COMMERCE COMMISSION

Please refer to:

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10 May 2006

<Recipient Name>
<Recipient Address>

Dear <Recipient>

Mobile Market: Competition Issues

As you will know, the Commission has recently completed its investigation into the regulation of mobile termination rates. During the course of that investigation, the Commission looked at the state of competition in the retail mobile services market. The Commission concluded that:

- The market is concentrated, with only two mobile network operators with roughly equal market shares, and limited resale by TelstraClear;
- Retail rates are relatively high in comparison to other OECD countries, and there is little direct evidence to suggest that these price levels are driven by higher mobile network costs in New Zealand;
- Higher prices in New Zealand are likely to be indicative of lower competitive pressures.

In the course of its current investigation into the extension of the period of various regulated services, the Commission has received several submissions arguing for alterations to the specified services of national roaming and cellsite co-location. The submitters contend that new entrants into the mobile services market face significant barriers to entry and that enhancements to the roaming and co-location services are required to lower those barriers and thereby promote competition in that market.

Against this background, the Commission has decided to gather views and relevant information in order to assist it to make a decision whether or not to commence a further investigation or investigations under Schedule 3 of the Telecommunications Act into the addition of new regulated services required to promote competition in the mobile services market or the alteration of the existing roaming and co-location services.

The Commission intends to focus this exercise around several key issues relevant to the prospects for new entry into the mobile services market.

Entry could in principle occur at either or both of the network or retail service levels.

Entry at the network level could be constrained by various barriers to entry, including high sunk costs associated with a national network build; the absence of competitive tension between suppliers of national roaming services; the absence of an industry framework to support multi-site co-location arrangements at efficient prices (though a revised co-location code is under development by the Telecommunications Carriers Forum); and by incentives for incumbents to engage in retail pricing strategies designed to deter localised entry.

Though spectrum availability is in principle a significant entry barrier, it does not appear in practice to be a material constraint, given the extent of spectrum already in the hands of potential entrants. The Commission wishes to understand whether there are nonetheless features of the spectrum holdings of incumbents that may deter entry.

Entry at the retail service delivery level, perhaps in the form of a "virtual" network operator acquiring capacity from an incumbent, appears plausible as a business strategy given current retail price levels. It is not clear whether the lack of entry to date is the result of a failure on the part of potential entrants to reach agreements with incumbents on access to capacity, or whether there are other structural or behavioural explanations.

The Commission will examine these issues through a process that will commence with a series of discussions with interested parties over the next few weeks. The Commission will contact representatives of interested parties to organise mutually convenient times for relevant employees and officers to attend interviews at the Commission's head office. The Commission will attribute substantial weight to the information collected during these discussions, although they may not be the sole source of information on which the Commission will rely.

Without confining the scope of the interviews, which are focussed broadly on the lack of new market entry to date and the future prospects for entry, the Commission is planning to ask detailed questions concerning any historical or current negotiations for supply of national roaming and co-location services and other wholesale mobile services. Questions will also cover any business plans by near entrants to roll out mobile networks in New Zealand and to commence negotiations for supply of mobiles services from incumbent telecommunications providers. They will also extend to the reasons for any previous failed attempts to launch a third mobile network in New Zealand. The Commission will take all necessary steps to protect the confidentiality of information supplied during this process.

If you have any questions or concerns with the Commission's approach concerning the gathering of information, please advise us in advance.

The Commission does not intend to hold public hearings or to publish preliminary views for industry-wide comment prior to deciding whether to launch a Schedule 3 investigation. Instead, the Commission will announce whether as a result of its findings it intends to launch a Schedule 3 investigation and the grounds for that decision.

Commission staff will contact you shortly to arrange an initial meeting. Should you have any questions in the meantime, please contact Tom Forster (thomas.forster@comcom.govt.nz) on (04) 924 3742.

Yours sincerely

Douglas Webb
Telecommunications Commissioner