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**2degrees – Submission  
to the National  
Infrastructure Unit**

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# CONTENTS

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INTRODUCTION..... 3

1 BASE INFORMATION ..... 4

2 MISSING ISSUES..... 7

3 DECISION MAKING ..... 14

4 CROSS –SECTORAL ISSUES ..... 17

5 REGULATORY REFORM ..... 18

6 ASPIRATION..... 20

7 LINK TO ECONOMIC GROWTH ..... 22

KEY SUMMARY POINTS..... 23

TWO DEGREES MOBILE LIMITED ..... 24

# Introduction

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Two Degrees Mobile Limited (2degrees) welcomes the National Infrastructure Unit's MED's paper, 'Towards the First National infrastructure Plan', and thanks the Treasury (Kaitohutohu Kaupapa Rawa) for the opportunity to make this submission.

The Treasury has proposed that New Zealand adopts a best practice approach to co-ordinated infrastructure deployment in NZ. Our organisation's experience is well positioned to make a substantial contribution to this infrastructure planning as 2degrees has become one of the largest new green-fields infrastructure deployments in New Zealand.

Our organisation's shareholders and employees have deployed over 30 networks cumulatively around the world. The challenge for 2degrees is to explain some of the differences in building NZ infrastructure and explain the unique differences of NZ in comparison with other countries.

2degrees' submission shares perspectives on the following:

- 1) The Telecommunications industry in NZ
- 2) The principles behind self regulation and competition law in NZ
- 3) The 3rd party ownership of the Cell Tower industry

2degrees has responded to the Treasury document titled 'Towards the First National Infrastructure Plan' September 2009, with a series of answers, comments and discussion items of the questions asked in the initial discussion paper. 2degrees has sought to answer the questions and then flesh out the important issues pertaining to the Telecommunications sector by more detailed explanations of important matters.

The 2degrees executive is available for further consultation to explain the observations made in this submission.

2degrees supports the process of a series of consultations to build a national infrastructure plan.

# 1 Base Information

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1.1 **Question:** *Is the sectoral analysis contained here an accurate and informative description of the sector? If not what changes are required to make it so?*

2degrees welcome's the initial review of the telecommunications sector. We believe more comprehensive research and analysis is required to ensure the National Infrastructure Unit's plan is fit for purpose.

1.2 The summary of what we believe should be reviewed would include the following:

- 1.2.1 A chart comparing and contrasting the core regulatory principles of the NZ telecommunications market with that of the OECD. Including a more comprehensive review of why NZ did not have a 3rd mobile phone carrier until 2009
- 1.2.2 A review of the net (after depreciation) capital expenditure per head of population relative to other similar sized OECD countries for telecommunication infrastructures.
- 1.2.3 A description of what New Zealand's telecommunications vision and goal is. (This must include, but not be limited to broadband)
- 1.2.4 A perspective on the impact of why NZ did not get an effective regulatory environment in place until 2007 – a decade or so later than most OECD countries and the impact this had on investment appetite, competition and prices for Kiwi consumers.

Other more detailed matters 2degrees would like to see in the Infrastructure Unit's review would include the following:

1.3 **A review of the cell tower industry** and how these tower companies work in most OECD countries. Many countries have 3rd party owner of cell towers and a vibrant competitive wireless industry which has easy access to these towers.

- 1.3.1 New Zealand has no 3rd party tower ownership. Cell tower ownership in NZ has been used as a barrier to slow down entry. An Australian tower company promises access in 4 working days. NZ in comparison has no such tower company which would not only save time it also saves the cost and environmental impact of having more mobile competition. The Infrastructure Unit need to share a perspective on why it took NZ some 13 years longer than the equivalent Australian industry to obtain this protocol.
- 1.3.2 Currently there are approximately 4500 cell towers in NZ, this number may double as coverage expands and improves and also as new technologies are introduced and more consumers take up mobile

broadband services. Cell towers and roof top co siting protocols for antennas are of critical importance for New Zealand Inc. As wireless technologies continue to improve and widen in service scope.

- 1.3.3 A review of the RMA laws should be included as the short towers and multiple countrywide council standards need to be included in the review. Cell network owners have to operate with 72 different councils in New Zealand, for infrastructure standards, this compares dramatically with Australia where there is only one standard. These challenges show the inefficiency of NZ RMA and difficulty in investing here.

#### 1.4 Historical perspective Cell Towers in NZ

- 1.4.1 NZ is stands out internationally in that very little co location has been completed, there is less than 1% Co location – this is because cell towers and their availability were used as a barrier to entry by the incumbents,
- 1.4.2 As a consequence of this incentive, co location was held up in self regulatory abyss for 4 years and the New Zealand landscape got burdened with more cell towers and consumers ended up with a larger cost burden than necessary.
- 1.4.3 Whilst the Commerce Commission rectified this anomaly in January 2009 by introducing the STD (standard terms determination) for Co Location. There is still the requirement for some substantial improvement in national standards for cell towers, to facilitate co location. These include:
- Facilitating a national standard for rural and industrial zoned cell towers improving the height allowances.
  - Facilitating a national standard for cell towers on private land to prevent the requirement to look at multiple standards.
  - Actively working with a 3rd party tower company.

- 1.5 Cell towers can sometimes be considered to be intrusive in local communities and in NZ they are regulated by the 72 different councils, rather than one National environmental standard. NZ did adopt a NES (National Environmental Standard in 2008 to facilitate one national set of rules for road side reserve towers (which were basically street lamp replacements). However on private land there are many different standards and heights with various different council standards. Of significant concern is the fact that in industrial and rural areas only short cell towers can be permitted

1.6 A review of how the RMA Simplification & Streamlining) Amendment Act – art II could impact infrastructure deployments. It is appropriate to share with the Treasury infrastructure unit the tremendous disappointment of the multiple district standards for national infrastructure in NZ. This has expanded the costs tremendously.

Simply put, 2degrees requested the RMA select committee to develop an Australia style break out section in the RMA amendment act to allow for national standards of cell towers on private land and to facilitate taller towers in rural and industrial locations thereby encouraging more co location, and in turn simplified investment opportunities for telecommunications infrastructure investors.

## 2 Missing issues

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- 2.1 2degrees has concerned itself with the important missing issues in the discussion document pertaining to telecommunications in the page 58 summary – they are as follows:
- 2.1.1 A review of competition law in telecommunications and the rules surrounding market conduct and how this impacts investment, innovation and pricing.
  - 2.1.2 A review of who should be setting the aspirational standards for “NZ Inc”. Is it appropriate that a group of incumbents set the standards for NZ telecommunications? As it is mentioned on pg 62 (section 251).
  - 2.1.3 A detailed empirical review and comparison with NZ’s peer group of countries of the telecommunications industry operating metrics.
  - 2.1.4 A review of international benchmarks which impact consumers.
- 2.2 **A Review of the Competition Law** the 2006 & 2001 Telecommunications acts only deal with access matters pertaining to physical telecommunications infrastructure. They do not concern themselves with the actual market behaviour of Telecommunications operators. In fact the Commerce Commission has another division to deal with behaviour matters and it’s the 1986 Commerce Act which controls what is permitted and what is not permitted. This contrasts dramatically with other countries where the telecommunications regulator and the underlying legislation deal with both access and behaviour. This is a huge concern for new entrant infrastructure investors.
- 2.3 **The recent history of the NZ telecommunications market** illustrates this point, there are still two outstanding cases that are unresolved which relate to abusive market power, Pocket pricing, Bundling and Data tails which have closed NZ to further investment and sends a negative signal to potential investment into NZ competition settings, they favour monopolies not fair competition. 2degrees believes that it is the weaknesses in the 1986 Commerce Act and the differences in the competition law environment which has meant NZ is an unattractive place to invest for competitive infrastructure.

It’s essential that the infrastructure unit prepare a comparison of this essential legislative component, as it will help explain why the Government has been forced to invest in broadband and why the 1996 private broadband investment of Saturn networks failed. The Precedents of the Clear case, the 0867 case and the Saturn case have shut the NZ infrastructure market down to competitive infrastructure being built.

- 2.4 **A review of aspirational standards** 2degrees believes it is totally inappropriate for incumbents to tell “NZ inc” what level of service, and price competition should be available – it will lead to duopoly industry structures where high pricing, low innovation and poor investment takes place. Its 2degree’s opinion that it is the National Infrastructure Unit’s job to benchmark NZ with its international peer group of countries and then share infrastructure and service level goals and targets for the NZ industry.
- 2.5 **A detailed empirical review and comparison with international benchmarks.** The commerce commission prepares a Quarterly and Annual Report on the state of the industry as it is obliged to do as part of the 2006 Telecommunications Act. This should be used in the national infrastructure plan to assist in benchmarking with peers and to set a pathway to ambitious infrastructure deployments and national scalable and sustainable competition.
- 2.6 **A review of international benchmarks** 2degrees believes it is appropriate for the Infrastructure unit to set benchmarks based on a peer group of international countries after a due process of selecting similar countries to NZ in GDP, population and geography. It is essential that 3rd party benchmarking takes place.
- (2degrees comments on the Telecommunications section of the infrastructure discussion document.)
- 2.7 **(Section 234)** 2degrees does not believe that it is correct to say that the NZ market was fully opened to competition in 1989 as mentioned because insurmountable barriers to entry were not removed until December 2006, and the passing of the 2006 Telecommunications Amendment Act made capital raising possible and the new Telecommunications Act and the Mobile market review made it possible for entry.
- 2.7.1 This is because prior to Dec 2006 basic interconnection facilities were not available. Several attempts to enter the market were made in the 1990s but they all largely failed as a consequence of there being no effective regulator until 2007.
- New Zealand’s telecommunications landscape included several frustrating events, notably the stalling of the second national operator CLEAR networks, the stalled development of Bell South, the abandonment of the private fibre deployment SATURN networks, the failure to secure the possibility of a 3rd Mobile operator until March 2007 when NZ Communications was financed.
- 2.8 2degrees believes it’s worth cataloguing the history and commentary of the 1990s environment to better understand the lack of investment and lack of competition. This contextually can help remove the perception that NZ is too small for competition.

- 2.8.1 **UK academics** Waldron and Angel described the NZ regulatory environment (or lack thereof) in 2001 as “widely regarded as a disaster” in their study of international regulatory environments published in 2002. Because the Telecommunications industry is so interlinked with economic growth it usually compromises approximately 3% of GDP.
- 2.8.2 **CLEAR Networks** started to create competition in 1992, however it suffered from never being able to get a satisfactory interconnection price until 2004, and as a consequence it struggled to make a real competitive impact. Meanwhile Telecom NZ became the most profitable telecommunications company in the world next to Mexico’s Telemex (as described by Patrick Russel the Merrill Lynch telecommunications analyst in 1998) and during this decade Telecom NZ notoriously paid dividends in excess of 100% of net earnings and failed to re invest at its depreciation rate for over a decade. During this time there has been poor scant regulation.
- 2.8.3 **Saturn Networks** Illustrated the weak 1986 Commerce Act and the impact that it has on infrastructure investment. In 1996 Saturn Networks built a private sector broadband fibre network in parts of Christchurch and Wellington (including parts of the Kapiti coast). It was Saturn’s intention to continue to build out the rest of the country to become a second national operator, and to benefit from the then foreseeable boom in internet traffic.

After services started to be retailed by Saturn networks Telecom started to “pocket price” its network. This means that Telecom only dropped its prices where Saturn had built infrastructure, rather than drop its prices across the entire network which is the regulatory requirement in other jurisdictions. Pocket Pricing is illegal in most regulatory environments whereby the incumbent has market power, because it’s so destructive to incremental roll out. As a consequence of this anti competitive reaction from Telecom which was then widely illegal in the EU, Saturn networks took its case to the commerce Commission.

*The Commission response was that: Telecom’s actions to see whether such regional pricing, or any other activity, breached either section 36 (use of a dominant position) or section 27(arrangements that substantially lessen competition).*

*The Act does not allow a dominant company to use its dominance to restrict prevent or eliminate competition, but it does allow it to*

*respond to competition. In general terms that mean the company can respond in ways that would be available to it if it were not dominant.*

*In themselves, regional pricing and offering discounts or reduced prices selectively are not prohibited by the Act. These are common responses, used by businesses that are not dominant, to a new entrant or increased competition.*

*Regional pricing is not in itself a breach of the Act. However, a dominant firm that reduced prices below cost, only because it could cross-subsidies from areas where it was making monopoly profits, would likely breach the Act. The Commission has found no evidence that Telecom has done this.*

- i) This case best illustrates the failure of the 1986 Commerce Act, and illustrates why no private sector organisation will build a broadband network in NZ. The impact on a mobile network has been to delay funding until the 2006 Telecommunications Act and the 2006 Mobile Market Review.
- ii) 2degrees urges the National Infrastructure Unit to include a review of the Commerce Act as part of its appraisal of the national infrastructure plan. This will help understand why there is such an infrastructure deficit in NZ.

**2.9 Bell South:** this network was the predecessor to the Vodafone NZ business; its history is worth cataloguing as it helps explain why so many barriers to entry developed. Bell South sought 4 significant re-alignments of policy from the government, of the day these included:

- Increase Penalties to deter anti competitive behaviour
- Introduce a tough Anti Competitive Test – (Change the Commerce Act )
- Independent Numbering plan
- Adopt comprehensive disclosure regulations to reveal internal incumbent pricing

**2.10 Bell South** requested that these initiatives be taken to level the playing field with the then dominant telecom. It is important to understand that Vodafone did not address Telecom's dominance, it merely benefited from the rapid drop in GSM handset costs in the late 1990s and the dramatic uplift in penetration. Vodafone's insistence that the government stay out of telecommunications was because they could see how no other player could get started and they were free to develop the mobile market whilst Telecom preserved the landline business.

- 2.11 **2000 Spectrum Auctions NZ** has prided itself on being one of the first countries to auction spectrum, however in recent years the Auctions for NZ spectrum have been a categorical failure. With some of the lowest prices recorded for spectrum anywhere in the world. The National Infrastructure Unit needs to ask the question why this is. 2degrees believes it's because there was no satisfactory competition law surrounding the build out of networks. This spectrum auctions and the very low prices achieved for spectrum were a financial manifestation of the poor regulatory environment at the time.
- 2.12 **1999 & 2000 Ministerial enquiry into Telecommunications.** This marathon enquiry into the telecommunications industry cost the Kiwi taxpayer several million dollars to host but it largely failed and was subject to intensive lobbying by vested interest incumbents. This was because the 2001 Telecommunications Act had to be reworked later in 2006 and the Mobile Market Review had to catalogue the barriers to entry which needed to be resolved for a new mobile entrant again in 2006.
- 2.13 **2001 Telecommunications Act.** This piece of legislation never had the desired effect and later had to be amended. In particular the regulator's powers had to be upgraded.

## **Further Comments on the Telecommunications Section of the infrastructure report**

**Section (238).** We applaud the observation actively discriminating between net and gross capital investment in the Infrastructure document. 2degrees believes the Government has been misleading on capital expenditure numbers as incumbents have included handset subsidies and large inter-company capital expenditure items. There is no requirement to produce accounting information on real costs within the mobile companies in NZ. We don't believe that this is in the interests of NZ consumers as there is no audit trail between claims of substantial investment and actual investment costs deployed.

**Section (243)** we believe that some more analysis and discussion needs to take place by the infrastructure unit on how wireless broad band sits into the infrastructure plan. Already over a billion \$NZ has been invested by Telecom, Vodafone and 2degrees in Wireless broadband, HSDPA 3G services - these are crucial to the ongoing productivity improvements in the economy.

### Questions which should be reviewed are:

- 1 What is the ideal competitive structure to ensure reasonable priced, good quality mobile broadband?
- 2 What is the opportunity for the mobile broadband industry to be anchor tenants for the national fibre network?
- 3 What is the ideal cell tower footprint policy to achieve quality national broad band quality?
- 4 How the 700 MHz Spectrum band should be allocated to ensure meaningful competition.?

**Section (244) "there are now 3 privately owned networks"** - we believe this does not do justice to the current market structure, because, competition is so new into New Zealand. NZ only has 2 & ½ networks, until 2degrees finishes building out its regional infrastructure and starts to make a real impact in attracting and retaining a meaningful amount of customers. 2degrees believes that real competition has only just begun in the mobile market. Without an introduction of a more effective termination protocol such as bill and keep, it is unlikely that there will be maintenance of competitive settings.

**Section (246) "telecommunications market is one of the most liberalised in the world with no statutory or legal barriers to entry"**. This statement has now been proved to become a tautology. A similar statement would be "there are no road rules in NZ, or citizens are free to make sensible decisions about car speed when driving. The liberalised environment had no statutory barrier but, the nature of the telecommunications industry means that there are huge barriers to entry, most of which are only able to be overcome by regulatory intervention. The stock market performance of Telecom NZ proved that NZ had the most profitable telecommunications, markets in the world, but no big serious new entrants attended the New Zealand spectrum auction programs in 2000 to buy spectrum and enter the market. The fact that Hautaki Spectrum Trust had problems finding a partner to pursue infrastructure development, illustrated how closed this market was, because of the difficult regulatory environment.

**2 degrees doesn't believe its rational to describe Vodafone as a challenger** or a new entrant in the mobile business, because it developed a market when there was less than 10% mobile penetration, and it had a superior technology monopoly because of exclusive ownership of all of the GSM 900mhz spectrum until April of 2008.

**Section (247) Broadband competition** 2degrees requests that the Director of infrastructure review just how competitive the broadband market really is. 2 degrees believes that much of the broadband is merely resale. Very little new infrastructure has been built. Ironically after all the unbundling legislation and TCF self regulatory

workshops less than \$50m has been invested in new competitive retail and business ADSL broadband internet facilities and this has subsequently stopped as a consequence of a loyalty discount dispute. We believe that this should be of huge concern to the Infrastructure Unit and arguably it has become the justification for government intervention into this industry. This Broadband investment amount of \$40 million compares dramatically with new investment in Mobile networks of over \$1billion. . - 80% of the telecommunications regulatory has created 10% of the new investment. And 10% of the new regulatory effort has created 80-% of the new mobile investment.

**Section (249)** it was the 2006 Amendment Act which gave real power the commissioner 2degrees believes it's critical that the Infrastructure unit understand that the first act was effectively gamed by the incumbents. This 5 year delay in creating infrastructure competition and investment needs to be highlighted to the Treasury Infrastructure Unit the impact of faulty and light handed regulation.

**Planning – Section (251)** apart from the Government's proposed roll out of fibre optic cable planning is the responsibility of the various market participants – 2degrees disagrees with this statement, because the Director of Infrastructure should be maintaining the private sector keeping up to date with international benchmarks. Kiwis have suffered from higher fixed line pricing as well as higher mobile phone pricing for decades because in the late 1990s there was no benchmarking available.

**Section (253)** 2degrees agrees with the relationship between ICT investment and productivity. 2degrees research endorses the EIU position and believes there are significant GDP uplifts to have as a consequence of the improved mobile market dynamics.

**The Role of Cell Tower company** 2degrees believes that this section should investigate the role of a 3rd party tower company. NZ is one of the few countries that do not have an independent tower company and as a consequence an unfortunately high number of multiple sites exist. A cell tower company is essential to a vibrant wireless industry, which is the least environmentally intrusive solution to wireless antennas.

### 3 Decision making

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- 3.1 Our question to the Infrastructure Unit - is the government running the country and making infrastructure decisions or is the incumbents? It has been 2degrees experience that the government say they want competition, but they don't want to state that they want a 3rd mobile phone operator and a universal license will be issued which addresses all the network agreements that need to be in place to operate.

As a consequence of no license issuance with simultaneous offering of terms and conditions, 2 degrees has had to buy spectrum and then argue in public for all the major terms of a license, in a sequence process (one after another), rather than sort out the entire license in parallel up front. All the evidence of the last 15 years has indicated that light handed regulatory approach in telecommunications doesn't work. Consumers suffer from a lack of competition and get expensive non competitive services, whilst shareholders benefit from excessive profits.

- 3.2 The Challenge for the decision making process within the telecommunications is to reduce the number of agencies participating in the competition settings of the industry.

2degrees believe that the Telecommunications, broadcasting and media functions should be merged into one agency, with spectrum being managed by the competition agency.

- 3.3 2degrees believes that the industry decision making process is poorly serviced because there is a lack of definitive government targets, and there is a plethora of self regulatory groups which total 13 (including sub groups of different tiers). These self regulatory groups act as a tax on small new entrants and as a barrier to entry erected by the incumbents. They are used to dilute the impact of the Commerce Commission and to slow down regulatory implementation.

- 3.4 We compare and contrast the infrastructure regulatory environment in NZ for telecommunications with that of international environments to illustrate the requirement to change integrated the regime.

<b>Business component</b>	<b>New Zealand</b>	<b>Normal OECD practice</b>	<b>Comment</b>
<b>Issuance of spectrum</b>	An auction for raw spectrum is held in 2000 and 200, the auction takes 9 months to complete	An integrated carrier license is issued for a sale at either an auction or by way of beauty parade. These integrated licences usually contain, full suite of spectrum rights, interconnection agreement protocols, cell tower co location, numbering ranges, roaming and market power rules	NZ spectrum sold very cheaply the NZ tax payer lost out in 2 ways:  no big income from spectrum sales no benefits from cheap wireless services
<b>Introduction of a regulator</b>	Most OECD countries had an industry specific regulator by the mid 1990s, to address all the concerns of new entrants trying to end the incumbency of monopolies	NZ had a ministerial enquiry a 2001 Telecommunications Act, but it wasn't until 2006 Amendment act that the regulator got all the required power	NZ inc. suffered from under-investment and a lack of competition until the regulator was armed with real powers in 2007
<b>Integration of telecommunications legislation</b>	4 government agencies involve themselves in telecommunications & media regulation.	Convergence of the telecommunications, media, and broadcasting industries, means fresh regulatory and competition issues	More efficient better competition rules would evolve from one agency
<b>Issuance of number range</b>	A number administration deed was set up which passed numbers to self regulatory body. The availability of "like for like" numbers was only available after substantial regulatory threats	The regulator issues numbers	Trivial issues like numbers take up significant amounts of management time. Self regulatory control of the number was a mistake in NZ
<b>Commencement of number portability</b>	This was passed to a self regulatory body in 1996 after 3 years of debate. After 15 years of in action and regulatory threats number portability was introduced	Regulators enforced this around the world in the 1990s	It was naive for NZ inc to think that the industry would want this tool. A 15 year delay illustrates the stupidity of self regulation
<b>Developing a specific</b>	The 1986 Commerce	Many environments	It has been the abuses of

<b>abuse of market power rules</b>	Act has been relied on and proved to be relatively in effective	have asymmetric rules for operators with over 25% market share	market power in the 1990s that have meant NZ start ups have not been able to get funded
<b>Development of a roaming rule to facilitate competition</b>	Roaming was legislated in 2001; however it was not until 2006 Mobile market review serious negotiations could be undertaken. This delayed the availability of network financing	This was a condition attached to spectrum and license sales-agreed up front before construction would start	The 2001 Teleco Act had to be amended, incumbents have no incentive in more competition. The setting of rules in the industry needs to note this
<b>Development of a cell tower co location protocol to facilitate 3rd party tower ownership</b>	Whilst this was mentioned in the 2001 telecommunications act, because of failed self regulatory interests this was never available until the regulator intervened in 2009.	Most OECD countries simultaneously developed a co location protocol to the issuance of more spectrum and licenses in the late 1990s	NZ has more cell towers than are absolutely necessary. Government intervention here can assist tremendously in reducing environmental impact and reducing costs by changing incentives
<b>Termination rates</b>	NZ chose not to regulate these in 2007 after 3 yrs of regulatory debate and some regulatory recommendations by the ComCom.	Most OECD countries have had regulated termination rates – and all have got pressure on substantial reductions	Termination rates act as a barrier to entry and efficient competition – they mean new entrants are paying a tax to incumbents
<b>Handset subsidies</b>	There are no controls on these	Some markets have used limitations on handset subsidies to ensure the maximum amount of competition	Consumers welfare is improved if there is more infrastructure competition, and incumbents aren't allowed to
<b>Contract lock ins</b>	There are no limits on contract length. NZ has a lot of 3 year contracts	Many countries limit contract length to 3 years	Consumer utility is improved by shorter contracts as it fertilises competition.
<b>Bundling of services</b>	There are no bundling rules, so incumbents use bundling protocols to create a barrier to entry for new entrants	Bundling rules exist in some markets. they have the effect of preventing market power from being abused in an anti competitive way and ensuring new technology is adopted with competitive pressure	Anti bundling rules facilitate a ladder of investment concept

Telecommunications is a regulated business all over the world, the New Zealand road rules of this industry have not been world class. Too much influence has been exerted by the incumbents. The industry story is one of iterative bumbling along. Because of

the failure of the industry to meet Government expectations, a substantial taxpayer's contribution to infrastructure is required. 2degrees believes that this should trigger a substantial review of the regulatory environment comparing NZ with international best practise regulatory issues.

## 4 Cross –sectoral issues

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### 4.1 What can be included in a national infrastructural plan?

2degrees would like to see a cell tower initiative inserted into the national infrastructure plan, 2degrees such a plan would highlight the following:

- A national environmental standard for cell towers on rural and industrial land – this would be synchronised with the new RMA simplification Act .
- It would allow for taller towers where there were co location.
- It would seek to introduce a 3rd party tower owner and operator to reduce the number of towers built in NZ .

## 5 Regulatory reform

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- 5.1 2degrees believes it is time to reform the regulatory process in the telecommunications and media sector by having one regulator. This regulator would become similar to Ofcom in the UK; it would recognise that telecommunications, broadcasting and media are all converging. This authority would consolidate the current fragmented approach to the setting of competition frameworks and regulation. This agency would manage spectrum, access rules, market behaviour rules and content rules. It would also have a role in liaison with the Ministry for Environment so rules pertaining to physical infrastructure deployment such as cable laying; tower building would be co-ordinated.
- 5.2 2degrees believes that one of the problems of regulatory reform is to rebrand the role of regulation inside the NZ economy. 2degrees believes that there is substantial confusion on what is straight out competition law and rules and what is regulation of practices.
- 5.3 There are currently over four agencies who have responsibility for telecommunications & broadcasting but a plethora of self regulatory bodies who influence policy – some of these are
- Commerce Commission
  - Ministry for Economic Development
  - Ministry for Environment
  - Ministry for Culture and Heritage
  - Telecommunications Carriers forum
  - Number Administration Deed
  - Domain Name register
  - Internet New Zealand
  - Telecommunications Infrastructure group
  - New Zealand ICT group
  - Telecommunications Users Association
- 5.4 2degrees believes the self regulatory arena is also worthy of a review. There over 13 different groups involved in the self regulatory process in telecommunications although there are only two major operators in NZ. Much of the vested interest and misleading messaging comes from these diverse groups some of whom have important roles which impact competition settings. For example the NAD (Number Administration Deed) delayed the introduction of number portability by 10 years because there wasn't an incentive. The TCF (Telecommunications Carrier's Forum) delayed, co location introduction for five

years. The TIG and the NZICT groups deliver misleading messages about the government broadband.

- 5.5 Self regulatory principles have not served the telecommunications industry well in some areas. Too often self regulatory organisations dilute the impact of the regulator or competition agencies job. In the years of the “light-handed” regulatory regimes self regulation was an active tool by incumbents to avoid regulatory interference. This regulatory failure is best illustrated by there being over 13 self regulatory groups for participation in the industry, but only two major operators.

Policy is extremely divergent from most international environments in this area and the confusion and bureaucracy plays into the hands of the incumbents.

- 5.6 The government is investing \$1.5bn in broadband facilities because of frustration of the lack of competition in the private sector; 2degrees believes it is time for an internationally benchmarked review of the entire NZ telecommunications and broadcasting sectors. The objective of which should be to consolidate the number of agencies who regulate the sector and simplify procedures, whilst driving vigorous competition for the benefit of the end users.

## 6 Aspiration

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- 6.1 2degrees believes the telecommunications sector information should be benchmarked on policy and performance to a group of international countries. Too often infrastructure development in New Zealand is quarantined by an incumbent's public policy messages that NZ is "too small to support competition" This message is often delivered by a business that is making an excessive 30% + return on equity.
- 6.2 The Director of Infrastructure needs to review their information risk and look internationally to discover sectoral best practice and drive domestic policy with international benchmarks in mind.
- 6.3 2degrees believes that the EU Telecommunications Commission, Ireland, Finland, Denmark and Sweden are crucial benchmark countries for the NZ government agencies to consider following.
- 6.4 Consultation with competition agencies in these countries will provide better guide on how to drive policy than extensive consultation with Vodafone and Telecom who have a vested interest in the status quo and often use consultation to slow down processes.
- 6.5 Particular benchmarks which should be part of an infrastructure plan should include the following:
  - Real capital expenditure ( net depreciation charges) per unit of service delivered
    - Financial transparency of operators ( net of intercompany transfers )
    - Market structure – including real churn
    - Minutes of use in mobile
    - Fixed to mobile substitution
    - Absolute level of pricing
    - Competition in software innovation
    - Broadband penetration relative to the efficiencies of service provision
    - Dead weight loss to NZ of monopolistic market inefficiencies

6.6 2degrees believes the Director of the National Infrastructure Unit should adopt “peer group” countries to deliver a change in expectation of where NZ needs to drive its policy towards. Often comparing NZ to Australia does not serve Kiwis well because of the dramatic difference in population and geography. – So reviewing closely what Ireland, Denmark and Sweden do can sometimes be more helpful.

## 7 Link to economic growth

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- 7.1 Telecommunications industry has a proven relationship with Economic growth, and environmental benefits. There is unquestionable evidence that increase use of mobile airtime and data improves productivity. 2degrees believes that with the current low use of mobile airtime in comparison with Australia and the USA, there are major productivity uplifts from enhanced competition and better industry structure, which would deliver increased fixed to mobile substitution and increased mobile software innovation along with lower prices ( and costs) , of doing business increased productivity , employment and growth.
- 7.2 Concept Economics illustrate a once off ½% increase in GDP as a consequence of a 3rd mobile operator and a potential of 15000 new jobs. Mobile is more efficient than the landline; mobile improves business productivity by saving time. Competition in the mobile industry creates innovation and it lowers pricing, as well as increases investment in facilities.
- 7.3 New Zealand understands it has a problem with Infrastructure; 2degrees position is that New Zealand's also has a competition problem, and in some industries these problems are inter-linked.
- 7.4 Competition laws ensure that the monopoly rents are not extracted from consumers, businesses and the economy, competition laws ensure that vital infrastructure is used in efficient manner and that innovation is fertilised.
- 7.5 New Zealand is a great country it has a fantastic history of competition in its sports and agricultural industries its now time to put the late 80s and 90s period behind the countries development and more actively benchmark OECD best practice.

## Key summary points

- Cell towers need to be included in any national infrastructure plan.
- A commerce Act review – specifically section 36 of the act needs to be included in an infrastructure review.
- Industry structure and competition rules specific to particular industries need to be considered for the NZ context and then benchmarked with peer group countries.
- Decision making needs to be maintained with central government agencies and not delegated to vested interest industry groups.
- 2degrees mobile is New Zealand's largest new Greenfields investor in competitive infrastructure. It will stimulate a tremendous outcome for NZ inc, if it gets a level playing field to deliver its contribution on.

These comments are not intended to be comprehensive.

## **Two Degrees Mobile Limited**

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This submission is from Two Degrees Mobile Limited ('2degrees') - the company building New Zealand's third mobile phone network across the country.

**2degrees** is an infrastructure-based telecommunications company which has built over 480 new cell sites in Auckland, Wellington and Christchurch and is committed to building another 1000 more cell sites

**2degrees** is New Zealand's largest new private sector infrastructure project and is the only new entrant to commit over \$250m investment into the industry since the 2006 Telecommunications Act was introduced. This Act signalled that there is government commitment for more competition in the telecommunications industry.

**2degrees** has been a catalyst in Telecom and Vodafone, increasing their infrastructure build in response to our planned entry into the market. As a consequence, more cell sites have been built in New Zealand in the last 18 months than the previous 10 years. 2degrees is 20% owned by the pan Maori Hautaki spectrum group and two specialist investment firms (Trilogy, CVP) who have collectively built over 20 cellular networks around the world. Trilogy is a specialist mobile phone operator.

**Tex-Edwards**

**2degrees**

**022 222 2222**