

# Overview of Standard Terms Determination process

## Introduction

This is a brief overview of the Standard Terms Determination (STD) process set out in the Telecommunications Act 2001 (the Act). It sets out background to the STD provisions, a flowchart of the key steps in the process, a brief explanation of the key steps and an indicative timeline for the process.

## Background

The *Telecommunications Act 2001* (the Act) regulates the supply of telecommunications services in New Zealand. The Act was introduced following a government inquiry into whether a specific regulatory regime was needed for the telecommunications industry after the industry was deregulated in 1987.

In May 2006, the government undertook a stocktake of the NZ telecommunications industry.<sup>1</sup> The stocktake recommended a package of measures to improve New Zealand's performance on the availability and uptake of telecommunications services, particularly broadband. The four components of the package included:

- Developing an effective wholesaling regime;
- Measures to encourage infrastructure-based competition, including developing a package for rural communities and ensuring a competitive mobile market;
- The future-proofing of the regulatory environment to technological change, including by reviewing telecommunications service obligations and preparing for next generation networks; and
- The continued development and implementation of the government's digital strategy to encourage the use of information and communications technology.

In June 2006, the government introduced the Telecommunications Amendment Bill (the Bill) which included amendments to:

- Introduce local loop unbundling (LLU) and supporting services that provide for backhaul and co-location of equipment;
- Amend the unbundled bitstream service (UBS) and its supporting backhaul service to remove performance restrictions and clarify that the service may be purchased without a requirement to purchase a phone service (ie 'naked DSL'); and
- Impose accounting separation on Telecom to increase the transparency of its wholesale operations and to enhance its incentives to comply with supply obligations.

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<sup>1</sup> Office of the Minister of Communications, *Telecommunications Stocktake*, 3 May 2006. <http://www.beehive.govt.nz/Documents/Files/Cabinet%20paper%20and%20minute.pdf>

The Bill also contained amendments to ensure that access terms and conditions are set in an effective and timely manner, namely by:

- Introducing a standard terms determination process that will allow the Commerce Commission to simultaneously set access terms and conditions for regulated services for multiple access seekers, access providers or both;
- Providing for a formal undertakings process that allows the Commerce Commission to accept and enforce voluntary supply commitments from access providers in lieu of regulation; and
- Improving the regulated service access codes regime.

The Bill also proposed enhancing the ability of the Commerce Commission to intervene to best promote the development of competition in telecommunications markets by:

- Empowering the Commerce Commission to continuously monitor the performance and development of the telecommunications sector and its markets; and
- Providing for the Commerce Commission to have regard to statements of government economic policies when exercising its powers.

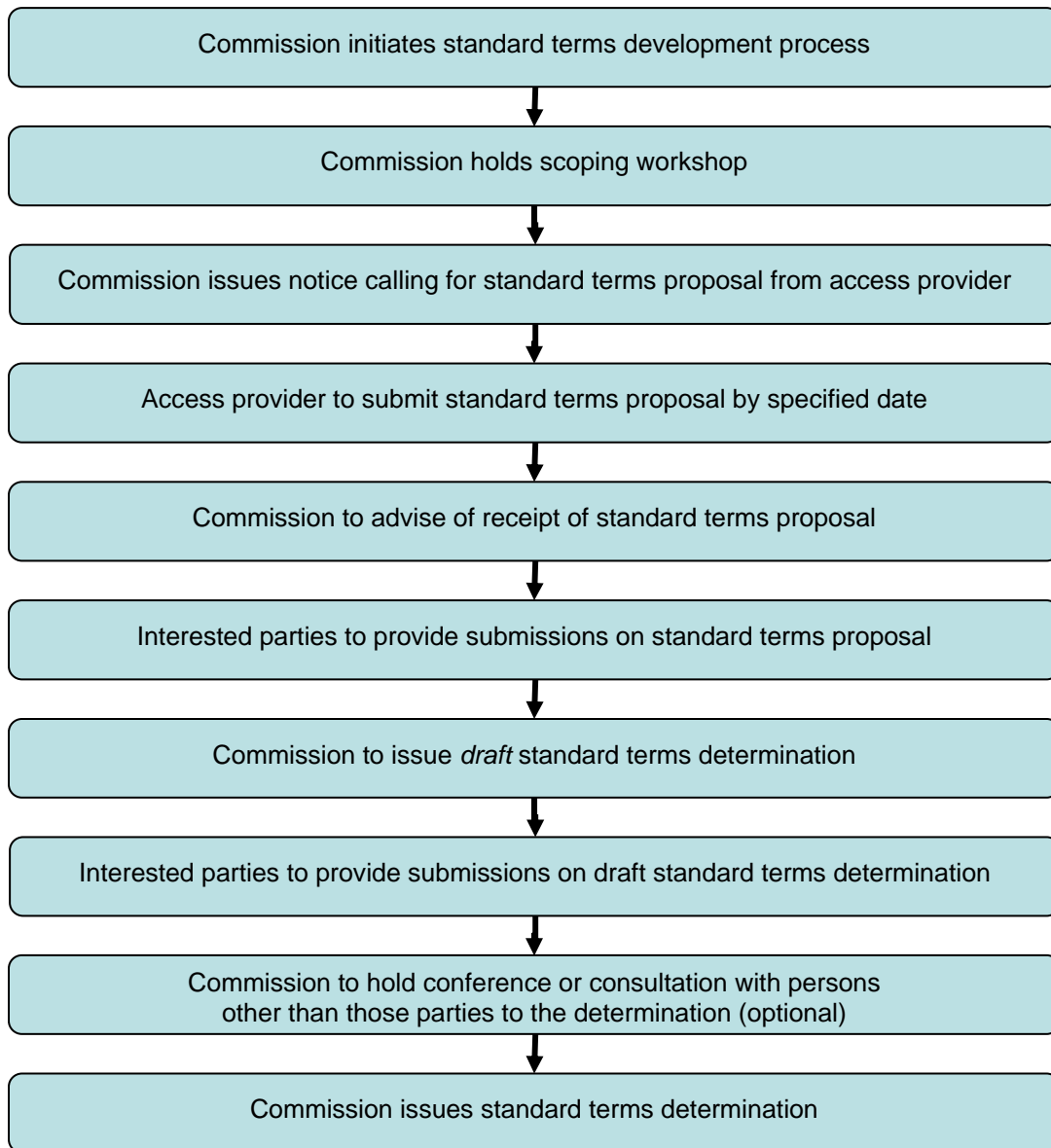
The Bill was passed in December 2006.

This overview focuses solely on the process of making a Standard Terms Determination.

## The Standard Terms Determination process

The administrative and substantive requirements for developing an STD are set out in sections 30A – 30Q of the Act. The application and effect of an STD are set out in sections 30S and 30T and section 30R provides for the Commission to be able to review, vary or replace an STD

Below are the key events in the STD process.



These key steps are briefly explained on the following pages. An indicative timeframe for some of these steps is also included.

## **Overview of key steps in the STD process**

### *Commission initiates STD process*

The Commission may initiate a standard terms development process for a designated access service or specified service (s. 30C).

Within ten days of initiating the STD process, the Commission must give public notice that the STD process has been initiated (s. 30D). The Commission will give such notice by notice in the Government Gazette and on its website; and will usually issue a media release and write to industry participants.

### *Commission holds scoping workshop*

The Commission must hold at least one scoping workshop in relation to the designated access or specified service (s. 30E(1)).

The purpose of the scoping workshop is to assist the Commission in understanding what is a ‘reasonable period’ to allow for an access provider to submit a standard terms proposal (STP) and to assist the Commission in specifying any requirements for the STP additional to those in section 30G of the Act (s. 30E(2)). These matters (ie the due date for the STP and any additional requirements that the access provider must include in the STP) must be specified in the notice the Commission gives the access provider calling for an STP (s. 30F(1)).

Practically, the scoping workshop must be:

- (a) open to all parties to the STD; and
- (b) conducted by an employee or agent of the Commission in a manner, and within the time, that the Commission sees fit (s. 30E(3)).

### *Commission issues notice calling for standard terms proposal from access provider*

After conducting the scoping workshop the Commission must give written notice to the access provider, who supplies the service, requiring the access provider to submit to the Commission a standard terms proposal (STP) by a specified date. The written notice may include any additional requirements that the Commission thinks fit to specify. The notice must be accompanied by a copy of section 30G which sets out the requirements for an STP and any additional requirements the Commission has specified. The Commission must also give public notice of that requirement (s. 30F).

### *Access provider to submit STP by specified date*

After receiving the relevant notice from the Commission, the access provider must then prepare the STP and submit it by the date specified in the Commission’s notice

(s. 30F(3)). The access provider's STP must comply with the requirements specified in section 30G, including any additional requirements the Commission has specified in the notice to the access provider. The STP must not include the price for the service unless it has previously been determined by the Commission in accordance with either the initial or final pricing principle in the context of an access determination (s. 30G(2)).

*Commission to advise of receipt of STP*

As soon as practicable after receiving the access provider's STP, the Commission must notify all parties to the STD (in writing) and give public notice that the STP has been received. In giving public notice the Commission must include details of how the STP may be obtained and viewed and specify the closing date for submissions on the STP (s. 30I).

*Interested parties to provide submissions on STP*

Interested parties may provide submissions on any matter to which the STP relates. However, if a submission proposes an additional or alternative term to be included in the STD, the submission must set out the wording of that alternative term (s. 30J). Parties should lodge their submissions by the date specified by the Commission in the notice of receipt of the STP.

*Commission to issue draft STD*

Within 60 (working) days of the closing date for submissions on the STP from interested parties, the Commission must make "reasonable efforts" to issue a draft STD to all parties to the STD (s. 30K(1)).

The draft STD must set out the terms, including price, on which the service(s) must be supplied (ss. 30K(1)(a) & (b) & 30K(2) ). Where the price or prices have previously been determined by the Commission, in accordance with either the initial or final pricing principles in the context of an access or pricing review determination, that price (or those prices) must be used unless the calculation needs to be updated due to a change in circumstances.

Where the price has not previously been determined, the Commission must determine the price in accordance with the applicable initial pricing principle (set out in the relevant schedule to the Act) (s. 30K(2)).

The Commission must give public notice of the draft STD and specify the closing date for submissions on the draft STD (s. 30K(1)(d) & (e)).

*Interested parties to provide submissions on draft STD*

Interested parties may provide submissions and cross submissions on the draft STD by the dates specified by the Commission.

*Commission to hold conference or consultation with persons other than those parties to the STD (optional)*

If, in the Commission's view, persons other than parties to the STD have a material interest in the STD, then the Commission must either consult those persons or hold a conference in relation that matter, before the Commission prepares the STD (s. 30L).

*Commission issues STD*

As soon as practicable after receiving submissions from interested parties or after holding a conference with persons not a party to the STD, the Commission must prepare an STD and provide a copy of it to the parties to the determination (s. 30M).

Where the Commission has considered 2 or more services during the standard terms development process, the Commission is entitled to set terms of general application to all services in one STD and include a separate schedule for each service, with specific terms for that particular service. Alternatively, the Commission may prepare a separate STD for each designated or specified service (s. 30N).

The matters which the Commission must or may include in an STD are set out in section 30O. In particular, the STD must specify sufficient terms to allow, without the need for the access seeker to enter into an agreement with the access provider, the service to be made available within the time frames specified in the determination.

Additional matters to be included in an STD for designated access services, such as price, are set out in section 30P.

An STD must *not* include an expiry date (s. 30Q).

## Indicative timeline

Below is a general *indicative* timeline for an STD process.

Step	Timing
Initiation of STD process	
Scoping workshop	Within 2-3 weeks of initiation
Commission issues notice calling for STP	Within 2 weeks of holding workshop
Access provider to submit STP	To be discussed at scoping workshop <sup>1</sup>
Commission to advise of receipt of STP	1 day
Submissions on STP due	2-4 weeks <sup>2</sup>
Commission to prepare and issue draft STD	4-6 weeks <sup>3</sup>
Interested parties to provide submissions & cross submissions on draft STD	4 weeks + 2 weeks
Conference or consultation with persons other than parties to the STD (optional)	2 weeks preparation + 1-2 days conference <sup>4</sup>
Commission prepares and issues STD	4-6 weeks after close of submissions/conference

### Notes

1. The time required for an access provider to submit an STP will be discussed at the scoping workshop. It is likely to vary depending on factors, such as, whether there is currently a commercial offer for a similar service already in the marketplace, and the extent to which industry working parties have already agreed on terms.
2. Submission times may vary depending on, for example, the complexity of the service, the extent to which non-price terms vary from an existing commercial offer, and the extent to which industry working parties have already agree to terms.
3. The Commission must make reasonable efforts to prepare a draft STD within 60 working days of closing date of submissions.
4. Depending on response (if any) from persons not party to the STD, this may be held during the period that parties to the STD are preparing their submissions and cross submissions.