

21 October 2011

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Via email: david.hinitt@acc.gov.au

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Re: Inquiry to make a final access determination for the Domestic Mobile Terminating Access Service (MTAS)

The Australian Communications Consumer Action Network (ACCAN) thanks the Australian Competition and Consumer Commission (ACCC) for the opportunity to comment on the draft final access determination for the Domestic Mobile Terminating Access Service (MTAS).

ACCAN is disappointed by the ACCC's change in stance on fixed-to-mobile (FTM) termination rates. The ACCC presented a strong case for FTM regulatory intervention in June but has reversed its stance with little explanation or evidence.

In June the ACCC noted that although mobile-to-mobile (MTM) and FTM are addressed with the same regulatory mechanism "*the two downstream market segments are distinct*". The ACCC explicitly stated that "*decreases in the MTAS rate has not lead [sic] to improved retail pricing for end users of FTM services*" and that any future "*input cost reductions are likely to be retained by providers in the form of increased margins with further detrimental impacts on consumer welfare*".¹ Previous ACCC papers and independent reports also present a strong case for regulatory intervention.²

The September draft final access determination has a reversal of this position with the ACCC stating that "*a reduction in the price of the MTAS towards the underlying cost of production will promote competition in the market within which FTM services are provided*" and that a pass-through mechanism is not warranted because "*competitive forces would ensure that consumers benefit from lower FTM calling prices*".³

Instead of introducing a pass-through mechanism the ACCC has proposed that FTM retail prices be addressed in the upcoming Department of Broadband, Communications and the Digital Economy (DBCDE) Retail Price Controls Review.

¹ ACCC, *Domestic Mobile Terminating Access Service (MTAS) Public Inquiry to make an Access Determination*, June 2011, pp. 6-7.

² See Analysys Mason, *Regulatory treatment of fixed-to-mobile passthrough*, October 2009 and ACCC, *Domestic Mobile Terminating Access Service Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011*, March 2009, pp. 22-24.

³ ACCC, *Inquiry to make a final access determination for the Domestic Mobile Terminating Access Service (MTAS) Draft Access Determination Explanatory Statement*, 23 September 2011 p 11.

ACCAN is concerned that the ACCC cannot guarantee that FTM retail prices will be addressed within the review, especially as the terms of reference are quite broad.⁴ As is raised in the Retail Price Controls Review Discussion Paper, the ACCC has stated that for markets experiencing significant changes it is more likely that price control agreements will not be an efficient regulation tool.⁵ The fixed-line market is facing significant changes with the roll out of the National Broadband Network as well as increasing fixed to mobile substitution. According to previous ACCC analysis, price controls appear to be the less preferable regulatory tool for this issue at this time.

ACCAN would like to see the ACCC address competitive issues within the fixed-line market rather than pass the buck to a DBCDE review, where it will have little control of the outcome.

ACCAN is aware that Vodafone Hutchinson has proposed an incentive based model for addressing FTM pass-through of the MTAS reductions. ACCAN considers that this would be a more effective tool to regulate FTM rates and should be adopted by the ACCC in this review.

ACCAN cannot support the current ACCC draft final access determination for the Domestic Mobile Terminating Access Service because the lower rates *“are likely to be retained by providers in the form of increased margins with further detrimental impacts on consumer welfare”*.⁶ The determination does not meet the criterion of promoting the long-term interests of end-users of carriage services that the ACCC is required to consider under the Competition and Consumer Act 2010. In lowering MTAS rates without addressing FTM pass-through the ACCC will be exacerbating current market problems.

If the ACCC does not include a FTM pass-through requirement or use an alternative mechanism to redress FTM rates in the final determination a full explanation should be given as to why the ACCC has reversed its initial position. A paper should be released explaining why a DBCDE price control mechanism would be the best regulatory option and why the ACCC is unable to regulate FTM MTAS pass-through using the determination.

Should you require further information on ACCAN's position please contact Erin Turner on 02 9288 4000 or erin.turner@accan.org.au

Kind regards,

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⁴ See DBCDE, *Retail Price Controls Review Discussion Paper*, October 2011
http://www.dbcde.gov.au/telephone_services/telstra_retail_price_controls

⁵ Ibid, p2.

⁶ ACCC, *Domestic Mobile Terminating Access Service (MTAS) Public Inquiry to make an Access Determination*, June 2011, pp. 6-7.