



**Draft Review of National Roaming as a Specified Service under clause 1(3) of
Schedule 3 of the Telecommunications Act 2001**

The Commission:

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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). The Commission will provide its final views on this matter by 11 September 2013.
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. However, the allocation of the digital dividend¹ will potentially influence competition in the near future. Therefore, the Commission intends to relook at the situation in 18-24 months, after the outcome of the spectrum auction is settled.
3. This document summarises the reasons for our view and seeks your comment by 5pm on Friday 23 August 2013.

Introduction

What is the National Roaming service?

4. Part 3 of Schedule 1 of the Telecommunications Act 2001 (the Act) describes the National Roaming (NR) service as:²

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

5. 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 the service should be omitted from Schedule 1 of the Act.
6. 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.³

¹ The 700 MHz band spectrum freed up by the switchover to digital television

² 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.

³ Schedule 3, clause 1(4). The Commission may, however, commence a separate investigation on its own initiative at any time in order to propose an amendment to Schedule 1.

7. 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 NR service was amended on 11 September 2008. Therefore, the current 5 year interval for the NR service ends on 11 September 2013.⁴
8. 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.
9. 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.⁵
10. The focus of a five yearly inquiry is to assess whether a regulated service should be recommended for removal from Schedule 1 of the Act assuming there are reasonable grounds for commencing an inquiry under clause 1(3) of Schedule 3.
11. The Commission also has the option at this time to consider whether to amend or alter a regulated service under clause 1(1) of Schedule 3 of the Act. However, this is not within the purview of the five yearly inquiry; a separate inquiry would be required but could easily be subject to the same process under Schedule 3.

What are considered reasonable grounds to investigate?

12. 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.
13. 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

14. The Commission's preliminary view is that there are 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. However, the allocation of the digital dividend may affect competition in the near future. Therefore, the Commission intends to relook at the situation in 18-24 months, after the outcome of the spectrum auction is settled. In

⁴ The latest Gazette notice was published on the 14th August 2008, available at 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 5 year period is 11 September 2008.

⁵ Schedule 3, clause 1(5).

addition the Commission may start an investigation at any time under Schedule 3 of the Act if it considers that there are reasonable grounds to do so.

15. 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:
 - 15.1 Roaming is not competitive. Telecom's network is 3G and uses the 850 MHz and 2100 MHz frequencies, whereas both Vodafone and 2degrees offer a 2G/3G network using the 900MHz and 2100MHz bands. As a result, 2degrees customers who use 2G handsets on 900 MHz frequencies can only roam on Vodafone's network. NR regulation is an important backstop, in case commercial negotiations break down in the future;
 - 15.2 The allocation of the digital dividend may influence mobile competition. The 700MHz auction provides an opportunity for a new entrant to purchase spectrum. A new mobile provider might require a NR arrangement while it rolled out its network on the 700MHz spectrum.

Submissions

16. We invite submissions on this Draft Review of National Roaming as a Specified Service which is conducted under clause 1(3) of Schedule 3 of the Act.
17. The closing date for submissions is 5pm 23 August 2013. Your submission should be provided as an electronic copy in an accessible form.⁶ You do not need to provide a hard copy. Submissions should be sent by email to: telco@comcom.govt.nz. If you have any inquires please contact filomena.antunes@comcom.govt.nz.
18. In drafting submissions, interested persons are requested to comment on our preliminary view that there are no reasonable grounds to commence an investigation under clause 1(3) of Schedule 3 in relation to the NR service.
19. 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

20. 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.

⁶ Electronic copies of submissions should be 'unlocked' and have text that can be easily transferred.