



31 August 2007

Commerce Commission
44-52 The Terrace
WELLINGTON

By email: thomas.forster@comcom.govt.nz

SCHEDULE 3 INVESTIGATION INTO AMENDING THE ROAMING AND CO-LOCATION SERVICES

1. We applaud the approach taken by the Commission in the discussion document. We strongly support all of its conclusions, subject only to the comments below.
2. It is widely accepted (and is often referenced by the Minister) that competition between networks is the form of competition which is in best long term interest of end users. Given the absence of a national competing mobile network to rival the two incumbents, the goal of regulation should be to encourage network build. We would encourage the Ministry and the Commission not to err on the side of caution when reviewing the relevant legislation if caution is going to result in New Zealand having no new national networks for another five years.
3. **Roaming**
We support the pragmatic approach of the Commission with respect to roaming and would add the following comments:
 - 3.1. Given the complexity inherent in the industry, it is important that any pricing model be kept simple. We do not believe that a deaveraged pricing model which required constant change to prices as the new entrant expands its network will achieve this. We believe that an averaged price is therefore more appropriate.
 - 3.2. Roaming charges must be cost-based if they are to be of material benefit to competition and we therefore support the conclusion of the Commission that roaming pricing should be based on TSLRIC calculations.
 - 3.3. Consumers buy services, they do not, buy technologies. When network operators deploy new networks they should be driven to select the technology which best meets the desires of consumers and should provide services which best utilise the technologies available. To achieve this it is imperative that the regulation remains technology neutral, allowing access seekers to deploy whichever technologies are suitable and to utilise the technologies (2G, 3G or other) deployed by the access provider for the benefit of consumers. We assume also that roaming will be regulated such that no differentiation is made based on the services bought from the

access seeker e.g. prepaid and postpaid customers will not be treated differently by the access provider.

- 3.4. There is little detail provided around the monthly access fee proposed by Vodafone. We understand that it is to be a prepayment for roaming minutes, not a “use it or lose it” charge as may be appropriate for MVNO but not for roaming. We would ask the Commission to clarify this.

Co-Location

4. The political/regulatory environment must change if widespread collocation is to occur

The current discussion around collocation is reminiscent of previous discussions regarding number portability. For a service that was 20 years in the making, number portability was relatively uncontroversial and simple in its delivery. Number portability was ultimately delivered because of a building of political and consumer pressure on the incumbents to deliver the service. Once this pressure was sufficient the process happened relatively efficiently.

5. LLU is another example of a product delivered in a relatively short period of time as a result of political pressure rather than commercial drivers.
6. In its report the Commission refers to a change in the incumbents’ behaviour when each believes that the other is going to grant collocation and they therefore have incentives to be that party, gaining the collocation revenue. That effect has not occurred.
7. We would encourage the Commission and the Minister to make clear to the incumbents that collocation is to occur. Perhaps targets could be set for the number of collocations to be achieved. If each of the two incumbents was to accommodate 50 collocates each a year that would significantly change the rollout environment for new entrants. We are confident that with sufficient political pressure, whatever technical limitations have been raised in the past will quickly be solved.
8. **Designation**
The Commission has recommended not designating collocation on the basis that the market now has an agreed pricing methodology. We think this approach is mistaken. If a methodology has been agreed (which is not clear to us), it has been achieved because of the threat of regulation. Behaviour can be expected to change after that threat has passed. We see no reason why collocation should not be designated.
9. The Commission proposes to leave implementation of part of the solution to the TCF without further formal regulation. In our experience, the TCF has not proven able to deliver unregulated outcomes when parties’ interests differ. Without formal regulation we believe that the TCF will struggle to include pricing and other mechanisms in the Code which have not been specifically required in the Act. We would urge the Commission to set out in regulation whatever factors it believes will facilitate collocation.

10. We would welcome the opportunity to talk to these submissions with the Commission.

Yours faithfully

A handwritten signature in black ink that reads "Nick Clarke". The signature is written in a cursive style with a large initial 'N' and a long, sweeping underline.

Nick Clarke
Commercial Manager
Woosh Wireless Limited