Submission by Ihug Limited ("IHUG") in relation to the Commerce Commission's September 2003 draft report on its investigation into unbundling the local loop network and the fixed public data network

General comments

1. IHUG is generally very supportive of the conclusions reached by the Commission as set out in the draft report. IHUG is strongly of the view that the unbundling of Telecom's local loop is fundamental to the development of a fully competitive telecommunications market-place in New Zealand. Unbundling of Telecom's fixed PDN and requiring access to be provided to co-location and backhaul services would be logical complements to local loop unbundling.

2. In IHUG's view it is almost impossible to underestimate the extent to which ownership of virtually the entire local loop gives Telecom an advantage over its competitors in terms of its ability to bundle services in respect of which competition exists with those in which there is either no competition, or very limited competition. Telecom has for many years offered customers discounts on line rentals as a means of winning competitive tenders for toll and other services.

3. Further to this we must stress the significance of the market power Telecom has by being fully integrated vertically and horizontally across all related telecommunications market sectors (i.e. local, data, ISP, mobile, etc) and being dominant in almost all of these areas. IHUG does not believe a more dominant player than Telecom exists in any country which permits competition in the telecommunications market.

4. IHUG also supports the Commission's view that the local loop must be made available at a rate which is cost based, otherwise it is unlikely that competitors will have a realistic margin within which to compete.

5. However for unbundling to produce the benefits which are contemplated in the report, it will be essential to ensure that competitors are not obliged to lease from Telecom more network elements than they require. In other words, the unbundling must be to such a level that Telecom cannot pass on to its competitors costs for network elements that they do not need Telecom to supply. For example, presently Telecom will resell Jetstream only when bundled with national and international bandwidth and with data caps and excess bandwidth charges being determined solely by Telecom. History has shown that Telecom will use whatever opportunities are available to it to try to minimise the benefits to its competitors (and therefore to the public) of any regulatory change.

6. You only need to look at the real savings customers have seen over time in toll bypass and other areas where there has been real competition. Customers could reasonable expect the similar process to take place in these other markets if competitors were given proper access. One only has to look at other markets such as Australia to see the increase in competition that

unbundling has generated there. In that market the costs have fallen significantly resulting in a greater uptake in broadband, generating wide benefits for customers, communities and the broader economy.

7. Because IHUG is very supportive of the views of the Commission which are contained in the draft report we consider it unnecessary to respond to each of the specific questions asked by the Commission. However IHUG does have comments on a number of the questions. Those comments are set out below.

Responses to questions

8. Question 3.2. Hybrid loops should be covered by the unbundling of the local loop network.

9. Question 3.3. Where Telecom adds a fibre overlay it should be required to retain copper and provide access to it if any other operator is using the copper.

10. Question 3.7. It would be extremely useful for OSS to be provided as part of LLU. However the provision of OSS should not have any significant impact on cost.

11. Question 3.9. It is appropriate to include fixed wireless technologies within the definition of the fixed PDN.

12. Question 3.10. It is appropriate to include third party network elements to the extent that they form a part of a PDN.

13. Question 3.11. IHUG agrees with the views set out in paragraphs 291 to 293 of the report regarding end-user access and control of a network.

14. Question 3.13. IHUG agrees with the views set out in paragraph 299 of the report.

15. Question 5.3. IHUG generally supports the Commission's views regarding the proposed initial and final pricing principles. However IHUG considers that all prices (including bitstream access) should be cost based.

16. Question 5.7. Telecom should be obliged to remove loading coils and other similar technology.

17. Question 6.2. IHUG is seriously considering whether it would install DSLAMs and presently considers it is likely it would do so in selected locations.

18. Question 6.4. Unbundling would be highly likely to increase IHUG's investment in infrastructure to meet customer requirements. We have just completed a merger with a similar Australian company iinet, and they are already investing heavily in the unbundled Australian market.

Summary

19. IHUG reiterates its strong support for unbundling of the local loop and PDN with pricing to be cost based. IHUG is happy to clarify any aspects of this submission if the Commission wishes IHUG to do so.

David Diprose
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