



**The Internet Society of New Zealand Inc
(known as InternetNZ)**

**Submissions to Commerce
Commission:
UBS determination**

5 July 2005

1 Introduction

2 Thank you Commissioners for this opportunity to be heard in support of our submission and cross-submission. I'm David Farrar, the Vice-President of InternetNZ, and Chairman of its Legal and Regulatory Committee. I will introduce our submissions. Our primary legal advisor, Michael Wigley, and our primary technical advisor, Don Stokes, will follow.

3 I'd like to begin by pointing out that InternetNZ's submission has been developed in consultation with the smaller Internet Providers who generally have been unrepresented in previous determinations. We are keen that the experiences and views of our stakeholders are taken into account on this determination. We would like to thank Telecom for their indication that this determination will form the basis of an industry-wide offering of UBS, as we certainly believe it will be beneficial to have all ISPs able to access the same product.

4 I wish to touch on just two issues – speed and price.

5 InternetNZ strongly supports there being no speed constraint on the regulated service. As TelstraClear has pointed out the Government's own digital strategy sets a benchmark of 5 Mb/s. InternetNZ in fact sees the future as being in gigas not megas, but we accept it will take some time to get there.

6 InternetNZ accepts there is some trade-off between unconstrained access speeds and reach. However it is not as dire as the worst case scenario that Telecom paints, and we highlight that unconstrained access has been achieved in other countries. It is managed and manageable.

7 We see the regulated service as being an umbrella in terms of price and speed. The simplest and fairest outcome is one price point for an unconstrained service. Beneath that umbrella, there would be incentives for non-regulated offerings to be made available for widely varying speeds and prices. We have faith that any market demand for lesser services would be met, as it will be in everyone's interest to do so.

8 We also strongly endorse the point made by TelstraClear that an unconstrained bitstream service will allow them to quickly change speeds in response to customer demands. Many ISPs have given us feedback that delays in having changes made by Telecom, have been detrimental to customer satisfaction.

9 On the issue of price, we note that Telecom's retail pricing is based on "market elasticity". In plain language this is charging as much as possible at different speeds and types of customers, in order to maximize revenue. And this is normal commercial behaviour.

10 As shown by Telecom's massive drop in business pricing, the retail fees bear little resemblance to the cost of service. Therefore using those retail fees as a

basis for a retail minus calculation for the wholesale fee is unlikely to provide the competition that the Act is designed to foster.

- 11 Telecom have said price discrimination maximizes overall demand which maximizes profitability of investing in infrastructure which maximizes the long-term interests of end users. We do not believe it is a taken that maximizing profitability for monopoly wholesale services does benefit the short or long term interests of end users.
- 12 Finally before handing over to Michael Wigley, I would make the general point that the Commission's decision to support an unbundled bitstream service was as a substitute to local loop unbundling, and that the best way to achieve the Government's targets for broadband uptake is to have a service which offer Internet Providers the ability to innovate, and is not unduly constrained.
- 13 This is not designed to be a summary of all of InternetNZ's views and submissions. Only particular points are covered.
- 14 If Australia and the UK can have unrestrained speeds, why can't New Zealand?**
- 15 Cable & Wireless' subsidiary, Bulldog, has released an unrestrained DSL service via its DSLAMs. As they say¹:

"8Meg Bulldog DSL Goes UK Wide

Bulldog Communications, the Internet and telecom group owned by Cable & Wireless, is rolling up its sleeves and shouting "Oy! Let's be 'aving you!" at its rivals as it doubles the speed of its broadband offering to a super-swifty 8 megabits-per-second from 4 megabits, and spread it across the UK.

With its local loop unbundling (LLU) cutting BT out of the loop, Bulldog can offer highly competitive prices, letting subscribers get broadband at speeds of up to 8 meg ...

A bullish Bulldog CEO Emanuele Angelidis insisted that the launch of the 8 meg service showed how the LLU operator was "redefining the boundaries of the broadband market".

"Eight meg from Bulldog, with no download caps, gives customers the freedom to use the Internet as they wish," he growled before retiring to his executive kennel.

Elsewhere, a spokesman for BT could be heard conceding that Bulldog's pricing was "an interesting proposition ... and a sign of a very healthy broadband market".

¹ http://digital-lifestyles.info/display_page.asp?section=distribution&id=2271

Although competition in this sector is white hot, BT remains the King Dong of the UK telecoms market, although it is yet to announce anything as fast as an 8 megabit broadband service ...

Currently, entry level broadband products tend to offer miserly speeds of around 256Kbps, although pricing pressure has seen major players such as BT, Tiscali, AOL and Wanadoo offering 1Mbps or 2Mbps broadband deals for around £14.99 (~US\$27, ~€22) to £29.99 (~US\$54, ~€44) per month.

C&W have been embarking on a broadband spending spree recently, announcing last week that it was doubling its investment in LLU to provide broadband coverage to 800 telephone exchanges - adding up to around 30 percent of homes and businesses across the UK."

- 16 WCSM engineering is **the** Standard by which providers manage cross-talk. It is what the ADSL standard does.² It is what is applied in Australia and the UK.³
- 17 Those countries (and others) can get unrestrained services and manage their networks including by using the industry standard, WCSM. The environment in those countries is much more difficult and complex: there is LLU and therefore greatly reduced ability to manage problems. Here, problems are much more manageable as Telecom runs all DSLAMs and associated network. In InternetNZ's view, TelstraClear go even further than they need to go, by accepting a regime which is tighter than what is accepted and works elsewhere.
- 18 Telecom want to take a different approach than WCSM, to extend reach. Leaving aside that it has not practiced what it now preaches for many years, it must produce compelling evidence before there is such a move away from industry standards which work well elsewhere even in more complicated LLU environments.
- 19 To justify a move away from the industry standard, and what has worked well in more complex environments, Telecom must have known that its evidence to support this change must be strong. This is not just a matter of reach at a technical level (a topic on which the experts disagree). There are, for example, issues around, once it is accepted how far reach is affected, how many are affected, the demographics, possible uptake of services, etc.
- 20 What of, for example, the impact of Telecom's recently announced spend on upgrading rural services?
- 21 The question goes much wider than just reach. For example, extended reach can, depending on the Commission's determination, erode the array of services available to those within reach anyway. To access the overall benefit to end-users requires comprehensive analysis, based on adequate data.

² ITU-T Recommendation G.992.1

³ See for example:

http://www.acma.gov.au/acmainterwr/telcomm/industry_codes/codes/c559_2_2005.pdf

- 22 This reach/WCSM point impacts strongly on what is obviously a key point for Telecom from many angles (technical, economic, strategic, etc). This is retention of multiple levels of service and multiple price points, rather than an unrestrained single price point service. Telecom is pushing hard for this, relying on many angles.
- 23 In short, Telecom must have known that its evidence, data and analysis about reach must be strong to justify the outcome they seek, which differs from the industry standard.
- 24 Against this background, particularly important is that Telecom's information is extremely thin on the impact of reduced reach, even accepting their technical arguments are correct. They have chosen (yes, "chosen", because on such a pivotal point this cannot be an oversight) to put in only a paragraph on their conclusions around the impact on the potential customer base, in respect of the reach issue. That is at para 84 of Telecom's May Submissions.
- 25 The underlying analysis, reasons, and data for the conclusions at para 84 are not given. Yet, on this pivotal issue, Telecom must have known that there are many variables (technical, commercial, location of people, type of potential users, the true extent of reach impact, etc) that go into the conclusions they give. But they don't give underlying data. If the information and evidence underlying these stated conclusions was there, it would have been, because that is such a pivotal point. Whatever the answer to that, the simple point is that the data is not there and the conclusions (and therefore the reach issue) should not be taken into account.
- 26 Yesterday's evidence about New Plymouth and the 69,000 person matrix have been excluded. However, it is worthwhile noting (because in InternetNZ's view, there are the same substantive reasons underlying exclusion of that material) that this material was also of a summary nature without any of the underlying analysis or data.
- 27 There is a lot at stake here. It is not on for Telecom to seek to rely on such thin information. It must have known that significantly stronger material was required to support such a major change from what works elsewhere, and what is the industry standard.
- 28 Dr Milner yesterday noted that iinet provides its unrestrained services⁴ subject to data caps (and he raises this as a point of differentiation as against the New Zealand scene).
- 29 Providers such as iinet in Australia have a choice as to whether to provide capped or uncapped services. iinet and Bulldog illustrate this. iinet have data caps and Bulldog (as their website shows) do not. It is the providers' choice. Particularly important is that local access (that is, in terms of the Act, access between the end user and the first ATM switch nearest the DSLAM) is

⁴ Details of the offerings are set out at <http://www.iinet.net.au/broadband>. In each line the first offering is via the DSLAM and the second offering is via Telstra wholesale services (that is, the equivalent of UBS in Australia).

only a part of the overall internet access service provided to the end user. Other costs (in particularly international and domestic connectivity) will drive ISPs to restrict traffic or find some other way to recover those substantial costs outside the local access service itself. We have made that point extensively in earlier submissions: the whole mix of components in the internet access service (whether basic or of a value added nature) allow and encourage innovation in the offering of services.

30 In turn this will also naturally self limit the extent to which the local access service will be used. In a New Zealand environment, where international access costs are so high, substantial unrestrained and non-data capped services are not generally possible (that is not a viable business model).⁵ The deluge of traffic that Telecom foresee will not arise.

31 Variable cost of delivering services at different speeds

32 Much is made of this in Telecom's opening submissions. Professor Hausman has re-focused, in his discussion today, on the variable expense of providing different speed local access services, whereas his reports are based instead on discriminatory pricing issues.

33 There is a critical point: nowhere in Telecom's various submissions and reports is anything more than rudimentary commentary made about additional expense in providing differential speed services. The data is not provided that enables anything like a proper analysis and conclusion.

34 Telecom are engaging in complex and controversial arguments supporting differing speeds and price points based on complex economic (eg: price discrimination) and technical considerations.

35 But if the evidence was there, they had a drop-dead winner: if the actual expense of delivering different speeds was materially different, that in itself would have been enough to justify differential speed and price offerings, to meet what is obviously a key Telecom strategic driver. By presenting that evidence, they would have had a clear starting point for differential pricing. They must have known this but chose not to produce the information. Yes, there can be difficulty in teasing out some common and other costs, but ultimately the calculation can be undertaken. The lack of detail can only be interpreted to the effect that there is either no significant difference in the cost of delivery (or there is some variation on that theme, such as that those variable costs are appropriately incorporated in the access price).

36 The submissions made by Telecom on this point (and this brings Professor Hausmann's conclusions into question to the extent that he now focuses on the expense of delivering the local access service) should not be accepted. The data underlying the claim that there are variable costs depending on speed are not there. This is not a matter of oversight, for this was always a potentially pivotal issue.

⁵ That was acknowledged by Professor Hausmann today at the conference, and is accepted by Telecom.

37 Monitoring and Metrics

- 38 Whether we are comparing apples and apples, apples and pears, oranges or whatever, there must be a way in which there can be monitoring and in which transparency can be achieved. Particularly important for InternetNZ is transparency. The metrics in Annex A goes some way but such (or any) metrics will always have difficulties and will not always fully meet needs. The answer is to have transparency of information.



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