

Description:

Equivalence is about ensuring Internet Service Providers have the genuine opportunity to give their customers at least the same experience as the incumbent's retail customers, providing true competition in the interests of the consumer.

Equivalence should be viewed from the customer's perspective and should include:

- Network performance and key performance indicators (KPIs)
- Availability including timing and geographic coverage
- Provisioning and moves, adds, changes (MACs)
- Fault handling
- Billing and usage information.

There are two forms of equivalence. Equivalence of Inputs is the most beneficial to ISPs, where they can purchase the same inputs on exactly the same terms, and with the same support, as Telecom can. Equivalence of Outputs (or Outcomes) is a part-way solution, justifiable only in certain circumstances, where the equivalence is measured at a retail level.

The operational separation of Telecom New Zealand, being driven by regulation, is the means by which the Government intends to enforce equivalence, particularly for services delivered from what are considered to be "bottleneck" assets, such as the copper local loop. Those bottleneck assets are not considered economic to replicate.

Operational separation will involve the separation of the company into at least three divisions. These will include a separate fixed network business and separate wholesale business.

There will be an independent oversight group to ensure its wholesale customers are treated equally to Telecom's business units.

Background:

Equivalence has been an issue in the New Zealand telecommunications industry since deregulation and the advent of new entrant service providers reselling Telecom services.

In 2006 the Government regulated for stronger powers for the Commerce Commission and for the operational separation of Telecom. Telecom had previously used its dominant market position to significant advantage, as evidenced by the following examples:

- Retail products launched before wholesale
- Wholesale products terminated but retail grandfathered
- Retail bundling discounts
- Retail products provisioned faster

- Retail bundles provisioning together but wholesale bundles sequential with big delays
- Wholesale network performance substandard
- Lack of information for wholesale

Telecom in April 2006 launched a new wholesale charter, proposing a number of improvements to the relationship with its wholesale customers. Telecom has continued to make improvements in provisioning and especially systems, but we are still some way off equivalence.

Overseas experience supports the approach that consumers will benefit from this government intervention. A recent study commissioned by the European Competitive Telecommunications Association found that customers pay more and are offered fewer telecommunications services in European countries where regulators have done a poor job of weakening former monopolies.

Australia and the United Kingdom, which both rank much higher than New Zealand in terms of broadband penetration in OECD countries, are evidence of this trend. In Australia the ACCC monitors Telstra's behaviour and has powers of sanction and in the United Kingdom Ofcom has helped to bring about voluntary operational separation of British Telecom.

Issues:

A lack of equivalence means it has been very difficult for ISPs to compete in the increasingly commoditised marketplace. If the wholesaler provides substandard provisioning, faults, network performance and product availability compared to what it supplies its retail operation, not even cheaper prices (along with the subsequent reduced margins) may be enough to attract customers from the incumbent retailer.

Furthermore, resellers of Telecom's wholesale services and their customers have suffered from a lack of information that can impact service levels and lead to disputes with the end customer. Examples of the information requirements are:

- Early availability of installation timing
- Likely performance levels and the availability of the service (e.g. ADSL broadband)
- Real time usage data where charging is based on this
- Network problems including congestion causes.

It is important that Telecom's operational separation is successful in achieving equivalence goals and creating divisions that do not favour each other ahead of their industry interactions.

A key issue is which services and assets should be included in which divisions so as to ensure equivalence. For much of this we can look to the proven British Telecom example.

Position:

ISPANZ believes that equivalence is essential to enable fair competition in the New Zealand telecommunications industry, for the benefit of ordinary New Zealanders.

Operational separation is necessary because we have a bottleneck to competition that is under the control of a vertically integrated monopoly. We need to remove the ability and incentive of the incumbent bottleneck owner to discriminate. Use of bottleneck assets by access seekers must be governed by equivalence principles.

Regulation should focus on the deepest point in the network where competition is efficient. For New Zealand in 2007 this is local loop unbundling. However, we still need wholesale of value added services to facilitate progress up the ladder of investment.

Equivalence of inputs should be the aim of separation. Equivalence of outputs is difficult to measure objectively and should be accepted only for legacy services or as an interim arrangement.

We are far more likely to get decent wholesale services when the incumbent has to buy services in exactly the same manner as its wholesale customers.

Separation needs to encompass legacy, current and future services. Examples of key services of interest today include: LLU, backhaul, UBS and its naked DSL variant, UNS, Ethernet, ATM, PSTN line rental, and NCA tolls. Future services that need to be covered include ADSL2+, VDSL2, and also wireless and fibre access where they can be considered a bottleneck.

The network asset split should start with determining which services go where, with assets then located so as to deliver those services.

Fully unbundled services such as LLU, and the assets to deliver them, should be in the network division.

The network division should also include regional backhaul including Ethernet and multi-service co-location. The later is important so as to aggregate services to regional points of presence, which should also have a reasonable geographic footprint to avoid multiple points of connection within a city.

Network elements of fibre and fixed wireless should also be in the access network division so that all forms of access including those to be launched in the future are included.

Other bottleneck network elements that directly provide for unbundled access must also be owned by the network company – typically ducts, cables and MDFs.

Partially unbundled services such as UBS should be in the wholesale division. Replicable network elements that provide value-added wholesale services must be owned by the wholesale company – for example DSLAMs and transmission equipment.

The access seeker should be able to choose whether to buy unbundled access from the network company or wholesale services from the wholesale company. Telecom retail would typically buy from the wholesale company, which would in turn buy from the network company.

Future network development should also be subject to equivalence with the network division treating Telecom Wholesale in the same way as its other customers in terms of input into that process and information relating to new products. The same would apply to Telecom Wholesale's product development in respect to Telecom Retail and its other customers.

Successful separation will promote competition both in the near and longer term future, and will therefore encourage investment.

Equivalence and operational separation will help us along the broadband roadmap for New Zealand (*please see ISPANZ Broadband Roadmap Position Paper*) and create an environment whereby competition occurs at a number of levels from multiple competitors. As a result:

- Our poor international ranking for broadband uptake will improve
- New Zealand businesses will be more competitive in the international market
- The average New Zealander will be able to benefit from lower prices and better services
- New Zealand as a country will reap the significant economic advantages of a broadband enabled society.

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About ISPANZ:

ISPANZ is a non profit, industry group that represents most internet service providers operating in New Zealand. Our membership includes all the major ISPs except Telecom Xtra; plus a broad range of medium and small ISPs. We exist to promote a fair and fully competitive internet marketplace where our members can deliver the full benefits of the Internet to the New Zealand public and our economy. Our primary goals are to:

- Improve New Zealand's poor International ranking for broadband uptake,
- Enable New Zealand businesses to become more competitive internationally through use of internet enabled technology,
- Improve internet pricing and services for ordinary New Zealanders,
- Enable New Zealand to reap significant economic benefits as it becomes a broadband enabled society.

For more information please visit ispanz.org.nz