



COMMERCE COMMISSION

Please refer to:  
11128  
904470\_1

1 October 2009

Juliet Jones  
Senior Corporate Counsel  
Vodafone New Zealand Limited

By email: [juliet.jones@vodafone.com](mailto:juliet.jones@vodafone.com)

Dear Ms Jones

**RE: MTAS Process and Conference**

I refer to your letter of 25 September 2009, in which you raise what Vodafone considers to be a number of “fundamental concerns” in respect of the Commerce Commission’s process for its investigation into mobile termination access services (MTAS).

The Commission strongly disagrees with Vodafone’s suggestion that its process has not enabled all parties to “truly engage with the Commission” regarding the issues raised by the MTAS investigation. The Commission has gone well beyond its statutory and due process obligations, and the Commission has received positive feedback about its process from the majority of interested parties.

I note your statement that “Vodafone has fundamental concerns about the Commission’s case for imposing regulation of MTAS”. The Commission is aware of Vodafone’s views on these matters. As you note, these views are set out in Vodafone’s submissions to the Commission. In total, Vodafone has provided the Commission with over 900 pages of submissions during the MTAS Investigation, including expert opinion.

The fact that the Commission’s preliminary views differ from Vodafone’s views does not mean that the Commission has closed its mind to the points raised by Vodafone in its submissions; all submissions will be afforded due consideration before a final decision is made. Further, Vodafone has been afforded “proper and fair opportunities” to set out its views to the Commission, or to respond to the views of other parties, given:

- (i) the length of time for which the Commission has been engaging with interested parties on issues central to the MTAS investigation (ie the last 16 months);

- (ii) the fact that Vodafone has been afforded the opportunity on no less than six occasions during the MTAS investigation to submit its views to the Commission; and
- (iii) the fact that Vodafone has made lengthy and substantive submissions throughout the MTAS investigation and engaged with the Commission on a number of occasions outside of the formal MTAS submission process.

However, I take this opportunity to address the specific concerns raised in your letter.

Vodafone has again raised concerns about public comments by the Commission in respect of the Commission's draft MTAS report. Given the high public interest in this matter, the Commission has a strong obligation to explain its views as expressed in the draft MTAS report. Any reasonable reading of the Commission's public comments in their context makes it clear that the Commission was not expressing finally concluded views.

Vodafone has raised "concerns regarding the truncated process that the Commission had imposed for submissions, cross-submissions and preparation times for the conference." The Commission has provided full and fair opportunities throughout the MTAS investigation for Vodafone and other interested parties to put their views before the Commission for consideration. The Commission's timeframes for submissions and cross submissions have been consistent with the required statutory timeframes and the Commission's practice for consultation on telecommunications matters.

Vodafone raises particular concerns in respect of the timing of and process followed during the Commission's MTAS Conference. The Commission does not consider that the timing of the Conference was "truncated" or unfairly prejudiced Vodafone because of a lack of time to prepare, and notes that, in fact, Vodafone was able to prepare a written opening statement of over 50 pages. This new approach of allowing written opening statements to be provided in advance of the Conference ensured that interested parties could be confident that their views on the key issues were before the Commission. The Commission reviewed these written opening submissions prior to the Conference and will consider these further as it finalises its views.

The Commission considers that the Conference itself was very successful. The Commission found the Conference process a very effective means of testing its own views of the key issues and canvassing the opinion of both interested parties and experts.

Vodafone, in Richard York's letter of 25 August 2009, provided a list of matters that it considered should be addressed at the Conference, which the Commission considered in formulating the agenda for the Conference. The Conference was not an opportunity for interested parties to raise new information or repeat established views in front of the Commission - that opportunity occurs at the submission stage.

The Commission also took a new approach to dealing with expert opinion, which involved an affirmation from experts that they would comply with the High Court rules for experts when appearing at the Conference. These experts were then asked questions independently of interested parties. Throughout the Conference the Commission afforded interested parties the opportunity to comment on the expert economic opinion presented, and indeed to present their

own views. This was generally received positively by other interested parties, and on the whole the Commission considers that this approach worked very well.

The Commission was pleased that, despite the number of issues canvassed, the Conference was able to be concluded almost three hours earlier than scheduled. Time was clearly available for Vodafone to raise any other relevant issues, but it chose not to do so.

The Commission notes Vodafone's comments in respect of Dr Small's expert opinion in response to the "whiteboard example" and has received a paper from Dr Small on this matter. The Commission considers that the experts had a proper opportunity to respond to all questions put at the Conference. Nevertheless, the Commission will accept for consideration an additional paper from Dr Small on the "whiteboard example". The Commission has written separately to Dr Small requesting that he provide a revised paper on this matter, focussing on clarifications to his comments about the "whiteboard example" only and removing references to other information that was not placed in issue at the Conference. The Commission will afford the same opportunity to other parties' experts, and invites Dr Small to provide any clarification of his comments to the Commission by **5pm, Friday 9 October 2009**.

In respect of last week's meeting on undertakings, the Commission is surprised that the nature of this meeting could be misinterpreted by Vodafone. The notification for the public meeting made it clear that it was to be a final opportunity for access providers to seek clarity on the Commission's views on issues of substance and process in respect of the undertakings, and not an opportunity for interested parties to make further submissions to the Commission. Feedback from the interested parties after the meeting was again positive, and the Commission trusts that Vodafone also found the opportunity useful for informing its thinking on the undertakings process generally, and any revised undertaking(s) that Vodafone intends to submit.

Should you have any queries in relation to this letter, please contact me by email at [ross.patterson@comcom.govt.nz](mailto:ross.patterson@comcom.govt.nz) or by phone on 0212 254 455.

Yours sincerely



Dr Ross Patterson  
Telecommunications Commissioner