

# **Further Submission to the ACCC's Inquiry on the Access Determination for the Domestic Mobile Terminating Access Service**

## **Public Version**

**MNF Group Limited**

10 July 2020

## Executive summary

- MNF Group Limited (MNF) supports the ACCC's proposal to reduce the MTAS price to 1.2 cents per minute but notes that a lower price of 0.75 cents per minute is justified .
- MNF supports the ACCC's decision to reject the option of merely rolling over the existing MTAS final access determination (FAD) and instead use an international benchmarking approach to estimate the MTAS price.
- MNF has some concerns with certain aspects of the benchmarking approach taken by Analysys Mason (AM) in its report prepared for the ACCC.<sup>1</sup>
- MNF welcomes the ACCC's acknowledgment of the important role that mobile virtual network operators (MVNOs) have in enhancing competition and agrees with the ACCC view that smaller fixed providers, MVNOs and downstream players play an important role and are valuable stakeholders to be considered in the MTAS setting process in the Long term Interests of End Users (LTIE).
- MNF supports the ACCC's decision to retain the non-price terms and conditions in the next MTAS FAD.
- MNF strongly disagrees with the ACCC's proposed 1 January 2021 commencement date of the MTAS FAD and instead proposes that the effect of the MTAS price reduction be backdated to 1 July 2019.
- MNF believes that next MTAS FAD should have an expiry date of 30 June 2022 which allows for a further review of the MTAS price prior to the expiry of the current MTAS service declaration.

## Introduction

- 1 MNF Group (MNF) appreciates the opportunity to make this further submission to the ACCC's public inquiry on the access determination for the domestic mobile terminating access service (MTAS). This submission responds to the ACCC's draft report of May 2020 (Draft Report).<sup>2</sup> MNF supports the ACCC's proposal to reduce the MTAS price to 1.2 cents per minute (cpm) but notes that a lower price is justified. The proposed MTAS price reduction is consistent with the evident downward pricing trend which in turn is consistent

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<sup>1</sup> Analysys Mason, Benchmarking the cost of providing the MTAS in Australia, May 2020

<sup>2</sup> ACCC, *Public inquiry on the access determination for the domestic mobile terminating access service*, Draft report, May 2020

with recent market trends such as operational efficiencies, technological developments and economies of scale and as such aligns with rational market expectations.

- 2 MNF notes that in reaching its draft position on the MTAS price, the ACCC has considered different points of view from stakeholders in relation to a number of important matters. In this submission, MNF makes comments in response to many of these matters which lend support to the ACCC's proposed position. MNF believes that specific adjustments should be made to the benchmarking approach which is needed to more accurately reflect the cost of the MTAS. Moreover, MNF disagrees with the ACCC's draft view on the commencement date of the MTAS FAD and proposes an alternative approach. On this basis, this submission is structured into the following main parts:

- MNF overview and relevance of MTAS;
- MTAS FAD rollover;
- Use of benchmarking approach;
- Application of benchmarking approach;
- Role of MVNOs and wholesale access;
- Non-price terms and conditions; and
- Commencement date of the MTAS FAD.

## MNF overview and relevance of MTAS

- 3 MNF was first listed on the Australian Securities Exchange (ASX) in May 2006 and provides voice communications, broadband Internet, and cloud-based communications services to residential, business, government and wholesale customers. The company owns and operates the largest VoIP (voice over Internet Protocol) network in Australia. MNF's ASX code is MNF and it has a current market capitalisation of approximately \$450 million.
- 4 MNF operates across three independent business segments – Domestic Wholesale, Global Wholesale and Domestic Retail. All segments operate in MNF's core area of specialisation, i.e., new and disruptive voice communications through software development and network deployment.
- 5 MNF is interconnected to all major mobile and fixed communications networks in Australia. The company has interconnection agreements with all three of Australia's mobile network operators (MNOs), i.e., Telstra, SingTel Optus and Vodafone Hutchison Australia (VHA). Under these agreements MNF acquires *inter alia* the MTAS which enables traffic originating on its VoIP network to terminate on the mobile networks operated by the MNOs. As MNF's

customer base continues to grow, MNF's MTAS payments to the MNOs also continues to grow.

- 6 MTAS also impacts MNF's activities in its capacity as an MVNO. MNF acquires from the MNOs a range of wholesale mobile network services which in turn are resold to its retail (and wholesale) customers. In the absence of regulated wholesale mobile access, the MTAS price is a key point of reference for MNF in commercially negotiating the prices of wholesale mobile services with MNOs. For example, the MTAS price may be used to estimate a charge for a wholesale on-net call. Such a charge may be estimated as double the MTAS price as the on-net call comprises both origination and termination components and the cost of each component is considered to be the same.
- 7 The regulated MTAS price has a significant direct impact on MNF's operating costs. In its role as an interconnecting network operator the MTAS price determines the amount MNF pays for the MTAS service. At the same, in its role as an MVNO, the MTAS price is used as a basis for determining the amount that MNF pays MNOs for access to wholesale mobile services.

## MTAS FAD rollover

- 8 In determining the MTAS price the ACCC considered the option of simply extending the expiry date or rolling over the current MTAS FAD. Such an approach while evidently supported by some stakeholders was rejected by the ACCC. MNF considers that rolling over the MTAS FAD would be administratively expedient for the ACCC but would carry with it significant negative consequences. The ACCC has rejected the roll-over option for several reasons including:
  - it would not be in the long-term interests of end users (LTIE) as it would entrench the MTAS price at a level higher than its cost; and
  - a lower MTAS would benefit downstream markets.
- 9 MNF agrees with and supports the ACCC's decision to reject the option of rolling over the MTAS FAD and the reasons on which this decision is based. In addition, MNF submits that given the very clear downward trend in the MTAS price, were the ACCC to take the roll-over option it would arguably be failing its statutory responsibility to protect competition and as such would establish a dangerous precedent. MNF also submits that stakeholder arguments in favour of the roll-over option are essentially self-serving arguments to protect existing MTAS revenue streams. MNF believes that rolling over the current MTAS price would forgo the opportunity for MTAS price reductions to promote competition in fixed and mobile markets because cost savings would be passed through to consumers.

## Use of benchmarking approach

- 10 The ACCC has used an international benchmarking approach to estimate its proposed MTAS price of 1.2 cpm. This approach has been adopted while acknowledging that a cost modelling exercise is likely to produce the most accurate cost estimate for the MTAS. The ACCC rationalises its use of the benchmarking approach on the grounds that cost modelling at this point of time would not adequately incorporate 5G technology and would quickly become obsolete. The ACCC considers that the required investment in resources and time in developing a cost model cannot be justified. The ACCC notes that it intends to explore cost modelling once 5G deployment is more advanced.
- 11 MNF agrees with supports the ACCC's use of an international benchmarking approach to estimate its proposed MTAS price. This is a practical and sensible alternative to engaging stakeholders in the development of a cost model. In particular, MNF considers that the cost and time involved in cost modelling cannot be justified. Moreover, MNF believes that cost modelling would not necessarily result in a materially better MTAS cost estimate than benchmarking. MNF also notes that while benchmarking necessarily involves subjective judgements on a wide range of matters it is most likely that these would be fewer than those involved in cost modelling as it is a considerably more complex exercise.
- 12 MNF welcomes the ACCC's view that it is minded to explore cost modelling at time when 5G deployment is more advanced. MNF urges the ACCC to make provision for such an exercise in order to ensure that its work may be completed before the expiry of the next MTAS FAD. That is, the ACCC should avoid having to extend the expiry date of the next MTAS FAD in order to complete its administrative processes. The scheduled switch off of 3G networks by Telstra<sup>3</sup> (which will also be followed by Singtel Optus and VHA in due course) should also be a further milestone for review by the ACCC.

## Application of benchmarking approach

- 13 As noted above, MNF supports the ACCC's decision to use a benchmarking approach to estimate the MTAS price. However, MNF has specific concerns with how the benchmarking approach has been applied. Such concerns which are discussed below are informed by an expert report prepared by CEG which has been submitted separately to the ACCC as part of this inquiry.
- 14 AM has made PPP adjustments to enable meaningful comparisons of MTAS costs between different countries. The approach taken by AM is a broad-based GDP PPP which reflects overall "whole of economy" costs. MNF contends that it would be more appropriate to

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<sup>3</sup> Refer to: [www.telstra.com.au/business-enterprise/news-research/networks/announcements/3g-service-closure](http://www.telstra.com.au/business-enterprise/news-research/networks/announcements/3g-service-closure)

adopt a PPP specific to the communications sector as this would more accurately reflect the costs of communications services such as the costs of the MTAS.<sup>4</sup>

- 15 AM has made an adjustment to allow for variation in costs across areas with different population densities. This is necessary as the jurisdictions included in the benchmarking exercise have vastly different population distributions to Australia. The adjustment is made by classifying geographic areas as being within a particular “geo-type” and model the cost of providing services in each of those geo-type areas.
- 16 AM has adjusted the cell radii of the “most rural” geo-type in each jurisdiction to reflect a cell radii for Australia. MNF believes that it would be more appropriate to adjust the cell radii in the “most rural” geo-type to be in line with the number of sites observed in SingTel Optus’ network as this would more accurately reflect Australia’s population distribution.
- 17 MNF notes that the ACCC has adopted the 75<sup>th</sup> percentile of the estimated MTAS cost range for 2020 as its proposed MTAS price. MNF notes that this is an unwarranted departure from the usual practice of adopting the mid-point or 50<sup>th</sup> percentile.
- 18 MNF believes that in finalising its proposed MTAS price, the ACCC should have placed greater weight on the results from the UK model. This is because the MTAS rates previously set by the ACCC most closely follow the trajectory of modelled MTAS costs in the UK.
- 19 After making adjustments *inter alia* for the above factors, CEG estimates that a more reasonable estimate of the MTAS price is 0.75 cpm.

## Role of MVNOs and wholesale access

- 20 MNF welcomes and supports the ACCC’s acknowledgement in the Draft Report of the important role that MVNOs play in Australia’s mobile communications ecosystem. In particular, the ACCC expresses the view that a reduction in the MTAS price would enable MVNOs to “... provide more competitive offerings.”<sup>5</sup> This view is made partly in response to submissions from stakeholders to the effect that a reduction in the MTAS price would be of no benefit to MVNOs as they do not pay or receive MTAS payments.

<sup>4</sup> MNF notes that such an approach would be consistent with the recent debate in the United Kingdom where the Office of National Statistics (ONS) has acknowledged errors in its computations and that instead of prices for telecoms services falling by a little more than half between 1997 and 2016, they actually fell by 95 per cent. Thus inflation applicable to the sector is much lower. See [www.ft.com/content/108a35e5-2aa0-4b82-9410-bee0e86d54b9?fbclid=IwAR2vXd7y-l6npVQybuOb3S68WMMYJzjJ8S1FsTUjil0K-nxJHU1Akn-8fM](http://www.ft.com/content/108a35e5-2aa0-4b82-9410-bee0e86d54b9?fbclid=IwAR2vXd7y-l6npVQybuOb3S68WMMYJzjJ8S1FsTUjil0K-nxJHU1Akn-8fM) See also [www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/articles/improvementstothemeasuremen tofukgdp/anupdateonprogress](http://www.ons.gov.uk/economy/nationalaccounts/uksectoraccounts/articles/improvementstothemeasuremen tofukgdp/anupdateonprogress)

<sup>5</sup> ACCC, Draft Report, page 2

- 21 In support of the ACCC's view on MVNOs, MNF notes the views of Telstra regarding MVNOs. In particular, the web page of Telstra's wholesale business notes the following:

*"MVNOs play a key role in the global mobile market as well as being a major part of the vibrant market here in Australia."*<sup>6</sup>

- 22 In support of the ACCC's rejection of the argument that a reduction in the MTAS price would not benefit MVNOs, MNF reiterates its view as expressed above in this submission that in its role as an MVNO, the MTAS price is particularly relevant for MNF as a key reference point in commercially negotiating charges for access to wholesale mobile services. Indeed, MVNOs seeking access to wholesale mobile services have little choice other than to rely on the regulated MTAS price as there is no regulated access to these services.
- 23 MNF considers that MVNO access to 5G networks is also critical in order to promote increased competition in the growing 5G Fixed Wireless Access (FWA) services segment in Australia following launches of such 5G FWA services by Singtel Optus<sup>7</sup> and plans by Telstra<sup>8</sup> and the merged TPG-Vodafone<sup>9</sup> to do so. MNF considers that competition in this market segment would materially increase if the ACCC was minded to review the current non-compete provision in the Telstra-NBN agreement<sup>10</sup> which places restrictions on Telstra in this area. Globally there has been a huge increase in such services which currently number over 100 million users.<sup>11</sup> Moreover, the International Telecommunication Union (ITU) considers that deployment of FWA as complimentary and that substitute broadband networks is one of the key initiatives of the COVID-19 recovery phase.<sup>12</sup> Australia is likely to see substantial increases in the take up of 5G FWA services in the near to medium term.

<sup>6</sup> Refer to: [www.telstrawholesale.com.au/wholesaleconnect/category/news/supporting-the-booming-demand-for-mobile-services-with-a-new-mob.html](http://www.telstrawholesale.com.au/wholesaleconnect/category/news/supporting-the-booming-demand-for-mobile-services-with-a-new-mob.html)

<sup>7</sup> Refer to: [www.optus.com.au/broadband-nbn/5g-home-broadband](http://www.optus.com.au/broadband-nbn/5g-home-broadband)

<sup>8</sup> Refer to: [www.afr.com/companies/telecommunications/telstra-taunts-nbn-with-5g-fixed-wireless-plan-20200227-p544zu](http://www.afr.com/companies/telecommunications/telstra-taunts-nbn-with-5g-fixed-wireless-plan-20200227-p544zu)

<sup>9</sup> Refer to: [www.theage.com.au/business/companies/15b-vodafone-tpg-merger-to-go-ahead-after-acc-decides-not-to-appeal-20200305-p5471m.html](http://www.theage.com.au/business/companies/15b-vodafone-tpg-merger-to-go-ahead-after-acc-decides-not-to-appeal-20200305-p5471m.html)

<sup>10</sup> The binding definitive agreement in 2011 with NBN Co states: "Telstra may not promote wireless services as a substitute for fibre-based services for 20 years from the commencement date, but otherwise remains free to compete in the market for the supply of wireless services."

<sup>11</sup> GSA, *Industry Report to determine the extent of FWA services*, 19 May 2020. The GSA has identified 401 operators in 164 countries selling FWA services based on LTE and of the 75 operators who had launched 5G services globally in May 2020, 38 operators that have announced the launch of either home or business 5G broadband using routers and [www.linkedin.com/pulse/fixed-wireless-access-reaches-more-than-100-million-users-minehane/](https://www.linkedin.com/pulse/fixed-wireless-access-reaches-more-than-100-million-users-minehane/)

<sup>12</sup> Refer to ITU, GSR2020 Discussion Paper, *Pandemic in the Internet Age: communications sector responses*, Geneva, June 2020, page 27. Available at [https://reg4covid.itu.int/wp-content/uploads/2020/06/ITU\\_COVID-19\\_and\\_Telecom-ICT.pdf](https://reg4covid.itu.int/wp-content/uploads/2020/06/ITU_COVID-19_and_Telecom-ICT.pdf)

## Non-price terms and conditions

- 24 The ACCC proposes to retain the non-price terms and conditions (NPTCs) in the new MTAS FAD. The ACCC reasons that the NPTCs “... appear to provide a useful set of terms and conditions for commercial negotiation for both access seekers and access providers of the MTAS as well as other service providers such as the MVNOs.”<sup>13</sup> The ACCC notes Telstra’s views on the NPTCs including that there is no reason to make changes to the NPTCs and further notes that “No other stakeholders commented on this issue.”<sup>14</sup>
- 25 MNF agrees with and supports the ACCC’s position to retain the NPTCs in the new MTAS FAD. This is because MNF considers that the NPTCs provide an important reference point for non-network operators when negotiating mobile access agreements with the MNOs. However, MNF wishes to correct the ACCC’s statement on the absence of comments from other stakeholders on the NPTCs. Paragraph 17 on page 6 of MNF’s submission to this MTAS FAD inquiry makes very clear comments on the NPTCs.<sup>15</sup> MNF notes *inter alia* in that submission that while including the NPTCs in the MTAS FAD provides an important reference point for access seekers, they are not strictly applicable to MVNOs as the MVNOs do not actually acquire the MTAS.

## Commencement date of the MTAS FAD

- 26 The ACCC proposes that the MTAS FAD commences on 1 January 2021. The ACCC considers this date appropriate as it provides additional time to the industry before the new MTAS price comes into force given disruptions to business activities arising from COVID-19. Moreover, the ACCC notes that it will consider an even longer timeframe to implement the new MTAS price.
- 27 MNF strongly believes that the proposed commencement date for the MTAS FAD is not appropriate and should be considerably earlier. The only change for industry arising from the new MTAS FAD is a change in the MTAS price. MNF submits that this is merely a rate change within an existing inter-operator billing system which is readily implemented and does require any lead time to prepare for its implementation. Moreover, an unjustified delay in the implementation of the lower MTAS price necessarily has a negative impact on the LTIE as consumers are denied the flow on benefits of lower prices as the MTAS price reduction is passed on to consumers. Moreover, consumers should not be denied other

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<sup>13</sup> Draft Report, page 49

<sup>14</sup> Ibid.

<sup>15</sup> Refer to

[www.accc.gov.au/system/files/MNF%20Group%20submission%20to%20the%20MTAS%20FAD%20discussion%20paper.pdf](http://www.accc.gov.au/system/files/MNF%20Group%20submission%20to%20the%20MTAS%20FAD%20discussion%20paper.pdf)



potential benefits arising from an MTAS price reduction such as innovations in service and pricing packages.

- 28 MNF notes that were the new MTAS FAD to commence on the proposed date of 1 January 2021 it would mean that the existing MTAS price of 1.7 cpm would be applicable for a period of five years. MNF submits that in an environment where MTAS prices are known to be falling this is simply an unacceptable position. In addition, MNF contends that the ACCC's view that it will consider a further delay in the commencement date of the MTAS FAD indicates that it has mis-read the situation. Certainly MNF does not support the view that the current COVID-19 situation should be used to justify any further delay to the MTAS FAD commencement date when, for example, Telstra is reported to have accelerated some AUD500 million of investment in its 5G network deployment.<sup>16</sup> On this basis, MNF contends that Telstra should be capable of making minor changes to its inter-operator billing system.
- 29 The existing MTAS FAD was due to expire on 30 June 2019 but has now been extended until the day immediately before the next MTAS FAS comes into force. This extension has been made to accommodate the completion of the ACCC's inquiry. MNF submits that the effective date of the MTAS price reduction should be backdated to 1 July 2019. That is, while the MTAS FAD *per se* may have a given commencement date, the date on which the MTAS price change takes effect is a separate matter. MNF believes that MTAS price reduction should be backdated on the grounds that in an environment where the MTAS price is falling, net MTAS "payers" have been unfairly overcharged and net MTAS "receivers" have unfairly benefited from a delay in the regulatory process. MNF notes, however, that in taking this view, the precise terms of existing inter-operator service agreements would determine whether a backdated MTAS price could actually be put into effect. That is, unless existing agreements make provision for regulated rate changes to take immediate effect, it is more likely that the new MTAS price would only take effect once existing agreements expire and are renegotiated.

## Duration of the MTAS FAD

- 30 The ACCC proposes that the new MTAS FAD should expire at the same time as the current MTAS declaration, i.e., on 30 June 2024. On the basis of the ACCC's proposed MTAS commencement date, i.e., 1 January 2021, the MTAS would have a duration of three and a half years. In MNF's view, the ACCC's rationale for its proposed MTAS duration is unclear. The discussion in the Draft Report at Section 6.1 "*Duration of the FAD*" dismisses a mid-term review of the MTAS to take into account the rollout of 5G as it "*would not be straightforward*" and further states that such a review "*would not be necessary*" as the ACCC may "*conduct a holistic review of the MTAS and FTAS in the near future.*" The ACCC further

<sup>16</sup> [Refer to www.rcrwireless.com/20200320/5g/telstra-suspends-job-cuts-accelerates-5g-rollout-face-covid-19-crisis](https://www.rcrwireless.com/20200320/5g/telstra-suspends-job-cuts-accelerates-5g-rollout-face-covid-19-crisis)

notes that it received “... no submissions on this issue in response to the Position and Consultation Paper.”

- 31 MNF is concerned with many aspects of the ACCC’s proposal. First, and contrary to the ACCC’s statement on “no submissions”, MNF made specific comments on this issue in its earlier submission to this inquiry.<sup>17</sup> In particular, at paragraph 18 of this submission, MNF argues for a three year duration of the MTAS FAD noting the MTAS declaration had recently been extended for five years. Such a timeframe would allow for a mid-term review of the MTAS price in the anticipation of the shut-down of 3G networks and the rollout of 5G networks.
- 32 MNF notes a recent report from the GSMA on the shut-down of legacy 2G and 3G networks in the Asia-Pacific Region.<sup>18</sup> *Inter alia*, the report identifies the characteristics of a successful network switch-off based on case studies from six regional markets, including Australia. In the light of this report, MNF contends that the ACCC should engage with the industry to ensure an orderly closure of Australia’s 3G networks in a manner which promotes the LTIE.
- 33 Second, MNF considers that the ACCC’s view that a mid-term review of the MTAS price “would not be necessary” is somewhat insincere. MNF submits that the reality is that opportunity for a mid-term review has been “conveniently lost” because it took the ACCC much longer than it anticipated to prepare its Draft Report. Irrespective of whether a cost model or a benchmarking approach was used, the effort involved should have, in MNF’s view, been reasonably anticipated and planned accordingly.
- 34 Third, MNF is concerned about the ACCC’s proposal to have the MTAS FAD expire on the same date as the MTAS declaration. This concern arises because a FAD inquiry cannot be undertaken unless a service declaration inquiry has been completed, i.e., FADs only apply in respect of declared services. MNF contends that the “same expiry date” proposal can only work if the ACCC is prepared to commence its review of the MTAS declaration at a date which would also allow for a further MTAS FAD inquiry to be completed (if required). That is, the ACCC would need to plan for the completion of a declaration inquiry and a FAD inquiry within its proposed expiry date. MNF considers that based on past experience this is unlikely to occur and the ACCC will most likely opt to extend the expiry date of its next MTAS FAD.
- 35 In light of its concerns with the ACCC’s proposal, MNF suggests that the next MTAS FAD have an effective duration of three years having a commencement date backdated to 1 July 2019. That is, the next MTAS FAD would expire on 30 June 2022. MNF maintains its view that it is

<sup>17</sup> See:

<https://www.accc.gov.au/system/files/MNF%20Group%20submission%20to%20the%20MTAS%20FAD%20discussion%20paper.pdf>

<sup>18</sup> GSMA, *Legacy mobile network rationalization, Experiences of 2G and 3G migrations in Asia-Pacific*, May 2020

appropriate to review the MTAS price at this time given the on-going changes that are occurring in the mobile sector and in particular, the closing down of 3G networks and the rollout of 5G networks. Further, MNF believes that the ACCC should estimate the MTAS price in this subsequent review through updating its benchmarking approach.

## Summary

- 36 MNF welcomes the opportunity to participate in the ACCC's MTAS FAD inquiry. The key points that MNF makes in this submission are summarised as follows:
- MNF supports the ACCC's proposal to reduce the MTAS price to 1.2 cpm but notes that a lower price of 0.75 cpm is justified.
  - MNF supports the ACCC's decision to reject the option of merely rolling over the existing MTAS FAD and instead use an international benchmarking approach to estimate the MTAS price.
  - MNF has some concerns with certain aspects of the benchmarking approach taken by AM in its report prepared for the ACCC.
  - MNF welcomes the ACCC's acknowledgment of the important role that MVNOs have in enhancing competition and agrees with the ACCC view that smaller fixed providers, MVNOs and downstream players play an important role for competition and are valuable stakeholders to be considered in the MTAS setting process.
  - MNF supports the ACCC's decision to retain the NPTCs in the next MTAS FAD.
  - MNF strongly disagrees with the ACCC's proposed 1 January 2021 commencement date of the MTAS FAD and instead proposes that the effect of the MTAS price reduction be backdated to 1 July 2019.
  - MNF believes that next MTAS FAD should have an expiry date of 30 June 2022 which allows for a further review of the MTAS price prior to the expiry of the current MTAS service declaration.