



**Cross submissions on the on the Draft Report to the
Telecommunications Act 2001: Schedule 3 Investigation into
Amendments to the Roaming and Co-location Services**

Submission by

Kordia™ Group Limited

18 September 2007

Introduction

1. Kordia™ Group Limited (*Kordia™*) thanks the Commerce Commission (*the Commission*) for the opportunity to make this cross submission.
2. Kordia™'s contact person for the purpose of this submission is:

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Summary

3. Kordia™ provides comments on the cross submissions on the Telecommunications Act 2001 (Act) Schedule 3 Investigation into Amending the Roaming and Co-location Services, dated 3 August 2007 (Draft Report) and on the Vodafone Undertaking of 31 August 2007.
4. Kordia™'s submissions are directed primarily at:
 - a. The market for co-location on the incumbent network operators' cellular transmission sites
 - b. Telecom's access to the Roaming Service on Vodafone's network.

Co-location

5. Kordia™ made submissions on the Draft Report by the 31 August 2007 closing date. Kordia™ has now considered other submissions on the Draft Report published by the Commission, particularly those of Woosh and New Zealand Communications and notes that despite the commercial agreements

that have been reached and the TCF codes, they both consider that co-location on the incumbent network operators' cellular transmission sites should be a designated service.

6. Kordia™ agrees with the Commission's preliminary view in the Draft Report that the relevant market for co-location is the national wholesale market on cellular transmissions sites.
7. The Commission also correctly notes at paras 143 and 145 of the Draft Report, that the existing incumbent cellular network operators have no or limited incentives to support co-location on reasonable terms for competing cellular networks, in particular new entrants.
8. Accordingly there is a need for regulatory involvement and Kordia™ believes that as a first option co-location on the incumbent network operators' cellular transmission sites should become a designated service and subject to price and non price terms.
9. The secondary option, but one which Kordia™ suggests will create less positive results, is not to move the co-location service from a specified to a designated service but to ensure that the incumbent network operator access providers who provide co-location services be subject to meeting key performance indicators (KPIs) relating to delivery timeframes, response times to defaults. For example, access providers should record and be accountable for regulatory review information regarding provisioning times for their own operations and their competitors.
10. Kordia™ notes that New Zealand Communications suggests that specific co-location targets or quotas would be a logical mechanism for achieving results. A natural conclusion would be to impose a penalty fee on defaults based on criteria which the Commission would consider it an unreasonable

omission to provide the services has occurred. Other mechanisms of implementing the KPIs is to apply the concepts as found in the Standard Terms Determinations or make further use of the Undertakings processes.

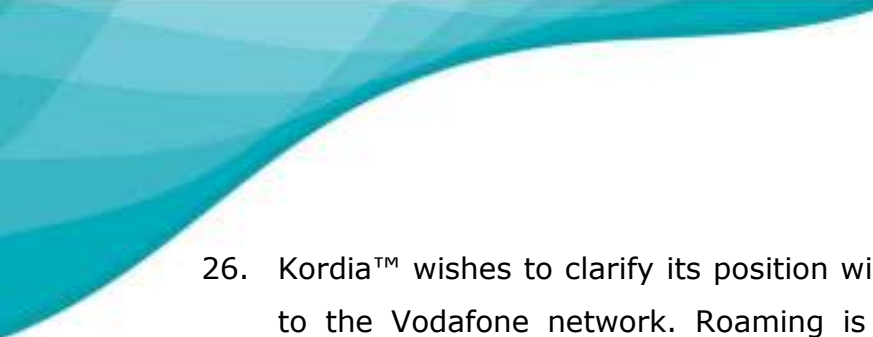
11. In any event, Kordia™ considers that the Commission should monitor the wholesale market for co-location on the incumbent network operators' cellular transmissions sites carefully over the next three months and with a view to treating it as a period where sample data can be collected. If significant progress is not made, the Commission should then commence the process to designate co-location on the incumbent network operators' cellular towers.
12. Kordia™ considers this is the de minimis response the Commission should take.
13. Accordingly, Kordia™ disagrees with the Commission view at para 273 of the Draft Report that designation of co-location would be likely to have a relatively minor incremental impact in terms of promoting new entry. Kordia™ notes that New Zealand Communications has explained that the agreement reached between New Zealand Communications and Telecom (para 9.4 of the New Zealand Communications cross submissions) which seemed to influence the Commissions view, has not in fact created any resulting co-locations.
14. Kordia™ notes the observations of Woosh and New Zealand Communications concerning the impediments raised by incumbents in providing further co-locations on the incumbent network operators' cellular transmission sites. If this continues to occur the results can only be detrimental to the end users of telecommunications services.

15. Kordia™ agrees with the Commission's preliminary conclusion at para 145 of the Draft Report that there is limited competition in the national market for co-location on the incumbent network operators' cellular mobile transmission sites.
16. Kordia™ agrees with the Commission's preliminary view at para 158 of the Draft Report that New Zealand's high prices for mobile services are indicative of lower competitive pressures in New Zealand compared with other OECD countries.
17. At para 120 of the Draft Report the Commission observes a direct link between the long term benefit to end-users for the continued regulation of roaming and co-location, and the degree of price competitiveness at the retail level resulting from the increase in competitive alternatives at the wholesale level.
18. Kordia™ agrees with this conclusion and contemplates that the Commission need only consider the retail performance by OECD standards as indicative of the need to address both areas of service with careful scrutiny.
19. It is common sense to note that co-location can significantly increase the efficiency of telecommunications services supplied. For this reason the availability of co-location will directly decrease the barriers of entry which Kordia™ emphasises is a key component of why New Zealand has fared poorly by OECD standards in mobile services.
20. Kordia™ notes the submissions of New Zealand Communications in relation to the impact of environmental and local authority laws and agrees that the Commission must take into account the impact of the Resource Management Act 1991 (*RMA*) on the value of co-location.

21. The building or addition of new structures often can be held up due to compliance requirements with any RMA or local council requirements. Activities such as the acquisition of rights of way, permits required to build any pole lines or towers, dig trenches or install ducts and conduits are not without a number of inherent complications.
22. These regulatory requirements, though mandatory, can decrease competition by creating barriers and substantial delays. Accordingly, Kordia™ submits that competition can only be enhanced by seeking to avoid such bureaucracy where possible.
23. The Commission must take a “hands on” approach with co-location on the incumbent network operators’ cellular transmission sites. Kordia™ is concerned that the Commission has not considered that the benefit to the general public (as well as the end users) when Access Seekers reduce the environmental impact and public inconvenience. A logical conclusion of co-location is ensuring an option exists instead of replicating infrastructure.
24. The Commission should allow the OECD report on retail mobile services to be considered a guideline on how New Zealand is performing as well as a reproach to encourage actions that will improve retail mobile services to the end users.

Roaming

25. Kordia™ supports the removal of the term “Cellular Mobile Network” (*CLM*) from the Description of the National Roaming Service as proposed in para 565 of the Draft Report. Kordia™ reiterates its views expressed in its submission on the Draft Report dated 31 August 2007 that the CLM term is technology limiting.

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26. Kordia™ wishes to clarify its position with regard to roaming by Telecom on to the Vodafone network. Roaming is regulated to facilitate *new* cellular network operator entry to a market whilst the new network operator's network is deployed. Kordia™ does not consider that the regulated roaming service should be available to Telecom as it upgrades from its CDMA network.

 27. Kordia™ notes Telecom has submitted that existing operators should not be precluded from having access to the regulated roaming service where they are establishing a new network. Kordia™ considers that both Telecom and Vodafone should be excluded as access seekers under the roaming service. The purpose of Schedule 1 is to promote competition in telecommunications markets. Kordia™ is concerned that permitting access by the incumbent mobile operators would have the likely effect of allowing those operators with significant market power to use and benefit from regulated roaming to entrench their market position and perpetuate New Zealand's duopoly landscape.

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