



## Commerce Commission Mobile Termination Conference Opening Statement

Submitted on 31 August 2009

1. Thank you for the opportunity to provide a brief opening statement at the Commission's Mobile Termination conference.
2. TelstraClear supports cost-based mobile termination rates. As the Commission's international benchmarking clearly identifies, current rates are significantly above cost. This results in a negative impact on downstream markets within New Zealand.
3. The Commission's task, as an independent economic regulator, is to consider whether mobile termination regulation will promote competition for the long-term benefit of end-users. The Commission's comprehensive analysis in the draft report demonstrates that the benefits of cost-based mobile termination will flow through to New Zealand telecommunications' end-users.
4. PSTN interconnection and mobile termination are bottleneck services that share common natural monopoly characteristics. In most jurisdictions, these common bottleneck characteristics have been recognised, with both services being regulated. For what reason then, should mobile termination be treated differently in New Zealand as some suggest?
5. Since 2004 when the Commission commenced its first investigation into mobile termination, TelstraClear has supported the view that cost-based wholesale mobile termination will deliver end-user benefits, by freeing up the competitive impediments in downstream markets.

6. Transparent, multilateral, cost-based PSTN interconnection has resulted in strong competition in retail markets, with those benefits clearly flowing through to retail customers. In contrast, mobile termination rates have remained significantly above cost, with the resulting negative impacts on downstream markets.
7. Telecom New Zealand, Vodafone and 2 Degrees Limited have provided various draft undertakings as part of this investigation, in lieu of regulation. While recent undertakings by Telecom and 2Degrees improve prior offers, the significant disparity between the various undertakings means that the benefits of regulation will continue to outweigh the benefits of accepting the undertakings.
8. Vodafone has argued that regulated mobile termination rate reductions do not get passed through to New Zealand end-users. This ignores both commercial reality and market-based evidence.
9. Increasingly, customers purchase bundles of services from a single provider. This commonly includes voice access, internet access (broadband or dial-up) and calling services (tolls and fixed-to-mobile). Frequently, customers purchase specific bundles of calling as part of those packages, offering significantly discounted fixed-to-mobile rates from stand-alone 'headline' rates.
10. The total package price to the consumer reflects the total value of the bundle sold. Pricing of individual components within a retail bundle may be designed to attract customers, rather than reflecting the underlying cost of delivering the service component per se.
11. Wholesale mobile termination rates above cost reduce the ability of competing carriers to deliver compelling packages in competition with those mobile carriers who are able to cross-subsidize their own bundles with revenue from above-cost mobile termination, thereby denying New Zealand end-users with choice.
12. TelstraClear competes against retail fixed-to-mobile offers from Vodafone and Telecom that can be at, or below, the current wholesale mobile termination charge we pay to terminate calls on their networks. As an example, a corporate client was recently

offered a landline to mobile rate of 12 cents to the client's other mobiles, and 15cpm to any other mobile. Similarly, Telecom has recently offered a landline to mobile rate of 10cpm to the client's other mobiles, 16cpm to other Telecom mobiles and 28cpm to other mobiles. Pricing below wholesale mobile termination rates is not uncommon as part of a package. It is unclear how Vodafone's narrow view of competition reflects the realities in the fixed market that competition occurs for bundles of services rather than stand-alone services.

13. Even on a stand-alone basis, retail fixed-to-mobile rates continue to significantly reduce, as the Commission's draft report identifies. Simply using comparisons of 'headline' retail FTM rates will not capture the competitive dynamic from bundles of minutes.
14. For example, in the residential market, TelstraClear offers Home-to-mobile 'Yak Paks' which provide a set number of minutes to make fixed to mobile calls at any time, for a fixed charge. Likewise, in competing for business customers, TelstraClear's whole-of-business offers must be competitive as a total bundle, including fixed-to-mobile calling. Significant price reductions and discounting continues because competition in the fixed market remains strong.
15. The ACCC in Australia has also identified that improvements in competition at the retail level may emerge, in addition to price reductions, in the form of lower prices for other services provided in the bundled market, or manifest itself in the form of improved quality of service.<sup>1</sup>
16. The trade-off that Telecom and Vodafone ask for - a small reduction in mobile termination rates with a narrow pass-through mechanism - will clearly not deliver the wider competitive benefits that would occur from cost-based termination rates.
17. Concern has been expressed around the risk of creating investment uncertainty between the fixed-to-mobile termination agreements that Telecom and Vodafone have with the Crown, and the Commission's current investigation into MTAS rates. The risk in this instance is overstated as the agreements with the Crown expressly provided for future investigation by the Commission. Furthermore, the rates delivered via the agreement

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<sup>1</sup> ACCC, Mobile Terminating Access Service, *An ACCC Final Report on reviewing the declaration of the mobile terminating access service*, May 2009, p. 26.

with the Crown; as the Commission's draft report makes clear, put New Zealand on a glide path significantly above cost and quite out of step with other countries.

18. In contrast to the ongoing uncertainty around mobile termination, the regulation of PSTN interconnection removed uncertainty, and ensures that all parties can get on and compete in the retail market, without the distortionary effect of above cost termination.
19. TelstraClear considers that a further benefit of designation would be the transparent, multilateral pricing for mobile termination. Vodafone and 2Degrees have a confidential agreement with lower mobile termination rates than are available to other telecommunications providers. A benefit of regulated MTAS would be consistent cost-based termination rates available to all parties through Standard Terms, thereby ensuring fair competition.
20. The pro-competitive benefits of cost-based mobile termination have been evident since the Commission's initial Schedule 3 investigation in 2004. In TelstraClear's view, the draft undertakings, submissions and cross-submissions are not sufficient to reverse the Commission's comprehensive view set out in its draft report, and the subject of this conference.
21. Following the conference, TelstraClear supports the rapid finalisation of the Commission's recommendation to the Minister.