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22 December 2005

Kate Saunders
Commerce Commission
P O Box 2351
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BY EMAIL

Dear Kate

Regulated services extension review: Suggestions for changes to regulated services

1. The Commission asked for suggestions for amendments to the definitions of regulated services in its decision to investigate the extension of regulation of some of the services regulated under the Telecommunications Act.
2. This letter presents Vodafone's views on the need to amend service specifications. We restrict our suggestions to the three regulated services relevant to our mobile network.
 - Number portability – We would appreciate it if the Commission could prioritise consideration of number portability extension ahead of other services, given the substantial investments that are scheduled on this project in early 2007.
 - Co-location – We expect the Commission will come under pressure to investigate whether to regulate the price of co-location. We do not think there is any need for further regulation of co-location. Genuine access seekers have negotiated numerous reasonable commercial deals, and the TCF is working to unify co-location arrangements across the industry.
 - National roaming – Vodafone thinks the Commission should not consider extending regulation to cover the price of national roaming, nor relaxing the rollout requirements. We do encourage the Commission to look at how to resolve the difficult 3G definition issues that were raised as part of the MTR investigation in the context of national roaming regulation, and to look at the definition of “nationwide” and “10%” in the rollout requirements.

Number portability

3. As the Commission knows, Vodafone is making a very substantial investment in its network to provide number portability by the April 2007 deadline. Commitments for the most significant and irreversible capital expenditures are required from April 2006.

4. Certainty around what the regulatory regime will be as regards portability after December 2006 is therefore extremely important to us.
5. We would greatly appreciate it if the Commission could prioritise consideration of the extension and amendment of the number portability service over other services.

Co-location

6. We expect the Commission will continue to come under pressure to investigate whether to regulate the price of co-location.
7. We think that there is no need for further regulation of co-location. This is for two main reasons:
 - Genuine access seekers have always negotiated reasonable commercial deals, and
 - The work of the TCF will lead to a single industry process approved by the Commission and a standard master agreement for co-location on sites.
8. We briefly explain these points below. We covered the first issue in our previous submission on the extension review, and we refer the Commission to that submission for more information. Some of the information below is a repeat of our previous submission.

Genuine access seekers can negotiate reasonable commercial deals

9. Vodafone strongly supports co-location and we want it ourselves whenever it is feasible (as both an access seeker and an access provider). This is for an obvious reason: it reduces the costs of running our network.
10. Vodafone does not own any of its sites. We have around 950 landlords, to whom we pay almost many millions of dollars a year in rental payments. In addition, there are payments for site maintenance and EME and OSH monitoring that add to these costs.
11. These costs are reduced if we co-locate (either putting our radio equipment on someone else's tower or vice-versa). So there are very good commercial reasons for Vodafone to want to co-locate with other networks where it is feasible to do so.
12. There are multiple firms with towers on which radio equipment can be sited. They include Vodafone, Telecom, BCL, TelstraClear, Woosh and Counties Power (now Compass). Since co-location can reduce costs, we would expect firms to have an interest in providing co-location to others. In fact, we would expect firms to compete with each other for co-location business.
13. Vodafone has negotiated around 100 co-location deals. Telecom is obviously a direct competitor, but we have many sites co-located with them and they have many co-located with us.
14. There is no evidence to support Econet's argument that it will be precluded from co-location because it competes with us. Indeed, our attitude is entirely the

opposite. We welcome reasonable negotiations on co-location because it saves us money.

15. Econet may argue that we will set an outrageous price for co-location. In reality, pricing has never been an issue in any co-location negotiation that we have engaged in with other operators.
 - Current pricing of co-location seems low to us. Indeed, we are looking at whether it might be too low.
 - Landlord consent, local authority consent, and the physical structure of the towers are bigger constraints on co-location than any difficulties with negotiating commercial agreements.
 - Less than 35% of our sites (and actually only 10-15% of our urban sites) are even capable of supporting co-location.
16. As we explain further below, we are developing a standard valuation methodology to apply for the future to all of our sites in a transparent and predictable way.
17. We remain very keen to come to mutually agreeable commercial terms with any access seeker, including Econet. We would far prefer to make a reasonable commercial deal that saves us money than have Econet publicly criticising us and arguing that further regulation of co-location is needed.
18. Econet will likely tell the Commission that this is a pretence: that we are only feigning interest in negotiating co-location because we want to delay their entry into the market. This is simply not true.

The TCF is working to unify co-location arrangements across the industry

19. The TCF Board considered the revised co-location Code at its meeting in mid December. There are some issues to tidy up, but it is expected to be approved for release to the Commission at the January 26 Board meeting.
20. The Code has been changed to reflect the Commission's concerns about the previous draft. Importantly, we understand the Code now has the support of TelstraClear.
21. This means that only Econet disagrees with the Code as it stands. From what Econet has said, it seems that they primarily disagree with the structure of the TCF and with the exclusion of price issues from the regulation. These are not features of the arrangements that the TCF Working Party on co-location can change.
22. The Working Party on the co-location Code is now turning its mind to work on a standard master services agreement that will apply across providers. This provides a higher level of detail than the Code itself, covering more complex process issues such as how to deal with sites where the addition of more equipment would mean a need to change the site structurally, rights of access to co-located sites by the parties and other issues.
23. The master services agreement is expected to be completed by March 2006.

24. Note that the co-location code, and soon the master services agreement, cover co-location regardless of site type. So it is broader in scope than the regulated service that covers only cellular sites, and more relevant to industry.
25. The last point we want to make on co-location concerns pricing. Broadly speaking, pricing of co-location has been very simple and reciprocal between providers.
26. We think that our pricing for co-location is relatively cheap, especially considering that a cellsite can cost \$500,000 to build.
27. Vodafone is doing some work on its pricing structure for co-location. We are working with valuers who have some thirty years experience in the telecommunications industry to develop a standard methodology for pricing access to our sites. This will deliver certainty and transparency to those seeking co-location with us.
28. Initial thinking, however, is that this process may actually mean higher prices. There are arguments that we have been setting co-location pricing too low, because current pricing does not include the recovery of the costs of building the site in the first place.
29. For obvious reasons, this is not a matter that we are discussing with other site owners. But it will form the basis for Vodafone's pricing of co-location access in the future. We expect the work to be substantially completed early in 2006.

National roaming

30. We expect that there will continue to be pressure on the Commission to explore further regulation of national roaming, especially by extending the regulation to cover price, and relaxing the current roll-out requirements.
31. Given the obvious commercial incentives to negotiate roaming, we question the need for roaming regulation.
32. Roaming itself is obviously helpful to entry. It removes coverage as a quality differentiator from day one and so makes the entrant's services more attractive to customers while it builds out a full network (assuming that customers care about coverage even in places where they may not want to use their mobile phones).
33. So the only reason to regulate roaming is as a way to encourage entry. But no one has ever applied for access to the regulated service. So the question for the Commission is whether price regulation or changing rollout requirements could generate benefits for consumers greater than the costs that they impose.
34. In our view, there are commercial incentives on existing operators to negotiate roaming deals with genuine entrants. Making a commercial deal generates roaming revenues.
35. Obviously, speeding an entrant into the market is not something that firms do lightly. But equally, if the entrant is going to enter the market anyway, then we are better off if we get some roaming revenue than if we do not. We would prefer that a firm that is going to enter anyway make more use of any spare capacity on our network rather than less.

Rollout requirements

36. These points are closely related to our support for the rollout requirements in the Act. The rollout requirements are a key part of the Act's focus on encouraging facilities-based competition and the building of competitive infrastructure. It could hardly be said that they have been proven unsuitable, given that no one has ever applied for access to the service.
37. It seems to be common in other jurisdictions to enforce rollout requirements into operator licences. We note, for example, that the latest entrant into the Irish market has committed to build its 3G network to 53% of the country. To us the rollout requirements in the Act are a sensible way to ensure that roaming need only be a temporary solution while an entrant builds a network rather than a permanent competitive millstone around the neck of those who decide to build infrastructure.
38. The risks of a permanent regulatory support for a new entrant funded by our customers and shareholders make us extremely uncomfortable about a Commission investigation into whether to price regulate roaming or whether to revise the rollout requirements.
39. We have, after all, built the only competing nationwide network telecommunications network, which we continue to expand and improve. We have sought to compete in the marketplace and not in front of the regulator. To decide to investigate price regulation of Vodafone (and there is no suggestion that entrants want roaming on Telecom's network) seems a rather perverse outcome in these circumstances.

Definitional issues

40. If the Commission is minded to look more closely at the national roaming service, then there are three definitions in the current regulation that we think need further work:
 - 3G/2G definition – The Commission agrees in its latest MTR report that Telecom's 1xRTT network is 3G. If Telecom's network is accepted as being 3G, the current regulation is an asymmetric regulation of Vodafone's 2G GSM network only. This issue deserves attention in any review of the service specification for roaming.
 - "Nationwide" build – The definition of what counts as a "nationwide" build could be made clearer in the Act. Our network covers about 97% of the population and around 37% or so of the geographic landmass of New Zealand. Perhaps a nationwide network is one that no longer requires roaming services.
 - 10% buildout requirement – The meaning of "10% of the area in which the New Zealand population normally lives or works" could also be made clearer. It is not clear to us whether this is a population coverage requirement or a geographic coverage requirement. If it is the former, then it could be met by covering only Auckland city. If the latter, then an entrant would need to have built several hundred cellsites before applying (or seek an exemption from this requirement from the Commission).

Conclusion

41. As always, I am more than happy to expand on any of these points at your convenience. Feel free to email me at hayden.glass@vodafone.com or call 021 689 176.

Yours sincerely,

Hayden Glass
Public Policy