



Level 4, 580 George St
Sydney, NSW 2000
(+61) 2 8008 8035
(+61) 420 960 949
www.commpete.org.au

Public Version

Submission to the Australian Competition and Consumer Commission's consultation on telecommunications infrastructure assets record keeping rules

13 December 2019

Summary

Commpete—an industry alliance for competition in digital communications markets—welcomes this opportunity to comment on the Australian Competition and Consumer Commission's (**ACCC**) consultation paper *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules*.

In short, Commpete supports the ACCC's proposal to amend the Record Keeping Rules (**RKRs**) to require mobile network operators (**MNOs**) to report details of any Commonwealth or state government co-funding of mobile sites. However, we believe this reporting obligation should be extended to require MNOs to indicate whether a co-funded site is included in any wholesale mobile coverage supplied to mobile virtual network operators (**MVNOs**). This could be achieved with a simple yes/no statement in the template report, with exception reporting if a co-funded site happens to be included in some wholesale offers but not all.

There would be value in the ACCC collecting such information in relation to all mobile sites—whether co-funded or not—as commercial wholesale offers from a vertically integrated network operator generally reflect the effectiveness of infrastructure competition. However, Commpete believes that the collection of such information is of greatest importance for public-funded facilities.

We also support the ACCC's proposal to report publicly on the year-on-year (**YOY**) changes in MNOs' infrastructure. Even if the ACCC ultimately decides not to proceed with this proposal in respect of mobile infrastructure generally, it should nonetheless publish an analysis of the competition implications of (1) any YOY changes in co-funded mobile infrastructure (given such information is already public); and (2) the extent to which that co-funded infrastructure is made available to wholesale customers.

MNOs' reports to ACCC should identify the mobile sites that form part of any wholesale coverage supplied to MVNOs

The RKR rules in relation to mobile radio infrastructure are intended to inform the ACCC's analysis of differences in the coverage and quality of each mobile network, the extent of infrastructure sharing, and the evolution of network investment over time.¹ Such study of competing infrastructure networks is an important and necessary undertaking. However, it should not focus on the coverage and quality of the MNOs' infrastructure networks to the exclusion of the coverage and quality of MVNOs' virtual networks. Nor should it focus on the retail competition dynamics to the exclusion of the functioning of wholesale markets.

Although MVNOs presently have neither the technological ability² nor collective market share³ to impose a significant competitive constraint on the pricing or service decisions of MNOs, that is principally a reflection of the wholesale market in which MNOs supply MVNOs. Indeed, the coverage and quality of a MVNO's network is entirely in the gift of the host MNO. The economic literature generally shows that an MNO's incentives and commercial offers in such wholesale markets will be shaped by the effectiveness of the downstream infrastructure based competition from other vertically integrated network operators.⁴ The ACCC could thus gain additional retail market insights by analysing the differences in the MNOs' wholesale offers to MVNOs and how they may change over time. Specifically, analysis of the differences in the coverage and quality of the wholesale mobile coverage offered by (1) an MNO vis-à-vis other MNOs; and (2) an MNO vis-à-vis its own downstream retail operations.

The basic information necessary to inform such analyses could be easily collected through the RKR. It would simply require an MNO to indicate whether or not each individual mobile site (and each technology/frequency band thereat) was included in its wholesale coverage offer to MVNOs. This could be achieved with a simple yes/no statement in the ACCC's template report, with exception reporting if particular sites happened to be included in some wholesale offers but not all.

¹ ACCC, *Audit of Telecommunications Infrastructure Assets – Record Keeping Rules* (Consultation Paper, 21 November 2019) [6].

² However, this need not be the case in the future, see generally Commpete, *Submission to the House Standing Committee on Communications and the Arts Inquiry into the deployment, adoption and application of 5G in Australia*, (Submission #313) <www.aph.gov.au/DocumentStore.ashx?id=b7258fed-5894-43b5-a333-29c1da1be9c5&subId=673130>

³ See, eg, ACCC, *Domestic mobile roaming declaration inquiry – Final Report*, (October 2017), [24–9].

⁴ See, eg, Duarte Brito and Pedro Pereira, 'Access to bottleneck inputs under oligopoly: a prisoners' dilemma?', *Southern Economic Journal* 76, no. 3 (2010) [660–77]; Janusz Ordover, and Greg Shaffer, 'Wholesale access in multi-firm markets: When is it profitable to supply a competitor?', *International Journal of Industrial Organization* 25, no. 5 (2007) [1026–45]; Marc Bourreau, Johan Hombert, Jerome Pouyet, and Nicolas Schutz, 'Upstream competition between vertically integrated firms', *The Journal of Industrial Economics* 59, no. 4 (2011), [677–713].

There is a particular need for this level of detail to be collected in respect of publicly funded mobile infrastructure, such as the mobile sites co-funded by government under the Mobile Black Spots Program. The expanded coverage that is created by this publicly funded infrastructure is not routinely shared with MVNOs. The MNO beneficiary reserves for itself a discretion to decide when—if at all—to make the extended coverage available to its wholesale MVNO customers.

For example, Telstra has declared that a co-funded mobile site will only be made available to its wholesale MVNO customers if the site happens to fall within the pre-existing footprint of Telstra's wholesale coverage offer (which offers 4G coverage for 97% population⁵ compared to 99% for Telstra's own retail operations⁶).⁷ That wholesale footprint generally reflects the extent of the competing infrastructure networks of the other wholesalers.

The upshot is that the benefits of publicly funded mobile sites are not shared with MVNOs except in those areas where the deployment of a competing network infrastructure is economically feasible.

Consumers in the affected areas become better served in terms of access but continued to be underserved in terms of choice and product innovation. This seems a perverse outcome given the purpose of the policies such as the Mobile Black Spots Program is to improve coverage *and* competition in regional and remote Australia. Further, the reasons why an MVNO would be denied access to publicly funded extensions of its host MNO's network are unrelated to the traditional claims that facilities access deters competing MNOs from investing in their own infrastructure. Denying access to publicly funded network extensions is solely an exercise of market power.

Given the ACCC intends to begin collecting information from MNOs about their co-funded mobile sites, Commpete submits that this process should also seek to confirm which (and when) co-funded sites are made available to service-based competitors through wholesale MVNO offers. This would enable further analysis of the effectiveness of mobile competition at both retail and wholesale levels, and the efficacy of government efforts to improve competition through public funding of mobile infrastructure.

Commpete would also support the ACCC publicly reporting on the YOY changes in MNOs' mobile infrastructure, especially if it included analysis of the reasons for and effects of any consequential changes in the MNO's wholesale offers to MVNOs. END-

⁵ Or 98.8% combined 3G/4G, see Telstra, *Mobility*, Telstra Wholesale, <www.telstrawholesale.com.au/products/mobiles.html>.

⁶ Mike Wright, *Delivering even more for regional and rural Australia*, Telstra Exchange, <<https://exchange.telstra.com.au/delivering-even-more-for-regional-and-rural-australia/>>.

⁷ An interactive map comparing Telstra's retail and wholesale mobile coverage is available at www.whistleout.com.au/MobilePhones/Guides/Telstra-mobile-network-coverage.