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**From:** Shane Kinley  
**Sent:** Monday, 13 July 2009 4:27 p.m.  
**To:** Paul Mathewson  
**Cc:** Bill McCabe; 'Tim Matthews'; Tom Forster; Edward Willis  
**Subject:** RE: Interconnection Agreement - please reply by 5pm Wednesday 15 July 2009  
**Importance:** High

Hello Paul

This email is in response to Tim Matthew's letter of 29 June 2009 regarding confidentiality issues re 2degrees / Vodafone interconnection agreement (**2° / V ICA**), and in relation to associated confidentiality issues regarding 2degrees submission of 13 February 2009 and the 2degrees / Telecom commercial interconnection agreement (**2° / T ICA**).

I have sent this email to you as the replacement nominated counsel for 2degrees, copies to Tim and Bill McCabe, as the original parties to discussion of this matter. As noted below, a reply to this email is requested by **5pm on Wednesday 15 July 2009**.

As advised in Tom Forster's letter of 30 June 2009, the Commission has provisionally accepted all requests for RI or COI status made in accordance with the terms of the Confidentiality Order (**Confidentiality Order**) for the mobile termination access services Schedule 3 investigation (**MTAS Investigation**). The Commission did, however, reserve the right to review the status of any information granted RI or COI status, in accordance with the terms of the Confidentiality Order, if necessary or desirable for the purposes of the MTAS Investigation.

### **2° / V ICA**

In relation to the confidentiality of the 2° / V ICA, the Commission also received a letter from Richard York of Vodafone dated 29 June 2009, which was copied to Bill McCabe. In that letter, Vodafone indicated that they were happy that the 2° / V ICA be publicly disclosed, if 2degrees agreed to this. Vodafone stated that "Given the importance of the price terms contained in the [2° / V ICA] to the Commission's consideration of the rates likely to apply for mobile termination in the absence of regulation, and the public's perception of the actual rates that are being charged for mobile-to-mobile termination of both voice and SMS services in New Zealand, Vodafone believes it is important that the Commission be able to publicly disclose the details of the price terms contained in the [2° / V ICA]."

Vodafone also indicated as an alternative to public disclosure that they considered that, under the Confidentiality Order, the Commission should designate this information as Restricted Information rather than Commission Only Information. Vodafone stated that they saw "no reason why [the 2° / V ICA] should not be made available to the external advisors of other parties to [the MTAS] investigation that have signed up to the Commission's confidentiality regime for the purposes of the Commission's Schedule 3 investigation into mobile termination access services."

This email is to advise you that the Commission's preliminary view is that the 2° / V ICA should either be publicly disclosed or classified as Restricted Information under the Confidentiality Order, and that the current requested status of Commission Only

Information is inappropriate. The Commission considers that making the 2° / V ICA available, either publicly or as Restricted Information, 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). As the Commission's preliminary view is that the 2° / V ICA should form part of the counterfactual, parties will be limited in their ability to make comments about the appropriateness of this view or the impacts that it has on the counterfactual, without access to the terms of the 2° / V ICA.

Further, the Commission's preliminary view is that to the extent that the terms and conditions of the 2° / V ICA reflect relatively common commercial terms and condition for interconnection, then the appropriate classification for those terms and conditions is likely to be public. The Commission also considers that designation as Restricted Information of the fact that [ ] 2° COI / V COI However, the Commission recognises that there may be an argument that [ ] 2° COI / V COI is a matter that could be appropriate for protection as Restricted Information in order to avoid likely unreasonable prejudice to the commercial position of 2degrees. In reaching this preliminary view, the Commission has taken into account Vodafone's position, as noted above. The Commission would, however, appreciate comment from 2degrees on the appropriate classification for the terms and conditions in the 2° / V ICA.

Given the submissions on the Commission's draft report are due on 28 July 2009, we would like to resolve this confidentiality issue promptly. I would be happy to discuss this with you further, or alternatively to receive your confirmation that 2degrees is happy to agree to the public disclosure of the 2° / V ICA or its classification, in part or in full, as Restricted Information under the Confidentiality Order. If you do not consider that this information should be made publicly available or classified as Restricted Information under the Confidentiality Order, then I would request that you provide reasons for 2degrees' position by **5pm on Wednesday 15 July 2009**.

### **2° submission and 2° / T ICA**

Related to this, the Commission has also considered the classification of information in various submissions, and whether it remains appropriate for the requested classification to apply under the Confidentiality Order. In relation to the 2degrees submission of 13 February 2009 (provided by email and letter from Bill McCabe of 16 February 2009), the sections of that submission where confidentiality has been claimed in relation to the terms of the 2° / V ICA would need to be similarly reclassified. A similar request will be made of Vodafone for a revised version of their submissions to be made available to reflect the reclassification of information regarding the 2° / V ICA.

The Commission has also considered the classification of the sections of the 2degrees submission that relate to the 2° / T ICA. The Commission notes that [ ] 2° COI / T COI of the publicly available commercial interconnection agreement on Telecom's website (available at [http://www.telecomwholesale.co.nz/f543.253191/253191\\_M2M\\_ICA\\_Final\\_23.7.08.pdf](http://www.telecomwholesale.co.nz/f543.253191/253191_M2M_ICA_Final_23.7.08.pdf)).

In addition, the Commission notes that Telecom has labelled as public the basis of its charges in its response to the Commission's data questionnaire for the MTAS Investigation. The Commission is currently preparing to release public versions of responses from parties, including Telecom, to the data questionnaire. The Commission

also notes that Telecom have indicated in their response to the Commission's Issues Paper, at page 26 reply to question 5.1(e), that "Current wholesale voice termination rates for FTM services match the MTM tariffs contained in Telecom's standard mobile interconnection agreement, available for acceptance by any mobile network operator meeting Telecom's standard terms and conditions."

The Commission requests that 2degrees provide any reasons why it considers that this information should be COI, given [ ] **2° COI / T COI**

I would appreciate your comments on this point, or alternatively your confirmation that 2degrees is happy to agree to the public disclosure of the portions of the 2degrees submission that relate to the 2° / T ICA. Again, please provide any written comment on 2degrees position by **5pm on Wednesday 15 July 2009**.

### **Conclusion**

If you agree to the reclassification of this information, then I would request that you:

- provide revised versions of the 2degrees submission (public and, if relevant, restricted versions) to the Commission promptly;
- provide, if relevant, revised restricted versions of the 2degrees submission to the nominated counsel who have signed up to the Commissions' confidentiality order (being Ken Ginn on behalf of Vodafone and Airihi Mahuika on behalf of Telecom); and
- liaise with Vodafone to provide a public or, if relevant, restricted version of the 2° / V ICA to the Commission, for posting on the Commission's website, or direct to the nominated counsel, as relevant.

As noted above, I am happy to discuss this matter. As you are aware I am potentially on jury service this week. If I am absent, please contact Tom Forster (cc'd to this email and phone 04 924 3742).

Regards,

Shane Kinley

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**From:** Tim Matthews [mailto:Tim.Matthews@2degreesmobile.co.nz]  
**Sent:** Monday, 29 June 2009 3:19 p.m.  
**To:** Shane Kinley  
**Cc:** Bill McCabe  
**Subject:** Interconnection Agreement

Dear Shane,

Please see our attached reply to your email to Bill of this morning regarding confidentiality of our Interconnection Agreement with Vodafone.

Regards  
Tim