



COMMERCE COMMISSION

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19 February 2009

To Interested Parties:

Letter to interested parties regarding information provided for MTAS Investigation

On 6 November 2008 the Commerce Commission (“**the Commission**”) commenced an investigation under Schedule 3 of the Telecommunications Act 2001 (the “**Act**”) into whether or not mobile termination access services should become regulated services under Schedule 1 of the Act (“**MTAS Investigation**”).

On 14 November 2008 the Commission wrote to interested parties seeking information to inform the MTAS Investigation and providing spreadsheets to be returned to the Commission (separate spreadsheets were provided for fixed-line network operators and integrated operators).

The Commission issued a confidentiality order pursuant to section 100 of the Commerce Act 1986 (as applied by section 15(i) of the Act) in respect of the MTAS Investigation.¹ This confidentiality order provides a process which allows interested parties making submissions to indicate any information that they consider should be designated as confidential. The majority of information provided was labelled “Confidential”, “Commercial In Confidence” or “Commission Only Information” (“**COI**”), although some information was also provided labelled “Restricted Information” (“**RI**”).

Responses to the Commission’s request for information were received from a range of parties and are currently being analysed by the Commission. In particular, the Commission is reviewing the information provided by a number of parties, in terms of whether consistent protection has been sought for that information and whether the protection sought is appropriate for the information. This review will be carried out under clause 24 of the MTAS Investigation confidentiality order and this letter serves as notice to interested parties that the Commission is undertaking this review.

The Commission intends, in reviewing this information, to act consistently with the general principle that information provided during Commission processes, such as the MTAS Investigation, should be made available to all parties involved those processes, unless there are compelling reasons for restricting the availability of that information ie restricting access to the information is necessary in order to avoid likely unreasonable prejudice to the commercial position of the person who supplied or who is the subject of the Information, as set out in clauses 8 and 9 of the MTAS Investigation confidentiality order.

¹ A copy of the Confidentiality Order is available at <http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/mobiletomobiletermination.aspx>.

AUCKLAND:

L 19, ASB Building
135 Albert Street
P.O. Box 105-222,
AUCKLAND 1143, NEW ZEALAND
Tel: (09) 920 3480 Fax: (09) 920 3481

WELLINGTON:

L 6, Vector Building
44 The Terrace
P.O. Box 2351,
WELLINGTON 6140, NEW ZEALAND
Tel: (04) 924 3600 Fax: (04) 924 3700
Main Office

CHRISTCHURCH:

L 2, Riverlands House
31 Victoria Street
P.O. Box 25-193
CHRISTCHURCH 8144, NEW ZEALAND
Tel: (03) 964 3450 Fax: (03) 964 3451

Under clause 25 of the MTAS Investigation confidentiality order, the Commission intends to engage directly with parties who have provided information that the Commission considers has not been consistently or appropriately designated in late February 2009. The Commission requires this period of time to assess the requested status of this information, due to the volume of information that has been provided.

The Commission will provide those parties with five Working Days to make submissions on the Commission's views about the appropriate designation, prior to notifying the Parties of the outcome of its review (including any determination that any information should be released publicly, or be classified RI or COI).

In the interim, the Commission does not intend to release the public copies of parties' responses to the Commission's information request, although this information will be released prior to the release of the Commission's draft Report in relation to the MTAS Investigation. Neither does the Commission consider that information that has been provided labelled RI should be shared with nominated counsel, prior to the Commission making a final decision on the designation of information provided.

The review process outlined in this letter applies only to the information provided to the Commission in response to the Commission's information request of 14 November 2008. The Commission is separately assessing requests for confidentiality associated with submissions received on the five undertakings that have been lodged with the Commission as an alternative to regulation, and will address any confidentiality issues in relation to those submissions separately.

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