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Miss Sham Panchacharan  
Senior Analyst  
Telecommunications Branch  
Commerce Commission  
WELLINGTON  
By email: Sham.Panchacharan@comcom.govt.nz

Dear Sham,

**Submission on the proposed review of the designated access services under the Telecommunications Act 2001 – public version**

This letter is Vodafone's submission in response to the Commerce Commission's notice to telecommunications service providers of its intention to review the designated access services under the Telecommunications Act 2001, dated 25 March 2009.

Vodafone is pleased that the Commission decided to seek feedback from industry stakeholders as to whether there are any reasonable grounds for commencing an inquiry into the Resale Services under Part 1 of Schedule 3 of the Telecommunications Act 2001. The review requested by Telecom has potentially significant consequences, given that many of the services impacted are currently consumed by Access Seekers; a situation that is likely to remain for some time.

**Confidentiality**

Confidentiality is sought for that information included in square brackets in the confidential version of this submission (i.e. [c-i-c ]).

We are providing you with this information on a strictly confidential basis. The information is highly confidential and commercially sensitive to Vodafone because it is not generally known to our competitors. If this information were to be made available, it would unreasonably prejudice the commercial position of Vodafone. This highly sensitive customer information must be protected from disclosure to protect Vodafone's commercial position.

Accordingly, for the reasons set out above, this information should not be made available pursuant to any request made under the Official Information Act 1982.

Should the Commission decide to make the information available following a request, despite the reasons set out above, please provide Vodafone with not less than three working days notice so that we have the opportunity to seek to protect our position.

## **Resale Services under review**

Resale Services, which are designated access services under subpart 1 of Part 2 of Schedule 1 of the Telecommunications Act 2001 ("Act"), are as follows:

- Retail services offered by means of Telecom's fixed telecommunications network ("FTN");
- Residential local access and calling services offered by means of Telecom's FTN;
- Bundle of retail services offered by means of Telecom's FTN; and
- Retail services offered by means of Telecom's FTN as part of bundle of retail services.

## **Summary**

Vodafone agrees with Telecom that we should have good regulatory practice in New Zealand, which includes removing regulation when the need for it has passed. However Vodafone is not convinced that the need for regulation of these designated access services has passed.

Vodafone's view on how the designated access services should be treated can be summarised as follows:

- Broadband – WBS is a resale broadband product that is not used by many access seekers and there is minimal requirement for its ongoing availability.
- Data services – Vodafone acknowledges that Megalink, ATM, Frame Relay, HSDDS and One Office are legacy data services that will be grandfathered. Grandfathering these resale products would be acceptable as long as Telecom has committed to a clear migration path to replacement wholesale products over a reasonable timeframe, on terms no worse than the current ones. A key requirement of any such replacement products is comparable geographic coverage.
- Local Access – As long as the legacy PSTN remains in service (presumably until 2020) there is an ongoing requirement for resale phone line services to be designated. These products may well be the only means of providing voice services to customers where the access seeker does not have its own infrastructure.

## **Response to the Commission's questions**

***(a) Have there been any developments in the specific markets where Telecom supplies Resale Services that would suggest that the Commission's conclusions in its 2006 Schedule 3 review are no longer relevant? What are they?***

Yes there have been developments which have partially impacted the Commission's conclusions. The most significant of these being Local Loop Unbundling (LLU), but also improved bitstream wholesale products (UBS < UBA) and commercial products from Telecom Wholesale such as HSNS. But these developments have not completely eliminated the relevance of the Commission's conclusions.

Many legacy resale data services are still in use today and it will be important to ensure that there is a clear migration path to replacement wholesale products. This migration must run over a reasonable timeframe to ensure that access seekers are able to complete any necessary internal product development. The replacement wholesale products must be made available

on terms no worse than the current ones. A key requirement of any such replacement products is comparable geographic coverage.

The availability of LLU has given access seekers the option to develop their own replacements for resale data and voice services; however it is unlikely that any competitive operator will be able to justify anything close to 100% nationwide coverage. To date LLU provides alternatives only in the non-cabinetised areas of Auckland. The requirement for resale local access will remain (at least in non-LLU areas including cabinets) for as long as Telecom's PSTN remains in service.

Further to this, the UCLL provisioning processes and SLAs are not appropriate for business customer expectations; this is an area that requires further work.

***(b) To what extent has infrastructure-based competition reduced or removed or is likely to be reduce or remove the need for regulation of Resale Services or resulted in a decline of commercial uptake of Resale Services from Telecom? Please provide details.***

Infrastructure based competition has reduced the need for resale services but not removed it. As LLU and wholesale bitstream services have become available there has been a decline in the uptake of Telecom resale service. Geographic coverage remains the critical issue here. LLU can only be used to replace resale services where competitive operators have made the necessary investment. Similarly wholesale bitstream services can only replace resale services where Telecom has rolled out the necessary fibre, Ethernet and ADSL2+ or VDSL2 technology.

***(c) Have the goals of regulation in relation to the Resale Services been achieved, in terms of promoting competition for the long-term benefit of end-users? Please provide details. For example, you may like to consider whether regulatory access to the Resale Services promoted competition by increasing:***

- (i) the availability of innovative products in the market;***
- (ii) the availability of close product substitutes; or***
- (iii) the number of alternative service providers.***

The goals of regulation in relation to resale services have been achieved in terms of promoting competition, although the benefits are not as great as those from unbundled services (UBS, UBA and UCLL). Resale services do enable competition and do increase the number of alternative service providers, but do not lead to much innovation, because the nature of a resale service is a complete end-to-end service that the reseller takes no or minimal part in the delivery of.

***(d) Please provide the volumes of retail services supplied or purchased via Resale Services as well as commercial equivalents for each of the past two years:***

- (i) for Telecom, please provide the volumes supplied to your competitors; and***
- (ii) for other providers, please provide the volumes supplied to your end-users; and***
- (iii) for Telecom and other providers please provide the resale discount for those services;***

For Vodafone the volumes of resale data services have reduced as alternatives have become available. We have never resold WBS. We have a small quantity of ATM and Megalink services used for network linking and handover of other services from Telecom Wholesale. The only resale data service we currently on-sell to our customers is Frame Relay. Customer numbers have declined from [c-i-c ] two years ago to [c-i-c ] one year ago to [c-i-c ] today.

In contrast, the number of resale local access connections has grown significantly as Vodafone has expanded its business into the fixed-line area. Vodafone had [c-i-c ] resale local access lines two years ago; [c-i-c ] lines one year ago and [c-i-c ] today. These lines do not include UCLL lines.

The discount on resale local access lines is either 2% for Zone 1 or 5% for Zone 2 as defined by Telecom. The discount on Frame Relay is unknown.

***(e) Please indicate whether you have migrated, or intend to migrate, retail customers from a Resale Service to a UBA or UCLL-based access service. Please advise the extent (i.e., volumes) of such migration;***

Yes we have migrated customers from resale local access to UCLL. A high percentage of our UCLL customers ([c-i-c ] at the end of April 2009) have been migrations as we build up customer numbers on a combination of UBS and resale local access, before investing in LLU. Some Frame Relay customers have been migrated to UBS, but the majority require a better performing fibre connection (such as HSNS or equivalent services from other infrastructure providers) to migrate to.

***(f) In what ways has the availability of the designated Resale Services influenced the commercial provision of other services?***

The availability of resale local access has made the transition to UCLL more viable; customer acquisition via resale enables access seekers such as Vodafone to move up the ladder of investment.

Availability of resale data services has enabled easier entry to the business data market, although this is an area that Vodafone has not significantly capitalised on to date. Most of Vodafone's involvement with resale data services has been for the provision of business grade symmetric internet access.

Presumably also the availability of resale services has led Telecom to develop other commercial services (such as HSNS) to entice wholesale customers up the value train and discourage competitive infrastructure investment.

***(g) Are there Resale Services that could not be supplied at the same or less cost using either UBA or UCLL access services? If so, please specify.***

Many resale services could be provided at the same or lower cost using UCLL. However that is not likely to be the case for local access voice services in cabinetised areas, where sub-loop unbundling costs are likely to be much higher than exchange UCLL.

Many of the higher performing resale data services (such as ATM or even Frame Relay) also do not have a direct replacement using UBA or UCLL services. Such services require fibre-based

replacements (such as HSNS), with business-grade SLAs. The technical performance and SLAs offered with UBA and to a lesser extent UCLL are clearly residential “best-efforts” only. With UCLL the technical performance is much more under the control of the access seeker, but provisioning and faults processes and SLAs remain biased towards residential requirements.

***(h) Telecom is currently augmenting their network with many street cabinets (cabinetisation). This will allow alternate service providers to provide end-users with high speed broadband service. However, this may reduce the take-up of exchange-based UCLL in those areas. What implication would cabinetisation have in terms of the importance of Resale Services?***

Cabinetisation is likely to prevent UCLL from being relevant to almost 50% of New Zealand access lines. The number of alternate service providers is likely to be reduced because of cabinetisation. It may well be that no access seekers take up sub-loop unbundling if the cost of that service (especially backhaul) is too high. Therefore resale local access will remain critically important in cabinetised areas.

***(j) What do you expect would happen if the Resale Services were not regulated?***

Telecom has indicated that it would continue to provide the same or similar services on commercial terms, but this does not give access seekers appropriate certainty.

If resale services were withdrawn the impact would depend on the category of resale service. The impact of withdrawing WBS would be negligible as valid alternatives exist in UBS/UBA and UCLL. The impact of withdrawing resale data services would be moderate, but this could be mitigated by Telecom committing to a clear migration path to replacement wholesale products over a reasonable timeframe, on terms no worse than the current ones. A key requirement of any such replacement products is comparable geographic coverage.

Withdrawal of resale local access would have drastic consequences. It would mean Vodafone would not be able to provide service to [c-i-c ] existing customers. UCLL is not a short-term alternative for most of these and may never be an alternative for many. Regulation of resale local access must continue for as long as the legacy PSTN remains in service (presumably until 2020).

As Telecom replaces its legacy PSTN with next generation voice services, it will be important to ensure appropriate wholesale regulation of the replacement service, on a more unbundled basis (as with UBA) and on properly equivalent terms. Vodafone already offers such a wholesale voice service (combined with bitstream access) today.

The only alternative to ongoing regulation is a suitably binding undertaking from Telecom.

***(k) What are the factors that the Commission should consider when assessing the value of retaining the Resale Services?***

Firstly the Commission must consider the extent to which the resale services are in use today. Clearly resale local access is in widespread use today, while resale data services are not so widely deployed but still in numbers that cannot be ignored.

Secondly the Commission must consider the availability of alternate service and the extent to which they are a direct replacement, and are available to access seekers on comparable or better terms. UCLL and UBA can replace some resale data services but not all. Higher performing business grade services are also required.

Thirdly, geographic coverage of alternatives is a key issue. Access seekers can determine the extent to which they roll-out UCLL, but they may have little choice in cabinetised areas. Resale or wholesale alternatives need to be available. The same applies to alternate services provided by Telecom; they need to have comparable geographic coverage to the current resale services.

Timeframe is also a factor, with clear migration paths provided for any resale services to be discontinued, over a reasonable timeframe that allows access seekers to complete any necessary internal product development.

Please feel free to contact me in relation to this letter if any clarification would be helpful. In this regard, I can be contacted by telephone on 021 2750003 or via email at [david.diprose@vodafone.com](mailto:david.diprose@vodafone.com).

Yours sincerely,

A handwritten signature in black ink, appearing to read 'David Diprose', written over a white rectangular box.

David Diprose  
Head of Fixed Line Regulatory  
Vodafone New Zealand Limited