

UNBUNDLING THE LOCAL LOOP NETWORK AND THE FIXED PUBLIC DATA NETWORK: EXECUTIVE SUMMARY

- (i) Under section 64 of the Telecommunications Act 2001, the Commerce Commission is required to undertake a review into whether access to the unbundled elements of Telecom's local loop network and access to the unbundled elements of, and interconnection with, Telecom's fixed Public Data Network should be regulated. Following the review, the Commission must by 20 December 2003 deliver its report to the Minister of Communications, with its recommendations.
- (ii) On 4 September 2003, the Commission decided to commence a related investigation under Schedule 3 of the Act into whether Schedule 1 should be amended. The Commission combined the section 64 and Schedule 3 investigations. This report deals with the combined investigation.
- (iii) The Commission has considered the case for recommending specification or designation of the following:
 - Unbundling of Telecom's local loop network;
 - A line sharing service, allowing an access seeker to obtain access to the non-voice frequencies of a local loop;
 - Unbundling of, and interconnection with, Telecom's fixed Public Data Network in the form of access to an asymmetric DSL (ADSL) bitstream access service;
 - Unbundling of other elements of Telecom's fixed Public Data Network.
 - Access to a backhaul transmission service used in conjunction with an asymmetric DSL bitstream service;
 - Access to Operational Support Systems (OSS) and a co-location service.
- (iv) The Commission has adopted a framework for making these decisions based on several factors: an assessment of the state of competition in the wholesale markets in which these services could be supplied and of the retail markets in which those services could be used to deliver telecommunications services to end-users; the costs and benefits likely to result from the imposition of regulation; and the experience of other countries in regulating similar wholesale services. In the application of that framework, the Commission is guided by the purpose set out in section 18 of the Act to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand. The Commission is required to make a recommendation that best gives, or is likely to best give, effect to the purpose set out in section 18.
- (v) The Commission does not recommend the specification or designation of unbundling of local loops. The wholesale market for local loops is dominated by Telecom, with limited competition from TelstraClear in areas served by its hybrid fibre-coaxial cable network, and emerging competition from several fixed wireless operators. The overall benefits from unbundling are not sufficiently persuasive to satisfy the Commission that a regulated solution is

warranted. The experience of a range of other countries with regulated local loop unbundling does not lend weight to the case for New Zealand to follow suit. The levels of uptake of unbundled loops are small in relation to the number of available lines and the competition impacts difficult to discern.

- (vi) The Commission does not recommend the specification or designation of a line sharing service. Though the cost-benefit analysis conducted for the Commission shows potentially significant benefits in the form of consumer surplus arising from such a service, there appears to be little or no interest on the part of the industry to use the service. The lack of demand for the service is consistent with overseas experience where similar services have been regulated.
- (vii) The Commission recommends that access to an asymmetric DSL bitstream service suitable for the residential and SME broadband market and related interconnection should be a designated service. Additional entry in that market is likely to result in lower prices, act as a spur to improvements in Telecom's productive efficiency, and encourage process innovation on the part of entrants. The Commission has weighed the potential impacts on current or future alternative technology platform providers. However, the Commission believes that those impacts should not be significant, given the capacity of those providers to differentiate their service offerings.
- (viii) The Commission recommends that a backhaul transmission service to be used in conjunction with access to an asymmetric DSL bitstream service provided by Telecom should be a designated service. The transmission service is an adjunct to the ADSL bitstream service to allow an entrant to obtain delivery of the bitstream at a point of interconnection with Telecom's fixed Public Data Network beyond the first ATM switch.
- (ix) The Commission does not recommend that access to further unbundled elements of Telecom's fixed Public Data Network beyond those supporting the asymmetric DSL bitstream service should be a specified or designated service. This decision has been influenced by Telecom's action in announcing on 13 November 2003 an Unbundled Partial Private Circuits service offer that has the potential to adequately address a major 'bottleneck' feature of the market for the provision of high quality committed bit rate services to corporates and other large users. Though the Commission is not satisfied that the offer is suitable in its current form, the Commission believes that an opportunity should be allowed for industry negotiations to result in an enhanced service that will promote further competition in that market. Should such an outcome fail to eventuate within the next six months, the Commission considers that it would be appropriate to re-evaluate the merits of regulated unbundling of a data tails or partial private circuits service at a long-run incremental cost price.
- (x) The Commission considers that Operational Support Systems (OSS) should be available as associated functions of the recommended services of an ADSL bitstream access service and backhaul transmission. The Commission does not recommend specification or designation of a co-location service.

