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29 October 2003

Alex Cheetham
Network Access Group
Commerce Commission
PO Box 2351
Wellington

Re: Unbundling Local Loop Draft Report

Dear Sirs

Please accept this submission on the above report.

Swiftel is a publicly listed company on the Australian Stock Exchange (SWT). Its primary business is broadband internet access services which it deploys via its own IP-based fibre network in the Perth central business district, or by wholesaling ADSL services on a national basis both to the business and residential markets.

Swiftel would also like to extend its services to the New Zealand marketplace.

The purpose of this submission is to help the commission understand the key drivers for our type of business, and what sort of environment would enable us to invest in the New Zealand marketplace.

Swiftel is strongly of the opinion that local loop unbundling must be a pre-cursor to the development of a strong competitive environment in the ADSL broadband market.

Background to Swiftel's business

Swiftel's initial business plan was to build infrastructure (an Ethernet-based fibre network) in the Perth CBD. This type of build is only viable in high-density business districts due to the capital cost of laying the fibre and gaining access to the buildings. Since we can only reasonably expect a relatively low market share of the customer base in any area where we deploy our network, the risk factor in building our own fibre network on a greater scale in lower density areas is too great.

Therefore our plan for addressing these markets was assumed to be on the basis of the then newly declared unbundling of the local loop.

Whilst our initial intent was to provide our own DSL service around Australia, for various reasons we have elected to develop our services based on purchasing wholesale capacity from other providers of ADSL infrastructure.

The key reasons for this decision were:

- Our concern over Telstra's ability to slow down the roll out of competing networks and the impact that would have on investment. This proved to be a valid concern
- The 'dotcom' crash which severely reduced the availability of capital in our market sector
- The entrance by other competing xDSL networks such as XYZed and Request, who were offering wholesale access to retail-focused Service Providers such as ourselves
- Telstra's decision to also offer a wholesale 'bit stream' product as a competitive response to the other entrant's success in this market sector.
- Our ability to add true value to our customer base by selecting the best type of access to meet the customers needs. In this respect we are able to offer Telstra DSL to the residential market where bandwidth and price is more important than a high level of reliability, and offer competitive DSL services to the business market where reliability and additional features such as redundancy or balanced bandwidth in both directions is more important.

Commentary on the Commission's draft recommendation

Swiftel agrees in principal with the draft recommendation as outlined in para 973.

- To designate unbundling of the local loop network
- To designate the public data network
- To designate access to co-location and backhaul services
- To apply benchmarking as the initial principle
- To apply cost-based pricing as the final principal

Areas of concern

1. Our primary area of concern is the draft recommendation not to treat the local loop network on a national basis, but to break it down into areas where unbundling would not be designated in key areas.

We believe this approach is flawed for the following reasons.

- While more competition may exist in some exchange areas, the basis for that competition is different to an unbundled local loop service. By way of example, even though there are six competing fibre networks in the Perth CBD including our own, we still sign up customers in this same area on ADSL services which we buy wholesale from Telstra or Request. In some cases it is more cost-effective to do this even if we have the building 'live' on our fibre network. If we did not have this flexibility in service delivery we would not be able to compete for this business. The main driver for this type of decision is the cost of either breaking into a building, or even the cost of gaining access to a different level within the building. By being able to initially deploy an ADSL solution, we can collect a number of smaller customers over a period of time and then move them to our own infrastructure.
- Customers regularly move. The residential market in Australia has about a 10% rate per annum of customers moving. If a customer moves into an exchange area (or a building) where you cannot offer services, then you lose that customer. This could create an unacceptably high churn rate for the business.
- If we were to deploy a solution that was dependent on a common technology such as ADSL, then the customers in those excluded exchanges would be deprived of the ability to purchase the service. Some of the new technology video-on-demand services which are based on an ADSL-set top box is one example.
- If you are effectively removed from competition in what we assume are the most lucrative areas, then the whole investment criteria changes – it is also more expensive to target advertising campaigns to exclude certain areas.
- We believe that it is better for the market to decide whether or not to take the investment risk of deploying a service in a specific area, rather than the Commissioner making that decision.
- We do not believe that the commissioner's economic model takes into consideration the reducing desirability of investment (and consequent reduced competition) as you move from a universal unbundling to a partial unbundling.

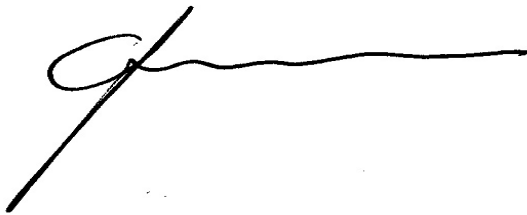
In summary, we strongly believe that the wholesale market for local loops should be regarded as one market. To remove high density exchanges will inhibit investment.

Another area of concern is that, since Telecom NZ has a strong anti-wholesale policy, competition will only arrive in New Zealand when companies such as ourselves actually deploy our own infrastructure-based ADSL services. Looking at the history of competition in New Zealand, it would appear that the most likely defensive strategy that Telecom would employ would be to simply aggressively price their own services on an exchange-by-exchange basis as the competing service is rolled out. They may even elect to price services below cost in an attempt to deter new entrants. This would seriously impair the ability of companies such as ourselves to raise capital for the project.

We believe that some mechanism needs to be developed to prevent this type of anti-competitive practice. Perhaps Telecom should be obliged to wholesale their own ADSL service uniformly at a discount off the lowest-observed price in any given metro/urban/rural region.

In any event, some such comfort would need to be given to new entrants that there are sufficient deterrents to such anti-competitive behavior.

Yours sincerely

A handwritten signature in black ink, appearing to be 'Chris Gale', with a long horizontal flourish extending to the right.

Chris Gale
Chief Executive Officer
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