

Comments on the report prepared by Empirica Consultants for Vodafone Australia

Report by Professor Heath McDonald

15 June 2017

Prepared on behalf of Telstra Corporation Limited for the Australian Competition and Consumer Commission's inquiry in relation to domestic mobile roaming

1 Summary

- 1.1 In December 2016 to January 2017, Empirica Research undertook a study, which was intended to determine the views of regional and rural Australians on declared mobile roaming. Empirica Research's subsequent report has been relied on by Vodafone Hutchison Australia Pty Ltd (VHA) to support the proposition that 61% of Telstra's own regional consumers support mandated roaming (see page 22 of VHA's supplementary submission).
- 1.2 The proposition VHA relies upon is not contained in Empirica Research's report. Further, for the reasons that follow, the results received by Empirica Research are biased in favour of declared roaming, and should not be relied upon.
- 1.3 The Empirica Research report is based on a survey undertaken in December 2016-January 2017, with 1029 rural and regional Australians as respondents.
- 1.4 I was not given access to the survey instrument used in the data collection, and thus my comments are based on the report only.
- 1.5 The report examines attitudes to changes in domestic mobile roaming regulations and consumer use of mobile technologies.
- 1.6 The sample, whilst substantial, does not reflect the regional or rural population of Australia. The classification of "remote" and "regional" used here differs from standard practice derived from the Australian Bureau of Statistics (ABS). The sample is also heavily weighted in favour of Victoria and under-represents Queensland.
- 1.7 The questions are asked in a manner likely to elicit highly positive responses, through a lack of balanced question framing.
- 1.8 The responses, surprisingly, are not as positive as could reasonably be expected under these circumstances.
- 1.9 The use of an attitudinal survey is not appropriate for determining future customer behaviours or the relative importance of various product features, even if rigorously undertaken. Choice modelling or conjoint analysis are more appropriate techniques for determining the relative impact a change like mobile roaming regulation might make to customer preferences and actual choice behaviour.

2 Introduction and Qualifications

- 2.1 I have been instructed by Gilbert + Tobin, on behalf of Telstra Corporation Limited, to provide a report setting out my expert opinion with respect to the report of Empirica Research, entitled REGULATED DOMESTIC ROAMING RESEARCH REPORT 2017. This report was prepared on behalf of Vodafone Hutchison Australia (VHA). A copy of my instructions is set out in full in Annex A.
- 2.2 I have read the Harmonised Expert Witness Code of Conduct (Annexure A to Federal Court of Australia Practice Note GPN-EXPT) and agree to be bound by it.

- 2.3 I have prepared my report for use in relation to the Australian Competition and Consumer Commission's inquiry into whether to declare a wholesale domestic mobile roaming service.
- 2.4 I am Professor of Marketing, and the Associate Dean (Research & Development), for the Faculty of Business and Law at Swinburne University. I hold a Ph.D. in Marketing from Monash University and a Masters By Research in Marketing from the University of South Australia. I was previously Associate Head of School, Graduate School of Business at Deakin University. I have published over 100 academic manuscripts, primarily on consumer research and research methods and been Chief Investigator on two Australian Research Council (ARC) Linkage grants funding multi-year consumer research projects. I am a Research Fellow of the North American Society for Sport Management. I consult to a range of organisations on consumer research issues including the Australian Football League, Cricket Australia, Zoos Victoria Federal Government Departments and Local Councils.

3 Commentary on the Report by Empirica Research

3.1 Sample is unrepresentative

- 3.1.1 The stated purpose of the report is "to explore the experience and opinions of regional Australians with respect to their mobile service and domestic roaming." (pg. 3).
- 3.1.2 The sample (all respondents) is large (n=1029) but does not reflect regional Australians accurately.
- 3.1.3 The ABS has a classification of remote and regional locations, but this has not been employed in this research. Empirica employ a definition based on size of town, whereas the ABS use a measure of remoteness from major centres. The ABS definition would seem better suited to the research question that is the subject of this report.
- 3.1.4 Comparison to the ABS census figures are therefore difficult. However, the Empirica sample is constituted as follows:
- NSW 22%
 - Victoria 22%
 - Queensland 23%
 - Western Australia 13%
 - Northern Territory/South Australia /Tasmania 20%
- 3.1.5 Using ABS figures for Outer Regional, Remote and Very Remote Australia, the breakdown of population is:
- NSW 19%
 - Victoria 9%
 - Queensland 32%
 - Western Australia 14%
 - Northern Territory/South Australia /Tasmania 24%
- 3.1.6 It appears that the sample is significantly over-indexed on Victorians and under-indexed on Queenslanders. If location plays a role in shaping consumer experiences and attitudes in relation to the issue of regional roaming, then this imbalance is problematic.

3.2 No baseline set for knowledge or importance

- 3.2.1 When collecting consumer attitude data it is normal practice to first collect data related to the topic in an unprompted manner. For example, in this case, baseline attitudes could have been collected by asking respondents what they currently know about mobile roaming in regional areas *without any background or prompting*. This could be through an open-ended response allowing consumers to write freely about what they know, or through a response to a with options such as “I don’t know anything about regional mobile roaming” through to “I know a lot about regional mobile roaming”. This would provide a ‘natural’ benchmark of both top-of-mind awareness and importance of the issue.
- 3.2.2 The issue of regional roaming could have also been put into context with other issues facing regional Australians, by simply asking them to identify issues of importance.
- 3.2.3 Neither of these things were done. This means that respondents who were previously unaware or unconcerned by this issue were not given the opportunity to express that. Instead they were given background, influencing their knowledge and opinions.
- 3.2.4 The result is that 100% of survey respondents are assumed to both know about mobile roaming and have enough information to make an assessment of its value.
- 3.2.5 The consequence is that this report cannot be said to report on consumer attitudes to regional mobile roaming in general. It reports only on attitudes to the scenario and explanation of mobile roaming presented here. The report gives no indication of whether respondents were aware of the issue before it was raised and, as discussed in the following section, was based on imbalanced presentation of information.

3.3 Improper question framing leading to response bias

- 3.3.1 Normal practice would be to include an explanation of mobile roaming regulation for all respondents, to ensure a common base of knowledge and understanding.
- 3.3.2 This has been attempted by providing the description presented on page 6.
- 3.3.3 The description contains a number of leading statements, such as:
- “mobile networks are one such area where the divide is real and significant”
 - “Regulated domestic roaming would mean that mobile carriers other than Telstra would have access to mobile coverage in these areas”
 - “you would always have access to the strongest signal”
 - “Through these payments further investment in regional mobile networks can be undertaken”
- 3.3.4 65% of respondents are reported to “support or strongly support domestic roaming based on this description” (pg. 6)
- 3.3.5 The description provided to respondents frames the questions that follow. Those questions include whether respondents agree domestic roaming will:
- Enable regional residents to have access to more competitive services (83% somewhat agree or more);
 - bring greater coverage to all Australians (80% agree);
 - encourage greater competition among mobile carriers (80% agree); and

- bridge the gap between regional areas and major cities (78% agree).

3.3.6 Effectively, then, these questions are a comprehension test for respondents. They are told, through the framing description certain ‘facts’ about domestic roaming, and then asked if they agree with statements repeating those ‘facts’.

3.3.7 The surprise here is that agreement is not stronger, given respondents were told these things would occur.

3.3.8 As a result of the leading nature of the question asked and information provided beforehand, the reports’ conclusion that “65% of respondents support or strongly support” domestic roaming is not credible.

3.4 Unbalanced framing leading to response bias

3.4.1 The description used to frame questions not only contains statements that prime respondents to think favourably about the issue, but it also omits any negative aspects of the proposed change to domestic mobile roaming.

3.4.2 Putting only positives to respondents is likely to result in higher levels of agreement.

3.4.3 A more balanced description would have at least reminded respondents that switching mobile phone providers can be complicated and that increased choice does not always result in lower prices.

3.4.4 To obtain an accurate reflection of consumer attitudes, a balanced description outlining the positives and negatives of any situation is required.

3.4.5 Given the highly positive description given, it is therefore surprising that only 65% were reported as “supporting or strongly supporting domestic roaming regulation”.

3.5 Determining relative importance of product features and benefits

3.5.1 The report states that it intends to examine “potential benefits arising from regulated roaming that respondents thought most important” (pg. 6).

3.5.2 Attitudes studies are not an effective way of uncovering the relative importance of product attributes. It has been consistently shown that consumers (people) act to maximise benefits and reduce costs. Therefore, all benefits are usually rated important in attitude studies.

3.5.3 Where information regarding product choices, or the relative importance of different product features is required, techniques such as choice modelling or conjoint analysis are typically used.

3.5.4 These techniques present hypothetical products to consumers, showing both costs and benefits. Consumers select their preferred products from a small number of options, in line with how they choose products normally. Repeating these ‘choice tasks’ reveals underlying consumer preferences.

3.5.5 Had one of these techniques been employed in this research, we would have specific information on the relative value and importance of greater coverage compared to price, mobile plan features, brand etc.

3.5.6 Due to an absence of rigorous evaluation of consumer attitudes, the report’s findings can be summarised as showing only that consumers are in favour of receiving more benefits, especially when there are no concomitant costs involved. None of this data would seem to support the conclusion that “61% of Telstra’s own regional consumers support mandated roaming”.

Annex A

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By email

Professor Heath McDonald

Email: heathmcdonald@swin.edu.au

Dear Professor McDonald

Response to the Australian Competition and Consumer Commission regarding potential declaration of a wholesale domestic roaming service on behalf of Telstra Corporation Limited

1 Background

- 1.1 We act for Telstra Corporation Limited (**Telstra**).
- 1.2 On 5 September 2016, the Australian Competition and Consumer Commission (**ACCC**) commenced an inquiry into whether to declare a wholesale domestic mobile roaming service (**ACCC Inquiry**). As part of that inquiry, on 26 October 2016, the ACCC released a Discussion Paper seeking views on a range of issues it considers relevant to whether such a declaration should be made.
- 1.3 The ACCC invited submissions to the Discussion Paper from mobile network operators. Submissions were provided by a number of operators, including Telstra and Vodafone Hutchison Australia Pty Ltd (**VHA**). VHA's supplementary submission, dated 13 March 2017, referred to a report by Empirica Research entitled '*Regulated Domestic Roaming Research Report 2017*' (**2017 Empirica Report**).
- 1.4 We have been instructed to engage you, on behalf of Telstra, to prepare a report based on your expert opinion, for use by Telstra in relation to the ACCC Inquiry. Telstra may seek to rely upon your report in any subsequent review of the ACCC's final decision. If that occurs, we will contact you.
- 1.5 By this letter, we set out our written instructions to you.

2 Scope of work

- 2.1 You are retained to provide an expert report which comments on the 2017 Empirica Report, and whether it supports the statement made in VHA's supplementary submission that "*Even the majority (61%) of Telstra's own regional consumers support mandated roaming*"¹.

¹ Page 22 (Public Version)

3 Guidelines for preparing your report

- 3.1 While you have not been engaged in respect of any legal proceedings, Telstra is seeking a robust and rigorous independent expert report. We request that you prepare your report in accordance with Federal Court of Australia *Harmonised Expert Witness Code of Conduct*. A copy of the Code of Conduct is enclosed at **Attachment A**.
- 3.2 In particular, in preparing your report, we ask that you please:
- (a) identify your relevant area of expertise and provide a curriculum vitae setting out the details of that expertise;
 - (b) only address matters that are within your expertise;
 - (c) where you have used factual or data inputs please identify those inputs and the sources;
 - (d) if you make assumptions, please identify them as such and confirm that they are in your opinion reasonable assumptions to make;
 - (e) if you undertake empirical work, please identify and explain the methods used by you in a manner that is accessible to a person not expert in your field;
 - (f) confirm that you have made all the inquiries that you believe are desirable and appropriate and that no matters of significance that you regard as relevant have, to your knowledge, been withheld from your report; and
 - (g) do not provide legal advocacy or argument and please do not use an argumentative tone.

4 Confidentiality and legal professional privilege

- 4.1 Presently, your report and all correspondence between us (excluding this letter) is subject to legal professional privilege. In addition, the information we have provided to you is commercially sensitive and confidential. For these reasons, we request you do not disclose or discuss your report, our correspondence or any information we provide to you with any third parties.

Yours faithfully
Gilbert + Tobin

A handwritten signature in black ink, appearing to read 'Peter Waters'.

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Attachment A

Harmonised Expert Witness Code of Conduct **(Annexure A to Federal Court of Australia Practice Note GPN-EXPT)**

APPLICATION OF CODE

1. This Code of Conduct applies to any expert witness engaged or appointed:
 - (a) to provide an expert's report for use as evidence in proceedings or proposed proceedings; or
 - (b) to give opinion evidence in proceedings or proposed proceedings.

GENERAL DUTIES TO THE COURT

2. An expert witness is not an advocate for a party and has a paramount duty, overriding any duty to the party to the proceedings or other person retaining the expert witness, to assist the Court impartially on matters relevant to the area of expertise of the witness.

CONTENT OF REPORT

3. Every report prepared by an expert witness for use in Court shall clearly state the opinion or opinions of the expert and shall state, specify or provide:
 - (a) the name and address of the expert;
 - (b) an acknowledgment that the expert has read this code and agrees to be bound by it;
 - (c) the qualifications of the expert to prepare the report;
 - (d) the assumptions and material facts on which each opinion expressed in the report is based [a letter of instructions may be annexed];
 - (e) the reasons for and any literature or other materials utilised in support of such opinion;
 - (f) (if applicable) that a particular question, issue or matter falls outside the expert's field of expertise;
 - (g) any examinations, tests or other investigations on which the expert has relied, identifying the person who carried them out and that person's qualifications;
 - (h) the extent to which any opinion which the expert has expressed involves the acceptance of another person's opinion, the identification of that other person and the opinion expressed by that other person;
 - (i) a declaration that the expert has made all the inquiries which the expert believes are desirable and appropriate (save for any matters identified explicitly in the report), and that no matters of significance which the expert regards as relevant have, to the knowledge of the expert, been withheld from the Court;
 - (j) any qualifications on an opinion expressed in the report without which the report is or may be incomplete or inaccurate;
 - (k) whether any opinion expressed in the report is not a concluded opinion because of

insufficient research or insufficient data or for any other reason; and

- (l) where the report is lengthy or complex, a brief summary of the report at the beginning of the report.

SUPPLEMENTARY REPORT FOLLOWING CHANGE OF OPINION

4. Where an expert witness has provided to a party (or that party's legal representative) a report for use in Court, and the expert thereafter changes his or her opinion on a material matter, the expert shall forthwith provide to the party (or that party's legal representative) a supplementary report which shall state, specify or provide the information referred to in paragraphs (a), (d), (e), (g), (h), (i), (j), (k) and (l) of clause 3 of this code and, if applicable, paragraph (f) of that clause.
5. In any subsequent report (whether prepared in accordance with clause 4 or not) the expert may refer to material contained in the earlier report without repeating it.

DUTY TO COMPLY WITH THE COURT'S DIRECTIONS

6. If directed to do so by the Court, an expert witness shall:
 - (a) confer with any other expert witness;
 - (b) provide the Court with a joint-report specifying (as the case requires) matters agreed and matters not agreed and the reasons for the experts not agreeing; and
 - (c) abide in a timely way by any direction of the Court.

CONFERENCE OF EXPERTS

7. Each expert witness shall:
 - (a) exercise his or her independent judgment in relation to every conference in which the expert participates pursuant to a direction of the Court and in relation to each report thereafter provided, and shall not act on any instruction or request to withhold or avoid agreement; and
 - (b) endeavour to reach agreement with the other expert witness (or witnesses) on any issue in dispute between them, or failing agreement, endeavour to identify and clarify the basis of disagreement on the issues which are in dispute.