



16 September 2013

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Dear Filomena

### **Draft review of National Roaming as a Specified Service**

Thank you for the opportunity to comment on the Commission's preliminary view that there are not reasonable grounds to commence a Schedule 3 investigation into whether to remove national roaming (**roaming**) from the Act as a specified service.

As a matter of principle we support rolling back regulation when it is no longer required and in this case we think that, rather than defer consideration of the matter for a further 18 to 24 months, the Commission should commence a Schedule 3 investigation now.

The Act requires the Commission to consider, at intervals of not more than 5 years, whether there are reasonable grounds to consider removing regulated services from the Act. This obligation recognises the potentially significant costs and distortions created by the regulation of services (or threat of regulation) and that services should be removed from the Act when no longer required for the efficient operation of telecommunications markets. Accordingly, the Commission should always prefer, and act promptly, to remove unnecessary regulation over the status quo.

### **The national mobile roaming service**

The mobile market has changed significantly since roaming was added to the Act in 2006. 2Degrees is now an established – growing - operator with over 20% market share. It has agreed commercial roaming arrangements with Vodafone, and continues to roll out its network. 2Degrees network coverage is now equivalent to 90% of Vodafone's network coverage. Further expansion is facilitated by infrastructure sharing and, for example, new RBI cell sites infrastructure is available to all operators on an open access basis. Operators are also looking to roll out 4G mobile networks.

The Commission should consider whether there are reasonable grounds to conduct *this* schedule 3 investigation in the context of the market and specified service description. The specified mobile roaming service has a transitional role towards facilities based competition. The service is premised on access to an established operator's equipment with a clear obligation for the access seeker to build out of their own network.

The Commission noted in its March 2009 decision not to investigate extending the service to include price that

*A key priority of the Commission is to ensure that the mobile market is competitive. The Commission considers that the promotion of efficient facilities-based competition is an important part of this, and has been focusing on reducing barriers to entry and expansion in order to allow such competition to generate market outcomes for the long term benefit of end-users. [para 7]*

In other words, roaming is not a substitute for efficient facilities based competition and incentives it provides for coverage and capacity expansion. The limited practical value of retaining roaming as a specified service in the Act would need to be weighed against the potential distortion of unnecessary regulatory overhang.

As 2degrees has rolled out its own network across 90% of Vodafone's coverage area it appears to us that it would probably not need to use the regulatory backstop. There are now three fully-fledged facilities-based competitors. Accordingly, 2degrees is no longer likely to require roaming as a regulatory backstop for 2G network or future 4G services. All three current mobile operators appear to starting from the same or a very similar point as far as building a 4G network is concerned.

Further, with 2Degrees' widespread network coverage and emergence of competing 3G and 4G networks, it is unclear whether a regulated roaming service remains relevant for new entrant providers or more importantly the market.

### **The Commission's preliminary view**

The Commission's preliminary view is that there are not reasonable grounds to commence an investigation because roaming is not seen as competitive for 2Degrees 2G handsets and a new 700MHz based mobile provider may require roaming arrangements while it rolled out its network.

The Commission should, however, consider the competition benefits of the specified service for mobile markets rather than whether the 2G roaming market itself is likely to be competitive. Current and future mobile operators can potentially obtain commercial roaming services from three existing mobile network operators. For example, a new entrant would have a choice of roaming provider across different bands and technologies, i.e. Vodafone, Telecom or 2Degrees.

While some 2Degrees customer devices are incompatible with the Telecom network, this is a commercial decision for 2Degrees. It could support devices compatible with all networks – as Telecom does – and migrate traffic on to the Telecom network over a modest period of time where technically feasible. Further, any new 700MHz operator could seek commercial roaming services off any of the three existing operators while rolling out its network in accordance with the Government implementation requirements set out as part of the 700MHz auction rules. Accordingly we think the considerations around 700MHz are best dealt with under MBIEs auction rules.

At this stage, all the Commission needs to consider is whether there are reasonable grounds to commence an investigation in to removing roaming from the list of specified services. On the face of it, there are reasons to believe that regulation could be lifted and the Commission does not need to wait for 18-24 months to consider these issues.

Yours sincerely

A handwritten signature in blue ink, appearing to be 'JWS', written on a light blue background.

John Wesley-Smith  
General Manager  
Regulatory Affairs