

28 May 2010

Dr Ross Patterson  
Telecommunications Commissioner  
Commerce Commission  
PO Box 2351  
Wellington

By EMAIL

**Public version**

Dear Dr Patterson

**Resale Services Schedule 3 Investigation – Response to Telecom’s revised position**

1. TelstraClear welcomes the opportunity to comment in relation to Telecom’s revised position on the Commission’s Resale Services Schedule 3 investigation (‘Resale Investigation’). Given the scope of the Commission’s request dated 14 May 2010, TelstraClear has limited its response to only the matters articulated by Telecom in its letter to the Commission also dated 14 May 2010 (‘Telecom Letter’).
2. TelstraClear supports the rollback of unnecessary regulation over time where sufficient competition has developed. That said, retail competition in New Zealand is still evolving and the industry is currently in a state of transition as Next Generation Networks, such as the Government’s Ultra Fast Broadband Fibre to the Premises initiative and Telecom’s Fibre to the Node network, develop and progress.
3. Notwithstanding the above, TelstraClear recognises that the Commission intends to proceed with its Resale Investigation. As such, we offer our observations on the Telecom Letter directed at the following general issues:
  - absolute clarity is required as to precisely which resale services Telecom submits should/should not continue to be subject to regulation;
  - regulation provides important protection in the context of commercial negotiations and the scope of resale services now proposed by Telecom appears too narrow;
  - any migration requires careful planning; and
  - the removal of business costs, Telecom’s primary driver for removal of resale regulation, may be the subject of negotiations.

### **Telecom's position requires clarity**

4. TelstraClear is pleased Telecom's Letter recognises the importance of resale regulation for access seekers and welcomes this revised position.
5. As a preliminary point, TelstraClear notes the Telecom Letter does not, however, articulate with the requisite degree of specificity precisely which services Telecom proposes should remain in the DSPL and RSPL and continue to be subject to regulation.
6. Telecom states generally that "residential and business line rental (RLR and BLR) should remain within the scope of regulation" and "in addition, some form of regulatory backstop may also be appropriate for a few key smart phone services" (our emphasis). In this regard, Telecom proposes "Call Minder, Permanent Toll Bar, DDI and Caller Display".
7. The reference to residential line rental, business line rental, Call Minder, Permanent Toll Bar, DDI and Caller Display are references to generic 'product families' in the RSPL and DSPL respectively. Telecom has not, to TelstraClear's knowledge, provided any written commitment that, pursuant to its revised position, it will not seek the removal of regulation in relation to the complete set of spot codes/product IDs currently within the RLR, BLR Call Minder, Permanent Toll Bar, DDI and Caller Display product families.
8. Though TelstraClear assumes this is Telecom's position (i.e. that all spot codes/product IDs currently within the RLR, BLR, Call Minder, Permanent Toll Bar, DDI and Caller Display product families contained in the RSPL and DSPL should remain subject to regulation), Telecom's written confirmation would provide certainty to both the Commission and access seekers in this regard.
9. TelstraClear encourages Telecom to provide the Commission and access seekers with clarity by supplying a schedule containing an exhaustive list of products, descriptions, product IDs and spot codes for services it submits should/should not continue to be subject to regulation.

### **Commercial negotiations in the absence of a regulatory backstop**

10. As a general proposition, absent regulation, it is not certain that satisfactory commercial terms will be reached on an efficient basis, or at all, between Telecom and access seekers for resale services to which access is sought in areas where Telecom faces limited competition from others using their own infrastructure, or where resale services are not otherwise efficiently replicable by access seekers.
11. Though the Telecom Letter does, pursuant to our assumption at paragraph 8 above, apparently indicate Telecom does not now seek regulatory roll-back in relation to residential line rental, business line rental, Call Minder, Permanent

Toll Bar, DDI and Caller Display, there are other currently regulated resale services contained in the RSPL and DSPL which remain important to TelstraClear for its ongoing retail offerings (including bundled offerings). Absent regulation, TelstraClear would be concerned about its ability to acquire those services on commercially acceptable terms.

12. **TelstraClear CIC [**

**] TelstraClear**

**CIC.** TelstraClear would be happy to provide the Commission with further details in this regard should the Commission find them useful.

**Migration requires careful planning**

13. The Telecom Letter also asserts that “most other active (i.e. not grandfathered) resale services may be replicated by service providers on a nationwide basis through the use of a combination of UCLL and/or wholesale intermediate inputs”. As this statement indicates, not all currently regulated resale services are capable of replication on a nationwide basis. Putting replication to one side, the removal of resale regulation may also result in service providers having less control over the migration of customer services. That is, absent regulation and commercial agreement, service providers could be effectively forced to migrate to UCLL/other wholesale services in order to acquire/retain retail customers.
14. Migration is not a costless process for any business and the ability to undertake a smooth migration of services to other means of supply is important to access seekers. The Telecom Letter does not address this issue. The issue of smooth migration of services from Telecom’s network to alternative sources of supply is one which should be addressed by Telecom in consultation with access seekers to ensure any migration occurs smoothly.
15. In TelstraClear’s view, adequate notification of any roll-back of regulation is required to assist access seekers in managing any migration of their services to alternative sources of supply, if they choose to do so. This will also provide the benefit of a regulatory backstop, should there be concerns with how migration of customers may occur.
16. In this regard, it seems Telecom itself recognises the resource intensive nature of migration and the critical issue of timing. This recognition is demonstrated by Telecom’s recent request, announced on 24 May 2010, that, amongst other things, variations be made to the Operation Separation Undertakings to allow Telecom to pause its migration of customers from UBS to UBA and for the removal of a requirement to move 17,000 customers off the PSTN.
17. In light of the above, TelstraClear considers that Telecom could potentially provide greater commercial certainty to access seekers around its intentions

in regard to the provision and terms of resale services by making an attractive commercial offer in relation to those services now. Such action would demonstrate to all parties Telecom's continued commitment to providing resale services on reasonable commercial terms.

**Cost removal may be the subject of negotiations**

18. As previously submitted, TelstraClear does not advocate the retention of regulation simply for the sake of regulation alone and supports the removal of unnecessary obligations which create unwarranted business cost or complexity.
19. In this regard, Telecom states that its primary driver for its request for change to the resale service descriptions is its wish "to simplify what have become complex and administratively burdensome processes around resale services".
20. TelstraClear understand this statement to refer to Telecom's concerns about the costs associated with compiling the RSPL and DSPL reports and their audit. These costs are, in large part, driven by the complex hierarchical classification of Telecom services into product and product families. During the TelstraClear Wholesale Determination, when Telecom proposed this methodology to delineate a boundary around the services Telecom was required to resell, TelstraClear was concerned that the methodology was overly elaborate. Subsequently, we have agreed adjustments to reduce Telecom's costs.
21. TelstraClear remains open to engaging with Telecom on potential future modifications which could be made to reduce Telecom's costs while providing important protections for access seekers and ensuring transparency and equivalence.
22. Reduction of costs should not, of itself, be relevant to the Commission's consideration of whether the resale services descriptions contain in Schedule 1 of the Telecommunications Act should be removed or amended however.

TelstraClear looks forward to engaging further with the industry and the Commission in relation to the Resale Investigation in due course.

Please do not hesitate to contact me should you have any queries.

Yours sincerely



Rebecca Mitchell  
Acting Group Manager Regulatory