



3 May 2010

Shane Kinley  
Commerce Commission  
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Dear Mr Kinley

### Submission on Vodafone's new retail plan

#### Introduction

1. Drop the Rate, Mate! is a public campaign launched in August 2009 to support the regulation of mobile termination access services (**MTAS**) in order to promote stronger competition in the mobile phone market.
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 more than 12,000 Kiwis who are registered supporters of our campaign.
4. We welcome the opportunity to provide the Commerce Commission with a submission on Vodafone's new retail plan, which has been released since the Commission made its final recommendation on MTAS on 22 February 2010.

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### **Vodafone's new plan is anti-competitive**

5. Vodafone's new "Talk Add-on" plan allows Vodafone's prepay customers to purchase 200 minutes of voice calls for \$12 per month, but only when calling other Vodafone mobiles or landlines. This works out as 6c per minute calling; far below the 89c charged for calls to mobiles on other networks.
6. We welcome competition and lower pricing for our supporters but not at the expense of a fully functioning, efficient market. If operators are allowed to charge their own customers less for calls than they charge competitors for making calls to their customers, then competition will be stifled and the long term benefits of competition will be lost for New Zealand consumers.
7. Competition is critical to providing the incentives for operators to invest in innovation and differentiation. Improved rural coverage for voice and improved data speed and accessibility are areas where we expect improvements if competition is allowed to flourish.
8. Significant on-net discounting by networks that have a large market share creates "closed" networks, which are a barrier to entry, restricting the ability of a new entrant to compete for customers. A company with a small share of the mobile market, like 2degrees, cannot match Vodafone's new on-net retail prices without incurring a loss, ensuring that no new operators can compete effectively in New Zealand. Similarly, fixed line providers cannot match a 6c price for calls to mobiles unless they run at a loss. Access prices must be lower than retail prices and regulation to cost is necessary.
9. There is already limited competition in the mobile market in New Zealand. A lack of competition means that Kiwi consumers lag behind other OECD countries in terms of call pricing (particularly in the prepaid market, which makes up two-thirds of New Zealand's mobile market), mobile usage and investment in new technologies. In terms of mobile network investment by the large operators, New Zealand sits at the bottom end of the most recent OECD rankings, between Poland and the Slovak Republic.
10. Thanks to a lack of competition, New Zealand consumers are worse off than their counterparts overseas. Vodafone's actions in announcing its new plan will make the situation even worse.



### **The voluntary regulations were intended to address competition issues**

11. Telecommunications Commissioner Ross Patterson said two weeks ago that the Commission had recommended acceptance of Vodafone and Telecom's undertakings on the basis they would address competition issues.<sup>1</sup>
12. The assumption inherent in the Commission's final recommendation to the Minister was that the difference between off-net prices and on-net prices would decrease over time. Instead, even before the final decision about MTR regulation has been made, Vodafone is causing the gap between on-net and off-net pricing to get larger.
13. It is clear that voluntary reductions in mobile termination rates will not appropriately address competition issues in MTAS as they are still significantly in excess of any reasonable measure of cost, and that regulation to cost is required – as has been determined in every other country bar Mexico.

### **Further delay cannot be tolerated**

14. The 2006 amendments to the Telecommunications Act were intended to remove lengthy delays in decision-making by giving mobile networks an opportunity to avoid regulation by providing a voluntary undertakings regime. However, Vodafone and Telecom have been able to use the undertakings regime as a source of substantial delay in the investigation into MTAS, which is an abuse of the system and plays into the hands of incumbents. Delay provides significant financial benefits to incumbents. They should be afforded no further favours and do not require ongoing subsidies from the rest of the industry.
15. The more than 12,000 members of Drop the Rate, Mate! have been waiting for competition in the mobile market for years, and this cannot occur unless the Commission supports regulation, and does so with haste.

### **Conclusion**

16. The undertakings process has clearly not worked and can no longer be considered to be the appropriate place to determine MTAS pricing.
17. Vodafone has shown that it does not intend to close the gap between on-net and off-net pricing, but will strategically manoeuvre an increase in the differential. Regulation is therefore essential.

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<sup>1</sup> <http://www.stuff.co.nz/business/industries/3600262/Vodafone-add-on-under-scrutiny>.



18. We urge the Commission to recommend that the Minister imposes international best practice by regulating MTAS to cost.

Yours sincerely

The Members of Drop the Rate, Mate!