



Commerce Commission

**Investigation into Regulation of
Mobile termination**

Draft report 18th October 2004

Submission by CallPlus



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Submissions on Draft Mobile Termination Report - Oct 2004

Introduction:

CallPlus welcomes the opportunity to have input on the subject of Mobile termination rates. This is a very material item for CallPlus' customers both now and into the future as it affects the single largest calling expense for our customers today – the price of which bears no resemblance to the cost.

Question 5.1:

The Commission is seeking views of parties on the likely impact of regulated mobile termination rates on the retail market. The commission is particularly interested in any quantitative assessment of the likely benefits or detriments arising in this market, including any assumptions made or data used.

Response: Calls from fixed line to mobiles.

Over the years the average consumer has seen a reduction in the cost of national & international calling, reflecting a competitive environment and a regulatory pressure. However customers are now spending a significant portion of their expenditure on calls from fixed lines to mobiles – a result of significant increases in the number of calls (as mobiles have become more pervasive) and very high costs relative to other calls.

- Fixed to mobile calls now account for [] % of CallPlus Business customers calling expenditure and [] % for CallPlus residential customers.

Customers are becoming increasingly aware of the expenditure on calls from fixed lines to mobiles (“FTM” calls) and this has become a key factor in their choice of providers, (noting that customers generally use one provider for all calling).

However the market is now at a point where there is likely to be very little “price movement”, innovation or competition unless some action is taken. We believe that the catalyst for change must come from regulation. Artificially high mobile termination rates, from providers with no incentive to disrupt the status quo, have resulted in limited price differentiation for FTM calls and no real choice for customers in the market.

In the business market, for example, where the customers are the most “rational shoppers” the majority of prices for are clustered in the 32-35c range regardless of whether they are a major corporate or smaller business.

- [] % of Call Plus business customers pay less than 35c for FTM calls; []



We therefore have a situation where:

- Consumers choose one provider for their calling
- Increasing customer awareness of the cost of FTM rates
- Termination rates are being held at artificially high levels.

This has meant that “Toll by pass” operators, who have been the major factor in leading price reductions, face a squeeze on their overall customer margins as the mix of “very low margin FTM minutes” to “higher margin National & International minutes” changes.

- Gross Contribution % (retail revenue less termination costs as percentage of revenue) on FTM calls is [] of the contribution % from National Calls for Business Customers and [] for Residential.

The result has been their inability to further reduce FTM costs to customers as well as impacting on the ability to compete on other call types. This situation is ideal for vertically integrated operators who make exceptional margins on FTM calls.

The net effect of the current situation is artificially high costs for consumers for FTM calls and no real choice.

Any significant reduction in mobile termination rates will rapidly flow through to consumers.

- Consumers are very attuned to FTM cost. Their behavior reflects this with over [] % of residential FTM calls being under 3 minutes and an average of [] minutes. This compares with National calls where [] % are under 3 minutes and the average is [] minutes.
- There is an opportunity for providers to stimulate the market with lower prices resulting in better value for consumers and increased minutes for providers.

Given a lower mobile termination cost we believe Toll-by-pass operators will quickly look to take advantage of this by **offering significantly lower FTM prices** to attract new customers and encourage usage. In fact we have already made a public commitment to this effect and directly to our business customers.

Over time the market would self-level around a new lower retail cost.

We support the introduction of a significantly lower mobile termination rate, 16c or less, because it will remove artificially high costs to deliver the benefit to consumers enabling them to take advantage from their fixed lines of the accessibility that mobility brings.

The major risk to this scenario that we see is that the Commissioner is convinced to make smaller incremental reductions over a period of time.



In this situation the vertically integrated fixed & mobile operator will use bundles of services, customer contracts, short term promotional offers, capping and other tactics to mask or erode any benefits of customers switching providers.

If “Toll-by-pass” operators are unable to create a compelling proposition, because of small incremental reductions, then they will be unsuccessful in encouraging customers to switch providers or stimulate usage of FTM calls. In this situation they will be more inclined to absorb the additional margin to offset the impact of the change in mix of calling minutes.

By way of example we would like to highlight Telecoms recent business calling offering which provides price caps for calls between three & sixty minutes for FTM calls to their own mobiles. This is the type of offer that a “vertically integrated operator” can make which is extremely difficult for another operator to react to and indicative of the true cost of a fixed-to-mobile call.

Question 5.2:

The Commission is seeking submissions on the cost benefit analysis undertaken as part of this investigation, including specific submission on the assumptions & data used, and the general approach

Response: No comment

Question 7.1:

*(a) Will regulation of 2G mobile voice termination and not 3G create price distortions and therefore problems for consumers?
(b) If so, what will these problems be and how could they be solved?
(c) How would regulation of 2G voice termination and not 3G hinder take-up of 3G services?
(d) Can it be demonstrated by way of example how regulation of 3G voice call termination would adversely affect efficient investment in new technology?
(e) Should 3G networks be described more precisely in the service description, and if so, how should 3G networks be described?*

Response:

- a) We believe that it is impractical and inappropriate to regulate 2G and not 3G mobile termination rates.
- b) The reasons we believe this are:
 - i) The only logical way to achieve this would be to allocate a separate number range for 3G services. Without a separate number range it would not be possible for other carriers to identify which calls are 3G and which calls are 2G, and so they



- would not be able to make differentiated charges for calls to 2G mobiles, thus obviating the pass-through gains to consumers. Even if there was available a database lookup service, this would not be practical for international carriers who would be required to pay a higher call termination fee for 3G calls and so would require a number prefix range for this.
- ii) Additionally, a move to the allocation of a different number range for 3G calls would make it impossible to implement number portability across 2G and 3G mobile networks, because the carrier handing over the call would not necessarily know which network and which price to pay for call termination. As mentioned in the previous point, International carriers would not have access to a database ported number lookup service so would be unable to handle a differentiated call rate.
 - iii) Similarly, if portability is considered highly desirable, how would the end-user know if they are calling a 2G or 3G service? This would be important to the end user who is aware that there is a different call rate between the 2 networks
 - iv) Because of the above issue, the stimulation of calls to mobile devices may not be as great as if there continued to be a known, single rate for calls to mobiles
 - v) It seems illogical from the consumer's point of view to pay a different amount for exactly the same thing. 3G was not developed for the purpose of terminating voice calls, but for the higher data capacity and enhanced services that could be provided. To make consumers pay more to terminate a voice call on a 3G network is a straight out cross-subsidy. In reality 2G services will terminate on 3G networks or vice-versa.
 - vi) Since dual 2G/3G handsets are going to become common, who is to know (apart from the network provider) whether the call actually went on a 2G or a 3G network?
 - vii) Will this not create incentives for the network provider to move traffic over to a 3G service at an earlier pace, so that they can enjoy higher termination rates on these calls? How is it in the interests of end users for this to occur, when they will pay more for such calls, and may have no interest in using the advanced features that a 3G network will bring?
 - viii) If 3G services were exempted from a reduced call termination rate, we are then faced with the situation that, over the next several years the average mobile call termination rates will gradually increase back to existing levels as the networks roll out 3G services, and the end consumers will be no better off.
 - ix) We don't understand why, for instance, given TCL's public statements of their intention to build a 3G network, they should be given a competitive advantage



over existing 2G networks by being excluded. We see a real risk that by setting up another “artificial” pricing distinction that the commission will create the very situation in 3G that it is trying to rectify in this investigation.

- c) No comment
- d) No comment
- e) In the event that the commission proceeds with a differentiated approach to 3G & 2G then there are a few small, niche non-geographic networks being developed in New Zealand which, because of their small size and the technology employed may have a significant investment on a per-customer basis. Where these are “wireless voice and data services that provide broadband data speeds” they should be considered “3G” for the purposes of this consideration.

Question 7.2:
<i>(a) Should there be any mark-ups or variations in the calculation of the TSLRIC?</i>
<i>(b) If so, what is the justification and exactly how should these be specified in the final pricing principle?</i>
<i>(c) Are there any other ways in which TSLRIC needs to be specified more tightly than the existing definition in Part I of Schedule 1?</i>
<i>(d) If so, what is the justification and exactly how should the final pricing principle be amended to take them into account?</i>

Response: No comment

Question 7.3 <i>Should the proposed alteration include a requirement that the Commission must require the access provider to complete a section 45 calculation for the mobile termination service?</i>

Response:

When determining requirements on access providers we would ask that consideration is given to recognizing the differences between highly resourced large providers and resource constrained smaller emerging providers.



Question 7.4:
<i>(a) Should any provider or potential provider of fixed-to-mobile services be able to apply to be an access seeker?</i>
<i>(b) If not, what conditions should apply and why?</i>
<i>(c) Are there any additional matters that need to be dealt with in the service description in light of section 18 of the Act?</i>
<i>(d) Should Telecom and Vodafone be excluded as access seekers?</i>
<i>(e) Is there anything the Commission can include in the wording of the service specification to assist providers of fixed-to-mobile services to achieve timely access to a regulated mobile termination rate applying to both mobile networks?</i>

Response:

Given the potential applications from many access seekers for access to multiple providers, we share the commissions concerns that initially this has the potential to “tie up the resources of the commission” resulting in delay to access of the regulated services and delaying benefits to the consumer.

We believe that it would be prudent to consider an initial period of 12 – 18 months where: -

- Access seekers who are existing operators of “fixed to mobile” services, and are eligible to make an application, should be prioritised. These applications from existing providers will have the most immediate impact and therefore the maximum benefit to the consumer.
- During the initial period the commission should only consider applications seeking access to the services from the two main operators – Telecom & Vodafone. This will ensure emerging providers are not drawn into the process early on and that those applications most likely to provide immediate benefit to consumers are dealt with.

In response to question 7(d) we are concerned at the ability of the large, well resourced players to effectively “gridlock” the process and believe that Telecom & Vodafone should be precluded from being access seekers.

We also believe that if the Commission was proactive in providing guidance & helping to facilitate possible joint applications – particularly from the 2nd tier operators – the process could be streamlined and unnecessary duplication avoided on both sides.

Many of these issues could be avoided if the outcome of a determination was automatically made available to all parties with existing agreements as at the date of the determination. We would support any review of the process to this end and would urge the commission to consider any action which can minimize the barriers to the determined rate becoming available to access seekers given the substantial incentive for delays from Telecom & Vodafone.