

13 December 2006

Osmond Borthwick
Commerce Commission
Box 2351
Wellington

Dear Osmond

Application under Section 59 of the Telecommunications Act 2001 for reconsideration of Determination 582

CallPlus Limited requests that the Commission reconsiders determination 582 ("D582") in accordance with Section 59 (1) (a), (b), and (c) of the Act, limited to issues as to price.

The applicant seeks the following amendments:

1. Reduction of the initial Bitstream access price ("initial price") (para 204 of D582)
2. Amendment of the wholesale price adjustment mechanism ("price review") (para 205-208 of D582)
3. Such further or other amendment in relation to price that the Commission considers is appropriate, including for the reasons raised in this letter, and for any other reasons that the Commission considers are appropriate.
4. Changes to other parts of D582, as required to give effect to those amendments (for example, to amend or add calculations and methodologies and to add further information)
5. The amendments to take effect from the date of the initial determination (22 June 2006), the date of implementation (October 2006), or such other date prior to the reconsideration determination, as the Commission determines.

To avoid doubt, CallPlus is not asking for a change to the discount (currently set at 16%).

CallPlus' reasons for this application include:

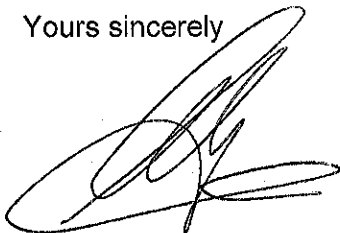
1. The Commission is required to:
 - 1.1. establish the "retail price (as imputed by the Commission having regard to any comparable service)" ("the Retail Price");
 - 1.2. apply, in the manner specified in s19, the purposes in s18.
2. The initial price, and price changes following the price reviews, are not such as to allow an access seeker, which is at least as efficient in carrying out the retail

function as the access provider, to be able to compete with the access provider. Consumer benefits from increased competition have not and will not eventuate. Further, information indicates that the initial price and the price review in D582 set prices that are higher than the appropriate Retail Price.

3. The matters in the preceding paragraph are both (a) evidence that the initial price and the price review are not correctly set and (b) a failure of the initial price and the price review (as specified in D582) to fulfill the requirements of s18 and 19.
4. The methodologies and information used for and in D582 do not meet the required objectives (that is, correct setting of the Retail Price and fulfillment of ss18 and 19).
5. The Commission has or will, since the date of the determination, become aware of the matters referred to in the preceding 3 paragraphs. It has or will become aware of this from:
 - 5.1. its observation of the spread of retail prices, the actual and potential range of costs, market developments generally and any other information the Commission has or will receive.
 - 5.2. documents filed in Court in respect of the appeal
 - 5.3. the price review reports to the Commission by John de Ridder and Michael Wigley
 - 5.4. the material submitted by the access seekers to the Commission in relation to price squeeze allegations
6. The circumstances in the preceding paragraphs, including the Commission becoming aware of the matters in the preceding paragraph:
 - 6.1. constitute material changes of circumstances (s59(1)(a))
 - 6.2. mean that the determination was made on the basis of information that was false or misleading as to material particulars (s59(1)(c)). The information provided, used and/or available to the Commission was less than the information that is now provided, used and/or available (and therefore s59(1)(c) applies as the incomplete information is false or misleading). To avoid doubt, s59(1)(c) does not require impropriety to be established.
7. The Telecom ADSL-based retail broadband plans (whether or not restrained on the uplink to 128kbps), and migration of Telecom's customers across its plans, particularly during October 2006, relative to the UBS price set under D582, constitute a material change of circumstance, such that:
 - 7.1. the s18 objectives are not met, in view of the UBS Retail Price payable by the access seekers to be able to provide a retail service, in the context of the price and non-price terms of the various Telecom retail plans (and migration of customers); and
 - 7.2. further, the method of setting the Retail Price and its calculation should be amended;

8. If the changes to retail plans and customer migration, effected in October 2006, were known (to a greater or lesser degree) prior the determination, but not communicated to the Commission, then the lack of complete information constitutes misleading or false information (s59(1)(c)). Such information is relevant in particular to s18. To avoid doubt, it is confirmed again that subsection (c) does not require impropriety to be established.
9. D582 does not deal with (or insufficiently deals with) non-price issues such as the effect of (a) movement of data caps and (b) the migration of customers by Telecom from one plan to another. D582 should be clarified to deal with the effect of non-price issues (s59(1)(b)).
10. If any of the grounds in s59(1)(a), (b) or (c) exist, the Commission has wide powers to amend the determination pursuant to s59(1) including amendment on a broader or different basis. For example in relation to the preceding paragraph, the Commission's options include a full amendment of the WARP method (and the method for setting the initial price); adoption of a regression methodology; and the addition, to the existing methodologies, of a method to cover non-price movements.
11. The determination, D582, is silent in respect of the UBR (UBS) backhaul component. There should be a clarification, by amendment, to deduct this component, which is not currently deducted, as part of the calculation by which the Retail Price is imputed. (s59(1)(b)). In any event, CallPlus submits that there can be an amendment in respect of backhaul as there are other grounds under s59(1)(a),(b) and/or (c).
12. There have been material changes as to products, services, price and non-price terms, and movement in respect of non-price matters. Further, as a result, there have been material changes to the market. (s59(1)(a)).
13. Clarification of the WARP methodology is necessary so that it takes account of changes in the non-price and other commercial terms of Telecom's plans such as data caps (and other non-price movements such as migration of customers). Further, clarification is necessary so that the methodology is based on appropriate weighted customer data. (s59(1)(b)).

Yours sincerely



Graham Walmsley
MANAGER REGULATORY