



COMMERCE COMMISSION

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**STATEMENT OF ELIGIBILITY OF
KORDIA LIMITED AS AN ACCESS PROVIDER OF THE
MOBILE CO-LOCATION SERVICE**

20 August 2009

Introduction

1. On 11 December 2008 the Commerce Commission ('the Commission') issued a standard terms determination ('STD') in respect of the specified service of co-location on cellular mobile transmission sites ('the Mobile Co-location Service')¹. The Mobile Co-location STD sets out the non-price terms for co-location of cellular mobile telephone network transmission and reception equipment on or with an access provider's relevant facilities.
2. In the STD the Commission defined a number of access providers and access seekers of the Mobile Co-location Service. The Commission's determination regarding the access providers, and eligible access seekers, as at the date of release of the Mobile Co-location STD was as follows:

Company	Access Provider	Access Seeker eligibility
Vodafone	Yes	Yes
Telecom	Yes	Yes
NZ Communications	Yes	Yes
Woosh	Yes	Yes
TeamTalk	No	No

3. The Commission noted that there is potential for entry into and exit from the cellular mobile telecommunications market throughout the term of the STD. Specifically, the Commission noted that parties that are not currently access providers may in the future utilise technologies that are consistent with the definition of cellular mobile telephone network, and will therefore become access providers of the service.²

¹ Commerce Commission, *Decision No. 661: Standard Terms Determination for the specified service co-location on cellular mobile transmission sites*, 11 December 2008.

² *ibid*, p 20, para 97.

4. Any person that is determined by the Commission to be an eligible access provider becomes a party to, and is bound by, the Mobile Co-location STD from the date of the applicable statement of eligibility declaring that person to be an eligible access provider.

Definition of access provider and access seeker

5. In accordance with the “description of service” in the Telecommunications Act 2001 (**‘the Act’**), access providers and access seekers of the Mobile Co-location Service are defined as follows:

Access provider: Every person who operates a cellular mobile telephone network

Access seeker: Any person who-

- (a) operates, or is likely to operate a cellular mobile telephone network; and
- (b) seeks access to the service

6. The term ‘cellular mobile telephone network’ is not defined in the Act. However, the Commission defined Cellular Mobile Telephone Network in the Mobile Co-location STD as follows:³

Cellular Mobile Telephone Network means a telecommunications network:

- (a) *that is designed to enable:*
 - (i) *two-way communications between end-users; and*
 - (ii) *an end-user of the service that uses that network to use the service while moving continuously between places or when standing still; and*
- (b) *that has the following characteristics:*
 - (i) *the end-user equipment used in relation to the network has a wireless connection to the network;*
 - (ii) *the service area of the network is divided into a number of contiguous geographical radio coverage areas (known as cells) and each cell is served by an antenna and a base station, which transmits and receives signals to and from the end-user equipment within that cell;*
 - (iii) *the service that uses that network is capable of re-using the radio frequencies in different cells within the service area; and*
 - (iv) *as the end-user equipment travels between adjacent cells, the service that uses that network uses intercell hand-over functions to:*
 - a. *determine in which cell the equipment is located; and*
 - b. *allow the transmit and receive signal connection to transfer from one base station to an adjacent base station when the end-user equipment moves out of that cell to an adjacent cell.*

7. The Commission noted in the Mobile Co-location STD that:⁴

In order to determine if a particular entity is an Access Provider or an Access Seeker it is necessary to determine whether that party operates (or in the case of an Access Seeker, operates, or is ‘likely to’ operate) a cellular mobile telephone network. This may be done by determining

³ Commerce Commission, *Decision No. 661: Standard Terms Determination for the Specified Service Co-location on Cellular Mobile Transmission Sites*, 11 December 2008, Mobile Co-location General Terms, p 3, clause 1.1.

⁴ *ibid*, Decision Report, p 19, para 91.

whether the relevant party operates a telecommunications network with the characteristics set out in the definition of 'cellular mobile telephone network' in the Mobile Co-location General Terms.

8. However, the Commission also noted that it:⁵

...intends to assess each potential Access Provider on a case-by-case basis, and may use its discretion if a strict interpretation of the definition of cellular mobile telephone network results in an outcome that is inconsistent with the Act [emphasis added].

Eligibility of Kordia as an access provider

9. On 18 February 2009, Kordia released a statement regarding the launch of its new 'KorKor' digital two-way radio network.⁶ The Commission understands that this network is based on TETRA technology, which is a form of Private Mobile Radio ('PMR').
10. On 23 February 2009, the Commission wrote to Kordia requesting further details about its KorKor network. The Commission noted that PMR was included in an indicative list of technologies that have the characteristics of a Cellular Mobile Telephone Network in the Mobile Co-location STD.⁷ Accordingly, the Commission requested that Kordia explain in detail whether the KorKor network meets the definition of Cellular Mobile Telephone Network set out in the Mobile Co-location STD (and consequently, whether Kordia is now an access provider of the Mobile Co-location Service).
11. On 29 April 2009, Kordia wrote to the Commission noting that due to the "expansive nature" of the definition of Cellular Mobile Telephone Network, "it seems that the KorKor network would be caught by the definition". However, Kordia noted that its KorKor network is a trunk mobile radio service, rather than a cellular mobile service and that these are distinct and different in several important ways. For example, Kordia provided the following list of distinguishing characteristics of cellular mobile and trunk mobile services:

⁵ Commerce Commission, *Decision No. 661: Standard Terms Determination for the Specified Service Co-location on Cellular Mobile Transmission Sites*, 11 December 2008, p 84.

⁶ See <http://www.kordia.co.nz/media-centre?q=node/1295&media=Press%20Releases>

⁷ Commerce Commission, *Decision No. 661: Standard Terms Determination for the Specified Service Co-location on Cellular Mobile Transmission Sites*, 11 December 2008, p 83, para B3.

Cellular Mobile	Trunk Mobile
Typically lower altitude cell sites	Typically higher altitude sites
Small cell areas, especially in urban areas	Large area cells, typically up to 58km radius
High re-use of frequencies	Low re-use of frequencies
High traffic density	Low traffic density
Approaching ubiquitous coverage	Coverage provided per customer area
One-to-one calls typical	Group calls a regular feature
Users can be individuals	Users typically part of a group or organisation

12. Consequently, Kordia suggested that in attempting to address co-location issues for cellular networks, the Commission has unintentionally captured digital trunk radio networks. Kordia stated that by taking a more “sites based” approach, the Commission would be more correctly focused on the types of sites that are at issue for cellular co-location.

Consultation

13. On 4 June 2009 the Commission wrote to interested parties inviting submissions on whether:
- co-location on sites used as part of Kordia’s KorKor network is practicable for a mobile network operator; and
 - Kordia should be included as an access provider of the Mobile Co-location Service.
14. Submissions were received from Telecom and TeamTalk on 18 June 2009. Telecom and TeamTalk both agreed that Kordia’s KorKor network meets the definition of a Cellular Mobile Telephone Network contained in the STD.
15. Telecom submitted that it would consider co-locating on Kordia’s KorKor network sites, and considers it likely that co-location on these sites will be practicable. Telecom also noted that the larger high altitude towers deployed by Kordia would offer coverage to a relatively wide area with a large cell radius, enabling mobile operators to achieve enhanced mobile coverage in rural areas.
16. Telecom further submitted that Kordia is a relatively large operator with many radio base station sites throughout the country, so it would seem well placed to offer access to its sites if the Commission considered that to be appropriate.
17. TeamTalk submitted that under the present determination, it would seem clear that Kordia should be included as an access provider of the Mobile Co-location Service. However, TeamTalk also submitted that it would support a change to the definition of Cellular Mobile Telephone Network to exclude all mobile radio networks.

Commission's view

18. The Commission considers that Kordia's KorKor network complies with the definition of Cellular Mobile Telephone Network set out in the Mobile Co-location STD. However, the Commission has the flexibility to assess each potential access provider of the Mobile Co-location Service on a case-by-case basis, and has foreshadowed that it may use its discretion if a strict interpretation of the definition of Cellular Mobile Telephone Network would result in an outcome that is inconsistent with the Act.⁸
19. Although Kordia operates a Cellular Mobile Telephone Network (as defined in the STD), KorKor is a digital trunk mobile network as opposed to a cellular mobile network (such as those operated by Vodafone, Telecom, NZ Communications (now 2degrees) and Woosh). The Commission considers that digital trunk mobile networks and cellular networks are significantly different in terms of scale and infrastructure, and are likely to operate in separate markets. Given the differences between mobile radio networks and cellular mobile networks, such as those outlined in paragraph 11 above, the Commission considers that it is appropriate to use its discretion to exclude Kordia as an access provider of the Mobile Co-location Service.
20. Furthermore, the Commission notes that co-location on Kordia's sites was previously a regulated service under the Act. However, regulation of 'co-location of equipment for fixed telecommunications services at sites used by Broadcast Communications Limited' was not extended during the review of regulated services conducted during 2005 and 2006.⁹
21. During the review of regulated services, the Commission noted that Broadcast Communications Limited (now Kordia) had co-location or co-siting agreements with a number of parties, and concluded that:¹⁰
- Absent any indication from potential access seekers of co-location at BCL's sites that there are concerns regarding access to the service, the Commission does not consider that there are reasonable grounds to investigate its extension.
22. The Commission has not received any indication from potential access seekers of co-location at Kordia's sites to suggest that this situation has changed. Accordingly, the Commission considers that Kordia should not be declared to be an access provider of the Mobile Co-location Service at the present time.

⁸ See paragraph 8 above.


⁹ Broadcast Communications Limited was renamed Kordia in November 2006.

¹⁰ Commerce Commission, *Review of Designated and Specified Services under the Telecommunications Act 2001: Decision to Investigate*, 16 November 2005, p 7, paragraph 30.

Conclusion

23. The Commission has determined that Kordia is not an access provider and access seeker of the Mobile Co-location Service. The eligibility of other persons as access providers and access seekers of the Mobile Co-location Service remains as stated in the Mobile Co-location STD, dated 11 December 2008.
24. This statement is effective as of 20 August 2009.

Signed by:



Dr Ross Patterson
Telecommunications Commissioner