OPTUS

Submission in response to ACCC Discussion Paper

Public inquiry into the declaration of the DTCS, fixed line services and domestic MTAS

Public Version

July 2023

EXECUTIVE SUMMARY

1. Optus welcomes the opportunity to provide feedback on the Australian Competition and Consumer Commission's (ACCC) inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service (the Discussion Paper).

2. Optus submits that all the existing service declarations should be remade for a further five year period.

3. Since the last fixed line declaration inquiry, the NBN has been declared built and fully operational. However, retail services are still migrating across from legacy networks to the NBN. For these services, and in areas outside the NBN fixed line footprint, Telstra's fixed line Customer Access Network (CAN) remains an enduring bottleneck to supplying downstream retail broadband and voice services.

4. Network access and resale services remain essential inputs needed for Retail Service Providers (RSPs), that do not have access to the NBN, to compete and supply voice and broadband services in downstream markets. Optus submits that declaration should continue until legacy services are completely migrated off Telstra's network within the NBN fixed line footprint, and in areas outside the NBN fixed line footprint where Telstra is required to maintain operation of the CAN until 2032.

5. Voice interconnection services (mobile termination and fixed origination/termination) remain key bottleneck services. Voice calls to mobile services can only be terminated by mobile network operators (MNOs), and there remains no effective alternative for terminating voice calls to mobile services. Voice origination and termination services to fixed services are not impacted by the transition to the NBN and remain a vital input for networks to connect voice calls to landline numbers.

6. Both MTAS and FTAS/FOAS declarations should be remade and remain separate reflecting the fundamental differences between mobile networks and fixed line networks. Optus does not see any justification for alternations to the existing service descriptions.

7. In addition, access to wholesale transmission services, along both regulated and unregulated transmission routes, and terminating access to mobile networks, also remain important inputs for RSPs in supplying downstream voice and broadband services.

8. There continues to be increased demand for medium and high-capacity transmission service and for wholesale transmission services in regional and remote areas since the last declaration inquiry. Continued regulation of the DTCS supports competitive provision of downstream voice and broadband services and encourages the efficient use of and investment in infrastructure.

9. The continuation of declaration for all services for another five years would provide regulatory certainty to RSPs in acquiring these essential inputs used to supply downstream voice and broadband services to end-users. The alternative without declaration is that supply may be withdrawn, or supplied on unreasonable terms, which would mean RSPs may either cease supplying downstream services or further increase retail prices.

10. For these reasons, Optus supports the continued declaration of fixed line services supplied over Telstra's CAN, the DTCS, FTAS/FOAS and MTAS in order to promote competition in downstream broadband and voice markets, support any-to-any connectivity and encourage the efficient use of infrastructure and ultimately promote the

long-term interests of end-users (LTIE) by providing certainty to RSPs and allowing the setting of cost-based access prices.

11. Optus considers the services descriptions for all declared services remain fit for purpose.

THE ULLS, WLR/LCS AND WADSL SERVICES SHOULD REMAIN DECLARED

12. Despite the NBN being declared built and fully operational since the last declaration inquiry in 2019, there still remains a need for access to essential services supplied over Telstra's Customer Access network (CAN) to be regulated.[1]

13. This is because the CAN remains an enduring bottleneck and access to the CAN is still essential to provide downstream services, promote competition in downstream telecommunications markets and promote the long term interests of end-users (LTIE).

14. While the large-scale migration of services off Telstra's copper network has continued, there remain many services still active on the legacy network. ACCC data shows that more than 543,000 services in operation are still being supplied over Telstra's CAN, across all geographic bands (not just those areas that may be outside the NBN fixed line footprint and subject to forced migration).[2] **[CiC]**.

15. Services continue to be used both within the NBN fixed line footprint – for example, where more complex NBN connections may be required – and outside the NBN fixed line footprint where Telstra is required to continue the operation of its copper network until 2032.

16. For example, **[CiC]**

17. In areas outside the NBN fixed line footprint, alternatives may be more limited, with Australia's remoteness and terrain making providing mobile services more challenging. Services provided using Telstra's CAN are still likely to represent an affordable competitive option at present, although more alternatives (such as improved satellite coverage and further expansion of mobile networks) could become available in future.

18. Residential and business end-users may be less willing to give up their fixed line voice services because of reliability/redundancy concerns (i.e. end-users may be unwilling to rely solely on another technology) or, for businesses, if their business phone number is related to that service.

19. Optus considers it is particularly important for services provided over Telstra's copper CAN to remain declared where services are essential outside of the NBN fixed line footprint and to service premises that may still be waiting for complex NBN connections. Absent declaration, Optus considers there could be detrimental impacts on downstream retail markets. Telstra could increase access prices or impose unfavourable terms which may encourage RSPs to exit the market with only limited options for end-users available in the meantime or lead to increased retail prices. It is unclear, in the absence of declaration, that an appropriate pathway is available to ensure the status quo of continued connectivity by all downstream users can be supported.

[1] Minister for Communications, Media Release, 11 December 2020. https://www.infrastructure.gov.au/media-centre/publications/declaration-nbn-should-be-treated-built-and-fully-operational

[2] ACCC, Snapshot of Telstra's customer access network as at 31 March 2023. https://www.accc.gov.au/system/files/Snapshot%20of%20Telstra%27s%20customer%20access%20network-%20Mar%202023.pdf

20. Ensuring services remain declared will also support the efficient use of existing infrastructure, particularly until remaining services are migrated off legacy infrastructure within the NBN fixed line footprint.

21. Optus submits that as long as access to wholesale services provided over Telstra's CAN is required to supply downstream services, the declarations should remain to provide certainty in promoting competition in downstream markets, the economically efficient use of infrastructure which ultimately promotes the long-term interests of end-users (LTIE).

CONTINUED DECLARATION OF DTCS WILL PROMOTE THE LTIE

22. Access to wholesale transmission services, along both regulated and unregulated transmission routes, remains an important input for core network access for network operators. High-capacity transmission carries data for most telecommunications services, which is particularly important as the demand for data across all platforms continues to grow.

23. Since the last declaration inquiry, there continues to be growing investment in transmission and national fibre backhaul. In particular, both the completion of NBN and investment in mobile networks to support more data-intensive applications and services have driven demand for backhaul capacity.

24. Nonetheless, Optus reiterates that the separate wholesale transmission markets identified in past declaration inquiries continue to apply, including:

    (a) Market for low-capacity bandwidth service (less than 10 Mbps), typically 2 Mbps lines used primarily for corporate and government access services;

    (b) Market for mid-capacity bandwidths greater than 10 Mbps and below 1 Gbps, reflecting transmission services used in several downstream markets; and

    (c) Market for high-capacity bandwidths greater than 1 Gbps, reflecting inputs into carrier services typically inter-capital and other high-capacity trunking routes.

25. In particular, we have observed an increase in the demand for medium and high-capacity transmission service since the last declaration inquiry. This increased demand continues for wholesale transmission services in regional and remote areas.

26. Optus therefore considers that continued declaration of the DTCS – which recognises both the different transmission capacity profiles, and DTCS route types – should be supported.

Increased demand for medium and high-capacity services in regional areas

27. The provision of medium bandwidth services (up to 1 Gbps) primarily impacts the provision of trunking services between network nodes – and not between a network node and an end-user premises. The declaration of DTCS has provided the greatest benefit in markets that rely upon medium bandwidth transmission inputs. Specifically, DTCS regulation has benefitted the market for mobile services as it has enabled greater use of fibre backhaul and played an important role in the provision of mobile backhaul.

28. The provision of high-capacity bandwidth services (above 1 Gbps) similarly relate to the provision of trunking services. This has also experienced considerable growth since the last declaration inquiry. For example, **[CiC]**

29. While Optus acquires wholesale transmission services from multiple providers, in many regional and remote areas, Telstra continues to maintain a monopolistic position.

30. Regulation of DTCS has enabled Optus to offer services in areas where it is uneconomical or inefficient for Optus to deploy medium bandwidth transmission links. This allows Optus and other RSPs to continue supplying downstream services in areas that may otherwise have a more limited number of downstream providers.

31. As such, continued declaration will promote competition in these downstream markets and support the efficient use of and investment in infrastructure that will promote the LTIE.

ACCESS TO INTERCONNECTION SERVICES REMAINS ESSENTIAL

32. The Fixed Originating Access Service (FOAS), Fixed Terminating Access Service (FTAS) and Mobile Terminating Access Service (MTAS) provide interconnection access, allowing end-to end connectivity between different telecommunications network operators.

33. Without regulated access to these interconnection services, it is likely that competition in the provision of voice services would be lessened relative to the future with declaration. Absent declaration of the FOAS and FTAS, fixed line providers could withdraw access to the services or offer them on unreasonable terms. This would have a deleterious impact on any-to-any connectivity, if Access Seekers were unable to offer voice services if they could not provide fixed voice origination or voice termination.

34. MTAS also plays a similar critical interconnection role in relation to mobile networks by ensuring terminating access is available across all mobile networks. Declaration of MTAS has been long-standing within telecommunications regulation, in recognition of the essential characteristics of terminating access services. Regulation of MTAS ensures:

    (a) that competition will be promoted in retail markets for mobile services and fixed voice services by ensuring wholesale mobile voice termination charges are aligned with the efficient costs of service;

    (b) any-to-any connectivity by enabling termination (i.e. connection) of a call on another MNO's network; and

    (c) prices can be set that promote the efficient use of and investment in telecommunications infrastructure, which is important as new mobile technologies continue to be deployed.

35. These interconnection services are a vital input used in both the fixed line and mobiles markets and are essential for achieving any-to-any connectivity; promoting competition in downstream retail markets and enabling pricing that support the efficient use of and investment in infrastructure. As such, continuing the FOAS/FTAS and MTAS declarations will promote the long-term interests of end-users.

36. Optus continues to support considering FOAS/FTAS and MTAS pricing concurrently, given the possibility (as submitted in previous declaration and pricing inquiries) that to consider regulation and pricing of these services without regard to the other may lead to distortionary outcomes.

37. Optus is concerned that failure to adopt a consistent approach to pricing will result in a regulatory-imposed competitive distortion, creating a subsidy away from competitive MNOs towards the dominant fixed line operator.

38. If prices are not set using the same cost methodology or taking into account relativities between the two services, Optus considers that mobile termination rates could approach, or even fall below, fixed termination rates. This could influence consumer decisions about downstream calls and investment decisions for telecommunications companies, leading to inefficient outcomes that do not promote competition in related markets; efficient use of and investment in infrastructure or the long-term interests of end-users.

MTAS cannot be provided over a non-mobile access network

39. While Optus has long submitted that the pricing of MTAS and FOAS/FTAS should be determined together in the same inquiry process, the declared services remain technical separate and not substitutable.

40. The fundamental nature of mobile termination is that it is provided over a mobile network. That is, the reason why there are two termination services in the market (fixed and mobile) is that there are key engineering and cost-causal differences between the services.

41. A generic termination services involves a communication being handed over at a point-of-interconnection traversing an CSP's core network, being sent from the core the network onto the access network on which the end-user is located, and onto the end-user's customer equipment to terminate the communication.

42. In a simple example several aspects of this termination service could be common across mobile and fixed termination. For example, a modern network could be designed to have a common POI and core network across multiple different access networks. Any communications to be terminated to a certain end-user could then be routed to the relevant access network on which the end-user is located.

43. The fundamental reason why there are two regulated termination services (fixed and mobile) is the different cost drivers of the relevant access networks. The costs of the fixed network access network are driven by access and the cost to connect the end-user premise. The cost of the fixed access network does not vary with the volume of termination traffic.[3] As a result, the price of FTAS does not reflect any access network costs. On the other hand, the cost of the mobile access network is driven by the volume of traffic delivered over it. As a result, the price of MTAS does reflect access network costs.

44. For these reasons, FTAS and MTAS cannot be regarded as the same service as the costs to provide the services will also be different. That is, the efficient MTAS rate will always be higher than the efficient FTAS rate due to the inclusion of access network costs in MTAS. Should non-mobile network operators be permitted to charge MTAS to terminate a voice call, there will be an inefficient over-recovery of charges which is inconsistent with the objectives of Part XIC.

45. Termination services over a non-mobile network are not, and cannot be, mobile termination services.

[3] The FSLM recognises this by allocating termination as a core service not an access service. Access costs are not allocated to FTAS.

SMS termination should not be declared

46. Optus submits there is no case for SMS termination to be included in the MTAS declaration and that it would not promote the long-term interests of end-users for SMS termination to be re-declared.

47. The deregulation of SMS during the last declaration inquiry has benefited end-users. First, there has been no detriment in any related market. The retail market continues to see unlimited SMS inclusions in all retail mobile products. In response to competition from data-based messaging services provided by OTT companies, MNOs have had to offer unlimited SMS in their retail services. Second, deregulation has enabled material benefits in related markets. Importantly, deregulation has provided MNOs discretion in differentiating between personal SMS (P2P) and business application messages (A2P). The ability to differentiate between these services has enabled MNOs to target the provision of scam SMS and to challenge the business model of scammers. The declaration of SMS in 2014, together with the material 99% reduction in the termination rate contributed to the proliferation of SMS scam messages. Addressing this issue is a key aspect of industry's response to illegal scam traffic – an objective supported by current government policy.

48. Re-declaring the of SMS termination is likely to hinder the ability of the telecommunications sector to continue to challenge the business model of illegal scammers. Optus does not support such a policy.

49. In any event, Optus submits the ACCC's finding during the last declaration inquiry that SMS termination no longer represents a bottleneck continues to hold true, including:

    (a) the emergence and take-up of OTT messaging services, such as Facebook Messenger, iMessage, WeChat and WhatsApp, which have become effective substitutes for person-to-person (P2P) SMS in the retail market, and

    (b) limited incentives for the MNOs to refuse to provide SMS termination on reasonable terms.[4]

SERVICE DESCRIPTIONS REMAIN FIT FOR PURPOSE

50. In general, Optus considers that the service descriptions for the regulated services the subject of this inquiry are fit for purpose and should remain the same. Specific comments are set out below.

Fixed line services service descriptions

51. Optus considers that the current services descriptions for the regulated fixed line services supplied over Telstra's CAN remain fit for purpose and should be retained. This would provide certainty to access seekers until migration is complete within the NBN fixed line footprint and on an ongoing basis in areas outside the NBN fixed line footprint where Telstra is required to maintain the operation of the CAN and where competitive alternatives may be more limited.

[4] ACCC, Domestic mobile terminating access service declaration inquiry, Final Decision, June 2019, p.22

DTCS service description

52. Optus considers the current DTCS service description remains fit-for-purpose and should be retained. While the available bandwidth profiles may have changed since the last declaration inquiry, the identification of distinct bandwidth markets recognise that transmission services are sold across a range of capabilities for differing purposes.

53. It follows that the relevant DTCS service description should retain the recognition of both different bandwidth profiles (low, mid, and high) and the route-type categories (metro, regional, inter-capital, tail-end and mobile backhaul).

MTAS service description

54. Optus considers the current MTAS service description is fit-for-purpose and should be retained. The purpose the MTAS service is to allow a voice call to be terminated to an end-user connected to a mobile network. The difference between mobile and fixed termination relates to the additional voice-related access network costs associated with mobile networks. This is captured in the current service description.