

## **Review of National Roaming**

### **Preliminary view on consideration of deregulation of national roaming**

**The Commission:** Dr Stephen Gale  
Elisabeth Welson  
Dr Jill Walker

**Date of determination:** 9 July 2018

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## Executive summary

1. The Commerce Commission (Commission) is required to decide if there are reasonable grounds to commence an investigation into whether to remove the National Roaming (NR) service from the list of specified services in Schedule 1 of the Telecommunications Act (the Act) by 20 September 2018. The Commission will provide its final views on this matter on 4 September 2018.
2. The Commission's preliminary view is that there are not reasonable grounds to commence a Schedule 3 investigation into whether to omit the NR service from Schedule 1 of the Act at this time.
3. This document summarises the reasons for our view and seeks your comment by 5pm on Friday 30 July 2018.

## Introduction

### What is the National Roaming service?

4. Mobile roaming services allow subscribers of one mobile network to use their mobile devices on another network when outside the coverage area of the network to which they subscribe.
5. Part 3 of Schedule 1 of the Telecommunications Act 2001 (the Act) describes the National Roaming (NR) service as:<sup>1</sup>

A service (and its associated functions) that enables transmission of cellular mobile traffic by means of the access provider's cellular mobile telephone network between (but not including) the cellular mobile device of the access seeker's end-user and the access seeker's handover point (or equivalent facility) and that enables an end-user who subscribes to an access seeker's cellular mobile service to use services (except value-added services) within the area where the access provider has a cellular mobile telephone network, but which is outside the coverage area of the access seeker's cellular mobile telephone network.

## Legislative framework

6. Clause 1(3) of Schedule 3 of the Act requires that the Commission 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 a service should be omitted from Schedule 1 of the Act.
7. The Commission may not consider under clause 1(3) of Schedule 3 of the Act whether or not there are reasonable grounds to commence an investigation into omitting a designated service or specified service earlier than 12 months before the end of the 5 year interval.

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<sup>1</sup> Part 3 of Schedule 1 includes other requirements relating to the NR service (eg pricing principles and conditions). This quote only relates to the "description of service" component of the NR service.

8. The Commission's last decision under clause 1(3) of Schedule 3 was released on 20 September 2013.<sup>2</sup> Therefore, the current 5 year interval for the NR service ends on 20 September 2018.<sup>3</sup>
9. A review by the Commission under clause 1(3) of Schedule 3 of the Act is limited to considering whether there are reasonable grounds for commencing an investigation into whether the service should be removed from Schedule 1. It does not extend to considering introducing a new service or amending an existing service.
10. If the Commission decides that there are reasonable grounds for commencing an investigation into whether a designated service or specified service should be omitted from Schedule 1 under section 66(b), the Commission must commence the investigation not later than 15 working days after making that decision.<sup>4</sup>

### **What are considered reasonable grounds to investigate?**

11. In reaching its views under clause 1(3) of Schedule 3, the Commission must make the decisions that will best give, or are likely to best give, effect to the purpose set out in section 18 of the Act.
12. The Commission considers that 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.

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

13. In its decision in September 2013 the Commission concluded that there were not reasonable grounds to start a Schedule 3 investigation into whether to remove the NR service from Schedule 1 of the Act.
14. The Commission's preliminary view is that there are still not reasonable grounds to start a Schedule 3 investigation into whether to remove the NR service from Schedule 1 of the Act at this time.
15. Now that 2Degrees has largely completed its national network build there are three potential suppliers of roaming services.<sup>5</sup> However, our preliminary view is that

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<sup>2</sup> <http://www.comcom.govt.nz/regulated-industries/telecommunications/regulated-services/service-deregulation-reviews/>

<sup>3</sup> Where a designated service or specified service is amended or altered, the effective date of that service coming into effect is the date the altered or amended service came into effect. The terms of the national roaming service were last amended by a Gazette notice published on the 14<sup>th</sup> August 2008, available at [www.legislation.govt.nz/regulation/public/2008/0251/latest/DLM1450501.html](http://www.legislation.govt.nz/regulation/public/2008/0251/latest/DLM1450501.html) - Telecommunications (National Roaming) Order 2008 (SR 2008/2511). The effective date of this Order is 28 days following the publication in the Gazette, therefore the date from which to determine the initial 5 year period was 11 September 2008.

<sup>4</sup> Schedule 3, clause 1(5).

<sup>5</sup> 2Degrees. Response to Radio Spectrum Management discussion document "Preparing for 5G in New Zealand" (April 2018).

sufficient competition has not yet emerged in the supply of roaming services such that the specified roaming service should be omitted from Schedule 1.

16. The reasons for our preliminary view that there are not reasonable grounds to start an investigation under clause 1(3) of Schedule 3 are outlined below:
  - 16.1 The allocation of 5G spectrum may influence mobile competition;<sup>6</sup>
    - 16.1.1 The allocation provides a potential opportunity for a new entrant to purchase spectrum. A new mobile provider will almost certainly require a NR arrangement while it rolls out. We note that Blue Reach Services has entered as a fourth provider and has publically stated their intentions to roll-out 5G.<sup>7</sup>
    - 16.1.2 If the 5G spectrum auction results in significant disparities in allocation between the mobile network operators (MNOs), regulated national roaming in rural areas is likely to be an appropriate competition safeguard.
  - 16.2 The regulated NR service is specified (non-price only), which mitigates the risk that NR will distort investment incentives facing both the MNO relying on roaming and the MNO supplying roaming;
  - 16.3 NR regulation provides an important backstop in case commercial negotiations break down in the future. Importantly, regulatory backstop may be necessary to prevent commercial hold-up of 5G. Our 2017 review of the roaming contract between Vodafone and 2Degrees found that there are conflicting incentives in the supply of national roaming services.<sup>8</sup> While there are now three MNO networks who could offer roaming, they may lack incentives to enable a fourth entrant.
  - 16.4 Co-location relates to the gradual deployment of the entrant's network. As a result, in the short term, co-location is not likely to be a substitute for roaming, as roaming offers immediate coverage.
17. Recently, there have been arguments made overseas that roaming regulation stifles investment in network builds. While the Commission accepts that there is some merit in this argument it does not outweigh the reasons for our preliminary view outlined above. In particular, as noted above, the regulated NR service in New Zealand is a specified service, which allows us to determine non-price terms only. As

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<sup>6</sup> Radio Spectrum Management anticipates that allocation will begin 2018/19.  
<https://www.rsm.govt.nz/projects-auctions/current-projects/preparing-for-5g-in-new-zealand/technical-consultation/5g-spectrum-road-map-discussion-document.pdf>

<sup>7</sup> Blue Reach Services "Submission to MBIE on Telecommunications Act options paper" (September 2016); Blue Reach Services. Response to Radio Spectrum Management discussion document "Preparing for 5G in New Zealand" (April 2018).

<sup>8</sup> Commerce Commission "Summary of findings of investigation of the national roaming agreement between Vodafone and 2Degrees" (October 2017).

pricing terms are set on a commercial basis, this is likely to preserve incentives on both parties to continue to invest in the coverage of their respective networks.

### **Submissions**

18. We invite submissions on this Review of National Roaming which is conducted under clause 1(3) of Schedule 3 of the Act.
19. The closing date for submissions is 5pm 30 July 2018. Your submission should be provided as an electronic copy in an accessible form.<sup>9</sup> You do not need to provide a hard copy. Submissions should be sent by email to: [regulation.branch@comcom.govt.nz](mailto:regulation.branch@comcom.govt.nz). If you have any inquiries please contact [robert.deuchars@comcom.govt.nz](mailto:robert.deuchars@comcom.govt.nz).
20. In drafting submissions, interested persons are requested to comment on our preliminary view that there are not reasonable grounds to commence an investigation under clause 1(3) of Schedule 3 in relation to the NR service.
21. We intend to publish all submissions on our website. Any confidential information should be clearly marked and preferably included in an appendix. When confidential information is provided, submitters should provide both confidential and public versions of their submissions. The responsibility for ensuring that confidential information is not included in a public version of a submission rests with the party making the submission.

### **Next steps**

22. After considering the submissions, we will publish our final decision on whether to investigate omitting the NR service from Schedule 1 under clause 1(3) of Schedule 3 of the Act.

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<sup>9</sup> Electronic copies of submissions should be 'unlocked' and have text that can be easily transferred.