

**MTAS Conference  
2<sup>nd</sup> and 3<sup>rd</sup> September 2009  
Agenda Item 6**

**INTERCONDITIONALITY PROVISIONS IN THE TELECOM REVISED  
UNDERTAKING**

1. The Commission has indicated that it wishes to discuss the reciprocity provisions of the Telecom revised undertaking. We assume the Commission is referring to the inter-conditionality of the undertaking, which we discuss further in this note.
2. Clause 3 of the Telecom revised undertaking provides:

***“... Terms and conditions***

*Telecom undertakes to the Commission that, during the period that this undertaking has legal effect, it will provide the Services (as set out in Schedule 3 of Annexure 1) at the prices and on the terms and conditions and within the time periods specified in Annexure 1 to any Access Seeker, provided that Vodafone New Zealand Limited and Two Degrees Mobile Limited have each (simultaneously with the registration) executed properly completed Deeds of Acceptance in the form set out in Appendix B of Annexure 1.”*

3. The 2degrees undertaking submitted on 22 December 2008 was inter-conditional in substantially the same way as the Telecom revised undertaking, requiring access seekers to offer undertakings on reciprocal terms.
4. The Commission rejected the 2degrees undertaking on the basis that it would not be operable on acceptance by an access seeker, stating:

*“...as 2degrees’ undertaking is contingent on both Telecom and Vodafone accepting its terms, it is not appropriate or certain enough to be accepted as being compliant with clause 3(1) of Schedule 3A of the Act, and therefore is not capable of acceptance by the Commission. 2degrees were invited to ensure that their undertaking is capable of independent acceptance by Telecom, Vodafone and other access seekers”<sup>1</sup>*

5. We agree with the Commission’s analysis.
6. In respect of the Telecom revised undertaking, there is no evidence that the condition described in paragraph 2 above would be met. The undertaking must therefore be rejected and should not form part of the counterfactual (ie the appropriate counter-factual is the status quo).

**MERW**

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<sup>1</sup> Commerce Commission, MTAS Draft Report, 30 June 2009, para 97.  
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