12 February 2021

Simon Thomson
Commerce Commission

PUBLIC VERSION

Dear Simon,

Thank you the opportunity to submit on the Commerce Commission's discussion paper *Review of the Commerce Commission's funding for the regulation of Telecommunications and Fibre under the Telecommunications Act 2001* dated 10 December 2020.

We have already met with you and shared our high-level response to the funding proposals set out in the discussion paper. This letter reflects the views expressed in that meeting. As stated, Vodafone does not support the substantial increase in levy funding sought by the Commission. We acknowledge that over time the complexity and scope of regulation in the communications sector has grown. While this poses challenges for both the Commission and industry, it does not justify the levy uplift asked for in the discussion paper.

The discussion paper argues that a major funding increase is necessary for the Commission to perform all activities that it judges necessary or desirable, and to do this in a manner that requires significant additional resources and funding. It poses a false choice between either a) increased funding being allocated; or b) the Commission not being *"….capable of undertaking functions required of us and [failing] to meet Government's expectations of our role*".[1] It then proceeds on the basis that a much expanded role and resource is required for the Commission to meet its statutory duties (i.e. "*reduction in activity would run counter to the purpose of the Act and the expectations of stakeholders*"[2]).

The increase in funding sought by the Commission is at odds with commercial realities faced by industry, which have only become more challenging because of Covid-19. At the upper end, the Commission's call for increased funding represents an additional cost of roughly $[x][3]m for Vodafone based on market share. Our expectation is that increased levy costs will remain with industry absent an effective mechanism to pass these through to end users. As such, any levy increase is a tax on industry that simply adds to the costs already imposed by existing and new regulatory requirements. Cumulatively, these costs will reduce the ability of operators to invest in innovation, networks and improved services.

[1] §4, Discussion paper.
[2] §33, Discussion paper.
[3] Confidential information to be withheld pursuant to s9 of the Official Information Act 1982

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Many of the arguments advanced by the Commission to justify increased levy funding do not bear weight. For example, relevant statutory purpose statements do not prescribe any level or scale of activity for the Commission. They simply require that, where activity is performed, the Commission must account for and prioritise particular considerations. Nothing in these purpose statements prevents the Commission from: a) reducing overall activity; b) prioritising *between* different activities; and c) applying a less expansive approach to *how* it performs activities with finite resources. It is simply not correct that *any approach* to performance of the Commission's statutory duties necessarily requires a funding boost of the scale sought.

The discussion paper's justification for higher levy funding is largely premised on the need for additional *discretionary* activities to be supported. It is unclear how many of these activities actually map to the Commission's relevant statutory duties:

- "*[w]e need to be more proactive and place greater emphasis on educating and supporting the industry to comply with the rules we set";*[4]
- *"[t]his level of funding would…[enable]…an increased focus on international engagement to help anticipate regulatory needs in the face of global technological change";* [5]
- *"modernisation of our data collection, storage and manipulation";* [6]
- *"enhance use of GIS data for monitoring and production of insights";* [7]
- *"greater use of behavioural economics".* [8]

To the extent that discretionary activities focus on competition and consumer matters that overlap with the Commission's remit under Commerce and Fair Trading Act regimes, increased levy funding cannot be justified. This work is already funded.

Even if these items are excluded, however, the expansion of discretionary activities that is envisaged will impose a burden on industry beyond financial costs:
- It will divert industry focus and resources from core activities.
- It will depend on consideration and response by a very small regulatory community within industry, which in reality is a fraction of the size of the Commission's existing regulatory FTE.

Unfortunately, there is simply no recognition in the discussion paper of limits to the *practical ability* of industry to genuinely engage with and respond to higher levels of Commission regulatory activity. Like the Commission, industry faces the challenge of responding to our dynamic environment and markets. Unlike the Commission, industry cannot support an open-ended regulatory work programme and transfer the costs of that programme elsewhere.

[4] §5.3, Discussion paper
[5] §19, Discussion paper
[6] §135, Discussion paper
[7] As above
[8] As above

Finally, the discussion paper says little about what activities the Commission has stopped, deprioritised or could do differently to address the 'funding gap' identified. The Commission says it will "...*remove regulation in areas where costs exceed the benefits of continued intervention.*"[9] However, it doesn't identify any specific area or timeframe within which deregulation would occur. If any levy increase were to be supported, it must be contingent on a robust and ambitious 'deregulatory' work programme being developed.

Vodafone's position is that *at most* levy funding should enable the Commission to 'hold the line'. This will require the Commission to continue to prioritise between all activities, choose its discretionary activities carefully, remove focus in appropriate areas and achieve efficiencies through new ways of working. This is not a radical recipe: it is what the businesses regulated by the Commission must do when faced with intense competition, challenging industry economics, increasing demands for innovation and service enhancements, and limited resources. The Commission must respond in the same way.

Yours faithfully,

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[9] §80.2, Discussion paper

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