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25 August 2009

Tom Forster
Manager – Telecommunications Branch
Commerce Commission

By e-mail: tom.forster@comcom.govt.nz

Dear Tom

Re: MTAS Investigation Conference – Administrative arrangements

I refer to your letter to interested parties to the mobile termination access services (**MTAS**) schedule 3 investigation (**MTAS Investigation**) of 20 August 2009, which sets out administrative arrangements for the forthcoming MTAS Investigation Conference (**Conference**). In the letter, the Commerce Commission (**Commission**) requests that parties advise:

- whether they wish to provide opening and/or closing statements at the Conference;
- the names of the presenters;
- the period of time those presenters intend to speak for; and
- the names and positions of those people who will attend the conference for or on behalf of your organisation, including any nominated experts.

The purpose of this letter is to:

- respond to the requests for advice set out in the Commission's letter of 20 August 2009;
- suggest topics that we believe should be included in the agenda for the Conference; and
- outline some concerns we have around the proposed administrative arrangements for the Conference.

Each of these matters is addressed, in turn, below.

Vodafone intends to make opening and closing statements

Vodafone is pleased to indicate it will make both opening and closing statements at the Conference. We expect to speak for the full 15 minutes available to interested parties in each of our opening and closing statements.

At this stage, we have not finally decided who will attend the conference on our behalf, or who will provide the opening and closing statements at the Conference. This will depend, in part, on the

agenda that the Commission has indicated it will shortly provide to interested parties. However, we will provide you with an indicative list of people that are likely to attend the conference on behalf of Vodafone before the prescribed deadline of 5pm on 26 August 2009.

Matters we believe should be included in the Conference agenda

To assist the Commission in preparing its agenda for the Conference, Vodafone believes it is helpful to specify certain matters that we believe are of crucial importance in this investigation, and which we therefore request be included in the Conference agenda. In this regard, we believe it is important that, at a minimum, the following matters be covered in the Conference agenda, about which Vodafone would like the opportunity to be heard:

- the state of competition in the retail mobile market in New Zealand;
- the appropriate pricing principle for the MTAS;
- appropriate benchmarks of the total service long-run incremental cost (TSLRIC) of providing the MTAS in New Zealand;
- the extent to which regulated reductions of FTM termination would be likely to promote competition and lead to pass-through of lower termination rates into lower retail FTM prices for consumers;
- the way in (and extent to) which regulated reductions in FTM termination rates would be likely to generate detrimental consequences for retail mobile consumers;
- the extent to which regulated reductions in FTM termination rates should be applied having regard to a glide path;
- the extent to which the benefits and costs of regulating FTM termination (as outlined above) have been adequately captured in the Commission cost-benefit model for FTM termination;
- whether, in light of the above, it is necessary to regulate FTM termination services, having regard both to the existence of the MTR Deeds entered into by Vodafone and Telecom, and the undertakings provided by the parties in this investigation;
- whether reduced MTM termination rates are likely to have any material impact on the state of competition in the retail mobile market;
- whether reduced MTM termination rates will lead to increased retail mobile prices for certain categories of mobile consumer, including low-spend pre-pay consumers;
- whether on-net pricing offers and MTM termination rates in New Zealand are likely to limit the promotion of competition in the retail mobile market;
- whether a ban of on-net retail pricing of mobile services is in the long-term interests of consumers;
- if there were concerns about on-net retail pricing, are these better addressed via the powers available to the Commission under the Telecommunications Act or the Commerce Act¹;
- whether it is necessary to construct a cost-benefit model for MTM voice termination, and the extent to which any material benefits from reduced termination rates are impacted by the interconnection agreement between Vodafone and 2degrees (the terms of which have now been made available to all other new entrants to the mobile market);

¹ Note, Vodafone does not accept that there are concerns about existing on-net retail pricing offers in New Zealand

- the nature of SMS termination and whether it needs to be analysed differently to voice termination given the different nature of SMS communications and the substitutes available in the retail market;
- the extent to which reductions in SMS termination rates will be likely to meet the purposes of the Telecommunications Act;
- whether it is necessary to construct a cost-benefit model for SMS termination, and the extent to which any material benefits from reduced termination rates are impacted by the interconnection agreement between Vodafone and 2degrees (the terms of which have now been made available to all other new entrants to the mobile market); and
- how the undertaking process can be made to work during the remainder of this investigation so that parties can work towards compatible undertakings.

Concerns about the administrative arrangements for the Conference

Vodafone remains concerned that the Commission has left a very limited time between the provision of cross-submissions and the Conference. This could be a serious impediment to being able to properly respond and comment on matters raised at the conference. The interested parties have provided over 340 pages worth of arguments and evidence in their cross-submissions. We do not begrudge parties the opportunity to put forward their arguments. It is an important part of the process that parties are able to be heard on issues that are of importance to them. However, we are greatly concerned that a period of two weeks between receipt of detailed cross-submissions and the Conference is simply too short. The Commission has not provided parties with adequate time to digest and understand the new submissions from the interested parties. This also leaves a very limited time to prepare adequately for the Conference given it will be leaving at most only four working days between the release of an agenda for the Conference and the Conference itself. In these circumstances, it is difficult for parties to know precisely which representatives and experts to bring to and retain for the Conference because we simply will not know what the Commission wants to cover at the Conference until four working days before it will commence.

In addition, the parties have been required to participate in the ongoing confidentiality aspects of the MTAS Investigation. For example, parties are in dialogue with the Commission in relation to the treatment and reclassification of certain pieces of confidential information. Parties are also considering additional submissions and cross-submissions in relation to interconnection information provided by other parties, some of which is new information received as recently as 24 August 2009. This is all being undertaken at the same time as parties are supposed to be reviewing cross-submissions and preparing for the conference.

Vodafone continues to believe the Conference should be held after the Commission has completed modelling for all services it is proposing to regulate.

We have expressed many of these concerns to the Commission before², but to date it appears the Commission is determined to push on with holding its Conference so soon after receiving cross-submissions.

² See, for instance, Letter from Vodafone to Commerce Commission, 20 August 2009; and Letter from Vodafone to Commerce Commission, 14 July 2009.

If however the Commission is insisting on progressing with the Conference despite our suggested approach, then to assist parties to better prepare for the Conference, we believe the Commission should provide a list of questions it intends to ask parties (and their experts) at the Conference, as soon as possible.

Finally, we do not believe that two days is a long enough period in which to cover all of the issues in any meaningful way. It is evident from the number and length of submissions and cross-submissions made by many interested parties that the MTAS Investigation is complex. This is further evidenced by the list of matters which Vodafone believes should be covered at the Conference, as outlined above.

Should you have any further queries in relation to this matter, please feel free to contact me on 021 882 429.

Yours sincerely

A handwritten signature in blue ink, appearing to read 'Richard York', with a stylized flourish at the end.

Richard York

Regulatory Manager

Vodafone New Zealand