



COMMERCE COMMISSION

15 July 2009

To Regulatory Managers

Dear Sir/Madam

Commerce Commission (International Cooperation and Fees) Bill

The Commerce Commission (International Cooperation and Fees) Bill (“the Bill”)¹ deals with the operation of the Commerce Commission (“the Commission”) and authorises the Commission to assist, and be assisted by, equivalent overseas regulators. The Bill as it currently stands does not authorise such assistance in relation to the Telecommunications Act 2001 (“the Act”). The Commission is therefore seeking industry views on having the Act included in the Bill.

The Bill allows the Commission to use its statutory powers to provide investigative assistance to overseas competition and consumer regulators. It allows the Commission to provide compulsorily acquired information to overseas regulators, subject to specified safeguards and the principle of reciprocity. The primary objective of the Bill is to facilitate increased co-operation between the Commission and the Australian Competition and Consumer Commission (“ACCC”). The Bill will also enable enhanced co-operation with other overseas regulators.

The Bill has been in preparation for some time as outlined below.

- In September 2004, the Ministry of Economic Development published a discussion document on information sharing, in the context of the enforcement of the provisions of the Commerce Act 1986;
- In mid-2005, the Ministry of Consumer Affairs consulted with consumers and business organisation, legal firms and enforcement agencies – including, the Commission – on information sharing amendments to the Fair Trading Act 1986; and

¹ Commerce Commission (International Cooperation and Fees) Bill -
<http://www.brookers.co.nz/bills/current/b082931.pdf>

- Finally, the Commission proposed and the Ministry of Consumer Affairs accepted – that the Credit Contracts and Consumer Finance Act 2003 be amended in a similar fashion.

The Bill is currently awaiting its first reading and referral to a Parliamentary Select Committee.

The Commission recognises the need for regional and international harmonisation to ensure widespread use of best practice regulatory policies, especially in areas dealing with trans-Tasman and international effects that cannot be tackled by a national regulator alone.

The Commission wishes to consult with interested telecommunications stakeholders on the benefits and implications of including the Commission’s regulatory functions under the Act within the scope of the Bill. This letter sets out the Commission’s preliminary views.

As a rule, the Commission does not disclose confidential information acquired from third parties, particularly information compulsorily acquired by the Commission, other than where required by law or under the Commission’s confidentiality regime. In addition, the Commission often acquires information from third parties subject to an obligation of confidence. If the Commission were to provide this confidential information to an overseas regulator this would breach the Commission’s obligation of confidence.

There may be some circumstances in which the exchange of information between the Commission and the ACCC – including information acquired compulsorily by the Commission – would assist the Commission to perform its regulatory functions more effectively. In particular, where the release of information to an overseas regulator would give the Commission access to similar information on, for example, costs or prices, there may be an argument for an exception to the Commission’s usual practice. The scope of such an exception would be limited, and would be subject to the safeguards that are in the current Bill.

The Commission is currently undertaking, considering undertaking or has recently completed a number of work streams in which information sharing (if available) is or would have been beneficial. These work-streams are:

- the investigation into the regulation of the Mobile Termination Access Services;
- determining whether there are reasonable grounds to commence an investigation into whether or not to subject National Roaming to price regulation;
- various issues that the Commission has taken into consideration in developing the final Standard Terms Determination for Sub-Loop Unbundling;
- the implementation of Operation Separation and Accounting Separation; and
- the regulatory implications of next generation network (for example FTTH) in building and providing open access solutions.

The Australian Competition and Consumer Commission (“ACCC”) has already begun, pursuant to section 155AAA (12) Trade Practices Act 1974, to share telecommunications related information with the Commission. However the Commission is not able to reciprocate as it is constrained from providing investigative assistance and any compulsorily acquired information. In the absence of any supply of information from the Commission, it is likely to become increasingly difficult for the Commission to rely on other regulators to supply information.

The Commission is of the view that responsible sharing of both voluntarily and compulsorily obtained information enhances productivity of the economy and generates long-term benefits for the end-users. Information sharing both regionally and internationally:

- promotes consistency between regulators as to best practice policy development;
- encourages consistency with best practice regulations internationally;
- promotes efficiency and cost effective regulatory practice which in turn lowers industry cost when information is accessible;
- addresses global trends and nature of telecommunication markets which could allow regulators and service providers to ascertain consumer needs accurately and meet those needs rapidly and efficiently; and
- ensures that regulators including the Commission are more fully informed in their decision-making processes for sound regulation.

The Commission recognises that information sharing with overseas regulatory bodies could mean an increase in direct compliance costs for industry. However, the Commission’s preliminary view is that it is unlikely to significantly increase costs to service providers.

The Commission further recognises that some of the information shared could be classified as confidential. However, the Commission has a history of dealing with sensitive information and accordingly has processes in place to manage these situations. Furthermore the Bill addresses this by providing for the protection of privileged documents that the Commission may provide to an overseas regulator, and vice versa.

The Commission considers that sharing information at a high level may be beneficial as it may lead to a more informed decision-making process. There is also increased efficiency when organisations collaborate on issues that are mutually beneficial to their respective countries. Therefore, the Commission’s preliminary view is that the Commission’s work streams in the telecommunications market will benefit from having the Act included in the Bill.

If you would like to provide comment on the Commission's preliminary views, submissions can be sent to: sham.panchacharan@comcom.govt.nz by close of business Friday, 31 July 2009.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Osmond Borthwick', written in a cursive style.

Osmond Borthwick
Director, Telecommunications Branch