



21 October 2010

Tom Forster
Commerce Commission
P.O Box 2351
Wellington

Dear Tom

Telecom's non-confidential response to the Commerce Commission revised draft review of unbundled local loop backhaul services and draft review for unbundled bitstream access backhaul services

Telecom would like to thank the Commerce Commission for the opportunity provide further feedback on its draft Decision on UBA Backhaul STD (the **UBA Backhaul Decision**) and the revised draft Decision on UCLL Backhaul STD (**UCLL Backhaul Decision**), (collectively referred to as the "**Draft Decisions**").

SUMMARY

Overall, we welcome and agree with the Commission's proposals to:

- (a) Simplify the assessment criteria to determine when alternative backhaul operators are considered to be a competitive constraint on Telecom;
- (b) Increase the number of links where Telecom does not face limited, or is not likely to face lessened competition;
- (c) Apply the same assessment framework and principles to UCLL Backhaul and UBA Backhaul; and
- (d) In future, undertake a combined review of UBA Backhaul and UCLL Backhaul links.

We do not, however, agree with the Commission's decision to exclude vertically integrated operators from being considered a competitive constraint for the reasons expressed in our earlier submissions. The Commission's approach in this regard is inconsistent with the approach of overseas regulators such as OFCOM and the way that the Commission itself analyses competition and potential competition in merger analysis¹. We remain of the view that any operator present in a particular area, whether vertically integrated or not, provides a competitive constraint on Telecom. Clearly this applies where an operator is actively wholesaling services. It also applies where the operator has capacity, though may not yet be actively wholesaling services, because in such a case the

¹ See for example, Commerce Commission, *Merger and Acquisition Guidelines*, pp22, especially paragraphs 2 and 3:

"Existing competition occurs between those businesses in the market who already supply the product, and those who could readily do so by adjusting their product-mix (near competitors)..." The standard has never been that a near-competitor must be "competing vigorously".

operator would have very low costs to enter the relevant market. In the latter case the operator should be regarded as not just a potential competitor but more appropriately as a near entrant – as it could enter the market at any time. In particular, we think the argument should be applied to secondary links. We therefore encourage the Commission to revisit this aspect of the Draft Decisions.

COMPETITIVE CONSTRAINT ON SECONDARY BACKHAUL LINKS

We consider the infrastructure provided by TelstraClear in its Southern Loop between Christchurch, Timaru, Dunedin, Invercargill and Queenstown poses real competitive alternative to Telecom.

[.] Confidential

We urge the Commission to review the market information that it relied upon to draw conclusions that the South Island routes (other than Wellington to Christchurch and Christchurch to Riccarton) are subject to limited competition; and to revisit the draft decision in regard to the following secondary links:

- (a) Wellington – Nelson;
- (b) Nelson – Riccarton / Christchurch;
- (c) Christchurch – Timaru;
- (d) Timaru – Dunedin;
- (e) Dunedin – Invercargill; and
- (f) Christchurch – Cromwell.

UBA BACKHAUL - ADDITIONAL CONSULTATION QUESTIONS

We agree with the Commission's assessment set out in paragraphs 21 and 22 of the UBA Backhaul draft review. We think that any additional costs associated with providing a competitive backhaul service are likely to be comparatively low when viewed in the overall scheme of things. Consequently, this should not affect the Commission's overall competition assessment framework. It rightly requires a party alleging otherwise to bear the onus to provide evidence to that effect.

We don't have any comments to make in regard to the additional changes required to the Schedule, other than to point out that if the Commission accepts our proposal to include secondary links provided by Telstra Clear (and wholesale providers in the South Island) as competitive constraints on Telecom, then the relevant changes to Appendix B – Secondary Links and related parts of the STD should be made.

If the Commission would like any further information you should not hesitate to contact us.

Yours Sincerely

John Wesley-Smith
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Group Industry and Regulatory Affairs