Legal and Other Issues

Peter Waters
Arculli and Associates

Issues (Quickly) Covered

- Bitstream and OSS in Australia
- Impact of unbundling on investment incentives
- Telecom’s “asset-specific” approach to PDN
- Bitstream and the legal definition of PDN
- “98 regulated services in NZ: one regulated service in Australia”
- International evidence of relationship between unbundling and broadband growth

Bitstream and OSS in Australia

- Telecom says "bitstream not regulated in Australia"
- ACCC has used Part XIB as alternative to access regulation (all competition notices have been access related)
- Sept 2001: competition notice issues on basis that layer 3 DSL service was anti-competitive:
    - "denies competitors the ability to differentiate the performance and functionality of their services from the Telstra retail service and to compete fairly with Telstra's retail price"

TelstraClear

OSS in Australia

- Telecom says Australian model is commercially negotiated/industry association compared to US
- Competition notice issued in 1998:
  - "Telstra has refused …to process end users from Telstra to another CSP…[including] AAPT by means of an automated transfer system"
- Government established SPAN/Telstra joint initiative to bring processes online (ToLI)
- Productivity Commission identifies importance of non-price issues
- 2002 TPA amended to expressly identify ordering and provisioning in non-discrimination principles and provide for model terms and conditions to deal with non-price
- 2002: ULLS Code provides for phased electronic OSS
- Oct 2003: ACCC states that real-time interface is essential to implementation of non-discrimination and ACCC will take action if not quickly agreed

TelstraClear

AAPT OSS Views

- In recent model terms and conditions submission, TCNZ Australia stated:
    - Wholesale customers of Telstra are to be no worse off than Telstra's retail business ..this is not simply a matter of having the same service level applied to a wholesale customer as is applied to Telstra Retail..what needs to be measured and reported on is the actual level of service to each of Telstra Retail and thew wholesale customer..including over performance…"
- TCNZ in NZ:
    - Telecom notes that the basic service level provided to TelstraClear corresponds with the service level generally provided at retail

Investment Incentives in Australia

- Telecom refers to networks in Australia as examples of deployment by entrants using alternative facilities – these were deployed after LLU

- LLU declared in 1999:
  - TransAct launched 2001
  - Personal Broadband acquired spectrum 2001
  - Unwired acquired spectrum in 2000
  - TCNZ 2002 annual report says AAPT still building fibre and wireless local networks

TelstraClear

AAPT views on Investment Incentive Impact

Stepping Stone:

"AAPT rejects the claim often made by incumbent carriers that the existence of an access regime may hinder investment. Overall, AAPT's experience is that it is in those markets where access services have promoted competition, investment opportunities are created. The most efficient way to secure facilities-based competition is to allow new entrants to first build a customer base using access services.

Incumbent Threats:

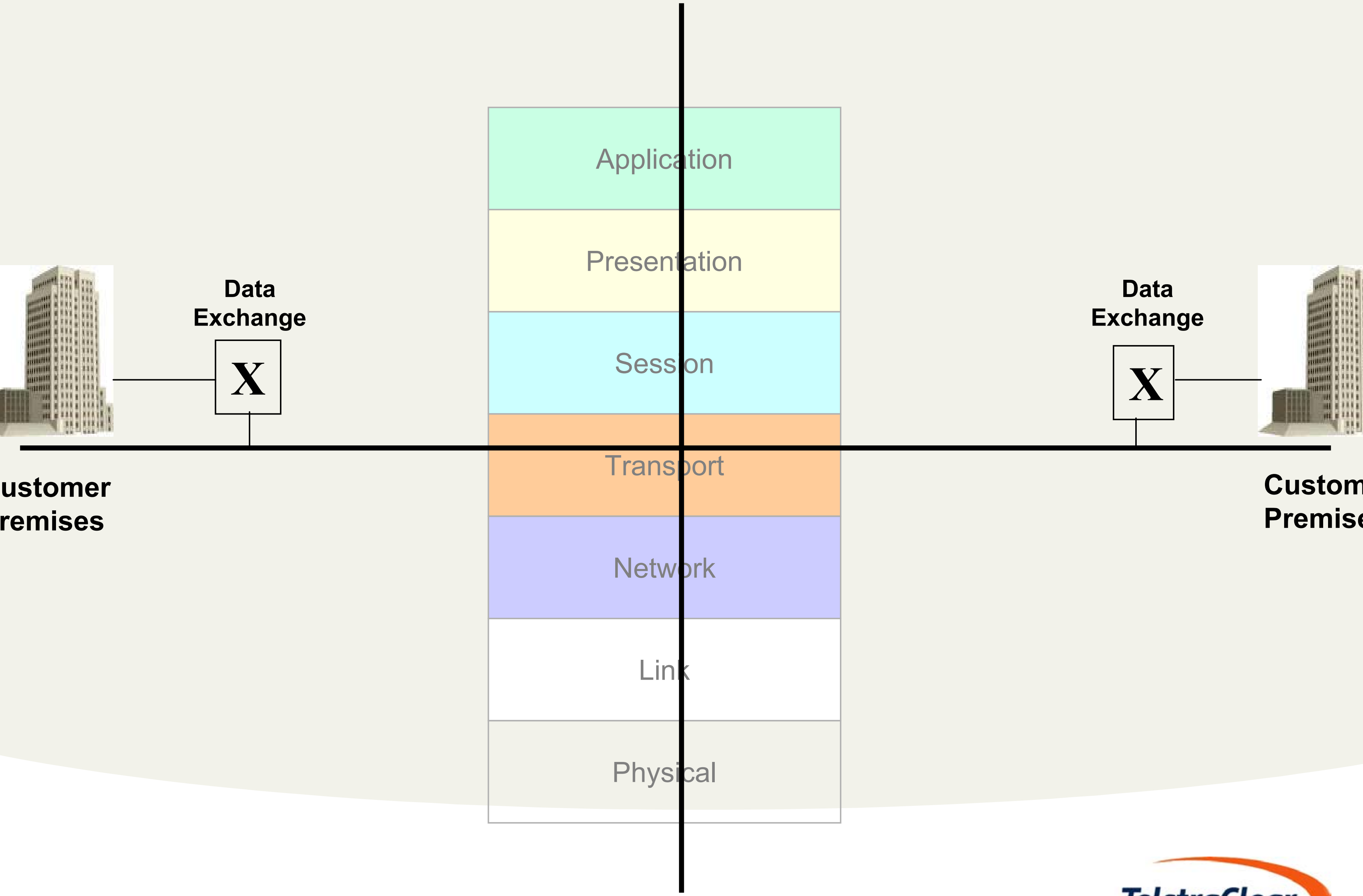
"Even if firms with market power refrain from investing as a result of mistaken views about the impact of Part XIB, any such shortfall has probably been made up by rivals, such as AAPT, investing in their own facilities.

TelstraClear

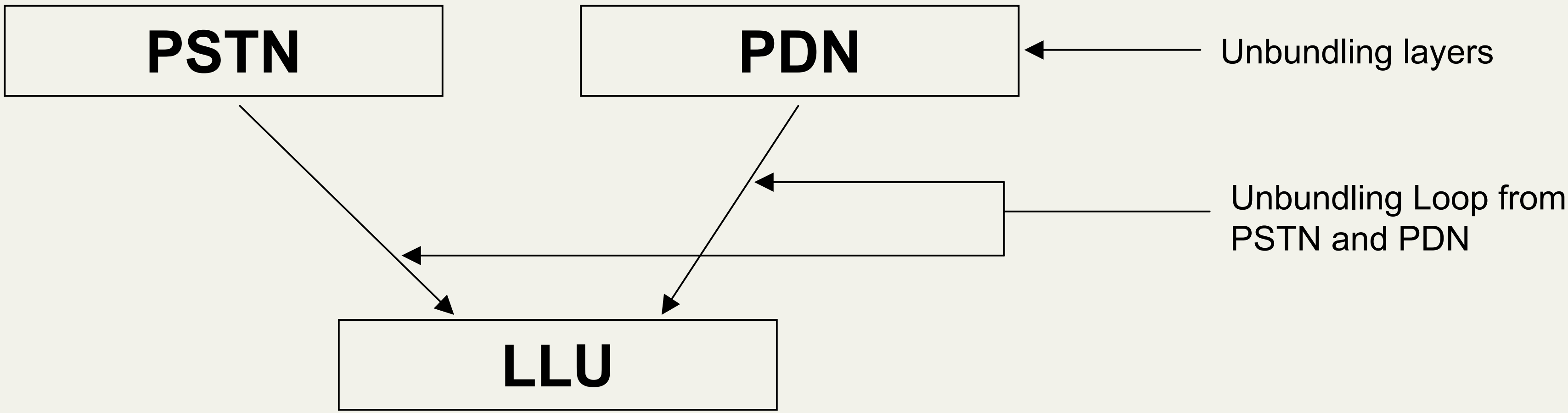
Telecom's Asset Specific view of Unbundling

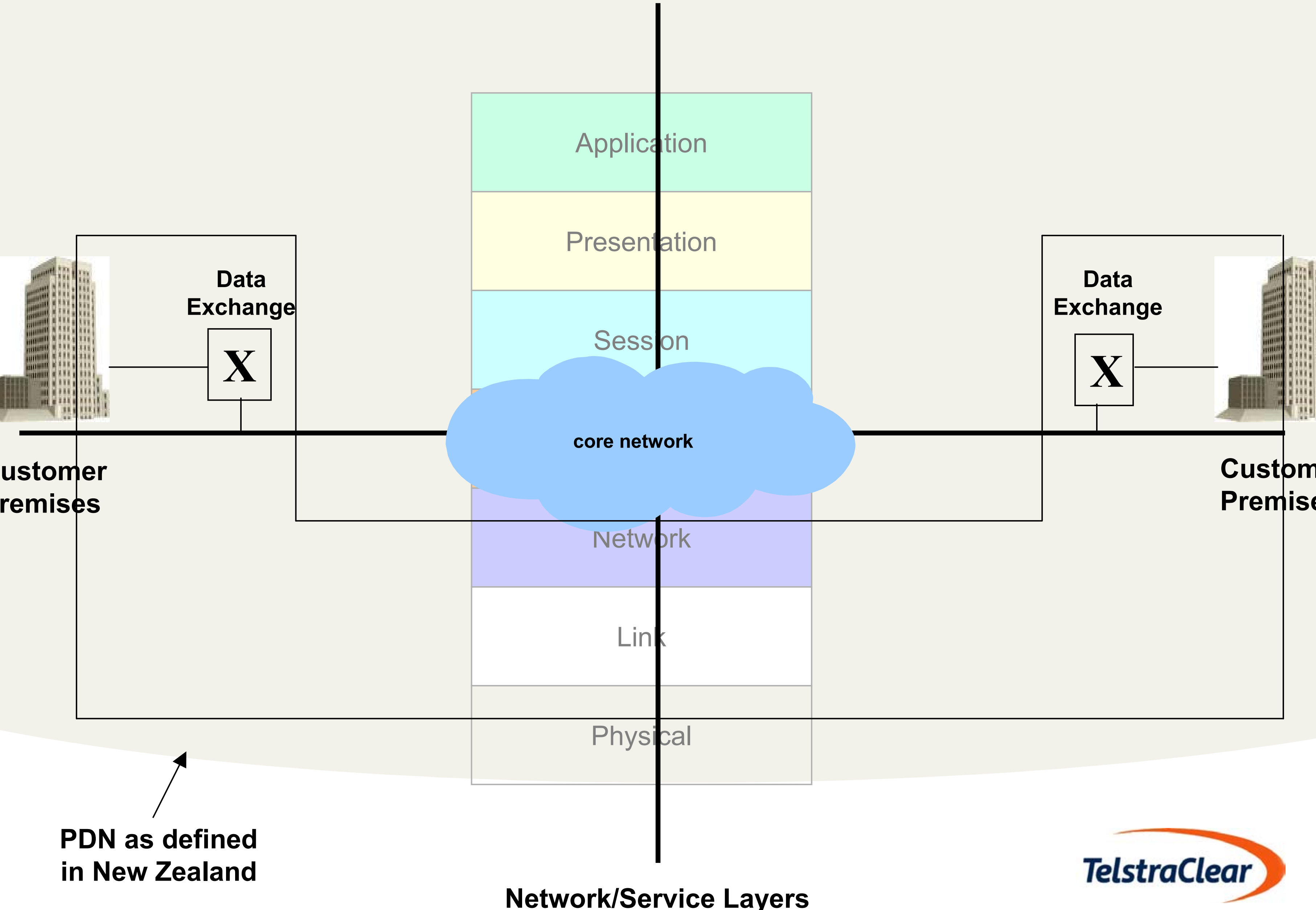
- "unbundling" takes meaning from thing being unbundled:
  - LLN is defined in asset terms;
  - PDN is defined as activated network (hence inclusion of data exchange like PSTN and unlike LLN)
  - Unbundling PDN can involve unbundling service layers of PDN
- EU/UK terminology of "partial" private circuit or "part" circuit suggests that component which has been "unbundled" from rest of end to end retail service

TelstraClear



Network/Service Layers


PSTN
PDN
Unbundling layers
Unbundling Loop from
PSTN and PDN
LLU


Application
Presentation
Session
Network
Link
Physical
core network
Data Exchange
X
Data Exchange
X
ustomer remises
Custom Premise
PDN as defined in New Zealand
Network/Service Layers
TelstraClear

Bitstream as PDN

- Telecom uses DSL as an option in the supply of data services, such as IPNetworking
- Telecom also acknowledges:
  - "In the data world we have a giant public data network. It is called the Internet"
  - Telecom part of the Internet is its IP network
  - Telecom uses DSL to provide access to its IP network
- DSL is as much a data network service as frame relay, DDN and ATM

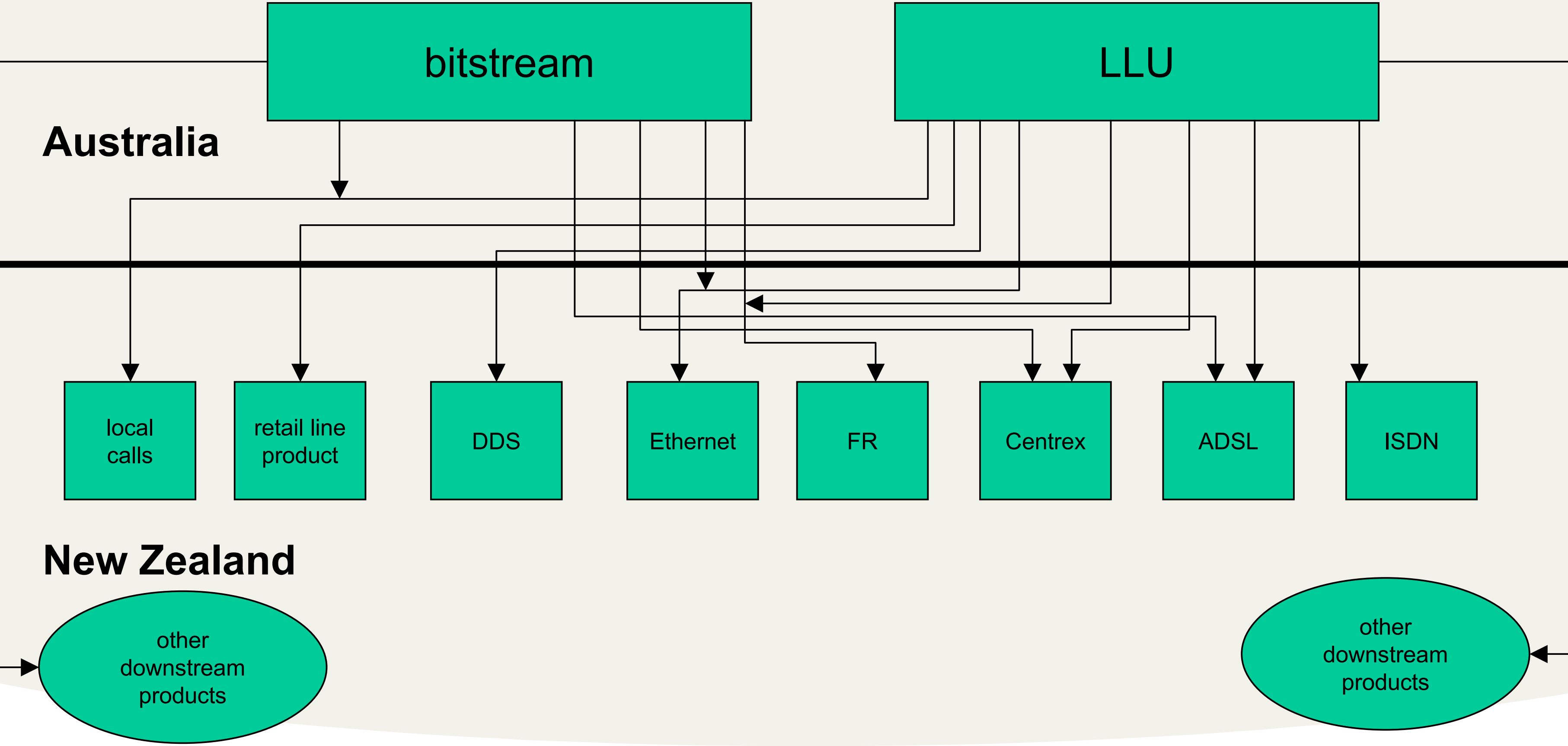
TelstraClear

Comparison of the Australian and NZ regimes

- Telecom argues that the NZ regime is already wide enough with 98 regulated services compared to one regulated service in Australia
- Telecom:
  - Ignores use of Part XIB;
  - Regulation of upstream inputs reduces need for downstream retail product resale (in fact second best option)
  - Extent of commercially offered wholesale services
- Every NZ regulated resale product is offered by Telstra but many Telstra wholesale products are not offered by Telecom (nor offered using "wholesale-friendly" systems)

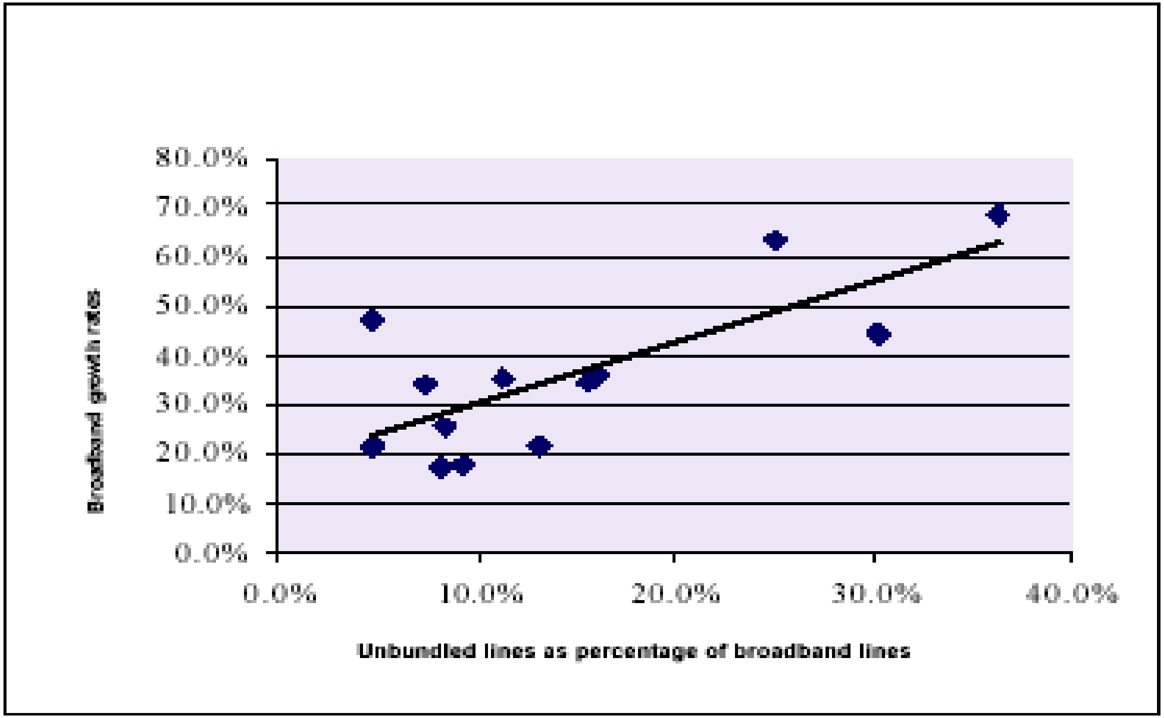
TelstraClear

Regulated Unbundled vs. Regulated Resale



INTERNATIONAL EXPERIENCE: CORRELATION BETWEEN UNBUNDLING AND BROADBAND UPTAKE – EU CASE STUDY

Recent international data shows that LLU/uPDN is a driver of broadband uptake

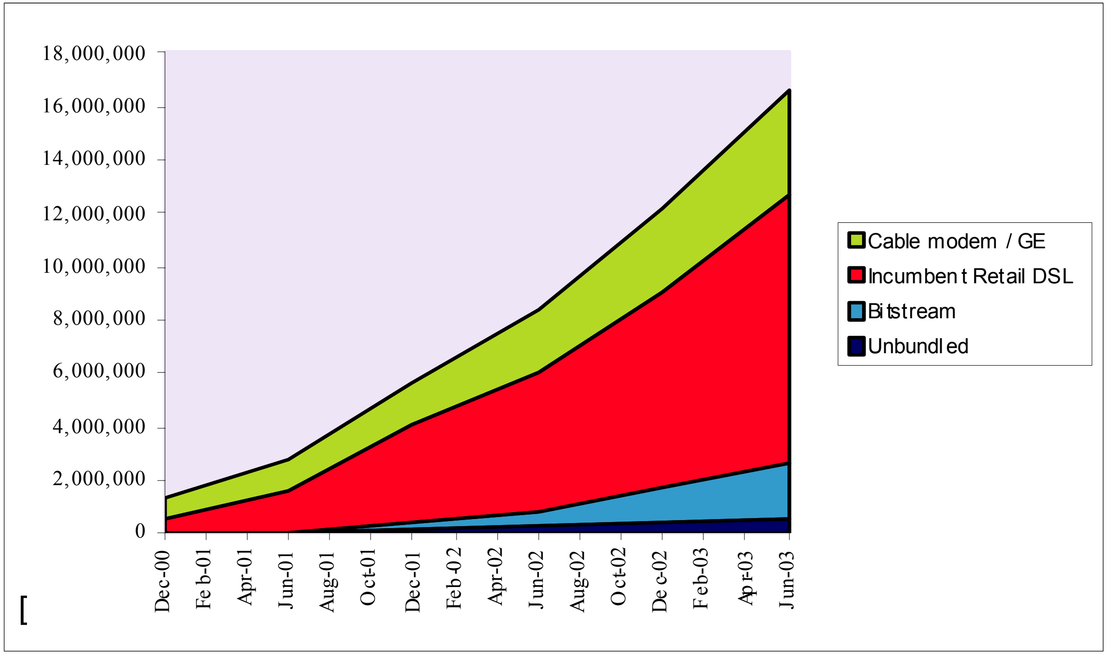


Source Point-Topic.com
[Figure 10 from TCL's Response to the Draft Report].

TelstraClear

INTERNATIONAL EXPERIENCE: BITSTREAM IS CENTRAL TO COMPETITION – EU CASE STUDY

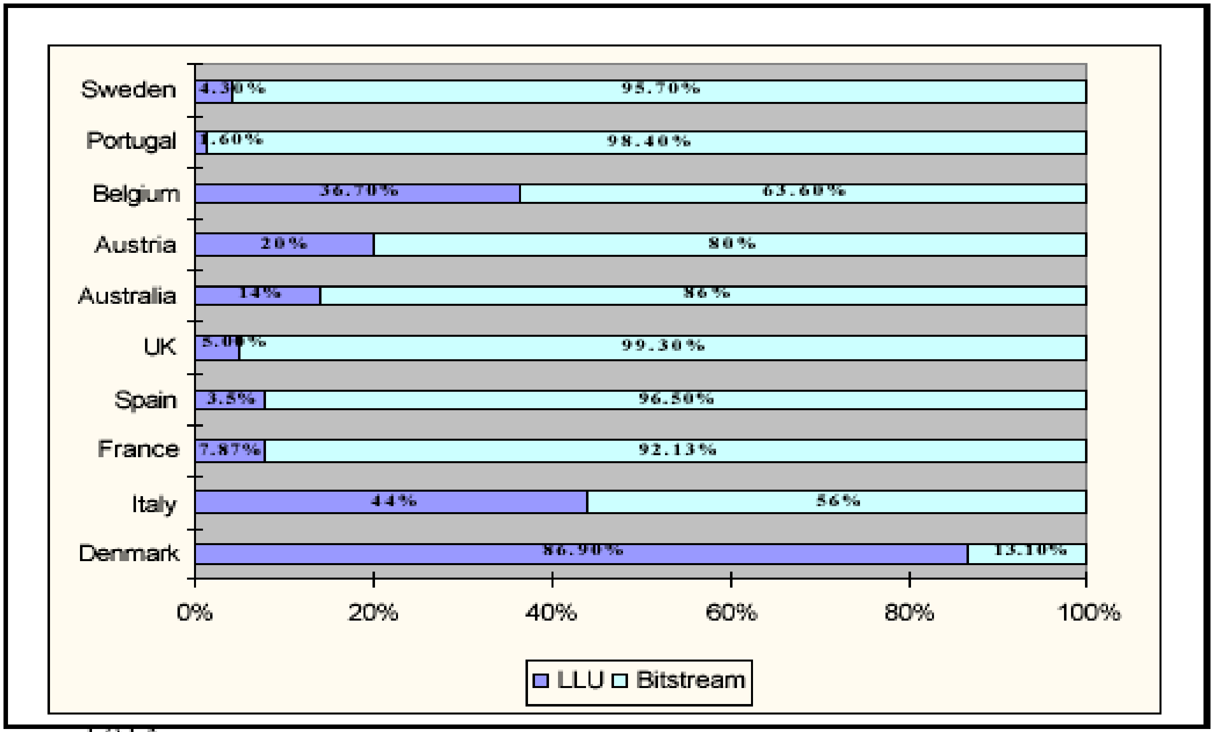
The number of broadband lines provided using bitstream is growing more rapidly than those which use unbundled DSL and Cable/Ethernet.



source: ECTA

THE IMPORTANCE OF BITSTREAM TO COMPETITION – EU CASE STUDY

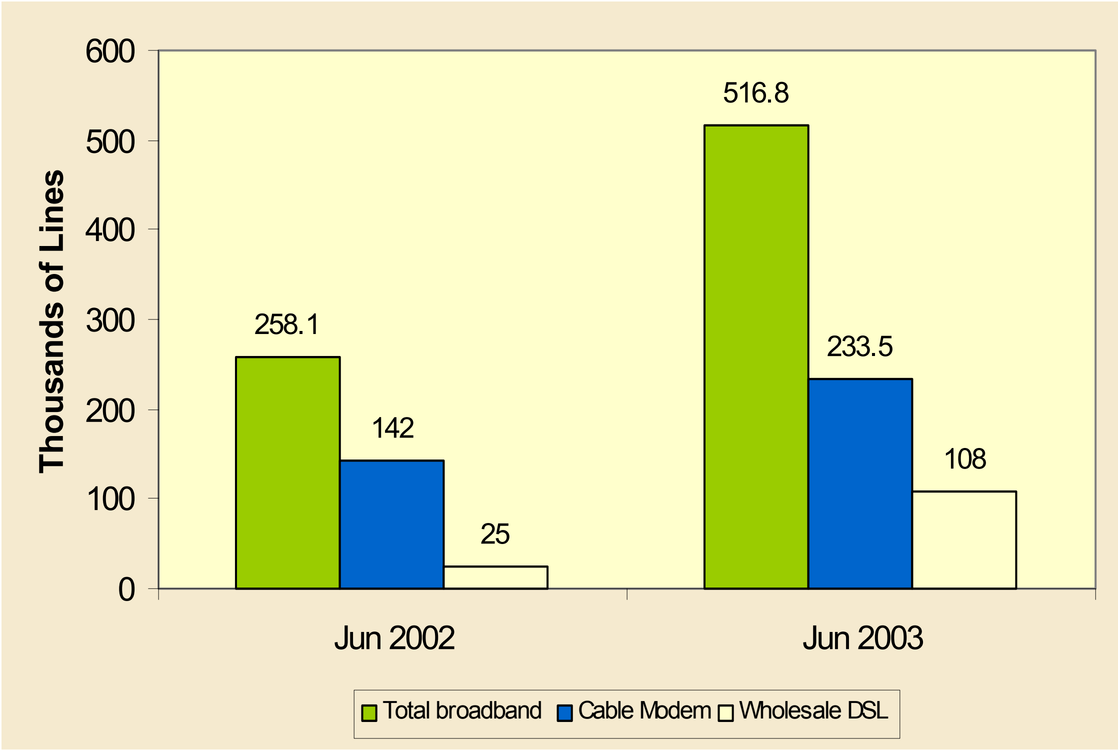
The importance of bitstream to new entrants is clear when we remove the figures for incumbent retail lines and those provided by alternative networks. Bitstream is used for a much larger proportion of entrant broadband services than LLU in most markets.



source: ECTA

INTERNATIONAL EXPERIENCE: AUSTRALIAN CASE STUDY

Remarkably similar things are happening in Australia as are happening in the EU.



Source: Point-Topic.com

Australia: All Boats Rise with Broadband Tide

Incumbent loses market share and competition is promoted.

Since Telstra released is bitstream (Layer 2 DSL) service in early 2002, entrant DSL Services (provided over LLU and bitstream) are growing substantially faster than Telstra retail DSL services. The number of wholesale DSL services increased by 400% in the period.

The largest growth is in DSL (made competitive by bitstream and LLU), but other access networks continue to grow.

DSL grew by over 260% in the 12 months to June 2003. Cable modem services grew by over 150%.

A correlation with LLU

Importantly, the number of LLU lines also increased by 196% from June 2002 to October 2003.

TelstraClear

CONCLUSIONS FROM THE INTERNATIONAL EXPERIENCE

These figures show that:

- There is a relationship between the number of unbundled lines made available by the incumbent and the levels of broadband growth.
- Although losing market share, incumbents remain the dominant provider of broadband services even in countries with competing networks and unbundling regulation/ bitstream access.
- Bitstream access is an important part of the emerging competitive environment in these countries.

The short time frame of these figures shows results that are not complicated by changes in “contextual factors” which could “explain away” such clear conclusions.

TelstraClear