

25 January 2017

Mr Rod Sims

Chairman

Australian Competition and Consumer Commission

GPO Box 3131 CANBERRA ACT 2601

Dear Mr Sims

The Competitive Carriers Coalition is an industry association representing the interests of non-dominant telecommunications carriers in Australian communications markets. The CCC members are vitally interested in the future of access to mobile services. CCC members increasingly rely on access to competitive wholesale mobile products to compete across communications markets.

However, we write to express our concerns about a proposition regarding the appropriate role of regulation and the regulator in relation to investment incentives that we believe is implicit in many of the submissions to the Commission’s present inquiry into mobile roaming.

We submit that, were the Commission to accept arguments put in numerous submissions promoting the idea that the need to encourage investment be regarded above all other considerations, it would represent a departure from decades-long practice and could create most serious uncertainty about the basis of the pricing of regulated communications services.

The argument repeated in a number of submissions appears to be that the Commission, if it were to declare roaming, could deter (unspecified) investment by Telstra in expanding its mobile network footprint. The Commission, this argument goes, should therefore forebear any further regulation in the hope that Telstra will expand its network – likely with additional public subsidy – if it does not have any competition at a retail level.

Given that regulated roaming would, by definition, require access seekers to pay Telstra at a level that provides for a reasonable return on investment, the underlying logic of this argument can only be that Telstra should be allowed to leverage unreasonably high returns on its investment, in the hope that this would encourage it to invest more.

To be clear, we believe the implication of this argument is that a potential investor in a natural monopoly market should be entitled to enjoy unconstrained ability to exploit vertical monopoly market power at the expense of those consumers who are at its mercy, because it might then invest further.

The CCC submits that the acceptance of such an argument would mark a fundamental change in regulatory philosophy and practice not only in telecommunications but in all regulated industries in Australia.

Firstly, the existence of a natural monopoly is prima facie case for access regulation to create some competitive choice for consumers who are otherwise without any bargaining power.

The argument that the marginal returns in some geographic locations means only one underlying network and one retail provider can be sustained, turns this proposition on its head.

It suggests those consumers unfortunate enough to live in those natural monopoly locations should be subject to whatever prices the vertically integrated provider chooses to charge them, free of any competitive or regulatory discipline, and above what is required to provide a reasonable return on investment, because these super-profits might be invested in expanding in these marginal areas.

Even considering its implications in relation only to mobile markets, the proposition is deeply concerning.

Accepting such a proposition would entrench what is already a vicious cycle for mobile investment and retail markets in regional areas.

Telstra presently benefits from hundreds of millions of dollars in tax payer subsidy to expand its mobile network. The creation of the Mobile Blackspots program, in particular, suggests policy makers have determined the further expansion of the network is not commercially viable. At the very least, where those funds go to Telstra to extend the boundary of its coverage area, it should therefore be considered that the expanded network is a natural monopoly.

However, with each subsidised expansion, Telstra’s ability to dominant further grants to expand further at the edges of coverage becomes greater and greater. By definition, areas adjacent to the existing boundaries of mobile coverage are more likely to be on the boundaries of Telstra’s network with each round of funding. Competing networks constrained to locations where it is commercially viable to have competing infrastructure can never catch up.

Telstra’s market power and ability to leverage its superior coverage to advantage in otherwise competitive locations and markets (such as corporate markets) thus becomes greater and greater. In this way, Telstra’s ability to distort competitive markets by leveraging natural monopoly, snowballs over time.

Unless the Government were to decide it would pay for the creation of competing infrastructure at some future point, the only prospect for competitive entry into these marginal locations is through access regulation.

More generally, the CCC submits that the argument that the Commission should not regulate mobile roaming if it might discourage Telstra from potentially investing is a highly risky and novel proposition. It would, in effect, suggest that access regulation, even it is enshrined in law that the owner of monopoly asset is entitled to a reasonable return on investment, is incompatible with future investment.

This proposition that the absence of regulation improves services and access options for regional consumers not only flies in the face of all of the evidence of history, it also represents the most retrograde and superficial economic thinking, and would be clearly detrimental to the long-term interest of end users.

We therefore urge the Commission to maintain consistency with its long-established approach to balancing the interests of access seekers, access providers and consumers, and to remind parties that declaration of access to a network carries with it an entitlement to a reasonable rate of return for the network owner.

Yours Sincerely

David Forman

Public officer

CCC