

16 April 2014

Australian Competition and Consumer Commission
mtasdeclarationinquiry@acc.gov.au

Review of the Declaration of the Domestic Mobile Terminating Access Service

Your Reference

Our Reference IP 041402

Macquarie Telecom Pty Limited (“**Macquarie**”) appreciates the opportunity to make this further submission to the Australian Competition and Consumer Commission (“**ACCC**”) concerning the ACCC’s draft decision on the above.¹ This submission arises from Macquarie’s consideration of SingTel Optus’ submission² to the Draft Decision and Message4U’s submission³ (which was recently promulgated by the ACCC) in response to SingTel Optus’ submission. SingTel Optus proposes an amendment to the mobile terminating access service (“**MTAS**”) service description which is opposed by Message4U.

Macquarie concurs with Message4U’s position that the amendment proposed by SingTel Optus should be rejected by the ACCC. This submission sets out Macquarie’s understanding of SingTel Optus’ proposed amendment and Macquarie’s comments on the proposed amendment.

SingTel Optus Proposal

SingTel Optus agrees with the ACCC’s draft decision to the extent that SMS termination services should be declared and thereby the terms (including price) on which such services are supplied will be determined by the ACCC. However, SingTel Optus believes that lower regulated prices for SMS termination services will have detrimental consequences in the form of:

- network congestion; and
- an increase in unwarranted SPAM SMS.

To address these apparent detrimental consequences, SingTel Optus proposes amendments to the MTAS service description such that only “peer-to-peer SMS termination is declared”, i.e., SMS originating from subscribers of an Australian mobile network operator including their wholesale partners such as mobile virtual network operators.

¹ ACCC, Domestic Mobile Terminating Access Service Declaration Inquiry, Report of the ACCC’s Draft Decision, 13 December 2013 (“**Draft Decision**”)

² SingTel Optus, Submission in response to ACCC Draft Decision Report, Domestic Mobile Terminating Access Service (MTAS) Declaration Inquiry, Public Version, February 2014 (“**SingTel Optus Submission**”)

³ Message4U, Mobile Terminating Access Service declaration review- 2013, reference TZD:DXO 1358059, Undated (“**Message4U Submission**”)

Macquarie's Comments on the SingTel Optus' Proposed Amendment

Macquarie is concerned about the materiality of the detrimental consequences that SingTel Optus claims will arise from a lower regulated price of SMS termination. Macquarie questions whether network congestion would actually arise given that one minute of a mobile voice call is the equivalent of 432 SMS.⁴ Macquarie submits that an end-user being bombarded with say 100 SMS in a single day would not result in network congestion if this is the equivalent of less than 15 seconds of a mobile voice call.

Macquarie also doubts that cheaper SMS termination would result in an increase in unwarranted SPAM SMS. This is because of the provisions in the *Spam Act 2003* which provide for the prohibition of the sending of unsolicited commercial electronic messages (which specifically includes text messages). In addition, the Act provides for significant pecuniary penalties for breaches of the Act. Macquarie submits that the *Spam Act 2003* is a significant and sufficient deterrent to guard against an increase in unwarranted SPAM SMS.

Based on the above, Macquarie believes that the concerns that SingTel Optus has with the declaration of SMS termination are more illusory than real. As such, there is no need for the ACCC to consider the amendments to the MTAS service description as proposed by SingTel Optus.

Closing

Macquarie welcomes the opportunity to make this further submission to the ACCC concerning its Draft Decision. SingTel Optus believes that lower regulated prices for SMS termination services will result in network congestion and an increase in unwarranted SPAM SMS. To address this, SingTel Optus proposes amendments to the MTAS service description such that only "peer-to-peer SMS termination is declared. Macquarie doubts the materiality of these concerns and therefore rejects the amendment proposed by SingTel Optus.

Please do not hesitate to contact me should you have any queries in relation to this matter.

Yours sincerely



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⁴ Draft Decision, pg 45