

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to
ACCC Draft Report

**Domestic Mobile
Terminating Access
Service**

Declaration Inquiry

Public Version

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Section 1. EXECUTIVE SUMMARY

- 1.1 Optus welcomes the Australian Competition and Consumer Commission's (ACCC) draft report into the declaration of the Domestic Mobile Terminating Access Service (MTAS). The draft report proposes that:
 - (a) MTAS voice termination should remain declared as there remains no effective substitute for voice calls for which voice MTAS is an essential input; and
 - (b) SMS messages should be removed from the MTAS service description as the retail market for messaging service comprise both SMS and OTT services. Importantly, OTT services do not require the provision of SMS termination services. MNOs, therefore, are unable to exploit any monopoly power they may have in the termination of SMS messages on their mobile networks.
- 1.2 Optus supports both proposals.
- 1.3 Optus reiterates that the current voice service description is fit-for-purpose and should be retained. Optus supports a technology-neutral approach – the purpose the MTAS service is to allow a voice call to be terminated to an end-user connected to a mobile network.
- 1.4 Further, we repeat that the continued declaration of SMS termination is not in the LTIE. Experience of the last four years has shown that:
 - (a) Consumers are moving away from SMS-based messages and OTT messaging services are now an effective substitute. SMS termination is no longer a bottleneck to the delivery of messages to B-party end-users.
 - (b) Consumers have access to unlimited SMS on almost all retail plans, and while the effective retail price to send an SMS is low, SMS use remains in decline and consumers are increasingly using OTT messaging.
- 1.5 Further, the market for A2P has changed, with large enterprises who acquire A2P services direct from MNOs benefitting from the reduction in wholesale charges. But A-Party SMEs and B-Party consumers have seen little or no benefit due to the lack of competition in the A2P Aggregator market. In addition, there has also been a material increase in the delivery of fraudulent and phishing SMS scams to consumers due to SMS interconnection.
- 1.6 Finally, Optus supports the draft position that competition in the mobile sector is encouraging the supply of innovative services, and that MTAS has little relevance to the supply of such services.

Section 2. DECLARATION PROMOTES THE LTIE

- 2.1 The ACCC proposes in the draft report to maintain the declaration of MTAS as it remains in the long-term interests of end-users (LTIE), although the ACCC notes that it is not clear declaration of SMS termination would remain in the LTIE given the proliferation of OTT messaging services which are effective substitutes to SMS.
- 2.2 Optus supports these views and sets out comments on the elements of the LTIE assessment below.

Relevant markets remain the same

- 2.3 The ACCC proposes that the relevant markets in relation to this declaration review include the:
 - (a) Wholesale market for voice termination;
 - (b) Retail market for fixed voice; and
 - (c) Retail market for mobile voice.
- 2.4 In respect of the wholesale market for voice services, the ACCC argues that each MNO continues to have exclusive access to the end-users on their own networks and control the termination of voice calls to those end-users. There are no other effective substitutes for wholesale voice termination.
- 2.5 In relation to retail markets, the ACCC notes that mobile voice termination is an essential input to calls made by an end-user originating on either a fixed or mobile voice networks attempting to call an end-user on a mobile network. In either case, the originating network recovers costs from its customers via call charges, so the ACCC concludes that MTAS is an essential input into both MTM calls and FTM calls. As such, MTAS is a relevant input for both the retail market for fixed voice services and the retail market for mobile services.
- 2.6 We note there were differing views in response to the discussion paper over whether OTT communications services were an effective substitute for MTM calls and/or SMS. The ACCC notes there were some limitations to OTT voice services being considered full substitutes for MTM voice calls, due to factors such as voice call quality, practicality and reliability and connectivity issues, such as, not being able to contact triple zero.
- 2.7 The ACCC considers this meant that OTT communications services are complements to MTM calls and does not consider them either a separate retail market or as part of a converged single retail market.
- 2.8 Optus agrees with the ACCC's views that the wholesale market for voice termination, retail market for fixed voice and the retail market for mobile voice are relevant markets for this review. We support the ACCC's views that at the moment OTT communications services are not a full substitute for MTM calls and are complementary to MTM calls.
- 2.9 We remain of the view that OTT services are substitutes for SMS, due to the simple need for data connectivity for both users. OTT messaging services do not have the same quality, practicality or reliability issues as OTT calls, nor are they a method for contacting triple zero (unlike voice calls). Therefore, as there are fewer factors to take into account when considering the substitutability for SMS, we consider that OTT

services are substitutable for SMS and contribute to the diminishing need for SMS regulation.

Continued declaration of MTAS will promote the LTIE

- 2.10 In considering whether MTAS should continue to be declared the ACCC examined the state of competition in the relevant markets and applied an LTIE assessment – that is, the extent to which declaration would assist in achieving the following objectives:
- (a) The promotion of competition in markets for telecommunications services;
 - (b) Achieving any-to-any connectivity; and
 - (c) The efficient use of, and investment in, infrastructure.

Promotion of competition in relevant markets

- 2.11 The ACCC considers whether the continued declaration of MTAS would promote competition in relevant markets. The ACCC considers that the continued declaration of MTAS would ensure that MNOs provide access to mobile voice termination services on reasonable terms and at prices reflective of cost. It noted that if the declaration were revoked there would be incentives for MNOs to exert their market power and that without declaration MNOs have the ability and incentive to increase voice termination rates.¹
- 2.12 Optus considers these observations are generally relevant to all three markets related to the supply of MTAS. Optus generally agrees with the ACCC's views that MTAS is an essential input for terminating voice calls on a mobile network and that there are no effective voice termination substitutes for MTAS, which would otherwise exert competitive pressure on providers of MTAS. However, we disagree that MNOs have the ability to increase voice termination rates.
- 2.13 Optus acknowledges that there are no substitutes for wholesale mobile voice termination services and agrees with the proposition that access to mobile voice termination services on each mobile network remains in the exclusive control of the respective MNO. As Optus noted in its submission on the Discussion Paper, only MNOs can provide MTAS - it cannot be provided over a non-mobile access network.
- 2.14 To that end, maintaining declaration of the MTAS allows reasonable terms and conditions of access to be set that will continue to promote competition in all three relevant markets.

Promoting any-to-any connectivity

- 2.15 Any-to-any connectivity is clearly the most relevant objective in considering the declaration of MTAS and the LTIE assessment. Terminating access is essential for a call to be completed on a mobile network operator's network and MNOs have monopoly control over this voice terminating access.
- 2.16 Without terminating access a call cannot be connected to the end-user recipient – whether the call originates from a mobile network or fixed network. Therefore, terminating access is critical to the achievement of any-to-any connectivity. Continued

¹ ACCC, Domestic Mobile Terminating Access Service Declaration Inquiry – Draft Report, May 2019, pp. 21-23.

declaration of the MTAS will ensure that access is provided on reasonable terms and any-to-any connectivity continues to be achieved.

- 2.17 Therefore, Optus supports the ACCC's draft views that the continued declaration of the MTAS will promote the achievement of any-to-any connectivity.

Encouraging efficient use of, and investment in, infrastructure

- 2.18 There seemed to be broad consensus amongst submitters that the continued declaration of MTAS would continue to promote the efficient use of and investment in infrastructure.
- 2.19 The ACCC notes in the draft decision that declaration allows the ACCC to regulate the price (and other non-price terms) of access to the regulated service via an access determination. It is through this framework that the ACCC can then set regulated prices that can constrain providers from charging monopoly rents for the access to the infrastructure used to provide the MTAS while allowing providers to recover the efficient costs of investing in infrastructure and a normal commercial rate of return. This also provides incentives to invest efficiently.²
- 2.20 Optus agrees that declaration puts in place a framework for the ACCC to then set price (and other non-price) terms of access to the MTAS. While pricing will be covered in the access determination inquiry, in general, prices should strike the right balance between enabling the provider to recover their costs and earn a reasonable rate of return without being so excessive as to represent monopoly rents. Optus has provided some recent comment on the relativities and considerations that should be given to MTAS and FTAS pricing as part of the fixed line access determination pricing inquiry.³
- 2.21 Optus considers that the continued declaration of the MTAS will encourage the efficient use of and investment in infrastructure.
- 2.22 Therefore, for the reasons above, Optus considers that the continued declaration of MTAS for voice termination services will continue to promote the LTIE.

² ACCC, Domestic Mobile Terminating Access Service Declaration Inquiry – Draft Report, May 2019, p. 25.

³ Optus, Submission in response to ACCC consultation and position paper – Inquiry into final access determinations for fixed line services, April 2019, p. 6.

Section 3. SMS TERMINATION SHOULD BE REVOKED

- 3.1 Optus supports the draft position that SMS termination on a mobile network should not continue to be a declared service. The draft decision observes that:
- (a) With regard P2P services, SMS termination no longer represents a bottleneck to accessing the end-user, because OTT messaging services do not rely on MTAS to connect with end-users on other networks;
 - (b) A2P messaging services do not rely solely on MTAS to deliver services to the customers of end-users.
- 3.2 ACCC is of the draft position that extending declaration of SMS termination services would not be in the LTIE because:
- (a) It is not required to align wholesale prices more closely with efficient cost of the service in order to promote competition in the downstream retail market for mobile services;
 - (b) It is not needed to achieve any-to-any connectivity as MNOs are not able to set unreasonable terms or conditions of access to SMS termination services; and
 - (c) MNOs have limited incentive to set above-cost prices of providing SMS termination and it is not needed to promote the efficient use of, and investment in, telecommunications infrastructure.
- 3.3 Optus supports these observations and conclusions.

SMS termination is no longer a bottleneck service

- 3.4 Optus supports the draft position that SMS termination is no longer a bottleneck service as there is sufficient competitive pressure from OTT messaging services in the broader retail market for messaging services to restrict the ability of MNOs to exploit any monopoly power in the termination of SMS message on their network.
- 3.5 Optus agrees with the ACCCs observation that MNOs are prevented from increasing retail SMS charges due to the possibility of substitution away to free OTT messaging services. The ACCC concludes that MNOs will likely be constrained from refusing SMS interconnection or providing SMS termination on unreasonable terms in the wholesale market even in the absence of declaration.⁴
- 3.6 We agree that the requirement to provide unlimited SMS in retail plans drives the need to set cost-based efficient SMS wholesale access prices. Should MNOs increase the wholesale cost of SMS termination, thereby necessitating an upward change in the retail charge for SMS, there would be adverse customer reaction – including negative customer sentiment and switching to alternative OTT messaging platforms.

⁴ ACCC, MTAS Draft Report, p.34

- 3.7 Optus can confirm that the trend observed in our previous submission has continued over the last year. If anything, the substitution away from SMS towards OTT has accelerated. [CiC]

Figure 1 [CiC]

[CiC]

Source: Optus.

MNOs cannot set unreasonable terms of access

- 3.8 Optus notes limited concerns that MNOs may act to increase the current SMS termination rate and set unreasonable terms of access. Optus agrees with the views in the draft report that it is not possible for MNOs to unilaterally increase the wholesale rate for SMS termination.
- 3.9 Optus supports the position that should MNOs unilaterally set excess termination costs, an end-user could bypass SMS and use OTT services instead.
- 3.10 Importantly, all parties that are able to acquire SMS termination from MNOs have existing commercial agreements. Any change to the terms and conditions of these agreements require agreement of both the parties. Optus does not believe that it is possible for MNOs to unilaterally change terms and conditions in interconnection agreements.

SMS declaration has not promoted competition for A2P

- 3.11 Optus submitted in response to the discussion paper that four years of regulated access shows that the impact of including SMS within MTAS has had some benefits for some acquirers of A2P services, but it has also demonstrated that Optus' concerns around increased fraud were warranted. We have seen:
- (a) Benefits for large enterprises that acquire ancillary A2P services direct from MNOs;
 - (b) Detrimental outcomes for small and medium enterprises that acquire A2P services from aggregators due to consolidation in the aggregator market and the lack of pass through of decreased wholesale rates to SMEs; and
 - (c) A clear detriment due to a substantial increase in SMS fraud arising from A2P messages sent through direct interconnection links.
- 3.12 This market evidence shows that declaration of SMS termination has not been in the long term interest of consumer or SME end-users.
- 3.13 Optus agrees with the conclusion in the draft report that the removal of SMS from MTAS will not impact upon the downstream A2P market. First and foremost, the pricing of wholesale SMS interconnection will be driven by the needs of mobile consumers and the need to maintain costs low to ensure P2P SMS is priced in a competitive manner against alternative P2P messaging platforms.
- 3.14 We agree with the ACCC that MNOs have benefitted from the reduction in the SMS interconnection rate, and as a result, MNOs do not have any incentive to increase rates absent declaration.

3.15 Importantly, the ACCC correctly characterises the relationship between MTAS and the downstream A2P market as being an input in the downstream market for A2P SMS services in which MNOs and aggregators supply services to A2P SMS service providers, and in which A2P SMS services are supplied to end-users.⁵

3.16 [CiC]

3.17 [CiC]

3.18 Further, the provision of managed SMPP messaging services to A2P providers and aggregators by an MNO does not involve any termination service when the messages are sent to that MNO's end-users. In other words, the nature of the managed service that Optus, for example, sells to A2P aggregators or providers provides access to Optus' SMPP messaging service. These messages are originated on the Optus network. MTAS is only applicable for those messages that originate on the Optus SMPP messaging platform and are sent to another MNO to terminate to one of their customers. [CiC] This data confirms that declaration of SMS did not provide any measurable benefit to A2P aggregators or re-sellers.

3.19 Optus also agrees with the description of the key policy question – namely, whether MNOs are able to exploit their market power in the termination of SMS messages in the downstream A2P market.⁶ Optus supports the draft conclusion that extending the declaration of SMS MTAS will not promote competition in relevant markets:

- (a) First, off-net traffic from A2P providers has remained stable and minor throughout the last declaration period. Optus has not observed any notable change in the proportion of A2P off-net messages, even with the removal of off-net cost barriers.
- (b) Second, SMS termination is only one input into the A2P product and is not a required input into the supply of A2P services to end-users.
- (c) Third, actual market evidence during the current declaration period shows that little, if any, pricing benefits have flowed through to end-users acquiring A2P services from A2P providers as a result of the fall in SMS termination rates.
- (d) Fourth, there are many other technology solutions to deliver marketing material other than SMS A2P messages. The ACCC correctly identifies that marketing messages can be sent through SMS, email, OTT messaging, social media.

3.20 Optus agrees with the conclusions in the draft report that the inclusion of SMS in MTAS resulted in some benefits to some providers in the wholesale market. We agree that it is not clear whether these benefits have flowed through to actual end-users in the downstream A2P market. Optus agrees with the draft conclusion that continual declaration of SMS is not in the long term interest of end-users.

Optus largely supports the ACCC's observations on the effect of the 2014 declaration

3.21 The draft report observes that the 2014 declaration decision has some impacts on downstream A2P markets:

⁵ ACCC, MTAS Draft Decision, p.36

⁶ Ibid.

- (a) Some positive changes to the structure of the wholesale segment with the entry of Pivotel and the MNOs directly supplying retail A2P SMS services to downstream enterprise customers.
- (b) Some reduction in some prices, namely the wholesale A2P SMS prices, and the retail prices that MNOs charge large enterprise end-users
- (c) Little evidence that the competitive benefit has been widespread, particularly in the retail segment;
 - (i) no increase in the purchase of off-net services by A2P aggregators
 - (ii) no sign of retail price changes for end-users
 - (iii) Pivotel entry has not led to material benefits to end-users.

3.22 In addition, Optus wishes to address:

- (a) Negative impact on end-users – typically mobile end-users – that has arisen due to the drop in the SMS interconnection rate; and
- (b) Claims made by Pivotel which are included in the draft report.

Removal of declaration will assist management of scam and spam SMS

3.23 Optus welcomes the draft position that extending declaration of SMS MTAS will not promote competition in relevant markets. We recognise that the ACCC has not directly addressed concerns raised by several MNOs that the reduction in SMS rates has led to an increase in the level of measured scam and spam SMS messaged. Nonetheless, Optus feels it is important to again emphasise that there are direct detriments due to the material drop in the wholesale cost to terminate a SMS message.

3.24 [CiC]

3.25 [CiC]

3.26 [CiC]

3.27 [CiC]

3.28 [CiC]

3.29 [CiC]

3.30 [CiC]

3.31 [CiC]

3.32 [CiC]

Pivotel's claims are unwarranted

3.33 Optus wishes to address claims put forward in the draft report relating to the potential impact of the draft decision on Pivotel. Specifically, we wish to address claims that Pivotel:

- (a) Will be frozen out of the market through increased termination rates; and

- (b) Cannot reach a balanced commercial agreement with MNOs absent declaration;
- 3.34 Optus disagrees with both these views; and we observe there is no evidence to support such claims. Rather, all available evidence shows the opposite.
- 3.35 **[CiC]** However, there is no incentive or ability for Optus to unilaterally increase the SMS termination rate to Pivotel, for two important reasons:
- (a) First, interconnection rates are agreed bilaterally. Any change to current rates would need to be agreed by both parties. Optus cannot change the termination rate to Pivotel unless Pivotel agreed.
 - (b) **[CiC]**
- 3.36 Second, Optus is puzzled by the comment Pivotel cannot acquire balanced commercial terms with MNOs absent declaration. There is no evidence to support such a claim.
[CiC]
- 3.37 **[CiC]**
- 3.38 **[CiC]**

Continual declaration is not warranted

- 3.39 The ACCC considers that extending declaration of SMS termination services is no longer necessary to constrain the MNOs from exercising market power by reason of having exclusive access to end-users on their network.⁷ The ACCC observes that competition from OTT services means that SMS interconnection agreements between the MNOs are likely to remain after declaration is removed. Optus agrees with this view.
- 3.40 The ACCC concludes that the downstream A2P SMS market would be largely unaffected should declaration be removed. The ACCC correctly identifies that the current arrangements, in which aggregators and A2P SMS service providers negotiate with each MNO to deliver SMS to its customers, are likely to remain in place. Further, Optus agrees with the conclusion that since the arrangements for A2P are not dependent on MTAS, not continuing SMS MTAS will have no impact on current market arrangements.⁸
- 3.41 **[CiC]**

⁷ ACCC, MTAS Draft Decision, p.40

⁸ ACCC, MTAS Draft Decision, p.40

Section 4. MTAS DOES NOT IMPACT INNOVATIVE SERVICES

- 4.1 Optus welcomes the discussion in the draft report in relation to voice MTAS and the provision of innovative new services. Optus addressed these issues in detail in response to the discussion paper.
- 4.2 The key purpose of the declared interconnect service is to ensure that networks are interconnected and provide any-to-any connectivity. These points of interconnection are simple transmission pipes. Optus agrees with the views expressed in the draft report that innovation comes from the service layer – and typically IP-based systems – rather than the network layer and provision of connectivity between networks.
- 4.3 Optus also supports the view that the current MTAS service description – together with the FTAS service description – work well and there is no reason for change. As discussed in detail in Optus’ previous submission, the requirement that MTAS terminates on a mobile network is a key requirement – there would be no justification for MTAS if such a description was not present. As explained previously, the only difference between mobile and fixed termination relates to the additional voice-related access network costs associated with mobile networks.
- 4.4 Optus, however, disagrees with claims that the MTAS service description has any relationship to the ability of CSPs to launch new products. The claim expressed in the draft report that Symbio has been unable to launch its virtual mobile numbers product because MNOs have refused to provide interconnection is incorrect.
- 4.5 **[CiC]**
- 4.6 **[CiC]**
- 4.7 **[CiC]**