

SUBMISSION

Review of Resale Services

Under Schedule 3

Of the Telecommunications Act 2001

Comments and Question
Answers from

NZ Communications Ltd (NZC)

27th April 2009

Version FINAL

Summary

- This review of resale market represents an initiative to repeal and reduce the amount of regulation that is imposed on Telecom. It is the view of NZC that there has been no material improvement in the market structure or market pricing since this legislation was passed in 2006. We urge the Commission to deny this application for regulatory dilution until New Zealand achieves an acceptable OECD telecommunications rating.
- We urge the ComCom to expand scope and consider whether the review of resale services should include mobile equivalence of inputs so that backhaul for mobile networks can be considered.
- Telecom has proved its inability to offer any services to real competitors unless regulation is in place. This was proved for eight years when no cell tower co-location was available until the day of a Standard Terms Determination was made binding. We urge the commission to consider all the damaging obfuscation which has occurred in New Zealand between the 1999 Fletcher Ministerial enquiry into Telecommunications and 2009 as having proved the need for detailed prescriptive legislation – none of which should be rescinded until New Zealand is in the OECD ‘s top ten for all telecommunications metrics.

Introduction

This submission is from **NZ Communications Limited** ('NZN') - the company building New Zealand's third mobile phone network across the country.

NZN is an infrastructure-based telecommunications company which has built over 280 new cell sites in Auckland, Wellington and Christchurch and is committed to building another 200 sites before commencing commercial services. To complete the entire project over 1000 more cell sites will need to be built.

NZN is New Zealand's largest new private sector infrastructure project and is the only new entrant to commit over \$250m investment into the industry since the 2006 Telecommunications Act was introduced. This Act signaled that there is government commitment for more competition in the telecommunications industry.

NZN has been a catalyst in Telecom and Vodafone, increasing their infrastructure build in response to our planned entry into the market. As a consequence, more cell sites have been built in New Zealand in the last 18 months than the previous 10 years.

The New Zealand mobile phone business is a NZD \$2.5bn dollar business, which is continuing to expand at approximately 15% PA as a consequence of consumer preference to substitute fixed lines for mobile connections. The increase in the appetite for wireless broadband technologies has also grown as consumers demand more usage of handheld broadband devices such as video phones, 3G Media devices, Blackberry's and HSPDA broadband 3G dongles. This new technology means more antennas must be erected and these must be erected in a cost effective manner to ensure the New Zealand consumer and business will extract the full benefit from this technology and continue to improve its economic competitiveness.

Because of the Government's plan for further investment in a fibre network, in addition to the changes to the Telecommunications Act, we believe it is in the interest of the Government and local community to further consider the specialist requirements of the telecommunications industry. The Government should consider a break out section in the RMA Amendment Act detailing the specific rules for the Telecommunications industry. This will avoid the quagmire of the earlier part of this decade whereby a new Telecommunications act failed in 2001, because of a lack of integration with other supporting legislation.

NZN is 20% owned by the pan Maori Hautaki spectrum group and 4 specialist investment firms (GEMS, Trilogy, CVP and KLR) who have collectively built over 20 cellular networks around the world.

Tex Edwards
NZ Communications Ltd
Public Policy and Strategy

- 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?**

NZC purchases services from Telecom Wholesale, it has been an ongoing concern that this area is not regulated and there is no binding Wholesale Charter that impacts service provision into the mobile market.

There is no evidence to suggest regulation should be relaxed in this area. The Commission should review why there has been little investment in the area and the failure to see scalable nationwide deployment using these resale services.

One of the major reasons that there has been no scalable expansion into this market is that there are no market power rules. Infrastructure builders, such as Vodafone and Orcon, have suffered from pocket pricing. This development is worthy of further investigation before any regulatory settings are relaxed.

- b) **To what extent has infrastructure-based competition reduced or removed or is likely to be reduced 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.**

NZC has a substantial concern that there is no national or partially national reseller arrangements which would enable a third mobile operator to partner within fixed line services, this is because no material competitor has built infrastructure as a consequence of the 2006 regulatory changes.

NZC believe the Commission should review why so little fixed line infrastructure has been built since the 2006 Act. We urge the Commission to review the impact of "wholesale pocket pricing" on Vodafone's red ASDL network. We believe that the failure to set market power rules has meant that the resale service benefits created by the 2006 Act have not worked properly.

- 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**

NZC believes there is still a substantial amount of change that is required to meet the goals of the resale services and the 2006 Act. The ComCom, quarterly review illustrates this.

(ii) the availability of close product substitutes; or

NZC believes that the objectives of the resale services have not been met and there is no substitute that would facilitate a removal of the resale provision. Should aggressive mobile pricing plans dramatically increase fixed to mobile substitution and therefore landline pricing would start to drop – then this resale service investigation could be revisited.

It must be of critical significance that fixed line rentals have increased in the period since the legislation was first enacted and Telecom is still earning over a 23% return on equity and Vodafone a return on equity which is estimated to be over 50% P.A(*NZC estimates*). These excessive returns by international standards illustrate the need for ongoing regulation.

(iii) the number of alternative service providers

NZC believes that a more aggressive market structure is needed and that the Government’s objectives will not be met without more prescriptive regulation. NZC believe the commission should be concerned about the potential for a “*Market Rotation*” of market shares with no impact on the consumer. We believe this rotation will mean that Vodafone increases its market share in fixed line services and Telecom increases its market share in mobile services. There is no vibrant fixed line market where there is a scalable third player who can ensure a paradigm change in competition.

Because the bundling of telecommunication services will be a competitive response to a new mobile player, and there is no scalable nationwide fixed line alternative network, it forces the question of - will abuse of market power be considered?

NZC urges the Commission to urgently review the structure of the market and abuse of market power rules to finish the task started by initiating the resale rules.

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;**

NZC purchases backhaul from Telecom Wholesale. Initially, delays in provision of this service caused concerns and additional cost. NZC will submit under separate confidential note the terms and volumes of these services. We note that they are not covered by the Resale Services of Schedule 3 and that there is no binding wholesale charter to ensure timely and cost effective provision of these services.

- 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 (ie volumes) of such migration.**

NZC is not in the fixed line infrastructure business this is because consumers have expressed a preference for mobile voice and broadband. NZC understands less than 50 telephone exchanges have been unbundled and the market share of the incumbent has dropped less than 7% in real terms. This represents a benign outcome is not a success given the considerable amount of work that has taken place. Telecom's return on equity is still 23% suggesting that competition still has not properly commenced.

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

NZC believes that backhaul provision for mobile should be included.

- 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.**

Yes mobile backhaul

- 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 should have prompted another regulatory review focused on Market Power and fibre to the home. This needs to be reviewed because the 2006 regulatory changes were intended to increase competition, not just the requirement for Telecom to invest more.

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

It will stimulate further resources to reduce regulation and it will divert further time and resources from the Commerce Commission in reviewing non-core items. We urge a continued priority discipline to prevent the Commission from being absorbed

in reviews of regulatory items which have little impact. We believe that this request from Telecom will divert speedy efforts to resolve other more compelling regulatory matters, specifically those which impact mobile termination.

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

NZC highlights the forthcoming problem associated NZC believes that the objectives of the Resale Services have not been met and there are no substantial scalable new entrants into the market with the bundling of products and the lack of equivalence in regulatory settings. Bundling of fixed broadband services will be used to quarantine the aspirations of a third mobile operator, it is imperative that a new broadband player be available to work with a third mobile operator. For this reason, continued vigilance on the broadband regulatory settings is required.

Summary

1. The balance of evidence proves that there is no reason to dilute the current regulatory pressure on Telecom NZ.
2. Competition for fixed line retail services was facilitated by the Commerce Commission during the 2006 PSTN inquiry when Vodafone argued successfully that retail competition would not be efficiently implemented unless wholesale charging between Vodafone and Telecom was based on Bill & Keep AND that retail pricing would not be allowed to discriminate Vodafone local customers from Telecom local customers. This was a key decision in enabling competition at the local calling retail market.
3. The balance of evidence available to the Commerce Commission illustrates the ongoing need to have detailed prescriptive codes to unblock bottleneck infrastructure access.
4. All the evidence surrounding the NZC relationship with Telecom NZ and its deployment of NZC infrastructure further illustrates the requirement for the Commission to consider expanding the scope of regulation to include an equivalence of service provision for mobile operators.

Suggested action points worthy of more investigation

- Why is Mobile backhaul not included in the ULL schedule 3 finding?
- Why is the Telecom Wholesale charter not a binding document, it gives no comfort to infrastructure builders, as it is just a pyrrhic document to assure the commission. NZC believes this document should be made binding.
- To benefit the New Zealand end user, more economic efficiency arguments should be considered in providing regulation, specifically on backhaul. The New Zealand consumer has already paid for three sets of cell towers, because it was not rationale for the incumbents to lease backhaul. Does the New Zealand consumer really want to pay for three sets of provincial backhaul?