

Please refer to: 13.09/14568

28 July 2020

Geoff Thorn
Chief Executive Officer
New Zealand Telecommunications Forum Incorporated
PO Box 302469
North Harbour
Auckland

Email: [REDACTED] and [REDACTED].

Dear Geoff

Response to the TCF's fraud prevention proposal

1. Thank you for your letter dated 4 December 2019, setting out the proposal of the New Zealand Telecommunications Forum Incorporated (**TCF**) in relation to fraud prevention (**the proposal**).
2. The purpose of this letter is to respond to your request for the Commission to confirm we are content that the proposal is consistent with the terms for local and mobile number portability (**LMNP**) in New Zealand (**LMNP terms**),¹ or, alternatively, to advise of any changes to the LMNP terms that the Commission considers would be necessary to give effect to the proposal.
3. In summary, our preliminary view is that the proposal could be implemented in a manner that is consistent with the existing LMNP terms and the purpose in section 18 of the Telecommunications Act 2001 (**Act**). We would like to see a final plan for implementation of the proposal before we provide a definitive view.

¹ The LMNP terms, Attachment C to the Designated Multinetwork Determination, Decision [2016] NZCC 32, are available at https://comcom.govt.nz/_data/assets/pdf_file/0026/87740/Final-LMNP-Terms-for-LMNP-Determination-2016-Attachment-C-19-December-2016.pdf.

Our understanding of the proposal

4. On 22 January 2020, the Commission met with the TCF to further understand and discuss the proposal. We understand that the purpose of the proposal is to protect consumers from potential fraud in the porting process for mobile numbers.
5. The proposal would utilise the Industry Portability Management System (**IPMS**), by sending a text message to a customer seeking to port their mobile number. The IPMS would prompt the customer to confirm the port request by reply text, in order to gain appropriate authorisation from that customer to the proposed porting. You have explained that the use of the IPMS in this way would resolve issues where porting can currently be used to fraudulently obtain access to a customer's mobile number. This has become a particular issue since most New Zealand banks have begun to use two-factor authentication to verify online banking transactions (a text message sent to a mobile number being one of the factors).
6. The proposal would add to the existing porting process in the LMNP terms before the expiry (on 20 December 2021) of the current Determination for the designated multinetwork services of 'local telephone number portability service' and 'cellular telephone number portability service' (**Determination**)².
7. We understand the TCF considers the proposal:
 - 7.1 to be a cost-efficient way to prevent fraud;
 - 7.2 to be pro-competitive, as it enables switching without introducing unnecessary barriers; and
 - 7.3 to be consistent with the current Determination.
8. The TCF has informed us that it is happy to have made progress on a solution and is continuing to work on the proposal. It has been giving consideration to how it could implement the proposal in a manner consistent with the LMNP terms.

Our view of the proposal

9. We thank the TCF for their engagement with us on the proposal. We welcome the ongoing work the TCF is undertaking with the aim of protecting consumers from fraud and we are fully supportive of such initiatives.
10. The Commission's purpose in regulating LMNP through the Determination is the promotion "of competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand", as set out in section 18 of the Act.

² Available at: https://comcom.govt.nz/_data/assets/pdf_file/0034/87739/2016-NZCC-32-Final-LMNP-Determination-2016-19-December-2016.pdf.

11. Provided the proposal, as outlined in paragraph 5, enables end-users to switch service providers, with the costs being absorbed by service providers that are party to the Determination, and does not introduce barriers to switching, then we would be satisfied that this would promote competition for the long-term benefit of end-users.
12. Based on our initial review of the proposal, our preliminary view that the proposal would be consistent with the section 18 purpose. However, as we have not yet viewed the solution in full, we are not yet in a position to confirm that the solution also complies with the current LMNP terms in the Determination.

How the proposal could be implemented

13. In our view, there are three routes, outlined below, through which the TCF could implement the proposal.
14. The first is to wait until the current Determination is due to expire, on 20 December 2021 (unless the service ceases at an earlier date to be a designated multinet network service under the Act). In the months prior to this date, the Commission will be required under Schedule 3 of the Act to consider whether there are reasonable grounds for commencing an investigation into whether LMNP Services should be omitted from Schedule 1. If regulation of LMNP Services were to continue at that time, we would have to decide whether to make changes to the current Determination and what those changes should be. Amendments to the LMNP terms to give explicit effect to the proposal could be considered at that point.
15. Secondly, a party to the Determination can apply for us to either amend the Determination or to revoke it and make a substitute determination, if we consider that there has been a material change of circumstances since the Determination was last reconsidered in 2016. In reconsidering a determination, the Commission must follow the same process that was followed for the initial determination. Given the current workload of the Commission, we expect that any such application is unlikely to be processed before the Commission is required to make a decision regarding continued regulation of LMNP Services, as outlined in paragraph 14.
16. Thirdly, the TCF could facilitate individual Bilateral Agreements³ between parties to the LMNP terms. Parties to the LMNP Terms may agree terms and conditions, in their Bilateral Agreements, for the provision of all appropriate and relevant services and service information that is required to facilitate and support the Porting Processes in an efficient and expeditious manner.

Next steps

17. We look forward to seeing the proposal in more detail and your members' plan to implement it.

³ As defined in the LMNP terms, means an agreement between a party who is obliged to comply with the LMNP Terms and another party (who might or might not also be a party to the LMNP Terms), relating in full or in part to Porting.

18. In order to provide transparency regarding our correspondence with you, I propose in the coming days to publish this response on the Commission's website, alongside your letter dated 4 December 2019.
19. Please contact Michael Callan on (04) 924 3818 or at michael.callan@comcom.govt.nz if you have any questions about this letter.

Yours sincerely,

A handwritten signature in dark ink, appearing to read 'Tristan Gilbertson', with a small dot at the end.

Tristan Gilbertson

Telecommunications Commissioner