



21 September 2018

Domestic Mobile Terminating Access Service Declaration Inquiry  
Australian Competition and Consumer Commission  
[MTASinquiry@acc.gov.au](mailto:MTASinquiry@acc.gov.au)

Dear Ms Moris,

ACCAN thanks the ACCC for the opportunity to contribute to its Domestic Mobile Terminating Access Service (MTAS) Declaration Inquiry. The continued declaration of MTAS services would provide strong incentives for efficient behaviour; promote innovation, service development and the long-term interest of end-users.

ACCAN notes that the underlying rationale for declaration – market power – continues to be an issue in this important wholesale market. Mobile Network Operators (MNOs) in the absence of declaration have the ability and incentive to engage in strategic behaviour to raise the costs of their competitors and exclude third-party access, to the detriment of competition in the marketplace and consumer interests.

The withdrawal of access services, even temporarily, as a result of a failure of MNOs to agree to terms is of concern. The absence of communications services – even for short periods – can result in social isolation, reduced economic activity, insecurity and can potentially pose a risk to safety – a cost to the community which is often undervalued (Graham 1999; Viscusi & Masterman 2017).

The declaration of services represents the first step in the process of regulatory price setting and provides strong incentives for MNOs to genuinely engage in negotiations with other market participants to allow access their networks on a fair, efficient and economical basis – or face the prospect of regulated pricing. Declaration does not result in or require regulatory intervention except where service providers cannot agree on the terms of access and ensures continuity of services for consumers.

#### *Benefits for consumers*

The declaration of MTAS has benefited consumers by requiring that service providers set their prices to reflect the actual cost of service provision. The cost of providing the service is generally low, and as a consequence consumers have been able to benefit through price reductions, and the widespread adoption of flat-rate billing with uncapped SMS and voice inclusions.

There is also evidence of stronger competition in the pricing of voice and SMS services enabled by the MTAS declaration (ACCC 2018, p.32). As a consequence the prices of mobile services have declined by 3.1% in real terms in the last financial year (ACCC 2018).<sup>1</sup> If these savings were reflected

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<sup>1</sup>. Although much of this decline is the result of an increase in the services provided rather than consumers seeing direct declines in price, regardless this reflects a significant benefit for consumers.

year on year, this would imply savings of \$34.1 million for consumers per annum, based on mobile revenues of \$22 billion as of 2015-16 (BCAR 2017, p. 11-14).<sup>2</sup>

The benefits of declaration are even greater for vulnerable consumers on low incomes, many of whom primarily rely upon mobile services. Although there have been improvements in affordability generally, for those consumers on low incomes affordable communications continues to be a challenge (PC 2017, p.24).

Consumers on low incomes spend a significant proportion of their income on telecommunications services. Households in the first and second lowest income deciles on average pay just under 10% and 6% of their disposable income on communication services respectively (BCAR 2017, p. 27). This is well in excess of average household expenditure on communications, which accounts for approximately 3.5% of disposable income (BCAR 2017, p. 27).

These consumers are also particularly sensitive to changes in price, with many having substituted away from fixed line services due to the costs that they face. As the price of fixed-line services increases, substitution to mobile alternatives increases and drives consumers to switch (PC 2017, p. 312; Vertigan Panel 2014). Consumers on low incomes also tend to substitute fixed line services for mobile services more often than their higher income counterparts (Vertigan Panel 2014), often due to the relatively low barriers to entry and lower costs for entry level services.

These consumers are now particularly vulnerable to changes in the price of mobile services, and the potential for the resumption of unregulated pricing by monopoly network operators is of concern. The return to per SMS and per minute calling from flat rates for this cohort of users would result in material detriment, with no offsetting economic benefits in terms of investment or competition.

For consumers on extremely low incomes, the declaration of MTAS services has resulted in them facing lower prices and reduced some of the financial pressure that they face. Although considerably more work is required to address the significant affordability challenges faced by many consumers, promoting the adoption of cost-reflective prices through declaration protects those most vulnerable to the abuse of monopoly power.

The benefits to consumers from continuation of the MTAS declaration are likely to be material and may be conservatively estimated to be on order of a minimum of \$25 million per year. ACCAN considers that a continuation of declaration will provide further benefits to consumers by allowing them to access affordable and competitive voice and messaging service offerings.

Government should intervene where the benefits of doing so exceed the cost of regulation.<sup>3</sup> The avoidance of unnecessary disruption to services and excessive prices due to contracting disputes and inefficient agreements is a significant benefit to consumers (and indeed industry) from declaration (Coase 1937). In the light of these benefits, ACCAN believes that there are compelling grounds for continued declaration.

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<sup>2</sup>. The benefits have been revised downwards to reflect the internal split between traditional services and data revenues (though these services are often bundled). As detailed public data is not available the effect of downward movements in prices has been discounted by 50%, reflecting historical industry average. The benefits are likely to be much larger, noting the significant downward pressure on mobile prices over the period of declaration.

<sup>3</sup>. Hicks 1939; Kaldor 1939; Hicks 1939; Marneffe & Vereck 2011.

### *Declaration framework*

ACCAN believes that the extension of the MTAS declaration is consistent with achieving the outcomes identified by the ACCC including:

- Promoting competition in markets for communication services;
- Achieving any-to-any connectivity;
- Encouraging the economically efficient use of, and economically efficient investment in, telecommunications infrastructure.

### *Promoting competition*

In assessing the potential for a declaration to promote competition, it is essential to:

- define the relevant markets;
- assess the current state of competition in those markets; and
- assess how declaration may affect competition in those markets.

At the wholesale level, ACCAN supports the existing definition of the market for MTAS as set out in the issues paper. At the retail level, the relevant markets for assessing the potential to promote competition include person to person (P2P) voice and SMS services. ACCAN would support consideration of the potential to include application to person (A2P) SMS services in the wholesale market definition – as bulk messaging services begin to evolve and add value to consumers through targeted reminders (to pay bills or avoid late repayment fees) and for emergency communications. For those consumers on particularly low incomes, these reminders can have significant value as they in some instances allow them to avoid fees and costs that place them under additional financial strain.

As an essential input to voice and SMS services, it is appropriate that the market definition of downstream markets reflect the broad implications of wholesale MTAS market outcomes on the level of competition, prices and outcomes for consumers. MTAS market outcomes, underpin the revenue of the mobile services sector, which as already noted is estimated at \$22 billion as of 2015-16 (BCAR 2017, p. 11-14).

Accordingly, a small movement in the pricing or availability of terminating access services has the potential to have material economic effects and cause significant detriment to consumers. Noting that many vulnerable consumers are particularly reliant on mobile services as their primary source of connectivity, the detriment and implications of increased MTAS prices may disproportionately harm this group.

The current state of competition in the Australian retail market is considerably weaker than levels ordinarily present in competitive market places. However, ACCAN considers that the level of competition attained at the retail level, has been materially increased as a result of the declaration of terminating access services.

Australia has a highly concentrated communications market with three entities accounting for almost 100% of the market (Grattan Institute 2017). Although concentration is but one of many indicators relevant in assessing the potential for anti-competitive activity, it is accepted that the level of concentration in the Australian communications market is well in excess of those observed in competitive markets that work well (ACCC 2018).

The lack of competitive pressure associated with this market structure has been identified as a potential driver of excess prices for telecommunications data and voice services and led to ‘extraordinarily high’ returns being achieved (Grattan Institute 2017, p. 31). A lack of competition has also been reflected in poor service quality outcomes and a high incidence of complaints from consumers who have faced poorer outcomes than could be reasonably expected in a competitive market (ACMA 2018; TIO 2018).

ACCAN has concerns that in the absence of declaration that the level of competition would be substantially lessened, and that as a consequence consumers would face material detriment through higher prices and poorer services. A continuation of the declaration is therefore desirable insofar that it will underpin and promote more intense competition than would otherwise occur in the absence of a declaration.

The declaration of MTAS has driven more competitive pricing of services than would have occurred in the absence of declaration and led to significant benefits for consumers. The declaration of MTAS has also provided strong incentives for MNOs to price at cost reflective rates and reduced the barriers to entry into the retail mobile market in Australia. Further, the continuation of declaration is likely to support emerging MVNOs to become genuine competitors within the retail market and further promote strong competitive outcomes.

#### *Achievement of any-to-any connectivity*

Any-to-any connectivity is essential and ACCAN supports the continuation of the declaration of MTAS in order that this be maintained. The capacity of MNOs and MVNOs to provide end-to-end services is essential to promoting both a thriving and competitive telecommunications market, but also in promoting the public interest.

Any-to-any connectivity provides material benefits to the public by eliminating barriers to smooth and straightforward communication. For vulnerable individuals (such as the frail aged), this can be of particular importance and provide them confidence that in an emergency or a crisis that they can access assistance from family and friends. For some individuals, confidence that they can access support can provide material benefits and allow them to remain socially active and independent.

In economic and competitive terms, any-to-any connectivity eliminates one of the core barriers to entry within the telecommunications sphere – scope or reach of services. The removal of this barrier promotes greater competition within the market, allowing consumers to have greater choice when selecting services and lower prices.

#### *Are there substitutes to MTAS?*

Whether alternative services such over-the-top (OTT) services and voice over internet services might be considered a substitute for mobile voice and SMS services is a function of individual consumer characteristics including age, whether an individual is disabled, where they live and their level of digital literacy.

For individuals living in major metropolitan centres, with access to reliable and efficient services at reasonable cost and who are highly digitally literate, OTT services may represent a substitute to traditional services. However, for those individuals residing in areas with poor infrastructure, or who are vulnerable and digitally excluded, standard services and the MTAS remain essential services.

Accordingly, for these individuals, who represent a significant portion of Australian society, OTT services are not substitutes.

ACCAN considers that in assessing whether there are substitutes to MTAS that the ACCC consider the broad implications of a discontinuation of declaration on all consumers. In particular, ACCAN would note that a reduction in the usage of SMS by some consumer cohorts (who are digitally literate and reside in population centres) does not indicate that OTT and MTAS services are substitutes. As the only form of any-to-any services, ACCAN notes that mobile terminating access services cannot be substituted for OTT services in a technical, as well as economic sense. For example, while iPhone users can exchange text messages using OTT Apple iMessages, when sending texts from Apple to Android devices it is necessary to use SMS.

Indications are that about 25% of the approximately 3.7 million individuals over the age of 65 are likely to use over-the-top services as a substitute for SMS services (ABS 2018a). Irrespective of the limitations associated with existing census data, it is clear that for a material number of consumers the use of MTAS enabled services is essential and OTT services are not substitutes.

For many consumers OTT services are not a substitute, and it is important to note that many older consumers are digitally excluded. Although these consumers may be comfortable and confident in using voice and SMS services, they lack the digital literacy to engage actively with more complex over-the-top services. As of the last census, 55.6% of individuals over the age of 65 indicated that they used the internet, and of these approximately 50% indicated that they used the internet for social media (ABS 2018b).

#### *Economically efficient, use of, and economically efficient investment in, infrastructure*

ACCAN considers that the economically efficient use of, and economically efficient investment in infrastructure is likely to occur where prices are set to reflect the cost of service provision. A closer alignment of wholesale prices with the cost of providing the service will be conducive to the economically efficient use of services.

The declaration of services has previously resulted in their economically efficient use. It has promoted the efficient allocation of services and encouraged firms to be technically efficient in the way their services are provided. Noting these efficiencies, there is also no clear evidence that there has been any detrimental impact on dynamic efficiency – that is incentives to invest in network infrastructure to support service provision.

The incentives for efficient investment in infrastructure are likely to remain strong for providers, even in the event that declaration continues. There is exceptionally strong private investment in communications infrastructure – valued at \$5951.5 million in 2016-17 (BITRE 2017, p.259). This represents a record level of investment by the private sector (over \$1 billion higher than the preceding year), which follows over a decade of exceptionally strong private and public investment in telecommunications infrastructure.

There are accordingly, limited grounds for concern that the declaration of mobile terminating access services has had any detrimental impact on incentives for MNOs to invest efficiently. Rather, there may be grounds for considering that greater certainty as provided by MTAS declaration, the reduction in the costs of forming wholesale agreements and the elimination of the potential for strategic behaviour has provided each MNO greater confidence to invest in their own networks.

*How long should an MTAS declaration apply?*

The new declaration should take into account the need for service providers to have certainty to underpin investment and commercial agreement formation. Accordingly, ACCAN believes that the adoption of a declaration of five years is reasonable in the circumstances.

*Concluding remarks*

The declaration of mobile terminating access services is essential to supporting strong retail market outcomes, competition and the efficient use and investment in telecommunications infrastructure. ACCAN supports ongoing declaration of these essential wholesale inputs in order to ensure that consumers continue to have access to affordable and competitively priced services.

At a minimum, declaration should be continued to avoid any adverse competitive outcomes and facilitate market entry to protect consumers from detriment as a result of price discrimination or anti-competitive behaviour. For consumers that rely primarily on mobile services on low incomes, the declaration of services is essential in order to protect them from the detrimental impacts of excessive pricing and service disruptions.

Should you wish to discuss this submission further please do not hesitate to get in contact.

Yours sincerely,

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