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Submission on consultation paper on setting prices for the service transaction charges for UBA and UCLL services

Vodafone welcomes the opportunity to submit on the Commission's consultation paper on setting prices for the service transaction charges for UBA and UCLL services (the **consultation paper**).

Vodafone supports an approach to modelling transaction charges that is cost-based and reflects a hypothetically efficient operator. While a range of approaches have been adopted by European regulators, a consistent theme is of a downward trend in transaction charges (despite changes in labour costs) due to the assumed or modelled efficiency level of service delivery by the access provider.[1]

This exercise should result in transaction charges which are lower than those delivered through the IPP benchmarking exercise. Specifically, we consider that:

- the $15.85 charge for a UBA installation which does not require a site-visit is significantly overstated. Efficiently provided, this service is a record change only which should be automated. As such, the plan change (no port change required) charge of $4.71 is a more appropriate starting point for UBA installations which do not require a site visit.
- the installation charges which require a site visit (particularly to an exchange or cabinet) are unlikely to adequately reflect the efficiency gains of "batching" that a hypothetically efficient nation-wide access provider can deliver.[2]

In addition, efficient provision of regulated services comprises not just the price of services (the charges), but also their volume. Because certain service types are more costly than others, it is important that the regime provides appropriate incentives to ensure that the services conducted (and therefore charged) are efficient. Where the access provider is simply passing on costs, it is not clear that these incentives are adequately in place.

Finally, we support the Commission taking a flexible approach to setting the transaction charges. The Commission is not constrained to setting only prices for which it set in the IPP determinations, and instead

[1] WIK Consult *Submission in response to the Commerce Commission's Consultation on setting prices for service transaction charges for UBA and UCLL services* (8 October 2014) (the **WIK Transaction Charges Report**).
[2] From a sense check perspective, we consider that the current prices more closely reflect a "single truck roll for a single service", as opposed to the efficient cost of a service provider basing personnel in an exchange or bundling exchange visits.

proper application of the FPP process requires to assess each of the costs the relate to the designated access service.

Vodafone provides specific responses to the Commission's questions below, as follows.

Question 1: Do you agree that in the FPP determinations the Commission can only set prices for the transaction charges for which it set prices in the IPP determinations?

We do not agree that the Commission is constrained this way. Section 42(1) of the Act relates to the requirements for an application for a price review determination. It specifies that an application may be made "for a review of that part of the determination that relates to the price to be paid for the service". However, the scope of an application made pursuant to s 42(1) does not define the scope of the Commission's enquiry when making a pricing review determination.

The Commission's duties when determining an application are governed by separate provisions. The terms of an application for pricing review cannot determine the matters that the Commission can consider when making a pricing review determination. If the Commission confined the scope of its review only to matters expressly addressed in an IPP determination or an application for price review, this would effectively exclude its consideration of matters that are directly relevant to the pricing review determination. This approach is inconsistent with the scheme of the Act, and would undermine the core objectives of the pricing review process (i.e., to determine prices that best approximate TSLRICs of the relevant services) and cannot be viewed as desirable regulatory practice.

Sections 49 and 52 set out the matters which the Commission must include in the draft and final determinations respectively. In particular, these provisions require that a pricing review determination include "the price payable for the designated access service".[3] The designated access services are Chorus' UCLL and UBA services as a whole. This is reflected in the fact that transaction charges are specified in UCLL and UBA service STDs. If these charges did not form part of the price payable for the designated access service, then there is no basis for their inclusion in these instruments.

As such, we submit that the Commission is required to assess each of the costs that relate to the relevant designated access service and that this obligation cannot be limited to those prices that were set in the IPP determination.

In addition, even if the Act did not direct that all elements of the price payable for UCLL and UBA services must be determined, the Commission has discretion to consider "*matters that relate to the price payable for the designated access service*" (ss 49(b) and 52(b)). In the event that the Commission does not accept that transaction charges are elements of the price payable (which, as we set out above, we do not accept), it must nevertheless be the case that these charges are matters that relate to the price payable for relevant services. The Commission can therefore consider these matters in the context of its pricing review and issue determinations that address these matters.

Question 2: Do you agree that the list of charges in the Appendix is the complete list of charges for which the Commission is setting prices in the FPP determinations?

As set out in response to question 1, the Commission's discretion to set prices is not limited to those prices set in the IPP determination. Accordingly, the Commission is permitted to price any underlying service that is relevant to particular designated access service.

[3] Telecommunications Act 2001, ss 49(a) and 52(a).

Question 3: Do you agree that when the Commission sets the prices for the transaction charges in the FPP determinations, it must apply the FPP of TSLRIC?

We agree with the Commission.

Question 4: How would you envisage this occurring?

See comments on Q5/Q6.

Question 5: Are there any other options for determining the costs of providing the transactions?

WIK provides a description of alternative approaches adopted by European regulators, which may be appropriate for the Commission to apply in this case.[4] In addition, WIK describes various options for the Commission at [15] – [17] of its transaction charges report.

Question 6: Which option should the Commission take?

The Commission should ensure whatever approach it adopts is cost-based, and includes an efficiency adjustment component consistent with modelling a hypothetically efficient operator. We agree with WIK that a bottom-up approach will support a higher quality outcome and could be practicably achieved without a significant imposition on the Commission's timeline.

However, given the likely availability of appropriate independent cross-checks, we would support a top-down approach as described by WIK:[5]

> *A practicable starting point to determine efficient costs until such analytical approaches have been established can be to start from the existing transaction charges and to apply a efficiency gain factor. In so far as benchmark data of efficient carriers with comparable high level data are available, this logic can be applied before sophisticated approaches like bottom-up models can be used.*

Question 7: Do you agree that it is open to the Commission to merge some the transaction charges into other charges?

The requirements of ss 47 and 52 of the Act provide flexibility for the Commission to merge certain charges where appropriate.

Question 8: Do you agree that the Commission is entitled to set bulk rates for UBA transaction charges?

In our view, the UBA installation charges must include the assumption that the service provider is able to achieve economies of scale and scope in batching services, as this would clearly be normal practice for a hypothetically efficient operator. The access provider (and its service partner) are best positioned to realise these gains.

We support the approach to bulk rates for UCLL migrations where, from time to time, RSPs undertake bulk migrations relating to specific exchanges for unbundling. However, we note that it be more appropriate to introduce a POA (cost-based) regime for these (generally larger) migrations and to reflect generic efficiency gains from batching that the access provider should deliver in provisioning generally. The "greater than 20" threshold is inherently arbitrary, and so it not necessarily fully cost-oriented.

[4] WIK Transaction Charges Report, Annex: European regulatory approaches.
[5] WIK Transaction Charges Report at [8].

Question 9: Are there any charges you consider should be merged into the monthly charges or re-classified in some other way? (Please also provide comments in response to paragraph 44 under this question.)

In our view, it may be appropriate to combine certain services which are effectively the same activity (for example, the UBA transaction charges described at 1.9 – 1.36 of the price list). Because these services are the same, as above, it is important the charges reflect the economies of scale available to a hypothetically efficient operator in providing these services.

Question 10: Please provide your understanding of what is involved in providing each transaction and the associated costs.

As set out in our general remarks above, Vodafone considers that the transaction charges should be cost-based and reflect the activities of a hypothetically efficient operator. In our view, an understanding of these costs can only properly be delivered by undertaking a cost-modelling exercise as describe above.

However, we consider that:

- certain costs are (or should be efficiently) automated, and so should be lower; and
- the access provider should efficiently deliver certain economies of scale (through, for example, batching exchange-based installations) to reduce labour costs.

We do not consider that the current prices adequately reflect these efficiency gains. Instead, our internal "sense check" suggests that these prices are likely to lead to an over-recovery and do not reflect efficient service provision.

Question 11: Do you have any other comments on the topics discussed in this paper?

No.

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