



COMMERCE COMMISSION

Please refer to:
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29 April 2010

Tom Chignell
General Manager, Corporate Affairs
Vodafone New Zealand Limited

By email: tom.chignell@vodafone.com

Dear Tom

RE: Mobile termination access services investigation (MTAS Investigation) – indicative process and timeline for reconsideration

I refer to your letter of 28 April 2010, in which you raise what Vodafone considers to be a number of concerns and questions about the Commission's process for its reconsideration of the recommendation in the Commission's MTAS Final Report.

You have indicated a concern that Vodafone cannot reasonably provide information relevant to the reconsideration, as requested in the Commission's letter of 27 April 2010, where Vodafone is not aware of what the Commission is concerned about.

The Commission's letter of 27 April 2010 clearly states the issue that will be considered in the reconsideration is:

“whether any relevant retail offers that have been released since 22 February 2010, or that are to be released before the Commission expects to complete its Final Reconsideration Report in early June, have implications for the Commission's recommendation in the Final Report.”

As set out in my letter to the Minister of 19 April 2010, when requested whether Vodafone's new Talk Add-on product may be material to the Commission's recommendation, the Commission's initial view was that the details of, and the type of market behaviour exhibited by that product and any market outcomes which may arise from it:

“may have the potential to affect the basis for the Commission's recommendation in the Final Report (with which Commissioner Mazzoleni did not concur) that the Telecom and Vodafone Final Undertakings would **address the competition issues which the Commission identified throughout the MTAS Investigation**, and should therefore be accepted as an alternative to regulation.” (emphasis added)

As Vodafone has participated throughout the MTAS Investigation process, you will be familiar with the competition issues that have been considered in the investigation. Correspondence between the Minister and the Commission, and the Commission's letter of 27 April 2010, refer to the Final Report having identified concerns regarding the issue of whether or not smaller operators could compete with Telecom and Vodafone's on-net retail rates. My letter of 19 April 2010 referred, for example, to the aspects of the Commission's recommendation in paragraphs xxx and xl to xlii of the Final Report. I would also refer you (by way of example only) to the discussion of these concerns and the Commission's conclusions in paragraphs xi to xiii, 249, 263 and 270 to 307 of the Final Report.

You have asked what the Commission considers would be directly relevant information. I reiterate the request in my letter of 27 April 2010 that you provide any information regarding "new retail plans that have been released since 22 February 2010, or that are to be released before the Commission expects to complete its Final Reconsideration Report in early June". This may include any information that Vodafone believes it would be useful that the Commission consider regarding this particular issue. For example, such information could include any analysis Vodafone has undertaken on any such plans, including the impact that any such plans are expected to have on the market.

You have requested, as an alternative to an exchange of letters, that the Commission and Vodafone have a face to face discussion about your intended retail market plans. Given this reconsideration process goes directly to retail market offerings, the Commission does not consider that face to face meetings with any party alone regarding retail market offerings would be appropriate or necessary. Vodafone has been given an opportunity to provide relevant information to the Commission in response to my letter of 27 April 2010. The Commission will also be providing all parties with an opportunity to submit on its Draft Reconsideration Report, which will provide an opportunity for Vodafone to respond to any preliminary views that the Commission reaches regarding the matters being addressed in this reconsideration.

You have requested copies of correspondence between the Commission and 2degrees related to this matter. I can advise you that, in addition to correspondence between Vodafone and the Minister, the Commission has received correspondence from 2degrees. As you will be aware, the Commission has indicated that it will be issuing a confidentiality order for the reconsideration process later this week. Once that confidentiality order has been issued, the Commission will be seeking public and classified versions of all correspondence received (including correspondence from 2degrees), and will release the public versions of this correspondence on its website. Any subsequent release of any classified versions of this correspondence will be in accordance with the confidentiality order and the Commission's obligations under the Official Information Act 1982. A response to your request for correspondence from 2degrees will be considered in conjunction with the Commission's release of the public versions of this correspondence.

You have asked the Commission to clarify how the reconsideration accommodates the undertakings regime. Having regard to the nature and scope of the reconsideration and the fact that parties have already been afforded reasonable opportunities to amend their undertakings, the Commission does not consider that opportunities for further amendments to undertakings is appropriate. .

Finally, you have stated that “if the Commission were to form the draft view that it should now recommend regulation instead of acceptance of the undertakings, we would expect to be given the opportunity to adjust our retail pricing plans to address the Commission’s concerns.” It would be premature for me to comment on the process that would follow or the preliminary views that the Commission may reach in the Draft Reconsideration Report. That process will be set out in the Draft Reconsideration Report.

Should you have any queries in relation to this letter, please contact me by email at shane.kinley@comcom.govt.nz or by phone on 04 924 3686.

Yours sincerely

A handwritten signature in blue ink, consisting of a vertical line that loops into a circle and then extends horizontally to the right.

Dr Ross Patterson
Telecommunications Commissioner