



COMMERCE COMMISSION

Please refer to:

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9 April 2009

David Kreider
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cc: marie.fitzsimons@vodafone.co.nz, richard.york@vodafone.com,
Vanessa.Oakley@telecom.co.nz, Airihi.Mahuika@telecom.co.nz,
Bill.McCabe@nzcomms.co.nz and other interested parties to the MTAS Investigation

Dear David

RE: Investigation into Mobile Termination Access Services (MTAS)

1. I refer to your letter of 3 April 2009 in which you raise concerns on behalf of Vodafone New Zealand Limited (**Vodafone**) with the process adopted by the Commission in respect of its investigation under Schedule 3 of the Telecommunications Act 2001 (the **Act**) into Mobile Termination Access Services (**MTAS Investigation**).
2. Vodafone's primary concerns appear to be that:
 - access providers, including Vodafone, have been limited to one opportunity to submit revised undertakings; and consequently
 - access providers may not have sufficient information to enable them to submit undertakings that are likely to be an acceptable alternative to regulation of MTAS.
3. The Commission has not ruled out further opportunities to amend undertakings. In response to the concerns raised by Vodafone, the Commission now intends that following the release of the draft report, it will provide an opportunity for parties to make amendments to their undertakings at the time they make submissions on the draft report.
4. The Commission notes that in the previous Schedule 3 investigation into amending the roaming and co-location services it did allow for a further revised undertaking at the draft report stage.
5. The Commission has an important obligation to set out a process and manage the MTAS Investigation in an orderly way, to ensure that the process is fair to all interested parties, who are required to be given an equal opportunity to engage effectively with the

investigation. It is also important for all parties to receive clear feedback on their undertakings within the timeframes set out in the Commission's process.

6. Vodafone in particular has previously sought clear signals on what changes the Commission considers need to be made to the undertakings Vodafone has submitted, and the Commission believes it has provided these.
7. The Commission also wishes to reiterate its encouragement that parties put their best offer forward at this stage of the MTAS Investigation, as an alternative to the regulation of MTAS.¹ The Commission considered this approach to be the best use of the resources of all parties to achieve a fair process and a timely conclusion to the MTAS Investigation, in the long-term interests of end-users.
8. Vodafone has placed significant weight on the availability of the draft report and in particular the Commission's preliminary cost-benefit analysis. For the purposes of clarity, the Commission notes that it intends that the draft report will contain the Commission's preliminary views on the undertakings received at that point (including any revised undertakings received), the Commission's preliminary cost-benefit analysis, and the Commission's preliminary views on whether or not the undertakings are satisfactory or whether regulation of MTAS would be required.
9. At this stage of the MTAS investigation, parties have received the Commission's views on terms provided in the initial undertakings², including:
 - comments on price and non-price terms, and in particular the Commission's view that the prices contained in the Vodafone and Telecom undertakings are significantly above the likely cost of the MTAS;³
 - the Commission's current benchmarking information; and
 - referring parties to the assessment framework and cost-benefit model from the Commission's previous Schedule 3 investigation into mobile termination⁴, which the Commission has indicated will inform its analysis in the current MTAS Investigation. The Commission notes that assumptions in relation to key modelling parameters such as the treatment of 'pass-through' and the 'waterbed effect' are included in this earlier assessment framework and cost-benefit model, but notes that these parameters will be reviewed in the Commission's draft report.
10. The Commission therefore considers that at this stage access providers have sufficient information to submit revised undertakings that clearly address the Commission's key concerns with the MTAS market. The Commission therefore expects parties to submit

¹ Commerce Commission, *letter to Vodafone, NZ Communications and Telecom: Comments on undertakings received in relation to the MTAS Investigation*, 25 March 2009, page 5. Available from: <http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/ContentFiles/Documents/MTAS%20Comments%20letter.pdf>.

² Ibid.

³ The Commission has also indicated that it does not consider that the 'bill-and-keep' model proposed by NZ Communications is appropriate at this time.


⁴ The Commission's previous investigation was conducted from 2004 to 2006. Papers relating to the previous investigation, including the Commission's reports and cost-benefit analysis model are available at <http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobileTerminationRates/reportsandsubmissions.aspx>.

revised undertakings, if any, that address the Commission's concerns, prior to the Commission releasing its draft report.

11. Copies of Vodafone's letter of 3 April 2009, this letter, and an updated timeline reflecting the process that the Commission intends to follow for the MTAS Investigation are available on the Commission's website.⁵ The updated timeline reflects the changes to the process for the MTAS Investigation outlined in this letter and in response to Telecom's requested extension to the deadline for the submission of revised undertakings.⁶ The Commission has revised the deadline for submission of revised undertakings, which is now **5pm Wednesday 6 May 2009**. The Commission will continue to regularly review and update the timeframes for the investigation, as it progresses.
12. Should you have any queries in relation to this letter or the MTAS investigation generally, please contact me on anita.mazzoleni@comcom.govt.nz, or Shane Kinley on (04) 924 3686 or by email at shane.kinley@comcom.govt.nz.

Yours sincerely



 Anita Mazzoleni
Commissioner

⁵<http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/mobiletomobiletermination.aspx>.

⁶ Telecom have requested a three week extension for the submission of revised Undertakings. The Commission have separately replied to Telecom's request, indicating that it considers a two week extension is reasonable.

