



COMMERCE COMMISSION

Please refer to:  
1081549\_1

15 October 2010

Tristan Gilbertson  
Group General Counsel  
Telecom Corporation of New Zealand Limited  
Telecom House  
Lvl 15, 8 Hereford Street  
Auckland, New Zealand

Dear Tristan,

**Notice of Investigation into compliance with non-discrimination obligations under the Separation Undertakings in regard to UBA services taken with SLES and SLU services**

The purpose of this letter is to inform you that the Commission is launching an investigation into compliance with non-discrimination obligations under the Telecom Separation Undertakings in regard to Telecom Wholesale's Unbundled Bitstream Access (UBA) service taken with Sub-Loop Extension (SLES) and Sub-Loop Unbundled (SLU) services.

As you are aware, Chorus launched SLES on 14 August 2009. A number of access seekers who intended to take SLES from Chorus requested Telecom Wholesale to supply them with the UBA service, so they could continue to offer retail broadband services to end users (with UBA as an input, supplied from the distribution cabinet), while still using their equipment in the exchanges to self-provide voice services.

Such requests for access were met at the time by Telecom Wholesale with an offer of UBA at the 'naked' UBA price (i.e., with an uplift equal to the UCLL price, as opposed to the 'clothed' UBA price). Access seekers submitted to the Commission that Telecom was in effect seeking to recover the costs of its copper access twice, first in the SLES price, and secondly in the uplift to the UBA price.

On 26 April 2010, the Commission advised Telecom of its concerns that Telecom was discriminating between Telecom Retail and other access seekers, as it was proposing to charge access seekers more than it charged Telecom Retail for the same set of services. Telecom responded that it did not believe that Telecom Wholesale was in any way in breach of its non-discrimination obligations.

On 28 May the Commission initiated a clarification process of the terms of the UBA STD, which has now concluded, with the clarification issued on 14 October 2010.

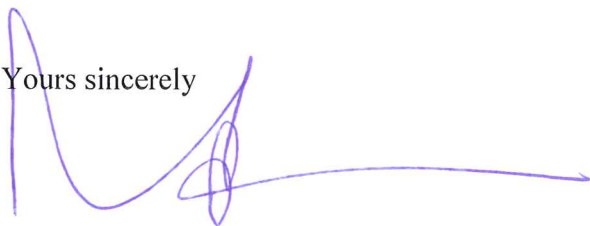
Having completed its investigations as part of the clarification process, the Commission remains of the view that Telecom Wholesale's conduct in pricing UBA when taken in conjunction with SLES is likely to discriminate in favour of Telecom Retail, thereby advantaging Telecom Retail over alternative access seekers who are Telecom Retail's competitors in retail broadband services.

The Commission considers that there are sufficient grounds for an investigation of a potential breach of Telecom Wholesale's non-discrimination provisions under clause 56 of the Telecom Separation Undertakings, and has today decided to launch such an investigation.

As part of its investigation, the Commission requests a written response to the information request enclosed, together with any submissions you wish to make in relation to the Commission's preliminary view set out in this letter, no later than close of business Thursday 18 November 2010. You may accept as given that the Commission has copies of your previous correspondence on the matter.

As with previous investigations, the Commission will prepare a draft decision and allow ample opportunity for consultation before proceeding to a final decision.

Yours sincerely



Dr. Ross Patterson  
Telecommunications Commissioner

cc: John Wesley –Smith, Vanessa Oakley, Grant Fraser, Mark Larsen, Michael Spooner

Encl.

Request for information in Commission's investigation



## COMMERCE COMMISSION

Please refer to:  
1081640\_1

### **Request for information in Commission's investigation**

This is a request for information in support of the Commission's investigation into UBA pricing when taken in conjunction with SLES and SLU as set out in the Commission's letter of 15 October 2010.

Please provide, to the extent applicable, the following information:

- 1 In relation to the provision of UBA in conjunction with SLES, for the period since 14 August 2009 please describe:
  - a) how these services are provided to Telecom Business Units;
  - b) how they are provided, or are or were planned to be provided, to external customers (Access Seekers);
  - c) the price for each service provided to an internal Telecom Business Unit; and
  - d) the price for each service provided, or to be provided, to an Access Seeker.
- 2 A list of all Access Seekers who have requested or otherwise expressed an interest in purchasing the Telecom Wholesale UBA service in conjunction with Chorus' SLES service, together with copies off all correspondence, file notes and other documentation evidencing discussions and negotiations with, and offers made to, access seekers in respect thereof.
- 3 Copies of the internal trading arrangements, including prices and transfer charges, between all Telecom Business Units used as inputs to UBA services and POTS where those services are provided over cabinetised lines, for the period since 14 August 2009.
- 4 Records of any communications, including file notes of discussions and meeting minutes, in relation to the terms and conditions (including price) on which SLES was provided, or was to be provided, to internal Business Units and/or external access seekers.
- 5 Copies of any management, business case, and/or decision papers, including file notes, e-mails, and meeting minutes, on SLES, and UBA taken or to be taken in conjunction with SLES, by Telecom Business Units and/or Access Seekers.
- 6 Please provide copies of any Honesty Box submissions and related investigation reports in relation to SLES and/or UBA taken in combination with SLES and SLU, and any investigatory reports or summaries of the outcomes of those complaints, by Telecom Business Units (or their respective Employees) and/or Access Seekers.

The information is requested in accordance with clause 84.2 of the undertakings. Please limit the information supplied to that which is or may be materially relevant to the Commission's investigation and feel free to contact Reto Bleisch at 04-924-3865 or at [reto.bleisch@comcom.govt.nz](mailto:reto.bleisch@comcom.govt.nz).

The Commission may seek additional or supplementary information, as it deems reasonably appropriate for completing its investigation.

Please note any information in your response for which you seek confidential treatment. The Commission does not intend to publicly release or share the information requested in this letter, so we see no need for a confidentiality order at this time.

Please provide the information no later than 18 November 2010.

15 October 2010