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7 October 2009

Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission

By email: ross.patterson@comcom.govt.nz

Dear Ross,

Re: request for additional information after the MTAS conference

Thank you for your letter of 5 October 2009 in response to my letter to Mr Kinley of the Commerce Commission (Commission) on 1 October 2009.

Thank you again for the opportunity to provide additional information following the MTAS conference, and for your indication that the Commission will have regard to the material provided on pages 3 to 8 of my 1 October 2009 letter. We believe this information is highly relevant to the Schedule 3 Investigation into whether to designate the mobile termination access service (MTAS), and trust it will be useful for the Commission in its investigation.

In your letter, you also indicate that some of the material provided in the early part of my letter appears to be more in the nature of a submission, rather than the mere provision of information. In consequence, you have asked that we re-submit the letter after excluding those portions of the letter which are in the nature of a submission.

The material contained in the early part of my letter was provided as context to help explain the materiality of the data provided in the letter. We can understand, however, that some of it may appear to be akin to the provision of a submission on this matter. We also understand that it was not the Commission's intent to allow further submission on this matter, when allowing the opportunity to provide such information.

That said, we believe the context in which the information is provided is important to the investigation, and we are keen to ensure our views on this context are heard and understood by the Commission.

Further, it is difficult from our perspective to differentiate between what is valid context and what is a new argument or a submission. In that regard, it is not clear to us precisely which parts of the first

two pages of the letter constitute a submission, meaning they should be excluded from any revised letter we would provide.

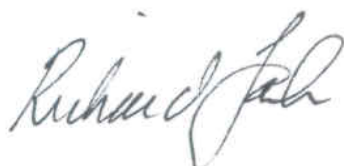
For this reason, we propose not to re-submit our letter of 1 October 2009. Instead, we propose that the original letter stand as is, but that the Commission chose to consider or disregard those parts of the letter it considers appropriate. Where the Commission chooses to ignore the comments set out in the first two pages of our letter, it would be useful for it to indicate that to interested parties to this investigation. Releasing the original letter in full would also help improve the transparency of communications between ourselves and the Commission so that all other parties can see as much information as possible that we have provided to the Commission.

Finally, it may be the case the Commission is concerned that the context set out at the start of our letter might lead other parties to feel they need to respond to the matters raised, and that it was not the intention to "kick off" further rounds of consultation on this matter. We appreciate this perspective, and understand the Commission wants to draw to a close its period of consultation in this investigation. As you indicate in your letter, however, the context we set out for the information at the start of our letter does not substantively add to (and in many cases repeats) the substance of earlier submissions made by Vodafone. In that sense, it is arguable there is no new information in the letter that would require a need for substantive response by other parties.

If the Commission remains concerned that other parties may feel they need an opportunity to respond to the initial comments in our letter, Vodafone would have no problem with this. On the current timetable set out for this investigation, the Commission expects to make a final report to the Minister of Communications in December of this year. We believe a short opportunity for others to comment could be easily accommodated within the remaining 2-3 months of this investigation without compromising the ability of the Commission to complete its investigation within the current timetable. We also note that the Commission is effectively already providing parties with an opportunity to comment on the very matters raised in the opening part of my letter in response to Dr Small's memo on the whiteboard example provided at the MTAS Conference. Given there is substantial over-lap between the issues raised by the whiteboard example and the material (and context) set out in my letter, perhaps the Commission could release my letter and ask interested parties to comment on both Dr Small's memo and my letter at the same time.

Should you have any further queries in relation to any of these matters, please feel free to contact me on 021 882 429.

Yours sincerely



Richard York
Regulatory Manager
Vodafone New Zealand