

Commpete's submission to the Domestic Mobile Terminating Access Service Declaration Inquiry (Draft Report)

- 1 Commpete welcomes the opportunity to provide a submission to the ACCC's Draft Report in respect of its Domestic Mobile Terminating Access Service (**MTAS**) Inquiry.
- 2 The supply of voice and messaging services in Australia and overseas has substantially evolved since the previous MTAS Declaration. Overseas and (to a lesser extent) in Australia, there has been a proliferation of cloud-based mobile numbering and unified communications as a service (**UCAAS**) and application-to-person (**A2P**) SMS messaging that facilitate new, richer and more convenient and secure forms of communication between end-users. For example, cloud-based mobile numbering enables end-users to hold separate numbers for different uses, thereby minimising the implications of identity theft or data breaches. UCAAS allows businesses to communicate with their customers through a single, integrated platform, integrating with technologies their customers are familiar with, such as two-way SMS messaging.
- 3 The ACCC has the opportunity to use the declaration process to encourage the development of these innovative services in Australia. This would significantly enhance competition in retail voice telephony and messaging markets, facilitate the efficient use of telecommunications infrastructure and ultimately promote the long-term interest of end-users (**LTIE**).
- 4 Achieving these significant benefits for the LTIE requires the right regulatory enablers to be in place. More specifically, Commpete urges the ACCC to:
 - continue regulating mobile voice termination through inclusion within MTAS;
 - maintain SMS termination within MTAS, given that over-the-top (**OTT**) messaging does not impose a sufficient competitive constraint on the supply of retail SMS services, particularly to vulnerable consumers (such as low-income and elderly end-users) and business end-users of A2P messaging services; and
 - amend the MTAS Service Description to include termination from a point of interconnection (**POI**) to any Australian mobile number, to allow innovative market challengers, such as cloud-based mobile numbering providers, to fully interconnect with mobile network operators (**MNOs**).
- 5 Due to the five-year timeframe of declarations, the ACCC's proposal to remove SMS termination from MTAS and otherwise maintain the Service Description in its current form would represent a missed opportunity for Australian end-users of telecommunication services, both by denying end-users the benefits of innovative new services and by strengthening the ability of some MNOs to continue imposing barriers to competition and any-to-any connectivity.

Mobile voice termination

- 6 Mobile voice termination is critical to facilitating competition in retail mobile voice telephony markets. Over-the-top (**OTT**) voice services are not sufficiently substitutable with mobile voice services, particularly given that they lack certain features which are critical to mobile voice services, such as full any-to-any connectivity and availability via any mobile device (beyond smartphones). Accordingly, OTT voice services do not impose a sufficient competitive constraint on the supply and pricing of wholesale mobile voice termination services or on retail mobile voice services. In this context, declaration of mobile voice termination is necessary to enabling competition in downstream mobile voice telephony markets, facilitating any-to-any connectivity and ultimately promoting the LTIE.

SMS termination

- 7 Maintaining SMS termination within the scope of MTAS is essential to ensuring a workable level of competition in retail markets for SMS messaging markets, particularly in respect of vulnerable market segments such as low-income and elderly end-users who rely on person-to-person (**P2P**) SMS messaging and business end-users who rely on A2P SMS messaging to add significant value to their own customers.
- 8 Commpete considers that OTT messaging services are not sufficiently substitutable with SMS services, for the following reasons:
- OTT services are unable to provide true any-to-any connectivity, instead only allowing messages to be sent to other users on the same platform (who have the same application or are otherwise able to access the same service). This limits the ability of OTT messaging to substitute SMS messaging in all circumstances, both for P2P and A2P messaging.
 - OTT services can only be accessed through a smartphone with a data connection, which involves such services having a high indirect cost (even where the direct cost of sending/receiving a message is zero). This particularly limits the take-up of OTT services among vulnerable groups of consumers, such as a low-income or elderly consumers. Recent ACMA data (cited in the ACCC's Draft Report) suggests that almost three-quarters of Australians aged 65 and over do not use OTT messaging services. In addition, over a quarter of Australian SMS users, across all age groups, do not use OTT services at all.¹

¹ ACMA, *Communications Report 2017–18*, p. 54, <https://www.acma.gov.au/-/media/Research-and-Analysis/Report/pdf/Communications-report-2017-18-pdf.pdf?la=en>.

- 9 The limited substitutability between OTT messaging and SMS services means that SMS termination remains a bottleneck service and that MNOs do not have sufficient market-based incentives to ensure efficient pricing of retail SMS services across all market segments.
- 10 This is demonstrated by the ACCC's own research in its Draft Report, which suggests that retail SMS rates remain "*stubbornly high*" among mobile pay-as-you-go plans.² These plans are primarily targeted to low-income or elderly users who face a low level of OTT substitution.³ The persistence of high SMS prices in these market segments suggests that, for the most vulnerable consumers, OTT messaging services are not a sufficient competitive constraint on the supply of SMS services. Continued declaration of SMS termination is therefore needed to promote the LTIE.
- 11 Maintaining SMS termination within the scope of MTAS is also necessary to enable the continued growth of A2P messaging services, which provide significant (and increasing) consumer benefits (e.g. two-factor authentication, critical communications and notifications from financial institutions and government agencies, etc). A2P messaging services rely on the SMS protocol due to its ubiquitous availability, any-to-any connectivity and high level of trust and security it creates for end-users and recipients.
- 12 While A2P messages can be transmitted on an "on-net" basis (where a single MNO controls both the origination and the termination), this is detrimental to competition. Off-net transmission, which relies on access to MTAS, allows a broader range of players (beyond MNOs) to be involved in the origination of A2P messages. Off-net transmission also allows for a higher level of competitive differentiation, as competition occurs over a greater and more meaningful portion of the supply chain (right up to the "last mile" of termination).
- 13 In Commpete's view, the ACCC should not be encouraging the proliferation of on-net supply structures, which reduce the ability for competitive differentiation and effectively allow MNOs to control the transmission of A2P messages on an end-to-end basis. Regulated SMS termination (as part of MTAS) is necessary in order to encourage interconnection at the network level between MNOs and alternative A2P service providers, and therefore bolster innovation and true competition in A2P messaging markets.
- 14 Continued inclusion of SMS termination within the MTAS would therefore have significant benefits for the LTIE. Increased use of off-net supply structures would directly benefit end-users of A2P messaging, who are typically businesses (e.g. financial institutions, airlines, real estate agents, etc) or government agencies. In particular, such organisations would have access to a more diversified, rich and competitive range of services for their A2P messaging needs.

² ACCC, Domestic MTAS Declaration Inquiry, Draft Report, 2 May 2019, p. 19.

³ ACCC, Domestic MTAS Declaration Inquiry, Draft Report, 2 May 2019, p. 18 ("*... despite average price declines overall, for consumers on pay-as-you-go (PAYG) pre-paid plans, the price of calls and SMS remains high*").

- 15 In addition, increased competition and competitive differentiation in respect of A2P SMS messaging would create follow-on benefits for recipients of A2P SMS messages (i.e. the downstream customers of the entities purchasing A2P messaging services). This is because, as outlined above, A2P SMS messaging results in increased convenience and security for such recipients, ultimately generating increased consumer benefit in downstream and adjacent markets.

MTAS Service Description

- 16 Commpete considers that the MTAS Service Description should be amended to become truly technology-neutral and allow innovative new services to interconnect with existing MNO voice and SMS services. More specifically, Commpete supports MNF Group’s submission to amend the Service Description to:
- describe MTAS in a technology-neutral manner, as *“the carriage of voice calls and SMS messages from a point of interconnection, or potential point of interconnection, to an Australian mobile number allocated to the access provider by the ACMA in accordance with the Numbering Plan”*; and
 - define the MTAS *“point of interconnection” (POI)* as a location which:
 - is physical point of demarcation between the access seeker’s network (or a network nominated by the access seeker) and the access provider’s network that allows voice calls and SMS messages to be transferred to the access provider’s network; and
 - is associated with (but not necessarily co-located with) one or more gateway exchanges between the access seeker’s network (or a network nominated by the access seeker) and the access provider’s network.
- 17 It is particularly critical that the Service Description be amended to include the carriage of voice calls and SMS messages from a point of interconnection *to any Australian mobile number* (allocated to the access provider under the Numbering Plan), rather than only to B-Parties directly connected to a digital mobile network.
- 18 This amendment would allow market challengers and other emerging service providers (e.g. providers of cloud-based mobile numbering) to interconnect with MNOs, whether by terminating their communications onto an MNO’s radio access network, or providing termination services to communications originating on an MNO network.
- 19 This would unleash services-based competition in respect of voice telephony and SMS messaging services, as it would allow a wide range of cloud-based mobile numbering providers to compete with existing MNO-supplied voice and SMS services. Increased services-based

competition in retail voice telephony and SMS messaging markets is a key factor that the ACCC must consider as part of the objective of promoting competition in markets for carriage services or services supplied by means of carriage services (one of the elements of the LTIE analysis).⁴

- 20 In addition, as demonstrated by its increasing adoption overseas and in Australia, cloud-based mobile numbering facilitates a range of new and innovative use-cases, from allowing end-users to have separate numbers for different functions, to allowing businesses to provide integrated cloud-based communications solutions that enhance productivity, convenience and security. Cloud-based numbering therefore has the potential to drive increased services-based competition in respect of voice and SMS services, generate increased benefits for consumers and maximise the economically efficient use of telecommunications infrastructure.
- 21 Commpete is very concerned that the current Service Description has been interpreted by some MNOs to deny market challengers the ability to interconnect their services with those of MNOs. This ultimately allows MNOs to maintain and strengthen their market power, in a manner that restricts services-based competition, hinders any-to-any connectivity and results in inefficient use of existing telecommunications infrastructure.
- 22 Commpete therefore urges the ACCC to consider amendments to the MTAS Service Description that would correct these imbalances and more fully promote the LTIE.

⁴ *Competition and Consumer Act 2010 (Cth)*, section 152AB(2)(c).