



COMMERCE COMMISSION

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17 May 2010

To all Interested Parties to the MTAS Reconsideration process

Classification of information about domestic commercial interconnection agreements and domestic national roaming agreements under the MTAS Reconsideration Confidentiality Order

As part of the MTAS reconsideration process, the Commission has received information from 2degrees and Vodafone about or related to a domestic commercial interconnection agreement (ICA) and domestic national roaming agreement (NRA) between 2degrees and Vodafone which those parties consider is confidential or commercially sensitive. Protection of confidential information in respect of the MTAS reconsideration process is governed by the MTAS Reconsideration Confidentiality Order issued by the Commission (the **Order**). A copy of the Order is available on the Commission's website.¹

2degrees and Vodafone have requested that this information be subject to various additional protection provisions under the Order. This letter advises the Commission's views on the classification of this information.

Consistent with the Commission's decision on the classification of ICAs under the MTAS Investigation Confidentiality Order, the Commission considers that the information provided by 2degrees and Vodafone about or related to the ICA and NRA should be granted additional protection under the Order and be classified as Additional Protection (**AP**).

The AP classification is provided for in clause 9 of the Order, which states:

- "9. If a party requests additional protection of particular Information over and above that given to Restricted Information, then Nominated Counsel for that Party must, at the time the request is made, certify in writing to the Commission that he or she considers that:
- (a) protection of the relevant Information as Restricted Information in accordance with this Order would be likely unreasonably to prejudice the commercial position of the person who supplied or who is the subject of the Information; and
 - (b) additional protection of the nature, extent and duration sought is necessary in order to avoid likely unreasonable prejudice to the commercial position of the person who supplied or who is the subject of the Information."

¹ See

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

The Commission considers that granting of access to this information on an AP basis appropriately balances the interests of all parties to be able to meaningfully submit on the Commission's Draft Reconsideration Report and the interests of 2degrees and Vodafone in safeguarding their sensitive commercial information in a competitive market.

The Commission therefore orders that the nominated counsel for 2degrees and Vodafone make available to any other nominated counsel under the Order all information, provided to the Commission by 2degrees and Vodafone in relation to the MTAS reconsideration process, about or related to the ICA and NRA, subject to the following AP conditions:

AP conditions applicable to information about or related to ICA between 2degrees and Vodafone (referred to as the "API1 information")

1. the nominated counsel seeking the API1 information must be a current signatory to the Deed of Undertaking under Schedule 1 of the Order (the **Deed of Undertaking**);
2. the nominated counsel seeking the API1 information must provide the nominated counsel for 2degrees and Vodafone with an undertaking that they will not participate in, or advise in relation to, any negotiations for domestic ICAs for a period of 12 months from the expiry of the MTAS Reconsideration Confidentiality Order;
3. the nominated counsel seeking the API1 information may disclose the API1 information to other signatories to the Deed of Undertaking, subject to those other individuals also providing an undertaking to the nominated counsel for 2degrees and Vodafone that they will not participate in, or advise in relation to, any negotiations for domestic ICAs for a period of 12 months from the expiry of the MTAS Reconsideration Confidentiality Order;
4. the nominated counsel seeking the API1 information must provide copies of any undertakings under condition 2 or 3 above to the Commission at the same time as they are provided to nominated counsel for 2degrees and Vodafone; and
5. the nominated counsel seeking the API1 information must supervise compliance with the undertakings required under condition 3 above in relation to those parties that the nominated counsel provides the API1 information to in accordance with condition 3 above.

These API1 conditions are in addition to the requirements of clauses 11, 17, 20 and 21 of the Order and the requirements of the Deed of Undertaking, which apply to the use of restricted information for the purposes of the MTAS reconsideration process, and such requirements also apply to API1 information with all necessary modifications.

The Commission requires that 2degrees and Vodafone provide the API1 information within 24 hours of a request being received and the above conditions being met.

AP conditions applicable to information about or related to the NRA between 2degrees and Vodafone (referred to as the "API2 information")

1. the nominated counsel seeking the API2 information must be a current signatory to the Deed of Undertaking under Schedule 1 of the Order (the **Deed of Undertaking**);
2. the nominated counsel seeking the API2 information must provide the nominated counsel for 2degrees and Vodafone with an undertaking that they will not participate in, or advise in relation to, any negotiations for domestic NRAs for a period of 12 months from the expiry of the MTAS Reconsideration Confidentiality Order;

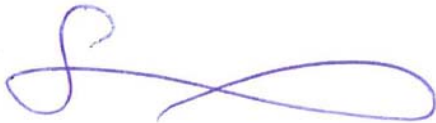
3. the nominated counsel seeking the API2 information may disclose the API2 information to other signatories to the Deed of Undertaking, subject to those other individuals also providing an undertaking to the nominated counsel for 2degrees and Vodafone that they will not participate in, or advise in relation to, any negotiations for domestic NRAs for a period of 12 months from the expiry of the MTAS Reconsideration Confidentiality Order;
4. the nominated counsel seeking the API2 information must provide copies of any undertakings under condition 2 or 3 above to the Commission at the same time as they are provided to nominated counsel for 2degrees and Vodafone; and
5. the nominated counsel seeking the API2 information must supervise compliance with the undertakings required under condition 3 above in relation to those parties that the nominated counsel provides the API2 information to in accordance with condition 3 above.

These API2 conditions are in addition to the requirements of clauses 11, 17, 20 and 21 of the Order and the requirements of the Deed of Undertaking, which applies to the use of restricted information for the purposes of the MTAS reconsideration process, and such requirements also apply to API2 information with all necessary modifications.

The Commission requires that 2degrees and Vodafone provide the API2 information within 24 hours of a request being received and the above conditions being met.

Should you have any queries in relation to this matter, please contact me on (04) 924 3686 or by email at shane.kinley@comcom.govt.nz.

Yours sincerely



Shane Kinley
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