TPP – international mobile roaming
Art 13.6
Reason to get excited?
“Excitingly, TPP parties have agreed to work together to promote transparent and reasonable rates for international mobile roaming services, which will help promote the growth of trade among the parties and benefit consumers. The agreement provides TPP participants with the ability to enter into arrangements with each other on the rates and conditions for wholesale international mobile roaming services. This is going to deliver great benefits for both Australian businesses and consumers.”

- Senator Mitch Fifield, Minister for Communications

13 October 2015
‘There must be some kind of way out of here,
Said the joker to the thief
‘There's too much confusion, I can't get no relief.
Businessmen – they drink my wine
Plowmen dig my earth
None of them along the line
Know what any of it is worth.’

‘No reason to get excited ...’
• Context – GSM standard dates back to 1987
• Market failure?
• Competition?
• ANZ bilateral
• EU regulation
• ‘One Area Network’
Art 13.6.2

- transparency and competition with respect to IMR rates
- ‘technological alternatives’
• eSIM
Art 13.6.4(a) – bilateral agreement to regulate IoTs between TPP governments

P1 and P2 agree there is market failure requiring regulation

P1 govt “ensures” that S2 need only pay P1-regulated IoT

P2 govt “ensures” that S1 need only pay P2-regulated IoT

S1/S2 “fully utilises commercial negotiations” to access regulated IoT rates & conditions but this fails

But! Australian-regulated (P1) IoT only available to Spark (S2) if the NZ (P2)-regulated IoT is “reasonably comparable” to the Australian(P1)-regulated IoT (fn9)

But! NZ (P2)-regulated IoT only available to Telstra (S1) if the Aus (P1)-regulated IoT is “reasonably comparable” to the NZ (P2)-regulated IoT (fn9)
footnote 9 ...

1. Parties A and B enter a bilateral arrangement for reciprocal regulation of IMR rates or conditions.
2. Parties A and B impose domestic regulations on IMR rates or conditions purportedly in accordance with the bilateral arrangement, presumably narrowing the availability of the rates or conditions to each other’s suppliers.
3. An MNO of party B seeks access to the regulated rates or conditions from an MNO of party A.
4. Party A’s MNO refuses access to party B’s MNO on the regulated rates or conditions, on the basis that party A’s MNO does not receive reasonably comparable rates or conditions with respect to customers of party A’s MNO travelling to party B.
5. Party B’s MNO refers the dispute to the telecommunications regulatory body of party A.
6. If party A’s regulator determines that party B’s regulated rates or conditions meet the ‘reasonably comparable’ test, the body forces party A’s MNO to provide access to party B’s MNO on the regulated terms or conditions.
Art 13.6.4(b) – no bilateral agreement between TPP governments but one Party regulates IoTs – example if Australia (P1) regulates but US does not regulate

No corresponding direct enforcement right for S1 against S2 by P2 to ensure access to S2 IoT offer: only indirect enforcement through suspension of forcing access to P1-regulated IoT

S2 “fully utilises commercial negotiations” to access regulated IoT rates & conditions but this fails

P1 govt “ensures” that S2 need only pay P1-regulated IoT

- S2 makes available to all S1 suppliers IoTs at rates or conditions “reasonably comparable” to P1 regulated IoTs (compliance determined by P1 – fn10) provided that
  - S2’s offer meets any additional requirements which P1 imposes (e.g. P1 requires S1 suppliers’ IoTs to reflect reasonable cost of supply of IMR and S1 meets P1’s cost methodology in doing so – fn11)
• Art 13.6.5 and footnote 8 – MFN
• domino effect?
• Art 13.6.6 – information gathering