

25 May 2010

MTAS Reconsideration
Regulation Branch
Commerce Commission
PO Box 2351
Wellington

Email: shane.kinley@comcom.govt.nz

Dear Sir/Madam

Re: Draft Reconsideration Report

I am writing to you in response to the Commerce Commission's draft reconsideration report on whether mobile termination access services should become designated or specified services.

BusinessNZ has made numerous submissions on mobile termination since the Commission began its formal investigation in this area in May 2004. Throughout this extended process, we have repeatedly raised concerns regarding issues such as impacts on investment, wider regulatory concerns beyond the telecommunications sector, inconsistent methodology and the importance of voluntary undertakings. The current reconsideration report adds another chapter to the process which we believe will have long-term negative consequences for investment not only by the major players in the industry, but also for other industries where major business investment is required.

We do not wish to outline views on specific details of the reconsideration report, as we believe these have been more than adequately covered previously. However, we do wish to pick up on three associated issues that we feel, if addressed, would go some way to ensuring a better outcome for the New Zealand economy.

Consultation Process

Paragraph 49 of the draft report outlines the indicative timetable for the remainder of the MTAS process. What we find striking is that only seven days were allowed in which to make submissions on the draft report, with only another seven days for cross-submissions. For a process that has evolved over six years, the extremely short time frame for major players to submit and cross submit is extremely short, and most probably will mean responses are less well thought through and therefore are less than ideal.

While the timeline for submissions on the draft report has already passed, BusinessNZ recommends that the time for cross-submissions be extended to no less than three weeks, pushing the deadline date out to 9 June at the earliest.

Communication of Future Retail Plans

Paragraphs 38-43 of the draft report outlines the process by which a request for reconsideration by the Minister occurred, and the subsequent response by the Commission. The Commission then outlined the scope of issues relating to the reinvestigation, including an information request concerning retail offers released since 22 February 2010. All major players took the opportunity to respond, with the Commission being aware that two offers were released.

While we understand the need for declarations of retail offers made by the major players after the first draft report, we have concerns about what this could mean to future business decisions by players in the sector. For instance, for issues of assurance, would all future retail plans need to be formally handed to the Commission for review/approval so as to ensure they do not conflict with existing arrangements? Our main concern here is that because of the inherent uncertainty that now seems to exist, the Commission may inadvertently become a clearing house for future retail plans. BusinessNZ would certainly not want this to be the case, as this would consume considerable resources, and slow business processes when nimbleness in such markets is often required.

Future Review

We would assume that the mobile termination issue has taken up a considerable amount of the Commission's time and resources over the six year period. It may also be the case that many staff at the Commission have been involved with this issue for a considerable time also. In one respect, this is useful as staff build up substantial expertise in the area, along with an inherent knowledge of how the process has evolved. However, it can also be useful for a fresh pair of eyes to examine/review this issue so that matters not previously considered can come to light. With this in mind, BusinessNZ believes that given the recent confirmation by Government regarding the establishment of a New Zealand Productivity Commission (NZPC), this is the type of issue that would ideally fall within one of their primary functions, conducting one-off reviews.

Unfortunately, the NZPC will not be established until early next year, so there would be no realistic opportunity for it to look at the issue as it currently stands. However, once established, there is every opportunity for the NZPC to examine the mobile termination issue in a wider context over the six years it has been running to analyse potential effects on future investment, including associated effects on other industries. Overall, the NZPC would likely have far fewer restrictions in terms of what it can investigate and would be able to provide a broader picture of the outcome of decisions made in the mobile termination space.

Therefore, BusinessNZ recommends that once the NZPC is established, a review of the wider issues of business investment in relation to the outcomes of mobile termination decisions should be carried out.

We thank you for the opportunity to discuss this issue, and also for allowing us additional time to make this submission.

Kind regards,

A handwritten signature in black ink, appearing to read 'P. O'Reilly', with a long horizontal stroke extending to the right.

Phil O'Reilly
Chief Executive
BusinessNZ