OPTUS

Submission in response to ACCC Discussion Paper

Domestic Mobile Roaming Declaration Inquiry

Public Version

November 2016

CONTENTS

Section 1. EXECUTIVE SUMMARY

1.1 This declaration inquiry responds to requests from a number of organisations for the ACCC to re-examine the issue of domestic roaming to address concerns identified about regional mobile services. Optus is a major investor in mobile infrastructure and services across both metropolitan and regional areas of Australia. As both an operator of mobile networks and a potential user of a roaming service, we are well placed to provide input to the inquiry that draws on our long experience of operating in this sector.

1.2 Whilst we recognise that there is scope to improve the provision of mobile services to some regional communities and businesses, we do not support the declaration of roaming as a means to achieve these improvements.

1.3 The mobile sector has been the stand-out success of the communications market. The industry services the needs of some 30 million customers per day across three national competing networks. Optus provides wholesale access to its full mobile network footprint to a number of Mobile Virtual Network Operators (MVNOs) who provide additional competition at the retail level. Mobile competition is strong and has delivered significant benefits to consumers in terms of lower prices and improved access to new technologies and services. It is no coincidence that as a result of this investment in competitive services, Australian consumers are leading adopters of mobile technology.

1.4 In contrast to the fixed line sector, regulation of the mobile sector has been light-handed. Competition in the mobile sector has been achieved on the back of significant investment in infrastructure by three Mobile Network Operators (MNOs). Network investment is a key point competitive differentiation and the MNOs continue to invest in infrastructure. This provides clear evidence of a market that is functioning effectively.

1.5 **[CiC]**

1.6 Declaration of a domestic roaming service is fundamentally at odds with the principle of infrastructure based competition that has driven such successful outcomes in the Australian mobile sector. The justifications put forward for roaming are that it will improve coverage and drive price competition in regional areas. We do not believe roaming will achieve these outcomes; in fact the opposite is more likely to occur. There is a real risk that mobile coverage will be capped and that prices will increase.

1.7 Declaration of roaming will almost certainly result in MNOs revisiting their current and future investment plans. Since network coverage will no longer provide a point of differentiation it will be difficult to justify investments in new coverage in the more remote areas.

1.8 Whilst roaming may increase the choice of provider available in some regional areas, this is unlikely to lead to lower mobile prices. Mobile operators currently adopt a national pricing approach with regional customers receiving the same services and prices as metropolitan customers. Even where customers have no choice of provider they benefit from competition by virtue of the fact that mobile operators compete on the basis of their national retail plans. Rather than reduce prices it is more likely that regulation will lead to regional based pricing or increased national pricing as MNOs adjust their plans to reflect the costs of a roaming service.

1.9 Whilst Optus acknowledges that mandated roaming has been a regulatory policy tool applied in some other jurisdictions, it is clear that the circumstances in which such

policies have been applied are not applicable to Australia. Roaming has either been mandated to enable operators to provide national services in jurisdictions where regional spectrum licences are prevalent (USA and Canada) or it has been used to assist a new entrant to enter the market (New Zealand, France, and Norway etc.). In the latter case roaming is usually time bound and subject to investment obligations on the new entrant. Neither of these circumstances applies to Australia, where we have three established providers with access to national spectrum licences operating nationwide networks.

1.10 In summary, Optus believes there is no case for the ACCC to mandate a domestic roaming service. The market will continue to deliver competitive mobile services for regional Australians.

Section 2. COMPETITION DRIVES NETWORK INVESTMENT

2.1 Over recent financial years, Optus has adopted a network investment strategy aimed at improving network experience in specific locations, most of which are in regional areas. Optus' renewed regional strategy focuses on quality of network experience in regional areas; for both regional end-users and visitors from metro areas.

2.2 **[CiC]**

Recent regional investment

2.3 Set out below are some examples of recent announcements by Optus of its planned investments in regional infrastructure.

(a) **Central West (NSW):** 17 August 2016: Optus announced plans to spend an additional $4 million to further improve mobile phone coverage across the Central West region in Orange, Bathurst and along the Mitchell Highway over the next 12 months.

This follows the $1.7 million investment Optus has made over the past 12 months, to upgrade 16 mobile site to 4G at locations, including Mt Canobolas, Blayney, Orange CBD, Burnt Yards, Orange West, Manildra, Molong, Cargo, Cumnock, Mt Panorama and Hill End.

These network enhancements have expanded 4G data coverage, increased download speeds and improved mobile voice quality for the Central West

(b) **Northern Territory:** 25 August 2016: Optus announced that it will boost mobile coverage for locals and travellers across 12 remote yet popular locations in the Northern Territory after announcing the introduction of cells that provide mobile coverage through Optus satellites.

Known as 'small cells', the small units provide the potential for an inexpensive and flexible alternative to traditional mobile towers.

The small cells will be located between selected locations from Katherine to Uluru along the Stuart Highway, key roadhouses and popular check-in locations including Daly Waters, Renner Springs, Three Ways, Barrow Creek and Erldunda.

Additionally, locations such as Curtin Springs on Lasseter's Highway have been chosen which are not currently serviced by any mobile coverage.

(c) **Bendigo (VIC)**: 29 September 2016: Optus announced plans to spend an additional $3.5 million to further improve mobile phone coverage across the Bendigo region over the next two years, with new towers planned for Lockwood, Maiden Gully, Bendigo Showground, Ironbark, Jackass Flat, Quarry Hill, and Flora Hill.

Optus' investment will also improve coverage along the Calder Highway at Kyneton West, Woodend and Sunbury South; and the Midland Highway at Castlemaine and Mt Helen.

This follows the $7 million investment Optus has made over the past two years, to upgrade mobile sites to 4G at Bendigo TAFE, Whitehills, Epsom, Eaglehawk, Bendigo South, Kangaroo Flat, Huntly, Maiden Gully, Strathfieldsaye, Junortoun, Long Gully, Bendigo CBD, and Strathdale.

These network enhancements have expanded Optus' 4G data coverage, increased download speeds and improved mobile voice quality for the Bendigo region.

(d) **Ballarat (VIC):** 29 September 2016: Optus announced plans to spend an additional $3.5 million to further improve mobile phone coverage across the Ballarat region over the next two years, with new towers planned for Ballarat Base Hospital, Newington, Alfredton, Delacombe, Lake Wendouree North, Ballarat Airport, Smythes Creek, and Bonshaw.

Optus' investment will also improve coverage along the Western Highway at Ballan, Rockbank and Brookfield; the Midland Highway at Castlemaine and Creswick South; and the Glenelg Highway at Smythes Creek.

This announcement follows the $6 million investment Optus has made over the past two years, to upgrade mobile sites to 4G at Mt Buniyong, Wendouree, Wendouree North, Sebastopol, Mt Helen, Ballarat West, Ballarat East, Ballarat North, Mount Clear, Ballarat CBD and Eureka.

[CiC]

Investment promotes investment

2.4 It is important to recognise that investment by Optus has seen a clear response by Telstra, which has also lifted its level of investment in mobile infrastructure.

2.5 Telstra has stated that it invested $1 billion in its mobile network over 2014–15 *"to provide our customers with the best connectivity and coverage"*[1] and that it will invest $5 billion in its network over the three years to June 2017[2]. A further $3 billion has been committed for network investments over the three years to June 2019.[3]

2.6 In addition to the above, Optus notes that Telstra won the bulk of the federal and State Government funding under the first round of the Mobile Black Spot programme. Under this programme, Telstra will construct 429 new sites to improve mobile coverage to over 400 communities.[4]

Roaming does not promote investment

2.7 **[CiC]**

2.8 Should roaming be mandated, a similar outcome would happen for all access seekers; that is, investment is likely to be replaced with roaming.

2.9 One very likely outcome of a decision to declare roaming is that Telstra will no longer invest to expand its coverage since roaming will remove coverage as a key market

---

[1] Telstra, Telstra Annual Report 2015, p.23
[2] Telstra, Telstra Annual Report 2015, p.6
[3] Telstra, "Telstra invests up to extra $3 billion on next generation network leadership, digitisation and customer experiences," Media Release, 11 August 2016
[4] Telstra, Telstra Annual Report 2016, p.12

differentiator. This point has been forcefully made by Dr Tony Warren, Telstra Corporate Affairs, Group Executive, in a recent blog:

> *Regulating mobile roaming would take away our ability to offer customers a better experience and bigger mobile network than any of our competitors. Regulated roaming would mean there was virtually no reason for any mobile phone company to invest in new coverage or better technology*[5]

2.10 At its recent Investor Day Telstra has reiterated the impact that roaming will have on its regional mobile investment strategy. Andy Penn, Telstra CEO, has noted that Telstra's current strategic investment program into regional mobile infrastructure "would be uneconomical if mobile roaming was declared". This investment programme includes the following;

(a) $350m over the next 3 – 5 years to expand coverage and capacity for the last 2% population geographically. This continues our historic practice of targeting 15% of our mobile network capital to the most remote corners of the network;

(b) $240m in mobiles black spots 1 and 2; and

(c) $100 - $200m co-contribution fund where Telstra is willing to commit capital for projects jointly funded by community and other parties to support infrastructure investment not viable on a stand-alone basis.

2.11 These statements demonstrate that if roaming is declared then mobile coverage is likely to be capped at current levels with no further extension or it will be extended to a much lesser extent than would otherwise be the case.

[5] https://exchange.telstra.com.au/2016/09/06/regulated-roaming-not-worth-the-risk/

Section 3. ROAMING WILL NOT LEAD TO END-USER BENEFITS

3.1 Domestic roaming can only be declared if it promotes the long term interests of end-users; including promoting competition, lowering prices and improving network experience.[6]

3.2 However, it is not clear that mandated roaming will achieve these results when compared against the current state of the market without mandated roaming. This is because:

(a) Mobile market adopts national pricing, with regional customers receiving the same product as metropolitan end-users, and benefiting from metropolitan competition.

(b) Whilst domestic roaming may increase the choice of retail providers available in some regional locations, customers in these locations that currently only have the choice of one mobile network today are not likely to be subject to monopoly pricing or other negative effects typically associated with lack of network choice.

(c) Mandated roaming is likely to lead to regional-based pricing, or increased national pricing which undermines the competitive pricing currently seen in the market.

(d) Mandated roaming is unlikely to have any positive effect on overall network coverage. It is unlikely that the roaming access provider would face increased incentives to invest.

3.3 This issues are discussed in greater detail below.

Competition in the national mobile market is strong

3.4 The Australian mobile market is a national market. Prices are set nationally, and all end-users, irrespective of their locations, are charged the same. That means regional end-users receive the benefits from competitive metropolitan markets.

3.5 Competition for mobile services continues to be strong – the mobile market has been one of the most successful areas for competition in the communications sector. There are three large competing mobile networks operating across a large portion of Australia, and retail prices have fallen significantly over the last decade. Australia has also been at the forefront of LTE deployment and smartphone adoption.

3.6 These benefits reflect the competitive infrastructure investment by the three MNOs: Telstra, Optus and VHA. These mobile networks each provide coverage to at least 96 per cent of the population, and support a range of mobile virtual network operators (MVNO) through well-established wholesale supply arrangements – with over 30 MVNOs currently providing services in Australia.

[6] Optus notes that promoting efficient investment in, and use of, infrastructure; as well legitimate business interests of access seekers will lead, in a consumer-led context, to better network outcomes.

3.7 Figure 1 shows the subscriber market shares between the three MNOs.[7] This reflects the current state of the mobile market, but excludes machine-to-machine SIOs.

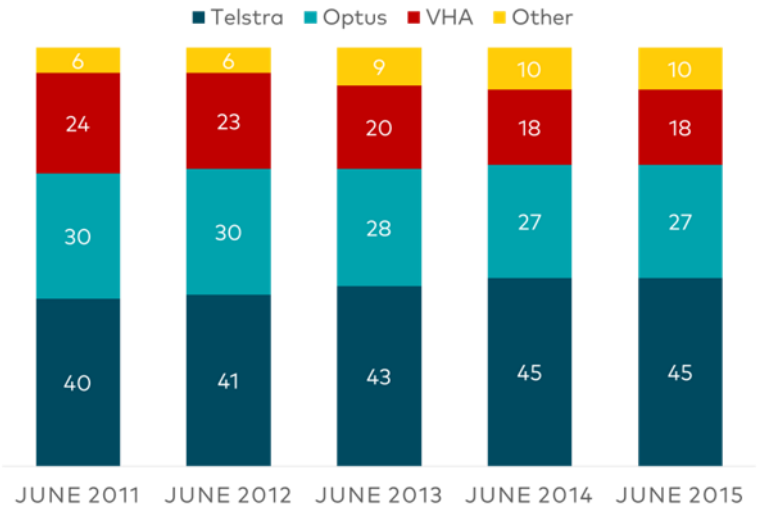
Figure 1 Mobile subscriber market shares

	June 2013	June 2014	June 2015	June 2016
Total mobile SIOs ('000)	**29,878**	**29,715**	**30,195**	**30,711**
Telstra	47.9%	50.8%	51.5%	51.7%
Optus	31.9%	31.7%	31.1%	30.4%
VHA	20.2%	17.5%	17.4%	17.9%

Source: Company reports

3.8 Within these overall carrier subscriber market shares, there is also a considerable share of MVNO subscribers. Figure 2 shows the development of market shares since June 2011 within the traditional mobile voice and data (i.e. mobile handset) segment, and shows that MVNO market share has stabilised at around 10 per cent of the market.[8]

Figure 2 Retail market share for mobile handset services



Source: ACCC

3.9 The growth in MVNO market share over this period also suggests that price competition plays an important role in encouraging take-up and meeting consumer demands. Notably, the ACCC has recognised the presence of MVNOs as being *"beneficial to end-users, providing greater product differentiation, innovative pricing and better value plans."*[9]

Current market shares still reflect VHA network issues

3.10 It is also instructive to note that the variations in market share from 2009 onwards is largely explained by the network issues faced by VHA. In the 2011-12 annual telecoms report the ACCC noted that:

[7] The subscriber market shares have been calculated based on company financial results. Total mobile SIOs include the sum of postpaid, prepaid, mobile broadband, and wholesale mobile SIOs.
[8] ACCC, Telecommunications report 2014-15, p.29
[9] ACCC, 2013, Domestic mobile terminating access service declaration inquiry, Final Decision, June, p.18

Customers moved to Telstra in significant numbers following VHA's network performance problems in 2010.[10]

3.11 Again in the discussion paper into the declaration of MTAS, the ACCC noted that:

VHA's losses have largely been due to the ongoing effects of network issues it experienced in late 2010. These network problems meant that VHA customers experienced poor network coverage, call drop outs, and delayed SMS and voicemails.[11]

3.12 VHA's market share has only recently begun to recover from the losses post 2010. At December 2010, VHA had 7.6M subscribers, this fell to 5.2M at June 2015, and has recovered somewhat to 5.5M at the end of June 2016. This 28% reduction in subscribers reflects a competitive response by the market to the network issues and associated reputational damage faced by VHA.[12] Many of these 'lost' subscribers moved to Telstra, which largely explains its consequent increase in mobile market share from 41% in December 2010 to 52% in June 2016. This market movement has been recognised by the ACCC:

Telstra has captured many of the subscribers leaving VHA, partly because it has been able to differentiate its services in terms of network quality and coverage.[13]

3.13 Optus submits the development of market shares since 2010 is important to keep in mind, as it demonstrates that Telstra's current market share is largely reflective of a change in consumer preferences and the perception of Telstra's network performance compared to VHA. In many respects this shows the market to be working effectively. Telstra has gained market share from customers migrating to it from VHA. This has in turn prompted both VHA and Optus to invest to improve both coverage and the quality of their network.

3.14 Optus highlights in its submission in response to the ACCC communications market review that each MNO has improved on its network performance from the previous year – especially in rural and remote areas, which is a positive improvement for consumers (based on physical test results).

3.15 Recent market research by Bernstein shows that network availability and performance is a large driver of network choice with pricing a close second in important buying factors for end-users. The research also shows that while Telstra's rankings have remained largely stable across the buying factors, Optus has improved the most across almost all criteria. Optus' largest gains have been in network coverage and speed – largely due to the rollout of LTE over the 700 MHz spectrum. Bernstein notes that:

Optus has improved the most, across almost all criteria. In a reversal of the trend we saw between the last two surveys, Optus's own users find network quality and service quality to have all improved significantly over the last year. [14]

3.16 The market survey results demonstrate the market benefits accruing from network investments. Importantly, there are no barriers to network improvement in the

---

[10] ACCC, *ACCC telecommunications reports 2011-12, Report 1: Telecommunications competitive safeguards for 2011-12*, 2013, p.6
[11] ACCC, *Review of the declaration of the Domestic Mobile Terminating Access Service*, Discussion Paper, May 2013, p.14
[12] Company data; Analyst Reports.
[13] ACCC, *Review of the declaration of the Domestic Mobile Terminating Access Service*, Discussion Paper, May 2013, p.14.
[14] Bernstein, Australian Telecoms: Market Survey 2016, 2016, July 19, pp.2-3

Australian market. Once an MNO makes a commercial decision to invest in its network, end-users start to see improvements in coverage and speed; and are more willing to switch to that MNO. The ability to improve network performance is demonstrated above in section 2, and the results of this investment can be seen in the above discussion.

3.17 Optus notes that access to spectrum has been an important factor in driving regional coverage for 4G services. When 4G was first rolled out by the MNOs it was primarily delivered over the 1800 MHz spectrum band. Since Optus only had a small number regional 1800 spectrum apparatus licences it was constrained in its ability to deliver 4G services to regional Australia. This was only alleviated when Optus acquired 700 MHz and 2600 MHz spectrum in the Digital Dividend auction in 2013. Notwithstanding these initial spectrum constraints, Optus has built out significant infrastructure in regional Australia, **[CiC]**. Since acquiring 700 MHz spectrum Optus has been able to lift investment in mobile infrastructure to **[CiC]** , a considerable proportion of which is to boost coverage in regional areas.

3.18 In contrast to Optus, VHA has not faced similar constraints as it has held more extensive 1800 MHz regional spectrum licences together with 850 MHz regional spectrum that was capable of being used for 4G almost two years before the 700 MHz and 2600 MHz spectrum became available. Despite having a first mover advantage over Optus, VHA has been slower to roll-out 4G coverage to regional areas. As a result, Optus has more than a thousand 4G enabled base stations in regional Australia than VHA and provides 4G coverage to 96% of the population.

Geographic sub-markets

3.19 While the ACCC has consistently adopted a national market for mobile service (an assessment which Optus strongly support), for this inquiry, it may be instructive to identify the sub-markets for metropolitan and regional end-users.

3.20 **[CiC]**

3.21 Optus' estimate of metro and regional market shares are shown above. It shows that Telstra's market share in greater capital cities is less than its overall market share, while it has around **[CiC]** market share in regional areas. Optus has markets shares in both regional and metropolitan more equivalent. VHA, on the other hand, has significant variation between its metro and regional shares, with its regional share at **[CiC].**

3.22 As noted, these shares reflect the outcome of competitive market processes. VHA's low regional share can be explained by market perception over its recent network performance issues; and its investment in regional areas. Telstra's high market share in regional area reflects its historical position as the beneficiary of previously Government owned and funded infrastructure. Of most note to the ACCC, Optus' market share across metro and regional areas appear stable – this shows that it is possible for 'challengers' in the market to maintain regional share given the requisite network investment and commercial focus.

3.23 In summary, this data show that:

(a) Competition is strong in metro areas, with MNOs having similar market shares;

(b) Telstra has a larger market in regional areas; and

(c) MNOs can gain regional market share given the necessary investment and corporate focus.

3.24 Optus submits that while Telstra does maintain a higher market share outside of the greater capital cities, there is no evidence to suggest that this represents a barrier to entry in regional areas. The fact that Optus can maintain market share across metro and regional areas shows that an MNO with a national marketing focus is viable. Optus submits that VHA's market share differential largely reflects its commercial priorities and reputational damage caused by its 2010 network issues.

Regional end-users may have less network choice, but enjoy competitive pricing

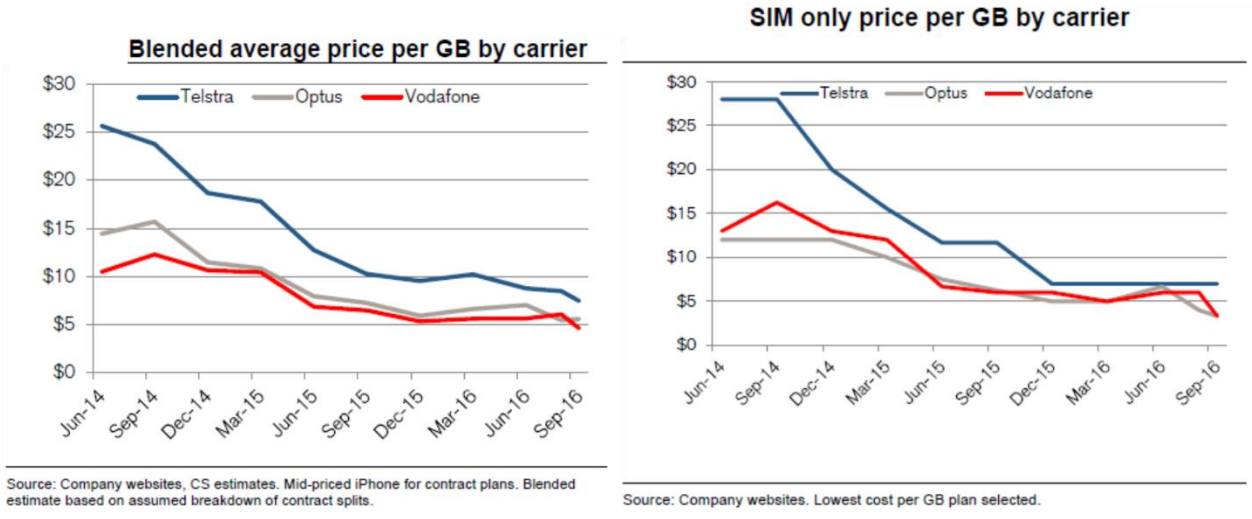
3.25 Importantly, a high market share in regional areas for Telstra does not mean that end-users in these areas are subject to monopolistic pricing. Even if it were correct to say that there are barriers to entry in regional areas, end-users in regional areas receive the same commercial benefits as metropolitan end-users. This is because of national pricing, and strong competition in metropolitan areas.

3.26 The nature of the Australian mobile market is that end-users in areas with only one provider receive the benefits of competition to the same degree as those end-users located in the highly competitive areas.

3.27 Whilst historically Telstra has been able to price at premium to Optus and VHA its pricing is still subject to competitive discipline. Regional users benefit from this competitive discipline by virtue of national pricing and competition for metropolitan customers.

3.28 Both metropolitan and regional end-users benefit from strong competition in metropolitan areas. During 2010-11 Telstra's price premium was reduced, reflecting higher competitive pressures due to the merger of Vodafone and Hutchison and the 'customer land grab' after the VHA network issues. Telstra's price premium appears to have returned when customers exhibited less willingness to leave due to higher value placed on Telstra's network advantage. At this point, Optus embarked on its extensive network investment program. As a result, market competition has increased and Telstra's price premium has been largely eroded.

Figure 3 Telstra price premium



Source: Credit Suisse, Telstra Corporation, 12 September 2016, p.7

3.29 As described above, the increased network investment by Optus and VHA is having an impact on customer choice. This market development has led to Telstra reducing its price premium in order to maintain share. It is seen above that there is now little if any price premium charged by Telstra. Indeed, it can also be seen that the price for

GB across the three carriers is barely different – a substantial change from June 2014 where Telstra was more than double.

3.30 Most importantly, as end-users across the market alter their perceptions on network performance, the premium that Telstra can command is being reduced. Bernstein's Market Survey 2016, a national survey across both metro and regional areas, concludes that competition is eroding Telstra's price premium:

> *Optus and VHA have improved significantly, eroding Telstra's network advantage and its ability to extract premium pricing. Telstra was the only operator to experience a contraction in average spending; a drop in willingness to spend; and deterioration in recommendation share vs. actual user share.*[15]

3.31 The movement of Telstra's price premium over recent years, corresponding to Optus' increased network investment, and the improvement in VHA's network performance, clearly demonstrates that *all end-users* irrespective of location benefit from increased competition – be it price or network based. The location of this competition does not matter. Strong network competition in metro areas will equally result in greater competition nationally as network competition in regional areas.

Roaming will not lead to lower prices for end-users

3.32 Optus cannot see any pricing benefit as a result of mandated roaming. One argument may be that some consumers who have limited access to MNOs could have greater choice of provider. While this may be true, it would be incorrect to assume that increased choice would occur at the current price levels. In this context it does not follow that increased network choice necessarily results in lower prices.

3.33 It has been discussed above that Telstra's price premium over the market has been largely eroded. Telstra's current pricing does not appear to reflect monopolistic factors.

3.34 Should domestic roaming be mandated – and the related Final Access Determination (FAD) adopts efficient pricing, set at the level that is consistent with the build-buy decision – wholesale roaming rates are likely to be substantially greater than the nationally averaged pricing currently seen in the market. There are two likely impacts on related retail market pricing:

(a) National average pricing increases to reflect the additional costs associated with roaming. Assuming efficient roaming costs; and actual roaming usage; non-Telstra prices would increase towards the Telstra level; or

(b) Roaming MNOs, in order to maintain metropolitan competition, would adopt disaggregated pricing, with higher prices or reduced inclusions, within roaming areas.

3.35 The precise uplift is dependent on many factors, most notably the areas in which roaming is mandated, and where roaming usage is expected. It would also include the direct costs associated with systems upgrades and management required to offer a mandated product.

3.36 It is instructive for the ACCC to reflect on market pricing adopted by Hutchison at the time when it relied heavily on 3G roaming with Telstra. This is the most recent example of wide-ranging roaming agreement. Hutchison's network in 2009 (including a joint venture arrangement with Telstra) covered 56% of the population. At this time

[15] Bernstein, p.1

Hutchison obtained 3G roaming on Telstra's 850 MHz network, covering 96% of the population. Hutchison offered two-tier pricing in market, with usage outside of Hutchison's network charged at higher rates, or excluded from plan allowances. Hutchison's usage charge in roaming areas was five times the rate charged over its own network.[16]

3.37 The experience of Hutchison also shows that the costs of roaming could lead to negative financial outcomes. For example, even with an urban-focused network, and pricing that discouraged roaming usage, Hutchison experienced significant increased costs as more customers joined the network and as more customers roamed outside its limited network. Hutchison's Annual Reports over this period made clear the negative financial impact from relying on roaming. Over two years from 1HFY07 to 1HFY09, Hutchison's direct telecommunication cost increased by 50%, which was largely attributed to roaming charges.[17] A substantial reduction in roaming costs was one component of the claimed $2B NPV worth of synergies attributable to the merger with Vodafone.[18] VHA noted in 2011 that it's operating margin increased by 22% reflecting lower domestic roaming costs.[19]

3.38 The experience with Hutchison over the period prior to its merger with Vodafone shows that even commercial roaming deals, entered into voluntarily, can lead to negative customer outcomes.

Conclusion

3.39 The above analysis demonstrates that the market is operating effectively today with competitive national pricing, reflecting the competitive intensity present in metropolitan areas. Regional end-users continue to benefit from strong competition in the metro areas.

3.40 In contrast, mandated roaming could result in higher prices as the costs of the service are added into current retail price plans.

3.41 Mandating domestic roaming would not promote competition in the relevant markets. Indeed, it is most likely to result in increased pricing for regional customers, and would have little if any impact on metropolitan customers.

[16] For example, Hutchison's 'cap' plans in the market, which included data allowance for 3G users (e.g. $79 per month cap allowed 1GB usage). Within Hutch's 'broadband zone' (i.e. coverage of the 3GIS network), Hutch offered unlimited access to key content, such as Sky News, ABC, Cricket Australia, Foxsports News. The pricing differential was larger for mobile broadband services (i.e. service through a 3G dongle). Broadband packages that had a data allowance of between 1GB to 3GB provided for only 2MB allowance outside of the Hutch network. That is, only 2MB allowance when roaming. Data usage above that level was charged at 50c per MB. This can be compared to a 10c per MB excess usage charge when within the Hutch network. http://shop.three.com.au/broadband, archive Nov 10 2009

[17] Hutchison Telecoms, 2009, Half Year Results Presentation, p.11. See also 2008 Half Year Results Presentation.

[18] Hutchison Telecoms, 2010, Annual Results Presentation, 12 February, Slide 13

[19] Hutchison Telecoms, 2011, Annual Report 2010, p.4

Section 4. INSUFFICIENT EVIDENCE OF A PROBLEM

4.1 The discussion paper references several regional inquiries to support the call for domestic roaming. In particular, the following documents are quoted as support for calls to inquire into mandated domestic roaming:

(a) **House of Representative Standing Committee on Agriculture and Industry's smart farming inquiry into agricultural innovation**. The Committee recommended investigating incentives for mobile network operators to provide roaming services in rural and remote areas. However, this arises from the Committee considering there is scope for more effective use of mobile infrastructure. In particular, "*that roaming arrangements between network operators could significantly improve the effective coverage available to farmers in the paddock*."[20]

(b) **2015 Regional Telecommunications Review**. There is one paragraph in the report that makes a brief reference that mobile roaming may capture additional revenue for regional sites, but the "*the Committee recognises that this may not be welcomed by mobile network operators who have invested in non-urban coverage to enhance their competitive advantage*."[21] No recommendation was made with regards to mobile roaming.

(c) **Australian Infrastructure Plan by Infrastructure Australia**. This report recommends modifying the USO; making NBN backhaul and towers available to MNOs; and to encourage co-location of towers.[22]

4.2 Whilst Optus recognises that the above organisations have recently commented on the benefits of mobile roaming, these do not constitute a sufficient body of evidence to justify the declaration of roaming. As has been set out in the previous sections it is not at all clear that roaming is the best policy response to address the issues raised in these reports. The problems identified in these reports largely relate to coverage issues in certain regional areas. This will not be remedied by mandating domestic roaming.

4.3 Mandating domestic roaming will not increase mobile coverage, and is unlikely to address the problems identified in regional inquiries that have examined telecommunications issues. Roaming will not expand the overall mobile footprint available today, it merely opens up existing coverage to other providers. As argued in section 2, roaming can reduce incentives for access providers to invest, so in the longer-term it may reduce coverage from that which would otherwise be available in the absence of roaming. Optus notes that some of the regional inquiries quoted above have noted this very risk that mandated roaming could result in decreased coverage and service.[23]

4.4 Finally, Optus notes the references to statements from some rural lobby groups calling on regulation of mobile roaming since "Telstra dominates and we suffer as a

[20] House of Representatives Standing Committee on Agriculture and Industry, *Smart farming: inquiry into agricultural innovation,* May 2016, p.54
[21] Regional Telecommunications Independent Review Committee 2015, p.41
[22] Infrastructure Australia, *Australian Infrastructure Plan,* February 2016, p.68
[23] Regional Telecommunications Independent Review Committee 2015, p.41

result, in terms of cost and coverage".[24] As discussed above in section 3, it is far from clear that roaming will lead to lower pricing.

Regional telecommunications problems relate to coverage

4.5 Whilst we have issues with the remedy proposed by the various regional reviews, Optus does agree with their underlying proposition that there is a need to improve coverage in the more remote areas. Australia has a large land mass and whilst the population is densely urbanised there are many small and sparsely populated communities spread across the nation. It is challenging to justify investment in areas which have very sparse population and which are subject to higher deployment costs to provide adequate coverage. However, there are a range of options available to facilitate such investment. This includes:

(a) Infrastructure sharing;

(b) Government funding schemes, such as the Mobile Black spot programme; and

(c) Commercial roaming agreements.

4.6 Each of these can improve and extend the reach of existing network coverage.

Network sharing arrangements

4.7 MNOs face significant capital and operating costs to establish infrastructure to support mobile services. Much of this infrastructure is of a passive nature and has no contribution to make to the level of overall service delivery. The costs of this passive infrastructure, which are significant, can be reduced if MNOs jointly deploy and operate the infrastructure.

4.8 A relevant example is the Optus and VHA network sharing agreement. In November 2004, Vodafone and Optus entered into an Alliance Agreement to form an unincorporated joint venture to establish and jointly operate shared and co-located 2G and 3G network infrastructure. This agreement was subsequently revised and extended in May 2012 in order to facilitate increased investment in site coverage. **[CiC]**

4.9 In very simple terms this type of arrangement has enabled both carriers to almost double the size of the areas they can cover for a given level of investment. **[CiC]**

4.10 Optus notes that the joint venture arrangement entered into by Vodafone and Optus resulted in increased coverage. Encouraging the sharing of passive network infrastructure is the sort of policy approach that would be appropriate to address the regional coverage problems identified in the reports referenced in the discussion paper.

Mobile Black Spot programme

4.11 Improved coverage in the more remote parts of Australia can be facilitated by direct funding assistance from Federal and State Governments. Whilst such funding has traditionally been provided to extend the coverage of a single provider it is possible to design such funding schemes to facilitate extended coverage by multiple providers.

---

[24] *Victorian Farmers Federation, Australia needs mobile phone roaming to deliver competition, say farmers,* 2 June 2016

4.12 The Mobile Black Spots scheme provides a good example of this approach. A condition of the Federal Government making funding available at a site is that any funded site should be capable of being accessed by other MNOs. Importantly, the arrangements under this scheme go a step further than the existing co-location obligations under the Facilities Access obligations of the Telecommunications Act. They place obligations on an MNO receiving funding to make access to a facility available prior to the construction of that facility. This enables for greater sharing of joint costs, which can significantly improve the commercial case for an MNO establishing a presence at a remote site.

4.13 This opportunity for cost sharing is much greater under these arrangements than the traditional co-location model, where access is usually sought to established sites. Co-location under these circumstances often involves duplication of activities and costs. For example, design work has to be duplicated, additional support infrastructure has to be constructed and towers often have to be strengthened. If these costs can be avoided then the economics of co-location in remote areas can be improved.

4.14 It would be possible to adopt the principles used in the Mobile Black Spot scheme more generally to promote increased collaboration and co-investment of infrastructure.

Commercial roaming arrangements

4.15 Finally, Optus notes that even if it were established there was is a durable market failure that justified domestic roaming as the proportionate remedy; this does not directly lead to regulated domestic roaming. Optus notes that regulation is not a pre-condition for domestic roaming, since a commercial domestic roaming service is provided in the Australian market today.

4.16 Optus has been providing domestic mobile roaming service to VHA since April 2013. This arrangement was agreed as part of wider wholesale agreement between Optus and VHA, which included the infrastructure sharing arrangements noted above.

4.17 **[CiC]**

Section 5. NO GLOBAL SUPPORT FOR ROAMING

5.1 There has been reliance on international precedent to justify domestic roaming in Australia. While this has superficial appeal, a proper understanding of the international markets demonstrates that there is no support for mandated domestic roaming given the Australian market conditions.

5.2 Advocates of domestic roaming have referred to markets such as the US and Canada; as well as some European markets and New Zealand. Further, it has been claimed that roaming is common in markets that have large landmass and low population density.

5.3 Optus challenges these statements. Importantly, they misrepresent the market environment or the policy reasons for the introduction of domestic roaming.

5.4 Optus requested international experts Analysys Mason to conduct a global review of domestic roaming requirement. Analysys Mason finds there are two reasons for the introduction of roaming:

(a) Regional licensing regimes; and

(b) Addressing barriers-to-entry for new entrants.

5.5 In addition, where roaming is introduced with new entry, it is done so on a time limited basis so as to encourage investment by the new entrant.

5.6 Analysys Mason finds that none of these situations exist in the Australian market. Analysys Mason conclude that neither of the two reasons for roaming "*applies in Australia. Licensing is national and there is no prospective new entrant seeking to make long-term investments.*"

5.7 Furthermore, Analysys Mason conclude that declaration under Part XIC, which mandates price terms to be set after declaration:

> *… would make Australian regulations more onerous than the majority of countries. Domestic roaming intervention carries high risk of unintended consequences on market competition and investment plans*

5.8 Optus agrees with this assessment since declaration will not address the concerns of regional communities, but could result in reduced levels of coverage and higher prices. The only MNO supporting domestic roaming is a well-established operator having been present in the market for 25 years and with access to large amounts of spectrum under national licences. There is no global support for the introduction of domestic roaming to remedy persistent under-investment from one MNO.

5.9 This section looks at the international use of mandated domestic roaming, and specifically:

(a) Roaming regulation in markets with regional licensing

(b) Regulation of roaming to support new entrants;

(c) Limited nature of roaming regulations; and

(d) Use of light-handed regulation.

Roaming in markets with regional licensing

5.10 Advocates for declaration of domestic roaming have relied upon the USA and Canada as examples of markets that have domestic roaming. The argument is that USA and Canada are large countries with sparse populations; hence, roaming should also be mandated in Australia.

5.11 These statements do not support mandating roaming in Australia.

5.12 The USA and Canada have regional spectrum licensing regimes which has resulted in regional-based mobile networks. In the USA, given the fragmented nature of spectrum holdings, no operator has full nationwide coverage and therefore domestic roaming is required to provide a nationwide service. Similarly, Canada is divided into 14 regions with spectrum allocated on a regional basis. Only the three large MNOs have national holdings. Regional operators would not be able to effectively operate without access to domestic roaming from the three large operators.

5.13 Australia, on the other hand, has a national spectrum regime. All three MNOs have sufficient spectrum to supply services across the whole country. Roaming is not required for the purpose of being able to access national spectrum holdings.

Roaming used to support new entrants

5.14 For markets with national licensing regimes, the use of mandated domestic roaming is to support the entry of a new entrant in mature markets, which may also face technology barriers to entry and growth. Most of the benchmarked markets introduced roaming regulation for this reason.[25]

5.15 New entrants in a mature market can face barriers to entry, since nationwide coverage is usually required before the commercial launch of mobile services. This association with new entry means that in these circumstances domestic roaming can increase investment. However, this new investment is triggered by the new entry, not by domestic roaming.

5.16 In certain markets (such as New Zealand), the network technologies and spectrum bands used by operators are not compatible. This may limit the number of domestic roaming partners available to a new entrant operator. Similarly, in some markets the new entrant has access to limited spectrum (such as Norway), which limits the technology that can be deployed, with roaming used to offer services over other technologies.

5.17 This reason, however, has little relevance to the Australian market. There is no prospective new entrant operator in Australia, and all three MNOs have well established networks and have been licensed for over 20 years. Moreover, all operators in Australia use compatible GSM / W-CDMA / LTE technology and could technically roam on each other's networks.

Where roaming is regulated it is typically time limited

5.18 Where domestic roaming has been regulated to assist new entry, it typically has sunset clauses or has been removed. Analysys Mason has looked at the following markets:

[25] New Zealand, UK, France, Norway, Italy, Germany, Austria.

(a) **Italy** – roaming has been mandated three times to assist new entry after new licencing or spectrum issue. Each time regulations expires 30 months after entry.

(b) **Austria** – regulations have been imposed to assist new entry on two occasions, each time as part of licences and spectrum issues. These regulations expired after four and six years respectively.

(c) **UK** – regulations were imposed in 1999 as part of new licences, in order to aid new entry. These were removed five years later.

(d) **France** – While roaming is not regulated in France. The regulator is of the view that even commercially negotiated roaming contracts decrease investment. The regulator is in the process of terminating these contracts.

(e) **Norway** – Regulation has been introduced in Norway as part of a market review to assist new entry. Regulation is to apply for three years.

5.19 Analysys Mason finds that regulation of domestic roaming is not standard in stable, competitive and mature markets. It is typically only adopted to assist new entry. Global use of domestic roaming does not support the declaration of roaming in Australia.

Roaming regulation is light handed without price terms

5.20 The majority of benchmark countries that regulate domestic roaming (e.g. the UK before regulations were removed, New Zealand, Italy, Austria, USA) have light-touch regulations. This means that prices and terms and conditions are not regulated, and are left to commercial negotiation. The recent regulation in Norway aims to be light touch as the entrant has already reached an unregulated deal with the other supplier

5.21 This light-handed approach is not available to the ACCC. Under Part XIC, once a service is declared the ACCC must start an Access Determination inquiry. Any subsequent FAD must then include price terms. It is not possible under the current interpretation of these provisions for the ACCC to declare the service and then leave it to the market to set reasonable terms.

5.22 Analysys Mason has identified that the declaration of domestic roaming as a service would require the imposition of price controls, meaning Australia would not be in line with best practice

International experience does not support roaming in Australia

5.23 Analysys Mason find that international reasons to regulate do not apply in Australia:

(a) The reasons for regulation do not apply in Australia. Licensing is national and there is no prospective new entrant operator seeking to make long-term investments in the market. All operators are free to strike commercial deals on agreeable terms, which could also reflect the higher costs of traffic in rural/regional areas.

(b) Examples of 'price regulation' by other regulators focuses on guidance not price setting. The declaration of domestic roaming requires price regulation which is not light touch and would make Australian regulations more onerous than the majority of countries. Domestic roaming intervention carries high risk of unintended consequences on market competition and investment plans.

(c) If domestic roaming becomes a declared service, there is a risk that this becomes a permanent feature of the Australian market, preventing independent investment in this area.

Appendix A. SPECIFIC QUESTIONS

A.1 This appendix answers the specific questions listed in appendix A of the discussion paper. Where relevant, the answers refer to the body of this submission.

1. How relevant have government funding programs been in assisting the MNOs in establishing their competitive positions in the mobile services market in regional areas? Please provide reasons for your view.

A.2 Historic government funding programmes may play a role in explaining the network differences in some regional areas. For example, Telstra has received by far the greatest share of Government funding targeted at regional areas. One scheme in particular that advantages Telstra is the USO. There is a strong case to reform the USO and we note that the present arrangements are under consideration by the Productivity Commission.

A.3 As a general principle, we believe it is important that any taxpayer assistance to fund mobile infrastructure should promote open competitive access to that infrastructure. This could be achieved through more efficient and pro-competitive co-location arrangements of the type set out in the Mobile Black Spot funding programme.

2. What is the extent of mobile network co-location of infrastructure (or infrastructure sharing) in: a. regional Australia? b. metropolitan Australia?

A.4 Refer to forthcoming data request responses.

3. How effective is the facilities access regime in promoting access to mobile network infrastructure, in both regional and metropolitan areas? Are there any limitations of the facilities access regime in facilitating the expansion of mobile networks in regional Australia?

4. Would more extensive co-location requirements be an effective substitute for mobile roaming services?

A.5 The Facilities Access regime has undoubtedly assisted in promoting investment in competitive mobile infrastructure in both regional and metropolitan areas. However, as noted in section 4 improvements could be made to facilitate greater upfront collaboration between MNOs prior to a site being constructed. This would be of significant benefit in regional areas where the site economics are challenging and modest cost savings can tip the balance on investment.

5. To what extent does regulation of the DTCS, including through regulated pricing, assist MNOs in extending their mobile networks in regional Australia? Please explain your views.

A.6 The regulation of the DTCS has assisted in the provision of backhaul links on declared routes. The 2016 FAD resulted in significant price declines for high speed regional routes. Optus does not believe the current regulated prices represent barriers to acquiring transmission services.

6. Are international arrangements for the regulation of mobile roaming relevant to the Australian market? Please provide reasons for your view.

7. Where have international regulators made decisions not to regulate domestic mobile roaming services? Are such decisions relevant to the regulation of mobile roaming in Australia? Please provide reasons for your views

8. What has been the impact of regulation of mobile roaming on competition and investment internationally? If possible, please outline whether it has impacted investment in regional and metropolitan areas to different extents.

A.7 Refer to section 5 and attached report from Analysys Mason.

A.8 International evidence demonstrates there is no justification for mandated roaming in the Australian market.

9. What are the relevant markets for the declaration inquiry?

10. Is the relevant retail market a national market or are there separate regional markets for mobile services? If there are separate regional markets for mobile services, how would the boundaries of these markets be determined?

A.9 Refer to section 3.

11. Please describe any mobile roaming arrangements currently in place and whether such arrangements have changed since the previous inquiry? Are current arrangements or agreements limited in terms of geographic scope or technology, and if so how?

12. Are there any current negotiations for new roaming agreements? Has there been any request for mobile roaming service which has been refused in the past three years? If so, what were the reasons for any such refusal?

13. Are roaming agreements for areas where there is limited infrastructure based competition likely to be reached in the future? Please provide reasons for your views.

A.10 Refer to section 4.

14. Is competition effective in the mobile services market and how does it differ in metropolitan and regional areas of Australia? Please provide evidence and reasons for your views.

15. How does Telstra's coverage advantage in areas where it is the only MNO affect its ability to compete for customers in the national retail mobile services market? How does this compare to its ability to compete for consumers in regional areas? Please provide evidence and reasons for your views.

16. What are the key drivers of competition for mobile services in metropolitan and regional areas of Australia?

A.11 Refer to section 3.

17. Is there any regional variation (e.g. price, inclusions, terms and conditions) in retail mobile services offered in Australia? If yes, please provide evidence to support your views.

A.12 As far as we are aware all pricing is national and there is no variation between regions. The only example of regional pricing was Hutchison prior to its merger with Vodafone. We believe this pricing was a direct result of its roaming arrangements.

A.13 It is likely that mandated domestic roaming would lead to the introduction of regional pricing.

A.14 For more detail see section 3.

18. How does the price and range of Telstra's retail offers compare to those of other mobile service providers? Do you consider that the higher prices charged by Telstra in comparison to other mobile services on the market constitute a premium? What factors do you think contribute to Telstra's ability to charge a higher price? Please provide information about the level of any premium and evidence to support your views.

A.15 Refer to section 3.

19. Is the extent of competition for mobile services in regional areas likely to change in the future in the absence of declaration? Please provide reasons for your views.

A.16 Optus believes that competition will be stronger in the absence of declaration given its current mobile investment plans. Refer to section 3.

20. How would declaration affect competition in markets for wholesale mobile services?

A.17 Refer to section 3.

A.18 Optus does not anticipate that domestic roaming would have any material impact on competition for wholesale mobile services.

21. How would declaration affect competition for retail mobile services in regional areas and nationally? Please provide reasons and any available evidence for your views.

22. To what extent do consumers in regional Australia see Telstra as the most viable choice of service provider? If so, please provide an estimate of the proportion of such consumers and evidence to support your views.

23. To what extent do consumers in regional areas benefit from competition in the national retail mobile services market? Please explain your response.

A.19 Refer to section 3.

A.20 Optus notes that a high market share in regional areas for Telstra does not mean that end-users in these areas are subject to monopolistic pricing. Even if it were correct to say that there are barriers to entry in regional areas, end-users in regional areas receive the same commercial benefits as metropolitan end-users. This is because of national pricing, with strong competition in metropolitan areas driving down national prices.

24. What are the key factors that influence consumer choice of service provider in: a. metropolitan areas? b. regional areas?

25. How important is geographic coverage, as distinct from population coverage, to consumers living in metropolitan areas?

26. How important is geographic coverage to a mobile service provider's ability to compete in the national market for mobile services?

27. Does the level of geographic coverage on a network impact a provider's ability to compete for business customers to a greater extent than other customers? Please provide reasons for your views.

A.21 Refer to section 3.

28. How is declaration of a mobile roaming service likely to benefit consumers in regional areas and more generally? Is it likely to disadvantage consumers or any groups of consumers in any way?

A.22 Refer to section 3.

A.23 Optus cannot see any consumer benefit as a result of mandated roaming. One argument may be that some consumers who have limited access to MNOs could have greater choice of provider. While this may be true, it would be incorrect to assume that increased choice would occur at the current price levels. In this context it does not follow that increased network choice necessarily results in lower prices. Further, as set in section 2, we believe that roaming will cap or limit further investment in coverage.

29. Is there potential for a new MNO to enter the mobile market in Australia? If so, to what extent would declaration facilitate their ability to enter and compete in the mobile market?

A.24 There are no barriers to new entry or to network expansion. Any licensed carrier is able to acquire spectrum and to build a mobile network.

A.25 Optus refers to ACCC to comments made in its merger approval between Hutchison and Vodafone. The key reason for approving the move from four MNOs to three MNOs was the need to invest in networks due to the growth in data demand.

A.26 Given the growth of data demand since 2010, and the observed network issues with the third MNO, it is doubtful whether a fourth network is viable in the long run.

A.27 Furthermore, given the vibrancy of the MVNO market, it is not clear that network investment is required for entry into the retail mobile market.

30. How may the scope of the declared service (such as geographic scope and technologies to be included) affect the extent to which declaration of a mobile roaming service may promote competition in the relevant markets?

A.28 Optus does not support the declaration of domestic roaming. No evidence has been put that identifies a market problem requiring the regulation of the functioning commercial roaming market.

A.29 Given this, it is not appropriate to consider possible the scope of the declared service. Absent the identification of a clear and durable market failure, it is not appropriate to discuss the scope of any proportionate remedy.

31. To what extent would declaration of a mobile roaming service promote the achievement of any-to-any connectivity in relation to carriage services that involve communications between end-users?

A.30 Optus does not support the declaration of domestic roaming. There is no evidence put forward that identifies a market problem that would necessitate the regulation of the functioning commercial roaming market.

A.31 Declaration is unlikely to have an impact on any-to-any connectivity.

32. Do mobile networks in regional Australia exhibit natural monopoly characteristics? Please provide reasons to support your view. If so, what are the implications of this for the assessment of the effect of declaration on the efficient use of, and investment in, infrastructure?

A.32 Mobile networks do not exhibit natural monopoly characteristics. Australia is covered by three mobile networks, with multiple networks covering up to 98.5% of the population. There are no barriers to expanding network coverage.

A.33 Moreover, even if there are natural monopoly characteristics it does not follow that declaration of roaming would promote the LTIE. End-users in regional areas receive the same commercial benefits as metropolitan end-users. This is because of national pricing, with strong competition in metropolitan areas driving down national prices.

A.34 As a result, even in areas where end-users have access to only one provider, end-users are not subject to monopolistic pricing. The nature of the Australian mobile market is that end-users in areas with only one provider receive the benefits of competition to the same degree as those end-users located in the highly competitive areas.

A.35 Refer to section 3 for more information.

33. Are there barriers and challenges to extending a mobile network in metropolitan and regional areas of Australia and how significant are they?

A.36 There are no barriers to entry or investment in regional areas. There is no market failure in relation to network investment. Optus notes that all three MNOs have invested significant amounts into expanding mobile networks.

A.37 Refer to section 2 for more information.

34. What is the extent of the first mover advantage when extending into regional Australia? Has Telstra's position as the incumbent provider (for both fixed and mobile services) provided it with advantages in building a mobile network in regional areas? Please provide reasons and evidence to support your views.

A.38 Any assessment of competition in the communications sector cannot escape the fact that Telstra remains one of the most dominant operators, in terms of subscribers, revenue and profit, not only in Australia but among its incumbent peers globally. More than twenty years of 'competition' regulation has facilitated competitive entry, but Telstra remains dominant.

A.39 Telstra's dominance is largely due to its vertically integrated ownership of the only national fixed network and associated national transmission network. This enabled Telstra to have significant cost and first mover advantages across a range of communications markets. Telstra has been willing to aggressively defend its dominance – with no better example than Telstra overbuilding Optus' HFC network in

the 1990s to prevent a viable alternative fixed network. Whilst Telstra's vertical integration is being addressed through the roll-out of the NBN, this policy is not without its issues.

A.40 Notwithstanding the roll-out of NBN, Telstra is retaining a strong position across the overall communications market. This is partly assisted by the 'compensation' it receives from NBN Co as part of the structural separation reforms. This compensation is estimated at more than $95 Billion over the lifetime of the agreement. Optus and other industry players have consistently highlighted the chilling effect this is likely to have on competition in the medium to long term. Furthermore, it is becoming increasingly clear that the annual payments to Telstra are enabling it to aggressively market to new or existing end-users during the transition to NBN.

A.41 None of these identified drivers of market dominance relates to regional mobile deployment. While it is possible that Telstra may be able to leverage advantages in related markets to mobile markets, this does not represent any justification for the regulation of mobile markets.

A.42 Should the ACCC identify issues in other communications markets that can be leveraged in the mobile market, the ACCC should deal directly with the identified problem.

35. What are the incentives to build or extend a mobile network in areas of regional Australia where population density is low?

A.43 Refer to section 2.

36. To what extent would declaration of a mobile roaming service promote the efficient use of the infrastructure used to provide mobile services?

A.44 Refer to appendix B.

37. How may the geographic scope of the service description affect the extent to which declaration could promote the efficient use of such infrastructure?

A.45 Optus does not support the declaration of domestic roaming. No evidence has been put that identifies a market problem requiring the regulation of the functioning commercial roaming market.

A.46 Given this, it is not appropriate to consider possible the scope of the declared service. Absent the identification of a clear and durable market failure, it is not appropriate to discuss the scope of any proportionate remedy.

38. How would declaration affect the incentives of an access provider to make investments in mobile infrastructure? Please provide evidence to support your views.

39. What factors should we consider when examining the economically efficiency of extending mobile networks into areas without network coverage? Is it likely to be efficient for Telstra to extend the reach of its mobile network beyond the current geographic coverage? Please provide reasons for your views.

40. To what extent is the declaration of a mobile roaming service likely to impact efficient investments by access providers in extending their network coverage and in upgrading their existing networks?

41. How would declaration affect the incentives of an access seeker to make investments in mobile infrastructure in order to: a. extend their network coverage? b. upgrade their existing network ? Please provide evidence to support your views.

42. What factors should we consider when examining the economic efficiency of an access seeker to extending its network into areas where there is an existing mobile network? Would it be efficient for either Optus or VHA to extend their mobile networks into areas where only Telstra has mobile coverage? Please provide reasons for your views

A.47 Refer to section 2.

43. Would restricting the scope of any declared roaming service to services on 3G networks address any dampening effect of the declaration may have on the incentives of MNOs to make efficient investments in mobile infrastructure?

44. If the ACCC were to declare a mobile roaming service: a. How should the service be described? b. What would the appropriate geographic scope for the service be? c. Should the service description be technology neutral or limited to certain technologies (e.g. 3G networks)? Please provide reasons for your views.

45. Should a declared mobile roaming service include mobile voice, SMS and data services?

46. Are there services that should be included or explicitly excluded? Please provide reasons to support your view.

47. Are there other matters which should be explicitly set out in the service description?

A.48 Optus does not support the declaration of domestic roaming. There is no evidence put forward that identifies a market problem that would necessitate the regulation of the functioning commercial roaming market.

A.49 Given this, it is not appropriate to consider possible the scope of the declared service. Absent the identification of a clear and durable market failure, it is not appropriate to discuss the scope of any proportionate remedy.

48. How is the setting of a regulated price for a declared mobile roaming service likely to impact competition in the mobile services market? Would the costs of accessing a declared roaming service likely to be passed onto consumers by access seekers and if so, in what form (eg. higher retail prices)? Please provide reasons to support your view

A.50 Refer to section 3.

A.51 It would be instructive for the ACCC to reflect on market pricing adopted by Hutchison at the time when it relied heavily on 3G roaming with Telstra. In 2010 Hutch was offering two-tier pricing in market, with usage outside of Hutchison's network charged at higher rates, or excluded from plan allowances. Hutchison's usage charge in roaming areas was five times the rate charged over its own network.

Appendix B. LEGISLATIVE CRITERIA

B.1 This appendix address the legislative criteria for declaration. Optus does not support declaration of the domestic mobile roaming service. Declaration would not promote the long term interest of end-users, as required by the Act.

B.2 The ACCC must take into account the following LTIE criteria in determining whether the service should be declared:

(d) Promoting competition;

(e) Achieving any-to-any connectivity; and

(f) Encouraging efficient use of, and investment in, infrastructure.

Promoting competition

B.3 The Australian mobile market is a national market, where end-users enjoy uniform pricing schemes regardless of location. There are two sub-markets, which consists of metropolitan end-users and regional end-users.

B.4 There are three large competing national mobile networks. Retail prices have also fallen significantly over the last decade. There is no evidence that the current mobile market structure gives rise to market power.

B.5 The analysis in this submission demonstrates that the market is operating effectively today with competitive national pricing, reflective of the competitive intensity present in metropolitan areas. Regional end-users continue to benefit from strong competition in the metro areas.

B.6 While there are different market shares across metropolitan and regional sub-markets, it is not clear that mandated roaming will promote competition when compared against the current state of the market without mandated roaming. This is because:

(a) Mobile market adopt national pricing, with regional customers receiving the same product as metropolitan end-users, and benefiting from metropolitan competition.

(b) Domestic roaming may increase the choice of retail providers in certain locations in Australia, but regional customers with only the choice of one mobile network today are not likely to be subject to monopoly pricing or other negative effects typically associated with lack of network choice.

(c) Mandated roaming is likely to lead to regional-based pricing, or increased national pricing which undermines the competitive pricing currently seen in the market.

(d) Mandated roaming is unlikely to have any positive effect on overall network coverage. It is unlikely that the roaming access provider would face increased incentives to invest.

B.7 For more specific discussion and market share data on the mobile market in Australia, please refer to section 3.

Any-to-any connectivity

B.8 Optus does not see any impact on any-to-any connectivity with and without declaration.

Efficient use of, and investment in, infrastructure

B.9 When assessing the efficient use of, and investment in, infrastructure, regard must be had (but is not limited) to the technical feasibility of providing and charging for the services, the legitimate commercial interests of the supplier(s) of the services, and the incentives for investment in infrastructure.

B.10 With regards to technical feasibility of roaming, Optus notes that commercial roaming agreements are present in the market; and have existed in the past between other operators. However, it is not clear whether commercial and declared domestic roaming services impose similar or different technical requirements. Further, the significant upfront costs incurred for commercial roaming, while reasonable in a wider commercial context, may not be reasonable under a mandated regime.

B.11 An infrastructure operator's legitimate commercial interests relate to its obligations to the owners of the firm, including the need to recover the costs of providing services and to earn a normal commercial return on the investment in infrastructure.

B.12 Declaration of domestic mobile roaming would likely result in access providers being unable to continue to fund regional investment at the current national price. This is either likely to result in under investment in regional areas, or the adoption of disaggregated pricing. It is likely that, even with efficient access charges (i.e. access charges that are neutral on the build-buy decision at the assumed level of traffic), access seekers will have an incentive to acquire less traffic in roaming areas so as to avoid the high efficient costs. As a result, the adoption of a fixed roaming usage charge could understate the actual unit cost of provision as actual traffic in roaming would fluctuate from that forecasted (or assumed) in the regulatory modelling.[26]

B.13 It is likely that access seekers would use the ability to acquire roaming as a marketing strategy to claim equal network reach as access providers. This would negate any network-related marketing advantages in metropolitan areas, and would reduce one of the major incentives for regional investment. This, combined with under-recovery in actual roaming access charges, raises questions whether access providers would be willing to maintain regional cross-subsidy implicit in national pricing if it results in market share losses.

B.14 Infrastructure operators should have the incentive to invest efficiently in the infrastructure by which the services are supplied (or are capable, or likely to become capable, of being supplied). In determining incentives for investment, regard must be had (but is not limited) to the risks involved in making the investment. Optus submits it is clear from the discussion in section 2, that declaration of domestic roaming would remove the incentive to invest efficiently by access providers.

[26] Provision of mobile infrastructure is a fixed costs. The variable usage charge therefore depends on the actual level of usage. Even if a FAD could set a usage charge at the efficient level that is neutral on build-buy incentives, it would only be efficient for the assumed level of traffic in the model. It is far from clear that the assumed level of traffic over the FAD period would be correct. Any variation in the volume of traffic would have drastic effects on the efficiency of the charge set.