



8 December, 2011

Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission
PO Box 2351
Wellington 6140

Cc: Kathryn McHarrison

By email

Dear Ross,

Mobile handset locking in New Zealand

2degrees writes with concern regarding apparent plans by Telecom to lock handsets to the Telecom network, specifically for customers of its planned 'Telecom Skinny' product.

As you will recall prior to the launch of 2degrees in April 2008, the Commission provided a very clear directive to Vodafone that introducing handset locking would be harmful to competition. That message resulted in Vodafone abandoning plans to lock handsets, resulting in a direct and positive impact on 2degrees' ability to enter the market and compete.

In the recently released Venture Consulting report, the Commission's initiative on this issue was cited as a key contributor to the \$2.24 billion of benefits New Zealand consumers have enjoyed as a result of the entry of a third mobile operator.

An old threat poses a new barrier to choice

2degrees' concerns about Telecom Skinny's plans were confirmed by the attached screen shot from the Telecom Skinny website, discovered in the Google cache and publicised by geekzone users. The content states:

"You can get your unlock code for your handset right here for \$30. Your unlock code will then appear on your account page or it will be sent via e-mail if your phone is a Nokia.

Once you have your code you can unlock your phone by simply following the instructions which can be found here."

Pricing information publicised to date implies Telecom will launch a low-cost service. Handset locking would explain how Telecom could lock consumers in with low cost handsets.

Telecom Skinny would only be able to recover such handset subsidies by locking customers into the service. The requirement to pay \$30 for an unlock code would be a new and unwarranted barrier to consumer choice.

Action now will reduce consumer harm

Based on the evidence to date, 2degrees encourages the Commission to again act promptly on this matter, reiterating to Telecom and the industry that it does not condone handset locking in New Zealand. We would encourage the Commission to seek an assurance that such a practice will not be adopted.

2degrees requests pre-emptive action given that Telecom Skinny is rumoured to launch this month. Delay could be harmful to consumers, who would likely move to a low-price service, unaware of the fish hook of a fee to unlock their handset.

Failure to act in advance of Telecom Skinny's launch could have wider implications. Vodafone has commented recently that handset locking is common in many markets overseas, leading 2degrees to believe Vodafone would move swiftly to adopt handset locking if Telecom Skinny was seen to be allowed to do so.

In reviewing the Commission's 2008 correspondence with Vodafone on this matter we note its letter to the Commission of May 22, 2008 stating:

"Vodafone has decided that, for the time being, it will change its policy and no longer order locked handsets."

And;

"Vodafone therefore reserves the right to review in the future its decision on whether to lock handsets."

At a time when the Commission is actively seeking to identify and remove switching barriers it would appear opportune to ensure a new detriment to competition was not introduced.

The Commission's early attention to this matter made a seismic impact on mobile competition in New Zealand. Reiterating that position to all mobile operators will help protect the gains made so far and ensure consumers continue to benefit from increased competition and choice.

We are available to meet with you to discuss this further should that be of assistance to the Commission.

Yours faithfully,



Paul Mathewson
General Counsel & Head of Regulatory



Mat Bolland
Director of Corporate Affairs



COMMERCE COMMISSION

Please refer to:

11108
690770_1.doc

29 April 2008

Tom Chignell
General Manager Corporate Affairs
Vodafone New Zealand
Private Bag 92161
Auckland

Dear Tom

Locking of mobile handsets

At our meeting on 4 April 2008, we discussed Vodafone NZ's intention to implement a policy whereby mobile handsets purchased from Vodafone NZ stores will be locked. These handsets will be able to be used only on the Vodafone NZ network until such time as they are unlocked. While I understand that the locking policy is yet to be implemented, I note that the Terms and Conditions for both your 'Prepay' and 'On Account' services now include clauses to this effect. The clauses of particular relevance are Clause 12(f) ('Prepay' Terms and Conditions) and Clause 13(f) ('On Account' Terms and Conditions), which state:

"Our Mobile Devices are sold exclusively for use on and may be locked to our network. Locked Mobile Devices may not be used with another telecommunications service provider's SIM card. If your Mobile Device is locked to our network, you must only arrange to unlock it through us and may have to pay an unlocking fee. If you arrange to unlock your Mobile Device through someone other than us, this may void the warranty for your Mobile Device."

I also note Clause 8(q) ('Prepay' Terms and Conditions) is of relevance:

"If you wish to use your Prepay Mobile Device as an On-Account Customer or with another GSM network, a charge may apply to modify the Mobile Device and/or SIMcard for On-Account use or for use with another GSM network."

The Commission has as we discussed, reviewed international practice in relation to handset locking. As you are probably aware, the practice is prohibited in some jurisdictions, regulated in some, and permitted in others.

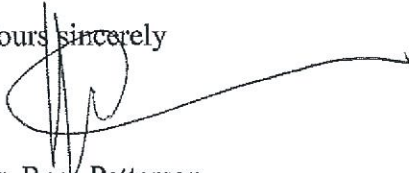
In the context of the New Zealand market, I am concerned that locking of mobile handsets may act as a barrier to mobile customers switching between service providers, and may therefore restrict competition on price and service. It is the Commission's view that a locking policy, if implemented by Vodafone NZ, would undermine recent and ongoing efforts to promote competition in the mobile market.

The Commission is also concerned about the timing of the introduction of Vodafone NZ's locking policy, given the likelihood of additional competition in the provision of GSM-based mobile services in the near future.

Given the adverse impacts that handset locking is likely to have on competition in the mobile market, the Commission does not support the introduction of handset locking in New Zealand. Accordingly, I would like to take this opportunity to encourage Vodafone NZ to reconsider its policy of introducing handset locking into the New Zealand mobile market.

I look forward to hearing from you.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ross Patterson', with a long horizontal flourish extending to the right.

Dr. Ross Patterson
Telecommunications Commissioner



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22 May 2008

Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission
WELLINGTON

Dear Ross,

Re: Locking of Mobile Handsets

Thank you for your letter of 29 April 2008 outlining the Commission's views in relation to Vodafone's proposal for the general introduction of locked handsets into the New Zealand market.

At the time of receiving your letter, Vodafone had already put in place plans to commence selling locked handsets. In this regard, Vodafone had purchased (and imported) a number of locked handsets from its overseas suppliers, and had commenced stocking its stores with the same. As you are aware, Vodafone commenced selling locked handsets to consumers at the beginning of May 2008.

As a result of the responses it has received from its customers, Vodafone has decided that, for the time being, it will change its policy and no longer order locked handsets.

Vodafone will, however, continue to sell to consumers those locked handsets that are already in our supply chain or on firm order. Vodafone will make it clear to customers who buy these handsets that should they wish to unlock the handset in the future, they will be able to call a freephone number and do so free of charge.

Vodafone does not consider handset locking will restrict competition on price and service over the provision of mobile services in New Zealand, as your letter suggests. Rather, Vodafone believes handset locking (and charging to unlock handsets) is consistent with competitive behaviour that occurs in many telecommunications markets where mobile telecommunications services are sold. Vodafone therefore reserves the right to review in the future its decision on whether to lock handsets. As part of this review Vodafone may also reconsider whether to charge differentially for locked and unlocked handsets, including giving prospective customers the choice.

I would welcome the opportunity to have a discussion with you on this matter now that this decision has been made. In any event, should you have any further queries in relation to this matter, feel free to contact me on 021 639977.

Yours sincerely,



Tom Chignell
General Manager, Corporate Affairs