



Telecom New Zealand Limited

**Cross-Submission on Commerce Commission
Draft Report "Schedule 3 Investigation into
Amending the Roaming and Co-location
Services"**

Public Version

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1 GLOSSARY

Act	means the Telecommunications Act 2001
access seeker	means a telecommunications service provider that meets the criteria of an access seeker under the Act in respect of the national roaming service
Co-location	means Telecom's unbundled copper local loop network co-location service as defined under the Act
Commission	means the Commerce Commission
Draft Report	means the Commerce Commission's Draft Report dated 3 August 2007 on the Schedule 3 Investigation into Amending the Roaming and Co-location services

2 EXECUTIVE SUMMARY

- 1 The Commission's Draft Report contains a number of conclusions which Telecom supports. As outlined in our submission dated 31 August 2007, we agree with the conclusions regarding Co-location and the two principal conditions the Commission proposes for the roaming service, subject to some qualifications as set out in that submission.
- 2 In particular, Telecom supports the Commission's views that: a) Telecom should be allowed to roam on Vodafone's network; and b) that any regulation should be technology neutral and not restricted to a particular platform such as 2G.
- 3 We have considered submissions by the other parties and wish to take this opportunity to address certain outstanding issues, in particular Vodafone's submission and the revised undertaking.
- 4 Whether the Commission decides to regulate or to accept the Vodafone undertaking, it will have to do so in accordance with the purpose statement as set out in sections 18 and 19 of the Telecommunications Act 2001, which is concerned with the promotion of competition for the long-term benefit of end-users having regard to the efficiencies that are likely to result.
- 5 We consider that the availability of roaming access to all participants in the mobile services market, at prices which continue to provide sufficient incentives on both access seekers and access providers to invest in their own infrastructure, will best meet that purpose.
- 6 In this cross-submission we address the following issues:
 - (a) Exclusion of Telecom as an Access Seeker;
 - (b) Access Price;
 - (c) Technology Neutrality;
 - (d) Additional comments on the Vodafone undertaking; and
 - (e) Co-location.

3 EXCLUSION OF TELECOM AS AN ACCESS SEEKER

- 7 We agree with the Commission's view that Telecom should not be excluded from accessing Vodafone's roaming service.
- 8 Vodafone in both its submissions and undertaking seeks to exclude Telecom from accessing its roaming service. Although Vodafone has deleted the explicit reference to Telecom in its undertaking, the amended clause is drafted in such a way to have the practical effect of excluding Telecom.
- 9 We consider any preclusion of particular participants in the mobile services market from accessing the roaming service in the Act would be detrimental to end-user benefits in the long term, and do not consider that Vodafone has put compelling evidence forward to the contrary.
- 10 Vodafone argues in its letter of 31 August 2007 that Telecom will build a GSM and W-CDMA network regardless of whether it has access to regulated roaming, and argues that Telecom already has nationwide coverage. Whilst we dispute Vodafone's view, this is somewhat immaterial as its argument does not deal with the issue of whether roaming access would provide benefits to competition and consumers in New Zealand. Access to roaming will allow any access seeker to offer a relatively complete and hence competitive service at an earlier point in the network build process than would otherwise be the case – including Telecom. This increase in early competition will have a direct flow on benefits to consumers, such as:
- (a) Consumers will have two comparable services immediately competing for their business rather than one service with only partial coverage; and
 - (b) Consumers in areas where coverage would require longer to complete will have an immediate access to a competing network.
- 11 As a secondary point the access will allow Telecom to conduct a more efficient network build process. In reality all firms ration capital expenditure to some extent, and as a result the ability to re-profile capex expenditure as a result of roaming is likely to facilitate investment in other areas that might otherwise be delayed. Although difficult to measure, this too is a benefit to consumers.
- 12 A second approach to considering whether Telecom should be allowed access is to consider whether, under similar circumstances, if there were effective competition in GSM roaming (i.e. say two or three GSM networks already in place), Telecom would choose to seek roaming, and if so whether it would be able to secure the service on reasonable commercial terms. The first question is not hypothetical. It is a matter of fact that Telecom intends to build a network, and it is Telecom's view that roaming will be the most

efficient way to effect an initial transition to the new technology in some parts of New Zealand. The second part of the question is hypothetical, but given the experience overseas where commercial roaming agreements and network sharing arrangements are commonplace, we think the Commission can reasonably assume that success in securing access on commercial terms would be possible.

- 13 Both of the above approaches present a strong argument that it is good policy to allow Telecom to access the roaming service.

- 14 In its letter of 31 August 2007 Vodafone argues that:

Telecom will build its GSM and W-CDMA networks regardless of whether it has access to regulated roaming services, just as it has built its other nationwide networks without access to roaming.

Telecom does not need regulated roaming in order to provide nationwide coverage while it builds out its GSM network. It already has nationwide coverage.

- 15 These arguments do not address the issue in question, namely regulation of roaming and co-location "for the long-term benefit of end-users of telecommunications services within New Zealand". Telecom has nationwide coverage for its CDMA network, but obviously not for its new GSM/W-CDMA network. Providing Telecom with access to Vodafone's network would be the most efficient outcome for end-users. We note also the apparent contradiction between Vodafone's suggestion that while the expansion or otherwise of the existing roaming regulation will be immaterial to Telecom's investment plans it will be material to Vodafone's.

- 16 We can confirm that it remains our intention to invest in and deploy a new GSM/W-CDMA mobile network next year, and to continue to invest in and upgrade our existing CDMA network. The proposed expansion of the roaming regulation will not affect these plans, other than the potential to bring services to market earlier than otherwise possible. Nor do we consider it likely that the proposed expansion in and of itself will materially affect any existing Vodafone investment plans – it is the setting of the regulated prices for access to the service which will be determinative of investment levels.

- 17 As a cellular service provider we are willing to provide roaming access on our network to any potential access seeker, including Vodafone. We recognise the importance of access to roaming services given the ability to promote efficiency in network build by companies across New Zealand. Providing roaming access will assist in ensuring the most optimal coverage to all New Zealanders. This will have positive impacts for overall welfare.

Technical Perspective

- 18 As noted above, the proposed regulation will not result in Telecom suspending or abandoning its plans to roll out its new GSM/W-CDMA mobile network next year. From a technical perspective a full national service provision would be faster and would be completed ahead of plan should Telecom get access to roam on Vodafone's network.
- 19 In general terms, taking the current market conditions as a case study, provision of roaming provides an entity building a new network with the ability to offer full national services ahead of time, including the following benefits:
- (a) potential delays such as landowner, RMA or backhaul problems will not affect the launch date; and
 - (b) testing and network optimisation can happen more quickly, given coverage deficiencies in non-metro areas will be backed-up by roaming and thus allow for provision of a competitive coverage proposition.
- 20 With the ability to roam on Vodafone's non-metro network, Telecom can focus its initial network build in different non-metro areas. By allowing customers to roam between Vodafone and Telecom, effective high-speed cellular coverage would be available sooner and would be more widely deployed in New Zealand, with more customers and better service options.
- 21 We note that further inconsistency in Vodafone's approach is witnessed by the reciprocity clause in Schedule 3 of its undertaking, which excludes Vodafone from its own definition of an "Excluded Operator" and allows it to have roaming access on any network.
- 22 For these reasons Telecom's view is that the purpose as set out in sections 18 and 19 of the Act will best be served by allowing all operators to access any roaming services subject to regulation under Schedule 1 of the Act, or to any registered undertaking.

4 ACCESS PRICE

- 23 As outlined in our submission of 31 August 2007, we agree with the Commission's fundamental concerns regarding access prices. Prices charged to an access seeker should provide sufficient incentives for an entrant to go on to build a reasonable level of network coverage. We do not wish to reiterate the arguments we have already put forward here. However, for the avoidance of doubt, we note that while Telecom believes it should have access to the roaming service, Telecom does not believe that access should be provided at cost-based rates that will not provide incentives to build. If cost-based rates are to be proposed, then as

previously noted in our 31 August submission, there should at a minimum be compulsory requirements imposed to ensure a reasonable level of network coverage.

5 TECHNOLOGY NEUTRAL REGULATION

- 24 Telecom agrees with the Commission's Draft Report that the Vodafone roaming services should be technology neutral and should not be restricted to 2G like services.
- 25 Notwithstanding our support for technology neutrality, we believe that the concept should be carefully considered so as to weigh out the impacts of its requirements on telecommunications providers' incentives to invest in new technologies.
- 26 Technology neutrality is an important concept in telecommunications regulation. As we have discussed in our 31 August submission, it has been argued in the past that cable based internet services were not in competition with copper based ADSL services on the grounds that they use different technologies. As has now been accepted, the issue is not whether different technologies are used, but whether such technologies are in competition with one another. As pointed out by Woosh in its 31 August 2007 submission: "consumers buy services, they do not buy technologies".
- 27 We also recognise the importance of protecting the incentives for telecommunications providers to deploy new technologies enabling customer access to more enhanced services. If new technology of telecommunications providers is subject to regulation, first mover advantages arising from deployment will be eroded. This will potentially create stagnation in cellular technological evolution to the detriment of consumers.
- 28 Therefore, we propose that a technology neutrality concept be applied by defining the roaming service with reference to certain services only. Roaming that supports these services should be available to access seekers on any technological platform. The services to which roaming applies could be defined in a flexible manner that would enable that set of basic services to grow over time as customer preferences evolve. For example, the regulated service could provide an access seeker with access to all Radio Access Network-related network capabilities of the access provider's network, with the exception of those which the access provider has put into commercial service within a specified window – for example in the past three years. This framework could help overcome concerns of a fixed threshold access test and concerns that Vodafone will switch off its 2G network. It will also help address some concerns that, dependent upon

access prices, firms will only be incentivised to buy roaming access rather than invest in infrastructure.

- 29 The telecommunications industry has been and will continue to be characterised by evolving technology. Regulation that locks in a particular technology will quickly become outdated.
- 30 For these reasons Telecom recommends that either the Commission's regulations or Vodafone's undertaking have to be technology neutral in order to give effect to the purpose as set out in sections 18 and 19 of the Act.

6 ADDITIONAL GENERAL COMMENTS ON THE VODAFONE UNDERTAKING

- 31 In addition to our submissions on the key issues set out above, Telecom wishes to comment on certain additional aspects of Vodafone's undertaking.

Exclusive Roaming Provider

- 32 Although Vodafone has removed its exclusivity clause, the new drafting is not satisfactory and essentially has the same effect. Vodafone has reduced the clause to an option for it to terminate the undertaking if the access seeker takes a roaming service from another operator. Given competition is based on providing customers with choice, this clause will have the effect of limiting competition and as such should be deleted for being anti-competitive.
- 33 Once Telecom builds a network compatible with Vodafone this clause will have the effect of preventing access seekers from roaming on both networks and perpetuate the status quo without furthering Commission's aim of developing roaming services.
- 34 As noted in our submission dated 9 March 2007, no such constraints are placed by Telecom on its wholesale customers, who are also competitors in the retail market.

Pricing Model

- 35 We note that the proposed pricing model in the Vodafone undertaking is rather complex and could prove practically difficult to bill accurately as the parameters keep changing as a result of reworking the costs, changes to exclusion zones, entry of new parties having an impact on the part of the charge recovering set up costs, monitoring of actual charges against the access fee etc. Nonetheless, we are happy with the prices that will provide sufficient incentives for an entrant to go on to build a reasonable level of network coverage, as set out above and in our previous submissions.

Pricing Request prior to entry into Deed of Acceptance

- 36 Clause 3.3 of the Vodafone undertaking provides that prices for the roaming traffic provided prior to acceptance of the undertaking by the access seeker will not be subject to an audit. This has the effect of forcing the access seeker to trade the ability to get certainty of pricing in advance of launching service against the right to have the pricing audited. This seems unfair on the access seeker and creates an incentive on Vodafone to inflate the prices decided prior to the acceptance of the undertaking. We suggest that this restriction is deleted.

7 CO-LOCATION

- 37 As discussed in our 31 August 2007 submission, Telecom agrees with the Commission's conclusions regarding co-location and does not see the need for increased regulation in this area. We also agree with the Commission's view that non-price issues can be resolved through amendments to the approved code on co-location.
- 38 Telecom remains open to offering co-location to other operators on the same terms as it has agreed with NZ Communications.