

24 July 2009

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Tom Forster & Shane Kinley  
Telecommunications Branch  
Commerce Commission  
**WELLINGTON**

Dear Tom & Shane

**Review of Classification of Information under MTAS Confidentiality Order**

**1. Introduction**

1.1 We refer to the letter from the Commerce Commission (**Commission**) to all interested parties to the Commission's investigation of mobile termination access services (**MTAS Investigation**) dated 22 July 2009. The letter seeks the comments of interested parties and/or requests information under the following headings:

- (a) Review of the classification of information about interconnection agreements under the MTAS Confidentiality Order (**Interconnection Review**);
- (b) Review of classification of information provided in response to the Commission's data questionnaire under the MTAS Confidentiality Order (**Data Review**);
- (c) Request that interested parties provide information about any commercial interconnection agreements (**Interconnection Request**).

1.2 Two Degrees Mobile Limited (**2degrees**) responds to the letter under each of the Commission's headings below.

**2. Interconnection Review**

2.1 The Commission states in its letter that references to the 2degrees / Vodafone interconnection agreement (**2° / V ICA**) in submissions relating to the MTAS Investigation have to date had COI status requested and been designated accordingly.

2.2 We note that while Vodafone requested COI status in respect of references to the 2° / V ICA in its submission to the Commission of 13 February 2009, it did not do so in its submission to the Commission of 6 May 2009, where only RI status was requested.

2.3 As set out in our letter of 15 July 2009, 2degrees considers that restricted disclosure of the 2° / V ICA would be appropriate, provided other interconnection and access agreements were similarly disclosed on an RI basis, and therefore agrees with the Commission's preliminary view that all interconnection agreements and references to them should be classified RI.

- 2.4 That said, 2degrees is concerned by the unilateral change in the designation requested by Vodafone between its February and May 2009 submissions as clearly the 2° / V ICA contains information confidential to both parties.

### 3. Data Review

- 3.1 2degrees agrees with the Commission's preliminary view that all of the information provided by Vodafone and Telecom in response to the Commission's data questionnaire should be classified as RI.

- 3.2 2degrees considers this information is necessary to enable its professional advisers to evaluate and comment fully on the Commission's draft report on MTAS (**Draft Report**) for the reasons set out in our letter of 21 July 2009 and which are expanded on below.

- Paragraph 624 of the Draft Report seeks the parties' views on the significance which should be placed on the Commission's cross-checks on its cost-based benchmarks. This included a cross-check against implied termination rates based on average on-net retail revenues calculated by the Commission.

The independent economic experts advising 2degrees are unable to comment fully on the cross-checks as the average revenue and implied termination rates are COI. It is not clear whether the average retail revenues are calculated from billed minutes or actual minutes (and how free minutes such as 'free weekends' calling are treated) which may have a significant impact. 2degrees' advisers are also unable to calculate the implied termination rates themselves as the underlying information is also COI.

Interested parties are therefore prevented from assessing the accuracy, relevance or significance of the cross-check.

- 2degrees considers that the use of *average* on-net retail revenue would result in a cross-check which is above cost.

The more appropriate cross-check, assuming as profit maximisers Vodafone and Telecom would not sell their retail services below marginal cost, would be a cross-check against each incumbent's *lowest* on-net retail prices. 2degrees' advisers are unable to calculate, estimate or evaluate this without access to COI data, and in particular actual minutes and revenue broken down for on-net and off-net.

In order to assess retail distortions and assess real cost, 2degrees needs, and would have expected the Commission to have requested, a breakdown of the revenue earned by each of Vodafone and Telecom from its lowest on-net retail prices (such as 'best mates' and 'free weekends'). We ask that the Commission release this information on an RI basis.

- 2degrees considers that the Commission's benchmarks are significantly above cost. Access to actual minutes and on-net and off-net data, and the prevailing per minute / per text pricing for specific on-net plans and any-net plans is therefore essential to any analysis of real prices and whether the Commission's benchmarks are an appropriate IPP.
- Paragraph 881 of the Draft Report seeks the parties' views on (among other things) how retail prices are likely to change under the counterfactual.

2degrees' advisers require access to information currently classified COI (such as actual minutes, on-net / off-net SMS traffic splits and on-net / off-net revenue splits) to understand the relevant retail markets, assess historical price trends and

project likely future prices under the counterfactual. This work is directly relevant to consideration by interested parties of the counterfactual and welfare discussions set out in the Draft Report.

- The Commission has also highlighted that having separate FTM and MTM termination rates creates potential distortions and arbitrage opportunities. 2degrees considers that the incumbent operators should be required to disclose total minutes and total revenues earned by the incumbent operators since 1998 from fixed to mobile termination (arising from high MTRs as compared to fixed termination rates), together with corresponding total minutes and total payments made for mobile to fixed termination, in order that interested parties may accurately calculate and assess the distortions and subsidies which exist in the relevant markets. We note that this information was provided by Vodafone and Telecom in response to the data request for the period 2006 to 2008 but not for earlier periods.

#### 4. Interconnection Review

##### *Interconnection Agreements*

- 4.1 Please find **attached** as requested all interconnection agreements that 2degrees is a party to, or has been a party to, since 1 January 1998.
- 4.2 2degrees requests RI status in relation to the agreements, conditional on all other interconnection agreements also being classified RI as per the Commission's preliminary view set out in its letter of 22 July 2009.
- 4.3 Pursuant to Clause 8 of the Commission's Confidentiality Order of 6 November 2008, I certify, as 2degrees' Nominated Counsel, that I consider that protection of the agreements as Restricted Information is necessary to avoid likely unreasonable prejudice to the commercial position of 2degrees.

##### *Other Agreements*

- 4.4 The Commission notes that its preliminary view is that provision of retail agreements (ASB, AA), calling card agreements (V8, Yabba) or interconnection agreements with overseas operators are not required at this point of time.

##### Retail Agreements

- 4.5 Agreements with commercial organisations such as ASB and AA are not retail agreements; they are bulk wholesale agreements for the acquisition of voice and SMS termination services on the incumbent mobile networks by commercial entities. These agreements typically involve either only origination (in the case of 0800 calls) or only termination (in the case of Premium SMS), not both origination and termination (typical retail construct).
- 4.6 Both the ASB and AA have recently been quoted as being "convinced" high MTRs are the reason for the high price of providing their customers with mobile 0800 and SMS texting services.<sup>1</sup> 2degrees considers the view of commercial access seekers, and the rates they are currently being charged for MTAS, is relevant to the current investigation.
- 4.7 At the TUANZ Telecommunications Day on 12 May 2009 the CEOs of both Vodafone and Telecom were confronted by questions from the floor about terminated SMS pricing from commercial parties and both asked the questioner to 'come and talk to us'. The

<sup>1</sup> Sarah Putt *ASB and AA hamstrung by mobile rates* Telecommunications Review, June 2009, p 1.

clear implication being that an improved price may be available to commercial entities that may not be available to competitors.

#### Calling Card Agreements

4.8 2degrees is surprised the Commission does not consider calling card agreements to be relevant to the MTAS Investigation but accepts the Commission's preliminary view that they are not required at this point in time. That said, 2degrees notes:

- V8 currently advertise retail prices for calls to a UK fixed line of 3.9 cpm (plus a call connection charge of 19 cents and total call cost rounding to the nearest 5 cents)<sup>2</sup>.
- These calls originate on and make use of capacity on the Vodafone network.
- Most international calls are of long durations, typically in excess of 10 minutes. A 10 minute call to a UK fixed line using a V8 calling card would cost 60 cents, or 6 cents a minute. This price must include all profit and costs of V8 and Vodafone, including Vodafone's airtime origination costs, V8's sales, marketing, distribution, customer care, switching and operational costs, GST and UK fixed termination costs.
- Vodafone is a profit maximising business and would not be expected to sell airtime or call origination services below cost. On the face of it, the low prices offered by retailers such as V8 indicate Vodafone's real airtime costs are very low, and significantly below the Commission's current benchmarks. 2degrees considers that retail prices are an important aspect of determining real cost.

#### Interconnection Agreements with Overseas Operators

- 4.9 International roaming agreements facilitate inbound SMS termination on the Vodafone, Telecom and 2degrees networks. 2degrees has over 150 agreements with overseas operators which facilitate SMS traffic between both sets of customers. All of these agreements, without exception, charge for SMS termination on a BAK basis.
- 4.10 2degrees understands that both Vodafone and Telecom have in the region of 220 countries / territories where international roaming agreements are in place. Each country may include multiple operators. If these agreements are based on standard GSM arrangements then they will also facilitate SMS termination services and like 2degrees the vast majority of these agreements, if not all, will charge for SMS termination on a BAK basis.
- 4.11 This means that the only operator in the world which will pay the SMS termination rates which are the subject of the MTAS investigation will be the local mobile operators (2degrees, Telecom and Vodafone NZ). 2degrees therefore considers interconnection arrangements (in the form of roaming agreements) with overseas mobile operators to be relevant as they clearly go to both the real cost of SMS and the appropriate pricing principle. As an alternative to the agreements themselves being provided, 2degrees considers the Commission should at least seek confirmation from Vodafone and Telecom what proportion of their international agreements with foreign mobile operators provide for termination of SMS on a BAK basis as described above.

<sup>2</sup> See [www.v8phonecard.co.nz/ratev8.html](http://www.v8phonecard.co.nz/ratev8.html)  
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24 July 2009

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**PUBLIC VERSION**

5. Please feel free to contact us or 2degrees directly if you would like to discuss any aspect of this letter.

Yours faithfully

**Minter Ellison Rudd Watts**



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