Submission in response to ACCC Consultation Paper

Domestic Mobile Terminating Access Service Access Determination

Public Version

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Section 1. EXECUTIVE SUMMARY

1.1 Optus welcomes the opportunity to provide comment to the Australian Competition and Consumer Commission's (ACCC) Position and Consultation Paper for the domestic mobile terminating access service (MTAS) access determination.

1.2 Optus does not support the proposed benchmarking approach and we strongly support the roll-over of the existing MTAS rate. Optus submits that the ACCC has not demonstrated that its proposed approach would result in a MTAS rate that would promote the long term interests of end-users (LTIE) better than the approach recommended by all MNOs — namely roll-over of MTAS, consistent with the ACCC's approach for fixed termination.

1.3 While we support the continual use of the TSLRIC+ cost approach, we do not agree that a cost estimate derived from an international benchmarking exercise best promotes the LTIE at this time. This is particularly the case where the ACCC has accepted the continual use of historic cost building block model (BBM) for fixed termination. It is not clear why allowing providers of fixed termination to recover costs far in excess of the efficient level while pushing down MTAS rates is consistent with the LTIE — especially where FTAS and MTAS are reciprocal wholesale inputs into the same downstream communications markets.

1.4 Optus is concerned that the ACCC is discriminating against the competitive mobile networks in favour of fixed line providers. If a consistent approach cannot be achieved in this inquiry; then the LTIE would be best promoted by delaying any further reductions to MTAS until a consistent approach across FTAS and MTAS can be achieved.

1.5 Optus finds that the proposed approach will not promote competition in any related downstream market. Contrary to the claims of a few MVNOs, MTAS has a negligible if any role to play in the wholesale call rates offered to MVNOs. Reducing MTAS will not impact the ability of MVNOs to compete in the retail mobile market. Indeed, reducing MTAS may actually result in MNOs having to *increase* wholesale call rates to MVNOs. There is no evidence before the ACCC that supports the position that a reduction in MTAS will promote competition in the market as a whole.

1.6 Optus finds that the proposed approach will not ensure efficient use of, or investment in mobile infrastructure. Consistent with the ACCC decision for fixed line services, and its previous MTAS decisions, greater certainty in regulatory outcomes and a conservative approach in setting MTAS rates is more likely to encourage MNOs to commit to the large scale investments required to roll out extensive networks.[1]

1.7 Further, Optus reiterates its concerns with the disconnect between the consideration of fixed and mobile voice termination services. We acknowledge that the ACCC rolled-over the fixed services rates in order to "*provide a stable environment for access seekers as customers migrate to the NBN*."[2] This is even though the roll-out of NBN has no direct impact on the efficient cost of supplying FTAS. The same justification holds for MTAS. The mobile industry is facing significant capital investment into new 5G networks which, while not directly impacting the cost of MTAS, requires certainty and stability to ensure efficient investment. Optus submits that regulatory consistency requires that MTAS be treated in a consistent manner as FTAS.

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[1] ACCC, 2009, MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011, March, p.27

[2] ACCC, 2019, Fixed line services FAD inquiry, Final Decision, November, p.6

1.8 Optus therefore remains of the view that the roll-over of MTAS rates for the next period is the best practical approach to promote the long term interest of end users (LTIE). Consucting a benchmarking exercise is little more than a box-ticking exercise that will service little or not purpose given the current level of MTAS rates.

Section 2. ROLL-OVER IS THE PREFERRED PRICING OPTION FOR MTAS

2.1 Optus submits that the continuation of the current MTAS rate until a holistic inquiry can be undertaken for both fixed and mobile termination rates is the best option to ensure that the LTIE is promoted.

2.2 Optus remains concerned that the ACCC has adopted a different approach to fixed and mobile termination — wholesale inputs into the same downstream market — and one which discriminates against the competitive mobile market.

2.3 The ACCC rejects the argument for a roll-over of MTAS on the basis of:

(a) Mobile investment has never provided grounds for maintaining MTAS;

(b) Efficient cost of MTAS may be lower than current rate;

(c) FTAS decision is distinguished from MTAS due to the NBN; and

(d) Competition will be promoted in downstream markets.

2.4 Optus is not convinced by these arguments. In fact, evidence shows that the ACCC has previously maintained MTAS due to the migration to new generation mobile networks; and evidence shows that the migration to the NBN access network has no impact on FTAS and yet the ACCC still rolled-over the fixed rates.

2.5 Further, evidence demonstrates that the MTAS plays little, if any, role in the setting of voice rates between MNOs and MVNOs. Optus, as Australia's largest provider of MVNO services, can confirm that MVNOs do not pay and do not receive MTAS payments. As such, there is little support for the claim MTAS will promote competition.

2.6 In addition, we also find that:

(a) Regulatory treatment of access payments should not discriminate between interconnection types for mobile and fixed voice termination;

(b) Reliance on 3G networks for voice services is still significant;

(c) TSLRIC+ is the appropriate model, but this supports a roll-over of current rates; and

(d) Price stability is promoted by maintaining MTAS rates.

2.7 We discuss this in more detail below.

Mobile investment and uncertainty have justified roll-over of MTAS

2.8 The ACCC rejected initial submissions that a roll-over of MTAS is justified on future investment grounds, including during the transition to more efficient networks. The ACCC is of the view that:

The MNOs make continuous investments to upgrade their network, and the moves to previous generations of mobile technology have never provided grounds for maintaining the FAD prices for the MTAS. [3]

2.9 Optus does not agree with the statement that moves to new generations of mobile technology have never provided grounds for maintaining rates. The ACCC used this very same argument as one reason why it maintained MTAS rates in 2009 at 9cpm for a three year period.[4]

2.10 The ACCC stated that one factor in maintaining MTAS rates in 2009 was the provision of "*greater certainty in regulatory outcomes* [which] *is more likely to encourage MNOs to commit to the large scale investments required to roll out extensive networks".* [5]

2.11 More specifically, the ACCC noted that MNOs made significant investment in infrastructure and that "*it is appropriate that the Commission at this time adopts a cautious approach in the light of the uncertainty [around the efficient cost level].*"[6]

2.12 Optus observes that the level of investment and level of uncertainty around investment for 5G is far greater than that present in 2009 for 3G and LTE networks. In fact, many of the factors that led to the ACCC maintaining existing MTAS in 2009 for a further three year period are present in this inquiry:

(a) First, there is a need for greater regulatory certainty given the impending uncertainties and costs associated with the large scale investments required to roll out extensive 5G networks;

(b) Second, there are material uncertainty around the actual level of efficient costs with insufficient data and a lack of cost modelling and acknowledging all the uncertainties associated with a benchmarking exercise; and

(c) Third, there is little evidence that reduction in MTAS would flow through to pricing benefits for downstream related markets.

2.13 Optus strongly disagrees with the assertion that the transition to new and costly new generations of mobile networks has never been used as a reason for maintaining MTAS rates. Rather, previous ACCC decisions support the industry's preferred position of rolling over MTAS rates. The ACCC should again adopt a cautious approach in setting MTAS rates in the light of the uncertainty noted above.

ACCC cannot rely on efficient cost argument to justify MTAS reduction while maintaining FTAS above efficient costs

2.14 MNOs argued that the relationship between MTAS and FTAS should be considered when setting future MTAS rates in this period. This is largely due to the difference in cost methodology adopted in FTAS and proposed in this MTAS FAD.

2.15 The ACCC in the position paper focuses on the gap between the two rates. This somewhat misinterprets Optus' position, which is correctly quoted in the ACCC paper. Optus is arguing that both MTAS and FTAS need to be set using the same definition and

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[3] ACCC, 2019, MTAS Position and Consultation Paper, December, p.17
[4] ACCC, 2009, MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011, March, p.28
[5] ACCC, 2009, MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011, March, p.27
[6] ACCC, 2009, MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011, March, p.28

methodology of 'efficient cost'. It is only when the same cost approach is adopted can we have an informed debate over the appropriate efficient cost difference between the rates.

2.16 The ACCC does not address this in the position paper, stating that *"there is no evidence on what the appropriate price gap should be"*.[7]

2.17 Optus agrees with the above quote – there is no evidence on what the appropriate price gap should be in Australia when both services use a consistent definition of efficient cost. But there is clear evidence that the current gap is not appropriate because FTAS is set far above the efficient rate due to the use of historic cost BBM.

2.18 We agree with the ACCC that the issue regarding cost relativities between the services is best dealt with in a holistic review of MTAS and FTAS in the future. But we do not agree with the statement that *"it would not be appropriate to roll over MTAS price in line with the approach taken for FTAS price"*.[8]

2.19 The ACCC asserts that this approach is justified in part due to the *"presence of indications that the efficient cost of providing the MTAS has likely declined since the last FAD".*[9]

2.20 It is not clear to Optus that this justification is sufficient to address the legislative criteria. We note the following:

(a) There are many indications that the efficient cost of providing FTAS has likely declined since the last FAD – especially when the effect of moving from an actual cost BBM to a hypothetical new entrant TSLRIC+ approach. Yet the ACCC chose not to reduce the FTAS rate.

(b) Different cost approach is leading to a material payments imbalance between MNOs and fixed networks. **[CiC]**

(c) This material cross-subsidy is not based on difference in efficient costs, rather it reflects the fact that FTAS is priced on a different cost standard to MTAS – that is, a non-efficient cost standard.

2.21 While we cannot say with certainty that the current MTAS rate is above the efficient cost of provision, we can say with certainty that the current FTAS rate is. This is simply because of the methodology adopted – historic cost BBM – a cost method in excess of the efficient standard used for termination services.

2.22 As a result, the ACCC cannot say with certainty that its decision to not roll-over the rate – as per the approach in FTAS – is consistent with the requirement to promote efficient investment in and use of infrastructure or the interest of access seekers or the legitimate interest of access providers.

2.23 Stating it is "not appropriate" without reasons and without assessing the legislative criteria is not sufficient. The ACCC should, at a minimum, address why this cross-subsidy between MNOs and fixed operators is efficient or promotes the LTIE – especially where the current MTAS proposal will likely **increase** the subsidy.

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[7] ACCC, 2019, MTAS Position and Consultation Paper, December, p.21
[8] ACCC, 2019, MTAS Position and Consultation Paper, December, p.21
[9] ACCC, 2019, MTAS Position and Consultation Paper, December, p.21

NBN migration has no impact on FTAS yet was rolled-over

2.24 Another reason why the ACCC distinguishes its treatment of FTAS is that it would be impacted by the transition to the NBN, yet the transition to NBN plays no role in the cost of MTAS:

> *… the transition to the NBN does not impact on the delivery of the MTAS on the mobile networks — neither the technology nor the manner in which the service is provided will change as a result of the change in the originating network, from the PSTN to the NBN.*[10]

2.25 It is correct to state that the technology or the way in which the MTAS is provided is unaffected by the transition to the NBN. But it is also correct to state that FTAS is similarly unaffected by the transition to the NBN – a fact that was accepted by the ACCC in the FSR FAD inquiry.

2.26 Optus does not agree with the description in the MTAS paper of the reasoning why FTAS was not amended in the recent FSR FAD decision.

2.27 It is accurate to state that for all the FSR rates the ACCC considered that stability during transition during the period to completion of NBN[11] – but equally, it was recognised that such stability was not relevant to FTAS. The FSR FAD final decision acknowledged that FTAS is technology neutral and applies to termination of calls to geographic number irrespective of the access network (PSTN, NBN or other).[12] The reason why FTAS was not amended was not due to NBN stability, but rather the complexity of removing FTAS from the broader suite of FSR services.[13]

2.28 In other words, the ACCC cannot rely on the transition to NBN as a reason to not roll-over MTAS – as FTAS was rolled-over even though NBN transition has no direct impact on the efficient costs of FTAS.

2.29 Optus notes that the decision to roll-over the access-related fixed services had a related effect on FTAS. It was the flow-on effect and associated costs that led to a continuation of FTAS. Similarly, the decision to roll-over FTAS should have a flow-on effect on MTAS, with associated costs if MTAS is reduced. Therefore, the reasons that justified rolling over FTAS also justifies MTAS roll-over.

Competition in downstream markets will not be promoted

2.30 The ACCC asserts that *any* reduction in the MTAS price is "*likely to promote competition in the retail mobile and fixed line services market by enabling smaller fixed line operators and MVNOs to offer more competitive retail products*."[14]

2.31 Optus strongly disagrees. There is no evidence before the ACCC that supports such a claim. The ACCC appears to overstate the likely impact a reduction in the MTAS rate will have on promoting efficient competition in downstream markets. It is insufficient to argue that:

(a) All mobile competition, and market differentiation, is based on the MTAS rate. The provision of mobile voice services is one factor in which consumers consider when choosing their appropriate retail mobile service.

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[10] ACCC, 2019, MTAS FAD Position and Consultation Paper, p.17
[11] ACCC, 2019, Fixed Line Services FAD inquiry, Final Decision, p.15
[12] ACCC, 2019, Fixed Line Services FAD inquiry, Final Decision, p.16
[13] ACCC, 2019, Fixed Line Services FAD inquiry, Final Decision, pp.15-6
[14] ACCC, ACCC, 2019, MTAS Position and Consultation Paper, December, 19

(b) The prevalence of retail mobile plans with PAYG mobile voice calls, compared to plans with unlimited calls, does not necessarily mean that consumers value voice calls above all other factors, e.g. access to data. MTAS does not impact on an operator's ability to offer innovative services

(c) A reduction in the MTAS rate is also material for MNOs, with large impacts on revenue. Any change to the MTAS rate will have implications for all operators, albeit in different ways.

2.32 Finally, the ACCC places weight on claims that reduction in MTAS will promote competition in the MVNO market and for smaller providers. We address those claims in this section. In summary, we find such claims to not be supported by evidence.

Strong infrastructure-based competition has led to a decline in mobile prices over time

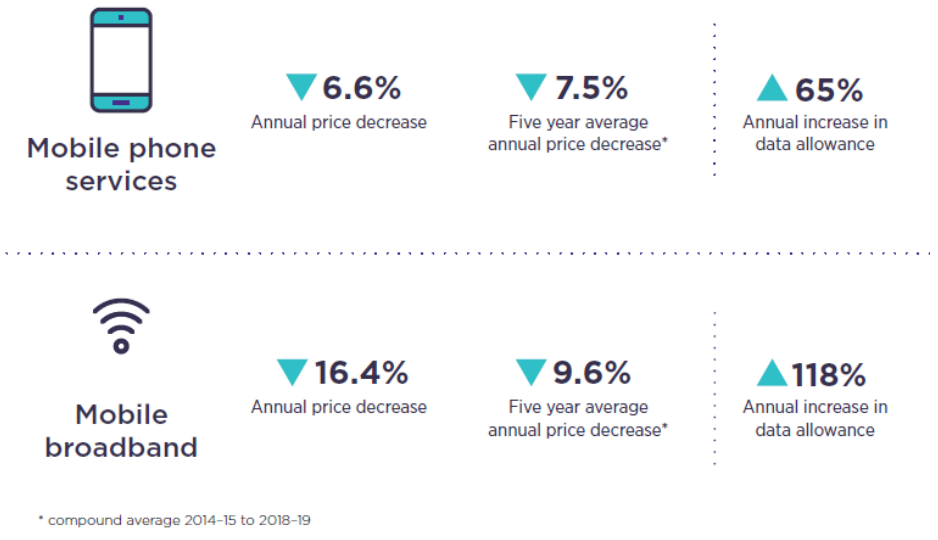
2.33 The current demand for mobile services in Australia continues to be strong. As at 30 June 2019, there were 28 million mobile phone services (up from 27 million in 2018).

2.34 The majority of mobile plans comprise voice, SMS and data services – with the ACCC firmly recognising that "*in the mobiles market, plans with unlimited calls and SMS are now the norm with price competition focused on data inclusions.*"[15]

2.35 The trend for unlimited included minutes has been strong in postpaid markets for several years, with prepaid increasingly adopting the same approach. However, despite an increase in number of services and prevalence of unlimited calls on mobile plans, total mobile voice call minutes have declined from 67 billion to 64 billion.[16]

2.36 The increase in mobile competition more generally has led to a decline in mobile prices over time. The ACCC's annual Communications Report clearly illustrates that declines in mobile prices, with increases in data allowances, continue to be the trend (Figure 1).

Figure 1 Mobile services



Source: ACCC

[15] ACCC Communications Market Report 2018-19, p.6
[16] ACCC Communications Market Report 2018-19, p.3

2.37 Optus submits that even with changes in consumer preferences over time, most retail plans already offer unlimited voice calls and SMS within Australia. Competition is very much based on data inclusions. The prevalence of PAYG plans in the mobile services market similarly only represent a very small proportion of total services in the Australian market, therefore the ACCC should be careful to not overstate its importance.

2.38 A snapshot of Optus' current in-market mobile plans show that all postpaid plans and most prepaid plans[17] offer unlimited included minutes. These customers will not directly benefit from changes to the MTAS rate. In a competitive mobile market, customers who wish to have unlimited voice calls are able to do so.

2.39 Even in the context of PAYG plans, excluding data only plans, the current MTAS rate represents only a very small portion of the retail rate, with no differentiation between on-net and off-net calling charges. As an example, Optus' retail rates for prepaid plans range from 10c to 25c per minute for voice calls.[18]

2.40 Lower MTAS rates do not necessarily imply lower prices. As highlighted above, mobile competition remains strong with a wide range of different postpaid and prepaid plans offered at all price points by various mobile operators and mobile resellers.

2.41 The price distribution of mobile plans has also remained relatively stable over past three years. In 2018-19, the ACCC estimates that approximately 79 per cent of postpaid plans and 87 per cent of prepaid plans are below the $50 price point.[19] It is therefore evident that mobile competition will not be sustainable if it remains reliant on price alone.

2.42 Optus also observes that the ACCC data demonstrates that price reductions have been achieved during a period of stable MTAS rates — demonstrating the lack of direct connection between wholesale MTAS rates and retail pricing. For example,

(a) The proportion of postpaid plans with unlimited calls or SMS has increased to 96 per cent in 2018-19, up from 65 per cent in 2014-15.

(b) The proportion of prepaid plans with unlimited calls or SMS has increased to 97 per cent in 2018-19, up from 52 per cent in 2014-15. [20]

2.43 As noted by the ACCC:

> *The increase in the number of plans with unlimited calls or texts is likely to reflect both a decline in the cost of providing these services as well as increasing competition from OTT services that provide similar functionalities.*[21]

2.44 Given the high proportion of mobile plans with unlimited calls available, and its growth over the last FAD period, market evidence shows that MTAS plays little role in the retail rates in the mobile market. It cannot be claimed that a further reduction in MTAS rates will have any meaningful impact on competition in related markets.

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[17] For example, Optus Prepaid Epic Data plans above $30 and all Optus Prepaid Epic Value plans
[18] Specifically, Optus Prepaid Epic Data plans below $30 effectively charge voice calls at 10c per minute (beyond the included minutes), while Optus' Prepaid Long Expiry plan charge voice calls at 25c per min (deducted from the included credit)
[19] ACCC Communications Market Report 2019-19, p.33
[20] ACCC Communications Market Report 2019-19, p.36
[21] ACCC Communications Market Report 2019-19, p.36

MTAS reductions will not benefit MVNOs

2.45 The ACCC appears to place weight on the arguments of two small MVNOs that MTAS is an important driver of the rates it can charge its customers.[22] Optus submits that such claims are incorrect and cannot be used to justify reductions in the MTAS rate.

2.46 First, Optus — as the largest provider of MVNO services — can confirm that MVNOs do not pay or receive MTAS payments. We can confirm that MTAS plays very little, if any, role in the setting of voice rates between MNOs and MVNOs.

2.47 This trend can be seen across large MVNOs who similarly offer mobile plans that include unlimited talk and text. For example, a desktop search of several MVNO brands show that the prevalence of plans with unlimited calls and text is increasingly common:

(a) Amaysim offers SIM only mobile plans at price points between $5 to $50 valid for 28 days, which all include unlimited talk and text to standard numbers in Australia. Where a basic PAYG plan is taken, with $10 starter credit valid over 365 days, standard calls are charged at 15 cpm.[23]

(b) Boost Mobile offers SIM only mobile plans at price points between $20 to $70 valid for 28 days, which all include unlimited calls and text to standard numbers. Even the $10 prepaid SIM valid for 7 days includes unlimited calls and text.[24]

(c) Belong Mobile offers SIM only mobile plans at price points between $10 to $40 per month, which all include unlimited national calls and text.[25]

(d) OVO Mobile offers prepaid plans at price points between $14.95 to $49.95 valid for 30 days, which all include unlimited talk and text in Oz. The lowest price point $9.95 valid for 30 days includes 500 minutes Oz calling and unlimited texts, this effectively sets an upper bound mobile retail rate of 1.99 cpm.[26]

(e) ALDI Mobile offers prepaid plans at price points between $15 to $45 valid for 30 days, which all include unlimited standard calls, SMS and MMS. Where a PAYG plan is taken, with $15 starter credit valid over 365 days, standard calls are charged at 12 cpm.[27]

(f) Kogan Mobile offers prepaid plans at price points between $16.90 to $49.90 valid for 30 days, which all include unlimited standard calls and texts.[28]

2.48 This also highlights that the on-net/off-net pricing differentials for standard calls is likely to be negligible. It follows that MVNOs have neither been advantaged nor disadvantaged

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[22] ACCC, 2019, MTAS FAD Position and Consultation Paper, p.19
[23] See: Amaysim, SIM only mobile plans, https://www.amaysim.com.au/plans/mobile-plans [accessed 4/2/20]
[24] See: Boost Mobile, Prepaid Plans, https://boost.com.au/plans/#1531186665498-b7bdd069-4726 [accessed 4/2/20] and Boost Mobile, $10 Prepaid SIM, https://boost.com.au/shop/10-prepaid/ [accessed 4/2/20]
[25] See: Belong, Great value SIM-only mobile plans, https://www.belong.com.au/mobile/plans [accessed 4/2/20]
[26] See: OVO, Choose a prepaid plan, https://ovo.com.au/products/mobile-phone [accessed 4/2/20]
[27] See: ALDI Mobile, Plan options for you: Mobile plans, https://www.aldimobile.com.au/plans/mobile-plans/ [accessed 4/2/20] and ALDI Mobile, Plan options for you: Pay as you go, https://www.aldimobile.com.au/plans/payg/ [accessed 4/2/20]
[28] See: Kogan Mobile, Prepaid plans for your mobile, https://www.koganmobile.com.au/ [accessed 4/2/20]

by the current MTAS rate, with current mobile market share for MVNOs accounting for around 13 per cent of mobile services in 2018-19.[29]

2.49 The ACCC relies on claims put forward by Macquarie Telecom that MTAS would assist it, as an MVNO, to compete in the market. It is claimed that MTAS price represents an important point of reference for MVNOs in commercially negotiating the prices of wholesale mobile services with MNOs.[30]

2.50 Optus rejects these claims. Optus submits the ACCC cannot accept the arguments of MVNOs without direct evidence supporting such claims. In fact, as the largest provider of MVNO services, Optus is uniquely positioned to demonstrate that MTAS plays little role in the pricing of MVNO services.

2.51 **[CIC]**

2.52 **[CIC]**

2.53 **[CIC]**

2.54 **[CIC]**

2.55 **[CiC]**

2.56 Given this evidence, the ACCC cannot accept the assertions made by some small MVNOs that MTAS has any material role in the commercial supply of MVNO services. In fact, MTAS revenue plays an important role in enabling MNOs to offer lower direct charges to MVNO partners. Reductions in MTAS rates are more likely to lead to increase in direct MVNO voice charges.

Focus on smaller providers is off-set by the large negative impact on MNOs

2.57 The ACCC also appears to place weight on the concerns of small providers, arguing that a benefit of the proposed reduction is that it will lead to a reduction in access payments for a small numbers of access seekers.[31] The ACCC specifically states that MTAS may have a larger impact on smaller fixed line providers than on the MNOs themselves. This used as a justification for the reduction in MTAS – that the benefits to smaller fixed line providers more than offsets the negative impact on MNOs.

2.58 This may or may not be correct, but Optus disagrees this line of argument justifies a reduction in MTAS. Put simply,

(a) The commercial impact on receipts from non-MNO operators is likely to be small. More importantly, a holistic analysis shows that net payments to smaller operators are not necessarily positive. **[CiC]**

(b) MNOs could be disadvantaged by a reduction in MTAS with regard to smaller non-MNO providers, given that the FTAS price has been concluded to remain constant. **[CiC]**

2.59 Optus notes that the legislative criteria focus on impacts on the market, and not on impacts on any one small provider. The role of the ACCC is to ensure competition not to protect individual competitors. The above data shows that negative impacts on MNOs outweigh any potential small positive to small fixed line providers. Optus submits that it

[29] ACCC Communications Market Report 2019-19, p.30
[30] ACCC, 2019, MTAS FAD Position and Consultation Paper, p.19
[31] ACCC, 2019, MTAS FAD Position and Consultation, p.19

cannot be claimed that small incremental cost savings for small providers is a net benefit that supports reductions in MTAS.

Reliance on 3G voice traffic is still significant

2.60 Optus notes that the provision of voice services over 3G networks still remains material and that the decommissioning of 2G technologies has not led to a higher share of 4G voice traffic. However, the ACCC considers that *"Regardless of the respective share of traffic on 3G and 4G, this trend would reasonably indicate, all things equal, that the cost of the MTAS is likely to have declined since the last FAD."*[32]

2.61 Optus does not consider this to be the case, **[CiC]** However while we note that this appears in direct contrast with Telstra's claim that *"Voice (3G and VoLTE) currently represents just 1% of total mobile (voice + data) network traffic in 2018-19,"*[33] this is likely due to differences in the network technologies adopted by operators.

2.62 **[CiC]**

2.63 The ACCC has long held the view that *"over time the deployment of all-IP networks such as LTE networks will mean that the incremental cost of providing MTAS will tend towards zero."*[34] However, this has not eventuated and there is still significant reliance on the provision and supply of 3G voice traffic, particularly in regional areas.

2.64 Optus also reiterates that the assumption that newer data-focused mobile technologies, like 4G and 5G, automatically lead to implications for traditional voice services is not valid. The impact of new networks on the cost of MTAS is more nuanced and requires further analysis once all fixed and mobile voice termination services are able to be considered together.

TSLRIC+ remains the appropriate pricing principle

2.65 The ACCC has concluded that the TSLRIC+ remains the appropriate pricing principle for the MTAS for the following reasons:[35]

(a) TSLRIC+ involves the examination of the cost of providing the service by a hypothetically efficient operator based on the best-in-use technology; and

(b) Similar to the cost recovery for data services, as voice traffic as a proportion of overall traffic becomes smaller, the shared and common costs that are attributable to voice services (including mobile termination services) become smaller.

2.66 The last two MTAS FADs have adopted the TSLRIC+ pricing principle, which includes an allowance for common costs, to price the per-minute charge for terminating a voice call on the mobile network. Furthermore, the ACCC has used TSLRIC+ pricing principles to set prices through benchmarking, as it allows for the efficient recovery of costs without the need to develop a specific cost model. Hence, also minimising the regulatory burden in developing the regulated prices. As noted in its 2011 FAD decision,

> *Given that the ACCC has not formally modelled the TSLRIC+, it believes that a conservative approach should be taken to estimating the efficient cost of providing the MTAS.* [36]

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[32] ACCC, 2019, MTAS Position and Consultation Paper, December, p.18
[33] Telstra, 2019, Telstra submission: MTAS FAD inquiry, September, p.6
[34] ACCC, 2011, MTAS FAD: Access Determination Explanatory Statement, December, p.12
[35] ACCC, 2019, MTAS Position and Consultation Paper, December, p.16

2.67 This position should similarly hold true. A TSLRIC+ based price would best promote the long term interest of end users (LTIE) as it strikes the right balance of ensuring prices reflect efficient costs, while still supporting access providers by ensuring cost recovery.

2.68 However, where international benchmarking is to be used again, then a similar approach to the previous benchmarking exercise (that is less onerous to industry) based on generic Australia-specific adjustment factors should be considered.

2.69 Optus acknowledges that the setting of termination rates (both fixed and mobile) should focus on the recovery of efficient costs. While the FTAS rates have now been set, we consider the MTAS rates should similarly be rolled over until such time that both the MTAS and FTAS can be subject to a holistic review.

2.70 Further, we observe that FTAS rates are not set at a level reflecting TSLRIC+ and are therefore likely to be materially above the efficient cost of supply. Optus submits that adopting an efficient cost standard for one input cost yet not for other risks entrenching inefficient cost structures in a market. This is particularly important when both wholesale costs are inputs into the same downstream market.

[36] ACCC, 2011, MTAS FAD: Access Determination Explanatory Statement, December, p.7

Section 3. COMMENTS ON THE PROPOSED BENCHMARKING EXERCISE

3.1 Optus submits that at this time, the costs associated with undertaking a benchmarking exercise are unlikely to be offset by any incremental benefit. Optus does not believe a benchmarking exercise is warranted.

3.2 Our concerns are increased by the details of the proposed benchmarking exercise. Not only is it going to require material input and time from MNOs, it appears unlikely it will result in any meaningful or useable output.

3.3 This section will highlight the material uncertainties that are associated with international benchmarking exercises. It cannot be assumed that the use of benchmarking will give an accurate representation of efficient costs in Australia. It is this uncertainty which supports the continuation of the current MTAS rates until a holistic modelling exercise can be undertaken in the next FAD period.

3.4 Benchmarking also has a higher risk of error in setting inaccurate MTRs for Australia. Traditionally, benchmarking has been difficult for Australia given its unique geography, population density and locations, which is not replicated in other markets. For example, spectrum holdings and spectrum costs significantly impact on the network deployment of sites and coverage assumptions. It would be incorrect to assume that a hypothetical mobile operator will have access to all spectrum bands, let alone on a nationwide basis, in all cases. Access to spectrum and spectrum costs will also have significant downstream implications on a mobile operator's ability to deliver services to end users.

3.5 These are not new observations. For example, the ACCC has long been of the view that *"international cost benchmarking may be a useful input in determining the efficient cost of supplying the MTAS. Many of these adjustments include spectrum allocations, network purchasing power, vertical/horizontal integration, network usage and scale, population density, land and labour costs, the use of different technology, retail prices, scope of services offered and the quality of services offered."*[37]

3.6 The relevant question before the ACCC is whether the risk of error in setting MTRs through benchmarking, and the impact of that error on the LTIE, is sufficient to warrant the significant costs incurred by the ACCC and interested parties in undertaking the proposed benchmarking exercise.

The proposed approach to benchmarking the cost of providing MTAS in Australia

3.7 Analysys Mason (AM) has been engaged by the ACCC to estimate the cost of providing MTAS in Australia using an approach that requires an international benchmark of the costs of providing an equivalent service in other jurisdictions.

3.8 This exercise comprises two key components:

(a) First, the selection of comparative countries with available and suitable mobile cost models. To this end, AM has identified 9 candidate cost models.

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[37] ACCC, 2009, MTAS Pricing Principles Determination and indicative prices for the period 1 January 2009 to 31 December 2011, March, p.19

(b) Second, the compilation of appropriate adjustment factors that can be applied peer group models and/or model outputs.

3.9 Optus notes that while the proposed AM approach appears to address some of the criticisms raised during the 2015 FAD inquiry, there are inherent complexities in the proposed approach that will give rise to new concerns.

3.10 The table below provides a high-level summary between the cost models used in the previous MTAS FAD and the current proposed selection identified by AM. This illustrates a number of key changes in both the selection of cost models and adjustment factors for use in this study.

Table 2 Comparison of candidate cost models and adjustment factors (2015 FAD vs this study)

Cost models and adjustment factors considered in the 2015 FAD	Candidate cost models and adjustment factors proposed by AM for this study
Benchmark cost models • Denmark • Mexico • Netherlands • Norway • Portugal • Romania • Spain • Sweden • UK	Candidate cost models • East Caribbean • France • Mexico • Netherlands • Peru • Portugal • Spain • Sweden • UK *Also considered but has since been excluded:* • Denmark • Greece • Norway • Romania
Adjustment factors • Currency conversion • Shares of 2G and 3G voice traffic • WACC • Network usage • Cost of backhaul • Spectrum fees	Proposed adjustment factors • Levels of market demand • Assumed market share • Geography • Cell coverage radii • Mobile radio technologies in use • Spectrum holdings • WACC Proposed adjustments (external to cost models) • Spectrum costs • Currency conversion

Source: Analysys Mason, ACCC

3.11 Optus questions the AM proposed selection of benchmark countries and adjustment factors being considered for this study. Furthermore, it is not immediately clear how the information being sought from operators will be used to conduct the proposed adjustments in each model. In addition to being highly onerous, this represents a marked departure from the approach used to determine the generic Australia-specific parameters used in the 2015 FAD.

3.12 The remainder of this section highlights some initial concerns with the AM benchmarking exercise.

Selection of benchmark countries

3.13 While nine candidate cost models have been chosen, down from 13, it is not immediately clear that these represent a suitable comparative sample set for Australia. These also differ from the nine cost models used in the international benchmarking exercise that formed the 2015 MTAS FAD price terms.

3.14 From the information provided, it appears AM have selected candidate cost models based on the following factors:

(a) Candidate cost models are publicly available, with most input parameters intact. However, not all cost models can be used to replicate the final mobile voice interconnection rate as agreed to by the National Regulatory Agency (i.e. the model output is not equivalent to the regulated rate set). This may be due to confidentiality claims for some input parameters and updates to the publicly available draft cost models in some cases.

(b) Exclusion of cost models which do not take into account 4G technologies. However, even where a cost model can be configured for 4G/LTE, these fields may not have been applied in the determination of the model outputs (e.g. none of the five member states in the ECTEL mobile model have been configured to utilise 4G technologies, i.e. the LTE network coverage is set to zero in all cases).

(c) Preference for multi-year models, with an exception for the single year cost model adopted by OSIPTEL.

3.15 However, there remain some deviations from the modelled output and the final regulated MTR value in the benchmark countries. For example, where a final model has not been published, it is difficult to align the modelled output with the regulatory determination – the Dutch modelled output based on pure BULRIC shows the weighted outcome for 2017-20 to be 0.00599 EUR per minute, while the final decision shows the 2017-20 MTR rate has been set at 0.581 EUR cents per minute.[38] The French and UK models have also been similarly acknowledged to be Draft Models, while the ECTEL model clearly does not replicate the final modelled output referred to in the final regulatory decision, given that each of the member countries captured each have different input parameters (which are not all publicly available) applied in the determination of their regulated rates.

3.16 Furthermore, the candidate cost models predominantly set its output based on pure LRIC methodology. In contrast to TSLRIC, pure LRIC approaches do not include the common costs of a network providing a full range of services. This is the generally accepted approach adopted by the European Union member states, which is not the approach supported in the Australian context by either industry or the ACCC,

[38] See: Autoriteit Consument & Markt, Marktanalyse vaste en mobiele Gespreksafgifte – Besluit voor Europese notificatie, 1 July 2017, p.5

> *Due to the risk of cost under-recovery, the ACCC noted that even though pure LRIC may result in a lower termination rate and promote competition in the short term, this is unlikely to be efficient or sustainable in the long term.*[39]

3.17 It is also instructive to note that a comparable TSLRIC+ will result in a higher MTR rate – for example, the Dutch modelled output based on BULRIC+ shows the weighted outcome for 2017-20 to be 0.012668 EUR per minute, which is 111% higher than the pure LRIC result.

3.18 The AM methodology also acknowledges that both the Mexican and French cost models do not implement a LRAIC+ output, and that this will be separately constructed by AM to enable both models to provide LRAIC+ outputs for MTAS.

3.19 Irrespective, there remains no robust discussion on the suitability of the selected benchmark countries as a comparator for the Australian market. For example, the same ACCC comments made it its 2011 FAD decision remain relevant.

> *The ACCC notes the Tribunal's view in relation to international benchmarking that 'in order to place any reliance upon international benchmarking analysis it would be necessary to know much more about the regulatory environment within which they were determined, the state of the relevant markets and the socio-economic environment in which the mobile services were operative'.*[40]

3.20 A common theme on the key concerns with the previous benchmarking exercise was the lack of comparable countries included in the benchmark sample, with clear differences in relation to population density, land area and network size.

3.21 While the last benchmarking exercise used OECD countries as a selection criterion (or proxy) with publicly available cost models for comparator countries, AM has not made (or established) any similar assumptions. As a result, it appears that East Caribbean and Peru are now being considered. However, it is unclear to what extent the East Caribbean countries represent a suitable peer group to Australia. AM has made no indication on whether, and how, it will consider the five member states (if any) for the purposes of the benchmarking exercise.

3.22 It is important that there is some degree of public transparency around a benchmarked cost model, and the resulting cost estimate, for the ACCC to use the estimate as a benchmark in the Australia context.

Selection of adjustment factors

3.23 There are several concerns regarding the proposed selection and use of adjustment factors for the purposes of this benchmarking exercise.

3.24 First, the selection of adjustment factors differs in approach to those adopted during the last MTAS benchmarking exercise. However, it remains to be established the extent to which the proposed adjustment factors and the sensitivities each individual adjustment will apply. While it may seem reasonable and logical that adjustments are applied in-model, we are concerned that incorrect assumptions for the Australian modelled operator, as well as the incorrect application within the models, will result in the compounding of errors in the overall benchmarking exercise.

3.25 Second, the derivation of Australian input values for adjustments are not defined, with the proposed approach only introduced at high-level. There is insufficient information to

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[39] ACCC, 2019, MTAS Position and Consultation Paper, December, p.15
[40] ACCC, 2011, MTAS FAD: Access Determination Explanatory Statement, December, p.9

establish how the proposed data sources will be used to derive the Australian specific adjustment factors. For example, while the same dataset may be used for an input category, it is not clear how this data will be cut to meet the constraints of each benchmark model. Similarly, it is not clear how the significant variations can be captured from one model to the next.

3.26 Third, it remains unclear how the benchmark models are able to accommodate many of the Australian specific adjustments. For example, it is unclear how a number of the models will be able to reflect the use of different frequencies by different operators, and in different geographic areas. Comments set out in AM's worked example also suggest that the same Australian assumptions will be applied consistently across all benchmark models, but it is difficult to envisage how this would be applied.

3.27 Some of these issues are further discussed below.

Defining the inputs for the relevant adjustment factors needs further consideration

3.28 The AM methodology sets out a high-level overview of their proposed selection factors; but given differences in the construct of various cost models, it remains unclear how these inputs can be updated to reflect the Australian specific adjustments.

3.29 Optus similarly questions the AM proposed consideration of several 'simplifications' to the proposed adjustment factors to be applied. For example, there are several suggested simplifications that require further explanation:

(a) Level of market demand and mobile radio technologies in use. The AM approach to demand forecasting is to derive metrics for historical years that can be forecast, however it is unclear how this information can be used to forecast future 3G/4G voice traffic distribution when voice remains predominantly delivered over 3G technologies and is unlikely to significantly change over the foreseeable regulatory period.

(b) Geography and cell radii. AM is proposing to use the geotypes based on SA2 areas and cell radii published in the ACMA mobile network infrastructure forecasting model as its starting point for this assumption. While this was the same model that was referred to during the last FAD inquiry process, it is interesting to note that several future state assumptions (e.g. voice traffic distribution) have not been achieved.

(c) Spectrum holdings. AM is proposing to adopt a smaller spectrum allocation by band since the models are unable to accommodate regional spectrum allocations, however in the majority of cases there is the same amount (i.e. total bandwidth) of spectrum in each band across both metro and regional areas. It is not clear why smaller allocations would be considered for the modelled operator in all bands, even though it considers network market share to be 33.3%.

(d) Spectrum costs. AM is proposing to separately estimate spectrum costs for the modelled operator on a spectrum cost per minute basis, which can then be added to the benchmark MTAS values calculated in each respective cost model. AM also intends to only apply the 'simplified' spectrum holdings mentioned above, however this could underestimate the 'true' spectrum cost faced by operators in Australia, which needs to also capture the full cost of spectrum acquisition fees for all active spectrum licences.

3.30 Of particular note is the proposed treatment of spectrum inputs in the benchmarking exercise. Spectrum holdings among the mobile network operators are not balanced across all mobile frequencies and geographies directlt impacting the cost of mobile

networks. Australian mobile networks are built using multiple frequencies, and not all frequencies are available in every location. The network frequencies used in regional areas are often completely different to those used in metro areas. Spectrum costs also represent a large proportion of operating mobile networks in Australia, which under the TSLRIC+ methodology, can be categorised under common costs and should be recovered accordingly. It is not clear how the benchmarking exercise will take into account these complicating spectrum factors.

3.31 Notably, in the final revised benchmarking report for the 2015 FAD, it was recognised that the factors for WACC and Cost of Spectrum were added *"because they vary substantially between the models and, further, their averages differ substantially from the levels applicable in Australia. They therefore account for correspondingly large differences in the calculated costs."*[41]

3.32 The following table sets out some high-level comments and concerns with use of the proposed AM adjustment factors. These adjustments are being considered for internal adjustments in the cost models. Separately, AM has also proposed adjustments for spectrum costs and currency conversion to be conducted external to the cost models.

Table 3 Comment on proposed AM adjustment factors

Proposed Adjustment Factors	Initial comment
Levels of market demand	• AM proposal = to derive metrics for historical years that can be forecast, and then to develop forecasts for these metrics for future years • It is unclear how this is to be reconciled, particularly given the confidential nature of the underlying data, as well as the treatment in cost models which only rely on a single year input.
Assumed market share	• AM proposal = to use network market share of 33.3% • There are significant regional variances in market share. It is unclear how this is to be reconciled given the diference in spectrum holdings and network coverage given the disparate differences in regional market share.
Geography	• AM proposal = to use SA2 areas as a starting point for the geotype definitions to be applied to the geotypes in each benchmark model • It is unclear how this is to be reconciled, despite the acknowledgement that this approach will cause an increase in the number sites modelled to take into account the Australian land mass
Cell coverage radii	• AM proposal = to adjust the cell radii used for mobile coverage in the most rural geotype in each model to address overestimation in the number of coverage sites due to Australia having coverage in far more sparse areas than the benchmark models • Cell radii is acknowledged as being calibrated to the coverage that exists within that country, however the inclusion of an adjustment is only being considered for the most rural geotype in each model.

[41] WIK-Consult, 2015, Benchmark for the Cost of the MTAS in Australia, Revised Final Report, July, p,2

Proposed Adjustment Factors	Initial comment
Mobile radio technologies in use	• AM proposal = all benchmark models will consider a mixed deployment of 2G, 3G and 4G technologies. Given Australia has shutdown 2G since 2019, adjustment will be made that any modelled 2G network will be assumed to be switched off from 2019 onwards. Forecast for proportion of traffic on 3G and 4G networks for future years to be based on historical information received • The assumption being applied are two-fold, first to accommodate 2G switch off and second to forecast future traffic distribution, and risks entrenching potential model errors. Given the arbitriary shutdown of 2G allocations, the natural assumption would be that all 2G voice traffic will need to move to 3G voice in the first instance.
Spectrum holdings	• AM proposal = to use a conservative (smaller) assumption of nationwide spectrum holdings in each band. Each band is also only proposed for a single mobile radio technology use in each model. • It is not clear why smaller spectrum holdings for a modelled operator would be considered, given that total spectrum bandwidth in most bands are the same on a nationwide basis, and that almost all other input factors are based on total market assumptions. The assumed spectrum holding will also have flow though implications on the contribution of spectrum costs.
Spectrum costs	• AM proposal = to deactivate spectrum costs in all models then consider Australian-specific spectrum costs (based on one-odd and recurrent spectrum costs) externally as an additional cost component. The cost allocation will be applied using an economic depreciation calculation implemented in a simple side model, then allocated accordingly on a network traffic basis. • As noted the assumed spectrum holding will have implications for the cost allocation approach. The total spectrum costs should be considered for each band, including all one-off spectrum costs and recurring apparatus licence fees. Depending on the relevant time series, this is currently not all captured in the table set out Figure 2.4 in the AM report.
WACC	• AM proposal = to use the ACCC calculated pre-tax WACC for this purpose • There is currently no proposed Australia-specific WACC input provided at this stage. The use of a fixed line WACC as applied in the last MTAS FAD is not likely to be appropriate.

Source: Analysys Mason, Optus

3.33 Notwithstanding concerns in the proposed 'simplified' adjustments to be considered, the AM approach to deriving the Australian input values is currently undefined. As such, the information being sought from MNOs is somewhat onerous and it has not been established, in either scope or description, how the data will be used.

3.34 For example, we have significant concerns with the need to provide historic data for such a long time series – that is, *"if possible for the last 20 years."*[42] This disconnect also stems from the fact that a number of models only use input data for a single year – e.g. the ECTEL assumptions for mobile voice minutes only apply the demand traffic based on a single year. Furthermore, these inputs are assumed to remain constant each

[42] Analysys Mason, 2019, Approach to benchmarking the cost of providing MTAS in Australia, December, p.B-1

year despite the growth in the number of SIMs modelled. The OSIPTEL model similarly only uses input data for a single year to produce a single year LRAIC+ result.

3.35 Further comments will be provided as we learn more about the underlying assumptions and proposed Australian specific assumptions to be applied.