

TWO DEGREES MOBILE LIMITED
VODAFONE NEW ZEALAND LIMITED

Telecommunications Act 2001
~~Draft~~ Undertaking to the Commerce Commission
under Schedule 3A in respect of the
~~Vodafone~~2degrees MTM Call Termination Service

2 October 2009 ~~6 May 2009~~

Draft Undertaking to the New Zealand Commerce Commission under Schedule 3A of the Telecommunications Act 2001

Dated ~~6 May 2009~~ 2 October 2009

Parties

1. ~~Vodafone New Zealand Limited of Level 1, 20 Viaduct Harbour Avenue, Auckland (Vodafone) Two Degrees Mobile Limited of 131 Khyber Pass Road, Auckland (2degrees).~~

in favour of:

2. **New Zealand Commerce Commission** being a Crown entity established by section 8 of the Commerce Act 1986 (**Commission**).

Background

- A. ~~Vodafone2degrees~~ is a cellular mobile telephone network operator who operates a cellular mobile telephone network.
- B. ~~Vodafone2degrees~~ gives this Undertaking pursuant to Schedule 3A of the Telecommunications Act 2001, as amended by the Telecommunications Amendment Act (No. 2) 2006.

1. Interpretation

Unless the context indicates otherwise, the following terms have the following meaning in this Undertaking:

- 1.1 **Access Seeker** means a provider of public switched mobile telecommunications services in New Zealand that owns or operates a voice switch in New Zealand and that provides a properly completed and executed Deed of Acceptance in favour of ~~Vodafone2degrees~~.
- 1.2 **Deed of Acceptance** means the deed of acceptance specified in Schedule 5.
- 1.3 **Expiry Date** means the date which is 5 years from the date of registration pursuant to clause 2.1.
- 1.4 **Undertaking** means this Undertaking given by ~~Vodafone2degrees~~ to the Commission under Schedule 3A of the Telecommunications Act 2001.
- 1.5 ~~Vodafone2degrees~~ **MTM Call Termination Service** means the service specified in Schedule 1.

2. Commencement and term

- 2.1 This Undertaking takes legal effect immediately after it is registered by the Commission under Clause 6 of Schedule 3A of the Telecommunications Act 2001 and continues until the earlier of:
 - a) the Expiry Date; and
 - b) the date on which either of ~~Vodafone2degrees~~ or the Access Seeker provides written notice to the other party to terminate this Undertaking, in the event that ~~Vodafone2degrees~~ becomes an access provider for the ~~FTM-MTM~~ Call Termination Service (or a service substantially similar to the ~~FTM-MTM~~ Call Termination

Service) as a designated access service under the Telecommunications Act 2001.

3. Undertaking terms and conditions

3.1 ~~Vodafone2degrees~~ undertakes to the Commission that, during the period this Undertaking is in effect, it will provide the ~~Vodafone2degrees~~ MTM Call Termination Service:

- a) specified in Schedule 1;
- b) at the prices specified in Schedule 2; and
- c) on the terms specified in Schedules 3 and 4,

to any Access Seeker.

4. Notices

4.1 Any communication in respect of this Undertaking should be made in writing to:

Attention: ~~Chief Commercial Officer~~~~General Manager Wholesale and New Business Development~~

Address: ~~Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland~~ Two Degrees Mobile Limited, 131 Khyber Pass Road, Auckland

Facsimile: ~~(09) 355 2006~~ (09) 919 7001

Copy to:

Attention: General Counsel

Address: ~~Vodafone New Zealand Limited, Level 1, 20 Viaduct Harbour, Auckland~~ Two Degrees Mobile Limited, 131 Khyber Pass Road, Auckland

Facsimile: ~~(09) 355 2005~~ (09) 919 7001

Signed by ~~Eric Hertz~~ Tom Chignell as
Authorised signatory for ~~Vodafone~~
New Zealand Limited Two Degrees Mobile Limited
in the presence of:

Signature of witness
Chignell

Signature of Eric Hertz~~Tom~~

Name of witness (block letters):

Place of abode:

Calling or description:

Schedule 1
Service Description

Vodafone2degrees MTM Call Termination Service

The **Vodafone2degrees Mobile Termination Access Services** comprises the MTM Call Termination Service.

The MTM Call Termination Service comprises:

- (a) acceptance of all MTM Calls handed over from the Access Seeker Network to the **Vodafone2degrees** Network in accordance with the MTM Call Handover Obligation for which a **Vodafone2degrees** Mobile Number is provided, and delivery or offer of delivery of each such MTM Call to the Designated Destination in respect of that MTM Call; and
- (b) transmission of an Answer Line Signal to the Access Seeker Network in respect of MTM Calls handed over from the Access Seeker Network to the **Vodafone2degrees** Network in accordance with terms of this Undertaking and answered by the called party or by some other means,

where the Access Seeker has:

- (c) for each MTM Call handed over from the Access Seeker Network to the **Vodafone2degrees** Network, transmitted the line, information or control signals in the Signalling Format that relate to the establishment of that MTM Call, including details in the Signalling Format of the valid **Vodafone2degrees** Mobile Number called; and
- (d) for each MTM Call handed over from the Access Seeker Network to the **Vodafone2degrees** Network that is to a number that has been ported to the **Vodafone2degrees** Network in accordance with the LMNP Determination, added a Hand-off Code to that number as its prefix in accordance with the Network Terms and the LMNP Voice Interconnect Specifications.

Schedule 2
Pricing
Vodafone2degrees MTM Call Termination Service

1. The price for the **Vodafone2degrees** MTM Call Termination Service, which the Access Seeker agrees to pay, is as follows:

Type of Chargeable MTM Call		Chargeable MTM Call rate
(a)	All Chargeable MTM Calls during the period from the Services Commencement to -Date to <u>31 March December</u> 2010 (inclusive).	<u>5.5615.0</u>
(b)	All Chargeable MTM Calls during the period from 1 April - January 201 <u>10</u> to 31 December March -2011 (inclusive).	<u>4.7314.4</u>
(c)	All Chargeable MTM Calls during the period from 1 January April -201 <u>24</u> to 31 December March -2012 (inclusive).	<u>4.2514.0</u>
(d)	All Chargeable MTM Calls during the period from 1 January April -201 <u>32</u> to 31 December March -2013 (inclusive).	<u>3.8313.0</u>
(e)	All Chargeable MTM Calls during the period from 1 January April -201 <u>43</u> to 31 December March -2014 (inclusive).	<u>3.6412.0</u>
(f)	All Chargeable MTM Calls during the period from 1 January April -201 <u>54</u> to the Expiry Date (inclusive).	<u>3.4511.0</u>

Notes:

1. The Chargeable MTM Call rate is an amount in cents per minute.
2. The Chargeable MTM Call rate applies on a ~~minute plus second~~per second basis, with, in the case of such Chargeable MTM Calls with a Duration of less than one minute, the Duration of those Chargeable MTM Calls being rounded up to one minute.
3. ~~[This clause has been left intentionally blank] The charge for each Chargeable MTM Call is rounded up to the next whole cent.~~
4. For the avoidance of doubt, Chargeable MTM Calls of more than two seconds Duration will be charged for the full period of the Call, including the first two seconds.
5. Where a Chargeable MTM Call starts on one date, and ends on a different date, the Chargeable MTM Call rate applicable on the start date shall apply to the entire Call.
6. **Vodafone2degrees** may round its total charges to the Access Seeker for all Chargeable MTM Calls on any invoice either up or down to the nearest whole cent.
7. For the avoidance of doubt, Clause 17.3 of Schedule 3 of this Undertaking applies to the prices set out in this Schedule 2

Schedule 3
Terms and Conditions
Vodafone2degrees MTM Call Termination Service

[Refer to separate attachment: "Schedule 3, Terms and Conditions"]

Schedule 4
Service Specific Terms and Conditions
Vodafone2degrees MTM Call Termination Service

1. Interpretation

Unless the context otherwise requires, words and expressions defined or construed in the main body of this Undertaking or **Schedule 3**, and not otherwise defined or construed in this **Schedule 4**, have the same meanings as defined or construed in the main body of this Undertaking or **Schedule 3** when used in this **Schedule 4**. In addition:

Chargeable MTM Call means any MTM Call handed over from the Access Seeker Network to the [Vodafone2degrees](#) Network in accordance with the MTM Call Handover Obligation and giving rise to the transmission of an Answer Line Signal, with a Duration of greater than two seconds;

Designated Destination means the point in the [Vodafone2degrees](#) Network to which a [Vodafone2degrees](#) Mobile Number provided in respect of an MTM Call has been allocated or assigned by [Vodafone2degrees](#), disregarding any call forwarding or like functionality or service that may have been invoked by an End User, the Access Seeker, [Vodafone2degrees](#) or a Network Operator which results in that MTM Call being routed to another point in the [Vodafone2degrees](#) Network or to any other network (including the Access Seeker Network) from which the Answer Line Signal in respect of that MTM Call emanates;

Duration means the period determined in accordance with methodologies:

- (a) employed by [Vodafone2degrees](#) in determining the actual duration of calls for the purposes of calculating the charges paid by other persons; and
- (b) which have been established having regard to:
 - (i) when an Answer Line Signal for an MTM Call is detected by [Vodafone2degrees](#) in respect of that MTM Call; and
 - (ii) when a Release Signal for that MTM Call is detected by [Vodafone2degrees](#) in respect of that MTM Call;

MTM Call means:

- (a) a series of signals associated with full duplex, real time, audio communication contained within a dedicated circuit established between the originator and the intended recipient (which may include a dedicated traffic channel over the air interface); where the bandwidth to be provided is 64 kbits per second for PCM encoded speech, circuit-switched data or fax; whether or not there is actual communication between the originator and the intended recipient of the signals; disregarding CCITT No. 7 MTP or ISUP messages including (without limitation) messages relating to set up, answer or release of an associated call including calling or called numbers;
- (b) that originates:
 - (i) from an Access Seeker End User;
 - (ii) from an Access Seeker Mobile Number (and the Access Seeker Mobile Number is the A-number for the MTM Call); and

(iii) either in a cellular mobile network in New Zealand operated by the Access Seeker or in a cellular mobile network outside New Zealand on which the Access Seeker End User is roaming;

(c) where the number dialled by the calling party is a Vodafone2degrees Mobile Number or where a Vodafone2degrees Mobile Number is provided by the Access Seeker as a result of number translation by the Access Seeker in accordance with **Clause 5.2** (but excluding, for the avoidance of doubt, calls where a Vodafone2degrees Mobile Number is provided by the Access Seeker as a result of number translation in any other circumstances); and

(d) the Designated Destination is in Vodafone's2degrees' cellular mobile network (including Vodafone's2degrees' 2G GSM cellular mobile network and Vodafone's2degrees' 3G W-CDMA mobile network and any future Vodafone2degrees cellular mobile network),

but excluding any other type of call (including an FTM Call or video telephony call), text message or multi-media message.

MTM Call Handover Obligation means the obligation set out in **Clause 4**.

2. Provision of Vodafone2degrees Network Interconnection Service

2.1 Provision of Vodafone2degrees Network Interconnection Service

Subject to the terms and conditions of this Undertaking, Vodafone2degrees will make available and provide the MTM Call Termination Service to the Access Seeker.

2.2 Testing

Vodafone's2degrees' obligation under **Clause 2.1** is conditional upon agreement on the successful completion of:

- (a) appropriate testing in accordance with clause 15.4 of **Subschedule 3A to Schedule 3** and the Operational Procedures; and
- (b) any other testing reasonably required by each party.

2.3 Commencement of testing

The parties will not be required to commence testing under **Clause 2.2** until such time as the Access Seeker advises Vodafone2degrees in writing that the Access Seeker's cellular mobile network in New Zealand is operational.

3. Price

The price of the MTM Call Termination Service to be provided under this Undertaking, and which the Access Seeker agrees to pay Vodafone2degrees, for each Chargeable MTM Call is specified in **Schedule 2**.

4. MTM Call Handover Obligation

An MTM Call that is handed over by the Access Seeker from the Access Seeker Network to the Vodafone2degrees Network shall be handed over at the Access Seeker Handover Point closest to the point of origination (which, in the case of MTM Calls that originate outside New Zealand, shall be deemed to be the Access Seeker Handover Point in Auckland).

5. Identification of MTM Calls

5.1 Calling party numbers

For the avoidance of doubt, in respect of any MTM Call handed over from the Access Seeker Network to the [Vodafone2degrees](#) Network, there shall be no charge to [Vodafone2degrees](#) for the provision by the Access Seeker of any number information provided by the Access Seeker, including the A-number or any part of the A-number or any default A-number provided in accordance with **Subschedule 3D** to **Schedule 3**.

5.2 Number translation

The Access Seeker shall not, in relation to any MTM Call, translate the number dialled by the calling party into any other number to be presented to [Vodafone2degrees](#), unless:

- (a) the translation is made in accordance with the requirements of the LMNP Determination and the LMNP Voice Interconnect Specifications; or
- (b) the following apply:
 - (i) [Vodafone2degrees](#) notifies the Access Seeker in writing that it requests the Access Seeker to undertake this number translation;
 - (ii) the Access Seeker agrees to undertake that number translation; and
 - (iii) the parties have agreed the terms on which that number translation will take place.

5.3 Notification of Third Party Reseller numbers

[Vodafone2degrees](#) shall use its best endeavours to notify the Access Seeker from time to time of any [Vodafone2degrees](#) Mobile Numbers that have been allocated to a Third Party Reseller and that are used on the [Vodafone2degrees](#) Network. However, for the avoidance of doubt, if [Vodafone2degrees](#) has not notified the Access Seeker under this **Clause 5.3** for any reason, any MTM Call for which any of those [Vodafone2degrees](#) Mobile Numbers are provided as the called party number will still be an MTM Call under this Undertaking. For the avoidance of doubt, nothing in this **Clause 5.3** limits clauses 21.4 or 21.5 of **Subschedule 3A** to **Schedule 3**.

6. Mobile Number Portability

For the purposes of applying the Network Terms and the LMNP Voice Interconnect Specifications to an MTM Call to a [Vodafone2degrees](#) Mobile Number referred to in clause [1.80.2-1.78.2](#) of **Subschedule 3A** to **Schedule 3**:

- (a) the Access Seeker may be:
 - (i) an “Originating Carrier” or a “Bypass Carrier”; or
 - (ii) a “Donor Carrier” or a “Contracted Service Deliverer” for a Network Operator; and
- (b) [Vodafone2degrees](#) may be a “Host Carrier” or a “Terminating Carrier”, (as those terms are defined in the Network Terms).

Schedule 5
Deed of Acceptance
Vodafone2degrees MTM Call Termination Service

[Date]

By: [Full name of Access Seeker]

In favour of: ~~Vodafone New Zealand Two Degrees Mobile~~ Limited (Vodafone2degrees)

By this Deed:

1. We refer to the Undertaking given by Vodafone2degrees in favour of the New Zealand Commerce Commission dated [] 2009 (the **Undertaking**). All capitalised terms used in this Deed will have the same meaning as set out in the Undertaking.
2. We request that Vodafone2degrees provide the Vodafone2degrees MTM Call Termination Service in accordance with all of the terms and conditions of the Undertaking.
3. We agree that the Undertaking is legally binding on us as an Access Seeker for the Vodafone2degrees MTM Call Termination Service, that we give all warranties of an Access Seeker set out in the Undertaking and that we shall comply with all of the obligations of an Access Seeker set out in the Undertaking. Vodafone2degrees may enforce the terms of the Undertaking against us as an Access Seeker.
4. Our IRD number is [] and our GST registration number is [].
5. Our notice details, for the purposes of the Undertaking, are as follows:

[New Zealand address]
Attention: [Name or office]
Telephone: [Number]
Facsimile: [Number]
6. Where we are, at the date of this Deed, a party to an agreement with Vodafone2degrees for the provision of services equivalent or substantially similar to the Vodafone2degrees MTM Call Termination Service, we agree that, when Vodafone2degrees begins to provide the Vodafone2degrees MTM Call Termination Service to us under the terms of the Undertaking:
 - (a) Vodafone2degrees will no longer be required to provide those services to us under that agreement;
 - (b) the parts of that agreement that apply to those services shall not apply whilst Vodafone2degrees provides the Vodafone2degrees MTM Call Termination Service to us under the terms of the Undertaking; and
 - (c) that agreement shall be interpreted accordingly.
7. We undertake to make available to Vodafone2degrees, at any time when we operate a cellular mobile network in New Zealand and at any time requested by Vodafone2degrees, a telecommunications service that is the same as the Vodafone2degrees MTM Call Termination Service at prices no greater than those specified in Schedule 2 (Pricing) of this Undertaking, and otherwise on reciprocal terms that are the same as the terms on which Vodafone2degrees makes available the Vodafone2degrees MTM Call Service under the Undertaking, mutatis mutandis.

8. For the purposes of section 9 of the Property Law Act 2007, and without limiting any other mode of delivery, this Deed will be delivered by the Access Seeker immediately on the earlier of:

- (a) physical delivery of an original of this Deed, executed by the Access Seeker, to 2degrees, or
- (b) transmission by the Access Seeker or its solicitors (or any other person authorised in writing by the Access Seeker of a facsimile, photocopied or scanned copy of an original of this Deed, executed by the Access Seeker, to 2degrees.

No such delivery shall be subject to any condition, and delivery shall be irrevocable evidence of the Access Seeker's intention to be bound by this deed.

Executed and delivered as a Deed
By [*Full name of Access Seeker*]
Director
Director