



COMMERCE COMMISSION

Final Decision on whether to investigate omitting certain
Designated and Specified Services from Schedule 1 under
clause 1(3) of Schedule 3 of the Telecommunications Act
2001

The Commission:

Dr Ross Patterson
Anita Mazzoleni
Gowan Pickering
Pat Duignan

Date of decision:

16 September 2011

Purpose of document

1. The purpose of this document is to set out the Commission's final decisions on whether or not to commence an investigation to omit certain Designated and Specified Services (listed in the Appendix to this document) from Schedule 1 under clause 1(3) of Schedule 3 of the Telecommunications Act 2001.

Summary of final decision

2. The Commission has determined that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 3 of the Act to omit any of the services from Schedule 1 of the Act.

Background

3. Clause 1(3) of Schedule 3 of the Telecommunications Act 2001 ('the Act') requires that the Commission consider, at intervals of not more than 5 years after the date on which a designated service or specified service comes into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 of the Act.¹
4. The Commission may not commence an investigation into omitting a service earlier than 12 months before the end of the 5 year interval.² Where a service is amended or altered, the effective date of that service coming into effect is the date the altered or amended service came into effect. The current 5 year interval for most of the services under consideration concludes on 22 December 2011. The services under review are listed in the Appendix to this document.
5. A review under clause 1(3) of the Act is limited to removing the service from Schedule 1. It does not extend to introducing a new service, or amending an existing service.

Reasonable Grounds to Investigate

6. The Commission may commence an investigation under clause 1(3) of Schedule 3 only where it is satisfied that there are reasonable grounds to do so.³
7. In reaching its views, the Commission must make the decisions that will best give, or are likely to best give, effect to the purpose set out in section 18 of the Act.⁴
8. The Commission considers that reasonable grounds to investigate whether a service should be omitted from Schedule 1 are likely to exist where competition has developed to such an extent that continued regulation is unlikely to best promote competition in telecommunications markets for the long term benefit of end-users. This may arise where:
 - continued regulation is no longer necessary to promote competition (that is, removal of the regulation will not have the effect of limiting, or allowing a party with significant market power to limit, competition in a particular market), or
 - removing the regulation will best promote competition for the long term benefit of end-users.

¹ Schedule 3, Part 1, Clause 1(3). An inquiry commenced under this clause is limited to omitting a telecommunications service from Schedule 1 of the Act

² Schedule 3, clause 1(4).

³ Refer to clause 1(1)(a) of Part 1 of Schedule 3 to the Act.

⁴ Section 19 of the Act.

Consultation process

9. The Commission issued its preliminary views in relation to the Relevant Services in a draft decision on 14 July 2011⁵(**Draft Review**).
10. The Commission received submissions from Vodafone New Zealand Limited (**Vodafone**), TelstraClear Limited (**TelstraClear**), and Two Degrees Mobile Limited (**2degrees**). 2degrees also submitted a paper by Frontier Economics on the unintended consequences relating to the Telecommunications (TSO, Broadband, and Other Matters) Amendment Act 2011.
11. 2degrees and TelstraClear agreed with the Commission's preliminary views that there were no reasonable grounds to omit any services from Schedule 1 of the Act.
12. Vodafone disagreed with the Commission's preliminary view that there were no reasonable grounds to omit the National Roaming service from the Act. .
13. The Commission has considered all relevant matters in the submissions in reaching its final views in this decision.

Commission's Decision

Interconnection services

14. The interconnection service was amended on 1 July 2011, and therefore is not subject to investigation under clause 1(3) of Schedule 3 until 1 July 2015.

Resale Services

15. In the Draft Review, the Commission noted that only two of the three Resale Services in the Act were subject to consideration for omission from the Act⁶. the Commission's preliminary view was that, since it completed its investigation into Resale Services in December 2010⁷, there have been no developments in the relevant markets which would warrant a new investigation. No submissions disagreed with the Commission's view.
16. The Commission determines that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to any of the Resale Services.

Unbundled Bitstream Access

17. The Commission's preliminary view in the Draft Review was that in light of the importance of UBA to wholesale based competitors of Telecom, and the fact it was subject to a competition condition, there were no reasonable grounds to commence an investigation into omitting this service from the Act. No submissions disagreed with the Commission's view.
18. The Commission determines that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the UBA service.

Telecom's unbundled copper local loop network including sub-loop copper access (sub-loop MPF)

19. The Commission's preliminary view in the Draft Review was that access to the local loop for both the UCLL and sub-loop services was important in promoting competition

⁵ Draft Review of Designated and Specified Services under clause 1(3) of Schedule 3 of the Telecommunications Act 2001, 14 July 2011.

⁶ Retail services offered by means of Telecom's fixed telecommunications network was amended on 30 June 2011, therefore is subject to review from 30 June 2015.

⁷ The Minister accepted the Commission's recommendation which became effective in June 2010.

for the long-term benefit of end-users. No submissions disagreed with the Commission's view.

20. In addition, the Commission noted that the commercial UBA with Access Seeker Voice will be available to service providers who are also access seekers of Sub Loop UCLL and have voice frequency equipment in the relevant exchange, and therefore there will likely be an increase in Sub Loop Unbundling uptake.
21. The Commission determines that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the local loop (UCLL and sub-loop MPFs) service.

Telecom's unbundled copper local loop network co-location (including sub-loop co-location)

22. In the Draft Review, the Commission noted that co-location services were necessary to enable access to the local loop network and thus promote competition. The Commission's preliminary view was that there were no reasonable grounds to commence an investigation to omit these services from the Act. No submissions disagreed with the Commission's view.
23. The Commission determines that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to the UCLL and sub-loop co-location services.

National Roaming

24. The Commission's preliminary view in the Draft Review was that the roaming service was important, as the third entrant, 2degrees, was dependent on roaming in areas where it did not have its own network coverage. The Commission further noted that 2degrees' existing commercial arrangements were for a finite period, and that it is appropriate that national roaming continue as a specified service to provide a regulatory backstop should future commercial roaming negotiations flounder.
25. Since the release of the Draft Review the Commission has noted that the National Roaming Service was amended on 11 September 2008⁸. Therefore, this service is not subject to investigation under clause 1(3) of Schedule 3 until 11 September 2012.

Co-location on cellular transmission sites

26. In the Draft Review, the Commission noted that co-location reduced the costs of building a network, as existing infrastructure can be used to deliver services whilst roll-out of new (or expanded) network occurs. The Commission's preliminary view was that the Mobile Co-location service should continue to be regulated, to facilitate efficient entry and expansion in the mobile market, and there were no reasonable grounds for omitting the service.
27. Vodafone submitted that the regulated co-location service was being under-used by 2degrees, and therefore, a national STD was no longer justified. However Vodafone recognised that the STD had an important role under the RBI initiative, and removing regulation at this time might prove problematic.⁹
28. 2degrees submitted that it was committed to co-location where it presents economic efficiencies over the development of incremental base stations. 2degrees anticipated far

⁸ See s3 Telecommunications (National Roaming) Order 2008 (SR2008/251)

⁹ Vodafone, *Submission*, page 2.

greater mobile co-location within the current 2degrees build programme, and considered co-location to be an important enabler to competition.¹⁰

29. The Commission is of the view that maintaining the co-location regulation will promote competition, efficiency, and more rapid deployment of competing infrastructure.
30. Therefore, the Commission determines that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to co-location on cellular transmission sites.

Number Portability Services

31. The Commission's preliminary view in the Draft Review was that there were no reasonable grounds to commence an investigation to omit the number portability service, as number portability remained an important element of New Zealand's competitive telecommunications regime. It was noted that a significant number had been ported in the time that the determination has been in place.
32. 2degrees submitted that number portability was important to ensure competition and should remain a regulated service.¹¹
33. The Commission determines that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to Number Portability Services.

Backhaul Services

34. The Commission's preliminary view in the Draft Review was that the three backhaul services which are subject to STDs should remain regulated, as they provide transmission capacity for the regulated UBA, UCLL and Sub-Loop Services. The three backhaul services were therefore necessary to give effect to these regulated services, to facilitate competition in downstream retail markets. No submissions disagreed with the Commission's view.
35. The Commission determines that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 1 in relation to Backhaul Services.

Mobile Termination Access Services (MTAS)

36. The Commission noted in the Draft Review that MTAS was added to Schedule 1 as a regulated service by Order in Council dated 23 August 2010 and came into force on 27 September 2010. The service is therefore not subject to investigation under clause 1(3) of Schedule 1 until 27 September 2014.

¹⁰ 2Degrees, *Submission*, page 9 paragraph 4.3

¹¹ 2Degrees, *Submission*, page 10 paragraph 5.1.

Appendix:

Services under review:

Residential local access and calling service offered by means of Telecom's fixed communications network

Retail services offered by means of Telecom's fixed communications network as part of bundle of retail services

Telecom's unbundled bitstream access

Telecom's unbundled bitstream access backhaul

Telecom's unbundled copper local loop network

Telecom's unbundled copper local loop network co-location

Telecom's unbundled copper local loop network backhaul (distribution cabinet to telephone exchange)

Telecom's unbundled copper local loop network backhaul (telephone exchange to interconnect point)

Local telephone number portability service

Cellular telephone number portability service

Co-location on cellular mobile transmission sites

Services not under review:

Next subject to review:

Retail services offered by means of Telecom's fixed telecommunications network

from 30 June 2015

Interconnection with fixed PSTN

from 1 July 2015

National roaming

from 1 September 2012

Mobile Termination Access Services

from 27 September 2014
