Submission by AAPT Limited to the Australian Competition and Consumer Commission in response to Domestic Mobile Terminating Access Service - a discussion paper reviewing the declaration for the domestic mobile terminating access service, dated December 2008
Introduction

1. AAPT Limited (AAPT) welcomes the opportunity to comment on the Australian Competition and Consumer Commission’s (the Commission’s) December 2008 discussion paper reviewing the declaration for the domestic mobile terminating access service (MTAS).

2. This is an important issue for AAPT (and it is assumed that it would also be an important issue for many other service providers) because the MTAS service is an essential input into AAPT’s supply of fixed to mobile (FTM) calls in the Australian market.

3. The price paid for MTAS services acquired from mobile network operators (MNOs) has a direct and significant impact on the ability of AAPT and other competitive carriers to compete in the provision of FTM calls and a bundle of preselection services, ie long distance, international and FTM (the downstream markets). AAPT considers that MNOs have bottleneck control over access to an essential input in the provision of these services.

4. Consequently, AAPT considers that an extension of the declaration is in the long term interests of end users (LTIE) and urges the Commission to extend the declaration for at least a further three (3) years, ie until 30 June 2012.

Competition

5. AAPT agrees with the Commission’s view expressed at the conclusion of the Mobile Services Review in 2004, ie that:

...providers of the MTAS have bottleneck control over access to an essential input in the provision of FTM and mobile to mobile (MTM) calls. Further the Commission finds that mobile network operators (MNOs) are not constrained
in their pricing decisions for the MTAS and have both the ability and incentive to raise the price of this service above its underlying cost of production...

More specifically, the Commission finds that the termination services of individual MNOs are not substitutable for each other...

Accordingly, the Commission finds that all mobile operators – irrespective of their size – have market power when it comes to terminating calls on their network...

6. AAPT considers that nothing has changed since 2004 and that the observations made by the Commission at that time still hold true today.

7. AAPT considers that an extension of the declaration will improve competition in downstream markets but only if pricing principles are also established which peg the MTAS price to its underlying cost of production.

8. This same view was expressed by the Commission at the conclusion of the Mobile Services Review in 2004:

Declaration, combined with a pricing principle that ensures the price of the MTAS reduces towards its underlying costs of provision, can ensure equally or more efficient carriage service providers can place competitive pressure on vertically integrated providers of FTM services to improve their own efficiency and reduce prices paid by consumers of FTM (and possibly other fixed-line services supplied in combination with FTM services such as national long distance and international long distance call) services.

9. Unfortunately, in the recent draft MTAS Pricing Principles Determination for 2009 to 2011, the Commission appears to have shifted away from this view because of a concern about the lack of retail pass through.
10. AAPT, is very concerned that the main objectives of the MTAS declaration (ie the promotion of competition and the efficient use of and investment in infrastructure) could be frustrated as a result. Consequently, AAPT urges the Commission to reconsider this view and to set indicative prices at 6 cents per minute (as estimated by the Commission’s own independently developed cost model) from 1 January 2009.

**Any to any connectivity**

11. AAPT considers that any to any connectivity can also be promoted through the declaration of MTAS. While commercial considerations make it unlikely that an MNO would withhold supply of the MTAS service, the declaration of the MTAS service eliminates that risk completely.

**Efficient use of and investment in infrastructure**

12. AAPT considers that an extension of the declaration will promote the efficient use of and investment in infrastructure but, as is the case with the promotion of competition, only if pricing principles are established which peg the MTAS price to its underlying cost of production.

13. AAPT considers that an MTAS price higher than the underlying cost of production would lead to inefficient over investment in mobile infrastructure and a corresponding inefficient under investment in fixed line infrastructure.

**Other matters**

14. AAPT makes no submission at this time on whether the short message service (SMS), the multimedia messaging service (MMS) or the mobile phone services deployed in aircraft operating in Australia should be considered as part of the MTAS declaration.