



28 July 2009

Osmond Borthwick
Commerce Commission
PO Box 2351
Wellington

By email: osmond.borthwick@comcom.govt.nz

MTAS: 2degrees response to Commission's Draft Report

Dear Osmond,

I have pleasure in attaching 2degrees' response to the Commission's Draft Report on whether the mobile termination access services should become designated or specified services (MTAS).

I commend the Commission on an excellent report and we support many of its findings. In particular, the view that "the provision of the MTAS at prices above cost represents a barrier to efficient entry and expansion in the retail mobile services market", and that 2degrees' "ability to compete for retail customers with the incumbent mobile network operators is likely to be limited where mobile termination rates (MTRs) are significantly above cost."

However, we go further. As detailed in our submission, we contend that there is a critically urgent requirement for MTR to fall immediately to a level not exceeding cost, which we show is of the order of 1c per minute and 0.1c per SMS and for retail price regulation to be implemented to prevent the anti-competitive and harmful practice of on-net / off-net (closed net) retail price differentiation.

The telecommunications market in New Zealand is fundamentally broken, and has been for some years now. In previous submissions we highlighted the exceptionally high retail prices and low usage prevalent in New Zealand and here we show how entire segments of the market are completely foreclosed to competition. We show how entrenched incumbents are not competing with each other. We show that because of on-net discounting, and excessive Mobile Termination Rates there is virtually no cross-network traffic. We show how Vodafone is completely dominant in Auckland with a 97% market share in some (prepaid) market sectors, and Telecom is completely dominant in Dunedin with a complete failure of competition between the current providers.

The closed network nature of calling and SMS in New Zealand means that only around 5-10% of SMS messages are across networks, and therefore do not provide Mobile Termination revenues. Over 80% of mobile to mobile voice minutes are contained 'on-net' and again, do not provide Mobile Termination revenues. The vast majority of calls are effectively already 'Bill & Keep'. We submit that instead of trying to regulate the small proportion of traffic that MTRs currently apply to, and are (1) the main cause of harm, (2) the main barrier to entry and (3) the main cause of incumbent mobile networks being so heavily

subsidised by fixed line customers (of the order of \$2.5 billion over the last decade), all calls should be Bill & Keep with immediate effect.

The comprehensive breakdown of any semblance of competition in New Zealand, and the harm that it is causing - ie very low usage, very high retail prices and almost no cross-network traffic should be of the utmost concern for the Commission, for government and for the New Zealand consumer. The incumbents have done a very successful job of carving up the market between them and preventing new competition or the prospect of new competition to date. We don't blame them, it's their job, but they have been assisted to date by the weakness of general competition law and the weakness of the Telecommunications Act.

New Zealand is finally on the cusp of having a third mobile network provider in 2degrees. Largely due to the Commerce Commission working to remove the barriers to entry listed in the 2006 Mobile Market Review and the Telecommunications Amendment Act 2006. All other developed countries have more than two operators, it would be a huge blow to New Zealand's consumers and businesses if competition were not allowed to flourish and this issue is the most important for effectively delivering competition in telecommunications.

We urge the Commission to err not on the side of caution, as it variously proposes in its draft, as it plays to the benefit of incumbents and not consumers, but to be bold in ensuring that competition is enabled as soon as it can be for the benefit of all New Zealanders.

It must be remembered that the incumbents currently enjoy *monopoly rents* and will of course seek to maintain or delay the status quo at the expense of competition and the end users who are the ultimate funders of the current duopoly. The Commission should not, in our view, be concerned with whether the necessary regulatory change delivers a "soft landing" for incumbents and instead should be focused on the outcomes which will achieve vigorous competition and the purpose of the Act.

Please find attached a Public Version and Commission Only Version of the response of 2degrees to the Commission's Draft Report on MTAS. We confirm that there is no Restricted Version. COI status has been requested at this point of time pending the Commission's final determination regarding the confidentiality of interconnect agreements and also due to the fact our response contains information relating to commercial agreements with other interested parties. Those parties may require the greater degree of protection provided by COI status. The necessary certification from Paul Mathewson as Nominated Counsel for 2degrees regarding confidentiality is also attached.

Yours sincerely


Bill McCabe
Chief Commercial Officer
Two Degrees Mobile Limited

