

27th July 2011

Lauren Zhu
Communications Group
Australian Competition & Consumer Commission
GPO Box 3648
Sydney NSW 2001

Dear Ms Zhu,

Pivotel Group Pty Limited - Submission in response to the Domestic Mobile Terminating Access Service (MTAS) Discussion Paper

Pivotel Group Pty Limited ('Pivotel') is pleased to make this submission in response to the ACCC's public inquiry to make an access determination for the Domestic Mobile Terminating Access Service (MTAS).

Pivotel is a MNO

In respect of the Globalstar mobile satellite service network, Pivotel owns and operates a public mobile telecommunications network (PMTN) and provides public mobile telecommunications services (PMTS) as that term is defined in section 32 of the *Telecommunications Act 1997* (Cth).

Pivotel holds a carrier licence and provides digital mobile telephony services using digital mobile numbers allocated by the ACMA under the *Telecommunications Numbering Plan 1997* (Cth).

As such Pivotel is a mobile network operator (MNO) and provides MTAS. We note that whilst the Discussion Paper in paragraph 3.1 initially lists the MNOs providing MTAS on a non-exclusive basis, the Discussion Paper then goes on to exclusively concentrate on the "three MNOs" providing MTAS.

The ACCC states in paragraph 1.2 that "MTAS is a technology-neutral wholesale input". Hence, given Pivotel operates a digital mobile network it is important for the ACCC to acknowledge and recognise Pivotel as a MNO providing MTAS as part of this public inquiry to make an access determination.

The fact that that Pivotel's digital mobile telephony services utilise a satellite based radio access network, rather than a terrestrial based radio access network must be irrelevant in what is stated in paragraph 1.2 of the Discussion Paper as a "technology-neutral" context.

Pivotel is aware of a number of other MNOs that may not be providing MTAS under the current voice-only service description, but which do provide mobile services. It is Pivotel's view that what today would be considered alternative MNOs will become mainstream MNOs once the network paradigm shifts from legacy voice based technology to data based technology. It these MNOs that are likely to drive significant price and product based competition in the market, competition that is in the long term interests of end users.

As an industry participant providing MTAS, it is vitally important that Pivotel's position in the market as a MNO, is not ignored or excluded from the ACCC's deliberations with respect to a Final Access Determination (FAD).

In its MTAS FAD it is Pivotel's view that the ACCC should also be considering the position of other MNOs which may not be providing MTAS currently, but have directly connected customers and provide mobile services which will need to communicate with end users on other mobile networks including the big three MNOs.

Pivotel Cannot Rely on Commercial Agreements

There is a material difference in size and scale between Pivotel's operations as an MNO, and the operations of the big three MNOs. By definition, any of the new, niche or alternative MNOs will not have similar scale and bargaining power to that of the big three MNOs. In the absence of regulation, Pivotel and any alternative MNOs cannot rely on reaching balanced commercial agreements with the big three MNOs with respect to network access.

As a consequence, many of the ACCC's assumptions with respect to an equality of bargaining power between MNOs are not valid, particularly when Pivotel's situation is considered (c.f. paragraph 6.4 of the Discussion Paper stating that the "market is characterised by three MNOs of similar scale"). Pivotel believes that the ACCC must take a forward looking market view in this MTAS FAD, and put in place the protections that alternative or new entrants to the market will need to ensure the long terms interests of end users.

Pivotel has experienced a number of issues adversely affecting its end users which we believe have not been able to be resolved satisfactorily due to a failure in the current regulatory arrangements for access, coupled with Pivotel's lack of bargaining power:

- 1 Pivotel's network is effectively being blocked by Optus' commercial decision not to acquire MTAS from Pivotel, resulting in no end user connected to Optus' fixed or mobile networks being able call or SMS an end user directly connected to Pivotel's network;
- 2 c-i-c;
- 3 c-i-c; and
- 4 c-i-c.

It is therefore clear that due to a failure in the current regulatory arrangements for access, coupled with Pivotel's lack of bargaining power, Pivotel has been forced to agree to unbalanced and discriminatory access conditions as a price it has had to pay to achieve some of its commercial outcomes relying on interconnection. In other circumstances, Pivotel has been forced to take costly legal action to attempt to protect its legitimate commercial interests.

In each case Pivotel has had to weigh the huge cost and delay of fully achieving its commercial goals in the face of an intransigent negotiating position adopted by the other MNO or integrated carrier. Without bargaining power or an effective regulatory framework, Pivotel been left to its own means to try to defend the rights of its end users and its own legitimate commercial interests.

Subsection 152AB(8) of the *Competition and Consumer Act 2010* (Cth) states that any-to-any connectivity "is achieved only if each end user who is supplied with a carriage service that involves communication between end users is able to communicate, by means of that service, with each other end user who is supplied with the same service or a similar service. This must be the case whether or not the end users are connected to the same telecommunications network."

Clearly, when one carrier Optus can refuse to acquire terminating access from another carrier Pivotal, for purely commercial reasons, and there is no regulatory obligation for Optus to acquire terminating access, the objective of any-to-any connectivity is at best illusory.

Where each of the mobile carriers, at a network level, are effective monopolies for the end users directly connected to their networks, to have any hope of achieving any-to-any connectivity, it is essential that the mobile networks are placed under the same regulatory regime for access as that imposed on the NBN.

In a retail market characterised by two year lock-in contracts, it is manifestly insufficient to rely on end users porting services between the big three MNOs if one them decides to prevent their end users accessing another network, or accessing a group of services connected to another network (e.g. a specific retail service provider operating on the NBN).

Consequently, in order to protect the long term interests of end users, it is Pivotal's firm view that all services provided by MNOs should be declared, including terminating access, originating access, SMS, MMS and data services.

Answers to Questions Raised by ACCC

1) Is the flow of voice traffic between any pair of mobile operators broadly symmetrical?

Pivotal's experience has been that the voice traffic between MNOs is not broadly symmetrical. This may be because Pivotal's operations are different to the operations of the big three MNOs. The diversity of products and services offered by Pivotal and other alternative MNOs, and the price at which those services are offered provides the much needed competition in the market. Competition that the ACCC recognises is in the long term interests of end users.

When Pivotal's outgoing traffic exceeded its inbound traffic, VHA being the only MNO to which Pivotal was interconnected, was comfortable to keep MTAS interconnect rates high on the basis that VHA viewed the difference between what Pivotal paid VHA, and what VHA paid Pivotal, as revenue.

When the balance of traffic swung round such that VHA's payment to Pivotal exceeded Pivotal's payment to VHA, VHA acted promptly to reduce interconnect rates. Consequently, VHA viewed the difference in interconnect payments as a cost to their business.

As the difference between the payments increased as a consequence of the increase in inbound traffic to Pivotal, VHA started to insist on an unbalanced interconnect rate such that the rate per minute VHA paid Pivotal for MTAS was reduced substantially below the rate Pivotal paid VHA per minute for MTAS. VHA indicated to Pivotal at the time that the difference in the price per minute was non-negotiable, and that if Pivotal did not agree to the difference in price for MTAS, VHA would cease to acquire MTAS from Pivotal.

As a consequence, VHA used the threat of refusing to acquire MTAS as a method of achieving an agreement in their own commercial interests, giving scant regard to any-to-any connectivity and the long term interests of end users. As Pivotal was only interconnected to VHA at that time, with VHA providing an inbound and outbound transit service to Pivotal, VHA's threat was to cut the Pivotal network off from all interconnectivity both domestically and globally. Pivotal accepted the lower interconnect rate in order to preserve its business. The cost, expense and delay in running an access dispute under the former *Trade Practices Act 1974* (Cth) Part XIC access regime was deemed too high at the time.

In December 2009, and again in February 2010, Optus blocked Pivotal's network by refusing to acquire MTAS from Pivotal. Optus cited the imbalance in traffic between Optus' network and Pivotal's network as the reason for why they took a commercial decision to refuse to acquire MTAS from Pivotal.

It is Pivotal's view that traffic imbalances, whether they be technology related such as satellite based mobile voice services, where the great majority of calls are outbound, or service related where a service provider provides a competitive service that attracts an abnormally high level of inbound traffic, will always be a characteristic of MTM, FTM, MTF traffic flows. Alternative MNOs like Pivotal that offer a diverse range of innovative products and services are more likely to experience material traffic imbalances with the big three MNOs and fixed networks for the very reason that they provide innovative, competitive or diverse services.

It is clear that any-to-any connectivity is impossible to achieve in circumstances where carriers, including the big three MNOs, are free for commercial reasons alone to decide whether or not to acquire terminating access services from other carriers.

Pivotal is concerned that the ACCC seems to view any-to-any connectivity as just one of the factors in a consideration of the long term interests of end users (LTIE).

To Pivotal, it is self-evident that an LTIE objective relating to promoting competition in products and services cannot be met unless first the fundamental objective of any-to-any connectivity is secured. If carriers, including the big three MNOs, can refuse for commercial reasons alone to acquire access services used to support competitive, diverse or innovative products and services, then any LTIE objective is sacrificed. Consequently, Pivotal views any-to-any connectivity as a threshold LTIE factor for the ACCC to consider rather than just one of many factors to consider in a study of LTIE.

Pivotal strongly supports the comment made in paragraph 4.1 of the Discussion Paper that “regulation may remain relevant for the purposes of any-to-any connectivity.”

Pivotal advocates that increased regulation is necessary to first achieve and then maintain any-to-any connectivity, as the current regulatory settings have shown themselves to be manifestly inadequate in achieving this LTIE objective.

2) Is there any evidence which suggests that retail pricing of FTM services reflects the reducing cost of MTAS?

Pivotal is unaware of any evidence that suggests FTM pricing has been reduced as a result of reductions in the MTAS rate.

In addition to the difference in cost of directly calling a mobile phone from fixed line, Pivotal recommends the ACCC inquire into the cost difference for fixed line versus mobile answering points when businesses use a 13/1300/1800 free and local rate number (FLRN) service.

3) Are MNOs likely to negotiate BAK-based access agreements for MTM calls commercially, and if so, within what timeframes?

Pivotal does not believe any of the big three MNOs would agree to a BAK based access agreement model with Pivotal in the absence of a FAD setting BAK as the default pricing mechanism for MTAS.

It is Pivotal's view that the big three MNOs often act in concert together to protect their mobile businesses from outside competition. Hence, even if a BAK pricing model was agreed between the big three MNOs, it is likely that Pivotal would be excluded from that MNO group without the protection of a FAD setting BAK as the default pricing mechanism.

4) Should the ACCC set a price of zero for MTM termination in the MTAS FAD?

Pivotel's view is that the entire telecommunications industry should move to a BAK model for all services. We recognise the scope of this Discussion Paper is MTAS, however the movement towards a BAK model for interconnect across the whole telecommunications industry must start somewhere, and it is Pivotel's view that it should start with MTAS.

Pivotel's recognises the ACCC's concerns about arbitrage in the FTM space where an operator may route traffic through one mobile operator to another mobile operator to take advantage of a zero priced MTM MTAS rate. In order to eliminate this arbitrage, Pivotel recommends that the MTAS rate be set at the same rate as terminating access on the fixed networks such that there is a single uniform declared rate for terminating traffic across the telecommunications industry regardless of the technology used by the network operator. At some later point in a coordinated manner, the uniform terminating access rate can then be set as zero across the whole telecommunications industry.

Pivotel strongly disagrees that there may be an opportunity to deregulate MTM termination. Pivotel's concern is that for a range of commercial reasons MNOs may decide not to acquire terminating services from other carriers or service providers. In these circumstances, it is Pivotel's view that regulation in support of any-to-any connectivity must be strengthened to preserve the LTIE any-to-any connectivity objective.

5) If commercial BAK arrangements for MTM termination were implemented successfully, should MTM termination be deregulated?

Deregulation assumes that there is some level of equality in bargaining power between the MNOs. Whilst this may be true between the big three MNOs, other industry participants like Pivotel and alternate MNOs are likely to be sidelined or have conditions imposed that limit their ability to provide price based competition, or innovative product based competition, or competition that challenges the established business models of the big three MNOs.

Pivotel's strong view is that neither FTM nor MTM termination should be deregulated in light of the facts that:

- 1 Optus has refused to acquire MTAS from Pivotel thus blocking Pivotel's network and preventing all calls and SMS from Optus fixed or mobile end users from calling or sending SMS to Pivotel end users;

- 2 VHA has previously threatened to cease acquiring MTAS if Pivotel did not agree to an unbalanced rate per minute for calls; and
- 3 c-i-c.

Deregulating MTM termination would enable the big three MNOs to prevent end users on other mobile networks contacting or communicating with end users connected to their networks, which would represent an extension beyond the current 'failure to acquire' blocking conduct preventing the LTIE any-to-any connectivity objective.

It is Pivotel's view that the big three MNOs will act to block access for a range of commercial reasons not only linked to interconnect pricing. If a big MNO sees their retail revenues challenged by new or innovative services they will act to reduce that competition.

Optus has stated that their decision to cease acquiring MTAS from Pivotel's was because they saw 'revenue leakage', defined as a loss of international direct dial (IDD) revenue due to Pivotel's innovative two-stage international dialling service. Consequently, Optus' stated reasons for blocking Pivotel's network was the threat to its IDD revenues from Pivotel's innovative two-stage international service, not the cost of acquiring MTAS from Pivotel. Hence, any-to-any connectivity is by no means assured in a BAK environment, and just because an interconnect cost is avoided does not guarantee that any of big three MNOs will preserve any-to-any connectivity if their retail revenues are threatened.

Therefore, Pivotel's strongly recommends that all services provided by MNOs should be declared and regulated in a similar fashion to the way all services provided by the NBN are regulated. The current access regime has failed to ensure the LTIE any-to-any connectivity objective is being met.

Pivotel believes it is essential that the ACCC's MTAS FAD provides regulatory certainty for all mobile industry participants, for end users connecting to mobile networks, and for end users connected to other networks wishing to call or communicate to end users connected to mobile networks.

6) If MTM termination was deregulated, how would any-to-any connectivity be maintained?

Any-to-any connectivity is not being maintained under the current regulatory access regime, and therefore it is Pivotel's view that deregulating MTM termination will only make it easier for the big three MNOs to make commercial decisions about whether to interconnect to other carriers, or whether to refuse to acquire terminating services from other carriers.

In the absence of regulation, the big three MNOs have all demonstrated that they will place their own commercial interests above maintaining the LTIE any-to-any connectivity objective.

7) Should reductions in the MTAS rate be subject to a pass-through safeguard for fixed or integrated operators?

Pivotel agrees with the ACCC that fixed networks have failed to pass on the reductions in the MTAS rate and hence there is limited competition in fixed networks, and service like FLRN services operated on fixed networks. This situation may change with the NBN, but the effect of that change is still many years away.

Pivotel supports any safeguards that can be implemented by the ACCC to prevent fixed carriers profiting from lower MTAS rates.

One mechanism could be to move to a global BAK model for interconnect between networks, and set a zero terminating access rate for all networks fixed and mobile. Pivotel's view is that it is likely that a 'retail minus' safeguard on fixed networks would be more effective if the terminating access rate to fixed networks is also set at zero.

8) If a percentage pass-through obligation is adopted, should pass-through occur at the same time, or after the reduction in the MTAS rate? What is the most effective way for the ACCC to monitor compliance with the provision?

Pivotel supports an telecommunications industry wide BAK model for interconnect, with 'retail minus' safeguards imposed on fixed networks until it is demonstrate that fixed networks are not unfairly profiting from a reduction in MTAS.

9) If a 'retail-minus' approach is adopted, should integrated operators lodge their average retail prices with the ACCC? If so, how often should retail prices be reviewed?

It is Pivotel's view that integrated operators should lodge their average retail prices with the ACCC no less frequently than every three (3) months. It is important that the reported average retail prices reflect the real volume of traffic to fixed and mobile networks, and not be skewed by reporting bundled retail pricing or retail pricing that does not reflect the underlying traffic flows to fixed and mobile networks.

10) If a 'retail-minus' approach is adopted, what should the floor price be before integrated operators can return to the standard MTAS price set out in the FAD?

On the assumption that the ACCC adopts an industry wide BAK model for terminating access pricing, the floor price should be set at a rate where the retail rate for calls to mobile are priced at the same level as calls to fixed services.

This is particularly relevant as handover between networks is normally on a near-end basis for mobiles (i.e. a call to a mobile from Sydney is handed off to the MNO in Sydney regardless of where the mobile is located) whereas a call to a fixed service is normally handed over on a far-end basis (i.e. a call from a service in Sydney to a fixed service in Perth is handed over to the fixed operator in Perth).

The practical reason for this difference in handover arrangements is that fixed operators do not know where mobile end users are located, however mobile operators generally know where fixed end users are located. Given the ACMA has loosened the requirement for a geographic number to be located in a specific geographic zone, the transmission cost saving benefit that fixed operators derive from far-end handover should now be addressed.

This difference in handover practices (which affects underlying cost structures for transmission) could be addressed in the non-price terms and conditions in the MTAS FAD by requiring all interconnecting carriers to operate on a near-end handover basis unless this arrangement is changed by agreement.

11) What factors should the ACCC consider in setting minimum level of pass through?

Pivotel's view is that on fixed networks, calls to mobiles should be priced at the same rate as calls to fixed services.

12) Are there other pass-through safeguard measures that promote the LTIE?

Pivotel's concern is that the ACCC must strengthen the any-to-any connectivity regulations for calls from mobile networks (originating access) and calls to mobile networks (terminating access). Unless this fundamental safeguard is established, safeguards with respect to achieving lower prices for end users or encouragement of innovative services (higher quality or greater diversity) will be still born.

13) Does TSLRIC+ remain an appropriate methodology for deriving an MTAS price?

Pivotel supports a BAK model for MTAS pricing.

14) Is a new cost model required to estimate the price of the MTAS using a TSLRIC+ pricing methodology?

Pivotel supports a BAK model for MTAS pricing.

15) Is pure LRIC an appropriate methodology for deriving an MTAS price?

Pivotel supports a BAK model for MTAS pricing.

16) Is international benchmarking an appropriate methodology for deriving the MTAS price?

Pivotel supports a BAK model for MTAS pricing.

17) Which parameters should be adjusted so as to ensure a benchmarked result reflects Australian conditions?

Pivotel supports a BAK model for MTAS pricing.

18) Are MNOs actual costs an appropriate methodology for deriving the MTAS price?

The ACCC's assumption is that there are only three MNO of similar scale. This is incorrect as there may be big three MNOs but Pivotel is an example of a small MNO with materially smaller scale. The ACCC has also recognised that Telstra and Optus are integrated carriers, whilst VHA (at least at present) is only a MNO.

In these circumstances, Pivotal has doubts whether the ACCC can normalise a MTAS rate built on the actual costs of MNOs that is meaningful for the setting of the MTAS rate. Consequently, Pivotal supports a BAK model for MTAS.

19) On what basis could MNOs demonstrate that their actual costs are efficiently incurred?

Pivotal doubts that a universally accepted methodology for using MNO actual costs to set a rate for MTAS is possible.

20) What is an appropriate timeframe for the MNOs to provide the ACCC with this information?

Pivotal supports a BAK model for MTAS pricing.

21) In the likely event that the MNOs provide the ACCC with different MTAS cost figures, how should the ACCC arrive at a single price for the MTAS in the FAD? For example, would a weighted average be appropriate and what weighting factors should be used?

Pivotal doubts that a universally accepted methodology for using MNO actual costs to set a rate for MTAS is possible.

22) Is a BAK system an appropriate methodology for the MTAS?

Pivotal strongly supports a BAK model for setting the MTAS rate, but goes further to recommend a BAK methodology is adopted for the whole telecommunications industry.

In the absence of a BAK methodology for fixed to mobile interconnect, and to avoid issues of arbitrage, Pivotal recommends that the terminating access rate for fixed networks is adopted as the MTAS until the entire telecommunications industry can move to BAK methodology for interconnect.

23) How significant is the traffic imbalance (if any) between FTM and mobile-to-fixed (MTF) calls?

It is Pivotal's view that there are and will continue to be traffic imbalances between fixed networks and mobile networks, and that those traffic imbalances are magnified for alternative MNOs like Pivotal or new market entrants that will offer innovative and diverse services.

24) Should there be a glide path or a single transition point?

It is Pivotal's view that if a BAK methodology cannot be adopted immediately across the whole telecommunications industry that there should be a single transition point between the current rate and MTAS set at zero, and that rate should be the terminating rate for access to fixed networks.

25) If a glide path was implemented what would be the appropriate frequency and size of adjustments?

Pivotal supports a model for MTAS pricing. To get to this pricing goal, and on the assumption that the whole telecommunications industry cannot immediately move to a BAK model for interconnect, Pivotal prefers a single transition point set at the termination access rate for fixed networks rather than a glide path.

26) If a glide path was implemented, should the end point be cost-based, BAK-based or zero?

Pivotal supports a BAK model for MTAS pricing.

27) Are there any circumstances that warrant a difference in the expiry dates of the access determination and the MTAS declaration?

No.

28) Is the current MTAS service description appropriate and relevant to the continued promotion of the long-term interests of end-users?

The Discussion Paper makes the statement that the "MTAS does not include messaging services, such as short messaging service (SMS), voicemail, call diversion, or data services".

With respect to voice calls, Pivotal strongly disagrees with this statement both as a matter of technical fact, and as a matter of legal interpretation.

The MTAS service description set out in Appendix A of the Discussion Paper states that MTAS is the "carriage of voice calls from a point of interconnection, or potential point of interconnection, to a B-Party directly connected to the access provider's digital mobile network".

To the extent that the MTAS service description does not deal with what happens *after* the voice call is carried to a directly connected B-Party by a MNO, Pivotel agrees that subsequent diversion or delivery of the voice call to another number or voicemail system is outside the scope of the current MTAS service description. However, the initial leg of that voice call must be captured by the service description for MTAS.

As a matter of technical fact, it is only *after* a voice call is carried to the directly connected B-Party by a MNO that any call diversion (whether to a voicemail service or not) occurs.

Originating carriers have no ability to determine whether a call to a B-Party has been diverted *after* the MNO has carried the call to the B-Party. Consequently, if calls that subsequently divert *after* delivery to a directly connected B-Party, the originating carrier cannot identify this circumstance, and should not have to be in a position to rely on the terminating MNO to report to the originating carrier how the call was subsequently handled. Were this the case in practice, it would be an extremely inefficient and unreliable way of settling interconnect invoices between industry participants.

c-i-c. It is custom and practice in the industry that *all* voice calls to a MNO are MTAS calls in accordance with the MTAS service description, as it is entirely irrelevant whether the call subsequently diverts or not after being carried by the MNO to the B-Party directly connected to its network.

This interpretation of the MTAS service description is entirely consistent with the PSTN terminating access service description. Calls made to B-Parties directly connected to a PSTN do not fall outside the PSTN terminating access service description just because they divert to other networks or divert to paging or voicemail services.

Consequently, it is Pivotel strong view that the nature of the initial leg of a voice call does not change as a result of anything that happens *after* the call is carried to the B-Party. Voice calls made to a B-Party directly connected to a MNO do not metamorphose into PSTN terminating access calls because *after* being carried to the B-Party directly connected to the MNO network, they subsequently divert to a B-Party directly connected to a PSTN.

Neither do voice calls made to a B-Party directly connected to a PSTN metamorphose into MTAS calls because *after* being carried to the B-Party directly connected to the PSTN network, they subsequently divert to a B-Party directly connected to a MNO.

Were this interpretation of MTAS correct, it would be completely unworkable for originating carriers who could never know the correct classification or rate for voice calls delivered to another MNO. The fact that this has never been the subject of an access dispute is further evidence that the industry accepts as a matter of technical fact, legal interpretation and operational practicality that all calls to B-Parties directly connected to MNOs must fit within the service description for MTAS.

Pivotel recommends that to ensure regulatory certainty, any proposed change to the MTAS service description as it relates to voice calls, must continue to ensure that *all* voice calls to B-Parties directly connected to MNOs are covered by the MTAS service description.

To ensure any-to-any connectivity, a new mobile originating access service must be declared to ensure that MNOs have an obligation to ensure that end users connected to their mobile networks will always have the ability to communicate with end users connected to any other fixed or mobile network. Pivotel has set out in this submission how Optus has effectively blocked end users connected to its fixed and mobile networks access to Pivotel end users by refusing to acquire MTAS from Pivotel.

Pivotel's view is that messaging services such as short messaging service (SMS), and multi-media service (MMS) must be included in a new MTAS service description along with other data services. Provided that these low and high data rate services are priced and provided on a BAK methodology, then the ACCC should have no difficulty declaring the services and setting the price for originating and terminating access to these messaging and data services at zero.

Each of the big three MNOs at a network level are monopolies with respect to the millions of end users directly connected to their mobile networks. As such, to ensure the long term interests of end-users (including the threshold objective of any-to-any connectivity), Pivotel recommends that all of the services offered by MNOs should be declared in the same way that all services offered by the NBN are declared services.

Consistent with this recommendation, Pivotel as a MNO currently providing MTAS has no objection to all of the services it offers being declared as part of a new MTAS FAD, and would welcome the regulatory certainty such action would provide the telecommunications industry as a whole.

29) Would there be significant consumer benefits gained from including other mobile termination services in the MTAS service description?

In Pivotal's view, the threshold LTIE objective of any-to-any connectivity and therefore all of the other consumer safeguards underpinned by this fundamental principle, can only be maintained if all services offered by the MNOs are declared.

MNOs often price on-net and off-net traffic differently. By declaring and regulating all MNO services, the playing field would be levelled for MNOs of any size to compete on the price, quality or diversity of the services they offer.

A BAK based pricing methodology for all of these declared mobile services would enable competitive new and innovative services to be created for the benefit of all end users regardless of the network to which they are connected.

30) Please provide comments regarding the appropriateness of the proposed NPTCs above.

Pivotal views the proposed NPTCs as adequate.

31) Should the ACCC include terms and conditions relating to the liability and risk allocation in the FAD? If so, should it apply to all access seekers equally, or should it be restricted to a particular class of access seekers?

If the ACCC includes terms and conditions relating to the liability and risk allocation in the FAD, it should only do so on the basis that it should apply to all access seekers equally.

32) Please provide any comments regarding additional NPTCs the ACCC ought to include in the FAD.

N/A.

Conclusion

Pivotel appreciates the opportunity it has been given to provide a submission in response to the ACCC's Domestic Mobile Terminating Access Service (MTAS) Discussion Paper.

With the changing dynamics of the telecommunications industry, particularly with the introduction of the NBN, Pivotel is concerned that the ACCC might have overlooked the smaller MNOs and concentrated solely on the big three MNOs.

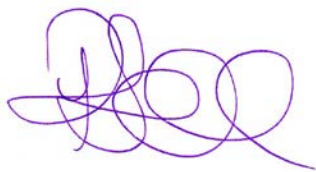
Small or niche MNOs such as Pivotel will increasingly deliver price and diverse product based competitive services, and it is essential that in the ACCC's FAD there are sufficient regulatory protections introduced to ensure that they can compete and that the LTIE objectives are met. Pivotel submits that the big three MNOs at a network level are effectively monopolies, locking their end users into long contracts, and that for competition to thrive the regulatory access settings must be enhanced not reduced.

Pivotel fails to see how the LTIE objective can be met if the regulated access regime continues to allow fixed and mobile carriers, for purely commercial reasons, to prevent other carriers or retail service providers (whether operating on the NBN or not) from communicating with their directly connected end user customers on a both ways basis.

The distinction between fixed and mobile networks is breaking down, and the threshold LTIE any-to-any connectivity objective can only be met if all access providers are under similar obligations to allow access to all access seekers across the entire range of services offered. Pivotel believes the adoption of an industry wide BAK model for interconnection, supported by the declaration of all telecommunications services involving access provision or access acquisition, would be the most effective and efficient way to achieve the best outcome for end users and industry participants.

Yours sincerely

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