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19 September 2013

Hon. Amy Adams
Communications and Information Technology Minister

re: Telecommunications (Interception Capability and Security) Bill

Dear Minister Adams,

I am writing to you in my capacity as a Director of New Zealand's largest open source company, Catalyst IT. This letter also has the support of NZRise, the industry group for the New Zealand owned digital technology sector.

Catalyst has 189 staff worldwide, of whom 151 are in New Zealand. These jobs are threatened by this draft Bill.

After careful consideration of the draft Bill, and in discussions with the membership of NZRise, Catalyst has deep concerns about the Telecommunications (Interception Capability and Security) Bill. Our concerns are around the potentially crippling effect this Bill could have on our businesses.

Essentially, the draft of the Bill has too many poorly formulated definitions that do not provide the necessary clarity or certainty for businesses in the digital sector.

Despite careful analysis of the draft Bill, and seeking legal advice, we are unable to reconcile its definition of **network operator** with any common sense meaning. The regulatory impact statement published by the Ministry of Business, Innovation, and Employment states that "no estimate is available" of the number of network operators that would be captured by the new definition, and that it is not possible to quantify the costs to industry of implementing the proposals.

As a significant part of our business involves the provision of digital services, we urgently need clarity on how our current and future investments will be impacted by the passage of this Bill. Our annual investment in research and development is 20 per cent of our income. Without clarity as to the impact of the clauses discussed below, we would not be confident that this is an economically sustainable approach.

Part 2 of the Bill would require Catalyst to have our systems in an **intercept ready** state. This will impose substantial costs on us. Complex technical changes would be required to make systems intercept ready and able to filter traffic to a specified individual, which would be required to comply with the principles in s6. We must reserve network interfaces and bandwidth sufficient to comply with any interception order that we may receive. Based upon our analysis, a possible case under the draft Bill is that a third of our bandwidth could be required indefinitely.

That level of forced redundancy would be an economic choke hold on our business.

We note that the Regulations provision of the Bill (s110) is sweeping, allowing the Government to regulate on "any matters contemplated by" the draft Bill. For our business, which may be drawn under the purview of the Bill due to the unreasonably broad definitions of **network operator** and **service provider**, this amounts to an unlimited Government authority to control our methods of business.



We believe that large parts of Part 3 of the bill are unworkable as presently worded. We provide two examples below, but the problems are deep-rooted and stem from the inappropriately broad definitions at the core of the Bill.

Under section 45, the onus is on our business to establish which of the data that we encounter constantly represent an “actual or potential threat to New Zealand’s national security or economic well-being.” This is an assessment that we would be obliged to carry out on data each hour of every day of the year. No criteria are specified. As a business, we have no certainty as to whether or not we are acting lawfully and how we can manage risks around the economic viability of being able to comply.

Section 46 again is unworkable. It places special obligations on network operators for changes relating to “any place in a network where data aggregates in large volumes.” There is no definition of a large volume of data. Would a list of all New Zealand’s residents, complete with their addresses, qualify as an example of “data aggregated in large volumes”? We believe so, and this illustrates the folly of the terms in the draft Bill.

When combined with the penalties of up to \$500,000 proposed in the Bill, we are concerned that this Government and Parliament may inadvertently be putting in place legislation that cripples a vibrant and growing part of our economy and is an instrument permitting widespread limitations of New Zealanders’ fundamental rights.

For Catalyst, this draft Bill causes substantial uncertainty, and if passed would remove a cornerstone of our business: the ability to offer secure computer systems. The draft Bill’s terms would mandate constant delays due to the requirements to involve the GCSB in day-to-day decision-making. Any future Government would have the power to dictate those day-to-day decisions, and may redact the important parts of the reasons for those decisions (s 54(4)). As a result of these provisions, our industry’s competitiveness in overseas market will be materially reduced. As with Huawei in Australia and the United States, we may find ourselves perceived as a potential agent for state action.

In the aftermath of the NSA revelations, US companies fear they may lose USD 20-35 billion dollars in cloud computing contracts worldwide. The market for cloud computing is estimated to be worth USD 200 billion by 2016, more than half of which will be outside the US.

In New Zealand, for example, Catalyst has invested heavily in an open source cloud platform, OpenStack. Other companies are making similar investments in infrastructure and software. We would not want to see those investments—and opportunity—stymied.

I urge you to withdraw this draft Bill altogether, and instead seek to amend the Telecommunications (Interception Capability) Act 2004 to modernise its provisions in consultation with the local digital sector. This would remove the risk of the Bill inadvertently providing the infrastructure for mass violations of New Zealanders’ privacy and potentially crippling the ability of the local digital sector to make an enduring and significant contribution to our economy.

Given the potentially devastating impact this Bill would have on the local digital economy, we are sharing this letter with the NZRise membership by posting it on the NZRise website, <http://nzrise.org.nz>

Yours faithfully,

Don Christie.