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Dear Sir, Madam,

Lycamobile Pty Limited (hereafter: Lycamobile) would like to take this opportunity to comment on the Draft Access Determination Explanatory Statement, dated 23 September 2011.

### **Introduction**

Lycamobile, duly registered as CSP under the Act, operates as a full Mobile Virtual Network Operator (MVNO) on the Telstra radio network and is operating its own mobile core infrastructure in Australia and its own Mobile Network Codes and MSISDNs. Lycamobile started its operation in Australia in November 2010. In this position Lycamobile is a provider of MTAS and, although not specifically addressed in the Determination, considers itself subject to the FAD.

With this response to the Draft Access Determination Lycamobile want to explain how the Determination fails to address the specific position and business model of MVNOs in the Australian market and how the Determination fails to recognize the legitimate business interests of Lycamobile and thereby jeopardizes competition and (efficient) investment in infrastructure.

### **Position of MVNO versus MNOs**

A MVNO behaves as a normal MNO, with the exception that the MVNO does not own a mobile radio license and radio network. In order to offer mobile telephony services a MVNO relies on the radio access offered on a wholesale basis by an established MNO. Such wholesale mobile radio access is typically charged at a per minute fee for both voice originating and terminating scenarios. Wholesale mobile radio access is not a declared service.

### **Cost model for regulating MTAS**

Lycamobile agrees with ACCC that incremental costing is the correct tool to regulate MTAS, provided such model allows for proper allocation of common cost and a reasonable rate of return on investments made. The 'pure' LRIC model, as proposed by the European Commission, does not incorporate these elements, thus arriving at extremely low levels of MTR. More and more local European appeal courts are rejecting the 'pure' model for this reason.

### **MVNO business model**

Contrary to the MNO business model, which is mostly based on sunk investments in licenses and (radio) network equipment, the MVNO business model is based on the 100% incremental wholesale mobile radio access charge. Since wholesale mobile radio access is not a declared service, nor is it linked in any way to the MTAS regulation, the efficiencies enforced in the price for MTAS through regulation are not (automatically) reflected in the radio access charges. The fast and steep decline of the price for MTAS causes immediate margin squeeze for MVNOs and at some point will force MTAS to become a subsidized service, when regulated price for MTAS falls below radio access charges. [**CONFIDENTIAL**

When regulating the price for MTAS, especially when applying incremental costing methodologies, close attention must be paid to the, due to its nature, specific incremental business model of MVNOs and the potential of margin-squeeze and/or forced subsidization. The only correct way to determine the price of MTAS for a MVNO is to base the cost model on the actual wholesale mobile radio access charge. It is fair to assume that in this case asymmetric MTAS prices will be calculated for MNOs and MVNOs, but will create the desired competitive pressure on the MNOs to adjust radio access charges to reflect similar efficiencies as for MTAS in order to restore symmetry, without the need for regulatory intervention in the wholesale mobile radio access services.

### **Conclusion on the Draft Determination**

Lycamobile recognize and agree with the market developments as described by ACCC under 3.1 (2007 WIK Model) since the 2007 WIK model was produced, however notice that ACCC have missed the introduction of full MVNOs in the Australian market since 2007. As a result, the position of MVNOs and the consequences of the new Determination for MVNOs have not been considered.

Had ACCC considered and investigated the presence of MVNOs in the market, in line with the criteria to be considered when making an FAD (as outlined in 2.3), ACCC would have to conclude that the current Draft Determination does not have regard to the direct cost of providing access to the declared service for MVNOs in general and Lycamobile in particular (2.3.(d)) and, considering the proposed glide path for MTAS price will force Lycamobile in a cross-subsidization model and thereby immediately affecting Lycamobile's competitive position towards its competitors (i.e. established MNOs), the current Draft Determination does not have regard to the legitimate business interests of Lycamobile.

Lycamobile would welcome to work closely with ACCC in a further investigation in the MVNO business model and consequences of the current Draft Determination to arrive at an alternative cost model and glide path that respects the position of Lycamobile and is in line with the criteria for making an FAD. Lycamobile will be happy to share with you, on confidential basis, all relevant pricing elements and investments made for the MVNO setup in Australia. For this you may contact our representative listed at the end of this letter.

### **Final note**

In response to ACCC's considerations regarding FTM pass-through (6.2) Lycamobile note that by experience the decrease of the MTAS price through regulatory glide paths is typically not (or only in part) passed on to the fixed line consumer. This will negatively affect the objective of achieving consumer benefits and will result in a cross subsidization of mobile carriers and CSPs to fixed line operators, disrupting the level playing field in telecommunication services. Lycamobile appreciate that the scope of the current FAD cannot include regulatory measures on pass-through of cost benefits by fixed line operators, but would like to stress the necessity of putting proper safeguards in place. Lycamobile is of the opinion that retail FTM prices must reflect the direct wholesale cost reduction in full in order to maximize consumer benefit and maintain the level playing field. Whether a sub cap

methodology is the (most) appropriate and/or proportionate obligation cannot be determined without careful analysis and investigation.

With this information we trust to present a clear view and explanation of the consequences of the Draft Determination for Lycamobile. In case you have any questions or remarks or wish to contact Lycamobile to investigate a dedicated MVNO model, please contact our representative below.

Your sincerely,  
Lycamobile Pty Limited



Chris Tooley  
Director

**Lycamobile representative:**

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*Please note our representative is working from the CET time zone*