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**Cross Submission mark up by Econet Wireless NZ Ltd of
Vodafone's 26 June 2006 submission regarding draft report on extension of
regulated services letter
(Econet comments are in *bold italics*, Vodafone comments are in normal Font)**

26 June 2006

Kate Saunders
Commerce Commission
P O Box 2351
WELLINGTON

Submission on draft report on extension of regulated services

- 1 This letter is Vodafone's submission on the Commission's draft report on its investigation into whether to extend the regulation of services in the Telecommunications Act.
- 2 This is the Public version of our submission.

- We are requesting Commission-only protection for the information in this submission marked in square brackets and labelled '**VFNZCOI**'

Econet position = That is because Vodafone feels that any ridiculous offer they may or may not have offered TelstraClear may be used to keep a fourth entrant out of the market

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.

- As usual, we have marked all restricted information in square brackets and labelled it '**VFNZRI**'.

Summary

3 We support extension of regulation of number portability and interconnection with Telecom's fixed PSTN.

- It would be destabilising for the industry number portability project if regulation were left to expire four months before the service is due to be launched.
- There are compelling market failure grounds for continuing to regulate interconnection with Telecom's PSTN.

4 We continue to argue that there is no evidence of a market failure in the case of co-location, and no need to regulate it.

- We have strong incentives to negotiate co-location arrangements. Colocation saves us money. Vodafone is currently the biggest access seeker of co-location.
- The best evidence for this point of view is the large number of agreements with most of the existing operators that we already have for co-location, about 40 of which are not with Telecom. The process for co-location is well established, the pricing for co-location is very reasonable, we offer the same terms to all comers (although pricing does change over time, of course).

5 We also argue that regulation of roaming is unnecessary, given existing commercial arrangements, and the obvious incentives on the existing operators to negotiate reasonable terms with entrants.

- We would prefer to negotiate a reasonable deal with a credible new entrant.

Econet position = It is fantasy to suggest that there is a wholesale business in New Zealand .

Refusing to negotiate a roaming deal will cost us wholesale revenue, since we will not get any roaming traffic on our network. And it will not help protect our retail business if the entrant joins the market anyway either by building a network or by roaming on Telecom's network.

- If we were to refuse to offer roaming to a genuine entrant or to only offer roaming at a very high price, this would encourage a new entrant to build a more extensive network. Clearly we would prefer to set a reasonable price for roaming in order to get an entrant's traffic on our network, rather than encourage a more extensive competing network build.

Econet Position = The issue is that they are gaming the process by manipulating the network effect to mean that on day 1, a whole network must be built.

- [

] VFNZCOI

6 In our view the Commission has not done enough to demonstrate that extending these regulations will promote competition.

Econet position = This is nonsense because regulation would level the playing field because it means the "closed network effect" would be overcome. International experience with similar regulatory frameworks prove the point.

- The Commission needs to define a counterfactual in each case, i.e., state what it thinks would happen if regulation were allowed to lapse, and compare that with what it thinks would happen if regulation were continued.
- The Commission also needs to do a more thorough investigation of actual competitive conditions in the relevant markets before it can conclude that further regulation is required.
- For example, the Commission needs to explain why regulation of roaming is needed if [] **VFNZCOI**, and why regulation of co-location is required if the existing terms have generated around 100 existing agreements with Telecom, Woosh, BCL, Police, TV3 and others.

Econet Position=The Police or TV3 or BCL hardly compete with Vodafone. It's a silly response.

Regulation of number portability should be extended

- 7 The Commission's argument for extending regulation of number portability is, in effect, that number portability is an important boost for competition.
- We agree that number portability can help reduce switching costs and lead to greater competition between operators.
- 8 But this is not a sufficient reason to recommend the extension of regulation unless number portability would not be introduced if the regulation were to be allowed to lapse.
- The Commission needs to consider the question of what would happen if regulation was not extended in its review.
- 9 Vodafone is strongly committed to the introduction of mobile number portability by 1 April 2007. Allowing the regulation to lapse on 19 December would be unwise. That would introduce uncertainty into the process at a time when what the industry needs is stable rules.

Regulation of fixed interconnection should be extended

Econet position = This is interesting. Vodafone believes in regulation to break up the fixed line monopoly. But Vodafone does not believe in regulation to break up a GSM monopoly.

- 10 We agree that regulation of interconnection with Telecom's fixed PSTN should be extended. This is a standard situation of mandating access to a network bottleneck that has some natural monopoly characteristics.
- While there is developing competition for Telecom's local access services (including Vodafone's local service) we do not expect this to substantially impact on Telecom's market power in the next six months.
 - Removal of fixed PSTN interconnection regulation before we have started services would jeopardise competition. It would allow Telecom to continue to refuse interconnection with our competing service.

- 11 While we agree with the Commission's conclusions, we do not agree with its analysis. In particular, we think the Commission has defined its interconnection markets too narrowly.
- As we argued extensively in the case of mobile termination, there is a two-sided market for termination and origination on telecommunications networks.
 - The Commission needs to rethink its market definition and do some analysis of the two-sided market. To define an operator-specific market for termination alone is inconsistent with both commonsense and with commercial reality. The Commission has recognised that operators compete for termination revenues by competing to attract retail customers.¹
 - In practice, we do not think that market definition makes a great deal of difference in this case. Regardless of how the market is defined, Telecom will have the majority of the market share by customers and revenue.
 - Telecom continues to have strong incentives to foreclose competition by competitors that are forced to seek access to its customers in order to provide services.
- 12 Again, the Commission needs to define what it thinks would happen if regulation of fixed PSTN interconnection were allowed to lapse in December, and compare that with what would happen if regulation were extended.

Co-location regulation does not need to be extended

- 13 We think that extension of co-location regulation is unnecessary. This is because co-location works without regulation. There is no need for ongoing Commission intervention. On each occasion that a new entrant has entered the market, reciprocal agreements have been forthcoming in a short timeframe, such as with Woosh in recent times.

Econet position = Econet believes this statement is nonsense, false and misleading. There is no access of "rapid multi-access co-location" The Commerce Commission should investigate in detail the failed co-location applications of Woosh. There is an audit trail of ridiculous pricing and process matters by Vodafone. We urge the Commerce Commission to investigate in detail the hideous co location practices in NZ over the past 15 years specifically the Bell South/ Telecom positions .

The Commission's views on market definition and state of competition need some refinement

- 14 The Commission has defined a market for co-location only on cellular operators' towers. This is too narrow a market.
- In fact we co-locate 40 sites with organisations other than Telecom. This indicates that there is competition between site owners for co-location business.
 - There is effectively an almost limitless number of buildings that can host radio equipment, especially in urban areas. Thirty percent of our sites are on top of

¹ In para 173 of its Final Reconsideration Report on the regulation of MTRs the Commission says "Mobile termination is a revenue stream attached to each mobile subscriber (by generating wholesale revenues on incoming calls to that subscriber). Mobile operators compete for this revenue stream by competing for mobile subscribers."

buildings, and fifteen percent are micro sites in lampposts and traffic lights. Anyone can co-site on these or adjacent structures (normally subject to a simple technical check that their equipment will not interfere with ours).

- So an entrant will face a choice whether to put its radio equipment on top of an existing building or lamppost, or whether to seek co-location on an existing mast, assuming there is one nearby. If a hypothetical mast monopolist were to raise its prices for co-location, an entrant would respond by placing its radio equipment on the nearby building or lamppost. The obvious conclusion is that we compete with building owners and lamppost owners for co-location business in areas where we have towers near to buildings or lamp posts.
 - In any case, we have no incentive to set an unreasonable price for colocating because, as we explain further below, co-locating with another operator saves us money.
- 15 The Commission suggests that existing operators have already taken all the “most optimal” sites. This misunderstands how network building actually works.
- There are no “most optimal” sites that can be monopolised. In practice, network building is an exercise in compromise, where Vodafone effectively takes the path of least resistance between numerous demands to try to put together a network that meets our customers’ needs. We have to take account of the physical landscape, our existing network, what sites area available, the attitudes of landlords, the rules of councils, lwi considerations, interference (including from our own network), and community concerns that sometimes arise in relation to particular sites.
 - In practice, for example, we have a site on a lamppost on Fanshawe St right outside Vodafone’s offices in Auckland. There are eight other lampposts within 20 metres of our site on which a new entrant could install radio equipment. There is nothing to say that our choice is the “most optimal” in any sense. The fact that there is a Telecom microcell on another lamppost within 40 metres of our microcell is compelling evidence that none of these sites are “most optimal”.
 - We are still building our 3G radio network. We plan to put up several hundred sites over the next few years. Unfortunately there is no way that we can co-locate all these sites with our existing 2G equipment due to landlord resistance, RMA issues, network design concerns and so on. We are in a similar position to a new entrant when it comes to site acquisition for many of the sites for our 3G network.

Econet Position=Vodafone’s statement has no respect to the “network effect” whereby rapid multi-access is required Voda uses Co location to manage the new entrants costs upwards and create significant delays through third party issues (RMA, etc).

Co-location would work just fine even without regulation

Econet Position= it’s a national environmental disaster it needs urgent regulatory attention

- 16 The Commission does not consider what would happen if co-location regulation were allowed to lapse. We think that even without regulation there would be no competition problem. Our pricing for co-location is low, we do not discriminate between access seekers, and the standard form agreement and normal process work just fine.
- 17 The co-location code is shortly to be finalised. The process would have been a lot

quicker if such a substantial amount of time at the working party meetings was not devoted to management of Econet's endless tirades against the code, the TCF, other telecommunications operators and the regulatory regime in general.

Econet is insulted by Vodafone's monopolistic nonsense. Econet has stretched meetings by 15 minutes to air its views but Vodafone and TCNZ refusal to meet for months from 2003 onwards when penetration was only 50% has created the problem. Econet's initiative in the TCF meetings has created :

- a. Sensible discussion of the inter play between co-location and roaming***
- b. Protests about no pricing being in the code***
- c. Protests about no standard cell site descriptions***
- d. Protests about ridiculous process***
- e. Protests about basic multi-access to facilitate "rapid rollout"***
- f. Protests about anti-competitive possible collusive activity between Vodafone and Telecom***
- g. Appreciation for the quality of the sausage rolls at Vodafone and Telecom***
- h. Reciprocation by providing a lawyer for drafting***
- i. Hosting a meeting***
- j. Bringing along a qualified radio engineer.***
- f. more protests about no pricing being in the code***

- 18 Econet's ongoing campaign to present co-location as a significant competition issue is both misguided and unhelpful, particularly when it refuses to meet to discuss issues directly but prefers to engage through the media.

Econet Position=This is not true. Econet has engaged on 37 co-location applications. There is an audit trail of hideous pricing and ridiculous procedure.

We want as much co-location as possible

- 19 Vodafone wants as much co-location as we can get. It saves us money. We want to share our network costs as much as possible. Vodafone is New Zealand's largest current access seeker for co-location with several hundred sites to be built in the next 12 months.

Econet position this is nonsense and there is evidence to illustrate barrier to entry.

- 20 Co-location means savings in both operating and capital costs. As sketched out in the table below, based on standard terms, co-location can save half the capital and up to 40% of the operating costs for both parties relative to the costs of two sites.

- We offer and seek access for either half the capital cost or a fair market operating cost.
- Most operating costs are shared evenly, and some (e.g., power) are paid separately.
- Not one application has ever been rejected or blocked on the basis of pricing.

Econet Position = we refer the Commerce Commission to the Economists theorem that the Incumbent monopolist controls the new entrants costs

Extract from "Competition Policy, Theory and Practice" by Massimo Motta
 Published in 2004 by Cambridge University Press
 Chapter 7 – Predation, Monopolisation, and Other Abusive Practices
 Section 7.3 – Non-Price Monopolisation Practices
 Sub-section 7.3.5 – Raising Rivals' Costs (page 490-491)

"Krattemaker and Salop (1986) claim that among the monopolisation tools available to firms there are also so-called raising rivals' costs practices.¹⁰³ These practices all aim at increasing the costs of one or more rivals, thus leaving room for the firm that engages in these practices to increase prices without losing market share. These practices would be particularly appealing for a firm that has anti-competitive aims because they do not require it to run losses in the short-run, as in predatory pricing. If the impact on rivals' costs is immediate, there will also be an immediate positive impact on profits.

A number of practices have been interpreted as belonging to the category of raising rivals' costs strategies. Some of them are probably of little relevance, such as those that increase rivals' costs directly, either through sabotage (if one destroys the rivals' plants it also increases its costs, but there is no need for anti-trust laws to take care of such behaviour); or through lobbying and regulation (think for instance of domestic firms that convince the government to introduce tariffs or other taxes on imported products).¹⁰⁴ More interestingly, a number of practices that we have already analysed might be seen as raising rivals' costs. Exclusive dealing might make it more difficult or more costly for a rival to find distributors that can sell its products. A vertically integrated firm might refuse to supply a key input to a downstream rival (or to engage in a price squeeze, that is sell the input to the rival but at a prohibitively high price), increasing the production costs of the latter. Furthermore, denying inter-operability to a rival network might also be seen as a strategy which increases the rival's cost of doing business.

Not all actions that increase rivals' costs are necessarily anti-competitive. For instance, one might argue that a firm that carries out significant R&D activities to increase its product quality is also raising the cost of its rivals: if they want to be competitive and keep their appeal, they also have to sustain higher R&D expenses.

Yet, this is not a practice that harms competition: R&D will benefit consumers.¹⁰⁵ Therefore, a crucial step in the theory is to distinguish between practices that only harm competitors from those that also reduce welfare. To sum up, raising rivals' costs theories provide a concept that encompasses many very different practices. Due to the specificities of such practices, I have preferred to deal with them separately."

¹⁰³ - See also Salop and Scheffman (1987).

¹⁰⁴ - An interesting US case in Pennington, where a large mine operator and the miners' trade unions lobbied for a minimum wage. The resulting increase in production costs would have hurt smaller competitors more than the large firm.

¹⁰⁵ - The same consideration should for advertising outlays, as they increase the perceived quality of products.

Table 1: Savings for each party associated with two standard co-location options for a standard metrosite build

Econet position = suggests these numbers are a complete sham and Econet suggests that the Commerce Commission raid Vodafone's office and order the removal of the real numbers and specifically focus in on the Vodafone billing system which is a sham for transfer pricing. We note the European Commission raided the European offices of the mobile networks and we ask the Commerce Commission to confirm that they have the power to actually raid Vodafone's office and remove documents.

Item	Option 1	Option 2	Self build
Capital excluding radio equipment	137,500	0	275,000
Capital charge at 13%		17,875	
Shared operating costs	8,250	8,250	16,500
Non-shared operating costs	4,000	4,000	4,000
Total annual operating cost	12,250	30,125	21,500
Total capital cost	137,500	0	275,000

Co-location is only part of a network build

21 Co-location is a useful way for network operators to reduce their costs. But it is not a substitute for building a network. We have approximately 100 sites colocated out of a total of around 1200.

Econet Position= A network is the antennas, base stations and transmission lines. RMA and tower access is a bottleneck facility that is a monopoly asset. The Regulator must set co-location targets in excess of 70%. The Regulator must refer to the environmental ministry and set a target in excess of 70% of sites must be co-located.]

22 As we explained above, 45% of our sites on our buildings or in other structures that we do not own. Another 5% are collocated on infrastructure that we don't own. This leaves around 50%, or about 625 sites that are capable of supporting co-location.

- Of the 625 possible sites for co-location, 30% are in urban areas and 70% in rural areas.
- We estimate that at least half of these sites would require additional investment to support co-location, usually either a new mast or a new foundation and a new mast.
- In addition, landlord, resource and building consent are needed.

23 Often we can not co-locate new equipment on our own sites because of issues with landlord or resource consent.

Econet Position = This is because Vodafone acts as a gatekeeper to its landlords. Vodafone uses the third party property argument to hold up co-location and control the costs of a new entrant.

For example, we had planned to co-locate [] VFNZRI of our 3G sites on our existing 2G infrastructure, but we were only able to co-locate [] VFNZRI of sites due to planning and landlord constraints. This means that we co-located about [] VFNZRI sites, and were unable to colocate a further [] VFNZRI that we expected to co-locate when we first planned our 3G network.

24 The savings from co-location are not insubstantial, but they are small in the context of the overall business case for new entry.

Econet Position [The benefits of co-location are small financially but massive in terms of RMA, time, speed of rollout and management of J curve.

- Covec modelling of the likely costs of entry for a 3G operator suggests that co-location would save an entrant around \$5 million in annualised capital costs and \$1.1 million in annual operating costs in the first year of network rollout. These savings are obtainable at a cost of \$1.9 million in co-location rentals.

Econet Position =This is complete nonsense. These numbers have no respect for "SAC" or the "J curve".

- These savings are equivalent to the revenue from about 8,200 customers or 0.2% of the market (assuming an ARPU of just over \$500).
- What this means is that co-location will affect network rollout at the margins, but it is unlikely to be a make or break part of the business case for a new mobile entrant.

Co-location requires site-by-site consideration

- 25 Site-by-site consideration is required because the unique characteristics of each site determine whether co-location can be accommodated or not. The structure has to be able to hold the equipment requested, the landlord must be willing, and the relevant resource consent must be complied with, as well as the basics of power and interference.

Econet Position This is complete rubbish. Vodafone went site by site to slow down on new entrant Econet. Research shows 84% of cell towers are four standard types.

- We are not unique in requiring site-by-site consideration. Oftel recognised that co-location is a site-specific service.²

Econet position = The audit trail of Vodafone participation at the TCF is a travesty and incongruent with Vodafone international behavior in more onerous regulatory environments.

We do not require site-by-site consideration in order to delay entry or to put hurdles in the way of Econet. We require the same process of every applicant for co-location.

Extending regulation of co-location is unlikely to make a difference

- 26 In practice, the current regulation of co-location makes little difference to our business.

Econet Position is . The regulator has requested “rapid multi-access co-location” for the benefit of end users. Vodafone is making co-location become a barrier. Solution: The Commerce Commission consider setting co-location targets similar to broadband targets. The Commission needs to consider the difference between rapid multi access and pyrrhic co location where there is only a few token co locations.

- 27 Co-location will continue to operate commercially regardless of whether co-location continues to be regulated or not.

- 28 But the question for the Commission is whether continuing to regulate co-location will promote competition. The Commission needs to explain what it thinks will happen if co-location is no longer regulated and compare what would happen if regulation were extended.

- We are of the view that regulation makes little difference to our behaviour. Therefore it can be allowed to lapse without any impact on market outcomes.

Econet Position = Vodafone’s behavior is disgraceful and is that of a monopolist with no respect of the regulator. Regulation and targets set by the regulator must be enforced.

- 29 We will be discussing these issues in our interview on the Commission’s investigations into whether further mobile regulation is required. We hope that the Commission will take into account information received in that process in its extension review as a matter of course.

² ² “Oftel did not set charges for those ancillary services that are either bespoke or whose characteristics are subject to significant variation from one location to another (e.g., colocation)”, <http://www.ofcom.org.uk/consult/condocs/rwlam/statement/rwlam161204.pdf> para 1.15.

Roaming regulation does not need to be extended

- 30 We think that roaming regulation is unnecessary. We are happy to negotiate roaming arrangements on reasonable terms without regulatory intervention. [**VFNZCOI** There is no need to extend the existing regulation.

Econet Position = This is nonsense. There is a monopoly. Regulation is required.

Market definition is too narrow

- 31 The Commission defines separate markets for roaming on GSM and CDMA networks on the basis that an entrant faces costs in switching between technologies once its network is launched. Of course, an entrant will face costs in switching between technologies, but this does not mean that there are separate markets.
- 32 The entrant knows that it will face costs in switching from GSM to CDMA roaming in the future, and so the entrant will naturally push for a long-term contract at the outset with rights of renewal.

Econet Position = These are separate markets. There are 2 billion GSM customers and 200 million CDMA. CDMA does not meet the Commission test to be of benefit to consumer in the long run.

- This is consistent with our experience of negotiating roaming arrangements and similar to contracting arrangements for any other long-held, specific asset. [**VFNZCOI**
- The long-term nature of the deal does not prevent an efficient contract, nor does it allow the host network to rip the roaming network operator off.

Econet position = This is nonsense Econet only wants to roam for customers who live or work in the coverage area that Econet has built, a third operator will force TCNZ to swan to W-CDMA and therefore a long term market will quickly develop in

- 33 What the long-term contract does mean is that an entrant can seek bids from both CDMA and GSM operators in deciding which technology to choose.

Econet Position = this is absolute nonsense. Vodafone is embarrassing itself suggesting that GSM and CDMA are substitutes. CDMA is not in the "long run interests of consumers" as it costs four times the cost of GSM to operate and handsets cost more. Telecom didn't operate GSM as it didn't want to conflict with Vodafone. Telecom is not a real mobile operator its primary business has traditionally been to preserve the monopoly rent extracted from the landline confusing customers and keep prices high.

- 34 For example, we understand that Hutchinson considered bids from both GSM operators and the CDMA operator in Australia before agreeing to roam on Telstra's CDMA network (as part of a wider network sharing deal).

- Clearly roaming on GSM networks competes with roaming on CDMA networks.

This is nonsense.

35 The Commission's market definition also focuses very narrowly on roaming. In practice, an entrant has a range of inter-related choices including (roughly in order of reducing capital requirements and therefore risk):

- building a stand-alone network,
- co-location of some sites,
- sharing the network build with another operator,
- building some network and roaming outside of coverage,
- wholesaling minutes on another operator's network, or
- resale of another operator's retail products.

36 All of these entry options are related.

- Roaming and network building are substitutes, so a higher roaming price will induce network building.
- Sharing of network assets and network building are also substitutes so a lower co-location price will deter network building and encourage sharing.
- Wholesale entry and network entry are also substitutes, so a lower wholesale price or a generous discount for resale will affect the incentives for network entry.

Econet Position= Wholesale entry are not substitutes. MVNO entry facilitates an entrenchment of the incumbent monopolist. Network competition is needed to create benefits for the consumer over the long term and specifically facilitate pricing where NZ consumers benefit from the low spectrum cost and the low distribution cost in the NZ mobile market. But also, that open software portals are developed whereby software developers can have access to mobile phone networks, creating further innovation in the NZ technology community.

37 The Commission should take a broader view of the wholesale market, one in which all of these network entry strategies are options for an entrant, and where the terms set for any of these options affect an entrant's choices of strategy.

Econet position=This is nonsense. It is a pathetic attempt to suggest that MVNO's will create real competition.

Strong incentives to negotiate with an entrant who intends to build

38 We would prefer to negotiate a reasonable deal with a credible new entrant. Refusing to negotiate a roaming deal will cost us wholesale revenue. This could happen because:

- Without roaming on our network, an entrant may choose to roam on Telecom's network, or
- Without roaming on our network, an entrant may choose to build a more extensive network than it would otherwise.

39 Either way, we will lose retail revenues as the entrant competes with us in the retail

market. If we agree to a roaming arrangement, we at least get some roaming revenues that will help to offset the retail losses.

Strong incentives to set a reasonable price

- 40 Setting a high roaming price encourages network building by an entrant, so obviously we would prefer to set a reasonable price for roaming so as not to encourage an extensive network build.

Econet position = It doesn't. What it means is it exacerbates the network effect and prevents network operation.

- 41 In addition, more traffic on our network lowers our average costs, so there is a cost benefit to us from hosting a roaming network operator. This incentive is stronger the more customers the roaming network takes from Telecom.

Econet Position=This is nonsense. Hosting an operator breaks the monopoly hold Vodafone has on the market.

- 42 [

Our prices for roaming are reasonable

] VFNZCOI

43 We are in the process of revising our standard roaming pricing [] VFNZCOI.

- There seem to be very few published international benchmarks for roaming prices. We are not aware of a regulatory decision that sets roaming prices anywhere in the world.

Econet position=We are not aware of any countries where there is only one.

- Our first year rate is roughly equivalent to [] VFNZCOI, which is the rate we understand was agreed in Ireland.

Econet Position=In Ireland costs of production are higher than NZ, specifically SAC and spectrum.

- Our rates are per-leg, per-minute prices. Each operator is responsible for its own interconnect arrangements.
 - For example, if a customer of another network operator were to receive a call from a Telecom landline customer while roaming on our network, that other operator would receive its standard mobile termination fee from Telecom and pay us the rate below.

The Commission needs to look at what difference this regulation actually makes

44 It makes little difference whether roaming is specified or not. We are happy to offer roaming at attractive prices to genuine entrants.

45 *Econet Position=This is a disgraceful lie. There is an audit trail of creditable negotiation. No creditable offer has been made by Vodafone. Vodafone's coffee is great. Voda have behaved like a monopolist in negotiations.*

Econet position=Yes, it breaks the bottleneck. The issue is Vodafone won't offer roaming until they can stitch up a new entrant using the "network effect".

• [] VFNZCOI

- One impact of a Commission investigation into roaming pricing will be to discourage new entrants from negotiating roaming agreements, since there will be the near-term prospect of regulation that might reduce the price.

Econet Position=This is nonsense. We have spent millions of dollars advancing plans to be able to negotiate with Vodafone. Unfortunately, Vodafone is still "trying to get resource" to appraise pricing. Vodafone has no credibility as their head office think the NZ regulator is weak.

46 The Commission's analysis does not consider what would happen in the wholesale market and in the retail mobile market if specification of roaming was allowed to lapse.

- If the Commission does not explore what would happen in the wholesale market in the absence of regulation, it is impossible for the Commission to draw any conclusions about the impact of roaming regulation on wholesale offerings.

- Equally, without looking at any features of the retail market (like prices, products, market shares, or churn), it is impossible for the Commission to conclude that the current roaming regulation actually benefits consumers.

Econet Position = This is nonsense.

- 47 Specifically, we suggest that the Commission construct a simple business case for a roaming entrant and see whether this regulation makes any difference to the chances of entry.

Econet Position = If this is done then SAC and J curve consideration need to be included as well as environmental consideration. Econet has an environmental ethic that requires it to drive co-location aggressively.

- In our view, if regulation does not measurably increase the chances of new mobile entry, it does not generate any benefits at all for consumers.
- We think that the current regulation of roaming does not measurably increase the chances of new mobile entry. There is therefore no purpose in extending this regulation.

Econet Position=This is simply not true. Please refer to Cell C, Meteor, Hutch Australia. Hutch UK and every late penetration new entrant.

Conclusion

- 48 It is not clear that the Commission has considered our previous submissions on these topics. It would be most helpful if the Commission could summarise the views of submitters on each issue in the body of its submission, and then provide the Commission's view after that summary.

- This was the Commission's standard practice in the MTR investigation.
- It helps us to avoid repeating ourselves because we are not sure whether the Commission has considered our previous submissions on an issue.

- 49 If you have any questions, or would like further information about the issues raised in this submission, please email hayden.glass@vodafone.com or call 021 689 176.

Econet Position = Econet respects Vodafone's investment in its network, and its right to an economic return on equity. Econet respects the careers of Vodafone employees. Econet does not accept that Vodafone has a property right to a monopoly rent because it built a closed network with a monopoly GSM licence.

Appendix

Misleading information in the Vodafone Submissions: Vodafone’s 60+ “Co-locates” with Telecom

Vodafone claims to have around 100 Co-locate agreements and they claim to co-locate 40 sites with organizations other than Telecom. (less than 2.5% of total actual cell sites) This must be judged in context with the over 4000 cell sites in New Zealand, and the requirement for any new national operator to capture approximately 70% or 1400 co located cell sites on a TSLRIC cost basis. On a “rapid multi access basis”

Econet Position is the Commerce Commission in conjunction with the Environment Ministry should set co location targets where the incumbents (who are extracting monopoly rents from their assets) are obliged to facilitate rapid multi access co location)

COLOCATE & SHARED FACILITIES - VODAFONE LESSEE

ST Name	ST Address Line 1	ST Address Line 2	ST Address Line 3	ST Address Line 4
Amberly/Balcairn	No.18	Main Road		Amberly
Big Hill		Nimrod Road	Peebles	North Otago
Canterbury/Oxford		Bay Road		Oxford
Clevedon		McNicol Road	RD 2	Clevedon
Cromwell		Felton Road	Bannockburn	Cromwell
Dannevirke		Rule Road		Dannevirke
Dashwood		Weld Pass		Dashwood
Dinsdale		Newcastle Road	Dinsdale	HAMILTON
Hahei	120	Lees Road	Hahei	Coromandel
Kaitaia		Korimako Lane		Kaitaia
Kaitoke		Waterworks Road		Kaitoke
Kamo North		Parakiore Road		Whangarei
Kawakawa East		Whangae Road		Kawakawa
Manakau Straits		Waitohu Valley Rd		Otaki
Mangakino	399	Kahu Rd		Whakamaru
Mangawhai		Cove Road		Mangawhai
Maroanui		S H 1	Maroanui Hill	Maroanui
Martinborough		Riverside Road		Martinborough
Meremere Straights (2)	209	Whangamarino Road		Te Kauwhata
Murchison		Lonford		Murchison
Muriwai (Perm)		Grass Track Road		Muriwai
New Plymouth Outer		Blagdon Hill		New Plymouth
Ngongotaha		Paradise Valley Road	Ngongotaha	Rotorua
Paekakariki		State Highway 1	Paekakariki	Wellington
Paeroa		Aorangi Road		Paeroa
Pahiatua		West Road		Mangatainoka
Parnassus		SHW1		Parnassus
Pokeno		Cole Road		Pokeno
Portland		Portland Quay Road	Portland	Whangarei
Pukekohe Outer	117	Masters Road		Waiuku
Pukepoto		Gee Road	Pukepoto	Rotorua
Raglan (Permanent)		Te Hutewai Road	RD 2	RAGLAN
Seddon		Marama Road		Seddon
Taumarunui North	State Highway 40	Ohura rd	Pukepoto	
Treble Cone (Temp)			Roys Peninsula	West Wanaka
Te Kauwhata		Halls Rd	R D 2	Te Kauwhata

Tutukaka		Western side of Matapuri Rd		Tutukaka
Waiouru		State Highway One		Waiouru -North Island
Waiuku	7	Martyn Street		Waiuku
Wanaka		Cardrona Road		Wanaka
Whakarewarewa		SH5	Kakapiko Lookout	Rotorua
Whangarei Industrial		High Street	Morningside	Whangarei
Whangaroa		Ness Road	Whangaroa	Northland
Whenuapai		Airfield Road	Whenuapai	Auckland
Whitianga Central		Flaxmill Bay Road		Whitianga

COLOCATE & SHARED FACILITIES - TELECOM LESSEE

ST Name	ST Address Line 1	ST Address Line 2	ST Address Line 3	ST Address Line 4
Culverden		SH7		North Canterbury
Happy Valley	167	Happy Valley Road		Wellington
Huntly		Riverview Road		Huntly West
Hunua		Stevens Road		Hunua
Haruru Falls		Puketona Rd		Haruru Falls
Kaimai Lower	29	Thorn Road		Tauranga
Milton		Carendon Berwick Road		Otago
Ohakune		Ratamairi Road		OHAKUNE
Okaihau		Puketi Rd		Okaihau
Onetangi		Man 'O War Bay Road		Waiheke Island
Otematata		State Highway 83		Otago
Pakaraka		Kerikeri		Pakaraka
Picton		Mt Freeth		Picton
Pirongia	471	Sainsbury Rd		Pirongia
Rakaia		Overdale Road		Rakaia
Riverton	12	Lex Street		Southland
Ruawai		Gallie Road		Ruawai
St Arnaud		Borlase Ave		NELSON
Tangihua		SH14		Tangiteroria
Taupo Straights		S H 5	R D 3	Taupo
Tuamarina		Parties Road		Tuamarina
Waihi		Rifle Range Road		Waihi
Waikouaiti		Quarry Road		Waikouaiti
Waipara		SH7		North of Waipara
Wairakei		Aratiatia Road		Taupo
Waiwera Township		No 1 State Highway		Waiwera
Winton		Sinclair Road		Winton

Whilst this at first appears to be an impressive list. The facts are very different and the heading gives it away. This is not a list of co-locates at all. This is a list of co-locates and shared facilities.

However, a quick perusal showed that almost every site was not a co-locate at all.

Econet is only aware of 2 genuine co-locates within the Vodafone network.

So what are the rest? Shared facilities.

So what is that? For most of these sites, the only shared facility that Econet is aware of is the access track. They all have their own Towers, Cabinets, Batteries etc.



Above is a picture of a hilltop in Pokeno. It is an eyesore that is immediately apparent when Aucklanders drive over the Bombay hills. This hilltop was on the cover of TUANZ Topics which contained an article describing how poorly co-location works in New Zealand. Vodafone would have you believe that this is an example of good co-location policy in action. Econet regard this as a national disgrace.



This is a hilltop in Clevedon. Yet again, Vodafone's would have you believe that this is an example of good co-location policy in action. Yet again, the only thing Econet are aware of Vodafone and Telecom sharing on this hilltop is the access track.



This is a hilltop just in Taupo. There are six towers visible in this picture and Econet believes there is at least one other tower on this hilltop that isn't visible. This hilltop is clearly visible from the Taupo township and is an eyesore. It is complete nonsense to suggest that this is an example of good co-location policy in action. However, that is what Vodafone would have you believe.

Econet suggest that the Commerce Commission request further information from Vodafone about their supposed "co-locates". Information that the Commission should request includes:

- *Site address*
- *Operator that Vodafone shares with*
- *What exactly is shared. Get a list of equipment on each site that is actually shared. What of the following is shared?*
 - *Access track*
 - *Power supply to the site*
 - *If power supply to the site is shared, whether an operator owns that power cable or whether the local power company does*
 - *Cabinets*
 - *Towers*
 - *Antenna*
 - *Transmission*

Econet expects that nearly all of Vodafone's "co-locates" will only share access tracks and power supply and Econet suggests that the only reason Vodafone "shares" these is because it's debatable whether or not they actually own them (so therefore cannot deny access to the other operator).

Where Vodafone (or another operator) has built an access track across a farmers land, do they own it? Can they deny another operator access to that track if the farmer wishes to grant that operator access? We doubt it. We also have no doubt that if Vodafone were able to deny access, then they would have done and this country would not only be littered with hillsides that have two or more towers on them. Those same hilltops would have two access tracks up them.

Vodafone and Telecom do have one genuine co-locate in Murawai. However, it's interesting to note the history of this co-locate. Neither operator had a site there and both operators were having difficulty obtaining RMA consent from the local council. What drove Telecom and Vodafone to work together on this occasion was the realization that if they didn't then neither of them would be able to build a site there. It was the local council that essentially forced Telecom and Vodafone to work together on this occasion, not any other reason that they would try and have you believe.

SUMMARY POSITION FROM ECONET:

The commerce commission needs to acknowledge that the incumbents control the new entrants pricing and timing to market entry through co location. Because the New Zealand market is so late in developing , and entrenched incumbents provide significant barriers to new entry through holding up bottleneck facilities , means urgent regulation is needed at a detailed level