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Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission
44-52 The Terrace
Wellington

Dear Ross,

Commerce Commission's First Annual Benchmarking Report

I write to express Vodafone's concern at the Commission's First Annual Benchmarking Report released this week. I do not intend to rebut every contention in the Commission's report. Many of the points made are debatable and can be traversed in the on-going dialogue Vodafone enjoys with the Commission.

There are, however, two instances in the report where, from Vodafone's perspective, it appears that the Commission has been very selective in the data it has used. This raises concerns that the Commission is fixated on ensuring the results of its benchmarking analysis reach a preconceived conclusion that the New Zealand market is not competitive by international standards. Not only does this lack integrity, it also represents a continually pessimistic approach which seems to wish to deny improvements to the state of competition in New Zealand markets that the Commission, the government and industry participants have worked hard to achieve.

OECD Benchmarking

The first concern is the approach the Commission has taken to OECD benchmarking of the mobile market. The Commission's decision to exclude our You Choose Base Plans altogether from its analysis is misleading to the readers of the report and lacks analytical merit.

The methodology used by Teligen has been developed over time after much input from stakeholders. It certainly is not perfect but it is a robust, agreed framework. The purpose of the methodology is to ask 'what is the least a consumer can pay in this country for this particular basket of usage?' It does not attempt to make judgements about whether or not plans included in the benchmarking are attractive to consumers. We simply do not know whether the top ranked plans from other countries are attractive to consumers. Unfortunately, the Commission seems to have seen it appropriate to make this judgement on behalf of New Zealand consumers and has excluded the plans from its consideration.

Further, in removing the You Choose Base Plans from consideration the Commission compares the second cheapest plans in New Zealand with the cheapest in every other country. Unsurprisingly, this makes New Zealand look worse than it otherwise would.

We accept that the Commission may wish to make comments on the Terms and Conditions associated with some plans, and might speculate on whether these are popular with consumers. Indeed, we have responded to these concerns by changing the terms and conditions on our You Choose Base Plans. To go one step further and treat them as if they do not exist in the New Zealand market is another matter entirely and calls into question whether the Commission has been neutral and analytically robust in its approach.

Termination Rate Comparisons

The second high level concern relates to the Commission's comments on termination rates. The Commission raises the issue of mobile to mobile termination rates in paragraphs 100 to 102 and fixed to mobile terminations rates in paragraph 168.

In both sections, the Commission compares termination rates in New Zealand with one ACCC figure. The reader could be forgiven for thinking that termination rates in New Zealand are outliers and are much higher than those in other jurisdictions.

It may have been more consistent for the Commission to use the benchmarked figures from its Reconsideration Final Report on its Schedule 3 Investigation into the Regulation of Mobile Termination. Following benchmarking of a number of jurisdictions, the Commission used a cost-based factual MTR of 15 cents. It would seem appropriate in such a report to at the very least note that this was the Commission's last official view on what an appropriate termination rate might be rather than pick a recent study from one jurisdiction that contains a very low estimate for a termination rate.

Indeed, it has long been recognised by regulators that benchmarking against a single cost study from one overseas country could give rise to misleading conclusions about cost in a domestic context. In this regard, the ACCC itself has indicated in the past that:

The Commission believes there are many factors that influence the cost of the [mobile terminating access service] MTAS in different jurisdictions, including:

- Geographic terrain;
- Population density;
- Network usage and scale;
- Land and labour costs in different jurisdictions;
- Spectrum allocations;
- The extent to which MNOs are vertically-integrated fixed and mobile network operators;
- Network purchasing power;
- Cost of capital in different jurisdictions; and
- The mobile network technology employed in different countries (i.e. GSM or CDMA).

By considering as broad a range of cost estimates from overseas jurisdictions as possible, the Commission believes it is able to account for differences in cost factors between different jurisdictions.¹

In other words, given the large number of factors that can influence mobile termination costs in different jurisdictions, it is unwise to simply focus on one estimate from one country. Rather, if one is to benchmark costs in different jurisdictions, it is better to look at as broad a range of estimates as possible to account for the different factors that can influence cost in different jurisdictions, including New Zealand.

Like the OECD benchmarking, the overall effect of the Commission's comments on mobile termination costs is that we should be pessimistic about the relative performance of the mobile market in New Zealand.

Conclusion

Vodafone does not expect the Commission to shy away from criticism in its reports. However, the Commission's statutory role to monitor and report on the sector implies a very strong obligation to be rigorously neutral and analytically robust. In Vodafone's view the Commission's report does not pass these tests.

As a major market participant in the telecommunications market we have a strong interest in consumers and decision-makers having fair and balanced market assessments available to them. We look forward to working with the Commission to achieve this in future reports.

Yours sincerely,

Tom Chignell
General Manager, Corporate Affairs

cc: Hon David Cunliffe, Minister for Communications and Information Technology

¹ ACCC, *Mobile Services Review – Mobile Terminating Access Service: Final decision on whether or not the Commission should extend, vary or revoke its existing declaration of the mobile terminating access service*, June 2004, pps 214 – 215.