

30 November 2004

Mr Douglas Webb
Telecommunications Commissioner
Commerce Commission
P O Box 2351
WELLINGTON

BY EMAIL

Dear Commissioner

Vodafone submission on mobile termination draft report

1. Introduction

Please find enclosed the submission of Vodafone New Zealand Limited (**Vodafone**) to the Commerce Commission (the **Commission**) on the Commission's "*Telecommunications Act 2001: Schedule 3 Investigation into Regulation of Mobile Termination*" draft report (the **Draft Report**).

All restricted information in Vodafone's submission and attached documents is clearly marked with square brackets and each item is designated according to its source, in accordance with the requirements of the Commission's "*Confidentiality Order relating to Mobile Termination*" dated 16 July 2004 (the **Order**). This information is to be treated as restricted information under the Order.

Vodafone is requesting additional confidentiality protection under clause 4 of the Order for certain information contained in our submission. The issue under investigation is important to Vodafone's business and we have prepared an extensive submission on the Draft Report. In order to present our best possible case we have needed to include certain information in our submission that is particularly sensitive and confidential to Vodafone. We have kept information in this category to a minimum. We believe that this is a situation where additional protection is justified and indeed required, and we give our specific reasons for seeking such protection below. We note that we are only seeking this confidentiality for a few very specific parts of the submission.

We have accordingly provided:

- A public version of the submission and related documents, with the Commission-only and Restricted Information redacted, and clearly marked as "public"; and
- A Commission-only version of the submission and related documents, with the Commission-only Information clearly identified in square brackets and noted as "VNZCOI"; and

- A Restricted Information version of the submission and related documents, with the Restricted Information clearly identified in square brackets and designated according to its source, but with the Commission-only Information redacted.

2. **Commission-only Information**

Our references to “Commission-only information” are to all of the information marked in the Commission-only version of the submission and related documents which is contained in square brackets and is designated as “VNZCO”.

We hereby request that the Commission provide additional confidentiality for the Commission-only information, pursuant to clause 4 of the Order. We set out some details about the information, our reasons for requesting additional protection for it, and the nature of the protection we are requesting below.

2.1 **Details of the information and reasoning**

Broadly speaking, the Commission-only Information falls into two categories:

- commercially sensitive information; and
- strategy and forecasting information.

Each is discussed in turn below.

(a) *Commercially sensitive information*

This information is comprised of numeric figures, and statements.

The information includes specific figures relating to Vodafone’s revenues. This information is provided for the purpose of illustrating the impact the Commission’s proposals may have on Vodafone’s business.

The information also includes specific figures on handset subsidies for particular customer segments, interconnection rates protected by confidentiality clauses in interconnection agreements, and information sourced from Vodafone Group operating company reports which we do not have authority to release to any person other than the Commission.

This information is specific and accurate, and can tell even an uninformed reader many things about the financial aspects of Vodafone’s business. As such it is extremely confidential. It could be used by one of our competitors to gain an artificial competitive or strategic advantage over Vodafone.

This information can not be verified by any other person and so there is no advantage to other parties in having access to it for that purpose. Further, disclosure of the substance of Vodafone’s arguments is sufficient without the particular confidential information being disclosed, in order for other parties to scrutinise and comment on Vodafone’s arguments.

(b) *Strategy and forecasting information*

This information is comprised of numeric figures, and statements.

The information includes specific figures based on internal Vodafone forecasts, and thus provides the reader with a significant insight into the inner workings of Vodafone's business.

The need for additional protection arises from the fact that any form of disclosure (except to the Commission) would be seriously detrimental to Vodafone in the market. Vodafone would be significantly prejudiced if this information were to fall into the hands of its competitors.

This need outweighs the need for other parties to have access to this information. Vodafone takes the view that it is sufficient that other parties can comment on Vodafone's arguments without seeing this particular information.

2.2 Type of protection required

Vodafone requests that all information designated as Commission-only information in the attached submission and the hard copies of the equivalent document be subject to additional protection under clause 4 of the Order and be treated as exclusively confidential to the Commission. None of this information may be disclosed to any person other than the Commission.

3. Process requirements

Vodafone is concerned to ensure that it is able to provide a full submission in this case, whilst maintaining confidentiality over the relevant parts. Vodafone has only provided this very sensitive financial and strategic information in order to present the fullest possible submission to the Commission, and only for the purpose of the information being used by the Commission to carry out its current investigation. We have included Commission-only information in reliance on the existence of the ability to gain additional protection under clause 4 of the Order.

All information sought as Commission-only by Vodafone must be held in confidence until the Commission makes a decision on its status under the Order.

The Commission said today (telephone call from Vanessa Young to Laura Chamberlain) that the Commission would consult with Vodafone before making a decision as to the status of the information. We will be happy to provide further comments when that opportunity arises.

If, following this, the Commission is considering classifying the information sought as Commission-only by Vodafone as "restricted information", then Vodafone requests the opportunity to remove this information and provide a revised version of our submission. If the Commission does not wish to allow this, then Vodafone requests that the Commission give Vodafone at least two working days' notice of this for Vodafone to take steps to protect its interests.

If the Commission has any questions, or would like further reasoning or detail about our confidentiality concerns, then please contact us. We would be happy to provide this.

Yours sincerely
Vodafone New Zealand Limited

Roger Ellis
Public Policy Manager