



CallPlus Limited

**Submission in Respect to Reconsideration of
Determination 582**

13 March 2007

PUBLIC

1. Introduction

1.1. The CallPlus submissions comprise this document, the report by John de Ridder (both contain no restricted information), and Mr de Ridder's spreadsheet (this is treated in its entirety as TCNZRI). **Note:** In view of the format of the spreadsheet it is not possible to apply the usual square bracket approach. It would be possible to provide the spreadsheets in a manner that retains some data (as happened in the spreadsheets in Determination 568). If any party wishes for that to happen, please advise.

2. Cost approach

2.1. In the draft reconsideration, the Commission proposes to subtract the **cost** of international and domestic data. This is an unheralded change from Determination 568:

2.1.1. The ISP charge of \$8.99 is the imputed retail price, not the cost of providing those services.

2.1.2. The regression derived the imputed retail price of data, not its cost.

2.2. The Commission's then approach is outlined by it in Determination 568 as follows:

"369.....Telecom submitted that the Commission is only entitled to deduct the avoided costs saved in relation to the ISP service and then only through the benchmarking exercise required under the initial pricing principle.

370. TelstraClear submitted that:

*'The IPP requires the Commission to first impute a retail price and then to move on to calculate the discount based on avoidable costs, rather than requiring that the entire price setting exercise be done on an avoidable cost calculation. In the first step, the Commission has to assign a notional price that downstream retail customers would pay for the services not forming part of the wholesale price to arrive at the imputed price that they would pay for a retail service that is equivalent to the wholesale service. Telecom's downstream retail prices, particularly given that the Commission has determined the market is not competitive, are not cost based. **Using a cost based formula to arrive at the imputed retail price for a service equivalent to the wholesale bitstream service would have the practical effect of loading all of the excess retail rents earned by***

Telecom across the whole retail service stack into the wholesale product. An avoidable cost approach is no less inappropriate for the ISP component as it is for the transmission component.'

371. The Commission agrees with TelstraClear that, as there is no equivalent retail component of the ISP charge, a notional price must be removed from the retail prices of the comparable services, and that an avoided cost approach is not appropriate." [emphasis added]

2.5 Mr de Ridder has made observations based on the approach in both Determination 568 and the draft reconsideration. He and CallPlus are constrained as to what they can do in view of lack of information. Some information was requested, but it became clear that information would not be provided, and so no further material was requested. CallPlus are concerned about a possible rerun of the events that led to the appeal and the reconsideration:

2.5.1 On the application that led to Determination 582, the access seekers requested Telecom to provide information. Telecom refused, maintaining, as outlined in detail in the access seekers' cross submissions at the time, that the application could be handled on the basis of methodology (so the underlying data was not needed).

2.5.2 Subsequent events (revealed in the appeal) demonstrated how critical real data is, and the dangers of using only methodologies.

2.5.3 The Telecom approach has overlapping hallmarks and CallPlus asks that the Commission is vigilant to ensure all relevant data is provided, and made available (subject to confidentiality constraints) to the access seekers. There should not be a re-run of past events.

3 Backhaul

3.1 The issue as to a cost versus retail approach arises also as to backhaul.

3.2 The Telecom retail services to its retail customers include UBS (that is, the service between the end-user and the first ATM switch nearest the DSLAMs), ISP services, data and the retail component (ie; the 16%). However, as we outline below, there is a further component (what we call here, "Backhaul").

- 3.3 Without having full information on Telecom's network it is not possible to be precise. However, as part of its retail services, Telecom transports data between that first ATM switch (nearest to the DSLAM (that is the demarcation of the regulated UBS service) and the points at which the international and domestic data services commence. For international data, this point is, for most service providers (including, we expect, Telecom), at an exchange adjacent to the Southern Cross cable stations in Auckland (typically Auckland's North Shore for US-bound traffic, for example). Typically, international data services have a demarcation point at that exchange near the cable station (ie: the service commences at that point). The service provider separately carries the traffic to that point. For domestic services, there will be another handover point (for most ISPs at interconnection points such as the Auckland Peering Exchange and at points of interconnection with Telecom).
- 3.4 Without information, it is not possible to be precise about the Telecom configuration except that it is clear that:
- 3.4.1 Telecom will have points at which it hands over and receives international traffic and domestic traffic (here we call that "data handover points");
- 3.4.2 Between (a) the data handover points and (b) the first ATM switch nearest the DSLAMs, the circuits and equipment will be similar to those used by non-Telecom ISPs. That is so even though the ISP's traffic typically leaves the Telecom network (at least, between the points it enters and leaves the ISPs' premises. In these submissions we will refer to the services between points (a) and (b) noted above as "Backhaul" (which is a larger service than the regulatory UBS backhaul service).
- 3.4.3 Possible differences between the services underlying the Telecom retail services (and other ISP's services) include:
- 3.4.3.1 As it is likely that Xtra servers are co-located at Telecom exchanges (but the third party ISPs will have their servers at other locations), the physical distances between network components (and thus the transmission circuits) will be shorter in some instances. Significantly, Xtra is likely to have similar circuits, equipment, and handover points (including an equivalent of the handover point referred to in the draft determination). Even though this is a handover point within Telecom, similar equipment and services are likely to be used.

3.4.3.2 Xtra services utilise Ethernet but the wholesale services are solely ATM. However this is unlikely to make a material difference.

3.5 Thus the Telecom retail services to its end users comprise the following components:

3.5.1 the equivalent of UBS (ie the service between the ATM switch nearest the DSLAM, and the end user)

3.5.2 ISP Service

3.5.3 Data

3.5.4 Retail component (minused out at 16%)

3.5.5 Backhaul (that is the service between points (a) and (b) in Para 2.3.2 above)

3.6 Whether the approach in para 369-370 of Determination 568 is used, or the model in the draft determination, the Backhaul component needs to be subtracted to derive the correct UBS price.

3.7 The sum claimed by the access seekers (\$1.92) is the sum charged by Telecom for only part of the equivalent of what we have called Backhaul (as a component of its service to its retail customers).

3.8 Issues have arisen as to the handover point charge. In fact (a) this price includes transmission over circuits between the handover point and the ISP's premises and (b) in any event, the service that Telecom provides to itself includes an equivalent of this handover point plus carriage over similar circuits.

3.9 The \$1.92 is a conservative proxy whether it is the imputed retail price of the Backhaul service that is to be assessed, or the approach is cost-based as in the draft determination.

4 Imputation test

4.1 CallPlus welcomes the approach in para 123 and suggests it be amended to the following (or some variation to accommodate the point made below):

"123. Should this analysis indicate that either (i) the margin between the planned retail prices and the regulated bitstream price is insufficient to

cover Telecom's avoided costs saved, or (ii) that a reasonably efficient access seeker could not compete, using the regulated service determined by Decision 582 and this reconsideration, then the price of the regulated bitstream service must be adjusted.”

- 4.2 This will accommodate the options envisaged by standard imputation tests such as the two EU¹ tests and the approach by ACCC². For example this allows the test to cover a reasonably efficient service provider test as well as an equally efficient service provider test.

5 Additional grounds for the reconsideration)

- 5.1 CallPlus considers that the reconsideration can be supported on grounds additional to the grounds accepted in the draft determination. However, rather than canvassing those now, it is more practical to do so in the cross-submissions if necessary (for example, in response to Telecom submissions).

¹ The two tests are outlined in *Albion v Dwr Cymru* [2006] CAT 23 and 36, and [2007]CAT 7. The Oftel tests have been adopted generally in the EU.

² ACCC, *Assessing vertical price squeezes for ADSL services: An ACCC information paper*, May 2005, page. 10. <http://www.accc.gov.au/content/index.phtml/itemId/756885/fromItemId/756870>