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Wednesday, 28 April 2010

Dr Ross Patterson
Telecommunications Commissioner
Commerce Commission
Wellington

Dear Ross,

Re: MTAS investigation – indicative process and timeline for reconsideration

Late yesterday, I received the Commission’s indicative process for the MTAS reconsideration. I have some concerns and questions about the proposed process.

In particular, we have been requested to provide any relevant information by this Monday. I am concerned at how it is that we can reasonably do so when we do not know what it is that the Commission is concerned about.

To that end, can you please urgently provide us with an explanation of the Commission’s precise concerns with Talk, and more detail about what the Commission considers would be “directly relevant” to the issue the Minister has asked the Commission to reconsider.

You received a copy of a letter Russell wrote to the Minister on Monday. This included some brief details of some of our future retail plans. Perhaps this is sufficient information for the Commission to assess developments in the retail market, as the Minister has requested. But without further information on the Commission’s concerns about Talk, we are not sure what level of information could reassure the Commission that its MTAS recommendation remains appropriate. It seems to me that an alternative process to an exchange of letters would be a face to face conversation where we explain what it is we are planning to do in the retail market, and the Commission explains what it is concerned about and gives us feedback on our plans.

Certainly I was surprised by your comment to the Minister last Monday that our new prepay Talk add-on “may have the potential” to alter the Commission’s MTAS recommendation, which was arrived at following an extensive 18 month consultation and undertaking process. The Commission appears to have formed its view without seeking any information from us on this new add-on, despite the fact that it said it had “reviewed the details” of Talk since it was launched. As you know, we have not been able to engage with you to clarify your concerns on this issue despite requests.

It seems likely that there has been some communication or information from 2degrees, subsequent to the Commission’s final report going to the Minister. Please provide us with copies of all correspondence between the Commission and 2degrees so we can see what it is we have to respond to. We understand that 2degrees at least wrote to the Minister about Talk, although we have not seen that letter. Perhaps that is the source of the Commission

views, or perhaps there is some further correspondence that we have yet to see. I am told the Commission is shortly to ask us to provide a public copy of the letter that Russell wrote to the Minister on Monday. I assume any 2degrees letter will be released at the same time. If not, could you please also provide us with a copy of that letter.

It is not clear to me how the Commission's indicative process for reconsideration accommodates the undertakings regime . I would be grateful if you could please clarify how the process will allow for that.

Finally, if the Commission were to form the draft view that it should now recommend regulation instead of acceptance of the undertakings, we would expect to be given the opportunity to adjust our retail pricing plans to accommodate the Commission's concerns. To us such adjustments are likely to be a faster and more certain way forward for the industry and for consumers than a lengthy and contentious standard terms determination. Again, clarity on how that fits within the Commission's proposed process would be helpful.

My objective with this letter is not to delay what the Commission obviously intends to be a speedy reconsideration, but to ensure that the information that we provide to you is appropriately focussed to address the Commission's particular concerns. My preference remains a fast and certain resolution to the MTAS issue. My view is the best way to achieve that remains the acceptance of the undertakings from Telecom and Vodafone.

Yours sincerely,



Tom Chignell
General Manager, Corporate Affairs

Copy:
Bruce Parkes, Ministry of Economic Development