

1 August 2017

Ms Clare O'Reilly  
General Manager, Convergence and Mobility Branch  
Australian Competition & Consumer Commission  
Level 20 175 Pitt Street  
SYDNEY 2000

Via email: [clare.o'reilly@acc.gov.au](mailto:clare.o'reilly@acc.gov.au)

Dear Clare,

## ACCC INQUIRY ON DOMESTIC MOBILE ROAMING – REPLY TO VHA

Optus wishes to provide a supplementary submission in response to the ACCC's Draft Decision on declaring domestic mobile roaming.

VHA, in its response to the Draft Decision, claims to have provided "*new evidence to address instances where the ACCC has indicated it does not have sufficient evidence*".<sup>1</sup> This new evidence is claimed to demonstrate that declaration of roaming would result in benefits to consumers of "*at least \$658 million per annum*".<sup>2</sup>

Optus strongly disagrees with both these statements. The 'new evidence' presented by VHA is simply a restatement of material that was submitted by VHA in the earlier consultation period. We assume the ACCC has had regard to this 'evidence' in reaching the Draft Decision.

The ACCC is faced with two different sets of evidence when assessing the likely impact of declaring domestic mobile roaming:

- One set provided by VHA, which is largely hypothetical using theoretical models from derived and assumed data inputs. We believe this evidence is both internally inconsistent and contradictory, and inconsistent with observed market facts; and
- Another set of data, provided by Telstra and Optus, using actual investment decisions, real world costs and revenues which clearly demonstrates the regional investment undertaken on the back of competition between competing mobile networks.

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<sup>1</sup> VHA, Attachment B, General comments on the Draft Decision, June 2017, p.1

<sup>2</sup> VHA, Attachment B, General comments on the Draft Decision, June 2017, p.1

The ACCC, in the Draft Decision, quite correctly found that the impact of declaring roaming on regional mobile investment is likely to lead to detrimental outcomes. The ACCC was not convinced by the evidence put forward by VHA.

In response to this, VHA's latest submission contains an expert report from Frontier UK, which claims a benefit to consumers of \$658M per year due to roaming.<sup>3</sup> VHA claims this work "*points to harm to consumers that is very material – in the order or magnitude of billions of dollars over the term of a service declaration.*"<sup>4</sup>

However, this analysis results solely on the assumption there is \$616M of monopoly rent in Telstra pricing. However, this assumption is drawn from another report, provided by VHA in the previous consultation period, that is based on a hypothetical exercise based on no real data, and which the author himself advises should be treated with caution.<sup>5</sup>

To assist the ACCC, Optus engaged the independent expert firm Analysys Mason to review the Frontier UK paper. The report is attached to this letter. In its report, Analysys Mason:

- Conclude that the method and assumptions used by Frontier *significantly and implausibly overstate* the costs and benefits of national roaming.
- Observe that the Frontier UK analysis rests solely on the ARPU difference between Telstra and VHA. But Frontier's ARPU calculations are inconsistent and incorrect. Frontier claim the difference is \$10 but actual correct data shows it to be closer to \$4. Further, ARPU differences change over time, at 2014 there was no difference between Telstra and VHA.
- Demonstrate that Frontier UK fail to take into account other drivers of Telstra's competitive advantage. If the Frontier UK model did so, it would show that the assumed \$10 ARPU gap could not support the assumed level of excess profit and cost of roaming.
- Show that actual market evidence contradicts the connection between geographic coverage and market share. Analysys Mason conclude that other factors must explain why VHA does not have a similar market share to Optus given their very similar network coverage.
- Observe that the large benefit claimed by Frontier UK arises from the assumption that all urban Telstra customers require and pay rent for Telstra's remote geographic coverage. However, VHA data shows that a proportion of Telstra's customers do not require or value full national coverage.
- Conclude that VHA's smaller share relative to Optus is due to factors other than the lack of access to Telstra's regional network. These other factors explain why VHA does not have a market share similar to Optus' 30%. Frontier UK also does not take into account VHA's recent decline relative to Optus and Telstra – in 2010 VHA had 27% national market share.

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<sup>3</sup> VHA, Attachment B, General comments on the Draft Decision, June 2017, p.6

<sup>4</sup> VHA, Attachment B, General comments on the Draft Decision, June 2017, p.6

<sup>5</sup> Feasey, 2nd report, March 2017, para.35.

- Show that if coverage produced the excess profit claimed by Frontier UK, the economic benefits would be sufficient to allow both Optus and VHA to expand their networks by over 1 million sq. kilometres; thereby negating the need for domestic roaming. Frontier UK's work actually undermines the claim that Telstra's remote geographic is a natural monopoly.

In addition, Optus wishes to highlight some further inconsistencies within the new VHA documents:

- First, we note that VHA claim that it *"is not aware of any instances globally where roaming has led to geographically unbundled pricing or rises in prices."*<sup>6</sup> Yet the existence of a geographically unbundled market is a corner stone of the Frontier UK analysis.
- Second, VHA claim that mandated roaming has led to successful regional programmes like the Regional Broadband Initiative (RBI) in New Zealand. However, the RBI is a network sharing model, more in line with the Mobile Black Spots Programme in Australia. It is unclear to Optus how the success of the RBI in New Zealand supports domestic roaming in Australia.
- Third, VHA claim that Optus invested on average \$6.4M per year in regional investment.<sup>7</sup> This is clearly false, and provides no evidence to demonstrate lack of competition or investment in regional areas. Optus has provided extensive confidential material to the ACCC demonstrating its commitment to regional Australia. In fact, Optus has made a commitment to invest \$1B to improve regional mobile coverage by June 2018.<sup>8</sup>

In conclusion, Optus finds that the 'new' evidence presented by VHA in response to the Draft Decision contains no actual new evidence. It is a re-working of data and evidence which was considered and rejected by the ACCC in the Draft Decision. There is no new evidence which could justify the ACCC changing its assessment that declaration of domestic mobile roaming does not meet the legislative requirements.

We would welcome an opportunity to discuss these and other issues with you in more detail.

Yours sincerely

Luke van Hooft  
Director Economic Regulation

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<sup>6</sup> VHA, 2017, Supplementary Submission to Discussion Paper, Part A, 13 March, p.31

<sup>7</sup> VHA, 2017, Supplementary Submission to Discussion Paper, 13 March, p.6

<sup>8</sup> Optus, Optus to invest \$1 billion to improve regional mobile coverage, Media Release, 21 July 2017, <https://media.optus.com.au/media-releases/2017/optus-to-invest-1-billion-to-improve-regional-mobile-coverage/>