

31 August 2018

Dr Stephen Gale
Telecommunications Commissioner
Commerce Commission
44 The Terrace
WELLINGTON 6140
By email: regulation.branch@comcom.govt.nz

Dear Stephen,

Cross submission on Draft Clarification of Deeds of Open Access Undertakings

Thank you for the opportunity to provide cross submissions on the Spark submission regarding the Draft Clarification of the Deeds of Open Access Undertakings for Fibre Services for each of Enable Networks Limited, Ultrafast Fibre Limited, Northpower Fibre Limited and Northpower LFC2 Limited.

We have reviewed the LFCs' Application, the Commerce Commission's Draft Decision and Spark's submission on this matter.

We are concerned that the proposal, which has been positioned as a non-material change in the Commerce Commission's preliminary view, has the actual effect of significantly narrowing existing LFC obligations, which do not apply just to certain access services, but to the whole LFC business.

2degrees agrees with Spark's submission that to consider whether the impact is material, and before making a change, the Commission must understand the actual and potential *effect* of such a change. Such analysis has not been undertaken as part of the application or the Commerce Commission's Draft Decision.

Relevant services are defined in the Telecommunications Act to include "*a wholesale telecommunications service that is provided using, or that provides access to unbundled elements of, an LFC fibre network*". 2degrees purchases both direct 'access' services and 'intra-candidate backhaul services'. These provide access to such unbundled elements of LFC networks. It appears the proposed amendment to the Deed would be a material change to the current regulatory framework for LFCs, impacting both non-discrimination obligations and line of business restrictions.

2degrees support:

- Clarification from the applicants of what they are seeking to achieve by amending the Deed. This includes the LFCs specifying what, in practice, they would like to do that is not permitted by the undertakings today. This is not just that their current framework is not the same as for Chorus (which has never been the case and is not proposed to be the case under the Telecommunications (New Regulatory Framework) Amendment Bill). For example, do they want to provide certain services on a discriminatory or non-equivalent basis, and/or services to end-users, which are both currently prohibited? We recognise LFCs may take the opportunity of this cross-submission process to clarify their intentions, which we welcome.



- Assessment from the Commission on the *effect* of the change (including any unintended consequences). For example, will this limit forms of future unbundling or line-of-business restrictions? Changes in the network, such as limiting inter-exchange availability, impact fibre access service provision by RSPs.
- Assessment of whether a more targeted clarification is more appropriate.
- Assessment of whether the proposed 'clarification' process is appropriate under the Act.

Yours sincerely



Mat Bolland
Director of Corporate Affairs & Wholesale