

# Submission on The Commerce Commission's Review of National Roaming dated 9 July 2018

30 July 2019 – Public Version



## SUBMISSION

- 1 We offer our comments on the Commerce Commission's *Review of National Roaming – Preliminary view on consideration of deregulation of national roaming*, dated 9 July 2018.
- 2 We encourage the Commission to focus on its Mobile Market Study rather than consider deregulating the national roaming (**NR**) service at this time. The study should allow the Commission to better understand the status of wholesale services. This will provide greater information on whether any of those services might act as a constraint on, or replacement to, a NR service.
- 3 Therefore, we agree with the Commission's preliminary view that there are not reasonable grounds to commence a Schedule 3 investigation into whether to omit the NR from Schedule 1 of the Telecommunications Act 2001.
- 4 We support the use of good regulatory practice and in our view:
  - 4.1 Regulation should be imposed (or maintained) only where there is evidence of a market failure and the benefits of regulation are clearly shown to outweigh the regulatory costs.
  - 4.2 Where there is no evidence of a market failure, or no clear benefit to consumers of regulation, regulation should be rolled back.
  - 4.3 Regulation should not be maintained as a backstop just in case market failure emerges in the future. In a competitive market, the right incentives should exist to offer commercial services where there is sufficient consumer demand.
- 5 The Commission considers there are reasonable grounds to investigate whether a service should be omitted from Schedule 1 are likely to exist where competition has developed to such an extent that continued regulation is no longer necessary to best promote competition in telecommunications markets for the long term benefit of end-users.<sup>1</sup>
- 6 A key element to the Commission's consideration is whether there has been any change in circumstances that indicate that a competition problem may no longer be present in the relevant market. We are not aware of any such change, which appears to be aligned with the Commission's observations as outlined in its Preliminary view:

*"...sufficient competition has not yet emerged in the supply of roaming services such that the specified roaming service should be omitted from Schedule 1".<sup>2</sup>*
- 7 The NR service has provided an incentive for parties to establish commercial agreements for the provision of NR services. This means that it is difficult for other parties to assess the impact of the regulation. We note that the quality of roaming agreements has been

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<sup>1</sup> Commerce Commission, '*Review of National Roaming – Preliminary view on consideration of deregulation of national roaming*', July 2018.

<sup>2</sup> Commerce Commission, '*Review of National Roaming – Preliminary view on consideration of deregulation of national roaming*', July 2018.

raised as an issue during the Telecommunications Act Review. Whether existing regulated services should be designated was part of the Government's consideration with final decisions providing for a more streamlined Schedule 3 investigation process.<sup>3</sup> This suggests that rather than considering there is a case for removing the NR service, there are views that it may not be effective as a specified service. While we cannot comment on this specific issue, it does suggest that there is not a case for deregulation. This is another issue relevant for the Commission's Mobile Market Review.

- 8 The development of other wholesale services is also relevant to the Commission's consideration. Where other services exist that may act as a constraint on, or replacement to, the regulated service, there may be grounds to consider whether the regulated service is still required.
- 9 We have previously made observations about the current status of the mobile market.<sup>4</sup> In particular, there may be evidence to suggest that there are circumstances preventing the development of a vibrant market for wholesale mobile services.
  - 9.1 When compared with other countries, New Zealand appears to be underserved by mobile virtual network owners (**MVNOs**). There are six commercial MVNOs holding less than 1% of the market.<sup>5</sup> The lack of MVNO market share might suggest competition is not prevailing to ensure good outcomes for consumers via commercial negotiation.
  - 9.2 In addition, mobile termination rates were set in 2011 for five years and have not since been reviewed. International evidence suggests the cost of mobile termination is decreasing.<sup>6</sup>
- 10 The Commission has confirmed the scope of its Mobile Market Study should address the concerns set out above, by indicating their study will include:<sup>7</sup>
  - 10.1 Looking at the current structure and competitiveness of the mobile markets;
  - 10.2 Identifying upcoming events, and how these events might play out in terms of competition and consumer outcomes; and
  - 10.3 Identifying and understanding any potential obstacles to market development e.g. the significance of barriers to entry for MVNOs, transaction costs, and information transparency.
- 11 Given the above, we encourage the Commission to focus on its Mobile Market Study rather than consider deregulating the NR service at this time.

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<sup>3</sup> MBIE, "Cabinet paper: Review of the Telecommunications Act 2001: Final Decisions on Fixed Line Services, Mobile regulation and Consumer Protection", June 2017.

<sup>4</sup> Chorus submission in response to the Commerce Commission's Mobile Market Study Terms of Reference, 30 November 2017; Chorus submission on the Radio Spectrum Management Discussion Document 'Preparing for 5G in New Zealand', 30 April 2018.

<sup>5</sup> *Ibid*, n 1, page 86 (excluding Skinny, a subsidiary of Spark).

<sup>6</sup> Commerce Commission, *2015 Annual Telecommunications Monitoring Report*, 2016, page 30.

<sup>7</sup> Commerce Commission, *Mobile market study – Scope paper*, March 2018.