



COMMERCE COMMISSION

Please refer to:

11128
924501_2

17 December 2009

Eric Hertz
CEO
Two Degrees Mobile Limited

By email: eric.hertz@2degreesmobile.co.nz

Dear Eric

Re: Commerce Commission investigation – Potential breach of section 100 Order under the Commerce Act 1986

As you know, the Commission has been investigating the leak to the media of information pertaining to a confidential interconnection agreement between Vodafone and 2degrees, and the potential breach of the Commission's related section 100 order. I acknowledge and appreciate that 2degrees confirmed with the Commission that 2degrees is confident that the leaked information did not come from within 2degrees and that they were not aware of the circumstances of the disclosure of the confidential information.

The Commission wrote to *The Independent* in respect of the attribution it made to Vodafone as the source of the disclosure. *The Independent* confirmed that it stood by the attribution, but has not provided further details, claiming protection under section 68(1) of the Evidence Act 2006 from being required to identify a source where an assurance of confidentiality has been provided. The Commission then wrote to Vodafone in respect of the attribution in *The Independent* that Vodafone was the source of the leak. Vodafone has given assurances, to the extent it can, that Vodafone treats confidential information in its possession seriously and deal with such information appropriately. Specifically, Vodafone has written to the Commission stating that "[w]e have satisfied ourselves that there was no authorised leak of mobile termination rate information for Vodafone".

In light of these confirmations, and as the Commission has not been able to obtain corroborating evidence linking a particular person or party with the potential breach, the Commission has concluded its investigation into the potential breach of section 100 in respect of the MTAS Investigation. The Commission has today also written to Vodafone and *The Independent* to inform them of this decision, and will shortly be issuing a media release in relation to this decision and the assurances given by each party.

That information confidential to Vodafone and 2degrees and part of the Commission's MTAS investigation has been made public remains a serious matter that is of concern to the Commission, especially as this may constitute a breach of a section 100 order. Accordingly,

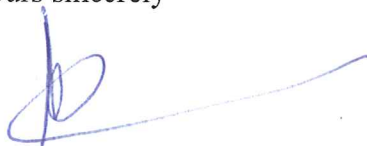
if further information relating to the disclosure of the confidential information is made available then the Commission will consider re-opening the investigation.

I would also like to take this opportunity to clearly set out the Commission's expectations in respect of confidential information that is put in issue as part of the Commission's processes. The Commission primary concern is that the integrity of its processes is maintained. The treatment of confidential information by interested parties, whether or not that information is subject to an order under section 100, is an essential part of that process. Any leaking of confidential information relevant to the Commission's processes, whether authorised or unauthorised, is of concern to the Commission, and the Commission's expectation remains that all parties take steps to prevent any such leaks, and engage with the Commission in good faith if any leaks do occur.

The Commission also expects interested parties to have clear procedures in place for dealing with confidential information, and that staff are regularly reminded of their confidentiality obligations.

The Commission looks forward to continuing to work with 2degrees and other interested parties on the basis of the expectations set out in this letter.

Yours sincerely



Dr Ross Patterson
Telecommunications Commissioner