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25 November 2010

Daniel Vincent  
Commerce Commission  
WELLINGTON

By email: Daniel.vincent@comcom.govt.nz

Dear Daniel,

**Re: Draft Review of the Standard Terms Determination for Telecom's unbundled bitstream access service.**

This letter is Vodafone's response to the Commerce Commission's draft report on its competition review of the UBA service.

Generally, Vodafone supports the narrowing of regulation where such regulation is not necessary. Where there is a clear need for regulation, it should promote competition, provide certainty to the industry and be cost and time efficient. We believe that the conclusion reached by the Commission in its draft report is consistent with the previous reviews of various fixed line services (UBA Backhaul, UCLL Backhaul and Resale services). Where views were invited on market definition and competition assessment, we have provided our comments.

Also, we take the opportunity to provide additional comments on three specific topics that we believe are relevant to the Commission's competition assessment: operational separation, UBA in combination with SLES, and the application of the Commission's competition assessment criterion.

**Market definition / Product dimension**

The Commission invited views on the conclusions it had reached regarding the product dimension of the market and, more specifically, in relation to substitutability between fixed-line and 3G mobile broadband services.

The table below outlines a list of some characteristics that are relevant in order to form a view on whether fixed-line and 3G mobile broadband services are substitutable, focusing on 2GB plans [ ]VNZRI of our fixed line customers use less than 2GB of data a month.

	<b>Fixed line services/ UBA</b>	<b>3G mobile broadband</b>
Speed	Between 2Mbps and 3Mbps in 2009 <sup>1</sup>	[ ]VNZRI
Coverage	80 % of population by end of 2011 <sup>2</sup>	97% of population <sup>3</sup>
Retail price	\$70 for 2GB (including line rental) <sup>4</sup>	\$51.05 for 2GB <sup>5</sup>

In our view, wireless is a real substitute today for an increasing number of customers.

That said, for the purpose of this review and based on the information provided in the table, we agree with the Commission's view that the relevant product market should exclude 3G mobile services. As wireless technology improves and competition continues to reduce prices, there will be a time when those services will become close substitutes from an end users' perspective. We would invite the Commission to monitor that element of the product dimension closely for the purpose of future competition review.

#### **Competition assessment/ existing competition**

The Commission invited views on the conclusion it had reached regarding the existing competition constraint exerted by services offered over FTTP networks on the current wholesale market for broadband access.

Vodafone acknowledges that the existing offer from the FTTP network is limited compared to the copper based broadband services and, in that respect, it is not constraining the broadband access wholesale market. As noted in paragraph 94 of the draft report, the role of UFB and the future competition it will bring to the market needs to be assessed and closely monitored by the Commission. Vodafone agrees with the Commission's views on that topic.

#### **Operational separation**

In line with our submission on the Resale Services Draft Report, Vodafone agrees that the existing obligations under the Operational Separation Undertakings constitute a safeguard for

<sup>1</sup> Based on information published in the Annual Telecommunications monitoring report 2009 by the Commerce Commission

<sup>2</sup> Based on information published on Telecom wholesale's website

<sup>3</sup> Based on information published on Vodafone's website

<sup>4</sup> Based on information published on Vodafone's website

<sup>5</sup> Based on information published on Vodafone's website

access seekers, specifically with regard to the non-discrimination obligations. If the UBA service was to be offered under commercial terms, Telecom would have an incentive to provide reasonable terms. However, given the context of the UFB program and the discussion regarding structural separation, it is Vodafone's view that the non-discrimination obligations as well as EOI may potentially be reviewed or even removed under a new set of terms for structural separation.

This is not a desirable outcome for Vodafone or any other access seeker who is trying to develop competitive offers in the retail market. As recommended in our submission regarding the Resale Services Draft Report, Vodafone recommends that the Commission consider this uncertainty to ensure that there are adequate protections for access seekers in future competition assessment reviews of the UBA service.

#### **UBA in conjunction with SLES**

As the Commission will be aware, by clarifying the UBA STD and the terms for the provision of the UBA service in combination with SLES, access seekers are now looking at expanding their unbundling footprint to geographic areas and exchanges that have been cabinetised and were previously not economic.

It is Vodafone's view that a significant increase in the number of unbundled exchanges as well as improved competition for cabinetised areas will occur within the next 12 to 18 months. Therefore, despite the fact that the criteria elected by the Commission for its competition assessment remains relevant to today's market situation, we suggest that they should be reassessed on a regular basis in order to reflect continuous changes in the retail and wholesale market for broadband access.

#### **Application of the Commission's competition assessment criterion**

Finally, we refer to paragraph 164 of the Commission's draft decision where the Commission's criteria for the competition assessment are outlined and, more specifically, for the situation where an exchange where one UCLL based Competing Provider is present and the exchange will serve at least 6,500 non cabinetised lines (after the cabinetisation deployment is completed).

It is Vodafone's understanding that the cabinetisation deployment is due for completion by the end of 2011. We are very unsure of when and how this criterion will apply on an exchange per exchange basis. Should access seekers assume that all exchanges meeting that criterion as of today are no longer subject to the UBA STD terms when the 6,500 lines threshold is met and therefore Telecom could offer different commercial terms? Should access seekers and Telecom inform the Commission of any change regarding volume of cabinetised lines on a regular basis so that the Commission can initiate a review when adequate? We believe that there is a need for clarification with regard to how this criterion will be applied and from when. We would welcome further discussion with the Commission on this topic.

#### **Conclusion**

In summary, Vodafone supports the Commission's draft decision and encourages the Commission to continue to monitor closely the evolution of the market and competition conditions.

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 Gilbert', with a long horizontal flourish extending to the right.

Celine Gilbert  
Industry Affairs Manager  
Vodafone New Zealand Limited