

COMMERCE COMMISSION

Please refer to:

2.7/J5270  
376792-3

11 February 2005

Grant David  
Chapman Tripp  
1-13 Grey Street  
PO Box 993  
WELLINGTON

Dear Mr David

**Mobile Termination Conference**

I refer to your letter dated 10 February 2005, where you propose that the Commission's mobile termination conference should be delayed. In short, you assert that Telecom will be significantly disadvantaged by the Commission's conference procedure, and that the proposed process strongly indicates that the Commission has predetermined its view on the key issues. Further, you assert that the Commission has recently made a fundamental change in the scope of its investigation, to the potential detriment of Telecom.

The Commission disagrees with these assertions, as outlined below. The Commission therefore does not intend to change the dates of the conference, nor change the procedure outlined in its letter dated 8 February 2005.

**Conference procedure**

I do not understand your suggestion that the Commission's decision to confine the scope of the conference represents a decision not to allow Telecom an opportunity to present its argument. To the contrary, Telecom has provided the Commission with extensive comments along with accompanying experts' statements on the Issues Paper and the Commission's draft report, as well as cross-submissions on the positions of other parties. The Commission has also set aside time for Telecom, along with all other parties, to make an opening presentation of its entire case, as well as a closing statement where that position can again be summarized in the light of the conference proceedings.

The Commission rejects your argument that the conference process strongly indicates that the Commission has predetermined its view on the key issues. The key issues identified are based on the various submissions and cross-submissions made by interested parties, and the Commission is currently weighing up the arguments made in relation to these issues. Given the procedures the Commission has put in place to accommodate cross-submissions and to limit the tabling of additional information outside the submission process, there should have been no expectation that new submissions or information would be received during the conference.

Since the parties' positions have already been laid out in considerable detail in the three rounds of written submissions, the Commission has been able to concentrate its attention on a series of key issues where the Commission wishes to be able to test the parties' positions through questions and answers. This of course should not be taken to imply that the Commission's mind is made up on these issues, or on any other issues in the prior submissions. It means simply that the key issues are those where the Commission believes that it will be helped by further information provided by the parties' experts or executives.

In particular, the Commission's decision to restrict its questioning on the total welfare test to legal matters does not indicate that the Commission has already formed a settled view on this issue. The legal issue of whether the Commission is permitted or required to take into account wealth transfers drives the direction of the debate, and the fact that the Commission wishes to discuss this threshold issue with the parties at the conference indicates that the Commission has not closed its mind on this issue. If the Commission were ultimately to conclude that it was neither permitted nor required to consider wealth transfers, there would be nothing to be gained by spending conference time on weighing the merits of a pure efficiencies approach.

The Commission has given interested parties more than two weeks notice of the changes to the conference procedure. The Commission considers that the procedure reduces the workload of parties presenting at the conference, and does not disadvantage the parties' preparation for the conference. The Commission notes that it has not received adverse reactions to its conference procedure from any other interested parties.

Telecom has advised that Mr Kevin Kenrick is unable to attend the conference on 23 February, when opening presentations will be made. The principal purpose of requesting that a senior executive from Telecom Mobile be present at the conference is to respond to questions from the Commission regarding Telecom's mobile pricing policies and Telecom's investment plans for its 3G network. However, such questions could be asked at the sessions on two-sided markets/waterbed effect and the regulation of 3G. The Commission now proposes to commence the two-sided market/waterbed session on Thursday 24 February, meaning Mr Kenrick will be available to attend both these sessions.

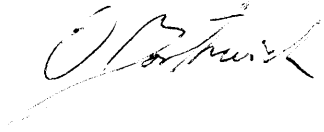
### **Scope of the investigation**

The Commission disagrees that its letter of 8 February could be construed to fundamentally change the scope of the investigation. The draft report analysed the retail market for mobile services, but did not express a definitive view on whether the mobile services market is subject to limited competition or, if so, whether regulation of mobile termination rates would promote competition in the market.

The report did conclude however that competition is limited in the fixed-to-mobile and toll services market and that a reduction in mobile termination rates will promote competition in that market. Accordingly, the service description proposed by the Commission for mobile termination limits access to the mobile termination service to providers of fixed-to-mobile calls, since that is the way by which the Commission anticipates that the outcomes from heightened competition will be realised.

The recent explanation provided by the Commission summarises the relevant parts of its Draft Report, for the benefit of parties who have had difficulty interpreting the proposed service description, and does not change the scope of the investigation.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Osmond Borthwick', written in a cursive style.

Osmond Borthwick  
Manager – Network Access