



11 November 2009

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Shane Kinley  
Commerce Commission  
44-52 The Terrace  
**WELLINGTON**

Dear Shane

**Process to address reciprocity issues in relation to revised MTAS undertakings**

1. We confirm that we are willing to engage in the process proposed by the Commerce Commission (**Commission**) in its letter of 9 November 2009.
2. In terms of the issues raised by the Commission in its letter, our position is:
  - (a) We are willing to remove the reciprocity condition in relation to price and non-price terms (ie delete Clause 7 of Schedule 5 of the Deed of Acceptance in our undertakings). With regard to price, we trust that the Commission would not put us in the position where we had the lowest prices as the resulting competitive distortions in favour of incumbents would be significant and potentially crippling.
  - (b) We broadly aligned our non-price terms with Vodafone's earlier undertaking because we considered that it provided a reasonable basis for an acceptable undertaking. We suggest that Telecom considers adopting the same standard. However, we believe that the following non-price issues are material and need to be addressed before any undertaking can be accepted:
    - (i) Separate undertakings must be offered for separate services according to the clear guidance of the Commission, at least in respect of text and voice (acceptance of one should not be linked to acceptance of the other).
    - (ii) Vodafone's undertaking should be adjusted to provide for second + second billing.
    - (iii) The stand-down period following termination contained in Vodafone's undertaking should be removed.

- (iv) The incumbents' broad rights of suspension, cross-default and termination must be narrowed.

While we disagree with many other non-price terms in the Vodafone and Telecom undertakings, we have always maintained that non-price terms are of significantly less importance than price, after all we have interconnect agreements already in place with both incumbents but the high and above cost prices distort competition in their favour. For the purpose of this process and subject to the above comments, we are willing to apply the non-price terms imposed by the incumbents provided they offer cost-based prices. We reserve our position on those terms in any future process.

- (c) The Commission is concerned that asymmetric rates may create distortions and inefficiencies. The foremost consideration should be the distortions and inefficiencies created by above-cost rates. As we stated at the conference, we agree that symmetric rates are appropriate provided that they are cost-based.<sup>1</sup> But as submitted on numerous occasions and implicitly supported by the most recent evidence by Dr Haucap in relation to glide paths,<sup>2</sup> there is considerable support for asymmetric rates which favour new entrants as they lack the economies of scale and efficiencies of incumbents. Accordingly, if the incumbents persist with above-cost rates, they will enjoy a competitive advantage which should be countered (although imperfectly) with asymmetry in a new entrant's favour.
  - (d) The Commission has requested that we consider the submissions of Access Seekers. We are unaware of any way in which our undertakings are materially inconsistent with those submissions, but we will review those submissions again and attempt to address any issues raised. Other parties have raised some minor drafting matters with our undertakings which we will correct.
3. We note that we were the only party to submit undertakings that followed the Commission's request for separate undertakings for separate services. In order to limit non-price issues, we adopted Vodafone's terms with minimal, generally critical changes. We were also the only party to submit undertakings broadly consistent with the Commission's benchmarks. This process that we are now agreeing to engage in would be largely unnecessary if Vodafone and Telecom had also followed the Commission's guidance.
  4. The fact that Vodafone and Telecom gain an anti-competitive commercial advantage from above cost termination rates is the only reason why they continue to ignore the Commission's guidance. It harms New Zealand consumers, as well as 2degrees' and others ability to compete. They have now submitted numerous Voluntary Undertakings, all of which are above cost but if the Commission feels there is a chance that the industry can finally agree to fair price and non-price terms then 2degrees welcomes that opportunity.
  5. If Vodafone and Telecom are now genuinely open to offering cost-based prices and engage on the limited non-price matters outlined above, there will no longer be any

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<sup>1</sup> Refer to Mr McCabe's comments on lines 28-29 and 31-33 of p116 and line 1 of p117 of the MTAS Conference transcript.

<sup>2</sup> Professor Dr Justus Haucap, A Short Note on the Philosophy and Economic Rationale Underlying "Glide Paths" for the Regulation of Mobile Termination Rates, 16 October 2009.

need to consider any recommendation to regulate the services. We look forward to engaging with Vodafone and Telecom to reach a speedy resolution to these matters. We will contact Vodafone and Telecom to arrange discussions.

Yours sincerely

A handwritten signature in black ink, appearing to read 'W. McCabe', written in a cursive style.

Bill McCabe  
Chief Commercial Officer

**Two Degrees Mobile Limited**

Copy: Simon Haines, Senior Counsel – Regulatory & Competition, Telecom New Zealand  
Hayden Glass, Acting GM Regulatory and Industry Relations, Vodafone New Zealand