

**Consultation on  
Commerce Commission  
Telecommunications Sector Monitoring**

**Response to Questions  
About  
Telecommunications Market Monitoring**

**21 November 2008**

**Introduction:**

NZC has committed to invest over \$250m on infrastructure and world leading mobile technology in order to launch services in the New Zealand telecommunications market.

NZCL will deliver competitive services at competitive prices which will benefit not only our own customers but all phone users in NZ as pricing drops as a result of a 3<sup>rd</sup> operator.

Market entry alone in mobile will not be sufficient to deliver wide ranging consumer and welfare benefits and the Commerce Commission in particular must recognize that what is required for sustainable new entry is efficient new entry. This will only be facilitated by appropriate regulation and ground rules.

The Commission must capture data which illustrates the state of the current market structure, highlights any market failings and inefficiencies in the current market structure.

NZCL would like to compliment the Commission on expanding the scope and content of this report in 2008, but would encourage the Commission to continue to expand the reporting until New Zealand has reached the top quartile in the OECD telecommunications metrics.

New investors in the NZ telecommunications industry do not take this market monitoring report for granted and are sympathetic to how much work goes into its production. We believe this report should be expanded and developed as it is an essential catalyst to more investment in the development of an efficient competitive industry.

Section 9a of the 2006 Act gives the Commission the power to (b) conduct inquiries reviews and studies ( including international benchmarking ) into any matter relating to the telecommunications industry or the long term benefit of end users of telecommunications services within New Zealand . NZ Communications Ltd believes this scope must be exercised regularly by the Commission until NZ reaches the top 10 in the OECD.

## Questions about monitoring reports

### 1) Are the commission's key statistics quarterly monitoring reports useful?

Yes. The report provides an essential insight into the health of the market the information generated by the quarterly statistics overview should highlight where there is market failure and where there is the potential for abuse of market power. Further, Commission commentary about future potential investigations or concerns may facilitate commercial or regulatory outcomes to solve these problems or alter market behaviors.

Quarterly statistics are an essential component of any modern regulatory environment as they assist in identifying where regulatory attention needs to be directed. Without adequate disclosure and statistical monitoring there will be no new investment attracted.

Networks are large complex enterprises with many different parts that are built up over decades. In order to create a ladder of investment approach for new entrants statistics are needed to break down these large integrated often bundled enterprises into workable business units that can sensibly be used to create competition on a reasonable scale.

Retail offerings disguise the true competitive status of the telecommunications industry. The industry statistics which are collected with statutory powers and then deciphered by the regulatory agencies which in turn assist regulators to develop appropriate policies to facilitate competition in the areas that are the most demanding of intervention.

End users interests are served by these monitoring reports, because they are essential tools which direct regulators & the market to service customer's needs which were previously hidden or disguised.

- Without the 2006 Mobile Market Review and subsequent monitoring reports which highlighted the high mobile calling costs in New Zealand, NZCL would not have been able to be capitalized by investors to commence network deployment. The Impact of this regulatory component has been a substantial investment into infrastructure in NZ, a pathway to lower prices for NZ consumers and the creation of many technology jobs in NZ.

### a) Is the OECD benchmarking information useful?

The health check of the industry through the OECD benchmarking is useful because it also assists in attracting capital and equipment suppliers to the market and it assists in helping illustrate the market failings of the NZ telecommunications market. It helps illustrate where the opportunities are and assists the industry referee in identifying market failure.

NZCL believes that it's essential that a formal process be continued whereby NZ compares its industry structure with international best practice through use of these OECD statistics. NZ was over 10 years behind the OECD in starting to adopt an industry specific regulator and as a consequence many of its comparison statistics still lag best practice. It would be a mistake not to continue to draw on international experience and drive a NZ policy that has compared itself with OECD policies which have had proven results.

### b) Is the reporting of Telecom data useful?

Yes. However the disclosure does not go far enough. There is no Telecom divisional reporting of Telecom's mobile business, its cost structure or the impact of bundling. This means that extracting relevant info is difficult and policy needs a full understanding, important businesses are unable to be regulated without any supporting statistics or data. There has been an over emphasis on land line disclosure. But is weak on mobile in a world where mobile is increasingly outstripping fixed lines for voice (except in NZ where the lag is still wide) There is not enough disclosure on bundling and handset subsidization in the mobile business or on co location. Additionally there is no regional analysis to disclose potential regional market share differences which impact closed network pricing barriers. It is important to note that fixed line business is a substitute for the mobile business and these businesses need more "equivalence of service" comparisons in the statistics produced.

This is by far the most critical issue and has the greatest potential impact on NZCL's ability to compete effectively in the mobile market, simply put more incumbent mobile statistics are needed.

**c) Should the Commission try to get quarterly data from parties in addition to Telecom?**

NZCL believe Vodafone needs to be subject to the same type of disclosure as Telecom. This is because Vodafone is the dominant mobile provider in New Zealand and has significant market power in wireless voice and data.

Moreover it has a monopoly of the world's dominant mobile technology- GSM.

More competition is needed in mobile as consumers are suffering; it seems particularly odd that there is no disclosure of the enterprise that has a monopoly in GSM whilst there is rigid accounting disclosure of a legacy land line business when consumers are demanding more mobile in substitution for their fixed line services.

We submit that Vodafone should be subject to statutory disclosure similar to that of Telecom. The impact of this disclosure would be more investment in competitive infrastructure as the true level of profitability was exposed. Additionally internal cross subsidies used to confuse consumers would be exposed and investigated as to whether they should be subject to regulatory re-alignment.

**d) Would it be better to report more comprehensive industry data (if possible) but on a less frequent basis?**

Frequency is important as it enables market trends to be better understood, and discloses the problems and blockages to more competition in the industry. The industry is in transition and in a period where it is trying to catch up to the OECD. We believe that is appropriate to have the current frequency of information maintained as a minimum. NZCL believes that it is only appropriate to adjust the current content to a more comprehensive report

**e) What information in the quarterly reports would you like to see presented differently and why?**

	Current Information	Comment
1	Market shares in the mobile market	<p>It doesn't make sense that subscriber market share is used to draw conclusions as to the true level of competition in the mobile market. Many SIM cards or second handsets don't illustrate the true level of competition or market power. The current market share reporting is unlikely to illustrate the relative market power of the 2 operators in their respective markets. NZCL believes the mobile market should be reviewed by</p> <ol style="list-style-type: none"> <li>1) revenue market share</li> <li>2) active subscribers</li> <li>3) minutes of airtime sold market share ( on an On net and off net basis, including SMS )</li> <li>4) data market share</li> <li>5) regional market share by main cities</li> </ol>
2	Level of capital expenditure	<p>In the current monitoring reports there is no clear distinction between gross capex and net capex after depreciation allowances (which don't represent new investment in the true sense from an accounting perspective).</p> <p>For many years the New Zealand telecommunications investment stock was run down, as there was no new net investment and dividends were larger than earnings. Charts need to be published to contextualize the impact of regulation illustrating the impact of the new environment on investment and actively display the benefits of new entrant capex versus incumbent capex.</p> <p>Additionally there is limited data on the impact of new entrant investment on innovation and incumbent investment. It is noteworthy that a 3<sup>rd</sup> entrant in the mobile industry has been the catalyst to a complete technology change for an incumbent mobile operator, and after continued threats of non investment by the incumbent mobile operators they have announced a \$ 500m 3g 900 rural deployment. It is disappointing that the monitoring report has not recorded the timing of these important investment announcements and the catalytic impact the new entrant has had on overall industry investment.</p> <p>We believe that more due diligence of the announced Mobile capital expenditure needs to take place. There is no review of the actual amount of network deployment, in comparison with handset subsidizes and related advertising and retail spend. "All capital expenditure "is not compared on a like for like basis, and consumer interests are better served if there was to be more analysis of these capex claims. NZCL believes a large portion of the announced capex recorded in the monitoring report is actual SAC, Shop fit outs and transmission. Some of this expenditure actually raises the barrier to entry and is not in the long term interests of consumers, this monitoring report should catalogue this...</p> <p>Some mobile operators announce SAC (Subscriber acquisition costs) as capital expenditure, when really it is merely and investment on creating a barrier to entry.</p>

3	Number portability	<p>We are concerned that there is too little focus on the quality of number portability systems. Until a new carrier comes there is little incentive in the current environment to use the porting service. NZCL believes the ComCom should be preparing statistics on the following</p> <ol style="list-style-type: none"> <li>1) the average time of porting</li> <li>2) the cost of porting</li> <li>3) the complexity of it</li> <li>4) a comparison with world best practice of porting</li> </ol> <p>The NZ history of number portability is contextual, as it is not satisfactory to have number portability that is not world class.</p>
4	Broadband	<p>NZCL believes that a separate section should be developed on mobile broadband and related services. Mobile broadband is one of the fastest growing new markets in Europe and it would be constructive to have some statistics about this market. Specifically monitoring should cover the following</p> <ol style="list-style-type: none"> <li>1) backhaul pricing</li> <li>2) usage by consumers</li> <li>3) device costs</li> <li>4) pricing</li> <li>5) impact of cross subsidizes</li> <li>6) congestion and quality</li> </ol> <p>It is a rational concern by new entrants that this service may be bundled with mobile voice services to further confuse the regulatory process. It does not meet the equivalence of service test that backhaul for ULL has a regulated setting but backhaul for mobile broadband does not. Wireless data provision is a logical barrier to entry which incumbents will use. They have had a 15 year head start use Data services as a offering to quarantine new entrants who need several years to perfect their networks and expand high capacity data networks .</p>
5	Mobile Market –section (Minutes of use on best mate programs)	<p>We believe it is essential that more disclosure is recorded on the change in the market structure towards “fixed price calling “Best mate MOU must be exposed in the monitoring report so new entrants and potential new investors know what the competitive landscape is. Minutes of use metrics in NZ are of little value unless they disclose the best mate’s minutes communicated to new entrants and the market – then they know what they are up against. It only serves in the short term interests of consumers to have best mates; their long term utility is better served by a competitive market and a competitive market where there is no barrier to calling across networks.</p>
6	Fixed line voice market	<p>We believe that there is a lack of analysis and statistical review in this market comparing NZ with the international trend of fixed to mobile (FTM) substitution.</p>

		<p>Internationally fixed to mobile substitution has seen fixed line calling costs drop materially and consumer preferences change to mobile. Here in NZ FTM substitution has one of the lowest rates in the world as a consequence of very expensive GSM airtime prices. The potential for fixed line calling costs to fall as a consequence of more competition in mobile is overlooked in the statistical review of the NZ market often they are in the same market. We urge the Commission to prepare statistics on FTM. We are disappointed with the MED's TSO review that the impact of increased competition in mobile has not been included in its review of the TSO. Many of the problems of the TSO are simply solved by more competition in mobile.</p>
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**f) What other information would you like to see included in the quarterly reports and why**

	<b>Additional Information</b>	<b>Comment</b>
<b>1</b>	NZCL would like to see some research on personal use of phones in the workplace	<p>NZCL has come across some interesting research which may assist the MED in reviewing the productivity of the New Zealand workforce. Research that NZCL has been exposed to suggests that NZ has an extraordinarily high use of workplace phones for personal calling in comparison to other OECD countries. This has been traced to the high cost of telephone calling in NZ in mobile and in toll calls. We believe it's appropriate that further research be conducted into this matter.</p> <p>This information may help explain productivity differentials in the NZ workforce.</p> <p>NZCL takes this opportunity to stress the urgency of further research in the productivity impact of improved ICT competition in NZ. Although most economists are predicting negative GDP growth in 2009, more competition in telecommunications will increase investment, jobs and productivity of NZ Inc. We urge the MED to review this statistic.</p>
<b>2</b>	Handset subsidies in NZ	<p>NZCL would like to see some research on the level of handset subsidies in NZ. This is because they are a barrier to entry and a barrier to competition. Handset subsidies mean that new entrants are investing in handsets rather than networks, and that high end consumers are locked into long term contracts with incumbents. Other markets have limited contract length to one year and in some instances handset subsidies are banned.</p>
<b>3</b>	NZCL would like to see some research on level of "on net" traffic	<p>Closed network traffic pricing discrimination is a major problem for new networks and inhibits competition and innovation. Absolute traffic patterns need to be monitored and compared with the</p>

	on mobile networks	OECD. In addition to this it would be appropriate to review the cross net pricing differential compared to other markets. NZCL advocates that future monitoring reports have a detailed matrix tabling on net traffic patterns.
4	NZCL would like to see some research on bundling in NZ	NZCL would like to see some research on level of broad band, fixed line and mobile contracts. These contracts often cross subsidies different products to thwart competition, we believe this should include mobile broadband bundling so markets are identified on an individual product basis.
5	Use of 2 handsets	Penetration is recorded in NZ as 106%; however NZCL believes that this is caused many consumers being forced into having multiple operators and multiple lines to ensure in-bound traffic. The market failure of having to have 2 handsets because of expensive cross network pricing needs to be catalogued in the monitoring report using a survey sample.
6	Co location of Cell Towers	The Commerce Commission and Central & local Government have been keen to encourage co location of cell towers to minimize the environmental impact of new networks but also to ensure economic efficiency of network construction . However there has been no public recording of this important industry metric. We urge disclosure of these matters in a separate section highlighting <ul style="list-style-type: none"> <li>1) numbers built</li> <li>2) time to construction</li> <li>3) positioning of antennas</li> <li>4) costs</li> </ul>
7	No review of potential cross subsidies	Bundling is a potentially dangerous marketing tool whereby incumbents use their market power to confuse consumers and thwart competition. We are concerned there is too little qualitative research by the Commission on this marketing approach. These areas include , broadband, handset, fixed line , data markets , but also handsets
8	Data as % of ARPU	This metric need to be added to the mobile market section. NZCL believes consumer interests would better served if there was disclosure of how much % of ARPU was text and data.

9	Review of Wholesale markets	There is no detailed review prepared by the Commission on backhaul fibre and transmission markets .We believes a new section on proposed investment. NZ Telecommunications industry is at a turning point whereby a considerable amount of new backhaul and transmission capex is about to occur. Without public disclosure of this investment, there is the potential for considerable economic inefficiency and miss- allocated capital investment in this strategic market (for both Broadband and wireless mobile). It's in the interests of consumers to ensure that new wireless entrants (and broadband fixed entrants) can access competitive backhaul markets, however there is little published on pricing. This needs to be improved.
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**g) What information do you think should be removed from future annual reports and why?**

Nothing should be removed until New Zealand meets its objective of reaching the top ten in the OECD telecommunications operations metrics.

**2 Was the Commission’s 2007 Telecommunications market monitoring report useful?**

Yes .The report provided an insight into where to start investing in unsatisfied consumer demand, and what products and services were most overpriced in the New Zealand market. The Report was useful from both an investment perspective and a marketing perspective. Our organization is well positioned to explain that these reports are influential in attracting the large blocks of capital for new infrastructure. However NZCL must continue to highlight that there was limited disclosure or monitoring of Vodafone NZ which weakens the use of the monitoring report market. Without full disclosure of the dominant player in NZ mobile and wireless broadband (Voda NZ) the Commissions report remains incomplete.

**What information in the annual report would you like to see presented differently and why**

We would like to see better financial transparency and disclosure of those operators who have market power. NZCL notes the international precedent for financial disclosure of those operators that have market power .We believe that the section 69ZD of the 2006 Telecommunications Amendment Act should be used to publish more information about Vodafone operations. Given the complete dominance by Vodafone of the NZ mobile market we believe it is appropriate to present financial disclosure of this company to telecommunications community.

We believe that the investment section should be materially expanded with a focus on Net Capex being explained, with Gross Capex numbers ignored. For many years there has been confusion on the actual amount of money being invested. Too often there is public & political confusion of who is investing what. Merely reinvesting the depreciation charge , and paying

dividends equal to the full Net Profit after tax with a 100% pay out to shareholders , is completely misleading .Too often the reinvestment of the depreciation is quoted as “ the investment level “ which it is not correct from an accounting perspective . In simple terms new investment by a new entrant has more consumer utility than and incumbent merely shouting about reinvesting its depreciation charge.

**a) What additional information would you like to see in the future annual reports and why**

NZCL believes that there is the requirement for the Commerce Commission to report on the following.

- a) On net traffic in mobile networks
- b) Level of handset subsidies
- c) Time period it takes to port numbers
- d) Level of land line bundling
- e) Share of on net traffic compared to off net traffic
- f) The level of fixed to mobile substitution
- g) Report on mobile broadband ( 3g dongle services)
- h) Regional market shares in mobile communications
- i) Level of fixed price on net calling on mobile networks ( best mate traffic)
- j) Report on wireless backhaul markets
- k) The Free cash flow of incumbent mobile operators

**b) What information should be removed from future annual reports and why**

None

**3 Do you support the Commission using an annual industry survey (which is generally supported by the TCF) to collect much of the aggregate industry data not already disclosure by Telecom?**

We believe there needs to be statutory disclosure of data from those operators with market power. It's not always in the interests of incumbents to have their operating metrics disclosed to the wider telecommunications community or consumers. We believe that this data collection it is too important for a self regulatory group like the TCF to get involved. The TCF is primarily concerned with assisting with industry matters where there is no commercial conflict and the TCF can execute and implement some rule or code which benefits the entire industry.

Data collection which will have a material impact on new entrant investment and competition is something that NZCL do not believe falls within the TCF remit. NZCL does not support the TCF being involved in the collection or consideration of what data should be collected.

NZCL submits that an annual survey should be the sole source of data for the industry to review. NZCL believes that those operators with market power should be forced to submit accounts and further statistical evidence of their position as a statutory requirement in addition to responding to Commissions data requests.

**h) Once respondents have systems set up to extract the required data would it be relatively easy and cheap for respondents to provide the data more often than annually**

Yes. Once systems are set up we believe that the reporting should be produced on a 1/4ly basis, until the New Zealand telecommunications industry is in the top quartile of the OECD for operating metrics.

**i) Would it be better to have statistics NZ collect industry statistics if this was able to be organized?**

NZCL would prefer to see a specialized agency collect this information, which should be the Commerce Commission. If this were not possible then the process should be at least supervised by the Commission. It is well acknowledged that confusion is a marketing technique in telecommunications, which could alter and confuse statistics. It's the confusion that the bundling of services creates, means that the specialist agency experts at the Commission need to supervise the collection of statistics which can decipher through the complex information and deliver clarity to the regulatory and policy agencies.

**j) Are there other ways of collecting industry information that the commission should consider and what are they?**

The Commission could consider accessing the management accounts and billing records from the operators to understand the NZ market. This would be easier than collecting material from consumers and it would assist in enforcing rules on bundling, abuse of SMP and on net pricing.

**It has been proposed that the Commission construct consumption baskets for the NZ usage of fixed and mobile phone services and use these to compare New Zealand prices to those in other countries. This would be in addition to rather than in place of OECD benchmarking. Do you support such a proposal and what suggestions do you have for progressing it?**

No we don't believe this should happen. The New Zealand Telecommunications markets have not advanced enough relative to its peer group to be comparing price bundles. This would be a backward step as it would further entrench the incumbents and legitimize bundling and the confusion of customers.

Baskets and bundling are techniques which are used by incumbents as a barrier to new entrants who have had to commence service provision only selling single services. In some OECD jurisdictions bundling has been restricted by the regulator to prevent those operators with market power from erecting further barriers to entry. NZ is not at the stage of development where this can be considered. NZ needs to play catch up to OECD best practice before this type of proposal can be completed

NZCL believes that statistics collection and subsequent publication should be having the purpose of being an instrument to expose market failure. It is imperative that those operators with market power report their operating metrics on a product by product basis and some comparisons be made with OECD best practice.

We urge the Commission not to consider collecting information in baskets, but to separate services and costs and collect information on a single service basis until NZ has caught up with the rest of the OECD.

NZCL's proposal is that statistics should be collected for different products and for different market segments, for example,

- In mobile Communications statistics should be collected both regionally and by market segment, we believe statistics should be collected quarterly or semi annually.
- In fixed line services statistics should be collected on a stand alone basis.
- In broadband statistics should be collected in a stand alone basis.

## Summary

Statistics are the life blood of the telecommunications industry, in a complex network environment where literally tens of millions of transactions are occurring daily and where the industry has a high fixed capital cost of hundreds of millions of dollars. NZCL believe it is essential that an impartial government agency provides statistics that disclose the structure of the industry and progress that it is making on a product by product basis.

The Market monitoring report and the related statistical research is one the most under-rated functions of the NZ Commerce Commission which must not be under-resourced or under-respected. The output of this monitoring is responsible for the mobilization of millions of dollars worth of capital expenditure and marketing resource. The monitoring reports expose market failure, anti competitive behavior as well as market success in the industry. Further perseverance by the Commission to produce expanded

dynamic monitoring reporting will assist greatly in driving competition for the long term benefit of the end user of telecommunications services.

We urge the commission to continue to invest in detailed and wide ranging monitoring reports which continue to expose market failure and barriers to entry.

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