

Response to the MTAS Declaration Inquiry Draft Report 2 May 2019



YOUR MESSAGE,
ON TIME, EVERYTIME!

Smart Messaging Services Pty Ltd

ABN 56 122 125 240

Level 5, 171 Collins Street
Melbourne VIC 3000 Australia

Phone: 1300 015 013

International: +61 3 9999 7762

Fax: +61 3 8616 0762

www.intellisms.com.au

1. Intelli Messaging

Intelli Messaging is an Application to Phone (**A2P**) SMS service provider operating in the Australian Market. It provides SMS carriage services to the public and corporations to allow SMS messaging to be sent to, and receive from, mobile phones from computer applications.

More about Intelli Messaging company can see from its website, www.intellisms.com.au.

2. Executive Summary

It is the view of Intelli Messaging that A2P SMS should remain a declared service and that many of the comments made by the ACCC in the Domestic Mobile Terminating Access Service Declaration Inquiry Draft Report (**Draft Report**) is likely to support a decision to remove A2P messaging, which is incorrect and mis-informed.

The Draft Report states that:

“Declaration of MTAS also seeks to mitigate the MNOs’ incentives to deny interconnection, or to set unreasonable terms for providing interconnection, particularly to smaller networks or providers with less bargaining power, such as new MNO entrants.”

Of all services that should remain declared, A2P SMS has the strongest case because it is in the long-term interests of end-users (**LTIE**) and supports in the ACCC’s achievement of its three objectives, being:

- *“promoting competition in markets for telecommunications services,*
- *achieving any-to-any connectivity, and*
- *encouraging the economically efficient use of, and economically efficient investment in, telecommunications infrastructure.”*

3. The ACCC’s reasoning for removing A2P SMS from the current list of declared services:

Below is the ACCC’s reasoning for removing A2P SMS from the current list of declared services:

The key reason for this position is the growth in the use of OTT messaging services that we consider have emerged as substitutes for SMS services in the retail market. Because OTT messaging services do not rely on MTAS to connect with end-users on other networks, SMS termination no longer represents a bottleneck to accessing the end-user.

Further, A2P messaging services do not rely solely on MTAS to deliver services to the customers of end-users. The majority of A2P SMS currently sent are on-net messages delivered to customers on each MNO’s network rather than being sent between MNOs’ networks

The markets have changed considerably since SMS termination was declared in 2014. In particular, smartphone penetration and the use of non-SMS messaging services have increased significantly. For example, OTT services such as Facebook Messenger, iMessage, WeChat and WhatsApp are widely used and do not rely on MTAS to access other end-users.

SMS on the other hand, still depends on MTAS and an MNO can control access to its end-users. However, if the cost of contacting another end-user via SMS is too high (for instance, if wholesale prices increase), then an end-user can choose to use a messaging service not dependent on MTAS. Competition from these OTT services operates to constrain MNOs from raising retail prices.

SMS is used between end-users (person-to-person or P2P) and for mobile SMS marketing via an application (application-to-person or A2P). A2P SMS services in the retail market include appointment reminders, password verification, marketing and advertising to customers with consent and also unsolicited commercial messages (spam).

The interaction between A2P messaging services in retail markets and MTAS is more complex than P2P SMS. As noted above, MTAS is not required if A2P messages are sent by an MNO on behalf of an A2P provider to end-users on its network. However, MTAS is required if A2P messages are sent by an MNO on behalf of an A2P provider to end-users on another MNO's network. Further, A2P SMS is not the only means by which businesses conduct mobile marketing. They also use alternative services such as email, MMS, social media and OTT services.

For both P2P and A2P SMS, we have found that MTAS no longer represents a bottleneck to accessing an end-user for messaging purposes. Regulation may be required if an essential wholesale service represents a bottleneck to downstream retail services.

Given this, the ACCC is of the draft position that extending declaration of SMS termination services would not be in the LTIE because:

- it is not required to align wholesale prices more closely with efficient cost of the service in order to promote competition in the downstream retail market for mobile services,*
- it is not needed to achieve any-to-any connectivity as MNOs are not able to set unreasonable terms or conditions of access to SMS termination services, and*
- MNOs have limited incentive to set above-cost prices of providing SMS termination and it is not needed to promote the efficient use of, and investment in, telecommunications infrastructure.*

Intelli Messaging disagrees with all of the ACCC's reasoning cited above and believes not enough businesses, like Intelli Messaging, have provided input in the review process. Thus, the ACCC's decision is lacking in important industry input which we hope to correct. The addition of A2P in the MTAS in 2014 has had a huge impact to competitiveness in the market and reduced pricing of A2P SMS service offered to the end user, despite the fact that Optus and Vodafone are unfairly restrictive as to who they will connect to their commercial A2P interface. To remove the declaration would reverse this impact and guarantee no further price productivity gains for businesses to send message to their customers' mobile phone numbers, which is the most common medium of choice by the recipient for communication.

4. Use of off-net compared to on-net A2P SMS messages

ACCC's position – *“A2P messaging services do not rely solely on MTAS to deliver services to the customers of end-users. The majority of A2P SMS currently sent are on-net messages delivered to customers on each MNO's network rather than being sent between MNOs' networks”*

It is incorrect for the ACCC to say most A2P SMS messages are sent on-net. They are, in fact, mostly sent off-net. Pivotal currently has about 35% of the A2P market share and sends almost 100% of its traffic off-net. As an Australian aggregator, Message Media and its subsidiaries, currently have at least another 20% market share of the A2P SMS message sector and most of its messages are sent [off-net] by Telstra to their subscribers and those on Vodafone and Optus.

Vodafone also carries significant traffic that they deliver off-net, including through their international service called Vodafone Hub. Both Optus and Telstra offer Web Applications and simple api connections for direct customers including large corporates, for A2P messaging. The re-introduction of commercial interconnect fees above the current declared service pricing between the carriers must have an on flow effect to the pricing for their direct customers.

We estimate that Vodafone delivers multiple times more traffic off-net than on-net. This is due to Vodafone offering a cheaper SMS service than Telstra. To clarify, the ACCC should request from each MNO the current volumes each is sending on-net and off-net via A2P Application Interfaces. This would give an indication of the consumer demand for A2P SMS off-net messaging services.

ACCC's position - *“SMS on the other hand, still depends on MTAS and an MNO can control access to its end- users. However, if the cost of contacting another end-user via SMS is too high (for instance, if wholesale prices increase), then an end-user can choose to use a messaging service not dependent on MTAS. Competition from these OTT services operates to constrain MNOs from raising retail prices.”* . *“For example, OTT services such as Facebook Messenger, iMessage, WeChat and WhatsApp are widely used and do not rely on MTAS to access other end-users.”*

The use of OTT for A2P messaging is currently very limited and almost non-existent. Arguably, it is more limited in its relative use than OTT applications used for voice calls. SMS is the only ubiquitous and commercially sensible way to send A2P short messages to mobile handsets for the following reasons:

- (a) The OTT application providers currently limit access to their A2P service;
- (b) Most of the OTT applications do not allow addressing of the messages by the mobile phone number;
- (c) The one OTT application is not used by all mobile subscribers making it impossible deliver messages reliably to the sender's full audience;
- (d) The read rate for OTT application messages is much lower than SMS;
- (e) Not all OTT applications allow A2P messaging, or, if they do, A2P messaging is provided on an uncommercial basis. For example, iMessage, the most used OTT application, does not allow A2P messaging. Whatapp's A2P service is in beta mode

only and, as with all the other OTT applications, has a lot of restrictions in its use. Facebook Messaging requires the message recipient to be following the A2P message sender to allow messages to be set.

OTT services are not retail substitutes for SMS services such that regulatory intervention in the wholesale market is still required to promote the LTIE.

5. Cost of A2P SMS

ACCC's position - *"MNOs have limited incentive to set above-cost prices of providing SMS termination and it is not needed to promote the efficient use of, and investment in, telecommunications infrastructure"* and *"it is not needed to achieve any-to-any connectivity as MNOs are not able to set unreasonable terms or conditions of access to SMS termination services,"*

MNO's currently price A2P messaging services at extremely inflated prices. The current minimum price is █ cents per message compared with a cost of just █. Prior to the declaration in 2014, the minimum price was █ cents per message on-net and █ cents per message off-net. The price drop was caused by the introduction of SMS into MTAS in 2014 where Pivotal gained access to the SMS MTAS service, and where the individual carriers for the first time offered the same price for off-net and on-net traffic. The Declaration created competitiveness between the MNO's as well as with Pivotal, our smallest MNO, for SMS A2P services. Given there are now 4 MNO competitors in the market one would expect the price would drop further. However, it has now be stable at this price for about 2 years. We believe as others seek access to the Declare A2P service and then gain market share, the price will continue to fall to expected world-wide industry margins – somewhere between █ to █ per message at the aggregation level.

ACCC's position - *"it is not required to align wholesale prices more closely with efficient cost of the service in order to promote competition in the downstream retail market for mobile services"*,

Since the introduction of SMS to MTAS in 2014 we have also seen a 100% growth in the use of A2P in Australia. A large part of the reason in the increase has been the reduced cost for businesses, the main users of A2P messaging, to send SMS via an application. This is evidence of the positive effect of adding A2P SMS service to MTAS.

6. Conclusion

While SMS remains the only ubiquitous method to deliver short messages from an application to a mobile handset, it will remain essential that the service remains declared under MTAS to avoid MNO imposed restricted access and excessive pricing, as put by the ACCC:

ACCC's position - *"In the absence of regulation, 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"* .

It is our belief that a differential of 66 times between the cost and the wholesale price of the A2P SMS service is evidence of very high pricing still existing even though the wholesale price has reduced from 120 times since the 2014 declaration.

While the ACCC notes that in the absence of declaration, prices for SMS termination would be a matter for commercial negotiation and any price increase that would effectively prevent any party (such as Pivotel) from competing in the A2P SMS market and that this may indicate anti-competitive conduct and warrant investigation under Part XIB of the CCA, we are of the view that it is unreasonable for a service provider to have to rely on an investigation under Part XIB of the CCA where a declaration could prevent such anti-competitive conduct.

If the ACCC does not wish to take our word alone on the incorrectness of their current assumptions then we highly recommend they do a proper factual enquiry and request more supportive information from the MNOs and industry stakeholders. It is in the financial interests of a few organisation in the market for the A2P Declared pricing to be removed and Intelli Messaging believes it is mainly these parties that have currently made submissions to the enquiry.