

2 November 2009

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**BY EMAIL** shane.kinley@comcom.govt.nz

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Commerce Commission  
44-52 The Terrace  
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Dear Shane

## **Letter from Telecom to the Commission re aligning undertakings**

### **1. Introduction**

- 1.1 We refer to your email of 28 October 2009 providing a link to a letter from Telecom to the Commerce Commission (**Commission**) dated 28 October 2009 regarding a possible process for aligning undertakings in relation to the MTAS investigation.
- 1.2 The status of the letter, and the intention of the Commission in publishing the letter, is unclear to both us and our client. It was surprising to see a further submission (or proposed revised undertaking) outside of the prescribed process and we note that in any event the proposed "adjusted" rates remain significantly above benchmarks.
- 1.3 While 2degrees would hope that all parties ultimately prefer this matter to be resolved by undertakings, the prescribed process was clear. Revised undertakings were to be provided and all parties were then to await notification of next steps.
- 1.4 Accordingly, 2degrees does not propose making a further submission at this stage but has instructed us to make the above and following points on its behalf. 2degrees would not want silence on its part to be considered as assenting to the departure from the prescribed process by Telecom or as agreement with the matters set out in the letter.

### **2. The nature of the letter is unclear**

- 2.1 Despite the description of the letter, its status is unclear. For example, it is not clear whether the letter is intended to be a further voluntary undertaking or amendment to the revised undertaking submitted by Telecom on 2 October 2009.
- 2.2 It is also unclear whether the Commission is inviting cross-submissions (on the letter and/or the revised undertakings in their entirety).

### **3. The letter goes beyond a simple suggestion on process**

- 3.1 2degrees does not consider the letter to be a simple suggestion on process. The letter can be characterised as Telecom suggesting to Vodafone, via a letter to Dr Patterson, that Vodafone adjust its rates to match those proposed by Telecom.
- 3.2 The structure of undertakings also remains a significant matter. 2degrees notes the letter is silent on the linking by the incumbents of voice and SMS undertakings.

3.3 While it is appreciated that the Commission has published the letter in the interests of transparency, 2degrees considers it unfortunate that this has resulted in what is effectively another submission being "on the record" outside of the prescribed process.

**4. The key issue remains the incumbents' failure to offer cost-based prices**

4.1 The letter has been presented as a process for aligning undertakings but is lacking in substance. The proposed "adjusted" rates remain significantly above any measure of cost and the benchmarks, as demonstrated by the table below:

Date from	Proposed adjusted rates for Vodafone and Telecom	Benchmark	Proposed rates as percentage of benchmark
1 Jan 2010	12 m+s (14.76 s+s)	6.5 s+s	227%
1 July 2010	12 s+s (April)	6.5 s+s	184%
1 Jan 2011	10 s+s	5.8 s+s	172%
1 Jan 2012	9 s+s	5.2 s+s	173%
1 Jan 2013	8 s+s	4.7 s+s	170%
1 Jan 2014	6 s+s	4.3 s+s	139%
SMS	B+K (hybrid) Overage @ 7% = 2cpt, @ 12% = 4cpt		

4.2 While the Commission commended Telecom for aspects of its approach at the conference, and we note that Telecom has taken many comments on board, the letter fails to address the single most important issue, namely setting cost-based prices.

4.3 The proposal also ignores the rates proposed by 2degrees, which as previously submitted are very close to the benchmarks. A proposal to align Telecom's above-cost undertaking with Vodafone's above-cost undertaking does not present a process for aligning undertakings with cost.

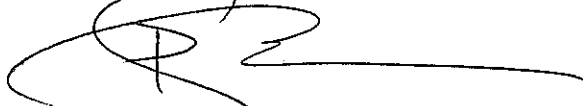
**5. Next steps**

5.1 Unless the incumbent networks are prepared to offer cost-based prices which remove the subsidy currently paid to the incumbents, 2degrees does not see any merit in discussing undertakings further.

5.2 As previously submitted, it appears that the only thing which will incentivise true cost-based rates, and bring the benefits of competition to end users of telecommunications services in New Zealand, is regulation.

Yours faithfully

**Minter Ellison Rudd Watts**



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