

**VODAFONE NEW ZEALAND LIMITED SUBMISSION TO
THE COMMERCE COMMISSION**



**Telecommunication Act 2001: Schedule 3 Investigation into
Regulation of Mobile Termination Access Services**

2 October 2009

[PUBLIC VERSION]

CONFIDENTIALITY

Confidentiality is sought for that information included in square brackets in the confidential version of this submission and designated as VNZAPI (Vodafone - designated Additional Protection Information) or VNZRI (Vodafone – designated Restricted Information) pursuant to the Commission’s confidentiality order dated 6 November 2008.

We are providing you with this information on a strictly confidential basis. The information is highly confidential and commercially sensitive to Vodafone because it is not generally known to our competitors. If this information were to be made available, it would unreasonably prejudice the commercial position of Vodafone. This highly sensitive pricing information must be protected from disclosure to protect Vodafone’s commercial position.

Accordingly, for the reasons set out above, this information should not be made available pursuant to any request made under the Official Information Act 1982.

Should the Commission decide to make the information available following a request, despite the reasons set out above, please provide Vodafone with not less than three working days notice so that it has the opportunity to seek to protect its position.

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Executive Summary

1. Vodafone welcomes the opportunity to provide a revised undertaking to the Commerce Commission as part of its Schedule 3 Investigation into mobile termination access services (**MTAS**).
2. Vodafone has consistently maintained over many years that commercial solutions are to be preferred to regulation wherever possible. We have demonstrated this on a number of occasions, including by:
 - entering into a Court-enforceable mobile termination rate (MTR) Deed with the Minister of Communications in April 2007 to voluntarily lower voice termination rates;
 - agreeing highly favourable mobile termination rates for 2degrees in our “secret deal” MTAS interconnection agreement (ICA) in September 2008;
 - reaching commercial agreement on mobile co-location arrangements (of which 2degrees has subsequently declined to avail itself); and
 - demonstrating a consistent pattern of being willing to reach commercial agreement on reasonable terms and conditions with regard to national roaming.
3. Vodafone believes voluntarily provided commercial arrangements (such as undertakings) provide significant benefits for industry participants and consumers. They provide benefits for industry participants by avoiding the need for long drawn-out regulatory (and potentially court) proceedings to determine regulated rates for services. They provide value for consumers because they can ensure the benefits of price changes for potentially regulated services are made available well in advance of when they could be achieved under regulation.
4. Vodafone strongly believes that the present circumstances do not warrant drastic changes to the price of the MTAS in New Zealand, and has provided detailed arguments, evidence and submissions in support of this view throughout this investigation.
5. It is apparent, however, that the Commission does not share our views on all key matters relevant to this investigation. It has instead expressed a number of draft and preliminary views that suggest it believes the price of the MTAS should be subject to significant reductions. While we do not agree with its views on these matters, we are troubled by the on-going uncertainty around this issue dating back to the Commission’s initial investigations in 2004, and the distraction it continually causes for our business. We would like to finally resolve the issue of mobile termination without recourse to further regulatory disputation.

6. In this context, we are pleased to provide a revised undertaking to the Commission that averts the need to formally regulate the price of this service. In this regard, our revised undertaking involves:
- an immediate 87.4 per cent drop in SMS termination rates to 1.2 cpt on 1 April 2010; and
 - an immediate 20 per cent drop in voice termination rates to 12 cpm from 1 April 2010, with a further decrease to 10.5 cpm within a further nine months. Over the life-time of the undertaking, the voice termination rates will reduce by 80 per cent to be only 3 cpm by 1 January 2015.
7. These initial reductions will commence well in advance of regulation if the MTAS is designated, and will, using the Commission’s own cost-benefit model, provide around \$31.5 million in benefits to consumers during 2010 alone¹. It will also ensure the price of mobile termination glides to match the Commission’s most recent estimates of cost by the end of the undertaking.
8. If the Commission accepts our undertaking, 2degrees can choose either to stay on its existing ICA with us, or switch over to the undertaking at a time of its choosing. It can decide which of these options provides a better solution for it. In the short-term, 2degrees will be able to receive rates [] VNZAPI than those in the undertaking, as it is currently paying us [] VNZAPI on a [] VNZAPI basis. We would also note the ICA is [] VNZAPI its ability to compete with us given the [] VNZAPI rates contained within it. To date, we estimate we have accrued a [] VNZAPI of over [] VNZAPI under the terms of the ICA. This is superior to the situation it would face if the MTAS were regulated at the rates contained in the Commission’s Draft Report.
9. The remainder of this document provides high-level points on a number of key aspects of our undertaking. In particular, it:
- shows that SMS termination rates in our undertaking ensure there is no remaining reasons to regulate the price of the service;
 - demonstrates that we are able to achieve a 30 per cent decrease in voice termination rates via our undertaking before the Commission can reduce prices under regulation;
 - explains how we have responded to signals from the Commission about the price of

¹ Assuming out undertaking rates are matched by Telecom if it were to put forward a revised undertaking.

voice termination by lowering our prices to match the Commission's estimates of cost by the end of the undertaking, while ensuring 2degrees still pays rates below measures derived from on-net retail rates; and

- re-inforces the need for regulated rates to contain a glide path of staggered rate reductions in line with international best practice.
10. Each of these points is discussed in greater detail below. We will provide a more detailed submission commenting on our undertaking, and those that any other party may provide, within the Commission's 2-week consultation period.
 11. The document also provides a high level summary at Appendix A of the main changes made to our previous undertaking submitted on 6 May 2009.
 12. Vodafone's undertaking demonstrates our genuine willingness to find constructive solutions that avoid the need for regulation. We recommend the Commission find that it should be accepted in lieu of formal regulation of the service.

1.2cpt for SMS termination means the Commission's concerns around SMS can be immediately resolved

13. Vodafone's revised undertaking would see the price of SMS termination immediately drop to 1.2 cents per text (cpt) from 1 April 2010. This would represent a decrease of 87.4 per cent compared to our standard market rate of 9.5 cpt. This rate could also be available to access seekers well ahead of when regulated rates could be set. In this regard, the Commission has previously indicated it will be unlikely to be able to set MTAS rates under regulation until 2011 at the earliest.
14. 1.2 cpt has been chosen as this represents our estimate of 41 per cent of the average retail on-net rate for SMS calls in New Zealand. This is the measure referred to by Commissioner Mazzoleni at the MTAS Conference where she indicated that:

... given the mobile termination costs that operators currently charge themselves for 80 to 90% of the traffic, the Commission considers at this stage that it would find it difficult to recommend grounds for acceptance of undertakings that are materially different to those initial prices.

...

*We assume some retail costs can come out of that.*²

15. SMS has been the subject of intense competition between Vodafone and Telecom for a number of years. Telecom has previously launched high value text offerings such as \$10TXT, and we have offered competitive products such as TXT600; TXT2000; BestMate and Family which all provide great value text offers to consumers. These offers come in many forms – some of them providing great on-net rates; others providing exceptionally low off-net rates. As a result, our submissions throughout this investigation have shown that our retail SMS prices are some of the lowest in the world, and that New Zealanders have responded to these low prices by consuming more SMS per consumer than other comparable countries throughout the world³. Vodafone and Telecom are clearly competing very hard already to win customers on the basis of SMS rates.
16. The concern raised throughout this investigation is that a new entrant will not be able to break into this market if SMS termination rates are set too high. We have argued these

² See Mobile Termination Access Services Conference Transcript (Day Two), 3 September 2009 at p. 214. The average retail price minus 18 per cent and divided by two is 41 per cent of the average retail price.

³ See Figures 6 and 8 of Vodafone's 18 August 2009 cross-submission following the Commission's Draft Report at p. 26 and p. 28.

concerns are unfounded because SMS traffic flows tend to balance out between interconnecting networks due to the 2-way nature of SMS communication – i.e. if I send you a text, you generally send one back. That means changing SMS termination rates will have a minimal impact on net payments between interconnecting mobile operators, and therefore their ability to compete with each other. Historic data shows this to have largely been the case between Telecom and ourselves; and data since 2degrees' launch is showing this to again be the case now.

17. We have also previously moved to address the concerns of others by entering into an agreement with 2degrees that provides it with highly favourable and generous SMS interconnection rates. Indeed, since launch, our data shows that 2degrees has been a net [] VNZAPI of SMS termination revenue [] VNZAPI. 2degrees will be able to stay on this arrangement for as long as it wants – even if the Commission accepts our undertaking.
18. Vodafone has never been convinced that regulation is needed for this service. It is not regulated anywhere else in the developed world other than in France, and New Zealand consumers get better retail value for SMS than other parts of the world. Our rate of 1.2 cpt will now be less than the 3 to 3.5 euro cpt (i.e. 6.1 to 7.1 NZ cpt⁴) rate presently set by the French regulator ARCEP. It will also make SMS termination rates the lowest of any of our operating companies that we are aware of⁵.
19. With a rate of only 1.2 cpt made available in our undertaking, there is now simply no basis to recommend regulation of this service. Pursuing a regulatory path will only involve launching into further regulatory processes to determine text-book optimal prices; potential modelling of the cost of the service; and on-going disputation in the industry. Such activity is unlikely to be of any serious benefit to anyone.

Voice rates will fall by 30 per cent under our undertaking before the Commission can set regulated prices

20. Under the terms of our undertaking, the price of voice termination will fall immediately from current rates to 12 cpm on 1 April 2010. The rate will then fall further to 10.5 cpm nine months later. This represents an overall fall of 30 per cent from the current rate of 15 cpm. Following that, the rate will trend down to 3 cpm by 1 January 2015.
21. In contrast, if the Minister decides to designate the MTAS, Vodafone and Telecom will no

⁴ Using today's spot exchange rate of 1 euro dollar to 2.04 NZ cpm.

⁵ See Figure 6.1 of Vodafone's May 2009 submission in response to the Commission's preliminary views at p. 59.

longer have an obligation to the Crown to lower their voice termination rates in line with their obligations under the existing MTR Deeds, or to pass through any further reductions to retail consumers. The Commission will also most likely have to embark on a standard terms determination (STD) process at great cost to the industry to set regulated prices, and potentially be asked to develop a formal cost model to set prices for the service during 2011.

22. Using the Commission's own cost-benefit model, proceeding down the regulatory route will cost consumers around \$31.5 million during 2010, and there can be no certainty where rates will end up after 2011. With our undertaking, all industry participants can have greater certainty now as to the level of mobile termination rates in the future. This will bring an end to many years of disputation on this issue, and provide a stable regulatory environment from which all parties – and especially mobile operators – can make investment decisions (including with respect to 4G LTE technology) with greater confidence over the regulatory settings that will apply to revenues they can expect to earn from mobile termination.

Our voice undertaking responds to key signals from the Commission

23. Not only does our undertaking include a 30 per cent decrease in voice termination rates ahead of when prices would be set under regulation, it also converges over the time with the long-term estimates of cost contained in the Commission's Draft Report. By the end of the undertaking, our rates will have fallen 80 per cent, and lie at prices marginally below the Commission's latest cost estimates for 2015.
24. Further, and as indicated above, the Commission made clear at the conference that termination rates should not be above 41 per cent of the average on-net retail voice price for the industry. We believe this is achieved in two key respects:
 - the initial 12 cpm rate is consistent with our measures of what we expect average on-net retail voice prices will be during 2010. A further decrease to 10.5 cpm on 1 January 2011 further enforces this finding; and
 - the terms of our ICA with 2degrees mean it is only paying a price of [] VNZAPI, on a [] VNZAPI basis which is well below our estimates of 41 per cent of the current average on-net retail price in New Zealand.
25. While Vodafone continues to have very strong concerns with the way the Commission has sought to benchmark its cost estimates for voice termination, and does not share its concerns around the level of on-net pricing occurring in the industry, we offer the rates in our undertaking as a constructive way to move forward on this issue. Importantly, we believe the rates in our undertaking strike the right balance between ensuring voice termination rates do not fall below reasonable estimates of the cost of providing the service in the short-to-

medium term, while affording us time to adjust to the Commission's indications about its belief on where costs will lie in the future.

International best practice requires mobile termination rate reductions occur over a glide path

26. As noted by the Commission at the MTAS public meeting on 23 September 2009⁶, Clause 4 of Schedule 3A of the Telecommunications Act (the Act) indicates that the Commission may not recommend an undertaking for acceptance unless it complies with the standard access principles in Schedule 1 of the Act. In this regard, Access Principle 2 requires any undertakings received to be consistent with international best practice. The Commission has also previously stated that it is appropriate for the standard access principles to be built into the terms of any STD⁷. An example of this is in the Mobile Co-location STD⁸.
27. Material provided by Analysys Mason shows that it is international best practice for regulators to apply a glide path when setting regulated rates for mobile termination⁹. Importantly, these glide paths are price glide paths – and not simply cost glide paths. The distinction is important – overseas regulators do not generally start their price paths from their estimate of the total service long-run incremental cost (TSLRIC) of providing the service.
28. We have provided detailed submissions on why a glide path is important when considering deep cuts to mobile termination rates.¹⁰ Rapid reductions in mobile termination rates quickly change the profitability of existing retail rates for different customer segments. This has been recognised by the UK Competition Commission, who earlier this year set out concerns about the impacts of moving to bill and keep pricing arrangements for low-spend pre-pay consumers. It is the consequences of reduced termination rates on retail pricing for mobile consumers that leads regulators to adopt a phased approach to reducing mobile termination rates.

⁶ See Commerce Commission, *MTAS Investigation Public Meeting Re Clarification of Matters for Submission of revised Undertakings*, 23 September 2009, at p. 11.

⁷ See Commerce Commission, *A Guide to Regulatory Decision Making by the Commerce Commission for the Telecommunications Sector*, 31 July 2009, at para [195].

⁸ Mobile Co-location General Terms, Clause 2.3.

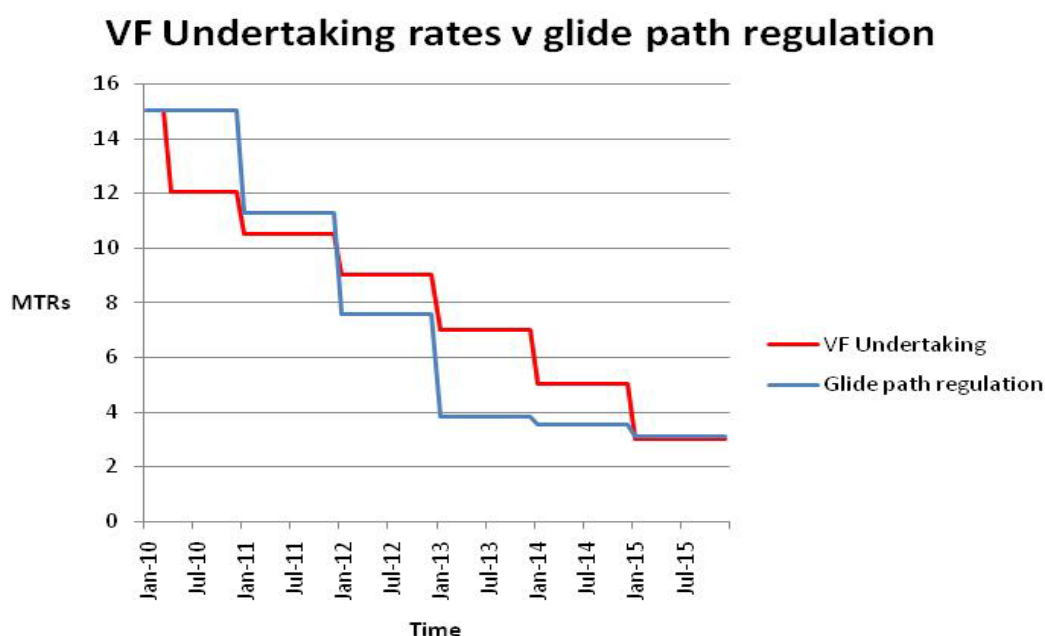
⁹ Analysys Mason, *Assessment of the position of the Commerce Commission of New Zealand in determining MTAS prices*, 27 July 2009, at pps. 21 – 23.

¹⁰ See, for instance, Section 5 of our May 2009 submission in response to the Commission's preliminary views at pps. 52 – 57; and Section E of our FTM voice termination and Section D of our MTM voice termination in our 28 July 2009 submission in response to the Commission's Draft Report at pps. 65 – 69 and pps. 94 – 98.

29. Given it is international best practice to include a glide path for prices towards costs (and not an immediate drop in prices to cost that then follow a cost path), we have also adjusted the expected prices that would be set under regulation in the Commission’s Draft Report to include a glide path of 3 years. In this regard, we believe the cost estimates contained in the Commission’s Draft Report should be adjusted to match the following path¹¹:

	2010	2011	2012	2013	2014	2015
Glide path costs	15	11.3	7.6	3.8	3.5	3.1

30. These rates are then compared to the rates set out in our undertaking below:



31. Comparing the rates shows that access seekers would receive considerably lower voice termination rates in the early years of our undertaking; pay higher rates than regulation during the middle years of the undertaking; and then be in line with the Commission’s most recent estimates of cost by the end of the undertaking.

32. As indicated further below, we have estimated consumers will be better off, on balance, with the rates set out in our undertaking than the rates we expect under regulation.

¹¹ The rates set out in the Draft Report have been discounted to take effect of minute plus second rounding for comparison purposes. The discount is the 23 per cent mark-up referred to at the MTAS Conference by Mr Walmsley. See MTAS Conference Transcript at p. 171 – 172..

Vodafone's undertaking provides better outcomes for consumers if simple assumptions are accepted

33. Throughout this investigation, Vodafone has presented evidence in support of a number of key issues. The Commission has not, to date, accepted our views on any of these points. For instance, while the Commission believes FTM pass through will be as high as 85 per cent as soon as it regulates in 2011 and rise to 100 per cent by 2015, the evidence provided by Covec suggests pass-through has been only around 41 per cent in the past¹² (with smaller fixed-line operators passing through significantly less than this amount¹³). Evidence supporting the claims made by some fixed line operators that pass through has occurred in some other way through bundled pricing has not been made available to interested parties. Further, the Commission appears to think that mobile operators will not adjust their retail operations in any significant way if termination rates fall heavily overnight¹⁴. This is in contrast with econometric studies overseas¹⁵, and the expectations of other regulatory authorities. We believe these two factors suggest that lowering mobile termination will not lead to the types of consumer benefit the Commission envisages. In short, we think the Commission over-estimates the extent to which fixed consumers will benefit from lower FTM termination rates; and under-estimates the extent to which mobile consumers (especially low-spend pre-pay consumers) will experience detriments following reduced rates.

34. With regard to costs, the Commission released a cost benchmark estimate at the commencement of this investigation of 10.75cpm. It is important to note that this rate is []

VNZAPI.

35. The Commission's initial cost estimate was calculated by determining the median of regulated prices set by regulators that had constructed a cost model to estimate the TSLRIC of providing the service. This approach to benchmarking appears consistent with the wording of the initial pricing principle (IPP) contained in the Commission's Draft Report.

36. Based on material provided by Covec during this investigation, and acknowledging the views of Analysys Mason on the suitability of excluding France from the Commission's benchmarking analysis and including Hungary, we believe the current median of the prices set by regulators who have constructed an appropriate cost model from overseas is 12.38 cpm.

¹² Covec, *MTAS Regulation Quantitative Analysis*, 27 July 2009, at para [4] on p. 3.

¹³ See Covec, *Further Analysis of FTM Pass-through*, 11 August 2009, at para [6] on p. 2.

¹⁴ See Commerce Commission, *MTAS Investigation Public Meeting Re Clarification of Matters for Submission of Revised Undertakings*, 23 September 2009, at p. 18.

¹⁵ See, for instance, Genalkos and Valletti, *Testing the Waterbed Effect in Mobile Telephony*, as referred to in fnote 63 of our 28 July 2009 submission in response to the Commission's Draft Report.

37. We believe there are strong arguments for suggesting the Commission should use a benchmark that represents the 75th percentile of prices set by regulators in overseas jurisdictions. This was the approach previously used by the Commission and would, based on evidence presented during this investigation, indicate a cost benchmark of 14.3cpm.
38. During the second half of this investigation, however, the Commission has favoured benchmarking against the median of raw cost model outputs from those regulators who have constructed a TSLRIC model. We have expressed grave concerns with this change in approach, and note that Analysys Mason (the world's foremost mobile termination cost modelling expert who has constructed 7 of the 9 cost models against which the Commission conducts its benchmarking exercise) has been highly critical of the Commission's new approach to benchmarking¹⁶. We also believe this new approach is inconsistent with the IPP in the Draft Report, and with the approach taken for other regulated services.
39. We believe a reasonable range of estimates for the 2009 benchmark cost of providing the MTAS lies between 10.21 cpm (the median of raw cost numbers from appropriate overseas jurisdictions, as identified by Analysys Mason and Covec) and 14.3 cpm (the 75th percentile of prices set by those regulators who have constructed an appropriate TSLRIC cost model). A reasonable approach to benchmarking would set a number somewhere within this range if regulated prices were set in 2009. The mid-point of this range is 12.26 cpm.
40. Understandably, the Commission expects cost estimates to decrease over time. We accept this point of view. The extent to which costs will come down over time is, however, less clear. The Commission indicated in its Draft Report that a cost decrease of 10 per cent per annum was appropriate for the purposes of its cost-benefit modelling, in line with the cost model constructed by the Swedish regulator¹⁷. In contrast, Analysys Mason¹⁸ and Covec¹⁹ have both noted there is more evidence available on cost paths from the other regulated models considered by the Commission in its Draft Report. If the median of this greater range of cost paths is used, Covec have shown this would imply an annual cost decrease of only 4.7 per cent each year.²⁰ We continue to believe this is the correct assumption to apply when estimating cost decreases over time.
41. All that said, the Commission has made it clear that it does not want this opportunity to provide revised undertakings to be used as a forum to provide further submissions on these points. Accordingly, for the purposes of modelling the impacts of our undertaking on

¹⁶ See, for instance, Analysys Mason, *op. cit.*

¹⁷ See Commerce Commission, *MTAS Draft Report*, para [516] at p. 124.

¹⁸ See Analysys Mason, *op. cit.*, at pars [23] – [30] at pps. 14 – 17.

¹⁹ Covec, *op. cit.*, para [9] at p. 3.

²⁰ Covec, *Ibid*

consumer welfare as compared to those one would expect under regulation, we have applied the mid-point of the Commission's preferred assumptions on the extent of the waterbed effect in its FTM cost-benefit model²¹. With respect to FTM pass-through, we have assumed there will be no difference to the extent of pass-through with or without regulation. In this regard, we have applied a pass-through assumption of 100 per cent in both contexts to reflect the Commission's apparent view that the pressure to pass-through reductions is already strong absent regulation.

42. We also note that we have removed from our initial undertaking the 100 per cent reciprocal pass-through obligation for FTM termination. The Commission, TUANZ and other parties appear to believe commitments to ensure 100 per cent pass through to consumers are of little benefit to them, and would rather place their faith in competition at the retail level ensuring reduced termination rates lead to lower prices for consumers. We have not seen any evidence to support this assertion in New Zealand or overseas, and note other regulators (such as the ACCC in Australia) have commented favourably on the existing pass-through commitments in New Zealand²². While we believe the 100 per cent pass through commitments have provided great value to New Zealand consumers in recent years, and the previous government recognised this in accepting Vodafone and Telecom's MTR Deeds, there is little point continuing with them if the Commission does not believe they are valuable for consumers.
43. With regard to the costs of providing mobile termination, we simply cannot accept that 7.16 cpm is a reasonable benchmark estimate for New Zealand in 2009. At a minimum, the Commission must update its country selection for its benchmarking exercise to follow the advice of Analysys Mason and Covec. As indicated above, using the median of raw cost estimates from a more appropriate selection of overseas cost models gives a rate of 10.21 cpm. While we believe an appropriate cost benchmark should lie above this level, we have none-the-less applied 10.21 in the Commission's FTM cost benefit model to analyse the impacts of the undertaking versus regulation. Despite our serious reservations about the Commission's methodology for estimating a cost path over time, we have also applied a rate of 10 per cent per annum in our estimations.
44. When these assumptions are combined with our view that regulation should include a glide path of at least three years, the Commission's model shows that consumers will be better off if the Minister accepts regulation rather than if the MTAS is designated by between \$18.6 and

²¹ That is, in the MTAS Draft Report, the Commission suggested a range for the waterbed effect of between 0 and 50 per cent. We have therefore applied a rate of 25 per cent in our modelling.

²² See ACCC, *Draft MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011*, November 2008, pps. 18 – 19.

\$21 million over the next 5 years.

45. In reaching this conclusion, we have relied on two other key assumptions in the modelling analysis:

- that a rate of 15cpm (set on a minute plus second basis) will apply under designation during 2010, consistent with the views of the Commission²³; and
- that the oversight in capturing the impacts of the waterbed effect in the Commission's cost-benefit, as identified by Covec²⁴, is corrected.

²³ See See Commerce Commission, *MTAS Investigation Public Meeting Re Clarification of Matters for Submission of Revised Undertakings*, 23 September 2009, at p. 18.

²⁴ See Covec, *op. cit.*, at para [146] at p. 31

Conclusion – our undertaking gets the balance right

46. Our undertaking can immediately solve all concerns the Commission might have around SMS termination. An immediate drop to 1.2 cpt from 1 April 2010 will ensure any lingering concerns around the impact of SMS termination on competition in the retail mobile services market are removed. By retaining a non-zero rate for SMS termination, there should also be some level of deterrent for SMS spam that would not be there if SMS was set on a BAK basis.
47. With regard to voice termination, we offer a compromise consistent with international best practice. Voice termination rates will fall by 20 per cent immediately on 1 April 2010, and by a further 12.5 per cent at the start of the 2011. This will all occur before the Commission is likely to be able to set regulated rates under an STD. Further, over the period of our undertaking, our voice termination rates will move to match the Commission's estimates of cost as set out in the Draft Report. What we ask in return is that we be afforded a glide path towards this convergence of prices with the Commission's views on cost. This will enable us to better manage and phase in the effects on consumers (especially low-spend pre-pay consumers), and give us time to adjust our business to the large reductions in mobile termination rates that we had not anticipated when we entered into the MTR Deed with the Crown, and which we had expected would apply until 2012.
48. By combining large up-front reductions, and eventual alignment of prices with the Commission's cost estimates, we can demonstrate that consumers will be better off using the Commission's cost benefit model. All that is needed to demonstrate this is a change in view from the Commission as to an appropriate starting benchmark cost estimate, and recognition that a glide path is consistent with international regulatory best practice. The Commission does not need to accept our other assumptions on input parameters into its cost-benefit model.
49. To the extent the Commission is concerned about the ability of 2degrees to compete in this environment while voice termination rates follow the glide path set out in our undertaking, we would note three things:
- our on-net discounts around voice are far more limited than the Commission may appreciate – they are generally limited to closed-user group offerings that offer lower rates to call only a small set of customers. Over [] VNZRI of our pre-pay customers do not purchase an on-net bundle at all;
 - 2degrees is not presently paying our standard market rates for voice termination – it is presently paying only [] VNZAPI, and

can continue to do so even if the Commission accepts our undertaking, while still enjoying the benefits of [] **VNZAPI**; and

- these rates are below our estimate of 41 per cent of the average industry on-net rate for voice.

50. In other words, 2degrees is already receiving from us a rate [] **VNZAPI** than the rate Commissioner Mazzoleni indicated prices should be below at the MTAS Conference. The glide path in our undertaking will therefore not impinge upon its ability to compete in the retail mobile market.
51. We trust the Commission shares our view that undertakings – where acceptable – are to be preferred to regulation.
52. The Commission faces a difficult challenge in this process as it may receive more than one revised undertaking for the MTAS. These undertakings may, or may not, be broadly consistent with each other.
53. If revised undertakings are provided by other parties that are dissimilar to ours, we would be keen to work with the Commission and other industry participants to find an acceptable industry solution to this issue.
54. We believe the solution contained in our undertaking represents a powerful case not to formally regulate the MTAS. We look forward to resolving this issue once and for all without recourse to further regulatory intervention on this issue.

Appendix A – Summary of changes made to Vodafone’s 6 May 2009 undertakings

Vodafone has made a number of changes to its undertakings of 6 May 2009 (**May Undertakings**). We have provided both clean and marked-up versions of Vodafone’s revised undertaking. The marked-up version shows changes that have been made to the May Undertakings, except for the obvious drafting changes made as a result of the consolidation of the May Undertakings. In addition to the price changes for voice and text, the material changes are as follows:

1. **Services Commencement Date:** Vodafone has amended the definition of *Services Commencement Date* at clause 1.62 of Schedule 3 to provide for the same service commencement date for each service that comprises the MTAS.
2. **Set-up Charges:** In its undertaking of 12 January 2009, Telecom included a number of charges, including a set-up charge, that an Access Seeker would pay Telecom. In its Draft Report the Commission stated that its preliminary view was that the set-up charge appears reasonable.²⁵ We have inserted a new clause 16.1 in Schedule 3 which is based on the relevant provision in Telecom’s undertaking.
3. **Reciprocal pass-through obligations:** As mentioned in the main body of this paper, Vodafone has removed clause 3 of Annex 1 to Schedule 4 relating to reciprocal pass-through obligations for the fixed-to-mobile service.
4. **Termination:** Vodafone has inserted a new clause 6.2 to Schedule 3, to make it clear that an Access Seeker is unable to terminate the actual undertaking if the MTAS becomes a designated service. Instead, an Access Seeker is able to terminate its rights and obligations with respect to Vodafone (as opposed to the undertaking itself), thereby leaving the undertaking in place for use with any other access seekers. Clause 2.1(b) of the main body of the undertaking has been amended for the same reason.
5. **Consolidation:** Vodafone has consolidated the May Undertakings into one undertaking. This has meant that a number of consequential amendments were necessary.

²⁵ Commerce Commission, *MTAS Draft Report*, at para [926].