Submission in response to the Australian Competition and Consumer Commission's draft report on the public inquiry on the access determination for the Domestic Mobile Terminating Access Service

10 July 2020

Commpete—an industry alliance for greater competition in digital communications markets—welcomes the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) draft report on the access determination for the Domestic Mobile Terminating Access service (MTAS).

Commpete broadly supports both the benchmarking methodology and the ACCC's intention to make a substantial reduction in the price of the MTAS (from its current level of 1.70 cents per minute (cpm)) so that it better reflects the efficient cost of supplying the MTAS. However, we believe that a number of refinements should be made to both the benchmarking methodology and to the way in which the ACCC applies the benchmarking results. These are set out below.

Commpete believes that the ACCC's proposed new price of 1.22 cpm still over-estimates the efficient costs of supplying the MTAS in Australia. Based on the ACCC's draft decision and an expert opinion from Competition Economists Group (CEG), Commpete believes that a more accurate estimate of that cost over the forward-looking period of the service declaration would lie somewhere between 0.75 and 1.08 cpm. This is notwithstanding any claims of additional or higher input cost assumptions that may be made by mobile network operators (MNOs), the effects of which would be wholly offset by the methodological adjustments to the benchmark models recommended by CEG and the significant discretion afforded to the ACCC in the determination of the final price point.

Benchmarking methodology

Commpete supports the ACCC's intention to determine the MTAS price for the forthcoming period based on international benchmarking. We also broadly support the approach adopted by Analysys Mason (Analysys) given the methodological constraints imposed by the ACCC's earlier decisions (e.g. to use only publicly available models capable of producing a LRIC+ result).

Commpete commissioned CEG to provide an expert review of the Analysys benchmark (the CEG report), which we submit for the ACCC's consideration at Annex A. (The CEG report was also made available to Commpete's members to inform the development of their individual positions and submissions).

Based on the CEG report, Commpete believes that:

1. The final benchmark set that is being used by the ACCC (i.e. France, Peru, Portugal, Sweden, UK) is reasonable and should remain the basis for the ACCC's decision (although note that the CEG report does raise concerns about the compatibility of the geo-types used in the Portuguese model). However, the ACCC's draft estimated cost range[1] is being skewed unduly high by overestimates of the cost produced by the Peruvian and Portuguese models. Additional adjustments to (at least) those particular models, or some re-weighting of their results, is necessary to achieve a more reasonable estimate of the cost range for an Australian context.
2. The inability to replicate the results reported by Analysys in respect of the East Caribbean and Spanish models warrant the results from those particular models being excluded from the benchmark (as the ACCC has done in its draft decision).

[1] That is, Table 11 on page 48 of the ACCC's Draft Report.

3. The incompatibility of the geo-types in the East Caribbean, Mexican, and Dutch models with the actual population densities of rural and suburban Australia warrants the exclusion of the results of those particular models (as the ACCC has done in its draft decision).
4. The similarity between the price paths produced by the UK model and the ACCC's previous MTAS price decisions warrants greater weight being given to the results from the UK model.
5. It would more appropriate to convert the costs of the non-tradable components in all the models using purchasing power parity (PPP) conversion factors that are specific to the communications sector instead of factors that reflect the economy as a whole (and thus include many sectors and goods and services that are irrelevant to telecommunications networks).

The CEG report concludes that a reasonable estimate of the efficient cost of supplying the MTAS in Australia, based on Analysys's benchmarking methodology (adjusted as per the CEG report), is 0.75 cpm (inclusive of 0.13 cpm adjustment for spectrum costs).

Whereas the ACCC's draft estimated cost range for the forward period is between 0.92 and 1.28 cpm, in the light of the CEG report, Commpete submits that a more reasonable range would be between 0.75 and 1.08 cpm (the latter being the 50th percentile of the bound averages for the years 2021–24 in the ACCC's draft range).

Application of the benchmarking results

Whatever estimated cost range for the MTAS that the ACCC finally settles on, if the ACCC intends to adopt a flat-rate for the five years of the declaration period, then Commpete believes that the ACCC should determine that final price point based on:

(1) the forecast prices in the latter years (i.e years 3–5) instead of focusing exclusively on the estimated price in year 1; and

(2) its normal practice of selecting the midpoint within the cost range (i.e. the 50th percentile instead of the 75th percentile).

Commpete disagrees with the ACCC's characterisation of these decisions as 'conservative'. The draft report is also not explicit as to whose particular interests such purported conservatism is intended to promote; implicitly it looks like the interests of MNOs are being preferred over that of consumers.

As the CEG report shows, the Analysys benchmark strongly suggests that MTAS prices in Australia have consistently been set well above the benchmark's estimate of the efficient cost range, meaning that MNOs have been substantially over-recovering on the efficient costs of supplying the MTAS. This trend will only be perpetuated by the way in which the ACCC intends exercising its regulatory discretion in determining a reasonable price point for the next period.

The ACCC's draft report provides no justification for the ACCC's intention to determine a price that is to apply for five years based solely on the estimate of that price in year 1. All international trends and the benchmark itself point to the fact that efficient costs for supplying call termination services are decreasing and will continue to do so over the next five years. Further, the most relevant impact of the coming investment in 5G is that an even greater proportion of network costs will get allocated to data services and away from voice services generally, which is likely to see the cost of call termination continue to decline relative to the data-centric services that is driving investment in 5G. In determining a single price point, the ACCC should focus on the latter years of its estimated cost range to ensure its price determination captures the cost trend over the forward-looking period. Further, as the ACCC proposes that the new price should take effect from 1 January 2021, the ACCC is effectively determining a price that will be out of date (i.e., one that is over recovering the estimated efficient cost) from Day 1. If the price determination is not to take effect until 1 January 2021, then the cost estimates for the year 2020 should not be taken into consideration. That is, the cost range that informs the ACCC's decision should cover only the years 2021 to 2024. Commpete believes that 1 January 2021 should be the absolute latest date on which the new price should take effect. As the ACCC has recognised that the prevailing price of 1.70 cpm is well above all reasonable estimates of the current efficient cost, there can be no justification for maintaining it any longer than absolutely necessary.

Commpete would support bringing forward the date of effect of the new price determination to, say, 1 July 2020.

The ACCC's intention to set aside its normal practice of adopting the 50th percentile of the relevant cost range has not been justified in the draft report. Further, the draft decision does not explain why the ACCC considers adoption of the 75th percentile would be a 'conservative' approach in the circumstances. The adoption of, say, the 25th percentile arguably would be the conservative choice in light of the historical over recovery of costs highlighted in the CEG report and would reduce the risk to consumer welfare of imposing an above cost price for the next five years. Commpete is concerned the draft approach may inadvertently result in the interests of MNOs being given more weight than consumers interests and this needs to be corrected in the final MTAS decision.

The intention to adopt the 75th percentile would imply that it is expected that (1) if the ACCC undertakes a cost modelling exercise in the future, then (2) that will produce price outputs for the MTAS that are significantly higher than the prices the benchmark is currently indicating for the latter years; which (3) would then require the ACCC to increase the price of the MTAS in a future access determination. The combined probability of these independent events seems very low given all the available evidence and international trends.

Commpete strongly believes the proposed adoption of the 75th percentile is not warranted (and cannot reasonably be characterised as conservatism) given that investment in mobile networks generally and 5G in particular is not being driven at all by the pricing of the MTAS but rather by the demand for enhanced mobile broadband services and the Internet of Things.

Maintaining the ACCC's usual practice of adopting the midpoint of its estimated cost range would be the more appropriate way of balancing the varying interests of access providers, access seekers and consumers. Otherwise, the ACCC should give a comprehensive explanation of why it considers it reasonable in the circumstances to preference the interests of MNOs over consumers.

Non-price terms and conditions

Commpete supports the ACCC's intention to retain the non-price terms and conditions without change. As the ACCC notes, they provide a useful set of reference terms and conditions or baseline standards for access seekers when negotiating with access providers.

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