

VODAFONE NEW ZEALAND LIMITED



Telecommunications Act 2001

**Draft Undertaking to the Commerce Commission
under Schedule 3A in respect of the Vodafone MTM
Call Termination Service**

12 January 2009

**Draft Undertaking to the New Zealand Commerce Commission under Schedule 3A of
the Telecommunications Act 2001**

Dated 12 January 2009

Parties

1. **Vodafone New Zealand Limited** of Level 1, 20 Viaduct Harbour Avenue, Auckland
(**Vodafone**)

in favour of:

2. **New Zealand Commerce Commission** being a Crown entity established by section
8 of the Commerce Act 1986 (**Commission**).

Background

- A. Vodafone is a cellular mobile telephone network operator who operates a cellular
mobile telephone network.
- B. Vodafone gives this Undertaking pursuant to Schedule 3A of the Telecommunications
Act 2001, as amended by the Telecommunications Amendment Act (No. 2) 2006.

1 Interpretation

Unless the context indicates otherwise, the following terms have the following
meaning in this Undertaking:

- 1.1 **Access Seeker** means a provider of public switched mobile
telecommunications services in New Zealand that owns or operates a voice
switch in New Zealand and that provides a properly completed and executed
Deed of Acceptance in favour of Vodafone.
- 1.2 **Deed of Acceptance** means the deed of acceptance specified in Schedule 5.
- 1.3 **Expiry Date** means the date which is 5 years from the date of registration
pursuant to clause 2.1.
- 1.4 **Undertaking** means this Undertaking given by Vodafone to the Commission
under Schedule 3A of the Telecommunications Act 2001.
- 1.5 **Vodafone MTM Call Termination Service** means the service specified in
Schedule 1.

2 Commencement and term

- 2.1 This Undertaking takes legal effect immediately after it is registered by the
Commission under Clause 6 of Schedule 3A of the Telecommunications Act
2001 and continues until the earlier of:
 - a) the Expiry Date; and

- b) the date on which either of Vodafone or the Access Seeker provides written notice to the other party to terminate this Undertaking, in the event that Vodafone becomes an access provider for the FTM Call Termination Service (or a service substantially similar to the FTM Call Termination Service) as a designated access service under the Telecommunications Act 2001.

3 Undertaking terms and conditions

3.1 Vodafone undertakes to the Commission that, during the period this Undertaking is in effect, it will provide the Vodafone MTM Call Termination Service:

- a) specified in Schedule 1;
- b) at the prices specified in Schedule 2; and
- c) on the terms specified in Schedules 3 and 4,

to any Access Seeker.

4 Notices

4.1 Any communication in respect of this Undertaking should be made in writing to:

Attention: General Manager Wholesale and New Business Development

Address: Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland

Facsimile: (09) 355 2006

Copy to:

Attention: General Counsel

Address: Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland

Facsimile: (09) 355 2005

Signed by **Tom Chignell** as
Authorised signatory for Vodafone
New Zealand Limited in the presence of:

Signature of witness

Signature of **Tom Chignell**

Name of witness (block letters):

Place of abode:

Calling or description:

Schedule 1
Service Description
Vodafone MTM Call Termination Service

The **Vodafone Mobile Termination Access Services** comprises the MTM Call Termination Service.

The MTM Call Termination Service comprises:

- (a) acceptance of all MTM Calls handed over from the Access Seeker Network to the Vodafone Network in accordance with the MTM Call Handover Obligation for which a Vodafone Mobile Number is provided, and delivery or offer of delivery of each such MTM Call to the Designated Destination in respect of that MTM Call; and
- (b) transmission of an Answer Line Signal to the Access Seeker Network in respect of MTM Calls handed over from the Access Seeker Network to the Vodafone Network in accordance with terms of this Undertaking and answered by the called party or by some other means,

where the Access Seeker has:

- (c) for each MTM Call handed over from the Access Seeker Network to the Vodafone Network, transmitted the line, information or control signals in the Signalling Format that relate to the establishment of that MTM Call, including details in the Signalling Format of the valid Vodafone Mobile Number called; and
- (d) for each MTM Call handed over from the Access Seeker Network to the Vodafone Network that is to a number that has been ported to the Vodafone Network in accordance with the LMNP Determination, added a Hand-off Code to that number as its prefix in accordance with the Network Terms and the LMNP Voice Interconnect Specifications.

Schedule 2
Pricing
Vodafone MTM Call Termination Service

1. The price for the Vodafone MTM Call Termination Service, which the Access Seeker agrees to pay, is as follows:

Type of Chargeable MTM Call		Chargeable MTM Call rate
(a)	All Chargeable MTM Calls during the period from the Services Commencement Date to 31 March 2010 (inclusive).	15.0
(b)	All Chargeable MTM Calls during the period from 1 April 2010 to 31 March 2011 (inclusive).	14.4
(c)	All Chargeable MTM Calls during the period from 1 April 2011 to 31 March 2012 (inclusive).	14.0
(d)	All Chargeable MTM Calls during the period from 1 April 2012 to 31 March 2013 (inclusive).	13.0
(e)	All Chargeable MTM Calls during the period from 1 April 2013 to 31 March 2014 (inclusive).	12.0
(f)	All Chargeable MTM Calls during the period from 1 April 2014 to the Expiry Date (inclusive).	11.0

Notes

1. The Chargeable MTM Call rate is an amount in cents per minute.
2. The Chargeable MTM Call rate applies on a minute plus second basis, with, in the case of such Chargeable MTM Calls with a Duration of less than one minute, the Duration of those Chargeable MTM Calls being rounded up to one minute.
3. The charge for each Chargeable MTM Call is rounded up to the next whole cent.
4. For the avoidance of doubt, Chargeable MTM Calls of more than two seconds Duration will be charged for the full period of the Call, including the first two seconds.
5. Where a Chargeable MTM Call starts on one date, and ends on a different date, the Chargeable MTM Call rate applicable on the start date shall apply to the entire Call.

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|---|
| 6. Vodafone may round its total charges to the Access Seeker for all Chargeable MTM Calls on any invoice either up or down to the nearest whole cent. |
| 7. For the avoidance of doubt, Clause 17.3 of Schedule 3 of this Undertaking applies to the prices set out in this Schedule 2. |

Schedule 3
Terms and Conditions
Vodafone MTM Call Termination Service

[Refer to separate attachment: "Schedule 3, Terms and Conditions"]

Schedule 4
Service Specific Terms and Conditions
Vodafone MTM Call Termination Service

1. Interpretation

Unless the context otherwise requires, words and expressions defined or construed in the main body of this Undertaking or **Schedule 3**, and not otherwise defined or construed in this **Schedule 4**, have the same meanings as defined or construed in the main body of this Undertaking or **Schedule 3** when used in this **Schedule 4**. In addition:

Chargeable MTM Call means any MTM Call handed over from the Access Seeker Network to the Vodafone Network in accordance with the MTM Call Handover Obligation and giving rise to the transmission of an Answer Line Signal, with a Duration of greater than two seconds;

Designated Destination means the point in the Vodafone Network to which a Vodafone Mobile Number provided in respect of an MTM Call has been allocated or assigned by Vodafone, disregarding any call forwarding or like functionality or service that may have been invoked by an End User, the Access Seeker, Vodafone or a Network Operator which results in that MTM Call being routed to another point in the Vodafone Network or to any other network (including the Access Seeker Network) from which the Answer Line Signal in respect of that MTM Call emanates;

Duration means the period determined in accordance with methodologies:

- (a) employed by Vodafone in determining the actual duration of calls for the purposes of calculating the charges paid by other persons; and
- (b) which have been established having regard to:
 - (i) when an Answer Line Signal for an MTM Call is detected by Vodafone in respect of that MTM Call; and
 - (ii) when a Release Signal for that MTM Call is detected by Vodafone in respect of that MTM Call;

MTM Call means:

- (a) a series of signals associated with full duplex, real time, audio communication contained within a dedicated circuit established between the originator and the intended recipient (which may include a dedicated traffic channel over the air interface); where the bandwidth to be provided is 64 kbits per second for PCM encoded speech, circuit-switched data or fax; whether or not there is actual communication between the originator and the intended recipient of the signals; disregarding CCITT No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including calling or called numbers;
- (b) that originates:

- (i) from an Access Seeker End User;
 - (ii) from an Access Seeker Mobile Number (and the Access Seeker Mobile Number is the A-number for the MTM Call); and
 - (iii) either in a cellular mobile network in New Zealand operated by the Access Seeker or in a cellular mobile network outside New Zealand on which the Access Seeker End User is roaming;
- (c) where the number dialled by the calling party is a Vodafone Mobile Number or where a Vodafone Mobile Number is provided by the Access Seeker as a result of number translation by the Access Seeker in accordance with **Clause 5.2** (but excluding, for the avoidance of doubt, calls where a Vodafone Mobile Number is provided by the Access Seeker as a result of number translation in any other circumstances); and
- (d) the Designated Destination is in Vodafone's cellular mobile network (including Vodafone's 2G GSM cellular mobile network and Vodafone's 3G W-CDMA mobile network and any future Vodafone cellular mobile network),

but excluding any other type of call (including an FTM Call or video telephony call), text message or multi-media message.

MTM Call Handover Obligation means the obligation set out in **Clause 4**.

2. Provision of Vodafone Network Interconnection Service

2.1 Provision of Vodafone Network Interconnection Service

Subject to the terms and conditions of this Undertaking, Vodafone will make available and provide the MTM Call Termination Service to the Access Seeker.

2.2 Testing

Vodafone's obligation under **Clause 2.1** is conditional upon agreement on the successful completion of:

- (a) appropriate testing in accordance with clause 15.4 of **Subschedule 3A** to **Schedule 3** and the Operational Procedures; and
- (b) any other testing reasonably required by each party.

2.3 Commencement of testing

The parties will not be required to commence testing under **Clause 2.2** until such time as the Access Seeker advises Vodafone in writing that the Access Seeker's cellular mobile network in New Zealand is operational.

3. Price

The price of the MTM Call Termination Service to be provided under this Undertaking, and which the Access Seeker agrees to pay Vodafone, for each Chargeable MTM Call is specified in **Schedule 2**.

4. MTM Call Handover Obligation

An MTM Call that is handed over by the Access Seeker from the Access Seeker Network to the Vodafone Network shall be handed over at the Access Seeker Handover Point closest to the point of origination (which, in the case of MTM Calls that originate outside New Zealand, shall be deemed to be the Access Seeker Handover Point in Auckland).

5. Identification of MTM Calls

5.1 Calling party numbers

For the avoidance of doubt, in respect of any MTM Call handed over from the Access Seeker Network to the Vodafone Network, there shall be no charge to Vodafone for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number or any part of the A-number or any default A-number provided in accordance with **Subschedule 3D to Schedule 3**.

5.2 Number translation

The Access Seeker shall not, in relation to any MTM Call, translate the number dialled by the calling party into any other number to be presented to Vodafone, unless:

- (a) the translation is made in accordance with the requirements of the LMNP Determination and the LMNP Voice Interconnect Specifications; or
- (b) the following apply:
 - (i) Vodafone notifies the Access Seeker in writing that it requests the Access Seeker to undertake this number translation;
 - (ii) the Access Seeker agrees to undertake that number translation; and
 - (iii) the parties have agreed the terms on which that number translation will take place.

5.3 Notification of Third Party Reseller numbers

Vodafone shall use its best endeavours to notify the Access Seeker from time to time of any Vodafone Mobile Numbers that have been allocated to a Third Party Reseller and that are used on the Vodafone Network. However, for the avoidance

of doubt, if Vodafone has not notified the Access Seeker under this **Clause 5.3** for any reason, any MTM Call for which any of those Vodafone Mobile Numbers are provided as the called party number will still be an MTM Call under this Undertaking.

For the avoidance of doubt, nothing in this **Clause 5.3** limits clauses 21.4 or 21.5 of **Subschedule 3A** to **Schedule 3**.

6. Mobile Number Portability

For the purposes of applying the Network Terms and the LMNP Voice Interconnect Specifications to an MTM Call to a Vodafone Mobile Number referred to in clause 1.80.2 of **Subschedule 3A** to **Schedule 3**:

- (a) the Access Seeker may be:
 - (i) an “Originating Carrier” or a “Bypass Carrier”; or
 - (ii) a “Donor Carrier” or a “Contracted Service Deliverer” for a Network Operator; and
- (b) Vodafone may be a “Host Carrier” or a “Terminating Carrier”,

(as those terms are defined in the Network Terms).

Schedule 5
Deed of Acceptance
Vodafone MTM Call Termination Service

[Date]

By: [Full name of Access Seeker]

In favour of: Vodafone New Zealand Limited (**Vodafone**)

By this Deed:

1. We refer to the Undertaking given by Vodafone in favour of the New Zealand Commerce Commission dated [] 2009 (the **Undertaking**). All capitalised terms used in this Deed will have the same meaning as set out in the Undertaking.
2. We request that Vodafone provide the Vodafone MTM Call Termination Service in accordance with all of the terms and conditions of the Undertaking.
3. We agree that the Undertaking is legally binding on us as an Access Seeker for the Vodafone MTM Call Termination Service, that we give all warranties of an Access Seeker set out in the Undertaking and that we shall comply with all of the obligations of an Access Seeker set out in the Undertaking. Vodafone may enforce the terms of the Undertaking against us as an Access Seeker.
4. Our IRD number is [] and our GST registration number is [].
5. Our notice details, for the purposes of the Undertaking, are as follows:

[New Zealand address]

Attention: [Name or office]

Telephone: [Number]

Facsimile: [Number]

6. Where we are, at the date of this Deed, a party to an agreement with Vodafone for the provision of services equivalent or substantially similar to the Vodafone MTM Call Termination Service, we agree that, when Vodafone begins to provide the Vodafone MTM Call Termination Service to us under the terms of the Undertaking:
 - (a) Vodafone will no longer be required to provide those services to us under that agreement;
 - (b) the parts of that agreement that apply to those services shall not apply whilst Vodafone provides the Vodafone MTM Call Termination Service to us under the terms of the Undertaking; and
 - (c) that agreement shall be interpreted accordingly.
7. We undertake to make available to Vodafone, at any time when we operate a cellular mobile network in New Zealand and at any time requested by Vodafone, a telecommunications service that is the same or substantially similar to the Vodafone MTM Call Termination Service at prices no greater than those specified in Schedule 2 of this Undertaking, and otherwise on terms that are the same or substantially similar to

the terms on which Vodafone makes available the Vodafone MTM Call Service under the Undertaking.

Executed as a Deed

By [*Full name of Access Seeker*]

Director

Director