



COMMERCE COMMISSION

Please refer to:
11128
865450_2

21 July 2009

To all Interested Parties to the MTAS Investigation

Schedule 3 Investigation into MTAS – Classification of Information provided in response to the Data Questionnaire

In the course of the Commission's investigation under Schedule 3 of the Telecommunications Act 2001 into regulation of mobile termination access services (the **MTAS Investigation**), the Commission has received information from interested parties which those parties consider is confidential or otherwise sensitive. This letter sets out the Commission treatment of that confidential or sensitive information.

Protection of confidential or sensitive information in respect of the MTAS Investigation is governed by a confidentiality order (the **Order**) issued by the Commission under section 100 of the Commerce Act 1986 (as applied by section 15(i) of the Telecommunications Act 2001). A copy of the Order is available on the Commission's website.¹

The Commission previously advised on 30 June 2009 that it had received a large volume of information which parties have requested the Commission treat as having restricted information (**RI**) or Commission only information (**COI**) status, in accordance with the Order. Designation of information as RI or COI is a matter for the Commission. At that time, the Commission had not assessed fully the merits of requests for RI or COI status, due to the large volume of information received, and advised that, unless a particular request had been dealt with specifically by the Commission and had been notified to the relevant party or parties, the Commission provisionally accepted all requests for RI or COI status made in accordance with the terms of the Order.

On 14 November 2008 the Commission circulated a request for information from interested parties, with parties requested to complete either the spreadsheet of fixed-line only companies or integrated operators. The Commission now wishes to finalise classification of information received in response to that data request.

Attached are two template spreadsheets, which show the classification of information that the Commission proposes attach to the information provided from integrated operators and from fixed-line only companies, respectively.

¹<http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/ContentFiles/Documents/MTAS%20confidentiality%20order.pdf>

To date, the Commission has primarily used information from integrated operators in its draft Report. The majority of this information has been provisionally classified as RI or COI, with the agreement of Vodafone and Telecom, the two parties that provided responses to the integrated operators' questionnaire. Accordingly, an RI version of the Commission's draft Report has been prepared and provided to the nominated counsel for those parties that have signed up to the Deed of Undertaking regarding Confidentiality in relation to the MTAS Investigation. RI copies of documents from Telecom and Vodafone, including their response to the data questionnaire and submissions to the Commission, have also been provided in accordance with the Confidentiality Order.

Attached as Annex One is a table presenting the public information from Vodafone's and Telecom's responses to the integrated operators' questionnaire.

The Commission seeks now to confirm the status of the information provided by fixed-line only companies in response to the questionnaire. This relates to responses provided by Orcon, TelstraClear, Woosh, WorldxChange, CallPlus and Linktel.

The Commission notes that it also received responses to its request for information from 2degrees advising that it was not currently operating a New Zealand network, and from Airnet and Compass declining to provide the requested information.

The Commission proposes that all information provided in response to the fixed-line only companies' questionnaire be classified as RI. The Commission has already taken this approach to the average retail prices for FTM calls (national) included in Table 23 of its draft Report. As a consequence, all other information contained in the fixed-line only companies' questionnaire responses would be provided to the nominated counsel for those parties that have signed up to the Deed of Undertaking regarding Confidentiality in relation to the MTAS Investigation.

The Commission requests that all affected parties (which it considers to be Orcon, TelstraClear, Woosh, WorldxChange, CallPlus and Linktel) either:

1. confirm that they consider that the classification of the information in their questionnaire response as RI under clause 2 of the Order is appropriate and provide a nominated counsel's certificate made pursuant to clause 8 of the Order; or
2. advise that they consider that additional protection, over and above the protection given to RI under the Order, is required for some or all of the information in their questionnaire response under clause 3 of the Order and provide a nominated counsel's certificate made pursuant to clause 8 of the Order,

by 5pm on Monday 27 July 2009.

The Commission notes that a nominated counsel is required under the Order to be a person who has a current certificate to practise as a barrister and solicitor of the High Court of New Zealand.

The Commission wishes to inform all interested parties that it reserves the right to review the status of any information granted RI or COI status, in accordance with the terms of the Order, if necessary or desirable for the purposes of the MTAS Investigation. In particular, the Commission wishes to ensure that it strikes the right balance between the interests of

protecting confidential or sensitive information and interests of justice in ensuring that parties are appropriately informed of information relevant to the MTAS Investigation. The Commission intends to regularly reassess the status of information to ensure that the correct balance is struck, ahead of the release of the final report for the MTAS Investigation.

The Commission will also be reassessing information to ensure that confidential or sensitive information is treated in a consistent manner in respect of the MTAS Investigation.

Should you have any queries in relation to this matter, please contact Shane Kinley on (04) 924 3686 or by email at shane.kinley@comcom.govt.nz.

Yours sincerely



Tom Forster
Manager
Telecommunications Branch

Annex One: Public Information from Telecom and Vodafone's responses to the Commission's data questionnaire.

The following table is consolidated from the *Subscriber Base* sheet of Telecom and Vodafone's responses to the Commission's data questionnaire. Note: Telecom and Vodafone advised that all pre-paid customers have been classified as Residential. Telecom figures were provided as thousands.

	Vodafone			Telecom		
	2006	2007	2008	2006	2007	2008
Total number of mobile subscribers activated at the end of year						
Total number of handsets (row 8)	n/a	2,274,831	2,422,371	1,703,000	1,977,000	2,177,000
Coverage of 2G/2.5G services in % of the population (row 10)	97%	97%	97%	97%	97%	97%
Coverage of 3G services in % of the population (row 11)	39 %	47 %	61%	97%	97%	97%
Mobile customer distribution (Residential) - Total number of pre-paid subscribers (row 14)	1,605,046	1,700,276	1,745,021	976,000	1,172,000	1,334,000
Mobile customer distribution (Business) - Total number of pre-paid subscribers (row 20)	n/a	n/a	n/a	n/a	n/a	n/a

In addition, Telecom and Vodafone have advised that they have interconnection agreements with the following companies, in relation to the billing mechanism questions on the *Other Data* sheet of Telecom and Vodafone's responses to the Commission's data questionnaire. Note: information about the actual billing mechanism contained in these interconnection agreements is Restricted Information. Telecom has provided details of domestic interconnection agreements only.

Telecom	Vodafone
Billing mechanism (please mark corresponding answer with x)	
Wholesale Mobile Termination Access Charges to your network are billed...	Wholesale Mobile Termination Access Charges to your network are billed...
Vodafone	Optus Australia
2degrees	Belgacom
	CallPlus
Wholesale Fixed-Line Termination Access Charges to your network are billed...	Compass
2degrees	2degrees
Airnet	Telecom Mobile
Callplus	Telecom New Zealand
Compass	TelstraClear
LinkTel & WorldNet	Vodafone Australia
Orcon	WorldxChange

Telecom	Vodafone
TeamTalk	
Telstraclear	Wholesale Fixed-Line Termination Access Charges to your network are billed...
Vodafone / iHug	Optus Australia
Woosh	CallPlus
WorldExchange	Compass
	2degrees
	Telecom Mobile
	Telecom New Zealand
	TelstraClear
	WorldxChange

Billing mechanism (please mark corresponding answer with x)	
Wholesale Mobile Termination Charges for access to others networks are billed...	Wholesale Mobile Termination Charges for access to others networks are billed...
Airnet	Belgacom
Callplus	Optus Australia
Compass	Telecom NZ International
LinkTel & WorldNet	Vodafone Australia
Orcon	TelstraClear
TeamTalk	CallPlus
Telstraclear	Compass
Woosh	2degrees
WorldExchange	Telecom Mobile
	Telecom New Zealand
Wholesale Fixed-Line Termination Access Charges to others networks are billed...	TelstraClear
2degrees	WorldxChange
Airnet	
Callplus	Wholesale Fixed-Line Termination Access Charges to others networks are billed...
Compass	Optus Australia
LinkTel & WorldNet	Telecom NZ International
Orcon	TelstraClear
TeamTalk	CallPlus
Telstraclear	Compass
Vodafone / iHug	2degrees
Woosh	Telecom Mobile
WorldExchange	Telecom New Zealand
	TelstraClear
	WorldxChange

