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Dear Commissioners

Mobile Termination Access Services – Commission Monitoring of On-net Retail Prices

I write regarding our understanding that Vodafone's latest on-net retail price offer of 200 on-net minutes for \$12 will result in a number of trigger points referenced in the Commission's Final Report being met such that immediate action and further investigation by the Commission is warranted.

The Final Report recognised that discriminatory retail pricing represents a significant barrier to entry and efficient competition. That is why the Commission undertook to monitor on-net prices and commence a further investigation to consider whether further regulatory intervention is required in the event on-net prices declined at more than the 5% pa assumed by the Commission.

It would appear extremely likely that the Vodafone offer will do just that. If the Minister accepts the Recommendations in the Final report, we will in all likelihood start a new regulatory investigation into MTAS or related issues within a matter of weeks. I believe that action now by the Commission is required to prevent that eventuality.

We welcome the competitive response that has come about as a direct result of the value that 2degrees has provided to customers and as a result of the proposed reduction in MTRs. However, the Vodafone offer exposes the fact that the real cost of mobile termination must be well below the rates recommended by the Commission in the Final Report. It is also almost certain to result in a re-investigation of the issue as a result of the Commission's own assumptions and conclusions about a competitor's ability to compete with average on-net pricing of incumbent operators.

I ask that you take immediate steps on this issue as we do not have the luxury of time. First, and most importantly given the critical timing of the imminent Ministerial decision, if the Commission considers that the thresholds set in the Final Report have been, or are likely to be breached by this offer, then you should inform the Minister immediately and ask that he does not accept the Commission's recommendation before you have determined whether there is a case for further regulatory intervention.

We consider that Vodafone's on-net pricing offer, which is currently being made available to around 70% of its customers (prepaid customers only), but will be extended to "on-contract" customers later this year according to Vodafone PR executives, will result in on-net prices falling at a significantly greater rate of decline than the Commission assumed in the Final Report raising critical competition issues that we will not comment on in detail here but can do so at your request.

The Commission placed significant weight on its consideration of average on-net pricing in rejecting our calls for retail non-discrimination unless justified on cost grounds and in reaching the conclusion that a new entrant could compete with existing on-net rates.

The Commission concluded at paragraph 954 of the Final Report that it would monitor a number of features of the mobile services market and will consider whether that monitoring indicates any issues which warrant further regulatory intervention. The Commission gave an example of such issues as:

"whether the implied average on-net retail prices are such that they create a barrier to efficient entry and expansion in the mobile services market to the extent that a small MNO is not able to compete effectively".

Vodafone's latest pricing provides an implied on-net retail price of \$0.0225 per leg at full utilisation. This is less than a quarter of the mobile termination rates offered by the incumbent operators in the Final Undertakings that were recommended for acceptance by the Commission to the Minister. Even at 50% bundle utilisation, the implied on-net rate for the offer is just \$0.045.

With 80% of mobile calls already on-net, this offering by Vodafone is extremely likely to reduce average on-net retail prices by more than the 5% threshold referenced by the Commission at paragraph 880 of the Final Report as being the threshold above which it is possible that a barrier to efficient entry could re-emerge.

We consider that the Commission's 5% threshold will almost certainly be breached in a very short space of time, if it has not been already. As a result the Commission will be duty bound to re-investigate the issue as anticipated in the Final Report and we would encourage that investigation to start now. The opportunity exists today for the Commission to notify the Minister that the re-emergence of barriers is an extremely likely outcome of the Vodafone offer. It may be that if the Minister is made aware of the high level of probability that we will be revisiting MTAS in a few short weeks after he makes his decision, then he is very likely to want to know about this development before he makes his decision.

I understand that due process must be followed and that your recommendations are now with the Minister. However, I would like to understand from the Commission whether you consider that under the current process, if new information comes to light that is likely to trigger a re-investigation of the issues under consideration prior to the Minister making a final decision, the Commission considers itself obligated to highlight those risks to the Minister prior to him finalising his decision?

We believe that even if there is no formal process around such an eventuality, the Commission should behave prudently and advise the Minister, prior to him making his decision, of its view of the likelihood of a re-investigation given the new information that has come to its attention.



In our view, the Commission must now write to the Minister advising that it would be unsafe for the Minister to accept the Commission's Recommendation based on the Final Report and that further consideration by the Commission is required if he was minded to accept. We urge the Commission to do so urgently and before close of business this Friday, 16 April 2010.

We also urge the Commission to immediately commence the further investigation anticipated in the Final Report.

I confirm that we have written separately to the Minister in respect of this matter and **attach** a copy of the letter for your reference.

If you would like me to discuss any aspect of this letter with you or your officials I am at your disposal.

Yours sincerely



Bill McCabe

Chief Operating Officer

Two Degrees Mobile Limited