

# **Commerce Commission**

## **Schedule 3 Investigation into Mobile Termination Access Services**

### **Submission on the Revised Undertakings**

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Submission by



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## **Submission on the Revised Undertakings**

### **Introduction**

CallPlus welcomes the opportunity to comment on the revised undertakings and acknowledges progress that has been made on a number of key issues over the last few months.

As a result CallPlus' preference would be for a commercial solution given the length of time before regulation will see lower termination rates benefitting consumers and improving competition.

CallPlus would like to comment on the following aspects of the undertakings.

#### **1. 'Second + Second' Billing**

CallPlus is surprised that Vodafone continue to quote 'minute + second' pricing despite: -

- Second + Second being international best practice,
- Second + Second being accepted by other providers
- Second + Second being already offered by Vodafone to other parties domestically and internationally

CallPlus continues to strongly support the Commissions view that rates should be Second + Second.

#### **2. Introduction of Second + Second**

Telecom is requesting that the introduction of 'Second + Second' billing is delayed until June 2010 to allow them to accommodate changes to their billing systems. CallPlus is surprised at the delay as Telecom already offers 'Second + Second' to international carriers.

Access Seekers, & ultimately consumers, should not be penalised by paying a higher rate in the interim. Telecom has stated that the impact is 19% and CallPlus' analysis assesses the rate at a similar level - 23%.

The issue is easily dealt with, in the interim, by applying a suitable adjustment to a 'Minute + second' rate to offset the impact where a short delay occurs as a result of an Access Provider's operational issue.

#### **3. International Origination & VoIP**

It was generally agreed at the conference that there was little or no cost justification to this differentiation and Callplus would like to acknowledge Telecom removing this differentiation in order to facilitate a commercial outcome.

#### **4. MTR Rate**

All parties, including CallPlus, have had ample opportunity to express their views on the appropriate MTR rate. CallPlus is confident that the Commission has heard the views and is able to determine an appropriate MTR rate for any undertakings that balances the benefit to consumers from acceptance of undertakings versus the longer term impact of regulation.

#### **5. SMS**

CallPlus does not support Telecoms proposed rates, or the overly complex 'excess' mechanism, for SMS. Vodafone, in contrast, has proposed a more straightforward construct and more realistic charge. However our position remains that Bill & Keep is appropriate for SMS given the nature of the service.

#### **6. Undertakings v Regulation**

If the key outstanding issues can be resolved CallPlus is supportive of the Commission having a preference for a commercial approach. Given the progress made to date we are optimistic that an agreement can be reached which would allow undertakings to be established.

In the event that Vodafone & Telecom are prepared to revise their undertakings, (given they represent nearly all of the market for fixed-to-mobile & mobile-to-mobile termination) then CallPlus believes that consumers will be better off with the earlier benefits flowing from undertakings rather than a lengthy wait for a regulatory outcome.

#### **7. Do all parties need to agree on undertakings?**

In order to have a sustainable undertakings 'regime' there is a need to have greater alignment between the two major mobile operators undertaking rates. However, for consumers to benefit, CallPlus does not believe it is necessary that 2 Degrees needs to have an undertaking which is aligned with the other access providers (or even have an undertaking) in order for the other undertakings to be accepted. Although for 2 Degrees to accept the other Access Providers undertakings it should be a pre-condition that they are required to make a reciprocal undertaking to all Access Seekers.

2 Degrees may choose a commercial solution, agreeing bilateral arrangements rather than making an undertaking. They already have a significantly different agreement for mobile termination to the other fixed line operators. Given their different market position our view is that competitive & commercial forces will result in an acceptable outcome.

#### **8. Undertakings are complete ICA**

The revised undertakings, unlike the existing undertakings, are effectively complete reference agreements for MTR. Many of the clauses have similar counterparts in existing ICAs for both fixed and mobile termination.

Both Telecom & Vodafone have reference offers and, naturally parties have negotiated amendments to clauses in the course of reaching bi-lateral agreements for fixed & mobile services. CallPlus assumes that intent of the undertakings is to act

as reference documents whereby relevant MTR clauses will be flowed through into existing ICA's in a way that avoids any other disruption to those existing agreements.

CallPlus has not attempted to detail all the areas of differences between the existing clauses in its bilateral agreements for fixed and mobile and the undertaking.

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