

**Australian Competition and Consumer Commission  
Domestic Mobile Roaming Declaration Inquiry 2016**

Submission by

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## Executive summary

The Australian Competition and Consumer Commission (ACCC) is conducting an inquiry into whether to declare a wholesale domestic roaming service (mobile roaming service). Australian telecommunications deregulation was marred by a number of fundamental flaws, principal amongst these was the failure to redress the imbalance that exists in the market with the incumbent, Telstra having infrastructure assets that new entrants would be forced to utilize at significant cost. Amongst the other mistakes made by government during the telecommunications deregulation process was the belief that by issuing mobile network operator (MNO) licenses there would be equal and fair competition and that this would result in Australia enjoying a multi-tier mobile cellular market that benefited consumers. The result was an unbalanced mobile cellular market. In regional and remote Australia over the past twenty years, Telstra received funding from Local, State and Federal governments and agencies for mobile cellular sites located in areas outside the other MNO footprints further enhancing Telstra's mobile cellular dominance. Telstra's mobile cellular network has also benefited indirectly from the ongoing funding received for the Universal Service Obligation. Telstra has taken every opportunity to slow or prevent competition and today the mobile cellular market is not what the government, ACCC and consumers envisaged when the mobile cellular licenses were issued. Anti-competitive behavior and high prices beset the mobile cellular market, particularly in regional and remote areas and directly affecting the mobile virtual network operator (MVNO) market. The ACCC should declare domestic mobile roaming as a mechanism to redress the imbalance between Telstra, Optus and Vodafone particularly in regional and remote areas. The declaration should also be structured to address the anti-competitive and restrictive trade-practices being applied to MVNOs.

## Introduction

The mobile cellular market has not evolved as it was envisaged by the government, ACCC and consumers. Consumer groups are actively calling for government and the ACCC to take action to rectify the lack of mobile cellular competition in regional and rural areas. The MNO and MVNO markets are beset by anti-competitive and restrictive trade-practices. The ACCC is conducting an inquiry into whether to declare a wholesale domestic roaming service (mobile roaming service).

A mobile roaming service allows mobile subscribers of one network to use their mobile phones for calls, text messages and to access data services by means of another network in Australia when outside the coverage area of the network to which they subscribe (ACCC, 2016). Currently only emergency calls are able to be made on another MNOs network when outside the customer's, MNO network.

In regional and remote areas the operations and infrastructure advantage that Telstra had when MNO licenses were awarded has translated into a larger footprint. This footprint has been further enhanced with additional funding from Local, State and Federal governments and indirectly from the USO funding. In some areas, it is not economic for MNOs to be installing separate infrastructure, rather it is logical that infrastructure be shared through infrastructure sharing and wholesale arrangements, however, Telstra has set pricing at an unreasonably high level.

The ACCC has taken into account requests and suggestions from a broad range of sources that a third domestic mobile roaming declaration inquiry should be held. The requests and suggestions have been made by consumer groups, the Australian Communications Consumer Action Network (ACCAN), together with suggestions made in the *Regional Telecommunications Review Report 2015* (RTIRC, 2015), the *Smart farming: inquiry into agricultural innovation Report* (HRSTCAI, 2016) and the *Australian Infrastructure Plan* (IA, 2016).

## Key points

**Deregulation.** Telecommunications deregulation has not resulted in an open and fair competitive telecommunications market as envisaged by government, ACCC and consumers. Whilst other countries,

New Zealand and more recently the UK, have taken steps to address the imbalance associated with maintaining an incumbent carrier, Australia has struggled and stumbled from one mis-step to the next. Telstra's failure to upgrade the fixed access network in the early 2000s should have led to Telstra being split into two companies, but a failure by two governments, from opposite sides of the aisle, to take the obvious and forward looking decision that would have been in the national interest, led to the National Broadband Network (NBN) which was a bold decision by the government of the day, but ultimately flawed in design. The recent waste of \$30 billion by the current government on obsolete telecommunications infrastructure highlights the paucity of reasonable decision making related to the NBN.

In hindsight, it should have been obvious at the time of the MNO licenses being awarded that the MNOs would not be able to compete whilst Telstra was able to restrict access to infrastructure. This led to regulatory decisions to regulate backhaul, access to mobile cellular towers and other infrastructure, etc. The decisions came too late to prevent Telstra from taking a dominant position in the mobile cellular market and to build a network with the largest coverage.

Australia's size and population density means that there will be regions where infrastructure sharing and wholesale agreements are pragmatic and logical, yet this can only happen with regulation when Telstra puts in place anti-competitive pricing and restrictive trade-practices.

**MNO.** Telstra has benefited from its position as the incumbent carrier and the advent of the mobile cellular market was always going to be affected by this. Failure by government and the ACCC to take early action to redress the situation should not be a reason to prevent action being taken now.

Investment by Optus and Vodafone has reflected the anticipated pathway for new entrants into an existing market dominated by an incumbent carrier.

Telstra's dominant position and access to existing infrastructure led to unreasonably high transit and backhaul charges, restricted or no access to infrastructure including mobile towers and exchanges and other non-competitive and restrictive trade-practices.

It is not, nor has it ever been, logical that the three MNOs would duplicate infrastructure around Australia, where in some areas there is not the population density to support the cost.

But the idea that the three MNOs would duplicate infrastructure is quite ludicrous when the totality of what this entails is considered. We've witnessed the three MNOs spend a decade or more duplicating infrastructure thereby increasing the cost of service to customers. As the MNOs ultimately need equal footprints to compete, is it not likely that they will aim to have a similar number of towers as close together as possible?

It is only reasonable that if the current mobile cellular situation is to continue that the government and the ACCC take action to ensure that Australia has three companies building roads, train lines, power distribution, water and gas side by side. Telecommunications infrastructure is in many ways a utility, it is time that this be considered seriously. Failure to do so leads to increased costs for consumers and other negative consumer outcomes.

Arguments put forward by Telstra as to why a domestic mobile roaming declaration should not occur have led to déjà vu, it is 2005 all over again, and Telstra is refusing to upgrade the fixed access network because of "freeloaders".

Telstra has benefited from funding from Local, State and Federal governments over the past twenty years for additional mobile cellular sites where Optus and Vodafone could not provide service due to the anti-competitive and restrictive environment in which they found themselves.

The potential for a new entrant into the mobile cellular network is severely limited by the anticipated cost of infrastructure investment, even if spectrum can be secured, e.g. TPG's purchase of spectrum in the digital dividend auction.

The relatively recent regulation of backhaul, in part due to the NBN, access to mobile cellular towers and other outcomes came too late to negate the earlier negative market environment.

**Infrastructure investment.** There is little evidence internationally that telecommunications related declaration to regulate infrastructure access limits or stops infrastructure investment when there are several network operators in a market as exists in the Australian mobile cellular market. The declaration may only be applied for a set period or to a part of a network to permit the other operators to compete whilst the infrastructure imbalance is rectified or a long-term solution put in place.

As evidenced by events in 2005, when there is only one network operator subject to a declaration to provide regulated wholesale access to its monopoly infrastructure it is possible for the company to cease infrastructure investment. The effective solution is to split the company into retail and wholesale companies. Events in New Zealand and more recently in the UK demonstrate that there is an effective approach that can be utilized to prevent threats that future infrastructure investment will be curtailed.

If there was a net reduction in infrastructure investment as a result of a domestic mobile roaming declaration in the Telstra footprint, then NBN Co should be tasked to rollout the infrastructure and to offer wholesale mobile cellular products and services. It should be noted that NBN Co has started down this pathway by providing access to its fixed wireless infrastructure to the MNOs.

**Transit and backhaul infrastructure.** For Optus and Vodafone, it is logical that they would want to utilise transit and backhaul infrastructure provided by a company other than Telstra, for any income provided to Telstra for a part of the network effectively gives Telstra a significant advantage overall. Whilst the ACCC has recently reduced the cost of regulated backhaul, the cost remains high internationally. A domestic mobile roaming declaration could be ineffective if Telstra were able to benefit by high charges for infrastructure or access in some part of the network not covered by the declaration.

**Technology.** A domestic mobile roaming declaration should include a requirement that the latest technology utilized anywhere in the affected MNO network be provided in the areas covered by the declaration if it is region based. It would not be unthinkable that a MNO would attempt to put the other MNOs onto 3G whilst its customers accessed 4G.

The declaration should include voice, SMS and data. There is no reasonable argument to restrict the declaration to a subset of the mobile cellular technologies that make available the totality of what consumers anticipate will be provided by a mobile cellular service.

**MVNO.** Whilst there are about 60 MVNOs the market share of the MVNOs is miniscule and only one MVNO (Macquarie Telecom) appears to have attained wholesale agreements with all three MNOs. Telstra appears to limit MVNO access to about 90 per cent of its mobile cellular network. Anti-competitive pricing and restrictive trade-practices are a feature of the MVNO market that must be tackled by the ACCC to improve open and fair competition and consumer outcomes.

**Consumers.** Australian mobile cellular consumers pay a premium for the failed mobile cellular market implementation. It could take decades before the mobile cellular charges here reflect international rates. In hindsight, it is possible to see that the government should have mandated infrastructure sharing and regulated wholesale agreements from the beginning to reduce the cost to consumers.

Consumers in regional and remote areas do not have adequate access to MNOs and MVNOs due to the anti-competitive and restrictive trade-practices currently found in the mobile cellular market. This situation is intolerable and every effort should be taken to remove the impediments to MNOs and MVNOs being able to participate in an open and fair competitive market.

**Business.** Business is detrimentally affected by the current situation and it is vital that business be able to get access to competitively priced mobile cellular services where the MNO networks exist.

Business in regional and remote Australia are struggling to compete with businesses located in urban areas due to this imbalance. Farmers (HRSCAI, 2016) and other businesses operating in regional and remote areas are heavy users of telecommunications and will benefit by infrastructure supporting the Internet of Things and innovative telecommunications based products and services.

Many businesses located in urban areas that have opted for Optus and Vodafone find that when staff go into regional and remote areas they're without mobile cellular services, in part due to the lack of information about where the networks actually exist and also due to the lack of understanding about how limited the Optus and Vodafone coverage is outside of urban areas.

## Summary

Stakeholders, including retail and business consumers, Local and State governments, Optus and Vodafone and the MVNOs would benefit from a decision by the ACCC to declare domestic mobile roaming. Telstra would also benefit, by being forced to look for new products and services to differentiate its offerings rather than continuing to rely upon infrastructure at a time when innovation is paramount.

The rationale for the ACCC to declare domestic mobile roaming is similar to other telecommunications related declarations made by the ACCC over the past twenty years, in part the need to provide access to regulated wholesale services, reduce unnecessary infrastructure duplication and to improve consumer outcomes.

The ACCC should make a domestic mobile roaming declaration to address the concerns of retail and business consumers. It is appropriate to take this step to ensure that the weight of evidence now available is acted upon.

## References

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