



COMMERCE COMMISSION

Please refer to:

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10 July 2008

Dr Paul Reynolds
Chief Executive
Telecom New Zealand
Private Bag 92028
AUCKLAND

Copied: Hon David Cunliffe
Mr Barry Paterson, IOG
Richard Scott, Chorus
Reg Hammond, MED

Dear Dr Reynolds

***Prima facie* Breach of Separation Undertaking: Telecom Zones 1, 2 and 3**

1. It is with concern that I read Richard Scott's letter to the Minister of Communications (the '**Minister**') dated 26 June 2008 and copied to the Commerce Commission (the '**Commission**'). This letter outlined several requirements of the Separation Undertakings and Telecom's (Chorus) failure to meet those requirements.
2. The specific requirements are set out in the definition of "Telecom Zones, 1, 2 and 3" in clause 1.1 of Part A, Schedule 1 of Telecom's Separation Undertakings. Under these provisions Telecom is required to:
 - a) provide the Minister with full details of the definitive geographic areas covered by Telecom Zones 1, 2 and 3 (which for the avoidance of doubt, will not change over time) on or before 30 June 2008.
 - b) before 30 June 2008 consult with the Minister and the Commission on the full details of the precise method for classifying all customer service addresses within zones 1, 2, 3a and 3b
 - c) Following consultation with the Minister and the Commission, Telecom will also by 30 June 2008 provide the Minister full details of the precise method of classifying all customer service addresses within these zones. This method must ensure that as at 30 June 2008 not less than 80% of the total Existing PSTN Lines are in these zones.

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3. In respect of requirements b) and c) above, Mr Scott stated in his letter that:

“Unfortunately, in the context of establishing Chorus and the scale of fibre-to-the-node (‘FTTN’) cabinetisation planning activities, the draft documentation has taken longer than expected to prepare. It has also occurred to us during the planning work for this initiative that the methodology needs to be fully auditable and we are engaging external support to ensure the methodology is robust.

As a consequence, we will not be in a position to provide you with the method in final form by 30 June. However, we will provide you and the Commission with the draft method for the purposes of consultation by 31 August 2008. We will then provide you with the method in final form as soon as possible following the completion of consultation.”

4. The letter indicates that full details on the precise method for classifying all customer service addresses within zones 1, 2, 3a and 3b have not been provided by the date given in the Undertakings. The Commission had not been consulted on the method for classification, as required by the Undertakings. The Ministry of Economic Development has advised the Commission that the Minister was not consulted on the method for classification, as required by the Undertaking. Accordingly, a prima facie breach of the undertakings has occurred.
5. The commission is also giving active consideration as to whether requirement a) has been fulfilled. That is, whether the information provides full details of the ‘definitive geographic areas’ covered by the Zones as required in the Definition of Telecom Zones 1, 2 and 3 in Operational Separation Undertakings, Schedule 1: Transition to Equivalence.
6. I recognise that in these early days of the undertakings Telecom personnel are only just starting to realise their obligations and that in the context of establishing Chorus, draft documentation may have taken longer to prepare. However, the details and methods for classification for Telecom Zones 1, 2 and 3 form an important base for Telecom to meet its obligations for PSTN migration.
7. It is also unfortunate that a prima facie breach of Telecom’s undertakings has occurred so early in the process. I would appreciate discussing with you as soon as possible Telecom’s (Chorus) proposed remedy and what courses of action you have and intend to put in place to insure that similar breaches do not occur again.
8. At this stage, I do not intend to take enforcement action, but reserve the right to do so under the Telecommunications Act 2001 at any point if it becomes necessary.

Yours sincerely



Dr Ross Patterson
Telecommunications Commissioner