



Vodafone New Zealand Limited –
Legal Department
Level 1, Lambton House

160 Lambton Quay, PO Box 1271
Wellington 6011, New Zealand

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Katie Bhreatnach
Principal Counsel – Regulation Branch
Commerce Commission
44 The Terrace
Wellington 6140
katie.breatnach@comcom.govt.nz

BY EMAIL ONLY

Dear Katie,

ADMISSION OF CEG REPORT IN CROSS-SUBMISSION PROCESS

The CEG report for Chorus “Welfare effects of the UCLL and UBA uplift” (20 March 2015) (**the CEG report**) responds to a request by Chorus to attempt to quantify the welfare effects of uncertainty in estimating the true cost of capital or price of UCLL and UBA services. CEG has sought to do this using the loss simulation model developed by Frontier Economics, which is itself an extension of a model developed by Professor Dobbs (**the Frontier-Dobbs model**).

As a preliminary point, we note that the Frontier-Dobbs model is not addressed substantively by any other party in submissions on the UCLL and UBA draft determinations. Wigley & Company notes the existence of this model in its submission (at §10.6 and footnote 81) but does not engage with or comment on it in any real sense.

The Frontier-Dobbs model is addressed extremely briefly by the Commission in its Draft Decision “Cost of capital for the UCLL and UBA pricing reviews” (2 December 2014) at §226. It is clear from the CEG report at §§87 and 88 that it is this Commission document that is being addressed. This being so, the proper course would have been for Chorus to have responded to the Commission’s consideration of this model in submissions due 20 February.

Vodafone considers that the CEG report cannot properly be accepted as a cross-submission.

First, to do so would subvert the principle that cross-submissions must address primary submissions made by other parties and cannot introduce new arguments not raised in

submissions. Parties other than Chorus have respected this principle throughout the UCLL and UBA price review process by confining their own cross-submissions to matters previously addressed in submissions (much as it would have been convenient to us to be able to raise new arguments at a later stage). It would completely undermine this rule, and be entirely unfair to those parties, if the Commission were now to decide that new matters, such as those in the CEG report, can be addressed within the cross-submission process. If the Commission were to make exceptions to this long-standing approach then all parties to this process are then encouraged to disregard this rule and include *de novo* arguments in their own cross-submissions.

Second, as a practical matter, other parties to the price review determination processes are simply unable to address the new matters raised in the CEG report prior to the conference. Addressing these matters would require very substantial work to be done, involving:

- consideration of the relevance of the Frontier-Dobbs model (as the Commission dismissed its relevance and Chorus did not discuss relevant in its submissions, we have not previously considered this issue in detail);
- assessment of whether the model is 'fit for purpose' in the context in which CEG seeks to apply it;
- review of CEG's implementation of the model including proposed model assumptions / parameters;
- implementation of the model and running CEG's 15 scenarios;
- running of any alternative scenarios we consider valid;
- interpretation of the model results;
- review of CEG's interpretation of Oxera's probability of loss function and reproducing CEG's estimates of welfare effects;
- review of the substance and relevance of the studies cited by CEG in relation to quantifying consumer benefits from existing and future applications of UFB; and
- reproduction of CEG's NPV calculation to estimate costs associated with delayed migration.

This work simply cannot be done in advance of the Commission's conference dates.

If the Commission does admit consideration of new matters raised in the CEG report within the context of its conference, Vodafone submits that this would conflict with the principle of natural justice addressed in our 18 March letter, which is that parties must have the opportunity to make informed comment on any new information that the Commission considers relevant to its final UCLL and UBA pricing review determinations where that information may affect the reasons or assessments on which these determinations are based. That principle is not respected where the Commission admits discussion on matters, and forms views on those matters, in circumstances where other parties cannot examine those matters and meaningfully comment on them.

At a minimum, we consider that matters included in the CEG report must be excluded from consideration and discussion at the Commission's conference. It remains open to Chorus to resubmit its report following publication of the Commission's further draft determinations in May 2015. If submitted by Chorus in this way, the procedural rights of all other parties should be respected via the submission and cross-submission process that will follow.

In the event that matters in the CEG report are admitted during conference, Vodafone and its experts will not address them. Furthermore, if Chorus' submissions on these matters made during conference are adopted by the Commission, this issue would be an element in any subsequent challenge that Vodafone may make to final determinations published by the Commission.

Yours sincerely



Tom Thursby
Lead Counsel – Competition and Regulatory
Vodafone New Zealand Limited

cc. Tricia Jennings, Commerce Commission