



Review of National Roaming

Preliminary Views on consideration of deregulation
of national roaming

Submission | Commerce Commission

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Public Version

Introduction

1. Thank you for the opportunity to comment on the Commission's *Review of National Roaming Preliminary view on consideration of deregulation of national roaming* discussion document (**discussion paper**).
2. In the discussion paper, the Commission sets out the following principal reasons for its preliminary view that there are not reasonable grounds to start an investigation in whether national roaming should be omitted from Schedule 1 of the Telecommunications Act 2001 (the **Act**):
 - a. If the future allocation of 5G spectrum results in a new entrant purchasing spectrum and/or results in significant disparities in allocation between mobile network operators (**MNOs**) then regulated national roaming in rural areas is likely to be an appropriate competition safeguard;
 - b. The regulated national roaming service is a specified (non-price only) service which mitigates the risk that continued regulation will distort investment incentives;
 - c. A regulatory backstop may be needed to address weak incentives on the existing three MNOs to offer reasonable commercial roaming services to a fourth entrant; and
 - d. Co-location does not provide any substitute for national roaming.
3. We address each of these views below. As a matter of principle we support rolling back regulation when it is no longer required and view timely deregulation to be just as important a feature of a well-functioning, mature, regulatory framework as timely interventions. 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, at least in our view, the Commission should always prefer, and act promptly, to remove unnecessary regulation over the status quo.
4. In that sense, we are disappointed that the discussion paper does not include any consideration of the potential benefits (both direct and indirect) of deregulation, or any recognition of the detriments that come from continued unnecessary regulation, at all. Given the statutory requirement to consider deregulation, and that:
 - a. regulated national roaming services have not ever been applied;
 - b. we now have three competing nationwide 4G networks each of which could provide national roaming for 4G and in time 5G entrants; and
 - c. it is inarguable that roaming is not a substitute for efficient facilities-based competition;

we would have expected the Commission's default starting position for this review to have been that deregulation may well be appropriate and therefore an investigation should commence. Instead, the discussion document evidences the opposite starting position.

5. We encourage the Commission to reassess its preliminary view.

Commission preliminary view: If the future allocation of 5G spectrum results in a new entrant purchasing spectrum and/or results in significant disparities in allocation between mobile network operators (MNOs) then regulated national roaming in rural areas is likely to be an appropriate competition safeguard;

6. National roaming as a regulated service is directed at a policy concern that the initial lack of nationwide coverage for a new entrant's mobile services may act as a barrier to entry or expansion. This concern makes sense when the service in question is a truly mobile one that requires contiguous connectivity in almost all of the places where customers live, work and play.
7. But contiguous 5G coverage is very unlikely to be required by any entrant in the foreseeable future— at least in so far as 5G is used to deliver what we consider to be traditional mobile telecommunications services today – because the propagation characteristics of available 5G spectrum make it highly unlikely any 5G network operator will have contiguous 5G coverage in many parts of the country let alone in rural parts.
8. For mobile services, 5G will initially be an overlay to existing 4G networks that is rolled out on a used to augment 4G network capacity in areas where there is very high demand. So even within the existing MNOs networks, then, there will be “islands” of 5G coverage and therefore non-contiguous coverage for quite some time, and we will use 4G as the base or coverage layer for those services for at least the foreseeable future.
9. Therefore, we would expect the national roaming requirements (if any) of any new entrant to be predominantly focussed on 4G roaming rather than 5G. 4G roaming would give that entrant the nationwide base coverage to offer traditional mobile telecommunications services, which it could augment as and where it required with 5G coverage in the same way existing MNOs will. In our view there are good reasons to believe that commercial access to 4G roaming will be available given there are three potential competing providers for that service.
10. And that assumes that any new entrant is interested in, or can deliver competition benefits to, traditional mobile services markets. Traditional mobile telecommunications services are intensely competitive and are rapidly becoming commoditised. It is more likely in our view that any new entrant will see 5G as an opportunity to enter the markets to provide non-traditional mobile services (such as fixed wireless broadband services or IOT services). These services:
 - a. Do not rely on or require the contiguous coverage that a traditional mobile telecommunications service does. A fixed wireless home broadband service, for example, only requires coverage of the customer's home.
 - b. Are nascent or immature, and likely to exist in markets that are separate to the mobile markets the Commission has traditionally associated with the national roaming service. It is far too early to define those markets, let alone decide that regulation of them is required – in fact the opposite (that regulation of nascent and immature markets should be avoided) should be true.
11. 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.

Commission preliminary view: The regulated national roaming service is a specified (non-price only) service which mitigates the risk that continued regulation will distort investment incentives

12. The introduction of 5G technology represents a potentially transformative event for telecommunications markets and possibly a number of markets in other sectors of the New Zealand economy. But it is at this point uncertain whether and how MNOs will pay for the 5G networks that will bring about these transformative effects. It is fair to say that, with the increasing commoditisation of mobile data, monetisation of these 5G networks will likely only occur if 5G network operators can find new 5G services to sell – services that are not traditional mobile telecommunications services. This will ultimately rely on other sectors of our economy identifying and investing in new digital business models that require connectivity that only a 5G network can provide.
13. So very large economy-wide benefits if 5G networks are built and utilised in new and possibly transformative ways, but very large risks to 5G network investors if they build 5G networks and that utilisation does not eventuate.
14. In this context, we absolutely believe that continued unnecessary regulation – of any kind – will have a cost and will distort investment incentives. How much is impossible to quantify – but we know that it only needs to distort those incentives in such a way as to incrementally affect the level of 5G network investment to create a large dynamic efficiency detriments. On the flipside, we see little evidence of any benefits from the continuation of a regulated services that has never been used and appears to us to have little prospect of being used.
15. We would not be so quick to assume that the Commission can simply let old regulation hang around without that affecting investment incentives or overall market efficiency.

Commission preliminary view: A regulatory backstop may be needed to address weak incentives on the existing three MNOs to offer reasonable commercial roaming services to a fourth entrant

16. The value of a regulatory backstop (or whether it has any value at all) depends on a determination of whether the relevant markets are, in fact, competitive or not. The Commission has not attempted to answer this question in its discussion paper so we find it difficult to see how the Commission could attribute value to this theoretical backstop value. The existence of three competing nationwide 4G network providers suggests to us that retail and wholesale markets are likely to be competitive.

Commission preliminary view: Co-location does not provide any substitute for national roaming.

17. It is not clear to us that the utility of co-location as a substitute to national roaming is particularly relevant to the question facing the Commission (whether there are grounds to commence a deregulatory investigation or not). But co-location is an available regulated service to any new entrant, and we would point out there are possible entry cases for new entrants that do not rely on nationwide coverage or the provision of nationwide traditional mobile telecommunications services. Co-location may well be an effective substitute to national roaming for a fixed wireless home broadband provider, or a 5G IOT provider for example.