



16 September 2005

Osmond Borthwick
Manager Network Access
Commerce Commission
WELLINGTON

By email: osmond.borthwick@comcom.govt.nz

Dear Osmond

Process for Mobile Termination Reconsideration

1. Thank you for your letter dated 13 September 2005 in which you advise on the Commission's process to respond to the Minister's requirement for the Commission to reconsider its recommendation to regulate mobile termination (the current process).

Proposal

2. We appreciate that the Commission is concerned to deliver its reconsideration to the Minister in an as timely a manner as possible. However, we are concerned to ensure that the consultation process is conducted in as open, collaborative and effective manner as possible, to ensure a robust and transparent result.
3. To this end, we propose that the Commission revise the current process to include the following steps:
 - a. produce an issues paper (or set of questions) for public submissions and cross submissions (prior to producing a draft report)
 - b. produce a draft report
 - c. invite submissions and cross submissions on the draft report
 - d. hold a conference
 - e. issue a final report

Reasons

4. We submit that it is premature for the Commission to produce a draft report without the benefit of first considering the views of the industry on all the matters to be specifically addressed by the Commission. We understand that the Commission is currently considering offers made by Telecom and Vodafone. However, we consider that the draft report should comprise the Commission's preliminary view, derived from its consideration

of the views and ideas of **all** interested parties. Otherwise, there is a real risk that a draft report produced without the benefit of such a preliminary process, may prematurely set the agenda and direction of the reconsideration by pre-empting, shaping, confining and/or embedding the issues for discussion.

5. Furthermore, we submit that a preliminary process driven by an issues paper will help to more constructively streamline (rather than unduly restrict) the submission process, and focus the minds of all interested parties when making their submissions on the reconsideration.
6. While our proposal will extend the time frame of the Commission's reconsideration, we believe that our proposal comprises a more efficient and focussed process which will ultimately result in a more robust and transparent reconsideration.

The Vodafone offer

7. Material to the Commission's consultative process is the issue of the Vodafone and Telecom offers. Unlike the Telecom offer, the Vodafone offer is currently confidential to the Commission and the Minister and subject to injunction proceedings. We have been unsuccessful in our efforts to persuade Vodafone to give us access to its offer on a confidential basis.
8. Based on our understanding that the Vodafone offer will form part of the Commission's reconsideration process, we submit that the current process cannot proceed until the Vodafone offer is available to all the interested parties. Undoubtedly the Vodafone offer comprises significant new evidence to be considered by the Commission. However, in the interests of natural justice, we submit that the offer must be disclosed to parties such as TelstraClear, which have a direct interest in the reconsideration. It is clearly not possible for parties to make informed comment or to effectively evaluate the Commission's draft report without first having recourse to the Vodafone offer.
9. We appreciate that, in the circumstances, the Commission is unable to release the Vodafone offer to any other parties. In our view, the Court must therefore be persuaded to grant other parties immediate access to the offer. Accordingly, we submit that the Commission inform the Court of the impasse which has ensued from Vodafone's refusal to release its offer either to the public, or at least to all interested parties on a confidential or restricted basis, and to highlight the fact that it is not feasible for the reconsideration process to commence or continue until the offer is fully disclosed to all interested parties. If necessary, this could be achieved by providing access to the offer subject to the usual confidentiality undertakings in Court proceedings.

Conclusion

10. We propose that the Commission:
 - a. produce an issues paper or set of questions for submissions and cross submissions from interested parties, prior to producing its draft report; and
 - b. ensure that its timetable for the reconsideration process is contingent on the public release (or at least release on a confidential basis to all interested parties) of the Vodafone offer.

11. We are happy to discuss this further with you. As I will be on leave for the next 3 weeks, please contact Adrienne Wing (adrienne.wing@team.telstraclear.co.nz; phone 09 912 4009) in relation to this matter.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Grant Forsyth', is positioned to the left of a vertical line.

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Regulatory & Industry Affairs Manager

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