



21 December 2005

Commerce Commission
PO Box 2351
Wellington
Attention: Kate Saunders

By email: kate.saunders@comcom.govt.nz

Dear Madam

REVIEW OF DESIGNATED AND SPECIFIED SERVICES

We refer to the Commission's discussion paper of 16 November 2005 entitled "Review of Designated and Specified Services under the Telecommunications Act 2001: Decision To Investigate".

Woosh believes that the Commerce Commission should recommend to the Minister that the specified service "National Roaming" be extended and amended.

The purpose of the Telecommunications Act is to promote competition by facilitating the entry of new operators into the mobile market. The current provisions provide no practical assistance to a new mobile entrant in the market because:

1. qualification for roaming is conditional on roll out timeframes which can not be practically met
2. the Telecommunications Commissioner is not permitted to set a charge for roaming, which will entitle existing operators to set a price which either prevents a new entrant from offering roaming or from doing so without incurring unsustainable losses
3. the service is limited to 2G to 2G roaming when a new entrant is more likely, in 2006 and beyond, to deploy a 3G network.

The amendments should reflect the following:

1. roaming should be a regulated service where the new operator is deploying either a 2G or a 3G network, and should permit roaming to the 2G and 3G networks of other operators;
2. the requirements in respect of the new operator deploying a "national network" within the specified timeframe should be amended to reflect the realities of deploying a mobile phone network in New Zealand;
3. national roaming should be made a designated service.

This recommendation reflects international practice. If New Zealand is to improve its position in OECD rankings with respect to mobile services and pricing then meaningful competition is required. Roaming on reasonable terms is a precondition for such competition.



Roaming Should Be Available on 3G Networks

The current description of roaming was drafted in 2001 when there were only 2G networks in operation and a competitor seeking to compete could be expected to roll out a 2G network. Market conditions have now changed such that this is not an appropriate definition of the service.

If a new operator is to compete with the existing mobile operators it is imperative that the new operator is able to offer competing services i.e. 3G services. The current regulation provides no assistance to an operator seeking to roll out a 3G network.

As the intention of the legislation is to ease the entry of a new mobile operator into the market then, to be of any practical use, it must offer roaming to an operator rolling out a 3G network.

Review of Roll-Out Requirements

In order to initially qualify for roaming (and to continue to do so on an ongoing basis) a new entrant must establish a "roll-out of a new national cellular mobile telephone network within the period of time in which the national roaming period is specified."

While the term "national network" is not defined, in Woosh's experience it would not be possible for a new entrant into the mobile market to deliver a "national network" in any reasonable reading of those words within five years. The description of the service should be amended to reflect the scope of any network that a new entrant would be able to plan to roll out for launch and the likely time to roll out that network. This will need to reflect the limitations of the New Zealand market including the limited number of sites available and the Resource Management Act process and design constraints.

Another implication of this approach is that roaming is only available to an operator which enters the market with sufficient backing to fund a national network. The restraints around the roll-out mean that it is not possible for an operator to begin to build a network, assess progress against milestones and consolidate before beginning the next stage of expansion and to do this progressively. This may prevent any operator from taking the risk required to qualify for roaming and will certainly limit the number of entrants who would qualify for roaming.

National Roaming Should Be Made A Designated Service

In order to give practical benefits of roaming, national roaming should be made a designated service. Without this, the existing mobile operators, acting rationally, will be able to make the business case of the new entrant untenable.

Yours sincerely

A handwritten signature in black ink that reads "Nick Clarke". The signature is written in a cursive, slightly slanted style.

Nick Clarke
Commercial & Legal Manager