



9 June 2004

Mr Richard York  
Director  
Telecommunications  
Australian Competition and Consumer Commission  
Level 35, The Tower  
360 Elizabeth Street  
MELBOURNE VIC 3000

Dear Richard

#### **MOBILE SERVICES REVIEW - MOBILE ORIGINATING ACCESS SERVICE**

We refer to the Australian Competition and Consumer Commission's (Commission) Draft Decision on the mobile origination access service (MOAS). The Draft Decision concludes that declaration of the MOAS should be allowed to expire on 30 June 2004.

Vodafone welcomes and supports the Commission's Draft Decision as it recognises that, where there is no justification for continued regulation of a service, the regulation should be removed. Regulation should only be proposed where a market failure has been clearly identified and where it can be shown that the proposed regulation will serve to deliver net benefits to end users. Vodafone will only make a few comments on this Draft Decision as many similar issues have already been raised in Vodafone's submissions in response to the Commission's Draft Decision on the mobile terminating access service.

#### **Service Description**

The Commission has outlined what Vodafone believes to be the commercial arrangements that underpin the provision of voice calls from mobile users to 13/1300 and 1800 numbers. For completeness, Vodafone believes it is worthwhile confirming these commercial arrangements in writing, namely:

Vodafone Pty Ltd  
ABN 76 062 954 554  
Citadel Towers, 799 Pacific Hwy  
Chatswood NSW 2067, Australia  
Telephone +61 (0) 2 9415 7000

Vodafone Network Pty Ltd  
ABN 31 081 918 461  
Locked Bag 1581,  
Chatswood NSW 2067, Australia

- For mobile voice calls to 13/1300 numbers, Vodafone makes a payment to the network provider of 13/1300 services;
- For mobile calls to 1800 numbers, Vodafone charges a fee to the network provider of 1800 services;
- For mobile voice calls to 13/1300 and 1800 numbers, Vodafone charges its customer a retail price for the end to end call; and
- The price Vodafone charges its customers for calls to 13/1300 and 1800 numbers is set by Vodafone independently of the 13/1300 or 1800 network provider and can be amended at Vodafone's discretion.

Given these commercial arrangements, Vodafone does not believe that an origination service as defined in the existing declaration is provided and therefore declaration is not necessary.

Vodafone also questions the relevance of the ACIF Interconnection model to the question of whether a MOAS is supplied. The provision of relatively complex services in a commercial environment does not always fit neatly into “pan-industry” guidelines. The reality is that any obligation to supply is driven by commercial incentives, rather than regulatory compliance and that the 13/1300/1800 provider does not take end to end responsibility for the call in either a technical or a commercial sense.

### **Expansion of the Service Description to include 3G**

The Commission essentially follows the same line of argument adopted in the mobile termination Draft Decision to justify expansion of the service description to include the origination of voice calls on all mobile networks and therefore including 3G. As Vodafone outlined in its submissions to the Commission in relation to its Draft Decision on the mobile terminating access service, Vodafone does not believe that just because a service “looks the same” is sufficient reason for the Commission to regulate the service.

The Commission must consider the benefits and costs of extending the regulation to new mobile networks like 3G. Similar to the mobile termination case, Vodafone considers that any benefits to consumers of extending this regulation would be insignificant, considering that the technology is relatively immature. Vodafone does not believe therefore that the Commission’s approach to regulating services based purely on apparent similarities is appropriate.

## Market Definition

The Commission believes mobile originating access for calls to 13/1300 and 1800 services on each mobile network is likely to represent a product market of its own<sup>1</sup>. Vodafone disagrees with the Commission's conclusion and believes that the appropriate market definition is that of a broader national mobiles market which includes mobile subscription, outgoing calls and termination services.

The Commission seems to have based its Draft Decision on the reasoning that was applied to the mobile terminating access service (MTAS). However, even if the Commission's view of the market in which the MTAS is supplied is correct, which we dispute, the application of that thinking to the MOAS has resulted in a conclusion that is fundamentally flawed.

Vodafone sells MOAS to its own customers as part of its mobile service offering. If it failed to provide its customers access to 13/1300 or 1800 numbers it would be punished in the mobile telephony market.

This view has been supported through various Vodafone submissions to the Mobile Service Review, including Vodafone's submission in response to the Commission's Draft Decision on the MTAS and also a number of papers prepared by Frontier Economics on behalf of Vodafone. Substantive evidence supporting an alternative view has not been provided by any other submitter on this issue. Vodafone sees little benefit in reiterating its views on this matter in this submission. However, we believe that the Commission has erred in its view that the market should be defined so narrowly in relation to its Draft Decisions in respect of both mobile origination and mobile termination.

We also note the Commission's observation that:

"...no substantial evidence has been provided to it that would indicate mobile operators are taking advantage of the control over access they have with regard to the provision of MOASs. Indeed, submissions provided by Telstra, Vodafone and the CCC all indicate that mobile operators often pay a fee to terminate calls on the networks of 13/1300 and 1800 service providers..."<sup>2</sup>

This "behavioural" observation is consistent with Vodafone's view that mobile operators have no such "control" over access and that the MOAS is part of a broader market for mobile services.

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<sup>1</sup> ACCC, Mobile Originating Access Draft Decision, page 36.

<sup>2</sup> ACCC, Mobile Originating Access Draft Decision, page 48.

The Commission also concludes in this Draft Decision, as with its Draft Decision on the MTAS, that the retail mobile services market is not effectively competitive at this point in time. Vodafone has serious concerns with the Commission's analysis in its Draft Decisions on mobile termination and origination. Vodafone has already provided evidence demonstrating that the mobiles market is effectively competitive and showing signs that competition is intensifying further. We have significant issues with the basis of the Commission's conclusion in this regard. However, Vodafone sees little benefit in reiterating its views in this submission. Rather, we refer the Commission to the various Vodafone submissions on this matter.

Notwithstanding the difference in view between Vodafone and the Commission regarding market definition and the state of competition, we agree with the Commission's conclusion that continued regulation of the MOAS cannot be supported by the argument that it promotes competition.

### **Any to any connectivity**

Vodafone agrees with the Commission's view that mobile operators and network providers of 13/1300 and 1800 services are likely to have an incentive to interconnect with each other. Vodafone also supports the Commission's apparent view that continued regulation of the MOAS is not necessary to ensure any to any connectivity.

However we are concerned that the Commission seems to indicate that *ex ante* regulation might be justified to inhibit anti-competitive behaviour by incumbent network providers that provide both mobile services and 13/1300 and 1800 services. Vodafone does not believe *ex ante* regulation is an appropriate tool for that purpose.

If you have any questions regarding this submission please feel free to call me on (02) 9425 9360.

Yours sincerely

Peter Stiffe

**General Manager, Public Policy**