



**TELECOMMUNICATIONS USERS ASSOCIATION OF
NEW ZEALAND INC**

P O Box 33 1014, Takapuna, Auckland

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Mobile Termination Reconsideration Draft Report
Network Access Group
Commerce Commission
P O Box 2351
WELLINGTON

MOBILE TERMINATION RECONSIDERATION DRAFT REPORT

Following is the response from TUANZ to the Draft Reconsideration Report of 22 December 2005.

TUANZ observes that the Minister's letter to the Commerce Commission of 9 August 2005, requiring the Commission to reconsider the recommendation in its Final Report, named three necessary considerations that are paraphrased in the Executive Summary of the Draft Reconsideration Report as:

- consider the definitional and implementation issues concerning 2G and 3G which have been identified by submitters and independent technical advice and what alternatives are workable, and have merit and dynamic efficiency benefits;*
- consider the commercial offers made by Telecom and Vodafone following the Commission's Final Report, in comparison to regulation; and*
- give further consideration to how best to ensure that end-users benefit from reductions in wholesale mobile termination rates."*

TUANZ warmly supports the Commission's conclusions and recommendations on the first two of these considerations: i.e. to remove the distinction between 2G and 3G networks for voice termination service purposes; and to reject the attempts by Telecom and Vodafone to forestall regulation by means of voluntary undertakings that TUANZ considers to be manifestly inadequate.

However, TUANZ considers the Draft Reconsideration Report fails to respond adequately to the third direction concerning "how best to ensure that end-users benefit from reductions in wholesale mobile termination rates". End-user benefit is the over-riding principle of the covering legislation, and TUANZ represents end-users, so we consider this to be a serious deficiency in the draft report.

1. Conservative benchmarking assumptions.

TUANZ considers that the Commission based its conclusions regarding reasonable pricing of the mobile termination service on costing assumptions far higher than service providers actually face now or will face in the lifetime of the Recommendation. The Commission has recognized that capital and operational costs for cellular mobile networks are declining, but its conclusions are based on international benchmarks that reflect historical costs that were higher, by substantial margins, than demonstrable current or future costs.

TUANZ submits that **the proper benchmarking approach would include a time dimension on declines in cost, as the basis to project the downward trend in capital and operational costs and apply a pricing trajectory appropriate to that predictable decline in costs.**

Furthermore, we see no valid reason why New Zealand users should be subjected to pricing based on benchmarking at the 75 percentile, when we are unaware of evidence that New Zealand has a cost base higher than many of the benchmarked countries. **We would consider the average rate to be a more accurate assumption for benchmarking New Zealand against the nominated comparators.**

2. Exclusion of mobile-to-mobile termination.

TUANZ submission of 27 November 2004, responding to the Draft Report of this Inquiry, made the proposal that the Service Definition not be limited to fixed-to-mobile termination, but also include mobile-to-mobile. The Commission did not appear to address this issue in its Final Report, nor in this Draft Reconsideration Report. The issue is clearly relevant to the Minister's reference to ensuring that "end-users benefit from reductions in wholesale termination rates".

Throughout the Draft Reconsideration Report and, in many other documents of the Inquiry, the term “mobile termination rates” is used without qualification. It is only in the Service Definition that an exclusion of mobile-to-mobile termination is clarified.

The following arguments from TUANZ submission of November 2004 have received no response from the Commission:

“Mobile-to-mobile termination

At paragraph 79, the Commission correctly recognises that mobile-to-mobile termination across networks is not different, for termination purposes, from fixed-to-mobile termination. Only the origination differs, and the Commission has correctly rejected submissions that the origination and termination markets should be considered a single service market. But at paragraphs 173-174 this factor is overlooked in conflating termination with all other elements of mobile services, without explanation.

In the context of the markets defined in this inquiry, only “on-net” mobile termination could be considered as intrinsically bundled with other services of a subscriber’s home mobile network. Noting the distribution of market shares of subscriptions to both mobile and fixed-line networks in New Zealand, it should be assumed that one third of all calls originating on a mobile network are likely to terminate on a different mobile network. Therefore mobile-to-mobile termination cannot reasonably be excluded from the mobile termination description.

Evidence of over-priced mobile termination rates is apparent in the substantial margins that exist between retail call charges for off-net calls and retail charges for on-net calls. These margins (often 100% for substantial volumes) cannot be explained by reference to the transaction costs of interconnection billing and settlements, nor by differing network costs of termination.

TUANZ is of the view that artificially-high termination charges between mobile networks are used to boost mobile network profits margins and to distort prices to end-users. Because all MNOs benefit from this activity, TUANZ considers this to be unacceptable price-fixing behaviour, albeit tacit. Differentials between “on-net” and “off-net” call prices are then used as marketing tools by MNOs to promote same-network subscriptions among business customers or other affiliated customer groups. TUANZ considers this to be a form of cross-subsidy for inter-network competition by market manipulation. It does not encourage efficient pricing, because

the benefits are not distributed according to the charges to users and the price signals are unrelated to underlying costs."

In its discussion of the "waterbed effect" and the offers from Telecom and Vodafone (paragraphs 122-129), the Commission has not shown recognition of the likelihood that mobile operators have the opportunity to apply high, unregulated mobile-to-mobile termination prices to make up for revenue declines under regulated fixed-to-mobile prices. There is no obvious deterrent to competing network operators charging excessive termination fees to each other, so as to subsidise lower-priced on-net mobile calls. The end-user originating a call has no more choice with a mobile-to-mobile call than with a fixed-to-mobile call – the termination service is a monopoly. The Commission has recognized this in its analysis, but failed to address it in its Recommendation, in particular the Service Definition.

An analogy can be made with certain kinds of banking interchange service charges that have come under scrutiny from competition regulators and with the inflated call termination arrangements and exorbitant mobile roaming charges that still bedevil international telephony services.

TUANZ would much prefer a Final Report in which the Commission gives the matter of mobile-to-mobile termination proper consideration.

Yours sincerely

Ernie Newman
Chief Executive