



# **Response to Trans-Tasman Roaming: Draft Report**

Submission by the Australian Communications Consumer  
Action Network



October 2012



## **About ACCAN**

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN activates its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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# Executive Summary

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ACCAN thanks the Ministry of Business, Innovation and Employment, New Zealand, and the Department of Broadband, Communications and the Digital Economy, Australia, for the opportunity to provide comments on the Draft Report into Trans-Tasman Roaming (the Report).

ACCAN supports the coordinated action of the Australian and New Zealand governments to reduce roaming rates for consumers travelling with their mobile phone from Australia to New Zealand or vice versa. Any solution will need to address both the high wholesale (what service providers charge other service providers to use their network) and retail (what service providers charge consumers using roaming services) roaming prices. Solutions should also focus on creating a system that is easy for consumers to use and understand.

For nearly a decade, reports on global roaming have shown that wholesale and retail rates are excessively high, there is little commercial incentive to reduce costs and there are no perfectly substitutable products that could place competitive pressure on service providers.<sup>1</sup> This report highlights these exact problems in the Trans-Tasman market.

The Australian and New Zealand governments have a range of options available to them to curb high roaming prices in the Trans-Tasman area. Based on the significant weight of research demonstrating the high cost of roaming and a lack of pressure to reduce these costs, ACCAN believes significant market intervention is required.

Based on an assessment of each option put forward in the Report, we recommend that:

- **The Australian and New Zealand governments should take immediate action to reduce roaming costs by implementing price caps with pass through requirements and plan to review the effectiveness of this measure after five years.**
- **The Australian and New Zealand governments should take action to ensure the decrease of roaming prices in the long-term by requiring pricing transparency and enhancing regulators' powers.**

We have also suggested an additional measure, the removal of fees to unlock mobile handsets. This will greatly assist Australian and New Zealand consumers access more affordable call, SMS and data services while overseas in any country, not just in the Trans-Tasman market.

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<sup>1</sup> ACCC (2005), *Mobile services review: International inter-carrier roaming*, <http://www.accc.gov.au/content/item.php?itemId=708242&nodeId=8704f59d82052c729e45e7408ecec91d&fn=Final+report%E2%80%94international+inter-carrier+roaming+service+%28September+2005%29.pdf> ;

DBCDE (2008), *Report of findings on: International Mobile roaming charges*, [http://www.dbcde.gov.au/\\_data/assets/pdf\\_file/0005/86369/KPMG\\_Report\\_of\\_findings\\_on\\_International\\_Mobile\\_roaming\\_charges.pdf](http://www.dbcde.gov.au/_data/assets/pdf_file/0005/86369/KPMG_Report_of_findings_on_International_Mobile_roaming_charges.pdf);

House of Representatives Standing Committee on Communications (2009), *Phoning home: Inquiry into international mobile roaming*, Commonwealth of Australia, Canberra.

# Response to Draft Report

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## 1. Assessment of options outlined in the report

In assessing each option detailed in the Report, ACCAN has considered if the action will result in:

- lower wholesale charges
- lower retail charges
- a system consumers will find easy to use
- greater competition

The ability to transfer solutions to other markets was also considered. The 2009 House of Representatives Standing Committee Inquiry into International Mobile Roaming, *Phoning Home*, recommended the Australian government pursue a policy of regulating the wholesale cost of roaming through bilateral and multilateral negotiations with other countries (prioritising countries which receive the largest number of Australian visitors).<sup>2</sup> If implemented successfully, the measures used to intervene in the Trans-Tasman market could provide a template to apply to other regions, facilitating bilateral and multilateral roaming discussions.

### 1.1 Maintain a watching brief

There have been investigations into excessive global roaming charges for nearly a decade and specific investigations into the Trans-Tasman market for many years. Prices have come down over time while under formal investigation but not significantly. There is no guarantee that continued investigation would result in lower wholesale or retail prices. ACCAN agrees with the Report's assessment that this action would do nothing to increase competition.<sup>3</sup>

### 1.2 Retail unbundling

Unbundling could force providers to compete for global roaming customers, potentially lowering retail prices and providing greater incentive to negotiate lower wholesale prices. While this option has merit, a poorly implemented system could increase complexity for end-users.

Unbundling would only lower retail and wholesale prices if consumers are able to clearly understand and easily choose between a competitive range of roaming products. From what we know about the Australian telecommunications market and global roaming, it is unlikely that unbundling will result in products that are easy to understand and access without clear regulation enforced by bodies with the ability to issue commercially significant fines upon finding breaches.

Global roaming charges are notoriously confusing; numerous reports have outlined the current complexity of roaming charges. Findings from behavioural economics demonstrate that consumer decision-making is a complex process with certain factors increasing the chance consumers will make less optimal decisions.<sup>4</sup> These include the optimism bias -

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<sup>2</sup> House of Representatives Standing Committee on Communications (2009), *Phoning home: Inquiry into international mobile roaming*, p xiii.

<sup>3</sup> MBIE and DBCDE (2012), *Trans-Tasman roaming, Draft Report*, p 64.

<sup>4</sup> Deakin University and Australian Communications Consumer Action Network (2011), *Seeking Straight Answers: Consumer Decision-Making in Telecommunications*. ACCAN: Sydney p 13.

where consumers have an unrealistic optimism about future events and believe that they are more skilled and less likely to experience a negative event than others<sup>5</sup> - and brand familiarity.<sup>6</sup> These factors result in consumers being less likely to seek out information and more likely to choose a product not suited to their needs.

Unbundled roaming products would be an infrequent purchase for the many consumers who travel across the Tasman once or twice in their lives. Consumer decisions about which unbundled roaming product to choose will be shaped by factors like the optimism bias and brand familiarity.

Consumers will be less likely to use roaming services from multiple providers if faced with barriers such as fees from local providers or complex processes to temporarily port a number to another network for roaming. If the unbundling option is pursued, measures must be put in place to ensure that consumers can access roaming services easily and for a fair price. This includes the abolition of handset locking fees (discussed in section two).

### 1.3 Mobile local-access services

The MLA option has the advantage of allowing roamers to become local end users while traveling without losing their original numbers. However, as with unbundling, it requires consumers to investigate prices for a service they may use only rarely. The same concerns about affordable access to services also apply to this option.

Due to the difficulty consumers could have resolving complaints directly with a foreign provider, ACCAN sees more merit in roamers arranging MLA services via a home network (option three, variant one) provided appropriate measures are taken to prevent local providers “clipping the ticket.” Option three, variant two creates additional complexity for consumers as they establish a direct billing arrangement with a service provider outside their own country. Depending on the billing process, bills may only be received after consumers have returned from overseas. If a problem arises, consumers will need to contact service providers and ombudsman services in the visited country.

The majority of people who lodge a complaint with the Australian Telecommunications Industry Ombudsman (TIO) have contacted their service provider about the problem more than six times over a period of three months, with over 20% of all complainants spending more than nine hours trying to resolve their complaint before escalating it to the TIO.<sup>7</sup> As few as one in twenty consumers lodge complaints at all because they believe complaining will not work or they do not want to engage in what they perceive to be a difficult process.<sup>8</sup> Given that lodging a complaint about a local service is a protracted and difficult process, seeking redress from a company in another country could prove excessively difficult for many consumers.

Providing consumers access to MLA services may reduce roaming costs in the trans-Tasman context but is a less appealing option to apply to other markets. This option requires consumers to actively investigate products and, if making a complaint, engage directly with a service provider. These tasks become more difficult if a consumer is visiting a country where they do not speak the local language.

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<sup>5</sup> Weinstein in Ibid p 32.

<sup>6</sup> Tam in Ibid p 32.

<sup>7</sup> TIO (2011), *Resilient Consumers Report*, TIO, Melbourne pp 4-5.

<sup>8</sup> Chebat, Jean-Charles, Moshe Davidow and Isabelle Codjovi, (2005) “Silent Voices: Why Some Dissatisfied Consumers Fail to Complain”. *Journal of Service Research* (7) p 328.

## 1.4 Price caps

In the short term, price caps would be very effective in reducing wholesale prices, retail prices and, if consumers continued to access roaming as part of a bundle of mobile services, would create no additional complexity for consumers. This option would not increase competition but, as discussed in the report, there are few current incentives for providers to seek lower roaming prices and little chance of new providers entering the New Zealand or Australian markets.<sup>9</sup>

The introduction of price caps is the only measure that guarantees price reductions in a short time. If price caps are pursued, both governments should review their effectiveness after five years of implementation to determine if further action is required.

ACCAN has no preference on price cap variations as long as the cap delivers a consistent price for consumers. A time-of-use cap, where different rates are charged at peak times, would result in higher wholesale rates at busier times of year, possibly leading to higher retail rates for consumers at the time of year they most need to travel and contact family: Christmas and other holidays. Varying rates could also make it difficult for consumers to calculate how much they will spend on roaming before they travel.

Pass-through requirements make sure that the discounted rates service providers pay for wholesale roaming services would result in lower retail roaming rates for consumers. Price caps would need to be implemented with pass-through requirements to avoid the use of “ramsey pricing”, where higher prices are charged for services with inelastic demand (like unbundled roaming services) which can allow providers to charge lower rates for services consumers are more likely to base a purchase decision on (local data rates, calls, SMS deals).<sup>10</sup> Without pass-through requirements, service providers with more roaming customers may gain an unfair competitive advantage in the local market.

## 1.5 Regulated terms of access, with or without pass through requirements

Regulated terms of access are not mandatory and rely on access seekers wanting to access low wholesale rates. The Report demonstrates that service providers have incentives to set high prices.<sup>11</sup> Regulated terms of access would be a suitable complementary measure if other options which guarantee price reductions for consumers were introduced.

## 1.6 Pricing transparency

As with option one, price transparency alone will not lower retail and wholesale prices. This option should complement – not substitute – the adoption of pricing interventions. Price transparency would be more effective if the information in the report was published online in a manner easily accessible to consumers. The information gathered through price transparency measures should be linked to a single website which, with appropriate government funding, could be run by the ACCC, ACMA or ACCAN.<sup>12</sup>

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<sup>9</sup> MBIE and DBCDE (2012), *Trans-Tasman roaming, Draft Report* p 48, 54-55

<sup>10</sup> Ibid p 28.

<sup>11</sup> Ibid p 48.

<sup>12</sup> As discussed as an additional measure, MBIE and DBCDE (2012), *Trans-Tasman roaming, Draft Report*, p 77.

## 1.7 Enhance regulators' powers

This option would deliver good outcomes for consumers in the long-term, allowing regulators to pursue any of the options canvassed above as appropriate. The process of passing legislation to enhance regulatory power, of regulators initiating reviews into Trans-Tasman roaming and finally commencing regulatory action would take, conservatively, four years.<sup>13</sup> It would be even longer before consumers noticed the effect of regulatory intervention on the prices they pay. This is an unacceptable length of time when considering the weight of evidence already available demonstrating intervention into the roaming market is required.

Little has changed since 2008 when the KPMG report, commissioned by the DBCDE, into international mobile roaming charges found that:

1. Consumers and regulators believe that the price of international mobile roaming is excessive
2. Numerous technical studies have concluded that mobile roaming retail margins are very high
3. There is a lack of consumer clarity around mobile roaming plans and prices
4. There are limited market incentives for roaming prices to decrease.<sup>14</sup>

Only enhancing the power of regulators risks making this latest report another in the long line of reports which finds damning evidence of a market not working in the interests of consumers but produces little action. This option would facilitate the long-term reduction and responsible regulation of roaming prices but, based on the weight of evidence seen in the Draft Report and other work, should be implemented alongside of short-term solutions to reduce prices for consumers.

## 1.8 Summary: ACCAN's preferred combination of measures

The solution most likely to reduce roaming prices in the trans-Tasman market in the long-term is option seven, enhancing regulators' powers to better equip them to intervene in the market.

However, only pursuing option seven will lead to a significant period of time before retail roaming rates are reduced. Consumers should not have to wait five years for reduced roaming rates. The Australian and New Zealand governments need to take immediate action.

The only option which is guaranteed to reduce wholesale and retail rates in the short-term is a price cap with pass through requirements to prevent any service provider gaining an unfair competitive advantage in their local market. Both short and long term actions could be bolstered if price transparency measures were also implemented.

This set of measures would promote cooperation among regulators to reduce mobile roaming costs, as Australia committed to in the Bali Statement of 2009.<sup>15</sup> It also provides a template which can be used to apply to other roaming markets, fulfilling the recommendation of the 2009 House of Representatives Standing Committee Inquiry into International Mobile

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<sup>13</sup> Calculated as a minimum of one year for both governments to pass legislation, two years to conduct an investigation and one year to draft, consult and finalise any regulatory determination.

<sup>14</sup> DBCDE (2008), *Report of findings on: International Mobile roaming charges*, p. 1.

<sup>15</sup> MBIE and DBCDE (2012), *Trans-Tasman roaming, Draft Report*, p 75.



Roaming, *Phoning Home*, that the Australian government pursue a policy of regulating the wholesale cost of roaming through bilateral and multilateral negotiations with other countries (prioritising countries which receive the largest number of Australian visitors).<sup>16</sup>

#### Recommendations:

- **The Australian and New Zealand governments should take immediate action to reduce roaming costs by implementing price caps with pass through requirements and plan to review the effectiveness of this measure after five years.**
- **The Australian and New Zealand governments should take action to ensure the decrease of roaming prices in the long-term by requiring pricing transparency and enhancing regulators' powers.**

## 2. Additional measure: unlocking mobile handsets

Handset locking allows service providers to lock a mobile phone handset so it can only be used on their network. This is also known as network locking or device locking and is common practice in Australia. In order for consumers to use a local pre-paid SIM when travelling, they must unlock their handset. Consumers, especially those who own a pre-paid phone or new customers, are charged high fees to unlock a handset they have legitimately purchased through a service provider. Optus customers pay up to \$120,<sup>17</sup> Telstra customers pay up to \$150,<sup>18</sup> Virgin customers pay at least \$80<sup>19</sup> and Vodafone customers can pay up to \$100 to unlock a handset.<sup>20</sup> These costs create an additional barrier to this group of consumers using global roaming substitutes. These costs could act as additional barriers if option two (unbundling) is pursued.

Australian and New Zealand governments could look at the attempts to legislate against network locking in Canada as a basis for local legislation.<sup>21</sup> This additional measure would benefit consumers roaming anywhere outside of Australia.

#### Recommendation:

- **Prohibit network locking of mobile phone handsets by legislation.**

<sup>16</sup> House of Representatives Standing Committee on Communications (2009), *Phoning home: Inquiry into international mobile roaming*, p xiii.

<sup>17</sup> Optus handset unlocking prices at [http://optus.custhelp.com/app/answers/detail/a\\_id/197/~how-to-&#039;network-unlock&#039;-your-pre-paid-device#fee](http://optus.custhelp.com/app/answers/detail/a_id/197/~how-to-&#039;network-unlock&#039;-your-pre-paid-device#fee), all sites last accessed 28<sup>th</sup> September 2012.

<sup>18</sup> Telstra handset unlocking prices at [https://help.telstra.com/app/answers/detail/a\\_id/17263/session/L2F2LzEvdGltZS8xMzM1OTI2ODU2L3NpZC80NTVqeDNYaw%3D%3D](https://help.telstra.com/app/answers/detail/a_id/17263/session/L2F2LzEvdGltZS8xMzM1OTI2ODU2L3NpZC80NTVqeDNYaw%3D%3D)

<sup>19</sup> Virgin handset unlocking prices at: [http://virginmobile.custhelp.com/app/answers/detail/a\\_id/168/~how-do-i-get-my-virgin-mobile-handset-unlocked%3F](http://virginmobile.custhelp.com/app/answers/detail/a_id/168/~how-do-i-get-my-virgin-mobile-handset-unlocked%3F)

<sup>20</sup> Vodafone handset unlocking prices at <http://support.vodafone.com.au/articles/FAQ/Network-Lock>

<sup>21</sup> Bill C-560, "Cell Phone Freedom Act 2011", available at <http://openparliament.ca/bills/40-3/C-560/>