



23 November 2009

Dr Ross Patterson  
Telecommunications Commissioner  
Commerce Commission  
WELLINGTON

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By e-mail: ross.patterson@comcom.govt.nz

Dear Ross,

**Process to address alignment of revised MTAS undertakings**

As requested in your letter of 9 November, 2degrees, Telecom and Vodafone engaged over the course of last week in order to explore an alignment of price and non-price terms. All these discussions and correspondence were held on a confidential and without prejudice basis.

This letter is a combined report from Telecom and Vodafone on the outcomes of those discussions. 2degrees wishes to report its views of the outcomes of the discussions separately.

All parties, including 2degrees, engaged in an effective and constructive manner in this process. Telecom, Vodafone and 2degrees held three meetings, one on process, one on non-price terms and one on price terms. All three parties attended all meetings. The discussion and negotiation of issues in the meetings continued in further bilateral discussions.

Telecom and Vodafone believe that significant progress has been made towards achieving an alignment of undertakings. We share the Commission's view that an undertaking on acceptable terms is a better outcome for end-users than further lengthy and costly regulatory debate.

**Summary of outcomes reached**

*Reciprocity*

Telecom and Vodafone agree that the best approach to resolve the Commission's concerns about reciprocity would be for Telecom and Vodafone to submit undertakings with aligned terms on all material issues. These undertakings would require reciprocity. It may be the case that 2degrees need not submit an undertaking.

- For MTM and SMS, 2degrees could rely on its existing interconnection arrangements, or move to the terms of the Telecom and Vodafone undertakings at its choice.
- Alternatively, the Commission may wish to give fixed access seekers certainty on the terms of access to FTM services on 2degrees' network by encouraging 2degrees to submit an undertaking for FTM services only.

Ultimately, we reserve our position on the best way to deal with any concerns about terms for access to 2degrees' network, but we do not think it critical for 2degrees to align its position with Telecom and Vodafone. We are happy to discuss this at a workshop.

*Non-price issues*

Telecom and Vodafone are now aligned on all material non-price issues, as set out in the attached table. Our understanding (subject to anything further 2degrees might say) is that from 2degrees' perspective, if a satisfactory outcome can be achieved on price, it could also accept the non price terms set out in the table.

Note, however, that this alignment between Telecom and Vodafone is without prejudice to views the parties may take in any future process, especially a standard terms development process should MTAS be regulated.

*Access seekers' submissions*

We were specifically requested by the Commission to consider the submissions of Access Seekers on the undertakings. Access Seekers were particularly concerned about the inclusion of internationally-originated and VOIP calls, and about second plus second billing.

- Telecom has agreed to include internationally-originated traffic (handed over in NZ) within the scope of its undertaking in response to Access Seeker concerns. Vodafone and 2degrees (we understand) have confirmed that they already treat all traffic handed over in NZ in the same way. Vodafone has agreed to make this explicit in its undertaking terms.
- All parties (including 2degrees as we understand it) confirmed that their terms already allow VOIP-originated calls.
- Vodafone has agreed to align with Telecom and 2degrees on second plus second billing.

Vodafone has also agreed to round at an invoice level in response to 2degrees' concerns about its approach to per call rounding.

*Price terms*

Telecom and Vodafone have also aligned on the glide path set out in Vodafone's undertaking as holding pattern price terms pending further discussions with the Commission. The voice and SMS rates are as set out in the following table. They assume a 1 April start-date for undertakings.

Period	Rate (second plus second)	Minute plus second rate (for comparison only)
1 Apr 2010 to 31 Dec 2010	14.76 cpm	12 cpm
1 Jan 2011	12.92 cpm	10.5 cpm
1 Jan 2012	11.07 cpm	9 cpm
1 Jan 2013	8.61 cpm	7 cpm
1 Jan 2014	6.15 cpm	5 cpm
1 Jan 2015	3.69 cpm	3 cpm
SMS	1.2 cpt	

### Next steps

We consider that this process has been extremely helpful in resolving remaining MTAS issues. In particular:

- All material non-price issues are effectively resolved, and a way through the challenge of reciprocity has been developed that we think resolves the Commission's concerns.
- Telecom and Vodafone are aligned on a 1.2 cpt SMS rate from 1 April 2010. We would be surprised if an immediate cut of almost 90% in rates was not an acceptable outcome from the Commission's point of view.
- Access seekers' concerns have been dealt with on international-originating calls, on VOIP, and on second plus second rounding. They also benefit from a 20% cut in FTM interconnection rates from 1 April 2010, with further steep declines over time.
- MTM rates for 2degrees will continue to fall over time to eventually end below the Commission's current estimate of costs. In the interim 2degrees is protected by the terms of its interconnection agreement with Vodafone.
- Telecom and Vodafone believe it is important to secure a measured reduction in rates via a glidepath in FTM voice rates. This recognises their legitimate concerns about too short a period for operators to adjust to losses in critical revenue streams. It also moderates concerns about the impacts on mobile customers from swift and radical cuts in inbound revenues.
- It would not have been possible to arrive at a commercial resolution of MTAS unless Telecom and Vodafone were to align on price. The outcome of the round of discussions is that Telecom has chosen to align with Vodafone so that any further discussions can be progressed from a common starting point.

At this critical juncture in the process, we think it very important that we are clear on next steps. The Commission will soon face a choice between recommending undertakings that would effectively end this process here, or recommending regulation, which could mean significant additional cost and dispute.

We note the Commission's comment in its letter of 9 November that it would consider whether a workshop or other further process should be undertaken following a report from the parties.

One possible issue that may require further discussion is the apparent difference between the Commission and Vodafone view of the shape of any glidepath for FTM termination rates. Telecom has an open mind as to what the glidepath should look like, but considers that a reasonably measured glidepath mitigating market shocks is important and that alignment between Telecom and Vodafone in any final undertakings is critical. Therefore it is worth holding further discussions to consider whether an agreement can be reached.

Clearly we would welcome the opportunity to discuss these issues further with you. In our view, an aligned industry undertaking on MTAS that is acceptable to the Commission remains a better outcome for customers than the regulatory alternative.

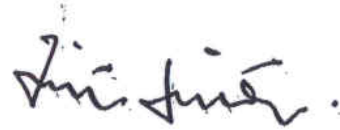
While the Commission considers whether to hold a workshop to resolve the few outstanding points, we suggest that Telecom and Vodafone commence drafting revised undertakings, so that the results of the workshop can be quickly incorporated into those.

We also suggest that before undertakings are resubmitted, the parties should have an opportunity to exchange drafts. This will mean that better alignment in the drafting of the non-price terms can be achieved.

Yours sincerely,



Tom Chignell  
**GM Corporate Affairs**  
Vodafone New Zealand Ltd



Tristan Gilbertson  
**Group General Counsel**  
Telecom New Zealand Ltd

**NON-PRICE TERMS – MATERIAL ISSUES DISCUSSED AND OUTCOMES AGREED BETWEEN TELECOM AND VODAFONE**

Issue	Summary of conclusions reached by the parties
Reciprocity	<ul style="list-style-type: none"> <li>• Vodafone and Telecom are strongly committed to retaining reciprocity conditions. They drafted their undertakings as reciprocal, as is common with commercial interconnection arrangements. In their view, moving away from reciprocity is likely to require a substantial review of the terms of the undertakings.</li> <li>• The parties discussed whether 2degrees would need to submit an undertaking if Telecom and Vodafone were to submit aligned agreements requiring reciprocity. As we understand it, 2degrees is unclear on the benefits of it offering an undertaking in those circumstances. Some fixed Access Seekers have expressed the view that they do not see the need for 2degrees to submit an undertaking in order for Telecom and Vodafone to have undertakings accepted.</li> <li>• Telecom and Vodafone consider that the undertakings are capable of acceptance by the Minister without the removal of the condition of reciprocity, assuming that other terms were acceptable.</li> </ul>
Separate undertakings for FTM, MTM, SMS	<ul style="list-style-type: none"> <li>• Telecom and Vodafone consider that their undertakings are commercial offers and that the proposed prices are offered only as a package. Their view is that this is common with interconnection arrangements.</li> </ul>
Call types	<ul style="list-style-type: none"> <li>• Telecom and Vodafone (and 2degrees we believe) are agreed that the undertakings should include VoIP originated calls. As none of the undertakings of the parties exclude VoIP, it is agreed that no changes to any of the undertakings are required.</li> <li>• Vodafone and Telecom, while noting that there is an issue as to whether regulation of termination rates on internationally-originated calls is in the long-term best interests of New Zealand end-users, have agreed to include ITM calls in their undertakings.</li> <li>• Vodafone has agreed to align its undertaking with Telecom’s in relation transit by the Access Provider to third party Network Operators’ networks.</li> <li>• These changes means the parties are aligned on the call types to be included in undertakings.</li> </ul>
Making premises available at MSCs	<ul style="list-style-type: none"> <li>• Telecom has agreed to include a cost-based co-location service in its undertaking, together with an express obligation to make premises available, benchmarked against the agreed UCLL price model. This amendment will resolve Vodafone’s concerns around the previous exclusion of an obligation to make premises available. Vodafone will</li> </ul>

	adopt a similar approach.
SMS	<ul style="list-style-type: none"> <li>• Vodafone (and 2degrees we believe) expressed strong support for equivalence as the guiding principle for treatment of the delivery of SMS, rather than the audit provisions in the Telecom undertaking.</li> <li>• Telecom has agreed to remove the audit provision in clause 4 of Appendix A to its undertaking.</li> </ul>
Expiry	<ul style="list-style-type: none"> <li>• There are some minor differences between the undertakings on expiry terms, but Telecom and Vodafone do not consider that the undertakings need to be aligned on this point in order for them to be capable of acceptance.</li> </ul>
Termination and suspension	<ul style="list-style-type: none"> <li>• 2degrees requested that Vodafone align with Telecom’s terms on suspension and termination. Vodafone has agreed to this change, removing its “stand-down” provisions in clause 6.3 of its undertaking and replacing it with clause 23.4 of Telecom’s undertaking. Vodafone has also amended its termination and suspension provisions for SMS in response to 2degrees’ concerns.</li> <li>• There remain some minor differences in suspension and termination between the parties, but Telecom and Vodafone do not consider that these are material, and they do not prevent the undertakings from being capable of acceptance.</li> </ul>
Cross-default	<ul style="list-style-type: none"> <li>• Vodafone has agreed to amend its undertaking to remove the cross-default provisions, i.e., provisions that link the breach of the undertaking terms with other interconnect services outside of MTAS. This now aligns with the Telecom and 2degrees formulations.</li> </ul>
Standard access principles	<ul style="list-style-type: none"> <li>• While Vodafone still considers that it is not necessary to expressly set out the standard access principles in its undertaking, it has agreed to insert a new clause in its undertaking as follows: <ul style="list-style-type: none"> <li>○ <i>“The standard access principles under clause 5 of schedule 1 to the Telecommunication Act 2001 apply to the MTAS and all of Vodafone’s obligations under this undertaking subject to the limits on the application of those principles under the Telecommunication Act 2001.”</i></li> </ul> </li> </ul>
Setup charges	<ul style="list-style-type: none"> <li>• Following discussion, it was agreed by the parties that existing terms in undertakings are appropriate on this issue. Subject to the comments above on MSC premises, setup charges only apply to new interconnects.</li> </ul>
Other	<ul style="list-style-type: none"> <li>• Vodafone agreed to move to the LEADR model for mediation. While there are other differences between Vodafone and Telecom’s undertaking in</li> </ul>

	<p>relation to dispute resolution, the parties do not consider that the undertakings need to be aligned on this point in order for them to be capable of acceptance.</p> <ul style="list-style-type: none"><li>• Telecom and Vodafone both stressed the importance of the dispute resolution procedures being mandatory rather than optional.</li><li>• Vodafone agreed to move to a six month period on back-billing and raising disputes on bills (aligning with Telecom), on the basis that this term would be reciprocal.</li><li>• Vodafone agreed to revise clause 1.18.3 of its undertaking to make it clear that the terms of the undertaking will not be confidential information.</li><li>• On request from 2degrees, Telecom has agreed that the maximum liability cap under its undertaking will be no less than \$1M (in the case of one or a series of events; or for all events in a 12 month period).</li></ul>
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