

Summary of findings of investigation of the national roaming agreement between Vodafone and 2Degrees

Background

1. On 22 November 2016 we requested that 2Degrees and Vodafone voluntarily provide us with copies of their original contract and subsequent variations by 30 November 2016 in accordance with section 9A of the Telecommunications Act (the Act).
2. Both parties provided the contracts and variations voluntarily as requested. We have now completed our initial analysis of these.

Our Findings

3. National roaming, which is a specified service under Schedule 1 of the Act, is a wholesale mobile access service which is used by new entrants or smaller mobile network operators to offer national coverage in the retail market for mobile services. Mobile operators compete in the retail market on a number of factors, including prices, coverage, and quality and range of services.
4. The supply of national roaming services by one mobile network operator to a competitor involves a number of conflicting incentives. For instance, a mobile network operator offering national roaming risks giving up some of their competitive advantage (in terms of coverage) in retail mobile markets. The mobile network operator offering national roaming, must balance this potential loss of competitive advantage and differentiation against the additional wholesale revenues earned by providing roaming on their remote sites. In addition, the provision of national roaming on a commercial basis may alleviate the need for the regulatory intervention to set the terms for access to the roaming service.¹
5. With this balance in mind, we found nothing of concern in the current national roaming contracts between 2Degrees and Vodafone. The balance is reflected in conditions applying to 2Degrees' access to new sites and new technologies and is as we expected it should be. Current prices and price trends are also as expected.
6. We did, however, identify provisions in earlier variations of the roaming agreement, that have since been amended by the parties and removed, that were of significant concern. These provisions enabled Vodafone to invoke sanction against 2Degrees should the Commission commence an investigation into national roaming, and also allowed Vodafone to apply retrospective sanctions if the Commission initiated such an investigation because of some action taken by 2Degrees. We consider these provisions to be potentially damaging to competition and we considered initiating an investigation under section 27 of the Commerce Act.

¹ The commercial offer of roaming services by Vodafone to NZC (the predecessor of 2degrees) in 2007 was a consideration in the Commission's decision in 2008 not to recommend amending the national roaming service from a specified service to a designated service.

7. However, at this stage we have decided not to pursue this matter, given the passage of time and the fact that the provisions have been removed. In this regard, please note that if such anti-competitive clauses such as these, were to resurface in any such contracts we would have to reconsider this position and an investigation may be opened.