
From: Corin Maberly [mailto:corin.maberly@mgfwebb.com]
Sent: Thursday, 20 August 2009 10:30 a.m.
To: Shane Kinley; Airihi Mahuika
Cc: Ken Ginn
Subject: RE: Release of reclassified Commission draft Report

Dear Shane

Thanks for giving us some time to consider the matter with our internal and external economists.

In summary, our greatest concern with the public disclosure of the information described in your email below is the ability for the Telecom business to calculate relatively reliable revenue and volume figures for Vodafone (and vice versa). We are less concerned with the ability of the general public to do the same.

Our internal and external economists believe that, if the information was disclosed as public, it would be possible for one party to arrive at a close estimate of the other party's RI by using their own company's information and making some reasonable assumptions based on other publicly available information. In such circumstances, we believe that neither party would have an obligation to keep the resulting information confidential. However, our economists agree that it is not possible for one party to exactly calculate the raw figures.

Further, we believe that each party would be capable of deriving a ratio or function between the other party's retail MTM on-net revenues and retail MTM on-net volumes (and likewise for off-net), which we believe is highly valuable information.

On this basis, we submit that the Commission should continue to designate the information – which is the result of a calculation completely based on the RI information of two parties – as RI and to not make that information public. Vodafone believes that disclosure of the information as public would be prejudicial to the commercial position of Vodafone.

We believe that the Commission should have conducted a review of this information prior to making its decision to reclassify the information from RI to public. If the Commission is still considering releasing the information as public information, we would request that the classification of that information first be reviewed in accordance with the MTAS confidentiality order.

Kind regards

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From: Shane Kinley [mailto:Shane.Kinley@comcom.govt.nz]
Sent: Wednesday, 19 August 2009 1:50 p.m.
To: 'Airihi Mahuika'; Corin Maberly
Subject: Release of reclassified Commission draft Report

Good afternoon Airihi and Corin,

This email is to advise you of an issue that has arisen in the proofing of the reclassified versions of the Commission's draft Report and how the Commission intends to handle this issue.

The matter relates to the information in the following tables and paragraphs (with current classification noted – from pages 171-172:

- 762. Table 49 summarises the termination costs that are implicit in the retail on-net prices for 2008, and compares these with the Commission's cost-based benchmarks for 2009 and the rates from the Undertakings.**

Table 49: Retail On-Net Prices and Wholesale MTRs (cpm, cpSMS)

	Voice	SMS
Average retail on-net price 2008)	[] COI	[] COI
less 18% retail costs	[] COI	[] COI
“termination”(50%)	[] COI	[] COI
Commission benchmark (2009)	7.20	0.95
Undertakings	16.00 - 17.00*	6.44**

Source: Commerce Commission (2009).

* 17.00cpm until 31 March 2008 and 16.00cpm from 1 April 2008 (based on the Telecom Deed).

** 2010.

- 763. In summary, based on the average retail on-net revenues for MTM calls and SMS, the respective cost-based MTRs in 2008 are likely to have been no more than [] COI cpm and [] COI cpSMS. Given the Commission's preliminary view that cost-based MTRs are likely to decline over time, for example due to increased volumes, and that on-net volumes have been increasing significantly in recent years, the implied MTRs for 2008 of [] COI cpm and [] COI cent per SMS are similar to the Commission's 2009 benchmarks of 7.2 cpm and 0.9 cpSMS.**

This information was initially classified COI, as these figures are derived from averages of Telecom and Vodafone figures provided in responses to the Commission's data questionnaires, specifically:

$$\frac{(\text{Vodafone retail MTM on-net revenues} + \text{Telecom retail MTM on-net revenues})}{(\text{Vodafone MTM on-net volumes} + \text{Telecom MTM on-net volumes})}$$

As the responses to the data questionnaires have been reclassified RI, the Commission was looking at the consequences of this for the draft Report. The above figures are ones that the Commission has derived, based on information from Telecom and Vodafone, as described above. We do not consider however that there is any possibility of the RI figures being derived from these figures, and will no longer classify this information ie it will be public.

For the same reasons, the Commission will also be reclassifying the following information, which was COI in the original draft Report, as public (on pages 179 and 210):

800. The data gathered from the mobile operators as part of this investigation indicates that the differential in average retail on-net and off-net prices is largely due to the above-cost MTRs for the MTAS. For example, the average retail on-net price for MTM calls in 2008 was [] COI cpm, while the average retail off-net price for MTM calls was [] COI cpm, or [] COI cpm higher than the on-net price. In 2008, the average wholesale MTR from the Deeds was 17 cpm, which is 9.8cpm higher than the Commission’s cost-based benchmark. This indicates that [] COI % of the retail differential was due to the above-cost MTR.^[1]

Appendix 1: Average retail and wholesale prices (MTM, SMS)

(average revenue per minute)

	2008
Retail MTM	
on-net	[] COI cpm
off-net	[] COI cpm
differential	[] COI cpm
Wholesale MTAS	16.70 cpm
Retail SMS	
on-net	[] COI cpSMS
off-net	[] COI cpSMS
differential	[] COI cpSMS
Wholesale MTAS	9.10 cpSMS

These decisions will be reflected in revised public, RI and the new AP version of the Commission’s draft Report released this afternoon.

Regards,

[Shane Kinley](#)

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^[1] Similarly for SMS, the Commission has found a high proportion of the retail differential ([] COI %) is accounted for by above-cost SMS termination rates.