Ministry of Economic Development
Manatū Ōhanga

31 May 2011

The Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Dear Sir/Madam,

Re: WT Docket No. 11-65

This letter is a submission in response to the public notice issued by the Federal Communications Commission (the "Commission") on 28 April 2011, in respect of the proposed acquisition by AT&T Inc of all of the stock of T-Mobile USA (the "Transaction").

Context

In New Zealand, the telecommunications sector is governed by the Telecommunications Act 2001 (the "Act").

Under the Act, regulatory responsibilities are shared by the Minister for Communications and Information Technology (the "Minister") and the telecommunications arm of the Commerce Commission (the "NZCC").

In exercising his or her responsibilities under the Act, and in developing policy outside the Act, the Minister receives the advice of officials from the Ministry of Economic Development (the "Ministry"). It is in this context that the Ministry makes the following submission.

Purpose

The purpose of this submission is:

- to articulate concerns that the Ministry has with the Transaction; and
- to propose conditions that the Commission may wish to consider imposing on the Transaction in order to allay those concerns.

The Ministry's concerns relate to the provision by US cellular mobile operators of international mobile roaming ("IMR") services, at wholesale level, to their New Zealand counterparts. For the purposes of this submission, IMR services include voice, text message and data IMR services.

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Our understanding of the US wholesale market for IMR services

The Ministry understands that only four US cellular mobile operators offer near-nationwide wholesale IMR services: two that use GSM and W-CDMA-based networks (AT&T and T-Mobile USA); and two that use CDMA-based networks (Verizon and Sprint).

New Zealand operators are GSM and W-CDMA based,[1] and the GSM / W-CDMA mobile devices sold to New Zealand customers do not function on CDMA-based networks. New Zealand operators wishing to purchase IMR services enabling their customers to roam in the United States, thus have two viable suppliers, in the form of AT&T and T-Mobile USA.

While it would be theoretically possible for a New Zealand operator to negotiate bilateral arrangements with a number of regional GSM / W-CDMA operators, there are practical difficulties, including significant additional administrative costs and the risk of coverage gaps. These practical difficulties mean that a merged AT&T / T-Mobile roaming agreement would be difficult to replicate.

Our understanding of the Transaction

The Ministry understands that AT&T Inc intends to acquire from Deutsche Telekom all of the stock of T-Mobile USA. This will result in AT&T Inc controlling both AT&T and T-Mobile USA.

Our concerns with the Transaction

The Ministry is concerned that, if the Transaction is approved, New Zealand operators wishing to purchase IMR services enabling their customers to roam in the United States, will effectively have only one viable supplier, in the form of AT&T Inc.

To the extent that the Commission considers the existence of alternative suppliers exerts competitive constraint on the wholesale prices that the two existing US operators offer to New Zealand home networks, then, in the Ministry's opinion, it would be appropriate to consider imposing conditions on the Transaction that mimic this constraint.

Our concern that the issues are enduring

It could be argued that, with the arrival of Long Term Evolution (LTE)-based networks in the USA (already in place) and New Zealand (likely from 2014), New Zealand mobile cellular operators might have more choice in terms of IMR service suppliers in the United States.

However, at this time none of the New Zealand mobile cellular operator sells mobile devices that would be able to use the US LTE networks. Equally:

- we anticipate that New Zealand operators are unlikely to heavily market LTE-compatible devices before they launch their LTE networks, which is likely to take place from 2014;
- New Zealand, as part of the Asia Pacific Telecommunity zone, will have a different frequency allocation for LTE devices from that in place in the Americas. Price-sensitive customers are likely to prefer single-zone LTE-based devices, rather than more expensive multi-zone devices compatible with the United States;

[1] Telecom New Zealand still operates a 2G CDMA network, but this is scheduled to be shut down in mid-2012.

- even to the extent that multi-zone LTE-based devices become popular, it will take many years for the existing mobile customer base in New Zealand to transition to the new devices;

- we understand that Sprint is pursuing a WiMax (Time Division)-based approach to 4G technology and the multi-zone LTE-based devices sold by New Zealand operators are unlikely to support this standard.

Our request

The Ministry respectfully requests that, in the spirit of comity outlined in the 1995 OECD Recommendation concerning Co-operation between Member Countries on Anticompetitive Practices Affecting International Trade [(C)95(130)], the Commission consider the potential for the Transaction to adversely affect the ability of cellular mobile operators in New Zealand to negotiate reasonable wholesale terms for IMR services.

Our proposed conditions

If the Commission agrees that it is appropriate to impose IMR conditions on the Transaction, then the Ministry proposes that AT&T Inc, AT&T and/or T-Mobile USA, as appropriate, be bound by the following obligations.

- to honour all IMR agreements that AT&T and T-Mobile USA may currently have with any New Zealand cellular mobile operators;

- to mimic the impact of competitive constraint on IMR wholesale prices, either:

    - by reducing, annually, the rates that AT&T and T-Mobile USA charge to New Zealand cellular mobile operators for IMR services, by a percentage equal to the percentage reduction, if any, in the two companies' average revenue for domestic (i.e. non-IMR) retail services (voice, text message and data), over the preceding 12-month period; or

    - by giving any New Zealand cellular mobile operator that currently has an IMR agreement with AT&T and/or T-Mobile USA the option of determining, within six months of the closing date, a reduced wholesale price for IMR services, to be applied on a reciprocal basis between the parties.

These obligations would apply for the full term of the agreement concerned or for six years from the closing date, whichever occurs later, notwithstanding any change of control or termination provisions that would give AT&T Inc, AT&T or T-Mobile USA the right to accelerate the termination of, or adjust the wholesale prices in, an IMR agreement with a New Zealand mobile cellular operator.

Alternative approach

If the Commission decides that it is inappropriate to impose IMR conditions on the Transaction, then the Ministry would encourage the Commission, acting in another capacity, to investigate the wholesale market in which US mobile cellular operators provide IMR services to New Zealand operators, in order to determine whether, after the Transaction, it is or remains workably competitive and, accordingly, whether regulatory intervention might be required.

In this regard, the Commission may wish to note that the issue of whether or not wholesale and retail markets for IMR services are workably competitive is currently exercising the minds of legislatures and regulators in a number of jurisdictions:

- on 27 June 2007, the European Union (EU) adopted Regulation 717/2007 on roaming on public mobile telephone networks, introducing wholesale and retail regulation of intra-EU IMR rates; [2]
- on 8 June 2010, the Arab Telecommunications and Information Council of Ministers decided that mobile cellular operators based in the Gulf Cooperation Council (GCC) states must reduce their intra-GCC wholesale and retail IMR rates;[3]
- on 20 April 2011, Singapore and Malaysia announced that they had successfully negotiated substantial price cuts from their countries' mobile cellular operators for IMR services between the two countries;[4]
- on 28 April 2011, New Zealand and Australia announced that they were launching a formal investigation into the market for the provision of IMR services between the two countries.[5]

Yours faithfully,

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[2] Under Article 11 of Regulation 717/2007, the European Commission is due to present its proposals for updating the Regulation, for a second time, by 30 June 2011.
[3] By way of illustration, the implementation by the United Arab Emirates of the Council of Ministers' decision can be seen in Directive No.4 of 2010 on Intra-GCC Roaming Charges, available at www.tra.ae/TRA%20Rulings.php
[4] Details of the Singapore-Malaysia price cuts are available at http://www.ida.gov.sg/News%20and%20Events/20110316121622.aspx?getPagetype=20
[5] Details of the New Zealand-Australia investigation are available at www.med.govt.nz/ttr