



PUBLIC
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COMMERCE COMMISSION

Decision Whether to Investigate an Application for Determination for Designated Multinetwork Services

Decision whether to investigate under section 35 of the Telecommunications Act 2001 (“the Act”) in the matter of an application for determination for designated multinetwork services under section 31 of the Act by:

**TELSTRACLEAR LIMITED
TELECOM NEW ZEALAND LIMITED
VODAFONE NEW ZEALAND LIMITED**

- Commission:** Douglas Webb
Donal Curtin
Shaan Stevens
- Summary of Application:** The parties listed above applied for a determination under section 31(a) of the Telecommunications Act in regard to (a) Local telephone number portability service; and (b) Cellular telephone number portability service (the ‘Number Portability Services’).
- Decision:** Under section 35, the Commission has decided to investigate the application for determination concerning the local telephone number and cellular telephone number portability multinetwork services.
- Date of Decision:** 28 January 2005

THE APPLICATION

1. On 24 December 2004, the Commission received an application ('the Application') from Telecom New Zealand Limited ('Telecom'), TelstraClear Limited ('TelstraClear'), and Vodafone New Zealand Limited ('Vodafone') under section 31(a) of the Telecommunications Act 2001 (the 'Act') for the following designated multinet network services:
 - (a) the local telephone number portability service; and
 - (b) the cellular telephone number portability service, (the 'Number Portability Services').
2. The Application requests that the Commission determine the functions that must be performed by a system in delivering the Number Portability Services, and the standard to which those functions must be performed. In particular, the Application requests that the Commission should¹:
 - (a) *subject to sub-paragraph (b) below, make a determination under section 31(a) of the Act that is in the form of the Network Code and the LMNP Code; and*
 - (b) *for the areas in the Codes that have not been agreed by the TCF (indicated by square brackets),² seek submissions from the Applicants and make a determination in respect of those issues accordingly; and*
 - (c) *make this requested determination under section 31(a) of the Act in conjunction with the determination under section 31(b) of the Act, which the Commission is currently investigating, including aligning the dates for submissions on determinations.*
3. The Application also notes that a determination is sought in respect of the draft Network Code and the LMNP Code ('the Draft Codes') on the basis that "the Codes must be enforceable to ensure there is certainty to progress implementation of local and cellular number portability"³.
4. On 10 January 2005 the Commission invited comment on the Application in relation to sections 31, 32 and 33 of the Act. In response to this request the Commission received submissions from Telecom, TelstraClear, Vodafone, and WorldXchange Limited, all in support of a determination under section 31(a) of the Act.
5. Telecom submits that the Commission should only seek submissions on those areas of disagreement, and otherwise make its determination on the terms set out in the Draft Codes. Telecom argues that "the industry has spent a significant amount of time and effort reaching agreement on the terms of the Codes and, accordingly, the Commission may not consider it necessary or desirable to revisit the agreed terms."⁴

¹ Paragraph 11 of the Application.

² That is, indicated in square brackets in the draft "LMNP Code" and draft "Network Code" annexed to the application and dated 24 December 2004.

³ Paragraph 10 of the Application.

⁴ Letter from Telecom to the Commission dated 25 January 2005.

ASSESSMENT OF APPLICATION UNDER SECTIONS 31, 32 & 33

6. The Commission cannot investigate an application for a multinet network determination unless the applicant satisfies the requirements of subpart 3 of Part 2 of the Act. The Commission may also consider any other relevant matters under the Act in making a decision to investigate.

Section 31

7. Section 31 of the Act states that:

An access seeker of a designated multinet network service may apply to the Commission for a determination of—

- (a) the functions that must be performed by a system for delivering the service and the standard to which those functions must be performed; and
 - (b) the formula for how the cost of delivering the service must be apportioned between the access seeker and all access providers of the service.
8. Pursuant to section 31(a) of the Act, the Application requests that the Commission determine the functions that must be performed by a system for delivering the Number Portability Services, and the standard to which those functions must be performed.
9. The Commission will evaluate whether the terms and conditions that are currently in the form of the Draft Codes are appropriate for incorporation within the determination and fall within the Commission's jurisdiction (i.e: they relate to the designated multinet network services in question).
10. Though the Commission notes that many terms of the Draft Codes have been agreed by the Telecommunications Carriers Forum, the Commission is required to consider whether all the terms of its determination, including those agreed terms, best give, or are likely to best give, effect to the purpose set out in section 18. The Commission will therefore consider the totality of the terms in preparing its determination.

Section 32(a)

11. Section 32(a) of the Act states that, despite section 31, no person may apply for a determination –

(a) Of any matters that an approved code already provides for.

12. An approved code is defined under section 5 of the Act as follows:

“approved code”—

- (a) means a telecommunications access code that has been approved by the Commission under clause 9 or clause 10 of Schedule 2; and
 - (b) includes any amendment to an approved code that has been approved under either of those clauses.
13. No approved codes currently exist in relation to the Number Portability Services. Accordingly, the Application meets the requirement of section 32(a) of the Act.

Section 32(b)

14. Section 32(b) of the Act states that, despite section 31, no person may apply for a determination –

- (a) If the Commission has already made a determination in respect of the designated multinetwork service and the determination has not expired.

15. On 6 December 2004, the Commission released a draft determination with respect to the Number Portability Services under section 31(b) of the Act. The Commission is yet to release a final determination in respect of the Number Portability Services. Accordingly, the Commission is satisfied that the Application complies with section 32(b) of the Act.

Section 32(c)

16. Section 32 (c) of the Act states that, despite section 31, no person may apply for a determination –

- (c) if there is an agreement between the access seeker and all access providers for the supply of the service and the agreement provides for all of the matters set out in section 31.

17. The Application states that there is no agreement between the applicants and all access providers for the supply of the Number Portability Services⁵.

18. The Commission therefore considers that the requirement specified by section 32(c) of the Act has been met.

Section 33

19. The Commission notes that the Application was received in writing, in the prescribed manner; containing the prescribed information; and accompanied by the prescribed fee.

20. Accordingly the Commission considers that the Application satisfies section 33 of the Act.

⁵ Telecom New Zealand Limited, TelstraClear Limited, Vodafone New Zealand Limited, *Section 31(a): Application for Designated Multinetwork Access Services*, Paragraph 13(c).

COMMISSION DECISION UNDER SECTION 35 OF THE ACT

21. Following due consideration of the documents, materials and other evidence provided in support of the Application, and the comments made by access seekers and access providers of the Number Portability Services, the Commission has concluded that it is appropriate to investigate the Application so far as it concerns the Number Portability Services.

DATED this 28th day of January 2005



Douglas Webb
Telecommunications Commissioner
Commerce Commission