



TelstraClear Limited

**Oral submission in response to the Commerce Commission's
"Schedule 3 investigation into the extension of regulation of designated
and specified services - Draft Report" dated 30 May 2006**

15 August 2006

1. Good morning. I am Alistair Dixon, Regulatory and Industry Advisor at TelstraClear. With me is Chris Abbott, Group Manager, Regulatory.
2. TelstraClear agrees with the Commission's draft recommendation to:
 - a. extend regulation of the 10 services the Commission decided to investigate that are currently included in Schedule 1 to the Act; and
 - b. not to extend the remaining 3 services the Commission decided not to investigate for extension.
3. TelstraClear notes that the Commission's decision whether to recommend extension of these services is not occurring in a vacuum. Earlier this month, the Commerce Select Committee reported back to the House supporting the Communications Legislation Bill, which would extend those 10 services for a further two years. Separately, the Finance and Expenditure Select Committee is considering the Telecommunications Amendment Bill 2006.
4. While these Bills do not alter the process that the Commission should follow in providing its recommendation for extension to the Minister, the changes in the Telecommunications Amendment Bill are likely to increase the value of extension of those services for a further two-year period.
5. The written submission phase has identified two main areas of contention amongst those parties that made submissions:
 - a. First, while there is agreement amongst the parties that eight of the ten services that the Commission has decided to investigate should be extended, Vodafone does not agree with the other parties that the roaming and co-location services should be extended.
 - b. Second, not all parties agree with the Commission's approach to market definition and cost-benefit analysis.
6. This oral submission will focus on these two main areas of debate amongst the parties. First, I will briefly address the issue of market definition and cost-benefit analysis. Then I will address the question of whether it is appropriate to extend the co-location and roaming services.
7. TelstraClear agrees with the Commission that a pragmatic approach to market definition and investigation of the competitiveness of the markets under consideration is appropriate. This is for several reasons.
8. First, this investigation is quite different to Schedule 3 investigations into whether regulation is required for services that are not already regulated. By contrast, the services that are the subject of this review are already subject to regulation. The benefits and risks of continued regulation are more apparent than may be the case with proposed regulation of new services. A full cost-benefit analysis is unlikely to provide a more accurate assessment of the risks of extending the regulation than the Commission's pragmatic analysis.
9. Second, the rollover period is only for 2 years, not the full 5 years that would be the case if these services were new regulated services. It is therefore quite reasonable for the Commission to judge that the risks associated with continued regulation of these services are much lower than if these

services were to be extended for a full 5 years. This shorter time horizon means that the degree of uncertainty is much lower than a 5-year period.

10. Third, the Act does not require the Commission to demonstrate a measurable increase in competition from a rollover of the current services. Nor does the Act expressly require that the Commission conduct a cost-benefit analysis before deciding whether to extend the services. All that the Commission is required to demonstrate is that extending regulation of a service will create the conditions or environment for improving competition. TelstraClear considers that the Commission has done this for the services that it is proposing be extended.
11. I will now turn to the question of extension of the co-location and mobile roaming services. As stated in our submission, TelstraClear agrees with the Commission that extending these services for a period of two years will create the conditions for improving competition in the cellular communications market. Competition in the mobile telephony market is currently limited to two players. While TelstraClear has announced that it intends to offer services using mobile technology next year, initially this offering will be limited to Tauranga. Therefore, competition is likely to continue to be limited for some time and across much of New Zealand. Allowing mobile regulation to lapse in the face of continuing limited competition would be inconsistent with the s.18 purpose of the Act of promoting competition for the long-term benefit of end users.
12. In addition to this, TelstraClear considers there are several other important reasons why the co-location and roaming services should be extended.
13. The Commission is currently undertaking a "mobile stocktake" process. This process is looking at potential amendments to existing co-location and roaming regulation as well as potential additional mobile market regulation. The need for a particular regulation to facilitate entry into the mobile market will be impacted by decisions on other mobile market regulation. For example, the lack of a roaming service would increase the importance of co-location and vice versa. Therefore, the existing mobile co-location and roaming regulations should not be allowed to lapse until the Commission's mobile stocktake process is complete.
14. In relation to co-location, the Telecommunications Carriers' Forum is close to finalising a revised draft code for co-location. The fact that co-location is a regulated service led to the drafting of a code. The code is not a substitute for regulation. This draft code will be submitted to the Commission for approval as a regulated code. That it would be a regulated code means access seekers have some basis for holding access providers to what they have offered in the code. If the regulation were to fall away this would no longer be the case. Furthermore, proposed changes in the Telecommunications Amendment Act further strengthen the protection afforded to access seekers that approved codes will be legally enforceable. TelstraClear considers that it would be destabilising for the industry if co-location regulation were left to expire just as the industry is close to finalising a regulated code of practice for the service.
15. To the extent that co-location is occurring without regulation, in the majority of instances this is with parties who are not potential new entrants in the mobile market, i.e., co-location is either occurring between the existing established mobile players or with organisations who do not provide retail mobile services. The incentives to provide co-location commercially are stronger in these circumstances than in the case of a new rival. While providing co-location to a rival may save costs, this may well be offset by a reduction of revenue. In addition, the negotiating leverage of new entrants is much weaker as they are unable to provide equivalent reciprocal co-location opportunities on their sites.
16. It is not only a question of whether co-location would be provided without regulation but also of whether it would be provided with the necessary speed and certainty. While co-location is not a

substitute for building a network, co-location can provide a more timely and efficient option for a new entrant than attempting to acquire new sites, which are often associated with significant lease and resource consent issues. Further, the need for a regulated co-location service is affected by the extent of other mobile market regulation. For example, the degree to which co-location is important to a new entrant's business case will depend on whether roaming can be obtained on economic terms.

17. Vodafone has raised practical issues with co-location. Undoubtedly, suitability for co-location will vary between individual sites. However, this is not a reason to remove any legal obligation to provide co-location at any sites. The assessment of the suitability for co-location should be addressed on a site-by-site basis within an overall framework for co-location.
18. In relation to roaming, TelstraClear considers that a new entrant wishing to enter the New Zealand mobile market is likely to seek to negotiate a national roaming service. TelstraClear considers it unlikely that roaming could be commercially negotiated in the absence of any regulation because of the implications of entry for the incumbent's profitability. The current roaming regulation lacks clarity – for example, the 10% threshold national coverage requirement before the regulated roaming service is available is unclear. However, while deficient, removing this regulation could remove important regulatory certainty for a new entrant.
19. Given that the costs of continuing to regulate the specified roaming service appear low, we consider that the benefits of continued regulatory certainty, at least while the Commission evaluates the appropriateness of mobile market regulation as a whole, are likely to outweigh the costs.
20. In conclusion the evidence in the draft report demonstrates that, while competition has increased with the availability of the regulated services, Telecom and, in mobile services, Vodafone, continue to have substantial market power in the markets that are the subject of this review. TelstraClear therefore agrees with the Commission that extending these services for a further 2 years would create the conditions for improving competition.
21. While the dividends of regulation for end users have so far been modest, this is due, in TelstraClear's view, to the delays in gaining regulated access, the limited wholesale discounts, particularly for residential services, and the non-price terms of supply not conforming to world's best practice. While not matters for these proceedings, these issues need to be addressed if the full potential of the current regulated services and the new services proposed by the Government are to be realised.