



TelstraClear Limited

**Submission on Draft Review of Designated and Specified Services under
clause 1(3) of Schedule 3 of the Telecommunications Act 2001**

PUBLIC
(There is no confidential version)

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Introduction

1. TelstraClear welcomes the opportunity to comment on the Commerce Commission's (Commission) Draft Review of Designated and Specified Services (Relevant Services) under clause 1(3) of Schedule 3 of the Telecommunications Act 2001 (Draft Review).
2. TelstraClear supports the Commission's preliminary conclusions set out in its Draft Review. However, given the context of emerging fibre services, the Commission may wish to provide additional reasons to ensure that its position is clear to all stakeholders.
3. Should the Commission change its conclusions in this Draft Review and decide that there are grounds to investigate, TelstraClear requests the opportunity for further consultation.

Reasonable Grounds

4. We note that the Draft Review states that reasonable grounds are likely to exist "where competition has developed to such an extent that continued regulation is unlikely to best promote competition". We presume that as part of this assessment the Commission considered the incentives to innovate and the risks faced by investors in new telecommunications services.¹
5. It may assist if the Commission expands its reasoning on this point. Previously the Commission has explained the competitive constraint that copper based services provide to new fibre based services.² Consistent with this view, the premature removal of regulation for copper based services may reduce the competitive constraint on new fibre services.
6. At this critical stage in the early development of fibre services, it is important that the market is certain that this competitive constraint will remain effective and appropriate. This view is consistent with the reasoning behind the three year price freeze for the unbundled copper local loop standard terms determination (UCLL STD) and the unbundled bitstream access service standard terms determination (UBA STD).

¹ Section 18(2A) Telecommunications Act, as inserted by s7 Telecommunications (TSO, Broadband, And Other Matters) Amendment Act 2011.

² Paragraph 79, Submission to the Finance and Expenditure Select Committee on the Telecommunications (TSO, Broadband, And Other Matters) Amendment Bill, Commerce Commission, 11 March 2011.

Interconnection

7. The Commission is correct to state that the Telecommunications (TSO, Broadband, And Other Matters) Amendment Act 2011 (Amendment Act) removed the service 'Interconnection with fixed PSTN other than Telecom's'.
8. However, the amendment to the other interconnection service 'Interconnection with Telecom's fixed PSTN' is minimal.³ Although it is technically correct that a 'new' service came into force on 1 July 2011, the Commission may wish to expand its reasons on this point.
9. In our view, the substantive need for regulated interconnection with a fixed PSTN (presumably Chorus and/or Telecom's) remains.

Resale

10. TelstraClear agrees with the Commission that there do not appear to be grounds for another review of resale services so soon after the previous review. Although the Amendment Act has been come into force since the previous review, its significance for resale (if any) would suggest retention of the regulated services.

UBA, UCLL, Sub-loop and Co-location (UCLL, Sub-loop)

11. TelstraClear agrees with the Commission that there appear to be no reasonable grounds for a review under clause 1(3) at this time.
12. Moreover, an investigation of de-regulation immediately following the Amendment Act – which provides new terms and price freezes for UCLL and UBA – would heighten uncertainty during this period of transition.

National Roaming, Co-location on Cellular Transmission Sites, Number Portability, Backhaul Services, Mobile Termination Access Services

13. TelstraClear agrees with the Commission that there appear to be no reasonable grounds for a review under clause 1(3) at this time.

³ Omitting 'Telecom' and substituting 'a'.