

16<sup>th</sup> June 2017

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Dear Sir/Madam

## **Introduction**

Pivotel Group Pty Limited (**Pivotel**) welcomes the opportunity to provide comments on the ACCC's draft decision in response to submissions received to its discussion paper Domestic mobile roaming declaration inquiry of October, 2016.

## **Background**

Pivotel is a licenced telecommunications carrier and mobile network operator (**MNO**) that since January 2003 has been providing both terrestrial and satellite mobile network services in the Australian market.

Pivotel as a MNO has direct experience with domestic mobile roaming in the Australian market as both an access seeker and an access provider.

Since 2003, Pivotel as a MNO access provider has provided domestic mobile roaming services to Vodafone Hutchison Australia Ltd (**VHA**) (and its predecessors) on its mobile satellite networks, including the Globalstar network that Pivotel acquired from VHA in January 2003.

In 2005, Pivotel was the second MNO after Hutchison to launch domestic roaming services as a MNO access seeker on Telstra's CDMA network, and acquired domestic mobile roaming services from Telstra on its CDMA network until its subsequent closure.

Over the years, Pivotel has invested heavily in its mobile network infrastructure including establishing direct interconnect with all the major telecommunications carriers in Australia, acquiring digital mobile numbers and a carrier access code, and having these numbers and number ranges conditioned on all Australian carrier networks, fully supporting mobile number portability (**MNP**) as required by the MNP Code, and implementing all of the other infrastructure and to support network access for our wholesale and retail customers, and regulatory compliance.

## **ACCC has abandoned regional consumers to their fate**

On reading the draft decision, it is clear to Pivotel that the ACCC has abandoned regional consumers to their fate, in a geographic market it openly recognises as uncompetitive.

The ACCC even attempts to justify its position by quoting a single submission stating that "...feedback from residents and business owners clearly identified a need for large investment in infrastructure to provide for mobile connectivity. Costs and access to multiple providers rates much lower as a need, or issue, for consumers in this region."

So for the ACCC it is okay for regional consumers to suffer from a lack of choice of provider and higher pricing for mobile services, provided there is ongoing investment in infrastructure. The premise of course being, that if the ACCC were to declare a domestic roaming service that investment in infrastructure would evaporate given Telstra's open threats of an investment strike.

At the same time, the ACCC throughout its draft decision recognises that there is no commercial incentive for any MNO to provide new coverage to unserved geographic areas in the absence of material government subsidies.

Despite this conclusion, the ACCC has indicated a preference that the various governments funding mobile infrastructure have given insufficient weight to competition given "there is no mandatory requirement to provide roaming at new mobile sites despite the significant public funds used to deliver the program."

If the ACCC as the regulator tasked with promoting competition, recognises that government funding schemes are not competitive or even anti-competitive, then why is it abrogating its responsibilities to governments at all levels to enforce open access on publicly funded infrastructure when it will not make that decision itself? At the very least, it is open for the ACCC as a result of this declaration inquiry to declare domestic roaming on all mobile sites that have in the past been funded in part with local, state or federal government subsidies, or that will in future receive such public funding.

However, if Telstra's investment strike threats are to be taken at face value, why would Telstra continue to choose to co-invest in future government funding programmes if open access was only mandated as a condition of receiving that new public funding? In practice, how could such open access and roaming be mandated by governments absent a declared roaming service by the ACCC?

In this regard, Pivotel notes and supports VHA's public objection to the ACCC's draft decision on the basis that the ACCC has not even attempted to define a domestic roaming access service for consideration or response by stakeholders.

In section 9 of its draft decision, the ACCC refusing to take any action itself in support of regional consumers, looks to others to find "policy or regulatory measures" to improve outcomes for regional consumers.

Absent any tangible action by the ACCC, increased information gathering, acknowledged marginal issues such as minor improvements to the facilities access regime or a suggestion that voluntary government funding programmes could secure domestic roaming outcomes in regional areas when the ACCC itself won't declare a domestic roaming service, and spectrum management are all put forward as ideas that might improve regional outcomes. In the absence of any action, the ACCC's mildly stated empathy for regional consumers certainly won't improve regional competition outcomes.

In section 4.1.2, the ACCC has determined that there is a national services market but with geographic variations. The ACCC has openly recognised that "there is a variance in competitive conditions between different regions, especially in regional, rural and remote areas." The ACCC also accepts "that for consumers in some remote and regional areas, there are few, if any, effective alternatives to Telstra's mobile services."

Absent a declaration of domestic roaming, this situation cannot and will not ever change. The ACCC fully acknowledges that regional consumers pay the price for this lack of competition, but refuses to act forming a view that a decision to declare a domestic roaming service won't materially change competition in metropolitan geographic areas, and hence nationally given that the population in metropolitan areas dwarfs the population in regional areas.

Whilst Pivotel fundamentally disagrees with the ACCC's findings that any improvement in competition in the national market from a declaration of domestic mobile roaming would be marginal, weighing regional versus national outcomes in a country like Australia against its concentrated metropolitan population radically distorts the competition discussion.

In an Australian national mobile services market, where population is so concentrated in metropolitan areas, by definition regional competition outcomes in themselves can never rise to be a material consideration. So if the point of the ACCC's public inquiry into domestic roaming was to look at ways in which outcomes could be improved for regional consumers, the ACCC has made it abundantly clear that in a national context it will give little weight to those regional considerations.

Whichever way the ACCC assessed the impact of a domestic roaming declaration, its consideration has always turned to the assessed impact on the national market for mobile services, and not on the impact for regional consumers, or those who rely regional coverage.

The realisation from the draft decision that the ACCC has consciously abandoned regional Australians to an uncompetitive mobile service is particularly ironic given the very significant number of submissions received from regional consumers, advocates and interest groups.



### **Any to any connectivity**

It is Pivotel's view that the narrow definition of any to any connectivity taken by the ACCC in 2017, as opposed to the broader definition of any to any connectivity the ACCC adopted in 2005, has been a material factor affecting the ACCC's proper consideration of the long-term interests of end-users (LTIE).

It is our strong view that any to any connectivity should not just be considered in the context of interconnect arrangements between carriers, it should properly be considered in the context of end-users being able to communicate with other end-users, whether on the same network or not.

It is self-evident that a domestic roaming declaration in the Telstra-Optus only coverage footprint would be of material benefit to many end-users, particularly those who travel to these areas. Those travellers would include a substantial number of people who could take a competitive mobile service from a MNO in a metropolitan area or a larger regional area, but who could benefit from the contiguous coverage provided under a declared mobile roaming service in more sparsely populated areas.

Mobile services have become such a vital means of connectivity for Australians that connectivity should be an overarching goal for competition policy wherever that connectivity is technically possible. Given the vast majority of the Telstra only geographic coverage will never be overbuilt, the only way to achieve any to any connectivity in this area is by way of a declared domestic roaming service. Where the incumbent refuses access to these natural monopoly assets on reasonable terms, it is our view that the ACCC has an obligation to regulate.

The ACCC's insistence that any to any connectivity should be considered solely in the context of interconnection between networks flies in the face of the absence of any regulatory requirement for calls originated on one carrier's network (fixed or mobile) to be terminated on another MNO's network. The Mobile Terminating Access Service (MTAS) has been declared, but there is absolutely no regulatory obligation on a carrier (fixed or mobile) to acquire that service from another MNO.

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Any to any connectivity also needs to be addressed in the context of the machine to machine (M2M) and Internet of Things (IoT) markets for services. Pivotel's direct experience is that for mobile assets, corporations will pay a premium for extended coverage even in circumstances where the overall percentage of mobile assets actually using that extended coverage is small.

This natural tendency by corporations to prefer access to extended coverage in case it is required, not because it is required, materially distorts competition in metropolitan markets as much as in regional markets for M2M/IoT services.

The most obvious example of this material lack of competition about to impact the Australian market is the rollout of connected cars. In Europe, where connected cars already represent a significant share of the market, the regional or global operator with the best roaming agreements is the natural preference of the connected car manufacturers.

Without domestic roaming in Australia, there is but one choice being Telstra given the material difference in its national coverage footprint to any other MNO. So whilst many connected cars may never leave metropolitan areas where there is a competitive choice of MNO technically capable of providing M2M/IoT connectivity, the connected cars will be connected to Telstra, being the MNO with the greatest coverage footprint nationally, just in case the connected car is used in a geographic area where only Telstra provides coverage. Thus Telstra is unconstrained in its premium pricing for M2M/IoT services nationally, where mobility of the M2M/IoT device is a determining factor.

It is our strong view that competition and innovation in M2M/IoT markets will be materially reduced absent a declaration of domestic roaming services in the Telstra-Optus only geographic areas.

Were the ACCC unwilling to help consumers access domestic mobile roaming services for personal communication services in its final decision, Pivotel strongly recommends that the ACCC declare a domestic data mobile roaming service for use by M2M/IoT devices in the Telstra-Optus only geographic areas.

## **Other considerations**

### **Boost**

It is not clear from the discussion paper that the ACCC fully recognises that Boost is in fact a Telstra Retail service proposition using a third party branded distribution model. This distribution model is not dissimilar to the models used by Virgin Mobile (owned and operated by Optus) or Kogan (owned and operated by VHA). None of these branded distribution models are true MVNOs operating on an arm's length wholesale basis.

The reason why Boost has access to Telstra's full retail coverage footprint, is because it is a Telstra Retail service proposition. Consequently, Boost is not competing with Telstra Retail, it is a Telstra Retail brand that can compete for customers who otherwise would not be attracted to the Telstra brand, and its premium price position. So by using Boost, Telstra can compete for customers at a lower price level, whilst at the same time maintaining its premium price position for the core Telstra brand.

It is not clear the degree of marketing and the level of awareness of the Boost brand specifically in regional areas, and what share of the market Telstra attracts under this value conscious brand versus connections to its widely promoted premium priced Telstra branded services.

For transparency reasons, in the ACCC decision we believe it should be made very clear that Boost is not competing for customers with Telstra Retail, and thereby providing a competitive constraint to Telstra. It is in fact deliberately an alternate distribution channel for Telstra Retail to acquire customers who might otherwise have chosen a different service provider based on the core Telstra brand values and premium pricing position.

Some consumers may be worse off

TPG has announced its intention to become the fourth large MNO by way of their recent acquisition of 700 MHz spectrum. They have done so on the basis that they describe current levels of competition in the metropolitan market as being "comfortable". They have a stated position that they will compete on price, and they can be believed based on their history in the telecommunications market that they will in fact do so. With a network planned to only cover 80% of the population, and no other product differentiation such as attractive exclusive content deals, it is clear they intend to be successful as a cut price MNO.



In our view, and in that context, it beggars believe that if the ACCC declared a domestic roaming service in the Telstra-Optus only coverage areas that metropolitan pricing from Optus and VHA may rise. In order to compete with TPG it seems clear to us that prices are likely to fall, and fall substantially in metropolitan markets with a fourth large MNO entrant.

Neither do we find persuasive an argument that some customers may be worse off as MNOs may start to offer disaggregated pricing models that penalise domestic roaming.

Clearly VHA has been the strongest proponent arguing for domestic roaming in order for it to be able to compete more strongly on a national basis for consumer and corporate customers who value geographic coverage. With pricing in metropolitan markets constrained by TPG, we can't see how VHA could improve its competitive position with increased coverage by way of a domestic roaming declaration, whilst simultaneously penalising customers who do value that same geographic coverage with higher pricing. This seems to be an illogical argument to us.

In our view all consumers will be better off should a domestic roaming declaration be made.

Telstra is not going to stop rolling out 4G in regional areas, or under investing in network quality improvements within its existing coverage footprint, thereby upsetting its customers and holding regional Australia back, just so that it can demonstrate its ongoing disappointment with an ACCC decision already made to declare domestic roaming.

The ACCC plainly recognises that for very similar reasons Optus will also continue to invest in its own network quality post a domestic roaming declaration, otherwise it could find a more competitive VHA willing and able to close the network gap.

TPG has already announced its market entry with a price based proposition for metropolitan markets.

Finally, if the concern is about coverage extension into new geographic areas currently without mobile service, a major concern for regional Australians, the ACCC has already found that it is uncommercial for any MNO to build new coverage without material government subsidies. So declaring domestic roaming of itself will have no detrimental effect on government infrastructure subsidy programmes.

In fact, given the ACCC now promotes open access and roaming on government funded infrastructure, it seems clear that a broader declaration of domestic roaming in the Telstra-Optus only coverage areas must improve competitive outcomes. Otherwise there would be isolated towers where roaming service is made available, without any connectivity between those isolated pockets of roaming coverage.

Whilst we fully support the proposition that government funded infrastructure (past and present) should be subject to open access and roaming requirements, we cannot see how competition is improved if there is no wider declaration of domestic roaming to provide contiguous coverage between these islands of coverage in underserved areas.

Pricing access is too hard

We are concerned that one reason the ACCC has declined to declare domestic roaming is its concern that pricing access for domestic roaming is too hard.

We understand that pricing access will be difficult for the ACCC if it declares domestic roaming, however we believe any determination of a regulated price is hard. It is a core function of the ACCC to determine a regulated price if a declaration is made, and the difficulty in determining that regulated price should not be used a reason for not declaring the domestic roaming service in circumstances where it would otherwise be prudent to do so.

## **Conclusion**

In conclusion we make the following points:

- 1 We agree with VHA that is hard for us to make a submission on a draft decision by the ACCC not to declare domestic roaming, when the ACCC has not even described that domestic roaming service;
- 2 We believe that the wholesale and retail market for M2M/IoT services is substantially different to a consumer retail market for mobile services, and we further believe that on a national level competition is weak in the M2M/IoT market. In the absence of a wider declared roaming service, we strongly recommend the ACCC should declare a domestic roaming data service for M2M/IoT services in the Telstra-Optus only coverage areas;
- 3 We disagree with the ACCC's recent narrow definition of any-to-any connectivity, and believe any to any connectivity must be considered more broadly as any to any connectivity between end-users, and not just in the narrow context of the interconnection between networks;
- 4 We cannot see any logical argument that some consumers may be worse off if domestic roaming is declared, particularly in light of TPG's decision to enter as a fourth large MNO in metropolitan markets. We strongly believe all end-users will be materially better off from such a declaration as it materially improves VHA and TPG's ability to compete; and

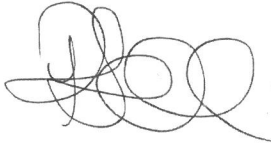


- 5 With the ACCC itself arguing for improvements to competition outcomes by mandating open access and roaming on government funded infrastructure, we believe the only practical way to achieve that competitive outcome is for the ACCC to make a domestic roaming declaration in the Telstra-Optus only coverage areas.

Should you have any further questions please feel free to contact me on email

Yours sincerely

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