

Submission to the ACCC regarding the draft access determination for the Domestic Mobile Terminating Access Service

Public version

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Macquarie Telecom Group (**Macquarie**) appreciates the opportunity to make a further submission on the issues that the ACCC has reviewed relating to charges for the Domestic Mobile Terminating Access Service (**MTAS**) and on the Draft Report issued on 15 May 2020.

Macquarie has made earlier submissions on this matter to the ACCC and does not intend to repeat the substance of those submissions here. We recognise that on several important matters our submissions have been taken into account, notwithstanding that the ACCC has not been able to agree with all of them. In particular we remain concerned by the ACCC's preference for TSLRIC+ rather than adopting a pure LRIC approach to the costing of the MTAS, as has been the case in Europe for over a decade now.

Having considered the ACCC's Draft Report, Macquarie Telecom remains concerned about a number of issues and requests the ACCC to make appropriate changes in its Final Access Determination (**FAD**). The issues relate to (1) the extended period before charges for MTAS will be further reviewed; (2) using 2020 benchmark results to set prices for 2021-2024; (3) adopting a "conservative" approach to determine the MTAS rate; and (4) the commencement date of the FAD.

(1) The extended period before charges for MTAS will be further reviewed

The Draft Report proposes that an MTAS rate of 1.22 cents per minute should remain in place from the proposed commencement date of the FAD—1 January 2021—until the expiry date of the current MTAS declaration—30 June 2024.

The ACCC has already noted in its report that it does not wish to undertake the development of new mobile network cost models until the introduction of 5G technology has become more established in the mobile sector. That is understood and accepted by Macquarie, although we would add the rider that 5G is now being adopted on a wide front around the world as expeditiously as mobile network operators are able. There is every reason to believe that 5G technology will be operating across the board in Australia well before the expiry of the current MTAS declaration.

In addition, given recent experience with the MTAS and other declarations, it is not possible to rule out an extension of both the declaration and of the MTAS rate that will be determined in the current review.

Therefore, there is every reason to expect that the MTAS rate that is determined in the present review will operate during a period of substantial industry change for at least four years from now and possibly even longer, with a distinct possibility that it will increasingly overstate the efficient costs that should be recovered during that period.

Under these circumstances, Macquarie recommends that the ACCC should commit to a further review of the continued appropriateness of the rate now determined before the end of the second year—that is, by 31 December 2022. This review could be undertaken expeditiously by considering the continued relevance of the assumptions about key parameters in the cost models for the countries in the benchmark set, with suitable allowance for the proportion of the voice and data demand carried on 5G networks at that time. Macquarie is not seeking a commitment to a new, full scale benchmarking exercise at that time, unless that turns out to be the ACCC's preference, but to a review of the appropriateness of the current rate in the light of mobile market developments in the 2½ years that will have elapsed in the meantime.

(2) Using 2020 benchmark results to set prices for 2021–2024

In Table 11 at page 48 of the Draft Report the ACCC sets out the upper and lower bounds of the MTAS cost range for the period 2020 to 2024 in nominal Australian cents per minute as follows:

Years	2020	2021	2022	2023	2024
Upper Bound (Sweden, Peru, Portugal)	1.28	1.24	1.22	1.20	1.20
Lower Bound (UK, France, Sweden, Peru, Portugal)	1.02	0.97	0.95	0.92	0.93

The ACCC then proposes to use the benchmark results for 2020 as the basis for setting the MTAS rate. This is done on the basis of the 75th percentile, thus resulting in a proposed rate of 1.22 cents per minute (i.e. ¾ of the way between the lower bound of 1.02 and an upper bound of 1.28).

Macquarie submits that the use of 2020 cost data is perverse when the ACCC has explicitly set out to determine a single cost-based rate applicable throughout the period 2021–24. It would be logical and preferable to establish a flat rate based on the average of the benchmark outcomes for the years 2021–24. From the data in Table 11 in the ACCC's Draft Report, this would create an upper bound of 1.21 cents per minute and a lower bound of 0.94 cents per minute. The 75th percentile result would then be 1.15 cents per minute.

(3) Adopting a “conservative” approach to determine the MTAS rate

The ACCC explains its use of these upper and lower bound figures thus:

In normal circumstances, the ACCC would consider that the midpoint of the range (50th percentile) would be appropriate as it balances the different interests that are likely to be affected by the MTAS price. In this case, the ACCC considers that there are additional considerations which may warrant a more conservative approach in adopting a price point that lies above the midpoint of the estimated cost range.

Macquarie has examined the reasons that the ACCC sets out on page 48 but, with respect, cannot find anything particularly compelling by way of justification. The reasons the ACCC gives for being “conservative” are (a) a probable future holistic review of the relativities between MTAS and FTAS and (b) a probable future development of a 5G cost model. In Macquarie’s opinion neither of these future developments justifies a higher MTAS rate: on the contrary, both suggest the need to lower the MTAS rate. If a holistic approach to termination rates were adopted for fixed and mobile services, this would result in a lower MTAS rate;¹ and if a 5G cost model were developed it would also result in a lower MTAS rate because of the efficiency savings inherent in 5G networks, particularly for voice services as costs in 5G are even more focused on data services. In other words, the two trends that the ACCC quotes are both justifications for a lower MTAS now, so as to avoid a “cliff-edge” reduction in the MTAS rate later.

Macquarie understands that the ACCC would not want to set a rate for MTAS now that would have any appreciable risk of increasing as a result of a cost review in the next 4 or 5 years. But, realistically, that should not happen, and should not be allowed to happen. 5G is being introduced to provide capacity to manage increased data demand and increased speeds. It is not being introduced for voice traffic. The reduction in (voice) MTAS costs will continue into the future and so too should the reduction in the MTAS rate. The unknown at this stage is only how much lower the rate will go.

Under these circumstances Macquarie recommends that the ACCC should continue the practice which it regards as appropriate in normal circumstances; it should adopt a figure that reflects the 50th percentile, or mid-point, between the upper and lower bounds. This approach would result in an MTAS rate of 1.15 cents per minute on the basis of the 2020 benchmark proposed in the ACCC’s draft report, and 1.08 cents per minute on the basis of the 2021–24 benchmark (i.e. taking account of the amendments proposed by Macquarie under (2) above).

¹ Currently the FTAS rate, at 0.86 cents per minute, is 51% lower than the MTAS.

(4) The commencement date of the FAD

Macquarie is concerned about the protracted nature of the current review and the possibility of further delays. The major mobile network operators have made it clear that they wish to maintain a high MTAS rate for as long as possible, well above the levels recommended by the ACCC's expert consultants as reflective of efficiently incurred costs when adjusted for Australian conditions.

Under these circumstances Macquarie recommends that the ACCC should commit to a commencement date for the FAD no later than 1 January 2021 come what may, even if that means some limited period of retrospectivity from the date of finalisation of the access determination. A commitment of this kind will remove any incentives for regulatory gaming on the part of anybody who might benefit from delay.

Conclusion

Macquarie understands the difficulties in preparing an accurate cost-based benchmark relating to charges for the MTAS. Although we still have some concerns about the methodology pursued by the ACCC's consultants, we believe that the outputs from the benchmark, as depicted in Table 11 of the Draft Report, provide a reasonable basis for determining the MTAS rate. However, we urge the ACCC to reconsider its approach to establishing rate proposals based on this benchmark. In particular, we urge the use of 2021–24 benchmark data to support a flat rate MTAS to apply throughout that period, and we urge the "normal" use of the 50th percentile between the upper and lower bounds of the benchmark. On this basis, Macquarie recommends that the ACCC's final report determines the MTAS rate for the period 2021–24 as 1.08 cents per minute.