

Two Years for Mobile Market Change

June 2006

The Commerce Commission has just started considering whether change is needed to help new entrants get into the mobile market. If a change is decided upon, it will most likely take years before new mobile operators dependent on regulation will be able to enter the market. The process and potential complications are set out in this article.

The Act lists the services that it covers such as interconnection, UBS, national

mobile roaming, etc. But that's just the entry ticket. An access seeker must then apply to the Commission for a determination giving it the service, and the Commission also decides key details such as pricing and technical specs.

The Commerce Commission has just started considering whether change is needed to help new entrants get into the mobile market. If, ultimately, the Commission and the Minister decide that there will be change, new mobile operators won't be rolling out their services any time soon if they depend on new regulation. 2008/2009 implementation looks like the earliest unless the Minister steps in as he did with LLU.

The two services in the Act that are key for mobile access seekers (national roaming and co-location at cell sites) stand apart from most of the rest. They are in a section of the Act which only allows the Commission to fix access terms except the all-important term: price. Mobile access seekers complain that, without the ability to fix price, the Act is toothless for mobile services.

Around two years seems good odds on which to bet a bet a bottle of Cold Duck (or even a case), in view of the process under the Telecommunications Act, outlined in the diagram below. If anything, the timing in that diagram is on the tight side, it could take many months longer.

They have other concerns as well such as, in respect of national roaming availability:

- 3G is excluded; and
- the requirement for the access seeker to have actual or planned



infrastructure. That, for example, rules out most potential Mobile Network Virtual Operators (MNVOs)

So, one of the options for the Commission is to move these services into the part of the Act where price can be fixed, and to tweak the descriptions of what services the incumbent operators (Vodafone and Telecom) must make available (eg, to include 3G).

The Commission would look at options such as freeing up opportunities for new entrants to build infrastructure, through to resale and other options over the incumbents' networks (such as access for MNVOs).

Assuming the Commission takes this all the way and wants to introduce new or changed services, and that is backed up by the Minister, the first step is for the Commission to decide to investigate whether to add new services or tweak existing ones. Timeframes are very unpredictable but based on past experience we can estimate timing. July this year sounds about right for that decision.

We then have an investigation in which all stakeholders can participate. These things take longer than appears at first sight, in part due to the very real complexities of regulation. Assume nine months for the Commission to decide to recommend to the Minister that new services are added to the Act, and/or changed. The Minister then agrees and he regulates in, say, May

2007, to add and/or change the mobile services.

At that point, if provision of service can't be agreed between (a) the access seeker and (b) Telecom and/or Vodafone, the access seeker goes back to the Commission to seek a determination that the service must be provided at x price and on y terms. That's a complex process and so we're at least out to early 2008. With several months then to start the incumbent's provisioning, and the access seeker's implementation, we're well into 2008-2009 before practical results are achieved.

This assumes that the Minister doesn't do what he did with LLU etc: override the process in the Act, by-pass Trafalgar Square, and legislate on some or all issues. For example, he could jump straight to the end of the "Regulate" phase in the diagram, which is what he's doing with LLU etc. This might happen if he decides that the mobile market is clearly dysfunctional and rectifying this should be expedited. Even then it will still take time (if only because it's important to "get it right" and complex issues are involved).

There are other areas where Government may participate anyway. If availability of spectrum is an issue, for example, it may be able to take some steps that aren't available to the Commission. Likewise on Resource Management issues. Some of the decisions in the stocktake could be extended to the mobile market too.

So, eager newcomers that are reliant on regulation will be champing on their bits and bytes for some time to come.

We welcome your feedback on this article and any enquiries in relation to its contents. This article is intended to provide a summary of the material covered and does not constitute legal advice. We can provide specialist legal advice on the full range of matters contained in this article.

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