

Telecommunications (Operational Separation) Determination 2007

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

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Determination

1 Title

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

2 Commencement

This determination comes into force on the day on which it is made under section 69G(1) of the Act (which provides that it is made by notice in writing to Telecom).

Part 1

Outline, interpretation, and provisions of general application

3 Outline of determination

- (1) This determination determines further requirements with which the separation plan under Part 2A of the Act must comply.
- (2) These requirements are additional to those in section 69D of the Act (which provides that the separation plan must require a robust operational separation of Telecom, including undertakings to achieve things specified in that section in respect of relevant services).

Separation day

4 Separation day

- (1) The separation undertakings must specify a separation day or a method of determining the separation day.
- (2) The separation day must not be later than 31 March 2008.
- (3) The separation undertakings must bind Telecom to comply,—
 - (a) on and after the separation day, with all of the following requirements:

- (i) clause 17 (which requires the ANS unit to be established as a separate division):
 - (ii) clause 21 (which requires, among other things, responsibility for local loop unbundling operations to be transferred to the ANS unit):
 - (iii) clauses 29 and 42 (which require the ANS unit manager and staff to be appointed):
 - (iv) clause 31 to the extent that it requires an ANS unit business plan for the balance of the 2007/08 financial year to be approved by the TCNZ board:
 - (v) clause 34 (which requires the ANS unit to act in its own best interests):
 - (vi) clause 40(1) (which requires the ANS unit's accommodation to be access-controlled):
 - (vii) clause 41 (which requires a separate ANS brand):
 - (viii) clause 47 (which requires the wholesale unit to be established):
 - (ix) clause 48(1) (which requires the wholesale unit to have all necessary arrangements in place to give it sufficient influence over the assets that provide relevant wholesale services):
 - (x) clauses 58 and 67 (which require the wholesale unit manager and staff to be appointed):
 - (xi) clause 66 (which requires the wholesale unit's accommodation to be access-controlled):
 - (xii) clauses 80 and 81 (which require the IOG to be established and its members appointed):
 - (xiii) clauses 84 and 85 (which require the IOG support office to be established and key staff appointed):
 - (xiv) clause 87(1)(b) (which requires draft codes of conduct to be prepared):
 - (xv) clauses 37, 38, 63, and 64 (which require policies governing customer confidential information and commercial information flows to be in place for the ANS unit and the wholesale unit); and
 - (b) on and after 1 July 2008, with all of the requirements of this determination.
- (4) Subclause (3) is subject to—
- (a) clauses 24 and 51 (which relate to the start dates for equivalence of inputs requirements); and

- (b) clause 40(2) (which relates to the requirement that employees of the ANS unit must be located in accommodation which is separately located from all other Telecom business units); and
- (c) clause 41(c) (which relates to branding); and
- (d) any other reasonable transitional provisions that are included in the separation undertakings and that relate to specific issues that—
 - (i) are identified in the separation undertakings; and
 - (ii) reasonably justify a different transitional regime in respect of those issues (for example, issues involving events beyond Telecom’s control, inordinate expense, or unacceptable technical complexity).

Application to services

5 Specification of relevant services

The following telecommunications services, or types of telecommunications services, are specified as relevant services under sections 69C and 69F(2)(b) of the Act:

- (a) the relevant network access services referred to in clause 21(2); and
- (b) the relevant wholesale services referred to in clause 49(2).

6 Application to relevant services

When this determination refers to a Telecom business unit, the determination applies to the Telecom business unit to the extent to which the unit provides, purchases, or is otherwise involved with relevant services.

7 Application of arm’s-length rules to relevant services

When the arm’s-length rules refer to activities and decisions, the arm’s-length rules apply to the activities or decisions to the extent to which they relate to or affect relevant services.

Example

The arm's-length rules will apply to interactions between the wholesale unit and the retail unit in relation to relevant wholesale services, such as unbundled bitstream access.

The arm's-length rules will not apply to interactions between the retail unit and Telecom's fixed network business units in relation to services that are not relevant services, such as international services.

8 Determination does not require Telecom to provide access to other services

This determination does not require Telecom to provide access to any service that it is not required to provide under Part 2 of the Act, a Telecom registered undertaking, or any other law, even if a business unit provides that service to another Telecom business unit.

Interpretation

9 Meaning of equivalence of inputs

- (1) In this determination, unless the context otherwise requires, **equivalence of inputs** or **EOI**—
- (a) means that, if Telecom is required to provide a relevant service to an access seeker,—
 - (i) Telecom must provide the access seeker and Telecom itself with the same service; and
 - (ii) Telecom must deliver that service to the access seeker and to Telecom itself on the same time-scales and on the same terms and conditions (including price and service levels); and
 - (iii) Telecom must deliver that service to the access seeker and to Telecom itself by means of the same systems and processes (including operational support processes); and
 - (iv) Telecom must provide the access seeker and Telecom itself with the same commercial information about those services, systems, and processes; and
 - (b) includes, if Telecom is required to provide a relevant service to an access seeker, the use by Telecom of services, systems, and processes that access seekers must be able to use in the same way, and with the same

- degree of reliability and performance, as those services, systems, and processes are used by Telecom; and
- (c) is subject to clause 8.
- (2) In subclause (1), **the same** means exactly the same, subject only to—
- (a) trivial differences; and
 - (b) differences relating to—
 - (i) credit requirements and vetting procedures;
 - (ii) payment procedures;
 - (iii) matters of national and crime-related security, physical security, security required to protect the operational integrity of the network, or any other security requirements agreed by Telecom and the Commission;
 - (iv) provisions relating to the termination of supply;
 - (v) contractual provisions relating to dispute resolution (to the extent necessary because Telecom is one company);
 - (vi) requirements for a safe working environment; and
 - (c) differences that are agreed by Telecom and the Commission in writing; and
 - (d) differences that are specified elsewhere in this determination; and
 - (e) differences relating to terms required by a residual terms determination under subpart 2A of Part 2 of the Act.

10 Meaning of resale equivalence standard

In this determination, unless the context otherwise requires, **resale equivalence** means, in relation to a particular resale service, that—

- (a) the service characteristics and functionality of the resale service must be the same (except for trivial differences) as the service characteristics and functionality of the corresponding retail service; and
- (b) the operational systems, processes, and procedures used by Telecom to supply the resale service must give access seekers the ability to provide end-users with the

- same or a substantially similar service delivery experience to that experienced by Telecom's end-users of the corresponding retail service; and
- (c) overall, the operational systems, processes, and procedures used by Telecom to supply the resale service must not place access seekers at a material disadvantage, when compared to the operational systems, processes, and procedures used by Telecom to supply the corresponding retail service to Telecom's end-users.

11 General interpretation

- (1) In this determination, unless the context otherwise requires,—

access network has the meaning given by clause 18(2)

Access Network Services unit or **ANS unit** means the unit referred to in clause 16

Act means the Telecommunications Act 2001

arm's-length rules means the rules provided by the following:

- (a) clauses 14 and 15:
(b) clauses 28 to 45 (which relate to the ANS unit):
(c) clauses 57 to 68 (which relate to the wholesale unit):
(d) clauses 73 to 76 (which relate to the retail unit):
(e) clauses 77 to 79 (which relate to Telecom's fixed network business units):
(f) clauses 90 to 93 (which relate to shared groups and services)

commercial information—

- (a) means information that is confidential and that relates to a relevant service, including information regarding—
(i) service development:
(ii) pricing:
(iii) marketing strategy and intelligence:
(iv) service launch dates:
(v) costs:
(vi) projected sales volumes:
(vii) network coverage and capabilities; but
- (b) does not include any information, or types of information, that Telecom and the Commission agree in writing is not commercial information

commercial policy means policies and plans relating to any of the following matters in respect of relevant services:

- (a) service development:
- (b) pricing:
- (c) marketing strategy and intelligence:
- (d) service launch dates:
- (e) costs:
- (f) non-price terms, including payment terms:
- (g) product specific forecasting:
- (h) network coverage and capabilities

Commission's wholesale determinations means any of Decision 497, Decision 525, and Decision 563

customer confidential information—

- (a) means any information that another service provider provides to Telecom, or that Telecom otherwise holds or obtains, that is confidential and that relates to another service provider or a person that is, or intends to become, a customer or end-user of another service provider; but
- (b) does not include—
 - (i) information that was publicly available or known to Telecom at the time of receipt, or that becomes publicly available other than as a result of a breach of confidentiality:
 - (ii) information that was obtained by Telecom directly from the customer or end-user or from sources that are independent of the other service provider:
 - (iii) information that is required to be disclosed by law or under the regulations of any stock exchange on which Telecom's shares are listed:
 - (iv) any information, or types of information, that Telecom and the Commission agree in writing is not customer confidential information

Decision 497 means the Commission's determination on the TelstraClear Limited application for determination for wholesale designated access services, dated 12 May 2003 (including any clarification or reconsideration of that determination under the Act)

Decision 525 means the Commission's determination on the TelstraClear Limited application for determination for residential wholesale designated access services, dated 14 June 2004 (including any clarification or reconsideration of that determination under the Act)

Decision 563 means the Commission's determination on the TelstraClear Limited application for determination of designated access services (including Private Office Networking), dated 9 December 2005 (including any clarification or reconsideration of that determination under the Act)

Designated Services Price List or **DSPL** means the list of regulated services and prices that was prepared by Telecom in accordance with the terms of Decision 497 and Decision 563 and that is maintained in accordance with clause 69

DSLAM means a digital subscriber line access multiplexer
employee, in relation to a Telecom business unit, includes the manager of the unit and any other employee of Telecom who is working for that unit

equivalence of inputs or **EOI** has the meaning given by clause 9

Group Legal Services means the group, including regulatory legal services, within Telecom that provides legal advice to TNZL, comprising solicitors who hold practising certificates from the New Zealand Law Society

Group Regulatory means the policy group within Telecom that manages group level stakeholder and regulatory issues, and provides expert regulatory advice to Telecom's business units, the executive, and the TCNZ board

IOG means the Independent Oversight Group referred to in clause 80

local access network has the meaning given by clause 18(2)

New Zealand has the meaning given by section 29 of the Interpretation Act 1999

regional backhaul network has the meaning given by clause 18(2)

regulated means, in relation to a service, that the service is a designated service or a specified service or is a service that is subject to a Telecom registered undertaking (regardless of

whether there is a determination under Part 2 of the Act currently in force in relation to that service)

regulated mobile services means—

- (a) the specified services of national roaming and co-location on cellular mobile transmission sites or any similar or related mobile services that, in future, become designated access services or specified services or become the subject of a registered undertaking; and
- (b) any other services that in future become regulated and that predominantly use a cellular mobile network

relevant service means a relevant network access service referred to in clause 21(2) or a relevant wholesale service referred to in clause 49(2)

required Telecom business unit means any business unit that is required by section 69D(1)(a) of the Act

resale equivalence has the meaning given by clause 10

resale service means the resale of any of the following designated services:

- (a) any retail service offered by means of Telecom's fixed telecommunications network;
- (b) any residential local access and calling service offered by means of Telecom's fixed telecommunications network;
- (c) any bundle of retail services offered by means of Telecom's fixed telecommunications network;
- (d) any retail service offered by means of Telecom's fixed telecommunications network as part of a bundle of retail services

Residential Services Price List or **RSPL** means the list of residential regulated services and prices that was prepared by Telecom in accordance with the terms of Decision 525 and that is maintained in accordance with clause 69

retail unit means the unit referred to in clause 70

shared services means the units listed in Part 1 of Schedule 2

subsidiary has the meaning given by sections 5 to 8 of the Companies Act 1993

support office means the support office required to be established under clause 84

TCNZ means Telecom Corporation of New Zealand Limited

Telecom personnel includes, to avoid doubt, the TCNZ board
Telecom's fixed network business units means any Telecom unit that provides functions in relation to Telecom's fixed network, including the ANS unit, the wholesale unit, and any core network units

Tier 1, Tier 2, or Tier 3 site means a Telecom building that is listed as such in Schedule 3

TNZL means Telecom New Zealand Limited

wholesale unit means the unit referred to in clause 46.

- (2) References in this determination to **Telecom's access network, Telecom's local access network, or Telecom's regional backhaul network**—
- (a) include a reference to those networks as they may be modified or upgraded, or replaced in part, from time to time; but
 - (b) do not include a reference to a network of an entirely different type that is installed in substitution for any of those networks and that is not of a type that is referred to in the access network definition.
- (3) Any term or expression that is defined in the Act and used, but not defined, in this determination has the same meaning as in the Act.

12 Status of examples

- (1) An example used in this determination is only illustrative of the provisions to which it relates. It does not limit those provisions.
- (2) If an example and a provision to which it relates are inconsistent, the provision prevails.

Arm's-length rules

13 Overview of arm's-length rules

- (1) This determination deals with the way in which required Telecom business units are managed or structured, and the type of relationships, dealings, and transactions the units have.
- (2) The arm's-length rules apply in respect of all of Telecom, including all business units and Telecom personnel, as follows:

- (a) clause 14 contains rules of general application which apply to all Telecom personnel;
- (b) clause 15 contains carve-outs for the TCNZ board and the TCNZ chief executive;
- (c) specific arm's-length rules that apply to each specific business unit are contained in the Part that relates to that unit;
- (d) Part 7 contains carve-outs for shared groups and services.

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

- (1) The separation undertakings must provide that Telecom personnel must act in a way that gives effect to Part 2A of the Act, this determination, and the separation undertakings.
- (2) The separation undertakings must provide that a Telecom employee must not, in doing or omitting to do anything, discriminate in favour of one required Telecom business unit (or its customers, suppliers, or employees) at the expense of another required Telecom business unit (or its customers, suppliers, or employees).
- (3) To avoid doubt, subclause (2) does not prevent an employee of one required Telecom business unit from discriminating in favour of that unit.
- (4) The separation undertakings must provide that no employee of Telecom who is not working for the ANS unit may,—
 - (a) except through mechanisms and processes that are also available to all other service providers on an equal basis, directly or indirectly participate in the formulation or making of—
 - (i) the annual and long-term corporate plans and technology plans of the ANS unit; or
 - (ii) other plans of the ANS unit; or
 - (iii) the commercial policy of the ANS unit; or
 - (b) have access to ANS unit commercial information unless that information is also available to all other service providers on an equal basis; or
 - (c) have access to ANS unit customer confidential information unless that information is also available to all other service providers on an equal basis.

- (5) The separation undertakings must provide that no employee of Telecom who is not working for the wholesale unit may,—
 - (a) except through mechanisms and processes that are also available to all other service providers on an equal basis, directly or indirectly participate in the formulation or making of—
 - (i) the annual and long-term corporate plans and technology plans of the wholesale unit; or
 - (ii) other plans of the wholesale unit; or
 - (iii) the commercial policy of the wholesale unit; or
 - (b) have access to wholesale unit commercial information unless that information is also available to all other service providers on an equal basis; or
 - (c) have access to wholesale unit customer confidential information unless that information is also available to all other service providers on an equal basis.
- (6) This clause is subject to the exceptions set out in this determination (for example, clauses 15, 37(2), 38(2), 90, and 91).

15 Role of TCNZ board and chief executive

- (1) This determination does not limit—
 - (a) the duty of the TCNZ board or the role of the chief executive of TCNZ, when exercising powers or performing duties as a director or chief executive of TCNZ, to act in a manner that he or she believes is in the best interests of TCNZ; or
 - (b) the role of any required Telecom business unit to act in accordance with the directions of the TCNZ board or the chief executive of TCNZ.
- (2) Subclause (1) applies even though the act is one that the required Telecom business unit may not itself resolve to do under the separation undertakings (for example, in the case of the ANS unit, an act that is not in the best interests of the ANS unit).
- (3) However, the separation undertakings must provide that if the TCNZ board or the chief executive of TCNZ wishes a business unit to act in a way that the unit may not itself resolve to do, the person must—
 - (a) give a direction in writing to the required Telecom business unit to act in that way; and

- (b) give a copy of the direction to the Commission and the IOG, as soon as practicable after the direction is given; and
 - (c) certify to the Commission and the IOG that, in the person's opinion,—
 - (i) the direction is consistent with the robust operational separation of Telecom; and
 - (ii) the reason that the direction is given is that it is in the best interests of TCNZ as a whole; and
 - (d) report to the Commission and the IOG on whether the direction undermines any of the purposes set out in paragraphs (a) to (c) of section 69A of the Act.
- (4) Subclause (5) applies—
- (a) if the TCNZ board or the chief executive of TCNZ participates in a decision related to the ANS unit or the wholesale unit:
 - (b) for the purpose of ensuring that any decisions made as a result of that participation are transparent.
- (5) The separation undertakings must provide that—
- (a) Telecom must provide the IOG with copies of draft and final documentation related to the decision referred to subclause (4) if the decision relates to an investment matter or any matter relevant to Part 2A of the Act, this determination, or the separation undertakings; and
 - (b) in any other case, Telecom must provide the IOG with copies of the draft and final documentation if the IOG requests them; and
 - (c) Telecom must, as soon as practicable, notify the Commission in writing of any provision of documentation to the IOG under this subclause.

Part 2

Fixed network access service business unit (ANS unit)

Establishment and assets

16 Outline of Part 2

- (1) This Part sets further requirements about the fixed network access service business unit referred to in section 69D(1)(a)(i) of the Act.

- (2) That unit is called the **Access Network Services unit** or **ANS unit** in this determination.

17 Establishment of Access Network Services unit

The separation undertakings must require the establishment of the ANS unit.

18 Access Network Services unit must control access network

- (1) The separation undertakings must provide that the ANS unit must control the access network and the operation of that network.
- (2) In this determination, unless the context otherwise requires,—
access network means Telecom’s local access network and Telecom’s regional backhaul network

local access network—

- (a) means all lines between the network demarcation point at an end-user’s premises (or, where relevant, the building distribution frames) and the local telephone exchange distribution frame or optical fibre distribution frame or equivalent facility; and
- (b) includes—
- (i) all cables and lines, including aerial and buried customer lead-ins from the network demarcation point at the end-user’s premises, sub-loop, loop and feeder copper, and optical fibre cables; and
 - (ii) the following infrastructure and buildings:
 - (A) poles, ducts, and manholes; and
 - (B) towers, distribution cabinets, and buildings that are predominantly used to house equipment that forms part of the access network; and
 - (C) power and building services equipment in the distribution cabinets and buildings referred to in subparagraph (B); and
 - (iii) all multi-access radio systems, and microwave systems that are used for backhaul between the points referred to in paragraph (a), and all fixed wireless access systems when used as a copper

- substitute or copper replacement (but not including cellular mobile systems); and
- (iv) all copper-pair gain and loop conditioning systems, but not including the terminal multiplex equipment; and
 - (v) all passive and active optical fibre equipment between the network demarcation point at an end-user's premises (or, where relevant, the building distribution frames) and the distribution frame or equivalent facility, including the distribution frame or equivalent facility, but not including the optical termination equipment, PSTN switch, ethernet aggregation switch, or edge router equipment if that equipment is not connected through a distribution frame; and
 - (vi) all copper and optical distribution frames (including main distribution frames, building distribution frames, cabinet-based frames, and intermediate distribution frames) that are predominantly used for the access network; and
 - (vii) those information technology support systems that are necessary to ensure the efficient operation, maintenance, and provisioning of the access network and the current and future services that are supplied by the ANS unit, except to the extent that they are provided by shared services; and
- (c) does not include—
- (i) service nodes, including DSLAMs, multi-service nodes, PSTN switches, or other similar devices that are used to deliver value-added services to end-users and that are not required for the normal operation of the access network; or
 - (ii) customer premises wiring; or
 - (iii) customer premises equipment; or
 - (iv) any equipment or facilities that are located in, or exclusively used to provide services to, any areas outside of New Zealand
- regional backhaul network—**
- (a) means, in geographic areas that are served by a Tier 1 or Tier 2 site, all copper, fixed wireless, and optical fibre transmission systems that are predominantly used to

- provide connections from an access seeker's equipment that is located at a distribution cabinet (or equivalent facility) to the nearest Tier 1 or Tier 2 site; and
- (b) means, in all other areas, all copper, fixed wireless, and optical fibre transmission systems that are predominantly used to provide connections from an access seeker's equipment that is located at a local telephone exchange or distribution cabinet (or equivalent facility) to the nearest Tier 3 site; but
 - (c) does not include any equipment or facilities that are located in, or exclusively used to provide services to, the Chatham Islands or any areas outside New Zealand.
- (3) The separation undertakings must provide that all arrangements between the ANS unit and other Telecom units or persons that provide for the ANS unit to control the access network and the operation of that network must be in writing, including all the terms of the arrangement, including price or appropriate transfer charges.
- (4) The separation undertakings must provide that the ANS unit must give a copy of the documents relating to the arrangement to the IOG, as soon as practicable after the later of the date on which the separation undertakings bind Telecom in this respect and the date that the arrangement is entered into or changes in any material respect.

19 Access Network Services unit must have sufficient influence over other assets

- (1) The separation undertakings must provide that the ANS unit must have sufficient influence over the network assets that are not under the control of that unit in order to discharge its responsibilities under these requirements in relation to delivery of relevant network access services.

Example

An access seeker may require backhaul to beyond the coverage of the regional backhaul network. In particular, one of the regulated LLU backhaul services requires Telecom to provide backhaul services to the access seeker's nearest point of interconnection. The ANS unit will provide that backhaul service. Therefore, in any cases where the access seeker requires backhaul to beyond the regional backhaul network, the ANS unit will need to obtain core network transmission capacity from another Telecom business unit.

- (2) The separation undertakings must provide that all arrangements between the ANS unit and other Telecom units or persons that provide for the ANS unit to have influence over network assets must be in writing, including all the terms of the arrangement, including price or appropriate transfer charges.
- (3) The separation undertakings must provide that the ANS unit must give a copy of the documents relating to the arrangement to the IOG, as soon as practicable after the later of the date on which the separation undertakings bind Telecom in this respect and the date that the arrangement is entered into or changes in any material respect.

20 Minimum requirements for undertakings about operation of Access Network Services unit

The separation undertakings must ensure that the ANS unit must, without limitation, be responsible for—

- (a) building, maintaining, operating, and repairing the access network;
- (b) making investment decisions relating to the access network;
- (c) determining which services the access network assets must be capable of supporting;
- (d) determining what enhancements to the functionality of the access network assets are appropriate.

Relevant services

21 Access Network Services unit must provide relevant services

- (1) The separation undertakings must provide that the ANS unit must provide the relevant network access services.
- (2) In this determination, unless the context otherwise requires, **relevant network access services—**
 - (a) means any current or future fixed telecommunications services that are delivered exclusively or mainly by use of assets that form part of the access network;
 - (b) does not include—
 - (i) relevant wholesale services;
 - (ii) the access service of interconnection with Telecom's fixed PSTN, or the access service of

interconnection with a fixed PSTN other than Telecom's:

- (iii) any multinetwork services that are listed in Schedule 1 of the Act:
- (iv) to avoid doubt, any regulated mobile services.

Example

The ANS unit must provide local loop unbundling, local loop unbundling co-location, and local loop unbundling backhaul (including both distribution cabinet to telephone exchange and telephone exchange to interconnect point).

22 Specific responsibilities of Access Network Services unit

- (1) The separation undertakings must ensure that the ANS unit's responsibilities include, in particular, the following matters in relation to relevant network access services:
 - (a) service management:
 - (b) providing a wholesale sales function (including sales to other units within Telecom):
 - (c) product management and marketing:
 - (d) network performance management:
 - (e) specification of the services and their functionality:
 - (f) deployment of services, including design, construction, testing, and commissioning:
 - (g) service-related procurement processes:
 - (h) setting of terms, including prices.
- (2) This clause is subject to the Commission's responsibilities under the Act.

23 Fibre to premises

- (1) The separation undertakings must contain Telecom's commercial policy for access to the relevant network access service known as fibre to the premises.
- (2) That policy may refuse access to that service if the service provider refuses to supply Telecom with similar services in circumstances where—
 - (a) the service provider is capable of supplying materially the same service; and
 - (b) the circumstances of Telecom and the service provider are materially the same; and

- (c) Telecom offers to access the service on materially the same terms and conditions; and
- (d) Telecom has requested the supply of the service in writing; and
- (e) it is reasonable and appropriate and in keeping with Telecom's obligations under Part 2A of the Act, this determination, and the separation undertakings.

24 Access Network Services unit must provide relevant network access services on equivalence of inputs basis

- (1) The separation undertakings must provide that the ANS unit must provide each relevant network access service on the applicable standard of equivalence in accordance with Schedule 1.
- (2) The separation undertakings must provide that the standard of equivalence that applies to all relevant network access services is equivalence of inputs.
- (3) The separation undertakings must include migration plans for the ANS unit in accordance with Schedule 1.
- (4) This clause is subject to clauses 25 and 26 and Schedule 1.

25 Different standards of equivalence for regulated network access services

- (1) Subclause (2) applies if—
 - (a) a relevant network access service becomes regulated after the commencement of this determination; and
 - (b) the Commission recommends to the Minister that a different standard of equivalence should apply and states what that standard of equivalence should be; and
 - (c) the Minister consults with Telecom about the Commission's recommendation; and
 - (d) the Minister accepts the Commission's recommendation.
- (2) The separation undertakings must provide that—
 - (a) the standard of equivalence recommended by the Commission applies to that service; and
 - (b) Telecom must make the recommendation and information about its effect available to the public at all reasonable times on Telecom's Internet website.

26 Migration to equivalence on legacy services

- (1) The purpose of this clause is to provide for migration plans for legacy services, as an alternative to rebuilding them.
- (2) In this determination, **legacy services** means all of Telecom's fixed telecommunications services as at the date of this determination that access a relevant network access service that must be provided on an equivalence of inputs basis in accordance with this determination.
- (3) The separation undertakings may, in the case of legacy services, contain 1 or more migration plans that are designed to move those services to an EOI compliant infrastructure on a timetable and using a migration strategy that is tailored for the service concerned and, if so, the separation undertakings—
 - (a) must require Telecom to comply with those migration plans; and
 - (b) must provide that, if Telecom fails in any material respect to comply with a migration plan, that plan is void, and that Telecom must meet the arrangements for EOI migration milestones and dates for the relevant services specified in Schedule 1.

Example

PSTN services access Telecom's copper local loop, which is a relevant access network service which must be provided on an EOI compliant basis. That would mean rebuilding PSTN services. As an alternative, Telecom can propose a migration plan that would move consumers to a new service that uses EOI compliant inputs.

- (4) The separation undertakings must include migration plans for the ANS unit in accordance with Schedule 1.

27 Access Network Services unit must build services and systems ready for equivalence of inputs standard

- (1) The separation undertakings must provide that the ANS unit must build all relevant network access services and associated systems that are not regulated at the commencement of this determination in such a manner as to ensure that access seekers can purchase those services from the ANS unit on an equivalence of inputs basis in the event that the services become regulated.

- (2) The separation undertakings under subclause (1) may apply except to the extent to which the Commission agrees to minor exceptions.

*Stand-alone and arm's-length rules applying to Access
Network Services unit*

28 Access Network Services unit must act on stand-alone basis and at arm's-length

- (1) The separation undertakings must provide that Telecom must operate the ANS unit on a stand-alone basis, at arm's-length from any other Telecom business unit.
- (2) This includes having relationships, dealings, and transactions that do not include elements that parties in their respective positions would usually omit, and that do not omit elements that parties in their respective positions would usually include, if—
- (a) the parties were acting independently; and
 - (b) one party (the ANS unit) were acting on a stand-alone basis; and
 - (c) the parties were acting at arm's-length.
- (3) **Arm's-length** also includes compliance with the other arm's-length rules.
- (4) This clause does not limit the ordinary meaning of the expression **arm's-length**.

29 Separate management and reporting lines for Access Network Services unit

- (1) The separation undertakings must provide that Telecom must appoint a person to have responsibility for the management of the ANS unit.
- (2) The separation undertakings must provide that the person must—
- (a) work solely on matters pertaining to the ANS unit and must not have any responsibility for other units within Telecom;
 - (b) manage the ANS unit in a way designed to secure compliance with the provisions of the separation undertakings that apply to the unit;
 - (c) report directly to the chief executive of TCNZ.

30 Employees of Access Network Services unit may not work for any other Telecom business unit

The separation undertakings must provide that no person who is an employee working for the ANS unit may work for any other Telecom business unit.

31 Setting Access Network Services unit annual and long-term corporate plans and technology plans

- (1) The separation undertakings must provide that the ANS unit must develop, and submit to the TCNZ board for approval, annual and long-term corporate plans and technology plans (or equivalent documents) for the ANS unit or the parts of Telecom plans that relate to the ANS unit.
- (2) The separation undertakings must provide that the TCNZ board may approve, amend, or otherwise deal with those plans as it sees fit, provided that it complies with the requirements set out in clause 15.

32 Implementation of plans and day-to-day management

- (1) The separation undertakings must provide that the following must be solely the responsibility of the ANS unit:
 - (a) the implementation of the plans approved by the TCNZ board under clause 31; and
 - (b) the day-to-day management of the ANS unit.
- (2) The separation undertakings must provide that the manager of the ANS unit must have sufficient delegations from the TCNZ board to allow him or her to manage the ANS unit in accordance with subclause (1).
- (3) The separation undertakings must—
 - (a) provide that this delegation must be not less than a level 2 (chief operating officer equivalent) delegation; and
 - (b) attach a document that describes the terms of this delegation; and
 - (c) prohibit any decrease in the delegation from that described in the document attached to the separation undertakings; and
 - (d) require Telecom to notify the IOG and the Commission of any changes in the delegation; and
 - (e) require the TCNZ board and the chief executive of TCNZ to certify annually that ANS has sufficient

resources to enable the manager of the ANS unit to manage the ANS unit in accordance with subclause (1).

33 Access Network Services unit must formulate its own commercial policies

The separation undertakings must provide that the ANS unit must formulate its own commercial policies.

34 Access Network Services unit must act in its own best interests

The separation undertakings must provide that all ANS unit employees, agents, and contractors must, when making their decisions in relation to relevant network access services, act in good faith and in what they believe to be in the best interests of the ANS unit.

35 Access Network Services unit must not discriminate

- (1) The separation undertakings must provide that the ANS unit and all its employees and agents must, when doing or omitting to do anything in relation to the supply of relevant network access services to persons who have or seek access to relevant services (whether other Telecom units or other service providers), act in a way that does not discriminate between those persons.
- (2) This clause is subject to clause 8.

36 Access Network Services unit must have trading arrangements

- (1) The separation undertakings must provide that all transactions between the ANS unit and any other Telecom business unit for the provision by the ANS unit of relevant network access services must be in writing and include all the terms of the transaction, including price or appropriate transfer charges.
- (2) The separation undertakings must provide that the ANS unit must give a copy of the transaction documents to the IOG as soon as practicable after the transaction is entered into.

37 Access Network Services unit must not disclose customer confidential information

- (1) The separation undertakings must provide that the ANS unit and all its employees, agents, and contractors must not disclose customer confidential information to any other Telecom business unit unless the service provider to which the information relates consents.
- (2) However, the separation undertakings may permit any disclosure that—
 - (a) is necessary operationally to enable the ANS unit to provide a relevant service in accordance with its obligations under the separation undertakings; or
 - (b) is made in order to transfer an order for a relevant service from the ANS unit to the wholesale unit (or vice versa) in accordance with arrangements made to comply with clause 94.

38 Access Network Services unit must not disclose commercial information

- (1) The separation undertakings must provide that the ANS unit and all its employees, agents, and contractors must not disclose ANS unit commercial information to any other Telecom business unit unless that information is also available to all other service providers on an equal basis.
- (2) However, the separation undertakings may permit any disclosure that—
 - (a) relates to relevant network access services that are neither regulated nor supplied to a service provider other than Telecom; or
 - (b) is necessary operationally to enable the ANS unit to provide a relevant service in accordance with its obligations under the separation undertakings; or
 - (c) is made in order to transfer an order for a relevant service from the ANS unit to the wholesale unit (or vice versa) in accordance with arrangements made to comply with clause 94.

39 Access Network Services unit must have localised incentive arrangements

- (1) The separation undertakings must provide that all incentive remuneration for employees working for the ANS unit must reflect solely the objectives and performance of the ANS unit.
- (2) The separation undertakings must provide that remuneration for employees working for the ANS unit must not comprise any Telecom shares or any incentives that are directly or indirectly linked to Telecom's overall performance.
- (3) The separation undertakings must provide that these requirements must apply to both short-term incentive schemes (such as annual bonuses) and long-term incentive and remuneration schemes.

40 Accommodation for Access Network Services unit

- (1) The separation undertakings must provide that all employees working for the ANS unit must be located in access-controlled accommodation that is separately secured from all other Telecom business units.
- (2) The separation undertakings must provide that after 12 months after the separation day all employees working for the ANS unit must be located in accommodation that is separately located from all other Telecom business units.
- (3) However, the separation undertakings may provide that sub-clause (2) does not apply to an employee if—
 - (a) the employee works in a place where Telecom does not have a significant number of employees; and
 - (b) the Commission has agreed, on application by Telecom, that—
 - (i) it would be impractical or unreasonably expensive to comply with the requirement in this clause in relation to that employee; and
 - (ii) appropriate alternative procedures are in place in relation to the employee in order to ensure compliance with the arm's-length rules.

41 Branding for Access Network Services unit

The separation undertakings must require the ANS unit to have, and only use, its own separate brand in accordance with the following requirements:

- (a) the brand must not include the word Telecom; and
- (b) the brand may be used in proximity to an endorsement containing either the word Telecom or the Telecom logo, or both, only if that endorsement is secondary to the ANS brand; and
- (c) branding for the ANS unit must change progressively to the new separate ANS brand within a time frame agreed between Telecom and the IOG.

42 Staff of Access Network Services unit

The separation undertakings must ensure that the following persons must be employees of Telecom who work solely for the ANS unit:

- (a) all employees who are directly involved in the provision, installation, maintenance, fault restoration, and repair of Telecom's access network, except to the extent that those persons work for shared services; and
- (b) all employees who are directly involved in the planning, design, implementation, and in-life service management of relevant network access services, except to the extent that those persons work for shared services; and
- (c) all employees who are directly involved in providing a wholesale sales function in relation to relevant network access services; and
- (d) the managers of the employees referred to in paragraphs (a) to (c), up to and including the manager of the ANS unit; and
- (e) those employees who carry out activities that are ancillary to those described in any of paragraphs (a) to (c); and
- (f) all employees who are directly involved in providing legal or regulatory advice to the ANS unit.

43 Consultation about changes to access network, etc

- (1) The separation undertakings must ensure that the ANS unit must consult with service provider customers if the ANS unit consults with any Telecom business unit before making any significant decision that may affect relevant network access services in relation to—
 - (a) changes to the access network:

- (b) changes to the specifications or functionality of any relevant network access service;
 - (c) introduction of any new relevant network access service or any variant of an existing relevant network access service.
- (2) The separation undertakings must ensure that the extent of the consultation, and the time when consultation occurs, must be equivalent for all service provider customers and Telecom's other business units.

44 Other relevant services that Telecom chooses to supply

The separation undertakings must provide that, if the ANS unit chooses to supply a service provider (other than Telecom) with a relevant service that it is not required to provide under Part 2 of the Act, a Telecom registered undertaking, or any other law, then the ANS unit must supply that service to the other service provider on commercial terms in accordance with the non-discrimination rule in clause 35.

45 Process for Access Network Services unit requests

- (1) The separation undertakings must ensure that the ANS unit must establish a process for making, considering, advising, and implementing decisions about requests in respect of relevant network access services, and in respect of assets controlled by the ANS unit, whereby—
- (a) all persons who have or seek access to relevant network access services (whether other Telecom business units or access seekers) use the same request form; and
 - (b) the process is substantially the same for all those persons, in like circumstances; and
 - (c) the process is subject to oversight by the IOG, including reviewing whether requests have been dealt with in accordance with the process.
- (2) This clause is subject to clause 8.

Part 3 **Wholesale business unit**

Establishment, assets, and services

46 Outline of Part 3

- (1) This Part sets further requirements about the 1 or more business units referred to in section 69D(1)(a)(ii) of the Act that must provide a wholesale function for all relevant services (except to the extent that a wholesale function is provided by the ANS unit).
- (2) The unit or units are together called the **wholesale unit** in this determination.

47 Establishment of wholesale unit

The separation undertakings must require the establishment of the wholesale unit.

48 Wholesale unit must have sufficient influence over relevant assets

- (1) The separation undertakings must require the wholesale unit to be a party to arrangements with other Telecom units or persons that give the wholesale unit sufficient influence over the assets necessary for the provision of relevant wholesale services.
- (2) The separation undertakings must provide that all arrangements between the wholesale unit and other Telecom units or persons that provide for the wholesale unit to have influence over network assets must be in writing, including all the terms of the arrangement, including price or appropriate transfer charges (if any).
- (3) The separation undertakings must provide that the wholesale unit must give a copy of the documents relating to the arrangement to the IOG, as soon as practicable after the later of the date on which the separation undertakings bind Telecom in this respect and the date that the arrangement is entered into or changes in any material respect.

49 Wholesale unit must provide relevant wholesale services

- (1) The separation undertakings must require the wholesale unit to provide the relevant wholesale services.

- (2) In this determination, unless the context otherwise requires, **relevant wholesale services**—
- (a) means,—
 - (i) in relation to resale services, only those services that are included in DSPL or RSPL, including any replacement or successor services that are added to DSPL or RSPL, and any resale services that are covered by a future determination under Part 2 of the Act;
 - (ii) all other designated access services and specified services that are listed in Schedule 1 of the Act (regardless of whether there is a determination under Part 2 of the Act currently in force in relation to that service);
 - (iii) any fixed network service that is subject to a Telecom registered undertaking;
 - (iv) all packet-based bitstream services (and their associated functions, including the associated functions of Telecom’s operational support systems) that enable access to, or interconnection with, Telecom’s NGN core, including IP interconnection;
 - (b) does not include—
 - (i) relevant network access services;
 - (ii) the designated access service of interconnection with Telecom’s fixed PSTN or the designated access service of interconnection with a fixed PSTN other than Telecom’s;
 - (iii) any designated multinet network services that are listed in Schedule 1 of the Act;
 - (iv) to avoid doubt, any regulated mobile services.

Example

The wholesale unit must provide unbundled bitstream access, unbundled bitstream backhaul, and those resale services that are listed in DSPL or RSPL.

- (3) In this clause, **NGN** means a packet-based network—
- (a) which is able to—
 - (i) provide telecommunications services; and
 - (ii) make use of multiple broadband and quality of service-enabled transport technologies; and

- (b) in which service-related functions are independent of underlying transport-related technologies.
- (4) To avoid doubt, it is expected that there will be further industry discussion on an approach to peering, and that the definition of relevant wholesale services does not require a particular industry-wide approach to that issue.

50 Specific responsibilities of wholesale unit

- (1) The separation undertakings must ensure that the wholesale unit's responsibilities include, in particular, the following matters in relation to relevant wholesale services:
 - (a) service management;
 - (b) providing a wholesale sales function (including sales to other units within Telecom);
 - (c) product management and marketing;
 - (d) network performance management, to the extent that the wholesale unit controls the relevant assets;
 - (e) design and specification of the services and their functionality;
 - (f) service-related procurement processes;
 - (g) setting of terms, including prices.
- (2) This clause is subject to the Commission's responsibilities under the Act.

51 Wholesale unit must provide certain relevant services on equivalence of inputs basis

- (1) The separation undertakings must provide that the wholesale unit must provide each relevant wholesale service on the applicable standard of equivalence in accordance with Schedule 1.
- (2) The separation undertakings must provide that the standard of equivalence that applies to all relevant wholesale services is equivalence of inputs, except as otherwise provided in clauses 52 to 54.
- (3) The separation undertakings must include migration plans for the wholesale unit in accordance with Schedule 1.
- (4) The separation undertakings in respect of the wholesale unit must reflect the effect of clause 26 on relevant wholesale services.

52 Wholesale unit must provide resale services on resale equivalence standard

- (1) The separation undertakings must provide that the standard of equivalence that applies to resale services is the resale equivalence standard.
- (2) However, the separation undertakings may provide that a different standard of equivalence applies to any of those resale services if—
 - (a) the wholesale unit and the access seeker have agreed to the application of the different standard; and
 - (b) the Commission has been advised of the application of the different standard and has not objected to it.
- (3) The separation undertakings may provide that Telecom has a reasonable time, after being notified of any failure to meet the resale equivalence standard, to meet that standard provided that—
 - (a) Telecom must have agreed with the Commission what a reasonable time would be in the circumstances of the case; and
 - (b) Telecom takes all reasonable steps during that period to try to achieve compliance; and
 - (c) the failure to meet the standard is inadvertent.

53 List of improvements to resale services directed to achieving resale equivalence standard

The separation undertakings must include a list of the improvements that Telecom undertakes to make to resale services for the purposes of meeting the resale equivalence standard, and the dates or times by which those improvements will be implemented (which must not be later than 31 December 2009).

54 Different standards of equivalence for regulated wholesale services

- (1) Subclause (2) applies if—
 - (a) a relevant wholesale service becomes regulated after the commencement of this determination; and
 - (b) the Commission recommends to the Minister that a different standard of equivalence should apply and states what that standard of equivalence should be; and

- (c) the Minister consults with Telecom about the Commission's recommendation; and
 - (d) the Minister accepts the Commission's recommendation.
- (2) The separation undertakings must provide that—
- (a) the standard of equivalence recommended by the Commission applies to that service; and
 - (b) Telecom must make the recommendation and information about its effect available to the public at all reasonable times on Telecom's Internet website.

55 Wholesale unit must build services and systems ready for equivalence of inputs standard

- (1) The separation undertakings must provide that the wholesale unit must build all relevant wholesale services and associated systems that are not regulated at the commencement of this determination in such a manner as to ensure that access seekers can purchase those services from the wholesale unit on an equivalence of inputs basis in the event that the services become regulated.
- (2) The separation undertakings may include reasonable limitations on the application of subclause (1) to any identified relevant wholesale service that is not regulated at the commencement of this determination if—
- (a) it is reasonably expected that Telecom itself will not meaningfully use the service; and
 - (b) the reasons for that expectation are set out in the undertakings.
- (3) If subclause (2) applies, the separation undertakings must require Telecom to build the service ready for a suitable alternative standard of equivalence specified in the undertakings.
- (4) Without limiting subclause (2), the separation undertakings under subclause (1) may apply except to the extent to which the Commission agrees to minor exceptions.
- (5) This clause does not limit clauses 51, 54, and 56.

56 Other relevant services that Telecom chooses to supply

The separation undertakings must provide that, if the wholesale unit chooses to supply a service provider (other than

Telecom) with a relevant service that it is not required to provide under Part 2 of the Act, a Telecom registered undertaking, or any other law, then the wholesale unit must supply that service to the other service provider on commercial terms in accordance with the non-discrimination rule in clause 61.

Arm's-length rules applying to wholesale unit

57 Wholesale unit must act at arm's-length from retail

- (1) The separation undertakings must provide that Telecom must operate the wholesale unit at arm's-length from any business unit that provides retail functions.
- (2) This includes having relationships, dealings, and transactions that do not include elements that parties in their respective positions would usually omit, and that do not omit elements that parties in their respective positions would usually include, if—
 - (a) the parties were acting independently; and
 - (b) the parties were acting at arm's-length.
- (3) **Arm's-length** also includes compliance with the other arm's-length rules.
- (4) This clause does not limit the ordinary meaning of the expression **arm's-length**.
- (5) The separation undertakings may include reasonable limitations on the application of the arm's-length rules to a relevant wholesale service that is not regulated if—
 - (a) the relevant wholesale service, the extent of any limitations, and the reasons for the limitations, are specified in the undertakings; and
 - (b) the limitations apply to the extent and for the period reasonably justified for the purpose of facilitating appropriate non-discriminatory contact between the wholesale unit and the retail unit in order to avoid unreasonable constraints on new product and service development.
- (6) To avoid doubt, this clause does not limit section 69D of the Act (which requires, among other things, that Telecom operate its wholesale units and its retail units at arm's-length).

58 Separate management and reporting lines for wholesale unit

- (1) The separation undertakings must provide that Telecom must appoint a person to have responsibility for the management of the wholesale unit.
- (2) Telecom has discretion to determine the title of the position of that person.
- (3) The separation undertakings must provide that the person must—
 - (a) not have any responsibility for the ANS unit or a retail unit;
 - (b) manage the wholesale unit in a way designed to secure compliance with the provisions of the separation undertakings that apply to the unit;
 - (c) report directly to the chief executive of TCNZ.

59 Employees of wholesale unit may not work for retail unit

The separation undertakings must provide that no person who is an employee working for the wholesale unit may work for the retail unit.

60 Wholesale unit must formulate own commercial policies

The separation undertakings must provide that the wholesale unit must formulate its own commercial policies.

61 Wholesale unit must not discriminate

- (1) The separation undertakings must provide that the wholesale unit and all its employees, agents, and contractors must, when doing or omitting to do anything in relation to the supply of relevant wholesale services to persons who have or seek access to relevant services (whether other Telecom units or other service providers), act in a way that does not discriminate between those persons.
- (2) This clause is subject to clause 8.

62 Wholesale unit must have trading arrangements with retail unit

- (1) The separation undertakings must provide that all transactions between the wholesale unit and the retail unit for the provision

by the wholesale unit of relevant wholesale services must be in writing and include all the terms of the transaction, including price or appropriate transfer charges.

- (2) The separation undertakings must provide that the wholesale unit must give a copy of the transaction documents to the IOG as soon as practicable after the transaction is entered into.

63 Wholesale unit must not disclose customer confidential information

- (1) The separation undertakings must provide that the wholesale unit and all its employees, agents, and contractors must not disclose customer confidential information to any other Telecom business unit, unless the service provider to which the information relates consents.
- (2) However, the separation undertakings may permit any disclosure that—
 - (a) is necessary operationally to enable the wholesale unit to provide a relevant service in accordance with its obligations under the separation undertakings; or
 - (b) is made in order to transfer an order for a relevant service from the wholesale unit to the ANS unit (or vice versa) in accordance with arrangements made to comply with clause 94.

64 Wholesale unit must not disclose commercial information

- (1) The separation undertakings must provide that the wholesale unit and all its employees, agents, and contractors must not disclose wholesale unit commercial information to any other Telecom business unit, unless that information is also available to all other service providers on an equal basis.
- (2) However, the separation undertakings may permit any disclosure that—
 - (a) is necessary operationally to enable the wholesale unit to provide a relevant service in accordance with its obligations under the separation undertakings; or
 - (b) is made in order to transfer an order for a relevant service from the wholesale unit to the ANS unit (or vice versa) in accordance with arrangements made to comply with clause 94.

65 Wholesale unit must have localised incentive arrangements

- (1) The separation undertakings must provide that all incentive remuneration for employees working for the wholesale unit must reflect solely the objectives and performance of the wholesale unit and, if Telecom wishes, any other Telecom business unit (other than the ANS unit) that manages the supply of wholesale services to persons who have or seek access to relevant services (whether other Telecom business units or other service providers).
- (2) The separation undertakings must provide that remuneration for employees working for the wholesale unit must not comprise any incentives that are directly or indirectly linked to Telecom's overall performance.
- (3) However, the separation undertakings may permit Telecom shares to comprise part of long-term incentive and remuneration schemes, but not short-term incentive schemes (such as annual bonuses), for employees working for the wholesale unit, provided that the separation undertakings—
 - (a) attach a document that describes the extent to which those schemes comprise Telecom shares; and
 - (b) prohibit any increase in the extent to which the schemes comprise Telecom shares, if the increase would result in the schemes for employees working for the wholesale unit comprising a higher proportion of Telecom shares than the schemes for employees working for the retail unit; and
 - (c) require Telecom to notify to the IOG and the Commission any changes in the extent to which the schemes for employees working for the wholesale unit comprise Telecom shares.

66 Accommodation for wholesale unit

- (1) The separation undertakings must provide that all employees working for the wholesale unit must be located in access-controlled accommodation that is separately secured from the retail unit.
- (2) However, the separation undertakings may provide that this clause does not apply to an employee if—

- (a) the employee works in a place where Telecom does not have a significant number of employees; and
- (b) the Commission has agreed, on application by Telecom, that—
 - (i) it would be impractical or unreasonably expensive to comply with the requirement in this clause in relation to that employee; and
 - (ii) appropriate alternative procedures are in place in relation to the employee in order to ensure compliance with the arm's-length rules.

67 Staff of wholesale unit

- (1) The separation undertakings must ensure that the persons referred to in subclause (2) must be either—
 - (a) employees of Telecom who work solely for the wholesale unit; or
 - (b) employees who work solely for the wholesale unit and any other Telecom business unit (other than the ANS unit) that manages the supply of wholesale services to service providers.
- (2) The persons are—
 - (a) all employees who are directly involved in the management of the planning, design, implementation, and in-life service management of relevant wholesale services and ancillary activities; and
 - (b) all employees who are directly involved in providing a wholesale sales function in relation to relevant wholesale services; and
 - (c) the managers of the employees referred to in paragraphs (a) and (b), up to and including the manager of the wholesale unit.

68 Legal and regulatory staff working for wholesale unit

- (1) The separation undertakings must ensure that all employees who are directly involved in providing legal or regulatory advice to the wholesale unit are as follows:
 - (a) employees of Telecom who work solely for the wholesale unit; or
 - (b) employees of Telecom who work solely for the wholesale unit and any other Telecom business unit (other

- than the ANS unit) that manages the supply of wholesale services to service providers; or
- (c) employees of Telecom who work solely for Group Legal Services or Group Regulatory.
- (2) The separation undertakings must provide that Group Legal Services and Group Regulatory must operate as follows to the extent that subclause (1)(c) applies:
- (a) all employees who are directly involved in providing legal or regulatory advice to the wholesale unit must be primarily accountable to the manager of the wholesale unit for the advice that they provide to the wholesale unit; and
 - (b) strict Chinese walls must be maintained between all employees who are directly involved in providing legal or regulatory advice to the wholesale unit and any employees who provide advice to the retail unit, including a rule that legal and regulatory staff that advise one of those units on an issue cannot also advise the other unit on that issue or any related issue.

69 Telecom must maintain DSPL and RSPL

- (1) The separation undertakings must ensure that Telecom maintains and updates DSPL and RSPL in accordance with the terms of the Commission's wholesale determinations as if all of the Commission's wholesale determinations were still in force but subject to any amendments agreed between the parties to those determinations.
- (2) This requirement includes an obligation on Telecom to have the DSPL and RSPL audited.
- (3) To avoid doubt, this clause only requires the DSPL and RSPL to be maintained for the purposes of the separation undertakings and does not have the effect of bringing back into force any Commission wholesale determination that has expired.

Part 4

Retail unit

Establishment, assets, and services

70 Outline of Part 4

- (1) This Part sets further requirements about the 1 or more business units referred to in section 69D(1)(a)(iii) of the Act that must provide 1 or more other functions.
- (2) The requirements in this Part only apply to a unit or units that provide a retail function, which are together called the **retail unit** in this determination.

71 Retail unit need not control any specific assets

The separation undertakings need not provide that the retail unit must control any specific assets.

72 Retail unit need not provide any specific services

The separation undertakings need not provide that the retail unit must provide any specific services.

Arm's-length rules applying to retail unit

73 Retail unit must act at arm's-length from Telecom's fixed network business units

- (1) The separation undertakings must provide that Telecom must operate the retail unit at arm's-length from any of Telecom's fixed network business units (whether access service units or other fixed network units).
- (2) This includes having relationships, dealings, and transactions that do not include elements that parties in their respective positions would usually omit, and that do not omit elements that parties in their respective positions would usually include, if—
 - (a) the parties were acting independently; and
 - (b) the parties were acting at arm's-length.
- (3) **Arm's-length** also includes compliance with the other arm's-length rules.
- (4) This clause does not limit the ordinary meaning of the expression **arm's-length**.

74 Employees of retail unit may not work for certain other units

The separation undertakings must provide that no person who is an employee working for the retail unit may work for the ANS unit, the wholesale unit, or any Telecom fixed network business unit.

75 Retail unit must not influence commercial policy of Telecom's fixed network business units

The separation undertakings must provide that the retail unit and all its employees, agents, and contractors must not influence or attempt to influence the commercial policy of any of Telecom's fixed network business units, except through mechanisms and processes that are also available to all other service providers on an equal basis.

76 Staff of retail unit

- (1) The separation undertakings need not provide that the retail unit must employ any particular Telecom employees.
- (2) However, this clause does not limit clauses 73 to 75.

Part 5

Telecom's fixed network business units

Arm's-length rules applying to fixed network business units

77 Employees of Telecom's fixed network business units may not work for retail unit

The separation undertakings must provide that no person who is an employee working for any Telecom fixed network business unit may work for the retail unit.

78 Telecom's fixed network units must not disclose customer confidential information to retail unit

The separation undertakings must provide that every Telecom fixed network business unit and all its employees, agents, and contractors must not disclose customer confidential information to the retail unit unless the service provider to which the information relates consents.

79 Telecom's fixed network units must not disclose commercial information to retail unit

The separation undertakings must provide that every Telecom fixed network business unit and all its employees, agents, and contractors must not disclose Telecom fixed network business unit commercial information to the retail unit unless that information is also available to all other service providers on an equal basis.

Part 6 Enforcement and oversight for compliance with separation plan

Independent Oversight Group

80 Establishment of Independent Oversight Group

The separation undertakings must require Telecom to establish an Independent Oversight Group (**IOG**).

81 Appointment of members of IOG

- (1) The separation undertakings must provide—
 - (a) that the TCNZ board must appoint 5 members of the IOG, of whom the majority must be independent of Telecom; and
 - (b) that the TCNZ board must appoint a member of the IOG who is independent of Telecom as chairperson of the IOG; and
 - (c) that the TCNZ board must not appoint a member of the IOG who is employed within the ANS unit, the whole-sale unit, or the retail unit; and
 - (d) that Telecom must consult with the Commission over the appropriate skills mix for the IOG, and before appointing the chairperson and the other independent members; and
 - (e) that the criteria for independent members must include that the members have no material conflict of interest; and
 - (f) that the TCNZ board may remove members of the IOG only after consultation with the Commission.
- (2) The separation undertakings must provide that, in determining whether a conflict exists for the purpose of subclause (1)(e), regard must be had to whether the person is—

- (a) an employee or former employee of Telecom:
- (b) a director or senior executive of another telecommunications provider:
- (c) a partner or senior executive of any firm, company, or other organisation providing services to Telecom or any other telecommunications provider:
- (d) an employee of the Commission:
- (e) a material shareholder in Telecom or in any other telecommunications provider.

82 Functions of IOG

The separation undertakings must provide that Telecom must set terms of reference for the IOG that provide for the IOG to have the functions contemplated for it in this determination, including, without limitation, the following functions:

- (a) those in clause 87 in respect of key performance indicators and codes of conduct for Telecom personnel:
- (b) recommending those indicators and codes to the TCNZ board, if the final product of the consultation process under that clause is satisfactory to the IOG:
- (c) reviewing performance against those indicators and codes, and recommending changes to those indicators and codes:
- (d) processing complaints about compliance with the separation undertakings:
- (e) requesting information, and carrying out any investigations, to assess compliance with the separation undertakings:
- (f) requesting the support office to carry out any investigations to assess compliance with the separation undertakings:
- (g) reviewing reports prepared by the support office:
- (h) being kept informed of service-level agreements set by Telecom and reviewing Telecom's performance against those agreements:
- (i) reviewing the supply of services internally to Telecom in accordance with the separation undertakings:
- (j) reviewing the process of making, considering, advising, and implementing decisions under clause 45 and reviewing whether requests have been dealt with in accordance with that process:

- (k) reviewing any documentation that this determination requires to be supplied to the IOG and investigating whether that documentation shows that there has been a breach of the separation undertakings:
- (l) reporting to the TCNZ board as soon as is reasonably practicable after the IOG becomes aware of any of Telecom actions or omissions that, in the IOG's opinion, may become issues of concern in terms of compliance with the separation undertakings:
- (m) reporting to the TCNZ board and the Commission—
 - (i) as soon as is reasonably practicable after the IOG becomes aware of any non-trivial breach of the separation undertakings or Part 2A of the Act; and
 - (ii) on a regular basis, at times agreed with Telecom, on Telecom's compliance with the separation undertakings; and
 - (iii) annually, in an annual review of Telecom's compliance with the separation undertakings:
- (n) making, subject to clause 89, each of its annual reports, and any other report or document that the IOG chooses to publish, available on an Internet website that is available to the public at all reasonable times:
- (o) every other function contemplated for the IOG in this determination.

83 Funding and support of IOG

The separation undertakings must provide that Telecom will—

- (a) fully fund the IOG in its performance of the functions in clause 82; and
- (b) pay each member who is appointed under clause 81 to a paid position; and
- (c) reimburse each member appointed under clause 81 for actual and reasonable travelling and other expenses incurred in carrying out his or her office as a member; and
- (d) organise and pay for professional indemnity insurance for each member appointed under clause 81, if requested by the member; and

- (e) prepare any reports that the IOG may reasonably require in relation to Telecom's compliance with the separation undertakings; and
- (f) ensure that the IOG has access to the Telecom staff and information that the IOG may reasonably request; and
- (g) ensure, subject to clause 89, that every report prepared by Telecom or by the IOG under the separation undertakings is made available to the public at all reasonable times on Telecom's Internet website if the report relates to—
 - (i) a breach of the separation undertakings under clause 82(m)(i); or
 - (ii) codes of practice for Telecom personnel in relation to the separation undertakings; or
 - (iii) key performance indicators that relate to the separation undertakings; and
- (h) use its best endeavours to provide whatever other assistance the IOG may reasonably require in the performance of its functions.

Support office

84 Establishment of support office

The separation undertakings must ensure that Telecom must establish a support office that will assist the IOG in the performance of its functions (**support office**).

85 Employment of staff for support office

The separation undertakings must provide that Telecom must employ sufficient staff for the support office, and provide other resources as necessary, to—

- (a) enable the support office to operate at a level that meets the reasonable requirements of the IOG; and
- (b) ensure that the support office is able to operate with a sufficient level of independence from Telecom.

86 Funding and support for support office

The separation undertakings must provide that Telecom must fully fund the support office and use its best endeavours to provide whatever assistance the support office may reasonably require in the performance of its functions.

*Performance measures, audit, and other checks of
compliance with separation plan*

**87 Performance measures and other checks of compliance
with separation plan**

- (1) The separation undertakings must provide that Telecom must, in consultation with the IOG,—
 - (a) prepare key performance indicators related to compliance with the separation undertakings and progress towards compliance, and Telecom must have those indicators considered by the IOG:
 - (b) prepare codes of conduct for Telecom personnel (including contractors) and have those codes considered by the IOG.
- (2) The separation undertakings must provide that Telecom must—
 - (a) provide additional information to the IOG and the Commission to demonstrate compliance with the separation undertakings, as reasonably requested by the IOG or the Commission, including preparing reports or other information related to compliance that are reasonably requested by the IOG or the Commission:
 - (b) use its best endeavours to assist the IOG in conducting an annual review of Telecom's compliance with the separation undertakings.
- (3) The separation undertakings must provide that information referred to in subclause (2)(a) must be provided—
 - (a) in the manner and form required by the IOG and the Commission; and
 - (b) within the time frame that is specified by the IOG and the Commission.
- (4) This clause does not limit the Commission's responsibilities under the Act.

88 Audit

The separation undertakings must provide that—

- (a) Telecom must appoint, and pay for, an independent external audit of the IOG's annual report; and

- (b) the appointment of the auditor and the terms of appointment for the auditor must be approved by the Commission, and the terms of appointment must place the auditor under a duty of care to the Commission; and
- (c) Telecom must, subject to clause 89, make each report of the auditor available on an Internet website that is available to the public at all reasonable times.

89 Reports containing confidential or commercially sensitive information

The separation undertakings must ensure that Telecom or the IOG may remove from any report that is made available to the public under clause 83(g) or 88(c) or 82(n) any information that the IOG has agreed is confidential or commercially sensitive information that can be removed, provided that a full version of the report, including that information, is provided to the IOG, the Commission, and the Minister.

Part 7

Miscellaneous and transitional provisions

Carve-outs from arm's-length rules for shared groups and services

90 Rules for corporate centre participation in formulation of commercial policy, etc

- (1) The separation undertakings must set rules about how the persons referred to in Part 2 of Schedule 2 (the **corporate centre**) may participate in policy relating to any required Telecom business unit, provided those rules meet the following requirements:
 - (a) the corporate centre may participate in the policy of the ANS unit only by asking the TCNZ board or the chief executive of TCNZ to act in accordance with clause 15(3); and
 - (b) the corporate centre may participate in the policy of the wholesale unit only as follows:
 - (i) by giving information (including advice but not instruction) to the wholesale unit; or
 - (ii) by asking the TCNZ board or the chief executive of TCNZ to act in accordance with clause 15(3); and

- (c) the participation of the member of the corporate centre must be no more than is reasonable and necessary to enable that member to perform their role (as that role is specified in the separation undertakings); and
 - (d) the participation must be transparent to the IOG either as—
 - (i) a direction under clause 15(3) and transparency under clause 15(3) and (5); or
 - (ii) information (including advice) that is recorded in writing and that is made available to the IOG if the IOG requests it; and
 - (e) the participation may also be made through mechanisms and processes that are also available to all other service providers on an equal basis.
- (2) To avoid doubt, the corporate centre may not give direct advice or instruction to the ANS unit, but the ANS unit may seek information from the corporate centre to help it make its own decisions.
- (3) In this clause, **participate in policy** means to participate in the formulation or making of—
 - (a) annual or long-term corporate plans or technology plans; or
 - (b) other plans; or
 - (c) commercial policy.

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

- (1) The separation undertakings must set rules about how the persons referred to in Parts 2 and 3 of Schedule 2 may receive commercial information, provided those rules meet the following requirements and the requirements in subclause (3):
- (a) the ANS unit and the wholesale unit may disclose summaries of commercial information to 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 provided that—
 - (i) the summary contains no more information than is reasonable and necessary to enable that member to perform their role (as that role is specified in the separation undertakings); and

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- (ii) the summary is in a form that could not reasonably be expected to identify any customers of Telecom or other service providers; and
 - (b) any required Telecom business unit may disclose commercial information to the persons listed in Part 2 or Part 3 of Schedule 2 provided that—
 - (i) the person has a legitimate need for the information; and
 - (ii) the disclosure is no more than is reasonable and necessary to enable that person to perform their role (as that role is specified in the separation undertakings).
 - (2) The separation undertakings must set rules about how the persons referred to in Part 4 of Schedule 2 may receive customer confidential information, provided those rules meet the following requirements and the requirements in subclause (3):
 - (a) the ANS unit and the wholesale unit may disclose summaries of customer confidential information to 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 provided that—
 - (i) the summary contains no more information than is reasonable and necessary to enable that member to perform their role (as that role is specified in the separation undertakings); and
 - (ii) the summary is in a form that could not reasonably be expected to identify any customer of Telecom; and
 - (b) any required Telecom business unit may disclose customer confidential information to the persons listed in Part 4 of Schedule 2 provided that—
 - (i) the person has a legitimate need for the information; and
 - (ii) the disclosure is no more than is reasonable and necessary to enable that person to perform their role (as that role is specified in the separation undertakings).
 - (3) The rules under subclauses (1) and (2) must also provide that—

- (a) the person to whom any information is disclosed must be required to maintain, and aid in maintaining, the confidentiality of the information, and not to disclose the information except as permitted under the clauses that limit the disclosure of information or under this clause; and
- (b) the disclosure may also be made if the information is also available to all other service providers on an equal basis.

92 Amendments to shared group people and roles

- (1) The separation undertakings must contain a fuller description of the roles of the groups and persons referred to in Schedule 2.
- (2) The separation undertakings may provide that Telecom and the Commission may, by agreement, amend—
 - (a) the contents of the lists of the groups and persons referred to in Schedule 2; and
 - (b) the description of the roles of any of those groups or persons.
- (3) The separation undertakings must require Telecom, if amendments are made under subclause (2), to make the information as amended available on an Internet website that is available to the public at all reasonable times.

93 Certification by managers of shared groups and services that separation undertakings complied with

The managers of each of the persons referred to in Schedule 2 (excluding the TCNZ board and the chief executive of TCNZ) must certify to the TCNZ board annually that, to the best of their knowledge after making reasonable inquiry, they and the employees working for their groups have complied with the separation undertakings (except for any breaches that have been reported to the IOG and the Commission).

Miscellaneous provisions

94 Consultation with access seekers about which unit they prefer to deal with

- (1) The separation undertakings must require Telecom to consult with each access seeker about whether each access seeker

would prefer to deal only with the ANS unit or the wholesale unit in relation to all of the relevant services that the access seeker purchases from Telecom and, if so, which unit.

- (2) The separation undertakings must require Telecom, if a significant number of access seekers do so prefer, to implement arrangements so that—
 - (a) the ANS unit or the wholesale unit, as the case may be, can sell relevant services to access seekers on behalf of the other unit; and
 - (b) an access seeker can choose to deal with only 1 unit for purchases of all relevant services; and
 - (c) if an access seeker chooses to deal with only 1 unit, the access seeker experiences no disadvantage in terms of price, service, or quality as a result of that choice.

95 *Force majeure*

- (1) The separation undertakings may contain a *force majeure* provision.
- (2) If so, the provision must—
 - (a) describe the types of circumstances beyond Telecom's reasonable control that will constitute a *force majeure* event; and
 - (b) relieve Telecom of an obligation or obligations under the undertakings only to the extent that, and for so long as, Telecom is unable to perform the obligation as a result of the *force majeure* event; and
 - (c) require Telecom to notify the IOG and the Commission as soon as reasonably practicable after the *force majeure* event occurs.

96 **TCNZ and subsidiaries must establish arrangements to ensure compliance, etc**

The separation undertakings must provide that TCNZ and its subsidiaries must—

- (a) establish arrangements to ensure that each of those companies, and all of their officers, employees, agents, and contractors, comply with the separation undertakings, and with any documents or procedures that are required by, or necessary to give effect to, the separation undertakings; and

- (b) provide evidence to the IOG of the steps that they have taken to comply with paragraph (a).

97 Determination does not limit outsourcing

The separation undertakings may preserve Telecom's ability to contract with any other person for that other person to operate any of Telecom's assets or to perform any of Telecom's functions or to carry out any activities that would otherwise be carried out by Telecom, provided that—

- (a) the separation undertakings must ensure that the terms of the outsourcing subject the other person to the same obligations as would be imposed on an employee working for the business unit whose business is being outsourced; and
- (b) Telecom retains the ability to ensure that the way in which those assets are operated, functions are performed, or activities are carried out will not undermine a robust operational separation of Telecom.

Example

Telecom may outsource any of the functions referred to in clause 42 provided that it does so in a way that is consistent with the arm's-length rules.

98 Shared assets and systems

To avoid doubt, any required Telecom business unit may share assets and systems with any other Telecom business unit, provided that the terms on which those assets or systems are shared comply with the requirements of this determination and section 69D of the Act.

99 Conditions on use of shared services

The separation undertakings must ensure that, if Telecom decides that shared services are to carry out any work for a required Telecom business unit, Telecom must have arrangements in place to ensure that the terms on which shared services are used complies with the requirements of this determination and section 69D of the Act.

100 Advisors

The separation undertakings must require Telecom to ensure that its selection and appointment of advisers does not undermine a robust operational separation of Telecom.

101 Confidentiality requirements not limiting

The provisions of this determination about the disclosure of customer confidential information do not limit any additional confidentiality obligations that Telecom has under existing laws or commercial agreements.

102 Certification by TCNZ board, TCNZ CEO, and managers of required Telecom business units that separation undertakings complied with

- (1) The separation undertakings must require the TCNZ board to certify annually (by all directors signing on behalf of the company) that, to the best of their knowledge after making reasonable inquiry, TCNZ and all its subsidiaries have complied with the separation undertakings (except for any breaches that have been reported to the IOG and the Commission).
- (2) The separation undertakings must require Telecom to ensure that the following people certify annually to the TCNZ board that, to the best of their knowledge after making reasonable inquiry, they have complied with the separation undertakings (except for any breaches that have been reported to the IOG and the Commission):
 - (a) the chief executive of TCNZ;
 - (b) the managers of the ANS unit, the wholesale unit, the retail unit, and any Telecom fixed network unit.

103 Whistleblowing

The separation undertakings must require Telecom to establish a system—

- (a) to facilitate the disclosure and investigation of breaches of the separation undertakings in or by Telecom; and
- (b) to enable Telecom employees to report matters to the IOG, and to protect employees who do so.

*Transitional provisions***104 Statement of assets of ANS unit as at separation day**

- (1) The separation undertakings must provide for the preparation of a statement of the assets controlled by the ANS unit as at 1 July 2008.
- (2) The statement must—
 - (a) be prepared in accordance with generally accepted accounting practice; and
 - (b) be prepared in accordance with the same accounting policies as the accounts of TCNZ; and
 - (c) reconcile with the accounts of TCNZ.
- (3) Telecom must appoint, and pay for, an independent external audit of the statement of assets.
- (4) No later than 1 October 2008, Telecom must provide to the IOG, the Commission, and the Minister—
 - (a) copies of the statement of assets and the independent external auditor's report; and
 - (b) full information setting out the methodologies used to prepare the statement of assets, which must include descriptions of any models used, and all assumptions and estimates that are necessary to provide assurance as to the robustness of the calculations made in preparing the statement, including identifying the owner of the assets.
- (5) To avoid doubt, nothing in this clause affects Part 2B of the Act (which contains information disclosure requirements).

105 Inadvertent failure to comply with arm's-length rules before 31 December 2008

- (1) This clause applies during the period beginning on the separation day and ending with 31 December 2008.
- (2) The separation undertakings may provide that Telecom has a reasonable time, after being notified of any failure to comply with any of the arm's-length rules, to comply provided that—
 - (a) Telecom must have agreed with the Commission what a reasonable time would be in the circumstances of the case; and
 - (b) Telecom must take all reasonable steps during that period to try to achieve compliance; and
 - (c) the failure to comply was inadvertent.

Schedule 1 Implementation timeframes

cls 24, 26, 51, 56

Requirement for detailed migration plans

1 Detailed migration plans for transition to equivalence

The separation undertakings must include a detailed description of the way in which Telecom proposes that each relevant service will migrate to being supplied on the applicable standard of equivalence (**migration plans**).

2 What migration plans must contain

Without limiting clause 1 of this schedule, the migration plans must—

- (a) specify each relevant service, product, and platform, and describe—
 - (i) what is proposed; and
 - (ii) how it is proposed to be done; and
 - (iii) when it is proposed to be done; and
 - (iv) why it is proposed to be done; and
 - (v) why it is proposed to be done that way; and
 - (vi) if relevant, why a higher standard of equivalence cannot be achieved earlier; and
 - (vii) any practical issues that relate to the above; and
- (b) provide a fuller description of the requirements in clause 8 of this schedule, and as to the practicalities referred to in that clause; and
- (c) include interim enforceable migration milestones, which milestones must not be at intervals of more than 12 months apart; and
- (d) include tracking migration milestones, which milestones must not be at intervals of more than 6 months apart; and
- (e) require Telecom to report quarterly to the Commission and the IOG on its progress in meeting those migration milestones.

3 What migration plans must apply to

Without limiting clause 1 of this schedule, the separation undertakings must contain a separate migration plan for each of the following:

- (a) each relevant service that is being migrated to EOI under clause 24; and
- (b) each legacy service that is being migrated under clause 26; and
- (c) each relevant service that is being migrated to the applicable standard of equivalence under clause 51; and
- (d) each resale service that is being migrated to resale equivalence under clause 52; and
- (e) each other service that this determination requires to be supplied on a standard of equivalence.

*Principles***4 What separation undertakings and migration plans must achieve**

The separation undertakings and each migration plan must comply with the principles in clauses 5 to 11 of this schedule.

5 Telecom must comply with timeframes and standards specified by relevant Commission determinations, Act, etc

To avoid doubt, the migration plans—

- (a) must be compliant with all requirements (whether as to access principles, quality, timing, or otherwise) that are required under the Act, under any Commission determination, or under any other requirement; and
- (b) may not reduce or defer any of those requirements; and
- (c) must require Telecom to implement the following services in the timeframes, and to the standards, specified by the Commission:
 - (i) unbundled copper local loop network;
 - (ii) unbundled copper local loop co-location;
 - (iii) unbundled copper local loop network backhaul;
 - (iv) unbundled bitstream access;
 - (v) unbundled bitstream access backhaul.

6 Telecom must achieve highest level of equivalence as soon as practicable

- (1) Telecom must, at all times, supply each relevant service that it is required to provide to an access seeker on the highest level of equivalence that is reasonably practicable in the circumstances.
- (2) Clauses 7 to 11 of this schedule set other minimum requirements, which do not limit this clause.
- (3) The separation undertakings must also contain the requirement in subclause (1) (so that if, for example, circumstances change so that a migration plan becomes out-of-date because Telecom can supply a service on a higher level of equivalence, the separation undertakings will require supply on that higher level, despite the migration plan).

7 Self-consumption and supply on same terms and conditions including price

The separation undertakings must provide that, on the date on which Telecom is required to provide access to a service under Part 2 of the Act, a Telecom registered undertaking, or any other law, or within the shortest reasonable time that is specified in the separation undertakings after that date, Telecom must implement that part of EOI that is required by clause 9(1)(a)(i) (self consumption) and (ii) (supply on the same terms and conditions including price) in relation to that service.

8 Milestones that must be achieved by 31 December 2009

On and after 31 December 2009, Telecom must ensure that—

- (a) access seekers and Telecom itself are able to use the same business-to-business gateways in the same way for ordering, provisioning, and fault management of the services referred to in clause 5 of this schedule:
- (b) access seekers and Telecom itself receive the same service level reporting in relation to those services:
- (c) a courtesy interface is available that meets the needs of those access seekers who do not require or are not capable of using the full business-to-business gateway capability.

9 Full equivalence requirements apply from 31 December 2011

On and after 31 December 2011, Telecom must ensure that all relevant services are provided on a fully EOI compliant basis, except to the extent that any migration plan in respect of legacy services or resale services otherwise provides.

10 Migration plans for dates beyond 2011

The migration plans required under this Schedule may contain dates beyond 2011 in respect of the migration of legacy services, but not for the migration of any other services.

11 Telecom must meet migration milestones for legacy services

On and after each milestone date in a migration plan for a legacy service, Telecom must comply with clause 26.

Schedule 2 cls 11, 90, 91, 92, 93
Shared groups and services

The contents of this Schedule may be revised from time to time in accordance with clause 92.

Part 1
Shared services

Shared Services (being the following units that supply operational and support services to more than one part of Telecom, without influencing the commercial policy of the ANS unit or the wholesale unit):

Shared Capability (the provision of skilled technology practitioners to business as usual and change programmes by in-house staff, occasional direct contractors, and talent from Telecom's partners and suppliers):

Shared Services and Finance (supply, property, information resources, provisioning, billing, credit and risk management, and finance and performance management):

Technology Operations (IS operations, field services, service delivery, technology services, sales and operations planning, operations strategy, network operations, portfolio management, operational risk services, and service co-ordination):

Programme Delivery (co-ordinated delivery of work programmes).

Part 2
Corporate centre

Any member of the TCNZ board

Any member of a committee of the TCNZ board

Chief executive of TCNZ

The following members of the Executive Committee (being generally direct reports to the Chief Executive):

- (a) if the commercial information and policy is that of the ANS unit, any member of the Executive Committee who is not managing the wholesale unit, the retail unit, or a Telecom fixed network business unit:

Part 2—*continued*

- (b) if the commercial information and policy is that of the wholesale unit, any member of the Executive Committee who is not managing the ANS unit or a retail unit:
- (c) if the commercial information and policy is that of the retail unit, any member of the Executive Committee who is not managing the ANS unit or any other Telecom fixed network business unit:
- (d) if the commercial information and policy is that of a Telecom fixed network business unit, any member of the Executive Committee who is not managing the retail unit

Group Technology (being the group within Telecom that provides technology strategy and recommendations to Telecom's executive and the TCNZ board, and ensures that Telecom's technology activities are coordinated and integrated into a single, well aligned, end-to-end process by applying an integrated technology view)

Group Strategy & Development (being the group within Telecom that provides strategic recommendations to Telecom's executive and the TCNZ board in relation to strategic decisions and progress that impact the Telecom group)

Group Finance

Group Legal Services

Group Regulatory

And in all cases their—

- (a) relevant external advisers, sub-contractors, and agents; and
- (b) successor bodies, roles, and functional areas from time to time.

Part 3

Shared groups and persons who can receive commercial information in accordance with this determination

Any member of the IOG, the IOG secretary, the IOG support office, and any member of a committee established by the IOG support office

Group Company Secretary

General Manager, Public Affairs

Part 3—*continued*

Group Risk and Audit (being the group within Telecom that provides recommendations to Telecom's executive and the TCNZ board in to relation risk, audit, and general compliance activities that impact the Telecom group)

Crisis Management teams

External Auditors

Human Resources

Public Affairs

Shared services

Group Company Secretary's Office

The project office personnel involved in implementing the separation undertakings

And in all cases their—

- (a) relevant external advisers, sub-contractors, and agents; and
- (b) successor bodies, roles, and functional areas from time to time.

Part 4

Shared groups and persons who can receive customer confidential information in accordance with this determination

Any member of the TCNZ Board

Any member of a committee of the TCNZ Board

Chief executive of TCNZ

The following members of the Executive Committee (being generally direct reports to the Chief Executive):

- (a) if the customer confidential information is that of the ANS unit, any member of the Executive Committee who is not managing the wholesale unit, the retail unit, or a Telecom fixed network business unit:
- (b) if the customer confidential information is that of the whole-sale unit, any member of the Executive Committee who is not managing the ANS unit or a retail unit:

Part 4—*continued*

- (c) if the customer confidential information is that of the retail unit, any member of the Executive Committee who is not managing the ANS unit or any other Telecom fixed network business unit:
- (d) if the customer confidential information is that of a Telecom fixed network business unit, any member of the Executive Committee who is not managing the retail unit

Group Company Secretary

General Manager, Public Affairs

Group Risk and Audit (being the group within Telecom that provides recommendations to Telecom's executive and the TCNZ board in to relation risk, audit, and general compliance activities that impact the Telecom group)

Group Finance

Crisis Management teams

Group Legal Services

Group Regulatory

Any member of the IOG, the IOG secretary, the IOG support office, and any member of a committee established by the IOG support office

External Auditors

Public Affairs

Shared services

Group Company Secretary's Office

And in all cases their—

- (a) relevant external advisers, sub-contractors, and agents; and
 - (b) successor bodies, roles, and functional areas from time to time.
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Schedule 3

Tier sites

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The Tier 1, Tier 2, and Tier 3 sites referred to in the determination are those Telecom sites that are identified as Tier 1, Tier 2, or Tier 3 in the following tables, using Telecom's classification nomenclature. Tier 0 sites are not relevant, and are not included in these tables.

The contents of this schedule may be updated to reflect changes in Telecom's network from time to time, provided that any such changes are consistent with Telecom's then current network architecture classification rules and those changes are agreed by Telecom and the Commission in writing.

Table 1

Tier 1 and Tier 2 sites

Region	Tier 1	Tier 2	
Auckland Region		KC WR	Kerikeri Whangarei
	AK		Mayoral Drive
		TBY	Torbay
	GLF		Glenfield
		HSN	Henderson
		MAB	Mt Albert
		RUE	Remuera
		HCK	Howick
		POP	Papatoetoe
	PAK		Papakura
	HN		Hamilton
	TG		Tauranga
		RO	Rotorua
	Wellington Region		NU
		NA	Napier
		PM	Palmerston North
LVN			Levin
WN			Wellington
		PRO	Porirua
		NAE	Naenae
South Region		NN	Nelson
		GM	Greymouth
	CH		Christchurch
	RIC		Riccarton

Region	Tier 1	Tier 2
		TU Timaru
		DN Dunedin
		IN Invercargill
		CMW Cromwell

Table 2

Tier 3 sites

Tier 3

Kaitaia (KTA)
 Dargaville (DRL)
 Wellsford (WFD)
 Te Kauwhata (TUW)
 Thames (TH)
 Coromandel (CL)
 Claudelands (CLE)
 Whakatane (WHK)
 Mount Maunganui (MMN)
 Taupo (TPO)
 Te Kuiti (TKT)
 Taumarunui (TMN)
 Turangi (TGI)
 Taihape (TPE)
 Hawera (HW)
 Wanganui (WG)
 Ohakune (OKN)
 Tokomaru Bay (TKY)
 Gisborne (GS)
 Wairoa (WA)
 Pahiatua (PHA)
 Waipukurau (WY)
 Dannevirke (DV)
 Masterton (MS)
 Wellington South (WTH)
 Paraparaumu (PRM)
 Upper Hutt (UP)
 Hastings (HBN)
 Blenheim (BM)
 Takaka (TAK)
 Westport (WP)
 Ross (RS)
 Franz Josef Glacier (FJG)
 St Arnaud (SA)
 Kaikoura (KK)
 Waipara (WPR)
 Springfield (SPF)

Tier 3

Hamner Springs (HP)
Akaroa (AO)
Ashburton (AR)
Fairlie (FK)
Twizel (TWL)
Oamaru (OU)
Kurow (KOW)
Ranfurly (RNF)
South Dunedin (SOD)
Queenstown (QST)
Wanaka (WNK)
Roxburgh (RXB)
Gore (GG)
Te Anau (TNU)
Balcutha (BL)
Lumsden (LMS)
Tuatapere (TTE)
Halfmoon Bay (HMB)

Dated at this day of 2007.

Minister of Communications.

Explanatory memorandum

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

This determination determines requirements with which Telecom's separation plan must comply, that are additional to those set out in Part 2A of the Telecommunications Act 2001.

Section 69D of that Act provides that Telecom's separation plan must require a robust operational separation of Telecom. Some of the undertakings required by that section are—

- Telecom must establish and maintain a fixed network access service business unit, 1 or more business units which must provide a wholesale function for all relevant services, and 1 or more business units that provide 1 or more other functions (for example, retail); and

- Telecom must operate its fixed network access service business unit on a stand alone basis, at arm's-length from any other Telecom business unit; and
- Telecom must operate its wholesale business unit or units at arm's-length from any business unit that provides retail functions; and
- Telecom must operate any business unit that provides retail functions at arm's-length from any of Telecom's fixed network business units (whether access service units or other fixed network units).

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Date of notification in *Gazette*:

This determination is administered by the Ministry of Economic Development.
