



COMMERCE COMMISSION

Please refer to:

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5 April 2007

Tom Chignell
GM – Commercial Development
Vodafone New Zealand Limited
Private Bag 92161
Auckland

Dear Tom

Vodafone Undertaking in respect of National Roaming and Co-location Services

1. On 16 November 2006, the Commission launched Schedule 3 investigations into whether the roaming and co-location services should be amended.
2. An undertakings regime was incorporated in the Act via the amendments made on 22 December 2006 which allow a relevant access provider to submit, as an alternative to regulation, proposed terms and conditions of supply of a service that the Commission is proposing to regulate.
3. On 19 January 2007, the Commission received an application for an undertaking from Vodafone (Undertaking) and sought submissions on the Undertaking from interested parties.

Process of assessing undertaking

4. Clause 3(2)(a) of Schedule 3A provides that if the Commission accepts an undertaking, it may recommend, in its final report to the Minister which is prepared in accordance with clause 4 of Schedule 3, that the Minister should accept the undertaking.
5. The Commission will provide its preliminary views on whether or not to amend the roaming and co-location services, and whether the Undertaking should be accepted, in its draft report prepared under Schedule 3.
6. Clause 16(3) of Schedule 3A requires the Commission to allow the access provider a reasonable opportunity to amend the undertaking in light of the submissions made prior to making a determination. The Commission considers that twenty working days is a reasonable opportunity to allow Vodafone to amend the Undertaking in light of the submissions received.

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7. The Commission has undertaken a preliminary review of the Undertaking and considered the submissions made by interested parties. To assist Vodafone in amending its Undertaking, the Commission has set out below its preliminary views on the Undertaking in light of the submissions received.
8. Accordingly, the Commission gives Vodafone the opportunity to submit an amended Undertaking to the Commission by **5pm on Tuesday 8 May**.

Commission's preliminary view

Form of Undertaking

9. In the submission in support of the Undertaking, Vodafone noted that there has been no guidance in the legislation on the form an undertaking should take.
10. The Undertaking, at present, does not contain any terms relating to implementation or operational procedures. The Commission considers that all the major terms and conditions of agreement that may be required between the access seeker and Vodafone to ensure a smooth and timely provision of Vodafone's roaming service must form part of the Undertaking including implementation and operational processes.
11. The Commission considers that the process of defining and changing Location Areas (LAs) and the general principles around which handover points will be established are important and should be included as part of the implementation/operational processes that form part of the Undertaking.

Existing commercial agreement

12. Clause 2.2 of the Undertaking excludes access seekers who already have a commercial agreement with Vodafone from accessing the terms of the Undertaking.
13. Clause 3 of Schedule 3A of the Act provides that the Commission may, while considering a proposed regulatory change, accept an offer from an access provider to supply a service to all access seekers on the terms and conditions of a written undertaking.
14. In the Commission's view, if an undertaking is accepted by the Commission and the Minister and registered under clause 6 of Schedule 3A, the access provider must supply the services to all access seekers in accordance with the terms of the Undertaking.

Exclusive provider

15. Clause 8.1(a) states that during the term of the Undertaking, Vodafone will be the exclusive provider of services equivalent or similar to the roaming services to access seekers.
16. The exclusivity clause in the Undertaking does not appear to be consistent with the promotion of competition for the long-term benefit of end-users. The Commission

considers that Vodafone should demonstrate how exclusivity will be in the best interest of end-users.

Roaming on to 3G networks

17. The roaming service offered by Vodafone is a 2G only voice/SMS/data roaming service and restricts access to the Vodafone 3G or HSPDA networks.
18. Vodafone has noted that it may decommission its 2G network at any time and has no obligation to provide roaming over any other part of the Vodafone network. In the absence of 3G roaming, the Commission considers that such a move by Vodafone may disadvantage access seekers and their customers and reduce the access seeker's network footprint.
19. In 2001 when the Telecommunications Act was enacted, 3G was an emerging technology. However, 3G has become more prevalent in recent years and any new entrant would most likely enter the market using 3G technology as there is an increasing demand from end-users for mobile data services.¹ Limiting roaming capability to only 2G networks may restrict new entrants from attracting customers.
20. The Commission considers that a technology neutral roaming service that does not restrict services to 2G voice/SMS/data roaming services would be a more desirable service that would assist new entry and promote competition for the long-term benefit of end-users.

Undertaking term

21. Vodafone's Undertaking is for a duration of five years from the date of registration except in cases of early termination. Under clause 4.2 of the Undertaking, Vodafone may withdraw or terminate the Undertaking at any time.
22. Clause 7(1)(a) of Schedule 3A states that the registration of an undertaking is effective for a period of 5 years from the date of registration. An undertaking may only expire before the five year period if the Commission recommends to the Minister that an undertaking should expire earlier than the 5-year period.
23. Vodafone cannot terminate or withdraw its Undertaking after it has been registered.

Initial coverage area

24. The current roaming regulation can only be accessed if an access seeker commits to rolling out a national network, and only after having rolled out to 10% of the area in which the New Zealand population normally lives or works.
25. Vodafone has proposed that the access seeker builds at least 150 cell sites before roaming is made available to it under the terms of the Undertaking.

¹ Both potential entrants into the market have indicated that they will be deploying 3G networks.

26. Potential access seekers in their submissions suggest that the initial coverage area should remain at 10% but that this should be clarified to refer only to population.
27. The Commission considers that an appropriate initial coverage threshold could be that an access seeker is required to build a network comprising of 150 cell sites or that covers 10% of the population, whichever is lower.

Set-up costs

28. Under the terms of the Undertaking, access seekers are required to reimburse Vodafone for all development costs to set-up the roaming service.
29. In previous Commission decisions, access providers have not been permitted to recover the costs involved in implementing capability to deliver regulated services. The Commission would expect this to apply in respect of the set-up costs involved in providing roaming services under the undertaking, as the undertaking has been submitted as an alternative to regulation.

Access fee

30. Vodafone requires an access fee to be paid in advance.
31. The Commission considers that Vodafone is entitled to some protection against credit risk. The Commission considers that normal commercial terms should apply in the case of access fees to minimise Vodafone's credit exposure.

Wholesale

32. Under the Undertaking, access seekers can only wholesale their retail services with the approval of Vodafone.
33. The Commission considers that access seekers should not need the approval of Vodafone to wholesale their retail services.

Co-location pricing

34. Vodafone's Undertaking offers two options for co-location pricing. Both are based on costs depending on whether or not the access seeker wishes to make a capital contribution.
35. The Commission considers that Vodafone should have regard to the submissions on co-location pricing when submitting its amended Undertaking

Roaming pricing

36. The Commission notes that all parties, including Vodafone, appear to be in agreement from submissions made on the Commission's Issues paper that there is a relationship between roaming and cost-based mobile termination.

37. The Commission considers that Vodafone should have regard to the submissions on the pricing of the roaming service when submitting its amended Undertaking.
38. The Commission notes that the Undertaking is silent on the period for which the prices apply. The Commission considers that it would be appropriate to include a mechanism for a regular review of the prices in the Undertaking.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Osmond Borthwick', written over a horizontal line.

Osmond Borthwick
Director, Telecommunications Branch