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Osmond Borthwick
Manager Network Access Group
Commerce Commission
By e-mail: Osmond.borthwick@comcom.govt.nz

Dear Osmond

RE: Mobile Termination Access Services (MTAS) undertaking submissions

I refer to the public announcement by the Commission on 15 January 2009 that it has received undertakings from Vodafone, Telecom and NZ Communications in relation to the provision of mobile termination access services (**MTAS**). The Commission invited interested parties to make submissions on the undertakings by Thursday 5 February 2009. The Commission further stated that, after the receipt of submissions, there will be a reasonable opportunity for parties to amend their undertakings in light of any submissions received.

The time-period for making submissions to the undertakings

Vodafone is concerned that the period afforded to interested parties for providing submissions does not give it sufficient time to consider and adequately comment on the issues raised by these undertakings.

In total, five undertakings have been received by the Commission in relation to the MTAS. Each party's undertaking(s) differs in form and content. The undertakings also introduce a number of new issues that have not been considered in telecommunications undertakings before. In particular, Vodafone notes that the undertakings contain offers that:

- introduce retail pricing restrictions in relation to "on-net" pricing propositions;
- seek to extend the scope of inquiry to include mobile messaging services (MMS) and video-calling services;
- involve voice and text mobile termination rates being set on a bill and keep basis; and
- propose a wide range of prices for SMS termination – a service for which we are unaware of any undertakings having being provided for regulatory consideration in any part of the world.

Prior to the lodgement of the undertakings, interested parties had no way of knowing with any certainty what clauses other parties may have introduced into their undertakings, or indeed whether other parties would submit undertakings at all.

The issues raised by the undertakings are in addition to those raised by the inter-play of the existing mobile termination rate Deeds (MTR Deeds) signed by Vodafone and Telecom; existing commercial arrangements between Vodafone and NZ Communications; and these undertakings. For instance, even though Vodafone and Telecom have both sought to retain the pricing that exists in their MTR Deeds, we have attempted different ways to achieve this end.

In combination, the undertakings – and context of the investigation in which they are provided – raise a number of complex issues of economic theory and questions of legislative interpretation. We believe this makes the investigation one of the most complex considerations undertaken by the Commission under the Telecommunications Act to date.

While a three week consultation period may be appropriate for a single undertaking provided by a single party, it is less clear that it is appropriate where there are 5 separate undertakings provided by 3 different parties in relation to more than one service.

In order to provide full responses to the undertakings, parties will be required to review the undertakings of the other parties and provide detailed submissions in response. Vodafone expects that for some or all parties this may additionally require the co-ordination of external resources. Parties will also most likely have internal governance processes they need to progress through in order to finalise submissions they can provide to the Commission.

Given the significance of the proposals and the potential for their direct impact on the welfare of end-users, and the returns on and of investments made by a number of interested parties, Vodafone would appreciate it if the Commission considered extending the deadline for submissions on the undertakings to **Friday 13 February 2009**.

We are cognisant that the Commission will not want to introduce undue delays into its investigation of this matter. However, in our view, the investigative process would benefit from an extension of 6 working days. We also believe that this would not cause delay to the overall timeline set by the Commission, nor its ability to meet its indicative timeframe for making a final decision in this matter. An extension would enable parties to respond more fully, which we believe is an important part of due process. We are concerned that the current timeline does not allow for a reasonable and achievable timeframe for parties to respond.

Please let us know if this timeframe is acceptable to the Commission at your earliest convenience, and preferably by Wednesday 21 January 2009.

Revised timetable for the Commission's investigation

As requested in the cover letter of our undertaking application, we would appreciate it if the Commission could update as soon as possible its indicative timeline document for the remainder of this investigation. Up until the Commission's recent announcement on the timeframe for submissions, we had not been provided with any indication of how long the Commission intended to provide parties for making submissions on any undertaking applications. This is understandable if the Commission did not know with certainty how many undertakings it would receive from interested parties until 12 January 2009. However, given the period for providing undertakings has now passed, we believe the Commission should have a good feel for how it believes the investigation should progress from this point in time.


We are still not sure whether the Commission intends to provide parties with an opportunity to cross-submit on each other's submissions in response to the undertakings, or whether the Commission intends

to allow parties the opportunity to submit on any amended undertakings prior to it making a draft decision in this investigation. We also do not know how long the Commission intends to give parties to make amended undertakings, or if the Commission will provide some initial views on the undertakings prior to affording parties the opportunity to provide amended undertakings, as it has done in previous undertaking processes.

It is difficult for parties to plan ahead in relation to internal and external resources when they have no advanced notice of timeframes for each step of the investigative process (nor what those processes will be). We believe the Commission could do much to improve the ability of interested parties to plan their participation in this inquiry if it could provide a more detailed outline of its planned processes between now and the provision of a draft decision later this year.

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

Yours sincerely



Richard York
Regulatory Manager
Vodafone New Zealand