

s 9(2)(a)

From: s 9(2)(a)
Sent: Tuesday, 3 March 2020 5:45 PM
To: Carolyn Tremain
Cc: s 9(2)(a); Len Starling; Crown Spectrum
Subject: Wellington International Airport Limited - Managed Spectrum Park - Ineligibility to hold licenses
Categories: Green Category

Dear Ms Tremain,

Thank you for your letter of 27th February 2020 sent on your behalf by Len Starling in response to my complaint regarding the breach of the association rules by Wellington International Airport Limited with respect to the Managed Spectrum Park.

1. On 02-December-2019 MBIE published a notice that had received an application for Managed Spectrum Park Licenses from Wellington International Airport Limited (WIAL). In accordance with the published managed spectrum park processes the publication of this notice meant that you as chief executive (or someone operating under your delegated authority) had determined that WIAL was an eligible applicant
2. Also 02-December-2019 I emailed you stating that in my opinion that WIAL was ineligible to hold managed spectrum park licenses due to an association with Vodafone New Zealand. I determined this simply by checking the companies register. I also in this email made an urgent official information act request for all documents relating to the WIAL application.
3. On 04-December-2019 my OIA act request was acknowledged. The request for urgency was not addressed in this response. Indeed it was noted by MBIE that the response did not need to be provided under the 20 working day requirement until late January due to there being no legal working days between 25 December 2019 and 15 January 2020.
4. On 04-December-2019 I emailed you requesting that the information be supplied on an urgent basis as I considered that it was likely that a false statutory declaration had been provided to MBIE by WIAL. I also noted that it was likely that MBIE would issue licenses to WIAL prior to responding to my OIA request. You did not respond to this email.
5. On 21-January-2020 the information that was urgently requested on 02-December-19 under the OIA was provided.
6. On 29-January-2020 the register of radio frequencies shows that the MSP licenses that WIAL had applied for were granted by MBIE. Having reviewed the managed spectrum park rules this in itself is highly irregular for two reasons these being:
 - a The notification period for MSP licenses is 30 working days. This would imply that the last day for any counter application (the end of the notification period) to be submitted was Tuesday 4th February 2020 given that MBIE does not consider any day between 25th December 2019 and 15th January 2020 to be a working day; &
 - b I had advised MBIE on 02-December-19 that WIAL appeared to be an ineligible applicant.
7. On 30-January-20 following a review of the WIAL application provided under the OIA I laid a formal complaint with MBIE regarding the ineligibility of WIAL to hold Managed Spectrum Park licenses.

8. On 27-February-20 I received a response to this complaint from Mr Starling that in essence stated that WIAL was an ineligible applicant by virtue of an association with Vodafone but as the licenses had already been issued to WIAL, prior to my formal complaint they would not be cancelled.

9. This appears to be a fairly audacious position given that I advised MBIE on 02-December-19 (the date that the applications were notified) that WIAL appeared by be an ineligible applicant.

10. That being said the fact that instruments have been issued to WIAL does not preclude MBIE cancelling these licenses. It's noted that cancellation authority for the 8 licenses in question is held solely by the manager not the rightholder. The manager of the managed spectrum park (management right 258) is the crown acting by and through the chief executive of the Ministry of Business Innovation and Employment.

11. The licenses therefore may be cancelled under section 57A of the radio communications act by the manager being the crown acting by and through the chief executive of the Ministry of Business Innovation and Employment without any reference to the rightholder (WIAL).

12. Furthermore given WIAL is currently in breach of the requirements of section 4.3 of the Managed Spectrum Park license agreement and has been since entering into the contract. Additionally the licenses were obtained based on a statutory declaration that is apparently false.

Given these circumstances its hard to imagine any sustainable cause of action that WIAL would have against the crown if such a cancellation were to occur.

13. I would appreciate if you could respond personally to this email as soon as possible. My intention is to make a complaint to the office of the ombudsman regarding the MBIE response to this issue if I don't hear from you by the end of the week. I'll be requesting that the Ombudsman makes a recommendation that MBIE cancels these licenses under section 57A of the act for the reasons outlined above.

Many thanks.

Regards,

s 9(2)(a)

RELEASED UNDER THE OFFICIAL INFORMATION ACT 1982