

4 April 2006

Jason Reid
Commerce Commission
P O Box 2351
WELLINGTON

BY EMAIL

Dear Jason

Commission decision to investigate local service application

1. In a letter of 14 March, the Commission sought comments on its decision to investigate Vodafone's application for a determination of a dispute with Telecom over interconnection with its fixed PSTN (the Application).
2. This letter is Vodafone's response to the issues the Commission raises in its letter, as well as some additional comments. The Application contains a considerable amount of material relevant to the Commission's determination that we do not repeat here.

Summary

Geographic structure

3. The Commission should only concern itself with how a local call is handled beyond the point of interconnection in a manner that is technology neutral and consistent with established industry practice. Imposing overly narrow geographical constraints on the ability for Vodafone local customers to make and receive local calls will artificially constrain competition.
4. Call-forwarding services for local calls are not new or controversial. Telecom widely promotes services that allow customers to forward local calls beyond their home LICA, including to mobile numbers.
5. In those instances where a local customer happens to move into or out of any geographically constrained area whilst on a call, the location of the customer at the time the call is made should determine the nature of the call at an interconnection level.

Other issues

6. Bill and keep should be the preferred pricing principle for the requested service. A condition of reciprocity under section 30 is an appropriate way to impose such a pricing principle. Reciprocal termination rates for call to and from our local numbers represents a significant price decrease for Telecom.
7. Vodafone is not seeking an amendment to the TSO Deed. What we want is a simple interconnection agreement similar to what has been agreed in the past. We consider it highly ironic that Telecom is using a Deed that was first negotiated

to protect consumers from Telecom's monopoly power as a reason why that monopoly power should be allowed to persist.

Conclusion

8. This determination gives the Commission an opportunity to substantially promote competition in New Zealand telecommunications markets. What we want the Commission to do is to enforce standard commercial terms for local interconnection, and prevent Telecom from continuing to stymie nationwide competition from Vodafone in local access and calling.

Vodafone welcomes the Commission's decision to investigate

9. Vodafone welcomes the Commission's decision to investigate our Application. We encourage the Commission to move as quickly as possible to complete its investigation and issue a determination.
10. Sections 18 and 19 of the Telecommunications Act 2001 oblige the Commission to now consider whether a determination in favour of Vodafone will promote competition for the long-term benefit of end-users.
 - A determination to require Telecom to supply the requested service will promote competition for local, national, international and especially fixed to mobile calling services.
 - Such competition will provide obvious and durable long-term benefits for end-users, many of whom have no choice but Telecom as a provider of local calling at present.
 - Providing services over different infrastructure has the potential to generate stronger competition with less ongoing regulatory oversight than a resale model.
 - Telecom has little incentive to agree to provide the requested service on terms that will allow Vodafone to compete with it.
11. Telecom suggests in its letter to you, dated 8 February 2006, that it is impossible for Telecom to assess how Vodafone's local service fits within the Telecommunications Act without more information on how it will work.
 - Vodafone believes that it has, as part of its Application, outlined in sufficient detail how our local service will work. Vodafone has detailed for the Commission how it wishes to interconnect with Telecom's fixed PSTN, how this is covered by the Act and how it helps Vodafone's entry into the local services market.
 - We are of course more than happy to provide any further details the Commission may request.
12. For Telecom to assert that Vodafone's local service "is no different to a mobile telephone service" is simply a continued denial by Telecom that mobile networks are free to use geographic numbers in conjunction with a local, rather than mobile, service provided they meet the NAR requirements.

- The Commission correctly identifies at paragraph 17 of its Decision to Investigate that the “regulated service is one of interconnection with Telecom’s fixed PSTN, without limitation as to the character of the interconnecting network.”
- The Commission’s focus must be on the functionality of the service, rather than the technology used to deliver the service.

13. More broadly, if Telecom thinks this service is no different to a mobile telephone service, we are mystified as to why it finds it so difficult to agree standard interconnection terms for the service. The fact that we are offering a significantly lower price for what Telecom says is the same service makes all the stranger Telecom’s failure to make a reasonable commercial proposal to settle our dispute despite years of discussions.

Geographic structure

In making its determination, should the Commission be concerned with how a local call that is presented from Telecom’s fixed PSTN to Vodafone’s network is handled beyond the point of interconnection?

Please comment on whether it is necessary for the Commission to consider the geographic structure of Vodafone’s local service? If so, how should the geographic boundaries of Vodafone’s service be defined?

14. We believe the Commission should concern itself to a limited extent with what happens after the point of interconnection for calls from Telecom to Vodafone.
- There is no reference in the Act to what ought to be classified a “local call” or any express requirement on the Commission to be concerned with how such a call is handled in the access seeker’s network beyond the point of interconnection.
 - We do not see any reason in principle why what happens after the point of interconnection should be of any concern to the Commission. Once the call is handed over to Vodafone, where that call is terminated should not make any difference to Telecom in an interconnection sense.
 - The question for the Commission is whether geographic structure requirements will promote competition for the long-term benefit of end-users better than the other feasible options.
 - Geographic requirements are not necessary as a means to promote competition. Indeed, these requirements could limit competition between rival technologies.
 - Our starting point then is that the Commission should adopt the least restrictive geographic requirements that it reasonably can.

15. However:

- Past agreements between Vodafone and Telecom have included some geographical requirements. A geographical requirement may be a standard feature of local interconnection arrangements.
- The requirements of the Number Administration Rules (NAR) for the use of geographic (local) numbers are also a relevant factor.¹

Past agreements built in some basic geographic requirements

16. The agreements between Vodafone and Telecom in [

▪

▪

] VNZRI

17. The Commission should also note that [

18.

•

•

] VNZRI

The NAR requirement is very simple

19. The NAR requirement is simply that a service using geographic numbers must have a geographic structure. Importantly, the NAR does not require a fixed network, does not require the calling or called parties to be in a fixed location, does not preclude the use of mobile or any other kind of network, and makes no reference to the TSO Deed.

A technology-neutral approach is extremely important

20. The most important thing is that if the Commission is to impose geographic requirements, it does so in a technology-neutral way.

¹ Although, of course, the Commission does not have jurisdiction over NAR/NAD issues, which instead remains with the Number Administrator, Management Committee and Independent Chair.

- Both the NAR requirements and past agreements use a technology-neutral approach to describe the use of local numbers and the requirements for local calls.
- Technology neutrality will promote fixed and wireless competition and encourage innovation in service delivery. By minimising the extent to which any regulatory requirements impose a particular technology, neutrality can also minimise the need to maintain unnecessary parallel technology.
- OfCom has recently released a statement setting out a modification to the UK number portability regime to implement technology neutrality.²
 - The rights and obligations associated with geographic number portability are no longer restricted to situations where the termination point or the number of the B-Party is retained at a “specific location”.
 - For example, the modification will allow geographic numbers to be ported from a fixed to a wireless network where the geographic number continues to be used in accordance with the numbering plan, i.e. where the charges for calls to those numbers remain consistent with those for geographic numbers normally.

Vodafone’s suggested approach

21. A technology neutral approach could impose two requirements on Vodafone as an access seeker:
 - The terminating Vodafone local number must be allocated to the same LICA as the originating Telecom local number; and
 - The Vodafone local customer’s premises (physical address of either home or business) should be in the LICA to which the local number is allocated.
22. These two geographic requirements are consistent with all local interconnection services to which Vodafone is a party, and, we expect, all local interconnection services to which Telecom is a party.
23. These requirements also provide an objective link between the Vodafone local customer and the LICA (or the LICA Group) in which the call is handed over to Vodafone. They would address any concern that an end user could have a local

² *Statement: Modification to the Number Portability General Condition and the National Telephone Numbering Plan*, OFCOM, 30 March 2006, at <http://www.ofcom.org.uk/consult/condocs/numport/mod/> Telecom quoted OfCom’s decision in the dispute between BT and Vodafone UK over access to geographic number portability as support for its view that the Commission should not allow fixed to cellular number portability. In fact, that dispute and the obvious distortion created by the outcome was the justification OfCom used for changing the number allocation policy to make it more technology neutral. See Telecom, ‘Cross submission in respect of the Commission’s Draft Determination on the application from TelstraClear Limited, Telecom Limited, and Vodafone New Zealand Limited under s.31(a) of the Telecommunications Act to decide certain functions and standards necessary to provide local and cellular telephone number portability services’, 24 June 2005, para 15.

number without having any connection (either through their private residence or workplace) with the LICA.

24. From an interconnection perspective, these requirements would ensure that local calls would be to a local number allocated to the same LICA within which they are made and where the called party has an objective and obvious link with that LICA.

Implications for Telecom with Vodafone's recommended approach

25. The fact that Vodafone customers will be able to receive calls when away from their desk or outside their home is irrelevant from an interconnection perspective:
- There are no additional costs for Telecom arising out of the mobility aspects of Vodafone's local service. In particular, Telecom will not be "required to bear the cost of free fixed to mobile calls" as Telecom has submitted.
 - Telecom will be handing over the local call to Vodafone as it would to any other local service provider.
 - There will be no additional costs for Telecom as compared to calls made to local numbers on any other carrier's network since Vodafone proposes "bill and keep" for local calls exchanged between networks.
 - There will be no additional obligations on Telecom as all local calls will continue to be either terminated or handed-over in the "home" LICA or the associated major LICA.

Other possible approaches

26. As stated above, Vodafone considers that strict geographic requirements are likely to undermine competition rather than promote it. The less restrictive the Commission can be about geographic rules, the greater latitude firms will have to compete with each other on the merits of their services.
27. To narrowly define a geographical constraint in connection with receiving a local call risks limiting competition, preserving fixed wireline technologies as the only options in the market for local calling services, and constraining the use of future technologies.
- The Commission should avoid introducing artificial distinctions such as "in the building", "on the customer's property" or even "where the handset is normally located". This overlooks current technologies which allow customers greater freedom (such as W-DECT phones) as well as the practicalities of meeting these requirements.
 - The Commission should also not be overly influenced by its 2005 LMNP determination, as the test of where the handset is normally located was driven by the technology-biased definition of local number portability service and in particular the expression "fixed telephone network service". A "fixed" approach is not required if the Commission follows a technology-neutral approach.

28. In the Application we explained that we intend to implement a 'homezone' concept at retail. This will define a small geographic area within which customers will be able to make calls on local numbers. We explained that this area would be no larger than the coverage of the cellsite(s) giving cover to the customer's home or workplace.
29. We do not think that the use of this concept at retail necessarily has any implications for interconnection. But if for some reason the Commission decides that it must be more restrictive in any geographical requirements for interconnection, a zone concept might be one option.
- Of course, defining such a zone in terms of cellsite coverage would not be technology-neutral, but it could be defined in terms of an area of a particular size.
 - We note, for example, that Woosh permits its customers to make and receive local calls within an approximate 7,500km² area.³ Telecom provides a local interconnection service to Woosh, an arrangement for which Commission intervention was not needed.

If geographic boundaries are required, how should the Commission allow for circumstances where:

- *a call to a local access number that is forwarded to an end-user who is outside his or her home zone?*
- *a call where the Vodafone local access customer moves out of (or into) his or her home zone?*

A simple and technology-neutral approach to local calls that are forwarded

30. The Commission need not concern itself with local calls that are forwarded to a mobile number at the receiving customer's option and expense.
- As explained above, this call forwarding has no impact on interconnection arrangements at all.
 - End-users already enjoy products that allow them to receive local calls away from their home or office.
 - For example, Telecom today offers customers services that allow users to automatically re-route incoming calls to elsewhere in the local calling area, another local calling area, or a mobile phone.⁴
 - Telecom also provides its local customers as part of voicemail an option to allow calling parties to press "0" to be forwarded to an

³ Woosh defines a local calling area within 50kms from a customer's home address. See the description of phone roaming on <http://www.woosh.co.nz> (visited 3 April)

⁴ See <http://www.telecom.co.nz/content/0,8748,100026-202109,00.html> and <http://www.telecom.co.nz/content/0,8748,24317-202109,00.html> (visited 3 April)

alternative number of the called party's choice (including a mobile number).⁵

- The Act's standard access principles set out in clause 5 of Schedule 1 of the Act place an obligation on Telecom to provide regulated services on the terms and conditions on which Telecom provides the services to itself. This clearly entitles interconnecting local service providers to offer call forwarding services for local calls, just as Telecom does.
- Standard industry practice is to expressly carve-out the provision of call-forwarding services from any conditions associated with local interconnection. The application of call forwarding or similar functionality is expressly excluded from the definition of "designated destination", a term used in most interconnection agreements in the market to indicate the point to which the incoming call should be delivered.⁶
- Any call forwarding service offered as part of Vodafone's local service is an additional option acquired at the election of the Vodafone local customer. We expect it to involve an additional charge for the called party.
- We find it extremely difficult to see how the Commission would draw a principled distinction between the options available to Telecom's local customers in diversion and call forwarding, and Vodafone's local service which allows customers to receive calls when they are away from their workplace or outside of the home.

A simple and practical approach to crossing a geographic boundary

31. The Commission queries how a call will be handled when the Vodafone local customer moves into or out of a defined geographic area while on a call.
32. We explained above that we think that narrow geographic controls are unnecessary and unhelpful. However, we provide our comments on this question on the basis that the Commission may decide to impose narrow geographic controls.
33. Vodafone believes that occasions where a customer moves into or out of a zone while on a call will be limited. However, Vodafone encourages the Commission to take a pragmatic approach to the issue and preserve the ability of network providers to provide an uninterrupted call.
 - Vodafone considers that any obligation to drop a call would not be in the best interests of end-users.

⁵ See <http://www.telecom.co.nz/content/0,8748,24182-203791,00.html> (visited 3 April)

⁶ Designated Destination is usually defined as "in relation to a call and disregarding the application by anyone of any call-forwarding or similar functionality that results in the Call being routed to a different point from which the answer line signal for that Call would emanate if that Call were answered, means the point in a carrier's Network to which that carrier has allocated the Network Number provided by the other carriers as the called party number".

- This is particularly because there do not seem to be any losses caused to consumers or to carriers as a result of allowing a call to continue in these circumstances.
34. A simple solution would be for the location of the customer at the time the call is made or received to determine the nature of the call for the duration of the call.
- Therefore, if a Vodafone local customer were in some geographic zone at the time s/he receives a call, the call will be treated as an in-zone call for its full duration, even if the customer moves out of zone during the call.⁷
 - We understand that a similar protocol is applied by BT in the UK market for its Fusion service.⁸

Reciprocity and bill and keep

Can the Commission apply the bill and keep pricing principle to termination of voice calls to and from both Vodafone's and Telecom's networks by virtue of a term that requires reciprocal pricing?

The pricing principle should be bill and keep

35. The pricing principles for the Requested Service expressly provide for bill and keep where it is considered that forward-looking cost-based pricing will not give effect to the Act's purpose set out in section 18.
36. In this case, forward-looking cost-based pricing is likely to give a much higher cost figure for termination on Vodafone's mobile network than on Telecom's fixed network. This would have to be passed on by Telecom to its customers.
37. Such an asymmetry in retail pricing is obviously a major concern for the provision of local services by Vodafone and is likely to retard competition.
- As we explained in the Application, the ability for callers to ring a Vodafone local number at the price of a local call is likely to be important to the success of our local service initiative.
38. We consider that bill and keep provides an excellent solution. We are seeking standard local interconnection terms and so we are prepared to accept those terms for calls to our local numbers.
39. It seems that Telecom is likely to also support bill and keep. In the interconnection pricing proceedings Telecom supplied the Commission with expert analysis from CRA confirming "that bill and keep has overwhelming advantages as a pricing regime for interconnection of local voice and data calls" compared to TSLRIC.⁹

Bill and keep can be enforced by way of a term requiring reciprocal pricing.

⁷ Note that this definition can apply regardless of the definition of the zone.

⁸ See <http://www.btfusionorder.bt.com/support/faqs.aspx#general13>

⁹ CRA, "Comments on the Draft Access Determination: Interconnection pricing", 9 September 2002, para 50.

40. The Commission is able to impose reciprocal pricing as a condition under s30 of the Act. There are no express limitations on the conditions the Commission can impose.
41. In this case a condition requiring reciprocity is undoubtedly pro-competitive and gives Telecom very reasonable pricing relative to the current termination rates that Telecom faces for calls by its customers to Vodafone customers.
 - A condition protects Telecom from having to pay high mobile termination rates for calls to Vodafone local customers where Vodafone will pay only regulated fixed termination rates for calls to Telecom customers. Telecom is not able to seek regulated access to Vodafone's PSTN under the Act.
 - A condition avoids the need for Telecom to recover at retail any interconnection costs, and therefore protects Telecom's ability to continue to offer free local calling.
 - A condition avoids the cost asymmetry that would be imposed on Vodafone if it had to buy both origination and termination from Telecom. A condition can prevent Telecom from refusing to acquire a termination service from Vodafone.

Impact of the TSO

42. In a letter to the Commission dated 8 February 2006, Telecom suggests that Vodafone is seeking an amendment to the TSO Deed through the Application.
43. Vodafone is seeking no such thing. We discuss the TSO Deed to draw attention to a serious issue we believe the Commission needs to address as part of any regulated interconnection with Telecom's fixed PSTN.
 - The TSO Deed allows Telecom to charge its residential customers for local calls to mobile networks. In our Application, we expressed our deep misgivings about the network technology bias inherent in this part of the TSO Deed.
 - This ability to discriminate arises because the Deed is drafted in highly technology-specific terms and excludes calls to cellular networks even where the call is to a local number and where no interconnection charge is paid by Telecom.
 - The exclusion under the Deed may have been designed to protect Telecom from having to provide free local calls where it faced significant interconnect charges (e.g., on calls to mobile networks). This provision is not relevant at all if Telecom does not face such interconnection charges.
 - If Telecom can require callers to Vodafone local numbers to pay higher rates than callers to other local numbers, there could be a significant disincentive to take up Vodafone's local service. Hobbled Vodafone's local service before it begins is unlikely to promote competition for the long-term benefit of end-users.

- The Commission should apply a non-discrimination condition preventing Telecom from discriminating between local calls from Telecom customers to Vodafone's local customers and to third party networks.
44. The TSO was designed to protect consumers from Telecom raising prices after privatisation. For Telecom to now be able to use the TSO to defend itself against the competition from new technologies is entirely unacceptable.

Conclusion

45. Vodafone continues to be frustrated by Telecom's attitude to a local interconnection agreement. At present Vodafone is offering to terminate calls from Telecom customers to our mobile numbers for 22.5cpm. We have offered to cut this price to effectively nothing for calls to our local numbers.
46. The only reason that we can see for Telecom not to welcome this reduction in costs is that it thinks that it will lose from making a deal because Vodafone will compete with it aggressively in the local services market.
47. The regulation of interconnection in the Act was designed precisely to prevent Telecom from using these kinds of tactics at wholesale in order to protect its retail margins.
48. In summary:
- This determination gives the Commission its greatest ever opportunity to promote competition in local access and calling by enforcing standard commercial terms for local interconnection.
 - The Commission should not be swayed by the fact that our network is a cellular network. The technology used is not important: what is important is the nature of the service. We are prepared to agree to standard interconnection pricing (i.e., bill and keep) for calls to our numbers.
 - We can accept some technology-neutral geographic restrictions on the operation of our service if the Commission considers that they are necessary at interconnection to promote competition. If narrower or technology-specific geographic restrictions are imposed, the Commission risks skewing the playing field against our service, and denying consumers the benefits of nationwide, facilities-based competition.
 - We need the Commission's help in overcoming the technology-bias of the TSO Deed. If Telecom is allowed to price discriminate at retail against our local customers, it will reduce the attractiveness of our local service to customers and deter much-needed competition.

49. If you have any questions, or would like further information about the issues raised in this submission, please email tom.chignell@vodafone.com or call 021 639 977.

Yours sincerely
Vodafone New Zealand Limited

Hayden Glass
Public Policy