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Network Access Group
Commerce Commission
P O Box 2351
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PUBLIC VERSION
BY EMAIL (kate.saunders@comcom.govt.nz)

Dear Kate

Cross submission on draft report on extension review

1. This letter is Vodafone's cross-submission on the Commission's draft determination of 30 May 2006.
2. This is the Public version of our submission.
 - We are seeking additional protection for the information surrounded by square brackets and labelled '**VNZCOI**'. This information relates to the current commercial arrangements that we have or are negotiating with other carriers that our confidentiality agreements oblige us not to disclose.
3. We have just two brief comments on TelstraClear's submission.

Too low a threshold for extension

4. TelstraClear is encouraging what seems to us to be too low a standard for what counts as "promoting competition".
 - In para 35 it refers to the ACCC test as being whether continued regulation "has the potential to help promote competition in the relevant markets".
5. We suggest that the Commission set itself a somewhat more rigorous benchmark.
6. The point of these regulations is to generate new entry into the mobile market. So the question for the Commission must be whether extending these regulations will make any real difference to the business case of a new entrant.
7. To decide this issue, we suggest that the Commission should follow a three step process:
 - Define a counterfactual in each case, i.e., decide what is likely to happen if regulation were left to expire.

- Define a factual in each case, i.e., decide what is likely to happen if regulation were extended for two further years.
- If the factual has an appreciably greater chance of new mobile entry than the counterfactual, in the sense that it means an entrant's costs of entry are meaningfully reduced, then the Commission would have a reasonable argument for concluding that regulation should be continued.
 - This is on the condition that the benefits of entry are sufficient to outweigh the costs of entry plus the costs of regulation.

Failure to explain the actual outcomes in the market

8. TelstraClear's analysis of the issues for roaming does not adequately explain the established market facts.
 - [
 -] VNZCOI
9. TelstraClear's theoretical arguments on co-location are also inconsistent with the facts.
 - In para 71, TelstraClear argues that co-location of cellular radio equipment is all but impossible apart from on existing cellsites.
 - This is inconsistent with that fact that more than half of our existing co-located sites are not on existing cellsites.
 - In para 77(b), TelstraClear alleges that one of the key factors that has limited competition for co-location is "the incentives on operators to seek to restrict entry in order to be able to continue to able to price above cost".
 - In practice, we do not seek to restrict entry, and we do not price co-location above cost. We have a standard approach to the co-location process that we adopt for all-comers. We set out the cost-based terms we offer in our submission on the Commission's Draft Report.

Conclusion

10. We think a conference on the issues raised by the extension review could be quite helpful. We would certainly attend.
 - It might provide a useful opportunity to discuss more fully amongst industry participants the prospects for entry into the mobile market and whether extension of the regulation of roaming and co-location is likely to make any difference to the likelihood of entry.
 - Face to face discussion might also provide a more fruitful way to understand the differences of view across the industry on these issues.

11. If you have any questions on this submission or require further information, please email me at hayden.glass@vodafone.com or call 021 689 176.

Yours sincerely
Vodafone New Zealand Limited

Hayden Glass
Public Policy