



**RESPONSE TO COMMERCE  
COMMISSION CONSULATION ON  
DRAFT TERMS OF REFERENCE FOR A  
STUDY ON DEMAND SIDE ISSUES**

19 April 2011

## **SUBMISSION**

- 1 We welcome the Commission's consultation on the Draft Terms of Reference for its Study on Demand Side Issues. We support the Commission seeking to gain a richer and more detailed understanding of issues affecting the markets that it oversees.
- 2 Given the importance of broadband services to economic growth, and the need to ensure efficient use of new infrastructure, it is appropriate that the Commission and industry stays abreast of demand side developments and issues in this highly dynamic market.
- 3 While we support a study, it is important to acknowledge that any findings can only be provisional and preliminary in nature. The availability of new technologies and the services they support is transforming traditional value chains. New business models and services are only now starting to appear.
- 4 One of the Commission's Terms of Reference is to analyse "*what steps, if any, need to be taken to promote effective competition for services requiring high bandwidth*". Given the early stage of market development during the period of the study, it will be impossible to identify barriers which cannot be overcome through the ordinary operation of market forces. The Commission needs to take a cautious approach as regulatory initiatives at this stage have the potential to distort market development and investment. That said, some preliminary thinking about markets would likely be helpful.
- 5 The primary purpose of the study should therefore be to promote understanding of the markets' demand drivers, identify where market and regulatory failure might take place in future, and identify issues for further consideration.
- 6 With this in mind:
  - a We propose as Appendix 1 a number of comments as to *how* the Commission should undertake its study.
  - b We have suggested as Appendix 2 some consequential drafting changes to the Terms of Reference

## APPENDIX 1

### **Suggestions as to the approach the Commission should take to its Demand Side Issues study**

To better meet the objectives of the study, we recommend that the Commission should:

- a Ensure the specific drivers and issues identified are set in the context of market and value chain changes and the importance of investment by all parties. The Commission should identify the fundamental changes occurring in the market and what this means for new services and demand. It will be important to understand the broadband value chain and incentives.

For example, much of the overseas debate around data caps and network neutrality has been driven by differing views over managing network congestion and the funding of necessary investment in the network. Any regulatory intervention needs to carefully balance short and long term consumer benefits where these are in conflict.

In identifying the demand drivers the Commission should also set out the necessary conditions under which those drivers may become materially relevant to consumer demand. Without this analysis it will not be possible to form a view of likely and relative importance of any barriers.

- b Consider content issues in their widest context to gain a full understanding of this very complex value chain. The content market is shaped by a mixture of domestic and international factors, many of which are being challenged by technology developments.
- c Augment its research phase by collating and coordinating existing NZ data and research. The Commission should consider undertaking primary research to understand the views and aspirations of New Zealanders.
- d Focus on international developments and benchmarking. The Commission has indicated that it will consider international studies and we support this. However, the results need to be interpreted and assessed for their application to the NZ situation. Issues such as demographics, geography, disposable income, life style, actual patterns of usage for broadband, alternative avenues of content provision, competing providers of services and other domestic factors will all influence the take up of ultra-fast broadband in New Zealand.

The Commission noted in its 2009 NGN study that it would consider demand side issues in the context of its monitoring strategy. This new study would be a good opportunity to identify key measures that the Commission could monitor and benchmark going forward.

- e Recognise that IP Interconnection and peering is already being actively considered by the industry and officials. While the approach to these issues can be informed by this study, it would be confusing and difficult to be considering specific IP Interconnect issues (for example) under multiple work streams. We recommend these issues continue to be considered as specific initiatives rather than part of a demand side study.

- f Identify areas for further study rather than steps to promote competition. Regulatory distortions are easily created, and difficult to remedy once created. Recommendations flowing from the study should recognise the evolving market, and the fragmented and rapidly changing value chain. These changes have significant implications for both network owners and service providers. Areas for further study should relate to the Commission's role under the Telecommunications Act, and are likely to be a subset of matters considered in the study.

All regulation should be based on firm evidence and be proportional to the problem identified. Initiatives focused on intervention require much wider policy consideration, they require robust evidence demonstrating enduring market failure and rigorous cost benefit analysis of potential solutions. The nature of this study is such that the market will almost certainly not have developed enough by the time the study ends to provide sufficient information to decide whether to intervene. The study will however play an important part in informing Commission activities and priorities going forward.

## APPENDIX 2

### Suggested drafting changes to the Commission's Terms of Reference

6 The proposed approach for this study is:

i. Analysis and Research

- a. To identify the fundamental changes occurring in the market and what those changes mean for new services and the demand for new services. To identify the necessary conditions under which those drivers may become materially relevant.
- b. To identify content related issues for New Zealand by undertaking a detailed study of the full content value chain, taking in to account domestic and international incentives and drivers.
- c. To collate and co-ordinate existing New Zealand data and research and undertake further research to understand the views and aspirations of New Zealanders in terms of new broadband services.
- d. To analyse the drivers of uptake of high speed fibre broadband access in other jurisdictions. To identify which of these demand drivers apply to New Zealand whilst considering New Zealand specific issues which will affect local demand and uptake. To identify whether there are appropriate key measures that the Commission should monitor and benchmark going forward.
- e. 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 where these issues are not being addressed through other regulatory work streams or commercial agreements.
- f. 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 whilst recognising that any regulatory intervention, if required once the market has matured, needs to carefully balance short and long term consumer benefits by promoting sustainable investment.
- g. To understand the market's demand drivers, identify where market and regulatory failure might occur and identify issues for further consideration in order to analyse what steps, if any, need to be taken to promote effective competition for services requiring high bandwidth. Identify steps to monitor the market as it develops which will indicate problems if they arise.