



COMMERCE COMMISSION

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To All Interested Parties to the MTAS Investigation

Review of classification of information

On 26 August 2009 the Commission wrote to interested parties advising that it proposed to reclassify information relating to market average on-net and off-net termination prices (the **relevant information**) from restricted information (RI) to public information under the MTAS confidentiality order (the **Order**).¹ The relevant information is referred to in paragraph 800, Table 49 and Annex 1 of the Commission's draft Report. The relevant information was derived from RI information supplied to the Commission by Vodafone and Telecom (the **underlying information**).

Submissions were received on the Commission's proposed approach from:

- 2degrees, CallPlus / Kordia and TUANZ supporting the release of the relevant information on public interest grounds, in order to inform the MTAS Investigation; and
- Telecom and Vodafone objecting to the release of the relevant information, submitting that the correct classification was RI, on the basis that the underlying information was commercially sensitive and could be reverse engineered from the relevant information. In addition, concerns were raised about the timing of the Commission's consultation over the reclassification of the relevant information and the consistency of the underlying information provided by Telecom and Vodafone.

The Commission has considered the arguments raised by both Telecom and Vodafone, and acknowledges that it only raised issues about the specific confidentiality status of this information in the last two weeks.

The Commission remains of the preliminary view that the relevant information is central to the MTAS investigation, and there would be significant public benefit in disclosure and testing of the relevant information to the fullest extent possible as part of a transparent decision-making process is significant. However, the Commission determines that given the late timing of the review of the status of the relevant information and concerns raised by Telecom and Vodafone about the consistency of the underlying information, it is appropriate that the relevant information continue to be classified as RI for the time being.

¹ A copy of the Commission's letter of 26 August 2009 is available at <http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/ContentFiles/Documents/Letter%20re%20reclassification%20of%20information.pdf>.

As a consequence of this, the Commission is likely to hold some sessions of the MTAS Conference on a restricted basis, to enable it to test issues that the relevant information is directly pertinent to, while preserving the RI classification of the relevant information.

Attendance at these restricted sessions will be limited to those parties that have:

- signed up to the Deed of Undertaking to the Order; and
- provided RI information, while their RI information is being discussed.

The Commission reserves, however, its position on the appropriate classification of the relevant information and intends to further review this matter following the MTAS Conference.

Yours sincerely

A handwritten signature in blue ink, consisting of a large, stylized loop followed by a long horizontal stroke that tapers to the right.

Dr Ross Patterson
Telecommunications Commissioner