



31 August 2004

Douglas Webb
Telecommunications Commissioner
C/- Commerce Commission
PO Box 2351
WELLINGTON

Dear Mr Webb

Telecommunications Mobile Termination Rates Issues Paper

The purpose of this submission is to register the New Zealand Business Roundtable's (NZBR's) concern that the Commission is giving serious consideration to regulating mobile termination rates, and possibly other services. We wish to stress the importance of preserving incentives to invest in infrastructure for the benefit of consumers (ie dynamic efficiency). This requires, in our view, a material burden of proof to be placed on proposals to regulate mobile services.

The mobile market is based on the recent development of cellular technology via mobile telephony. That it is open to competition is evident from the successes of past entrants and the active presence of more recent ones. It is a dynamic market, as indicated by the ongoing heavy investments by incumbents and new entrants.

The market for mobile services appears to be one of the most competitive in telecommunications today. We understand that it is characterised by relatively high customer churn rates, significant rivalry between firms for customers, and significant levels of technological and service innovation.

Regulation could impair dynamic efficiency by distorting investments in infrastructure – deterring some welfare-enhancing investments and inducing some welfare-reducing investments. This dynamic efficiency concern is greatest when the rate of change is fast and investments are irreversible. Both factors apply to investments in mobile technologies. Services based on these technologies have been a significant tool for improving business productivity.

In our view, the Commission has a responsibility to impose a significant burden of proof on itself before signalling to investors in infrastructure that intrusive regulation is likely. It should emphasise that investors in infrastructure are entitled to the proceeds from those investments unless it is established by a proper and principled inquiry that they have been violating the provisions of the Commerce Act. Its communications to existing and potential investors in infrastructure should also acknowledge the need to preserve investors' ability to achieve supernormal *ex post* returns, in order to balance the normal market risk of subnormal *ex post* returns.

We are concerned that none of these considerations was mentioned in the Commission's summary statement (see the Annex) listing the factors it considered in deciding to investigate mobile termination rates. To the contrary, the factors that the Commission identified as influencing its decision were all too likely to be read by potential investors in infrastructure as unbalanced, superficial and economically dubious. If so, the statement is in itself a deterrent to investment.

The risks of unintended consequences arising from regulatory intervention in this rapidly changing and capital intensive sector are high. The NZBR's preliminary view is that the arguments put forward by the Commission for regulating are unconvincing. Given the dubious gross efficiency benefits and the inevitable unintended and undesired costs of intrusive regulation, the recommended assignment of the burden of proof would point to a finding that long-term consumer welfare would be best served by not intervening further in this market. The Commission can always intervene in future if more compelling evidence comes to light.

The NZBR is happy to make this brief submission available to any interested parties or to have it published on the Commission's website.

Yours sincerely

A handwritten signature in black ink, appearing to read 'R L Kerr', with a long horizontal flourish extending to the right.

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EXECUTIVE DIRECTOR

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Annex

Decision to Investigate Mobile Termination Rates

The purpose of this paper is to set out the Commission's reasons for deciding to investigate mobile termination rates.

The Commission has received complaints that the lack of competition in the mobile termination market results in unreasonably high charges for fixed-to-mobile calls in New Zealand.

Mobile termination relates to the termination of calls to mobile customers, and is a component used in the supply of various downstream retail services such as fixed-to-mobile and mobile-to-mobile calling services.

The Commission is satisfied under clause 1(a) of Schedule 3 to the Telecommunications Act 2001 ('the Act') that there are reasonable grounds for an investigation into mobile termination rates.

The Commission has considered the following factors in making its decision to investigate mobile termination rates:

There are indications that mobile termination prices in New Zealand may exceed cost by a significant margin. Cost-based estimates of mobile termination rates in comparable jurisdictions appear to be well below the current New Zealand rates. If this is proven to be the case, a further issue for the Commission to address is the degree to which a reduction in New Zealand wholesale mobile termination rates will flow through to reductions in retail fixed-to-mobile rates.

The owners of mobile networks, in this case Telecom New Zealand and Vodafone, appear to have a substantial degree of market power in terminating calls on their mobile networks. A number of overseas regulators have identified competition concerns in relation to mobile termination services. Overseas regulators have identified the calling party pays arrangement for calls to mobiles as being a source of market power. The Commission considers that an investigation is necessary to determine whether similar competition issues exist in New Zealand.

With 2.8 million mobile phones in New Zealand and 1.7 million fixed lines, the termination of mobile calls is relevant to most phone users. Spending on calls to mobile phones makes up a significant portion of spending on telecommunications services.

The Commission will commence an investigation pursuant to clause 2 of Schedule 3 of the Act on whether or not mobile termination should be regulated by including it in Schedule 1 to the Act as a designated service.

Douglas Webb
Telecommunications Commissioner

[The statement is apparently dated 29 April 2004. It was downloaded on 31 August 2004 from <http://www.comcom.govt.nz/telecommunications/pdf%2FCommission%20Decision%20to%20Investigate%20Mobile%20Termination%20%2D%20Final%2EDOC.>]