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Australian Competition and Consumer Commission
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Review of the Declaration of the Domestic Mobile Terminating Access Service

Your Reference

Our Reference IP 021401

Macquarie Telecom Pty Limited (“**Macquarie**”) appreciates the opportunity to make this submission to the Australian Competition and Consumer Commission (“**ACCC**”) in response to the ACCC’s draft decision concerning the above.¹ Macquarie supports the key preliminary conclusions of the ACCC as set out in the Draft Decision. In this submission, Macquarie provides comments on some of these conclusions, in particular:

- the declaration of mobile voice termination services;
- the declaration of SMS termination services;
- the non - declaration of MMS termination services; and
- the duration of declaration.

Each of these preliminary conclusions is addressed in turn.

Declaration of Mobile Voice Termination Services

The key conclusion arising from the Draft Decision is the ACCC’s preliminary view that voice termination on a mobile network whether originating from another mobile network or a fixed-line network should continue to be declared. The ACCC has reached this view on the basis that declaration is in the LTIE on the basis of an assessment against the statutory criteria as set out in the *Competition and Consumer Act 2010*. That is, the ACCC considers that continued declaration is in the LTIE because it will promote competition, achieve any-to-any connectivity and is likely to encourage economically efficient use of, and investment in, infrastructure.

Macquarie supports the ACCC’s preliminary view and the basis on which it is made. With regard to the assessment against the statutory criteria, Macquarie makes the following comments.

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

Promotion of Competition

Macquarie agrees with the ACCC's views on the construct of the relevant markets, i.e., a wholesale voice termination market and separate retail markets for fixed voice services and mobile voice services. With regard to the wholesale voice termination market it is a fact that each mobile network operator ("MNO") has a monopoly on voice termination on their own network. Therefore, MNOs are in a position to exercise monopoly power over access to their own networks. It follows that declaration of mobile voice termination services is not only conducive to promoting competition but essential for competition.

With regard to the downstream markets for fixed voice services and mobile voice services, Macquarie agrees with the ACCC's view that the regulation of mobile voice termination services will promote competition. This is because regulation will ensure that charges for such services will approach their cost-base. Macquarie believes that cost-based wholesale prices for mobile voice termination services will enable mobile virtual network operators ("MVNOs") like Macquarie to compete more effectively against the MNOs. That is, both MNOs and MVNOs would potentially compete on the basis of equivalent cost structures for such services.

Macquarie does, however, caution that competition on the basis of equivalent cost structures is only possible if MNO's actually pass-through the regulated MTAS prices to MVNOs. It is Macquarie's experience that such pass-through is neither immediate or in total. Unless pass-through is immediate and in full, effective competition is compromised.

Any to Any Connectivity

Any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) customers of any other network. Mobile voice termination services are essential to enable customers of fixed or mobile networks to connect with customers of a given mobile network. On the basis that each MNO can exercise monopoly power over access to its own network, the declaration of mobile voice termination services is necessary to ensure any-to-any connectivity.

Efficient use of and Investment in Infrastructure

Macquarie considers that the declaration of mobile voice termination services is consistent with promoting the efficient use of, and investment in, infrastructure. This is because declaration should result in efficient cost-based pricing for wholesale services which will ensure that MNOs receive sufficient compensation when they supply mobile voice termination services to access seekers. With appropriate pricing signals, MNOs will avoid making inefficient investment decisions, i.e., under or over investing in network infrastructure. Macquarie re-iterates the need for immediate and full pass-through of regulated prices from MNOs to MVNOs.

Declaration of SMS Termination Services

Macquarie particularly welcomes the ACCC's preliminary conclusion that it will declare SMS termination services. The ACCC has reached this view on the basis that declaration is in the LTIE. That is, the ACCC's considers that the declaration of SMS termination services is in the LTIE because it will promote competition, achieve any-to-any competition and is likely to encourage economically efficient use of, and investment in, infrastructure.



Macquarie supports the ACCC's preliminary view and the basis on which it is made. With regard to the assessment against the statutory criteria, Macquarie makes the following comments.

Promotion of Competition

Macquarie agrees with the ACCC's views on the construct of the relevant markets, i.e., a wholesale SMS termination market and a retail market for mobile services. With regard to the wholesale market and as discussed above with respect to mobile voice termination services, each MNO has a monopoly on SMS termination on their own networks. As such, MNOs are in a position to exercise monopoly power. Accordingly, the declaration of SMS termination services is essential for promoting competition.

The more significant impact of the declaration of SMS termination services would be in the retail market for mobile services. Macquarie notes that the current level of wholesale charges for SMS services is considerably above cost. Wholesale charges for SMS are currently in the order of 7 cents per SMS. Macquarie notes that the Draft Decision refers to a mobile termination cost model which assumes 432 SMS can be sent per minute of voice calls.² At the current regulated MTAS price of \$0.036 per minute, this equates to a cost of \$0.000083 per SMS, i.e., less than 1 cent for 100 SMS. Alternatively, 7 cents per SMS would equate to a voice call costing \$32.24 per minute.

The declaration of SMS termination services should result in cost-based wholesale charges being determined which in turn is expected to result in significant wholesale cost reductions. This in turn is expected to stimulate competition in the retail market for mobile services as cost savings are passed through to end-users. Moreover, declaration of SMS termination services would result in both MNOs and MVNOs competing on the basis of equivalent cost structures for such services. This is of course, provided that pass-through of regulated prices from MNOs to MVNOs is immediate and in full.

Any to Any Connectivity

As discussed above, any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) customers of any other network. SMS termination services are essential to enable customers of one mobile network to send (and receive) SMS messages to (and from) customers of another mobile network. On the basis that each MNO can exercise monopoly power over access to its own network, the declaration of SMS termination services is necessary to ensure any-to-any connectivity.

Efficient use of and Investment in Infrastructure

Macquarie considers that the declaration of SMS termination services is consistent with promoting the efficient use of and investment in infrastructure. This is because declaration would result in efficient cost-based pricing for wholesale services which will ensure that MNOs receive sufficient compensation when they supply SMS termination services. With appropriate pricing signals, MNOs will avoid making inefficient investment decisions, i.e., under or over investing in network infrastructure. This is of course, provided that pass-through of regulated prices from MNOs to MVNOs is immediate and in full.

² *ibid*, pg 45

Non - Declaration of MMS Termination Services

Macquarie notes the ACCC's view that MMS termination services should not be declared at this time. Macquarie is disappointed with this view and urges the ACCC to reconsider its position. While the ACCC acknowledges the similar bottleneck characteristics of MMS termination services to those of mobile voice and SMS termination, it has essentially decided to not declare MMS termination services for the following reasons:

- that it is not convinced that MMS wholesale pricing is inefficient; and
- the consumer take up of MMS services is low.

Macquarie is of the view that wholesale pricing for MMS termination services is excessive in comparison to its underlying cost. *Prima facie* this is apparent in the variation in the level of wholesale charges between different MNOs in the data that Macquarie has already provided to the ACCC. Macquarie notes that in its experience wholesale charges for MMS have remained at the same level in recent years.

Macquarie acknowledges that consumer take up of MMS is low. However, this seems to be more of a reason for regulating MMS termination services rather than a reason for not regulating MMS termination services. That is, excessive wholesale MMS charges enable MNOs to keep retail MMS prices high and with high retail prices consumers are deterred from using MMS. Macquarie is of the view that lower retail prices would drive end-user demand.

With regard to the statutory criteria for the assessment of whether the declaration of MMS termination is in the LTIE, Macquarie makes the following comments.

Promotion of Competition

Macquarie believes that the construct of the relevant markets for this assessment is the same as for the SMS, i.e., a wholesale MMS termination market and a retail market for mobile services. With regard to the wholesale market, each MNO has a monopoly on MMS termination on its own network. As such, MNOs are in a position to exercise monopoly power. Accordingly, the declaration of MMS termination services is essential for promoting competition.

The more significant impact of the declaration of MMS termination services would be in the retail market for mobile services. As noted above, Macquarie considers that the current level of wholesale charges for MMS termination services is considerably above cost. The declaration of MMS termination services would result in cost-based wholesale charges being determined which in turn would be expected to result in significant wholesale cost reductions. This in turn would be expected to stimulate competition in the retail market for mobile services as cost savings are passed through to end-users. Moreover, declaration of MMS termination services would result in both MNOs and MVNOs competing on the basis of equivalent cost structures for such services. This is of course, provided that pass-through of regulated prices from MNOs to MVNOs is immediate and in full.

Any to Any Connectivity

As discussed above, any-to-any connectivity is a concept by which customers of one network can make (and receive) calls to (and from) customers of any other network. MMS termination services are essential to enable customers of one mobile network to send (and receive) MMS messages to (and from) customers of another mobile network. On the basis that each MNO can exercise monopoly power over access to its own network, the declaration of MMS termination services is necessary to ensure any-to-any connectivity.

Efficient use of and Investment in Infrastructure

Macquarie considers that the declaration of MMS termination services is consistent with promoting the efficient use of, and investment in, infrastructure. This is because declaration would result in efficient cost-based pricing for wholesale services which will ensure that MNOs receive sufficient compensation when they supply MMS termination services. With appropriate pricing signals, MNOs will avoid making inefficient investment decisions, i.e., under or over investing in network infrastructure. This is of course, provided that pass-through of regulated prices from MNOs to MVNOs is immediate and in full.

As noted above, Macquarie urges the ACCC to reconsider its preliminary conclusion that it will not declare MMS termination services at this time. In particular, Macquarie believes that the ACCC should further scrutinise current wholesale charges and underlying costs of MMS termination services.

Macquarie also notes that the ACCC may vary a declaration if there are changes in the market that warrant a variation (subject to a public inquiry). Accordingly, Macquarie undertakes to keep the ACCC informed on movements in wholesale MMS charges that it experiences.

Duration of Declaration

The ACCC has reached the preliminary conclusion that it will declare the mobile terminating access service (“**MTAS**”) for a period of five years. Macquarie supports this preliminary conclusion on the basis that it provides access seekers with a more certain operating environment which is thereby less risky. While the duration of terms including price for the MTAS is subject to a separate final access determination (“**FAD**”) by the ACCC, Macquarie submits that a five year MTAS declaration sits comfortably with a FAD of two years. That is, a two year FAD reflects the period of commercial agreements and different end dates for the FAD and the declaration eases the workload for the ACCC and industry.

Closing

Macquarie welcomes the opportunity to make this submission in response to the Draft Decision. Macquarie reiterates the following key points arising from its review of the Draft Decision:

- Macquarie supports the ACCC’s position on the declaration of mobile voice termination services;
- Macquarie supports the ACCC’s position on the declaration of SMS termination services;

- Macquarie disagrees with the ACCC's position on the declaration MMS termination services and urges the ACCC to reconsider its draft decision; and
- Macquarie supports the ACCC's view that the declaration of the MTAS should be for a period of five years.

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

Yours sincerely



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