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Osmond Borthwick
Manager Network Access
Commerce Commission
By e-mail: Osmond.borthwick@comcom.govt.nz

Dear Osmond

RE: National Roaming

I refer to your letter of 12 September 2008 in relation to whether the Commerce Commission (the Commission) should commence a fresh investigation into national roaming under Clause 8(1) of Schedule 3 of the Telecommunications Act (the Act). I refer also to the e-mail of 17 September 2008 from Tom Forster of your office to myself, granting Vodafone an extension to its response to this letter until 29 September 2008. Vodafone is grateful both for the opportunity to respond to your letter and the extension granted for this response.

Vodafone notes that the request by the Minister for Communications (the Minister) to consider whether there is a need for a fresh inquiry into national roaming seems to be based on a single claim by NZ Communications (NZC). NZC's claim is that the charging structure for national roaming calls leads to an artificial inflation of up to 50 per cent above the headline 'per minute' rate. It appears to argue this is the case because up to 70 per cent of mobile calls in New Zealand are of less than one minute in duration.

NZC's claim has no evidential basis, and Vodafone is surprised the issue has been raised with the Minister some months after the Commission finalised its detailed consideration of the service. Vodafone would be particularly concerned if this issue was to generate another full-blown investigation under Schedule 3 of the Act.

More generally, we have also offered to change the charging structure for voice calls under the National Roaming Agreement (NRA) we have with NZC to second plus second pricing so that any lingering concerns around the analysis contained in the Commission's Final Report on its Schedule 3 investigation should now be removed.

For these reasons, we believe there are no reasonable grounds for the Commission to conduct a fresh inquiry into whether to make national roaming a designated service under the Act.

We also attach an appendix that seeks to address, as much as possible, the specific questions raised by the Commission in your letter of 12 September.

Charging structure is only one aspect of the National Roaming Agreement

As the Commission would be aware, commercial agreements contain a wide range of terms and conditions. The NRA is no exception. While the particular charging structure contained in the NRA is an important term, it should not be considered in isolation. The true value of any commercial agreement needs to be assessed having regard to the full suite of terms and conditions contained within it. While comparing some terms and conditions in different contracts in different jurisdictions in isolation might make one agreement seem less valuable than another, others will make it appear more attractive. What is important when comparing different agreements in different jurisdictions is the entirety of the agreement – not simply a particular term in exclusion of others.

Vodafone notes that while the NRA is based on a minute plus second charging structure, the actual headline rates are very attractive compared with those in other jurisdictions. Based on those commercial agreements Vodafone New Zealand has been able to view from overseas jurisdictions, it appears that while the charging structure in some other jurisdictions is on a [c-i-c] basis, the [c-i-c] headline rate can be a [c-i-c] of that contained in the NRA in New Zealand.

Further, the charging structure for voice calls is not relevant to the headline rate for SMS services. In this regard, Vodafone notes that the SMS rates contained in the NRA [c-i-c].

In other words, while one aspect of the NRA may mean it compares less favourably with commercial arrangement in overseas jurisdictions, other aspects offset this. To validly compare agreements across different jurisdictions for benchmarking purposes, it is important to compare all relevant terms and conditions.

Clearly, NZC would like to have the most favourable charging structure from one jurisdiction, the lowest SMS rate from another and the best voice rate in the world. Who can blame it – it clearly wants to cherry pick terms from a range of arrangements in other jurisdictions and have “the best of all worlds”. What is relevant, however, is the overall value of an agreement. We are confident that if the Commission were able to view the entirety of the agreements in other jurisdictions that we have seen, it would be convinced that the commercial offer agreed between Vodafone and NZC in New Zealand compares very favourably with those in other jurisdictions.

NZC’s claims around a 50 per cent “artificial inflation” are unsupported

Vodafone is particularly disappointed that a single claim by NZC – that seems to have been made without any supporting evidence – has led the Minister to request the Commission consider whether to conduct a fresh inquiry into national roaming.

It is not clear to Vodafone on what basis NZC believes up to 70 per cent of mobile calls in New Zealand are under one minute in duration. As best we know, NZC has never provided a single retail call to consumers in New Zealand, and so it is a mystery to us how NZC comes up with these figures.

Further, it is simply incorrect to assert that the charging structure for national roaming leads to an artificial inflation of up to 50 per cent above the headline roaming per minute rate.

Vodafone believes it would be poor public policy practice to consider undertaking detailed investigations into matters whenever a party makes an unfounded assertion in support of a self-interested argument. Vodafone believes NZC should be required to support future allegations it makes before the rest of the industry has to devote scarce time and resources to responding to its claims.

In considering the extent to which minute plus second rounding for national roaming impacts on the value of the per minute headline rate, a number of impacts should be taken into consideration:

- minute plus second rounding will, if considered in isolation, increase the effective per minute rate for national roaming above the headline per minute rate. Vodafone does not, however, believe there is any evidence to support the assertion that this increase is in the order of 50 per cent in New Zealand;
- further, it should be noted that under the NRA, calls to voicemail for NZC consumers who are travelling outside NZC's network area are zero-rated by Vodafone. That is, if an NZC customer is travelling outside NZC's network coverage area, Vodafone will set up a link over its network to try to ensure NZC's customer can receive the call. If the NZC customer takes the call, NZC will be charged for the roaming service under the terms of the agreement. If, however, the NZC customer does not take the call such that the call goes to voicemail, Vodafone will "circuit" the call back to NZC's voicemail system. Under the terms of the NRA, Vodafone does not charge NZC for that relay service despite the fact it will hold open two links for NZC for the duration of the call. Vodafone estimates that between approximately [c-i-c] per cent of calls to its network go to voicemail services. Assuming a similar amount of calls made to NZC customers will go to voicemail, this means it will be receiving a free service for between approximately [c-i-c] per cent of calls that go to its customers. Further, NZC will be charging a termination fee to other carriers whose customers make calls to NZC's voicemail service, and it will be free to charge its customers a retail fee to retrieve voicemail messages. These fees it collects will likely more than offset any "artificial inflation" to headline rates as a result of minute plus second rounding.

Overall, the impact of minute plus second rounding is likely to be substantially less than NZC claims to be the case, and is offset by other factors in the NRA that impact on the difference between the headline rate and the effective roaming rate.

Mobile termination rates are not a perfect proxy for overseas national roaming rates

Vodafone acknowledges that in many overseas jurisdictions interconnection rates for mobile termination services are set on a second plus second basis. While there are some jurisdictions – such as [c-i-c] – which appear to allow for minute plus second interconnection charges, a large number of rates in European jurisdictions are set on a second plus second basis.

Typically, however, interconnection rates in New Zealand have been set on a minute plus second basis for a whole series of interconnection services. For instance, PSTN origination and termination

services in New Zealand have been set on a minute plus second basis. Further, at the retail level, voice calls on mobile networks are charged on a minute plus second basis in New Zealand. Accordingly, there is nothing particularly unusual about having a minute plus second charging regime for a telecommunications service in New Zealand.

Perhaps more importantly, it should be expected that national roaming rates are higher than mobile termination rates. This is because national roaming is a service that normally would only be expected to be provided in high-cost areas of the country. That is, the purpose of national roaming is to enable a carrier to provide service to its consumers in those areas where it does not have network coverage. A network operator will, naturally, choose to initially build its network in those areas where it is more economic to build a mobile network. Roaming, therefore, would be expected to occur in those areas of the country where it is more costly to provide services to consumers. The notion that costs can vary between different geographic regions – and should be recognised in regulated prices for designated services – has previously been accepted by the Commission when it has set geographically de-averaged prices for the unbundled copper local loop service in New Zealand.¹

Normally, national roaming prices reflect this. While termination charges are not set on a geographically de-averaged basis, national roaming rates should be. Hence, it should be expected that national roaming rates would lie above mobile termination rates. As indicated above, this is certainly the practice in [c-i-c].

Accordingly, Vodafone believes that termination rates in overseas jurisdictions are a particularly aggressive benchmark for determining appropriate cost-based prices for national roaming. We continue to believe the roaming rates contained in the NRA represent a very low rate compared with other jurisdictions.

[c-i-c]

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[c-i-c]

¹ Commerce Commission, *Standard Terms Determination for the designated service Telecom's unbundled copper local loop network*, 7 November 2007, especially at pars [247] – [253].

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Vodafone is willing to offer second plus second pricing for national roaming

In any case, even if the Commission continues to have concerns about the impact of minute plus second pricing (as compared to second plus second pricing), Vodafone can advise it has offered NZC the option of changing the charging structure for national roaming voice services to second plus second rounding. That is, it can continue to receive the rates contained in the NRA, but have them charged on a second plus second basis.

It is noteworthy, however, that this offer has been made on condition that the Commission does not conduct a fresh Schedule 3 investigation into whether or not to make national roaming a designated service.

Put simply, Vodafone does not accept it is necessary to price regulate the national roaming service, nor that the rates and the charging structure contained in the NRA are in any way suggestive of the need to increase the extent of regulation of this service. Vodafone has, however, been prepared to make a further concession on this point to improve the certainty over regulatory settings affecting the industry. Vodafone is becoming increasingly concerned by the instability around regulatory settings affecting the provision of mobile services in New Zealand. For instance,

- Only 16 months after providing a 5-year Court enforceable Deed with regard to the provision of fixed-to-mobile termination services, the Commission has asked parties to comment on whether re-consideration of whether to regulate this service is now appropriate; and
- Only six months after finalising a Schedule 3 investigation that concluded it was not necessary to make national roaming a designated service, the Commission has been asked to consider whether to conduct a fresh inquiry into whether or not to make the service a designated service.

As set out further below, Vodafone believes it has made every reasonable effort to find commercial solutions to assist the entry of NZC into the market, and to avoid the need for unnecessary regulation of mobile services.

It is sometimes argued that existing operators and access providers have an incentive to use every means possible to delay providing services to new entrants in order to prevent the realisation of

competition via access regimes. This has not, however, been Vodafone's approach to these matters. It has tried to find commercial solutions to avoid the uncertainty that comes from regulatory intervention. This is evidenced by it reaching commercial agreements on spectrum, [c-i-c], national roaming and co-location. If, however, such certainty cannot be attained by entering into such commercial solutions, Vodafone may feel it has significantly less incentive to try to reach commercial outcomes on potential regulatory matters.

In any case, if, as appears likely from the letter from the Minister of Communications to the Commission of 5 September 2008, the only reason for commencing a fresh inquiry into national roaming relates to the existence of minute plus second charging, this concern has now been removed by Vodafone's latest offer on national roaming to NZC.

It is time for NZC to enter the market

New Zealand has been waiting for over 7 years for NZC and its predecessors to make good on their claim they are entering the mobile market. Unsurprisingly, NZC has sought to use the regulatory system to improve its business case for entry.

In response, the government, the Commission and now other industry participants have bent over backwards to create a path to market for it. NZC now has:

- management rights to spectrum sold to it at a 57 per cent discount compared to the price set for Vodafone for similar spectrum by the Ministry of Economic Development;

[c-i-c

- [c-i-c]; and
- a national roaming agreement signed in 2007.

Vodafone believes it has done everything reasonably within its power to assist the entry of NZC into the market. It is noteworthy that none of these regulatory concessions were available to Vodafone (or its predecessors) when it entered the market in the 1990s. It is also noteworthy that many of these concessions were not available to Hutchison when it launched its 3G network in Australia in 2003. Finally, none of these concessions have been needed by TelstraClear, Black and White or other MVNOs who are already (or scheduled to shortly begin) providing services to New Zealanders.

Vodafone believes it is time the Commission drew a close to the endless stream of regulatory inquiries that have the potential to create considerable uncertainty for investors in this industry. Much good work has been done by the Commission to consider and resolve issues around spectrum, national roaming, co-location and [c-i-c]. Now that these issues are largely resolved, Vodafone hopes the Commission will recognise the value of regulatory certainty for all competitors. It is particularly important for Vodafone given our recent commitment to invest a

further half a billion dollars to roll out our nation-wide mobile broadband network. The possibility of a fresh investigation into national roaming has a real impact on the business case for this investment.

In summary, it is time for NZC to stand on its own two feet and commit to an entry without further regulatory assistance and hand outs. It is time NZC started competing on its merits.

It is not time for another drawn-out inquiry on national roaming that will simply provide another excuse for NZC to delay its entry into the market.

Should you have any further queries in relation to this matter, feel free to contact me on 021 882 429.

Yours sincerely

Richard York
Regulatory Manager
Vodafone New Zealand

Appendix – Answers to specific Commission questions

Question 1

Vodafone understands that voice termination is provided on a second plus second basis in a number of overseas jurisdictions. However, most interconnection services are provided on a minute plus second basis in New Zealand. Further, [c-i-c] enables mobile operators to set voice termination on a minute plus second basis.

Question 2

Vodafone would like to be able to provide you with evidence of the charging structure – and the rates – commercially agreed for national roaming services in [c-i-c]. However, in order to do so, we would need the agreement of not just our own Operating Companies in overseas jurisdictions, but also that of the third parties with whom these agreements have been made. [c-i-c].

Question 3

Vodafone is not, at this point, able to answer this question as it is unable to disaggregate between calls of less than or greater than a minute for fixed-to-mobile and mobile-to-mobile termination.

Question 4

As indicated in our submission to the Commission's Issues Paper on whether it should conduct an inquiry into mobile termination services, the average duration of inbound calls to Vodafone's network is [c-i-c] minutes.