



8 June 2004

Mr Douglas Webb
Telecommunications Commissioner
Commerce Commission
P O Box 2351
WELLINGTON

BY EMAIL

Dear Douglas,

Mobile Termination: Origination Access Services

1. Following your letter of 11 May, I am writing to provide additional information to substantiate TelstraClear's view that the Commission's Schedule 3 investigation into mobile termination rates should be broadened to include mobile origination access services.
2. Your letter also referred to my 30 April letter seeking a Schedule 3 investigation into mobile roaming. TelstraClear considers that this issue should form part of a separate investigation to mobile interconnection and I therefore plan to write to you separately regarding the additional information you have asked for on this matter.
3. With regard to mobile origination access services, we consider that the merits of regulating the origination of calls to some services should be considered in the Mobile Termination Schedule 3 investigation as similar concerns about the exercise of market power arise. Where origination is used for the purpose of providing access to an end service (e.g., toll-free (0800, 0508) or nationwide (50XY)), we believe that mobile operators have an incentive to overprice origination charges. In these markets, mobile carriers have control over access to an essential input in the provision of a telecommunications service,¹ as in termination, and this control gives them the ability to raise the price of the mobile origination access service above competitive levels. This also has the potential to undermine competition in the downstream markets for special (origination access based) services.²
4. For example, both Telecom and Vodafone currently charge TelstraClear the same rate for mobile toll-free access origination as they do for mobile termination. A single rate is negotiated covering both services. Further, we note that this rate appears high when compared to rates charged in other countries, such as Australia.³ We therefore consider that the current high interconnect rates charged for toll-free mobile origination access suggest an investigation is

¹ If a purchaser of a toll-free (0800, 0508) or nationwide (50XY) number service wants to be able to receive calls from customers subscribing to a particular mobile operator, there are no alternative suppliers of the mobile originating access service provided by that mobile operator.

² This is particularly a concern in relation to Telecom, given its status as a vertically integrated provider of mobile and fixed-line services.

³ See 'ACCC Mobile Services Review – Mobile Terminating Access Service, Draft Decision (March 2004)' for Australian termination rates and 'ACCC, Mobile Services Review – Mobile Originating Access Service, Draft Decision (May 2004)' p48, which suggests that Australian mobile origination access rates, when charged, are generally at or below the termination rates levied there.

warranted into whether to regulate this service, along with termination services, to ensure access is given on reasonable terms.

5. In addition, there is currently no 50XY mobile originating access service offered commercially in New Zealand. Based on our experience in negotiating a 50XY fixed originating access service (and our need to have that service determined), we do not expect mobile operators to commercially offer reasonable terms for this service and therefore think the investigation should also consider regulation in this area.

6. Broadly, we are concerned about the potential impacts on the market of a decision to regulate termination rates without also regulating rates for mobile originating access services. In our view, mobile operators are unlikely to voluntarily reduce the mobile originating access rates in line with any regulated reductions in termination rates. As a result, New Zealand consumers may be discouraged from, or pay excessively high prices for, receiving calls to special number services that originate on mobiles.

7. The Commission has noted that the Australian Competition & Consumer Commission (ACCC) has recently published a draft report proposing to lift regulation in this area. We note however that there are several reasons why the Australian situation may be distinguished from the position in New Zealand. Firstly, the Australian mobile market has more players than the New Zealand market and the environment is therefore more competitive. Secondly, mobile origination access services for calls to toll-free and local rate services have been subject to regulation in Australia since 1997 and the competitive market may be further developed as a result. Thirdly, the Australian Numbering Plan does not rate restrict the retail prices that mobile operators can charge for calls from mobile networks to toll-free and local rate number services and this may have impacted on mobile access originating charges. The ACCC decision was based on a lack of evidence that Australian mobile carriers were setting unreasonable terms. The ACCC did acknowledge that mobile network operators' control over access to mobile origination services could give them the ability to raise prices above cost with potential negative effects on competition in downstream markets.⁴

8. In our view, declaration of mobile origination services in New Zealand, as with mobile termination, would lead to greater competition in downstream markets and improved efficiency by helping to ensure prices better reflect the efficient costs of providing the service. We suggest that the issues paper currently proposed for mobile termination should also address the following related issues:

- Whether or not mobile network operators have market power in relation to mobile origination access services for calls to toll-free (0800, 0508) and nationwide (50XY) services?, and
- Whether or not mobile network operators have market power in relation to any other mobile origination access services?

9. If the Commission has any questions or requires further information, please do not hesitate to contact me.

Yours sincerely

⁴ ACCC, Mobile Services Review – Mobile Originating Access Service, Draft Decision (May 2004), p48.



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