



ECONET WIRELESS NEW ZEALAND LTD

**SUBMISSION TO COMMERCE COMMISSION REGARDING EXTENSION OF
13 REGULATED SERVICES**

Econet Wireless New Zealand Limited (“Econet”) thanks the Commission for the opportunity to make this submission. As we stated in our submission to the Ministry of Economic Development regarding potential changes to the Telecommunications Act 2001 (“the Act”), expiry dates are fundamentally important to the regulatory process and are an urgent matter for the Commission to deal with. Therefore, we wholeheartedly support the Commission’s initiative in investigating the expiry of the services.

We must point out at the outset that the services that are being extended do not constitute a true OECD style system. We believe that a number of amendments need to be made to the Act in order to be effective for ensuring competition. The most important of these is the regulation of a retail prices between customers of a large network customers to customers of an emerging network. We call this “closed network pricing”, and it is essentially the problem that both Clear Communications and Saturn faced before they both fell on the sword of incumbent practices. It also has a termination rate element, which has overwhelming OECD precedent. We will be in touch with the Commission about this practice. But for present purposes, the fact that it is not dealt with in the Act is an illustration of the fact that the current Act is not exhaustive: it needs constant vigilance and constant review relative to European and OECD markets, to ensure that the appropriate regulatory mechanisms are in place.

The two regulatory measures we are most concerned for the purposes of this submission with are national roaming and cellsite co-location. Our summary position is:

Roaming	Co-location
Extend expiry date	Extend expiry date
Move from specified to designated	Move from specified to designated
Other minor changes to service description	Other minor changes to service description
Deal with as first cab off the rank	Deal with alongside roaming, as first cab off the rank

Linking roaming and co-location

Firstly, we are pleased that the Commission intends to look at these issues at the same time. Cellsite co-location and national roaming are economically and commercially linked, and it makes sense to have the issues around both heard at the same time.

Reasonable grounds to investigate

Econet firmly believes that there are reasonable grounds to investigate all of the services that the Commission has identified that it will review. However, we are limiting our specific comments in this submission only to national roaming and cellsite co-location.

In general terms, there is an obvious need for the regulatory system as a whole to continue, and to be strengthened considerably. Given the current state of play in New Zealand telecommunications - across a range of factors ranging from broadband penetration to mobile retail rates to TelstraClear's recently announced scaling back – we believe the Commission will need to provide a very high standard of proof that *any* measure should not be extended.

Finally, we believe that a system of 2 year extensions is quite frankly ridiculous in the context of large-scale, capital intensive infrastructure in a networked utility industry that provides an essential public benefit in modern life. Therefore we look forward to the progress of the Cabinet paper in relation to changes to the Act.

National Roaming

Expiry dates

We believe there are overwhelming grounds for the Commission to investigate the expiry dates of national roaming. The very obvious reason for this is that there still has been no new entry into the mobile market, and therefore the need for the service is as acute, if not more acute, as it was when the provision was introduced in 2001.

Even with the national roaming provision, neither TelstraClear nor Econet has been able to enter the market. However, from Econet's point of view, there will certainly be no new entry if national roaming were to disappear from the Act. With TelstraClear having recently announced a scale-down of their operations due to the ineffectiveness of the regulatory system, now is not the time to be getting rid of key regulatory provisions. On the contrary, the anomalies and conditions in the Act, whereby the Act giveth with one hand, and taketh away with the other, should be straightened out in the upcoming review of the Act. National roaming is at the heart of new entry in the mobile space. It needs to be strengthened and extended to ensure competitive benefits to end users, and it would be unthinkable not to extend its expiry date.

Designation

Econet would like the Commission to conduct a Schedule 3 investigation into moving national roaming from a specified service to a designated service.

The reasons for this are as follows:

- Commercially effective roaming is the single most important regulatory input into a new entrant's business case, (followed closely by closed network pricing);
- Econet's experience in negotiating roaming has demonstrated that the key point is price, with all other terms being conditional on the price that is charged;

- Therefore, when price is the one term that cannot be regulated, it means the regulation is effectively useless;
- Econet's experience is that there are widely divergent views between access seeker and access provider on what constitutes an acceptable price. Therefore, no agreement is possible without the price being determined;
- The fact that roaming needs to be regulated at all suggests a market failure. This means that without regulation, there is no incentive for the incumbent network to offer roaming to a new entrant. It is rational economic behaviour and commercially logical for an access provider who does not wish to see a new entrant in the market to maximize the price of the service, so that entry is unattainable for a new entrant;
- OECD style consumer pricing requires OECD style competition. The only way this can be done is by having OECD style industry rules. This requires price regulation for roaming where no commercial market for roaming exists.
- Econet's observation is that the market has acted exactly in accordance with commercial incentives, both before and after the regulation of national roaming: ie, incumbents have not wanted to see a new entrant, and have maximized the opportunity of having no price regulation, and a lengthy and expensive regulatory process, to deter new entry.

For all of the reasons listed above, the designation of roaming would certainly promote competition for the long term benefits of end-users, because it would remove the one major hurdle standing between the current mobile duopoly and a new competitive mobile operator.

There is negotiating evidence to support our view. This information is confidential but Econet is happy to provide such evidence under the appropriate confidentiality orders.

Other changes

Econet would also like to see minor changes made to the service description of national roaming under the Act. We would be happy to take the Commission through these changes at an appropriate time.

More detailed information on Econet's experience, and reasons for requesting designation, are subject to confidentiality restrictions. However, Econet would be delighted to provide the Commission with more information under the appropriate confidentiality orders in more detail about its experiences of negotiations for both roaming and co-location.

Cellsite co-location

The industry has only just begun its second round of attempts to self-regulate the process of co-location. That it has taken 5 years to get to this point illustrates the fundamental fallacy of self-regulation intended to promote competition, when the industry is dominated by incumbents. We believe that self-regulation is an oxymoron. It is a contradiction in terms. Regulation is imposed by law, not by market players themselves. No rational economic player will ever choose to regulate itself – at least unless there is a compelling financial penalty if it does not. Therefore we believe the self-regulation system is set up to fail, both because of the inherent flaws in the TCF and working party structure, and the lack of power given to Codes under the Act.

The result of these failures means that, like national roaming, cellsite co-location has not got off the ground. Like roaming, it needs to be strengthened and streamlined in order to be effective. This means that not extending it is out of the question. It must be extended so that it can be strengthened and made to work effectively.

Designation

Econet would like the Commission to conduct a Schedule 3 investigation into moving cellsite co-location from a specified service to a designated service.

In brief, the reasons for this are:

- Just as with roaming, lack of price regulation means that all of the pro-competitive progress made on regulated non-price terms is lost, by the access provider charging unreasonable access prices;
- Co-location is inherently no more difficult to price than any service with a cost and variable inputs, such as interconnection or roaming;
- Once again, incumbents follow rational economic behaviour – if there is a chance of deterring a potential competitor, they will take it. Therefore they have no incentive to play ball with a new entrant, and where pricing is not regulated, they will take every opportunity to use high pricing to claw back any regulatory ground they have lost. This makes a mockery of a regulatory system which was designed to assist new entry.
- Econet would be happy to explain its negotiation discussions under the appropriate confidentiality orders.

Other changes

As with roaming, we would like to see certain minor changes made to the service description of cellsite co-location. We can take the Commission through this in more detail when it is appropriate.

Timing and priorities

We are aware that such a large number of investigations in a relatively short time frame will impose a significant burden on the resources of the Commission. This will mean that any regulatory action in the next year is likely to take an even longer than usual, given the “traffic jam” that will occur with the advent of these new investigations.

Given this, we agree with the comments made at paragraph 26 of the Commission’s letter of 15 September that any broader investigation should be conducted in parallel with the Schedule 3 investigations into expiry dates.

We agree fully with the Commission’s approach set out in paragraph 29:

The Commission is mindful of the fact that some investigations will be more complex and resource intensive than others, particularly if the Commission subsequently decides to investigate whether to make amendments to any of the services. The Commission agrees with TelstraClear that it would be sensible to begin the most complex and controversial investigations first.

We also believe that the order of the investigations should be determined by whether a specific regulatory request has been made. For instance, in the case of a request to investigate whether to change a service from specified to designated, which is in itself a complex and controversial investigation – *then those services should be the first cabs off the rank*. To prioritise such investigations would be to avoid significant delays to a process of introducing competition which the Minister himself has said already takes too long.

In this submission, we have requested a Schedule 3 investigation for designation of national roaming and cellsite co-location. These investigations should be run parallel with the expiry date investigations, *and should be dealt with as first priority*. Our summary reasons for this are:

- Fixed to mobile substitution is the most important dynamic in the telecommunications industry today. The market is going wireless, and fast;
- Vodafone is a player with significant market power, and is in the process of transferring its GSM monopoly into a W-CDMA monopoly. The more time it has to do this without the threat of competition, the more it will strengthen its GSM / WCDMA monopoly and strengthen its market power;

- Telstra's recent announcements make it even more urgent that competition enter the mobile space;
- Therefore, there can be no greater pro-competitive event in New Zealand telecommunications than the entry of 3rd and 4th mobile operators. Ireland, Finland, Sweden, Australia and Hong Kong all have well-functioned, multi-player markets with prices significantly lower than New Zealand. There is no greater benefit to the New Zealand consumer and the New Zealand small business person than having new mobile entrants building infrastructure, creating positive consumer outcomes and preventing monopoly rents being extracted from New Zealand consumers by driving competition;
- If roaming and co-location are not prioritized, Econet could be looking at a further 18 – 24 months of regulatory bureaucracy before it is able to have a solid platform for market entry. This is patently crazy given the quickly changing dynamics of mobile telecommunications;
- If the regulatory processes around roaming and co-location, which are a pre-condition for entry, are not resolved within a reasonable time frame then the opportunity will be lost and no competition will enter the mobile market. TelstraClear's recent announcements are testament to the fact that commercially rational companies will not wait around forever; and
- Minister Cunliffe is already on record as saying the current regulatory processes take too long. To add extra time onto an already lengthy process, which is essential to facilitate market entry, would have an anti-competitive effect. On the other hand, to prioritise the most important measures – which, in relation to promoting competition, are undoubtedly roaming and co-location – would be consistent with the Commission's mandate to promote competition for the long term benefits of end users.

Finally, we would like to reiterate the need for the Commission to strengthen its ties with European regulators, and continue to look towards those countries with effective competition and low retail prices as the model to follow here in New Zealand. A visit from the Commission to these countries specifically Ireland, UK, Slovenia and Denmark would quickly remove petty debate and lobbying from NZ based companies, thereby focussing on a prompt out come for NZ consumers.

New Zealand corporations who want overseas standards take the best from overseas. New Zealand consumers who want the best of overseas demand the best from overseas. Vodafone Live! is a classic example of this. In fact, the entire success of Vodafone in New Zealand is an illustration of the power of overseas precedent: the government *didn't* follow precedent, allowing Vodafone to establish a GSM monopoly, and Vodafone *did* follow precedent, leveraging its global brand and buying power to create a huge New



Zealand business. Even our political system, jurisprudence and constitutional structure is taken from overseas, in order to access the best of what the world has to offer. Regulation is no different: if we want OECD style competition and OECD style pricing, we must have an OECD style regulatory system.

We look forward to providing the Commission with any other information or feedback it requires.

Yours sincerely

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