



Telecom Corporation of New Zealand Limited  
Level 9, North Tower, Telecom House  
68-86 Jervois Quay, PO Box 570  
Wellington, New Zealand

Tel: +64 (04) 498 9324 Fax: +64 (04) 473 5926  
Email: [airihi.mahuika@telecom.co.nz](mailto:airihi.mahuika@telecom.co.nz)  
[www.telecom.co.nz](http://www.telecom.co.nz)

**Airihi Mahuika**

Assistant General Counsel  
Group Regulatory & Competition  
GROUP LEGAL & CORPORATE SERVICES

28 August 2009

Shane Kinley  
Senior Analyst  
Telecommunications Branch  
Commerce Commission  
P O Box 2351  
WELLINGTON

Dear Shane

**MTAS Investigation - Reclassification of confidential information as public in the Commission's draft report**

1. We refer to the Commission's letter of 26 August 2009 and our earlier correspondence on the public disclosure of information included in paragraph 800, table 49 and Annex 1 of the Commission's draft recommendation in relation to the MTAS Investigation (**Draft Recommendation**).
2. Telecom maintains its view on, and strongly objects to, the reclassification of the relevant information in the Commission's Draft Recommendation as public. We consider that, while the underlying Telecom and Vodafone data cannot be reverse engineered to produce an *exact estimate*, it can be sufficiently closely backwards engineered so that reclassification of the relevant information as public would be commercially prejudicial to us if released. We believe NERA has demonstrated this point to the Commission in its memo dated 21 August 2009. The degree of accuracy with which Vodafone will be able to backwards engineer Telecom's respective revenue and volume information will of course depend on the accuracy of the assumptions Vodafone is able to make.
3. If the information was classified as "Restricted Information" we consider that would allow a more appropriate balance between protecting commercially sensitive information and allowing for sufficient transparency in the Commission's MTAS Investigation. The Commission could manage the conference in an efficient and effective manner without disclosing the specific relevant information publicly.
4. In addition we understand that Vodafone and Telecom may not have provided data on a "like-for-like" basis in response to the Commission's data questionnaire. It follows that this potentially affects the Commission's calculation in table 49 of the Draft Recommendation. Even if the data allocation has been carried out consistently, table 49 may not be accurate as it may not include the monthly fee subscription. We have previously raised with the Commission that, when considering average prices, the Commission needs to take into account the total subscription and usage relationship with the customer - calling prices should not be looked at in isolation. We are unsure if the Commission has in fact taken this point into account. Accordingly, the Commission may need to adjust the method of calculation or caveat the figures in table 49.

5. We appreciate the opportunity for proper consultation on the public release of the relevant information, as set out in the Commission's letter of 26 August. It is a shame this did not occur in the first instance, given there was no pressure on timeframes, as we believe that this would have enabled the resources of all parties to have been used more efficiently and effectively rather than being placed under time pressure to respond to the Commission's initial approach of notification only of release.
6. We would be happy to discuss this matter further with you.

Yours sincerely



**Airihī Mahuika**  
Assistant General Counsel  
Group Regulatory & Competition