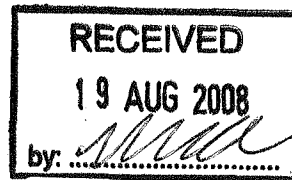
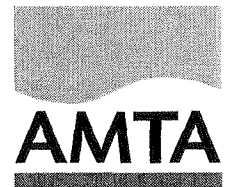


House of Representatives
Standing Committee on Communications
Parliament House
Canberra ACT 2600



Submission No. 9



Australian
Mobile Telecommunications
Association
ABN 98 065 814 315
First Floor
35 Murray Crescent
Griffith ACT 2603 Australia
PO Box 4309
Manuka ACT 2603 Australia
Ph +61 2 6239 6555
Fax +61 2 6239 6577
Web www.amta.org.au

By email: coms.reps@aph.gov.au

Dear Sir/Madam

Re: Inquiry into international mobile roaming

The Australian Mobile Telecommunications Association (AMTA) is pleased to provide the attached submission in response to the House of Representatives' Standing Committee on Communication's inquiry into international mobile roaming.

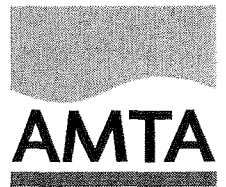
AMTA will also be providing supplementary information to the Committee to respond directly to the recently-released KPMG Report.

In the interim, please do not hesitate to contact me, or AMTA's Policy Manager, Peppi Wilson, for further information, or with any questions.

Yours sincerely

A handwritten signature in black ink that reads "Chris Althaus". The signature is written in a cursive, flowing style.

Chris Althaus
Chief Executive



**Australian
Mobile Telecommunication
Association**
ABN 98 065 814 315
First Floor
35 Murray Crescent
Griffith ACT 2603 Australia
PO Box 4309
Manuka ACT 2603 Australia
Ph +61 2 6239 6555
Fax +61 2 6239 6577
Web www.amta.org.au

House of Representatives Standing Committee on Communications

Inquiry into International Mobile Roaming

Australian Mobile Telecommunications Association

August 2008

1. Introduction

- 1.1 AMTA is the peak industry body representing Australia's mobile telecommunications industry. AMTA's mission is to promote an environmentally, socially and economically responsible, successful and sustainable mobile telecommunications industry in Australia. AMTA members include mobile network operators (**MNOs**), 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 The Australian Mobile Telecommunications Association (**AMTA**) welcomes the opportunity to comment on the House of Representatives Standing Committee on Communications' Inquiry into International Mobile Roaming (**the Inquiry**).

Background: the mobile telecommunications industry in Australia

- 1.3 The mobile telecommunications industry makes a substantial direct contribution to the Australian economy, contributing \$6.5 billion to Australia's Gross Domestic Product in 2006-2007 and employing over 22,000 people¹.
- 1.4 A wide variety of mobile telecommunication services is available to both business and personal users in Australia, including voice services, Short Messaging Service (**SMS**) and Multimedia Message Service (**MMS**), mobile broadband, mobile TV and mobile commerce.
- 1.5 Voice remains the primary use of mobile devices. Data roaming is still in its early stages, but is now starting to increase in popularity.
- 1.6 Importantly, the advancement of mobile telecommunication services and devices has led to significant indirect economic impacts including productivity gains for Australian businesses. Some firms have reported as much as a 25 percent productivity gain from using applications on 3G phones².

¹ *Australian Mobile Telecommunications Industry: Economic significance and contribution*, Report by Access Economics for AMTA

² *Ibid*

2. Executive summary

International Mobile Roaming is a high value added service

- 2.1 International mobile roaming is a very convenient and valuable component of the much wider package of mobile service elements. International mobile roaming is generally used relatively infrequently by a subset of mobile users, and it is unlikely that the costs of this component play a significant part in the service purchase decision. Frequent users have many alternatives to assist in managing their international mobile roaming charges.
- 2.2 It is simplistic to examine the costs and expenses associated with international mobile roaming in isolation. Such an approach will not reflect the full costs of providing the service and will exclude a contribution to the common costs of providing mobile services. Any conclusions from such an approach would likely be erroneous.

Australian mobile network operators are net wholesale out-payers, and also wholesale price-takers

- 2.3 As the ACCC recognised in its 2005 report, a large proportion (up to 75%) of the final retail price for international mobile roaming is set by the overseas operator with Australian operators being price-takers when dealing with international partners. Australian operators lack bargaining power due to Australia's relatively small population and the impact of closed intra-regional 'clubs' such as the EU operators.

Competition for international roaming services

- 2.4 There is competition between Australia's mobile network operators for international mobile roaming customers - and prices are generally falling. Furthermore, Australia's MNOs are continuing to develop innovative pricing structures to respond to customer preferences.
- 2.5 In addition to inter-carrier competition, numerous extraneous competitive forces work to constrain prices within Australia. These include the availability of a large - and ever-increasing - number of substitutes for international mobile roaming, including local pre-paid SIMs, Skype-phones, calling cards and multi-country SIM cards, to name just a few.

Consumers are well-informed with clear choices

- 2.6 Consumers are well-informed about the costs of international mobile roaming, with a considerable amount of information available on all Australian mobile operators' websites, supplemented by call service centre information and hard copy brochures. There is also generic information available from AMTA, ACMA and various other sources.
- 2.7 Consumers have clear choices about how to best meet their communication needs while travelling. They can (and do) mix and match various international mobile roaming options with numerous substitutes to suit their needs and budgets.

Regulation is not justified

- 2.8 The imposition of regulation as a response to concerns about international mobile roaming charges is not justified in Australia. The economic rationale for its introduction does not exist. Moreover, any attempt to introduce legislation would likely provide few real consumer gains and would come at a huge cost to Australian mobile network operators. This would negatively impact consumers in the long run.
- 2.9 Even if regulatory intervention was justified (and AMTA strongly considers it is not), it is likely to distort the market as has already happened in the EU market. Moreover, it would be extremely difficult to implement any regulation: no one regulator would be able to achieve a reduction in international inter-carrier charges without co-operation from the regulator's overseas counterpart(s).
- 2.10 Any price controls imposed only on Australian operators in an attempt to reduce retail rates would unfairly penalise Australian operators for an issue outside of their control. This would do nothing to increase the bargaining power of Australian operators in international inter-operator tariff markets. Australian operators have already had to accept escalating wholesale charges as EU operators seek to recover (from non-EU members) revenue lost as a result of the new regulation to control roaming prices within the EU.
- 2.11 The introduction of regulation to control roaming prices within the EU should not, in itself, be a reason to consider similar regulation in Australia. Australian and European conditions (structure of market, number of travellers, existence of EU-wide regulation, etc) are very different. Further, the legal basis for regulation in the EU is under challenge.

- 2.12 More importantly, initial analyses of that market suggests that if there have been any customer benefits as a result of the price regulation, they have been modest. Yet the cost to industry has been substantial. Regulation will ensure a poor outcome for consumers in the medium-term, with competition, innovation and the willingness of European mobile operators to introduce new international mobile roaming product propositions to the market offering.

3. Structure and terms used in this submission

3.1 In 2003 the Australian Consumer and Competition Commission (**ACCC**) commenced an investigation into international mobile roaming services, and in 2005 published its *Report on the provision of international inter-carrier roaming services*³ (**ACCC Report**). That report considered whether it was necessary and appropriate for the ACCC to regulate international roaming services. Although the Terms of Reference (**TOR**) for the current Inquiry do not specifically address the question of regulation, the discussion is essentially the same. In its responses to this Inquiry, therefore, AMTA will seek to identify relevant changes to the market since the ACCC review.

3.2 AMTA will also comment on the European Union's (**EU**) experience, as it assumes that the Inquiry will be reviewing the EU's response to 'international' roaming within the EU and considering its relevance to the Australian debate.

3.3 In this submission, AMTA uses the following definitions:

- (a) **International roaming agreement.** An international roaming agreement is a commercial arrangement between two mobile carriers that allows a customer of a mobile carrier in one country to utilise the network infrastructure and services of a mobile carrier in another country.

For example, Australian-based carrier Y may have a roaming agreement with UK-based carrier X which allows carrier Y's customers to access carrier X's network when they are travelling in the UK.

A carrier may have roaming agreements with more than one carrier in any country.

- (b) **Outbound roaming** refers to Australian network subscribers travelling outside of Australia and accessing overseas networks with which the relevant Australian network operator has a roaming agreement.

In the example in (a) above, the Australian traveller in the UK is utilising outbound roaming services.

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

- (c) **Inbound roaming** refers to the services supplied by Australian networks to overseas network operators to allow their subscribers to access networks in Australia.
- (d) **Retail international mobile roaming charges** refer to the price charged to the end-user (the customer), by their Australian mobile operator, when using their mobile service outside of Australia.
- (e) **Wholesale mobile roaming charges** refer to the price charged to one mobile operator by another mobile operator with whom they have an international roaming agreement. These charges are generally referred to by industry as international operator tariffs (**IOTs**). (The prices charged by one operator to service inbound roamers obviously then form a portion of the other carrier's outbound roaming costs.)
- (f) **Voice services** – include voice calls ('normal' phone calls), message bank and video calls. Short Message Services (**SMS**) are also included within this category because they are sold as part of a package with voice services. AMTA notes that video calls are new and have not been included in previous inquiries.
- (g) **Data services** – are services that enable travellers to quickly access email, the internet, corporate IT systems and other services. For the purposes of this submission, Multimedia Message Services (**MMS**) is included within data services.

3.4 In responding to the Inquiry's individual Terms of Reference (**ToR**), AMTA will focus on outbound roaming, as this is the area that impacts Australian end users and hence would appear to be the area of most interest to the Inquiry.

4. Response to the Terms of Reference

ToR 1: The extent to which retail international mobile roaming charges for both voice and data services reflect the underlying costs to operators of supplying the service.

4.1 In order to address this ToR and comment on the extent to which retail international roaming charges reflect underlying costs, it is necessary to examine how the final retail charge is calculated. This is outlined below.

Common costs

4.2 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.

4.3 Customers who pay international roaming charges are the same customers who also pay charges for other mobile services. The Inquiry 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, for example. It is the price of the entire mobile services package that is relevant – and that price is set in a highly competitive market.

Life-cycle evolution

4.4 The categories of roaming products have evolved over time and this evolution continues. Historically, roaming calls were just voice calls. Then SMS roaming was introduced. Now data, video calls and MMS are included. Data growth rates are currently high, but will likely slow over time, possibly to be replaced by new products. Assessment of whether charges are excessive will be misleading if these dynamic considerations are not taken into account.

- 4.5 For example, data services are still an emerging market. Wireless technology is constantly evolving and the mobile industry operates in a climate of constant renewal and innovation. This includes the current worldwide focus on upgrading to 3G technology and beyond. Data delivery pricing through 2G technology has traditionally been determined based on bandwidth. 3G technology and beyond uses considerably more bandwidth. The changes and constant innovation mean that operators are striving to offer seamless service for their customers while also considering how pricing models and structures are impacted.
- 4.6 Taking a 'life-cycle perspective', then, it may be appropriate for margins to be low initially to encourage take-up, but then increase over time as the roaming product matures. Alternatively, it can be legitimate to initially earn a higher margin on a young roaming product but reduce the margin subsequently. Consequently, a finding of 'excessive' voice/data margins would be misplaced if the Inquiry compares a mature category (e.g. voice) to a young category (e.g. data), or fails to recognise that the weight of each category changes over time.

Competitive markets can legitimately offer premium products

- 4.7 International roaming services offer all users very high value experiences and benefits. To expect services of such complexity, high cost, and inherent value to be simply cost-based in every respect would be to ignore the realities of *fundamental marketplace functioning*.
- 4.8 AMTA further notes that it is very widely accepted in competitive markets that it is legitimate business practice to offer premium services at a premium charge. In the airline industry, for example, it is routine for a carrier to offer premium 'business-class' services. Were a monopoly operating in Australia, it would be acceptable, indeed likely necessary, for regulatory measures to be introduced to limit prices. The Australian mobile market is clearly competitive, however, with a number of operators competing to offer a range of mobile services nationally and internationally, with an ever-increasing number of substitute alternatives providing further competitive pressure. It is therefore not necessary or desirable to intervene.

Further, even where prices charged are above costs for a particular product in a particular market, other products, or even the same product in a different market, may be sold below cost. This is a very common marketing model for many products and services. In the airline industry, for example, carriers offer discount 'student standby' airfares – as well as the 'business-class' services.

- 4.9 AMTA further suggests that it is common for firms to supply services at premium prices even in competitive markets. In part, premium pricing is present wherever there are substantial common costs (as is the case with mobile services which are carried over common network infrastructure). Prices must necessarily exceed the short term incremental cost of supplying a service; otherwise the firm would not be able to deliver a normal return on investments.
- 4.10 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. AMTA strongly believes that the market in Australia clearly is competitive. There are four mobile network operators in Australia. Having regard to the significant upfront investments required to build a mobile network, it is difficult to think of any other market in Australia with a similar level of upfront investments having at least four major competitors.

Retail charge calculation

- 4.11 The analysis below applies to the roaming charges levied where an Australian mobile operator has a roaming agreement with a foreign mobile operator who is not otherwise associated with the Australian operator - an operator that is not a sister company. Where there is a closer relationship between the Australian and foreign operator, underlying costs and retail prices may be different. Further comment on this is provided at 4.36.
- 4.12 Customers using international roaming services are charged for making calls, as they would be in Australia, but also for receiving calls. The price paid by the customer for these calls (the international mobile roaming charges) comprises:

- (a) for making voice calls:

| | | |
|--|---|---|
| Wholesale charge imposed by foreign network operator | + | Retail mark-up charged by the Australian mobile operator to cover costs |
|--|---|---|

- (b) for receiving voice calls:

| | | | | |
|--|---|--|---|---|
| IOT wholesale charge imposed by the foreign network operator | + | International wholesale mobile call rate for the “international leg” of the call | + | Retail mark-up charged by the Australian mobile operator to cover costs |
|--|---|--|---|---|

The final price paid by the customer for voice calls made or received is then subject to foreign exchange fluctuations.

(c) For SMS

Costs – and therefore retail rates – are not as complex for SMS compared to voice. No termination rate is charged – only origination:

To receive SMS: no charge⁴.

To send SMS:

| | | |
|--|---|---|
| Wholesale charge imposed by foreign network operator | + | Retail mark-up charged by the Australian mobile operator to cover costs |
|--|---|---|

(d) for data

| | | | |
|--|---|---|---|
| IOT wholesale charge imposed by the foreign network operator | International wholesale mobile data transmission rate for the “international leg” of the transmission | + | Retail mark-up charged by the Australian mobile operator to cover costs |
|--|---|---|---|

AMTA notes that the price paid by consumers for using data services is slightly more complex. Although data charges follow essentially the same logic, charges are per Kb or per Mb and both the upload and download of information are charged. As with voice, the final price paid by the customer is then subject to foreign exchange fluctuations.

- 4.13 AMTA highlights that IOT charges are paid to the visited network by the home network irrespective of whether the home network recovers any fees from its roaming customers. The home network operator therefore takes on all bad debt risk (i.e. the risk of non-recovery of charges from the end customer).

⁴ AMTA notes that some operators in receiving party pays ('RPP') billing jurisdictions do charge their own customers to receive text messages. For example, Bell Canada and Telus in Canada have recently introduced a 15c per SMS charge in respect of all texts received by many customers. These are both CDMA operators and it is not clear whether there are any GSM operators with whom Australian MNOs have roaming agreements that impose a similar incoming text message charge. It has been speculated by industry commentators, however, that both Bell and Telus may switch to WCDMA for 3G services, so this charge may be passed through to Australian MNOs in the future.

Underlying costs

- 4.14 As the ACCC recognised in its 2005 Report, “*the most significant factor in the setting of retail prices paid by Australian travellers for international roaming services are the wholesale charges set by overseas mobile network operators when consumers roam on to their networks.... [this can be] up to 75 percent of the final retail price.*”⁵
- 4.15 AMTA understands that the ACCC is in the process of updating its 2005 figures and will be reporting to the Inquiry. However, AMTA believes that the broad findings from the 2005 Report are still valid: Australian MNOs are generally price-takers when negotiating wholesale IOTs with foreign operators. They are certainly not price-setters.
- 4.16 If a large proportion of the final retail price is set by the overseas operator, the simplest way of reducing retail international roaming charges would seem to be for Australian and foreign mobile operators to negotiate reciprocal wholesale rate reductions.

Unfortunately, there is no incentive for foreign operators to agree to do this. The main reasons for this are:

- that Australian MNOs have a lack of bargaining power; and
- that wholesale international mobile roaming competition has been impacted by the emergence of closed intra-regional ‘clubs’.

Ironically, this lack of bargaining power is in part because Australian MNOs compete with each other to some extent to provide inbound services to the overseas MNO.

Australia’s bargaining power and the emergence of intra-regional clubs is further explored below.

Bargaining power

- 4.17 As the ACCC Report recognised, Australian operators are price-takers when dealing with international partners; Australian operators have little influence

⁵ ACCC Mobile Services Review *International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*, September 2005

over the IOT charges set by foreign operators. Even where an Australian operator has a reciprocal arrangement whereby it provides inbound roaming to the foreign operator, the traffic flow – or more importantly the number of inbound roaming minutes versus the number of outbound minutes - is not symmetrical. This means that the bargaining power is not equal. This reality is further explained below.

- 4.18 IOTs represent the fees the visited network charges the home network for letting the home network's customers roam on its network. Although these IOTs are agreed bilaterally between the home and visited network operators, Australian operators are, in general, not in a strong position to seek lower rates.
- 4.19 Operators negotiate respective IOT charges based on factors such as the numbers of users passed between operators and the volume of calls (or data sessions). Given that Australia has a relatively small population (21 million) compared to global powers in Asia and Europe (e.g. Japan 128 million and UK 59 million), Australian MNOs have only a small amount of traffic 'volume' to negotiate with overseas MNOs⁶.
- 4.20 The effect of this lower level of demand is even more pronounced given that operators can only negotiate with reference to their specific market share and the number of customers they have (and therefore the traffic volume created by them).
- 4.21 Furthermore, the actual volume of traffic (and therefore bargaining power) will be further reduced depending on the specific country. For example, exotic destinations will have fewer Australian travellers meaning that an Australian MNO will not be able to offer the foreign MNO a significant amount of roaming traffic.

AMTA understands that generally MNOs are in a slightly better bargaining situation with respect to more popular destinations (e.g. the UK). This effect is seen in the relative roaming prices for different destinations. However, given that the total volume is still low (in global terms), the improvement in bargaining position is limited.

⁶ United Nations (2006) Population, Resources, Environment and Development: The 2005 Revision.

Intra-regional 'clubs'

- 4.22 Exacerbating the constrained position that Australian MNOs face in regards to roaming, some nations have recently engaged in discriminatory pricing behaviours towards countries outside their region.
- 4.23 In Europe, for example, as a direct result of the EU roaming regulation, operators have dramatically reduced the IOT charges that they seek from each other. However, in a clear example of the 'waterbed effect' (an economic term describing how price decreases in one area are offset by rising prices elsewhere), these operators have compensated for the loss in revenue by significantly increasing IOT charges paid by 'foreign' operators.
- 4.24 In a further example, in Saudi Arabia, the per-minute rate for an outgoing (voice) call for one carrier was increased by 280 per cent. Australian (and other) MNOs have virtually no option but to pass-through these costs to consumers.
- 4.25 AMTA is aware that the GSM Association (**GSMA**) now lists two price lists for EU operators – one list for EU members to offer to each other, and another list for EU operators to offer to non-members. Again, Australian MNOs have experienced extortionate increases.
- 4.26 Furthermore, over the past year a French operator has unilaterally increased its IOTs to apply to an Australian operator three times. The per-minute rate has been increased by 236% over that period. Again, Australian operators have had no choice but to accept this increase.
- 4.27 This behaviour by overseas operators continues. For example, at least one Australian operator reports that in the past month alone it has experienced 30 unilateral increases in IOTs by international operators with which it has roaming agreements.
- 4.28 This 'waterbed effect' of the introduction of retail price capping regulation across EU countries has been widely recognised. Extracts from a forthcoming Informa report, 'Global Mobile Roaming, Forecasts 2008-2013', reported in the Global Mobile research service, state that:

"European mobile operators have raised the price of roaming calls into the European Union by as much as 163 per cent as they seek to offset losses from reduced charges within Europe".

The report goes on to note that:

“European regulators have no legislative powers to regulate the cost of roaming outside their own territories, but they say they are well aware of the situation and are considering ways of remedying it.

The EC [European Commission] said it is concerned about the price hikes but is powerless to legislate outside its domain. Meanwhile, UK regulator Ofcom is working with the European Regulator Group (ERG), which represents regulators both within and without the EU, to ‘monitor the situation’⁷.

- 4.29 Carriers would be happy to provide the Inquiry with further information about the price increases they have been forced to endure if requested.
- 4.30 Australian MNOs do not always have very much choice in determining which foreign carrier to purchase roaming services from. In Hong Kong, for example, there are five MNOs and so potentially greater competition in the IOT charges offered. Conversely, in Canada the supply of GSM 2G and WCDMA (3G) roaming – the technology family in use in Australia – is a domestic monopoly operated by the mobile carrier Rogers. The specifics of the IOT market therefore depend greatly on the market conditions that prevail in each country.
- 4.31 Furthermore, the number of international carriers from which Australian MNO are able to seek a roaming services is diminishing. There has been a significant number of mergers and acquisitions that have seen smaller carriers being bought out. For example, in the Netherlands there were 5 operators before the latest round of EU regulations, whereas now there are only 3 operators. This has the effect of reducing the level of choice for Australian MNOs, as well as the competitive tension on the IOT market.

Relationship between Australia and the international market

- 4.32 As noted above in relation to the situation in Europe, roaming is an issue that extends beyond national boundaries. Reciprocal reductions in IOTs would require bilateral, if not multilateral international collaboration.
- 4.33 AMTA highlights that any price regulation to reduce retail charges would only have the effect of harming Australian operators. As noted in detail above,

⁷ <http://telecoms.com/itmgcontent/tcoms/news/articles/20017537865.html>

Australian MNOs are already constrained in their pricing of roaming services. To force prices below the efficient level would reduce the profitability of our own carriers. It would do nothing to increase the bargaining power of Australian operators in international IOT markets and would therefore not lead to a reduction in wholesale prices. AMTA strongly submits that it would be incorrect, and unfair, to penalise Australian MNOs for an issue that is largely outside of their control.

The damaging effect of retail price regulation in isolation has also been recognised by the European Regulators Group (**ERG**). In its recent submission to the European Commission review of the roaming regulation, the ERG stated that:

“...retail regulation in the absence of effective competition in the wholesale market risks squeezing operators’ margins to the point where they cannot offer a retail roaming service profitably, particularly smaller, newer and independent players, to the detriment of consumers.”⁸

Retail mark-up

- 4.34 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, for example:
 - negotiation and set-up of the roaming agreements;
 - management of the roaming agreements; and
 - 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.

⁸ IRG / ERG Response to Commission Consultation “Review of the functioning of Regulation (EC) No 717/2007 (The “Roaming Regulation”) and of its possible extension to SMS and data roaming services” of 7 May 2008; July 2008.

- 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 call back to the Australian service centre).
- Reasonable contribution to common costs – including website and call centre maintenance and management.

Innovation by Australian MNOs

- 4.35 As illustrated above, the retail price paid by Australian customers is predominantly set by overseas operators; the Australian operator has negligible control over the IOT price they pay.
- 4.36 Nevertheless, despite this constraint there are numerous competitive and innovative forces that work to constrain prices. Tariff structures are an obvious example.

Some companies are focusing on the benefits they can derive from their relationship with sister companies to offer very attractive packages to international travellers, for example:

- (a) '3' has a package called '3 Like Home'⁹ that allows customers to make and receive calls when roaming on the 3 mobile network in a number of countries at the same tariff as they pay in Australia. On this plan, customers roaming on 3's network in a number of countries do not have to pay for incoming calls or voicemail deposits to their mobile. They also benefit from very competitive call rates back home to Australia.
- (b) In July 2008, Vodafone launched the 'Vodafone Traveller' proposition including new fixed fee roaming tariffs¹⁰. The Traveller product allows

⁹ For further information, see: <http://www.three.com.au/cs/ContentServer?pagename=Three%2FPage%2FBusinessVideoCallingTemplate&cid=1169503909127&c=Page>

¹⁰ For further information, see: <http://vodafone.com.au/personal/services/roaming/prepaycaps/index.htm>

customers to use international roaming within their existing value cap and offers significant price savings to customers. See the link below for a more detailed description.

- (c) Optus has a relationship with the 'Bridge Alliance'. This enables it to offer discounts of around 20 per cent to customers selecting the Bridge Alliance affiliate whilst roaming. The Bridge Alliance covers 10 countries¹¹.

4.37 Consumers can also choose between post and pre-paid services when roaming overseas. Pre-paid services provide the security of staying within a defined budget. For example, Telstra customers choosing to use pre-paid services overseas can check their balance at any time (at a flat fee of \$0.50).

4.38 Consumers also have the ability to swap between various networks once overseas in order to take advantage of the network with the best price in a particular area. For example, every customer device (e.g. mobile handset) allows manual network selection. This allows consumers to choose a different network to roam on to, if they so desire.

4.39 Carriers have attempted to further simplify and reduce retail rates by more recently moving into 'zonal' pricing to various extents.

- (a) For example, Optus now offers the same rate across a block of multiple countries. This flat rate is available regardless of which particular operator a customer chooses in each zone (except where Optus is able to offer a further discounted rate via its Bridge Alliance).

- (b) Telstra has a similar model, with carrier-agnostic charges available in 16 countries. For these countries (Telstra's most popular destinations), the retail price paid by end customers is the same regardless of which overseas carrier a customer roams on within a country. For example, a Telstra customer travelling in the UK could roam on Vodafone, O2, 3, T-Mobile or Orange, but the charges for making a call back to Australia are the same no matter which of these carriers' networks the customer roams on. This does not imply that the wholesale charges incurred by Telstra for such roaming are the same across the different carriers, but Telstra has chosen to provide

¹¹ For further information see:

http://personal.optus.com.au/web/ocaportal.portal?nfpb=true&_pageLabel=Template_woRHS&FP=/personal/mobile/usingyourmobileoverseas/bridgemobilealliance&site=personal

a simplified tariff to its end customers for roaming to certain countries and it bears the revenue risk of customers roaming onto a relatively higher cost carrier network.

- (c) As already noted, Vodafone launched its Traveller proposition in July 2008. Traveller splits the World into four travel zones with identical fees applicable to each country within each zone.

The Vodafone Traveller proposition sits on top of a customer's existing mobile plan and applies a simple tariff per minute to the customer's standard call rate when making a call. To receive a call a standard rate is also applied. The tariff to receive a call is the same throughout the world. Customers on different value caps, travelling to different destinations with different usage pattern will recognise different savings. Vodafone calculates the average percentage price reduction across all zones at approximately 40%, however, far greater savings are possible. Customers will pay the same tariff no matter which network they roam onto so long as they are within the travel zone. For example if a customer roaming in Europe chooses to switch from one roaming network to another, they will continue to pay the Vodafone Traveller Zone 2 fees.

The move towards simplified zoned pricing reflects the demand that customers have for such pricing constructs. While such constructs involve possible increases in costs to Australian MNOs (in part because they bear the risk of end-users roaming onto the most expensive overseas MNO network), the benefits to customers are thought to outweigh any increase in cost.

- 4.40 There are also a large – and ever-growing - number of substitutes in the market, providing strong competition to international mobile roaming services. This acts to constrain prices. Substitutes are further examined under ToR 3.

ToR 2: The adequacy of information available on Australian mobile operators' international mobile roaming costs and revenue in both retail and wholesale markets.

4.41 It is critical that consumers are adequately informed about the costs they can expect to incur should they choose to use a particular service, and that there is information available to assist them choose an appropriate service for their needs.

All the MNOs provide detailed information on their websites about international roaming. Customers are also provided with information and advice when they contact the MNOs' call centres. Hard copy brochures and other information is also available from some MNOs.

Further detail about the consumer information available is provided in response to ToR 4.

4.42 AMTA notes that there is little information available on Australian operators' international roaming costs and revenues¹² in both wholesale and retail markets.

AMTA believes that it is appropriate that this information is not available publicly, because – as recognised by the ACCC – it is of limited value to consumers:

"The Commission notes that it is not usual for retailers to inform customers of the wholesale prices they pay for inputs into their end-products. The Commission is also concerned that provision of such information would be of limited value to consumers, given that the information provided would not inform consumers of the prices they will ultimately face, and could, in fact, create further confusion on the part of consumers¹³."

4.43 AMTA acknowledges that this information might be useful for regulatory assessment reasons. AMTA notes, however, that the majority of the costs are wholesale rates which are the subject of commercial-in-confidence international roaming agreements. Disclosure of the rates, even on a commercial-in-confidence basis, is therefore sensitive. AMTA therefore urges the Committee

¹² AMTA notes that Telstra publishes high level international roaming revenues in its annual report and provides some commentary on those figures.

¹³ P47, ACCC Mobile Services Review *International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*, September 2005

to assess whether this information could realistically be used without breaching confidentiality.

- 4.44 Finally, AMTA notes that there is no requirement for other industry sectors to 'make available' their wholesale costs and pricing structures. Supermarkets, for example, are not expected to provide information about the cost breakdown of each product (can of baked beans: \$0.001 paid to farmer for beans; \$0.003 for canning process and labelling; transport \$0.005; mark-up by supermarket: \$0.15, etc.) Similarly, international airlines are not required to provide information about flight code-sharing costs.

ToR 3: The impact of new and emerging technologies and commercial initiatives that may reduce international mobile roaming charges for users or provide a substitute for international roaming services.

4.45 In its 2005 Report, the ACCC stated that:

“The availability of close substitutes (on both the demand and supply side) constrains the ability of suppliers to profitably divert prices or quality of service from competitive levels. To the extent that [...substitutes can be used...] these services may act as a constraint on the pricing practices of the mobile operators.”¹⁴

4.46 AMTA notes that a range of substitutes for international roaming is available, with the number and sophistication of substitutes having increased since the 2005 Review.

The optimum solution for substituting international mobile roaming is likely to involve a combination of several services, rather than a single service substitute. Time zone differences can also have a significant impact on what is the most suitable arrangement for travellers in particular countries.

Various options are illustrated below.

(a) For voice:

- Fixed-line telecommunication services, either as a stand-alone substitute or combined with mobile services to reduce costs. Such services include:
 - 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).

¹⁴ P.32, ACCC Mobile Services Review *International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*, September 2005

- Services allowing a travelling mobile user to have multiple mobile phone numbers for different countries provisioned on a single SIM card. This solution, offered by specialist roaming providers such as vRoam¹⁵, allows users levels of convenience and flexibility close to actual roaming services. 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.
- Internet-based applications, such as Voice-over Internet Protocol (VoIP) – e.g. Skype, VoIPBuster¹⁶, 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, though this option can be pricey); or
 - on a mobile telephone* (new since the 2005 Report).
- Blackberry-type devices and plans
- iPod Touch and other Wi-Fi capable devices can already be configured for VoIP using after-market applications and/or accessories.

* For example, the '3 Skypephone' is a fully integrated Skype mobile¹⁷. It provides all the features of a regular mobile phone (regular voice calls, SMS, pictures, etc), plus 4,000 minutes of calls to other Skype users every month. 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 a particularly attractively priced and convenient way of staying in touch¹⁸.

¹⁵ See: <http://www.vroam.com/whatisvroam.html>

¹⁶ See: <http://www.voipbusterpro.com/en/>

¹⁷ <http://www.threeskypephone.com.au/overview.aspx#>

¹⁸ 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. It is not yet possible to connect Skypephone to Skypephone internationally. It is expected that this option will be available in the near future.

(b) For data:

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

4.47 These 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 iPass¹⁹.

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 are also widely available and are a particularly cost-efficient option.

4.48 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-charge²⁰ (unless it is for a premium opt-in content delivery service such as a ringtone). This must be taken into account when considering the cost of this and other services.

4.49 AMTA notes that the customer has the option of minimising their costs, while managing their convenience, by 'mixing and matching'. That is, travellers are not faced with an 'either/or' scenario where they either use their mobile or use substitutes. They can use international mobile roaming as well as substitutes.

For example, when roaming internationally, consumers could set their mobiles to on-forward messages only (not to on-forward voice or video calls). They can also leave appropriate detail in a personal greeting: "*I'm travelling overseas until xx/yy. Please send me a text if possible, or leave a detailed message*". The traveller can then return the call via a cheaper form of voice call back (or respond via email) if they wish.

¹⁹ See: <http://www.ipass.com/services/index.html>

²⁰ See footnote 4.

Hints such as these, providing information about how to minimise costs when roaming internationally, are provided on the mobile operators' websites.

4.50 AMTA notes that the ACCC concluded in its 2005 Report that most of the services available (at the time of that review) *"did not provide the same opportunity for immediate contact with the roaming party that international roaming services do"*²¹. In other words, they were imperfect substitutes for international mobile roaming.

4.51 However, the ACCC did acknowledge 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."*²², 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."*²³

4.52 AMTA makes the following points in relation to these issues:

- (a) The availability of substitutes acts to constrain prices, furthermore, the number of substitutes has increased since the ACCC Review. Indeed, some could now be considered as close to 'perfect substitutes' for international mobile roaming, which increases the competitiveness of pricing. VoIP, for example, 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.
- (b) Moreover, as already explored in this submission, AMTA contends that competitive markets can legitimately offer premium products. Premium pricing does not mean poor value, however, or 'unacceptable' mark-ups – price points must be acceptable to customers.

²¹ p32, ACCC Mobile Services Review *International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*, September 2005

²² Ibid

²³ Ibid

On this point, AMTA notes that there have been some headline-grabbing claims about the 'extortionate' costs of international mobile roaming. For example, Rosemary Sinclair, Managing Director of the Australian Telecommunication Users Group (ATUG) has made claims about 'wildly inflated' prices for international mobile roaming. Ms Sinclair claims that it does not cost providers significantly more to field calls from their clients while overseas than it does to place calls to international locales, but that this is not reflected in the price:

"A 1 minute call to the UK from Australia [generally costs] 70 cents," she says. "1 minute from the UK to Australia when roaming [costs] \$3.29."²⁴

AMTA believes that Ms Sinclair's cost 'comparison' above is inaccurate and misleading. Comparing outgoing call costs with incoming call costs is like comparing apples with oranges. Accurate comparisons dictate that calls in one direction only must be considered. The direction of the call is important because of how charges are derived (with different components of the call controlled by the Australian and overseas operator). The key point is that the Australian MNO is less able to control the cost of a call originating overseas (from a roamed number).

Using Optus figures as an example, an analysis of calls in the same direction illustrates that the price differential is much less than ATUG suggests. ATUG states that a one minute call to the UK from Australia generally costs 70 cents. Receiving a one minute call in the UK when roaming on an Australian Optus mobile number costs \$1.17. Thus an apple-with-apple comparison implies that the premium for international mobile roaming in this example is about 50 cents.

AMTA submits that this is not overly expensive for the convenience of a roaming service (with all the associated costs incurred by the MNOs).

- (c) AMTA also notes criticisms about the cost of international SMS. AMTA notes that SMS is usually provided as part of a bundled offering to customers. It is simplistic to compare the domestic retail price of an SMS with international SMS charges. Further, the pattern usage for this service bears no similarity to that for voice or data. It is likely that SMS (like voice and data) roaming costs will trend down if free markets are allowed to operate.

²⁴ iTnews, House to size up global roaming rates, 10 July 2008

- (d) AMTA also notes the comments made in the ACCC Report about the charges levied by hotels for use of hotel phones. The ACCC noted that international calls on hotel phones come at a premium price. Neither it, nor any other agency, questioned why this service attracted such a charge when the price clearly does not reflect the direct underlying cost of the hotel providing the service.

This example illustrates the fact that it has been generally accepted by consumers that they either pay a premium cost for the convenience of using the hotel phone or they can choose to save money by seeking alternatives (substitutes).

This point was also recognised at a recent ATUG Forum, where it was acknowledged that consumers have 'learned' not to use hotel phones because of the premium costs. The discussion at that Forum suggested that *travellers could learn not to use their mobile phones overseas in the same manner as they do domestically*²⁵. AMTA considers that a more accurate way to characterise this process is that travellers are learning to use their mobile phones overseas more intelligently, using competitively provided premium roaming options where they choose to do so, and lower priced alternatives where these suit.

Further, it is clear that substitutes in the hotel (including the use of mobile phones instead of the hotel phone) are increasingly impacting the policy of many hotels: for example, data connections in hotels are available at increasingly competitive prices. Conversely, some hotels have chosen not to have phones in each room at all.

AMTA notes that these changes are coming about as a result of market forces, not regulatory intervention.

- 4.53 Increasing international bandwidth with ongoing competitive undersea cable investments is expected to lead to some wholesale traffic cost reductions over time, particularly on thick traffic routes. But the net impact on international mobile roaming rates would be slight, and route dependent in the near to medium term.

²⁵ Precis of a discussion ATUG Forum, Melbourne, 15 July 2008

ToR 4: The adequacy of existing information from mobile operators available to consumers concerning international mobile roaming charges for users.

- 4.54 All of the Australian mobile network operators provide information on their websites about the international roaming services that they provide, including:
- Countries where services are available;
 - Indicative 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
 - Subscriber eligibility for international roaming services.
- 4.55 Where an operator has roaming agreements with more than one mobile operator in a country, the operator also provides information about the different prices of services on each network, if applicable. This allows the customer to select the most cost-efficient roaming option (the customer uses features on the handset to select the network they wish to roam on).
- 4.56 Some operators (e.g. Optus and Telstra) provide hard-copy guides, information packs and brochures on their websites, or through their customer call service centres.
- 4.57 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.
- 4.58 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.”*²⁶

²⁶ P34, ACCC Mobile Services Review *International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*, September 2005

The information available today on international mobile roaming options and rates is even more comprehensive than when the ACCC reached its favourable conclusion in 2005.

4.59 AMTA notes that the information provided by operators is supported by more generic consumer information. For example:

(a) ACMA has produced a fact sheet providing basic information on what international roaming services are and how a subscriber can obtain them. 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*”²⁷.

(b) AMTA has produced and widely distributed ‘consumer tips’ about international mobile roaming. This is currently being revised, but has been available since early 2004. In January 2008 – the peak Australian travelling period – this page was the most frequently visited on AMTA’s website²⁸, with nearly 1100 hits. This suggests that consumers are seeking information on services before heading overseas.

(c) A number of other organisations have also written information on the subject, as a simple internet search reveals. AMTA also notes 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.

4.60 AMTA notes that the risk profile for Australian travellers is somewhat different to that for travellers in other parts of the world. For example, it is very obvious when a traveller leaves Australia. Unlike in Europe, where you might accidentally find yourself on the neighbouring country’s network, Australians cannot ‘accidentally’ roam outside Australia.

²⁷ P35 ACCC Mobile Services Review *International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*, September 2005

²⁸ See: <http://www.amta.org.au/default.asp?Page=318>

5. Regulation and the European experience

- 5.1 The ACCC inquiry considered whether it would be appropriate to regulate any aspect of international mobile roaming. It concluded that regulation was not appropriate. AMTA assumes that the current Inquiry is at least partly driven by a wish to re-consider this conclusion in light of the fact that the European Union (EU) has recently introduced roaming regulation (**EU Regulation**) within the EU, with further legislation under consideration. To date, the EU Regulation covers only voice (not yet SMS or data) services.
- 5.2 AMTA strongly believes that the ACCC conclusions remain valid: the imposition of regulation as a response to concerns about international mobile roaming charges is not justified in Australia. Indeed, AMTA notes that the legal basis for regulatory intervention in the EU is currently being challenged within that jurisdiction.
- 5.3 Further, even were intervention within the EU justified, AMTA notes 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 there should not, in itself, be a reason to consider similar regulation here.
- 5.4 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 regulation²⁹.
- 5.5 Finally, even if it were found desirable to intervene (and AMTA strongly considers that it is not), regulation across jurisdictions is extremely difficult to implement. The ACCC recognised the difficulties of regulation across jurisdictions in its 2005 Report when it stated:

“It is unclear to the Commission, however, that it does have jurisdiction over the setting of wholesale prices by foreign mobile network operators, or over

²⁹ 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 2 2008.

*telecommunications services provided by carriers established outside Australia.*³⁰

Furthermore, it is likely that this limitation applies to other regulators. No one regulator will be able to achieve a reduction in inter-carrier charges without co-operation from the regulator's overseas counterpart(s).

These issues are explored in more detail below.

EU regulation

- 5.6 There were three key aspects to the EU Regulation. First, all operators were required to introduce a default retail tariff (the 'Eurotariff') at, or near, the regulated caps – this tariff applies to roaming within the EU/European Economic Area (EEA)³¹. They were also required to provide information to the customer in a standardised format ('transparency measures'). Wholesale charges (IOTs) were also capped – as with the retail tariff, these price caps apply to intra-EU/EEA roaming.
- 5.7 The EU Regulation was introduced despite evidence of strong competition in the EU both for mobile services in general, and for (intra-EU) mobile roaming services. According to the GSM Association (GSMA) - the global trade association representing over 920 GSM mobile operators across 222 countries and territories worldwide (as at 2007) – domestic mobile service costs in the EU fell by 13 percent from 2004-06. Retail outbound roaming charges decreased by 20 percent in a similar period³². The GSMA states that these price reductions were the result of strong competition, with operators striving to retain existing customers, and attract new customers, through constant tariff innovation.
- 5.8 Although it is too early for a detailed economic analysis of the impact of the EU Regulation to have been undertaken (it is less than a year since its enactment), analysis by the GSMA suggests that the signs are that the regulation was not justified and has not provided a significant consumer benefit.

The GSMA has made the following observations:

³⁰ p43, ACCC Mobile Services Review *International inter-carrier roaming, A final report on the provision of international inter-carrier roaming services*, September 2005

³¹ The scope of the EU roaming regulation has been extended to the European Economic Area countries of Norway, Iceland and Liechtenstein.

³² 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 2, 2008

(a) *"...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 considerably between countries), reinforcing the fact that regular roamers are perfectly able to seek out attractive offers."*³³

(b) The GSMA goes on to note that even where consumers are impacted by the legislation benefits are very modest:

*"While the cash savings for a typical mobile customer in Europe due to the Regulation are very modest (perhaps 5 Euros for those who take one foreign holiday per year), the aggregate impact on the industry has been damaging. While the Commission asserted that increased usage from price elasticity effects would offset the price cuts, this has not been the case. Usage has continued to grow but total retail roaming revenues will be around 30% lower on a full year basis...than they were in 2005. This is a considerable source of concern for an industry where profitability has been under severe pressure on a number of fronts in recent years."*³⁴

(c) The GSMA also 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"*³⁵. One year after the regulation changes, the GSMA reported that there was an increase in minutes of use of only 11 per cent. However, the revenue across the carriers had fallen by 26 per cent. Critically, the GSMA notes that reduced roaming revenues and substantial implementation and compliance costs are leading to reduced investment for certain operators.

5.9 AMTA notes 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'. Indeed, data published recently by the ERG suggests that the average retail prices charged by EU/EEA MNOs for voice calls made involving roaming outside the EU/EEA countries are

³³ 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 2, 2008

³⁴ Ibid

³⁵ P17, Ibid

significantly higher than intra-EU/EEA prices at 1.319€ per minute compared to 0.444€ per minute for intra-EU/EEA voice calls. For received calls, the average rates for roaming outside the EU/EEA are 0.726€ compared to 0.208€ for intra-EU/EEA received calls³⁶.

- 5.10 There are a number of processes and challenges underway within Europe about the process by which the EU regulation was adopted and whether there was a legal basis for it. The UK High Court of Justice has referred questions about the legal basis of the regulation to the European Court of Justice. That court is expected to report before 2010. It is, then, currently unclear whether the EU regulation has the legal basis to continue.

Economic rationale for regulation as it applies to Australia

- 5.11 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 MNOs) is highly competitive and prices are generally falling. This is in spite of operators being constrained in their pricing by exogenous and international factors. It follows that the rationale for introducing regulation does not apply with respect to international roaming rates.
- 5.12 It is further recognised that the market is the optimal mechanism for determining prices as it is more efficient at processing information. This is because competition is effectively a 'discovery process', in which markets are the 'arenas' for discovery of market information.
- 5.13 Regulation is a less effective means of digesting information because planners do not have sufficient information to produce 'perfect' results. In a market, imperfect information results in firms instantaneously adjusting prices and quantities to remain competitive, whereas regulatory authorities (regardless of whether they have the incentive to do so) cannot respond so quickly. This was highlighted recently by Professor George Yarrow in a paper presented to the ACCC Regulatory Conference using the famous quote by John Kay that:

³⁶ ERG International Roaming: ERG Benchmark Data Report for October 2007 – March 2008, 12 August 2008. All prices quoted are for Q1 2008.

"If the partial genius of market economies lies in their capacity to achieve co-ordination without a co-ordinator, the greater genius lies in their ability to innovate and adapt in an environment of uncertainty and change."³⁷

5.14 Regulation imposes significant direct costs on firms and industries. Australian MNOs 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).

5.15 There are also indirect costs associated with regulation. Economic literature has highlighted the adverse affect of regulatory burden on the productivity of firms and industries. This was highlighted recently by the OECD in a recent working paper that analysed the relationship between competition policies and productivity growth. AMTA highlights 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."³⁸

5.16 This is not to say that price regulation is *never* appropriate. There would be a rationale for monopoly price regulation if it could be shown that Australian MNOs were able to control the supply and price of roaming charges. However this is simply not the case. Furthermore, as discussed earlier, the 'bottleneck' is not caused by factors that can be easily changed by either Australian MNOs or the Australian government or regulatory authorities.

5.17 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.

³⁷ ACCC Regulatory Conference 2008, Presentation by George Yarrow, What do today's regulators and regulates need to know, 24 July 2008, Surfers Paradise

³⁸ OECD (2008), *Regulation, Allocative Efficiency and Productivity in OECD Countries: Industry and Firm-Level Evidence*, Working Paper No. 616, page 7.

Multi-product pricing

- 5.18 In this section AMTA considers efficient pricing methods for a multi-product market and contends that high roaming prices are not evidence of a serious market distortion that needs correcting.
- 5.19 In multi-product marketplaces such as telecommunications it is common-practice and efficient for firms to price particular goods above cost, however balance this out by pricing other goods below cost³⁹. In the airline industry, for example, carriers offer premium 'business-class' services and also discount 'student stand-by' fares. The net result is that the total 'bundle' of goods is priced most efficiently and at cost. This ensures that common costs are recovered in the least distortionate way.
- 5.20 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.
- 5.21 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."*⁴⁰

- 5.22 The PC was also clear on the negative effect of curtailing pricing behaviour through regulations noting that "*regulations may restrict operator behaviour for*

³⁹ This form of pricing is commonly referred to in regulatory literature as 'Ramsey-Boiteux' pricing, for further details refer to Laffront and Tirole (2000), *Competition in Communications*, MIT Press.

⁴⁰ Productivity Commission (2006), *Draft Report into Road and Rail Freight Infrastructure Pricing*, Chapter 5, page 5.12.

*example, by precluding discriminatory pricing strategies, in a manner that may reduce efficiency”.*⁴¹

5.23 AMTA therefore submits 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.

⁴¹ Productivity Commission (2006), *Draft Report into Road and Rail Freight Infrastructure Pricing*, Chapter 10, page 23.

6. Conclusions

- 6.1 The imposition of regulation as a response to limited concerns about international mobile roaming charges is neither justified nor warranted in Australia. There is competition between Australia's MNOs for high-value international mobile roaming customers - and prices are generally falling. In addition to inter-carrier competition, numerous extraneous competitive forces work to constrain prices within Australia, including a large - and ever-increasing - number of substitutes for international mobile roaming.
- 6.2 Consumers are well informed about the costs of international roaming and have clear choices about how to best meet their communication needs while travelling. They can (and do) mix and match various international mobile roaming options with numerous substitutes to suit their needs and budgets.
- 6.3 Even if regulatory intervention was justified (and AMTA strongly considers it is not), it is likely to distort the market in unforeseen ways and it would be extremely difficult to implement any regulation: no one regulator would be able to achieve a reduction in international inter-carrier charges without co-operation from the regulator's overseas counterpart(s).
- 6.4 There would be no benefit to Australian customers from unilateral regulatory action on wholesale roaming charges. Any price controls imposed only on Australian operators in an attempt to reduce retail rates would unfairly penalise Australian operators for an issue outside of their control. It would do nothing to increase the bargaining power of Australian operators in international IOT markets.
- 6.5 Unilateral action on retail charges would result in an international mobile roaming margin squeeze on Australian MNOs, who without power to control the IOT rates incurred could expect to see withdrawal of innovation, and potential closure of then uneconomic roaming routes.
- 6.6 AMTA thanks the House of Representatives for the opportunity to comment and would be pleased to participate in further discussions on international mobile roaming.

