

27 October 2005

TelstraClear Bitstream Application Statement for Consultation
Commerce Commission
PO Box 2351
WELLINGTON

Email: Chris.abbott@comcom.govt.nz

Dear Sir/Madam

Re: Bitstream Statement for Consultation

In May Business New Zealand made a submission to the Commerce Commission on the Unbundled Bitstream Service. However, we are disappointed with the resulting Statement for Consultation, as it appears the Commission has continued to effectively remove any incentive to efficiently price discriminate.

Business New Zealand is an organisation representing the interests of a large number and range of consumers. The Telecommunications Act is about the long-term interests of end-users and as such we consider our views as a consumer representative important for steering New Zealand down the right path for future development in New Zealand's telecommunications sector.

Business New Zealand would like to take the opportunity to reiterate its primary point made earlier in the year that price discrimination is widely evident in markets and is good for consumers where it increases the range of choices for customers and expands demand. We believe the Commission's move to one single price point will lead to less choices for customers. Currently, customers are able to trade off a lower price for a lower speed with their broadband service. It would seem that the Commission believes that ISPs will still have incentives to offer such a range of options for customers. However, we do not believe this will be the case.

Unlike the network owner, Telecom, ISPs purchasing the UBS will not face any material cost reduction if they provide a lower speed service. The rational incentive will therefore be to always offer the maximum speed the ISP can derive from the UBS. The actions of ihug in the last week exemplify this case, who is clearly anticipating getting access to the Commission's UBS service. Ihug had offered a range of speeds and prices from 256k to 2MB/s. Ihug has now moved all its offering to the single higher speed available. This may be the first of many actions we would predict to occur with various service providers if the Commission confirms its draft UBS statement. The market will move to one speed offering with limited competition around the edges in terms of megabyte usage.

Business New Zealand notes that the Commission has also reverted back to its idea of unconstrained download speed. While we are clearly not in a position to comment on the technical detail of this issue, the network owner, Telecom, has expressed considerable concerns as to the effect on some customers in terms of service quality and speed to the effect that a significant number of existing and potential customers will either not be able to receive service or suffer a material reduction in performance. Given Telecom's knowledge and experience regarding how its network performs, Business New Zealand is very concerned to see the Commission continuing with their current approach.

We are deeply concerned that the decisions are in effect making a trade-off whereby some customers are made better off at the expense of others. We are unclear as to how the Commission has made this trade-off on any empirical basis and it would be imperative that the Commission fully set out its assumptions that underlie this trade-off. For example, the Commission has not specified how many customers it believes will benefit, and what those benefits will be. Also, there is no indication of how many customers it believes will be negatively affected and to what extent those negative effects will be. In order to make a fully informed decision on this key issue, Business New Zealand believes the Commission needs to take an analytically robust approach and lay out such assumptions.

Summary – Business New Zealand Recommendation

As per our previous submission Business New Zealand recommends that the Statement for Consultation by the Commerce Commission for Telecom to provide an unlimited speed service at a single price point should be revisited and changed to encourage a range of services and prices to be available at both wholesale and retail.

Again, we would like to thank you for the opportunity to comment.

Yours sincerely

A handwritten signature in black ink, appearing to read 'P. O'Reilly', with a stylized flourish extending to the right.

Phil O'Reilly
Chief Executive
Business New Zealand