



Telecommunications (Operational Separation) Amendment Determination 2007

Pursuant to section 69F of the Telecommunications Act 2001, the Minister for Communications and Information Technology makes the following determination.

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Determination

1 Title

This determination is the Telecommunications (Operational Separation) Amendment Determination 2007.

2 Commencement

- (1) Clause 7(3) comes into force on 1 January 2009.
- (2) The rest of this determination comes into force on the day on which it is made under section 69G(1) of the Telecommunications Act 2001 (which provides that it is made by notice in writing to Telecom New Zealand Limited).

3 Principal determination amended

This determination amends the Telecommunications (Operational Separation) Determination 2007.

4 General rules applicable to all personnel (except to extent that exceptions apply)

- (1) Clause 14(4)(c) is amended by omitting “that information is also available to all other service providers on an equal basis” and substituting “the service provider that provided the information consents”.
- (2) Clause 14(5)(c) is amended by omitting “that information is also available to all other service providers on an equal basis” and substituting “the service provider that provided the information consents”.

5 Role of TCNZ board and chief executive

Clause 15(5) is amended by revoking paragraphs (a) and (b) and substituting the following paragraphs:

- “(a) Telecom must provide the IOG with copies of the final documentation (including the formal recommendation) provided to, and considered by, the TCNZ board or the chief executive of TCNZ, along with the documenta-

tion that records any decisions made, in respect of the following matters:

- “(i) an investment matter involving capital expenditure in excess of the amount that the manager of the ANS unit or the wholesale unit (as the case may be) has the delegated financial authority to approve:
 - “(ii) a material aspect of the development or introduction of a relevant network access service that will be provided to service providers:
 - “(iii) any material change to the overall size or reach of the access network or to access network technologies:
 - “(iv) any matter that materially impacts on the operation of the separation undertakings; and
- “(b) in any other case, Telecom must, on request by the IOG, provide the IOG with copies of the final documentation (including the formal recommendation) provided to, and considered by, the TCNZ board or the chief executive of TCNZ, along with the documentation that records the decisions made; and”.

6 Migration to equivalence on legacy services

Clause 26(3) is amended by omitting paragraph (b) and substituting the following paragraph:

- “(b) must provide that,—
- “(i) if (in the Minister’s opinion) Telecom fails in any material respect to comply with a migration plan, the Minister may by written notice to Telecom require Telecom to remedy the non-compliance; and
 - “(ii) if within 60 working days of receiving the notice Telecom fails to remedy the non-compliance to the Minister’s satisfaction, the Minister may void the plan by written notice to Telecom; and
 - “(iii) if the plan is voided under subparagraph (ii), Telecom must meet the arrangements for EOI migration milestones and dates for the relevant services specified in Schedule 1.”

7 Wholesale unit must provide relevant wholesale services

- (1) Clause 49(2)(a)(iv) is amended by omitting “, including IP interconnection”.
- (2) Clause 49 is amended by inserting the following subclauses after subclause (2):
 - “(2A) The interconnection with Telecom’s NGN core referred to in subclause (2)(a)(iv) includes any IP interconnection services that become a designated service or specified service after the commencement of this determination.
 - “(2B) Subclause (2A) does not limit the generality of subclause (2)(a)(iv).”
- (3) Clause 49 is amended by inserting the following subclauses after subclause (2B):
 - “(2C) The interconnection with Telecom’s NGN core referred to in subclause (2)(a)(iv) includes—
 - “(a) IP interconnection for voice services; and
 - “(b) IP interconnection for virtual private network services.
 - “(2D) Subclause (2C) does not limit the generality of subclause (2)(a)(iv).”

8 New clause 49A inserted

The following clause is inserted after clause 49:

“49A IP interconnection services

- “(1) The separation undertakings must provide for a consultation process between Telecom and service providers about the approach to IP interconnection services.
- “(2) The consultation must cover, at a minimum,—
 - “(a) the process for transitioning from fixed PSTN interconnection for voice services to IP interconnection for voice services; and
 - “(b) the introduction of IP interconnection for virtual private network services.
- “(3) The separation undertakings must require Telecom to publish a plan for addressing the issues arising from the consultation process.”

9 New clause 57A inserted

The following clause is inserted after clause 57:

“57A Arm’s-length rules may be relaxed for resale purposes

The separation undertakings may include reasonable relaxations of the application of the arm’s-length rules to the wholesale unit and the retail unit, but to the extent only that those relaxations are necessary operationally to allow the wholesale unit and the retail unit to interact or exchange information in order for the wholesale unit to fulfil its obligations in respect of resale services.”

10 Wholesale unit must have localised incentive arrangements

(1) Clause 65 is amended by inserting the following subclause after subclause (2):

“(2A) However, the separation undertakings may provide that,—

“(a) for the manager of the wholesale unit, incentive remuneration that reflects the objectives and performance of Telecom as a group may comprise up to 80% of the manager’s total incentive remuneration; and

“(b) for an employee who reports directly to the manager of the wholesale unit (other than an employee who is responsible for relevant wholesale services only), incentive remuneration that reflects the objectives and performance of Telecom as a group may comprise up to 20% of the employee’s total incentive remuneration.”

(2) Clause 65(3) is amended by omitting “However” and substituting “Furthermore”.

11 Telecom’s fixed network units must not disclose customer confidential information to retail unit

Clause 78 is amended by adding the following subclause as subclause (2):

“(2) However, the separation undertakings may provide that a Telecom fixed network business unit may disclose customer confidential information to the retail unit if—

“(a) the disclosure is necessary operationally to enable the Telecom fixed network business unit to participate in providing a relevant service in accordance with the separation undertakings; and

“(b) the separation undertakings impose an obligation of confidence on the recipient of the information.”

12 Telecom’s fixed network units must not disclose commercial information to retail unit

Clause 79 is amended by adding the following subclause as subclause (2):

“(2) However, the separation undertakings may provide that a Telecom fixed network business unit may disclose Telecom fixed network business unit commercial information to the retail unit—

“(a) if the information relates to a relevant service that Telecom is not required to provide service providers with and that Telecom is not supplying to a service provider; or

“(b) if—
“(i) the disclosure is necessary operationally to enable the Telecom fixed network business unit to participate in providing a relevant service in accordance with the separation undertakings; and
“(ii) the separation undertakings impose an obligation of confidence on the recipient of the information.”

13 Rules for shared groups in relation to commercial information and customer confidential information

(1) Clause 91(1)(a) is amended by omitting “the members of the Executive Committee who are listed in Part 2 of Schedule 2 as being permitted to receive that unit’s commercial information” and substituting “any of those persons (including, without limitation, any member of the Executive Committee)”.

(2) Clause 91(1)(a)(i) is amended by omitting “that member” and substituting “the person”.

(3) Clause 91(1)(b) is amended by omitting “the persons listed in Part 2 or Part 3 of Schedule 2” and substituting “any of those persons (other than members of the Executive Committee whom Part 2 of Schedule 2 does not permit to receive that unit’s commercial information)”.

- (4) Clause 91(2)(a) is amended by omitting “the members of the Executive Committee who are listed in Part 4 of Schedule 2 as being permitted to receive that unit’s customer confidential information” and substituting “any of those persons (including, without limitation, any member of the Executive Committee)”.
- (5) Clause 92(2)(a)(i) is amended by omitting “that member” and substituting “the person”.
- (6) Clause 91(2)(b) is amended by omitting “the persons listed in Part 4 of Schedule 2” and substituting “any of those persons (other than members of the Executive Committee whom Part 4 of Schedule 2 does not permit to receive that unit’s customer confidential information)”.

14 New clause 99A inserted

The following clause is inserted after clause 99:

“99A Exception to arm’s-length rules for access planners

The separation undertakings may provide exceptions to the application of the arm’s-length rules to access planners (being employees of the ANS unit who work for that unit and perform access planner functions) provided that—

- “(a) the separation undertakings set out the role of access planners; and
- “(b) the reasons for the exceptions are explained in the separation undertakings; and
- “(c) the exceptions are not more than is necessary to enable access planners to perform their role.”

15 New clause 106 inserted

The following clause is inserted after clause 105:

“106 No breach for trivial non-compliance

The separation undertakings may provide that a failure to comply with the separation undertakings is not a breach of the undertakings if the failure is trivial or *de minimis*.”

Dated at Auckland this 24th day of December 2007.

David Cunliffe,
Minister for Communications and Information Technology.

Explanatory memorandum

This memorandum is not part of the determination, but is intended to indicate its general effect.

This determination amends the Telecommunications (Operational Separation) Determination 2007. *Clause 7(3)* (which provides that the interconnection with Telecom's NGN core referred to in subclause (2)(a)(iv) includes IP interconnection for voice services and IP interconnection for virtual private network services) comes into force on 1 January 2009. The rest of the determination comes into force on the day on which it is made.

Issued under the authority of the Acts and Regulations Publication Act 1989.

Date of notification in *Gazette*: 17 January 2008.

This determination is administered by the Ministry of Economic Development.
