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21 November 2008

Ms Paula Rebstock
Acting Telecommunications Commissioner
Commerce Commission
PO Box 2351
Wellington

By e-mail: paula.rebstock@comcom.govt.nz

Dear Ms Rebstock

INVESTIGATION INTO MOBILE TERMINATION ACCESS SERVICES

We refer to the decision of the Commerce Commission (the **Commission**) to commence an investigation into mobile termination access services (**MTAS**) and in particular its reasons for decision paper of 6 November 2008 (the **Reasons Paper**). To ensure that we have the correct understanding of the MTAS investigation and the process involved, we would be grateful if the Commission could clarify its view on the points set out below.

The process for an access provider to submit an undertaking – application stage

The Commission states that if any access provider wishes to make an undertaking it must do so no later than 12 January 2009.¹ Vodafone's interpretation of Schedule 3A of the Telecommunications Act 2001 (the **Act**) is that there is a two stage process under Schedule 3A – the application and the undertaking. The Act provides for separate legislative provisions that apply to each.

The Act provides that an access provider who wishes to make an undertaking must apply to the Commission.² The application must meet certain requirements.³ Although the Act does not provide for any express link between the application and an undertaking, we consider that the application should outline the scope of the relevant service under which the access provider will eventually submit an undertaking. We understand that there is no prescribed form, information to be provided or fee in relation to the application.

Applications (rather than undertakings as stated by the Commission) must be made not later than 40 working days after the date on which the Commission commences an investigation into a proposed regulatory change.⁴ For the MTAS investigation, this means any application would

¹ Paragraph 26, Reasons Paper.

² Clause 13, Schedule 3A of the Act.

³ Clause 14, Schedule 3A of the Act.

⁴ Clause 15(1)(b), Schedule 3A of the Act.

need to be submitted prior to 12 January 2009. The Act does not stipulate that an application must include a signed undertaking. In a previous application in relation to the investigation into the national roaming and co-location services, the Commission did not require a final signed undertaking from Vodafone and, instead, accepted an application with a draft undertaking.⁵

The Commission must then give public notice of the application and invite interested parties to make submissions.⁶ Before determining the application, the Commission must give the access provider a reasonable opportunity to amend its application in light of those submissions.⁷ In relation to Vodafone's previous application in relation to the investigation into the national roaming and co-location services, the Commission gave Vodafone the opportunity to amend its application and draft undertaking prior to the Commission issuing its draft determination.⁸ This process enabled Vodafone to refine and develop the proposed undertaking through the period of the Commission's investigation and in light of Commission and industry feedback on what the objectives of the undertaking should be.

The process for an access provider to submit an undertaking – undertaking stage

Vodafone would expect an access provider to submit an undertaking following submitting the application as outlined above. Schedule 3A does not provide any express time restrictions relating to when an undertaking may be submitted. The scheme of Schedule 3A only indicates that undertakings may be submitted whilst the Commission is considering a proposed regulatory change and prior to the Commission's final report.⁹

We would be grateful if the Commission would confirm that our interpretation of the undertaking process, as set out above, accords with its own understanding. Given the short period within which to submit an application for an undertaking, we would appreciate if you were able to confirm this at your earliest convenience, and preferably no later than 28 November 2008.

The scope of the Commission's investigation and its definition of MTAS

In its Reasons Paper, the Commission states that the scope of the MTAS investigation is "all MTAS (incorporating MTM voice termination, FTM voice termination and SMS termination)".¹⁰ It is unclear to us whether the Commission is of the view that MTAS is three separate services (each of which is being investigated pursuant to one Schedule 3 investigation) or that MTAS is one service (incorporating three sub-elements). "MTAS" is defined by the Commission as "mobile termination access services",¹¹ however the Commission also refers to MTAS as one service.¹²

Vodafone would appreciate the Commission confirming whether it intends for the MTAS to be interpreted as a single service for the purposes of this investigation or as three separate termination services.

⁵ Refer to Vodafone's "Submission in support of an Application for Schedule 3A Undertaking in respect of National Roaming and Co-location" dated 19 January 2007.

⁶ Clause 16(1), Schedule 3A of the Act.

⁷ Clause 16(3), Schedule 3A of the Act.

⁸ Refer to letter from Osmond Borthwick to Tom Chignell, dated 5 April 2007.

⁹ Clause 3, Schedule 3A of the Act.

¹⁰ Paragraph 3, Reasons Paper.

¹¹ Paragraph 1, Reasons Paper.

¹² See for example wording used at paragraph 25 of the Reasons Paper ("...should become a regulated service...").

Should you have any queries in relation to this matter, please feel free to contact me on 021 882 429.

Yours sincerely



PP

Richard York
Regulatory Manager