



SUBMISSION TO THE COMMERCE COMMISSION

SCHEDULE THREE INVESTIGATION - AMENDMENTS TO ROAMING AND CO-LOCATION SERVICES

Response to Issues Paper of 15 December 2006
 appending
Comment on Vodafone's proposed access undertaking.

Telecommunications Users Association of NZ Inc
9 March 2007

Introduction

TUANZ, as an industry organisation composed largely of private businesses, offers its comments from the standpoint that government regulation should never be more intrusive on private enterprise than is necessary. TUANZ supports the general thrust of the Telecommunications Act as currently amended, on the basis that the long term interests of the end user in the provision of telecommunication services are best served by sustainable competition.

TUANZ is in favour of infrastructure-based competition wherever this is the strategic choice of investors. In the current New Zealand market, the opportunity for roaming access and co-location access on reasonable terms is vital to the growth of sustainable competition in telecommunication service provision. Roaming and co-location are critical to the entry of new providers to the New Zealand market, offering:

- Access to shared infrastructure that may be essential to allow new suppliers to enter mobile service markets without up-front infrastructure costs that are unsustainable on the revenues derived from a small to moderate market share.
- More efficient use of infrastructure to deliver competitive services, which should reduce average costs and provide more scope for reduced prices.
- Minimisation of the environmental impact of towers and infrastructure sites to counter local resistance to infrastructure rollout for enhanced services such as 3G and WiFi.

TUANZ has a general preference for market incentives rather than strict regulation, but in this case we recognize that a number of factors point to the need for clear regulatory support for new market entrants.

Some other national markets have been able to rely on market-based solutions in the development of competitive mobile cellular phone services. But several contemporary factors rule this out in New Zealand.

- The mobile telephony market is now close to maturity and therefore competition for users is intense, with any new entrant's gain being an incumbent's loss. This was not the case when a second carrier first entered the New Zealand market, at which time most growth could come from customers new to the growing market for cellular mobile service. The migration to next-generation networks is likewise substantially a matter of substitution rather than growth, so any new entrants face extremely stiff resistance from incumbents and little willingness on the part of infrastructure-owning operators to cooperate for mutual benefit.
- The mature state of the mobile telephony market also affects availability of sites and facilities needed for mobile network infrastructure. Most of the best sites are already occupied by incumbents, and this increases the bottleneck value of towers,

antenna sites, and property access agreements held by these incumbents.

- While the cost of technical equipment for cellular network infrastructure has fallen significantly over recent years, site costs have continued to increase, and now form a much larger proportion of total investment costs for network infrastructure rollout.
- New Zealand's incumbent national cellular networks each operate to unique technical standards. As a result there is no competition with regard to offering of roaming services in a particular technology – eg CDMA or GSM (though co-location services may be more technology-neutral). In the case of GSM, the incumbent operator (Vodafone) has a monopoly of rights to the 900 MHz spectrum that is essential for economic service provision to low-density population areas.

TUANZ appreciates that the Commission faces a difficult task in balancing incentives for

- incumbents to offer access services to competitors,
- new entrants to provide competitive cellular mobile services to a national market, and
- both incumbents and new entrants to make infrastructure investments that will form a deeper foundation for sustained competitive service delivery.

TUANZ has previously advocated that the Commission should move national roaming and co-location services from the "Specified service" category to the "Designated service" category in Schedule 3. This view was strengthened through TUANZ participation in the TCF self-regulatory process for development of the Co-location Code, during which it became evident that a Code relating to "Specified services" could not address pricing issues in any effective way, and therefore could provide only limited effective assistance to access seekers, because any non-price terms and conditions negotiated in accordance with such a Code may be negated by the failure of pricing negotiations not subject to any Code. TUANZ considers it essential that roaming and co-location should be scheduled as "Designated services".

Such a move entails the development of effective pricing principles. TUANZ offers comments below to most questions raised in the Issues Paper. TUANZ may form views on other aspects of service descriptions and terms after review of submissions from prospective access seekers and access providers during this investigation.

TUANZ appreciates that the Commission invites consideration of more far-reaching issues concerning future interoperability of communication networks based upon different technologies. In our responses to the Issues Paper, we offer some encouragement to consideration of inter-network interconnection, but urge that the priority focus of this process should remain the enhancement of competition in voice and data services over cellular mobile networks.

TUANZ also notes that cost-based and timely mobile number portability is essential, in addition to roaming and co-location, for successful entry to a cellular mobile market in which most potential customers already have a mobile service. Current arrangements provide insufficient incentive for prompt response to a request to port a number. We note that best practice transfer times of less than half an hour are now available to customers switching between service providers in Australia, and we urge action to ensure that New Zealand end users receive comparable access to the benefits of competition.

Responses to Consolidated List of Questions

Chapter 3

Question 3.1

(a) To what extent are commercial negotiations being undertaken for the services?

We understand that commercial negotiations have not been concluded to the satisfaction of both parties in any case where the infrastructure access provider is in retail competition with the access seeker.

(b) What is the likelihood of commercial agreements being reached for the services?

One consequence of relatively high market penetration is that those access providers who are also retail mobile service providers have no incentive to facilitate market entry of a retail competitor. Such entry will result in i) substitution of high-margin retail revenues for lower-margin wholesale revenues, and ii) price and value competition for retail customers in mobile services, particularly voice services where the market is relatively mature and there is limited scope for total market growth. Access providers who are also retail service providers must see access provision as a zero-sum game for them, with little to gain and all to lose in terms of market share and monopoly pricing.

(c) What is the likely counterfactual for the services?

TUANZ considers it highly unlikely that any infrastructure-based competition in mobile voice services will emerge in New Zealand unless co-location and roaming markets are appropriately regulated for the encouragement of competitive investment.

In the current cellular network duopoly, competition is limited because the incompatible wireless technologies tend to lock users into a single network through the user's investment in handsets that can not be transferred to a "competing" network that uses different wireless technology. Without active support for new entrants to the retail market, New Zealand users would continue to pay for services at prices typical of an infrastructure monopoly in control of bottleneck facilities.

Question 3.2

(a) What is the likely factual? What would be an appropriate designated roaming service and co-location service? How would the service compare to the services available under the counterfactual (in particular, in terms of pricing)?

An effective pro-competitive roaming and co-location service environment must allow new entrants to offer nation-wide service to their initial customers through roaming and co-location access, whilst preserving incentive for such new entrants to invest in their own infrastructure whenever their market share delivers sufficient revenue to support separate infrastructure.

Incumbents have no market incentive to offer roaming and co-location at prices that will facilitate competitors, therefore this can only be achieved by designated service price regulation that provides a proxy for a competitive wholesale price for the relevant services to new entrants. The price must be low enough to leave scope for that access seeker to offer competitive retail pricing.

If new entrants are to be encouraged to invest in their own networks, the pricing of co-location service must be as low as possible (for example, cost-based plus a risk margin). Consequently, the pricing of roaming service needs to balance both investment incentives and retail price competition: it should be low enough to permit the access seeker to provide roaming access to its own customers at a price competitive with the incumbent; and it should be high enough to motivate an access seeker to move up the "ladder of investment" to a co-location service (and in some circumstances to independent infrastructure), when this can be supported by growth in their market share and revenue.

(b) How would such changes to the current specified services lead to long term benefits for end-users, which would not otherwise have been forthcoming?

The absence of pricing elements in the regulation of specified services has resulted in the general failure of commercial negotiation with regard to these services.

Designation is an essential step to promotion of the long term interests of end users through competition.

What empirical evidence is available to support such scenarios?

See answer to Q 3.3(d).

(c) What is the interrelationship between the roaming and co-location services? How does the price of one service affect the other?

Roaming and co-location are alternative and complementary mechanisms that make it easier for a new entrant to participate in a national market. Co-location enables direct user access to the home network, whereas roaming substitutes a re-sold access service for home network access. The prices are therefore alternative, not cumulative. The prices affect each other only as they relate to initial business viability and to the longer-term investment

incentives of the access seeker (see below). If roaming service is priced too low, it may reduce the market incentive for investment in co-location or separate infrastructure by new entrants.

(d) To what extent would amendments to the regulated service reduce barriers to entry?

Amendments that affect the pricing and availability of the service should significantly reduce barriers to entry by reducing costs and improving access to potential customers for new entrants. During early stages of market entry, new entrants must be able to operate partially as MVNOs with limited network infrastructure of their own, and therefore national roaming needs to be priced as a wholesale service with a wide margin for retail price competition between MVNO/entrant and incumbent.

Question 3.3

(a) In principle, what benefits and costs do respondents consider would result from designating the services (that would not eventuate in the absence of such designation)?

The benefits will be increased opportunity for competitive provision of mobile telephony services, to the long term benefit of the end user.

We must assume that there will be some additional regulatory costs to providers in the processes needed to determine access terms, conditions, and pricing.

There may be some decrease in the profitability of mobile telephone services as a result of increased competition – however we do not consider that any artifacts of increased competition should be calculated as economic costs, because they are incurred only in the generation of increased consumer benefit.

(b) Should these benefits and costs be evaluated in qualitative or quantitative terms (or a combination)? Is there any particular modelling approach that should be adopted to best evaluate the benefits and costs?

TUANZ believes that a combination of qualitative and quantitative analyses should be used, because the primary objective is to create regulatory conditions for a more robust competitive market for the services, in which benefits to industry participants or to investors are secondary considerations.

(c) To what extent have parties themselves conducted or intend to conduct a quantitative assessment of the impact of designating roaming and co-location services in New Zealand (for example, by modelling the impact of designation on the business case of a new entrant)?

This issue falls outside TUANZ responsibilities.

(d) What empirical evidence is available from overseas jurisdictions on the impact regulating roaming and/or co-location services (or the threat of regulation) has made on new entry?

National roaming services for new entrants have been a regulatory requirement in many countries including seven EU members (Denmark, France, Italy, Portugal, Spain, Sweden and Netherlands). In UK, national roaming has been achieved on a commercial basis, but only because Ofcom had the power to strictly regulate it and had indicated preparedness to apply that power (2004-5).

Unregulated commercial solutions have only been achieved in markets where there was already significant nationwide competition in mobile telephony infrastructure. This is not yet the case in New Zealand, because a user-owned mobile handset on the GSM national network is technically incompatible with the CDMA national network, and therefore the costs for a user to switch between service providers are relatively high.

(e) Do respondents have a view on how any interplay between roaming and co-location should be accounted for in the Commission's assessment of the benefits of any amendments?

See response to 3.3(c)

(f) Could one service act as a substitute for the other? If so under what conditions?

As noted at 3.2(c), the two services are technical substitutes for each other, for a specific access seeker in a specific location. However, an access provider should not be able to deny access to one of these services on the ground that the other service is available. Access seekers should have the choice of either service in any locality. The business decisions of an access seeker to invest in co-location will depend on the relative pricing of the services, factored by the density of its subscriber traffic in a particular geographic area. Since co-location entails substantial fixed costs and sunk investments, co-location will be chosen where the investment is justified by the density of demand for the new entrant's network subscribers, measured against the ongoing running costs of purchasing roaming service from an incumbent.

National roaming access is the more essential for allowing any new entrant into the market, because few users will subscribe to a service that does not offer national access. Co-location is a second step on the investment ladder.

Chapter 4

Question 4.1

(a) Should the requirement to cover 10% of the area in which the New Zealand population normally lives or works before accessing the roaming regulation still be in place?

(b) If so, what should the 10% cover – population or area?

(c) Should an access seeker still be obliged to commit to rolling out a national network?

(d) If national roll-out is unnecessary, should there be a minimum roll-out (% of population) necessary?

In answer to (a), (b) and (c) and (d) together: TUANZ considers it reasonable that a market entrant, in order to qualify as an access seeker for roaming services, should demonstrate a commitment to providing nation-wide service for its subscribers, including an initial minimum of 10% of the New Zealand population to be served with the entrant's own network access infrastructure. The incentives for further infrastructure roll-out should arise as far as possible from the pricing of the roaming and co-location services.

A new entrant should not be required to roll out its own infrastructure in any location where the Commission is satisfied that the long term interest of the end user would be better served by ongoing roaming arrangements. The sort of criteria that might apply can be found in Schedule 1, sections 5 and 6 of the Telecommunications Act, regarding general access principles and limits to access. They qualify the general access principles in relation to technical, economic, environmental and qualitative issues concerning the service to be delivered to the end user and the interests of all parties involved in delivery of the service. TUANZ suggests that access principles for an ongoing roaming service could be developed with industry consultation, further to the assumption that any competitive mobile service provider is committed to providing a national service to its subscribers.

(e) *Should roaming cease to be available in particular areas as a new entrant builds out its network?*

It is reasonable that price-regulated access rights should lapse once a service provider has access to its own infrastructure in a service location. The incentives for a new entrant to build out its own network should be commercial, in that on-net traffic should be more profitable once market share thresholds are reached. However, TUANZ notes that from a user perspective, there is also a good case to maintain a commercial basis for emergency inter-network roaming access as a backup, for example in times of network outage or congestion.

(f) *Should there be a sunset clause for the provision of roaming?*

No - The Telecommunications Amendment Act 2006 provisions for review of Schedule 3 service designations are adequate.

(g) *Should the amended roaming regulation include 3G-3G roaming?*

Yes – the increased density of base stations for 3G services will require heavy site investment and warrants a reasonable incentive for infrastructure sharing, both by roaming and by co-location.

(h) *Do value-added services, as set out in the current roaming service description, include data services? Should data services be specifically included in the roaming service description?*

It is absolutely essential that data services be included in any roaming service definition. Data services are increasingly important for business and private users, and also as revenue generators to support infrastructure investment. For example, data services includes VOIP, instant messaging, and file transfer

tools critical to mobile business applications for which national access is essential.

(i) What provisions need to be made to facilitate data roaming?

It is normal for cellular mobile networks to provide data services to their own subscribers on a private Internet Protocol network, which connects to the public Internet only through the host network's own private gateway servers. These servers are usually configured to provide services exclusively to network subscribers.

For proper data roaming, mobile network data gateway servers must be configured to recognize the presence of a roaming user from another subscription network, to notify the home network of the roaming user's network location, and to create a data path to the roaming user's home network data gateway, in order for normal data service to be enjoyed by the roaming user.

Data roaming setup is therefore a separate and different operation to the standard voice roaming arrangements that simply establish a roaming user as a temporary user on the roaming network (after an authorization check) and send only billing information to the home network.

In the case of both voice and data roaming, billing to the user should reflect the terms and conditions of the user's contract with the home network, regardless of the way that such services are billed on the roaming host network.

(j) Are there any technical issues associated with voice roaming which the Commission should be aware of?

(k) Are there any technical issues associated with data roaming which the Commission should be aware of?

(l) Should inter-network roaming (roaming between different technology types) be considered?

True roaming should be understood as "authorized access to a subscriber network from a technically-compatible user terminal that is subscribed to a different network". The current specified service refers only to cellular mobile services, and TUANZ recommends that this description be retained. It would not be reasonable to require cellular mobile networks to accept roaming from other wireless access technologies (eg WiFi) which operate on very different technical principles and business models.

Most current user handsets are capable of accessing only networks that use a single one of the various cellular mobile standards – eg TDMA or GSM or CDMA or WCDMA (backwards compatible to GSM but not to CDMA). Each standard uses different wireless transmission and reception protocols, radiofrequencies, and other variations.

However, TUANZ notes that handsets and other portable devices capable of accessing more than one type of network are beginning to enter the high end of the market, principally to serve globe-trotting business users. We foresee

that technology-agile handsets are likely to become more common and less expensive over time.

We therefore consider it would be appropriate to define the roaming service with sufficient technical neutrality to allow access by multi-protocol devices, i.e roaming access should be available to any device

- technically capable of meeting the host network's interconnection protocols, and
- subscribed to a home network that is recognized by the roaming host network.

(m) Is inter-network roaming feasible within the time period usually used to assess new entry (2-3 years)? If so on what types of networks should the service cover?

To our understanding, this issue should be left to any market-driven development of agile handsets or other multi-service terminals and should not require any specific regulatory consideration.

No network operator should be required to offer roaming access to an incompatible device (eg a WiFi or WiMax device) or to a device without a recognized network subscription.

(n) If inter-network roaming is considered, does this affect the markets already defined? If so how?

The term "roaming" should not be applied to the possibility of interconnection of voice or data traffic between cellular mobile networks and other wireless access services such as HF trunk radio, satellite services, or wireless LAN/WAN services (WiFi, WiMax etc). TUANZ supports the facilitation of such interconnection arrangements through appropriate gateway facilities and commercial arrangements that maintain the boundary (visible both to users and to operators) between regulated PSTN-type services and unregulated, innovative wired or wireless communication services such as ISP networks.

It is likely that such services may benefit from some co-location and network backhaul access services, and end-users would benefit from some competition between established and innovative service options. An argument could be made that non-cellular public wireless access systems, such as WiMax, should be eligible as access seekers for Co-location Services, to the extent that they met other criteria as public telecommunication networks. Nevertheless, TUANZ considers these issues to be outside the scope of cellular mobile regulation and better treated in a separate discussion.

(o) What are the technical issues that need to be considered for inter-network roaming?

As the immediate issue should be confined to cellular mobile roaming access, we suggest that the relevant technical issues relate solely to optional handset or other portable device configuration, and therefore they lie outside the scope of regulatory interest.

Question 4.2

(a) What is the most appropriate pricing methodology for access to roaming services – retail minus or cost-based?

TUANZ considers that a retail-minus pricing for roaming access would provide the most stable basis on which a roaming access seeker can offer some price competition to an incumbent, at the same time as incentive is maintained for access seekers to consider investment in co-located or standalone facilities, as market share and revenue growth permit.

Critically, the roaming revenue-sharing approach used in GSM international roaming should not be permitted. GSM international roaming charges remain one of the scandals of telecommunication profiteering, with up to 1000% markups above domestic pricing even on such close international routes as New Zealand-Australia mobile roaming on networks in common ownership. Roaming services, like termination services, present opportunities for transfer pricing manipulation, against which users and regulators must be vigilant.

TUANZ supports a pricing approach to the service as a wholesale access service, not a per-call value-added service.

(b) If retail-minus, what would the various components of such a price look like (for example,

- **what would be the appropriate retail price(s), would it be necessary to impute a retail price;**
- **what would be the avoided costs?**

Retail pricing arrangements in a competitive market can be complex. An effective retail-minus price would need to be based upon a retail benchmark, established by the Commission, based on the weighted average of a basket of prices that include all relevant elements such as network subscription charges, “on-net” call prices, time of day discounts, flagfalls, call volume caps, data volume caps and discounts, business volume discounts and “free” value-added service enhancements that may be used to cross-subsidise prices between retail customers. Handset acquisition subsidy costs are an obvious example of a hidden price component that must be excluded from such a benchmark.

TUANZ observes that retail customer administration and billing operations constitute a major component of the total cost of retail mobile service provision. As the roaming access seeker (not the access provider) will continue to carry that cost with regard to any roaming user, we suggest that a retail-minus margin for a wholesale roaming access service should be substantial, taking into account the large component of avoided cost. An incremental cost model should be applied with some rigour.

(c) Should a single retail-minus price cover both voice and data? How should the retail-minus price be constructed to cover both voice and data?

Voice and data services should be accounted separately for the purposes of price modelling, because customer billing continues to charge separate retail

pricing for voice and data. Voice is billed and settled in call minutes, whereas data is billed in quantity of bytes transferred.

Users need to be able to expect charges for both voice and data services to be the same on a national roaming connection as on a home network connection, particularly as users will typically not know when their handset roams from a home network base station to another network's base station.

There should be no retail surcharges on roaming calls, either voice or data (for example the exorbitant surcharges commonly charged by hotels on fixed-line calls). There are ample available models for aggregated wholesale settlement for traffic exchanged between networks, including telephony interconnection and also the peering and transit arrangements between Internet Service Providers. The additional signalling traffic generated in setting up a roaming access session should be a relatively trivial incremental cost both the host and the home networks.

(d) If cost oriented pricing is the preferred pricing principle, is TSLRIC pricing the only viable option?

(e) Would cost-based mobile termination rates be an appropriate benchmark for a cost-based roaming service?

Mobile termination rates may not be a perfect benchmark for roaming service, primarily because the roaming user is as likely to be originating calls on the host network as to be receiving them, and therefore procedures must be in place for the origination and termination costs associated with such calls (possibly to third-party networks) to be charged back to the account of the user's home network.

However, given that mobile termination rates in New Zealand are still far above any justifiable cost, we would be confident that any additional costs associated with a roaming service could easily be absorbed within the margin of the mobile termination rate, on an aggregated basis.

(f) What are the implications of each pricing principle (retail-minus and cost-based) in terms of promoting new entry?

In the interests of promoting competitive investment, TUANZ suggests that a roaming host network should be entitled to receive a reasonable margin over its fully allocated costs in providing the service, and therefore a roaming service need not be provided on a strict cost basis such as TSLRIC.

However, a roaming access seeker should be able to provide its retail customers with roaming service at the same competitive retail price as service on their home network, even if this is less than the retail price charged by the host network to its own customers. A retail-minus margin must therefore be wide enough to permit this.

(g) In what ways could access seekers and access providers be encouraged to continue to invest, if a cost-based pricing principle was used? For example, would it be appropriate to have a roaming price that rises over time? If so, what are the appropriate bounds?

TUANZ encourages the Commission to address the question of investment incentives through pricing principles rather than through non-price regulatory terms and conditions.

It has been well established in previous Commission enquiries that the underlying costs of cellular mobile service provision are falling significantly, and are expected to continue falling in the foreseeable future. TUANZ therefore could see no justification in regulating for increase over time in the price of a roaming service.

Incentive for investment will be present if a retail-minus pricing for roaming service ensures that an access seeker's profit on roamed calls is sufficient to maintain competitive viability, but less than its profit on calls made from its own network via co-location or standalone access facilities.

(h) Should the pricing of voice roaming differ from that of data roaming? If so how?

The architecture of contemporary cellular mobile networks, and issues of backwards compatibility with interconnected fixed-line PSTN services, support the continuation of charging for mobile voice calls on the basis of (time x bandwidth x distance).

Mobile data calls are a hybrid of line-switched access connections and packet-switched data routing, and operators are able to exploit the monopoly characteristics of cellular mobile access to charge far higher rates than similar data services using Internet Protocol over other wireless or fixed networks.

TUANZ, observing the business case for VOIP in many circumstances, looks forward to future generations of network access technology that will fully harness the efficiencies of packet-switched data transport, and open network competition, so as to bring pricing for voice into line with best practice data service pricing.

In the mean time we see retail-minus pricing for both voice and data roaming services as the best option to bring competition to bear on mobile voice and data services over cellular networks.

Question 4.3

(a) For each likely final pricing principle [for a roaming service], what is the appropriate interim pricing principle that would provide an appropriate estimate?

TUANZ suggests, subject to more industry consultation, that an interim pricing principle could be:

$$\text{Retail(voice)}-x + \text{Retail(data)}-y$$

where x and y are estimated on the basis of submissions to the Commission from access seekers and access providers in the course of this investigation, .

(b) Is benchmarking appropriate and practical?

Benchmarks may be available from international regulatory experience and from the outcome of commercial arrangements made under regulatory oversight – eg UK.

(c) Could cost proxies be used, and if so, which ones?

(d) Is there a close relationship between roaming rates and mobile termination rates?

See answer to 3.2(c)

(e) Would an estimation process be more appropriate to use in the situation where there are very few relevant benchmarks?

Question 4.4

(a) What is an appropriate final pricing principle?

TUANZ advocates a retail-minus pricing principle with the margin calculated to making roaming access marginally more costly to an access seeker than co-location once market share reaches a certain figure (eg 15%) in a given location. The retail benchmark price should reflect the weighted average of a basket of cellular mobile prices, as described in our response to 4.2(b).

Question 4.5

TUANZ may offer comment on this question later in the process, after consideration of submissions from network operators.

(a) Do respondents have any views on the wording of the other parts of a service specification for roaming and whether any new parts are needed?

See responses to Q. 4.1 (a-e) regarding the possibility of allowing for ongoing roaming access in locations where duplication of infrastructure may be impractical or undesirable in the long term interests of the end user.

(b) What is the most appropriate description of an access seeker?

See also responses to Q 4.1

(c) Should there be alignment between the access seeker and access provider definitions?

TUANZ considers that some of the current limitations on the access principles in Schedule 1 may apply to limits on the roll-out obligations of new entrants and therefore strengthen their rights to roaming access in specific locations (see also responses to Q 4.1).

(d) Should the definitions be more forward-looking to cater for fixed-mobile convergence?

Only cellular mobile access should be addressed in this investigation – however the definitions should not exclude 3G and future generation cellular services that use regulated spectrum allocations.

Question 4.6

(a) Should co-location pricing be based on a specified formula?

Co-location pricing should be cost-based, with reasonable margin to account for the access provider's investment risk.

Separate ongoing regulatory obligations on access providers to provide a roaming service, as an alternative to a co-location service, are likely to improve the negotiating environment for co-location access seekers, because the access provider will have less capacity to obstruct market entry so effectively, and access providers may therefore have more incentive to agree upon a commercially viable co-location arrangement in preference to continuing roaming service.

In such negotiations, a co-location pricing principle will be complemented by the TCF Co-location Code recently endorsed by the Commission and supported by TUANZ.

(b) Could co-location be classified into a number of generic site types/forms?

There is a good case for classifying sites to expedite bulk negotiation, but TUANZ is also aware that minor differences between sites can represent significant differences in running costs and non-price terms and conditions.

(c) Could a cost allocation formula be used to determine the price depending on the type/form? If so how?

A site-classification factor in a pricing principle would need to provide scope for exceptional site-specific cost factors to be attributed.

In order to avoid an exemption process being used as a delaying mechanism, the service description could require initial access to be provided to all relevant sites according to broad site classification, and for categorized site-specific adjustments to be made in arrears, following recourse, if necessary, to arbitration.

Question 4.7

(a) How should the initial pricing principle be distinguished from the final pricing principle?

(b) What is an appropriate interim pricing principle?

(c) What is an appropriate final pricing principle?

APPENDIX

Vodafone proposed undertaking on mobile roaming and co-location.

Vodafone's submission of a draft proposed undertaking is a helpful contribution to the Commission's consultation processes, in that Vodafone

- identifies a range of specific issues that will need to be taken into account in any agreements between access seekers and access providers, and also
- provides a draft legal structure for such agreements.

However, TUANZ does not consider that Vodafone's submission in any way provides the Commission with a reason to refrain from establishing mobile roaming and co-location services as designated services.

The current investigation

Vodafone's proposal can not been as a workable alternative to regulated designated services because, *inter alia*:

- The proposal is acknowledged, by Vodafone, to be in a very preliminary, non-binding form and therefore provides no secure basis for new entrants to make business plans, nor for the Commission to consider it as any more than as a general submission to the investigation. We particularly note that Vodafone asserts the right to "unilaterally or by agreement with the Commission amend this application at any stage prior to the Commission making a recommendation to the Minister" (Supporting Submission, para 23) – i.e. after all other industry consultations are completed. We particularly advise the Commission not to accept submission of any last-minute amendments to this document as a pretext for further delay to the current course of the investigation.
- No benchmarking or cost-oriented justification is provided for the proposed pricing scheme. We see robust, regulated pricing principles for the designated services as essential to encourage competitive market entry.
- Several of the proposed conditions would place unjustifiable competitive restraints upon the business options for new entrants seeking access to the services.
- Vodafone proposes to reserve the right, under this undertaking, to take unilateral actions, concerning the capacity and availability of individual cells within its network, that could severely disadvantage access seekers dependent upon Vodafone's network. An "undertaking" containing such such a latent threat would raise the risk for any investor contemplating entry to the New Zealand market. It would certainly deter the growth of competitive services, including infrastructure-based services, because no service provider can offer national service from day one unless adequate roaming access is assured.

We recommend that the Commission do not be distracted by the plethora of detail that would need to be debated if this proposal were to be considered as an alternative to regulation. The Commission should first establish the core descriptions and pricing principles of the designated access services, in order to provide some bounds of certainty to the commercial negotiations that must follow, including those raised in Vodafone's submission. This would seem to be the best fulfilment of the current terms of reference for the Investigation.

Alternate applications

TUANZ sees scope for some elements of Vodafone's proposal to form the basis for a "Standard Terms" service declaration by the Commission, but this would require a separate public process and we therefore commend the current investigation as providing a more efficient means to the same end.

For aspects of the commercial relationship between access seeker and access provider that are outside the normal scope of Commission declarations, TUANZ notes the possibility of access seekers and access providers establishing a "model contract", for example in a Code that could be developed by the Telecommunication Carriers' Forum (TCF). This TCF process could only occur after core service description, conditions and pricing principles had been established by the Commission for the designated services.