



TelstraClear Limited

Cross-Submission on Commerce Commission Draft Report:

**SCHEDULE 3 INVESTIGATION INTO THE EXTENSION OF
REGULATION OF DESIGNATED AND SPECIFIED SERVICES**

Public Version

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1 INTRODUCTION

1. This cross-submission comments briefly on Vodafone's and Telecom's submissions on the draft report on extension of regulated services with respect to the existing specified mobile co-location and roaming services.
2. TelstraClear agrees with Telecom that regulatory continuity would be advantageous to the industry and customers generally at this time and we therefore advocate that existing regulation should be extended for a further two-year period.
3. TelstraClear also notes that Telecom's agreement that all regulated services should be extended means at least one access provider accepts there is a sound basis for extending those services that Vodafone does not want extended, ie roaming and co-location.

2 MOBILE CO-LOCATION SERVICE

2.1 Vodafone Submission

4. Vodafone submits that the extension of co-location regulation is unnecessary, as co-location works without regulation. TelstraClear disagrees. In our view, the existing specified co-location service should be extended for a further two-year period for a number of reasons.
5. First, TelstraClear notes that the Commission is currently undertaking a "mobile stocktake" process. This process is looking at potential amendments to existing co-location and roaming regulation as well as potential additional mobile market regulation. In our view, the need for particular regulations to facilitate entry into the mobile market will be impacted by decisions on other mobile market regulation. For example, the lack of a roaming service would increase the importance of co-location and vice versa. Therefore, we do not think it would be appropriate for the existing mobile co-location regulation to be allowed to lapse prior to the conclusion of the Commission's stocktake process.
6. Second, although Vodafone states that co-location is occurring without regulation, in the majority of instances this is with parties who are not potential new entrants in the mobile market, i.e., co-location is either occurring between the existing established mobile players or with organisations who do not provide retail mobile services. The incentives to provide co-location commercially are stronger in these instances than in the case of a new rival, where cost savings may well be offset by potential revenue impacts and new entrants lack the ability to provide equivalent reciprocal co-location opportunities on their sites.
7. Third, it is not only a question of whether co-location would be provided without regulation but also of whether it would be provided with the necessary speed and certainty. Vodafone states that co-location reduces operating and capital costs, but that the cost savings for a new entrant are small in the context of the overall business case for entry. While we agree that co-location is not a substitute for building a network, co-location can provide a more timely and efficient option for

a new entrant than seeking to acquire new sites, which are often associated with significant lease and resource consent issues. Further, as stated above, the importance of a regulated co-location service is affected by the extent of other mobile market regulation – e.g., how important co-location is to a new entrant’s business case will depend on whether roaming can be obtained on economic terms.

8. Fourth, Vodafone raises practical issues with co-location. Undoubtedly, suitability for co-location will vary between individual sites. However, this is not a reason to remove any legal obligation to provide co-location at any sites. The assessment of the suitability for co-location should be addressed on a site by site basis within an overall framework for co-location.
9. Lastly, as Vodafone notes, the Telecommunications Carriers Forum is close to finalising a revised draft code for co-location. This draft code was made because of the regulated co-location service and not in substitution for it. This draft code will be submitted to the Commission for approval as a regulated code. Just as Vodafone has submitted that it would be destabilising for the industry if regulation of number portability were to expire four months before the service is due to be launched, TelstraClear considers that it would be destabilising for the industry if co-location regulation were left to expire just as the industry is close to finalising a regulated code of practice for the service.

2.2 Telecom Submission

10. Telecom has provided comments on certain assumptions made by the Commission in its draft report in relation to co-location. These comments seem to be attempting to suggest that the grounds for regulation of co-location are questionable because opportunities for co-location on mobile sites are limited, that substitutes are readily available and that access to sites is not always within the control of access providers.
11. However, even if co-location opportunities on mobile sites are limited and some substitutes are available, this does not mean that co-location is not a desirable means of facilitating entry nor does it necessarily mean that co-location should not continue to be regulated. In fact, Telecom’s comment that the RMA is the prime controlling factor for access to sites is likely to mean that regulation of mobile co-location is more important as it would assist in lowering the barrier to entry imposed by the RMA.

3 MOBILE ROAMING SERVICE

12. Vodafone submits that roaming regulation is unnecessary since they are happy to negotiate roaming arrangements on reasonable terms without regulatory intervention. TelstraClear disagrees that the existing specified roaming service should be allowed to lapse for the following reasons.
13. First, as stated above, the Commission is currently undertaking a “mobile stocktake” looking at the appropriateness of mobile market regulation as a whole. This stocktake includes looking at whether changes are needed to the existing regulated roaming service. Given this, TelstraClear considers that the

existing specified roaming service should be extended for a further two years pending the outcome of that stocktake.

14. Second, Vodafone states that it makes little difference whether roaming is specified or not since they are happy to offer roaming at attractive prices to genuine entrants. The current roaming regulation does not regulate price, but only non-price terms. While deficient, removing this regulation could remove important regulatory certainty for a new entrant. TelstraClear considers it unlikely that roaming could be commercially negotiated in the absence of the regulation because of the implications from entry for the incumbent's profitability.
15. Given that the costs of continuing to regulate the specified roaming service appear low, we consider that the benefits of continued regulatory certainty, at least while the Commission evaluates the appropriateness of mobile market regulation as a whole, are likely to outweigh the costs.

4 NEED FOR CONFERENCE

16. The Commission has requested comments from parties on whether a conference is required for this investigation. TelstraClear considers that a conference is not required. There appears to be consensus on the extension of regulation of most of the services. For those services where extension is in dispute, TelstraClear considers that the submission and cross-submission process have provided sufficient opportunity for parties to provide the Commission with their views.
17. Should the Commission decide that a conference is required, TelstraClear would of course be pleased to attend.

TelstraClear