



COMMERCE COMMISSION

Please refer to:

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28 November 2008

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Dear Richard

Investigation into Mobile Termination Access Services – Clarification of Undertakings Process

I refer to your 21 November letter regarding the statutory processes for undertakings in respect of the Commission's investigation under Schedule 3 of the Telecommunications Act 2001 (the "Act") into Mobile Termination Access Services ("MTAS Investigation"). In that letter, you raised three separate points on which you were seeking clarification from the Commission:

- the relationship between an "application" and an "undertaking" under Schedule 3A of the Act;
- the statutory timeframe for submission of an undertaking; and
- whether the MTAS Investigation relates to more than one service, or a single service with more than one element.

I address each of these issues in turn below.

The relationship between an "application" and an "undertaking"

In your letter, you have sought clarification on the relationship between an application and an undertaking under Schedule 3A of the Act. You also queried whether it would be more accurate for the Commission to refer to a deadline of 12 January 2009 for any "applications", rather than for any "undertakings" as stated in the Commissions Reasons Paper.

The Commission considers that Schedule 3A sets out one process – that for undertakings. An application made under clause 13(1) of Schedule 3A is a part of the undertakings process. The Commission's expectation is that any such application to include an undertaking that is sufficiently detailed for the Commission and interested persons to form a view and comment

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on and capable of being accepted by the Commission. The Commission expects that any such undertaking would address the criteria for an undertaking set out in clause 4 of schedule 3A and the requirements for an undertaking set out in clause 5(1)(b) to (d).

For this reason the Commission considers it appropriate to refer to a deadline for “undertakings” rather than an “application”, and this is consistent with the Commission’s approach in previous investigations under Schedule 3 of the Act.

The timeframe for submission of an undertaking

Consistent with the Commission’s view set out above, the timeframe for submission for an undertaking in respect of the MTAS Investigation is 12 January 2009. Before making a recommendation on any undertaking received, the Commission will provide an opportunity within a reasonable timeframe for any Access Seeker who submits an undertaking to amend that undertaking after it has received submissions on that undertaking from other interested parties.

The nature of the MTAS Investigation

You have also sought clarification as to whether the MTAS Investigation is an investigation into three distinct but related services (being mobile-to-mobile (“MTM”) termination, fixed-to-mobile (“FTM”) termination, and SMS termination) or an investigation into one service with three distinct elements.

The Commission’s preliminary view is that the MTAS Investigation concerns two distinct services – voice (FTM and MTM) termination and SMS termination. The Commission considers that voice termination services should be indifferent to origination, that is, indifferent as to whether a call involves FTM termination or MTM termination. The Commission foreshadowed this view in its Issues Paper on the *Schedule 3 Investigation into Regulation of Mobile Termination*.¹ The wording in paragraph 25 of the Commission’s Reasons Paper referring to a single regulated service that you note in your letter is a typographical error.

The Commission would be interested in any alternative views that Vodafone or any other interested party might wish to put to the Commission on whether the MTAS Investigation should be conceptualised as an investigation into one or more distinct services when the Commission calls for submissions as part of the MTAS Investigation.

Confidentiality of your letter

Your letter of 21 November 2008 was labelled “Confidential”.

As your letter addressed matters of the Commission’s process, the Commission’s usual practice would be to make available on the Commission’s website both your letter and the Commission’s response, for the benefit of all interested parties.

1 Commerce Commission, *Schedule 3 Investigation into Regulation of Mobile Termination* (8 August 2008).

It would be appreciated, therefore, if you would indicate the aspects of the letter that you consider confidential and the grounds you are claiming confidentiality over those particular aspects, with reference to the confidentiality order² issued in respect of this 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

² A copy of the Confidentiality Order is available at <http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/mobiletomobiletermination.aspx>.