A Submission

on ACCC 2008 Draft MTAS Determination

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30 December 2008

ATUG welcomes the opportunity to provide a submission to the ACCC's Draft Pricing Principles Determination 2009-2011 for the MTAS service.

Indicative Prices 2009-2011

In terms of the Indicative price of 9c per minute, ATUG notes the ACCC's reason for not accepting the WIK model indicative price range of around 6c per minute:

> The Commission considers there remains some uncertainty surrounding the actual cost of the MTAS including:
>
> - Given costs incurred in a competitive market may be efficient, in the absence of actual costs, TSLRIC+ as applied in the WIK model remains an appropriate approach and generally provides a reasonable lower bound estimate of the cost of the MTAS,
> - FTM pass through does not appear to have been as strong as expected given the significant reductions in the MTAS since 2004,
> - the RAF applying to MNOs is currently being reviewed and more accurate information about MNO costs is likely to be available in the future, and
> - the existence of a waterbed effect in an Australian context remains unclear
>
> The Commission also notes that MNOs have made significant investments in infrastructure (particularly 3G technologies).

ATUG's position

While understanding the ACCC's preference for caution and certainty, ATUG notes that the cooperation of MNOs in respect of RAF data collection will be needed to support a "more accurate" assessment of costs and that discussion in the EU context, where regulators have been at the forefront of regulatory action over termination rate reductions, is now moving to options including "bill and keep" or peering. The fact that these options are being discussed suggests to ATUG that termination costs may be below even WIK model assessments.

ATUG is concerned that despite a rigorous "bottom-up" analysis (WIK model) supporting a price well below 9 cpm, the ACCC has decided for discretionary reasons to continue with 9 cpm. In ATUG's view, cost-oriented pricing decisions should be based on rigorous models in preference to decisions which include discretionary elements, which may vary from one party to another.

In the 2004 decision the ACCC noted:

> The Commission continues to believe that a closer association of the price of the service with the underlying efficient cost of providing the

> MTAS can place pressure on vertically integrated providers of FTM services to reduce prices paid.

ATUG sees no reason for the ACCC to step away from this position particularly with WIK model data and the upcoming collection of RAF data.

The Pass-Through Problem

Whatever figure is used for the pricing determination, ATUG notes the ACCC's disappointment that the market for fixed line services does not appear to be sufficiently competitive to ensure pass through of the significant reductions in MTAS achieved during the period 2004-2007 and that in fact for some end users prices have been moving unexpectedly in the opposite direction of price increases.

As the ACCC said in the 2004 decision in 9.3 on Mechanisms to address FTM 'pass-through':

> That is, a key benefit of declaration of the MTAS with implementation of an accompanying pricing principle yielding a closer association of price with underlying cost, is that the market within which FTM services are provided will become more competitive. Accordingly, the pricing principle itself should, over the long-term, work to provide a greater level of FTM 'pass-through'

The ACCC also suggested Part XIB monitoring would encourage the right market outcome for end users.

The key problem is the degree of effective competition in the fixed services market. While the ACCC's Fixed Services Review of December 2008 provides an opportunity for a deeper assessment of competition problems in the fixed services market overall, ATUG's position is that ensuring "pass-through" will require specific action by government through regulation.

In its 2007 decision the ACCC said:

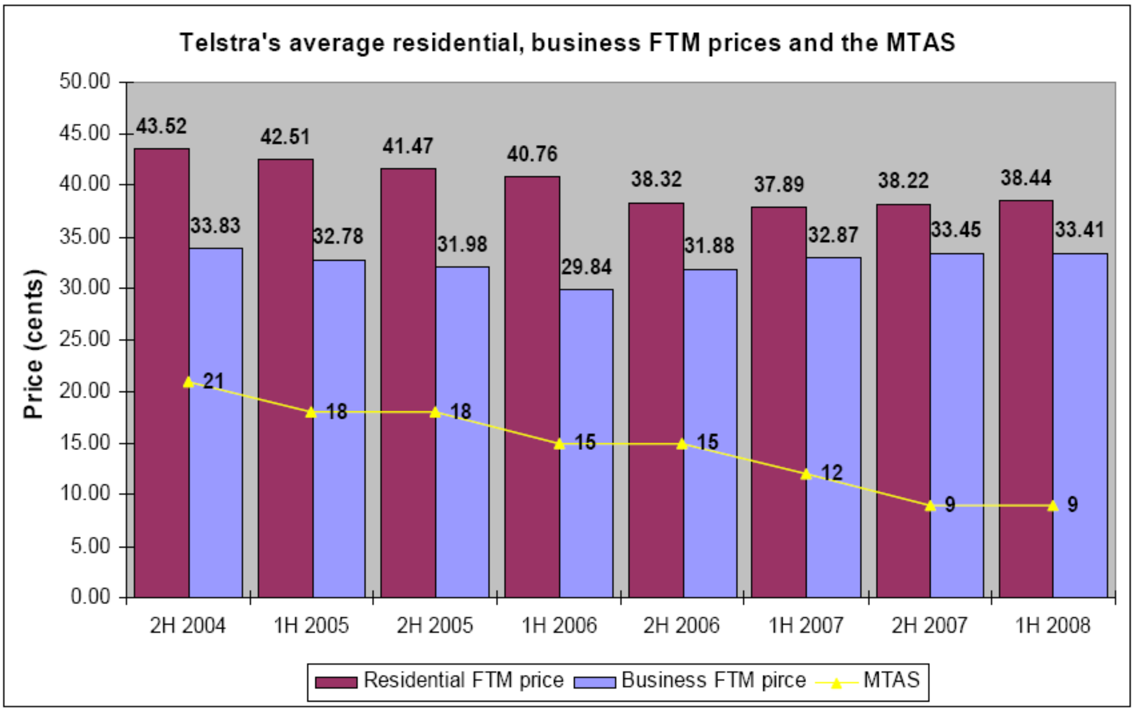
> The Commission notes that while the reductions in FTM retail rates to date have been positive there is still opportunity for integrated operators such as Telstra and Optus to reduce retail FTM prices further particularly for residential end-users in line with reductions in MTAS.

In the 2008 Draft ATUG notes the ACCC current position on pass-through:

> ….. the ACCC is disappointed it appears there has been no significant reduction in FTM prices has emerged despite earlier expectations. For example, Telstra's average FTM residential retail price trend demonstrates that FTM pass-through appears to have weakened in recent years (see figure 3 below). Indeed, the Commission has observed an increase in Telstra's residential FTM retail prices since 2007. Telstra, as of 1 November 2008, commenced billing FTM calls in 30 second increments thereby raising the effective price paid for FTM

calls significantly. This suggests that FTM pass through is not evident despite the MTAS indicative price decreasing significantly**.**

Figure 3 Telstra's average FTM prices and the MTAS 2004 to 2008[35]



While the Commission appreciates that there are other costs associated with delivering FTM services, the Commission is of the view that the degree of pass through to FTM retail prices remains lower than could be expected given the reductions in MTAS prices. The Commission notes that additional regulatory mechanisms may be necessary to ensure a greater pass through of reductions in MTAS prices to FTM retail prices. For example, price control sub caps, particularly in the less competitive segments, may be appropriate. This would, of course, be a matter to be determined by Government which has the responsibility for such changes. This may require different caps for residential and business FTM services. The Commission considers that the approach adopted in New Zealand may also be appropriate. In New Zealand any reduction in mobile termination rates by any MNO is required to be passed through to fixed customers in full under voluntary deeds made between MNOs and the New Zealand Government.

ATUG's position on "pass-through"

ATUG believes there is now clear evidence of market failure warranting targeted intervention. The intervention will need to be introduced by Government through the Price Control Regime – a surprising outcome and one moving contrary to the direction of the removal of regulation in fixed services wholesale markets.

ATUG also notes the ACCC's suggestion in regard to inter-operator wholesale agreements but prefers the more sharply focused retail price control tool.

The purpose of declaration of MTAS in the first place was to ensure the long-term interests of end users – after waiting for the market and then regulation to deliver this outcome it is time for the Government to intervene directly.

Indeed in Australia the fact that end user prices decreased inline with the mandated reduction but are now decreasing more slowly than the mandated reductions and in some cases are increasing means in this particular instance additional regulation is the only answer.