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FACSIMILE MESSAGE

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Fax No:	03 96633699	Date:	2 November 2004
Cc:			
Subject:	Roaming	No of Pages *(inclusive)*	6

Please see attached letter.

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2 November 2004

Mr Richard York
Director - Regulatory
Telecommunications
Australian Competition and Consumer Commission
GPO Box 520J
MELBOURNE VIC 3001

Dear Richard

MOBILE SERVICES REVIEW – DRAFT DECISION RELATING TO MOBILE DOMESTIC INTER-CARRIER ROAMING SERVICE

We refer to the Australian Competition and Consumer Commission's (the **Commission**) Draft Decision on whether or not the Commission should declare the mobile domestic inter-carrier roaming service. The Draft Decision concludes that declaring the domestic inter-carrier roaming service:

- will not promote competition in the mobile services market;
- is not necessary to achieve any-to-any connectivity;
- is not necessary to achieve the economically efficient use of and investment in infrastructure; and
- will not promote the long term interests of end-users.

Vodafone welcomes the Commission's Draft Decision finding that there is no market failure in the domestic inter-carrier roaming services market and supports the Commission's decision not to declare. However, Vodafone does have concerns with other elements of the Commission's Draft Decision. In particular, Vodafone is concerned that the Commission proposes to make a Record-Keeping Rule (RKR) in relation to the terms and conditions upon which domestic inter-carrier roaming services are provided. Vodafone also disagrees with the Commission's approach to defining the market and its analysis of the state of competition in the identified markets.

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Proposed Record Keeping Rule

As noted above, Vodafone supports the thrust of the Commission's Draft Decision. Vodafone notes that this decision, recognising a lack of market failure in this area, confirms the pervious position of the Commission not to declare such services.[1] Importantly, the Commission's consistency provides the market with a level of certainty regarding the likely regulatory approach to national roaming services.

However, Vodafone is concerned that the Commission is recommending establishing a RKR to enable it to closely monitor the provision of national roaming services in Australia. This proposal is concerning as it appears the Commission may intend to regulate the service in the future. Given current supply arrangements available in the market, the conclusions of the previous Inquiry and this Draft Decision, Vodafone queries the basis upon which the Commission proposes the establishment of an RKR.

The justification offered for the proposed RKR is the Commission's concern regarding structural features in the markets within which GSM and CDMA inter-carrier roaming are supplied. The Commission concludes that, given this concern, the terms and conditions upon which the service is supplied should be monitored. Vodafone believes that the Commission can adequately monitor the provision of national roaming services without establishing an RKR. The Commission should continue its current approach of monitoring developments and conducting market enquiries in the context of any formal review of a market or an existing declaration.

Vodafone disagrees with the Commission's concern regarding structural features in the market within which GSM mobile domestic inter-carrier roaming is supplied. Vodafone has experience in this market as both a buyer and seller of these services. On the basis of this experience we can confirm there are no issues with the functioning of the market. Within this context, Vodafone rejects the application of a pan-industry formal RKR given the decision of the Commission that the declaration is not necessary to promote competition in the market or in the LTIE.

We submit the proposed RKR is disproportionate to the Commission's concerns about the national roaming services and unnecessary given the absence of market failure and the state of competition in the market. Furthermore, Vodafone contends the Commission already possesses sufficient powers to address alleged anti-competitive conduct on a case-by-case basis under Part XIB of the *Trade Practices Act* 1974.

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[1] *Public Inquiry Into Declaration of Domestic Inter-Carrier Roaming Under Part XIC of the Trade Practices Act 1974, Report Prepared Pursuant to Section 505 of the Telecommunications Act 1997, March 1997.*

The Commission notes that structural features of the supply side of the CDMA inter-carrier roaming service may not be as broad as those for the GSM roaming service. It is in this context Vodafone assumes the Commission's concern exists. Vodafone therefore suggests that should the Commission wish to implement a RKR, it should only apply to the CDMA national roaming service.

State of Competition in the Market

The Australian mobile market is dynamic and highly competitive. It features: 3 national 2G GSM networks; 1 national CDMA network; 1 CDMA network located within specific metropolitan regions; and 1 UMTS 3G network located within specific metropolitan regions. In addition to this, there are a range of providers utilising differing supply side arrangements including a number of virtual network operators, and other commercial models resulting in greater competition in the provision of wholesale and retail mobile services.

It is this dynamic market structure that has underpinned the evolution of mobile domestic inter-carrier roaming services on commercial terms. As noted in earlier submissions, Vodafone has made two commercial agreements for mobile domestic inter-carrier roaming. In addition, we are aware of other mobile domestic inter-carrier roaming agreements in the market. [2]

Vodafone firmly believes such supply arrangements/options reflect the competitive state of the mobile services market in Australia. Commercial processes have been successful in delivering such arrangements/options thereby demonstrating the proper functioning of the market to deliver efficient results in the supply of mobile services to end-users.

The Australian market has produced on commercial terms:

- 2G to 2G GSM mobile domestic inter-carrier roaming;
- 2.5G to 2.5G GSM mobile domestic inter-carrier roaming;
- 2G to 2G CDMA mobile domestic inter-carrier roaming;
- 3G to 2.5G GSM mobile domestic inter-carrier roaming; and
- 3G to 2G GSM mobile domestic inter-carrier roaming.

Comparing these commercial outcomes, in the absence of regulation, with approaches by National Regulatory Authorities (NRA's) internationally to achieve like outcomes suggests the Australian market is not only functioning efficiently, but also ahead of developments in other jurisdictions.

[2] *Vodafone Supplementary Submission to Mobile Service Review Discussion Paper, 2 July 2003.*

Furthermore, recent developments in the infrastructure sharing space through the Vodafone-Optus 3G Joint-Venture and the Telstra-Hutch 3G Joint-Venture are again evidence that the Australian market is producing efficient outcomes in the delivery of services to the broader mobile services market without regulation. Advances in technology have made the infrastructure sharing model more attractive as they now allow each carrier to retain control of the end-to-end service. Such capabilities are considered superior to the domestic roaming experience, where the roaming carrier must concede a degree of control of the end-to-end service. Currently, Vodafone understands that most national roaming arrangements in Australia require a voice call to "drop" before it can roam across networks. However it is anticipated that "soft call handover" will become a feature of national roaming arrangements in the future.

Market Definition

The Commission concludes in its Draft Decision that national roaming services are supplied within separate wholesale markets and that there are (at least) two separate markets for roaming services in Australia – the national GSM roaming services market and the national CDMA roaming services market.

Vodafone contends that the Commission's approach to market definition is incorrect. Vodafone has continually argued that the appropriate approach to market definition is to define a broad mobile services market in Australia. This approach is considered appropriate due to the complementarities in supply and demand that exist between the different products and services that a mobile operator offers and that a consumer buys. No operator competing in the Australian mobiles market only offers a national roaming service.

Notwithstanding, Vodafone considers that if there is considered to be a separate market for the national roaming service, there is only one market – the wholesale market for national roaming services in Australia. Vodafone considers that the roaming service offered on a GSM network and that offered on a CDMA network are reasonable substitutes for each other and therefore provide a competitive constraint on the behaviour of suppliers of the roaming services.

Vodafone considers that this competitive constraint is strong in the case of a new entrant to the mobiles market seeking to negotiate a national roaming service. A new entrant wishing to acquire a national roaming service is able to initially choose between either CDMA or GSM (1800 spectrum is technology neutral and can be used for GSM or CDMA). Furthermore, a new entrant could seek to enter into an infrastructure sharing arrangement with another carrier or become an MVNO. These are considered to be real and credible substitutes to the national roaming service and provide a substantial degree of competitive constraint.

Vodafone also notes that it is possible for an established carrier who buys a national roaming service to switch to the alternative technology. Vodafone however notes that there would be some difficulties and commercial constraints making this less likely. The established carrier could also seek to enter into an infrastructure sharing arrangement with another carrier or become an MVNO as an alternative to renegotiating a national roaming arrangement.

Vodafone also believes that the Commission incorrectly concludes that infrastructure sharing is not a substitute for those carriers who do not hold spectrum.[3] The Hutchison-Telstra 3G Joint-Venture illustrates that spectrum is not a barrier to infrastructure sharing, as the Hutchison licence does not include spectrum in Canberra and other regional centres. Thus, as with any deal, the parties to the deal will look to the benefits each party brings to the deal to deliver mutual commercial benefit. On this basis, Vodafone considers that an infrastructure sharing joint-venture would be possible in the instance where only one party held spectrum.

If you would like to discuss any aspect of this letter please feel free to call me on 02 9425 9499.

Yours sincerely

Paul Johnston

Manager - Economic Policy

[3] *Mobile Services Review, Mobile Domestic Inter-Carrier Roaming Service, Draft decision on whether or not the Commission should declare domestic inter-carrier roaming service, October 2004*, at p 21.