



COMMERCE COMMISSION

Please refer to:

11128
924440_2

17 December 2009

Tom Chignell
General Manager, Corporate Affairs
Vodafone New Zealand Limited

By email: tom.chignell@vodafone.com

Dear Mr Chignell

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

I refer to our recent correspondence on this matter, and in particular your letter to the Commission dated 5 November 2009.

I appreciate that Vodafone has given assurances, to the extent it can, that Vodafone treats confidential information in its possession seriously and deal with such information appropriately. The Commission welcomes both the detail you have provided in respect of Vodafone's practice of managing confidential information, and Vodafone's confirmation there has been no authorised leak of mobile termination rate information from Vodafone.

As part of its investigation, the Commission also contacted 2degrees who advised that they were 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.

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 2degrees 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's 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. I acknowledge and welcome Vodafone's assurance that it will provide an update reminder to all staff that breaches of confidence are unacceptable and will be treated seriously. I would appreciate it if you would forward to the Commission a copy of any reminder provided to Vodafone staff stemming from the Commission's investigation.

I must also register the Commission's disappointment that Vodafone initially sought to challenge the Commission on a jurisdictional point, rather than actively assist the Commission with its investigation into the disclosure of confidential information. Regardless of the merits of Vodafone's arguments as to jurisdiction, which the Commission does not accept, the Commission believes that a protracted and distracting investigation into the disclosure could easily have been avoided if all parties had engaged with the Commission fully, directly and in good faith. The Commission expects all interested parties to adhere to these ideals when engaging with the Commission in future.

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

Yours sincerely



Dr Ross Patterson
Telecommunications Commissioner