



Internet New Zealand (Inc)

Submission to the Commerce Commission on Draft
Notification of Information Disclosure Requirements

7 November 2008

Public Version

(There is no confidential version)

1 Summary

InternetNZ:

- strongly endorses the proposed Disclosure Requirements, which reflect considerable and careful Commission work, to the benefit of the economy and end-users;
- proposes an annual review of the regime for at least the first two years;
- submits that the Commission should commence a workstream as to disclosure on non-price issues and specific matters such as imputation tests for price squeeze;
- suggests that less information should be treated as confidential (and the Independent Oversight Group should get the information anyway).

2 Support for Disclosure Requirements

InternetNZ strongly endorses the Commission's proposed Disclosure Requirements. They reflect considerable and careful work by the Commission, which will be particularly important in providing benefits for the economy and end-users. Information disclosure is an essential adjunct to operational separation and other aspects of the telecommunications sector (not just the Telecommunications Act).

3 Annual review

Appropriate disclosure will evolve over time, reflecting both technology and commercial change, and also the need to develop the regime based on experience. While the Commission can review the approach at any time, we suggest that, for the first three years, provision for an annual review, with consultation, is included in the Requirements document. That is consistent with Ofcom's approach, for example.

4 Non-price and other specific disclosure

The draft Requirements deal with financial information. They do not extend to non-price reporting and reporting on additional specific issues (as envisaged in the legislation). We expect this reflects the fact that the Commission's approach so far has been to focus on that aspect. Also, reporting on financial issues in itself is a large workstream. This is understandable.

In view of its importance, we submit that the Commission should start a workstream as to reporting on non-price issues and/or on particular specific issues. That is a separate workstream and the current draft should not be held back from being finalised for this reason.

In our two submissions, we gave examples of non-price disclosure, and disclosure on specific issues. They include imputation testing for vertical and horizontal (bundled) price squeeze, meeting non-price KPIs, forward-looking NGN plans, etc. (ACCC provide imputation test and KPI methods and Ofcom provides an approach to NGN).

Issues such as price squeeze concerns and bundles are having a marked impact in the sector. Information disclosure could work powerfully in relation to this increasingly ubiquitous challenge.

5 Ad hoc information disclosure

We note also that the Commission can (and should) require ad hoc reporting on particular issues from time to time (just as ACCC utilised reporting on Internet peering). While not strictly necessary, it would assist if the ability to seek additional reporting is made clear in the Requirements document. Para 45 should be clarified anyway so that such disclosure will not be limited to confidential disclosure. The paragraph has an effect that, we expect, is not intended.

6 Confidentiality

While understanding the need for confidentiality, we note two points:

- We suggest all (or most) confidential information is also shared by the Commission with the Independent Oversight Group in view of its relevance to the IOG's responsibilities;
- The Commission should err on the side of disclosure. For example, the ceiling and floor cost points should be disclosed (Para 47 of the Draft). We consider that the Commission and other stakeholders will benefit from taking that approach. It is worth repeating what Ofcom says about this:

Ofcom considers that a regulatory environment where stakeholders are simply informed that the regulator is satisfied that the obligations have been met is likely to be less effective than one where the industry is better informed. Disputes and investigations will be resolved more quickly, efficiently and on the basis of more reliable information. Specifically, Ofcom considers that relying solely on the regulator's assessment of whether compliance has been demonstrated carries the risk that either:

- *Important issues that may have been identified by stakeholders will remain unnoticed; or*
- *Ofcom's allocation of scarce resources to important issues will be reduced as it is obliged to consider an increased number of speculative complaints raised by less well informed stakeholders.*

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