



COMMERCE COMMISSION

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30 March 2009

To all Interested Parties

**National Roaming – Deferral of decision on whether to commence Schedule 3 Investigation**

1. The Commerce Commission (**‘Commission’**) wishes to inform interested parties that it has deferred for a period of three months the decision on whether or not there are reasonable grounds to commence an investigation under Schedule 3 of the Telecommunications Act 2001 (**‘the Act’**) into whether national roaming should become a designated service under Schedule 1 of the Act.
2. This letter provides background information on the reasons why the Commission is considering whether there are reasonable grounds to commence a national roaming investigation, summarises the reasons why this decision has been deferred, and outlines the Commission’s expectations for the mobile market over the coming months.

***Background***

3. On 5 September 2008, the Minister for Communications and Information Technology wrote to the Commission requesting that, pursuant to Clause 8(1) of Schedule 3 of the Act, the Commission commence a fresh investigation into whether Schedule 1 of the Act should be amended by:
  - omitting the national roaming service from Part 3 as a specified service; and
  - adding it to Part 2 as a designated service.

This amendment would have the effect of allowing price regulation of the national roaming service.

4. The Minister’s request was made in light of information provided by NZ Communications (**‘NZC’**) regarding an issue with the charging structure in the commercial roaming agreement between Vodafone and NZC which may have artificially inflated the headline roaming rate considered by the Commission in its final report on national roaming (dated 10 March 2008).

5. The Commission did not consider that the information provided by NZC to the Minister was, by itself, enough to satisfy the Commission that there were reasonable grounds to commence a Schedule 3 investigation, and wrote to the Minister indicating that it would not commence an investigation at that stage. The Commission noted that it had written to interested parties requesting further information, and would consider launching an investigation under Schedule 3 of the Act on its own initiative if it was satisfied that there are reasonable grounds for an investigation.<sup>1</sup>
6. The Commission has been engaging with interested parties and gathering further information since that time. The Commission notes that Vodafone and NZC have recently agreed new terms for roaming services under a deed of variation to their existing commercial agreement. The Commission has been analysing and evaluating this development and other information received over recent months.

### *Commission's Decision*

7. A key priority of the Commission is to ensure that the mobile market is competitive. The Commission considers that the promotion of efficient facilities-based competition is an important part of this, and has been focusing on reducing barriers to entry and expansion in order to allow such competition to generate market outcomes for the long-term benefit of end-users.
8. In considering issues related to the mobile market generally, and this decision regarding a national roaming investigation specifically, the Commission is cognizant of the significant impact that both national roaming and mobile termination access services ('MTAS') have on the New Zealand mobile market. In particular, in the Schedule 3 investigation into amending the national roaming service<sup>2</sup>, the Commission noted that national roaming prices for voice, SMS and data services are generally not subject to regulation in other jurisdictions. In the absence of prices for voice services, the Commission used prices for mobile termination voice services as a proxy<sup>3</sup>. The Commission considers that this approach generally remains valid.
9. In the Commission's view, it is crucial that the national roaming service is provided in a manner that facilitates efficient market entry and incentivises efficient network expansion. The Commission considers that this can best be achieved where roaming is provided on terms that reflect the cost of providing the service, and where those terms are available to any party wishing to access the roaming service.

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<sup>1</sup> Letter from Dr Ross Patterson to Hon David Cunliffe, Minister of Communications and Information Technology, 19 September 2008.

<sup>2</sup> Commerce Commission, *Schedule 3 Investigation into Amending the Roaming Service Final Report*, 10 March 2008.

<sup>3</sup> In the final report, the Commission noted that there are likely to be additional costs involved in providing a roaming service, indicating that cost-based roaming rates are likely to be somewhat higher than cost-based MTRs. This was factored in to the factual roaming rate adopted by the Commission. The Commission notes that this is consistent with the approach taken in Malaysia, where the Malaysian regulator has published indicative long-run incremental cost (LRIC) estimates for the provision of roaming services, and that these rates are slightly above the LRIC estimates for mobile termination.

10. While the Commission welcomes the conclusion of a commercial roaming agreement between Vodafone and NZC, it has significant concerns with the current state of the mobile market that suggest there may be a case to commence a national roaming investigation. These concerns are:
- the bilateral nature of current commercial roaming agreements, which may not be available to future potential access seekers wishing to enter the mobile market;
  - questions as to whether the prices contained in current commercial roaming agreements align with the costs of providing the service<sup>4</sup>, and the impact that pricing above cost will have on the ability of new entrants in the mobile market to compete with the on-net pricing plans offered by the incumbents<sup>5</sup>;
  - questions regarding whether current commercial roaming agreements will facilitate efficient network expansion, leading to increased facilities-based competition; and
  - the inability of potential entrants to the market to negotiate competitive agreements in a timely manner, including roaming and interconnection arrangements.
11. However, the Commission has also considered factors which suggest that a Schedule 3 investigation should be deferred. One such factor is the likely impact that benchmarking of cost-based MTAS rates will have on the Commission's final view regarding appropriate cost-based roaming rates. The Commission's approach to pricing for MTAS is likely to influence the Commission's decision in respect of national roaming given the relationship between the pricing of the two services identified in paragraph 8 above. The Commission notes that it currently expects to release a separate draft report on MTAS as part of that investigation in early to mid June 2009.
12. In light of the above, and given the potential for commercial solutions to address many of these issues, the Commission has deferred the decision of whether there are reasonable grounds to commence a Schedule 3 investigation into designation of the national roaming service.

### *Commission's Expectations*

13. The Commission will be closely monitoring developments in mobile market over the next few months, and expects to see access to the national roaming service offered commercially on an industry-wide basis, on price terms that encourage efficient market entry, and incentivise efficient network expansion.

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<sup>4</sup> Based on the Commission's current benchmarking in relation to the MTAS investigation. See letter from the Commission to Vodafone, Telecom and NZC, *Comments on undertakings received in relation to the MTAS Investigation*, 25 March 2009.

<sup>5</sup> The Commission notes that in Italy, roaming was required to be offered on a retail on-net price less avoidable cost basis as a condition on mobile operator licences.

14. At this stage, the Commission's intention is to complete its consideration of whether there are reasonable grounds to commence a national roaming investigation in three months' time. How the market addresses the issues raised in this letter within this timeframe is likely to be a significant factor in forming the Commission's decision regarding the commencement of a national roaming investigation.

Yours sincerely

A handwritten signature in purple ink, appearing to read "Paula Rebstock". The signature is fluid and cursive, with a large initial "P" and "R".

Paula Rebstock  
Chair  
Commerce Commission