



Australian Government

Department of Communications and the Arts

Mobile Roaming Inquiry
Australian Competition and Consumer Commission
GPO Box 3131
CANBERRA ACT 2601
Via email: mobileroaminginquiry@acc.gov.au

ACCC's draft decision on domestic mobile roaming

Dear Sir/Madam

The Department of Communications and the Arts welcomes the opportunity to make this submission in response to the draft decision by the Australian Competition and Consumer Commission (ACCC) on the declaration of a domestic mobile roaming service.

We note that Vodafone Hutchison Australia has sought judicial review of the draft decision and that the review is a matter for the court. Our submission is made in recognition that the court is yet to make a decision on this matter.

The submission focuses on the ACCC's request for feedback on other measures which may improve mobile service outcomes in the absence of regulating roaming.

Regulation of roaming

Consistent with the views expressed by the Minister for Communications in his submission to the inquiry, the Department considers that the current policy and regulatory settings have delivered solid outcomes in the mobile sector for consumers. These settings have fostered significant private sector investment on a sustainable commercial basis, provided broad coverage, high quality services, real reductions in pricing and ongoing technological innovation. In this context there needs to be a clear case for regulation, particularly given the significant impact inappropriate regulation could have in this sector. The submissions to the inquiry and the ACCC's draft decision has reinforced this view for us.

We see real and enduring benefits in an environment where infrastructure competition between competing networks is encouraged. This will provide direct benefits to consumers. Investment can also promote retail competition when carriers provide access to wholesale services on a commercial basis.

Machine to Machine (M2M) and Internet of Things (IoT) use do not change the conclusion

The draft decision has sought further information on whether growth in M2M and IoT communications using mobile platforms should affect this decision. Unfortunately, data on the growth of these uses is limited. However, our view is the growth of such uses reinforces the ACCC's draft decision. If anything, these uses will increase demand for mobile services and infrastructure. Coverage will be important, particularly for applications where continuous or widespread coverage is desirable (such as tracking of vehicles). This will create incentives for competitive infrastructure provision, which in turn will provide scope for the provision of roaming on a commercial basis where mobile service providers do not want to invest in their own infrastructure.

Roaming regulation could impact on satellite mobile services

We consider the potential implications of regulated roaming for satellite mobile are relevant and may warrant some consideration by the ACCC. While handsets and usage pricing for satellite mobile services are generally higher than those for terrestrial mobile services, newer, innovative products and pricing are becoming available. For example, Optus is actively marketing Thuraya SatSleevs¹ and Pivotel has introduced a terrestrial and satellite mobile bundle². Mobile satellite services do provide a mobile service option in areas covered by only one terrestrial carrier or in areas with no terrestrial coverage, giving providers that offer mobile satellite services a means to compete in these areas. However, the regulation of roaming could potentially impact on the coverage advantage of such services and lead to lower take-up, revenues and returns on investment for these providers. This could lead to less competition and higher prices for end-users or even the removal of innovative hybrid services.

Further measures could improve regional mobile service outcomes

The ACCC's draft decision also seeks comments on a range of other measures which may improve mobile service outcomes in the absence of regulating roaming. We have provided some preliminary comments on these measures below and would welcome further discussion on them.

Coverage and investment information for consumers can be improved

We support improved transparency about mobile coverage and proposed new investments. Such information would enable better decision making by consumers in purchasing services and assist policy-makers and regulators in performing their roles. To enable informed decision-making, such information needs to be standardised across providers, for example, to enable comparison by technology and the level of coverage for ordinary handsets compared to those with external antennas. Such information also needs to be available for presentation on a common mapping platform to enable easy comparison. This could be achieved through the publication of relevant data sets which could be presented on a platform like the National Map.

As you know, the Department is actively engaging with the ACCC and ACMA on sector data to improve access to relevant information.

¹ See, for example: <http://www.optus.com.au/business/broadband-internet/networking-solutions/satellite/voice-data/sat-talk/satsleeve>

² See, for example: <http://www.pivotel.com.au/bigbundle.php>

A key community concern is ongoing investment in network coverage and depth of coverage. This was a strong theme in submissions to the inquiry, particularly from regional organisations and individuals. Telstra and Optus have indicated they will make significant new investments in the absence of roaming regulation because of the ongoing incentives to do so. We see benefit in carriers providing details of these investment plans so that their progress in implementing them can be monitored. This would provide a means of confirming their commitments to make the significant investments that they have stated a roaming declaration would otherwise put at risk and further assure regional consumers that competition is delivering positive outcomes for them.

The Mobile Black Spot Program has balanced coverage and competitive objectives

The Mobile Black Spot Program and similar types of programs must carefully balance coverage outcomes against possible longer term competition benefits. The open access provisions of the program therefore aim to maximise the opportunity for multiple mobile network operators to utilise the mobile infrastructure funded through the program. The objective of this is to provide consumers in regional and remote parts of Australia with greater choice of mobile service providers, but only where this is commercially feasible for mobile carriers within the context of the program.

The Department has worked closely with the mobile network operators to develop the program guidelines for rounds 1 and 2 of the program. Under these guidelines individual base stations were assessed against the program criteria on a competitive base station versus base station comparison.

Assessment 'points' were awarded where base stations were nominated by the applicant as being able to support a co-locating mobile carrier. These base stations were only built for co-location where another mobile carrier expressed an interest in doing so. The co-locating mobile carrier is also only required to pay the incremental cost incurred by their co-location. Under round 2 of the program a number of technical specifications were negotiated with the mobile carriers, and included in the funding deeds, to assist in the co-location discussions between mobile carriers.

A co-locating mobile carrier must also have the opportunity to participate in the design of the relevant base station. There are also a range of additional requirements that apply, for example the supply of power and the capacity of the backhaul provided.

There are also specific program measures relating to backhaul. For example, a discount on backhaul is required to be offered by the funded applicant where it is in a position to do so. The backhaul service offered is a Managed Lease Line service, which is charged at a discount applied via a rental holiday and based upon the ACCC's Domestic Transmission Capacity Service regulated price.

Importantly, if the mobile carriers cannot reach agreement on co-location the Commonwealth may refer the matter for dispute resolution. To date, there have been no such referrals.

Competition is a key consideration in spectrum management

We share the ACCC's view that promotion of competition should be a key consideration in spectrum management.

The recently released exposure draft of the new Radiocommunications Bill continues to support competition. The draft legislation does not propose significant changes to current arrangements between the ACMA and the ACCC in relation to competition matters and continues to provide for consultation with the ACCC. The Bill maintains both a requirement regarding consultation by

the ACMA with the ACCC before setting licence issue limits and the application of section 50 of the *Competition and Consumer Act 2010* to acquisitions of licences.

Indicative of how these arrangements work in practice, the Minister for Communications sought the views of the ACCC to inform his decision regarding competition limits for the recent 700 MHz spectrum auction. In seeking this advice, he asked that the ACCC have regard to the long-term interest of end-users. The Department engaged with the ACCC throughout its deliberations to provide assistance and support as required.

In November 2016, the ACCC provided its formal advice to the Minister for Communications and this advice was accepted in full. An executive summary of the ACCC's advice was published on the Department's website.

The Department understands the importance of drawing on the expertise of the ACCC in considering the implications of spectrum management for competition. Proposed spectrum legislation is currently the subject of a consultation process and aims to ensure that this continues to occur.

Conclusion

In conclusion we would like to thank the ACCC for its careful and thorough analysis of this issue. We consider the ACCC's conclusions are consistent with the evidence and arguments and expect that ongoing private sector investment will continue to improve mobile outcomes across Australia in the long-term interests of end-users.

There are also a range of measures in train or that can be developed to supplement such private sector activity to improve regional mobile outcomes. We look forward to hearing the final views of the ACCC on such measures and discussing these further with stakeholders.

Yours sincerely



Heather Smith
Secretary

26 June 2017