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Ross Patterson
Telecommunications Commissioner
Commerce Commission
P O Box 2351
WELLINGTON 6140

Dear Ross

RE: INVESTIGATION INTO MOBILE TERMINATION ACCESS SERVICES (MTAS)

Thank you for your letter of 26 August 2009 responding to mine of 20 August 2009.

While the concerns set out in our letter remain, Vodafone thanks the Commission for scheduling time at the forthcoming MTAS conference to discuss the possibility for an additional opportunity to submit revised undertakings.

In your letter, you ask that Vodafone identify the regulators to which we referred as having undertaken cost-benefit modelling for MTM, in particular modelling which identifies the impact of regulation on efficient entry and expansion. You asked that Vodafone direct the Commission to the cost-benefit modelling undertaken by those regulators.

The point made in my letter related to the absence of cost-benefit modelling for each service the Commission is proposing to regulate. The Commission itself has identified that analysis to quantify the costs and benefits of a proposed regulatory change is the best means of assessing the long term benefit for end users.¹ Although we acknowledge that cost-benefit modelling is not always a straightforward matter, this does not mean that cost modelling cannot or should not be done. The reference to other regulators having undertaken cost-benefit modelling addressed that point. We did not deal in the letter

¹ Commerce Commission *Draft Report – MTAS Investigation*, paragraph 46

with how modelling has been done by other regulators, or what aspects those models may have sought to identify, because such details would not have been relevant to the point we wished to highlight.

Responding to your specific question, Vodafone is aware that the EC² and Ofcom³ are among those regulators that have undertaken cost-benefit modelling. In the Netherlands, the Dutch Trade and Industry Appeals Tribunal ordered OPTA to issue new decisions concerning mobile termination, in part because of the absence of modelling.⁴

Other examples overseas may possibly be found. Vodafone considers that this is something which the Commission would wish to research as part of the exercise of its powers and functions under the Telecommunications Act.

Yours sincerely,

Vodafone New Zealand Limited



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² Commission of the European Communities, *Commission staff working document accompanying the Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU, Implication for Industry, Competition and Consumers* [C(2009) 3359 final] [SEC (2009) 600]. In this case the model was not made public, however a cost benefit model was completed nonetheless.

³ Ofcom, *Mobile Call Termination, Proposals for Consultation*, 13 September 2006. This document contains the impact assessment of the proposed regulation, which includes the key elements of a cost benefit model.

⁴ http://ec.europa.eu/information_society/policy/ecomm/doc/implementation_enforcement/article_7/national_judiciaries/ruling_OPTA.pdf. "The advantages of tariff regulation for providers and end-users of fixed lines that were specified by OPTA in the contested decisions were not weighed up in a qualified way against the other interests involved in tariff regulation, including any disadvantages of tariff regulation for providers and end-users of fixed lines and the advantages and disadvantages of tariff regulation for mobile providers and mobile end-users.In the Tribunal's opinion, OPTA has not allowed for these interests — which are relevant to tariff regulation — conspicuously enough in its assessments"(paragraph 11.5.2).