



COMMERCE COMMISSION

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To all Interested Parties to the MTAS Investigation

Schedule 3 Investigation into mobile termination access services (MTAS) – Review of classification of information under the MTAS Confidentiality Order and request for information about commercial interconnection agreements

Purpose

The purpose of this letter is to:

- advise that the Commerce Commission (the **Commission**) is commencing a review of classification of information about interconnection agreements under the mobile termination access services (**MTAS**) Confidentiality Order (the **Order**);
- advise that the Commission is commencing a review of classification of information provided in response to the Commission's data questionnaire under the Order; and
- to request that Telecom, Vodafone and 2degrees provide information about commercial interconnection agreements.

Background

In the course of the Commission's investigation under Schedule 3 of the Telecommunications Act 2001 into regulation of MTAS (the **MTAS Investigation**), the Commission has received information from interested parties which those parties consider is confidential or otherwise sensitive.

Protection of confidential or sensitive information in respect of the MTAS Investigation is governed by the Order issued by the Commission under section 100 of the Commerce Act 1986 (as applied by section 15(i) of the Telecommunications Act 2001). A copy of the Order is available on the Commission's website.¹

The Commission has separately written² to interested parties regarding the current classification of information provided in response to the Commission's data questionnaire as either Restricted Information (**RI**) or Commission Only Information (**COI**) under the Order.

¹<http://www.comcom.govt.nz//IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/ContentFiles/Documents/MTAS%20confidentiality%20order.pdf>

² See Commission letter to all Interested Parties to the MTAS Investigation, *Schedule 3 Investigation into MTAS – Classification of Information provided in response to the Data Questionnaire*, 21 July 2009, available on the Commission's website at

The Commission has also consulted with Vodafone and 2degrees in relation to the classification of the commercial interconnection agreement between those parties, which has to date been classified as COI under the Order. This letter is primarily in response to issues raised in that consultation with Vodafone and 2degrees, and in relation to 2degrees' request that the Commission review the status of information that has been classified COI under the Order (the **2degrees request**).

Copies of correspondence from Vodafone and 2degrees to the Commission, between the Commission and 2degrees, and the 2degrees request are available on the Commission's website at

<http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/mobiletomobiletermination.aspx>.

Review of classification of information about interconnection agreements under the MTAS Confidentiality Order

Under clauses 24 and 25 of the MTAS Confidentiality Order:

- "24. The Commission may in its discretion, on its own initiative or upon written request by any Party, at any time review the status of, or the terms of access to, any Information, including:
- (a) public Information;
 - (b) Restricted Information; or
 - (c) Information in respect of which additional protection has been requested or given.
25. If the Commission decides to undertake a review pursuant to clause 24, the Commission shall:
- (a) give notice of any such review to the Party who supplied the relevant Information and any other Party or Parties to the Proceeding;
 - (b) allow affected Parties to comment, where circumstances permit, within such period as may be specified by the Commission; and
 - (c) notify the Parties of the outcome of its review."

This letter serves as notice under clause 25 of the Order to all interested parties to the MTAS Investigation, and in particular Telecom, Vodafone and 2degrees, that the Commission is, on its own initiative, commencing a review of the confidentiality status of all interconnection agreements and all references to the terms of those interconnection agreements in submissions under the MTAS Investigation.

The Commission notes that to date copies of the interconnection agreement between 2degrees and Vodafone (**2° / V ICA**), and references to the **2° / V ICA** in submissions, have had COI status requested and that COI status has been accorded to the **2° / V ICA** and any reference to it in submissions and in the Commission's draft Report.

The Commission also notes that the public information provided by Telecom and Vodafone in response to the Commission's data questionnaire, and released by the Commission, sets out the parties that Telecom and Vodafone have interconnection agreements with. However, the billing mechanism contained in those interconnection agreements has to date been classified as RI.

Finally, the Commission notes that Telecom's standard interconnection offer is publicly available from Telecom's website.³

<http://www.comcom.govt.nz/IndustryRegulation/Telecommunications/Investigations/MobiletoMobileTermination/mobiletomobiletermination.aspx>.

³ http://www.telecomwholesale.co.nz/f543,253191/253191_M2M_ICA_Final_23.7.08.pdf.

The Commission's preliminary view is that all interconnection agreements, and in particular the 2° / V ICA, and all references to the terms of those interconnection agreements in submissions under the MTAS Investigation should be classified as RI under the Confidentiality Order. Accordingly, the Commission's preliminary view is that the current requested status of COI in relation to the 2° / V ICA is inappropriate.

The Commission's preliminary view, expressed in the draft Report, is that the 2° / V ICA should form part of the counterfactual for the MTAS Investigation. As discussed further below, the Commission will also consider how any other interconnection agreements provided in response to its request below should inform the counterfactual.

The Commission's preliminary view is that making all interconnection agreements, and in particular the 2° / V ICA, available as RI would aid submissions from parties to the MTAS Investigation in relation to the assessment of the counterfactual compared to the factual (as defined in the Commission's draft Report). The Commission considers that parties will be limited in their ability to make comments about whether interconnection agreements, and in particular the 2° / V ICA, should form part of the counterfactual, without access to the terms of those interconnection agreements.

The Commission requests that interested parties, and in particular Telecom, Vodafone and 2degrees, provide any comments about the Commission's preliminary views on the classification of interconnection agreements, set out above, by **5pm on Friday 24 July 2009**.

Comments should set out the status that interested parties consider should apply under the Order to interconnection agreements and references to the terms of those interconnection agreements in submissions under the MTAS Investigation. Comments should also set out the reasons for parties' views, with reference to clauses 8 and 9 of the Order, which relate to the reasons that relevant Information should be protected under the Order as either RI or COI.

Review of classification of information provided in response to the Commission's data questionnaire under the MTAS Confidentiality Order

As noted above, 2degrees has written to the Commission requesting that the Commission review the status of information provided by Vodafone and Telecom in response to the Commission's data questionnaire that has been classified COI under the Order.

The information provided by Vodafone and Telecom that has been classified as COI at this time can be summarised as being information about:

- the duration of contracts for residential and business customers;
- the actual minutes of calls from and to mobiles;
- the average duration of calls from and to mobiles;
- disaggregated volumes and revenue splits for SMS sent and received, into on-net, off-net and international; and
- revenue splits and average retail prices for calls from and to mobiles, into on-net and off-net.

Information that the Commission has derived from information provided by Vodafone and Telecom has similarly been classified as COI.

This letter serves as notice under clause 25 of the Order to all interested parties to the MTAS Investigation, and in particular Telecom, Vodafone and 2degrees, that the Commission is, in response to the 2degrees request, commencing a review of the confidentiality status of the status of information provided by Vodafone and Telecom in response to the Commission's data questionnaire that has been classified COI under the Order.

The Commission's preliminary view is that 2degrees have not yet provided reasons for:

- why this information is required to enable it to evaluate and comment fully on the Commission's approach to costs and determination of a factual price for MTAS set out in the Draft Report; or
- why the additional protection of designation as COI is not necessary to prevent undue prejudice to the commercial position of Vodafone and/or Telecom.

The Commission invites 2degrees to provide reasons for these points by **5pm on Friday 24 July 2009**.

The Commission notes that the information that has been classified as COI does not inform the Commission's preliminary view on the determination of a factual price for MTAS, as the factual price is based on benchmarking. However, this information has been used in cross-checks in the Commission's draft Report.

The Commission also notes that it has, to date, accepted the confidentiality requested by Vodafone and Telecom for the information provided in response to the Commission's data questionnaire, including the classification of information as COI.

The Commission's preliminary view is that all of the information that has to date been classified as COI should be reclassified as RI.

The Commission invites Vodafone, Telecom and any other interested parties to provide comments about whether the information that has been classified as COI to date should retain COI classification or should be reclassified as RI by **5pm on Friday 24 July 2009**. Comments should also set out the reasons for parties' views, with reference to clauses 8 and 9 of the Order, which relate to the reasons that relevant Information should be protected under the Order as either RI or COI.

Request that interested parties provide information about any commercial interconnection agreements

As noted above, the Commission's preliminary view, expressed in the draft Report, is that the 2° / V ICA should form part of the counterfactual for the MTAS Investigation.

The Commission has not previously sought comprehensive information about specific interconnection agreements, although Telecom and Vodafone have provided average prices for the MTAS and information about the billing mechanism for MTAS in relation to other interconnection agreements.

The Commission considers that it is appropriate to seek more detailed information on all interconnection agreements, in order to determine how these interconnections should inform the counterfactual.

Accordingly, the Commission requests that Telecom, Vodafone and 2degrees provide it with copies of all commercial interconnection agreements that they are a party to, or have been a party to in the period after 1 January 1998, by **5pm on Friday 24 July 2009**.

To the extent that commercial interconnection agreements follow a standard template or are based on a standard interconnection offer, the Commission considers that the provision of that document, in conjunction with the details of the other parties to the commercial agreements, the services covered by the commercial agreements and any pricing⁴ and term details, would satisfy this request.

The Commission requests that Telecom, Vodafone and 2degrees identify whether RI or COI status is being sought under the Order in relation to information provided in response to this request. For the avoidance of doubt, the Commission's preliminary view is that it will apply the same approach to the confidentiality status of information provided under this request as it reaches under the review of the confidentiality status of all interconnection agreements initiated by this letter.

The Commission also notes that, for the avoidance of doubt, it's preliminary view is that it provision of any retail agreements such as with ASB and AA, calling card agreements such as V8, GoTalk or Yabba, or interconnection agreements with overseas operators, as proposed by 2degrees, is not required, at this point in time, for the purposes of the MTAS Investigation. The Commission's preliminary view is that provision of these agreements would not assist the Commission in reaching conclusions, or interested parties in making submissions, in relation to the MTAS Investigation.

Comments on the reviews notified, and information requested, in this letter should be sent to Shane Kinley by email at shane.kinley@comcom.govt.nz.

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

⁴ For the purposes of this request, pricing details include, but are not limited to, the headline rate charged for a service, the basis of charging and any other conditions that impact on the headline rate charged, for example, volume thresholds or time periods for which the charge applies. Pricing details would also include "bill-and-keep" pricing, where that applies.

