

Reference: 01524483

Temiloluwa Dawodu  
Information Rights Advisor  
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5 December 2022

### Freedom of Information: Right to know request

Thank you for your request for information in relation to the Enders Analysis data mentioned in our publication: “Helping consumers to get better deals in communications markets - mobile handsets”, dated 22 July 2019. We received this request on 16 November 2022. We have considered it under the Freedom of Information Act 2000 (the “FOI Act”).

### Your request

*We request that you please provide us with the Enders Analysis data referred to in the July 2019 document on p91 in footnotes 170 and 171.*

### Our response

We obtained the information you have requested by subscribing to Enders Analysis’s service and sought permission from it to use the information. We are unable to provide this information as we consider that it is exempt from disclosure under section 43(2) of the FOI Act. This exemption deals with information that, if disclosed, would, or would be likely to prejudice the commercial interests of any person including the public authority holding it. In applying this exemption, we have had to balance the public interest in withholding the information against the public interest in disclosing the information. In this case, we consider that the public interest favours withholding the information.

The attached Annex A to this letter sets out the exemption in full, as well as the factors Ofcom considered when deciding where the public interest lay.

You may wish to approach Enders Analysis directly about the information.

I hope this information is helpful. If you have any queries, then please contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk). Please remember to quote the reference number above in any future communications.

Yours sincerely,

## Temiloluwa Dawodu

If you are unhappy with the response you have received in relation to your request for information and/or consider that your request was refused without a reason valid under the law, you may ask for an internal review. If you ask us for an internal review of our decision, it will be subject to an independent review within Ofcom.

The following outcomes are possible:

- the original decision is upheld; or
- the original decision is reversed or modified.

### Timing

If you wish to exercise your right to an internal review, **you should contact us within two months of the date of this letter**. There is no statutory deadline for responding to internal reviews and it will depend upon the complexity of the case. However, we aim to conclude all such reviews within 20 working days, and up to 40 working days in exceptional cases. We will keep you informed of the progress of any such review. If you wish to request an internal review, you should contact [information.requests@ofcom.org.uk](mailto:information.requests@ofcom.org.uk).

If you are not content with the outcome of the internal review, you have the right to apply directly to the Information Commissioner for a decision. The Information Commissioner can be contacted at:

Information Commissioner's Office  
Wycliffe House  
Water Lane  
Wilmslow  
Cheshire  
SK9 5AF

**Annex A**

<p><b>Section 43(2) of the FOI Act provides that:</b></p> <p>Information is exempt information if its disclosure under this Act would, or would be likely to, prejudice the commercial interests of any person (including the public authority holding it).</p>	
<p><b>Factors for disclosure</b></p>	<p><b>Factors for withholding</b></p>
<ul style="list-style-type: none"> <li>• Disclosure of the data requested would facilitate transparency thereby increasing public confidence in Ofcom’s work.</li> <li>• Enabling the public to gain a better understanding of the commercial relationships between Ofcom and the businesses it obtains services from.</li> </ul>	<ul style="list-style-type: none"> <li>• Ofcom obtained the information by subscribing to Enders Analysis’s service and obtained permission from it to publish the figures in the document. By disclosing the material, we would be undermining their commercial interests as their competitors and potential customers wishing to obtain the data would be able to access the material once disclosed and this would likely be to the supplier’s detriment.</li> <li>• Ofcom contracts with a number of businesses regularly and has commercial relationships with them. These businesses need to be confident that information relating to their business, such as information relating to their products or services, will not be disclosed if it would, or would be likely to, prejudice their commercial interests.</li> </ul>
<p><b>Reasons why public interest favours withholding information</b></p>	

- We consider that, on balance, the public interest in withholding disclosure of the requested information outweighs the public interest in disclosing the information.
- Ofcom enjoys a positive relationship with those providers of services it contracts with. The release of information which would, or would be likely to, prejudice these businesses' commercial interests, into the public domain would impair Ofcom's relationship with them. If businesses could not be confident that such information provided by them to Ofcom would be withheld from disclosure, except in compelling circumstances, commercial activity may be impeded, and this would also likely affect Ofcom's ability to carry out its functions effectively.
- Weighing the issues presented, it is considered that on balance, the factors for withholding the requested information outweigh those for disclosing the information.