



**COMMERCE COMMISSION**

**Decision No. 640**

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving

**TELECOM NEW ZEALAND LIMITED**

and

**850 MHZ SPECTRUM**

- The Commission:** Paula Rebstock  
Donal Curtin  
Anita Mazzoleni
- Summary of Application:** The acquisition by Telecom New Zealand Limited of Radio Frequency Spectrum management rights and licences in the 850 MHz band from the New Zealand Government.
- Determination:** Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.
- Date of Determination:** 11 April 2008

## THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered with the Commerce Commission (the Commission) on 4 April 2008 seeking clearance for Telecom New Zealand Limited (Telecom) to acquire from the New Zealand Government management rights in the 850 MHz radio spectrum band.
2. At present, Telecom holds the management rights to 20 MHz of naturally paired radio spectrum in the 850 MHz range. All of Telecom's existing rights to this spectrum are due to expire in 2012.
3. On 9 November 2007, the Ministry of Economic Development (MED), on behalf of the Government, made an offer to Telecom for the renewal of 850 MHz management rights. MED offered Telecom the renewal of blocks A and B, in total 15 MHz. The offer to renew block B is conditional on Telecom commercially selling block C (5 MHz) to a new entrant. Telecom has entered into an unconditional agreement to sell block C to NZ Communications Ltd (NZC).

## COMPETITION ANALYSIS

4. In the factual, Telecom will hold the management rights to blocks A and B of 850 MHz spectrum for the next 23-24 years. The factual will not result in any market aggregation on the part of Telecom. Indeed, it instead involves Telecom reducing its management rights.
5. The counterfactual is not the status quo. In its Application, Telecom identified two possible counterfactual scenarios:
  - Telecom obtains clearance to acquire an amount less than 15 MHz of 850 MHz spectrum; or
  - Telecom does not obtain clearance and is left with no 850 MHz spectrum after the expiry of its existing management rights in 2012.
6. In both the factual and counterfactual, NZC will hold rights to 10.8 MHz of spectrum in the 800/900 MHz range.<sup>1</sup> Vodafone will hold rights to 15.2 MHz of 900 MHz spectrum.
7. The 850 MHz spectrum is the cornerstone of Telecom's existing and future mobile network.
 

[ ] Accordingly, the counterfactual, where Telecom has less than 15 MHz or no 850 MHz management rights, harms competition as it would limit Telecom's ability to:

  - compete in the wholesale and retail mobile telecommunications services markets; and
  - effectively offer roaming and wholesale services to other access seekers so that they can compete in the retail and wholesale markets for the supply of mobile telecommunications services.

---

<sup>1</sup> Being 5 MHz of 850 MHz spectrum acquired from Telecom and 5.8 MHz of 900 MHz spectrum acquired from Vodafone.

8. Telecom's proposed acquisition of block A and block B (and the associated sale to NZC of block C) is likely to enhance competition in the wholesale and retail markets for the supply of mobile telecommunications services in comparison with both the present position, and in comparison with the competition effects likely to occur in the counterfactuals. Both the counterfactuals are considered likely to lessen competition more than the factual.
9. Accordingly, the Commission is satisfied that the proposed acquisition will not have, nor would be likely to have, the effect of substantially lessening competition in any relevant market.

#### **DETERMINATION ON NOTICE OF CLEARANCE**

10. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for Telecom New Zealand Limited to acquire from the Crown:
  - (a) the management rights for 19 years, two months and 19 days from 9 September 2012 in the radio frequency range between 825.015 to 835.005 MHz, together with the corresponding natural pair management rights in the range between 870.015 to 880.005 MHz, and the management rights for 19 years and one month from 30 October 2012 in the radio frequency range between 835.005 to 837.5 MHz, together with the corresponding natural pair management rights in the range between 880.005 to 882.5 MHz ("Block A"); and
  - (b) the management rights for 19 years and one month from 30 October 2012 in the radio frequency range between 837.5 to 840 MHz, together with the corresponding natural pair management rights in the range between 882.5 to 885 MHz ("Block B").

Dated this 11<sup>th</sup> day of April 2008

Paula Rebstock  
Division Chair  
Commerce Commission