

Tuesday 19th April 2011

To Whom It May Concern:

Feedback on Commerce Commission

MediaWorks operates in the radio, television and on line sectors of our community – through the news, entertainment and information that it provides to New Zealander's here and overseas it has a voice into every New Zealand home and business (whether that business operates solely in New Zealand or trades more widely).

We are at the forefront of technology advances. We have seen our customers and consumers adapt to and adopt technological change. We know that this is supported when technology makes sense to end users – when it is compelling and cost effective.

We have already identified issues which may hamper or slow take up of UFB – we are concerned that barriers (currently in place) may inhibit strong uptake. We would welcome the opportunity to expand on this summary as part of our feedback to the Commerce Commissions Draft Terms of Reference for the UFB Demand Side Study.

Our concerns can be summarised into the following two points.

1) Encouraging Consumer Choice:

- Content arrangements
- Price competitiveness
- ISP data packages
- Net neutrality

2) Consumer Education and High Awareness.

Go to Market Strategy for UFB generally – it will be important to ensure all New Zealanders are aware of and know how to enjoy the benefits of the UFB platform..

We have outlined a summary of our feedback regarding the terms of reference for the UFB demand side study. They have been itemised under each of the terms.

Terms of Reference

i. Analysis and Research

a. To analyse the drivers of uptake of high speed fibre broadband access in other jurisdictions.

MWL FEEDBACK

Learnings for NZ can be taken from a variety of sources. One such source which we consider is helpful and applicable is that of Analyses Mason's "Connected Consumers" Study of 6,000 consumers across Europe and US.

<http://www.analysismason.com/About-Us/News/Press-releases/Ultra-fast-broadband-requires-smarter-marketing-in-Europe-and-the-USA-says-Analysys-Mason/>

b. To identify whether there are any barriers likely to inhibit the uptake of high speed fibre broadband services in New Zealand, including peering, IP interconnection, data caps and content arrangements.

MWL FEEDBACK

We believe PRICE and EDUCATION also need to be included in this term.

How will the Commerce Commission ensure that UFB does not become gridlocked by exclusive carriage deals with one content provider? Such exclusive arrangements narrow consumer choice for variety of content and homogenises internet service providers, reducing competition and potentially increasing the price to consumers as well as the ROI for investors in UFB.

One of the drivers for consumer enthusiasm and demand for UFB will be the opportunity to receive video services that are not currently available on existing platforms.

It will be important to ensure no one content provider can require “exclusive marketing arrangements” with major Telco Companies, as this would inevitably limit new content options. The study we have referred to above has concluded that education and information is key to uptake commenting that “Consumers’ lack of understanding of the benefits of ultra-fast broadband, as highlighted by our survey, presents a marketing challenge for service providers.” Martin Scott, Principal Analyst on “Connected Consumers” for Analysys Morgan (Nov, 2010)

“What’s in it for me?” Consumers must be convinced there is something in UFB that will make a positive difference to their lives. Analysys Mason’s “Connected Consumers” survey evaluated responses from 6000 consumers in Europe and US. One of the key findings was that

“Almost 40% of respondents to our Connected Consumer survey indicated that ultra-fast broadband would make no difference to their usage of fixed broadband services. Many consumers are clearly not aware of the new applications and experiences that would be available to them ...”

Educating and demonstrating the benefits of UFB to New Zealanders as well as to the various market segments within the general population will be critically important. I.e. those who have various content interests and connection requirements. (speed, concurrency etc, local, international).

c. To determine whether network neutrality (where all data on the internet is treated equally, whatever its source or destination) is an issue in New Zealand.

MWL FEEDBACK

MWL is strongly supportive of ensuring net neutrality prevails at all times in the NZ market. MWL would encourage the Commerce Commission to investigate how a Code of Conduct might be developed to ensure “fair and open dealing” is adhered to by all ISP participants, so that genuine competition exists for Consumers.

d. To analyse what steps, if any, need to be taken to promote effective competition for services requiring high bandwidth.

We see the need for consumers to be provided with vibrant and carried content packages in order to take up UFB. It will be important for the Commerce Commission to ensure

- vibrant and varied content packages from a variety of providers
- A “cartel” style pricing model will not emerge through a lack of competition over content.
- SOEs and /or monopolies allowed to exist in the present environment such as TVNZ and /or Sky cannot be allowed to use their state-owned/funded or monopolist position to exploit an uncompetitive advantage on UFB (whether it be in isolation or in collaboration with each other)

The Telecommunications Bill:

MWL acknowledges the latest amendment to the Bill regarding Equivalent of Outputs (EOI). We support Dr Ross Patterson's recommendation that UFB network operators be obliged to provide access to their unlit fibre to everyone using exactly the same systems and processes.

We note and support Minister Joyce's comment (April 18) "I am not sure if it (EOI) is something the committee will recommend, but even if the committee doesn't recommend it, it is something I will probably focus on – strict EOI in the definition."

'Regulatory Oversight by the Commerce Commission': The 'Regulatory Holiday' clause.

"In its present form, the Telecommunications Bill removes New Zealanders choice, by creating unregulated broadband services with no oversight for 10 years,". The period of "regulatory forbearance in the proposed legislation, will restrain the power of the Commerce Commission to regulate UFB until the end of 2019".

(Statement made by Telcos and Lobby Groups in a letter to MPs - April 11)

MWL FEEDBACK

MWL acknowledges the balance required to ensure certainty to the builders of the fibre networks, however we question whether this additionally necessitates legislating away the regulatory oversight of the Commerce Commission for a period of 10 years.

MWL knows by experience that supervision by the Commerce Commission allows competitors to "really get stuck in" and create a thriving multi-supplier market. We believe this is what UFB will need to be if it is to achieve mass market uptake and longer term success. (Much in the same way the Mobile Phone Market has more recently achieved).

We are concerned that the length of the regulatory holiday may allow market conditions to be established that will directly and negatively impact UFB uptake. We consider a more effectively (yet flexible) structure would be to amend the 10 year review period to a system allowing for more regular assessment and reporting on the state of competition across broadcasting and telecommunications, every 2 years. We support flexible pricing as we recognise that it is unrealistic to expect to set pricing for the next decade up front.

MWL identifies that UFB rollout and uptake is likely to have a direct impact on the broadcasting environment of New Zealand and welcomes this opportunity to provide input on Demand Side Issues as identified by the Draft Terms of Reference – a most important aspect of the study should, in our view, be this issue of regulatory oversight to ensure a robust and vibrant offering is presented to consumers in accordance with Government policy that "New Zealanders be encouraged to adopt fibre based broadband in their business and homes".

Warm regards,

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