

BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554

RECEIVED

JUN 18 2004

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

In the Matter of

Int'l Bureau

Inmarsat Ventures Limited

JUN 17 2004 File No. SAT MSC-20040210-00027

Received

Front Office

JUN 29 2004

Policy Branch

REQUEST FOR CONFIDENTIAL TREATMENT International Bureau

Pursuant to Sections 0.457 and 0.459 of the Commission's rules, 47 C.F.R. §§ 0.457 and 0.459, Inmarsat Ventures Limited ("Inmarsat") respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the enclosed letter from Permira Advisers Limited ("Permira") and Apax Partners Worldwide LLP ("Apax Partners") to Morgan Stanley dated October 15, 2003 and certain attachments thereto (the "Offer Letter"). The Offer Letter memorializes the final bid to acquire a majority interest in Inmarsat that was made by an entity formed by funds managed or advised by Apax Partners and Permira

The Offer Letter contains sensitive commercial and financial information that squarely fall within Exemption 4 of the Freedom of Information Act ("FOIA").<sup>1</sup> Exemption 4 of FOIA provides that the public disclosure requirement of the statute "does not apply to matters that are . . . (4) trade secrets and commercial or financial information obtained from a person and privileged or confidential."<sup>2</sup> Inmarsat is voluntarily providing this commercial and financial information, which is "of a kind that would not customarily be released to the public" by Inmarsat, in response to a request from the Office of General Counsel. Therefore, this

<sup>1</sup> 5 U.S.C. § 552(b)(4).

<sup>2</sup> 5 U.S.C. § 552(b)(4).

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information is “confidential” under Exemption 4 of FOIA.<sup>3</sup> Moreover, Apax Partners and Permira, who manage or advise the funds which are Inmarsat’s majority shareholders, would suffer substantial competitive harm if the Offer Letter were disclosed.<sup>4</sup> The terms of the bid and funding arrangements described in the Offer Letter contain confidential and proprietary bidding strategies of Apax Partners and Permira, as well as confidential letters provided by their financing sources. Thus, disclosure would place Apax Partners, Permira, and Inmarsat at a substantial competitive disadvantage and may make obtaining additional financing on terms beneficial to the company more difficult. Finally, the Offer Letter describes the terms and conditions of financing offered by certain financial institutions. If this information became public, the financial institutions may be disadvantaged in negotiating future transactions and therefore suffer competitive harm.

In support of this request and pursuant to Section 0.459(b) of the Commission’s rules,<sup>5</sup> Inmarsat provides the following information.

**1. IDENTIFICATION OF THE SPECIFIC INFORMATION FOR WHICH CONFIDENTIAL TREATMENT IS SOUGHT<sup>6</sup>**

Inmarsat seeks confidential treatment of letter from Permira Advisers Limited and Apax Partners Worldwide LLP to Morgan Stanley dated October 15, 2003 (including certain of the attachments thereto).

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<sup>3</sup> See *Critical Mass Energy Project v. NRC*, 975 F.2d 871, 879 (D.C. Cir. 1992).

<sup>4</sup> See *National Parks and Conservation Ass’n v. Morton*, 498 F.2d 765 (D.C. Cir 1974).

<sup>5</sup> 47 C.F.R. § 0.459(b).

<sup>6</sup> 47 C.F.R. § 0.459(b)(1).

**2. DESCRIPTION OF CIRCUMSTANCES GIVING RISE TO THE SUBMISSION<sup>7</sup>**

The Offer Letter has been provided to Commission staff in this proceeding in response to their request.

**3. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION IS COMMERCIAL OR FINANCIAL, OR CONTAINS A TRADE SECRET OR IS PRIVILEGED<sup>8</sup>**

The Offer Letter for which Inmarsat seeks confidential treatment contains sensitive commercial and financial information “which would customarily be guarded from competitors.”<sup>9</sup> Certain categories of confidential commercial and financial information appear throughout the Offer Letter, including without limitation (a) disclosures of business plans, (b) financial terms and conditions, (c) bidding strategies, and (d) terms and conditions of funding commitments, all of which were negotiated, developed by, or involve Apax Partners, Permira, and/or Inmarsat.

The Offer Letter is a highly negotiated document that details not only the terms of Apax Partners’ and Permira’s acquisition bid, but also the business strategies that they intend to pursue as advisors of the majority shareholders of Inmarsat. The Offer Letter further includes correspondence from certain financial institutions that describes financing for their takeover bid.

**4. EXPLANATION OF THE DEGREE TO WHICH THE INFORMATION CONCERNS A SERVICE THAT IS SUBJECT TO COMPETITION<sup>10</sup>**

The Offer Letter concerns the acquisition of control over, and future business plans of, Inmarsat, operator of a mobile satellite system that is used throughout the world, including North America. Inmarsat competes or will compete with mobile satellite services and

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<sup>7</sup> 47 C.F.R. § 0.459(b)(2).

<sup>8</sup> 47 C.F.R. § 0.459(b)(3).

<sup>9</sup> 47 C.F.R. § 0.457.

<sup>10</sup> 47 C.F.R. § 0.459(b)(4).

certain VSAT services offered by other companies in the U.S. and elsewhere. Thus, the Offer Letter concerns a business whose service that is subject to competition.

**5. EXPLANATION OF HOW DISCLOSURE OF THE INFORMATION COULD RESULT IN SUBSTANTIAL COMPETITIVE HARM<sup>11</sup>**

The information contained in the Offer Letter is not of the type customarily released to the public by Apax Partners, Permira, or Inmarsat. The Offer Letter contains sensitive commercial and financial information about Inmarsat and certain of its shareholders that could be used by their competitors to gain an unfair competitive advantage. Moreover, the Offer Letter represents the result of a protracted competitive bidding process and substantial negotiations both between Apax Partners and Permira and between Apax Partners and Permira and certain financial institutions. Release of the letter may place Apax Partners, Permira, and/or Inmarsat at a disadvantage in subsequent negotiations with other parties who would not normally have access to this information. Additionally, disclosure of the financing information may make it more difficult for Apax and/or Permira to obtain financing from those certain financial institutions. As a result, Inmarsat, and Apax Partners and Permira would be subject to substantial competitive harm if the Offer Letter was disclosed. Moreover, because the Offer Letter describes the terms and conditions of financing offered by certain financial institutions, those entities may be competitively disadvantaged in future financing negotiations if the letter became public. Thus, the Offer Letter is covered by Exemption 4 of FOIA when, as here, it is submitted by Inmarsat to the Government.

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<sup>11</sup> 47 C.F.R. § 0.459(b)(5).

**6. IDENTIFICATION OF ANY MEASURES TAKEN BY THE SUBMITTING PARTY TO PREVENT UNAUTHORIZED DISCLOSURE<sup>12</sup>**

The Offer Letter is legended “confidential” and access to the document has been restricted to individuals within Apax Partners, Permira, and Inmarsat with a need to know. To the extent that the Offer Letter has been disclosed to third parties, such as their respective financial and legal advisors, such disclosure was needed to further the transaction.

**7. IDENTIFICATION OF WHETHER THE INFORMATION IS AVAILABLE TO THE PUBLIC AND THE EXTENT OF ANY PREVIOUS DISCLOSURE OF THE INFORMATION TO THIRD PARTIES<sup>13</sup>**

The Offer Letter submitted today has not previously been publicly disclosed. To the extent necessary to effectuate the contemplated transaction, Apax Partners, Permira and Inmarsat disclosed the Offer Letter to third parties such as their respective financial and legal advisors. These third parties, however, are obligated to maintain the Offer Letter in confidence.

**8. JUSTIFICATION OF THE PERIOD DURING WHICH THE SUBMITTING PARTY ASSERTS THAT MATERIAL SHOULD NOT BE AVAILABLE FOR PUBLIC DISCLOSURE<sup>14</sup>**

Inmarsat requests that the Offer Letter be treated as confidential for a period of at least 10 years. The Offer Letter contains forward looking business plans and the terms and conditions of certain financial arrangements. Inmarsat believes a ten year period is necessary to allow Inmarsat to implement those business plans and pursue the financial arrangements without unfair interference that may result from public disclosure of the information.

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<sup>12</sup> 47 C.F.R. § 0.459(b)(6).

<sup>13</sup> 47 C.F.R. § 0.459(b)(7).

<sup>14</sup> 47 C.F.R. § 0.459(b)(8).

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For these reasons, Inmarsat respectfully requests that the Commission withhold from public inspection, and accord confidential treatment to, the enclosed Offer Letter.

Respectfully submitted,

Inmarsat Ventures Limited

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June 18, 2004

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ENCLOSURE

Letter from Permira Advisers Limited and Apax Partners Worldwide LLP

to Morgan Stanley dated October 15, 2003

REDACTED in its entirety