



11 June 2009

Tom Forster
Manager, Telecommunications Branch
Commerce Commission
Level 6, Vector Building
44 The Terrace
P.O. Box 2351
Wellington 6140

Dear Tom

Re: Application for Determination for designated access service

I would like to further update you on our progress (or more accurately, the lack of progress) in trying to reach an agreement with Telecom that allows 2degrees to begin offering local services to customers over our network.

It has been 3-years since Teresa Gattung's "I am here to tell you in no uncertain terms, we get it" speech¹. However, it appears that Telecom is slipping back to its tired old incumbent tactics of hiding behind legalistic arguments to delay and frustrate competitive new entry into the market.

Telecom is continuing to:

- Refuse to offer access on the same terms as the Commission Determined that Vodafone was entitled to in 2006
- Try to use the wholesale interconnection agreement as a mechanism to define / restrict the types of offerings that 2degrees can make in the local calling retail market
- Refuse to agree to not discriminate (at a retail price level) between calls to Telecom local numbers and calls to 2degrees local numbers

Further, what Telecom has been intimating to 2degrees (via face-to-face meetings and written communication) is this:

- 2degrees, you will agree to the terms that we dictate, or else:
 - We will drag-out and delay this Determination process as long as possible; and

¹ *Telecom CEO Theresa Gattung at the TUANZ Telecommunications Summit; "I am here to tell you in no uncertain terms, we get it.", "We are not going to be obstructive. We are not going to mount any rearguard actions. We are not going to fight old regulatory battles. We are not going to hide behind legalistic arguments.", "We are totally committed to providing a level playing field for our wholesale customers.", "Some of you will be sceptical. But this is not mere window dressing. Judge us by the evidence. Judge us by the changes you see.", "We are committed to playing fair by our wholesale customers."*



- Even if you do eventually get the Determination that you seek, we will further delay and frustrate your competitive new entry by further legalistic challenges at the NAD and on Number Portability.

If you wish, we can provide the Commission with written documentation received from Telecom to support this.

It is difficult to view this as anything more than anti-competitive behaviour designed to frustrate and delay for as long as possible (and possibly thwart) our competitive new entry into the local calling market. These tactics are well known to cause particular harm to new entrants.

The Commission has already made a Determination on the exact same issues that 2degrees is seeking a Determination. Telecom has not shown any willingness to constructively engage in negotiations with 2degrees and it is clear that Telecom has no intention of offering 2degrees access on the terms that we seek. I therefore strongly encourage the Commission to continue with the Determination process.

Finally, pursuant to section 56 of the Telecommunications Act, 2degrees requests the Commission to order Telecom to pay our costs and disbursements on the Determination application. This is because Telecom's refusal to offer us terms equivalent to the 2006 Determination related to Vodafone has materially contributed to, in fact is the sole reason for, us incurring the costs of our application.

Yours sincerely

Andrew Davis
Manager - Interconnection
Two Degrees Mobile Limited