the determination of wholesale terms and conditions between Telecom and TelstraClear for the resale of retail services; and
- the release of a draft determination of TSO net costs for the period from the commencement of the Act to 30 June 2001 (the first TSO period).

Looking Ahead

In the next financial year, the Commission will:

- finalise the calculation of the net cost of the TSO for the first TSO period, providing the industry with certainty going forward. The work undertaken this year means that future calculations will be less resource intensive and quicker to produce;





- finalise the reviews of the pricing of interconnection and wholesale services; and
- complete a major review of the telecommunications regulatory environment through its recommendation to the Minister on the unbundling of the local loop and the public data network.

Role of the Commerce Commission

The Commission is an independent, quasi-judicial body with enforcement and regulatory control responsibilities under a number of general and specific regulatory regimes set out in the Commerce, DIR, EIR, Fair Trading and Telecommunications Acts.

The purpose of the principal Act, the Commerce Act, under which the Commission is established, is to promote competition in markets for the long-term benefit of consumers within New Zealand.

The overriding purpose of the Commission is to promote market efficiency by fostering:

- healthy competition amongst businesses;
- informed choice by consumers; and
- sound economic regulation.

This purpose definition represents the Commission's summarised view of its various statutory responsibilities. Each statute has its own purpose statement or statements. The Commission has interpreted the specific purpose of each piece of legislation or part to arrive at this overriding purpose.

In fulfilling its purposes, the Commission's activities cover enforcement (investigation, litigation, and the provision of information to the public) and regulatory control (adjudication and reports to Ministers).

SERVICE DELIVERY PERFORMANCE

Adjudication

Adjudication services provided by the Commission under the Telecommunications Act cover access determinations, cost allocation determinations, and industry code approvals.

Access Determinations

Under Part 2 of the Telecommunications Act, the Commission considers applications for determinations to resolve disputes relating to access terms and conditions. An access seeker or a provider of a designated or specified service may ask the Commission to make a determination that sets the terms and conditions of access for designated and specified services, and designated multi-network services. In the case of designated multi-network services, the Commission will determine the system functions and cost formula.

During the year, the Commission issued its first two access determinations under the Telecommunications Act.

The number of access disputes brought before the Commission in the first full year of the regime is likely to reflect a backlog of issues of concern to the industry, and is not expected to continue at the same level beyond next year. As the parties have sought reviews of the Commission's pricing decisions, access disputes will continue to form a significant part of the Commission's activities next year.

In June 2002, the Commission separated into two the application by TelstraClear for a determination in relation to access to Telecom's network, separating the interconnection and wholesale services.

In November 2002, the Commission issued its first determination (Decision 477) covering interconnection with Telecom's fixed Public Switched Telephone Network (PSTN) and interconnection with TelstraClear's fixed PSTN.



The Commission set the interconnection price at 1.13 cents per minute.

Following release of this determination, the Commission received applications from both TelstraClear and Telecom for review of the pricing aspects of the interconnection determination. The Commission also received an application from Telecom for reconsideration of the interconnection determination, which the Commission declined to undertake on the grounds that it did not have the jurisdiction to do so.

In May 2003, the Commission issued its second determination (Decision 497) on the supply of services on a wholesale basis between Telecom and TelstraClear. The Commission set a wholesale price of 16 percent off Telecom's standard retail prices, effective for 18 months from 12 May 2003.

Both TelstraClear and Telecom filed applications for review of the wholesale determination.

A significant feature of the dispute resolution process under the Telecommunications Act has been the ability of carriers to agree commercially on a number of major non-price terms. In both the interconnection and the wholesale proceedings, Telecom and TelstraClear agreed many non-price terms on a bilateral basis.

During the year, the Commission received a further three applications for access determinations, two of which involved other carriers.

In December 2002, CallPlus Limited (CallPlus) requested a determination on interconnection with Telecom's fixed PSTN, including both price and non-price terms of such access. The Commission decided to proceed with the interconnection element in the first instance and deferred a decision to proceed with the wholesale services element.

In March 2003, five carriers, TelstraClear, Callplus, Compass Communications Limited, ihug Limited and WorldxChange Communications Limited, applied to the Commission for a

determination relating to the cost allocation for local and cellular telephone number portability.

2.6 Access Determinations	2002 /2003	2001 /2002
<i>On hand at 1 July</i>	1	0
Received during the year (<i>Standard: 1-4</i>)	10	3
Total to be determined	11	3
Issued	3	0
Decision not to proceed	0	2
Total adjudication decisions made (<i>Standard: 1-4</i>)	3	2
<i>On hand at 30 June</i>	8	1

TSO Cost Allocation Determinations

In June 2003, the Commission released its draft determination on the calculation of Telecom's net cost of complying with its service obligations for the period 20 December 2001 (the commencement date of the Telecommunications Act), to 30 June 2002 (the end of Telecom's financial year).

The Commission determined that approximately 51,000 of the 1.3 million residential customer lines currently operating in New Zealand served commercially non-viable customers. The Commission's preliminary conclusion was that the TSO business was characterised by low risk, that an after-tax return on capital of 6 percent was reasonable, and that the TSO cost for the period was \$38.84 million.

The cost, when finalised, will be apportioned between liable carriers in proportion to their revenues.

As this was the first time the Commission had calculated the net cost, it was necessary to develop a methodology for doing so, to build or modify models to perform the calculations, and to collect the necessary data. The Commission used two models to calculate the net cost. The Commission's consultation process included the release of the models for industry scrutiny, consultation on appropriate input values for the models, and the release of reports on the appropriate weighted average cost of capital (WACC) and the intangible benefits that flow from the TSO.



Industry Code Approvals

The Telecommunications Industry Forum is a self-regulatory body established in accordance with procedures set out in the Telecommunications Act. A carrier or service provider that fits the criteria set out in the legislation must register with the Commission in order to be eligible to vote in relation to draft codes. At the end of June 2003, the Commission had registered 12 carriers. The forum submitted no industry codes to the Commission for approval during the year.

Reports to the Minister of Communications

Under the Telecommunications Act, the Commission is required to provide various reports to the Minister of Communications.

Compliance with Telecommunications Service Obligations

In September 2002, the Commission notified the Minister of Communications that the calculations provided by Telecom relating to its compliance with the TSO had not demonstrated to the Commission's satisfaction that Telecom was in compliance with the TSO instrument for the period from 20 December 2001 to 30 June 2002. The Commission considered that the process for the measurement, reporting and auditing of the TSO service quality could be significantly improved.

The Commission accepted Telecom's undertaking to reconcile the inconsistency in reporting dates (between that specified in the Telecommunications Act and that specified in the TSO Deed) by reporting once annually, consistent with the legislation.

The basis for Telecom's measurement methodology is complex and retrospective, involving sampling and approximations. The Commission reserved its position on the appropriate measurement methodology for future periods. Telecom agreed to work with the Commission to improve measurement processes for the future periods.

In June 2003, Telecom provided the Commission with its audited final report on TSO compliance for the first TSO period. Given the circumstances in which the Commission was making its decision, the Commission accepted that the service quality measure report demonstrated compliance for the first TSO period. The Commission therefore did not report any non-compliance to the Minister.

Local Loop Unbundling and Fixed Public Data Network

In April 2003, the Commission provided public notice in the Gazette and released an issues paper to signal the commencement of its inquiry into unbundling Telecom's local loop network and its fixed public data network.

Initial Pricing Principle

In February 2003, the Commission announced by Gazette notice that it was conducting an inquiry into whether the formula under the Telecommunications Act for setting initial prices for bundled service offerings should be amended. The Commission's decision followed a request from the Minister of Communications, made under the Telecommunications Act. The Commission was satisfied that there were reasonable grounds to commence an inquiry.

The Commission's view was that the initial pricing principle (IPP) for bundles of retail services offered by means of Telecom's fixed telecommunications network applied a double discount to any bundle that includes a price-capped service, and that was inconsistent with the treatment of other designated services elsewhere in the Telecommunications Act. The result of this inconsistency was felt to risk damaging economic efficiency, which would be contrary to the purpose of the Telecommunications Act.

In April 2003, the Commission published a draft report proposing that the IPP be amended to apply a single discount of 2 percent to price-capped services within a bundle, consistent with the treatment of price-capped services elsewhere in the Telecommunications Act. The Commission gave public notice of its draft report in the Gazette. Submissions on the draft report closed in May 2003.



Public Information

This output involves the provision of public information to sectors, industries and businesses – both generally and specifically – and consumers, as one element of the Commission’s overall enforcement and regulatory control activities. The Commission provides information using a

range of communications tools, including print and web-based publications, presentations and regular updates.

The Commission released four publications and made four presentations in regards to its regulatory role in the telecommunications industry.

Publications

Title	Date published
Application of a TSLRIC Pricing Methodology – Discussion Paper	2 July 2002
International Benchmarking Report: A Comparative Review of Interconnection Price	2 September 2002
TSO Position Paper	30 September 2002
Telecommunications Annual Report 2001/2002 extract	December 2002

Seminars and Briefings

Date	Focus/Theme	Audience	Speaker
25 July 2002	Consumer perspectives on the responsibilities and processes under Telecommunications Act	Telecommunications Users Association of New Zealand Annual Conference	Telecommunications Commissioner
27 August 2002	Telecommunications Summit: The new telecommunications regulatory regime	3rd Annual Telecommunications Summit	Telecommunications Commissioner
28 January 2003	Telecommunications Act 2001	OPTA Dutch Telecommunications Regulators	Telecommunications Commissioner
25 June 2003	Investment and Competition in Telecommunications	4th Annual Telecommunications and ICT Summit	Telecommunications Commissioner



FINANCIAL PERFORMANCE

Vote Communications

The telecommunications regulatory regime is funded initially by the Crown through a non-departmental output class appropriation, and ultimately by an industry levy to reimburse the Crown for those costs. In addition, the Commission recovers, directly from the parties, the full costs that it incurs in considering and making determinations on applications to resolve access disputes between carriers.

Activity in the Crown-funded aspects of the regime was at a lower level than expected during the year, largely due to the higher than expected demand in relation to access determinations. This unexpected balance of activity is reflected in the 40 percent above budget (\$430,000) result for cost recovery revenue, which drew the Commission's focus and resources away from other areas of work.

Two other key factors contributed to the below budget expenditure. The Commission was able to modify an existing United States Federal Communications Commission network model for use in the calculation of the TSO cost, rather than developing a new model, and commenced the inquiries into unbundling the local loop and public data networks later than expected.

As a reflection of this lower expenditure, the appropriation was drawn down to 76 percent only and a surplus of \$594,000 remains, which is to be repaid to the Crown. The significant area of under expenditure was on external consultants.

Financial performance for the year (GST exclusive) is summarised in the following table.

Vote Communications	Actual \$000	Budget \$000
Revenue		
Revenue from Crown	2,667	3,500
Cost Recovery	1,501	1,071
Other	0	37
Total Revenue	4,168	4,608
Expenditure		
<i>Cost Recovery</i>		
Output 2: Adjudication	1,501	1,071
<i>Levy-funded</i>		
Output 2: Adjudication	1,441	2,438
Output 3: Litigation	0	0
Output 4: Reports to the Minister	608	989
Output 5: Public Information	24	30
Total Expenditure	3,574	4,528
Total Surplus	594	80
Surplus to be repaid to the Crown	594	80
Retained Surplus	0	0

Contact details

To contact the Commission for information about the Telecommunications Act, contact the Network Access Group on 04 924 3600.

To contact the Commission with information about unfair or misleading trading practices, or anti-competitive behaviour by businesses:

- call the Contact Centre on 0800 94 3600;
- write to Contact Centre, Commerce Commission, PO Box 2351, Wellington; or
 - email contact@comcom.govt.nz
 - website www.comcom.govt.nz