



**TELECOMMUNICATIONS USERS ASSOCIATION OF
NEW ZEALAND INC**

P O Box 33 1014, Takapuna, Auckland

7 June 2005

Mr Douglas Webb
Telecommunications Commissioner
Commerce Commission
P O Box 2351
WELLINGTON

Dear Commissioner Webb

**DRAFT DETERMINATION ON TELSTRACLEAR "BITSTREAM ACCESS" –
CROSS SUBMISSION**

TUANZ welcomes the opportunity to make cross submissions on the Commission's Draft Determination.

INTRODUCTION

TUANZ continues to fully support the thrust of the Commission's Draft. We agree with the Commission that there is an absence of real competition in this market.

We remind the Commission that the planned Unbundled Bitstream Service had its genesis during the investigation into Local Loop Unbundling, when Telecom at a late stage offered such a Service as an alternative to full unbundling. Given that background, TUANZ is surprised at the energy Telecom appears to be putting into resisting or diluting the Service, to the extent of a cross submission of 116 pages. Failure of UBS to satisfy users would certainly re-open the demand for LLU – hardly a desirable outcome for Telecom.

GEOGRAPHIC BOUNDARIES

TUANZ reiterates also that the broadband market is a national one. In certain parts of the country there are pockets of niche competition, but nowhere is there a competitor that offers a serious threat to Telecom's market power. We restate our support therefore for this Determination to be a nation wide one. We would strongly oppose the imposition of geographical "no go zones" which until now

have confused both wholesale customers and end users, and prevented some vendors from offering and advertising services on a nationwide basis.

VALUE BASED PRICING

Telecom argues that requiring it to sell a single UBS product at a single price would undermine value based pricing. Business New Zealand has made similar comments.

TUANZ agrees in principle that discriminatory pricing is a common and acceptable business practice. However, we believe that in this wholesaling scenario, the right to determine whether and in what form such pricing should apply should reside not with the wholesaler, but with each individual organisation to which the wholesale service is sold. Our reasons are:

1. As Business New Zealand observes, there are many ways in which discriminatory pricing might be applied to such a service. Under the Draft as it stands the product is wholesaled at a flat price, and therefore the basis on which to price-discriminate is left to each of the wholesale customers individually. Each of them may implement such discrimination with different criteria, break points, and price differentials – or choose not to discriminate at all. This is an optimal outcome for end users, giving them the benefits of competition through an imaginative array of different pricing plans.
2. Conversely if the wholesaler determines and manages the discriminatory pricing centrally, the opportunity for creativity and competition in marketing is lost. This way the structure of the retail market is left to the decision of Telecom, with all wholesaling customers having no choice but to follow suit and adopt the same pricing structure. In that scenario the end user is left with only a single, centrally-determined price structure and market segmentation.
3. Central management of the pricing would thus effectively downgrade the UBS from a wholesale service to a reselling arrangement. This would be very different to what TUANZ and – we believe – the Commission hoped to achieve from UBS.
4. Such a centrally-managed structure would also leave Telecom as custodian of its' resellers' businesses. Telecom would become involved customer-by-customer, deciding what category each customer should fall into.
5. We are very supportive of far greater uptake of broadband in the SME sector. However, TUANZ believes UBS competition will drive this market, ensuring that SMEs are offered the various combinations of speed and price that will make the service irresistible to them. Conversely, if a single supplier – Telecom – decides on the structure and relative pricing for all

users of a particular volume, SMEs will be left without the benefit of effective choice and large segments of the market will remain unsatisfied.

SPEEDS

Much as TUANZ recognises that the maximum upload speed for such a service is limited by the Telecommunications Act to 128kbps, TUANZ has to note that this is a major restricting factor and will limit the usefulness of the UBS service to end users. Broadband speeds have moved exponentially around the world since 2002 when the Act came into effect. These days even 256kbps in the eyes of many commentators is not considered to be "broadband."

We believe that the Act should be broadened so that the Commission can set speed parameters appropriate to real world practice at any given time, and not pegged to a particular moment in history. TUANZ will be taking this up with the government as a policy issue.

CHURN FEE

TUANZ absolutely supports the Commission in requiring that any Churn Fee be limited to the actual incremental cost incurred by Telecom. Telecom appears to be seeking some credit for unilaterally reducing the Churn Fee on its commercial UBS service, but the Churn Fee initially charged was an outrageous abuse of a monopoly position that could never have been sustained if imposed by a business without the benefit of a monopoly. The Commission must stand firm in enforcing the barest minimum churn fee in order to allow users to exercise choice.

TECHNICAL SPECIFICATIONS

TUANZ believes it is a fundamental principle that Telecom must be required to deliver to its wholesale customers a service that is in no way inferior to that which it retails, or provides to its own ISP Xtra. This must apply to every element of the service including installation time, technical services, speeds, and administrative backup. Telecom must be required to report transparently to the Commission to ensure that this requirement is being met.

RURAL SERVICE QUALITY

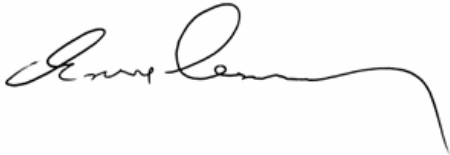
TUANZ is surprised at the concern expressed by Federated Farmers that the offering up of "unconstrained" bitstream services might increase noise or cross talk for users at the extremities of Telecom's network.

TUANZ can find no evidence anywhere that this has occurred in other jurisdictions. Further, we can see no logic in the implication that offering DSL through a choice of wholesaler is likely to cause more of a problem than if the service is offered through Telecom alone – ten wholesalers with ten customers each make no more demand on the network than a single service provider with 100 customers. The argument seems to imply that ten trucks on a rural road will cause more wear and tear if they are from different transport companies, than if they are all from the same one.

Further, we disagree with Federated Farmers that some farmers on the fringes of DSL coverage might lose their existing DSL service as a result. Such an outcome defies logic, as competition arising from UBS would certainly encourage Telecom to upgrade its service in order to take a major part in the explosion of rural uptake of broadband that is inevitable over coming years. We would expect Telecom either to upgrade its network where necessary, or utilize its association with BCL which we understand is pivotal to its existing rural DSL services especially in the South Island.

TUANZ continues to be a staunch and vocal advocate of the opportunities broadband presents to farmers and rural communities. We are absolutely confident that the UBS Draft in its present form will enhance, and not detract from the speed at which the farming community becomes connected.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ernie Newman', with a long, sweeping underline that extends to the right.

Ernie Newman
Chief Executive