

9 September 2008

Commerce Commission
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Email: telco@comcom.govt.nz

Dear Sir/Madam

Re: Telecommunications Act 2001: Schedule 3 Investigation into Regulation of Mobile Termination

Business New Zealand would like to take the opportunity to briefly comment regarding the Commerce Commission's (the Commission) issues paper into whether there should be a formal schedule 3 investigation into mobile to mobile termination charges.

While the paper asks a series of questions relating to a possible investigation by the Commission, Business New Zealand wishes instead to make some general points regarding whether a formal investigation is warranted.

The issues paper follows on from an initial period of consultation earlier this year, which attempted to gauge reaction from interested parties whether an investigation into the regulation of mobile termination should take place. While Business New Zealand did not submit on the earlier paper, we have submitted on previous matters relating to mobile termination. Also, given the Commission's initial view that there are indeed reasonable grounds to commence a formal investigation, we believe a broader business aspect needs to be considered.

While Business New Zealand strongly believes in competition across any industry or sector, this should not come at the expense of creating further uncertainty in the market. In particular, any negative flow-on effects involving investment. It would be fair to say that the communications industry is one that involves fast change relative to other sectors, and one in which the players are quick to take up innovative products and services to provide to customers. However, continued regulatory intervention to 'correct' perceived instances of market failure may end up stifling, rather than assisting, the industry as a whole. Certainly, the desire to deepen market investment can become an early casualty.

In terms of specific issues within the paper, much is made of the market concentration in New Zealand that is essentially split between Vodafone and

Telecom, i.e. only two players present. While increases in competitor numbers often provide choice and enhanced competition, we have to be mindful of not striving towards increasing the number of operators simply for the sake of it. Instead, there has to be overwhelming evidence that the existing competitive structures are not providing the best outcomes for consumers, and that there would be a significant net benefit from one or more players entering the market.

One has to question the comparisons made in the paper with OECD countries in terms of market share in each country. Even choosing jurisdictions that are 'close' to New Zealand (as outlined on page 15) only show Sweden and Finland that have a maximum of three competitors that have significant market share. One could argue that any benefit associated with ensuring 3+ players in the market (no matter how small some of the new players may penetrate the market) may be overridden by the costs of further regulatory practices in the industry.


Regarding wholesale mobile termination markets discussed from page 20 onwards, Business New Zealand had previously submitted to the Commission regarding the voluntary commercial outcomes both Vodafone and Telecom had sought to ensure ongoing reductions by both companies concerning termination rates out to 2012. Despite these moves, the paper points out that a median termination rate of 10.76cpm is well below the current New Zealand rate of 16cpm, and therefore making termination rates well above cost in New Zealand. However, as the table shows on page 21 that by 2012, the difference will be much smaller as the cost will be 12cpm and 14cpm for Telecom and Vodafone respectively.

We also have to be careful in terms of comparisons of what may happen regarding termination rates offshore, as opposed to what will happen. In particular, paragraph 78 of the paper mentions that the EU Commission is currently considering publishing proposals that will *encourage* national telecom regulators to cut termination rates across the EU, with a decrease towards 2-4cpm. Whether this eventuates is another matter entirely, and we need to ensure that any regulatory actions towards lowering the cpm in relation to comparatives offshore are based on actual levels to compare with, rather than a possible level that might not be realistic or achieved.

Lastly, a number of submitters to the previous paper have requested that the investigation be widened to include regulation of SMS (text messaging) termination. We need to be careful that a strict objective of investigating mobile termination does not morph into a wide-ranging review into various matters that competitors may seek to examine for whatever purpose. On page 23 of the paper it states that the SMS cost per text in New Zealand is likely to be under 5 cents, which is actually below the only SMS regulated country in the world (France). In addition, the larger players in New Zealand have noted in previous submissions that text usage in New Zealand is extremely high by international standards, which would typically indicate a satisfactory outcome for consumers at present. Therefore, we would have serious reservations regarding the need to include the SMS termination as part of the formal investigation.

The Commission should investigate areas of clear market failure and operations by market players where there are significant disadvantages for consumers. However, moves towards another layer of regulation in an industry where ongoing investment is paramount to keep pace with world trends often send the wrong signals to the major players who have already invested substantial amounts to continue to re-invest.

Regards,

A handwritten signature in black ink, appearing to be 'PO'Reilly', with a long horizontal stroke extending to the right.

Phil O'Reilly
Chief Executive
Business New Zealand