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Ms Paula Rebstock
Chair
Commerce Commission

By e-mail: paula.rebstock@comcom.govt.nz

Dear Ms Rebstock

RE: Concept Economics Consultancy report

I refer to the submission provided by Concept Economics during the Commission's recent Mobile Co-location Service Standard Terms Determination (STD) conference (the conference).

During the conference, you provided interested parties with an opportunity to comment on the Concept Economics report.

In its report, Concept Economics suggests that Vodafone and Telecom have limited incentives to provide co-location to a new entrant in a timely fashion as the revenue benefits they would attain from co-location are greatly outweighed by the lost revenue existing operators would expect to experience on account of the greater levels of competition that co-location would create. Concept Economics then appears to suggest that these incentives could be addressed if the penalty regime facing an access provider for failing to meet timeframes in the Mobile Co-location Service STD included a requirement to provide national roaming at short-run marginal cost (SRMC).

Vodafone is concerned with a number of aspects of the Concept Economics report and the implied regulatory prescriptions contained within it. At a broad level, Vodafone believes the recommendations are flawed because:

- the Commission does not have the ability to specify a penalty regime that includes pricing for national roaming services, as the National Roaming Service is not a designated service within the meaning of the Telecommunications Act;
- It fails to take account of many of the practical difficulties associated with such a proposal (such as, for instance, many of the access providers of the Mobile Co-location Service not having a National Roaming Agreement in place to which such a penalty regime could apply; and problems associated with developing a billing system capable of setting different roaming charges in different parts of the country where co-location is being provided);

- The analysis of Concept Economics around the incentives faced by access providers and access seekers fails a few basic reality checks. For instance, if co-location provides such little revenue gains/cost savings for access providers and access seekers, and there are hundreds of millions of dollars of mobile retail revenues potentially available to a new entrant, why wouldn't NZC have launched its network long ago? In other words, is NZC really holding out for a final \$10 Million in network build savings to get co-location on terms it would like while there are potentially hundreds of millions of dollars of retail revenue opportunities on the table for it to compete away from existing operators? This is especially the case given Concept Economics itself appears to assume NZC would enter and enjoy 5 per cent market share even if mobile co-location was not available to it. Concept Economics does not, therefore, appear to consider mobile co-location of itself to be a barrier to entry to NZC commencing providing services to consumers – it is merely something that enables it to experience greater cost savings if it does enter. In this context, it is also questionable whether co-location of itself will drive hundreds of millions of dollars of price reductions for consumers. It is not clear to us how an additional \$10 Million in savings for NZC will be the key that enables it to provide hundreds of millions of dollars in price savings for consumers when it already has many of the other essential elements needed to launch a network and start competing already (e.g. heavily discounted spectrum; and favourable roaming and interconnection agreements with Vodafone);
- Concept Economics fails to take account of the harmful “second round” incentive effects that setting SRMC pricing for national roaming would create. For instance, the ability to attain national roaming at SRMC would give an access seeker incentives to try to lodge vexatious co-location applications in an attempt to get reduced national roaming charges; find ways to hinder the ability of an access provider meeting its service level requirements; and potentially stall its own network roll-out in those areas where it never previously intended to either roam or co-locate. That is, if SRMC pricing were available to it for national roaming, it would have incentives to find ways to roam in as many parts of the country as possible rather than incur the full long-run incremental cost of building its own network in those areas it would otherwise intend to build in. SRMC pricing for roaming would fundamentally distort appropriate build/buy incentives a potential access seeker would face when deciding which sites to build, which site to roam on, and on which sites to seek to co-locate.

Vodafone has also asked Covec to consider the report provided by Concept Economics. The Covec paper is attached to this letter for your convenience.

Overall, we believe the proposal to link SRMC pricing for national roaming to penalties for failing to meet service level requirements for mobile co-location is unlawful, impractical and short-sighted in terms of its consideration of the incentives such a penalty regime would create.

Should you have any further queries in relation to this matter, please feel free to contact me on 021 882 429.

Yours sincerely

Richard York
Regulatory Manager