

Trans-Tasman mobile roaming

Discussion document

Submission by:

Australian Mobile Telecommunications Association
and
Communications Alliance

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1. Introduction and Summary

- 1.1 The Australian Mobile Telecommunications Association (AMTA) is the peak industry body representing Australia's mobile telecommunications industry. AMTA's mission is to promote an environmentally, socially and economically responsible and successful mobile telecommunications industry in Australia. AMTA members include mobile Carriage Service Providers (CSPs), handset manufacturers, retail outlets, network equipment suppliers and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.
- 1.2 Communications Alliance is the peak telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers as well as business and consumer groups. Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behaviour through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.
- 1.3 AMTA and Communications Alliance ("the Associations") welcome the opportunity to respond to the Discussion Document on *Trans-Tasman mobile roaming*, May 2010 ("the Discussion Document") released by the Ministry of Economic Development of New Zealand (MED) and the Department of Broadband, Communications and the Digital Economy of Australia (DBCDE) (jointly "the Agencies").
- 1.4 In addition to this submission, AMTA, Communications Alliance and the New Zealand Telecommunications Carriers' Forum take the opportunity to jointly comment on issues related to transparency in the context of international mobile roaming. Moreover, operators might also choose to make individual submissions.

Summary

- 1.5 The Associations believe that the information provided and prices charged by Australian operators for roaming in New Zealand are transparent. All mobile operators supply easily accessible information regarding providers, prices and underlying pricing principles of roaming, activation, eligibility and other roaming related tips on their websites. This information is supplemented by consumer guides from various other sources, e.g. AMTA, ACMA and consumer organisations.
- 1.6 Notwithstanding the above, the Associations are willing to explore options for further improvement, e.g. through consideration of a guideline on mobile roaming transparency and the constructive participation in a government led public awareness campaign. Moreover, the current review of the Telecommunications Consumer Protections Code will cover transparency and adequacy of pricing and billing information.
- 1.7 The Associations doubt the viability of the price comparisons made in the Discussion Documents particularly given the lack of details on methodologies behind the economic models or the results achieved by the EU regulation, and the Associations feel that they cannot adequately comment on the price differential without significantly more detailed information. The Associations do note, however, that the roaming costs for Australians whilst roaming in New Zealand compare favourably with real market prices paid by roamers from other countries.
- 1.8 The Associations contend that examining the costs and expenses associated with international roaming in isolation is simplistic and does not reflect the full costs of providing the service as it neither makes any contribution to common costs nor does it place international roaming prices in the context of the bundle of (often very low priced) services that the customer purchases in a package. Hence, the treatment of international mobile roaming should remain within the definition of a national Australian mobile telecommunications market.
- 1.9 The Associations are of the firm belief that there are a number of substitutes for international mobile voice and data roaming, e.g. domestic and foreign pre-paid cards, SMS, internet cafes, WiFi, VoIP etc. Price elasticity in a trans-Tasman context is not always low as

consumers are aware of those substitutes and use them in combination with traditional mobile roaming to suit their needs.

- 1.10 Importantly, increasing competition amongst mobile operators through the entry of 2degrees and Telecom New Zealand into the 3G market as well as competition from an ever increasing number of (cheap) substitutes will exercise downward pressure onto roaming prices in the future.
- 1.11 The Associations suggest that a practical form of unbundling roaming services from other domestic services already exists, e.g. through the use of pre-paid SIM cards. The Associations also contend that a temporary Mobile Number Portability solution is considered too costly and too difficult to implement. The Associations would like to obtain clarification on what form the Agencies envisage an unbundling of roaming services from other domestic services would take.
- 1.12 The Associations firmly believe that no market failure exists in the trans-Tasman mobile roaming market as it is highly competitive through direct competition from mobile operators in the mobile roaming space and numerous substitutes for traditional mobile roaming. Therefore, regulation of the trans-Tasman mobile roaming market is not appropriate.
- 1.13 The Associations submit that data on European Union regulation, in as far as viable at all for means of comparison, indicates significant costs to the industry with rather limited benefits to consumers. Those data also point to a significant 'waterbed effect'.

2. Background of this submission

- 2.1 In 2005 and following several years of conducting a wide range of reviews of a number of issues in the mobiles services industry, the Australian Competition and Consumer Commission (ACCC) issued its *Mobile Services Review: International Inter-Carrier Roaming* ("the ACCC Report").
- 2.2 In May 2008 The House of Representatives Standing Committee on Communications made an *Inquiry into International Roaming* ("the Inquiry").
- 2.3 In 2008 on behalf of the Department of Broadband, Communications and the Digital Economy (DBCDE), KPMG prepared its *Report of Findings on International Mobile Roaming Charges* ("the KPMG Report").
- 2.4 In August 2008, AMTA submitted an extensive paper in response to the Inquiry ("the AMTA 2008 Submission").
- 2.5 In March 2009, the Standing Committee on Communications ("the Committee") published its report *"Phoning home: Inquiry into international mobile roaming"* ("the Phoning Home Report").
- 2.6 Communications Alliance submitted a response to the Phoning Home Report in May 2009 ("the Communications Alliance Submission 2009").
- 2.7 In May 2010, the Ministry of Economic Development of New Zealand (MED) and the Department of Broadband, Communications and the Digital Economy of Australia (DBCDE) (jointly "the Agencies") released a Discussion Document on *Trans-Tasman mobile roaming*, May 2010 ("the Discussion Document") which is accompanied by the document "Analysis of retail trans-Tasman mobile roaming prices: methodology, assumptions and price data" ("the Analysis Document").
- 2.8 This submission addresses Questions 2, 3 and 4 of the Discussion Document. As this constitutes a submission from Australian parties only, Question 1 (the equivalent of Question 2 for the New Zealand market) of the Discussion Document will not be addressed.

3. Response to the Terms of Reference of the Discussion Document

Do you think that the features offered by Australian operators for mobile roaming are reasonable? If not, why? (Question 2a)

- 3.1 The Associations agree with the Discussion Document's assessment that the range of features available whilst roaming in New Zealand is similar not only to services enjoyed by roamers from and in other countries, but also to the services enjoyed at home, i.e. not roaming.
- 3.2 To the degree that features might not be similar to those enjoyed at home or enjoyed by roamers from and in other countries it should be noted that technical constraints, and competitive considerations, e.g. service differentiation, might be responsible for such deviations.

Do you think that the quality of service experienced by Australians roaming in New Zealand is adequate? If not, how do you think the quality of service should be improved? (Question 2b)

- 3.3 The Associations agree with the Discussion Document's assessment that the quality of service whilst roaming in New Zealand is adequate. They are not aware of any major customer complaints in this respect. It should also be noted that the control over the quality of service whilst roaming lies to a large part with the operator of the visited network.

Do you think that the prices offered by Australian operators for roaming in NZ are transparent? If not, what would improve price transparency? (Question 2c)

- 3.4 The Associations believe that the prices charged by Australian operators for roaming in New Zealand are transparent:

- 3.5 The registered Industry Code on Telecommunications Consumer Protections¹ (C628:2007) contains minimum requirements on prices, terms and conditions. International mobile roaming services are covered by the provisions of the Code. Specifically, the Code contains the following objectives:
- To set minimum standards for Suppliers to meet in telling Customers about the prices, terms and conditions of Telecommunications Products;
 - To provide sufficient, accurate, current and relevant information to enable Customers to make an informed purchasing decision.²
- 3.6 Furthermore, the Associations would like to observe that all Australian mobile operators already comply with the suggested minimum standards put forward by the Standing Committee in the Phoning Home Report by providing information on:
- Countries where services are available
 - The choice of providers in each country
 - Prices in Australian dollars about each service, and each component of the service (receiving and making calls, voicemail, SMS, any flag fall and set-up fee)
 - How to activate international roaming and any charges this will incur;
 - Basic information on how the pricing of international roaming differs from the pricing of local calls, including
 - The fact that the traveller pays an international charge to receive calls;
 - The fact that the traveller pays an international charge when retrieving a voicemail message; and
 - Subscriber eligibility for international roaming services.
- 3.7 The information provided by the operators is easily accessible via their respective websites:
- Telstra:
http://www.telstra.com.au/mobile/internat_roaming/
Starting from the Telstra homepage and using the search function typing "roaming", it takes one click to access the website for country specific pricing information. Alternatively, the customer can navigate to the website

¹ The Telecommunications Consumer Protection code is available from <http://commsalliance.com.au/documents/codes/C628>

² Chapter 4, Telecommunications Consumer Protections Code, available at http://www.commsalliance.com.au/__data/assets/pdf_file/0014/1346/C628_2007.pdf

via the heading "Mobile" and selecting "International Roaming" from the pop-up menu (i.e. one click from homepage).

- Optus:
https://personal.optus.com.au/web/ocaportal.portal?_nfpb=true&_pageLabel=Template_woRHS&FP=/personal/mobile/usingyourmobileoverseas/postpaidautoam&site=personal
Starting from the Optus the customer can navigate to the website via the heading "Mobile" and selecting "Using your mobile overseas" (i.e. three clicks from homepage).
- Vodafone Hutchison Australia (VHA):
<http://www.vodafone.com.au/personal/services/roaming/countries/index.htm>
Starting from the VHA homepage and typing "roaming" in the search function, it takes one click to access the website for country specific pricing information. Alternatively, the customer can navigate to the website via the heading "Services" and subsequently selecting "International Roaming" (i.e. three clicks from homepage).

3.8 In the recent past the operators have simplified their pricing structure for roaming significantly. None of them differentiates the roaming prices charged by the network visited in New Zealand: Telstra offers one price for all networks in New Zealand for all post-paid customers and another price for all pre-paid customers. Optus charges the same price for roaming in New Zealand irrespective of the network used to all its post-paid customers and one single price for all New Zealand networks with variations depending on the pre-paid plan. Vodafone Hutchison Australia (VHA) offers zone based roaming tariffs drawing upon Vodafone's footprint in New Zealand.

3.9 Operators attempt to alert customers to the fact that roaming charges are different to standard call/SMS/data charges. Optus specifically encourages customers to check rates prior to leaving Australia; indicates that data roaming charges are not included in the value of a plan/pack and names the costs per MB for data roaming upon activation of international roaming via hotline; and makes the customer aware of the costs of any push or pull emails of smartphones and explains how to deactivate data roaming. Telstra specifically warns that data roaming charges are significantly higher than domestic charges.

3.10 Some operators provide hard-copy guides, information packs and brochures on their websites, or through their customer call service centres. For example, Optus provides its customers with a 'Roaming Quick Guide' that can be emailed to customers who request it and that contains information on the

applicable roaming rates and steps to access voicemail. All operators provide roaming hotlines, partly also free of charge.

- 3.11 Some operators welcome a customer roaming in New Zealand with an SMS including a link or number to a specific roaming website or hotline. Given current technical systems and the costs associated with the required changes to them, it is currently not feasible to provide roaming post-paid customers with real time billing information, i.e. it is not feasible to send an SMS with the costs after completion of a call. The Agencies will note that such practices in the USA (as referred to in the Discussion Document) only relate to domestic customers – most likely for precisely the same reasons, i.e. that the billing information for roaming customers is not readily available. It should be noted that any benefits of real time billing solutions are to be weighed against the costs of implementing any technical changes to existing systems and the likely recovery of costs from customers via higher charges. In the same vein, customer mandated spend caps for post-paid customers are currently technically not feasible. Nevertheless, the operators will continue to work on providing near real time billing information and attempt to realise any associated benefits. For example, Telstra is looking into sending a warning SMS to the customer if a pre-specified spend level is being reached.
- 3.12 The majority of business customers are able to access the account management resources of their mobile operator(s). This provides access to information and advice about optimal international telecommunications usage, including international mobile roaming.
- 3.13 In 2005, the ACCC concluded that, *“overall, the Commission considers the level of information currently provided by Australian mobile network operators allows consumers to make informed decisions about whether to use international roaming services, and gives consumers a reasonable idea of the prices they can expect to pay for these services.”*³ Interestingly, even the very critical KPMG report (AMTA and Communications Alliance previously expressed their concern with the methodology of any pricing related arguments and conclusions of this report.) also commented that the Australian operators *“presented roaming information that was easier to access and understand than many of the European and Asia Pacific carriers we sampled.”* The information available today on international mobile roaming options and prices is even more comprehensive than at the time when the ACCC reached its favourable conclusion in 2005.

³ P34, ACCC, *“Mobile Services Review, International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services”*, September 2005

- 3.14 The Associations note that the information provided by operators is supported by more generic consumer information. For example:
- ACMA has produced a fact sheet providing basic information on what international roaming services are and how a subscriber can obtain them. (http://www.acma.gov.au/WEB/STANDARD_PC/pc=PC_1715). In its 2005 Report, the ACCC considered that this fact sheet was "*an important first step in government action to improve consumer awareness about international roaming services and the nature of charges for those services*"⁴.
 - Since 2004 AMTA has produced and widely distributed 'consumer tips' about international mobile roaming. The web page containing those is visited 4,000 to 5,000 times per year (<http://www.amta.org.au/articles/amta/International.Mobile.Coverage.and.Roaming.Frequently.Asked.Questions>). This suggests that consumers are seeking information on services before heading overseas.
 - A number of other organisations have also written information on the subject, as a simple internet search reveals. The Associations also note that many organisations also provide information to their employees about international roaming and how they can/are expected to use the service and/or substitutes where available.
- 3.15 The Associations note that the 'risk profile' for Australian travellers is somewhat different to that for travellers in other parts of the world. In Europe, you might accidentally find yourself on the neighbouring country's network (either because the customer physically has crossed the border or because the network from the neighbouring country reaches into the home country). Australians cannot 'accidentally' roam outside Australia. Hence the benefit attached to some of the measures of informing customers in Europe might not be as applicable to Australia or New Zealand.
- 3.16 Notwithstanding all of the above, the Associations are willing to explore options for further improvement.
- 3.17 To this end, the New Zealand Telecommunications Carriers' Forum has formally set up a Working Party to investigate whether and how improved consumer information and empowerment could be achieved with regards to mobile roaming in a trans-Tasman context. In the same vein, Australia's Communications Alliance has indicated that it will consider guidelines on mobile roaming transparency. Furthermore, the current review of the

⁴ P35, ACCC, "*Mobile Services Review, International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*", September 2005

Telecommunications Consumer Protections Code and Guideline will cover transparency and adequacy of pricing and billing information.

- 3.18 The Associations also signal their willingness to constructively participate in the development of a government led public awareness campaign that includes encouraging users to understand the multiple options available to them. For example, some options are:
- a pre-paid service from that overseas country;
 - encouraging consumers to use other communications methods such as:
 - email;
 - internet telephony (e.g. Skype);
 - computer based messaging services (e.g. Yahoo messenger, MSN messenger, etc.);
 - social network sites (e.g. MySpace, Facebook, etc.);
 - temporary third party pre-paid services that can be in place in Australia before they travel (e.g. Travel SIM⁵, GT-SIM⁶, etc.).
 - a pre-paid service of an Australian operator that provides international roaming (with calls to the customer's usual mobile number forwarded to the temporary pre-paid number – a solution particularly viable for customers on a capped plan);

In your view, what explains the pricing differences shown in this section? (Question 2e)

- 3.19 The Associations question the methodology of comparison chosen in the Discussion Document. The Discussion Document relies heavily on the inclusion of comparisons of prices without an assessment of all relevant variables that exist within the markets surveyed. The Associations doubt the viability of this comparison particularly given the lack of details on methodologies behind the economic models or the results achieved by the EU regulation.
- 3.20 The Analysis Document that accompanies the Discussion Document specifically points out that the economic models/reports chosen for comparison are *“based on European costs, and that Australian and New Zealand operators may face higher costs than their EU counterparts in providing roaming*

⁵ See: www.travelsim.net.au/rates.php

⁶ See: www.gt-sim.com.au/

services”.⁷ Nonetheless, the Discussion Document uses the data derived from those reports to come to the conclusion that Australian prices are too high. It would be valuable to have a better understanding of the rationale for using European cost benchmarks.

- 3.21 Particularly in the light of the previous KPMG report and its flawed methodology and hence conclusions, the Associations feel that they cannot adequately comment on the price differential without significantly more detailed information.
- 3.22 The Analysis Document also recognises the many limitations that a comparison of the Eurotariff with real retail market prices entails but equally claims that there are merits from its inclusion in the comparison⁸, however without further qualifying those. To provide meaningful comments the Associations seek further explanations from the Agencies as to the validity of the comparisons made.
- 3.23 The Associations note that it is misleading to compare the costs of an Australian customer whilst roaming in New Zealand with the cost of a European customer roaming in the European Union in one and the same graph.
- 3.24 Moreover, the accompanying document indicates that the Eurotariff is only one of a number of comparisons made.⁹ The Associations note that the roaming costs for Australians whilst roaming in New Zealand are the lowest of all when compared to ‘real market prices’ paid by customers from the United Kingdom, Singapore and the United States when roaming in New Zealand.
- 3.25 The Associations would like to observe that the prices used to calculate the average bills incurred by customers are inadequate, e.g. the Discussion Document uses Telstra’s Pay As You Go data roaming rates thereby neglecting much cheaper bolt-on offers. However, this submission will not consider the adequacy of input prices in further detail as operators will comment on these issues in individual submissions.

⁷ P39, Ministry of Economic Development of New Zealand and Department of Broadband, Communications and the Digital Economy of Australia, “*Analysis of retail trans-Tasman mobile roaming prices: methodology, assumptions and price data*”, May 2010

⁸ P36, Ministry of Economic Development of New Zealand and Department of Broadband, Communications and the Digital Economy of Australia, “*Analysis of retail trans-Tasman mobile roaming prices: methodology, assumptions and price data*”, May 2010

⁹ P36, Ministry of Economic Development of New Zealand and Department of Broadband, Communications and the Digital Economy of Australia, “*Analysis of retail trans-Tasman mobile roaming prices: methodology, assumptions and price data*”, May 2010

What are average usage profiles of an individual and business customer roaming in New Zealand? (Question 2f)

3.26 Usage profiles constitute business sensitive data and are confidential. The operators will address this issue in their submissions should they wish to comment.

What other benchmarks for roaming prices, if any, should the Agencies consider? (Question 2g)

3.27 It is critical to note that examining the costs and expenses associated with international roaming in isolation is simplistic and does not reflect the full costs of providing the service. International roaming services are provided as part of a package of mobile services, each component of which depends on carriers' underlying mobile network infrastructure which is 'common' to all mobile services. Therefore any assessment of whether charges for international roaming calls reflect underlying costs must recognise that such charges have to include a contribution to common costs.

3.28 In accordance with the above – and to be included in any price benchmarking - the retail mark-up charged by the Australian mobile operator is designed to recover the costs associated with the provision of the service, including:

- Administration, e.g.
 - negotiation and set-up of the roaming agreements;
 - management of the roaming agreements;
 - building systems to provide billing mechanisms to allow charges to be captured and billed.
- Infrastructure – building, network, IT systems, etc. ;
- Operational – managing international mobile roaming services, e.g. activations/changes, and operating the IMR related infrastructure;
- Marketing and consumer education;
- Financial clearing expenses for operators using different currencies (including risks due to exposure to the foreign exchange rate);
- Bad debt;
- Data clearing house expenses to allow for international settlement;

- 24/7 technical support for roaming customers (often with a discounted or free call back to the Australian service centre);
- Reasonable contribution to common costs – including website and call centre maintenance and management.

3.29 Moreover, customers who pay international roaming charges are the same customers who also pay charges for other mobile services. The Agencies must therefore consider whether any apparently ‘excessive charges’ for international roaming are really excessive when customers are purchasing international roaming as part of a package that includes lower charges for other mobile services - reduced monthly charges, caps on charges for domestic calls, subsidised handsets, etc. It is the price of the entire mobile services package that is relevant – and that price is set in a highly competitive market. Therefore, in calculating the price of a typical bundle of services, the Agencies should not have confined that bundle to roaming services but rather included all services a customer usually uses, i.e. including all national and international services.

3.30 Furthermore, if markets are competitive, any pricing that is significantly above cost (even after allowing for a contribution to common cost) is temporary. The issue here is whether the relevant market is competitive. As mentioned above, the Associations strongly believe that the market in Australia clearly is competitive. Due to technological changes (e.g. a shift from CDMA to 3G technologies) all three Australian operators now have roaming agreements with all three mobile operators of New Zealand, thereby clearly increasing customer choices and competition. Competition is more than likely to grow further as operator footprint in New Zealand will be increasing over time, i.e. reducing the previous dominance of Vodafone New Zealand.

As markets are to a large part defined by the ability to substitute any given product or service, the two questions below ought to be answered in conjunction.

Do you consider the market definition(s) as outlined appropriate? If not, what do you believe are the appropriate definitions and why? (Question 3a)

&

For the three types of services below, what do you consider as substitutes, and why? (Question 3b)

- 3.31 The Discussion Document notes that *“Market definition requires an understanding of the value that customers place on mobile roaming and whether other services are viewed as substitutes”*¹⁰.
- 3.32 The ‘market definition’ used by the Agencies makes a number of assumptions regarding market structure, substitute products and consumer behaviour. In response the Associations do not regard international roaming as a separate market in isolation from a range of services marketed as packages of services by operators. Moreover, the consumers’ sensitivity to international roaming charges is not a primary factor in decisions to choose an operator and/or usage plan. The treatment of international mobile roaming should remain within the definition of a national Australian mobile telecommunications market.
- 3.33 The Associations are of the firm belief that there are a number of substitutes for international mobile roaming and that customers also perceive and use those as such.
- 3.34 Substitutes for voice and SMS roaming include fixed-line telecommunication services, either as a stand-alone substitute or combined with mobile and PC services, e.g.:
- Pre-paid and post-paid calling cards used from mobiles/payphones/hotel phones/family home phones/corporate offices;
 - Payphones, including reverse calling and cash and credit card options;
 - Using a local network (pre-paid) SIM in the destination country (either on an Australian handset or on a handset hired in the destination country).
 - Services allowing a travelling mobile user to retain their existing mobile number and divert calls to multiple mobile phone numbers for different countries provisioned on a single SIM card. This solution, offered by specialist roaming providers such as vRoam¹¹, allows users levels of convenience and flexibility close to roaming services provided by mobile operators. It also allows access to low prices because the user is charged local rates within many countries. These systems can allow for all customer charges to appear on a single bill, and international forwarding between the user’s different numbers.

¹⁰ Para. 10, Ministry of Economic Development of New Zealand and Department of Broadband, Communications and the Digital Economy of Australia, *“Trans-Tasman mobile roaming: Discussion Document”*, May 2010

¹¹ See <http://www.vroam.com/whatisvroam.html>

- Internet-based applications, such as Voice-over Internet Protocol (VoIP) – e.g. Skype, VoIPBuster¹², MSN Messenger. These are available via a number of different mechanisms, e.g:
 - from a PC connected to a fixed-line connection;
 - from a PC connected to a wireless connection or data card;
 - on a mobile telephone.
- Blackberry-type devices and plans
- iPod Touch and other Wi-Fi capable devices can be configured for VoIP using after-market applications and/or accessories, e.g. the Skypephone (at VHA) is a fully integrated Skype mobile¹³. Consumers can therefore choose to use Skype to call or instant message their contacts, instead of calling them on a fixed or mobile number. When travelling, this is another viable option¹⁴.

3.35 Substitutes for data roaming on handsets or laptops include e.g.:

- Fax
- Internet and email via:
 - a PC (through a fixed or wireless connection);
 - a mobile handset or Blackberry-type device;
 - iPad Touch/GPS and other handheld devices with WiFi capability.

3.36 The above substitutes are widely available. For example, PC connections are available at most hotels, and many hotels provide broadband access to their guests for a low daily charge (or even free of charge). Business travellers can also access PCs at corporate offices, including at customer/supplier locations. Travellers can also use global roaming services such as iPass¹⁵. Wi-Fi technology allows travellers to access the internet when in range of a public or corporate Wi-Fi connection. Wi-Fi hotspots provide free or low cost access for Wi-Fi equipped laptops and handheld devices. Internet cafes in New Zealand are also widely available and are a particularly cost-efficient option. SMS also remains a useful and very competitively-priced option for corresponding internationally. It is critical to note that receiving SMS when roaming internationally is typically free-of-charge (unless it is for a premium opt-in

¹² See <http://www.voipbusterpro.com/en/>

¹³ See <http://shop.three.com.au/mobile-prepay-details/3-Skypephone-Prepaid-White>

¹⁴ Note: currently, when calling internationally, users of the Skype phone can contact another Skype user who is using a PC. For example, an Australian traveller abroad would use their Skypephone to contact an individual back home in Australia who is connected to Skype via a PC.

¹⁵ See: <http://www.ipass.com/services/index.html>

content delivery service such as a ringtone). This must be taken into account when considering the cost of this and other services.

- 3.37 VoIP is a very good substitute for voice calls, as not only can it be enjoyed from a range of devices (including on a mobile), but its 'online' feature (showing which contacts are online at any time) can assist with the management of communication across different time zones.
- 3.38 The Associations note that the customer has the option of minimising their costs, while managing their convenience, by utilising a combination of options that best suit specific needs. The mobile operators also provide hints on their websites as to how to minimise costs when roaming internationally.
- 3.39 The ACCC Report acknowledged that: "*Whether the services [would be] viable substitutes for some travellers will depend largely on the nature of the travel being undertaken.*" It then concluded that (even the 2003) substitutes would be "*highly suitable*" for a number of different traveller profiles. The ACCC further noted that, for other traveller profiles, "*none of the identified alternatives [in 2003] will be a fully practical substitute for international roaming.*"¹⁶, and concludes that, "*[...] because possible alternatives to international roaming services are imperfect substitutes....this may be a factor contributing to the relatively high retail prices for international roaming services.*"¹⁷ The Associations make the following point in relation to these issues:

Price elasticity in a trans-Tasman context is not necessarily low and consumers are not price-takers in all cases. Given the competition from a large amount of substitutes and the ease of obtaining most of them, e.g. the ease of obtaining a local SIM at any supermarket, convenience store or petrol station, in combination with an increasing competition between the mobile operators (with simultaneous enhancement of footprint) roaming prices are more than likely to be reduced over time. The level of elasticity may differ on a call-by-call basis for the same customer depending on the nature of the call. There may be some calls and SMS which are so urgent and critical to the customer that demand is inelastic - however for most calls the customer will happily use a substitute service, or simply reject the call and let it go through to voicemail and decide to retrieve the message depending on the likely importance of the message (itself a form of substitution). Roaming does facilitate the first contact but that contact may be very brief (e.g. an SMS asking the roamer to call someone in his/her home country) and the parties may move to a cheaper

¹⁶ P32, ACCC, "*Mobile Services Review International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*", September 2005

¹⁷ P32, ACCC, "*Mobile Services Review International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*", September 2005

service (e.g. VoIP) to continue the call. The important point is not to impute low elasticity for the small number of calls and SMS in that special (urgent and critical) category, to *all* possible calls made and received while overseas. Hence, the Associations contend that the Agencies must recognise that price regulation is not required, since the market will over time be forced to respond to competitive pressure from mobile operators in the traditional roaming space and from the various alternatives to roaming by introducing more attractive roaming offers.

Domestic and roaming services are currently sold as a package at the retail level. Would you choose to unbundle this package if such an option was available? (for example, would you purchase international roaming from one operator and domestic services from another)? (Question 3c)

- 3.40 The Associations would like to obtain clarification on the question above. It is not clear what form the Agencies envisage such an unbundling option would take especially in light of contractual obligations which, under most plans, do not allow for a switching of operators, and hence early termination of contract free of charge.
- 3.41 The Associations suggest that a practical form of unbundling of roaming services which does not involve early contract termination is already possible, e.g. through the purchase of a pre-paid SIM card from either a domestic operator or an operator in the destination country. Also, the customer could take out a month-to-month plan if there is a preference for post-paid roaming. Equally, already customers are able to purchase roaming services separately from their domestic services via the substitute products already mentioned, including the services of specialist roaming providers.
- 3.42 Should the Agencies consider a form of unbundling that enables the customer to keep their domestic number, i.e. temporarily porting the customer's number to the chosen mobile operator for the duration of the overseas stay, the Associations would like to note that previously the DBCDE regarded temporary MNP too costly and difficult to implement:

"At present, the Government does not agree with this recommendation. The Government understands that there are significant technical barriers and operational complexities involved with billing systems and agreements between carriers that prevent the implementation of this recommendation. At present, the mobile number portability system is designed for the purpose of

permanent transfer of customers rather than temporary porting. New systems would need to be designed in order to introduce temporary mobile number portability and this is likely to result in an increase in costs charged to Australian consumers.”¹⁸

- 3.43 However, in the absence of any further clarification on this issue, the Associations would like to reiterate the strong view regarding the significant operational difficulties and costs, to both industry and customers, such a solution would pose.
- 3.44 Australia already has arguably the best MNP solution in the world with the timeframe to complete a port out measured in hours, and more often less. Each port out to a different mobile carrier network is a discrete transaction and results in the end of the relationship between the customer and the ‘losing’ mobile operator. To implement a temporary port out for international roaming and for a mobile operator to keep a mobile number active or ‘on hold’ following the port out would contradict the fundamental basis underlying the design and operation of MNP in Australia.
- 3.45 Given that in 2009-10 there were more than 6.6 million movements (specifically short term resident departures)¹⁹, there is the potential for very significant numbers of temporary MNP requests. Those numbers could dwarf the existing number of ports (more than 1.2 million) between mobile carriers and the impact of those increased numbers could be detrimental to Australia’s current world leading MNP solution.
- 3.46 It is difficult to accurately state the cost of introducing a temporary MNP solution, however the industry has attempted to estimate the costs, which it believes would amount to tens of millions of dollars. Some of the key cost drivers would be :²⁰
- the required changes to the MNP system, e.g. changes to all mobile and CSPs’ billing systems, network routing systems as well as customer facing units to account for the temporary nature of the porting;
 - the economic costs associated with increased contractual uncertainty;
 - the revision of the MNP Code and IT specifications, including IT testing and deployment of the new IT systems;

¹⁸ The Department of Broadband, Communications and Digital Economy, Government, “*Statement of Response – Phoning home: Inquiry into international mobile roaming*”, 2009

¹⁹ See Australian Bureau of Statistics, 3401.0 Overseas Arrivals and Departures, Australia.

²⁰ For a more detailed elaboration on the challenges of temporary MNP, please refer to Communications Alliance’s response to the Phoning Home Report in May 2009.

- new operational procedures that would need to be implemented and new industry wide Customer Authorisation requirements developed in the MNP Code;
- new industry training.

3.47 It is reasonable to assume that the CSPs would look to recover the initial and ongoing costs from customers, either specifically those that use international roaming, or to spread the cost recovery across all customers. Alternatively, the scale of the costs may result in fewer CSPs providing international roaming services.

3.48 A number of other practical considerations need to be taken into account when looking at temporary MNP, e.g.

- Most importantly, a temporary MNP solution might impact the application of the Telecommunications Interception Act (TIA). The Associations do not believe that the provision of temporary MNP would breach existing legislation, but they do believe that there would be an impact not only on national security and law enforcement agencies that rely on intercepted material, but on the operation and compliance of the TIA.²¹
- CSPs do not have an obligation to 'port in' a customer. Given the high cost of temporary MNP and the limited benefits associated with them, CSPs are likely not to offer such a service.
- Credit checks would need to be carried out for each porting transaction. This has the potential for many credits checks being recorded against the customer's credit history, which could be seen as adverse history to some organisations offering credit, which may result in refusal of credit to the customer.
- Consideration would need to be given to whether or not temporary MNP would lead to an increase in fraudulent activities (or at least, make such activities harder to handle for both CSPs and customers), e.g. if a customer lost their handset whilst overseas which Australian CSP should the customer contact to have the handset put on the 'Lost & Stolen' handset register – their existing CSP, or the CSP providing 'temporary' number portability?
- A requirement for temporary MNP may also have implications for the Numbering Plan. This would require review by ACMA and any change to the Numbering Plan would have to go through the normal public consultation process to develop a Variation to the Numbering Plan.

²¹ For a more detailed explanation on the potential impact of temporary MNP on the Telecommunications Interception Act, please refer to Communications Alliance's response to the Phoning Home Report in May 2009.

For each of the measures outlined below, submitters are encouraged to provide feedback on the benefits of that measure in addressing any market failure that may exist in the trans-Tasman mobile roaming market, and the costs of the measure – such as the administrative or regulatory costs, or the cost of discouraging private investment. (Question 4)

- 3.49 As the responses provided to the previous questions illustrate, the Associations firmly believe that no market failure exists in the trans-Tasman mobile roaming market as it is highly competitive. However, the Associations would like to offer some comment on some of the measures proposed. As argued previously, the increased number of roaming agreements which was facilitated by the market entry of 2degrees and Telecom New Zealand's W-CDMA XT network (as opposed to Vodafone New Zealand only) in combination with an increased footprint of those operators is likely to decrease roaming prices over time.
- 3.50 As the Associations are of the opinion that numerous substitutes for mobile roaming exist which customers perceive as substitutes and use accordingly to suit their needs, competition is also likely to increase through market entry, innovation and decreasing prices for substitutes.
- 3.51 A centralised website listing all trans-Tasman roaming prices for the individual mobile operators on one single web page could only bring benefits to consumers if the prices listed were comparable and up to date. However, roaming prices may be difficult to compare since, as argued previously, they are to be viewed in combination with all components of a plan/pre-paid offer, e.g. national calling and SMS prices, data prices, handset subsidies, contract minimum term etc. In order to ensure that prices displayed on a single page were comparable, it would be necessary to take into account extensive additional information on the underlying plans involved. To omit this information would be misleading and of very little use to the consumer. It should be noted that this would raise challenges with respect to achieving the purpose of simplicity and transparency. The Associations also raise their concern with respect to the considerable administrative task of maintaining such a website.
- 3.52 As previously indicated due to current technical constraints it is not feasible to provide customers with an SMS after use as real time billing information is not available in a roaming context. It is hence also not feasible to implement customer mandated billing caps (in a post-paid environment) as this equally implies the availability of real time billing information for roaming. However, customers can of course limit their roaming spend by choosing a pre-paid offer (and should they wish to, combining it with a call forward setting from their existing home number). The Associations again draw the Agencies' attention to

the costs that would be associated with the introduction of any real time billing features and how those costs would influence the cost-benefit ratio for consumers as those costs are likely to be recouped from customers through higher prices. Nonetheless, the mobile operators will continue to work on providing near real time billing information and attempt to realise any associated benefits.

- 3.53 With respect to enhancements to product disclosure, the Associations would like to note that the current Review of the Telecommunications Consumer Protections (TCP) Code will include a review of issues relating to informed consent when taking out any telecommunications service, i.e. including international roaming services.
- 3.54 As regards the appropriateness of regulation, the Associations note that the ACCC Report considered whether it would be appropriate to regulate any aspect of international mobile roaming. The ACCC Report concluded that regulation was not appropriate.²² The Associations strongly believe that the ACCC conclusions remain valid: with increasing rather than decreasing competition and an increasing number of substitutes available to consumers, the imposition of regulation as a response to concerns about international mobile roaming charges is not justified in Australia.
- 3.55 Further, the Associations reiterate that Australian and European conditions (structure of market, number of travellers, existence of EU-wide regulation, etc) are quite different. Thus a decision to impose regulation in the EU should not, in itself, be a reason to consider similar regulation in a trans-Tasman context.
- 3.56 Perhaps more importantly initial analyses of roaming regulation imposed in the EU suggests that customer benefits have been very modest. The cost to industry, on the other hand, has been substantial – estimates from the GSMA are that the industry spent €150m to implement the requirements of the regulation²³. The GSMA has made the following observations:
- *"[...] the competition and innovation which existed in the market prior to the Regulation continued independently of this new 'Eurotariff'. Indeed, in the first quarter of 2008, we estimate that approximately 40% of all roaming calls were made on specialist roaming (non-Eurotariff) price plans. Customers on such plans have higher roaming usage and pay on average 15% less per minute than those on the Eurotariff (note that this varies*

²² P53, ACCC, "Mobile Services Review International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services", September 2005

²³ P11, GSM Association response to the public consultation for the Review of the functioning of the Regulation No 717/2007 and of its possible extension to the SMS and data roaming service, July 2008.

considerably between countries), reinforcing the fact that regular roamers are perfectly able to seek out attractive offers.”²⁴

- The GSMA noted that regulated price reductions have not been offset by increased usage: volumes have increased (as would have also been expected without the regulation), but these increases have *“clearly not offset the regulated price reductions as revenues”*.²⁵ Critically, the GSMA notes that reduced roaming revenues and substantial implementation and compliance costs are leading to reduced investment for certain operators.²⁶

3.57 The Associations note that consumer benefits may be even more modest than the above commentary suggests because it is not clear whether any roaming price decreases are likely to have been off-set by higher prices for domestic calls or access charges reflecting a ‘waterbed effect’.

3.58 With respect to the ‘waterbed effect’ Tariff Consultancy Ltd., a consultancy focussing on pricing and tariff research of mobile operators worldwide, noted in January 2010:

“A characteristic of the introduction of the EU roaming cap has been the change in roaming pricing to other regions outside of the European Union. Operators have sought to offset the revenue limiting effects of the EU roaming cap by rebalancing roaming tariffs outside the EU. Some operators have altered the geographical zones which has resulted in higher prices for roamers in countries in particular countries such as Norway, Switzerland, the USA and Asia Pacific that were before in the EU zone. Increasingly though mobile operators push a series of separate “opt in” roaming bundles for consumers that bypass the EU roaming cap which offer roaming discounts in return for a weekly or monthly fee to selected holiday destinations but can attract higher rates to EU countries than the EC rate cap. The net effect of the rebalancing of mobile roaming tariffs outside of the EU has been to make roaming services to the US or other countries relatively expensive by comparison with the EU. For example:

- *The price of SMS roaming outside the EU zone to the next geographical zone has an average mark up of 160%.*

²⁴ P1, GSM Association response to the public consultation for the Review of the functioning of the Regulation No 717/2007 and of its possible extension to the SMS and data roaming service, July 2008

²⁵ P17, GSM Association response to the public consultation for the Review of the functioning of the Regulation No 717/2007 and of its possible extension to the SMS and data roaming service, July 2008

²⁶ P17, GSM Association response to the public consultation for the Review of the functioning of the Regulation No 717/2007 and of its possible extension to the SMS and data roaming service, July 2008

- *The price of Mobile Data roaming outside the EU zone to the next geographical zone has an average mark up of 270%.*
- *The price of a roaming voice call from the EU zone to the next geographical tariff zone has an average mark up of 200%”²⁷*

3.59 With respect to the economic rationale for regulation, it is well recognised in free market economies that it is not appropriate to regulate prices in competitive markets. The proper role of price regulation is to control the exercise of market power in a monopolised industry. However, as has been detailed earlier in this submission the mobiles market (between Australia’s mobile operators) is highly competitive and prices are generally falling. It follows that the rationale for introducing regulation does not apply with respect to international roaming rates.

3.60 Regulation imposes significant direct costs on firms and industries. Australian mobile operators are amongst the most regulated in the world and are already burdened with regulatory requirements. Significant resources are devoted to, for example, the gathering and supply of information as well as regulatory reviews by the various authorities (ACCC, ACMA, DBCDE, etc).

3.61 There are also indirect costs associated with regulation. Economic literature has highlighted the adverse effect of regulatory burden on the productivity of firms and industries. This was highlighted recently by the OECD in a working paper that analysed the relationship between competition policies and productivity growth. The Associations highlight some key conclusions from this report, particularly that:

“[...] across industries (and especially within the ICT-using set) resources are allocated less efficiently where anti-competitive regulations are severe...[and] anti-competitive regulations tend to be associated with a weaker ability of sectors and countries to allocate resources to the most dynamic and productive firms.”²⁸

3.62 Accordingly, it is not in the interests of society to interfere with the operation of the market unless there is some serious distortion that needs correcting. That is, the key reason for regulating price is that the market in question is a monopoly.

²⁷ See: http://www.mobilepricing.com/news_detail.cfm?item=3177

²⁸ P7, Working Paper No. 616, OECD, “Regulation, Allocative Efficiency and Productivity in OECD Countries: Industry and Firm-Level Evidence”, 2008

3.63 The Associations contend that efficient pricing methods for a multi-product market might well imply higher roaming prices without those, however, being any evidence of a serious market distortion that needs correcting.

3.64 The Productivity Commission (PC) has recognised the efficiency of price discrimination. For example, in the context of rail access the PC questioned whether regulatory arrangements in rail provided sufficient scope for regulated firms to implement efficient price discrimination. Notably, the PC expressed concern that regulators had not fully embraced the concept of efficient price discrimination and that this could adversely affect cost recovery and incentives for investment:

"[...] generally, there are potentially efficiency gains from allocating proportionately more common costs to customers whose use is less sensitive to price changes. Preventing pricing based on demand elasticities would therefore be inappropriate from an efficiency perspective (and could affect financial viability). Even though no explicit regulatory prohibitions exist, it appears rail infrastructure owners perceive that regulators may not find such pricing acceptable. Pricing principles such as those recently included in Part IIIA of the Trade Practices Act 1974 would potentially facilitate increased efficiency by explicitly allowing multi-part pricing and pricing based on demand elasticities." ²⁹

3.65 The PC was also clear on the negative effect of curtailing pricing behaviour through regulations noting that *"regulations may restrict operator behaviour for example, by precluding discriminatory pricing strategies, in a manner that may reduce efficiency"*. ³⁰

3.66 The Associations therefore submit that discriminatory pricing, rather than distorting the market, has the positive effect of increasing the overall efficiency of a multi-product market. The prevailing prices in the roaming market are not a distortion that needs correcting – in fact it is accepted practice in the ordinary workings of a competitive market and an efficient use of resources because it leads to greater utilisation of the industry's resources overall.

²⁹ Chapter 5, P5.12, Productivity Commission, *"Draft Report into Road and Rail Freight Infrastructure Pricing"*, 2006

³⁰ Chapter 10, P23, Productivity Commission, *"Draft Report into Road and Rail Freight Infrastructure Pricing"*, 2006