



COMMERCE COMMISSION

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To All Interested Parties to the MTAS Investigation

Reclassification of information

The Commission is proposing to reclassify information relating to market average on-net and off-net termination prices (the **relevant information**) from RI to public information under the MTAS confidential order (the **Order**). The relevant information is referred to in paragraph 800, Table 49 and Annex 1 of the Commission's draft Report.

The relevant information is Commission information, but has been derived from RI information supplied to the Commission by Vodafone and Telecom (the **underlying information**). The Commission notified Vodafone and Telecom of its intention to reclassify the relevant information on Wednesday 19 August 2009. Vodafone and Telecom both submitted that the relevant information should not be reclassified as public information, on the basis that the underlying information was commercially sensitive, and could be reverse engineered from the relevant information.

The Commission considers that the relevant information is central to the MTAS investigation, and the benefit in disclosure and testing of the relevant information to the fullest extent possible as part of a transparent decision-making process is significant.

The Commission has considered the arguments raised by both Vodafone and Telecom. It has concluded that the underlying information cannot be accurately reverse engineered from the relevant information, and does not consider that the relevant information itself is commercially sensitive or otherwise requiring protection under the Order. The Commission's preliminary view is that these arguments do not outweigh the significant benefit in public disclosure of the relevant information.

Due to the fact that the information goes to the heart of the Commission's MTAS investigation, it is likely to be the subject of significant discussion and questioning at the upcoming MTAS Conference. It would be very difficult for the Commission to manage the Conference in an efficient or effective manner if the relevant information is not reclassified as public information. This underscores the central importance of the relevant information to the MTAS investigation, and that it should be dealt with as transparently as possible.

Accordingly, the Commission's preliminary view is that the relevant information should be reclassified as public information. Further, due to the importance of the relevant information for the MTAS investigation, the Commission's preliminary view is that strong reasons for

protection of the information would have to be demonstrated if the Commission is to retain COI status for the relevant information, or reclassify the relevant information as RI.

Consistent with the process for reclassification of information under the Order, the Commission invites comment from interested parties on the Commission's preliminary view to Shane Kinley (shane.kinley@comcom.govt.nz) by **5pm, Friday 28 August 2009**.

In light of the Commission's upcoming MTAS Conference, the Commission intends to notify interested parties on its decision on the reclassification of the relevant information by **midday, Monday 31 August 2009**. If the Commission remains of the view that the relevant information should be reclassified as public information, then the Commission intends to release the relevant information publicly shortly after its decision has been notified.

Yours sincerely

A handwritten signature in blue ink, consisting of a stylized 'R' followed by a long, sweeping horizontal line that ends in a small curve.

Dr Ross Patterson
Telecommunications Commissioner