VODAFONE NEW ZEALAND LIMITED
SUBMISSION TO THE COMMERCE COMMISSION

Telecommunications Act 2001

Submission in support of an Application for Schedule 3A Undertaking in respect of National Roaming and Co-location

19 January 2007

Public Version

I Summary

1. This submission and the accompanying proposed Undertaking document together constitute an application by Vodafone for the registration of an Undertaking under Part 3A of the Telecommunications Act 2001 (the Act).

2. We are submitting this application to provide an alternative to a regulated solution for access seekers wanting roaming or co-location services from Vodafone. In our view, an undertaking offers a simple alternative to regulation, on terms that the Commission can negotiate and agree and make available to access seekers.

3. This submission briefly summarises the terms and conditions that Vodafone would be prepared to agree with the Commission to supply national roaming and co-location services. It also covers some issues arising from the newness of the legal framework relating to undertakings, and discusses timing issues.

4. The attached proposed Undertaking sets out the terms and conditions that we propose in more detail.

Framework and timing issues

5. This is the Commission's first consideration of an Undertaking application and, due to recently imposed statutory timeframes, it preceeds any opportunity for the Commission to issue guidelines or prescribe the necessary information and format of an Undertaking application.

6. The statutory timing issues have also meant that Vodafone has been afforded only 13 working days prior notice of the deadline for submitting this application, as opposed to the 40 working days envisaged in the legislation.

7. Against this background, Vodafone is keen to continue to work with the Commission to refine and develop the proposed Undertaking through the period of the Commission's mobile market investigation. In particular, we look forward to Commission and industry feedback on what the objectives of this Undertaking should be.

Roaming terms

8. We have focused on developing a simple alternative to regulation that could provide a back-up for new entrant network builders who need certainty on the terms on which they would be able to secure access to GSM roaming.

9. Vodafone is proposing a very simple roaming pricing arrangement.

Table 1: Pricing for roaming services (cents per minute/text/MB)

Service	Price
Voice	21.5 cpm per leg
SMS	9.5 cpt per leg
Data	4.9 cp MB

10. The voice and SMS prices are per leg prices. This means that, for example, a call from a roamer to a roamer will incur a total charge of 43 cents per minute.

11. We hope to explore alternatives for pricing of this roaming service as one of the further developments of this proposed Undertaking. In particular, geographical de-averaging (with lower prices in lower cost areas and higher prices in higher cost areas) may be a desirable pricing option. We are also keen to explore the merits of volume-based pricing, where prices fall in line with rising roaming traffic, and to look more closely at retail minus pricing options. In the limited time available, however, we have not been able to give these matters the attention they require.

12. This submission also outlines some of the key non-price terms Vodafone is proposing. These include provisions requiring some network building by an entrant, and for roaming services to be excluded in areas where an access seeker builds.

Co-location terms

13. The proposed Undertaking reflects our current approach to co-location negotiations,

14. The access seeker has a choice between two cost-based options for co-location, depending on whether it wishes to make a capital contribution or to make no initial contribution but to pay a monthly rental in lieu.

15. The actual pricing for any particular site will depend on the estimated cost to replace a site of its type (we have eight standard types), plus a contribution to any site-specific assets for that site (like access tracks, for example).

16. We follow the processes set out in the co-location code as approved by the Commission for co-location requests.

II Framework and timing issues

17. This section comments on some issues arising from the legal framework and timing of this application.

Timeframe issues

18. The timeframe for this application has proven to be more than challenging. Given that we are effectively proposing an alternative to regulation of roaming for the next five years, a high level of scrutiny and care is required in formulating the terms.

19. Unfortunately, time has not been available to develop the proposed Undertaking as we would have liked. Because of the absence of transitional provisions in the legislation, we have had just 13 working days to develop this proposed Undertaking when the normal statutory period is 40 working days.

20. We understand that we have the right to amend this proposed Undertaking, following feedback from the industry and the Commission through the consultation process. We expect to be guided by the Commission's views as expressed in its mobile services review. There are also some specific areas on roaming pricing that we will look at.

Legal framework issues

21. The legislation that underpins this application is very new and its interpretation quite uncertain.

22. Given this uncertainty, Vodafone wishes to recite its understanding of the legal framework upon which the proposed Undertaking is predicated.

23. Vodafone understands that it can unilaterally or by negotiation and agreement with the Commission amend this application at any stage prior to the Commisson making a recommendation to the Minister.

24. Vodafone envisages that once it has a better understanding of how the Commission views the issues surrounding both the regulated national roaming and co-location services that it may wish to amend its application.

    - According to the Commission's preliminary timetable for its investigation, this is most likely to be in early June following the release of the Commission's Draft Report on its mobile market investigation in mid-May.

    - We also look forward to industry feedback on this proposed Undertaking as a result of the consultation process envisaged in the Act. We note that clause 16(3) of Schedule 3A provides Vodafone with a further opportunity to amend its application in light of such submissions.

25. Vodafone understands that if the Commission were to accept an Undertaking and that Undertaking was ultimately registered, it would be effective for a period of five years from the date of registration and any further period as might be agreed between Vodafone and the Commission.

Issues for clarification

26. There is some uncertainty about the legislative framework around undertakings. Three important questions are as follows.

The overall objective

27. From the Commission's previous work we assume the objective of roaming regulation is to encourage firms to build competing networks to the greatest geographical extent possible. But this may not extend to requiring a nationwide buildout.

28. It would be helpful if the Commission would clarify its objectives since it affects the terms and conditions on which we are prepared to offer roaming services as an alternative to regulation.

Practical impact of an undertaking

29. It would also be most helpful if the Commission could indicate how it sees implementation of an undertaking working in practice.

- We are especially interested in how a registered undertaking would affect existing or future commercial agreements between the various parties, and in how Vodafone and an access seeker that wants to take a service on the basis of an undertaking would be contractually bound.

- We have specified in the proposed Undertaking our understanding that it does not take precedence over existing contracts.

30. If there is to be great uncertainty about the regulated terms for a service, this will reduce our chances of coming to a commercial agreement.

What format should an Undertaking take

31. We have not been blessed with an abundance of guidance in the legislation on the form of an undertaking or precisely how it works.

32. If, for example, what is required is a draft Heads of Agreement between Vodafone and the Commission, then we could look to create such a document.

III Roaming

33. This section discusses pricing of the roaming service and outlines some other key terms.

34. We have focused on developing a simple alternative to regulation that could provide a back-up for new entrant network builders who need certainty on the terms on which they would be able to secure access to GSM roaming.

35. The roaming service that we would make available has two purposes:

- Temporary assistance while building – The roaming service will remove coverage and network quality as competitive differentiators for a new entrant. The entrant will use our network while it builds.

- Full coverage in the longer-term – In some places it may never be economic to replicate Vodafone's radio access network. Roaming on Vodafone's network therefore provides a way for an entrant to offer full geographic coverage, regardless of the economics of building a full coverage network.

Key terms

Prices

36. The pricing terms we are currently proposing are extremely simple.

Table 2: Pricing for roaming services (cents per minute/text/MB)

Service	Price
Voice	21.5 cpm per leg
SMS	9.5 cpt per leg
Data	4.9 cp MB

37. The voice and SMS prices are per leg prices, so, for example a call from a roamer to a roamer would attract a 43 cpm fee.

38. There will be provision for forecasts by an access seeker, with a proportion of usage fees payable in advance.

39. We intend to explore refinements to our approach to pricing of roaming services. In particular, we want to look at geographic de-averaging, a volume-discounting approach, and the efficiencies of retail-minus approaches.

Build requirements

40. There is no requirement in the proposed Undertaking for a nationwide build. We intend that national roaming can be a permanent service if an access seeker does not wish to build a nationwide network.

41. However the proposed Undertaking does require some network building by an entrant. We consider this important to achieve the purpose of assisting facilities-based entry rather than being a back-door solution for MVNO entry.

42. For similar reasons, the proposed Undertaking provides that in areas where an access seeker has built, roaming will not be available.

Technology

43. This is a 2G only voice/SMS/data roaming service. It does not give access to our 3G or HSDPA networks.

Access seekers

44. Only an access seeker for the regulated roaming service may benefit from the Undertaking. Under no circumstances can Telecom benefit from these terms.

45. An access seeker must not resell or assign the bare roaming service to any other party. It can offer wholesale services using the roaming service with consent from Vodafone.

Interconnection

46. The roaming service does not include interconnection. An access seeker will be responsible for its own interconnection requirements.

Process for agreement

47. We expect to need to make specific arrangements with any access seeker in addition to the terms we agree with the Commission in the Undertaking.

48. We envisage that the launch process will include agreeing an expected commencement date, an implementation plan, the technical specifications and operational procedures relating to the roaming service with an access seeker.

49. In the proposed Undertaking we agree to have any dispute or issue that arises between Vodafone and an access seeker resolved by an arbitrator subject to agreed standard dispute resolution procedures.

IV Co-location

50. This section briefly sets out the terms for the proposed co-location service. In essence we are proposing to include in the proposed Undertaking what amounts to our existing practice in regard to co-location requests.

51. The purpose of our co-location service is to share the costs of network building, and thereby reduce the costs of network deployment for both parties.

Pricing

52. We have two options for co-location pricing. Both are based on costs. The choice comes down to whether or not an access seeker wishes to make a capital contribution.

53. An access seeker can either pay half of the replacement capital cost of a site (excluding the costs of radio equipment, which each person pays for separately), or instead pay an operating fee equivalent to a 13% yield on half of the capital costs each year.

54. The shared operating costs of the site are split evenly, and each party pays its own non-shared operating costs.

55. Replacement costs vary between sites. We have eight standard site types, but there are also specific assets associated with some sites that would need to be valued and included in the replacement cost estimate. The table below shows an indicative calculation for one of the standard site types.

Table 3: Indicative pricing for a standard metro site (total cost $275,000) compared with self-build (GST exclusive)

Item	Option 1	Option 2	Self build
Capital excluding radio equipment	137,500	0	275,000
Capital charge (at 13%)		17,875	
Shared operating costs	8,250	8,250	16,500
Non-shared operating costs	4,000	4,000	4,000
Total annual operating cost	12,250	30,125	21,500
Total capital cost	137,500	0	275,000

Process for dealing with co-location requests

56. We will follow the process set out in the Radiocommunications Co-location Code (the Code), utilising the master co-location agreement set out in the Code as the basis for bilateral arrangements with co-location access seekers.