



COMMERCE COMMISSION

Please refer to:

4.3/J6759  
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10 March 2006

Bruce Parkes  
General Manager, Government  
and Industry Relations  
Telecom New Zealand  
PO Box 570  
Wellington

Dear Bruce

**Commercial and regulated bitstream**

1. Thank you for your letter of 6 March. I note that Telecom's position is that acceptance of Telecom's commercial UBS offer would preclude an ISP from applying for the regulated UBS service. I agree that should an ISP choose to accept a commercial bitstream service, it will be precluded by section 22(a) of the Act from applying for a determination of supply terms for the same service. I also accept that an ISP may agree in the context of a negotiation of a commercial bitstream service that it will not apply for a determination of any particular term of that service, and will instead rely entirely on a commercial solution.
2. Neither of these scenarios was the cause of my initial concern. My concern was and remains that Telecom may be encouraging ISPs to agree to a commercial bitstream offering, on the condition that those ISPs agree that they will not apply to the Commission for a determination of terms for a variant bitstream service. That variant may differ from the commercial offering in any of a number of ways, including speed and contention ratios. Simply put, this would be an outcome whereby a competitor would be induced by the offer of an essential input to give up the opportunity to apply to the Commission for access to a different service. I do not accept that the Act sanctions such behaviour on Telecom's part.
3. To summarize, the Commission does not believe that the Act allows an ISP to be excluded from the regulatory regime where the ISP has unsuccessfully sought a commercial agreement for a variant of the UBS service.
4. I would appreciate your confirmation that Telecom does not require such a concession from ISPs as a condition of the supply of its commercial UBS service.

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5. You also refer to Telecom's decision to introduce a spectrum management plan for delivery of broadband. I would appreciate it if arrangements could be made for an early briefing of the Commission on that plan.

Yours sincerely



Douglas Webb  
Telecommunications Commissioner