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Tom Forster / Shane Kinley
Manager / Senior Analyst - Telecommunications Branch
Commerce Commission
PO Box 2351
WELLINGTON

Dear Tom and Shane

MTAS- Review of confidentiality status of information

This letter responds to the Commerce Commission's review of the confidentiality status of information covered by the MTAS section 100 order.

In *summary*:

- With respect to 2Degree's challenge, we are of the view that the existing categorisation of information as COI is correct. Essentially, 2Degrees is seeking to dilute the protections afforded to highly valuable marketing information that cannot in practice be unlearned after it is learned. Further, this information is of limited relevance in terms of responding to the MTAS report.
- With respect to the status afforded to interconnection information, we are happy for our template to be in the public domain and we accept the importance of providing interested parties with aggregated interconnect information subject to appropriate confidentiality protection as agreed previously with the Commission. However, the specific terms negotiated with individual parties and disaggregated information should be protected as COI.
- With respect to the further disclosure of interconnection agreements, we query the relevance of the Commission seeking disclosure of expired agreements. In any event, as discussed, we are unable to pull even the existing interconnect agreements together within the two working day timeframe requested by the Commission. If the Commission considers that this information is required we will be happy to discuss a reasonable timeframe for its provision.

2Degrees' challenge to classification of information

In response to a challenge by 2Degrees, the Commission has sought views on whether certain categories of information should continue to be accorded COI status under the MTAS section 100 order, or whether it is more appropriate to accord it the lesser protection of RI status. The information covered by the challenge is as follows:

- Duration of contracts for residential and business customers;
- Actual minutes of calls from and to mobiles;
- Average duration of calls from and to mobiles;
- Disaggregated volumes and revenue splits for SMS sent and received, into on-net and off-net and international; and
- Revenue splits and average retail prices for calls from and to mobiles, into on-net, off-net and international.

We set out specific comments in relation to each category below. However, Telecom's overall view is as follows:

- The existing categorisation of information as COI information is correct.
- If the position taken by 2Degrees was to be accepted, in-house counsel and other advisors to the interested parties to the determination would be made aware of information that would be highly valuable for the purposes of targeting the customer base of the other parties.
- While we are not suggesting that any person who has signed the section 100 order would intentionally breach its terms, the in-house counsel and other advisors would not in reality be able to unlearn the high level understanding of the commercial position of other parties to the determination. It would therefore become problematic for the advisors and in-house counsel to provide advice to their respective businesses going forwards without in some way being influenced by possession of this information. (On this issue we note that while we have separate in-house counsel working on regulatory matters from commercial matters, we are aware that the in-house counsel of other parties work across regulatory and commercial matters, therefore other parties are not as well placed at containing risks as we are.)
- Not only is the information which 2Degrees is seeking the release of highly valuable from a marketing perspective, but it is also of a low value in terms of responding to the MTAS Draft Report and cost benefit analysis.
- Related to the point above, 2Degrees has provided very little justification for its request to reclassify the COI information and what justification has been given does not justify its relevance. As the Commission itself notes that the information has sought reclassification of does not inform the determination of a factual price, as claimed by 2Degrees.
- Therefore the overall balance of commercial risk to the providers of the information if the classification is relaxed against the benefit gained from enabling advisors and in-house counsel ability to use the information to inform their

response to the MTAS draft report does not favor reclassifying the information as RI.

- We also note that it will undermine confidence in providing the Commission with highly sensitive information in the future if the Commission is perceived as being willing to withdraw protections it has agreed without strong reasons.
- We note that there is an asymmetry of risk in diluting the confidentiality status of the information referred to above. 2Degrees has far more to gain and less to lose than Telecom and Vodafone in this regard.

Duration of contracts

A recipient of this information would be able to see at a high level which of Telecom's (or Vodafone's) customers would be ripe to switch and at what point in time.

A competitor could use this information to devastating effect with respect to targeting and timing its marketing campaigns to win customers from the provider of the information. This information therefore is of utmost commercial value and sensitivity.

While we have no reason to suspect that a person eligible to receive RI would intentionally breach the section 100 order and participate in formulating marketing strategy, the reality is that the recipients of RI cannot unlearn everything that they see, which becomes problematic given their ongoing role in advising their clients, especially on commercial initiatives whose success or failure may be influenced by the information.

As an example, in-house counsel at Telecom who are eligible to receive RI would know at a high level what proportion of Vodafone's business customers would be coming off their contracts over the next six months if it was classified as RI. This would potentially compromise them if they were asked to provide advice on some commercial initiative to win customers from Vodafone. Given the commercial sensitivity of the information and that fact that this is of limited relevance to the MTAS Investigation we do not consider that it is appropriate to reclassify this information as RI.

Actual minutes of calls to and from mobiles

The key point with respect to this category of information is that the value of relaxing the classification of this information needs to be considered against the fact that billed minutes of calls to and from mobile is available as RI.

The billed minutes information provides all the information required to determine prices at an aggregate level and to determine the aggregate differential between on-net and off-net calling. Therefore there is little additional value to feed into the MTAS investigation by making the actual minutes available.

While the actual minutes are of low value as far as the MTAS report is concerned, the differentials between actual and billed minutes are highly commercially sensitive. In essence, an awareness of the differentials would enable a competitor to target specific customer groups with pricing that is pitched just at the right level to win them.

That information would also enable a new entrant to generally model the likely revenue streams from different categories of customer. Telecom and Vodafone have accumulated this knowledge over a considerable period of time and at considerable cost. To allow a third party to free ride on that knowledge would essentially be a violation of Telecom and Vodafone's core intellectual property.

Average duration of calls

The rationale for protecting this information as COI is essentially the same as for protecting the differential between actual and billed minutes.

Interested parties will have aggregate data on call duration to inform their position on the MTAS investigation. Information in any greater degree of granularity risks highly commercially sensitive and intellectual property for little if any gain.

Disaggregated volumes and revenue splits for SMS sent and received, into on-net and off-net and international

Again the rationale for COI status is the same as above. Aggregate information is available to inform parties' submissions in the MTAS Investigation.

The commercial value and insights that can be learned (and which cannot be unlearned) from viewing the disaggregated information is not worth risking given its limited value to responding to the MTAS draft report.

Revenue splits and average retail prices for calls from and to mobiles, into on-net, off-net and international

The rationale for requesting the COI protection is the same as above.

Confidentiality status of interconnection agreements

Telecom is happy to publish its current standard interconnection template to the world at large. It accepts the value in publically disclosing the parties that it has interconnection agreements with. Telecom also accepts the provision of aggregate interconnection data to interested parties to inform the MTAS debate, provided it is protected as RI.

However, Telecom does not agree that it should provide disaggregated interconnection data to any party other than the Commission, or to disclose the specific terms of its agreements with specific parties to anyone other than the Commission.

Disaggregated interconnection data would essentially provide competitors with a sense of the pool of revenue it can attack for each individual customer. The release of this data even as RI, would compromise us without adding value to the MTAS process.

As far as terms and conditions are concerned, some parties may have negotiated amendments to the standard terms or be on legacy contracts. These differences are not likely to be material as far as the overall picture of the market is concerned but may compromise Telecom or the third parties to the agreement (whose confidentiality Telecom is obliged to protect to the best of its ability). This information should therefore be COI.

Further, many variations and roll-overs to interconnection arrangements will be contained in extraneous documents that are commercially sensitive but not relevant to the MTAS investigation. This information should be COI.

Further information requested

In relation to the Commission's request to provide all interconnection agreements going back to 1 January 1998 we do not in principle object to providing relevant information with respect to current interconnection agreements at a high level, however we request that the Commission provides us with a further explanation as to why it is necessary for us to provide copies of expired historic agreements. Intuitively expired and historic agreements would not be relevant to the counterfactual to regulation being imposed because those arrangements would not come into play in any scenario.

In relation to the provision of information pertaining to existing interconnection agreements:

- We attach a statement about the MTR rates for existing arrangements at an aggregate level (we request that this is treated as RI as it is aggregated commercially sensitive information); however
- The Commission should be aware that collating the individual interconnect agreements involves a significant amount of work as they are held by different staff within Telecom and variations to these agreements are located in extraneous materials. In light of this, we query the Commission's need to use this information for its analysis, given that the standard template document together with the statement about our rates at an aggregated level provides a good indication of the current price and non price terms. Any departures from that template in individual agreements are unlikely to be material to the overall picture of the market.
- We are also unable to gather the full documentation pertaining to all current interconnect agreements by Friday 24 July.

Finally, we are concerned that the request for further information to "inform the counterfactual" raises a question as to whether we are being asked to submit on a moving target with respect to the draft MTAS report, if the Commission has not completely formulated its preliminary position.

We look forward to your response.

Yours sincerely



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Group Regulatory & Competition

Appendix - Regarding Mobile Termination Rates Public

We confirm that []**TNZRI** interconnection partners are charged []**TNZRI** per minute for domestically originated fixed to mobile and mobile to mobile voice calls.

Telecom's standard mobile termination rate for internationally originated calls is []**TNZRI** per minute although we have some commercially agreed rates that differ from that.