

Delivering on the Act

31 May 2007 - TUANZ Telecommunications Day
Renouf Foyer, Michael Fowler Centre, Wellington

Introduction

Greetings

Thank you for the opportunity to speak with you again...

We've come along way since I last spoke with you.

It is only a year ago the results of the Telecommunications Stocktake were released, and the direction of future policy set, albeit rather more dramatically than I had expected.

The dust has now well and truly settled on the leaked Cabinet paper. One year later we have

- a completely revised Act in place;
- the Telecommunications Commissioner working hard to deliver local loop unbundling, unbundled bitstream and Naked DSL;
- the Telecommunications Carriers Forum pulled together industry working groups to implement LLU before the legislation was enacted;
- the draft form of operational separation has been published and;
- Telecom is offering structural separation as an alternative or possibly as a complement.

Given the outlook a year ago, I am pleased to say we are where we should be. Work is well on track to implement the changes required to bring faster, cheaper broadband to all New Zealanders.

But we, and by we I mean, the government, the Commerce Commission and the industry, still have to put more flesh on the bones to turn it into reality for consumers who are, understandably, still dissatisfied with the speed and quality of the broadband services they receive.

And on that basis, I would like to talk about what that reality should be, and why we are doing what we are doing.

What we're doing and why we are doing it

Competition, innovation and investment in the telecommunications sector are key enablers of New Zealand's economic transformation to a stronger and more productive, knowledge-based economy; a New Zealand that is both innovative and creative, and provides a unique quality of life for all New Zealanders.

One lever for this economic transformation is world-class digital infrastructure. Guided by the Digital Strategy, we want New Zealand to have a world class broadband performance with provisions and uptake in the top half of the OECD by 2010.

The government's process of regulatory reform is one element of accelerating that transformation.

The telecommunications sector and the services it delivers matter to every New Zealander. Broadband has become a "water-cooler conversation" in just about every office in the country. It is an issue that affects almost every household directly.

Anecdotally that is shown by the fact that I am told that two of Campbell Live's highest-rating shows were its two broadband specials last year, and that show received more emails on broadband than any other topic.

More emails have certainly come into my office on broadband than any other topic including Ahmed Zaoui, civil unions or the child discipline bill.

But broadband is not just a hot topic.

Lack of timely access to the Internet is not just a public annoyance.

Fast, competitive access to the Internet is a matter of necessity for New Zealand's economic future. Broadband is a necessary foundation of economic transformation.

New Zealand companies cannot compete globally without instant access to their partners in global value chains.

Waiting overnight to download large files or graphics does not cut it.

Waiting for a cruise ship to dock in Auckland harbour so you can use its WiFi to upload to the US is a terrible indictment of where a decade of inaction in the 1990s left our telecommunications infrastructure.

Twenty-first out of 30 in the OECD for broadband penetration or 22nd for ICT infrastructure investment per capita is not good enough. Not by half.

Incumbents and policy makers alike share responsibility for the appalling under-investment that now sees New Zealand having to play catch-up to get to the starting blocks of a 21st Century infrastructure.

So let no-one here be in any doubt that this Labour-led government is absolutely determined to deliver the benefits of fast broadband to all New Zealanders. We are therefore equally determined to carry through in full and on time the reforms signalled in the Telecommunications Stocktake and required by the new Telecommunications Act.

I would now like to look at some of what is being progressed to move us forward from today.

Radio spectrum

2.3 and 2.5 GHz announcement

For years there was a sterile debate about whether the way forward to cheaper, faster broadband was via the wire loop or through inter-modal competition via a range of other delivery modes.

The Stocktake demonstrated the answer was not one or the other, but a sensible combination of both.

For that reason, we are promoting LLU on a fast track. But there is also much, much more.

Today I am announcing plans to release to the market by auction a very large amount of spectrum for broadband wireless.

Broadband wireless works by providing base sites, much like cellular networks, to give either fixed or mobile users access to share a multi-megabit capacity to a fibre or other fixed network.

Following the MED's consultation in March/April, we have listened carefully to both the present service providers, and those keen to enter the market or expand their offering.

You may recall that the consultation was focused on the 2.3 GHz band and the issues of meeting the needs for both nationwide and local/regional spectrum allocations from this limited frequency band.

I am delighted to announce that a much larger, combined auction for both the 2.3 GHz spectrum and the 2.5 GHz spectrum will be held in December 2007. It seems likely that WiMAX type equipment will be widely available in both these frequency bands within 12 months, so it makes sense to look for a faster overall expedited allocation process.

The auction of the 2.5 GHz spectrum has been brought forward and the 2.3 GHz auction originally scheduled for this month has been rescheduled to enable a combined auction.

This expanded auction will put more spectrum into the market sooner, and fast-track the rollout of broadband wireless by more competing players.

The revised timing for availability of the 2.3 GHz auction is not expected to slow broadband wireless deployment. The World Radio Conference in October-November is expected to provide greater certainty of technology trends, which will be needed to help inform bidders.

The previous consultation confirmed that most of you saw that around 30 MHz was needed for a nation wide roll out, and I anticipate that the auction acquisition limits will allow for this as well as any guard bands to allow right holders to manage interference issues.

We expect this will lead to around six nationwide blocks of spectrum plus a generous managed park that will provide space for local and regional players, such as iwi and local government initiatives.

The government expects spectrum purchasers to implement services. There will be a strict acquisition limit so that no one player can own more than one nationwide set across both blocks. Use it or lose it provisions will also apply, to deter spectrum hoarding. There will be no room for "strategic" bidding and no room for anti-competitive games.

A further consultation process will be necessary to confirm details of the auction, the technical spectrum details and the timing of transition of current licences in the 2.5 GHz band, and obviously we are looking forward to your input into this process.

The observant among you will have realised that by making so much spectrum available at one time, this is not a revenue-maximising exercise for the Crown. That is deliberate. It is a roll-out maximising policy to accelerate the use of wireless broadband.

I am confident that the proposed combined auction will provide the spectrum needed to make wireless broadband rollout a reality in every region of New Zealand by a healthy array of competing providers.

Separation

Now to separation.

One of Cabinet's primary concern in deciding the stocktake package was to ensure that LLU, Naked DSL and UBS were implemented as quickly as possible. But Cabinet also realised there were various mechanisms that also needed to be put in place to ensure that these "bottleneck" services were made available to competitors on equivalent terms at a deep wholesale component level.

We considered accounting separation the minimum level of equivalence monitoring required to complement the other Stocktake policies and address the risk of discrimination against other providers. Internationally, however, accounting separation was considered by many to fall short of what was necessary for true equivalence.

Cabinet therefore invited the Finance and Expenditure Select Committee to consider further forms of separation along with considering the Amendment Bill and to work with stakeholders to provide a way forward. The committee did this in a positive and bipartisan way.

I wish to acknowledge the work of committee chairman Shane Jones and two previous communications ministers, Hon Paul Swain and Hon Maurice Williamson, who worked together effectively on that bill.

Telecom, in submissions and appearances with the committee, agreed with a three-way operational separation much along the lines of the model adopted in the UK and that was what was reported back to Parliament by the committee.

Parliament, reflecting the widely held views of many New Zealanders, passed the bill by a thumping 119 votes to two in very quick time.

In the meantime, the industry, through coordination of the TCF, has been working well towards agreeing industry non-price terms and standards for LLU and the other services that were facilitated in the legislation.

On the passing of the legislation, the Commerce Commission immediately commenced work on LLU. The commission has committed to making a standard terms determination by 9 November and I am confident they will meet this target.

At my direction, the Ministry of Economic Development immediately began work on the development of the requirements for operational separation, publishing the consultation document on schedule this April.

The responses to this were, on the whole, overwhelmingly positive – the main concern being that the separation work might delay the implementation of LLU, concern I have been at pains to point out was unfounded.

Telecom's submission offered voluntary structural separation in return for far-reaching concessions elsewhere. This was taken seriously by us to the point where we asked for cross submissions on it.

Again, the submissions we have received have been largely consistent – structural separation, while potentially bringing some advantages, must not divert us from implementing operational separation as per the bill and ensuring robust equality of access.

Officials are currently considering the submissions received and will be reporting to me soon. The process as previously outlined is continuing and my expectation is that the Ministry of Economic Development will provide me and the Cabinet with further advice, including a draft determination of requirements for operational separation in the reasonably near future.

Investment incentives

Investment was also one of the issues raised by Telecom and others.

We recognised the importance of investment in the Stocktake paper and we have recognised it continually since then.

The Stocktake exercise looked around the world at patterns of investment when unbundling took place. Ilsa Godovitch's address this morning usefully summarised that experience.

Before unbundling, we observed that incumbents said it would make them stop or reduce investment. However, the evidence shows after unbundling happened, they could not avoid investing, because others moved quickly to invest and incumbents had to match them to stay competitive.

If you look at what happened in the UK after operational separation, BT has seen significant growth of its wholesale business, which in turn led to increased investment.

BT's submission also makes it clear that they see the operational separation environment as providing certainty for their own investment, as well as those of others.

If you look at what happened in France, it was the competitor that moved first and France Telecom then had to catch up.

Irrespective of the organisational form of Telecom, investment is required

- in rural areas in order to ensure continued delivery of TSO services;
- in exchanges in order to replace aging NEAX equipment;
- in NGN in order to ensure future delivery of services; and
- in fibre deployment in regional backhaul to ensure higher broadband speeds.

Whether an operationally split Telecom or a structurally split Telecom will better incentivise investment in these areas is the subject of both the Telecom submission, the BT submission and many others.

So the question of investment is important – as is who will invest.

During the Stocktake, where investment was focused on LLU, a number of parties indicated that in the right circumstances they would be prepared to invest significantly around DSLAMS. All the indications are that those circumstances are now, or soon will be, conducive.

I am aware that the Commerce Commission is carefully considering investment issues in relation to both LLU and UBS pricing, and the relativities between the two.

Overall it remains my expectation that significant new investment will flow as a result of the reforms, both from entrants and from Telecom, and

that this will benefit consumers.

Unlike some (but interestingly, not some other) members of the Opposition, I will not seek to crowd out this investment with untimely prognostications on taxpayer contributions. These are serious matters. They must be addressed in a serious, appropriately sequenced way.

Structural or Operational separation

So what then for the way forward?

Telecom has recently confirmed it is genuine in its desire to move forward in good faith. I welcome this and agree that an open dialogue is an essential foundation for progress.

Telecom agreed in front of the Finance and Expenditure Committee to a three-way operational separation and the committee's report back to Parliament relied on this.

Telecom's proposal on structural separation did not, however, provide detailed feedback on the design of the operational separation contained in the government's discussion document. This was an interesting move, given that their unsubstantiated general criticism of unworkability flew in the face of recent UK and EU experience.

Common ground is the need for urgency in removing uncertainty from the market.

Therefore, in case anyone has missed the implication, let me state this clearly and for the record. We will not go backwards and reverse the Telecommunications Amendment Act or be changing what is a fundamentally now a sound, best practice regulatory framework.

The act sets out clear requirements for both LLU and separation and we will be guided, we must be guided, by that. I agree that new LLU and bitstream services are a priority in the short-term and I welcome Telecom's, the industry's and the commission's commitment to expedite the delivery of these essential products.

I am also determined to see a robust separation implemented as soon as practicable to ensure that benefits of a newly competitive environment flow through to consumers as soon as possible.

Does that rule out some form of structural separation? No.

But we must be confident that any form of structural separation better meets the objectives of the act and is overall better for New Zealand. Consideration of structural separation additionally must not be allowed to derail or unduly delay the operational separation process. Accordingly, I am determined that work on both matters must be fast-tracked and will both be a top priority for my officials.

Telecommunications commissioner

I would now like to say a warm farewell to Douglas Webb and thank him for being our first Telecommunications Commissioner. It was a challenging role, being tasked with implementing an entirely new telecommunications regime, one which had to rebuild the regulatory approach after a lost decade.

Douglas took the heat of the industry – he took a pragmatic approach to previously 'hot issues' and resolved some long-standing industry disputes.

Douglas and I have had a high-trust relationship. We usually agreed, and we knew we could pick up the phone and talk to each other in confidence. I again want to thank Douglas for his tireless service, his sound analysis, his dry wit, and to wish him well for the next stage of his life and work.

The new commissioner is taking over at an important time. He will play a pivotal role in the ongoing implementation of the new telecommunications regime introduced in the Stocktake and Telecommunications Amendment Act.

I am pleased to announce today that Dr Ross Patterson will be filling the large shoes left by Douglas Webb.

Dr Patterson is a New Zealand lawyer, currently working in Sydney, Australia as a partner of Minter Ellison Lawyers, where he heads their competition and regulatory practice.

Dr Patterson brings extensive experience and knowledge in competition and regulatory issues in New Zealand and Australia to his new role. He has significant experience in dealing with the Australian Competition and Consumer Commission, the New Zealand Commerce Commission, and the Australian Competition Tribunal.

His principal areas of expertise include all aspects of competition law, telecommunications law, payment systems regulation and competition policy. He is president of the Australia - New Zealand Business Council and a member of the Australian New Zealand Leadership Forum.

He has a PhD in commercial law, and regularly provides commentary and articles for publications and journals in Australia, New Zealand and overseas.

Dr Patterson will have lead responsibility in monitoring the telecommunications market and ensuring, in a robust and impartial manner, that the enhanced regime provides an effective and competitive telecommunications environment which delivers long term benefits for end users.

I expect the new commissioner to hit the ground running when he starts work on 12 July, to facilitate the rapid and full implementation of the Stocktake policies as set out in the act.

Earlier today, Ilsa Godlovitch of ECTA raised the question of whether it was more appropriate for the government or the commission to undertake the separation undertakings. It is clear that the Telecommunications Amendment Act significantly strengthens the role of the commissioner and the commission in respect of telecommunications policy.

By conferring upon the commission a proactive, monitoring and strategic role, Cabinet has indicated its desire to see the commission play a greater role in telecommunications policy going forward.

It is also true however that New Zealand has a very urgent need to catch up to the position already enjoyed by many European jurisdictions in respect of the fundamentals of its regulatory structure.

The Cabinet decision to delegate to the minister rather than the commissioner the lead role in overseeing the separation negotiations therefore reflects the urgency attached by the government to the need to secure a clear outcome on this matter in the shortest possible timeframe. Because this is a major structural issue and not a matter of micro regulation, this was felt and is still felt to be the appropriate way forward.

Theresa Gattung

I wish also to acknowledge a previous speaker, Theresa Gattung, the long-standing and very able CEO of Telecom.

Theresa and I have worked together for four years, since I first became Associate Minister of Communications to the Hon Paul Swain. I have always enjoyed her intelligence, her energy and her good humour.

As you can imagine, we've had one or two good debates, but I have always appreciated the fact that we have been able to develop and maintain a good personal relationship through a period of significant change in the industry.

I am sure that her immense talents will lead her on to a highly distinguished international career in years to come.

Digital strategy

And finally, I would like to touch on the Digital Strategy. It's been two years since we launched it.

Currently the government is looking at the progress made over those two years, with a view to delivering a refresh of the Digital Strategy later in the year.

The review of the Digital Strategy will identify any gaps that need to be filled, and provide the basis of a forward looking and refreshed strategy for the next five years. We are fondly calling the refresh " Digital Strategy 2.0".

This has been a speech of announcements and I'd like to make one more today before I conclude.

As part of the refresh of the Digital Strategy and looking forward to the next five years, I will be convening a major ICT summit in Auckland from October 2 to 4 this year.

This summit will be action-based and future oriented, with international and local guest speakers and workshops to inspire and challenge us to realise the vision of what ICT can do for New Zealand. How New Zealand will be a world leader in using information technology to enhance all aspects of our lives – business, leisure, culture and our environment.

The summit will be preceded by web-based working groups that will pre-discuss critical issues and have input at the summit proper. It will be followed by an Action Plan that will form the heart of Digital Strategy 2.0. It will be highly influential in setting the digital agenda in New Zealand for the next two to three years at least.

I invite you all to join me at the summit and be involved in advancing New Zealand's digital future – make a note of that in your diaries!

Conclusion

The Labour-led government is delivering on the promises and policies of the Stocktake and the Telecommunications Amendment Act.

Off-loop, we are delivering on spectrum for broadband wireless and other applications. On-loop, we are delivering with competition aimed at getting all New Zealanders access to faster, better broadband and all that entails for a successful future.

We are future-proofing what we are doing through the new role of the commissioner. And we are continuing to deliver on the implementation of the Digital Strategy.

All these policies are key components in the government's overall programme to transform the New Zealand economy.

Let no-one be in any doubt as to this government's determination to transform the regulatory framework, the sector and the economy of New Zealand.

The old, light-handed "game" is over.

A new era of more intense, open, multi-modal competition by more players is already here.

Those who acknowledge that and move with it stand the best chance of winning the trust of consumers and the public of New Zealand. Those who hold back may find their markets and margins eroded, and the tides of history roll over them.

It is an exciting year ahead for ICT and New Zealand's digital future. Believe it. Be part of it. Get into it.