



COMMERCE COMMISSION

Please refer to:

4.3/J7371  
446306\_4.doc

14 February 2006

Anna Moodie  
Regulatory and Competition Counsel  
P O Box 570  
Wellington

Dear Anna

**Mobile Termination Reconsideration Draft Report - Process**

I refer to your letter of 7 February that raised several process issues concerning the mobile termination reconsideration draft report.

***Conference***

Telecom asserts that the Commission issued two process statements dated 13 and 27 September 2005 that “stated the Commission’s view that it did not intend to hold a conference as part of the reconsideration process”.

The Commission considers that this does not correctly characterise the Commission’s position with regard to having a conference. The statement of 13 September made no mention of a conference. While Telecom seems to have interpreted this as indicating that the Commission will not be holding a conference, this was not the Commission’s intention. Further, the Commission’s statement of 27 September stated that “The Commission will fully consider all submissions and does not anticipate that a conference will be required.” Clearly, it was not the Commission’s intention to make a conclusive statement which would apply for the remainder of the investigation. Rather, it was a statement of intended process that parties were welcome to submit on, either as part of the draft determination, or independently, as Vodafone and TelstraClear did in response to the first of the Commission’s statements.

The Commission continues to have an open mind as to whether a conference will be required. At this stage the Commission considers there is no need to review its preliminary position (that it does not anticipate that a conference will be required) until after it has had the opportunity to examine submissions and cross-submissions on the reconsideration draft report. The Commission will consider any specific submissions from Telecom and other parties on the issue provided they are received by 21 February 2006.

***Additional matter***

In his request that the Commission reconsider its recommendation in respect of mobile termination, the Minister directed the Commission to give further consideration to how best to

ensure that end-users benefit from reductions in wholesale mobile termination rates. The Commission was, therefore, obligated to consider whether measures over and above those recommended in its previous report were necessary to ensure end-users would benefit from regulation.

In considering this issue for the reconsideration draft report, the Commission concluded that it was not necessary or desirable to impose a mandatory pass-through condition but it did consider that it should be able to have regard to how an access seeker would make use of the benefit it would derive from lower mobile termination rates. The Commission did not, however, form a view as to the weight it should place on any commitments made by access seekers as to how they would use this benefit.

Telecom is welcome to make comments in cross-submissions about the obligation imposed by the additional matter in the service description. The Commission notes that other parties have commented on the additional consideration and Telecom can contribute to this debate. The Commission does not accept that there is any need for and an additional submission round or an extension to the closing date for cross-submissions.

***Process for reconsideration***

The Commission does not agree that its reconsideration process must reconsider the decision to regulate in its entirety. The Minister directed the Commission to reconsider particular aspects of its final report on mobile termination. The Commission must, therefore, consider how those aspects identified by the Minister impact on the recommendation as a whole.

Yours sincerely



Osmond Borthwick  
Manager Network Access