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Sharoon Abas  
Senior Policy Adviser  
Telecommunications Branch  
Commerce Commission  
PO Box 2351  
Wellington

<By email>

Dear Sharoon

A Guide to Regulatory Decision Making by the Commerce Commission for the Telecommunications Sector – Discussion Paper

1. Thank you for the opportunity to provide comment on the Commission's discussion paper. This will be a useful guide which sets out, at a high level, how the Commission performs its functions in respect of the telecommunications sector.
2. Prior to finalising the paper, TelstraClear recommends that the Commission provide some further clarity in respect of the following matters:
  1. Residual Terms Determinations
  3. Amendments to the Telecommunications Act in 2006 introduced both the Standard Terms Determination process and the Residual Terms Determination process. While the paper discusses the STD process, a process that is largely understood, the paper is silent on the Residual Terms Determination process.
  4. There would be considerable benefit to providing further clarity on the Commission's approach to Residual Terms Determination – a process neither the Commission nor the industry has participated in.
2. Take up of local loop unbundling
5. In paragraph 50, the Commission notes that “[t]he increasing penetration of fibre in the access network is likely to have implications for the take-up of regulated access products. For example, under Telecom's fibre-to-the-node programme, the take-up of unbundled local loops may largely be replaced by sub-loop services and/or wholesale bitstream services.”
6. Under Telecom's existing FTTN programme, a significant number of copper pairs continue to be fed directly from the local exchange. TelstraClear has specifically factored Telecom's FTTN programme into its investment decision. For that reason, we do not agree that the take-up unbundled local loops will be largely replaced in the medium term. Telecom's FTTN programme is likely to have been factored into existing business cases for UCLL roll-out.

7. A more significant impact on local loop unbundling in the medium term is likely to be the Government's Urban Fibre Initiative, that has the potential to deliver fibre-to-the-premises on an open-access, dark fibre or layer 2 bitstream basis. It would be useful for the Commission's guide to discuss, to the extent possible, that dynamic.

### 3. Increasing its public information activities

8. In paragraph 8, the Commission notes that it "intends to increase its public information activities over time to provide greater clarity of its key roles and functions, and as it looks for new ways to influence industry behaviour in order to promote dynamic and responsive telecommunications market"
9. The Commission also notes, in paragraph 149 that "[t]he Commission is considering how it can further make its monitoring reports more relevant and useful to market participants and other stakeholders. It aims to align these reports with its strategic focus on mobile services markets, fixed services (including voice and broadband) and industry investment."
10. It remains unclear how the Commission specifically intends to exercise this function, and how it aligns with the overarching purpose set out in section 18 of the Act. TelstraClear considers that discussion on this matter should be significantly expanded upon.
11. Commission monitoring reports have the potential to materially impact the market, and it is imperative that the information provided is both accurate and the reporting is balanced. TelstraClear has previously expressed concerns about the broadband monitoring that has been undertaken to date – a concern relating to the monitoring and comparison of incorrect TelstraClear plans.

### 4. Sector Monitoring and Confidentiality

12. Paragraph 100 discusses the Commission's approach to confidentiality where parties submit commercially sensitive information. In addition to the Commission's confidentiality regime, it would be also useful to discuss the Official Information Act.
13. Clear guidance on the Commission's management and treatment of commercially sensitive information is important, to maximise the free flow of information between the Commission and the telecommunications industry.

### 5. Commercial agreements and industry decisions

14. Paragraphs 227 to 231 discuss the interrelationship between commercial agreements, industry decisions and the Commission's decision making role. As part of that section, the Commission discusses Schedule 2 of the Act, and the development of codes by the Telecommunications Carriers' Forum (TCF).
15. The Commission does not appear to distinguish between regulated and voluntary codes. Regulated codes, which the TCF prepares and the Commission approves, relate to regulated services under Schedule 1 of the Act.

16. In contrast, voluntary codes are developed by the TCF on its own initiative and do not relate directly to regulated services under Schedule 1. For example, the co-siting, customer complaints code and mobile content code do not fall within Schedule 2.
17. TelstraClear strongly supports the TCF, and its role in developing self-regulatory decisions that remove the need or benefit of further regulation by the Commission.
18. It would be useful for the Commission to distinguish between regulated and voluntary codes. Furthermore, it would be useful for the Commission to clarify what weight the Commission gives to voluntary codes when considering whether further intervention, such as a Schedule 3 investigation, is required.
19. Should you have any queries, please don't hesitate to contact me.

Yours sincerely



Chris Abbott  
Group Manager Regulatory