

11 February 2010

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Dear Nicholas

## **FEEDBACK FOR 2010/2011 PLANNING PROCESS**

Thank you for the opportunity to provide input into the Commission's planning process for the 2010/11 year, invited by your letter dated 19 January 2010. This letter sets out InternetNZ's response, and invites an input by the Commission to InternetNZ's planning for 2010/11.

### **InternetNZ**

InternetNZ is the charitable membership society working to ensure an open and uncaptureable Internet. We aim to protect and promote the Internet for New Zealand.

InternetNZ is the local country manager for the .nz top-level domain, which we manage through two wholly owned and charitable subsidiaries: Domain Name Commission Limited (DNCL) - the independent regulator and .nz Registry Services (NZRS) - the registry operator.

### **Our interactions with the Commission**

InternetNZ's general experience of working with the Commission is that the organisation and its staff are capable, reasonably effective in their role, get most of the big calls right, and are committed to improving its operation.



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Our main engagements with the Commission have been in the course of the operational separation of Telecom (for which we were major advocates in 2006); the development of standard terms determinations for access to Telecom's network; and more recently the Commission's work on adapting to the opportunities presented by the rollout of Next Generation Networks in New Zealand. We were closely involved with the TCL UBS determination proceedings, including through the provision to the Commission of independent expert advice.

InternetNZ staff maintain a range of links with various Commission staff in sharing knowledge, ideas and expertise. InternetNZ senior staff and elected officials occasionally meet with the Telecommunications Commissioner to exchange views and maintain the relationship.

### **Forthcoming changes to the Commission's operating environment**

In the telecommunications sector, the rollout of the Government's Ultra Fast Broadband Initiative (UFB) marks the most extensive shakeup to the structure and environment of the telecommunications industry since Telecom's privatisation in 1990. The construction of new optical fibre networks and the eventual supersession of the copper telephone network poses questions for the Commission's role both during and after the transition. The Commission will need to remain highly agile to manage this process in a manner that promotes the long term benefit for end users – its mission under the Telecommunications Act.

The driving insight of the changes that were brought about by the Telecommunications Amendment Act 2006 is that competition drives investment. In the transition that is about to begin, the Commission must at all costs resist the heavy pressure it will come under to "trade off" competition in order to deliver higher levels of investment. Competition is not to the detriment of investment. Rather, competition drives investment, and any preference for investment over competition in the short term will harm competition as well as investment in the long term, and as such cannot be in the interests of end users in the long run.

This argument, that competition will discourage investment, has been made by incumbent telecommunications operators the world over. The empirical evidence to the contrary has led regulators to ignore these calls, and whether one observes domestic or international evidence, the correlation between more competitive markets and greater investment (leading to higher quality services and lower prices) is self-evident.

This has bearing on a number of issues, including:

- **Protecting operational separation** – there will be pressure to unpick elements of the operational separation undertakings between Telecom and the Crown. InternetNZ expects the Commission, as the enforcer of the operational separation plan, to promote the benefits that operational separation and related regulatory interventions (such as information disclosure) deliver for end users.

Operational separation will remain absolutely critical to driving competition on the copper infrastructure that households will continue to use for many years, and is the only guarantee of diversity in the ISP market due to the fact that smaller ISPs cannot afford to invest in their own infrastructure.

- **Regulating new fibre networks** – there will be pressure for the Commission to take a hands-off role in the regulation of the new fibre optic networks that are the core of the UFBI. InternetNZ has consistently argued that regulatory certainty and efficient investment require up-front, transparent and durable cost-based regulation of these new networks. The Commission must be active in monitoring the competition implications of the rollout and, subsequently, emerging market power (likely in the medium term). It must be prepared to exercise all the discretion it has or can develop under the Telecommunications Act framework to bring about a competitive market that operates for the long term benefit of end users.
- **Interconnection and standards** - the Commission may also have an interest in the interconnection of these new network/s; the technical standards that are applied across them; the service descriptions for the services they are obliged to provide; the provision of compatible business OSS systems to allow for nationwide service delivery; the role of Crown Fibre Holdings Ltd (CFHL) in imposing requirements via contract (and any internal tensions within CFHL between driving the greatest possible level of private sector investment in fibre, versus developing a truly competitive market environment in the medium and longer term); and interconnection and peering between LFC networks and between the new fibre infrastructure and the existing copper infrastructure (where peering and interconnection have been ongoing matters for discussion and debate).

On another matter, the Commission should maintain an awareness that the numbering environment is changing. The proposal currently on the table from the Telecommunications Carriers' Forum (TCF) to make only minor adjustments to the governance of New Zealand's telephone numbering administration is of significant concern to InternetNZ.

The convergence between the Internet and the telecommunications industry is leading to new opportunities for service development and delivery that rely at least in the medium term on the numbering system being governed in the interests of end users. It is unlikely that opportunities to develop new and innovative services for the public will be realised if the governance of numbering remains in the hands of those who stand to benefit the most from retaining the status quo. Independent governance of numbering that includes telecommunications service providers, the public and appropriate oversight by the Commission should be a bottom line.

The Commission should not, in our opinion, authorise any arrangement that perpetuates the inadequacies of the status quo.

## **“Strengths and do-betters” for the Commission**

In the context of our general approval of and satisfaction with how the Commission is working, we suggest two particular areas for improvement:

- The Commission’s website is complex and can be difficult to navigate, though it is an improvement on the previous iteration. Given the wide areas of work the Commission undertakes and the vast amount of information it produces, it cannot be an easy matter to deliver a functionally satisfying website to all stakeholders. We are aware a renovation of the site is under way, and we would urge the Commission to complete this as soon as possible.
- Occasionally it is difficult to establish who should be the appropriate contact in the Commission for passing on information or obtaining answers to questions on matters of policy or various regulatory proceedings. The Commission could perhaps be clearer in communicating to stakeholders like InternetNZ the contact responsible for managing our relationship.

## **Strategic Priorities for 2010/2011**

We have discussed above at some length, the importance of managing the impact of the Government’s UFBI.

Other matters for the Commission’s attention include:

- **Network neutrality** – New Zealand’s access regulation regime is similar to those in Europe and, like those regimes, has managed to largely avoid net neutrality debates to date. However the ongoing convergence between telecommunications, the Internet and broadcasting brings content market issues into contact with telco and Internet communications in a way that was not previously the case. The Commission needs to keep a careful watching brief on this process and seek to influence content providers, content carriers and providers of communications services in a manner that keeps both content and network markets open and competitive.
- **Data caps and international bandwidth** – as the UFBI is rolled out and much faster domestic Internet speeds become the norm, data caps in New Zealand will become a growing source of justified consumer anger. The near-monopoly in carriage between New Zealand and the United States over the Southern Cross cable, and high costs for domestic transit capacity, should both be kept under careful scrutiny by the Commission. High network bandwidth from end to end is a critical component of allowing the Internet to drive innovation and growth in New Zealand’s economy and society. Alternative suppliers should be encouraged and Southern Cross influenced to lower prices and expand capacity, through the Commission’s well established role in advancing competition law principles.
- **Peering and IP Interconnection** – as already mentioned, the interconnection situation in New Zealand remains below par, with the local interconnection

offered by Telecom (at 29 points of interconnection) not meeting the needs of many industry participants. Domestic optical fibre networks will lead to massively increased dataflows within New Zealand and between New Zealand and other markets. The Commission could take advantage of the shakeup about to occur (from the UFBI) to encourage the development of a more open and competitive peering and interconnection landscape, to better manage exponential increases in data transfer.

We also support the Commission's ongoing role as an advocate for consumers in working towards more transparent consumer markets, including the importance of the broadband measurement work the Commission is doing.

### **A reciprocal discussion**

While this letter sets out some key issues we would like you to consider, InternetNZ requests an exchange of views with relevant Commissioners and staff regarding the future development of the telecommunications industry, as convergence brings it closer to the broadcasting and Internet worlds.

Such an exchange would provide new perspectives for the Commission in developing its Sol, and would also offer the Commission the chance to influence InternetNZ's work plan and approach.

Thank you for this opportunity to assist with your planning for the year. I look forward to hearing from you soon regarding the suggested exchange of views.

Yours sincerely

A handwritten signature in black ink that reads "Vikram Kumar". The signature is written in a cursive style with a long horizontal stroke at the end.

Vikram Kumar  
**Chief Executive**