



Australian
Competition &
Consumer
Commission

**Domestic Mobile Terminating Access Service
Pricing Principles Determination
and indicative prices for the period
1 January 2009 to 31 December 2011**

March 2009



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Table of contents

1	Introduction	4
2	Developing pricing principles	5
2.1	Legislative requirement	5
2.2	Role of Pricing Principles	6
2.3	Legislative criteria	6
3	Background to the MTAS regulation	8
3.1	Description of the declared service.....	8
3.2	MTAS Declaration 2004.....	9
3.3	MTAS Pricing Principles Determination 2004.....	9
3.4	MTAS Pricing Principles Determination 2007.....	9
4	MTAS pricing principles	11
4.1	Efficient costs.....	11
4.2	TSLRIC framework for pricing the MTAS	11
4.3	Allocation of common costs	12
4.4	The appropriate benchmark of an efficient operator.....	13
4.5	WIK Cost Model.....	14
4.6	International benchmarking	19
4.7	Regulatory Accounting Framework data	20
4.8	Fixed to mobile pass through.....	22
4.9	Consumer welfare	25
4.10	Length of regulatory period	27
5	Price related terms and conditions	28
	Appendix 1 — Pricing Principles Determination	29
	Appendix 2 — Submissions in response to the Draft MTAS Pricing Principles Determination 2009–11	32

1 Introduction

On 30 June 2004 the Australian Competition and Consumer Commission (ACCC) declared the domestic mobile terminating access service (MTAS) for all voice services terminating on all digital mobile telecommunications networks. The declaration of the MTAS is due to expire on 30 June 2009. The ACCC is currently conducting a public inquiry into the declaration of the MTAS.

Upon declaring the MTAS the ACCC released the *MTAS Pricing Principles Determination for the period 1 July 2004 to 30 June 2007 (2004 Pricing Principles)*. As part of the 2004 Pricing Principles the ACCC adopted an adjustment path in setting indicative prices. Subsequently the ACCC released the *MTAS Pricing Principles Determination for the period 1 July 2007 to 31 December 2008 (2007 Pricing Principles)*. The 2007 Pricing Principles set an indicative price of 9 cents per minute (cpm) to apply from 1 July 2007 to 31 December 2008.

Table 1 below sets out the indicative price of the MTAS from 2004 to 2008.

Table 1 – MTAS indicative price 1 July 2004 to 31 December 2008

Time period	cpm
1 July 2004 – 31 December 2004	21
1 January 2005 – 31 December 2005	18
1 January 2006 – 31 December 2006	15
1 January 2007 – 30 June 2007	12
1 July 2007 – 31 December 2008	9

On 14 November 2008, the ACCC commenced a public inquiry into MTAS pricing. As part of this inquiry, the ACCC released the *Draft MTAS Pricing Principles Determination for the period 1 January 2009 to 30 June 2011 (Draft 2009 Pricing Principles)* for public consultation and received submissions in response from seven interested parties. A list of all submissions received is provided in Appendix B of this report.

After reviewing interested parties' submissions, the ACCC has set out its findings in this Final Report.

2 Developing pricing principles

2.1 Legislative requirement

Under Part XIC of the *Trade Practices Act 1974* (**the Act**), the ACCC is responsible for arbitrating access disputes concerning access to particular declared services, and for assessing access undertakings relating to access to such declared services. One of the prime issues arising under these processes is the determination of an appropriate access price. Under section 152AQA of the Act, the Commission must, by writing, determine principles relating to the price of access to a declared service.

The pricing principles determination may contain price-related terms and conditions (**indicative prices**) relating to access to the declared service. The ACCC must make such a determination at the same time as, or as soon as practicable after, the ACCC declares a service.

This Pricing Principles Determination is expressed to operate beyond the notional expiry date of the current declaration (30 June 2009). There are two reasons for this. Firstly, the current declaration may be extended or further extended pursuant to section 152ALA of the Act. The ACCC notes that its *Draft Report on reviewing the declaration of the MTAS (MTAS Declaration Draft Report)* proposes to extend the current declaration for a period of five years.¹ Without prejudging the outcome of the declaration review, to the extent that the declaration is ultimately extended, it is intended that this determination will continue to apply to the declared service (up to 31 December 2011). Secondly, an arbitration under Division 8 of Part XIC of the Act may still be on foot at the date the current declaration is due to expire. It is intended that this determination will apply to the setting of prices in such an arbitration.

However, if the MTAS is re-declared the Commission is obliged to make a new Pricing Principles Determination under section 152AQA(3) of the Act. The Commission will decide at that time how this present determination is to be applied in relation to the period before a new Pricing Principles Determination is made. The Commission seeks to provide as much long-term certainty as possible about its pricing intentions in order to promote efficient investment by both access providers and access seekers.

The Commission must have regard to its pricing principles determination if it is required to arbitrate an access dispute in relation to the same declared service under Division 8 of Part XIC of the Act.² However, the pricing principles are not binding on the Commission, and parties to arbitrations are still able to address the Commission on the relevance and applicability of the principles having regard to the circumstances of their particular dispute. The Commission considers that, although a party may argue against the pricing principles being applied to its particular case, pricing

¹ ACCC, *Mobile Terminating Access Service — An ACCC Draft Report on reviewing the declaration of the mobile terminating access service*, March 2009, p. 4.

² Section 152AQA(6) of the Act.

principles may help guide commercial negotiation of access by providing greater certainty as to the Commission's views on reasonable access prices.

2.2 Role of Pricing Principles

In July 1997, the ACCC published *Access Pricing Principles: Telecommunications – a Guide* (**Access Pricing Principles**). The purpose of the Access Pricing Principles was to advise the telecommunications industry and other interested parties about the principles that are likely to be relevant in assessing undertakings or in arbitrating access disputes. It set out the following broad principles:

- the access price should be based on the cost of providing the service
- the access price should not discriminate in a way which reduces efficient competition
- the access price should not be inflated to reduce competition in dependent markets, and
- the access price should not be predatory.

In the Access Pricing Principles, the ACCC noted that when determining a cost-based price, it would generally seek to determine the total service long-run incremental cost (**TSLRIC**) of providing the service. It also noted that the applicable approach would be assessed on a case-by-case basis for each service.

2.3 Legislative criteria

The object of Part XIC of the Act is to promote the long-term interests of end-users (**LTIE**) of carriage services, or of services provided by means of carriage services.³ This will be achieved, in part, through establishing the rights of third parties to gain access to services that are necessary for the competitive supply of services to end-users.

An important part of the access regime is the terms and conditions of access (including the price or a method for ascertaining the price). Under Part XIC of the Act the Commission cannot make a telecommunications access code or accept an undertaking unless satisfied that the terms and conditions specified are reasonable.⁴

In determining whether terms and conditions are reasonable, regard must be had to the following matters:

- whether the terms and conditions promote the LTIE
- the legitimate business interests of the carrier or carriage service provider concerned, and the carrier's or carriage service provider's investment in facilities used to supply the declared service concerned

³ Section 152AB(1) of the Act.

⁴ The Commission must also ensure that the terms and conditions in undertakings and any arbitration determination are consistent with any Ministerial pricing determination in place. See section 152CH of the Act.

- the interests of persons who have rights to use the declared service concerned
- the direct costs of providing access to the declared service concerned
- the operational and technical requirements necessary for the safe and reliable operation of a carriage service, a telecommunications network or a facility, and
- the economically efficient operation of a carriage service, a telecommunications network or a facility.⁵

This does not, by implication, limit the matters to which regard may be had.⁶

When the ACCC is making a final determination in an access dispute, the ACCC must have regard to the same matters, as well as the value to a party of extensions or enhancement of capability whose cost is borne by someone else.⁷

Accordingly, the ACCC considers that, when it is making pricing principles for a declared service, it is appropriate to have regard to the matters set out above. A more detailed discussion of these legislative criteria and their application in determining access pricing principles can be found in the Access Pricing Principles.⁸

⁵ Section 152AH(1) of the Act.

⁶ Section 152AH(2) of the Act.

⁷ Section 152CR(1) of the Act.

⁸ ACCC, *Access pricing principles – Telecommunications – a guide*, July 1997.

3 Background to the MTAS regulation

3.1 Description of the declared service

The MTAS is a wholesale input, used by providers of calls from fixed-line and mobile networks, in order to complete calls to mobile subscribers connected to other networks.

When a call is made between customers (or end-users), it will involve two essential elements – origination and termination.

Origination refers to the carriage of a call from the end-user who makes, or originates, the call over the network to which this end-user is connected.

Termination refers to the carriage of the call to the person receiving the call over the network on which the person receiving the call is connected.

Where the person making the call and the person receiving the call are on different networks, a point of interconnection between these two networks will exist. The main network elements of providing the MTAS are illustrated in Figure 1 below.

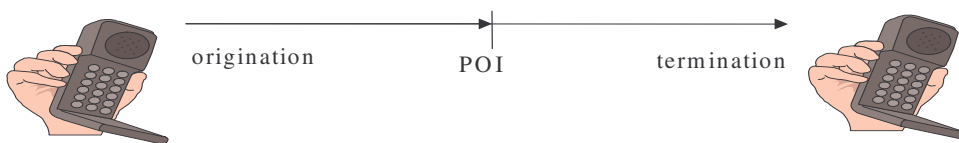


Figure 1 – Termination, origination and the POI

The MTAS is also an input for the carriage of fixed-to-mobile calls as illustrated in Figure 2.

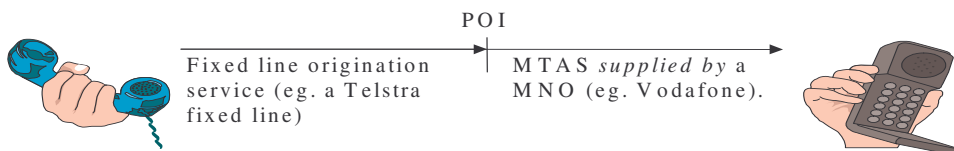


Figure 2 - Use of the MTAS to supply a FTM call

Under current commercial arrangements between network owners, the network owner that originates a call to a mobile network will, generally, purchase the MTAS from the network owner that completes (terminates) the call. The originating network owner will recover these costs, and the costs it incurs from originating the call, through the retail

price it charges its directly connected end-user for providing the call. This commercial arrangement is typically referred to as the calling party pays model.

The MTAS is therefore an essential input into the provision of calls to mobile phone users where the mobile phone user is on a different network to the individual who originates the call. This is the case irrespective of whether the call terminates on a 2G or 3G mobile network.

3.2 MTAS Declaration 2004

In 2004, after holding a public inquiry under Part 25 of the *Telecommunications Act 1997* the Commission declared that it was satisfied that declaring the MTAS would promote the LTIE. In declaring the MTAS the ACCC found that declaring the MTAS would:

- promote competition in markets for listed services
- achieve any-to-any connectivity in relation to carriage services that involve communication between end-users, and
- encourage the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied.

The declaration for the MTAS is due to expire on 30 June 2009. The ACCC is currently reviewing the MTAS declaration and has released the MTAS Declaration Draft Report for public comment.

3.3 MTAS Pricing Principles Determination 2004

The 2004 Pricing Principles adopted an adjustment path in setting indicative prices for the MTAS, reducing the indicative price from 21 cpm to 12 cpm over the period from July 2004 to June 2007. The specification of an adjustment path was designed to protect the legitimate business interests of access providers of the MTAS. In particular, the Commission was concerned that an immediate reduction in the price of the MTAS to 12 cpm might generate significant and potentially harmful disruption to mobile operators' business plans.

The ACCC's decision was informed by analyses of international cost benchmarking and Regulatory Accounting Framework (RAF) reports. In the 2004 Pricing Principles the Commission stated that any reduction in pricing below 12 cpm would be supported by the development of a bottom-up cost model.

3.4 MTAS Pricing Principles Determination 2007

The 2007 Pricing Principles further reduced the MTAS indicative price, setting a flat rate of 9 cpm for a period of 18 months to 31 December 2008. The ACCC's decision was informed by the WIK Mobile Network Cost Model (**WIK model**), a bottom-up

cost model developed for the ACCC. The WIK model estimated the efficient cost of supplying the MTAS (TSLRIC+) as being in the range of 6.1 cpm (31 per cent market share scenario) to 6.6 cpm (25 per cent market share scenario).

However, in setting the MTAS price at 9 cpm the ACCC took into account other constraints faced by Mobile Network Operators (MNOs) that were not considered in the WIK model. The 2007 Pricing Principles concluded a price of 9 cpm to be a:

... useful indicative price that is broadly consistent with the statutory criteria and does not represent a glide path, but a considered, conservative estimate at this point in time of the cost of supply of the MTAS.⁹

The Commission noted that in making any future pricing determinations it would consider a range of factors such as efficiently incurred costs of MNOs with reference to actual costs.¹⁰

⁹ ACCC, *2007 Pricing Principles*, p. 44.

¹⁰ As set out in the ACT decision *Application by Optus Mobile Pty Limited & Optus Networks Pty Limited* [2006] ACompT 8, 22 November 2006, at p. 116–118.

4 MTAS pricing principles

4.1 Efficient costs

The ACCC is of the view that prices should be based on the forward looking costs of an efficient operator in order to set prices that promote economic efficiency, which is the outcome that could be expected in a competitive market in that industry.¹¹ The ACCC also notes the Australian Competition Tribunal's (**Tribunal**) approach to efficient costs:

Although there is merit in the proposition that a firm in a competitive market has an incentive to be efficient and to incur costs efficiently, there is still a need for the Commission ... to be satisfied ... that the firm's costs are efficiently incurred. In general terms, an operator in a competitive market should have more of an opportunity to establish the efficiency of its recently incurred costs by reference to its actual costs than a monopolist or dominant operator such as Telstra in *Telstra Corporation Limited* [2004] ACompT4.¹²

In relation to the MTAS the ACCC is of the view that the application of the best-in-use technology as well as the most efficient network design will reflect efficient costs and a TSLRIC+ approach generally provides a reasonable estimate of efficient costs.

The ACCC notes that it is open to considering other approaches of pricing regulated services that satisfy the legislative criteria. The ACCC has previously indicated that it will consider the appropriate pricing approach on a case-by-case basis.¹³

4.2 TSLRIC framework for pricing the MTAS

The ACCC is of the view that the indicative price of supplying the MTAS should be reflected by applying cost-based pricing. However, there are many variants of cost-based pricing depending on the costs that are included, how they are allocated and how they are measured. The Commission's view in the 2004 Pricing Principles and the 2007 Pricing Principles was that in relation to the MTAS the indicative price of the MTAS should be determined based on the TSLRIC+ of supplying the MTAS.

TSLRIC is the incremental or additional cost the firm incurs in the long run in providing a specified volume of the service, assuming all of its other production activities remain unchanged. Alternatively, it is the cost the firm would avoid in the long run if – everything else being equal – it ceased to provide the service. As such, TSLRIC represents the costs the firm necessarily incurs in providing the service and captures the value of society's resources used in its production.

¹¹ The Australian Competition Tribunal concurs with this view. See *Re Vodafone Network Pty Ltd & Vodafone Australia Limited* [2007] ACompT 1, 11 January 2007, para 68.

¹² Application by Optus Mobile Pty Limited & Optus Networks Pty Limited [2006] ACompT 8, 22 November 2006, at para 118.

¹³ See ACCC, *Access Pricing Principles - Telecommunications, a guide*, July 1997, p. 13.

TSLRIC is interpreted by the ACCC as a forward-looking measure of costs which means that the referable costs are those of the most efficient means possible and commercially available. In practice this often means basing costs on the best-in-use technology and production practices available today and valuing inputs using current prices. It includes the costs an efficient carrier would necessarily incur in providing the service, or alternatively the costs that would be avoided if the service was no longer provided in the long run.

Telstra submits that TSLRIC is an appropriate model upon which to base the MTAS indicative price. Optus, on the other hand, considers that TSLRIC has limited applicability and should be used only to provide an initial base from which to determine an appropriate price.

The ACCC has previously stated that an access price based on TSLRIC is consistent with the price that would prevail if the access provider faced effective competition, and usually best promotes the LTIE.¹⁴

The ACCC has also outlined why it preferred to establish access prices such as the MTAS price with reference to the TSLRIC, including that:

- it encourages competition in telecommunications markets by promoting efficient entry and exit in dependent markets
- it encourages economically efficient investment in infrastructure and provides the appropriate incentives for future investment in decisions by access seekers to “build” or “buy”
- in the long run TSLRIC based pricing provides for the efficient use of existing infrastructure, promoting allocative efficiency in the use of infrastructure
- it provides incentives for access providers to minimise the costs of providing access by using the most efficient technology commercially available today and best-in-use technology compatible with the existing network design
- by allowing efficient access providers to fully recover the costs of producing the service, it promotes the legitimate business interests of access providers, and
- it protects the interests of persons who have rights to use the declared service.¹⁵

The ACCC remains of the view that TSLRIC+ is an appropriate framework for pricing the MTAS.

4.3 Allocation of common costs

Non-network common costs are organisational-level costs incurred in the provision of all of a firm’s services that are not attributable to any particular service. Stated alternatively, they are not incremental to a particular service in the sense that they are not avoided if the firm does not produce the service. However, they are incremental in the sense that they would need to be incurred by an efficient firm if the service was

¹⁴ *ibid.*, p. 29.

¹⁵ ACCC, *2007 Pricing Principles*, p 15.

provided on a stand-alone basis. An efficient multi-product firm would have the expectation of recovering, in some manner, these common costs. As a result it would be expected that the prices of the firm's services (including prices for access) incorporate some contribution to these costs.

As common costs are not directly attributable to the production of any one service, the allocation of these costs across services is somewhat arbitrary. There is a range of possible methods of allocating common costs.

In the past the Commission has adopted the Equi-Proportional Mark Up (**EPMU**) approach to estimate the allocation of common costs. EPMU allocates joint and overheads to a product in the same proportion as that product's share of total costs. However, Optus considers that the ACCC should take some account of the acknowledged efficiency of Ramsey-Boiteux pricing for the allocation of common costs, and also proposes that a network externality surcharge be incorporated into the setting of indicative MTAS prices. The ACCC acknowledges the difficulties of regulators adopting Ramsey-Boiteux pricing and considers the EPMU approach more appropriate for the allocation of common costs.

The Commission is of the view that the TSLRIC should include a portion of organisational-level common costs allocated using the EPMU approach, as represented by the TSLRIC+ approach.

4.4 The appropriate benchmark of an efficient operator

In *Re Vodafone Network Pty Ltd & Vodafone Australia Limited* (**Vodafone decision**), the ACCC was of the view that an efficient operator with the scale and scope achievable by all MNOs was an operator with a 25 per cent market share.¹⁶ The ACCC notes the view expressed by the Tribunal that whilst the forces of competition would not enable an operator to charge more than the costs that would be incurred by an efficient, forward looking new entrant, an efficient new entrant would not itself have immediate access to the economies of scale and scope that might be achievable over time.¹⁷

In emulating the outcomes realisable in a competitive market some regard must be had to the actual processes by which operators compete and establish themselves in markets.¹⁸ The task of deciding how to assess the efficient forward looking costs of a new entrant must involve some balancing of opposing considerations and must take account of the actual markets in which the relevant services are provided.¹⁹ In an effectively competitive market the most efficient operator may well be able to price somewhat above its costs. It is difficult to see how any less efficient operators could survive otherwise.²⁰ Given a new entrant would not be able to bring the new design and

¹⁶ *Re Vodafone Network Pty Ltd & Vodafone Australia Limited* [2007] ACompT 1, 11 January 2007, para 63.

¹⁷ *ibid.*, paras 71–72.

¹⁸ *ibid.*, para 73.

¹⁹ *ibid.*, para 74.

²⁰ *ibid.*, para 76.

technology to bear immediately in a legacy-sized network the most efficient operator would not be forced to base its prices on the costs of a network optimised for all-new design and technology.²¹

The ACCC agrees with the Tribunal's finding in the Vodafone decision that prices may need to be based on the costs of an efficient operator with the scale and scope achievable by all MNOs.²² However, the ACCC notes that the Tribunal did not reach a concluded view on how the benchmark of an efficient operator should be defined.²³

The ACCC discusses the applicable market share benchmark in the context of the WIK model in the section below.

4.5 WIK Cost Model

As part of developing the 2007 Pricing Principles the Commission engaged Wik Consult GmbH (**Wik Consult**) to provide a cost model that estimates the efficient costs of supplying the MTAS by a hypothetical MNO.

Wik Consult delivered the WIK model, a bottom-up cost model that modelled network and cost structures for a hypothetical MNO that was not constrained by technology systems and architectural decisions of the past. The WIK model adopted a scorched-earth approach to the network design component, which deployed best-in-use technology that had proven its operational feasibility and was cost-effective. The resulting optimised network structure did not necessarily reflect the structure of any operator actually operating in the market. This was particularly true as radio communications technology (a key input for a mobile network) continues to constantly evolve, resulting in increased efficiencies in providing coverage to end-users.

Telstra submits that the ACCC has not made a complete version of the model available to the industry, nor has it published a detailed description of how the model has been used. Telstra recommends that the Commission provide the industry with greater access to the WIK model to ensure that indicative prices are determined in a transparent manner.

Wik Consult has recently supplied the ACCC with updated base data used for carrying out calculations with version 1.2 of the WIK model (2008 update). The WIK model 2008 update consists of the latest population data from the Australian Bureau of Statistics based on the 2006 Census. The ACCC has consulted extensively on the WIK model and has made the WIK model along with the 2008 update available to all parties requesting access.

The effect of the update file, running similar scenarios as in the 2007 Pricing Principles, is that the WIK model 2008 update yields slightly lower estimated costs for supplying the MTAS of 6.1 cpm for the 25 per cent market share scenario and 5.8 cpm for the 31 per cent scenario.

²¹ *ibid.*, para 77.

²² *ibid.*, para 78.

²³ *ibid.*, para 84.

The ACCC also ran a scenario with uplifts to the weighted average cost of capital (WACC), the mobile penetration rate and minutes of use. These uplifts only marginally increased the estimated cost of supplying the MTAS. Table 2 below summarises the various efficient cost estimates of supplying the MTAS obtained using the updated and uplifted data.

Table 2 – WIK model estimates of efficient cost of supplying the MTAS

Model version	25% market share*	31% market share*
WIK 1.2	6.6 cpm	6.1 cpm
WIK 1.2 (2008 update)	6.1 cpm	5.8 cpm
WIK 1.2 (2008 update – with uplifted data**)	6.2 cpm	5.9 cpm

* market share benchmark used in the 2007 Pricing Principles Determination.

** estimates only, minutes increased 10%, mobile penetration at 100% and WACC at 15%.

The ACCC notes the proposed merger of Vodafone’s and Hutchison’s operations in Australia may affect the use of the relevant market share scenarios in the WIK model.²⁴ Moreover, the ACCC notes the Tribunal’s comments in relation to the utility of the achievable market share benchmark.²⁵ Nonetheless, the ACCC is of the view that the achievable market share benchmark is an essential input to the WIK model to calculate its estimate of the efficient cost of supplying the MTAS. The ACCC notes Vodafone’s submission, albeit prior to the announcement of its proposed merger with Hutchison, that the appropriate market share benchmark is 17 per cent, as there is no reason to assume – in the Australian context – that in the long run each MNO will have the same market share. Even so, the ACCC is of the view that applying benchmark market shares ranging from 25 per cent to 33 per cent is appropriate and flexible enough to reflect a market structure of four or three MNOs.

Network Externality Surcharge

There has been considerable debate regarding the possibility of a network externality surcharge (NES) being included in the setting of indicative MTAS prices. The logic behind the NES is that the private benefit placed on subscribing by a new subscriber fails to take into account the external benefit accruing to existing subscribers, who benefit from the ability to contact the newly connected subscriber and the expansion of the network generally. This in turn leads to below optimum subscription levels from an economic welfare perspective if network externalities are not incorporated in MTAS prices (by way of a NES). To encourage higher penetration it may therefore be economically desirable to allow MNOs to charge a NES to enable MNOs to attract marginal subscribers to increase penetration, and in turn increase economic welfare.

²⁴ Hutchison and Vodafone, *Hutchison and Vodafone agree to merge Australian Telecom Operations to form a 50:50 venture*, 9 February 2009. www.hutchison.com.au/hutchison2004/hutchison2004staging/object/attachment/docs/Press_Release_vFinal.pdf, accessed 9 March 2009.

²⁵ Vodafone decision, para 80.

The ACCC concluded in its 2007 Pricing Principles that no NES should apply to the MTAS in Australia.²⁶ The ACCC concluded that the empirical importance of network externalities was likely to be low or non-existent in a highly mature market with high rates of market penetration such as Australia. Furthermore, the ACCC considered that these network externalities are, or could be, internalised by individuals and MNOs through various other methods.

The ACCC notes the Tribunal's finding in the Optus decision that the consideration of externalities may be a valid part of reaching a reasonable price for the MTAS. The ACCC also recognises the possibility that externalities between fixed and mobile networks might not cancel out.²⁷

However, the ACCC agrees with the Tribunal's conclusion that if externalities are to be considered in pricing services, they need to be thoroughly surveyed with some attention given to the possibility of other potential externalities, such as fixed subscription network externalities or calling externalities.²⁸

In the Optus submission, the Competition Economists Group (**CEG**) claims that fixed subscription network externalities are already being internalised in prices to a certain extent, while calling externalities are a bigger theoretical issue for pricing of telecommunication services.

However, the ACCC considers that the arguments relating to the existence or non-existence of fixed subscription and calling externalities remain largely speculative in nature, and do not provide sufficient reason to negate the Tribunal's concerns on this matter.

It is important to note that those parties proposing the inclusion of the NES in the determination of MTAS prices have made regular use of the arguments and methodology employed by UK Office of Communications (**Ofcom**), which has supported the inclusion of a NES in mobile termination prices in the UK since 2004.²⁹ These parties will note, however, the recent finding by the UK Competition Commission (**UKCC**) that there was no longer a sound case for the NES in the UK.³⁰

In a market characterised by a high penetration rate, such as Australia, there is at least some risk that the additional revenue arising from the NES would not be used to attract new subscribers, but rather would be directed towards the firm's other objectives. Additional revenue may be retained as profit or used in competition for non-marginal customers resulting in excessive prices, an inefficiency in the structure of prices and inequitable distributional effects.³¹ For these reasons, the ACCC considers that a NES mark-up should not be included in the setting of indicative MTAS prices.

²⁶ ACCC, 2007 Pricing Principles, pp 17-18.

²⁷ ACT, 2006, *Application by Optus Mobile Pty Limited & Optus networks Pty Limited*, p291.

²⁸ *ibid*, paras 281 – 289.

²⁹ CEG 2008, *CEG Network Externality Surcharge*, Attachment to *Optus Submission to the ACCC in response to Draft MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011*, p2.

³⁰ UKCC, *Mobile phone wholesale voice termination charges determination*, para 4.168-9.

³¹ *ibid*, p 4.122.

Customer acquisition costs

Customer acquisition costs generally consist of advertising and marketing costs, handset subsidies, discounts and incentives.

There is some debate as to whether customer acquisition costs should be included as efficiently incurred costs for supplying the MTAS. For example, in the Optus submission, CEG argues that customer acquisition costs are an important element of achieving network scale and should be recovered, at least in part, through termination charges. This would result in an additional mark-up to the ACCC's indicative MTAS price.

The ACCC notes that there is some limited support for this view. For example the UKCC recently found that a stand-alone provider of wholesale termination services has an incentive to undertake some or all of the different aspects of customer acquisition costs. However, even the UKCC concluded this did not sufficiently justify increasing termination revenues in respect of customer acquisition costs.³²

The WIK model regards customer acquisition costs as retail costs. Customer acquisition costs are primarily targeted at generating subscription revenues. The ACCC does not view customer acquisition costs as incremental to the provision of network (wholesale) services and, in particular, the MTAS.³³ As such, the ACCC is of the view that customer acquisition costs cannot be taken into account as a mark-up on top of the WIK model cost estimates.

Constraints on the WIK model

The WIK model adopts a scorched earth approach (adjusted for traffic and contextualisation for Australian conditions) which assumes efficiencies that may not be obtainable in a rollout under competitive conditions.

As recognised by the 2007 Pricing Principles, it may be appropriate to consider certain constraints faced by MNOs in a policy context when establishing indicative prices for the MTAS.³⁴ The ACCC notes that some of these constraints are already built into the policy parameters informing the efficient cost estimates derived from the WIK model.³⁵

The ACCC also notes the Tribunal's comments in the Vodafone decision in relation to real life constraints and in particular a new entrant's inability to bring new design and technology to bear immediately in a legacy-sized network. Accordingly, the ACCC considers it appropriate to accept an application of the TSLRIC approach that recognises these constraints. A key implication of this approach is that while the cost estimates derived from the WIK model provide important information, they cannot be considered conclusive in determining an appropriate indicative price.

³² UKCC, *Mobile phone wholesale voice termination charges determination*, 16 January 2009, para 8.115.

³³ wik-Consult, *Mobile Termination Cost Model for Australia*, January 2007, p. 17.

³⁴ ACCC, *2007 Pricing Principles*, p. 1.

³⁵ *ibid.*

Vodafone criticises the WIK model submitting that it does not reflect the practical realities which would be experienced by a new entrant rolling out a network in Australia. Optus submits that the WIK model fails to take into account real world constraints faced by efficient mobile operators in Australia. These include the cost of achieving scale, the location of base station sites, and busy hour dimensioning.

Whilst the ACCC does not accept the specific constraints highlighted by Optus, the ACCC is of the view that practical realities experienced by a hypothetical new entrant rolling out a network warrant a conservative approach to setting an indicative price for supplying the MTAS. As such, the ACCC considers that the WIK model provides an estimate of the TSLRIC+ of supplying the MTAS somewhat lower than that achievable in reality.

Increased prevalence of 3G network infrastructure

At the time Wik Consult was engaged to develop the WIK model the rollout of 3G network infrastructure and services had only just commenced and the number of 3G subscribers was small. Since that time there has been an extensive roll out of 3G infrastructure by all MNOs and a corresponding increase in the use and importance of data services over mobile phones. The main developments to 3G services in the mobile sector since the 2007 Pricing Principles Determination include that:

- the number of 3G subscribers is increasing rapidly
- Telstra has completed the deployment of its extensive 3G network
- Vodafone and Optus have almost completed extensive 3G rollouts, and
- Hutchison and Telstra have agreed to share 3G infrastructure.

Optus and Vodafone submit that the rollout of 3G services will result in higher network costs because MNOs will be required to concurrently operate two networks. Both Vodafone and Optus submit that the WIK model fails to include 2G / 3G hybrid network costs, and thus the WIK model should be used merely as a guide when determining indicative prices for the MTAS.

Telstra submits that the WIK model provides the best possible estimate of costs and should be used as the key determinant in the setting of indicative MTAS prices. ATUG generally concurs with Telstra, submitting that cost pricing decisions should be based on rigorous models in preference to decisions which include discretionary elements.

The ACCC considers that while it is more efficient to operate a 3G network as compared to a 2G network, MNOs will concurrently operate 2G and 3G networks for some time. The ACCC is of the view that it will remain efficient for a hypothetical MNO to concurrently operate both 2G and 3G networks for a period of time whilst end-users migrate to 3G capable handsets. The ACCC recognises that the WIK model does not account for the increased efficiencies of 3G networks, or the increased efficiently-incurred costs of concurrently operating 2G/3G hybrid networks.

It is the view of the ACCC that the WIK model effectively provides a floor price on the cost of supplying the MTAS on a 2G network. The ACCC considers that a cost model based on a 2G network remains an appropriate tool to inform decisions, but its application as a tool to estimate the efficient costs of supplying the MTAS in the Australian context may become increasingly limited.

The ACCC is of the view that in certain circumstances other tools including international benchmarking and RAF data analysis can be used in conjunction with the WIK model to estimate the efficient cost of supplying the MTAS.

4.6 International benchmarking

The ACCC is of the view that in certain circumstances it may be appropriate to consider further benchmarking analysis of international cost models in estimating the TSLRIC+ of supplying the MTAS.

The ACCC has looked at potentially relevant international benchmarks and notes that as of 1 July 2008 the European Regulators Group (**ERG**) calculated an average termination rate in 30 European countries of 15.6 cpm. Termination rates in the 30 countries range from a high of 27.1 cpm in Bulgaria to a low of 3.6 cpm in Cyprus.³⁶

Further international benchmarking submitted by Optus showed that the range of average MTAS charges in fifteen European Union countries is between 7.69 cpm and 17.78 cpm.³⁷

In light of the benchmarking analyses conducted by Optus and the ACCC itself, the ACCC notes the Tribunal's view on international benchmarking as expressed in *Re Optus Mobile Pty Limited & Optus Networks Pty Limited* (**Optus decision**) that

In order to place any reliance upon the international benchmarking analysis it would be necessary to know much more about the regulatory environment within which they were determined, the state of the relevant markets and the socio-economic environment in which the mobile services were operative.³⁸

The ACCC is of the view that international cost benchmarking may be a useful input in determining the efficient cost of supplying the MTAS. Many of these adjustments include spectrum allocations, network purchasing power, vertical/horizontal integration, network usage and scale, population density, land and labour costs, the use of different technology, retail prices, scope of services offered and the quality of services offered. Telstra submits that the ACCC has previously indicated that the above factors are relevant to assessing the value of comparative benchmarking data.

³⁶ Applying EUR/AUD of 0.5565, exchange rate as at 30 September 2008. Reserve Bank of Australia (RBA), *Exchange rates since 1969*, <http://www.rba.gov.au/Statistics/HistoricalExchangeRates/2008.xls>, accessed 30 September 2008.

³⁷ Optus 2008, *Optus Submission to the ACCC in response to Draft MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011*, p22.

³⁸ [2006] ACompT 8 (22 November 2006), para 297.

In further developments The ACCC notes that the European Commission (EC) is currently considering the regulatory treatment of fixed and mobile termination rates in the European Union. In a recent draft explanatory note the EC recommended national regulatory authorities should:

- regulate termination rates based on the costs of an efficient operator using a long run incremental cost (LRIC) model based on current costs
- normally adopt symmetric termination rates, and
- bring termination rates down to costs of an efficient operator as soon as possible (by December 2011).³⁹

The EC's draft explanatory note has been criticised by ERG and Ofcom. ERG advocates a more flexible approach commenting that a bottom up LRIC model is only one of a variety of methodologies that may be used to obtain an efficient outcome. ERG also considers that benchmarking can, in certain circumstances, be a more appropriate and proportionate mode of regulation.⁴⁰ Ofcom has commented that the EC's proposal regarding cost-oriented termination charges based on LRIC fails to include a reasonable allowance for fixed and common costs.⁴¹

The ACCC will place progressively more weight on benchmarking analyses that contain progressively more comprehensive adjustments to address Australian-specific factors. However, substantive reliance cannot be placed upon international benchmarks in any arbitration proceedings or assessment of undertakings without making substantive adjustments to account for the differences between Australia and the benchmark countries as envisaged by the Tribunal in the Optus decision.

4.7 Regulatory Accounting Framework data

Currently the RAF record keeping rules (RKR) require Telstra, Optus and Vodafone to provide half yearly reports about the relevant costs and revenues associated with the delivery of various services.⁴² The required data also includes actual service usage reporting.

The RAF provides a basis to test MNOs' claims concerning the TSLRIC+ of supplying the MTAS and may assist in estimating a TSLRIC+ proxy for the three reporting carriers. RAF data has also been used to inform a number of the assumptions underlying the WIK model such as call revenue and call minutes.

³⁹ EC, *Draft Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU*, pp. 7–8.

⁴⁰ ERG, *IRG/ERG Response to Public Consultation on Termination Rates*, September 2008, ERG (08) 31 rev1, p. 8.

⁴¹ UK Department for Business, Enterprise & Regulatory Reform and Ofcom, *Draft European Commission Recommendation on the Regulatory Treatment of Fixed and Mobile Termination Rates in the EU*, p. 2.

⁴² ACCC, *Telecommunications Industry Regulatory Accounting Framework (Record-keeping rules)*, October 2003.

RAF data can also be used to provide estimates of the cost of the MTAS to assist or support other costing methods. For example, the Commission used RAF data to provide corroboration and verification for the international cost benchmarking analysis establishing the 5 cpm to 12 cpm range in the *Mobile Terminating Access Service – Final Decision on whether or not the Commission should extend, vary or revoke its existing declaration of the mobile terminating access service (MTAS Final Report – 2004)*.⁴³ However, the Commission did not seek to rely on RAF data analysis to support the indicative price of 9 cpm for the 2007 Pricing Principles.⁴⁴

Currently the MTAS is not separately reported under the RAF, but is rather reported under the external wholesale services segment. In September 2008 the ACCC released the *Discussion paper on proposed changes to the regulatory accounting framework record-keeping rules* (September 2008) to require separate reporting of the declared MTAS service, as well as separate reporting of 2G and 3G activities. It is also proposed that Hutchison will be required to report under the RAF from the same period.

While these proposals might go some way to improving the consistency and reliability of the RAF data in relation to the MTAS it is not expected to be available until after 2009. The ACCC expects the improved RAF data to help identify the cost of supplying the MTAS on different networks and by different MNOs. This will in turn increase the relevance of RAF data analysis in estimating the efficient cost of supplying the MTAS over time.

Hutchison is supportive of the ACCC basing MTAS indicative prices on factors including the consideration RAF data.

Optus and Telstra submit that it will take at least 12 months (until 2010) to implement the ACCC's RAF data proposals. Moreover, Optus submits that it is not clear that it would be appropriate for the ACCC to implement its proposed changes to the RAF RKR and it expresses concerns about the feasibility of separate recording of 2G and 3G data. Telstra submits that proposed RAF data reporting will be unreliable and inappropriate as a basis for determining costs for regulatory purposes. Telstra further notes that the ACCC and the Tribunal have previously rejected the use of costs RAF data as determinative of the efficient costs of a declared service.

The ACCC is cognisant of the Tribunal's comments that the costs of MNOs cannot be assumed to be efficient simply because they are incurred in a competitive environment.⁴⁵ The ACCC notes that the utility of RAF data is limited by MNOs being required to demonstrate their respective costs have been incurred efficiently.

⁴³ ACCC, *MTAS Final Report – 2004*, p. 70.

⁴⁴ ACCC, *2007 Pricing Principles*, p. 50.

⁴⁵ [2007] ACompT 1 (11 January 2007).

4.8 Fixed to mobile pass through

The Commission noted in the MTAS Final Report – 2004 that all MNOs, irrespective of their size, have market power when it comes to terminating calls on their network. Additionally, the Commission stated that above cost MTAS prices caused an increase in prices of an essential input for providers of fixed to mobile (FTM) calls.⁴⁶

At that time the Commission expressed the view that above-cost MTAS rates tended to act as a barrier to providers considering entry into the FTM segment and resulted in above-cost retail prices for FTM calls.

Since 2004, the MTAS indicative price has been lowered from 21 cpm to 9 cpm, or over 57 per cent. In the MTAS Final Report – 2004 the Commission acknowledged that the market within which FTM call were provided was far from effectively competitive and leading to higher-than-cost prices for FTM calls and, consequently substantial losses in consumer welfare. The Commissions expected that *“increased competition in the market within which FTM services are provided would create pressures on all providers of this service to pass-through reductions in the price of the MTAS to end-users”*.⁴⁷

The ACCC is disappointed with respect to reductions in retail FTM prices, as it appears no significant reduction in retail FTM prices has emerged despite earlier expectations. For example, Telstra’s average FTM residential retail price trend demonstrates that FTM pass-through appears to have weakened in recent years (see figure 3 below). Indeed, the Commission has observed an increase in Telstra’s residential FTM retail prices since 2007. Telstra, as of 1 November 2008, commenced billing FTM calls in 30 second increments thereby raising the effective price paid for FTM calls significantly. This suggests that FTM pass through is not evident despite the MTAS indicative price decreasing significantly.

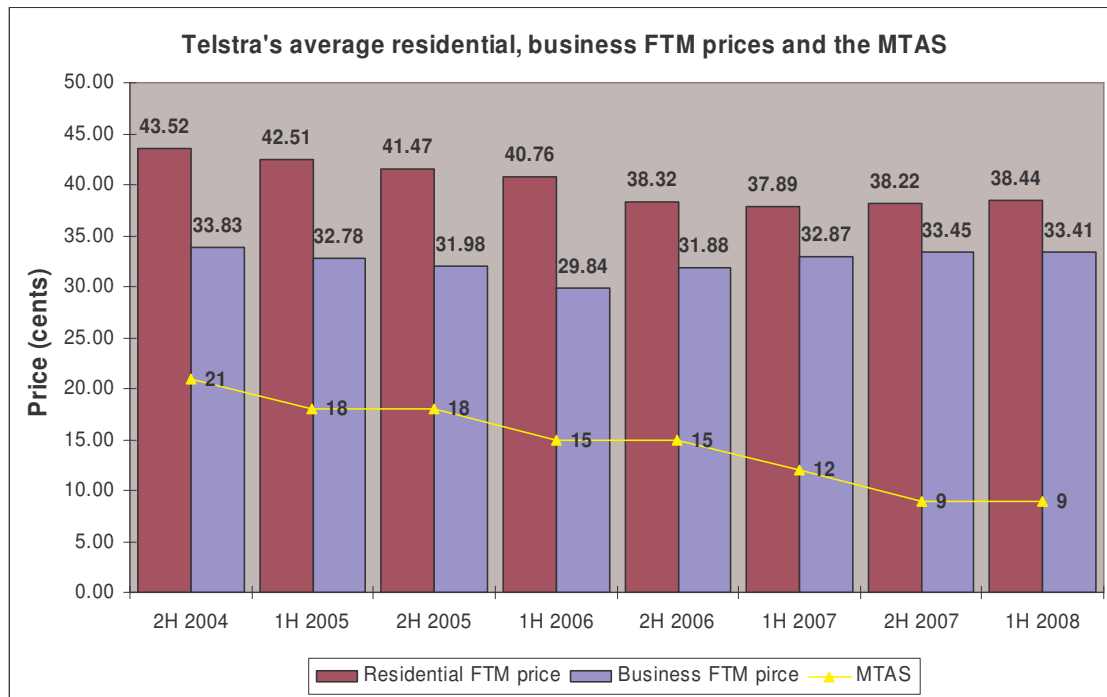
The Commission noted in the 2007 Pricing Principles Determination that *“while the reductions in FTM retail rates to date have been positive there is still opportunity for integrated operators such as Telstra and Optus to reduce retail FTM prices further particularly for residential end-users in line with reductions in the MTAS.”*⁴⁸

⁴⁶ ACCC, *MTAS Final Report – 2004*, p. vii.

⁴⁷ *ibid.*, p. x.

⁴⁸ ACCC, *2007 Pricing Principles*, p. 26.

Figure 3 Telstra's average FTM prices and the MTAS 2004 to 2008⁴⁹



Whilst average residential FTM prices have increased since 2007, the ACCC acknowledges that that MTAS cost savings can also be passed through via reductions in the price of other services provided in the bundle of pre-selected fixed line services. For example prices for the whole bundle of Public Switched Telephone Network voice products have shown declines. The total bundle of fixed voice products for both business and residential customers for the September 2008 quarter was reported as \$164.97 compared to \$176.10 in the same quarter of 2005.⁵⁰ The Australian Communications and Media Authority reports that local, National Long Distance (NLD), International Direct Dial (IDD) and FTM call prices declined in the three years from 2005–06 to 2007–08.⁵¹

Hutchison submits that reductions in the MTAS price are only in the LTIE if these reductions are passed through to end-users of FTM and mobile-to-mobile (MTM) services. Hutchison notes that reductions in the MTAS price have not been passed through to consumers of FTM services and as a result the ACCC should not reduce the regulated MTAS price below 9 cpm.

Optus considers that reductions in the MTAS price have allowed Telstra to receive a significant windfall gain. Optus submits a further reduction in the MTAS price will not be passed through by Telstra to end users. Further Optus submits that any additional

⁴⁹ ACCC, *Imputation testing report relating to the accounting separation of Telstra*, September 2004–June 2008.

⁵⁰ ACCC, *Imputation testing and non-price terms and conditions report relating to the accounting separation of Telstra for the September quarter 2008*, December 2008, Table 2.1; ACCC, *Imputation testing and non-price terms and conditions report relating to the accounting separation of Telstra for the September quarter 2005*; December 2005, Table 2.1.

⁵¹ ACMA, *Communications Report*, 2005–06, 2006–07 and 2007–08.

mechanism contemplated by the ACCC should take into account the degree of pass-through that has already occurred to date.

Telstra criticises the views expressed by the ACCC in relation to FTM pass through in the Draft MTAS Pricing Principles. It submits that the ACCC's approach is flawed, departs from regulatory precedents set by itself and accepted by the Tribunal, is contrary to allocative and dynamic efficiency as well as the LTIE and will inhibit competition. Telstra submits it has made substantial reductions in its wholesale FTM pricing. Telstra notes the ACCC has previously objected to any requirement for a pass-through safeguard of MTAS price reductions to FTM prices and notes the need for flexibility in choice as to how MTAS reductions would be passed on to end users. Telstra considers that the FTM data relied upon by the ACCC does not adequately reflect bundled offers in the retail market. In particular, the fact that bundled offers are in place means that the benefits to consumers of lower FTM prices are being passed through to consumers.

ATUG submits that there is evidence of market failure warranting targeted intervention. ATUG notes the purpose of the MTAS declaration was to ensure the LTIE. After waiting for the market and then regulation of the MTAS, ATUG is of the view the Government should intervene directly by setting retail price controls.

The ACCC is of the view that costs to consumers for the preselect bundle of NLD, IDD and FTM calls remain high and reductions in retail prices since 2004 have been slow compared to the regulated reductions in the MTAS price. While the ACCC appreciates that there are other costs associated with delivering FTM services and that MTAS cost savings can be passed through via reductions in the bundle of pre-selected fixed line services, the Commission is of the view that the degree of pass through to FTM retail prices remains lower than could be expected given the reductions in MTAS prices.

The Commission notes that additional regulatory mechanisms may be necessary to ensure a greater pass through of reductions in MTAS prices to FTM retail prices. For example, price control sub caps, particularly in the less competitive segments, may be appropriate. This would, of course, be a matter to be determined by Government which has the responsibility for such changes. This may require different caps for residential and business FTM services. The Commission considers that the approach adopted in New Zealand may also be appropriate. In New Zealand any reduction in mobile termination rates by any MNO is required to be passed through to fixed customers in full under voluntary deeds made between MNOs and the New Zealand Government.⁵²

⁵² See, for example, Vodafone New Zealand Limited, *Deed of Undertaking relating to the provision of cellular mobile termination services*, 20 April 2007, clause 5.

4.9 Consumer welfare

Alternatives to calling party pays arrangements

The Australian telecommunications industry currently operates under a calling party pays system (**CPP**), whereby the calling party pays for making a call to a mobile. The receiving party incurs no charge for receiving the phone call, with the terminating network provider recovering the cost of termination through the wholesale MTAS price. The ACCC recognises the alternative approaches to cost recovery by mobile network operators.

Under the Receiving Party Pays (**RPP**) system the receiving network terminates calls without charging the originating operator the full cost of that termination service, leading the terminating network to potentially recover part of the termination costs from their own retail customers. Thus, both parties are charged for some of the cost of the call. In this scenario end-users will take into account not only the cost of making phone calls but also the cost of receiving phone calls. This would ensure that MNOs have an incentive to lower termination rates, knowing that higher termination rates will lead to a reduction in subscriptions.

The Bill and Keep (**BAK**), also known as or Net Payment Zero, is basically a RPP system where operators agree to set the termination rate at zero. This system then involves the costs of terminating the call being recovered from the terminating network's customers via retail charges.

However, as there is no wholesale termination charges levied between operators, operators are free to decide how to recover the termination cost either from charging to receive calls, to make calls, or in combination.

Vodafone submits that the continual reduction in the MTAS rate could lead mobile operators to recover lost termination revenue by introducing minimum spend requirements on prepaid positions. This would introduce into the Australian market features of an RPP system, and could lead to a reduction in mobile penetration as low-spend subscribers are priced out of the market. Vodafone states this is supported by evidence of low mobile penetration rates in the US, which currently operates under a RPP system.

The ACCC is not fundamentally opposed to either of these two models and has not formed a concluded view in relation to whether CPP or RPP are preferable in terms of consumer welfare.

The major benefit of RPP or BAK models is that they may remove the monopoly characteristics of terminating calls and thereby reduce the need for regulation of termination services. These models could also help to internalise any calling externalities which may currently exist, as call receivers are required to pay for the benefit which they derive from receiving the call.

However, the ability of operators to attract low-spend subscribers may be constrained under the RPP or BAK approaches, as the absence of wholesale termination revenue forces operators to recover revenue through subscriber monthly bills.⁵³ Hence, this approach would be likely, based on the available evidence, to result in lower levels of mobile penetration, as low-spend users may be excluded from the market.⁵⁴

Waterbed effect

The waterbed effect refers to the extent to which regulated reductions in access prices such as the MTAS result in increases in retail prices such as the price of outgoing mobile calls, subscription or fixed contract and handset prices.

Some MNOs have argued that a waterbed effect is likely to operate in the markets within which mobile services are provided in Australia. For example, Optus submitted in support of its ordinary access undertaking to the ACCC in 2007 (**Optus 2007 Undertaking**) that retail prices would not fall following a regulated reduction in the MTAS rate, and may actually increase to compensate for lower MTAS revenues.

In the Optus 2007 Undertaking decision the ACCC formed the view that:

- the behaviour attributed to the waterbed effect as a general principle may be inconsistent with profit maximisation
- the arguments for the existence of a waterbed effect in the Australian context were not sufficiently developed to enable a substantial understanding of the effects of a change in the MTAS charge on retail mobile prices.⁵⁵

The New Zealand Commerce Commission (NZCC) has recently acknowledged the possible existence of a waterbed effect.⁵⁶ However, the NZCC noted that to the extent that there is a waterbed effect, whereby retail mobile prices are adjusted in some way in response to regulation, it considered it likely that mobile prices will decline under regulation but at a slower rate than without. Therefore, although the waterbed effect was described in terms of mobile subscription prices increasing (and the numbers of mobile subscribers decreasing), the NZCC considered it unlikely that mobile subscription prices will actually increase (or that subscriber numbers will decrease) in absolute terms.

The 2007 Pricing Principles Determination considered that a waterbed effect was not apparent in an Australian context due to lower average retail prices (including lower FTM prices) and increases in handset subsidies.⁵⁷ The Commission also noted the continued existence of two integrated operators in the Australian market as being not conducive to a waterbed effect.⁵⁸

⁵³ Vodafone 2008, *Submission to the ACCC: Draft MTAS Pricing Principles Determination and indicative pricing for the period 1 January 2009 to 31 December 2011*, p 7.2.

⁵⁴ J.S. Marcus, *Call Termination Fees: The US in global perspective*, page 18.

⁵⁵ *The Optus 2007 Undertaking in relation to the Domestic Mobile Terminating Access Service Public Version*, Final Decision, November 2007.

⁵⁶ New Zealand Commerce Commission, *Investigation into Regulation of Mobile Termination (2006)*.

⁵⁷ ACCC, *2007 Pricing Principles*, p. 14.

⁵⁸ *ibid.*, p. 13.

Optus maintains that a waterbed effect is likely to exist in the Australian market, and submits that the waterbed effect is stronger in highly competitive markets such as the Australian mobile services market. Vodafone agrees with this argument, describing as “uncontroversial” the idea that multi-product firms would rebalance revenues between products when the price of one product changes. Telstra, on the other hand, supports the ACCC’s stance on this matter, claiming that no waterbed effect exists in the Australian mobile services market.

The ACCC considers that competition at the retail level remains strong with an increase in the availability of capped and uncapped plans and the emergence of bundled pricing packages (particularly with data services) evidence of continued competition at the retail level.

4.10 Length of regulatory period

The ACCC has determined to set an indicative price of 9 cpm for the supply of the MTAS for a time period of three years.

The Competition Carriers’ Coalition and Telstra consider that the pricing principles should apply for shorter periods. The CCC submits that there may be significant developments relevant to MTAS regulation within the next 12 months such as improved RAF data, and structural changes to the industry emerging from the National Broadband Network process. Telstra submits that the ACCC does not provide MNOs any certainty beyond 30 June 2009 until the MTAS re-declaration process is complete. Telstra also submits the legislation contemplates that Pricing Principles should be determined at the time the re-declaration occurs, or shortly thereafter.

Vodafone and Optus are supportive of the ACCC’s proposal to set the indicative price for a period of three years, while Hutchison does not object to this. Both Optus and Vodafone submit that setting an indicative price provides MNOs with increased certainty encouraging economically efficient investment.

The mobile sector and telecommunications industry are very dynamic resulting in an industry structure which is quickly and constantly changing. In the mobile sector the roll out of 3G networks and forthcoming commercialisation of Long Term Evolution technologies create increased uncertainty surrounding the efficient costs of supplying the MTAS. This may to a certain extent be balanced by the ACCC’s use of improved RAF data to assist in estimating MNOs actual costs. As such the ACCC notes there may be grounds to only set an indicative price for a relatively short period of time (e.g. twelve months).

However, setting the indicative price for a three year period is likely to create greater certainty for planning and investment decisions of MNOs. A greater certainty in regulatory outcomes is more likely to encourage MNOs to commit to the large scale investments required to roll out extensive networks. The ACCC is of the view that setting an indicative price of three years is likely to encourage efficient investment in and use of infrastructure and be in the LTIE.

5 Price related terms and conditions

Subject to the MTAS declaration being ultimately extended, the ACCC has set an indicative price of 9 cpm for the period from 1 January 2009 to 31 December 2011 as set out below and Schedule 2 of the MTAS Pricing Principles instrument (see Appendix 1).

Time period	Indicative price
1 January 2009 – 31 December 2011	9 cpm

The TSLRIC+ pricing methodology has been used to inform the ACCC of the estimated efficient cost of supplying the MTAS. The ACCC provides the following information in relation to estimating the efficient cost of the MTAS:

- TSLRIC+ as applied in the WIK model remains an appropriate approach and generally provides a reasonable lower bound estimate of the cost of the MTAS
- International benchmarks, where appropriate adjustments are made, assists in estimating the TSLRIC+,
- the RAF applying to MNOs is currently being reviewed and more accurate information about MNO costs is likely to be available in the future, where relevant and reliable RAF data is available it is appropriate to use it to assist in estimating the TSLRIC+
- FTM pass through does not appear to have been as strong as expected given the significant reductions in the MTAS since 2004, and
- the existence of a waterbed effect in an Australian context remains unclear.

The Commission also notes that MNOs have made significant investments in infrastructure (particularly 3G technologies) and that it remains efficient for MNOs to concurrently operate 2G/3G hybrid networks.

It is appropriate that the Commission at this time adopts a cautious approach in the light of the uncertainty noted above. Maintaining MTAS indicative prices at 9 cpm for a period of 3 years provides a higher level of certainty to MNOs and is the LTIE.

Appendix 1 — Pricing Principles Determination

TRADE PRACTICES ACT 1974

Section 152AQA

Pricing Principles for the Domestic Mobile Terminating Access Service

The Australian Competition and Consumer Commission (the Commission) determines, pursuant to section 152AQA of the *Trade Practices Act 1974* (the Act), that the pricing principles specified in Schedule 1 and indicative prices specified in Schedule 2 are to apply to the Mobile Terminating Access Service (MTAS) declared by the Commission under section 152AL of the Act.

This Determination commences on the day it is made.

This Determination replaces any earlier Pricing Principles determinations for the Domestic Mobile Terminating Access Service.

Note: for the effect of this determination, see subsection 152AQA(6) of the Act. The Commission may have regard to earlier Pricing Principles determinations under subsection 152CR(2).

Made by the Australian Competition
and Consumer Commission on

[Insert Date]

Graeme Samuel
Chairman

Schedule 1 — PRICING PRINCIPLES

The ACCC's pricing principles for the MTAS are:

- cost-based pricing principles should be adopted in determining indicative prices for the MTAS
- a total service long run incremental cost framework (TSLRIC+) is an appropriate pricing methodology in informing the ACCC of the efficient cost of supplying the MTAS.

Schedule 2 — INDICATIVE PRICES

The indicative price for MTAS for the period 1 January 2009 to 31 December 2011 is:

Time period	Indicative price
1 January 2009 – 31 December 2011	9 cpm

Note: The application of this indicative price beyond 30 June 2009 is subject to the MTAS being declared beyond that date.

Appendix 2 — Submissions in response to the Draft MTAS Pricing Principles Determination 2009–11

Australian Telecommunications Users Group (ATUG) (one public submission)

Competitive Carriers Coalition (CCC) (one public submission)

Hutchison 3G Australia Pty Limited (one public submission)

SingTel Optus Limited (one public submission with a c-i-c version)

Telstra Corporation Limited (one public submission)

Unwired Australia Pty Limited (one public submission with a c-i-c version)

Vodafone Australia Limited (one public submission with a c-i-c version)