

Review of National Roaming Preliminary Views on consideration of deregulation of national roaming

Submission | Commerce Commission
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Executive Summary

Thank you for the opportunity to comment on the Commission's preliminary view on the deregulation of National Roaming (the **draft**). The Commission's preliminary view is that there are no reasonable grounds to commence a Schedule 3 investigation into whether to omit the National Roaming service from Schedule 1 of the Act.

This is the third time the Commission has considered whether there are reasonable grounds to investigate omitting the service from the Act. Over this period there has been significant market and technology change and an amended s18 purpose statement, yet the Commission has not taken the further step of investigating the removal of this regulated service.

Since the Commission's last substantive review of the service in 2008 (in 2013 and 2018 the Commission determined there was no reasonable grounds to commence an investigation):

- 2Degrees has completed its roll out and is an established third mobile operator. It no longer relies on roaming to provide coverage at the edges of its network.
- The subsequent Mobile Market Study - and ongoing Commission market monitoring data - highlight that we operate in a highly competitive market delivering great outcomes for consumers, and
- Operators are deploying modern 5G networks which, while being a substantial investment in new capability, also change the nature of competition. New 5G providers are unlikely to require national coverage to enter the market, and there are powerful incentives on operators to provide roaming services outside their coverage areas.

These market changes are evidence that the original competition concerns have been effectively overcome and that ongoing service regulation is unwarranted.

The Act does not require or even encourage the Commission to regulate a market. By contrast the principle of regulatory forbearance is evident in the requirement to regularly review the services in Schedule 1 of the Act to determine if they are still required. The Commission should take the same care in deciding to retain regulation as it would to recommending regulation in the first place. Removal of unnecessary regulation is a key component of the wider legislative framework – for example, the Commission is also required to apply similar considerations to regulated copper services and fibre competition reviews – and it is important that the prospect of regulation being removed is credible.

We believe the Commission should have a proper look at whether to retain national roaming as a regulated service.

Introduction

1. Thank you for the opportunity to comment on the Commission's preliminary view on the deregulation of National Roaming (**the draft**). The Commission's preliminary view is that there are no reasonable grounds to commence a Schedule 3 investigation into whether to omit the National Roaming service from Schedule 1 of the Act.
2. We believe that the Commission should consider further investigating the omission of National Roaming from Schedule 1.
3. The purpose of the Telecommunications Act (**Act**) is to promote competition, efficiency, and investment, and this means minimising and removing regulatory interventions where they no longer support the purposes of the Act. As a pointer to do this, the Commission is required to consider, at intervals of not more than 5 years after the date on which a designated service or specified service comes into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 of the Act.
4. This is the third time the Commission has considered whether there are reasonable grounds to investigate omitting the service since the Commission 2006 investigation¹. Without any party having utilised the regulated national roaming service it is difficult to understand how – considering the significant market and technology change and amended s18 purpose statement over this period – the Commission hasn't taken the further step of investigating the removal of this regulated service over the intervening years.
5. The Commission should further aim to provide regulatory certainty to minimise distortions to investment and market distortions. The Commission already takes care in Part 4 and Part 6 sectors to provide long term certainty over its approach and considerations, determining IMs that apply for long periods and only reluctantly departing from key principles such as FCM. The same concern to provide investment certainty should apply to competitive markets with the Commission pro-actively removing contingent regulation where possible.
6. The Commission's approach sends an important signal to the market.

The Commission decision framework

7. On the face of it, the draft bounds the Commission's decision framework in a way that will inevitably result in a bias towards the regulatory status quo.
8. The Commission has proposed that it will consider reasonable grounds to investigate exist where²:
 - a. Changes to competition in the market may have developed to a point where regulation no longer serves its intended purpose, and
 - b. As such, the key question for consideration is whether anything has sufficiently changed in the market since our last review that negates the need for the National Roaming service to remain as a specified service in Schedule 1 of the Act.
9. In other words, the Commission will only consider an investigation when there has been changes to competition in the market since the prior review.

¹ Investigation completed in 2008 with further reasonable grounds reviews in 2013 and 2018.

² Para 16 and 19

10. However, such an approach will inevitably bias the decision process for the regulatory status-quo and may not give best affect to section 18. For example:
- a. An incremental approach that uses the next most recent review as the decision baseline is unlikely to fully expose changes in the conditions that led to the original competition concerns and avoids considering whether the concerns that led to regulation continue to be valid.
 - b. A narrow focus on incremental competitors (i.e., counting heads) and whether current providers are likely to provide commercial national roaming is unlikely to expose:
 - i. Whether the relevant markets are, in fact, competitive or not. This is important for determining the theoretical backstop value of regulating this market; or
 - ii. The wider efficiency and investment considerations to determine whether regulation supports the s18 purposes.
 - c. The static approach under-weights the regulatory costs in a dynamic market. The draft points to uncertain future need for roaming arrangements - due to the impact of emerging technologies such as low earth orbit (LEO) satellites – as a reason to retain regulation. However, it is the dynamic nature of the market that suggests it should be removed.

The mobile market since 2008

11. Stepping back, there has been significant changes in the market since the Commission’s 2008 investigation:
- a. 2Degrees has completed its roll out and is an established third mobile operator. It no longer requires roaming to provide coverage at the edges of its network – rather it makes a rational build/buy decision about which network architecture and economics it prefers at those edges.
 - b. Subsequent mobile market studies and Commission ongoing market monitoring data highlights that the market is delivering excellent outcomes for consumers, consistent with those expected from a competitive market and
 - c. Consumer prices benchmark well against prices in other OECD countries, particularly where taking into account the high costs of providing services in a country with low population density.
12. Recent Commission market monitoring data highlights that consumers are in real terms paying less every year for their mobile services, while consuming more of key services. On average prices have fallen by 15% over the past 5 years, while data usage has grown by over 150%. The 2022 market monitoring report highlights that New Zealand consumer prices benchmark well against OECD averages, with consumer prices around or below the OECD average.

Figure 1: per end-user spend per month³

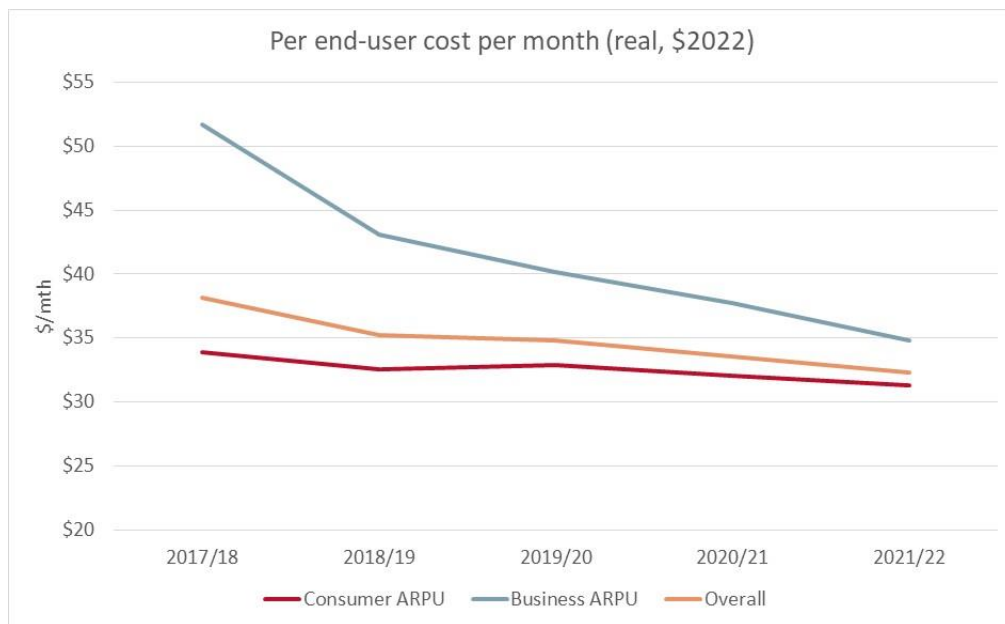
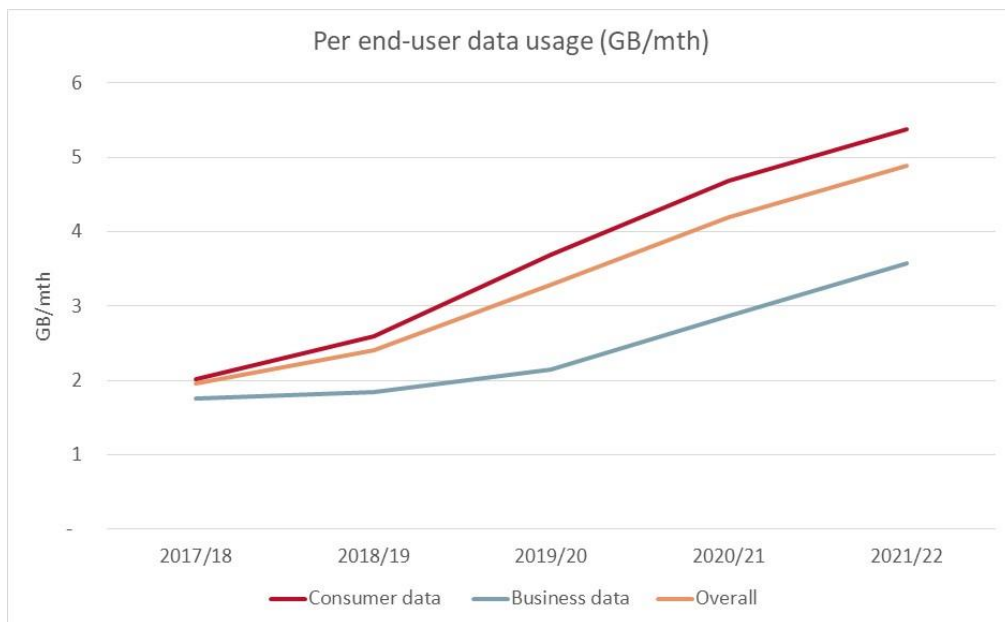


Figure 2: per end-user data usage



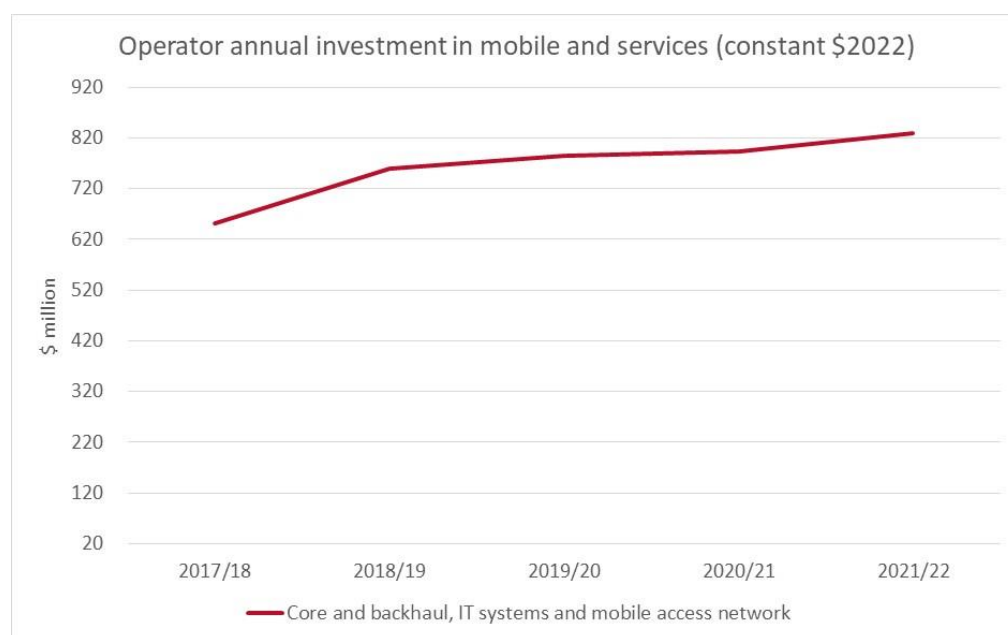
13. There are further indicators of a highly competitive market delivering benefits to end consumers. Operators continue to make significant investments in capacity to meet growing demand and in new capability and services. Operators invested around \$830 million in mobile access networks, core and backhaul networks and in new IT systems in 2022. Further investment is required to full transform the current networks for standalone 5G operation and features (such as network slicing) and shifting network functions closer to customers for better performance and resilience.
14. Consumers are frequently considering their purchase options, with market monitoring data showing 23% of end-users switching providers in the past year alone⁴. A further 965,000 consumer customers changed their plan or swapped between a pre and post mobile plan. In

³ From Commerce Commission market monitoring data services. Pre-paid (30 day) volume. Stats CPI index.

⁴ Commission market monitoring data. Customers relinquishments over total customers 2022.

other words, over 50 percent of consumer customers took action to change their provider or plan in the past year alone, a significant level of customer engagement in their services.

Figure 3: sector investment in constant \$2022



15. The market is significantly different from that which prevailed in 2008; there are now three established operators, consumer prices that benchmark well against international benchmarks and indicators of a significant level of competition.

5G technologies and services deployment is changing the market

16. Looking forward, even if the market weren't delivering such strong outcomes, a specified national roaming service is unlikely to promote the s18 purposes.
17. 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. It assumes that any new entrant is interested in, or can deliver competition benefits to, traditional mobile services markets.
18. However, the transition to 5G networks has materially changed the nature of the market. In our view, the 5G network market will be significantly more diverse than the past as private and localised networks are deployed and there is increasing demand for services that do not require a national footprint. It is more likely 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, port or campus coverage or IOT services).
19. Accordingly, in this more diverse 5G market:
 - a. 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. A fixed wireless home broadband service, for example, only requires coverage of the customer's home.

- b. Where coverage is required outside these localised 5G networks - given there are three potential competing providers facing a diverse range of localised providers - in our view there are good reasons to believe that commercial access to national networks will be available for that service.

Mobile providers are making significant capital investments in new 5G capabilities and have strong incentives to compete for traffic from third party operators.

- c. Specified National Roaming is not a substitute for these commercial negotiations as national roaming is limited to extension of an access seeker's coverage/services and does not extend to a scenario where roaming access is provided to, for example, 4G services while the access seekers deploys 5G services on its network (the access seeker's own network must offer the same services within its coverage area as the services it is seeking from the roaming provider).
- d. New markets 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.

20. An interesting "test" of the Commission's draft decision is to ask whether – if there in fact no specified national roaming service – current market conditions would meet the threshold for regulation of that service today. In our view any proposal to introduce national roaming regulation today would not meet the requirements of the Act, and the Commission's findings in its mobile market study and subsequent mobile market investigations, support that conclusion.

The costs of regulation

- 21. The draft concludes that it would be prudent to leave the current regulatory backstop in place as a competitive safeguard, particularly considering the relatively benign implications of retaining regulation. For example, national roaming regulation operates at the lower "specified service" level, the costs associated with retaining regulation do not appear to be material and has not constrained the ongoing development of the New Zealand mobile market.
- 22. The Commission notes that the cost of maintaining regulation is an important dimension to its decision-making and has asked for any views and relevant evidence that parties may wish to provide in this regard.
- 23. We agree, it is difficult to identify the specific costs of a regulatory backstop as there are few observable administrative costs to regulation (as it hasn't been applied) and the key implications relate to additional uncertainty faced by operators and investors.
- 24. Nonetheless, the costs are likely to be higher when the removal of regulation is a key component of the wider framework (having important signalling benefits) and in dynamic markets where it potentially distorts investment.
- 25. The introduction of 5G technology represents a potentially transformative event for telecommunications markets and possibly 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.

26. 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.
27. 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 detriment. 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.
28. 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.

[End]