

26 November 2008

Anthony Morris
Chief Adviser
Commerce Commission

By email

Dear Anthony

Consultation on Commission's Telecommunications Sector Monitoring

1. TelstraClear welcomes the opportunity to comment on the Commission's Telecommunications Sector Monitoring. TelstraClear is supportive of the new role provided under section 9A, described by the Minister of Communications as facilitating the "future-proofing of the regulatory environment to technology change and market dynamics, including by... empowering the Telecommunications Commissioner to undertake strategic reviews of sector performance"
2. The Commission has sought specific comment on the quarterly and annual reports (with the exception of the Eptiro and IDC reports) that the Commission has issued on a regular basis for nearly two years.

General comment on Commission Reporting

3. Section 9A sets out that the Commission must monitor competition (section 9A(1)(a)), may conduct inquiries, reviews and studies (section 9A(1)(b)) and must make available reports, summaries and information about that work (section 9A(1)(c)).
4. In TelstraClear's view, there are two separate and distinct components of section 9A. Firstly, it provides for the Commission to monitor and review the development of competition within the market. This may enable the Commission to identify any areas where there are reasonable grounds to undertake a Schedule 3 investigation, which may ultimately lead to a recommendation to the Minister that further regulation under Schedule 1 is appropriate.
5. The second function is the provision of public information under section 9A(1)(c), to make available reports, summaries and information about this monitoring and review. Section 9(A)(2) provides the Commission with the discretion as to whether it releases reports, summaries and information that it produces or acquires.

6. TelstraClear notes that this is a new function under the 2006 amendments to the Telecommunications Act. It would be useful to clarify the target audience for the quarterly and annual reports to ensure the effectiveness of the Commission's reports are maximized. It is unclear whether these reports are designed to provide information to the general public to assist in purchasing decisions, to identify areas where the Commission is concerned about the state of competition, or to provide a review of the impact of the Commission's regulation.
7. If the primary purpose of the reporting is to identify areas where the Commission is concerned about the state of competition, it would be beneficial for the reports to provide background information on the defined market and competition issues that the Commission is specifically monitoring.

Data collection

8. The provision of specific data to the Commission for the purposes of sector monitoring can be time consuming and costly – particularly where the information is collected in a form that differs from standard internal company reporting.
9. TelstraClear supports the TCF Information Reporting working party as a forum to discuss information reporting requirements. By clearly understanding the data requirements and the required purpose, it is easier to ensure that the information is collected and presented in a uniform way, thereby ensuring that the aggregate information is accurate.
10. Secondly, being clear on the purpose of the information can reduce the significant costs to the industry to collect the information. By ensuring that there is a clear understanding of the proposed work to be undertaken, the industry is better able to assist the Commission. There may be relevant information that is collected for other purposes, or in a different form, that can also be provided to satisfy the Commission's purposes.
11. Discussion with the industry will also ensure that realistic timeframes for the collection of the required information can be set.

Interpretation and commentary

12. Reports by the Commission can have a significant impact on the industry, the perception by end-users of competition within the market, and the relative performance of industry participants.
13. Given this impact, it is important that the reports provide not only the data, but also sufficient, robust and balanced commentary to ensure that end-users are able to interpret the data correctly. For example, raw comparison of New Zealand against OECD data is unlikely to provide a full explanation of the dynamics operating within

- the market. While not seeking to ‘explain away’ any variation, the Commission must ensure that a balanced and comprehensive explanation is provided.
14. TelstraClear also considers that the Commission must be judicious with the use of information. For example, in the June Quarter key statistics, the Commission notes that “[t]he Commission understands several thousand lines had been unbundled as at 30 June 2008, but the exact number is still considered by the UCLL retailers to be too commercially sensitive to be disclosed”.¹ Given the commercial sensitivity of this information, we consider that it is inappropriate for the Commission to infer the number of lines, without citing any source.
 15. Given that the Commission is able to collect such information using formal powers such as section 98 of the Commerce Act 1986, the Commission is privy to confidential information that is not in the public domain, and could be commercially detrimental if released. Section 9(A)(2) specifically provides that the Commission can decide not to publish information it collects for the purposes of its general monitoring function. If there is no identifiable benefit to making such information public, the Commission should exercise its discretion under section 9(A)(2) and withhold that information from its report.

Responses to the Commission’s specific questions

16. TelstraClear provides brief responses to a number of the questions raised in the Commission’s letter.
 - 1a. *Is the OECD benchmarking information useful?*
 17. The OECD is used to compare New Zealand’s performance against its OECD peers, across many sectors of the economy. While this is a useful comparator, it must be recognized that there are many factors, other than simply regulatory settings, that might explain differences in comparative performance. While OECD comparison is useful, TelstraClear considers that it is inappropriate to draw conclusions as to the state of competition using OECD data for comparison, in isolation. To that end, a balanced reporting approach must be taken, which also acknowledges other factors that might impact the result.
 - 1b. *Is the reporting of Telecom data useful?*
 18. Much of the information in the quarterly reports appears to draw directly from Telecom’s reporting, consistent with the requirements of its New Zealand Stock Exchange listing. While this information is useful, it is unclear whether it is necessary for the Commission to republish that data in its own reports.

¹ Commerce Commission, *Telecommunications Key Statistics – June Quarter 2008*, p. 4.

1c. Should the Commission try to get quarterly industry data from parties in addition to Telecom?

19. The Commission currently collects significant information from all parties through its annual survey, and issues periodic requests for information such as broadband numbers on a quarterly basis. As previously discussed, there is significant expense and resource required to respond to those information requests. For that reason, additional information should only be collected if there is a specific, defined reason for doing so.
20. TelstraClear understands that much of the data presented about Telecom is information currently provided by Telecom within its quarterly management commentaries provided to comply with its New Zealand Stock Exchange requirements.

1d. Would it be better to report more comprehensive industry data (if possible) but on a less frequent basis?

21. An annual report, rather than quarterly reporting, may enable the Commission to undertake a more comprehensive analysis of the telecommunications market (subject of the telecommunications providers being able to collect information in the form sought by the Commission). However, given that the telecommunications market continues to evolve and change rapidly, there is a risk that the reports are out of date by the time that they are published. An example of this is the rapid growth in broadband penetration.
22. Furthermore, it is not clear what the more comprehensive industry data might be. TelstraClear considers that any information must be directly tied back to specific markets and areas where the Commission considers intervention may be required.

1e, 1f & 1g Questions on the presentation of information

23. TelstraClear considers that the underlying purpose for providing the information must be clear. The facts represented, and the interpretation and commentary on that information, must clearly identify the competition issue that the Commission is seeking to address.

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 disclosed by Telecom?

24. TelstraClear considers that an annual industry survey is the most efficient method to collect regular information for the purposes of monitoring. Discussion with the industry on information requirements will also ensure that realistic timeframes for the collection of the required information can be set. We consider that the TCF Information Working party is a useful dialogue to assist the Commission in the development of its information requests.

25. Should you have any further queries, please don't hesitate to contact me at chris.abbott@team.telstraclear.co.nz or (04) 920 3682.

Yours sincerely

A handwritten signature in blue ink, appearing to read "Chris Abbott", is positioned below the "Yours sincerely" text.

Chris Abbott
Group Manager Regulatory