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23 January 2015

Katie Bhreatnach
Principal Counsel – Regulation Branch
Commerce Commission
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BY EMAIL ONLY

Dear Katie,

**RE: PROCESS AND ISSUES UPDATE PAPER FOR UCLL AND UBA PRICING REVIEW
DETERMINATIONS DRAFT DETERMINATIONS – REQUEST FOR EXTENSION TO DEADLINE**

Happy New Year!

We have reviewed the Commission's *Process and issues update paper for UCLL and UBA pricing review determinations* Consultation Paper published on 19 December 2014.

The Consultation Paper sets out the Commission's emerging view that monthly prices for the UBA and UCLL services (and consequently SLU and UCLFS prices) derived from the current FPP process will be backdated to not earlier than 1 December 2014.

We agree that the Commission has discretion to backdate but is subject to no requirement to do so. We also agree that no final decision on backdating can be made before the Commission makes a final decision on FPP prices and can properly assess the impact of backdating in light of the actual quantum involved.

Section 18 of the Telecommunications Act is identified by the Commission as a key consideration informing both its emerging view on backdating and any final decision. The Consultation Paper notes that s 18 provides "the most important guidance".¹ This is appropriate given that matters referred to in s 18 are mandatory relevant considerations that the Commission must account for in decisions on FPP prices.

Unfortunately, the Consultation Paper provides extremely limited information as to how the Commission has examined and weighed s 18 matters, and reached its emerging view that backdating should occur. Analysis of s 18 considerations is confined to the following statements:

¹ Consultation Paper, §15.1.

- in respect of UBA, i) that backdating best gives effect to s18 because it “can promote competition”² and ii) that IPP prices are “the most accurate”³ and should therefore apply instead of FPP prices.
- in respect of UCLL, that backdating “provides the best outcome for the relativity of the UBA and UCLL services.”⁴

The Consultation Paper invites submissions from parties on its preliminary view on backdating by 20 February 2015.

However, in accordance with consultation principles and as a matter of practical reality here, before any such submission could be contemplated, the parties would need a considerably more complete set of reasons from the Commission on its preliminary view that backdating is consistent with s 18. Therefore, Vodafone asks for details of the Commission’s preliminary s 18 analysis as a matter of urgency so that it can provide submissions on the issue (and on the related issues identified by the Commission in paragraphs 34 and 35 of the Consultation Paper) in accordance with the Commission’s timetable.

Please contact me if you have any questions regarding this letter.

Yours sincerely



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

² Consultation Paper, §23.

³ Consultation Paper, §23.

⁴ Consultation Paper, §30.