



ECONET WIRELESS NEW ZEALAND LTD

**SUBMISSION TO COMMERCE COMMISSION REGARDING
RECONSIDERATION FINAL REPORT ON WHETHER MOBILE TERMINATION
SHOULD BECOME A DESIGNATED OR SPECIFIED SERVICE**

23 MAY 2006

Econet would like to thank the Commerce Commission for the opportunity to state its position with regards to mobile phone competition in New Zealand.

Background to Econet

Econet Wireless NZ has had an office in New Zealand for over five years. Econet Wireless NZ has invested over \$30 million in spectrum and equipment. Econet Wireless NZ has entered into a long-term supply arrangement with Huawei Technologies of China for a 220-site radio access network in Auckland. Econet Wireless NZ has commenced construction of its network in Auckland city.

It is Econet's position that to facilitate infrastructure competition which permanently creates a positive consumer outcome, there needs to be road rules of a similar nature to the OECD.

1. Econet would like to re-iterate our position. Econet believes that there is a problem in the New Zealand mobile market. New Zealand consumers pay too much for both originating and terminating services. However, Econet does not support regulating Mobile Termination Rates. Econet believes that true, long-term benefits to the New Zealand consumer will only be achieved through the introduction of true competition.

2. True competition can be achieved by following 3 simple steps:
 - a. Behaviour issues should be taken out of the Commerce Act and brought into the Telecommunications Act
 - i. Currently the Telco Commissioner can only deal with access disputes; bad behaviour by the incumbents must be dealt with by the Commerce Commission under general competition law. This means the Telco Act only looks at half the picture. This is not the international norm. Give the Commissioner the power to do the full job.
 - b. Key changes must be made to the service descriptions
 - i. Roaming and Co-location are fatally compromised by conditions, incoherent and inconsistent rules and regulations. Price needs to be included along with a review of the services respectful of the state of the market.
 - c. The regulator must be able to act independently, without waiting years for disputes to happen – and damage to be done – before taking action
 - i. The Commission has to wait years to act because action is driven by operators who must negotiate and fail before raising a dispute. This means you must crash your car into a monopoly before the regulator can rebalance the monopolist. It then takes

years for the Commission to deal with the issue – when it is obvious from the beginning that the market structure does not support a competitive situation. The Commission should have the resources and power to correct a situation before a crisis arises, acting on their own initiative.

3. However, given the decision to regulate, Econet supports the recommendations of designation.
4. Econet's experience with Specified services (Roaming and Co-location) is that they're fundamentally flawed. Regulation of everything except price is not regulation at all. It is a farce. Incumbents have strong commercial incentives to deny potential competition from entering the mobile market. Econet's experience of Specified services is that incumbents will uneconomically price the service in order to deny market entry.
5. Also given the decision to regulate, Econet supports the final pricing principle of TSLRIC.
6. Econet believes that TSLRIC leads to the best economic outcome both for individual consumers and the economy as a whole. Incumbents obviously wish to push for "retail minus" type pricing models. However, this only serves to lock-in monopolistic rents and benefits no-one except self-interested incumbents.
7. Finally, given the decision to regulate, Econet also supports the decision to regulate 3G as well as 2G.

8. Econet re-iterates that 3G technology handles voice calls more efficiently than 2G and therefore 3G is a lower cost technology for terminating voice calls than 2G.

9. This position is also supported by various public statements from the Vodafone Group including the following from Mr Graham Maher. Mr Maher is an ex-CEO of Vodafone New Zealand and is currently the CEO of Vodafone Australia. In an interview with Christopher Zinn, Mr Maher stated:

“It’s more about volume because we’re already very competitive with landlines on mobile and already seeing that happen but when we upgrade CBD Sydney, or CBD Melbourne, or something, we will be upgrading with 3G because it carries effectively 10 – 15 times more voice calls at once than 2.5G”

A copy of the full interview can be found at

<http://businesssunday.ninemsn.com.au/article.aspx?id=49826> and a

hardcopy is **enclosed**.

10. It is Econet’s position that regulation of termination rates will only lead to a one-off reduction in calling prices for only one type of call.

11. Across-the-board reduction of prices and improvement in services will only be achieved through true competition.

12. OECD road rules = OECD competition = OECD pricing

13. It is Econet's position that Vodafone is an unbridled GSM monopolist whereby there is no transparency of its profitability. The fixed to mobile termination enquiry has not completed an independent financial review of Vodafone before inter-company expenses, software expenses, interest expenses. It is Econet's position that Vodafone is legitimately confusing the NZ public through its financial structure and through legitimate transfer pricing arrangements with a confusing capital structure, artificially window dressing through profitability of Vodafone's accounts. It is Econet's position that Vodafone be stamped as a participant with significant power or joint dominance of the mobile market and subject to publishing management regulatory accounts like Telecom.

14. The problem with regulating termination rates is that this technique is only useful whereby a new entrant has paid off its mobile phone infrastructure. High termination rates were sensible in the 90's when mobile networks were still capex-hungry. The tragedy of the NZ position is that there is a duopoly whereby both networks are paid off but a new entrant has to suffer the indignity of paying off their mobile phone network with lower termination rates. We ask that the Commission consider these points in their final determination.