

Submission by Kordia and CallPlus in
relation to MED Consultation Paper on
RBI Non-Discrimination

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1. Introduction and Executive Summary

- 1.1 CallPlus (including Slingshot) and Kordia (including Orcon) welcome the opportunity to comment on the MED Paper. This follows from the opportunity at the TCF Workshop supported by MED.
- 1.2 We also note and appreciate improvement in the co-location regime.
- 1.3 We agree with and support the submissions made to MED by InternetNZ. This submission supplements those submissions. In light of that we do not go into detail on major concerns for us, such as equivalence, the price squeeze test, etc.
- 1.4 At the end of this submission we note a number of points as to co-location, particularly focussed on:
 - (a) ensuring that sites are actually built by VF as described in the MED Paper:
 - (b) ensuring that more detail is developed and provided in relation to design and implementation;
 - (c) “future proofing” the towers further (for example, by having space for 4 mobile operators not just 3);
 - (d) ensuring consents for additional equipment and tower extensions are obtained at the outset.
- 1.5 We have covered policy and objectives relating to the undertakings, and reached some conclusions as a result. They include:
 - (a) We note the Frontier Economics’ conclusions, deriving from the Vodafone and Telecom natural rural monopoly and the fact they are the two largest telecommunications providers. They conclude that:
 - (i) given the natural monopolies’ ability to distort competitive market outcomes in downstream markets, strict access arrangements are needed;
 - (ii) the current regime falls short of that.
 - (b) Solutions such as EOI are therefore appropriate, as are robust price squeeze imputation tests, etc.
 - (c) Climbing the ladder of investment directly to co-location, without the intervening roaming and antenna sharing “rungs”, will substantially harm if not eliminate competition. Roaming and antenna sharing should be added for this reason, enabling market entry for access seekers, while the access provider gets paid cost and profit anyway.
 - (d) VF and Telecom are investing \$200M, supplementing the RBI \$300M. in other words, 3/5ths of the initiative is funded out of the subsidy. This in turn comes, via the TDL, from access seekers (and, ultimately, consumers).Frontier Economics deal with economic considerations. But, at a high level, this scale of subsidy indicates a special responsibility to

ensure the scene is set for workable competition, via a robust open access regime, including EOI, a workable price squeeze test, etc.

- (e) The MED Paper does not deal with legacy VF sites and the detail should be provided. As many of those sites will not be able to host co-location at the levels in the new sites, this is further reason for roaming and antenna sharing.
- (f) Consultation with the public and the Commission is valuable for achieving RBI objectives and should be continued. This consultation shows it can be done quickly. Similarly, information and monitoring obligations between VF and the Commission are major considerations.

1.6 The answers to the 3 questions posed are self-explanatory from this submission, and from the specific answers in the InternetNZ submission.

2. Policy and Objectives

2.1 In this section of our submission, we outline the issues that we consider should guide the approach to the undertakings. We also draw some conclusions on issues such as EOI, roaming, consultation, etc.

2.2 We agree with the MED Paper's conclusion that workable and healthy competition, to the benefit of rural consumers, should be the overriding objective. Vodafone's (and Telecom's) incentives to reduce or eliminate competition should be appropriately constrained by the undertakings and contractual obligations.

2.3 There are five supporting issues which should drive and inform the approach:

- (a) Market failure if there are inadequate controls;
- (b) The ladder of investment;
- (c) The effect of the RBI subsidy, funded by industry and consumers;
- (d) The position on legacy and new VF cell sites;
- (e) The value of public and Commission consultation.

Significant prospect of market failure

2.4 This problem is articulated carefully in the March 2011 report by Frontier Economics.¹ Among other things,, Frontier Economics state by way of conclusion::

It is highly likely that Chorus and Vodafone will be natural monopoly providers of network services in the rural areas covered by the RBI bid – at least in the short-to-medium term.It also needs to be borne in mind that these two firms are already the overwhelmingly largest providers of fixed and mobile network services in New Zealand, and their joint extension of services to uneconomical rural areas through government subsidy will help to enhance these positions.

¹ http://www.parliament.nz/NR/rdonlyres/8E799058-6D13-44CA-8D06-5EC5DD2EEA6D/188015/49SCFE_EVI_00DBHOH_BILL10470_1_A176879_TwoDegreesM.pdf

Control over natural monopoly infrastructure brings with it the ability to distort competitive market outcomes in downstream markets.²

Strict access arrangements are ... necessary to ensure winning bidder(s) do not take advantage of their natural monopoly control over subsidised infrastructure to distort competition in their favour in downstream retail markets.³

To have any chance of being effective, these regimes must be carefully designed; and impose tight and easily enforceable obligations on access providers. Our review of the Bill and the on-going RBI process leads us to conclude that [the] open access obligations imposed on access providers are limited and are not likely to be sufficient to promote competition in downstream markets. For instance, the undertaking regime set out in the Bill only requires an access provider to provide for non-discrimination, while leaving equivalence obligations optional.....⁴

- 2.5 We submit, for example, that EOI is appropriate, and relatively easy to achieve, as outlined in more detail in the InternetNZ submissions. Anything short of EOI is likely to lead to market failure.

Ladder of Investment

- 2.6 Climbing the ladder of investment directly to the co-location “rung” is costly, and generally prohibitive. 2degrees in its select committee submissions estimates the cost at around 10 times higher than the cost of roaming (with, they say, an initial capex per site in the order of \$100K). While the relative cost is open to debate, what at least can be noted is that the cost differential between roaming and co-location is high. Roaming has the benefit of not requiring substantial up front site investment by the access seeker, while the access provider fully recovers cost and profit for supplying the roaming service.
- 2.7 Only being able to climb the ladder directly to co-location, without the intervening roaming rung, will substantially harm if not eliminate competition, even for the largest of competing mobile network operators.
- 2.8 To encourage investment and competition, and to migrate providers up the ladder of investment toward infrastructure based competition, the roaming “rung” should be added. For similar reasons, antenna sharing should be added as well. Further reasons for this are outlined below. VF should commit to roaming and antenna sharing, possibly based on Commission-determined pricing if not agreed.⁵

The effect of the RBI subsidy, funded by industry and consumers

- 2.9 Vodafone and Telecom are investing \$200M, to supplement the \$300M RBI subsidy.⁶ In other words, 3/5ths of this initiative comes from the subsidy.
- 2.10 That is paid for by the industry by way of the Telecommunications Development Levy. In a sense, access seekers face a double-hit: funding of VF and Telecom

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⁵ The current decision not to investigate is based on what 2degrees describes as a medium term roaming agreement. Either the issue comes up again for 2 degrees in the short to medium term, or another access seeker seeks roaming

⁶ As stated in Telecom’s slide pack provided at the TCF Workshop

leading to the negative outcomes outlined by Frontier, but at their expense. More significantly, consumers ultimately fund the levy in their retail bills and they suffer from reduced competition and innovation.

- 2.11 Frontier Economics explain their economic concerns about this. At a high level, the scale of the subsidy (3/5ths), via the Levy, indicates a special responsibility to ensure the scene is set for workable and healthy competition, through a robust open access regime. This includes EOI, an appropriate co-location arrangement, a viable price squeeze test, KPIs, and access to roaming and shared antennae. It is not enough for VF to say that it will own the radio access network (RAN): that network operates off a heavily subsidised platform.

The position on legacy sites and the new VF sites

- 2.12 The Consultation Paper does not explicitly address access via VF legacy sites. That is the 380 sites which supplement the 150 new sites to be built using RBI funding. This should be expressly covered by the undertakings including what if any modifications are to be made.
- 2.13 It is unlikely that many – if any - of the legacy sites can accommodate the level of co-location anticipated for the new sites. Many will not have any co-location availability at all.
- 2.14 Additionally, there may well be some newly built sites that can't host the intended number of co-located providers.
- 2.15 In addition to the ladder of investment and the scale of the subsidy, noted above, having viable access via these sites calls for solutions such as roaming and antenna sharing. Moreover, that overcomes, on those sites, environmental concerns, etc, around proliferation of towers and other kit.

The value of public and Commission consultation and information sharing

- 2.16 Frontier Economics express considerable concern about the lack of transparency and the lack of consultation.
- 2.17 There is much to gain, in fulfilling RBI objectives, by consulting stakeholders. The quality of outcomes can only improve, and the current consultation shows this can be done quickly. Consultation also reduces the risk of stakeholders considering they are dis-enfranchised, when genuine consultation can lead to a greater level of buy-in.
- 2.18 We assume that there is considerable detail behind the brief overview in the MED Paper. As the devil can be in the detail, we encourage MED to engage with stakeholders on that detail. If there is no such detail, then that is problematic, given the issues involved, for example in cell site choice, design, location, etc.
- 2.19 We note that Chorus, if Telecom goes down the separation path, must consult stakeholders as to non-price KPIs. Although the provision in the SOP should be tightened, this indicates that KPIs in this instance can also be the subject of consultation.
- 2.20 Related is the importance of getting the regime right for reporting to the Commission, and in turn, the regime for keeping stakeholders informed. As this is not itemised in the Bill (unlike for UFB), this needs close attention. Choices as

to the price squeeze imputation test, for example, drive information and monitoring requirements.

3. Co-location

- 3.1 It appears that the 9 month requirement has now gone, and that the model now reflects the benefits to competition and consumers from having tower space available for new entrants, relative to the initial cost. We recognise and are grateful for those changes.
- 3.2 We submit that VF should be contractually bound to minimum site developments, as overviewed in the MED Paper. Any deviation should only be permitted if authorised by the Commission, on strong grounds. For example, if a particular landowner will not allow the full facility to be installed, best endeavours must have been used to seek solutions including other locations. As VF is experienced in rolling out cell sites, the cost of leases, for example, could not be an objection.
- 3.3 VF has strong incentives not to build to the designs indicated, and there are various ways it can maintain that the design and implementation are not possible. That is the practical day-to-day reality (literally involving “talking to Farmer Brown across a fence”). Therefore there must be robust controls, with the ability for the Commission and/or other stakeholders to communicate directly with landowners, councils etc should that be necessary. If VF do what it has committed to do (including rolling out sites as briefly overviewed in the MED paper) this should be straightforward.
- 3.4 As noted above, the position as to legacy towers needs to be clarified, and fuller detail should be provided to access seekers and other stakeholders.
- 3.5 If issues are to be left to resolution via the TCF, final decisions should be made, if resolution can’t be achieved, by the Commission. We consider detailed design and implementation issues to be critical (such as the ability to provide LTE services with the right equipment). At present we have only limited information.
- 3.6 We do not agree that landowner and RMA consent to extra height and additional kit such as a second carousel should be left until later. This must be agreed in the initial arrangements. Otherwise, it will be difficult if not impossible to achieve resolution of those aspects.
- 3.7 There should be provision for backhaul via paths other than the Telecom fibre backhaul, such as by other fibre or by microwave.
- 3.8 As this is a development taking into account medium to long term considerations, we submit that there should be the ability to have 4 (not just 3) mobile network operators in the top two tiers (carousels) on the tower. The second carousel can be added later if necessary. Ensuring ready access for new entrants, on business and technology models that may develop later, is important to encourage competition. This does not involve additional cost initially and we don’t know how the market will develop.
- 3.9 We suggest that locations on towers are allocated on a “first come, first served” basis. There is either a “use it or lose it” rule or a requirement that the use commences by a specified date.

3.10 In the limited time available, we have not had the opportunity to fully review if the Mobile Co-location STD is fully applicable. This should be checked. For example, the STD is designed for situations where space is made available only if that space is not required for the access provider's use over the following 3 years. However, the RBI model calls for a more proactive approach.