

14 March 2007

Commerce Commission  
PO Box 2351  
WELLINGTON

Dear Sir/Madam

**Re: Vodafone Application for Schedule 3A Undertaking in Respect of National Roaming and Co-location**

I am writing in response to the application for Schedule 3A Undertaking in respect of national roaming and co-location under the Telecommunications Act (2001) by Vodafone made on 19 January 2007.

The Telecommunications Amendment Act (No.2) 2006 that came into force in December 2006 that provides a mechanism for an access provider to effectively offer an alternative to a proposed regulatory change within 40 working days of the Commerce Commission commencing an investigation into the proposed change. The Undertaking by Vodafone provides an alternative to a regulated solution for access seekers wanting roaming or co-location services from the company. While Business New Zealand is not in a position to discuss the finer details of the Undertaking submitted by Vodafone, we would like to raise a few points regarding the process as an alternative to regulation.

Business New Zealand has always supported moves that lead to commercial outcomes, rather than Government-led regulatory outcomes that often end up being the ultimate result. Therefore, we support provisions that allow a relevant access provider to submit as a viable alternative proposed terms and conditions for the supply of a service the Commission is proposing to regulate. As well as having a stronger likelihood of a successful outcome, this also sends positive signals to investors regarding the willingness of the Government to support commercial solutions.

As Vodafone have stated in their Undertaking proposal, this will be the Commission's first consideration of an Undertaking application. Therefore, the process and eventual outcome of this Undertaking could play a key role in determining whether Undertakings of future issues are submitted. While we understand that an Undertaking should not be automatically accepted as cost/benefits need to be

assessed against other options, negative signals from the Commission that such Undertakings would have a relatively low chance of success could deter future attempts, and show that alternatives to Government-led regulation have a low take-up rate.

Also, we note that due to statutory issues, Vodafone were only given 13 working days prior notice of the deadline to submit an application, rather than the 40 working days envisaged in the legislation. Vodafone have explained in their application that this lack of time has meant particular issues have not had ample time to be given the attention they require. Again, we submit that the Government should engage in meaningful consultation with Vodafone to ensure these additional issues end up being successfully concluded for both regulator and industry participants, and that Vodafone should not be penalised in any way because of the confined timeframe they were given.

Overall, we hope that Undertakings such as those submitted by Vodafone are given full consideration by the Commission to ensure that regulatory outcomes are industry, rather than Government led.

We thank you for the opportunity to comment.

Regards,

A handwritten signature in black ink, appearing to be 'P. O'Reilly', with a stylized, flowing script.

Phil O'Reilly  
**Chief Executive**  
**Business New Zealand**