



COMMERCE COMMISSION

14 July 2011

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

Background and purpose

1. Clause 1(3) of Schedule 3 of the Telecommunications Act 2001 ('the **Act**') requires that the Commission consider, at intervals of not more than 5 years after the date on which a designated service or specified service comes into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 of the Act.¹ The five year review is limited to removing the service from Schedule 1 and does not extend to introducing a new service or amending an existing service.
2. The Commission is considering whether to investigate omitting the designated and specified services listed in the Appendix to this document (Relevant Services). The current 5 year interval for most of the Relevant Services concludes on 22 December 2011.
3. The Commission may not commence an investigation into omitting a service earlier than 12 months before the end of the 5 year interval.²
4. The purpose of this document is to outline, and seek submissions, on the Commission's preliminary view that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 3 in relation to any Relevant Service.

Reasonable Grounds to Investigate

5. The Commission may commence an investigation under clause 1(3) of Schedule 3 only where it is satisfied that there are reasonable grounds to do so.³
6. In the Commission's view, reasonable grounds to investigate whether a service should be omitted from Schedule 1 are likely to exist where competition has developed to such an extent that continued regulation is unlikely to best promote competition in telecommunications markets for the long term benefit of end-users.

¹ Schedule 3, Part 1, Clause 1(3). An inquiry commenced under this clause is limited to omitting a telecommunications service from Schedule 1 of the Act

² Schedule 3, clause 1(4).

³ Refer to clause 1(1)(a) of Part 1 of Schedule 3 to the Act.

7. The Commission sets out below in relation to each Relevant Service the reasons for its preliminary view that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 3 of the Act in relation to any of the Relevant Services

Commission's preliminary views

Interconnection services

8. Two interconnection services were designated in the original Telecommunications Act 2001:
 - *Interconnection with Telecom's fixed PSTN; and*
 - *Interconnection with fixed PSTN other than Telecom's*
9. The Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011 (the **Amendment Act**) redrafted the first service description by omitting "Telecom's" and substituting "a", and repealed the second. The amended service came into force on 1 July 2011, and accordingly will not be subject to investigation under clause 1(3) of Schedule 3 until 1 July 2016

Resale Services

10. In December 2010 the Commission completed a Schedule 3 investigation into the four designated Resale Services in Schedule 1, and recommended to the Minister that there should be no change to two of the services (Residential local access and calling service offered by means of Telecom's fixed telecommunications network and Retail services offered by means of Telecom's fixed telecommunications network as part of a bundle of retail services). The Commission also recommended that a change be made to the description of Retail services offered by means of Telecom's fixed telecommunications network, and that the designated service 'bundle of retail services offered by means of telecom's fixed telecommunications network' be omitted from Schedule 1 of the Act
11. The Minister accepted the Commission's recommendation and the changes were implemented by Order in Council dated 30 May 2011. The new service came into force on 30 June 2011, and accordingly will not be subject to a clause 1(3) investigation until 30 June 2016.
12. The two services to which clause 1(3) does apply are:
 - Residential local access and calling service offered by means of Telecom's fixed telecommunications network
 - Retail services offered by means of Telecom's fixed telecommunications network as part of a bundle of retail services
13. The Commission's *Final Report on whether the Resale Services should be omitted from Schedule 1 of the Telecommunications Act 2001 (or if not omitted, amended in some form)* dated 16 December 2010 concluded, for the reasons set out in that Report, that these two services should remain designated services.. The Commission is of the view that there have been no developments in the relevant markets in the seven month period since its Final Report was released which would warrant a new investigation.

14. As a result, the Commission's preliminary view is that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to any of the Resale services.

Unbundled Bitstream Access

15. The Unbundled Bitstream Access (UBA) service is currently subject to an STD governing both the price and non-price terms on which Telecom must make this service available on the request of an access seeker.
16. As shown in the Commission's Annual Telecommunications Monitoring Report 2010 (2010 Monitoring Report), the majority of competition faced by Telecom in the retail broadband market is from wholesale based competitors using UBA.
17. The UBA service is subject to a competition condition; the regulated service is available only in those areas where Telecom does not face limited competition or is likely to face lessened competition. The Commission is currently conducting a competition review to determine the areas in which Telecom does not face limited competition.
18. In light of the importance of UBA to wholesale based competitors of Telecom, and the application of the competition condition, the Commission's preliminary view is that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the UBA service.

Telecom's unbundled copper local loop network including sub-loop copper access (sub-loop MPF)

19. The Unbundled Copper Local Loop Network (UCLL) is currently subject to an STD governing both the price and non-price terms on which Telecom must make this service available.
20. As shown in the 2010 Monitoring report, UCLL is an important, and growing, access technology for infrastructure based competitors of Telecom. It has been available only since late 2007 and the take up of unbundled lines by access seekers by the end of 2010 represented 8 per cent of total Telecom DSL lines.
21. The Commission considers that the provision of UCLL is important in facilitating competition. It does not consider that there are reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the UCLL service.

Telecom's unbundled copper local loop network co-location (including sub-loop co-location)

22. UCLL Co-location is currently subject to an STD which governs the price and non-price terms on which Telecom must make this service available at the exchange. There is also an STD in place for the Sub-loop Co-location Service which governs the terms upon which Telecom must make this service available at the distribution cabinet.

23. The UCLL Co-location service allows access seekers to place their equipment in a space within the Telecom exchange or cabinet for the purpose of accessing the UCLL service. The UCLL Co-location service therefore is necessary to enable access seekers to use the UCLL service (including the sub-loop network).
24. For the same reasons as set out in relation to the UCLL service, the Commission's preliminary view is that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the UCLL Co-location service.

National Roaming

25. National Roaming is a service that is subject to regulation in respect to non-price terms only. There is no STD in place.
26. Over the course of 2010, the Commission considered whether or not to commence an investigation to extend the regulation of National Roaming to include price.
27. In December 2010, the Commission decided not to launch an investigation because there were adequate commercial arrangements in place relating to price.
28. The roaming service remains important, as the third entrant, Two Degrees, is dependent on roaming in areas where it does not have its own network coverage. As Two Degree's existing commercial arrangements are for a finite period, the Commission's preliminary view is that it is appropriate that national roaming continue as a specified service to provide a regulatory backstop should future commercial roaming negotiations flounder.
29. The Commission's preliminary view is that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 3 in relation to the national roaming service.

Co-location on cellular transmission sites

30. There is an STD in place that covers the non-price terms on which the Mobile Co-location service must be made available by access providers to access seekers.
31. There is currently very little mobile co-location within the industry. However, the Commission understands that Two Degrees is planning on extending its coverage from the main cities into provincial New Zealand. Two Degrees has indicated that it intends to make greater use of the regulated co-location service for its network expansion.
32. In addition, Vodafone has acknowledged in relation to its participation in the Rural Broadband Initiative, that the towers built under RBI will be subject to the Mobile Co-location STD, and access will be granted to parties who are not cellular mobile operators on the same terms.
33. Co-location reduces the costs of building a network as existing infrastructure can be used to deliver services whilst roll-out of new (or expanded) network occurs. The Commission considers that Mobile Co-location should continue to be regulated to facilitate efficient entry and expansion in the mobile market.

34. The Commission's preliminary view is that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the Mobile Co-location service.

Number Portability Services

35. There are two regulated number portability services in the Act:
- Local telephone number portability service; and
 - Cellular telephone number portability service.
36. The first number portability determination was issued in 2005, and was to expire in December 2010. The TCF and the parties to the determination advised the Commission the processes and arrangements in place for number portability were functioning well and meeting the needs of the parties as well as end users. The TCF and parties requested that the Commission extend the determination for a further period.
37. In December 2010, after consultation with the industry and interested parties, the Commission extended the term of both local and mobile number portability determinations until December 2016.
38. Number portability remains an important element of New Zealand's competitive telecommunications regime. In December 2010, when the Commission extended the two determinations, half a million numbers had been ported since the introduction of number portability in April 2007. In the period January to June 2011, the total number of ported numbers has increased by more than 100,000.
39. The Commission's preliminary view is that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the number portability services.

Backhaul Services

40. There are three backhaul services in the Act.
- Telecom's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange) – Sub-Loop Backhaul;
 - Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point) – UCLL Backhaul; and
 - Telecom's unbundled bitstream access backhaul – UBA Backhaul.
41. All of the backhaul services are currently subject to STDs that cover the price and non-price terms on which the services should be made available.
42. Backhaul provides transmission capacity for the regulated UBA, UCLL and Sub-Loop Services. Backhaul services are necessary to give effect to those services, to facilitate competition in downstream retail markets.
43. The UCLL and UBA backhaul services are subject to a competition condition: the regulated service is available only in those areas where Telecom does not face limited

competition or is likely to face lessened competition. The Commission has conducting three competition reviews in relation to UCLL backhaul, and one in relation to UBA Backhaul. As a consequence of those reviews, the UCLL and UBA backhaul services are available only in respect to backhaul links where Telecom faces limited competition.

44. Sub-Loop Backhaul is a service that has not as yet been taken up by access seekers due to the challenging economics of sub-loop unbundling. This service remains important, as it is likely that Sub-loop Backhaul may only be viable in a small number of exchanges. It is therefore important that this service remains regulated.
45. The Commission's preliminary view is accordingly that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the backhaul services.

Mobile Termination Access Services (MTAS)

46. MTAS was added to Schedule 1 as a regulated service by Order in Council dated 23 August 2010 and came into force on 27 September 2010. The service will accordingly not be subject to investigation under clause 1(3) of Schedule 1 until 27 September 2015.

Submission Process

47. The Commission is seeking comment from interested parties on its preliminary views expressed in this document. After considering these submissions, the Commission will finalise its views on whether or not there are reasonable grounds to commence an investigation under clause 1(3) of Schedule 3 in relation to the Relevant Services that are eligible for consideration.

Address for Submissions

48. Please send all written comment by 19 August 2011 to telco@comcom.govt.nz.

APPENDIX

- Interconnection with fixed PSTN
- Retail services offered by means of Telecom's fixed telecommunications network
- Residential local access and calling service offered by means of Telecom's fixed communications network
- Retail services offered by means of Telecom's fixed communications network as part of bundle of retail services
- Telecom's unbundled bitstream access
- Telecom's unbundled bitstream access backhaul
- Telecom's unbundled copper local loop network
- Telecom's unbundled copper local loop network co-location
- Telecom's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)
- Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point)
- Local telephone number portability service
- Cellular telephone number portability service
- National roaming
- Co-location on cellular mobile transmission sites
- Mobile Termination Access Services