

Telecommunications Carriers' Forum

**Report of the
Joint NAD TCF Working Party
on the Administration of the Numbering
Regime in New Zealand**

14 July 2008

Issued for Public Consultation

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A. INTRODUCTION

1. The NAD and TCF have agreed to undertake a joint initiative, to review who should be responsible for managing the numbering plan, and how it should be managed.
2. The key issues to be addressed are:
 - a) differential membership between the NAD and the TCF;
 - b) differential voting structure between the NAD and the TCF;
 - c) quasi judicial function exercised by the NAD Chair;
 - d) whether there are efficiencies to be gained from a change in governance/housing; and
 - e) not creating inappropriate barriers to entry.
3. The objectives of this review are to:
 - a) develop and assess different options, having regard to the key issues outlined above; and
 - b) consider appropriate forms of regulatory oversight.
4. In considering these options, the TCF NAD Working Party considered the following principles:
 - a) best practice governance and management of a national resource;
 - b) efficiency and effectiveness including reflecting least cost to industry (cost minimisation, cost certainty);
 - c) public confidence;
 - d) facilitate new entrants; and
 - e) transparency.

B. CONSULTATION PROCESS

5. The TCF has prepared this report and is now issuing it for consultation to TCF Members, NAD Management Committee members, the Ministry of Economic Development and the Commerce Commission.
6. You are invited to examine the report and provide your feedback. If you wish to make a submission, please note that the closing date is **5.00 pm, Friday 15 August 2008**. Please send your submission to susan.wells@tcf.org.nz.
7. The final report is due to be completed on 30 September.
8. For further information, please contact Ralph Chivers, TCF Chief Executive on (021) 576 424.

C. HISTORY AND BACKGROUND

Number Administration Deed and the TCF

9. The Number Administration Deed (NAD) is an industry-based mechanism which was established in December 1998 to provide centralised and independent administration of New Zealand's telecommunication numbering resources.¹
10. Number portability was originally a key function of the NAD, however the TCF and NAD agreed in 2003 that this function should be transferred to the TCF, as it had a better governance and project management structure to oversee the design of the technical and operations requirements and the subsequent implementation. The transfer of number portability to the TCF left the NAD with the core number administration tasks.
11. In 2004 the NAD considered whether the remaining functions of the NAD should come under the governance of the TCF. The NAD prepared a number of papers considering the pro's and cons of this initiative and identifying issues which would need to be resolved. The matter was not progressed beyond this point until 2008, when the TCF instigated a project to form a joint working party with the NAD, to review who should be responsible for managing the numbering plan, and how it should be managed.

Commerce Commission Study

12. The Commerce Commission has recently issued the terms of reference for a study into telecommunications numbering, to identify international best practice models for number management and the potential application of those principles in New Zealand. The Commission's study is being undertaken with the assistance of the NAD. The Commission expects to deliver the final report of the numbering management study in September 2008.

D. DESCRIPTION OF NAD FUNCTIONS AND GOVERNANCE STRUCTURE

Management Committee and Membership

13. The NAD is governed by a Management Committee which has a single representative from each of the parties to the Deed. The Management Committee meets 3 to 4 times a year.
14. The Management Committee determines the annual work programme and manages the NAD's finances.
15. Each party to the NAD has a single vote, with recent changes providing for a super-majority of 75% (rather than unanimity) for changes to the numbering plan and number allocation rules, the appointment of the Number Administrator and the duties of the Independent Chair. Unanimity is required for the appointment of the Independent Chair, dispute resolution of a decision of the Number Administrator and, when required, the arbitration model to be used.
16. Membership of the NAD is set at \$10,000 per annum for each member plus \$500 for each new number block allocation.

¹ For more information see www.nad.org.nz

Independent Chair

17. The Management Committee is supported by an Independent Chairman, who is appointed by the Management Committee. In addition to the usual functions of a Chair the Independent Chair:
 - a) has a quasi-judicial function on matters of compliance; and
 - b) oversees the work of the Numbering Administrator.

Sub-Committees

18. The main operative committee of the NAD is the Numbering Sub-committee, which undertakes the majority of the NAD's work programme, supported by the Number Administrator.
19. The Numbering Sub-committee prepares recommendations (e.g. changes to allocations and allocation rules) for approval by the Management Committee.
20. A number of ad-hoc subcommittees are formed from time-to-time to investigate and progress specific matters.

Number Administrator

21. The Number Administrator:
 - a) provides secretariat services for the Management Committee and sub-committees;
 - b) allocates numbers according to the numbering rules, including processing any objections;
 - c) monitors and researches international trends;
 - d) develops recommendations for new rules and proposals for rule changes working with the Numbering Subcommittee; and
 - e) co-ordinates activity between carriers relating to the implementation of allocation changes.

Comparison with TCF Governance

22. There are strong similarities between the governance arrangements for the NAD and the TCF:
 - a) The NAD Management Committee has a similar function to the TCF Board;
 - b) Both bodies have an Independent Chair, although the NAD Independent Chair has judicial functions which the TCF Chair does not;
 - c) The Numbering Sub-committee resembles a TCF Working Party, although without the guidance of the detailed rules that exist in TCF handbook;
 - d) The Number Administrator and TCF Forum Administrator perform comparable roles, although the Number Administrator has decision rights over the allocation of number blocks - no comparable function sits within the TCF; and
 - e) The Number Administrator performs a similar operational co-ordination function to the TCF's Number Portability Co-ordinator.

23. The TCF has dedicated full-time professional management, and as a result of scale, has access to a wider range of operational staff through its outsourcing agreement with Organisers New Zealand.

E. OPTIONS FOR MANAGING NAD FUNCTIONS UNDER THE TCF

24. The Working Party considered four options for the future management of the functions of the NAD:

- Option 1* “*Amalgamation*” - full amalgamation of NAD into the TCF;
- Option 2* “*Siamese Twins*” - partial amalgamation of some NAD and TCF functions;
- Option 3* “*Just Friends*” - formalised but arms-length relationship between NAD and the TCF; and
- Option 4* “*Free Trade*” - informal relationship between NAD and the TCF, with TCF practices “exported” to the NAD.

Amalgamation

25. Under this option, the functions of the NAD would be integrated as much as possible into the TCF. At a high-level:
- a) The TCF Board would assume many of the functions of the NAD Management Committee;
 - b) The judicial functions of the NAD Independent Chair would be separated out and possibly re-established in a similar fashion to the Number Portability oversight;
 - c) The Numbering Sub-Committee would be re-established as a permanent Numbering Working Party of the TCF;
 - d) Ad-hoc numbering projects would be treated in the same way as ad-hoc TCF Working Parties, or possibly as sub-working groups of the Numbering Working Party;
 - e) A Numbering Code would be developed that incorporated all relevant material from the NAD Deed; and
 - f) The core Number Administrator function would continue largely unchanged, except for a change to oversight and the implementation of relevant TCF working practices.
26. The major challenges in this model are preserving the one-party-one vote (1P1V) principle and accommodating differential membership.

Siamese Twins

27. Under this option, management and administration is amalgamated as far as possible, with higher level governance separated, primarily to reflect the 1P1V principle. Three sub-options were considered:
- a) Separate Boards for NAD and TCF with shared management and administration.
 - b) A single board with shared management and administration, following two sets of rules depending on the activities being considered.
 - c) An integrated but more generalist Board overseeing TCF and Numbering working parties that have a higher degree of autonomy.

28. The Working Party considered that none of these sub-options represented a material benefit over and above the Amalgamation option and this option was eventually discarded.

Just Friends

29. Under this option, formal but more arms length connections would be established, in a similar fashion to the Telecommunications Dispute Resolution Service which has its own membership and governance but remains formally (if somewhat distantly) connected to the TCF.
30. The Working Party considered that this option was legally and administratively complex for what it would achieve, and was potentially retrograde in terms of efficiency. Consequently it was eventually discarded from consideration.

Free Trade

31. Under this option the NAD would “import” TCF-like working practices but otherwise operate independently. The NAD and TCF would establish formal co-ordination mechanisms that explicitly gave each other mutual recognition and allowed specific activities to be joined/amalgamated as made sense, e.g. in respect of number portability.
32. Sharing of management and administration functions would be considered on an *ad hoc* basis.
33. This option is not the status quo, rather it represents the best possible improvements within the existing NAD structure.

F. REGULATORY OVERSIGHT

34. The NAD operates under the “blessing” of a Commerce Commission authorisation, granted under s27 of the Commerce Act. This authorisation attests to the public benefits of the NAD outweighing any potential detriments to competition. The authorisation is open to review and revocation by the Commerce Commission at any point in time. This review power aside, there is no direct regulatory oversight of the NAD’s activities.
35. Compliance and dispute resolution are currently managed under the processes established by the NAD Deed, with a defined role for the NAD Independent Chair.
36. Industry self-regulation of numbering, as happens in New Zealand under the NAD, is unusual by comparison to international practice. Recognising this, the Working Party considered a range of regulatory models and their potential applicability to numbering in New Zealand:
 - Option A* Fully Self-Regulated;
 - Option B* Self-regulated with external oversight;
 - Option C* Co-regulation; and
 - Option D* Fully regulated.

Fully Self-Regulated

37. Under this option:
 - a) Activity is undertaken, managed and approved by the industry;
 - b) Enforcement/compliance is undertaken by the industry (through an independent agent) backed up by dispute resolution; and
 - c) Examples include the current NAD arrangements and TCF non-regulated codes.

Self-regulated with external oversight

38. This option is similar to the Fully Self Regulated option, but with the monitoring/enforcement/compliance role sitting with a regulatory agency such as the Commerce Commission.

Co-regulation

39. This option extends Self Regulated option to give the regulator formal review and approval powers over the fundamentals.
40. This would be similar to regulated codes under the Telecommunications Act and the TCF’s more informal role in contributing to Standard Terms Determination processes.

Fully regulated

41. Under this option:
 - a) All regulatory activity would be undertaken by the regulator;
 - b) The industry would have a role in providing technical and market advice, but it would have no decision making rights; and
 - c) There would be some form of independent appeal.
42. Under the Amalgamation option, there is an opportunity to integrate the oversight currently provided by the NAD Chair with other TCF self-regulatory oversight, or alternatively to vest that function in the Commerce Commission (regulatory oversight option b). The relative balance between these options depends on the robustness and strength of the TCF self-regulatory framework as compared to the potential benefits of oversight from a fully independent and well-equipped regulator.
43. The Working Party notes that the TCF is actively considering the approach for monitoring and compliance of self-regulatory activity as part of its strategic review.
44. The Working Party considers that the self-regulatory model should be preserved as far as possible. However, in considering matters of oversight, the Working Party considers that “outsourcing” oversight to the Commerce Commission should be considered.

G. ASSESSMENT OF OPTIONS AGAINST ISSUES AND PRINCIPLES

45. For the purposes of assessment, the Working Party focussed on the “Amalgamation” option using the “Free Trade” option as the comparator when relevant.

Issues

Differential membership between the NAD and the TCF

46. While the membership of the NAD and TCF differ, the membership each have in common is greater than the differences.
47. The Working Party considered that the issue of differential membership could be easily managed by permitting non-TCF members to join the Numbering Working Party (much as non-TCF parties often do now), and become signatories to the Numbering Code.
48. Financial contributions for Numbering Working Party members would need to be partitioned in much the same way as Number Portability is currently partitioned.

Differential voting structure between the NAD and the TCF

49. Parties to the NAD consider that the 1P1V principle must be preserved on core matters relating to numbering principles and numbering allocation. Under the NAD, equal voting rights come with an equal responsibility to meet the costs of the NAD.
50. The WP considers that 1P1V encourages participation, and any change to a more TCF-like representation structure risked disadvantaging and disenfranchising smaller NAD parties compared to the status quo.
51. 1P1V is inconsistent with the TCF voting structure at the Board level, but is consistent with the operation of TCF Working Parties. The Working Party did not consider that changing the TCF voting structure was likely to be practical, in part because it would require a rebalancing of financial contributions.
52. The Working Party considered that, under the Amalgamation option, a pragmatic compromise was to:
- a) Vest high-level governance functions (key appointments, finances) with the TCF Board; and
 - b) Preserve 1P1V on key decisions by empowering the Numbering Working party to make decisions on numbering allocations, with the TCF Board having no power to amend or over-rule such decisions.
53. The Working Party acknowledges that vesting financial management in the TCF Board is a necessary consequence of the Board’s fiduciary responsibilities. However, issues relating to the allocation of costs may possibly be more appropriately dealt with by the Numbering Working Party.

Quasi judicial function exercised by the NAD Chair

54. The Working Party considers that there is merit in the Numbering Working Party being chaired by an independent person, but that the oversight functions should be separated from the Chair and either amalgamated with other TCF oversight functions or “outsourced” to the Commerce Commission as discussed above.
55. The Independent Chair could be either an external party, as is the case at present, or the TCF CEO. Utilising the TCF CEO would preserve a degree of independence, be consistent with the CEO’s oversight of the Number Administrator, and achieve a small efficiency gain.

Whether there are efficiencies to be gained from a change in governance/housing

56. One of the arguments often advanced in favour of Amalgamation is the belief that there are significant efficiencies to be gained.
57. The Working Party has analysed the NAD governance and administration arrangements and does not consider that there are significant efficiencies to be realised. While consolidation of functions between the TCF and NAD is expected to give rise to some efficiencies, they are modest, and certainly not a determinative factor on their own.
58. When compared to the “Free Trade” option, which involves reforming the NAD “in situ”, there may be no material advantages in Amalgamation from an efficiency perspective.

Not creating inappropriate barriers to entry

59. Requiring all existing and prospective NAD parties to become TCF members could potentially impose unwelcome costs and obligations on some parties. On the other hand, an integrated industry self-regulatory body may be in a better position to facilitate new entry, in part by removing the cost and inconvenience of having to interface with two organisations, and in part by realising synergies across activities.
60. There is not a lot in the argument either way: neither arrangement creates an inappropriate barrier, with each having small positives and negatives relative to the other.
61. The Working Party considers that under Amalgamation, membership of the Numbering Working Party, and being a signatory to the Numbering Code, should be mandatory requirements for any party seeking an allocation of numbers, but membership of the wider TCF should remain voluntary.

Principles

Best practice governance and management of a national resource

62. The Working Party does not consider that the NAD’s governance and management structure is fundamentally flawed. Indeed, there were no obvious high-level problems identified by Working Party members, or those we consulted with.
63. There is obvious intuitive appeal to managing all numbering issues under a consistent governance framework, but that aside, there are no issues of high-

level organisational design that distinguish the TCF from the NAD. Indeed the two organisational forms are very similar at a high-level.

64. The question of regulatory oversight is germane to the assessment of whether either model is indeed “best practice” for a national resource. The Working Party is of the view that self-regulation in this area, despite being unusual internationally, remains viable.

Efficiency and effectiveness

65. As discussed above, Amalgamation presents the opportunity to realise some efficiencies, but they are not significant, nor determinative of direction.
66. On the other hand, there is a clear distinction between the effectiveness of the TCF and the effectiveness of the NAD, this being partly a function of the levels and type of resourcing and partly a function of constitutional infrastructure. While the NAD has made a number of improvements in recent times, it has struggled to make timely progress on critical issues, and lacks the infrastructure, resources and focus to turn this situation around.
67. In the Working Party’s view, this issue *is* determinative of the way forward. There are significant gains to be made in effectiveness of numbering self-regulation that would be better realised under the TCF with its professional management team, robust rules and strong track record of delivery.

Public confidence

68. There is currently a significant gap between the perceived credibility of the TCF and the NAD in the minds of the industry’s key stakeholders, with the TCF currently enjoying strong support. By contrast, the NAD has a lot of historical issues that it has struggled to overcome, notwithstanding recent improvements.
69. While confidence in organisations is subject to variation, the current strength of credibility of the TCF is a factor to be considered.

Facilitate new entrants

70. As discussed above, the Working Party does not consider that there are significant advantages to new entry with Amalgamation, and neither are their material disadvantages providing joining the wider TCF remains optional.

Transparency

71. Some of the NAD’s historical issues have been a result of the strict confidentiality provisions that used to apply. This has now largely been remedied.
72. The TCF operates on a very open basis, only applying confidentiality restrictions when absolutely necessary.
73. While transparency considerations favour Amalgamation, the issue is not determinative.

H. DRAFT RECOMMENDATIONS

74. The Working Party has reached a preliminary view that the functions of the NAD should be transferred to the TCF along the lines of the Amalgamation option discussed in this paper.
75. While a number of the issues and principles analysed do not strongly point one way or the other, none count against Amalgamation and some considerations are clearly in Amalgamation's favour.
76. The Working Party's preliminary view is that the Amalgamation should have the following features:
- a) A permanent Numbering Working Party (NWP) should be established with an Independent Chair (possibly the TCF CEO). The NWP's scope should be designed to assume most of the responsibilities of the current NAD Management Committee and Numbering Sub-Committee - effectively collapsing these two bodies into one;
 - b) The TCF Board should have high-level governance functions only:
 - Appointment of NWP Independent Chair;
 - Appointment of Number Administrator;
 - Financial oversight;² and
 - No ability to over-ride substantive NWP decisions (eg Numbering Code, numbering allocations);
 - c) A Numbering Code should be developed that includes all relevant material from the current NAD Deed. Number Allocation Rules would become an appendix to the Numbering Code. NWP members would be required to be signatories to that Code;
 - d) NWP membership should permit non-TCF members to join. The NWP would operate on the 1P1V principle. Funding and membership fees would be compartmentalised to reflect 1P1V for this sphere of activity;
 - e) The NA's function in terms managing the numbering plan, allocations and rules will be largely unchanged. The NA would be appointed by the TCF Board. The NA would be accountable to the TCF CEO with activities and work programme largely determined by the NWP;
 - f) The administrative functions of the NA, such as managing the finances, budgeting and management reporting and maintaining the website would be undertaken as part of the Forum Administrators role;
 - g) TCF working practices should be adopted with any necessary modifications; and
 - h) Enforcement, monitoring, compliance and dispute resolution is either amalgamated with other like TCF activity or vested in the Commerce Commission.

² The question of whether financial oversight of the Numbering Working Party includes an ability to vary the structure of contributions is still under consideration.

I. IMPLEMENTATION ISSUES

77. The Working Party has identified the following key issues that will need to be addressed if Amalgamation proceeds:
- a) All parties to the NAD will have to agree to the change taking place;
 - b) The TCF constitution and rules will need to be amended to put the appropriate arrangements in place. Unanimous agreement of TCF members will be required to achieve this. Numbering related fees and membership will need to be established;
 - c) Transitional arrangements, possibly by means of a Memorandum of Understanding, will need to be put in place;
 - d) Resolution of ownership issues relating to the numbering plan and number allocation;
 - e) The TCF will need to secure the delegation from MED for managing number allocations for NZ;
 - f) The Terms of Reference and working model for the NWP will need to be developed;
 - g) Appropriate elements of NAD Deed will need to be re-engineered into the Numbering Code;
 - h) NAD working practices will need to be aligned to TCF practices with appropriate modification;
 - i) Consideration will need to be given to the status of, and ongoing need for, a Commerce Commission authorisation;
 - j) The basis for the Commerce Commission's role (if any) will need to be determined. There is currently no statutory provision for the possible role contemplated for them in this report; and
 - k) Role descriptions for the NAD Chair (whether an independent or the TCF CEO) and Number Administrator will need to be aligned to the new arrangements.