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Schedule 1 Review team  
Telecommunications Branch  
Commerce Commission  
Wellington

<By email>

## **Review of Designated and Specified Services under Schedule 1 of the Telecommunications Act 2001: Submission on draft decision**

Vodafone welcomes the opportunity to comment on the Commission's draft decision whether there are reasonable grounds to commence an investigation into certain designated or specified services under Schedule 1 of the Telecommunications Act 2001.

Vodafone supports the regular review of regulated services under the Telecommunications Act. The last five years has seen a rapidly changing competitive environment, significant and ongoing investment in next generation networks and transformative structural changes in the industry. As a result, it is appropriate to ensure that current regulation remains fit for purpose, including by removing unnecessary regulation. This is crucial to minimise the risks of distorting or impeding competition in effectively competitive markets.

The comprehensive analysis set out in the draft decision identifies the material changes that have occurred in the market since the services were last reviewed or regulated. We are in transition from a vertically integrated market based primarily on the copper network, to a competitive and dynamic market migrating to next generation services.

Broadly speaking, we support the Commission's competition analysis of each designated and specified service under review. However, in respect of the resale of Spark local and calling access services, we think it is premature to conclude there are reasonable grounds to investigate the removal of the local access and calling regulation in particular. We acknowledge the clear trend occurring with voice services, and the increasing number of competitive substitutes available including Chorus baseband, VoIP and mobile substitution. However, the Commission's own analysis shows this is still in its early days. The protection of a regulatory backstop remains appropriate during this period of transition. Maintaining this backstop does not impact or distort competition or parties' incentives.

Recognising that the industry is in a period of significant transition, we recommend that the Commission instead defer a review for three years, at which point, the trends showing in the analysis will be clear, and the construction of next generation networks will largely be complete. In addition, it is likely that there will be greater certainty around the future regulatory framework for telecommunications services in New Zealand.

## Regulated Services under Review

We support the Commission's preliminary view that there are not reasonable grounds to investigate the removal of Schedule 1 regulation for:

- **Interconnection with a fixed PSTN service:** Network termination is inherently a bottleneck service. While there is no current bilateral or standard terms determination in place, the designated fixed interconnection service remains a necessary backstop to commercial negotiations. Fixed commercial interconnection agreements today broadly reflect the now-expired Commission interconnection determinations issued in 2002.
- **Wholesale Access to Chorus' copper network:** Wholesale access to Chorus copper services continues to be an important fixed access service. This includes wholesale bitstream (UBA), unbundled local loops (UCLL) and access to low frequency loops (UCLFS). Next-generation networks are being built today, including UFB, RBI and 4G, that will ultimately provide a competitive and superior alternative to the copper network. However, the ability to deliver competitive retail services will continue to remain dependent on copper services for the foreseeable future. To the extent that competition does develop over time, the Commission retains the ability to review whether there are grounds to investigate the removal in the future. However, it would be premature to do this today. Furthermore, the Commission retains the flexibility to review the existing binding STDs to the extent that competition has developed in specific areas.
- **Backhaul Services:** As the draft decision identifies, there are multiple backhaul providers in New Zealand, with a competitive wholesale market providing significant choice for RSPs. Vodafone has over 9,000 kilometres of core fibre and points of presence (PoPs) New Zealand wide, and is a leading wholesale provider in New Zealand. However, competing backhaul networks do not neatly align with Chorus's exchange and cabinet backhaul structure necessary to provide ubiquitous backhaul for copper services. For that reason, we agree with the Commission's draft decision that a number of routes remain where Chorus faces limited competition so access to regulated backhaul services is still required. Future reviews of STDs also provide the Commission with flexibility to review and not require regulated access where sufficient competition has developed on a sector by sector basis. This reduces the risk of regulation impacting the competition on backhaul routes where effective competition exists.
- **UCLL Co-location Service:** Exchange and cabinet co-location services remain essential for the unbundling of copper – to allow the access and interconnection with Chorus' UCLL network.
- **Number Portability Services:** The industry has ported over 1.7 million fixed and mobile numbers since number portability was introduced in 2007. Number Portability has been essential to the promotion of competition by facilitating switching between competing networks. The industry process is well established, with the collectively owned Industry Portability Management System (IPMS) operating effectively. The current designated multi-network determination sets out the minimum porting requirements and how the costs associated with the IPMS are fairly allocated between providers. We support its continued regulation.
- **Co-location on Cellular Mobile Transmission Sites:** Co-location enables efficient deployment of mobile technology through the sharing of facilities such as towers and masts. The regulation in place today is effectively delivering that. Mobile co-location is working effectively under the current STD, with Vodafone co-locating on hundreds of sites (both as an access seeker and an access provider). In respect of new Vodafone RBI towers, in excess of 75% have been co-located by other mobile and wireless operators.

## Resale Services

The Commission's draft decision concludes that there are reasonable grounds to investigate the regulation of three designated services under Schedule 1 of the Act:

- (1) Local access and calling service offered by means of a fixed telecommunications network;
- (2) Retail services offered by means of a fixed telecommunications network; and
- (3) Retail services offered by means of a fixed telecommunications network as part of a bundle of retail services.

Vodafone broadly agrees with the analysis on the development of competition since the services were first regulated in the Telecommunications Act in 2001.

When the Commission originally made determinations between 2004 and 2007 (Decisions 497, 525 & 563), the structure of the market was fundamentally different – no structural separation, no access to Layer 1 copper services, and limited competition in the mobile market, with 3G having only been launched during that period. As the Commission acknowledges, the availability of resale has been an important in allowing competitions to enter and compete in the supply of retail fixed access services.

We think it is premature to conclude there are reasonable grounds to investigate the removal of the local access and calling regulation. This remains a key resale service with significant demand. We acknowledge the clear trend occurring with voice services, and the increasing number of competitive substitutes available including Chorus baseband, VoIP and mobile substitution. However, the Commission's own analysis shows this is still in its early days. We are in a period of transition as next generation networks such as UFB will not be complete until 2020, and new technologies such as Chorus' baseband IP that Chorus has announced will be limited to 68% of copper connections in the next twelve months. As a result, fixed alternatives identified by the Commission do not provide a complete substitute to resale access for voice services.

The protection of a regulatory backstop is appropriate during this period of transition. Maintaining this backstop does not impact or distort competition or parties incentives. The risk of removal of the backstop regulation during this transition period creates a real risk that could cause interruption. The Commission's analysis identifies correctly the decline in purchase of PSTN connections, and accelerating migration to alternative delivery mechanisms and platforms.

In light of this uncertainty, Vodafone does not agree that there are grounds to investigate the deregulation of local access and calling regulation or resale services at this time. Instead, we recommend that the Commission schedule a review in three years' time, when next generation network builds will be completed, and the migration path will be significantly clearer.

Should you have any questions, please do not hesitate to contact me at [chris.abbott@vodafone.com](mailto:chris.abbott@vodafone.com).

Yours sincerely



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