



COMMERCE COMMISSION

Please refer to: 13.01/12078
980936_10

30 March 2010

To Interested Parties:

Unbundled Copper Local Loop Backhaul and Unbundled Bitstream Access Backhaul Standard Terms Determinations – Consultation over the market definition and competition assessment

Purpose of Consultation

Unbundled Copper Local Loop Backhaul (UCLL Backhaul) Service

1. Schedule 1, Part 2 of the Telecommunications Act 2001 (the Act) provides that a competition assessment must be applied to the UCLL Backhaul Service. The Commerce Commission (the **Commission**) periodically reviews the state of competition to determine on which Primary¹ and Secondary² Links of the UCLL Backhaul Service Telecom no longer faces limited competition.
2. The Commission has completed two competition assessments: Decision 667 on 30 April 2009 (the **first review**)³, and Decision 686 on 3 December 2009 (the **second review**).⁴
3. In the second review, the Commission stated its intention that, prior to carrying out the next UCLL Backhaul Primary and Secondary Links review, it would review its current market definition and application of the competition assessment.⁵
4. The purpose of this letter is to consult on the continued applicability of the market definition and assessment applied in the UCLL Backhaul Standard Terms Determination (**STD**) and the subsequent reviews.

¹ Primary Links are from a local telephone exchange to its Parent Point Of Interconnection (POI) Site.

² Secondary Links are from a Parent POI Site to an access seekers' nearest available POI.

³ Commerce Commission, *Review of the Standard Terms Determination for the designated service Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnection point)* (**Decision 667**), 30 April 2009.

⁴ Commerce Commission, *Review of the Standard Terms Determination for the designated service Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnection point)* (**Decision 686**), 3 December 2009.

⁵ Decision 686, page 1, paragraph 5.

Unbundled Bitstream Access Backhaul (UBA Backhaul) Service

5. Schedule 1, Part 2 of the Telecommunications Act 2001 (the Act) provides that a competition assessment must be applied to the UBA Backhaul Service three years after the date on which the Telecommunications Amendment Act (No 2) 2006 was passed, i.e. December 2009
6. The Purpose of this letter is also to consult on whether it is appropriate for the Commission to follow the same general approach for the UBA Backhaul competition assessment as that adopted for UCLL Backhaul.

Issues where the Commission is seeking feedback

7. A background to the decisions made by the Commission regarding market definition and competition assessment in the UCLL Backhaul STD, and the first and second reviews, are attached as Appendix 1 to this consultation document.
8. Appendix 2 provides an overview of all primary links assessed under the STD and whether Telecom is considered to face limited competition on these links or not. Appendix 3 presents the secondary links assessed under the STD, and outlines whether Telecom is considered to face limited competition or not.
9. The Commission will formally launch, under section 30R of the Act, the competition review(s), and will release initial timelines, after considering submissions generated by this letter.
10. Having considered previous submissions made on market definition and competition assessment, the Commission is seeking the views of interested parties on the following issues.

Geographic dimensions of the market in which Telecom supplies the UCLL Backhaul Service

11. The Commission has adopted a narrow market definition of individual point-to-point links. Telecom has previously proposed that the Commission should consider revisiting route-specific geographic markets, arguing that such an approach is too narrow because competitors tend to enter on a regional basis.⁶ According to Telecom, entry on one link provides evidence that barriers to entry are low, and that there is potential for competition on all links in that region.
12. The Commission notes its previous comments on proposals to define broader regional markets:
 - in the UCLL Backhaul STD, the Commission referred to Vector's proposal to define broader geographic markets. The Commission concluded that the definition of individual point-to-point routes was appropriate, as this was likely to best assist in identifying where competition has or was likely to emerge. While some degree of aggregation of routes could be contemplated, it

⁶ Telecom (Group) submission, 3 April 2009, paragraph 52(a).

was likely that different competitors would be present on different routes, even within a broad region such as Auckland. This suggested that the level of competitive intensity within such a region was likely to vary considerably, and that a more granular approach to geographic markets was appropriate;⁷ and

- in the first review, the Commission noted Telecom (Group)'s submission that in principle a regional roll out of a competitive backhaul network might indicate competition within that area. However, the Commission considered that each route needed to be looked at, as it could also be likely that an alternative provider did not intend to extend backhaul to a particular exchange within that region.⁸

13. The Commission also notes that Christchurch City Networks Limited (CCNL)⁹ has previously submitted that the market in which the UCLL Backhaul Service is supplied should be assessed on a per location basis.

14. Comments are sought on whether the geographic dimension of the market definition as applied by the Commission is too narrow. In particular, should this be a regional, rather than a route by route, market. If a broader geographic market is considered appropriate, how should the boundaries of such a market be defined.

Supply-side substitution

15. When assessing the level of competition in the supply of the UCLL Backhaul service from a particular exchange, the Commission considered the potential for supply-side substitution, where a nearby network ('near entrant'), who does not currently supply backhaul from that exchange, could commence supply in the short term. The Commission noted that a one-year timeframe is often used to assess supply-side substitution.¹⁰

16. On this issue, the Commission has adopted a more flexible approach in the first and second reviews than the 1km and 2km distance rules used in the STD. Whereas the distance rules applied in the STD were based on an average build cost of \$150,000 per km, the Commission took actual build costs and intention to build into account when considering the ability of near entrant fibre networks to constrain Telecom in the supply of UCLL Backhaul Services from a particular exchange.

17. Comments are sought on whether the Commission's revised approach to 'near entrant' networks is appropriate for determining whether a nearby network exerts a competitive constraint on the supply of UCLL Backhaul Services from a particular exchange. Comments are sought on the use of a one-year timeframe within which to assess supply-side substitution and, in particular, whether it is reasonable to expect a 'near entrant' to build out to an exchange and commence the supply of a backhaul service within a one year timeframe.

⁷ Decision 626, paragraph 102.

⁸ Decision 667, paragraph 36.

⁹ Ibid, paragraph 39.

¹⁰ See Commerce Commission, *Mergers and Acquisitions Guidelines*, page 18.

18. In particular, views are sought on the Commission's current local exchange by local exchange approach, and on the relevance of the individual elements of the test, specifically the proximity, likely costs, and the intentions of the smaller networks to connect to specific local exchanges.

Competition from vertically integrated fibre network operators

19. Where Telecom faces competition only from a vertically integrated fibre operator such as TelstraClear, the Commission has to date concluded that Telecom faces limited competition in the supply of the UCLL Backhaul Service.
20. Telecom has previously submitted that the finding of limited competition, and hence the application of cost based regulation, on those routes involving just Telecom and TelstraClear creates a disincentive for TelstraClear to extend its fibre network.¹¹
21. The Commission notes that in its submission on the draft STD, TelstraClear supported a rule-of-thumb that backhaul regulation should only be considered on routes where there are fewer than 3 fibre-based operators (including Telecom). This would apply to those routes where there were only two fibre networks, such as Telecom and TelstraClear.

22. Comments are sought on whether the Commission should continue to consider that Telecom faces limited competition in relation to routes where Telecom faces competition from one other vertically integrated fibre operator.
23. Comments are also sought on whether the Commission's approach to market definition and competition assessment adequately addresses investment incentives, so that those incentives promote infrastructure competition and the introduction of greater service innovation or more efficient technologies.

Evidence of increased competition and/or barriers to competition

24. Telecom previously submitted on the first review that "fundamental to a refresh of market definition will be the consideration of the presence of actual or potential substitutes. As levels of actual or potential competition increase it may be that some aspects of the geographic aspect of the market definition could well be reviewed."¹²
25. Another issue raised by Telecom was the emergence of a number of regional and national backhaul operators, which Telecom stated was evidence of low barriers to entry. Telecom stated that these barriers to entry, specifically the level of sunk costs and the expected profitability of entry, created an environment with the potential for further competitors to enter the market.

¹¹ Telecom (Group) submission, 3 April 2009, paragraph 52(a).

¹² Ibid, page.9 paragraph 32.

26. Comments are sought on whether there has been a significant increase in the number of backhaul competitors in this market since June 2008, and whether sunk costs and profitability are at levels likely to entice such competition.

Frequency of Competition Reviews

27. The Commission has conducted two competition reviews, since the inception of the UCLL Backhaul STD approximately 20 months ago.
28. The Commission notes that when the UCLL Backhaul STD was being developed the nascent nature of the UCLL Backhaul Service meant a limited number of Primary Links (57) were assessed.¹³ Because of developments in unbundling under the UCLL STD, the first review gathered a significant amount of information on competition in the UCLL Backhaul market, from the six months after the release of the UCLL Backhaul STD. This resulted in an increase in the number of Links assessed (98), the number of Links considered to be subject to limited competition (from 20 in the STD to 48), and the number of links considered competitive (from 37 in the STD to 50).¹⁴
29. By contrast, the second review found that in the six months since the first review there had been limited developments in unbundling under the UCLL STD. There was no change to the number of links assessed, and only two of the links where Telecom was considered to face limited competition in the first review were considered to be competitive in the second review.¹⁵
30. In light of the experience of the first two reviews, the Commission considers that it may be appropriate to consider undertaking full competition reviews on a twelve monthly basis. If reviews were to be undertaken on a twelve monthly basis, the Commission considers that there would be value in allowing for reviews to be undertaken on an individual link by link basis between the full twelve monthly reviews, in order to ensure that developments in relation to competition on specific Links could be considered between reviews.

31. Comments are sought on the appropriate frequency of competition reviews, and in particular whether a review every twelve months would appropriately reflect the evolution of the market.

32. Comments are sought on whether the Commission should consider undertaking competition reviews on an individual link by link basis, either in response to requests from interested parties or on its own initiative, in addition to conducting a competition review of all links.

¹³ Ibid, page.37, paragraphs 131-135.

¹⁴ See paragraph 31 in Appendix One for details of the changes to the Links that were regulated, following the first review.

¹⁵ See paragraph 33 in Appendix One for details of the changes to the Links that were regulated, following the second review.

UBA Backhaul.

33. On 19 December 2009 the UBA Backhaul Service became subject to the additional conditions that either:
- i) Telecom faces limited, or is likely to face lessened, competition in a market for transmission capacity between Telecom's first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection; or
 - ii) Telecom does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between Telecom's first data switch (or equivalent facility) and the access seeker's nearest available point of interconnection, and the Commission has decided to require Telecom's unbundled bitstream access backhaul to be wholesaled in that market.
34. The Commission notes that the service descriptions set out in the respective STDs of the UBA Backhaul Service and the UCLL Backhaul Service are similar, except for the following minor differences:
- the initial handover point is on the access seekers' side of the first data switch for the UBA Backhaul Service and on the access seekers' side of the optical fibre distribution frame in the Local Exchange for the UCLL Backhaul Service;
 - the UBA and UBA Backhaul Services are provided solely on Telecom's equipment, through to the ASNAPOI Handover Point, whereas the UCLL, UCLL Co-location and UCLL Backhaul Services also provide for access seeker's equipment to be utilised as part of the end-to-end delivery of the Services; and
 - the presence of an additional data switch in the ASNAPOI for the UBA Backhaul service.
35. The Commission notes that the competition test for the UBA Backhaul Service is the same as that for the UCLL Backhaul Service, except for the reference in the former to transmission capacity from Telecom's first data switch (which is the means for delivery of traffic between the UBA Service and the UBA Backhaul Service).¹⁶
36. The Commission also notes that the pricing methodology for the UCLL Backhaul Service and the UBA Backhaul Service is identical, with the same methodology used to determine the prices for both services.¹⁷ The UCLL Backhaul Service includes 100Mbps and 1Gbps options, while the UBA Backhaul Service includes additional options for a 50Mbps and 200Mbps service.
37. The Commission's preliminary view is that that the UCLL Backhaul and the UBA Backhaul Services are sufficiently similar to justify taking the same approach with respect to market definition and competition assessment.

¹⁶ For the UCLL Backhaul Service, the competition test refers to transmission capacity from Telecom's local exchange (which is the interface between the UCLL Service and the UCLL Backhaul Service).

¹⁷ Conference Transcript – UCLL Backhaul and UBA Backhaul Conference, 10-11 April 2008, pages 181-183.

38. Comments are sought on whether the same framework should be adopted for the UBA Backhaul market definition and competition assessment as is used for the UCLL Backhaul competition assessment.

Further Questions

39. Comments are sought on any other issues interested parties consider the Commission should take into account in reviewing the approach to the market definition and competition review for both the UCLL Backhaul and UBA Backhaul Services.

Consultation Process

40. The Commission requests that interested parties provide submissions on the issues outlined in this letter by **5pm on Tuesday 20 April 2010**.
41. The Commission notes that this letter is seeking comments on ten questions and for the purposes of conciseness the Commission encourages parties to attempt to limit submissions to no more than five pages in length.
42. Please send responses or any queries on this matter to Daniel Vincent at daniel.vincent@comcom.govt.nz.
43. The Commission will formally commence, under s30R of the Act, the competition review(s), and will release initial timelines, after considering submissions generated by this letter.



Dr Ross Patterson
Telecommunications Commissioner

Appendix 1 – Background

Section 18 Telecommunications Act 2001

1. In conducting a review of the primary and secondary links defined in the UCLL Backhaul STD, the Commission is obliged to consider the purpose set out in section 18 of the Act. Sub-sections 18 (1) and (2) state that:
 - (1) The purpose of this Part and Schedules 1 to 3 is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunication services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.
 - (2) In determining whether or not, or the extent to which any act or omission will result, or will be likely to result, in competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand, the efficiencies that will result, or will be likely to result, from that act or omission must be considered.

Applicable Conditions – UCLL Backhaul

2. The current applicable conditions for the UCLL Backhaul Service, which is a telecommunications service for the purposes of section 18 of the Act, are that either:
 - i) Telecom faces limited, or is likely to face lessened, competition in a market for transmission capacity between Telecom’s local telephone exchange (or equivalent facility) and the access seeker’s nearest available point of interconnection; or
 - ii) Telecom does not face limited, or is not likely to face lessened, competition in a market for transmission capacity between Telecom’s local telephone exchange (or equivalent facility) and the access seeker’s nearest available point of interconnection, and the Commission has decided to require Telecom’s unbundled copper local loop network backhaul (telephone exchange to interconnect point) to be wholesaled in that market.
3. In considering whether these applicable conditions have been met, the Commission defines relevant markets and assesses the level of competition in each of the relevant markets.

Market Definition

UCLL Backhaul STD

4. In the UCLL Backhaul STD, the Commission focused on the product, geographic and functional dimensions of the market. The Commission determined that an appropriately defined market would include products which are:¹⁸
 - regarded by access seekers as being close substitutes (under the product dimension); and
 - supplied in close proximity (under the geographical dimension),

¹⁸ Decision 626, p.26, paragraph 76

and are therefore products to which access seekers could switch if the regulated access provider were to attempt to exert market power.

5. In relation to supply-side substitutability, the Commission also determined that the market should include those potential access providers who are likely, in that event of a price increase by the regulated access provider, to shift promptly to offer a suitable alternative products, even though they do not currently do so.¹⁹ The Commission notes that in considering the ability of a near entrant to commence supply, a one-year timeframe is often used.²⁰
6. In the UCLL Backhaul STD, the Commission defined two relevant markets for the provision of the UCLL Backhaul Service:²¹
 - the wholesale markets for transmission capacity on each Primary Link of the UCLL Backhaul Service; and
 - the wholesale markets for transmission capacity on each Secondary Link of the UCLL Backhaul Service.

Functional Dimension

7. The Commission determined in the UCLL Backhaul STD that the relevant functional dimension of the markets, in which the transmission capacity on both the Primary Links and Secondary Links of the UCLL Backhaul Service are supplied, is the wholesale level.

Geographic Dimension

8. Regarding the geographic dimension, the Commission determined²² that there were likely to be differing levels of competitive intensity in different geographic regions given the localised deployment of the competing infrastructure. The Commission considered that a narrow definition of individual point-to-point routes (for each Primary Link and Secondary Link) was appropriate, as such a definition was likely to best assist in identifying where competition had emerged or was likely to emerge.
9. In considering the relevant geographic dimension for the UCLL Backhaul Service, the Commission examined the potential for supply-side substitution and, in particular, the ability of ‘near entrants’ who do not currently supply an alternative service but who could do so relatively easily. Specifically, the Commission considered the extent to which a nearby network operator, which is not currently connected to a Telecom exchange, could constrain Telecom’s supply of the UCLL Backhaul Service from that exchange.
10. With regard to the proximity to a Telecom exchange of an alternative backhaul network, Telecom indicated in its submission on the draft STD that it considered a

¹⁹ Ibid, page 31, paragraph 106

²⁰ Commerce Commission, Mergers and Acquisitions Guidelines, page 18.

²¹ Ibid, pages 32-33, paragraph 114.

²² Ibid, pages 30-31, paragraphs 101-102.

network within 5 km of an exchange would be an effective competitor.²³ In the UCLL Backhaul STD, the Commission noted that a number of other parties, including TelstraClear, FX Networks, and Covec, had agreed that network infrastructure that was close to a Telecom exchange would provide some competitive constraint.²⁴

11. In considering how close an alternative fibre network would have to be to a Telecom exchange to represent a supply-side substitute for backhaul, the Commission examined the feasibility of such a network to undertake incremental expansion into the Telecom exchange. This entailed a comparison of the likely additional revenues such a network could earn from providing a backhaul service to UCLL operators with the incremental cost of expansion into the Telecom exchange. The Commission noted that according to information supplied by a number of parties, the costs of deploying fibre could vary considerably, for example depending on the type of terrain over which the incremental expansion would take place. As a result, the Commission noted that such investments would be undertaken on a case-by-case basis.²⁵
12. For the purposes of the STD, the Commission used an estimate of the cost of deploying fibre of \$150,000 per km.²⁶ Based on this build cost per km, and the incremental revenues that could be earned from supplying a UCLL Backhaul Service from a Telecom exchange,²⁷ the Commission identified a maximum distance over which a nearby fibre network operator would be prepared to build.
13. The Commission determined that where a nearby fibre network with existing inter-city coverage is within 2 km of a Telecom exchange, the network is likely to exert a competitive constraint on Telecom and other backhaul providers that are directly connected to that exchange.²⁸ With regard to smaller networks with more localised coverage, the Commission applied a distance of 1 km from a Telecom local exchange.²⁹

First Review

14. In its first review, the Commission concluded that some flexibility was appropriate when considering the likely competitive constraint of an alternative network that was close, but not directly connected to, a Telecom exchange:³⁰

“This is because a 1 km network extension may not represent a significant incremental investment in some areas (where the build cost per km is relatively low), whereas it might be significant in other areas.”

²³ Telecom, *Submissions on draft Standard Terms Determinations for Telecom’s unbundled copper local loop backhaul and Telecom’s unbundled Bitstream access backhaul*, 7 March 2008, paragraph 79(c).

²⁴ Decision 626, paragraph 105.

²⁵ *Ibid*, pages 31-32, paragraphs 107-109.

²⁶ *Ibid*, page 32, paragraph 109.

²⁷ As proxied by the benchmarked prices in the UCLL Backhaul STD.

²⁸ Decision 626, page 32, paragraph 112.

²⁹ The shorter distance of 1km reflected the lower revenues that localised network operators would be able to earn, as the backhaul pricing is distance-related.

³⁰ Decision 667, paragraph 25.

15. The Commission stated that it would take actual build costs into account for a particular network, when assessing the competitive constraint exerted by that network on Telecom and other backhaul providers that are directly connected to a Telecom exchange. The Commission also stated that it would have regard to whether a nearby fibre-based competitor had expressed an intention to connect to, and supply backhaul services from, the exchange.³¹

16. In summary, the Commission concluded that:³²

“the competitive constraint posed by ‘near entrant’ networks should be considered on a local exchange by local exchange basis, based upon information about the proximity, the likely costs, and the intentions of the smaller networks to connect to specific local exchanges, in order to determine if the smaller network is likely to exert a competitive constraint”.

Second Review

17. In the second review, the Commission followed the same approach used in the UCLL Backhaul STD, as amended by the first review.

Competition Assessment

STD

18. In assessing the level of competition in the UCLL Backhaul STD, the Commission concluded that wholesale-only fibre-based network operators that were either directly connected or close to a Telecom exchange would have strong incentives to aggressively compete for backhaul business. Such competitors are unlikely to face capacity constraints, and the Commission referred to the example of Vector’s deployment of fibre into Telecom exchanges in Auckland.³³

19. In deciding how many backhaul providers on a particular route were likely to be sufficient to ensure that there was effective competition, the Commission not only gave due consideration to the views expressed in submissions but also international experience, in particular the approach taken by the ACCC in respect of the domestic transmission capacity service in Australia. The ACCC concluded that three providers of transmission capacity on a particular route provided effective competition.³⁴

20. However, in the UCLL Backhaul STD, the Commission was aware of the emerging nature of the markets in which the UCLL Backhaul Service is supplied, and that the imposition of a regulated price in those markets could deter competitive investment. Consequently the Commission determined that a route was competitive provided there is at least one other wholesale-only backhaul provider in addition to Telecom.³⁵

³¹ Decision 667, paragraphs 26 and 27.

³² Ibid, paragraph 28.

³³ Decision 626, page 40.

³⁴ Ibid, page 44, paragraph 174.

³⁵ Ibid, page 44, paragraph 171

21. The Commission considered that the incentives for a vertically integrated competitor such as TelstraClear to compete with Telecom in supplying backhaul services could be reduced, as it would be supplying a wholesale backhaul service to a downstream competitor. The Commission noted in the UCLL Backhaul STD that it had not seen evidence that TelstraClear was competing aggressively in the supply of UCLL Backhaul Services.³⁶

22. The Commission also considered whether the relevant markets might be susceptible to co-ordinated market power, and concluded that:³⁷

“While it is difficult to draw a definitive conclusion as to whether co-ordinated market power is likely to result in limited competition³⁸, the Commission generally agrees with NERA’s view that given the emerging state of competition in these backhaul markets, it is reasonable to expect that conditions are such that competition between two fibre-based backhaul providers on a particular route will be effective.”

23. The Commission concluded in the UCLL Backhaul STD that:

- in general, Telecom did not face limited competition on Primary Links or Secondary Links where there is one other wholesale-only fibre-based competitor either directly connected, or sufficiently close, to the Telecom exchange;
- for a wholesale-only fibre-based network to be sufficiently close to the Telecom exchange to be considered in the same geographic market, such a competitor with existing inter-city coverage should be within 2 km of the exchange, or within 1 km for smaller networks;³⁹
- for Primary Links or Secondary Links where there was only Telecom, or Telecom and one vertically-integrated competitor,⁴⁰ the Commission concluded that Telecom faced limited competition. The Commission indicated, however, that it would review this conclusion, should evidence emerge that market outcomes on such routes were comparable to routes that were found not to be subject to limited competition; and
- for those markets found to be markets in which Telecom did not face limited competition, Telecom was not likely to face lessened competition.⁴¹

³⁶ Ibid, page 41, paragraphs 155-156

³⁷ Ibid, page 44, paragraph 171.

³⁸ In its final decision to declare the transmission capacity service in Australia, the ACCC also acknowledged that there was no clear framework within which to analyse cooperative oligopoly conditions in the inter-capital transmission market. ACCC, *Competition in data markets*, November 1998, page 52.

³⁹ As discussed above, the geographic boundaries used in this approach were subsequently amended in the first review to allow the Commission more flexibility by considering ‘near entrant’ networks on a local exchange by local exchange basis.

⁴⁰ For example, TelstraClear.

⁴¹ Decision 626, page 37, paragraph 136

24. However, the Commission also noted:⁴²

- the nascent nature of the UCLL Backhaul Service and therefore the limited information available; and
- that there were a number of reasons why competition in these markets might increase. Specifically, the availability of economies of scope in the provision of transmission services could stimulate the deployment of competitive networks plus the continued unbundling of exchanges which was likely to increase demand for backhaul services and so attract competitive supply.

25. The Commission stated in the UCLL Backhaul STD that it would review under section 30R of the Act, the competition assessment on a three monthly basis during the first year, acknowledging the emerging nature of the markets and the likelihood of rapid change to the state of competition within the same. After the first year, the Commission stated its intention to review the competition assessment on a six monthly basis, or more often at the Commission's discretion or in response to a request from any party.⁴³

26. The Commission advised that the information that any such competition review would consider included:⁴⁴

- which additional local exchanges had been unbundled;
- which additional exchanges were planned to be unbundled within the next twelve months;
- where new competition has emerged on a link;
- whether changes in the nature of competition on a link had occurred e.g. evidence that other vertically integrated competitors were constraining Telecom in terms of pricing;
- any announcements of planned competition on a link; and
- whether any previously announced competition had eventuated.

27. In reviewing the competition assessment, the Commission stated that it would take into account any changes since the previous competition assessment, focussing on:⁴⁵

- the state of competition in respect of the Primary and Secondary Links that have been considered in the previous competition assessment; and
- the state of competition in respect of additional local exchanges that are expected to be unbundled over the following year.

⁴² Ibid, page 37, paragraphs 131-135.

⁴³ Ibid, pages 51-52, paragraph 204.

⁴⁴ Ibid, page 52, paragraph 206

⁴⁵ Ibid, page 52, paragraph 205.

First Review

28. In the Commission's draft decision in the first review, the Commission stated its preliminary view that the competition assessment in the first review and in subsequent reviews will generally follow the approach set out in the UCLL Backhaul STD.⁴⁶ In response, Telecom (Group) submitted that additional matters should be considered relating to the promotion of infrastructure-based competition, and that changes to the market definition should be considered during section 30R reviews to determine potential competition, and whether further account needs to be taken of potential competition and barriers to competitors entering the market.⁴⁷
29. During the first review, the Commission sought information from providers of commercial backhaul services and purchasers of commercial backhaul services, in relation to all Primary and Secondary Links to be assessed under the First Review. Interested parties were also invited to provide any additional information that they considered relevant to the scope of the First Review.
30. In the first review,⁴⁸ the Commission noted that in order to determine if the smaller networks were likely to exert a competitive constraint, the competitive constraint posed by 'near entrant' networks should be considered on an individual local exchange by local exchange basis, taking account of information about the proximity, the likely costs, and the intentions of the smaller networks to connect to specific local exchanges. The Commission took such information into account when considering whether Telecom faced limited competition in the supply of the UCLL Backhaul Service.
31. Under the first review the Commission:
- assessed for the first time 41 Primary Links that were not considered under the UCLL Backhaul STD. The Commission considered 28 of these links to be subject to limited competition;
 - reassessed the Primary Links considered in the UCLL Backhaul STD and found that:
 - four Primary Links that were previously considered to be competitive, were subject to limited competition. These Primary Links were added to the list of Primary Links available under the UCLL Backhaul STD; and
 - three Primary Links that were previously considered to be subject to limited competition were competitive. These Primary Links were removed from the list of Primary Links available under the UCLL Backhaul STD; and
 - reassessed all Secondary Links and found that one link that was previously considered to be subject to limited competition was competitive. This

⁴⁶ Decision 667 (draft), 18 March 2009, paragraph 20.

⁴⁷ Telecom (Group) submission, 3 April 2009, pages 2-3.

⁴⁸ Decision 667, 30 April 2009, paragraph 43.

Secondary Link was removed from the list of Secondary Links available under the UCLL Backhaul STD.

Second Review

32. In the second review, the Commission noted that it had not modified its approach to market definition or competition assessment from that applied in the UCLL Backhaul STD and the First Review.⁴⁹ However, the Commission noted its intention to review the approach taken to market definition and competition assessment, including the matters raised by Telecom (Group), prior to carrying out the next review.

33. Under the second review the Commission:

- reassessed the Primary Links considered in the first review and found that two Primary Links that were previously considered to be subject to limited competition were competitive. These Primary Links were removed from the list of Primary Links available under the UCLL Backhaul STD; and
- reassessed all Secondary Links and found that there had been no changes to the competition status of Secondary Links. As a consequence, no changes were required to the list of Secondary Links available under the UCLL Backhaul STD.

⁴⁹ Decision 686, 3 December 2009, paragraph 5.

Appendix 2 – Primary Links on which the UCLL Backhaul Service must be supplied by Telecom at the request of the Access Seeker⁵⁰

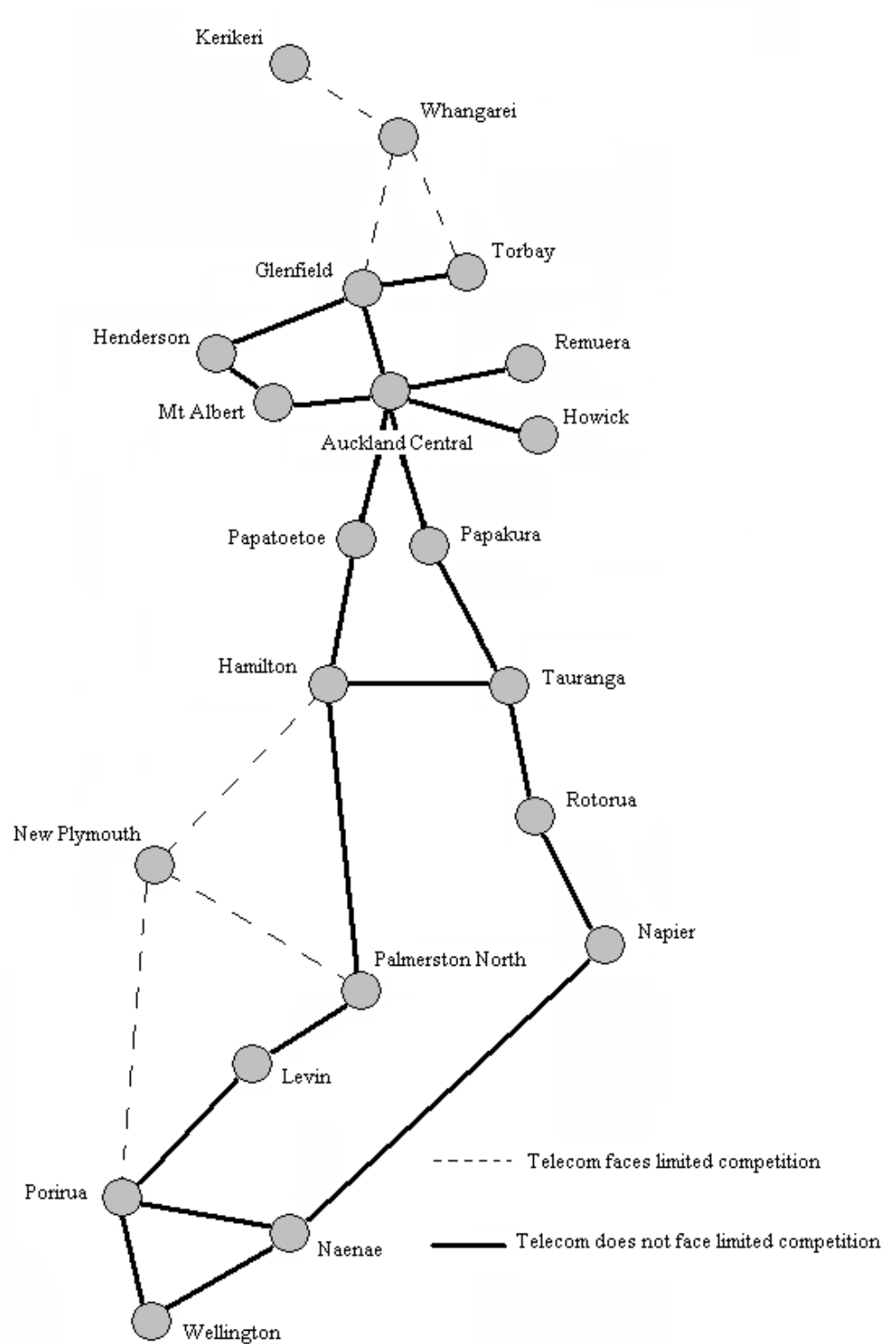
Local Exchange	Parent POI	Assessment of competition status
Kamo	Whangarei	limited
Kensington	Whangarei	limited
Albany	Torbay	not limited
Browns Bay	Torbay	not limited
Forrest Hill	Torbay	not limited
Greenhithe	Torbay	limited
Hibiscus Coast	Torbay	limited
Matakana	Torbay	limited
Red Beach	Torbay	limited
Warkworth	Torbay	limited
Mount Eden	Airedale Street	not limited
Ponsonby	Airedale Street	not limited
Airedale Street	Auckland Central	not limited
Mayoral Drive	Auckland Central	not limited
Ellerslie	Remuera	not limited
Glendowie	Remuera	not limited
St Heliers	Remuera	not limited
Tamaki	Remuera	not limited
Avondale	Mt Albert	not limited
Blockhouse Bay	Mt Albert	not limited
Mount Roskill	Mt Albert	not limited
New Lynn	Mt Albert	not limited
Three Kings	Mt Albert	not limited
Birkdale	Glenfield	not limited
Birkenhead	Glenfield	not limited
Devonport	Glenfield	not limited
Takapuna	Glenfield	not limited
Glen Eden	Henderson	not limited
Massey	Henderson	not limited
Te Atatu	Henderson	limited
Titirangi	Henderson	not limited
Waiatarua	Henderson	limited
Whenuapai	Henderson	limited
Pakuranga	Howick	not limited
Whitford	Howick	limited
Manurewa	Papakura	not limited
Pukekohe	Papakura	not limited
Tuakau	Papakura	not limited
Waiiau Pa	Papakura	limited
Waiuku	Papakura	limited
East Tamaki	Papatoetoe	not limited
Mangere	Papatoetoe	not limited
Manukau City	Papatoetoe	not limited
Onehunga	Papatoetoe	not limited
Otahuhu	Papatoetoe	not limited
Otara	Papatoetoe	not limited
Brymer	Hamilton	limited

⁵⁰ Links highlighted in grey are considered to be subject to limited competition.

Local Exchange	Parent POI	Assessment of competition status
Cambridge	Hamilton	limited
Claudelands	Hamilton	not limited
Flagstaff	Hamilton	limited
Frankton	Hamilton	not limited
Hamilton East	Hamilton	not limited
Melville	Hamilton	not limited
Te Awamutu	Hamilton	limited
Te Rapa	Hamilton	limited
Whatawhata	Hamilton	limited
Maungatapu	Tauranga	limited
Mount Manganui	Tauranga	limited
Otumoetai	Tauranga	limited
Whakatane	Tauranga	limited
Hastings	Napier	limited
Havelock North	Napier	limited
Marewa	Napier	limited
Taradale	Napier	limited
Bunnythorpe	Palmerston North	limited
Wanganui	Palmerston North	limited
Tawa	Porirua	not limited
Waikanae	Porirua	limited
Eastbourne	Naenae	limited
Lower Hutt	Naenae	not limited
Petone	Naenae	limited
Courtenay Place	Wellington	not limited
Hataitai	Wellington	not limited
Island Bay	Wellington	not limited
Johnsonville	Wellington	limited
Kelburn	Wellington	not limited
Khandallah	Wellington	limited
Wellington South	Wellington	not limited
Blenheim	Wellington	not limited
Richmond	Nelson	not limited
Stoke	Nelson	not limited
Upper Moutere	Nelson	limited
Ashburton	Christchurch	limited
Kaipoi	Christchurch	limited
Linwood	Christchurch	not limited
Mount Pleasant	Christchurch	limited
New Brighton	Christchurch	limited
Papanui	Christchurch	not limited
St Albans	Christchurch	not limited
Avonhead	Riccarton	not limited
Fendalton	Riccarton	limited
Lincoln	Riccarton	limited
Memorial Ave	Riccarton	not limited
Woodend	Riccarton	limited
Oamaru	Timaru	limited
Queenstown	Cromwell	limited
Mosgiel	Dunedin	limited
South Dunedin	Dunedin	limited

Appendix 3 – Secondary Links

North Island:



South Island:

