



**ECONET WIRELESS NEW ZEALAND LTD
RESPONSE TO MINISTRY OF ECONOMIC DEVELOPMENT:**

**RENEWAL OF MANAGEMENT RIGHTS FOR CELLULAR SERVICES
DISCUSSION PAPER**

To Discuss Spectrum valuation and renewal without simultaneously discussing the allocation of that spectrum to achieve competitive outcomes, along with the interplay between spectrum and co location, roaming, and market behaviour, is dangerously narrow-focused, and extremely damaging to new entrants. The whole process illustrates government agencies playing into the hands of the incumbents

How can any new entrant in New Zealand in 2006 sensibly discuss spectrum valuation and renewal procedures, if they are not discussing allocation, co location, roaming, and market behaviour simultaneously?

Incumbents like Telecom and Vodafone want fragmented, diluted, convoluted rules, with weak, self regulatory structures with general confusion amongst government agencies

Its time to learn from shameful NZ policy disasters of the 1990s

“It’s time to understand the interplay between spectrum management, competition

Introduction

This is a flawed process and is a repeat of the 2000 disaster whereby the MED auctioned spectrum with no regulatory environment in place; again the MED is making a huge mistake by having no decent respect for the impact that a proper OECD style competition policy would make

Econet Wireless is a new entrant mobile telecommunications company that has invested over \$50 million and has budgeted for another NZD \$200 million investment. This investment will generate a positive outcome for New Zealand consumers. Econet has had its plans consistently delayed because of the failure for regulatory policy to align itself to that of the OECD.

The New Zealand spectrum market is characterised by having the only GSM monopoly in the OECD and the only country in the OECD where there is a monopoly in 900MHz GSM spectrum.

Econet's base position is that spectrum management in New Zealand is a mess and that there has been a disaster as spectrum has been monopolized and allocated poorly. Regulatory bodies have deferred to incumbents rather than to international regulators in seeking an effective policy. Decisions for New Zealand consumers are made by the EU community and international vendors. The GSM decisions made by the Europeans affect all New Zealand consumers. The tragedy was that New Zealand regulatory bodies didn't follow the rulebook set by the Europeans to create same technology competition.

The policy that New Zealand won't issue licenses but merely sell spectrum reflects poorly on New Zealand understanding of the complexities of interplay in a networked industry. The New Zealand taxpayer has suffered as spectrum valuation has been

ridiculously low but New Zealand consumers have also suffered, as mobile prices are the highest in the OECD.

It's Econet's position that spectrum management can only be discussed simultaneously with the interplay of competition rules surrounding access to incumbent's networks and behaviour of those companies with significant market power.

Moreover, to discuss the renewal and valuation of spectrum management rights without first creating a framework to ensure (re) allocation of that spectrum in a manner which actively encourages and assists new entrants cannot but fail to achieve the government objective of 'maximizing the value of spectrum to society as a whole'. The presumption that this objective is achieved merely by ensuring the government earns a few dollars for the spectrum is astounding, more so when one compares the spectrum valuation to the (acknowledged) monopoly rents currently being extracted from the NZ public.

Econet is extremely disappointed in Clause 2.25 of the PWC discussion paper. This reflects the intellectually bankrupt thinking that spectrum policy can be pursued independent of competition and regulation policy. The casual assumption that it is in the public good to allow the current incumbent operators to continue to each respectively monopolize the most cost effective spectrum for covering the country is breathtaking in its naivety.

New Zealand must generate OECD style road rules, which are respectful to the current market landscape, which means a new entrant must start at 100% penetration where one player has 66% of all traffic.

Any new entrant has a bottleneck problem with 900MHz spectrum similar to collocation, roaming and number portability. Policy failure has meant that Vodafone has monopolized it. The MED or the Com Com has obviously encouraged Vodafone to consider selling a chunk on 900MHz to Econet as in a 4 week period, Vodafone sent

Econet a letter saying “ we need all the 900 spectrum,” (letter dated 17 April) to change its view and actually offering us a block.

As with all Vodafone requests “PRICING IS PATHETIC”

In roaming, pricing is appalling and non commercial (opening pricing was 86c a minute)
In collocation, pricing is pathetic and reflects a monopoly rent component.

The very interplay of bottleneck services in order to build a network Vodafone wants to extract a monopoly rent from Econet.

Econet requests that Vodafone be forced to rent Econet some 900 MHz spectrums at TSLRIC pricing for the 5 years from 2006 to 2011. At which time Econet can then buy a 20-year lease from the MED.

Upon purchase of this spectrum Econet should pay an asymmetric renewal valuation that is because the MED, needs to understand (as illustrated in the PWC report) that Vodafone and Telecom will game the valuation of the renewal to drive it as high as possible (even though they have to pay more themselves because it creates a barrier to entry and raises the capital cost for new entrants, and prevents a new entrant from being able to lower mobile phone prices (so monopoly rents are still able to be charged by the incumbent)

Without focusing on a license based “get a network built methodology “, the MED is going to get captured with an appalling 90s logic

Being technology agnostic is not going to cut it, because it won't lead to a same technology out come

Econet has a fundamental objection over the terms of reference and scope of this discussion paper. A meaningful discussion on spectrum valuation and renewal simply

cannot be sustained in the absence of clear policy that encourages competition in this market by:

- 1) Ensuring new entrants have access to the 900MHz band in order to achieve cost effective coverage on urban fringes and in rural areas
- 2) Ensuring new entrants are nurtured and given reasonable protection from new technologies while establishing themselves. A fractured competition with competing technologies, fighting over the scraps of the market will never bring competitive pressure to bear on the incumbents.
- 3) Protecting new entrants from anti-competitive behaviour in the market place by the incumbents, as seen in Telecom's response to Saturn cable in the 90s
- 4) Providing new entrants with the rights to quickly and easily avail themselves of roaming, co-location and number portability, not at some price set arbitrarily by incumbents intent only on protecting their market share, but on sensible, cost-based terms set by an independent regulator.
- 5) Links spectrum management to competition management and industry regulation.

Econet believes that the cellular spectrum rights in the 800 and 900MHz band cannot and must not be renewed in their current format. In the absence of an appropriate regulatory policy on spectrum, Econet believes that following procedure should be followed:

- 1) The Telecom allocation in the 800MHZ band should be reduced to less than 886 MHz to allow use of the full 25+25MHz spectrum available for standard GSM use (i.e. 890-915MHz and 935-960MHz).
- 2) The 900MHz band appropriate for GSM should be divided up into four equal portions, and reserved for use by GSM and UMTS networks only (subject to UMTS use not interfering with GSM use).
- 3) The four portions should be allocated to holders of the 1800MHz spectrum being Vodafone, Econet, TelstraClear and Telecom.

- 4) The new holders should pay a nominal fee for the spectrum. The objective of the process should be to create a competitive mobile industry, not to derive a token income for the government.
- 5) Telecom should be allowed continued use of the 850MHz band only as long as it operates a CDMA 2000 network in that band.
- 6) Vodafone should be required as a condition of the renewal to rent (at TSLRC pricing) at least 4MHz each of 900MHz spectrum to other interested 1800MHz spectrum holders until the new management rights at 900MHz are effective.

This submission has been prepared by Econet Wireless for the Ministry of Economic Development.

Harbour Concept

Econet has delivered a plan to the Commerce Commission, which has radio plans in Auckland, Wellington, Christchurch, Dunedin and Hamilton. Econet wants to be an infrastructure provider across the country. Econet intends to build until on par with Vodafone and Telecom.

Such is the craving for competition by the Ministry of Economic Development and the Commerce Commission, that they run the risk of having a pyrrhic victory whereby the Vodafone fantasy of Vodafone perpetuating their GSM/W-CDMA technology in perpetuity with the regulator sucked in by the façade of competition as multiple brand names use their one network.

Every other spectrum vendor in the OECD (and including Nigeria) have given several years of spectrum harbour to those operators who are rolling out nationwide infrastructure. Econet is happy to agree to build and roll out conditions. In a high-penetrated market like New Zealand Econet has been effectively locked out of the market with no number portability, no collocation and ridiculous roaming prices. A new entrant is forced to roll out well over 30% of the country (i.e. Auckland or greater) to get an economic proposition off the ground.

Instead of choosing to encourage a “same technology framework” using the world standard low cost technologies. NZ has gone off on a rotten and pathetic technology agnostic approach, which directly plays into the hands of the incumbents, it causes non-standard, non-scalable pocket networks to be built with serve no purpose. NZ is the only country in the OECD world not to benefit from same technology competition. The MED needs to stand up and be counted and make a decision: go with GSM / WCDMA and try and get NZ to catch up with the rest of the world

1. Case by case review of cellular rights

Issue 1.1

What significant changes in cellular technology and in the cellular market do you foresee within the next 10-20 years? How might these changes affect the future use of the 800 MHz and 900MHz MHz bands?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Econet believes there will be another order of magnitude increase in the scablilty of GSM/WCDMA handsets. As recent as 1999 and 2000 when the spectrum auction took place, no one in New Zealand considered an environment of 120% penetration. No one could predict even 48 months ago, 2 billion GSM devices. This means lower prices for every consumer in every country, except New Zealand. This means the 900MHz band maintains its current value and there must be competition in this 900MHz band and a safe harbour to build a complete country wide network where there is plenty of scope to build up most rural areas because of the enormous economy of scale in the equipment markets.

However, there's a hole in my bucket, where is collocation in this discussion?

Because technology is going to become so cheap, there is going to be a massive amount of competition in open portal software space. Except of course in New Zealand where there will not be any open software portals because there is no same technology network competition.

Issue 1.2

What is the current level of spectrum-related investment in the 800 MHz and 900MHz MHz bands? How might the use of these bands be optimised? What are your intentions in the next few years with respect to this spectrum?

Econet only provides an answer to this question on the understanding that the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Econet has been rejected in negotiations to buy 900MHz spectrum from Vodafone, which will see Econet mobilise \$200mill of investment in the 900MHz band over the next 4 years. The issue here is, Vodafone have a vested interest in ensuring that the renewal costs of the spectrum are ridiculously high (please see Appendix 1).

The issue with regard to the development of the spectrum is, will a rational, integrated OECD look-alike regulatory environment be available and will that regulatory environment respect the entrenched nature of the incumbents at a 100% penetration of mobile. Econet is concerned by the Ministry of Economic Development approach because spectrum development discussions and workshops are being held without a simultaneous discussion of the interplay with other services. It is a networked industry. It is a nationwide infrastructure network whereby every component of the business has substantial interfaces with incumbent monopolists, who have no vested interest in competition. There is a need for fundamental structural change in the way spectrum is administrated and we believe the responsibility should go to the Commerce Commission.

Incumbents complain that TelstraClear and Econet have not built, so there is no problem, so there is no need for change. Given the current regulatory environment, a network build is not rational. A Boston based investor said to us in 2002 “The Fletcher enquiry, the money would be better spent on a boat trip. Thanks for explaining how crazy New

Zealand is. The only thing I'm investing in is Telecom shares. You haven't got a proper regulator."

Econet's intention with 900MHz

Econet has invested \$32m in equipment, cell sites, switch sites, radio plans for Auckland, Wellington, Christchurch, Dunedin, Hamilton and Tauranga (Appendix 2) with a plan for over 450 cell sites. This is before moving to another 300. We require 900 for rural coverage and roaming negotiations. These plans require OECD style regulation of behaviour, spectrum and access Econet is happy to discuss with the Commerce Commission and Ministry of Economic Development conditionality of this rollout. Econet will then agree to OECD conditionality.

The commerce commission made a massive mistake in 2002 by allowing Vodafone to take all the 900 spectrum, but specifically allowing it to get fooled by the Vodafone argument that any new entrant was likely to roam in the rural areas. Without co location and 900 spectrum a new entrant will never get a decent roaming price. It costs a new entrant 4 fold to build using 1800 spectrum and their fore Vodafone can continue to charge an monopoly rent for the roaming service.

Can anybody the MED understand the difference in roaming negotiations if you turn up with a collocation arrangement (so as to avoid and RMA and environmental disaster) and some 900 spectrum?

Issue 1.3

Should rights to unused spectrum be renewed? Why or why not?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Asymmetric principles should apply when considering incumbent versus new entrant renewal. The Econet consortium has had 3G-spectrum availability for 5 years and has invested heavily in 1800MHz spectrum. Because there has been no availability of a roaming agreement and because, despite 4 years of negotiations on collocation, there is no collocation code, (that is before one looks at no availability of number portability or rules managing the significant market power of incumbents) it makes it unrealistic to build without creating an environmental disaster, of multiple towers, but also the 1998 Saturn Telecom decision developed into a decision to prevent network building, because it legitimised those with significant market power to shut down new operators.

Vodafone has monopolised the 900MHz spectrum in a manner that has made a mockery of the government so badly that Vodafone has published, on page 14 of its PLC annual report, that it has 3 GSM licences in New Zealand.

Issue 1.4

Which of the three options with respect to the length of the renewal period is appropriate? If you do not agree with any of these options, what alternative timeframes do you suggest? Why?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Issue 1.5

Do you have any comments on the appropriateness of applying the Covec formula to the New Zealand cellular market?

Econet is appalled that the Ministry of Economic Development would consider using a company like Covec, which is a Vodafone consultant. We note the factual misstatement, on page 8 of the document, whereby Vodafone entered the market in 1998. This is not correct. Any regulator would make a decision on the entrenchment of the incumbent.

whereby the Vodafone network had construction start in 1992, six years earlier. The Vodafone network is 14 years old not 8. Vodafone has had a monopoly. Econet is concerned that there is no discussion of interplay with other services such as collocation, roaming and there is no focus on developing a competitive new network.

Issue 1.6

Do you have any comments on the approaches that were examined as alternatives to the Covec formula in valuing spectrum for the New Zealand cellular market? Are there any other approaches that should have been considered and why?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

2. *The recommended pricing approach*

Issue 2.1

Is the proposed incremental ODV approach, benchmarked against New Zealand and overseas spectrum values, a reasonable and appropriate approach in calculating a market value for the renewal of management rights in the 800 MHz and 900MHz MHz bands? Why or why not?

Does this approach meet all policy objectives) fair market value, fair return to the Crown, transparent and simple to administer)? Why or why not?

The proposed ODV is appalling because there is no competition in the use of 900MHz. New Zealand is the only country with no same technology competition. The primary concern of the Ministry of Economic Development should be to develop New Zealand, the country. Not to fertilize a monopoly. The primary concern of the Ministry of

Economic Development should be to stimulate competition in the same technology band. The crown needs competition not further entrenchment of the incumbent, which the current ODV formula is designed to do.

Issue 2.2

Are there factors or inputs that should or should not be considered in the proposed methodology? Why or why not?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Yes. There needs to be a consideration of the asymmetric policy requirements needed to create competition.

Issue 2.3

Do you have any comments on the benchmarking to be applied to the ODV – calculated value?

It is a flawed process and Econet does not agree with the ODV valuation process, as it is a subsidy to the incumbents.

No respect has been given to the gaming by the incumbents in the process

Issue 2.4

Do you have any other comments on the recommended approach? Do you have any other comments on the consultant's report and peer reviewers' feedback?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

The Price Waterhouse Cooper report has failed the country. It is full of errors and statistical anomalies. We would like to point out a few.

- It fails to highlight the lack of competition in the 900MHz spectrum
- It fails to illustrate the comparison between New Zealand and other countries who have same technology competition
- The report fails to articulate the relatively cheap price of spectrum in New Zealand and the virtual nil SAC costs of Vodafone which should lead to a tremendously wonderful consumer outcome
- It fails to discuss the development of 900MHz 3G networks
- The report is a travesty because it does not discuss the capex cost differential of building a 900MHz spectrum verses 1800 spectrum in New Zealand
- We are disgusted that public money has been spent on this report and there have been discussion with Vodafone and Telecom regarding this report but not Econet, TelstraClear, Woosh or Callplus
- Page 28 of the report, point 6.20, has also failed to identify Ireland as a similar country to benchmark New Zealand against.
- It fails to discuss the concept of gaming (regulatory gaming) by the incumbents to drive up the renewal costs of 900MHz spectrum for new entrants

It is Econet's view that the Ministry of Economic Development would be better informed by contracting their peers in Ofcom, ACCC, the EU Commission, ComReg (Ireland) or the Kinshasa based Congolese regulator.

Issue 2.5

If you do not agree with the proposed approach, what alternative approach would best meet all policy objectives?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Such is the mess in New Zealand. Such is the entrenchment of Vodafone and Telecom regulatory government relations' team. We believe the whole function should be outsourced to a European Regulator for a five-year period.

3. *Process and terms of renewal*

Issue 3.1

Do you have any comments on the proposed timing of the renewal offers?

What would be a reasonable period for incumbent right holders to consider whether to accept or reject the renewal offers? Why?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Issue 3.2

Do you have any comments on the terms of offer?

Econet does not provide an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Issue 3.3

Do you have any comments on the terms of settlement?

Would you prefer an early on-off payment or annualised payments – why?

What should be the latest date for settlement? Why?

What should be the penalty for failure to settle on time – why?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Econet believes that part payment should be acceptable with rollout requirements matched to payment dates with appropriate penalties (this is for new entrants).

For incumbents there should be upfront one off payments, as they have no network to build.

The Ministry of Economic Development desperately need to work with the Commerce Commission to align policy and align the 900 spectrum with that of WCDMA spectrum holders.

THE MED is repeating the mistakes of the 2000 spectrum auctions they are making spectrum decisions with no realistic impact of the other Commerce Commission decisions re co location, behaviour, or other such matters.

Issue 3.4

Do you have any comments on allowing purchasers to assign and transfer contractual rights and obligations prior to settlement?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Issue 3.5

Do you have any other comments on the process and terms of renewal?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

The Ministry of Economic Development has failed on the following issues:

1. to administer spectrum in a competitive manner

2. to conduct a sensible auction which was not gamed by Vodafone and Telecom
3. to prevent a bottleneck in 900MHz spectrum
4. to prevent hoarding of spectrum that prevents new entry
5. to interface with other regulatory bodies and understand interplay with other services
6. to ask third party consultants such as Price Waterhouse Coopers to consult with new entrants
7. to review similar countries to New Zealand, specifically Ireland, Denmark, and the Congo

4. *The auction alternative*

Issue 4.1

What would be the most appropriate design of auctioning spectrum, following a rejection by incumbent right holders of renewal price offers from the Government?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

Issue 4.2

Do you have any comments on the use of an open, simultaneous multiple round auction design previously adopted by the Ministry for large commercial rights and licences

(e.g. Auction 6 rules)?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

The spectrum auction in 2000-2001 created a world record which New Zealand should be ashamed of. Auction rules should not allow any party to maintain or gain a monopoly hold on any given spectrum range.

Issue 4.3

Do you have any other comments on auction as an alternative to the renewal process?

Econet only provides an answer to this question on the understanding that it maintains the whole process under which these questions are asked is flawed and inadequate to achieve Government objectives.

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1800MHz spectrum holders until the new management rights at 900MHz are effective.

New Zealand are world leaders in Rugby, New Zealanders are world leaders in international yachting, New Zealand has a vibrant, hardworking community who pride them selves on doing things well.

In the telecommunications industry NZ has participated in some bizarre Right wing cult where are no common sense was allocated to the self interest of large corporates, who have monopolized community owned government owned natural recourses.

In the time period most countries have broken up monopoly utility businesses, New Zealand has actually encouraged them. Nowhere else is NZ's track record more shameful than the disastrous telecommunications business where Kiwis shamefully sit at the bottom of the league tables.

The lack of imagination and the lack of vision for a multi network new Zealand leaves many economists stunned, when countries such as Ireland has 4 networks and the Congo has 5 networks

Spectrum management in NZ needs to facilitate scalable nationwide competitive networks and spectrum can only be discussed in conjunction with the other policy components of an ICT policy that clears up the pigsty mess of 15 years of failed policy settings