



16 October 2009

Shane Kinley
Commerce Commission
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Dear Mr Kinley

Submission on revised undertakings on mobile termination access services

Introduction

1. Drop the Rate, Mate! is a public campaign launched in August of this year to support the Commerce Commission's draft recommendation to regulate mobile termination access services (MTAS).
2. The founding members of Drop the Rate, Mate! are:

Airnet NZ Limited

Consumer NZ

Federated Farmers

Federation of Maori Authorities

New Zealand Union of Student Associations

Telecommunications Users Association of New Zealand

2degrees

Unite Union
3. We speak not only for the members of the above organisations, but also for the thousands of Kiwis who are registered supporters of our campaign. The name of our campaign was chosen carefully; the "mate" that we refer to is

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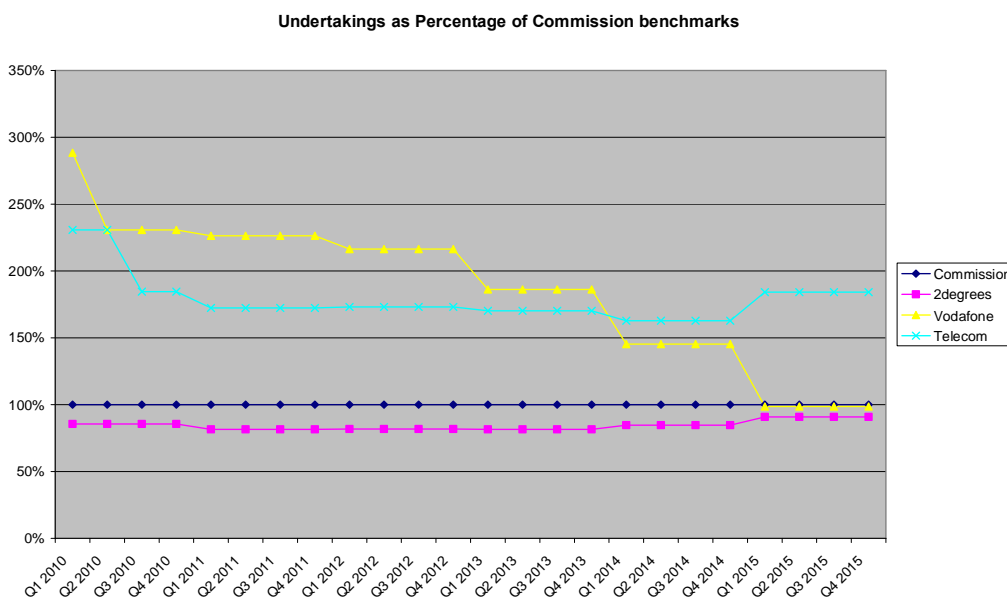
Communications and Information Technology Minister Steven Joyce. Drop the Rate, Mate! intends to provide the Minister with the comfort of knowing that he has the support of both the important representative bodies and the public if he accepts the recommendations of the Commerce Commission on mobile termination rates (MTRs).

4. We welcome the opportunity to provide the Commerce Commission with a submission on the revised undertakings submitted by the mobile access providers.

The Commerce Commission should reject the revised undertakings and recommend regulation

5. The members of Drop the Rate, Mate! strongly believe that the Commerce Commission should reject the revised undertakings and instead recommend to the Minister that MTAS be regulated as a designated service.
6. Time and time again, Telecom and Vodafone have been given procedural indulgences and opportunities by the Commerce Commission to provide voluntary undertakings in order to promote competition. We submit that this endless cycle must finally stop.
7. Only 2degrees has provided a revised undertaking that provides rates close to the benchmarks that the Commission has proposed.

Graphic representation of the parties' offered rates compared with benchmarks





Explanatory comments:

- *adjustments have been made by quarter to address mismatch in timing between operators*
- *Vodafone rate adjusted upwards by 25% to reflect an estimate of the artificial inflation demanded by Vodafone by proposing to round up of calls less than 1 minute to a full 1 minute charge.*

Revised undertakings, if accepted, would prevent competition

8. The latest revised undertakings from Vodafone and Telecom continue to be vastly in excess of any reasonable measure of cost and would result in their continuing to be unfairly subsidised by their competitors. Telecom's SMS price encourages increased retail prices, not reductions, as operators will compete to be net receivers of traffic.
9. The rates offered prevent competitors from matching their on-net retail prices without incurring a loss and ensure that no other operator can compete effectively in New Zealand.
10. Vodafone and Telecom are still yet to provide undertakings that are close to the international benchmarks reported by the Commission. Vodafone's voice termination rate effectively starts at 288% of the benchmarks (when uplifted by 25% for its first minute rounding up), and Telecom's voice termination rate is 231% of the benchmarks in 2010.
11. Furthermore, the undertakings themselves contain delays for the reduction of MTRs through the use of very protracted glide paths. Only in 2015 does Vodafone's voice termination rate reduce to a level that meets the Commission's recommended cost. In 2015 Telecom's price would still remain at 184% of the Commission's benchmarks for that year. Glide paths delay or reduce the benefits of regulation (ie cost-based pricing) – they prolong the harm to consumers and jeopardise competition, with Vodafone and Telecom presumably hoping that new entrants will be unable to withstand the high MTRs in the short term. Consumers should not have to wait six years to see the benefits of lower MTRs, nor should new entrants have their businesses penalised for such a period.
12. There is no evidence that glide paths are justified, and they were not utilised when setting the rate for interconnection with Telecom's Fixed PSTN. No harm has been displayed, although prices dropped by nearly 60% overnight.



13. Vodafone and Telecom are not motivated to reduce MTRs, as over the last decade mobile operators have received monopoly rents of around \$2.4 billion from fixed line operators. Furthermore, it is commonly accepted that high MTRs act as a barrier to entry in the mobile market.
14. The undertakings process has been ongoing for ten months now, and neither incumbent has come close to the Commission's cost benchmarks. The Commerce Commission, which is a highly specialised body with a Telecommunications Commissioner and dedicated staff, has conducted a detailed analysis of the market failure in New Zealand mobile telephony and the considerable benefits to consumers of regulation and the increased competition that would result.
15. It is clear that the Commission should recommend to the Minister the regulation of MTAS without delay.

The undertaking process has been abused by Vodafone and Telecom

16. The undertakings regime was incorporated into the Telecommunications Act as part of the 2006 amendments. The regime allows an access provider to submit proposed terms and conditions of supply of a service that the Commission is proposing to regulate, as an alternative to regulation. The benefit to providers is that commercial agreements can be implemented quicker with less resources and more efficiently, providing greater certainty to the market.
17. By using the undertakings regime as a source of substantial delay, Vodafone and Telecom are effectively gaming the process set up by the Telecommunications Act to give mobile networks an opportunity to avoid the red tape of regulation. This is a blatant abuse of the system, and was not the intention of Parliament.

Conclusion

18. The undertakings process is not working and can no longer be considered to be the appropriate place to determine MTAS pricing.
19. Vodafone and Telecom have been given numerous opportunities to put their "best foot forward" with commercial offers, and should not be given any further opportunities to delay matters. They cannot keep asking for "one more chance", and then keep abusing it.



20. We urge the Commission to reject the current undertakings put forward by Vodafone and Telecom and to recommend that the Minister regulate MTAS.

Yours sincerely

Airnet NZ Ltd

Consumer NZ

Federated Farmers

Federation of Maori Authorities

NZUSA

TUANZ

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