

**COMMERCE COMMISSION CONFERENCE
ON SECTION 64 AND SCHEDULE 3 INVESTIGATIONS
10 November 2003**

Introductory comments by David Knight, General Counsel, Telecom New Zealand Limited

1. It is unfortunately necessary to make a formal statement for the record about the basis on which Telecom attends this conference. As previously advised to the Commission, Telecom believes that there are significant illegalities in the way the Commission has conducted its investigation including the scheduling of this conference. These illegalities have prejudiced Telecom. They include:
 - a) the failure to deliver for Telecom's evaluation the full CBA at the time of the issue of the Draft Report;
 - b) the commingling of the s.64 investigation with the purported Sch 3 investigation;
 - c) the fact that no proper s.64 investigation has taken place with no proper s.64 draft report being issued;
 - d) the compression in time frames resulting from the deferral of the conference with the effect that Telecom's position cannot properly be taken into account.
2. Telecom reserves all its rights in respect of these concerns.
3. I will now move on to Telecom's submissions on the substance of the conference.
4. Telecom sees this investigation as a contest between competition and pseudo-competition. The companies which embrace infrastructure competition and service innovation, Telecom, Woosh, BCL, PacificNet.com, Counties Power and others are investing in the future. Companies which favour unbundling TelstraClear, Call Plus and others prefer to rely on regulation to avoid investment and risk.
5. Not only would unbundling avoid investment by its proponents, but overseas experience has demonstrated that it would deter investment by those who would otherwise build their own networks.
6. Further, some overseas attempts at unbundling progressively require more intrusive regulation after it has been introduced. This is already apparent in New Zealand: This investigation started with a focus on specific Telecom access assets, principally copper. Already, the Commission has seen the need to commence a new investigation on services much wider than the original investigation. Most of TelstraClear's submissions are aimed at ensuring that it obtains full use of all the multiple services available from Telecom's proposed mass market packet switched network, even before it is built.
7. Telecom has four key submissions for the Commission at this conference:
 - (a) If left alone (ie no unbundling), the access bottleneck problem which unbundling has been used to solve elsewhere (unsuccessfully) will not exist in New Zealand over the timeframe being investigated: competitive access for both simple telephones and higher value multiple services will see to that.
 - (b) The Draft Report could be read to include Telecom's proposed mass market packet switched NGN. Regulation of this complex and risky new investment

has implications for the engineering of the whole NGN, and creates disincentives to invest, with consequent loss of benefits to consumers.

- (c) The Commission has been let down by the OXERA CBA which contains fundamental misconceptions about how the New Zealand telecommunications markets will work without unbundling, and how regulated unbundling would actually work. It cannot safely be relied on.
- (d) TelstraClear has taken a "failed competitor" position and argued that it cannot compete for virtually any customers except using Telecom's assets. This reflects the natural progression of unbundling towards "competitors" simply wholesaling the incumbent's services or services with only minor differences.

8. Today, Telecom will address the following:

- (a) First, we will provide an explanation of the access technologies which will be in place in the short to medium term, the competition they will provide, and the services customers will receive from them.
- (b) Secondly, we will explain how data services are provided in New Zealand and are regulated overseas.
- (c) Thirdly, we will describe the major new investment Telecom is planning to make in a its NGN, and the impact that unbundling may have on that.

9. We will provide a reasonable amount of technical information, but hopefully this will be presented in a form which removes some of the misunderstanding evident in the Draft Report and will give the Commission an opportunity to seek clarity if that is lacking at present.

10. The format we propose is for each speaker to provide hard copy of their statements and powerpoints before they present, for the assistance of the Commission and parties.

11. There will be only one restricted session dealing with Telecom's investment strategy.

12. Bruce Parkes, Telecom's General Manager of Government and Industry Relations will make an opening statement and other Telecom speakers will follow, as set out in the speaking schedule forwarded to the Commission yesterday, and attached to my own speaking notes which have also been provided this Conference.

13. Tomorrow, Telecom's experts will comment on the OXERA cost benefit analysis and some aspects of TelstraClear's submissions.