



ACCC Discussion Paper into the declaration of the  
Mobile Terminating Access Service – August 2018  
Submission by Commpete

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## 1 Introduction

Commpete – Alliance for Competition in Digital Communications (**Commpete**) welcomes the opportunity to make this submission to the Australian Competition and Consumer Commission (**ACCC**) in response to the *ACCC Public inquiry into the declaration of the Domestic Mobile Terminating Access Service Discussion Paper – August 2018 (Discussion Paper)*.

Commpete represents non-dominant telecommunication providers of retailer and wholesaler digital communications – [www.commpete.org.au](http://www.commpete.org.au)

Commpete's members are mobile virtual network operators (**MVNO**) that provide mobile services to its customers using wholesale service obtained through varying commercial relationships with mobile network operators (**MNO**). While this submission is prepared on behalf of Commpete's collective members, individual members may provide additional and more detailed input to the ACCC during the inquiry.

It is Commpete's view the MTAS should continue to be regulated by the ACCC because each MNO continues to have exclusive control of access to customers on their respective networks and as such there continues to be a risk that MNO's could refuse or set anti-competitive terms of access to their networks.

Further, Commpete submits that the declaration should be extended with some modification to make the service description fit-for-purpose for the different ways in which voice and messaging services can now be delivered to a mobile handset. To make the service description as technology neutral as possible, the service description should be amended to specify termination on a *mobile number*. The use by Australians of mobile handsets continues to grow. With the continuing technological and innovative developments, it is critical that voice calls and messages can terminate on mobile devices.

In the absence of an MTAS service description drafted in appropriate functional terms:

- retail service providers will be unable to offer a full range of innovative services to customers;
- competition in the downstream markets will be reduced, as access seekers will be denied access to vital inputs into downstream services; and
- economically efficient use of, and investment in, infrastructure will be undermined, as the full potential existing and emerging service providers to foster vibrant retail competition will not be able to be realised.

It is Commpete's strong view that regulation of the MTAS by the ACCC continues to make an important contribution to the aspiration of a competitive telecommunications market in Australia.

The Discussion Paper raises 23 specific consultation questions and invites submissions to all or any of these and any other matter relevant to the MTAS. In this submission, Commpete has addressed some general matters which it considers are relevant to the ACCC's consideration of whether to continue to declare the MTAS and has provided responses to several the consultation questions.

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## 2 General Matters

### ***Rationale for declaration of MTAS services***

- 2.1 The MTAS is a wholesale interconnection service. It is currently provided by an MNO. The MTAS enables voice and SMS calls to be made or sent by an end-user on one network to an end-user on a mobile network.
- 2.2 MTAS is regulated because each MNO has a monopoly in controlling access to its subscribers. It is important to note that while the MTAS is a regulated service it is not a service that is sought by or supplied to MVNO's. That is, the MTAS is essentially a service that serves the needs of other MNO's and fixed network operators and thereby ensures "any-to-any" connectivity. Nonetheless, the MTAS provides an essential reference point in MVNO "commercial" negotiations with MNO.
- 2.3 The ACCC's Discussion Paper states:
- The MTAS is regulated because each network has a monopoly in controlling access to its subscribers. When a person (the A-Party) makes a call or sends an SMS to another person (the B-Party), the A-Party's network provider has no option other than to purchase MTAS from the B-Party's network provider to complete fixed-to-mobile (FTM) and mobile-to-mobile (MTM) calls.
- Every network provider therefore has control over connecting calls to its own customers. In effect, they have monopoly power over access to the end-users on their network. This means that a network operator could restrict access to its own customers by imposing unreasonable terms or very high prices to terminate calls or SMS on its network. This could limit the services available to consumers and distort competition in downstream markets.
- The ACCC has historically viewed the MTAS as a bottleneck to any-to-any connectivity for mobile network end-users. The MTAS was regulated to ensure that termination rates are not a barrier to competition, and that consumers on different networks can call each other.<sup>1</sup>
- 2.4 Commpete considers that MVNO's produce positive outcomes for consumers in terms of wider choice through pricing and service innovation. However, Commpete submits that the benefits to consumers of MVNO's have not been fully captured. This is evident from the comparison of Australia's MVNO market share of 11 per cent<sup>2</sup> to other international markets. In Europe, where MVNO competition is encouraged by regulators, MVNO market shares in selected markets in 2014 were reported to be Netherlands 38 per cent, Germany 35 per cent, the United Kingdom 18 per cent and Spain 16 per cent<sup>3</sup>. In Japan, the MVNO market share is estimated to be approximately 28 per cent<sup>4</sup>.
- 2.5 Commpete submits that Australia's relatively low MVNO market share is explained by the absence of a kind of encouragement that regulators in other markets afford to MVNO's to boost competition and lower prices for consumers. That is, MVNO's in Australia must rely on "commercial" negotiations to acquire relevant services in an environment where market power clearly favours the MNO's relative to the MVNO's.

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<sup>1</sup> Discussion Paper, p.8.

<sup>2</sup> ACCC, *Competition and price changes in telecommunications services in Australia 2016-2017*, February 2018, page 25

<sup>3</sup> NEREO, *MVNOs in Europe*, October 2015

<sup>4</sup> WPC analysis based on ITU and Digitimes Research data. See:

<https://www.digitimes.com/news/a20161218PD202.htm?mod=3&q=MVNO&chid=9>

### ***Competitive Implications of 5G Services***

- 2.6 The mobile communications ecosystem is set to undergo significant change with the introduction of 5G services. 5G represents a fundamental transformation of the role of mobile communications in society. It will support significantly faster mobile service speeds and bandwidth and ultra-low latencies enabling the delivery of future communications such as virtual reality, autonomous cars, industrial Internet and smart cities.
- 2.7 MVNO's have an important role to play in the mobile ecosystem through strengthening and deepening the process of competition. MVNO's do this by serving the needs of niche markets through pricing, product and service innovation. The advent of 5G provides new and exciting opportunities for MVNOs to continue to serve niche markets and to continue to develop and to offer consumers innovative prices, products and services.
- 2.8 Commpete submits that the outcome of the ACCC's inquiry into the declaration of the MTAS will significantly impact whether the economic and consumer benefits of 5G are captured or forgone. This is because any wind – back in the regulation of mobile services that would occur if MTAS was no longer to be declared will have a detrimental impact on the on-going viability of MVNO's and in turn a detrimental impact on consumers. In the absence of a regulated MTAS, the bargaining power of MVNO's will be weakened and the confidence of MVNO's to continue to invest in the mobile ecosystem will be damaged.
- 2.9 On the other hand, the continuation of the declaration of the MTAS will assist MVNO's such as the Commpete members with a base-line level of confidence to continue to invest in the mobile ecosystem and to pursue the opportunities that 5G services offer. Commpete submits the regulation of MTAS on its own is not enough to protect competition. To fully capture the benefits of 5G requires the additional regulatory support that would be provided through the regulation of wholesale MVNO services.

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## **3 Declaration of mobile voice termination services**

- 3.1 In deciding whether to declare a telecommunications service, the ACCC must be satisfied that doing so will promote the long-term interests of end-users. To do so, the ACCC must consider the extent to which the declaration is likely to result in the achievement of the following three objectives:
- promoting competition in markets for carriage services and services supplied by means of carriage services;
  - achieving any-to-any connectivity; and
  - encouraging the economically efficient use of, and investment in, infrastructure by which those services are supplied

Commpete considers the three objectives below.

### ***Promoting competition***

- 3.2 In assessing whether declaration would promote competition, the ACCC's approach is to identify and define the relevant markets, assess the current state of competition in those markets, and assess how declaration might affect competition in those markets in the future.<sup>5</sup>

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<sup>5</sup> Discussion Paper, p.6.

- 3.3 In the 2014 inquiry, the ACCC found that the markets in which mobile voice termination services are supplied are the separate wholesale markets for voice termination services on each MNO's mobile network. The ACCC found that each MNO had exclusive control over access to mobile voice termination services on their network, and that there were no substitutes for these services.<sup>6</sup> The ACCC also identified two downstream markets in which declaration of the service may promote competition: the retail market for mobile services, and the retail market for fixed voice services.
- 3.4 Commpete considers that each of those markets continue to be very significant markets and remain relevant: the mobiles market now has 25.9 million services in operation, including 6.7 million mobile-only users and, while a growing proportion of Australians are replacing their fixed line services with mobile services, there remain 8.8 million fixed line services, only a small decline on the 8.9 million fixed line services in the preceding annual period.<sup>7</sup> Accordingly, the continued declaration of mobile termination services would continue to promote competition, for the same reasons the ACCC found in the 2014 inquiry.
- 3.5 In addition, existing retail markets are growing, and new markets have developed that also support the re-declaration of the MTAS. Commpete consider that the growth of the market for retail mobile services and the expansion of over-the-top (OTT) communications support the need to re-declare the MTAS.
- 3.6 The Discussion Paper notes that the number of consumers who prefer to use mobile voice services over fixed voices services has continued to grow, and that this trend is likely to continue with increasing data inclusions and the deployment of 5G. Hence, retail end-users are increasingly finding that having a functioning mobile service is a necessity. In these circumstances it remains essential to ensure that the essential inputs used to supply a retail mobile service – including the MTAS – remain declared.
- 3.7 The Discussion Paper notes the “growing substitutability of over-the-top (OTT) services for messages and voice calls, and the disruption of traditional service models in the market”. The Paper states: “The ACMA also reported that, in the six months to June 2017, 80 per cent of Australian internet users had used an app to communicate. Of these consumers, more than 50 per cent had used an app to make voice calls”.<sup>8</sup>
- 3.8 The ACCC also states:

OTT communications service providers (such as WhatsApp, Facebook Messenger, Skype and Viber) typically offer voice and messaging services, supplied over existing fixed and mobile broadband services. The ACCC considers there to be competition between OTT services and mobile voice services, despite some differences in quality and service standards, which arise partly from the fact that OTT service providers do not control the access network. For instance, the ACCC has noted that OTT services currently suffer technical limitations, particularly with any-to-any connectivity, such as the inability to call 13/1300/1800 numbers or make emergency calls (except Skype).

As a result, OTT services are not yet considered to constitute a full substitute for voice services, and the ACCC has not seen any basis for regulating the originating or terminating functions of OTT services. The ACCC has, however, previously indicated concern over the potential for mobile service providers to foreclose these innovative services. In the recent Communications Sector Market Study, the ACCC found that, to the extent that competing OTT services constrain pricing, there may be a case for reducing or removing existing economic regulation of traditional telecommunication services. For instance, the use of OTT services may reduce the need for SMS regulation to continue.<sup>9</sup>

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<sup>6</sup> Discussion Paper, p.9.

<sup>7</sup> ACCC, *Competition and price changes in telecommunications services in Australia 2016-17*, February 2018, p.6.

<sup>8</sup> Discussion Paper, pp.13-14.

<sup>9</sup> Discussion Paper, p. 14.

- 3.9 Commpete is of the view that rather than being separate services, OTT services intersect with MTAS services. Providers of OTT services rely significantly on the MTAS service to contact end users who have not subscribed to the OTT service and as a means of ensuring secure access to essential features of their web services. There is no universal OTT provider so access between all mobile networks is a requirement as end users' behaviour's change. This applies particularly to business users, including users of unified communications services. The key to this type of communication is knowing the end-users' mobile phone number so they can be contacted regardless of the OTT service they may be using.
- 3.10 Given the intersection of OTT services with the MTAS, the market for OTT communications is a relevant market for the declaration of mobile voice termination services.
- 3.11 The potential for mobile service providers to foreclose access to innovative OTT services, and the reliance of the operators of OTT services on being able to make communications to end-user's mobile telephone numbers, reinforces that declaration of the MTAS would be promoted by declaring mobile voice termination services.

#### ***Any to any connectivity***

- 3.12 In respect of the achievement of 'any-to-any connectivity', the Discussion Paper states:

Declaration of a service will promote any-to-any connectivity if it allows end-users of a telecommunications service to communicate with other end-users, whether or not they are connected to the same network. This is particularly relevant when considering services that require interconnection between different networks.

Interconnection is the handover of telephone calls and data traffic between telecommunications network operators. Through interconnection arrangements, network operators provide end-users with access to other end-users, services or content on other networks. As the MTAS is essentially an interconnection service, this objective is particularly significant.

- 3.13 Commpete agrees that this objective – allowing end-users to communicate with other end-users – is particularly significant. In many inquiries into the declaration of services, the 'any-to-any connectivity' objective is not controversial and has received limited analysis. However, in this inquiry, the 'any-to-any connectivity' objective requires careful consideration. There are now many ways in which calls and messages may be delivered to a mobile handset. These calls and messages are no longer only terminated by the MNOs – the termination may be undertaken by a service provider that does not own or operate a mobile network. The other providers – often small, innovative providers – may not have enough bargaining power to force the MNOs to acquire termination from them. This can affect the supply of innovative products and services in the retail markets that compete with the traditional mobile services of the MNOs. Accordingly, it is imperative that the declaration of the MTAS is broad enough to address the variety of ways in which calls may be terminated on a mobile handset.

#### ***Encouraging the economically efficient use of, and investment in, infrastructure***

- 3.14 In considering the objective of encouraging the economically efficient use of, and investment in, infrastructure, the ACCC must have regard to the legitimate commercial interests of the MTAS supplier and the incentives for investment in infrastructure. In the 2014 inquiry, the ACCC concluded that extending the declaration of mobile voice termination services, combined with pricing regulation, was likely to promote economically efficient investment in, and use of, infrastructure by which mobile and fixed voice services are provided.

- 3.15 The ACCC also considered that aligning prices with the cost of providing the mobile voice termination services promotes allocative efficiency, productive efficiency and dynamic efficiency in the market, which in turn encourages efficient use of, and investment in, infrastructure.
- 3.16 Commpete considers these conclusions remain relevant to the current inquiry and support the redeclaration of the services.

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## **4 Declaration of SMS termination services**

### ***Promoting competition***

- 4.1 In the 2014 inquiry, the ACCC found that SMS termination services are supplied in separate wholesale markets for SMS termination services on each MNO's network and identified the relevant downstream markets to be the mobile retail services market, the wholesale application-to-person (**A2P**) SMS services market and the downstream A2P SMS services market. The ACCC considered that declaration of SMS termination services would promote competition in each of these markets. Commpete considers these conclusions remain relevant to the current inquiry and support the redeclaration of the services.
- 4.2 SMS remains a significant communications service for end users – in fact many emerging technologies and uses are making SMS messaging an even more critical service for end-users. The ACMA Communications Report 2016-17 indicated that the most popular ways for Australians to communicate was by mobile phone voice calls and text messages (SMS), still well above social networking and messaging apps.<sup>10</sup> There is also increasing use of SMS for verification services, e.g. factor authentication for bank account access; SMS messaging of a unique code to access secure information on websites. The A2P market from end users to business/enterprise users is growing globally and we see similar activity in Australia – even though a lot of these providers are considered OTT, they are still communicating with mobile users using traditional mobile phone numbers. Given the continuing high use of SMS, Commpete considers there remains a strong need for ongoing SMS regulation.
- 4.3 In respect of A2P services, the Discussion Paper notes that a point of contention in the 2014 inquiry was whether A2P SMS services should be excluded from the declared SMS termination services. However, following the declaration of SMS, and the decision to include A2P service providers, the ACCC issued an explanatory note to provide clarification on the scope of the declaration. The ACCC's Explanatory notes on the MTAS declaration included the following:
- Based on the information currently available, the ACCC considers that A2P SMS providers cannot currently access the MTAS.
- The MTAS service description provides that the MTAS is an access service for the carriage of SMS services from a point of interconnection, or potential point of interconnection, to a B-party directly connected to the access provider's digital mobile network.
- The service description is technology neutral and does not require the access seeker's network to be a digital mobile network. Consistent with the discussion in the declaration final decision, the ACCC understands that currently the only parties who have the capability to interconnect to the access provider's network are MNOs.
- 4.4 Accordingly, Commpete understands that A2P SMS providers cannot currently access the MTAS because they do not operate a digital access network.

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<sup>10</sup> ACMA, Communications Report 2016-2017, p. 47.

- 4.5 Commpete also understands that currently the only parties who have the capability to interconnect to the access provider's network are MNOs as they are the only parties who have invested in suitable equipment to be able to access the SMS component of the MTAS service.
- 4.6 A2P SMS providers should be able to access the MTAS if they invest in suitable equipment. Commpete considers that the current regulatory arrangement is unfair, by enabling the MNOs to receive an MTAS fee for SMS services that terminate on their networks, while A2P providers are not able to access the declared MTAS service and hence the declared termination rate. It is Commpete's view that the rate charged to A2P providers is far above the cost to MNOs of providing the service.

***Any to any connectivity***

- 4.7 In 2014, the ACCC concluded that the declaration of SMS termination services would be likely to promote the achievement of any-to-any connectivity by ensuring that MNOs provide access to SMS termination services on reasonable terms to smaller MNOs and new entrants. In sections 3.5 to 3.9 above, Commpete notes the expansion of OTT communications, including for messaging services. Given the many ways in which messages may be delivered to a mobile handset – and that messages are no longer only terminated by the MNOs – it is imperative not only that SMS termination services are declared, but also that the declaration of the MTAS is broad enough to address the variety of ways in which messages may be terminated on a mobile handset.

***Encouraging the economically efficient use of, and investment in, infrastructure***

- 4.8 In the 2014 inquiry, the ACCC concluded that the declaration of SMS termination services was likely to encourage economically efficient use of, and economically efficient investment in, infrastructure.
- 4.9 The ACCC also considered that aligning prices with the cost of providing the SMS termination plus a normal rate of return promotes allocative efficiency, productive efficiency and dynamic efficiency in the market, which in turn encourages efficient use of, and investment in, infrastructure.
- 4.10 Commpete considers these conclusions remain relevant to the current inquiry and support the redeclaration of the SMS termination services.

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**5 Current MTAS service description is no longer fit for purpose**

- 5.1 Since it was originally declared, the service description for the mobile terminating access service has, in functional terms, remained the same (other than the inclusion of SMS in the service description in 2014). The service description has not been updated to adapt to the different ways in which voice calls may now be delivered to a mobile handset.
- 5.2 The Discussion Paper states that the ACCC is keen to understand whether the service description is fit-for-purpose, and that its preference is to describe the service in functional terms using a technology neutral basis:

... The ACCC is also keen to understand the impact of technological developments since the last declaration inquiry. In particular, whether the service description is fit-for-purpose and remains accurate given different ways in which voice calls can now be delivered to a mobile handset. The ACCC's preference is to describe the service in functional terms using a technology neutral basis as far as possible. This provides the access provider with the flexibility to determine the most efficient way of supplying the service. It also ensures that, with technological or innovative developments, a bottleneck service continues to be declared.

- 5.3 The number of OTT services providing voice and messaging services is increasing. Further, all MNOs are now offering Voice over Long Term Evolution (VoLTE) and Voice over WiFi (ViWiFi) – and calls delivered by VoWiFi are not carried over the MNO’s radio access networks: to make these calls, an A-Party needs only know the B-Party’s mobile number.<sup>11</sup> The introduction of these services means that there are now many different ways in which a call to a mobile handset may be terminated. The one common component is that all calls are terminated on a mobile number.
- 5.4 Accordingly, to make the MTAS service description as technology neutral as possible, Commpete considers the service description should specify termination on a *mobile number*.
- 5.5 Given the variety of ways that calls may be terminated on a mobile handset, the service description:

should no longer specify that the end-customer be ‘directly connected to the access provider’s network’;

should provide that the point of interconnection (POI) be a point of demarcation between the networks nominated by the access seeker and the access provider, without requiring that the access provider itself operate a digital mobile network; and

should make it clear that the POI for the voice component of the MTAS definition is different from the POI for the SMS component of the MTAS definition. Although the voice component may be associated with a gateway (voice) exchange the SMS component will not be.

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## 5. Length of declaration

- 5.1 A declaration must specify an expiry date. In doing so, the ACCC must have regard to the principle that an expiry date for declarations should occur sometime between three and five years after making the declaration.
- 5.2 With change continuing in the telecommunications sector, a shorter duration for MTAS regulation is appropriate. Commpete submits that the MTAS declaration should apply for a period of three years.

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## 6. Response to Consultation Questions

### 6.1 **Question 1: What kind of voice calls require acquisition of termination access by the originating network? What are the technical characteristics of these calls?**

The MTAS service arose in an analogue, circuit – switched environment to facilitate any-to-any connectivity, i.e., enabling the customers of one fixed or mobile network to connect to customers of any mobile network. As circuit switched technology has given way to digital, packet switched technology, voice calls now almost exclusively use IP technology.

Voice calls provided by mobile service providers (which include MVNO’s) as an integral part of their service package, are distinct from “over-the-top” (‘OTT’) voice calls which are provided by third parties using the Internet. Such services which include, for example, those provided by Viber and WhatsApp, are delivered to applications on mobile handsets using the mobile handset’s data connection to the Internet. Such services are provided by third parties independent of the mobile service provider. OTT applications connect to the Internet in the following ways:

- via the mobile network's data connection which uses the mobile telephony network infrastructure only for connectivity to their servers or services;
- via WiFi networks in the home or workplace of end-users; and
- via public WiFi networks in public places including airports, hotels, restaurants etc.

Voice calls that are provided to customers by mobile service providers require the originating network to acquire termination access. This is because these calls use functions which are integrated within the mobile network and form part of the service offered by the mobile service provider. In contrast, OTT voice calls do not require the originating network to acquire termination access. This is because these calls use connectivity to the Internet and are provided to customers by third parties.

Commpete notes that data usage has increased significantly in recent years as consumers have increasingly adopted music streaming, video services and social media. This suggests that the focus of regulation might shift towards data services rather than voice and SMS services.

**6.2 Question 3: Is the current service description fit for purpose and does it adequately address the issue of monopoly power held by mobile network operators? Is the service description technologically neutral?**

Since it was originally declared, the service description for the mobile terminating access service has, in functional terms, remained the same (other than the inclusion of SMS in the service description in 2014). The service description has not been updated to adapt to the different ways in which voice calls may now be delivered to a mobile handset.

The Discussion Paper states that the ACCC is keen to understand whether the service description is fit-for-purpose, and that its preference is to describe the service in functional terms using a technology neutral basis:

... The ACCC is also keen to understand the impact of technological developments since the last declaration inquiry. In particular, whether the service description is fit-for-purpose and remains accurate given different ways in which voice calls can now be delivered to a mobile handset. The ACCC's preference is to describe the service in functional terms using a technology neutral basis as far as possible. This provides the access provider with the flexibility to determine the most efficient way of supplying the service. It also ensures that, with technological or innovative developments, a bottleneck service continues to be declared.

The number of OTT services providing voice and messaging services is increasing. Further, all MNOs are now offering Voice over Long Term Evolution (VoLTE) and Voice over WiFi (ViWiFi) – and calls delivered by VoWiFi are not carried over the MNO's radio access networks: to make these calls, an A-Party needs only know the B-Party's mobile number.<sup>12</sup> The introduction of these services means that there are now many different ways in which a call to a mobile handset may be terminated. The one common component is that all calls are terminated on a mobile number.

Accordingly, to make the MTAS service description as technology neutral as possible, Commpete considers the service description should specify termination on a *mobile number* and recommends the ACCC adopts the following definition:

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<sup>12</sup> Discussion Paper, p.17.

### **Domestic Mobile Terminating Access Service**

The domestic mobile terminating access service is an access service for the carriage of voice calls and short message service (SMS) messages from a POI to end-customers assigned numbers from the digital mobile number ranges of the Australian Numbering Plan.

Given the variety of ways that calls may be terminated on a mobile handset, the service description:

- should no longer specify that the end-customer be 'directly connected to the access provider's network';
- should provide that the point of interconnection (POI) be a point of demarcation between the networks nominated by the access seeker and the access provider, without requiring that the access provider itself operate a digital mobile network;
- should make it clear that the POI for the voice component of the MTAS definition is different from the POI for the SMS component of the MTAS definition. Although the voice component may be associated with a gateway (voice) exchange the SMS component will not be; and
- should also include Multimedia Message Service ('MMS') messages.

#### **6.3 Question 4: Do Smaller network operators have difficulty securing commercial arrangements to terminate voice calls on behalf of their customers?**

"Smaller network operators" are characterised by their relatively weak bargaining power and limited financial resources. It is a widely accepted proposition that such "smaller network operators" have difficulty in securing viable commercial terms of access to the networks of access providers who are also their competitors. This is fundamentally why access services need to be regulated.

Commpete submits that to address the more important aspects of the ACCC's MTAS declaration inquiry it is important to consider the experience of non-MNO's in securing commercial arrangements to access the networks of the MNO's. Based on the collective experience of the Commpete members as MVNO's seeking wholesale access to mobile networks, Commpete submits that it is very difficult to secure satisfactory "commercial" arrangements with MNO's. In the absence of regulated access, MVNO's must rely on "commercial" negotiations. MNO's have little inherent incentive to negotiate with MVNO's and have vastly superior bargaining strength. As such, it is inevitable that "commercial" agreements between MVNO's and MNO's are characterised as involving an inferior service standard, out-dated services and excessive prices.

#### **6.4 Question 6: What kind of short message services require acquisition of termination access by the originating network?**

Short Message Service ('SMS') messaging arose as a service for delivering text messages to and from mobile network customers. As technology has developed the scope of SMS has expanded to include, for example, mass messaging (one to many) and application to person (A2P) variants. SMS messaging plays an increasingly important role in user identification, e.g., in electronic banking and in emergency warnings, e.g., floods, bushfires. SMS continues to form part of the LTE/4G standard<sup>13</sup> and the 3GPP 5G standard.

<sup>13</sup> See [www.etsi.org/deliver/etsi\\_ts/123200\\_123299/123204/07\\_06\\_00\\_60/ts\\_123204v070600p.pdf](http://www.etsi.org/deliver/etsi_ts/123200_123299/123204/07_06_00_60/ts_123204v070600p.pdf)

**6.5 Question 8: Does the current service description encourage the supply of innovative services?**

Encouraging the supply of innovative services” is concerned with allowing new methods, ideas and processes to be adopted in the provision of services. The operating conditions that are conducive to service innovation include:

- motivation to improve;
- flexibility;
- experimentation; and
- feedback loops.

The current service description should be adjusted to ensure it remains ‘fit for purpose’ to not restrict the level of possible innovation despite technological evolution that has taken place both in Australia and abroad.

**6.6 Question 10: Do network operators continue to have a monopoly over the termination of mobile voice calls on their respective networks?**

Yes. MNO’s have exclusive control of the access to customers on their own network for the termination of voice calls (and SMS messages). Only MNO’s can decide which other network operators may have access to their respective networks.

It remains a fact that MNO’s could refuse (or set unreasonable terms) to terminate voice calls (and SMS messages) to customers on their networks that originate on other fixed or mobile networks. This is simply because MNO’s control access to customers on their networks. Commpete submits that to ensure that MNO’s do not refuse (or set unreasonable terms for) such access and thereby breach the fundamental concept of any-to-any connectivity, the MTAS must continue to be declared.

**6.7 Question 11: Do smaller networks have, or are they likely to have, sufficient market power to negotiate sound commercial outcomes without declaration?**

As noted in Commpete’s response to question 10, MNO’s could refuse (or set unreasonable terms) to terminate voice calls and SMS messages to customers on their networks that originate on other fixed or mobile networks simply because MNO’s control access to customers on their networks. Accordingly, it is arguable that the market power of any access seeker can always be withstood by an MNO that wishes to refuse or set unreasonable terms of access.

Commpete submits that it is crucial that the ACCC recognise that the declaration of MTAS does not simply serve the interests of MNO’s. In the absence of any other regulated access to the networks of MNO’s, the declaration of MTAS is crucial to the existence and on-going viability of MNVO’s. That is, the declaration of MTAS and the regulated terms of access (including price) that follow declaration provides a crucial reference point for MVNO’s in their “commercial” negotiations with MNOs.

Commpete welcomed the prospect of a fourth MNO when TPG Telecom acquired 4G spectrum in April 2017. Prima facie this would provide an additional source of wholesale MVNO services and apply competitive pressure on existing suppliers. However, this seems unlikely to eventuate given that TPG Telecom and Vodafone Hutchison Australia (‘VHA’) recently announced their merger. This merger is, however, subject to ACCC approval. This narrowing of MNO options for MVNO’s underlines the need for wholesale MVNO services to be regulated.

The ACCC must recognise that in the absence of the declaration of MTAS, the already relatively weak bargaining power of MVNO's compared to MNO's would be further eroded. In turn, this would be harmful to competition as MVNO's would be weakened and their ability to offer end-users competitive pricing and services would be compromised.

**6.8 Question 12: Are there wholesale substitutes for mobile voice call termination?**

Voice call termination is a wholesale service. That is, MTAS which provides voice call termination is a service provided by MNO's to other MNO's and fixed network operators. In addition, MTAS is not offered to, or sought by, end-users.

Commpete does not believe that there any effective wholesale substitutes for the MTAS. This follows from Commpete's response to question 10 which notes that each MNO has exclusive control of the access to customers on its own network for the termination of voice calls (and SMS messages). There is simply no alternative for a given MNO or fixed network operator to have voice calls (and SMS messages) originating on their networks to reach a "B Party" on a specific mobile network unless the operator of that network provides access.

**6.9 Question 13: Are there retail substitutes for mobile voice call termination?**

As noted in its response to question 12, Commpete considers the MTAS to be a wholesale service. As such, Commpete does not believe that there are retail substitutes for mobile voice call (or SMS message) termination. That is, retail markets are distinct from wholesale markets. Commpete submits that it is illogical to contemplate that a service in a retail market could be a substitute for a service in a wholesale market. This is because each market has different buyers and suppliers pursuing different purposes.

Further, Commpete submits that an "A Party" calling a "B Party" via an OTT Internet-based voice service, such as those provided by Viber or WhatsApp, is neither a practical or viable substitute for a voice call delivered to the "B Party" by a mobile service provider. This is because the "B Party" must also be a registered or pre-enrolled user of these OTT services. This may work where the "A and B Parties" are known to each other and mutually agree to use such services. Commpete submits that this is not at all suitable for business purposes let alone emergency situations. It should also be noted that OTT Internet-based services are inferior to services provided by mobile service provider in terms of user experience, e.g., convenience, quality, practicality and reliability.

Commpete further submits that other alternatives for making "B Party" contact such as e-mail or sending a letter by post are even more impractical. Accordingly, Commpete reiterates its view that it is not possible for an "A Party" to reach a "B Party" on a given mobile network through a voice call (or SMS message) unless the operator of that network provides access.

Commpete strongly considers that the mobile bottleneck persists. This is because MNOs have exclusive control of the access to customers on their own network for the termination of voice calls (and SMS messages). Moreover, Internet-based OTT services cannot match the convenience, quality, practicality and reliability of mobile services which are based on the mobile networks. As such, consumers have limited power to switch exclusively to OTT services.

**6.10 Question 14: Do network operators continue to have a monopoly over the termination of SMS on their respective networks?**

Yes. MNOs continue to have a monopoly over the termination of SMS messages on their respective networks. Please refer to Commpete's response to question 10 above.

In its Final Decision on the MTAS Declaration Inquiry of 2014, the ACCC justified its decision to regulate SMS messaging services based on the MNO's monopoly power. In particular, the ACCC states:

“... each MNO has a monopoly over the provision of SMS termination services on their network. The ACCC considers that in the absence of declaration, this monopoly power gives MNOs the ability and incentive to either deny access or set unreasonable terms of access to the service.”

Commpete submits that nothing has changed in the ACCC's rationale and that accordingly, there is no logical basis on which the ACCC could decide to exclude SMS messages from the MTAS service description in the continuation of the MTAS declaration.

In addition, reductions in MNO wholesale charges for SMS messages occurred following the ACCC's decision to regulate SMS messaging in 2014. This has enabled MVNOs to offer more competitive pricing to end-users and has thereby been beneficial to the interests of end-users. However, the price reductions have not been to the extent that they reflect the regulated charge of 0.03 cents per SMS. Commpete submits that this significant differential in charges provides evidence for the on-going regulation of SMS messages and the need for the regulation of wholesale MVNO services.

Commpete is concerned that in the absence of SMS message regulation, there is a risk that MNO's could set unreasonable terms of access to such services. This in turn would be detrimental to competition and the interests of consumers. A simple proof point of such unreasonable terms is the prohibition on MVNO's using SMS for machine to machine applications. Accordingly, Commpete urges the ACCC to continue to regulate SMS messaging.

Commpete further considers that the rationale for the regulation of SMS messages applies equally to MMS messages. That is, MMS messages, like SMS messages, require termination services that are controlled by MNOs and are supplied to end-users by mobile service providers. As such, Commpete urges the ACCC to consider including MMS messages in the service scope of the MTAS.

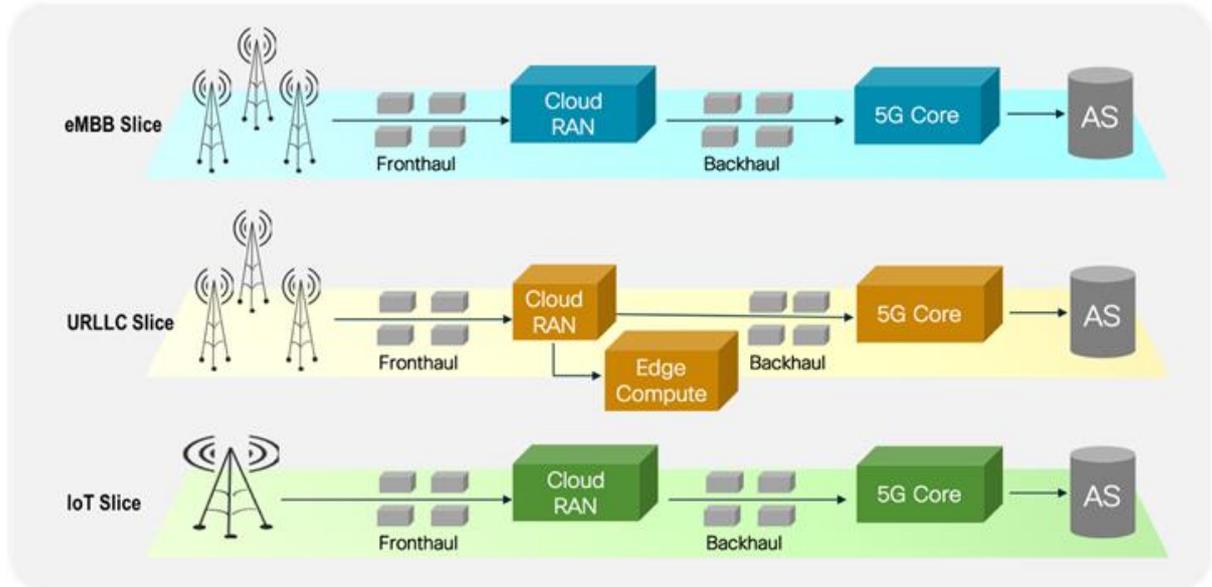
**6.11 Question 15: How are wholesale agreements for SMS termination currently structured?**

Charges for SMS messages are structured on a per unit basis. That is, “X” cents per SMS message. This structure is considered disadvantageous for MVNOs as the retail offering for SMS messages is typically that they are provided free.

The situation described above illustrates clearly that the MTAS per se is not a service that is acquired by MVNOs. That is, the MTAS is confined to termination only and as such ignores origination. As such, Commpete reiterates its view that an MVNO wholesale access service should be declared by the ACCC.

One of the key aspects of 5G which creates opportunities for MVNOs is network slicing. Network slicing allows a network operator to provide dedicated virtual networks with functionality specific to the service or customer over a common network infrastructure. Network slicing is illustrated in Exhibit 1 below.

**EXHIBIT 1 – Illustrative 5G network slices**



Note: eMBB (Enhanced Mobile Broadband), URLLC (Ultra Reliable Low Latency Communication) and IoT (Internet of Things)

Commpete submits that network slicing is the great 5G disruptor. It creates the ability to quickly secure virtual, dedicated slices of the wireless broadband network, on-demand, for a particular customer, an industry vertical or application, optimized for that usage. Moreover, such access may be dialled down again when it is no longer required. As highlighted by Cisco recently:

“5G is, ... an opportunity to align the technical use cases with economic gain, and an opportunity to drive new sources of network value via network slicing, automation, software-defined and disaggregated radio, and advanced applications such as augmented reality. 5G is an opportunity to look beyond the hype, beyond “speeds and feeds”, and discover 5G use cases that can add value .... 5G should provide the opportunity to drive and adoption of “neutral host” and shared infrastructure business models..... It’s an opportunity that may see establishment of “virtual” MNOs (VMNOs), changing the competitive landscape for today’s MNOs.”

In the 5G environment, competition will intensify at the service layer. Traditional communications services will continue to migrate to IP and new services will increasingly be created natively in IP. MNOs, MVNOs and OTT players will compete strongly with each other to provide the services that consumers demand. To meet the demands of consumers, all players will need to collaborate to develop new technical solutions and commercial models. As such there is a strong rationale for MVNOs (or future VMNOs) to be included within the MTAS service description.

**6.12 Question 16: Are there wholesale substitutes for SMS termination?**

In line with its response to question 12, Commpete notes that SMS message termination is a wholesale service. That is, MTAS which provides SMS message termination is a service provided by MNO’s to other MNO’s. In addition, MTAS is not offered to, or sought by, end-users.

Commpete does not believe that there any effective wholesale substitutes for the MTAS, as recognised globally by its inclusion within both the 4G and 5G standards. This follows from Commpete’s response to question 10 which notes that each MNO has exclusive control of the access to customers on its own network for the termination of SMS messages (and voice calls). There is simply no alternative for a given MNO to have SMS messages originating on their

networks to reach a “B Party” on a specific mobile network unless the operator of that network provides access.

**6.13 Question 17: Are there retail substitutes for SMS termination?**

As noted in its responses to questions 12 and 16, Commpete considers the MTAS to be a wholesale service. As such, Commpete does not believe that there are retail substitutes for SMS message termination especially since SMS is defined within and included in the 4G/LTE and 5G standard. That is, by definition retail markets are distinct from wholesale markets. Commpete submits that it is illogical to contemplate that a service in a retail market could be a substitute for a service in a wholesale market. This is because each market has different buyers and suppliers pursuing different purposes.

Further, Commpete submits that an “A Party” messaging a “B Party” via an OTT Internet-based message service, such as those provided by Viber or WhatsApp, is neither a practical or viable substitute for an SMS message delivered to the “B Party” by a mobile service provider on a mobile network. This is because the “B Party” must also be a registered or pre-enrolled user of these OTT services. This may work where the “A and B Parties” are known to each other. However, Commpete submits that this is not at all suitable for business purposes let alone emergency situations. Accordingly, Commpete reiterates its view that it is not possible for an “A Party” to send an SMS message to a “B Party” on a given mobile network unless the operator of that network provides access.

**6.14 Question 20: is the MTAS still an essential input to the MTM market? Is mobile voice termination still an essential input to FTM market? Will continued declaration of the MTAS promote competition in these markets?**

Commpete considers that the MTAS is still an essential input to the MTM market. This is because MNO’s continue to have a monopoly over the termination of voice calls and SMS messages on their respective networks. Any-to-any connectivity in the MTM market cannot be achieved unless MNO’s provide access to their networks to other MNO’s.

Commpete considers that mobile voice termination is still an essential input to the FTM market. This is because MNO’s continue to have a monopoly over the termination of voice calls (and SMS messages) on their respective networks. Any-to-any connectivity cannot be achieved in the FTM market unless MNO’s provide access to their networks to fixed network operators.

Commpete believes that continued declaration of the MTAS will promote competition in these markets. This is because MNO’s continue to have a monopoly over the termination on their networks and as such MNO’s could refuse access (or set unreasonable terms of access) and thereby damage competition.

**6.15 Question 22: Have reductions in the MTAS rate been passed on to consumers in the downstream markets?**

Commpete members pass on reductions in the costs of their wholesale services to their retail customers.

## **7. Summary of Key Points**

7.1 Commpete welcomes the opportunity to make this submission to the ACCC's MTAS declaration. The key points in in this submission that Commpete wishes to emphasise are the following:

- it is undeniable that MNOs continue to have a monopoly over the termination of voice calls and SMS messages on their respective networks;
- OTT Internet-based services are not practical substitutes for mobile services provided on mobile networks as evidenced for example, by the continuing inclusion of SMS within the 4G and 5G standards;
- the MTAS should continue to be regulated by the ACCC primarily because there is risk that MNOs could use their monopoly powers to refuse or set anti-competitive terms of access to their networks;
- SMS messages should continue to be regulated by the ACCC because the ACCC's rationale for SMS message regulation remains valid and MVNO wholesale SMS message charges remain significantly above regulated SMS message charges;
- MVNO wholesale access should be regulated by the ACCC in order to promote and strengthen competition in the mobile sector and to ensure that the benefits of the introduction of 5G services are sufficiently captured;
- The MTAS Service Description needs to be revised to better encourage innovative services;
- the duration of the MTAS declaration should be a period of three to five years, consistent with past practice and the absence of any concerns.

Please direct any questions regarding this submission to:

Michelle Lim

Chairperson  
Commpete

**21 September 2018**