

# **Commerce Commission**

## **UBA Competition Review**

### **Submission on the Revised Draft Decision**

6<sup>th</sup> July 2011

Submission by



CallPlus Limited



Kordia Group Limited

Public Version

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Telecommunications Branch  
Commerce Commission  
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#### **Introduction:**

CallPlus & Kordia Group ("Kordia") thank the Commission for the opportunity to make this submission. Given the high degree of alignment in our positions we have decided on a joint response by CallPlus & Kordia.

For more information please do not hesitate to contact us:

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#### **Specific Comments:**

##### **Product dimension**

The Commission's view is that the product dimension includes cabinetised & non-cabinetised lines. This is based on the notion of indirect constraints as detailed in the revised draft report. The Commission believes that *"Telecom is constrained in its ability to price discriminate between cabinetised and non-cabinetised lines and Telecoms behaviour to date illustrates this practice"*

The concern of CallPlus & Kordia is that at a practical level, even where we have our own MSANs, we have no viable alternative to Telecom Wholesale UBA in cabinetised areas. This is due to the barrier to entry presented by the economies of scale required to make use of the regulated 'sub-loop' service in cabinets viable. Telecom therefore faces limited or no competition in cabinetised areas.

Our concern is unfounded if the Commission is right and the indirect constraint means Telecom continue its practice of not price discriminating at a retail or a wholesale level within an ESA; i.e. cabinetised and non-cabinetised wholesale UBA prices remain the same within the ESA. However if the Commission is

incorrect we could see 'pocket pricing at a retail or wholesale level' within the ESA to the detriment of competition and consumers.

CallPlus & Kordia suggest that rather than leaving this to chance the Commission makes it a pre-condition of the proposed approach that Telecom continue to not price discriminate wholesale UBA between cabinetised and non cabinetised areas in areas where the regulated product is not available. In the event that this occurs the Commission should review the competition test. In the absence of such a prerequisite we would not support the approach and suggest that cabinetised areas should continue to be regulated.

CallPlus & Kordia agree with the Commission that mobile broadband is not a competitive restraint.

### **Competition test**

CallPlus and Kordia support the move from an assessment based on the number of competing providers to a market share assessment. The mere presence of providers does not mean effective competition and the Commission notes that not all providers will offer wholesale services.

In terms of whether 20%, or 30% as in Australia or higher, is the appropriate level CallPlus & Kordia are not privy to the information to assess the appropriate level in the same manner as Telecom. We are therefore reliant on the Commission. The 20% level appears a very low hurdle however it is our understanding that this is measured across all lines (both cabinetised and non-cabinetised) in the ESA. If this is not the case then we would submit that the 20% level is definitely too low.

### **Approach to calculating the regulated UBA price**

CallPlus and Kordia's argument in previous submissions was not that de-averaging the calculation of the regulated price was contrary to the Act. The point we sought to make was that, at a time when the regulated price of UBA is to be frozen for a three year period – effectively meaning no retail price pass through mechanism is in effect for the regulated product, the Commission is introducing a new variable in to the mix which will remove areas from the regulated service with no adjustments to the regulated retail minus calculation.

Given that the freezing of the retail minus calculation will occur soon we suggested that the Commission may defer making changes until the cost based UBA is in place.

ENDS