

Response to TPG's supplementary submission



10 November 2023

Public Version

Submission on the public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service.

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Introduction

- 1.1 Pivotel wishes to respond to a couple of claims made in TPG's most recent submission the Declaration Inquiry.
- 1.2 Any defined terms in this submission have the meaning set out in Pivotel's earlier submissions.

Further unsubstantiated claims regarding scam SMS

- 1.3 TPG makes further unsubstantiated and contradictory claims regarding scam SMS. Rather than engaging further with those claims Pivotel has engaged Luke Wainscoat from HoustonKemp to provide an independent report responding to the 2018 report from Frontier Economics, which TPG repeatedly cites. A copy of HoustonKemp's supplementary report is **attached** to this submission.
- 1.4 Pivotel relies upon the findings of the supplementary report from HoustonKemp which finds that:
 - 1.4.1 *"In our opinion, the analysis of Frontier Economics does not demonstrate that declaration of SMS termination services and the associated reduction in price for those services caused an increase in the volume of SMS spam or scams because:*
 - a. *the Frontier Economics report uses unreasonable counterfactuals to estimate the effects of declaration on SMS spam and scams; and*
 - b. *extending Frontier Economics' analysis by a few years demonstrates that there is no correlation (let alone causation) between the declaration of SMS termination services and the volume of SMS scams.*
 - 1.4.2 *In summary, SMS scam volumes have continued to increase substantially from 2015 to 2022 no matter what happens to the declaration of SMS MTAS."*¹

¹ HoustonKemp report, Declaration of SMS termination services and SMS spam dated 9 November 2023, paragraphs 19 and 20.

- 1.5 Pivotel also refers to HoustonKemp’s findings that “...it is highly likely that scams are driven by causes other than declaration and its associated effects on prices.”²
- 1.6 Pivotel also considers that the same methodological flaws apply to all of TPG’s submissions regarding the supposed connection between the declaration of SMS and scam SMS. Put simply, there is absolutely no evidence to support the claim that any increase in scam that may have occurred in the past was attributable to the previous declaration.
- 1.7 In addition, TPG’s submissions are internally inconsistent. On the one hand it claims that the trend in the increase of scam SMS has “reversed and is decreasing after the removal of regulation”, yet in the very next bullet point, it claims the contrary namely that “the problem of scam traffic is now an enduring one”.³
- 1.8 That being the case, Pivotel remains firmly of the view that it would be unsafe for the Commission to rely upon TPG’s submissions or the 2018 Frontier Economics report in deciding whether to declare MTAS for SMS.
- 1.9 Pivotel also reiterates its view that scam is most appropriately addressed through investment in technologies which combat scam (e.g., firewall solutions) alongside initiatives such as the proposed SMS Sender ID registry, rather than forcing MNOs and MVNOs to pay inflated wholesale charges. Pivotel actively supports industry initiatives to combat scam, and has led the way in developing firewall services to combat scam.

Claims regarding the withdrawal of unlimited international SMS lack merit

- 1.10 TPG contends that, if MTAS for SMS is declared, it may be forced to withdraw its unlimited international SMS service and charge consumers *a la carte*. It does so on the basis that the product can “only exist if there is balanced volume of traffic at reciprocal rates between TPG and overseas networks directly”.⁴
- 1.11 TPG’s claim warrants further scrutiny. Firstly, TPG effectively claims that it can only provide such a service because the cost of supply is “neutral” (i.e. zero). If that is true, it is a perverse outcome that TPG would seek to charge monopoly rents to local MNO’s so that TPG may supply the international SMS service at no cost to itself. Rather, Pivotel considers that, if MTAS for SMS service is declared an unlimited international P2P SMS service will continue to be provided because of the profitability of the underlying mobile bundles as a whole, and the additional value SMS is perceived to bring.
- 1.12 Even if TPG’s claims are taken at face value and it is “forced” to withdraw its unlimited international SMS service (which Pivotel considers to be highly unlikely given that similar unlimited services are offered by other MNO’s), Pivotel submits that the ACCC should have regard to the outcome that will best promote the long-term interest of end-users.
- 1.13 In Pivotel’s experience, the volume of P2P text messages that are sent internationally is extremely low when compared to the (1) number of messages sent domestically, and the (2) number of A2P SMS messages sent to domestic mobiles each month.⁵ TPG itself

² HoustonKemp report, Declaration of SMS termination services and SMS spam dated 9 November 2023, paragraph 44.

³ TPG Supplementary Submission, slide 6.

⁴ TPG Supplementary Submission, slide 6.

⁵ For example, [REDACTED]

has previously claimed that P2P SMS traffic will decrease in the coming years,⁶ whereas evidence from the ACCC shows that demand for A2P has risen considerably and is likely to increase further.⁷

- 1.14 In a future with declaration, any impact on the interests of end-users resulting from the withdrawal of TPG's unlimited international SMS service would be minimal and far outweighed by the benefits of declaration, particularly for consumers and those small and medium businesses that use A2P SMS to communicate with their customers. Pivotel refers to and adopts the findings in the HoustonKemp report that "*Competition is likely to be stronger in the wholesale and retail markets for A2P SMS in a future with declaration, relative to a future without declaration*".⁸

Inability to gain access on reasonable terms and conditions

- 1.15 TPG has suggested that, if there is evidence a specific access provider is refusing interconnection, the ACCC could use other powers (such as Part XIB) to deal with the conduct of certain actors "*due to lack of any specific market failures and real downstream social and economic costs associated with regulation*".⁹
- 1.16 Pivotel's inability to gain access to SMS termination services on reasonable terms and conditions is not limited to its dealings with one specific MNO.
- 1.17 As detailed in Pivotel's submissions at paragraphs 7.19-7.26, each of the three national MNOs have imposed termination charges vastly in excess of the price set out in the Commission's 2015 Final Access Determination. That being the case, each of the three national MNOs clearly have the ability and incentive to raise the costs of SMS termination above efficient levels.
- 1.18 TPG also states that "*Any negative commercial impact to Pivotel due to deregulation (as the ACCC indicated may happen in its decision to deregulate), does not mean there is market failure. Pivotel is not the market, as it seems to imply in its submissions*".¹⁰
- 1.19 Pivotel has never claimed that it is "the market". Nor is Pivotel the only operator to make a submission to the ACCC Declaration Inquiry which advocates for the declaration of MTAS for SMS. To the contrary, submissions to that effect have been made by Aussie Broadband, Commpete, Soprano, Symbio and Virtutel. What is true is that Pivotel is a smaller MNO that lacks the market power, scale, and vertical integration of the three national MNOs.
- 1.20 It is also true that the ACCC's primary objective must be the promotion of competition in telecommunications markets rather than the interests of individual competitors. However, in circumstances where the market for SMS termination services is highly concentrated and Pivotel (by providing off-net termination) is an effective competitor to the national MNOs, a reduction in Pivotel's ability to impose a competitive constraint will cause irreparable harm to competition in that market and in

⁶ TPG's original submission to the declaration inquiry, page 5.

⁷ See the ACCC's Discussion Paper at page 48, as well as Pivotel's original submission to the declaration inquiry, paragraph [7.51]. The figures cited are broadly consistent with data provided to Pivotel by Mobile Squared.

⁸ HoustonKemp report dated 27 July 2023, paragraph [227].

⁹ TPG supplementary submission, slide 4.

¹⁰ TPG supplementary submission, slide 3.

downstream markets as well. This is consistent with the approach taken by the Australian Competition Tribunal's in the Telstra/TPG decision.¹¹

- 1.21 In any event, the benefits of declaration will be widespread. The HoustonKemp report found that, in a future with declaration, not only will Pivotel be an effective competitor, but *the larger* MNOs will also compete to provide off-net A2P SMS. In addition, there will be a constraint on the price of monopoly on-net services supplied to SMS aggregators, which will promote competition in downstream wholesale and retail markets. Access to competitively priced off-net services also means that A2P service providers and MNOs will be able to compete effectively against vertically integrated SMS aggregators and other MNOs.¹²
- 1.22 It is also well recognised that barriers to entry in telecommunications markets (including for mobile services) are high, and the prospect of new entry is low.¹³ Any increase in charges for MTAS for SMS will further increase barriers to entry and diminish the prospect of new market entry. Put simply, this will further damage competition.

¹¹ See *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, at paragraphs [673] and [692].

¹² HoustonKemp report dated 27 July 2023, paragraph [27].

¹³ See *Applications by Telstra Corporation Limited and TPG Telecom Limited (No 2)* [2023] ACompT 2, at paragraph [8].