



COMMERCE COMMISSION

**CLARIFICATION OF THE STANDARD TERMS DETERMINATION ON
TELECOM'S UNBUNDLED BITSTREAM ACCESS SERVICE**

DECISION NO. 671

Clarification under section 58 of the Telecommunications Act 2001 (the 'Act') of Decision 611

The Commission:

Anita Mazzoleni

Summary of Application and Initiation:

The Commission has made amendments of its own initiative to Decision 611 in order to incorporate changes to Telecom retail broadband offerings which influence calculation of the core UBA charges.

Date of clarification:

22 April 2009

Background

1. The Commerce Commission (the '**Commission**') is a body corporate established under the Commerce Act 1986 having its head office at Wellington. The Commission has various functions and powers under the Telecommunications Act 2001 (the '**Act**').
2. On 12 December 2007, the Commission issued a standard terms determination ('**STD**') under section 30M of the Act in respect of the designated access service of Telecom's unbundled bitstream access ('**UBA**').
3. On 28 November 2008 Telecom applied under section 4.2 of the Schedule 2 of the UBA STD ('**UBA Price List**') for amendments to the UBA recurring charges to reflect changes in Telecom's retail broadband offerings.
4. In order to incorporate Telecom's new retail broadband offerings, the Commission considers that amendment is required to clause 4.3.3 of the UBA Price List.
5. The Commission invited submissions from interested parties, including the Telecommunications Carriers' Forum ('**TCF**'), on the Commission's proposed clarification of clause 4.3.3 of the UBA Price List.

Jurisdiction

6. Under section 58 of the Act the Commission may amend a determination for the purpose of making a clarification if:
 - at any time the Commission, on its own initiative or on the application of any person, considers that a determination requires clarification; and
 - no appeal is pending in respect of the determination.
7. Under section 19(a) of the Act, the Commission must consider the purpose set out in section 18. Section 18 states that:

18 Purpose

- (1) The purpose of this Part and Schedules 1 to 3 is to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.
- (2) In determining whether or not, or the extent to which, any act or omission will result, or will be likely to result, in competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand, the efficiencies that will result, or will be likely to result, from that act or omission must be considered.
- (3) Except as otherwise expressly provided, nothing in this Act limits the application of this section.
- (4) Subsection (3) is for the avoidance of doubt.

8. Under section 19(c) of the Act, the Commission is required to make a decision that best gives, or is likely to best give, effect to the purpose set out in section 18 of the Act.

Analysis

9. The Initial Pricing Principle for the UBA Service set out in subpart 1, Part 2, Schedule 1 of the Act is:

“Retail price (as imputed by the Commission having regard to the price of any other digital subscriber line enabled service, including the imputed price of any such service offered as part of a bundle of retail services) minus a discount benchmarked against discounts in comparable countries that apply retail minus avoided costs saved pricing in respect of the service.”

10. In the UBA STD, the Commission selected the full set of Telecom’s DSL broadband offerings (including those that formed part of bundled plans) in the calculation of the UBA price.¹

11. Clause 4.3.3 of the UBA Price List sets out a key formula in calculating the imputed retail price of a broadband service that is part of bundled plan. An important part of that formula is the value of the ‘tolls discount’ for purchasing the bundled plan, compared to purchasing the components of the bundle on a standalone basis. Clause 4.3.3 of the UBA Price List sets out the ‘tolls discount’ as follows:

i = Tolls discount received when purchasing homeline, tolls, and broadband from Telecom (\$8.89 excl GST)

12. The ‘tolls discount’ of \$8.89 is specific to Telecom’s older bundled plans and is not relevant to Telecom’s new bundled retail offering known as Total Home (for which the total effective discount is much larger). Accordingly, the Commission considers that it is appropriate to amend 4.3.3 so that a relevant discount can be calculated for each different group of bundled plans.
13. The Commission’s view is that the proposed amended reference to tolls/bundle discount should follow the same approach used to calculate the \$8.89 (excl GST) discount for older plans, but that the drafting of clause 4.3.3 be more generic so that the value is not limited to \$8.89 (excl GST) for plans to which this value is not relevant.
14. The Commission’s analysis is that it is necessary to amend clause 4.3.3 for the purpose of making a clarification and this amendment is likely to best give effect to the purpose set out in section 18. The Commission considers that this clarification will enable that calculation of the UBA recurring charge to account for Telecom’s relevant retail broadband offerings in a manner that appropriately disaggregates bundled pricing to accurately derive the effective retail price of the broadband component.

¹ UBA STD, paras 136 to 143.

Submissions

15. On 27 March 2009, the Commission received submissions on the proposed clarification of clause 4.3.3 of the UBA Price List from Telecom (Wholesale), Vodafone and Covec, on behalf of Vodafone, Kordia, Orcon and CallPlus.
16. No submissions offered opposed the proposed clarification.
17. Vodafone and Covec expressed concern regarding the implementation of the proposed clarification. These concerns relate to the collection and availability of data for calculating the bundle discount rather than taking issue with the definition of the bundle discount as proposed in the draft clarification. The Commission has notified Telecom (Wholesale) that is currently investigating further a longer-term solution to the issue raised by Covec and Vodafone in relation to information inputs on tolls revenue, with the objective of reaching a decision on a preferred approach before the UBA price adjustment for the June 2009 quarter.

Decision

18. The Commission considers that clause 4.3.3 of Schedule 2 of the UBA STD set out in column 1 of the attached Schedule 1 (**'Reference'**) requires clarification under section 58 of the Act. Further, it notes that no appeal is pending in respect of the determination.
19. The Commission proposes clarification of the Reference by making the amendment identified in column 2 of the attached Schedule 1 (**'Proposed Amendment'**). The reason for the Commission's clarification is set out in this decision and in column 3 of the attached Schedule 1.
20. The Commission considers that the proposed clarification set out in Schedule 1 is likely to best give effect to the purpose set out in section 18 of the Act. In terms of section 18(2), the clarification will promote efficient delivery of the UBA Service.

DATED at Wellington this 22nd day of April 2009



Anita Mazzoleni
Commerce Commission

Schedule 1

Reference	Proposed Amendment	Reason
<p>Changes to UBA STD Price List (Schedule 2 of STD)</p> <p>Clause 4.3.3</p>	<p>Delete:</p> <p>i = Tolls discount received when purchasing homeline, tolls, and broadband from Telecom (\$8.89 excl GST)</p> <p>Replace with:</p> <p>i = the bundle discount which is the difference between the retail price of the bundled Telecom plan (which includes a broadband service and other Telecom services, such as calling services) and the sum of the retail prices of the standalone components of the bundled plan if they were purchased on a standalone basis (excl GST)</p>	<p>The definition of the discount (“i”) associated with purchasing a bundled plan is more generic to allow for the new bundles which have a discount which is different to the discount of \$8.89 (excl GST) for Telecom’s bundled plans that were offered at the determination date of the UBA STD.</p> <p>The effect of this amendment is that the discount for Telecom’s older plans will remain at \$8.89 (excl GST), given Telecom’s current pricing, and that a different and more relevant discount must be used in the calculation for Telecom’s newer Total Home plans (and any future plans that the Commission decides may be taken into account in calculating the price of the UBA Service).</p>

