



COMMERCE COMMISSION

Please refer to:

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19 September 2008

Hon. David Cunliffe
Minister of Communications and Information Technology
Parliament Buildings
Wellington

Dear Minister

National Roaming

On 5 September you wrote to me requesting that, pursuant to Clause 8(1) of Schedule 3 of the Telecommunications Act 2001 ("the Act"), the Commerce Commission commence a fresh investigation into whether Schedule 1 of the Act should be altered by:

- omitting the national roaming service from Part 3 as a specified service; and
- adding it to Part 2 as a designated service.

The request was made in light of new information received from NZ Communications suggesting that the Commission's calculation in the final report on National Roaming (dated 10 March 2008) may not have appropriately considered the charging structure in the commercial roaming agreement between NZ Communications and Vodafone, which may have artificially inflated the headline roaming rate considered by the Commission.

Clause 8(2) of Schedule 3 of the Act provides for the Commission to commence an investigation only if it is satisfied that there are reasonable grounds for the investigation. Clause 8(3) of Schedule 3 of the Act requires that if an investigation has been requested in writing by the Minister and the Commission is satisfied that there are reasonable grounds for an investigation, then the Commission must commence the investigation within 10 working days after receiving that written request.

The Commission does not consider that the new information received from NZ Communications provides reasonable grounds to commence a fresh investigation by itself. In light of this information, the Commission has written to interested parties requesting that certain further information be provided. The Commission considers that this requested information, once received and considered, is likely to enable the Commission to determine whether it can be satisfied that there are reasonable grounds to commence an investigation.

To date, the Commission has received only some of the information requested. A request has, however, been received from one party for an extension to the period provided to respond to the Commission's request. The delay has been caused as the party seeks to obtain

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confidentiality waivers to enable it disclose third party information to the Commission. The Commission expects to receive this information on 29 September.

Until the Commission receives and considers the requested information, the Commission will not be able to be satisfied that there are reasonable grounds to commence an investigation on the basis of the issues raised by NZ Communications. As a result of the delay in receiving all the requested information, the Commission will not be in a position to determine if there are reasonable grounds to commence an investigation within 10 working days of receiving your request, as set out in clause 8(3) of Schedule 3 of the Act.

The Commission will continue to look into this issue and I note that, under clause 8(1) of Schedule 3 of the Act, the Commission can commence an investigation into whether Schedule 1 of the Act can be altered on its own initiative at any time if it is satisfied that there are reasonable grounds for it. The Commission considers that it is likely to be in a position to make a decision on whether there are reasonable grounds in this case after all the requested information from the parties has been received and considered.

Yours sincerely



Dr. Ross Patterson
Telecommunications Commissioner