



Vodafone New Zealand Limited

Public Policy

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19 July 2004

Mr Osmond Borthwick
Manager Network Access Group
Commerce Commission
P O Box 2351
WELLINGTON

BY EMAIL

Dear Osmond

Vodafone submission on mobile termination Issues Paper

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*" issues paper (the **Issues Paper**).

Vodafone is requesting additional confidentiality protection under clause 4 of the Commission's "*Confidentiality Order relating to Mobile Termination*" dated 16 July 2004 (the **Order**) for certain parts of our submission. We give our reasons below. We note that we are only seeking this confidentiality for a few specific parts of the submission, and we are not seeking "Restricted Information" status for any information. We have kept the confidential information to a minimum.

We have accordingly provided:

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

We note that Richard Browning has today signed a Deed of Undertaking pursuant to the Order, and will be Vodafone's Nominated Counsel for the mobile termination investigation.

We will be posting ten hard copies of each of the versions of our submission to the Commission [tomorrow].

Commission-only Information

Our references to "Commission-only Information" are to all of the information marked in the Commission-only version of the submission document which is contained in square brackets and is designated as "COI".

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.

Details of the information in question

The Commission-only Information falls into two categories:

- commercially sensitive financial information; and
- strategy and new products information.

Commercially sensitive financial information

This information is comprised of numeric figures and graphs. This information must not be disclosed at all except to the relevant employees of the Commission.

The financial information includes specific expenditure figures that relate to the mobile sector generally, and also to aspects of Vodafone in particular. It also includes financial information about Vodafone's return on capital.

This information is specific and accurate, and can tell the reader many things about the financial aspects of Vodafone's business. As such it is extremely confidential.

Strategy and new products information

This information is comprised of sentences discussing services and projects Vodafone is currently developing and working on. This information also must not be disclosed at all except to the relevant employees of the Commission.

The information includes specific discussion about services and projects that are not as yet publicly known and which are of high value to Vodafone. The need for additional protection arises from the fact that any form of disclosure (except to the Commission) would be severely detrimental to Vodafone in the market.

Reasons why greater protection is required for the Commission-only Information

In general, we are seeking additional confidentiality for this information because it can not be disclosed to any of the other participants in the mobile termination investigation.

Commercially sensitive financial information

The key reason is because the Commission-only Information is very detailed and accurate financial information about certain expenditure by Vodafone's business, and it could be used by one of our competitors to gain an artificial competitive or strategic advantage over Vodafone. Even knowledge without the use of this information would be likely to result in a disadvantage for Vodafone.

The information could, without needing any other information, be used against Vodafone. In combination with other information, the information could have very serious detrimental effects on Vodafone's business.

We are not suggesting that the Nominated Counsel or any person who has signed a Deed of Undertaking will disclose the information or use it for an unauthorised purpose. Vodafone is cognisant of the binding commitments on these persons. However, we are concerned that the information could be indirectly used by a recipient. We say this because the New Zealand telecommunications industry tends to involve a large amount of transactions, between a relatively low number of players.

We also note that we are not aware of the particular security arrangements in place amongst the various signatories to the Deed.

Strategy and new products information

This information discusses highly confidential services and projects Vodafone is currently developing and working on, and it is essential that the information not leak into the market.

The information is not publicly available. The services and projects discussed are some of the latest developments at Vodafone, including within the Vodafone Group internationally, and we believe they are innovative in nature.

It is widely accepted that sensitive information about products yet to be launched on the market is highly confidential, because the initial “splash” into the market is generally well-planned and first impressions are important. We do not want to give our competitors undue prior warning of products. The effectiveness of the launch to market could be severely compromised.

This is generally so, but particularly important when referring to new technology-based products. In some cases these types of products can deliver functionality that end-users did not previously enjoy. In other cases there may be variations and developments that add significant value to products and services. The firms that develop and offer such products and services often represent the “first mover”, however if sensitive information about the new products and services leaked to the market ahead of launch, then the advantages derived from innovating and being first to market could be all but lost.

This information is not publicly available or in the marketplace

The Commission-only Information is not publicly available and is not available in the marketplace. It is highly confidential.

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 employees of the Commission.

Process requirements

Vodafone is very anxious to ensure that it is able to provide a full submission in this case, whilst maintaining confidentiality over the relevant parts.

Accordingly, while the Commission is considering this request from Vodafone, the Commission must not distribute any of the Commission-only Information to any person outside the Commission, and for the avoidance of doubt the submission must not be disclosed to any advisors or external consultants of the Commission while the Commission is considering our request.

When the Commission has decided on Vodafone's request, we expect that the Commission will notify us of its decision as soon as possible.

If the Commission's decision is to decline Vodafone's request, then the Commission must return all copies of this Commission-only version of our submission or confirm to us that they have been destroyed. This requirement covers both the soft copies emailed to the Commission, and the hard copies posted.

If the Commission has any questions, or would like further reasoning or detail about our confidentiality concerns, then please contact the writer.

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.

Yours sincerely
Vodafone New Zealand Limited

Roger Ellis
Public Policy Manager