

16 September 2005

Mr Osmond Borthwick  
Manager – Network Access  
Commerce Commission  
PO Box 2351  
**WELLINGTON**

**By Email & Facsimile: (04) 924 3700**

Dear Mr Borthwick

### **Mobile Termination Rates**

Thank you for your letter of 13 September 2005 concerning the Commission's proposal for a process to respond to the requirement of the Minister of Communications that the Commission reconsider its recommendation to regulate Mobile Termination.

The Minister has asked the Commission to reconsider three things. One of them is the Commercial Offers made by Vodafone and Telecom. In some ways it might be reasonably straightforward for the Commission to consider the benefits of the Commercial Offers against regulation by simply applying the evaluation model developed and used by the Commission in its Final Report of 9 June 2005.

However, in its Application for Judicial Review of the Final Report Vodafone has made a number of challenges to the benefit analysis undertaken by the Commission. These challenges include a failure to consult in respect of changes to the evaluation model made between the Conference held between 23 and 25 February 2005 and the Final Report, and allegations of error of law.

It is our view that the changes made to the evaluation model were of sufficient significance and had sufficient effect on Vodafone that a duty arose for further consultation. A simple application of the model used by the Commission in its Final Report to the Commercial Offers would not cure the challenges made by Vodafone in its Review Proceeding.

In the Minister's letter to the Commission of 9 August 2005, he stated that it would be helpful if the Commission could consider any other significant points made in the submissions which he received on the Final Report.

Does the Commission intend simply to apply the model used for the Final Report or does it wish instead to hear from Vodafone, and the other parties who made submissions to the Minister, in respect of the concerns they have about that model?

If the Commission wishes to hear from parties in respect of the model introduced in the Final Report, then clearly a more complete process, including a conference, will be necessary.

The other two issues referred to the Commission by the Minister, namely definitional and implementational issues concerning 2G and 3G, and "Pass Through" of benefits from reductions in wholesale termination rates to users, are matters of considerable complexity.

- The 2G/3G issue was the subject of written submission after the Conference, but has not yet been the subject of a conference. Whether or not the recommendations made by the Commission in its Final Report capture traffic carried by Telecom on its current 027 network, there is the potential for significant asymmetric effect of proposed regulation on Telecom and Vodafone. This asymmetry has not been modelled.
- The Pass Through issues were the subject of some submission in the Conference and had been raised by Vodafone in its written submissions. However, the subject was not debated to any real extent and is, in many ways, a new topic.

Vodafone's position is that neither of these issues can be addressed sufficiently by the process proposed by the Commission and that a conference will be necessary.

We are also concerned that the time frame chosen by the Commission, which is not a requirement that arises under the Telecommunications Act 2001, is too short for the consideration of issues of this complexity. We request the Commission to extend its timeframe for responding to the Minister to allow adequate time for this consideration.

Your letter refers to possible delays arising from the proceedings commenced by Vodafone to protect confidentiality in its Commercial Offer. These proceedings do not concern the 2G/3G or Pass Through issues and are not an impediment to those issues being considered by the Commission. I confirm that Vodafone is content for its Commercial Offer to be subject to a restricted information regime pursuant to section 100 of the Commerce Act 1986.

We would be very keen to meet with the Commission to discuss the suggested process should that be helpful.

Yours sincerely  
**Vodafone New Zealand Limited**



Tom Chignell  
General Manager, Commercial Development