

Woosh Wireless Ltd  
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Auckland

28 October, 2009

Commerce Commission  
PO Box 2351  
Wellington 6140



Dear Dr Patterson

**Re: Woosh response to complaints concerning the Telecom Wholesale loyalty offers and the impact on existing contracted customers.**

Woosh Wireless Limited was one of the parties that accepted the Telecom Wholesale loyalty offer as we saw benefit for our regional and rural New Zealand customers. This proved to be the case as we have significant pick up for our subsequent "Bundle of Joy" offer, particularly in regional areas that had not previously been able to access pricing structures comparable to those available in our major metropolitan markets.

Woosh accepted the Telecom loyalty offer in good faith and so did our customers who benefitted from the lower pricing structure we were able to make available. We had no reason to doubt that Telecom was following its separation undertakings in the contract they entered into with us.

This offer allowed us to be competitive, especially in the regions. Woosh offered nationwide pricing which predominately benefited customers in regional and rural New Zealand where there has traditionally been little price competition.

As a result of the IOC review, Telecom Wholesale has served notice it is withdrawing forthwith the favourable prices that allowed Woosh to provide attractive offers to rural and regional customers.

Of most concern to us is that this will affect existing customers who have benefited from our prices and who have the reasonable expectation that these prices should continue.

Woosh does not believe the impact on New Zealand consumers who took up the offer in good faith has been given adequate or sufficient consideration.

Many of these customers have agreed to term contracts of at least one year and they would in effect be compelled by a regulatory decision to immediately suffer a price increase as our margins are too narrow to sustain current pricing. I doubt price increases are an intended consequence of any prospective decision.

Therefore Woosh believes that existing customers under contract should be exempt if the Commission finds that Telecom must increase its prices.

At the very least this allows the Commission to make its ruling on Telecom's loyalty offer without penalising either Woosh or our existing customers – we have both entered into these agreements in good faith.

That is the primary submission of this letter.

Furthermore we would like the Commissioner to consider how Section 56.2(a) of the Telecom Separation Undertakings could be used to reflect the differences between 'reseller' service

providers and those operators making substantial investments in building regional infrastructure.

As an example, Woosh currently has substantial investment in rural Southland with 97% of the population covered. We intend to expand into other regions where we are prepared to resell those services on favourable terms, to Telecom, and other retailers.

We require the ability to enter into reciprocal commercial agreements with operators such as Telecom who already have coverage of the main centres. This will allow us to target our regional build plan so we aren't competing head to head on price in the areas already well covered by Telecom, Orcon and Vodafone.

The co-siting determination accepts the principal that a new operator must have more than 10% coverage before co-siting benefits apply, and we believe this sets a useful precedent.

Woosh believes a regulator pursuing a 'one size fits all' regime, where operators with minimal network investment must receive the same commercial terms in all areas of the country, runs the risk of producing sub optimal results. Any new operator, other than the two or three incumbents, deserves encouragement to invest against such strong, entrenched and profitable competitors, especially outside the main centres.

The offer by Telecom made it possible for Woosh to develop a toe-hold in regions outside our usual coverage foot print by acquiring customers through a more attractive offer than was available from the incumbents.

In effect we were increasing competition in the market and offering rural customers improved services, (data and voice) at better prices. We greatly value the loyalty of our customers and the brand values that are associated with our offer.

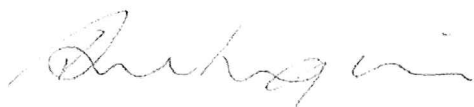
Our strategy based on accepting, in good faith, the Telecom offer, improves current competition and the prospects of future competition. Importantly the future competition offered by a Woosh network in the regions would be true infrastructure competition not normally requiring regulatory intervention.

Clearly this is the ultimate goal of the Government and the competition regulator and ultimately the winners out of such an approach will be all New Zealanders living outside the main centres.

The commissioner may have other ideas that would assist Woosh in building a competitive rural services and they would be welcome.

Thank you for taking the time to consider this submission. Woosh looks forward to the Commission's decision. Should you have any further questions of need clarification of our position please contact us.

Regards



Rod Inglis  
Executive Chairman  
Woosh Wireless Ltd