



CallPlus Limited

Cross-Submission in Respect to
Reconsideration of Determination 582

21 March 2007

PUBLIC (There is no confidential version)

1. Introduction

- 1.1. A further report from Mr de Ridder is filed with this submission. We do not summarise all issues from that report in this submission, so the Commission is referred to it directly.
- 1.2. There are no confidential versions of either document.

2. Analysis prior to introduction of plans (Para 121-125 draft determination)

- 2.1. For reasons such as those set out at Para 121 of the draft determination, it is appropriate to have the proposed analysis, amended as outlined in Para 4 of the CallPlus submissions in relation to the draft determination.
- 2.2. There is no jurisdictional issue. Section 30(1) is designed to allow the Commission to include terms and conditions. That can include a method of dealing with matters in the future (so the Commission has jurisdiction in that respect as well). The short descriptions in Schedule 1 of the Act were never intended to be self-contained and limited. They must inevitably be fleshed out and supplemented by comprehensive terms and conditions. That of course is what happens in all determinations. The proposed analysis is but one aspect of this.
- 2.3. The decision to have the analysis is also guided by the requirements of s18 and long-term benefit of end-users, to which the Commission must have regard under s19. Reasons such as those in Para 121 demonstrate why the proposed analysis furthers s18 outcomes appropriately.
- 2.4. Even if the sorts of practical issues arise, as maintained by Telecom, they would be resolved on the first occasion this is referred back to the Commission (assuming that proves necessary). Thereafter, the analysis should be straightforward to resolve. The difficult history of this matter, the problems so far, and the need to get this right, also illustrate that the Commission should go down this path even if there is additional work involved.
- 2.5. As the way forward can be sorted out first time around (making implementation simple thereafter), the Commission does not need to address the detail of the model at this stage. This can be resolved when and if issues are referred back to the Commission. The model can be fleshed out then.
- 2.6. For example, Telecom's concerns as to confidentiality of information can readily be addressed. There is no reason for concern on Telecom's part

in any event. The Commission will ensure that confidential data is not seen by the other ISPs themselves (and CallPlus acknowledges that this is appropriate). The Commission's usual confidentiality regime can address this.

3. Confidential Information

3.1. Given the history of what happened (in Determination 582 and the subsequent appeal) and what ended up being revealed in those proceedings after court order, CallPlus is surprised that the Commission remains of the view that the analysis can be done at a theoretical level by access seekers¹. Those proceedings demonstrate just how important it is to have the information available on an RI basis. Treatment as COI should be rare. The Commission is referred to related correspondence with it as to the OIA request and also to the documents lodged with the Court on the appeal. As the Commission knows, under the Official Information Act, there is authority to the effect that having confidentiality restraints justifies disclosure of sensitive information. CallPlus is very concerned that the Commission continues to fall into the same error and reserves the right to refer this matter to the Ombudsman for review should the same position be taken.

3.2. Information asymmetry is a well known problem in dealing with parties that have SMP, and the Commission is simply exacerbating that problem by taking this approach.

¹ See para 58-60 of the Telecom cross submission