



Submission on

**Review of Resale Services:
Response to the Commerce Commission's
Draft Report**

23 September 2010

PUBLIC VERSION

TABLE OF CONTENTS

A	EXECUTIVE SUMMARY	1
B	GENERAL OBSERVATIONS.....	4
	B.1 Deregulation is only appropriate where markets are effectively competitive	4
	B.2 The importance of the ‘ladder of investment’ in a principled approach to regulation	4
	B.3 The appropriate timing for removing rungs on the ‘ladder of investment’	5
C	DEREGULATION OF ‘SINGLE SERVICE RESALE’ SERVICES AND RESIDENTIAL LOCAL ACCESS AND CALLING SERVICES IS NOT APPROPRIATE	6
	C.1 Progress in climbing the ladder of investment has been slow	6
	C.2 The climb has been delayed by matters beyond TelstraClear’s control ..	8
D	RESERVATIONS IN DEREGULATING RESALE BUNDLED SERVICES AND RESALE BROADBAND AND DATA SERVICES	11
	D.1 More detail is required	11
	D.2 Deregulating bundles may just remove the discount	11
	D.3 Interplay between deregulation and the WSA	12
E	A CONSTRUCTIVE PROPOSAL IF THE COMMISSION WERE MINDED TO PROCEED WITH DEREGULATION	14
	[.....	16
]	TCLCO

Public version

This is the public version of TelstraClear’s submission. Commercially confidential information for the Commerce Commission only has been removed, and is identified by square brackets [] **TCLCO**.

A EXECUTIVE SUMMARY

- 1 TelstraClear welcomes the opportunity to comment on the Commerce Commission's (**the Commission**) Draft Report on whether Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001 (or if not omitted, amended in some form) (**Draft Report**).
- 2 Above all, TelstraClear emphasises that the Commission should apply a principled approach to deregulation. The Commission should ask the following critical question: does regulation continue to promote the long-term benefit of end-users? Deregulation should only occur if regulation is no longer necessary to promote the long-term benefit of end-users and the benefits of removing a regulation exceed the costs.
- 3 TelstraClear strongly **supports** the Commission's proposal to **retain** resale regulation for 'Single Service Resale' services and residential local access and calling services. Deregulation of these services is not appropriate for the reasons already expressed by the Commission and as further identified by TelstraClear in this submission.
- 4 TelstraClear **opposes** the Commission's proposal to **deregulate** resale bundled services and resale broadband and data services. Applying a principled approach, TelstraClear has significant reservations whether such deregulation is appropriate at this time. However, if the Commission were minded to proceed with deregulation, TelstraClear provides a constructive proposal that would address TelstraClear's concerns by reducing some of the potential risks.

Critical importance of resale regulation

- 5 TelstraClear supports the objective that regulation should be gradually rolled back in telecommunications markets where effective competition has developed. However, there are few markets in New Zealand that could currently be said to be effectively competitive. Accordingly, the removal of resale regulation in New Zealand remains premature:
 - (a) While competition is developing, it cannot yet be said to be effective. Telecom continues to have the largest market share in all relevant telecommunications markets. New Zealand's telecommunications markets remain highly concentrated by world standards.¹
 - (b) Indeed, the Commission in its Draft Report has recognised that, in the main, competition in the relevant telecommunications markets is limited.
- 6 It is also clear that resale regulation has already delivered very significant benefits to New Zealanders and that those benefits are ongoing:
 - (a) To date, resale regulation has facilitated or enhanced the market entry of several telecommunications providers, including TelstraClear. Such

¹The Herfindahl-Hirschman Index in the retail voice market in New Zealand, while it has decreased by several thousand points over the past four years, is still 5810, which indicates that the market is highly concentrated. This is considerably more concentrated than the Australian market. See Commerce Commission, *2009 Annual Telecommunications Monitoring Report*, April 2010, p. 31.

market entry has in turn culminated in a reduction in retail prices paid by customers over the past five years.²

- (b) From TelstraClear's perspective, resale regulation has enabled TelstraClear to supply fixed line services to customers outside its own network footprint. It has also provided TelstraClear with the opportunity to build a solid customer base in such areas ahead of it investing in its own network infrastructure.
- (c) Accordingly, TelstraClear has been able to offer services in competition with Telecom without incurring the significant expense and risk associated with a large-scale infrastructure rollout. As TelstraClear achieves a critical mass of subscribers, it can proceed to offer real infrastructure-based competition.

7 Indeed, resale regulation continues to play an important role to the development of long-term and sustainable competition in New Zealand telecommunications markets:

- (a) Resale-based competition continues to play a critical role as the first 'rung' on the ladder of investment. Resale regulation facilitates market entry, particularly by smaller operators that could not otherwise sustain the cost of significant infrastructure deployments.
- (b) As noted in the Draft Report, the uptake of resold local access services continues to increase steadily over time. The fact that the trend is upward illustrates that resale competition in New Zealand is still emerging and has not yet reached sufficient maturity to warrant deregulation.
- (c) Moreover, as TelstraClear (and other operators) climb the ladder of investment and seek to migrate customers from the bottom resale 'rung' to one of the next 'rungs' on the ladder, it is important that resale regulation not be removed prematurely. As identified in this submission, the migration of customers must be undertaken in a way that is gradual and staggered so as to preserve service quality and thereby minimise customer churn back to Telecom.
- (d) Such migration is particularly important for TelstraClear given the current challenges it faces to climb to the next rung on the ladder. As the Commission will appreciate, the unbundled local loop service (**UCLL**) remains in its infancy in New Zealand. TelstraClear also faces significant investment uncertainty regarding the next 'rung' on the ladder given the current transition to an ultra fast broadband (**UFB**) world. Moreover, there are inherent delays in migrating customers to new services given long-term contracts and the need to minimise adverse impacts on service quality.
- (e) TelstraClear anticipates that other operators have faced, or are currently facing, similar issues.

² See, for example, Commerce Commission, *2009 Annual Telecommunications Monitoring Report*, April 2010, p. 31.

Deregulation of ‘Single Service Resale’ services and residential local access and calling services is not appropriate

- 8 As the Commission has pointed out in its Draft Report, wholesale resale services are currently being provided by Telecom to TelstraClear and other access seekers on commercial terms. However, it is also important to recognise that resale regulation remains a critical ‘safeguard’; a safeguard which does not currently impose a significant regulatory compliance burden on Telecom.
- 9 TelstraClear strongly supports the draft recommendations that retain ‘Single Service Resale’ and residential local access and calling services in their current forms.

Deregulation of resale bundled services and resale broadband and data services is only appropriate if the deregulation is spread over a two year period

- 10 The Commission has recommended that resale regulation be removed for resale bundled services and resale broadband and data services.
- 11 TelstraClear has three broad concerns with these recommendations:
- (a) First, it is not entirely clear to TelstraClear which services are going to be subject to deregulation. TelstraClear submits that it is important that further detail be provided beyond the broad product families. More detail would enable TelstraClear and other access seekers to fully understand the impact that the proposed deregulation would have on their businesses and customers.
 - (b) Second, TelstraClear is concerned that the deregulation of bundled services may have the effect of removing the discount associated with those bundled services as the individual elements of the bundle remain regulated.
 - (c) Third, and most importantly, TelstraClear is concerned at the potential for Telecom to introduce non-commercial terms. [

]**TCLCO**

- 12 However, if the Commission were minded to proceed with deregulation, TelstraClear puts forward a constructive proposal that would address TelstraClear’s concerns. The proposal essentially requires that there is an orderly phased migration from the services that are to be deregulated—resale bundled services and resale broadband and data services—to alternate services. TelstraClear considers that such a migration period should be no less than 2 years. A 2 year period will allow TelstraClear to migrate its customers in a way that does not compromise service quality. In 2 years time, there will also be further clarity around the next ‘rung’ on the ladder enabling TelstraClear to move up the ladder and focus its investments and migration efforts accordingly.

B GENERAL OBSERVATIONS

- 13 This section sets out TelstraClear's general observations on the Commission's objectives and its draft recommendations.

B.1 Deregulation is only appropriate where markets are effectively competitive

- 14 TelstraClear strongly supports the Commission's objective of removing regulation in markets where there is effective competition.³
- 15 In practice, however, TelstraClear is firmly of the view that resale regulation is still required in New Zealand. Wholesale services remain an enduring bottleneck and sufficient competitive entry has not yet occurred at the wholesale level. Absent resale regulation, the relevant wholesale services would not be offered by Telecom to access seekers at competitive prices. As noted by the Commission in the Draft Report, while wholesale resale services are currently being provided by Telecom to TelstraClear and other access seekers on commercial terms, resale regulation remains an important 'safeguard'.

B.2 The importance of the 'ladder of investment' in a principled approach to regulation

- 16 The Commission noted that it has had regard to the ladder of investment concept in the context of this review. The Commission outlined:⁴

The principle behind the ladder of investment is that a competing service provider will start at the bottom of the ladder, purchasing resale services. Resale is the most basic form of market entry, requiring the least investment by the access seeker. However, resale is also the least flexible option (i.e. provides the least scope for innovation), as the access seeker directly on-sells the retail services offered by Telecom.

As the entrant builds market share, it will generate the scale necessary to work its way up the ladder by investing in its own infrastructure. In the context of broadband services, bitstream and local loop unbundling allow greater flexibility for access seekers, but also require additional investment. For example, an access seeker using the UCLL services rent the copper line from Telecom and co-location space in the local exchange, but owns the other infrastructure required to deliver retail services (e.g. DSLAMs).

- 17 Indeed, the Commission stated that telecommunications regulation in New Zealand is underpinned by the ladder of investment concept. In particular, the Commission noted that:⁵

The ladder of investment relies on different functional levels of wholesale access, whereby an access seeker is incentivised to invest further in its own infrastructure as it expands its customer base. Under the ladder of investment framework, there is a complementary relationship between access products at different functional levels ('rungs' on the ladder), as access at a lower rung (such as resale) may be used as a stepping stone to access at a higher rung (such as UCLL).

³ The Commerce Commission's other stated objective is to remove regulation where it is imposing or maintaining an unnecessary burden. This objective is implicit within the other stated objective because the burden imposed on Telecom is 'unnecessary' where regulation is no longer needed as there is effective competition in the market.

⁴ Commerce Commission, *Draft Report on whether Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001 (or if not omitted, amended in some form) (Draft Report)*, 26 August 2010, p. 27.

⁵ *Ibid*, p. 66.

B.3 The appropriate timing for removing rungs on the ‘ladder of investment’

- 18 Essentially, the question being asked by the Commission in this review is whether this is the appropriate time for it to remove, in full or in part, the ‘bottom rung’ on the ladder of investment.
- 19 TelstraClear’s strong view is that this question cannot yet be answered in the affirmative. That is, the bottom rung on the ladder of investment must remain in place in New Zealand for the foreseeable future:
 - (a) Primarily, this is because UCLL, one of the next ‘rungs’ on the ladder, was only made available in 2007–2008. TelstraClear is still migrating its customers across to UCLL services in local exchanges where lines have been activated by Telecom. TelstraClear requires more time to complete this migration. That is, TelstraClear needs to climb the ladder of investment in an orderly and gradual manner so that it can bring its customers up the ladder with it.
 - (b) Another reason why it is not appropriate to remove the resale rung on the ladder at this stage is because it is not clear what the next ‘rung’ on the ladder is. Currently, there is significant uncertainty, for example, as to whether the next rung is UCLL, or a next generation wholesale bitstream service, or a sub-loop unbundled product on Telecom’s fibre-to-the-node (FTTN) network, or a dark fibre service on the Government’s proposed fibre network.

C DEREGULATION OF ‘SINGLE SERVICE RESALE’ SERVICES AND RESIDENTIAL LOCAL ACCESS AND CALLING SERVICES IS NOT APPROPRIATE

- 20 TelstraClear strongly supports the Commission’s proposal to retain resale regulation for ‘Single Service Resale’ services and residential local access and calling services. Deregulation of these services is inappropriate for the reasons identified by the Commission.
- 21 To illustrate this point, and to support the Commission’s reasoning, this section discusses TelstraClear’s progress to date in climbing the ladder of investment from resale to UCLL.
- 22 An important issue identified by the ERG in Europe was that the timing for removal of rungs on the ladder of investment needed to reflect the unique circumstances of each country.⁶ TelstraClear submits that the New Zealand situation is one which warrants slower progress in the removal of ‘rungs’, given there are distinguishing features of the New Zealand market, including its generally higher market concentration.
- 23 Importantly, TelstraClear’s business is vulnerable to the premature removal of resale regulation.

C.1 Progress in climbing the ladder of investment has been slow

- 24 Up until November 2007, wholesale resale services were the only access services that TelstraClear was able to use to service its customers outside its own network footprint.
- 25 Following a long period of negotiations with Telecom, TelstraClear first delivered voice, broadband and data services to customers using wholesale services in 2003.⁷

The use of resale services

- 26 Resale PSTN services has proved critical in enabling TelstraClear to build its customer base:

(a) [

(b)

] TCLCO

⁶ In the context of analysing when it is appropriate to deregulate, the ERG noted that the circumstances in each country were different. The ERG also noted that: ‘Speeding up the process too much may create the opposite effect of new entrants “falling down the ladder” (i.e. exiting the market)’. See ERG Broadband market competition report (Full Report) available at: http://www.erg.eu.int/documents/erg/index_en.htm.

⁷ Commerce Commission, *Determination on the TelstraClear Application for Determination for “Wholesale” Designated Access Services*, 12 May 2003, available at: <http://www.comcom.govt.nz/assets/Imported-from-old-site/industryregulation/Telecommunications/Wholesale/WholesaleDeterminations/ContentFiles/Documents/comcom-telstraclearwholesaleaccessservicesapplicationdetermination497-may2003.pdf>.

- (c) Importantly, resale PSTN services are still being used actively by TelstraClear to build up its customer base.
- (d) Take up of resale PSTN services have continued to increase notwithstanding the recent introduction of UCLL.

[

] TCLCO

- 27 In the past, TelstraClear has also used resale broadband and data services in areas outside its network footprint. For example, TelstraClear previously offered its residential customers Telecom's JetStream broadband product. While business customers were previously sold resale broadband products using the wholesale broadband service (**WBS**).
- 28 Similar to the negotiations with Telecom regarding resale services, TelstraClear spent a considerable amount of time and resources in securing UBS access.⁸
- 29 Upon securing UBS, TelstraClear migrated residential customers from resold broadband services to bitstream services. [

] TCLCO

- 30 TelstraClear is also well progressed in migrating its business customers [

] TCLCO

⁸ See Commerce Commission, TelstraClear applies for access to regulated bitstream services and the resale of select business services, 4 November 2004, available at: <http://www.comcom.govt.nz/media-releases/detail/2004/telstraclearapplies1200/>.

The move to UCLL

31 TelstraClear has made a significant push into UCLL. In effect, TelstraClear is seeking to climb to this rung of the ladder of investment on an expedited basis.

(a) [

(b)

(c)

] **TCLCO** the overall New Zealand figure
(which is around 4%).⁹

C.2 The climb has been delayed by matters beyond TelstraClear's control

32 TelstraClear submits that the New Zealand situation is one which warrants slower progress in the removal of 'rungs' given some important features of the New Zealand market, including its generally higher market concentration.

33 TelstraClear has been impeded from climbing the ladder as quickly as it would have liked by various matters outside its control that should be considered by the Commission when making any deregulatory decisions. Specifically:

- UCLL remains in its infancy in New Zealand;
- there is significant uncertainty in an UFB world as to what should now properly be considered to be the next 'rung' on the ladder;
- some customers face significant switching costs and therefore tend to delay any migration to a superior service; and
- there are inherent delays in any migration from resale services to UCLL services given the need to minimise adverse customer impacts.

Infancy of UCLL

34 As the Commission will appreciate, UCLL has only been available in New Zealand for 2–3 years unlike in many other countries such as Australia where the regulated unbundled local loop service has been available since 1999.

35 TelstraClear has simply not had enough time to complete its move up the ladder.

36 While TelstraClear's strategy has been to transition its customers to UCLL-based services in local exchange areas, this strategy takes time to effectively implement.

⁹ Data for calculating the total New Zealand unbundled lines as a proportion of total lines in New Zealand is taken from Table 11 and Figure 4 on pages 77 and 78 of the Draft Report.

Uncertainty

- 37 A second key consideration when identifying the appropriate timing for deregulation is created by the current paradigm shift in telecommunications away from copper access infrastructure towards fibre access infrastructure.
- 38 Significant uncertainty is currently being created by the deployment of Next Generation Networks, given that these have the potential to strand certain investments in UCLL, such as DSLAMs.
- 39 Specifically, access seekers moving up the ladder from resale to the next 'rung' will be required to incur a significant amount of capital expenditure and operational expenditure.
- (a) Access seekers will need to invest in the relevant infrastructure as well as ensure there is connectivity between its existing core network, switching platforms and systems, such as its billing system and faults system, and the new network layer or service. This is a process that takes a significant amount of time and resources to ensure that service quality is not compromised.
- (b) In order to make these investment decisions, access seekers require certainty over the next 'rung' on the ladder. Access seekers do not want to risk making investments in related network assets that soon become 'stranded' or obsolete before a sufficient return on those assets are made.
- 40 In this context, the next rung on the ladder of investment could be any of the following:
- UCLL;
 - a next generation wholesale bitstream service on Telecom's FTTN network;
 - a sub-loop unbundled product on Telecom's FTTN network; or
 - a dark fibre service on the Government's proposed fibre network.
- 41 As noted above, TelstraClear is in the process of [
-] TCLCO**
- 42 TelstraClear has to adopt a different strategy in relation to how it will migrate its customers to new services in an UFB world:
- (a) If Telecom's FTTN program proceeds as intended, approximately [] **TCLCO** of residential and [] **TCLCO** of business lines across target areas will be served from cabinets by 2012.
- (b) In an FTTN environment, TelstraClear plans to deliver services to customers using resale, bitstream and possibly sub-loop unbundling. TelstraClear plans to move customers from resale PSTN to VOIP offered using bitstream. Of crucial importance is that the VOIP product is of a sufficiently high quality. A 'best efforts' VOIP service is grossly inadequate as the packets can be subject to latency or even worse can be 'dropped.'

- (c) A bitstream service that could be of sufficient quality to support IP voice and broadband on a single access basis is now available for TelstraClear to utilise (this is the EUBA variant which was made available at the start of 2009). [

] TCLCO

- (d) In an environment where the Government rolls out its own fibre network, TelstraClear would seek access to a dark fibre service. However, given that the proposal is still uncertain, [

] TCLCO

- 43 It is TelstraClear's expectation that the landscape will become clearer in two to three years. At that time, TelstraClear will be able to make a decision as to which service it will acquire in what region and will focus its investments on that service/layer and will migrate its customers from resale services to services on the next 'rung' accordingly.

Difficulties faced by customers when switching

- 44 A third issue impeding TelstraClear from quickly moving up the ladder of investment relates to customer behaviour in New Zealand.
- 45 Customers can be affected when they migrate from one service to another, even when the new service is a superior one. Accordingly, any migration necessarily takes significant time, cost and effort. TelstraClear's experience in New Zealand is that migrations of customers is taking, and will likely continue to take, significant time.
- 46 As the Commission will be aware, it can be difficult to persuade customers to switch products. This is particularly true for residential customers that have invested in their own infrastructure and where switching costs remain high. For example, a customer may not wish to switch from a Homeline product to another voice service as it may require them to purchase a different phone device and it may also require them to use a different phone number.

Inherent delays to minimise adverse customer impacts

- 47 A fourth issue impeding TelstraClear's push into UCLL is the practical rate it can migrate its customers.
- 48 TelstraClear must take care to ensure that customers are migrated in a manner which minimises the risks of service diminution and, at worst, service outages. That is, effective migration takes a significant amount of time and resources.
- 49 As noted previously in our 15 May 2009 Submission to this review, [

50

] TCLCO

D RESERVATIONS IN DEREGULATING RESALE BUNDLED SERVICES AND RESALE BROADBAND AND DATA SERVICES

- 51 TelstraClear opposes the Commission's proposal to deregulate resale bundled services and resale broadband and data services. TelstraClear has significant reservations with this proposal.
- 52 TelstraClear identifies its concerns below and, in the next section of this submission, makes a constructive proposal that may address TelstraClear's concerns if the Commission were minded to proceed with deregulation.

D.1 More detail is required

- 53 At a broad level, TelstraClear is concerned that it is not entirely clear which services are being deregulated. The Commission's Draft Report identifies the product families for the services to be deregulated, however, it is not possible for access seekers to identify with certainty the exact products which fall within these product families.
- 54 In TelstraClear's view, the Draft Report should specify the individual product lines, distinguished by a unique product ID. In this manner, access seekers may clearly identify the unique products affected by the Commission's proposal and, in turn, properly assess the impact of the change on them. This will also assist TelstraClear in planning customer migrations if the proposed deregulation proceeds.
- 55 While TelstraClear understands that the provision of this level of detail would be a non-trivial exercise for Telecom, TelstraClear considers such detail is essential to fully understand the impact that the proposed deregulation would have on its business and its customers.

D.2 Deregulating bundles may just remove the discount

- 56 The proposal to remove the bundled products from regulation raises a number of concerns. TelstraClear's understanding is that Messageline¹⁰ and Smartline¹¹ will be omitted from Part 2 of Schedule 1 of the Act, but the individual elements within those bundles will remain subject to designation in the Act.
- 57 Where there are alternative services available at equivalent prices and at a similar service quality, the impact of removing bundled products from the Act should be minimal. In these circumstances, access seekers are able to replicate the bundle.
- 58 However, if the effect of removing the bundled products from the Act is to reduce or remove the discount associated with buying the bundle compared with buying the access services separately from Telecom, this would be a perverse result.

¹⁰ Messageline allows end users to package their Homeline and the Call Minder service on that particular line for one fixed monthly rental fee.

¹¹ Smartline allows end users to package their Homeline and two Smartphone services on that particular line for one fixed monthly rental fee. Smartphone services include quick dial, call diversion (call forwarding), remote divert service, call restriction, call waiting, conference calls, do not disturb, dual telephone number, hotline and reminder call.

- 59 TelstraClear is concerned that the deregulation of bundled products will directly impact its ability to continue to replicate the bundled offering for its own customers at the same price at which it offers bundles currently.

D.3 Interplay between deregulation and the WSA

- 60 Even when a service is designated under the Act, Telecom's obligation to supply the designated service is not an absolute obligation. Telecom has the ability to cease supply of 'a determined service' that is available for resale to end users to the extent that it is also withdrawing the corresponding retail service to Telecom's own customers under the WSA.
- 61 An issue that warrants some consideration by the Commission is the [

] TCLCO

- 64 In TelstraClear's view, although it is not ideal that Telecom retains discretion to grandfather even designated access services, these arrangements allow for the progressive migration of services in an orderly phased manner. Where a service is being withdrawn it is critical that these arrangements continue to apply and in particular, if the Commission proceeds with its proposal, it is critical that this process continue to apply to the resale bundled and resale broadband and data services that the Commission is proposing to deregulate.
- 65 The issue for TelstraClear in relation to the deregulation of services subject to the grandfathering arrangements is this: deregulating services now which are already in the process of being grandfathered will remove Telecom's obligation to adhere to the established grandfathering rules and will allow Telecom to discriminate between itself, on the one hand and access seekers, on the other hand. [

] TCLCO

- 66 Related to this issue is the recommendation that ‘none of the proposed alterations should be deferred for any period’. If the Commission adopts this draft recommendation that the proposed alterations not be deferred, it means that the migration path may be as short as [] **TCLCO**. Such a migration path is neither staggered nor gradual. In this situation, TelstraClear would have to commence the migration of [] **TCLCO** its customer base to alternative services immediately and it would have a substantial detrimental effect on its business.
- 67 Not only would a [] **TCLCO** migration period pose additional costs on TelstraClear, it also involves additional costs for TelstraClear’s customers who have invested in their own infrastructure. Such customers may face switching costs and therefore may not wish to migrate to alternative services.

E A CONSTRUCTIVE PROPOSAL IF THE COMMISSION WERE MINDED TO PROCEED WITH DEREGULATION

68 TelstraClear generally considers that it is a premature move to deregulate resale services in New Zealand because the UCLL rung of the ladder has not been in place for sufficient time to have allowed resale providers to migrate up to the next rung in a way that would permit a sufficient proportion of its customers to move with them.

69 As noted in this submission, TelstraClear has significant concerns with the proposed removal of resale bundled services and resale broadband and data services from Part 2 of Schedule 1 of the Act. Of most concern is that deregulation of these services may allow Telecom to introduce non-commercial terms. [

] TCLCO

70 Further, in light of the specific issues referred to in this submission, TelstraClear considers that:

- it would be inappropriate for the Commission to remove bundled services from the Part 2 of Schedule 1 of the Act as this would have the effect of increasing the cost of those services for access seekers' customers if the effect of deregulation were that Telecom would no longer make those services available at the discounted bundled price; and
- similarly, it would be inappropriate for the Commission to remove from Part 2 of Schedule 1 of the Act those services which are only available as part of a bundle, unless it were clear that those services could be replicated by a sufficient number of access seekers;

71 Importantly, [

] TCLCO

72 For these reasons, TelstraClear considers that the Commission should not deregulate any resale services as a result of this review.

73 If, however, the Commission proceeds on the basis outlined in the Draft Report, then TelstraClear considers that the Commission should, in accordance with its power under section 66 of the Act, recommend to the Minister the following:

- rather than removing each of the services proposed to be omitted from Part 1 of Schedule 2 of the Act, the Minister instead amends the conditions for each designated service in such a way that:
 - (i) it is clear that for services for which Telecom has commenced the grandfathering process under the WSA, Telecom is required to continue that process and is prevented from reclassifying services; or
 - (ii) the service definitions remain as they stand for each of the services proposed to be removed from the Act, however, the conditions for each of those services be amended to incorporate rules about how migration from the service is to occur over a minimum 2 year period, including a rule providing that Telecom must offer the same price

and non-price terms to access seekers over the course of the migration (i.e. a non-discrimination rule).

- 74 Such an approach would address TelstraClear's concerns by reducing some of the risks created by premature deregulation.
- 75 As Vodafone noted in its submission to this review on 15 May 2009, 'a clear migration path ... over a reasonable timeframe, on terms no worse than the current ones' is required for the services that the Commission is proposing to deregulate.¹² TelstraClear agrees with Vodafone on this particular matter.
- 76 TelstraClear considers that a reasonable timeframe would be no less than 2 years. In 2 years, TelstraClear will be able to migrate its customers in a way that does not compromise service quality. It will also allow UCLL and the other 'rungs' on the ladder to develop and TelstraClear will focus its investments and migration efforts accordingly.

¹² Vodafone, *Submission on the proposed review of the designated access services under the Telecommunications Act 2001*, 15 May 2009, p. 2.

[

]TCLCO