

**COMMERCE COMMISSION**

**Decision No. 634**

Determination pursuant to the Commerce Act 1986 in the matter of an application for clearance of a business acquisition involving

**VODAFONE MOBILE NZ LIMITED**

and

**900 MHZ SPECTRUM**

- The Commission:** Paula Rebstock  
Donal Curtin  
Anita Mazzoleni
- Summary of Application:** The acquisition by Vodafone Mobile NZ Limited of Radio Frequency Spectrum management rights and licences in the 900 MHz band from the New Zealand Government.
- Determination:** Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for the proposed acquisition.
- Date of Determination:** 14 February 2008

## THE PROPOSAL

1. A notice pursuant to s 66(1) of the Commerce Act 1986 (the Act) was registered with the Commerce Commission (the Commission) on 17 January 2008 seeking clearance for Vodafone Mobile NZ Limited (Vodafone), or any of its interconnected bodies corporate, to acquire from the New Zealand Government management rights in the 900 MHz radio spectrum band.
2. At present, Vodafone holds the management rights to 21 MHz of naturally paired radio spectrum in the 900 MHz range. The majority of Vodafone's existing rights to this spectrum are due to expire in 2011 and 2012.
3. On 9 November 2007, the Ministry of Economic Development (MED), on behalf of the Government, made an offer to Vodafone for the renewal of 900 MHz management rights. MED offered Vodafone the renewal of blocks A and B, in total 15.2 MHz. The offer to renew block B is conditional on Vodafone commercially selling block C (5.8 MHz) to a new entrant. Vodafone has negotiated an agreement to sell block C to NZ Communications Ltd (NZC).

## COMPETITION ANALYSIS

4. In the factual, Vodafone will hold the management rights to blocks A and B of 900 MHz spectrum for the next 23-24 years. NZC will hold the rights to block C. The factual will not result in any market aggregation on the part of Vodafone. Indeed, it instead involves Vodafone reducing its management rights.
5. The counterfactual is not the status quo. In its Application, Vodafone identified two possible counterfactual scenarios:
  - Vodafone acquires block A and retains its remaining rights in respect of block C (has a total of 13.4 MHz of 900 MHz spectrum);<sup>1</sup> or
  - Vodafone is left with the use of only block C (5.8 MHz), having been unsuccessful in getting clearance to acquire blocks A and/or B.
6. A consequence of either counterfactual is that block C would not be sold to NZC this year. Accordingly, NZC would be unlikely to be able to enter the wholesale and retail markets for the supply of mobile telecommunications services to the same extent or as early as would otherwise be the case. In the counterfactual, the Crown would auction off blocks A and/or B (as appropriate), but not until perhaps around 2011. Even if NZC was successful in attaining a block of 900 MHz spectrum at auction, its ability to use that block of spectrum would be delayed until 2012 (when the management rights commenced). In turn, this would lead to less competition in the relevant markets over the period 2008 to 2012 (and even beyond).
7. The 900 MHz spectrum is the cornerstone of Vodafone's existing and future mobile network. Accordingly, the second counterfactual, where Vodafone has management rights to block C only, harms competition as it would limit Vodafone's ability to:

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<sup>1</sup> This counterfactual results from clauses of MED's offer to Vodafone and Vodafone's agreement with NZC.

- compete in the wholesale and retail mobile telecommunications services markets; and
  - effectively offer roaming and wholesale services to other access seekers so that they can compete in the retail and wholesale markets for the supply of mobile telecommunications services.
8. Vodafone's proposed acquisition of block A and block B (and the associated sale to NZC of block C) is likely to enhance competition in the wholesale and retail markets for the supply of mobile telecommunications services in comparison with both the present position, and in comparison with the competition effects likely to occur in the counterfactuals. The counterfactual is considered likely to lessen competition more than the factual.
9. Accordingly, the Commission is satisfied that the proposed acquisition will not have, nor would be likely to have, the effect of substantially lessening competition in any relevant market.

#### **DETERMINATION ON NOTICE OF CLEARANCE**

10. Pursuant to section 66(3)(a) of the Commerce Act 1986, the Commission determines to give clearance for Vodafone Mobile NZ Ltd, or any interconnected body corporate of it, to acquire from the Crown:
- (a) the management rights for 20 years from 29 November 2011 in the radio frequency range between 899.8 to 907.4MHz, together with the corresponding natural pair management rights in the range between 944.8 to 952.4MHz ("Block A"); and
  - (b) the management rights for 19 years and 5 months from 30 June 2012 in the radio frequency range between 907.4 to 915MHz, together with the corresponding natural pair management rights in the range between 952.4 to 960MHz ("Block B").

Dated this 14<sup>th</sup> day of February 2008



Paula Rebstock

Division Chair  
Commerce Commission