



Telecom Corporation of New Zealand Limited
Telecom House, L9, Nth Tower
68-86 Jervois Quay, PO Box 570
Wellington, New Zealand

Tel: +64 (04) 498 9362 Fax: +64 (04) 473 5926
Email: vanessa.oakley@telecom.co.nz
www.telecom.co.nz

Vanessa Oakley

Acting Assistant General Counsel
Competition & Regulatory

31 August 2005

Osmond Borthwick
Manager, Network Access
Commerce Commission
44-52 The Terrace
WELLINGTON

BY EMAIL

Dear Osmond

Comments on TelstraClear's additional information on OSS

1. The Commission has requested that Telecom comment on the OSS matters set out in TelstraClear's letter dated 16 August 2005¹ ("**TelstraClear's letter**"). The OSS matters appear at paragraphs 17 to 34 and in the new proposal set out in the Annex to TelstraClear's letter.
2. Telecom's response on the OSS proposals in TelstraClear's letter is necessarily broad brush due to some of the proposals being broad brush and new. We offer the following comments in this light and in the timeframe available. We hope to be able to elaborate further once we have worked through the implications of the service specification we have now received.
3. As the Commission is aware, the commercial teams from Telecom and TelstraClear are in discussions around UBS. For the purposes of this response, Telecom focuses on responding to TelstraClear's letter. We are mindful of our commercial in confidence obligations to TelstraClear in relation to the exchanges which have occurred before and after TelstraClear's letter.

eOR for broadband for regulated bitstream access service

4. TelstraClear accepts Telecom's commercial industry wide eOR for broadband solution as set out in the industry Roadmap provided at the July workshop. Three modifications are sought at paragraph 20 of TelstraClear's letter. We comment on each below. Our responses are subject to any difficulties that the final regulated bitstream services may create.

(a) *the addition of a time/date status change field*: This will be implemented prior to the November release to the industry.

(b) *the use of agreed reject codes and free text fields*: We are aiming to implement this with the November release to the industry.

¹ TelstraClear's letter is a response to an information request from the Commission dated 3 August 2005.

(c) *the provision of multiple user logins for audit and security reasons*: We understand TelstraClear's request. We have a proposal from our vendor and are in discussions and review to ensure it meets Telecom IS security policy. If it does, we will implement for the November release to the industry. Otherwise, we will plan for release in May 2006.

5. Telecom is acutely focussed on providing an online order and tracking system that meets the industry's needs. The Commission heard the comments of Mr Diprose at the conference and July workshop. TelstraClear also now accepts eOR for broadband subject to the three modifications which we have responded to above. Industry best practice dictates that industry needs are met by understanding what our customers' business requirements are, and providing we can deliver that within usual system constraints or industry preference, we will aim to meet the industry needs.
6. In addition, at the Annex to TelstraClear's letter, the functional specifications for these modifications are sought before Telecom commences coding the work. To provide all our customers with functional specifications, reviewing those specifications with each customer, and then agreeing them will result in delay. Telecom will likely be left with multiple designs that are uneconomic to build on an individual basis. This is not to say we are not committed to meeting the industry's business requirements. We are committed to providing our customers with the information they need to ensure they can interface with Telecom from a system perspective. We discuss this more below in the "consultation" paragraph below.
7. Thus, Telecom is able to deliver them subject to any issues arising from the standard access principles or the nature of the regulated bitstream service. So long as TelstraClear's business requirements are met, how Telecom designs and operates those requirements is not something which TelstraClear needs access to.
8. In the Annex to TelstraClear's letter a request is made for the user guide for eOR for broadband. This has already been provided. We will provide TelstraClear and the rest of the industry using eOR for broadband with updated user guides as they become available from time to time.

B2B solution for regulated bitstream access service

9. TelstraClear accepts Telecom's commercial industry-wide B2B solution insofar as it may relate to regulated bitstream services as set out in the industry Roadmap provided at the July workshop.
10. While it is stated that Annex 1 of TelstraClear's letter corresponds to Telecom's Roadmap, it is TelstraClear specific and is not the industry Roadmap. We consider that it is important for the Commission to view the Roadmap as a whole although we do appreciate that the Commission only has jurisdiction in relation to the services that it regulates.
11. Importantly the Commission will appreciate that the Roadmap may be subject to change through industry consultation (including TelstraClear), through feasibility and planning processes and the principles contained in the standard access principles. Telecom is committed to, and engaged in, industry consultation so that business requirements can be met wherever possible.
12. TelstraClear seeks consultation on the design of systems and an escalation pathway through a third party who can report on feasibility and costs as to disputed functionality. A Roadmap by its nature is fluid. It sets out proposed changes to eOR with sufficient clarity and in sufficient time for Telecom's customers to be informed and so they can plan for changes and improvements to the system. This combined with Telecom's commitment that TelstraClear, along with other users in the industry, are consulted on the business requirements and the

feasibility and implementation of these, not just in relation to bitstream, but whatever is on the overall Roadmap, results in an effective process.

13. This application specifically concerns bitstream and as such, other OSS requirements or functionality are excluded. To have consultation on design and involvement of a third party for just bitstream means that TelstraClear, or the third party, would be directing all OSS development – thus impacting Telecom’s ability to deliver to the industry - to benefit TelstraClear. Additionally, such consultation on design of systems would mean making Telecom’s intellectual property available to competitors – again for just bitstream this will affect all OSS development, to TelstraClear’s benefit over the industry.
14. In light of TelstraClear’s acceptance of the industry Roadmap, it is unclear exactly what TelstraClear is proposing the role of the facilitator should be. We note that acceptance of the industry Roadmap would be completely undermined if TelstraClear subsequently seeks to open it up to lengthy bi-lateral debate and discussion.
15. TelstraClear seeks the establishment of KPIs and measurement on regulated OSS matters. Telecom notes that the draft determination did not contain a proposal for the establishment of KPIs and measurement on regulated OSS matters. Furthermore, TelstraClear’s latest proposal does not appear in the Annex to TelstraClear’s letter nor was such a request for KPIs raised at the July workshop orally or in the paper TelstraClear presented on OSS. Telecom is hindered in its ability to respond to this blanket request. As no consultation has occurred on a request such as this, if the Commission is minded to pursue this in a final determination consultation will be required.
16. Telecom considers that a facilitator is unnecessary and inappropriate. Telecom is committed to consistency as between retail and wholesale as we have set out in previous submissions. However, if the Commission wishes to entertain such requirements then we request that it sets out its preliminary views. Telecom requires an opportunity to respond as to the workability and cost of such a proposal along with implications for OSS development beyond the regulated bitstream access service and the rest of the industry.

Joint project team and consultation

17. Telecom agrees that the parties should establish a joint project team which could meet monthly until the expiry of the determination on OSS matters for regulated bitstream access services. This would provide the vehicle for consultation between the parties and clarification of TelstraClear’s business requirements. We consider that the requirements which would sit around such a team would be as follows.
 - (a) TelstraClear would be required to set out in detail its business requirements for OSS for regulated bitstream access services. This would be required only in relation to the areas it has identified as conditional on its acceptance of the industry Roadmap for eOR for broadband and B2B.
 - (b) Consultation and formal discussions would occur in a joint project team of representatives from TelstraClear and Telecom in relation to the three modifications sought by TelstraClear for eOR for broadband and in relation to the progression of a B2B solution for regulated bitstream access services.
 - (i) TelstraClear’s business requirements as referred to in (a);
 - (ii) Implementation of the solutions in the Roadmap
 - (iii) Monitoring progress against the Roadmap;

- (iv) Consulting on requested or proposed adjustments in the target dates or solutions set out in the Road Map;
- (v) Provision of sufficient information to TelstraClear enabling it to modify its own systems to interface with eOR for broadband and B2B solutions; and
- (vi) Provision of updated user guides as they become available.

16. In essence, the differences between Telecom and TelstraClear's proposal are that TelstraClear will be in the same position as the rest of the industry. Telecom will consult and have regard to TelstraClear's requirements and provide sufficient information to TelstraClear. However, Telecom will not be required to favour TelstraClear's requirements in priority to, and at the expense of, the rest of the industry.

17. TelstraClear seeks that Telecom develops its systems by agreement with TelstraClear. Telecom has three primary concerns with this approach. First, it provides TelstraClear with an ability to seek to design Telecom's systems yet TelstraClear does not, and can not (for reasons above) have access to all of Telecom's systems. Second, expenditure by Telecom would effectively have to be agreed with TelstraClear who may be incented to drive cost into Telecom's business. Third, delay for TelstraClear and the rest of the industry will occur if Telecom is unable to proceed with any development in the absence of agreement. Finally, systems are developed from business requirements. Providing the business requirements are met and retail and wholesale processes are equivalent, the system that is used is not relevant, nor is agreeing its development with a competitor who could gain advantage from such knowledge.

Other requirements

18. In section C of the Annex to TelstraClear's letter a test/training version of eOR for broadband and B2B solutions is requested. We have responded to this in paragraph 7 of our 16 August letter.

19. TelstraClear also seeks different levels of access to solutions – eg: "read only" and "read/write". We note this new business requirement from TelstraClear not previously raised in the regulatory proceedings to date. This is something we will need to investigate before we can respond in any detail and will require significant work. We reserve our position on the issue of costs which may arise, particularly those that are TelstraClear specific.

Independent facilitator

20. The Annex to TelstraClear's letter does not contain a proposal for an independent facilitator. However, the body of TelstraClear's letter makes such a request in relation to OSS for regulated UBS. Commission staff have stated in a recent audio that an independent facilitator is under consideration.

21. In the absence of any views from the Commission as to how a facilitator's role might be scoped we can only comment on a potentially wide ranging role indicated by TelstraClear's comments.

22. Telecom has four areas of concerns with the high level proposal for a facilitator. We consider the costs, limitations on the role and the disincentives created will outweigh the alleged value.

23. First, OSS for regulated broadband does not sit neatly and separately "in a box". It is part of the overall OSS for service providers that include TelstraClear. Telecom's systems cover a much wider range of issues as to technical and operational practicability, network security, priorities etc. Robust views of OSS for regulated bitstream access services cannot be taken in

isolation. TelstraClear's proposed facilitator can only make recommendations on matters specific to regulated bitstream services.

24. Accordingly, we are concerned as to how the role of a facilitator could be sensibly scoped in relation to regulated bitstream services and we have no detail to comment on. Telecom considers that the public Roadmap, continued consultation with the industry, and Telecom's continued development of its OSS for bitstream and other wholesale functions is the most expedient way forward. A facilitator making recommendations "in a box" will not be helpful.
25. We strongly object to TelstraClear seeking detailed reports on systems overseas or engaging a facilitator in detailed correspondence and requests of the facilitator generally. We have provided substantial comments on why we consider that it is inappropriate and undesirable to cherry pick pieces of systems overseas and graft them onto systems in New Zealand. It is not clear to us how and when a facilitator could or would be engaged, particularly if the parties can not agree.
26. When the commercial representatives from Telecom and TelstraClear spoke about OSS issues at the July workshop there was clear understanding between them. Accordingly, TelstraClear should be able to assess Telecom's progress against the Roadmap that it has accepted. The Act has mechanisms for returning to the Commission. Of course, we hope this would be unnecessary. If TelstraClear is suggesting in paragraph (d) of the Annex to its letter that the Commission should provide itself with a new power to take jurisdiction, we reiterate the submissions in our letter dated 16 August.
27. TelstraClear now appears to agree that a facilitator should not make binding rulings. Telecom has already submitted that a determination which had permitted this would be unlawful.
28. We question the alleged value of a facilitator. TelstraClear suggests that a facilitator would be beneficial so that a report or recommendation could be provided to the Commission in the event that OSS for regulated UBS is referred back to the Commission under the Act. The Commission must of course still carry out its own investigation in relation to any matter referred to it under the Act. It cannot defer its statutory powers to a facilitator. The Commission may take into account the views of an independent expert but must also take into account all other relevant matters and consult interested parties in the usual way.
29. In the unfortunate event that OSS issues in relation to regulated bitstream access are referred back to the Commission the Commission is able to engage an independent expert itself at that time to inform any decision it may be required to take. We consider that this is a substantially more cost-effective mechanism than having a facilitator keeping across matters just in case the matter goes back to the Commission in the future.
30. Second, Telecom is concerned at the incentives that a facilitator would create. Open discussions may well be hindered and may become led by, or at least vetted by, regulatory rather than commercial teams. The focus will instead be on the facilitator, records and recommendations and not on co-operative discussions which are solution focused. We consider that this is likely to result in delay, not only in TelstraClear's requirements, but the industry Roadmap itself.
31. Third, the involvement of an independent facilitator is likely to incur substantial cost to the parties. We are unable to estimate costs without knowing the proposed scope of the role of a facilitator. We would comment that the Commission is aware of the cost involved in relation to a quarterly DSPL audit report. It subsequently agreed to reduce this cost. If a facilitator is to be involved in monthly meetings and a potentially endless stream of correspondence, the costs could be enormous.

32. Fourth, TelstraClear proposes that the Commission mandate that other industry participants contribute to the cost of the facilitator. The Commission is unable to mandate an industry facilitator in bi-lateral proceedings or impose costs relating to such, or indeed on the rest of the industry. An industry levy in relation to a service desired by only one party would ultimately have the effect of increasing costs for end users.
33. Finally, if the Commission has a proposal in mind we request that it provide a short opportunity for consultation. We note that a similar request for consultation on non price terms is made at paragraph 34 of TelstraClear's letter. In light of the delay in the release of the service specification we do not consider that it would delay the process for this to occur.

Yours sincerely



Vanessa Oakley
Acting Assistant General Counsel
Competition & Regulatory

cc: Grant Forsyth, TelstraClear