



3 May 2010

Dr Ross Patterson  
Telecommunications Commissioner  
**Commerce Commission**  
Via email

Dear Ross

### **MOBILE TERMINATION ACCESS INVESTIGATION – RECONSIDERATION**

TUANZ has received your circular to interested parties dated 27 April 2010, and responds as follows.

Vodafone's Talk Add-on plan announced on 16 April is most definitely material to the issue of regulation of MTRs. It provides real-life evidence supporting TUANZ's stated view that MTRs materially above cost have a powerful anti-competitive effect on New Zealand's mobile telecommunications market.

TUANZ acknowledges that at a glance Vodafone's plan represents a significant decrease in prices for customers in some instances. But it comes with two major disadvantages for users.

#### **1 Increasing the differential between on-net and off-net traffic is contrary to the desire of users for non-discriminatory, simple, fair pricing.**

TUANZ is not implacably opposed to some differential between on-net and off-net pricing, but we are extremely concerned about the scale of Vodafone's differentials. A few percentage points difference, or perhaps a short term promotion might be acceptable. However, for a user not to know readily whether a specific call will cost 6c or 46c is unacceptable. This wide variation is especially concerning in the price-sensitive prepay market where many users are least able to afford unexpected charges.

This desire of users to know with certainty, within a reasonable range, what each call will cost them is widely recognised. Indeed it was re-stated recently by Vodafone's own GM of Consumer Marketing, David Gutteridge, who said in the announcement of the Plan on 16 April "our Prepay customers want the power to choose how to use their mobiles without worrying about costs." TUANZ agrees with Mr Gutteridge. However, that desire by customers includes not worrying about whether the person they are calling is on the

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same network, or a different one. For a Prepay customer to find the cost increases eightfold simply because they have unwittingly called someone on a competitor's network is unacceptable.

Users seek a market where excessive price discrimination of this kind is disciplined by competition. If MTRs were at cost-oriented, regulated levels, other operators could respond to Vodafone's offer by introducing their own retail plans that treated all calls similarly without discriminating by terminating carrier. Indeed Vodafone itself could in theory respond by reducing all calls to the same 6c level. But with Vodafone having to pay Telecom as much as 12cpm for MTRs it is obviously unable to offer calls to Telecom at a retail price of 6c, while other operators are unable to compete against the Vodafone offer for similar reasons. Regulating MTRs at cost-oriented levels would allow the market to decide what level of price discrimination, if any, is acceptable to consumers.

## **2 Above-cost MTRs stifle the ability of smaller operators to respond competitively to excessive differential prices, and thus deprive users of the long term benefit of competition**

The unique structure of the New Zealand mobile market (with two level-pegging market leaders, distantly followed by one small new entrant and several small MVNOs), combined with MTRs that remain well above cost, introduces a serious risk that the market will be foreclosed to new, smaller competitors. The two market leaders both benefit from high MTRs, while 2degrees and MVNOs are constrained in reducing their retail charge for off-net traffic by the inflated amounts they are forced pay the terminating carrier.

If both Telecom and Vodafone were to proliferate on-net/off-net differential pricing on such a large scale – and we understand that Vodafone has more plans in this direction - they could completely close out competition from any other carrier which lacks the scale to make on-net only calling marketable to its small cluster of customers.

Vodafone positions its differential pricing as discounting for on-net traffic. TUANZ sees it differently – as a surcharge for off-net traffic. It means that callers who exercise the choice to be on a network other than Vodafone's not only face inflated prices for most of their outward calls, but also run the risk of receiving fewer calls from Vodafone customers because of the differential.

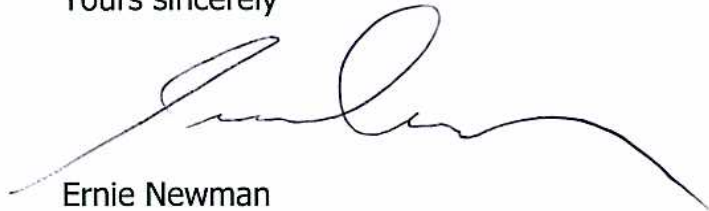
If the Commission were to regulate MTRs immediately to cost-oriented levels, new entrant carriers would be free to compete against incumbents' offers by introducing a "call who you like" flat rate tariff. But with MTRs far above cost, they cannot. This will skew the market and shore up Vodafone's and Telecom's joint dominant position. It will not be fixed until the MTRs reach a level that reflects the underlying cost.

Hence, TUANZ reiterates our view that MTRs materially above cost are contrary to users' interests by:

- Creating an artificial surcharge for off-net calling up to eight times the on-net rate with no economic justification
- Confusing customers and creating high potential for bill shock
- Depriving users of the benefits of smaller new entrants in the mobile market, and
- Offending the principle of any-to-any connectivity that users hold as a critical feature of a healthy telecommunications market

We therefore ask that the Commission take note of this powerful new evidence and recommend that the government introduce full regulation of mobile termination charges.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ernie Newman', with a long, sweeping underline that extends to the right.

Ernie Newman  
Chief Executive