



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

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

20 July 2011

Commerce Commission  
Wellington

By email

**Unbundled Bitstream Access (UBA) Service Commerce Commission Competition Review – Cross submission**

Vodafone welcomes the opportunity to provide a cross-submission to the Commerce Commission's (the Commission's) revised draft decision reviewing the development of alternative infrastructure competition for the UBA service. We only make two comments in this cross-submission:

- (a) The impact of the amending legislation to the Telecommunications Act and
- (b) Reiterating the impact of monopoly pricing being disguised through 'averaging' within ESAs.

*Telecommunications (TSO, Broadband, and Other Matters) Amendment Act*

Telecom's submission alludes to recent changes to the Telecommunications Act will also limit the Commission's powers, except in limited circumstances, from separation day for a three year period. We note that section 76 of the new amendment legislation will disable the following sections of the *Telecommunication Act* in relation to Chorus' UBA service:

- (a) Section 30R (review of standard terms determination)
- (b) Section 30V (application for a residual terms determination)
- (c) Section 59 (reconsideration of determination) and
- (d) Cl. 1(1) and (5) of Schedule 3 (Commission's investigation).

Accordingly, we encourage the Commission to consider the consistency of the amendment legislation and footnote 3 of its revised draft decision which it suggests it will reserve the power:

"if this non-discriminatory practice changes and Telecom does price discriminate between cabinetised and non-cabinetised lines, the Commission will need to review the market definition and competition assessment under section 30R of the Act."

We submit the Commission should be certain and provide certainty when unwinding regulation for the UBA. This would benefit Telecom and industry.

*Averaging of market shares over cabinetised and non-cabinetised areas*

Telecom's submission discusses how "non-cabinetised areas drive competition in exchange areas and the threshold should take into account how competition in those lines is averaged over the whole ESA." We refer to our submission that provides an illustration of how monopoly pricing over cabinetised lines could occur despite Telecom not discriminating between cabinet and non-cabinet products. In this sense monopoly rents gained from cabinetised lines would more than offset any losses in the competitive areas of an ESA.

If you have any further questions in relation to anything in this letter please contact Kelvin Binning, Senior Public Policy Advisor by email at [kelvin.binning@vodafone.com](mailto:kelvin.binning@vodafone.com) or by phone on 021 224 6636.

Yours sincerely,

Kelvin Binning  
Public Policy  
**Vodafone New Zealand Limited**