Commerce Commission LLU & PDN Review

Overview

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Commission's Recommendations

Broadly speaking….

- *…the're on the money,*
  - LLU should be regulated
  - uPDN should be regulated
- *but with the addition of:*
  - Bitstream should be regulated
  - Reinstate geographic carve outs- allow others to compete nationwide
  - Decision does not need to rest on a CBA

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Countering the Claims

- LLU produces “me-too” competition
- LLU undermines entrant investment
- NZ will miss out on “wall-to-wall” NGN
- Wireless alternatives alone will do it
- Bitstream and LLU overlap
- Existing networks = effective competition
- CBA is fundamentally flawed
- Implementation is too hard

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"LLU Produces "Me-Too" Competition": Wrong

- LLU & bitstream allow entrants to be full-service, national coverage providers:
  - competitively matching & challenging the incumbent
  - "me too" only in sense that without unbundling cannot match incumbent's ubiquitous full service offering
- Ample evidence of innovation by entrants once unbundling solves access gap:
  - 1st with ShDSL (Aus, in UK Bulldog sells to BT!)
  - Offering SLAs (Aus – Request)

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“LLU Undermines Entrant Investment”: Wrong

- Smart investment
  - LLU & bitstream demand considerable investment
  - Also need to ask “invest in what infrastructure?”
  - Not replicating “dumb” copper but focus on core network and value adding platforms & applications
  - Bypassing high priced local loops, consumes scarce capital
- Supported by overseas evidence (“all boats rise with the broadband tide”)
  - EU: bitstream growing at 110% p.a. but alternative facilities growing at 70% p.a.
  - Australia: (TransAct, broadband wireless, investment by existing carriers eg AAPT, all since LLU/bitstream introduced)

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"NZ Will Miss Out on "wall-to-wall" NGN": Wrong

- NGN is direction in which all incumbents are heading – variations on a theme
- NGNs being implemented in countries where LLU *exists* (*eg* Aus, UK)
  - Enhanced competition will stimulate incumbent's shift to NGN as entrants initiate delivery of NGN services over incumbent copper (*eg* ShDSL)
- Only monopolists think they alone can serve all the needs of a market – and look where it has got NZ broadband take up!

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Availability vs. Take-Up

Rank in availability	Rank in broadband take-up
Belgium (1)	Canada (2)
Denmark (2)	Iceland (3)
Germany (3)	Denmark (4)
Netherlands (7)	Belgium (5)
New Zealand (8)	Netherlands (6)
Austria (9)	Japan (8)
Japan (10)	US (9)
Iceland (11)	Austria (10)
Canada (12)	Germany (14)
Italy (17)	UK (19)
US (18)	Italy (20)
UK (19)	New Zealand (23)

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“Wireless Alternatives Alone Will Do It”: Wrong

- Technically infeasible to ubiquitously challenge fixed broadband
  - Business vs Internet quality broadband
  - Think NGN - multi-services
- Telecom, BCL, Woosh vision:

  High-price services over low-cost copper ***vs*** *high-price services over high-cost wireless*
  - Under this model, Telecom still captures the monopoly rents
  - Incapable of offering business data services, let alone NGN

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“Bitstream and LLU Overlap”: Wrong

- LLU & bitstream are complimentary
  - Australia: no residential served by LLU
  - FCC notes: LLU not used for mass market (res & SME)
  - UK & Aus: >50% of incumbent DSL w/s bitstream
  - Different geographic footprints of LLU and bitstream Aus: bands 1:2:3 ULL/DSL = 39/5:61/83:0/11
  - Bitstream & broadband growth: positive relationship
  - Bitstream: greater scope for innovation than layer 3

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“Existing Networks = Effective Competition”: Wrong

- No country carves out LLU geographic areas
  - FCC applied an “actual connection” (2 or more) test on basis that best indicator of feasibility
- Consider SMEs – low revenue to cover high cost
  - Entrants have to **newly connect** customers, incumbents **retain** buildings even if lose customers
  - Incumbent: leverages low cost IP on sunk investment
  - Entrant: high cost build
- Bitstream & LLU are stepping stones

“CBA Fundamentally Flawed”: Wrong

- CBAs are a tool to support, not make a decision
  - NZ: benefits – costs = net benefits
  - UK: benefits – costs ≥ 0 assumes competition positive
- Monopoly profits vs welfare transfers
- Analysys find OXERA CBA robust @ its core – Telecom experts criticise at the margins

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“Implementation is Too Hard”: Wrong

- Nortel:

“…may appear complex to non experts…now common practice…”

- Right processes upfront minimises problems:
  - Co-regulatory approach (UK, Aus)
  - Third party facilitator (UK, Ireland)
  - NZ can leverage off existing codes
- Bitstream provides immediate take off

It’s been 3 years since the Inquiry

“If the Commissioner concludes that Telecom is inadequately investing in enhanced services (e.g. ADSL), or not facilitating wholesaling of such services, or frustrating the innovative use of data tails by access seekers who are accessing on Telecom's side of the exchange distribution frame, then the Commissioner should investigate designation of full local-loop unbundling.”

Ministerial Inquiry, Final Report, September 2000(pp64-65) as quote by Telecom (Response to Commerce Commission Draft Report, para 134)

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