



Vodafone New Zealand Limited  
Corporate Affairs  
20 Viaduct Harbour Avenue  
Private Bag 92161  
Auckland, New Zealand

Reception +64-9-355 2000  
Facsimile +64-9-355 2006

20 April 2010

Daniel Vincent  
Commerce Commission  
WELLINGTON  
By email: [telco@comcom.govt.nz](mailto:telco@comcom.govt.nz)

Dear Daniel,

**Re: Unbundled Copper Local Loop Backhaul and Unbundled Bitstream Access Backhaul Standard Terms Determinations – Consultation over the market definition and competition assessment**

This letter is Vodafone's response to the Commerce Commission's (the **Commission**) letter of 30 March 2010 inviting a submission on the market definition and competition assessment in the Unbundled Copper Local Loop Backhaul and Unbundled Bitstream Access Backhaul Standard Terms Determinations (**Consultation Paper**).

Vodafone always welcomes the opportunity to comment on the Commission's deliberations.

Prior to providing comments on the questions specifically asked by the Commission in the Consultation Paper, we would like to outline some general comments on the overall review process. Our intent here is to ensure that the Commission is focusing its attention on the matters of greatest importance amongst the very large number of potential questions of interest.

In short, we think there is scope to simplify the process of backhaul regulation.

The Commission has operated with the current process for the last two years. Almost half of the existing links are regulated. In that time, we have not seen any significant change in the level of competition for backhaul services and we do not foresee any change in the near future. This suggests that the value of careful regular reviews of every backhaul service, link by link, is likely to be outweighed by the costs of these reviews to the industry and the Commission.

An alternative approach would be to change the underlying approach to the competition assessment. That is, rather than conducting a link by link review on a regular basis, the Commission could regulate all backhaul links by default. Should an Access Provider require greater pricing flexibility, it could be managed on a case by case basis, following application by an Access Provider. By managing regulation review by exception upon the application of Access Providers, the same market outcome might be able to be achieved at lower cost to all concerned.

If the Commission is to run a review process, it also seems that it could give more priority to the question of demand for backhaul. Demand is critical to supply in this market; no competitive entry is likely on any link without committed demand in advance. This means that the pattern and scale of demand, i.e., UCLL plans and UBA customer counts by area, are important inputs into whether competitive entry on any link is likely. Bringing this demand information into the review could help the Commission determine areas where backhaul competition might emerge in the future.

We would also encourage the Commission to look at the actual impact of regulation on prices, and to drill down to see what difference there is, if any, between prevailing prices on unregulated routes and on regulated routes. If regulation makes little difference to pricing in practice, there is even less reason to have a regular pricing review.

Our responses to the Commission's specific questions in the Consultation Paper are as follows.

***Comments are sought on whether the geographic dimension of the market definition as applied by the Commission is too narrow. In particular, should this be a regional, rather than a route by route, market. If a broader geographic market is considered appropriate, how should the boundaries of such a market be defined.***

The market definition as applied by the Commission in the UCLL Backhaul Standard Terms Determination is still relevant for UCLL and UBA backhaul services. The technical and design specification of the services imply that, if an Access Seeker wants to deliver, for example, UCLL from a particular exchange and only limited backhaul service is offered from that exchange, there is no alternative for that route.

Given this geographical specificity, a link by link approach best exposes the interplay of market forces relevant to the Commission's analysis. Adopting a broader geographic approach for the competition assessment risks unduly liberalising controls on those routes where there is only one Access Provider.

***Comments are sought on whether the Commission's revised approach to 'near entrant' networks is appropriate for determining whether a nearby network exerts a competitive constraint on the supply of UCLL Backhaul Services from a particular exchange. Comments are sought on the use of a one-year timeframe within which to assess supply-side substitution and, in particular, whether it is reasonable to expect a 'near entrant' to build out to an exchange and commence the supply of a backhaul service within a one year timeframe***

***In particular, views are sought on the Commission's current local exchange by local exchange approach, and on the relevance of the individual elements of the test, specifically the proximity, likely costs, and the intentions of the smaller networks to connect to specific local exchanges.***

In terms of timeframe within which a 'near entrant' is able to build out and commence the supply of a backhaul service, in our experience, one year is not sufficient. We have had the experience of Vector building capacity all around Auckland unbundled exchanges. The project, based on a commercial agreement signed between Vodafone and Vector, started early 2008 and is still to be completed. This example demonstrates how difficult an estimate of a reasonable timeframe would be. We propose that any revised approach defines that a 'near entrant' exerts a competitive constraint only when it is ready to supply the service.

The individual elements of the test still seem to be relevant, but we would encourage the Commission to keep the approach as flexible as possible depending on which market is being assessed.

***Comments are sought on whether the Commission should continue to consider that Telecom faces limited competition in relation to routes where Telecom faces competition from one other vertically integrated fibre operator.***

Competition from one other vertically integrated fibre operator has not created any additional competition. We agree that the Commission should consider that Telecom faces limited competition for those routes.

***Comments are also sought on whether the Commission's approach to market definition and competition assessment adequately addresses investment incentives, so that those incentives promote infrastructure competition and the introduction of greater service innovation or more efficient technologies.***

We agree with the Commission that, in theory, investment incentives need to be considered as part of the competition assessment. However, in reality, investment incentives come down to demand, so it is important to understand where parties want to unbundle and wholesale. In our practical experience, demand of the service is a major driver for a competitor in the decision making process to invest in building and supplying the service. We would encourage the Commission to incorporate that additional element in the overall approach.

***Comments are sought on whether there has been a significant increase in the number of backhaul competitors in this market since June 2008, and whether sunk costs and profitability are at levels likely to entice such competition.***

We have not seen any significant increase in the number of backhaul competitors since June 2008.

We do not have detailed visibility of the actual costs and potential profits for new entrants. However, our experience during the past two years has demonstrated that the best incentive for any new entrant is to have an Access Seeker expressing interest in the service. It seems that with the security of a supply contract signed, competitors are more likely to invest in building the service.

***Comments are sought on the appropriate frequency of competition reviews, and in particular whether a review every twelve months would appropriately reflect the evolution of the market.***

If the review process was to stay as it is, Vodafone believes that a review every twelve months is appropriate. Any more frequent than that seems to impose costs greater than any likely benefits.

***Comments are sought on whether the Commission should consider undertaking competition reviews on an individual link by link basis, either in response to requests from interested parties or on its own initiative, in addition to conducting a competition review of all links.***

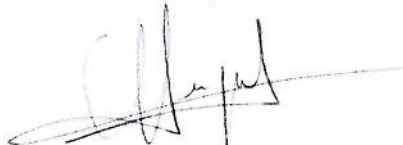
In conjunction with a review every twelve months, we agree that the Commission should maintain a flexible process whereby an interested party or the Commission itself could consider conducting a review on an individual link outside the normal review process. As stated in our general comments above, it is Vodafone's preference for the Commission to review on an exception basis rather than to manage a cumbersome and detailed quarterly review.

***Comments are sought on whether the same framework should be adopted for the UBA Backhaul market definition and competition assessment as is used for the UCLL Backhaul competition assessment.***

Vodafone supports the concept of achieving a greater alignment across all Standard Terms Determinations. There are no major differences from a technical point of view between the UBA Backhaul service and the UCLL Backhaul service. We agree with the Commission's view that the revised market definition and competition assessment approach for the UCLL Backhaul service should be applied to the UBA Backhaul service.

Please feel free to contact me in relation to this submission if any clarification would be helpful.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Celine Hugues', with a long horizontal flourish extending to the right.

Celine Hugues  
Industry Affairs Manager  
Vodafone New Zealand Limited