



## **Commerce Commission Draft Report on Whether Mobile Termination Access Services Should Become Designated or Specified Services**

Submission from TUANZ – the Telecommunications Users Association of NZ  
28 July 2009

### **Introduction**

TUANZ welcomes the opportunity to comment on the Commission's Draft Report.

The regulation of Mobile Termination Access Services has been identified by our members as the largest unresolved issue in telecommunications policy. User associations similar to TUANZ around the world have also identified above-cost MTRs as a major barrier to competition, despite the fact that in most other jurisdictions there is substantially more competition in the mobile retail market than in New Zealand.

TUANZ fully supports the Commission's draft recommendation, noting that it bears out our many previous Submissions on this issue over the years. Our letter of 17 July 2003 alerted the Commission to the concerns of users in New Zealand and globally about the high levels of MTRs and asked the Commission to find a framework within which it could investigate.

While supporting the draft recommendations, TUANZ is extremely concerned about the time it will take on the current trajectory to reduce the rates set out in the Commission's benchmarks, in the context of the imminent entry of 2 Degrees to the market. As the Commission has identified, an efficient entrant will be limited in its ability to compete with the mobile incumbents as long as MTRs remain above cost. For 2 Degrees to have to bear this burden from its launch in August 2009 until early 2011 would greatly impair its introduction to the market. We urge the Commission to look creatively for ways in which the timetable could be truncated.

## Undertakings received

TUANZ is frustrated and disappointed that in their undertakings dated 6 May 2009, both Vodafone and Telecom neither demonstrated understanding of the public concern around this issue, nor engaged constructively in the process. We had hoped that both companies would have recognised the reality that charges for an essential service vastly higher than the benchmarks calculated by an independent regulator are unsustainable and simply not acceptable in terms of corporate citizenship. We strongly support the Commission's rejection of these offers.

## Market definition

TUANZ agrees with the market definitions set out in the Draft.

## Competition Assessment

We agree with the Commission's preliminary view on the wholesale MTAS market.

In relation to the retail mobile services market, we wish to underline the impact of the extraordinary proportion of mobile traffic that remains "on net" – more than 80% of mobile voice traffic and greater still for SMS. This illustrates the reality that to many users across a whole spectrum of market segments, the cost of calling between networks is simply unaffordable. The effect of above-cost MTRs has been to create closed user communities for the incumbent mobile carriers. This situation is anti-competitive in the worst possible way, and highly disadvantageous to users who are entitled to expect fair and open market competition.

TUANZ has had feedback that many major businesses and organisations are keen to introduce innovative uses of mobile services, especially SMS, in ways that would greatly improve transactional efficiency with their retail customers. However, their ability to introduce such services is being stifled by excessive retail costs that make such services prohibitive both to the businesses themselves and their customers. The outcome is that New Zealand businesses are deprived of productivity and efficiency gains that are readily available to equivalent businesses elsewhere, leading to an overall reduction in New Zealand's competitiveness. These excessive retail prices in turn appear to be driven by MTRs.

A related issue is the charge to terminate calls from mobiles on freephone numbers, which are a major inhibition to some larger TUANZ members. A recent survey of TUANZ members showed that 85% of respondents accepted freephone calls from land lines, but only 75% from mobiles. The dominant reason for this discrimination was the cost differential. TUANZ is aware of major institutions including financial services companies and government agencies which have ceased accepting freephone calls from their customers'

mobiles. This is due to the huge cumulative cost of these services and the failure of the incumbent mobile carriers to bring the unit prices down sufficiently to reflect the organic growth in traffic as more people rely increasingly or solely on mobiles.

We note the Commission's observation that both Telecom and Vodafone have been offering retail packages to business customers which include retail FTM prices close to or below the wholesale MTR. While such packages often sit behind non-disclosure agreements, TUANZ believes from a great deal of anecdotal evidence that such pricing is widespread. We endorse the Commission's observation that this puts fixed-only operators at a major disadvantage in the market.

While we recognise the constraints of the legislation, logic suggests to us that regardless of the benchmarking, MTRs should be set at a level no higher than the lowest observable price in the market for calls or SMS messages, whether on-net or off-net. This would make the cost of terminating SMS messages close to zero, which is where we believe they need to be.

### **Assessment framework**

TUANZ agrees with the Commission's logic in this section.

### **Factual price**

TUANZ notes the Commission's observation that its cost-based benchmarked prices are similar to those that each mobile network implicitly charges itself for on-net traffic. This underlines TUANZ's suspicion that MTRs have become in effect an insidious premium on off-net traffic. In turn this is a major entry barrier, a disincentive to users to choose a network different to that of their friends or business colleagues, and an incentive to some users to have accounts with two (or potentially more) mobile operators. Such a practice is totally contrary to the general principle of any-to-any connectivity that users are entitled to expect in an open, competitive market.

### **Framework for the Commission's Draft Recommendations**

As noted earlier, TUANZ is deeply concerned that the timetable is unlikely to result in the terms being regulated until early 2011.

For the first time users now have the prospect of a third network to choose from. For a variety of reasons, some of which relate to the regulatory process, 2 Degrees appears to have been placed in a position where its launch date is 18 months ahead of the resolution of the MTR issue. During that period it will be greatly inhibited in its sales by the well-demonstrated incentive on users to use the same network as their friends and associates. This will be exacerbated by the enthusiasm with which the mobile incumbents have

locked in customers on fixed term contracts with a diversity of termination dates.

We urge the Commission and the Government to seek ways to accelerate this process so that 2 Degrees, and any network operator which may follow 2 Degrees into the market, has a chance to compete on fair and equitable terms at the earliest possible date.

### **Assessment of potential impact of regulation**

TUANZ has consistently rejected arguments about the Waterbed Effect. We believe that in the case of the FTM market there is sufficient retail competition to ensure pass-through. Similarly in the MTM market the entry of 2 Degrees, and possibly some MVNOs, should reduce any likelihood of other prices increasing to offset reduced MTRs. In any event we have confidence that even if there were some offsetting increases these would leave users in a position of net advantage.

We note also the strong assurance given recently by the Chief Executive of Vodafone NZ (Television NZ's "Sunday" programme on 12 July) that MTRs do not factor in any way in the setting of Vodafone's retail prices. This appears to contradict the assertion in Vodafone's May 2009 Submission on MTRs (para 25) that reducing MTRs would incentivise mobile operators to increase retail prices for some mobile consumers, especially pre-pay.

### **Draft recommendation**

TUANZ strongly supports the Commission's draft recommendation in this matter.

Ernie Newman  
Chief Executive