



Review of the MTAS STD monitoring requirements - draft determination

Submission | Commerce Commission

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Introduction

1. Thank you for the opportunity to comment on the Commission's draft determination dated 7 January 2016 setting out its preliminary views on the review of the MTAS monitoring requirements (**Draft Determination**). Spark supports the Commission's preliminary views on deletion of the MTAS monitoring requirements from the relevant STD, and the use of section 9A to carry out broader monitoring of mobile telecommunications markets.
2. Spark strongly suggests that a wider review of and consultation on the Commission's current telecommunications market monitoring processes under section 9A should be undertaken. We believe this is essential to ensure that market monitoring continues to provide the best quality information to the Commission, policy makers, the industry and the public, to support the regulatory process most effectively.
3. Spark further urges the Commission to consider setting up appropriate internal processes for the periodic review and industry consultation on the scope, both of the mobile market monitoring processes, and the Commission's wider telecommunications market monitoring process to ensure the continued relevance and appropriateness of its monitoring.

Commission's preliminary views

4. The Draft Determination sets out the Commission's preliminary view on variation of the Mobile Termination Access Service Standard Terms Determination¹ (**MTAS STD**). The Commission proposes to delete the mobile termination access service market monitoring requirements set out in paragraphs 564 to 569 and in Appendix 11 of the MTAS STD.
5. Spark supports the removal of these legacy requirements. We agree that developments in the mobile telecommunications markets in New Zealand since Decision 724 was issued in May 2011 have made the specific requirements set out in the STD less relevant. In particular, we think the competition concerns raised at that time have been reasonably effectively addressed by the regulation of mobile termination rates, monitoring of the outcomes, and a range of broader mobile market competitive developments.
6. The Commission proposes to continue to monitor the level of competition in mobile markets within the scope of its general market monitoring obligation set out in section 9A of the Telecommunications Act 2001 (**Act**). That section requires the Commission to monitor and report publicly on competition and market performance and developments in telecommunication markets.
7. The Commission has already undertaken an initial review of its processes for monitoring of mobile markets under section 9A, consulted on these with operators, and implemented a range of updated and extended data requests. On assessing the information gathered on this basis, the Commission has concluded that the data received from operators under the amended processes is more relevant, less limited, and better serves the purpose of assessing the state of competition in mobile telecommunications markets.
8. Spark supports the Commission's decision to rely solely on using its powers under section 9A to carry out monitoring of competition and market performance and development in the mobile telecommunications markets. We agree in principle that the Commission's use of section 9A and other powers available under the relevant legislation enables a greater level of flexibility in adjusting market monitoring processes to changes in competitive constraints arising from the

¹ Commerce Commission Decision 724 dated 5 May 2011

dynamic nature of mobile telecommunications technologies and the impact on mobile telecommunications markets.

Ongoing review of the MTAS STD monitoring requirements and processes

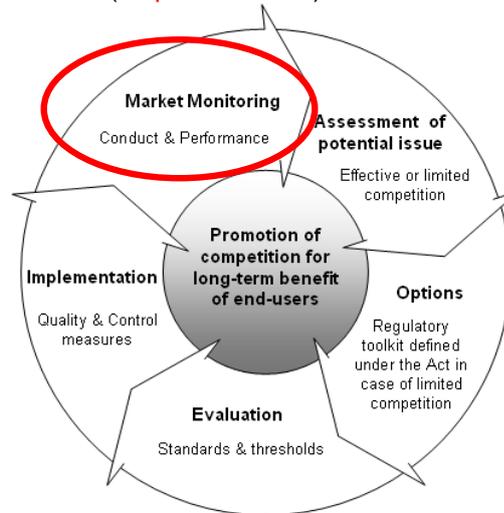
9. The Commission has previously consulted on, and set in place, mobile monitoring processes under its section 9A power in order to assess whether or not the monitoring regime established under the MTAS STD continues to be fit for purpose. Based on the evidence it has gathered, the Commission has reached the preliminary view that that the MTAS STS monitoring requirements are no longer appropriate in the current state of mobile telecommunications markets and proposes to vary the STD under section 30R of the Act. Spark strongly supports the Commission's approach to the review of this aspect of its market monitoring regime.
10. Spark urges the Commission further to consider setting in place a more formal internal process for the regular review of the monitoring regime for mobile telecommunications markets to ensure that it continues to appropriately meet the statutory purpose over time. This process should ideally have two aspects;
 - a. first, regular small adjustments as required to recognise changes in the relevant markets, improve data quality, and maintain relevance to the regulatory purpose of monitoring; and
 - b. second, periodic "top down" review and consultation to ensure that the overall structure of mobile market monitoring continues to be fit for that purpose without imposing undue compliance costs on operators.

In the latter respect, we suggest, in connection with any periodic review, that the Commission should seek information from operators as to the costs associated with assembling the response to the relevant information requests. For example, we estimate that the most recent response to the mobile market monitoring questionnaire, (as currently structured) required 14 Spark staff a total of more than 210 person-hours to complete, with an overall direct cost of at least \$30,000. A contributing factor driving operator time and cost in this case is because much of the data required is not gathered or aggregated for business purposes but must be assembled from transactional records. Spark thinks it likely that in many cases some of these costs could be reduced without material impact on the relevance of the data for regulatory monitoring purposes.

11. Section 9A certainly gives the Commission added flexibility to respond to the dynamics of mobile market competition or a cost/benefit trade-off by adding or deleting classes of data, or amending the details of the extent, type and frequency of data it collects. These adjustments are critical to maintaining relevance. Equally, we strongly believe that a regular top down review of the mobile market monitoring regime should be undertaken to ensure that the development of the overall process continues to be fit for purpose.
12. In July 2009, the Commission sought submissions on the Discussion Paper "A Guide to Regulatory Decision Making by the Commerce Commission for the Telecommunications Sector" (**Guidelines**). Paragraph 138 of that paper noted:

The telecommunications regulatory environment is characterised by "shifting bottlenecks" due to the dynamic nature of telecommunications technologies. This makes regulatory decision making an evolving process in which regulatory settings are reviewed to ensure that they remain appropriate and proportionate. This process is summarised in Figure 1, and could involve actions that could lead to new regulation or the alteration or removal of existing regulation (deregulation) in particular market segments.

Figure 1: The Regulatory Process (emphasis added)



13. In the Discussion paper, the Commission illustrated its approach to decision-making by a regulatory process diagram depicting a cycle of activities largely based on the ROAMEF appraisal and evaluation cycle². The ROAMEF approach is well accepted as a robust and well-tested approach to regulatory decision-making and is an approach Spark continues to support.
14. The Commission also noted in paragraph 140 of the Discussion Paper that “[A]n important part of [the regulatory] process is an effective monitoring strategy to ensure that relevant information is collected, for example, on the development of competition and the effectiveness of existing regulatory interventions”. We agreed with this statement in our submission on the Discussion Paper, and Spark continues to consider an effective monitoring strategy to be highly important.
15. The Commission acknowledged in the 2009 Discussion Paper, the dynamic nature of telecommunications technologies, and the associated markets makes regulatory decision making an evolving process.
16. In order to comprehensively understand the outcomes of past regulatory settings on current state of competition and the current developments of telecommunications markets, market monitoring must capture appropriate data.
17. The Commission’s preliminary view to delete the current requirements of the MTAS STD monitoring provisions appears to follow exactly this logic. The Commission has consulted on, and set in place, mobile monitoring processes under its section 9A power in order to assess whether or not the monitoring regime established under the MTAS STD continues to be fit for purpose. Based on the evidence it has gathered, the Commission has reached the preliminary view that that the MTAS STS monitoring requirements are no longer appropriate in the current state of mobile telecommunications markets. Spark strongly supports the Commission’s approach.

² The ROAMEF process can be found in *The Green Book – Appraisal and Evaluation in Central Government – HM Treasury, para 1.4*. The Green Book describes itself as a “best practice guide for all central departments and agencies” in the United Kingdom and it “aims to make the appraisal process throughout government more consistent and transparent.”

Reviewing section 9A monitoring requirements and processes more generally

18. As proposed in relation to the ongoing monitoring of mobile telecommunications markets, we urge that the Commission's overall telecommunications market monitoring approach should be regularly reviewed to ensure that all aspects of it remain appropriate and proportionate.
19. Spark urges the Commission also to carry out a "top down" review and consultation to ensure that the overall structure of telecommunications market monitoring under section 9A continues to be fit for purpose without imposing undue compliance costs on operators. Once this process is complete, we suggest that the Commission should setting in place a formal internal process for the regular review of the monitoring regime for mobile telecommunications markets to ensure that it continues to appropriately meet the statutory purpose over time. This process should also consist of the same two aspects discussed above in the context of mobile telecommunications markets.
 - a. First, as takes place at the present, regular small adjustments should be made, as required, to recognise changes in the relevant markets, improve data quality, and maintain relevance to the regulatory purpose of monitoring. Spark thinks this process could be carried out more formally in consultation with the industry than is currently the case.
 - b. Second, we think it is important that the Commission establish a more formal internal process to carry out a periodic "top down" review and consultation to ensure that the overall structure of telecommunications market monitoring continues to be fit for that purpose, and without imposing undue compliance costs on operators.

END
