Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service

ACCC

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Public version

A Summary

TPG Telecom welcomes the opportunity to respond to the ACCC discussion paper into the declaration of the domestic transmission capacity service, fixed line services on Telstra's legacy network and domestic mobile terminating access service issued in May 2023 (**Discussion Paper**).

In summary:

- TPG Telecom considers regulation of the domestic transmission capacity service (**DTCS**) remains relevant, however DTCS should only apply where Telstra remains the only supplier of transmission services, particularly in certain regional and rural areas;
- TPG Telecom neither supports nor opposes the continued declaration of fixed line services, given the continued phasing out of services on Telstra's legacy network;
- TPG Telecom supports the continued declaration of mobile voice termination services, primarily because over-the-top (**OTT**) voice services are not yet a sufficient substitute for traditional voice calls; and
- TPG Telecom does not support the regulation of SMS termination services because the reasons for the ACCC deciding to remove declaration in 2019 remain appropriate.

Further detail regarding TPG Telecom's views are detailed in this submission.

B Domestic transmission capacity service

The ACCC is considering whether declaration of the DTCS should be extended, revoked, varied, allowed to expire or whether a new declaration should be made.

Transmission services remain an essential wholesale input into a range of communications services. The continued availability of transmission services at competitive terms is critical to downstream competition in relevant markets, as consumer demand for data has increased since the last ACCC declaration inquiry and will continue to increase at a rapid pace. As the ACCC has observed, recent investments in network infrastructure have been driven by growth in data consumption and the shift to cloud-based services.[1]

TPG Telecom agrees with the markets identified by the ACCC in the Discussion Paper. TPG Telecom considers the ACCC's competition criteria to assess competition in transmission markets remain largely fit for purpose.

In the transmission market, TPG Telecom operates interstate transmission corridors, interconnecting major capital cities, particularly those along the eastern seaboard in Australia. As recognised in the Discussion Paper, significant changes have occurred in recent years, which have made it easier to acquire transmission or similar services. These changes could reduce the utility of continuing to declare the DTCS in certain areas.

Notwithstanding the above, we agree with observations made by the ACCC regarding the challenges involved in duplicating Telstra's network in areas outside the main corridors. Where Telstra is the only

[1] ACCC, *Communications Market Report 2021-2022*, page 4.

option for service providers wishing to acquire transmission services to provide retail services in regional areas, TPG Telecom considers the DTCS should continue to apply. The DTCS may also need to apply where there are only two transmission providers, to avoid duopoly outcomes. This approach would promote competition, any-to-any connectivity and promote efficient use of, and investment in, infrastructure. This would in turn support the long-term interests of end-users (**LTIE**).

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The Discussion Paper notes NBN Co's business grade service may impact the market for transmission services. We understand NBN Co's business grade services are tail services which return to the NBN Point of Interconnect (**POI**). To turn these services into a transmission service, a provider would need to purchase the service at each end and then have the provider's own network between the POIs. While NBN Co's business grade services may make it easier to connect the 'B-end' at more remote locations, in most instances mobile sites in regional locations do not sit in the NBN 'Business Fibre Zones'.

It appears the primary purpose of NBN Co's Business Fibre Zones is to facilitate the expansion of NBN Co's wholesale Enterprise Ethernet service. This is an access service which is bundled with an internet or cloud service. In general, NBN Co does not afford providers with much flexibility regarding its business grade services. This reduces the ability of providers to offer tailored services for consumers. TPG Telecom is not aware of plans by NBN Co to offer more flexible Enterprise Ethernet services.

Although the presence of NBN Co's business grade services could constrain Telstra, the extent of this constraint is limited. Accordingly, NBN Co's business grade services should not be considered a complete substitute for access to Telstra's transmission services.

Where the ACCC decides to continue declaring the DTCS, we consider a period of 5 years would be appropriate. We welcome further consultation from the ACCC regarding any areas where it intends to remove the declaration of the DTCS.

C Fixed line services

The ACCC is considering declarations in relation to the following 7 fixed line services on Telstra's legacy network:

- Unconditioned local loop service
- Line sharing service
- Wholesale line rental
- Local carriage service
- Fixed originating access service
- Fixed terminating access service
- Wholesale ADSL

TPG Telecom does not support or oppose the continued declaration of fixed line services on Telstra's legacy network. Given the significant presence of NBN Co in the broadband market, the number of users of Telstra's legacy networks has declined significantly since the ACCC last considered whether to declare the relevant fixed line services. Regardless, the continued declaration of fixed voice interconnection services would still be necessary to support any-to-any connectivity.

Without declaration, there is a residual risk Telstra will have the ability to raise prices for competing access seekers (such as TPG Telecom), limit access, reduce the quality of services, or discriminate and favour itself. It is unclear whether Telstra will have the incentive to do this, given the presence and dominance of NBN Co.

While the Discussion Paper notes NBN is currently available to 12.1 million premises, there is a lack of information regarding: the premises where NBN Co has not rolled out; if NBN Co intends to rollout; when NBN Co intends to rollout; any reasons for delay in NBN Co's rollout; and the overlap between these premises and Telstra's legacy network. This is despite the NBN rollout being declared complete in late 2020, meaning the 18-month forced migration period would have expired by now.

Without this data, TPG Telecom cannot comment on the extent to which NBN Co will act as a constraint on Telstra's incentive to increase prices or reduce service levels if the ACCC decides not to declare the fixed line services.

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If the ACCC decides to declare these services, we believe a shorter period of 3 years is reasonable. This would allow the ACCC to reconsider any changes in NBN Co's rollout and assess the impact of technological developments such as satellite and 5G services on the industry.

D Mobile SMS termination service

In 2019, the ACCC decided to remove declaration for SMS termination because it considered declaration of these services, including application-to-person (**A2P**) SMS, was not in the LTIE. The ACCC is currently considering whether to declare SMS termination services.

TPG Telecom does not support the declaration of SMS termination and agrees with the ACCC's views that de-regulation of SMS termination services since 2019 has not harmed competition.[2] TPG Telecom considers declaration would not promote competition and does not support the efficient investment in and use of telecommunications infrastructure. Declaration would therefore not be in the LTIE.

Declaration of SMS termination would not promote competition

The declaration of SMS termination services would not promote retail competition. Declaration of SMS termination is unlikely to result in changes to current mobile plans because SMS is not a feature on which MNOs compete, due to the ubiquity of unlimited SMS offers. Further, the historic model of SMS pricing is unlikely to return on the basis SMS is now routinely included as part of a bundle of services (comprising voice, SMS and data).

For the Person-to-Person (**P2P**) SMS market, consumers continue to benefit from competition. Most service providers offer unlimited SMS in pre-paid and post-paid plans. An even greater degree of substitution between SMS and OTT services can be observed than in 2019. Declaration of SMS

[2] ACCC, *Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service*, Discussion Paper, May 2023, page 47.

termination services would therefore have no impact on promoting competition, including in the relevant downstream markets.

According to ACCC reports, 2021 was the first year in which all post-paid plans surveyed included unlimited SMS to numbers in Australia.[3] Retail demand for SMS is also falling. Omdia predicts P2P SMS sent in Australia will decrease from 17.3 billion in 2019 to 10.3 billion in 2026.[4] This suggests unlimited SMS will remain a standard feature of retail mobile plans as this is not a source of competitive tension between providers. Rather than SMS inclusions, mobile providers are competing on other features of their offering, such as price, coverage, user experience, additional services and data inclusions.

There are also several service providers offering messaging services to consumers in the form of P2P SMS or OTT messaging services. These service providers include the MNOs, MVNOs and OTT service providers in varying ways, such as WhatsApp, Facebook Messenger, Instagram and Microsoft Teams.

OTT messaging constrains SMS pricing

When removing declaration for SMS termination in 2019, the ACCC considered the increased presence of OTT for messaging services effectively constrained SMS pricing.[5] TPG Telecom considers there is an even greater degree of substitution between SMS and OTT services than in 2019, which strengthens the effect of this constraint.

For instance, OTT services provide more functional benefits than traditional SMS. Examples include recipients being able to know when their messages are read or when other users are online, group messaging capabilities and enhanced features such as integrated multimedia, sharing of files and photos, as well as Graphics Interchange Format (**GIFs**), polls and other features users value. Further, messages sent using OTT services are often end-to-end encrypted (e.g. Apple iMessage and WhatsApp), meaning no intermediary is able to read the message. Accordingly, OTT messaging services allow consumers to better control their privacy and data security needs, which may be seen as a benefit not featured in SMS.

OTT messaging is also superior to SMS as a user can send OTT messages using different devices and retain the records of messages across several devices, including mobiles, tablets and laptop. The availability of free Wi-Fi hotspots across Australia means OTT messages can be sent even where there is no or limited mobile coverage.

Usage data from the ACMA demonstrates OTT services are increasingly substituting SMS services. In the six months to June 2022, the proportion of Australian adults using messaging via an app was 75%, reflecting an increase from 61% in 2020 and 58% in 2019.[6] In addition to the proportion of Australians using OTT services, the volume is also increasing significantly, and this trend is projected to continue.

[3] ACCC, *Communications Market Report 2020-2021*, page xi.
[4] Omdia, *Mobile Messaging Traffic and Revenue Forecast: 2022-27*, Omdia, 2022; Omdia, *Messaging Apps: User, Traffic, and Revenue Forecast 2021-26*, Omdia, 2022.
[5] ACCC, *Domestic Mobile Terminating Access Service Declaration Inquiry,* Final report, June 2019, pages 24 – 25.
[6] ACMA, *Communications and media in Australia: How we communicate – Executive summary and key findings,* 2022, page 3.

The Discussion Paper notes the quantity of P2P SMS and OTT messages from 2019 to 2026 will dwarf the number of P2P SMS.[7]

A2P SMS services

The ACCC previously noted in the context of A2P messaging there would not be obstacles to consumers of A2P SMS services from accessing those services absent declaration.[8] The ACCC correctly recognised MNOs have limited incentive to refuse to provide SMS termination on reasonable terms even if declaration is removed. In its recent Discussion Paper, the ACCC referenced the view of some stakeholders that there is no alternative at the retail level for A2P SMS services, and consequently wholesale termination is a bottleneck over which each MNO retains control. TPG Telecom submits the market for A2P services remains competitive and the dynamics do not necessitate regulation.

Prices in A2P markets are likely to trend downwards in coming years.[9] The revenue/price per A2P SMS sent is expected to decline over time. An increase in A2P SMS volumes should be considered against this context, rather than in isolation.

In TPG Telecom's view, there is no rent-seeking incentive for MNOs in the A2P market because:

a) There are substitutes and competition from alternatives to A2P SMS. Telephone calls, email, OTT messaging and in-app messages are all effective substitutes for A2P SMS. Most businesses offer a notification system determined primarily by the customer's preferred choice, which could comprise of in-app messaging, email or SMS. As the use of smartphone applications becomes increasingly common for all aspects of a consumer's habits (including ordering food and ridesharing, shopping online, and accessing services relating to health and fitness, banking and insurance etc.), the prevalence of in-app messaging in particular continues to rise.

b) As identified during the ACCC's previous inquiry, a primary reason for increased usage of A2P SMS is the increase in multi-factor identification using A2P SMS.[10] Importantly however, identity authentication via A2P SMS is often used in conjunction with other media types, particularly in-app messaging and pin codes, soft and hard tokens, biometric authentication and email. As remote access has become ubiquitous since COVID-19, such as to virtual desktops, the use of authentication apps is an alternative to A2P SMS authentication. As cybersecurity is a significant concern, the use of multiple authentication methods has become a necessity. It is likely authentication processes will continue to employ varied methods and service types, ensuring competitive alternatives to A2P messaging exist.

c) In addition to competitive constraints, it is worth considering recent trends in prices. The Discussion Paper notes at the retail level, prices for A2P SMS appear to have remained relatively stable following deregulation. This may indicate mobile network operators have been unwilling or unable to leverage any monopoly over wholesale SMS termination on their respective networks to earn rents more than the efficient cost of providing SMS termination.

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[7] Discussion Paper, page 47.
[8] ACCC, *Domestic Mobile Terminating Access Service Declaration Inquiry, Final report*, June 2019, page 34.
[9] Discussion Paper, page 48.
[10] ACCC, *Domestic Mobile Terminating Access Service Declaration Inquiry*, Final report, June 2019, page 32.

Competition is strong and A2P providers are able to add software/value added features, which may be commercialised through recurring platform fees.

For these reasons, TPG Telecom considers declaration for SMS termination would not promote competition.

Wholesale market for SMS termination services

In the wholesale market, TPG Telecom agrees with the ACCC's previous position that while there is a functional monopoly for SMS termination services on networks, there is sufficient competitive pressure in the retail market that MNOs are not able to exert rent-seeking behaviour.[11]

Importantly, MNOs continue to act to constrain each other. Each of the MNOs supply wholesale A2P services and each of the MNOs competes against the others for wholesale A2P customers. In a competitive industry, there is no incentive for an MNO to forgo revenue by raising wholesale A2P prices when to do so would only shift wholesale revenue to a competing MNO (or lead to a loss of that business due to substitution to alternatives). That is, an MNO will not refuse to supply wholesale A2P services to SMS aggregators and A2P service providers because this will only result in a loss of the wholesale business as the providers can approach other MNOs to acquire the wholesale services.

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Any-to-any connectivity is already well-established in the context of SMS

MNOs are interconnected and have no incentive to deny access to each other, new entrants, MVNOs or SMS aggregators, or to impose unreasonable terms and conditions of access. Because almost all mobile plans now offer unlimited SMS, and competition in the mobile market has moved to data inclusions and other non-price factors, there is no commercial rationale for any MNO to deny access to SMS termination to other MNOs, as each requires access to SMS termination from others.

Declaration of SMS termination would lead to inefficient use of infrastructure

Regulators including the ACCC and the ACMA are prioritising the implementation of additional anti-scam measures. This is evidenced by the establishment of the National Anti-Scam Centre within the ACCC. These regulatory initiatives since 2019 are supported by the revision of the *Spam Regulations 2021*. Consistent with these objectives, it is important declaration does not re-introduce incentives for scam SMS to increase.

The carriage of scam content is not an economically efficient use of telecommunications infrastructure. Fraudsters send scam messaging to gain an economic advantage from unsuspecting consumers who are misled by the authentic appearance of the content. If the cost to carry out this conduct is immaterial relative to the gain, it will result in higher levels of scam messaging.

A declared or regulated rate could render it economically cost effective to send a high volume of SMS at little cost to the fraudster, compared to the potential benefit gained from a successful scam. To retain non-declaration of SMS termination services would reinforce efforts to reduce SMS scam and encourage telecommunications infrastructure be used in an economically efficient way.

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[11] ACCC, *Domestic Mobile Terminating Access Service Declaration Inquiry,* Final report, June 2019, page 27.

While a multitude of factors affect the incidence of scams in the Australian economy, scams would be more problematic under a declared service, as an MNO's ability to monitor whether scam SMS is being sent over their network is limited. While the introduction of a Digital ID regime, as proposed by the Government, could assist, it is unclear when this will be implemented.

Approach in foreign jurisdictions

Regulators in various jurisdictions have set a global precedent for moving away from regulation of SMS termination. This has been observed in countries such as France (2015), Denmark (2016) and Bahrain (2019).

Where regulation has been retained, there appears to be specific and technical reasons for doing so. For instance, in New Zealand, regulation of SMS termination was retained in 2019, although the NZCC has acknowledged the wider trend towards deregulation in other jurisdictions.[12] The NZCC ultimately retained declaration of SMS only because the service description does not distinguish between SMS and voice, and it concluded the benefits of declaring voice outweighed the benefits of de-regulating SMS.[13] This suggests where regulatory agencies have not yet de-regulated SMS, they agree in principle with SMS de-regulation or are trending towards removing declaration.

The European Commission has retained regulated rates of SMS termination between EU member nations. However, this is attributable to the very different cross-border context of the European Union compared to the domestic market of a single country.

E Mobile voice termination services

TPG Telecom supports the continued declaration of MTAS for voice calls originating inside Australia and considers this would continue to be in the LTIE.

The ACCC has historically considered each MNO's mobile network is a separate wholesale market for voice termination services because, on the supply side, there are no substitutes for these services if an MNO refuses to provide access. The MTAS for voice has therefore been regulated to ensure termination rates are not a barrier to competition and end-users on different networks can call each other.

OTT for voice is not yet an effective substitute for mobile calls

The Discussion Paper considers the question of whether, despite the increasing use of OTT services, each mobile network operator maintains sufficient market power and without declaration they would exercise their market power in the supply of voice termination services.[14]

TPG Telecom consider traditional voice calls remains sufficiently integral to how Australians communicate. OTT services are not yet an effective enough substitute to ensure competition and any-to-any connectivity, absent declaration. While use of OTT for voice has become more prevalent since COVID-19, particularly through the increased use of Microsoft Teams, Zoom and via social media calling platforms, retail users do not yet consider OTT voice calling as an effective substitute.

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[12] See NZCC, *Final decision on Mobile Termination Access Services*, 2 September 2020.
[13] See NZCC, *Final decision on Mobile Termination Access Services*, 2 September 2020, pages 33-35.
[14] Discussion Paper, page 43.

There is a gap between the take-up of OTT in voice compared to messaging services. This appears to primarily be attributable to quality differences, both real and perceived, between mobile voice and OTT services. Mobile voice calling remains the most convenient, user-friendly choice in a smartphone interface. Mobile calling retains a familiarity with users, whereas SMS has been largely replaced by other messaging platforms.

Traditional voice calling is the default operation for mobile call services on a mobile handset, in a way traditional SMS is not for messaging. For example, for an Apple iPhone, traditional voice calling is the default voice communication method when communicating with a saved contact from the Contacts list. FaceTime Audio (Apple's OTT for voice application) is not the default operation when clicking on a contact's mobile number, even where the other user also has an iPhone. In contrast, when an iPhone user messages another iPhone user in the Messages application, the service will default to Apple's iMessage OTT service rather than traditional SMS reliant on cellular networks (unless the user has specifically instructed the application not to do so or the network signal is too weak).

Traditional voice calling presents as a higher quality option than OTT for voice, particularly when users are relying on network signal rather than Wi-Fi. OTT voice services do not offer a dedicated voice channel, which can affect call quality and are subject to the reliability of the underlying data service. Calling features on social media applications are therefore perceived as poorer quality, less reliable and more affected by delays and lag caused by latency issues when compared to mobile voice calling. For example, OpenSignal's 'Voice App Experience' report measures the quality of experience for OTT voice services in Australia. OpenSingal's 2022 report for OTT for voice notes "*Optus, Telstra and Vodafone have again placed in the Acceptable (74-80) category. This means that some users were satisfied. Perceptible call quality impairments were experienced by some users. Clicking sounds of short duration or distortion were heard, and/or the volume may not have been sufficiently loud*".[15]

Unlike messaging, where the implications of poor network quality are binary (i.e. a message is either sent or not sent), network quality is a much more salient consideration for voice because users experience fluctuations in network coverage during the call.

Traditional voice calling also supports any-to-any connectivity which is appealing to consumers – callers are not required to have the same application or brand of phone. This renders voice calling as the obvious, and perhaps only, choice where an individual needs to contact either a person or business in the first instance. In contrast, OTT voice applications only offer free voice calls to and from the same service (for example, Facebook Messenger) or same handset brand (for example, FaceTime Audio for iPhone).

Where consumers wish to communicate with businesses (such as a shop or restaurant, doctor's office etc.), corporate entities, and call or service centres, this is overwhelmingly performed through traditional voice calling. This is because many businesses do not have a registered mobile phone number – they instead have a fixed line number together with (in some instances) a social media presence such as a Facebook or Instagram page. By contrast, where customers are seeking to message a business or brand rather than call, this is more likely to be performed through OTT messaging, such as via Facebook / Facebook Messenger, Instagram or WhatsApp.

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[15] OpenSignal, *Mobile Network Experience Report*, October 2022. Accessed from https://www.opensignal.com/reports/2022/10/australia/mobile-network-experience.

During previous inquiries, OTT services were not considered as substitutes to mobile voice calling due to the inability for OTT services to make emergency calls or call 1800/1300 numbers.[16] While emergency calling over data networks or Wi-Fi has improved in recent years, it is typically an alternative where a mobile network is not available. Making emergency triple zero calls over a mobile network is automatically preferred as this provides greater information (such as the user's location details) to the chosen emergency service.

These qualitative reasons demonstrate the unique role of voice calling in the market. These observations are further demonstrated by the following usage statistics, published by the ACMA:[17]

- Despite the increase in popularity of OTT for voice observed during COVID-19, during which voice calls via an app were used by 73% of Australian adults, this number stabilised downwards to 52% in the six months to June 2022.
- Meanwhile, traditional calling from a mobile phone has remained the most popular way for Australian adults to communicate from the period 2017 to 2022.
- The reliance on traditional calling is particularly acute in regional areas, where only 43% of Australian adults used an app to make a voice calls in the six months to June 2022.

For these reasons, traditional voice calling retains a unique and primary role in how Australians communicate, and this has not yet been replaced with OTT for voice services. OTT for voice cannot yet be considered a like for like substitute to mobile voice calling. Further, the market for OTT for voice remains highly fragmented.[18]

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Service Description for voice termination

Complications arise where termination is supplied by an Australian MNO in relation to voice calls originating from outside Australia. TPG Telecom considers it is appropriate to exclude termination of internationally originated voice calls from the Service Description for MTAS. TPG Telecom's position on this issue remains largely the same as it was during the previous MTAS Declaration Inquiry in 2019. At that time, the ACCC was of the view that retaining international originating calls in the scope of the declaration would avoid complexity and the likely higher prices that may materialise.[19]

Voice calls originating outside of Australia should not fall within the geographic scope of the relevant markets defined by the ACCC and should be excluded. This will enable MNOs to achieve parity with jurisdictions that do not have similar regulations to Australia and allow MNOs to negotiate commercial arrangements for International Direct Dialling (**IDD**), which would ultimately benefit Australians. TPG Telecom considers it would be commercially beneficial for Australian MNOs for the ACCC to remove internationally originating calls from the Service Description. **[c-i-c]**

TPG Telecom remains of the view that a normalised commercial relationship between Australian MNOs and overseas MNOs may lead to better consumer outcomes, facilitated by Australian MNOs

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[16] ACCC, *Domestic Mobile Terminating Access Service Declaration Inquiry,* Final report, June 2019, page 11.
[17] ACMA, *Communications and media in Australia: How we communicate – Executive summary and key findings,* 2022, page 3.
[18] Discussion Paper, page 35.
[19] ACCC, *Domestic Mobile Terminating Access Service Declaration Inquiry*, Draft Report, 2 May 2019, page 48.

having increased negotiating power to bargain for lower outbound rates, leading to cheaper international outbound calls.

Service Description

The Discussion Paper asks parties for their views on whether the service description should be changed to refer to termination on a mobile number rather than a digital mobile network (to be consistent with the current fixed terminating access service description). TPG Telecom considers this change would have a limited material impact on the MTAS framework.

The duration of the MTAS declaration for voice calls which originate inside Australia should be for a period of 5 years. A 5 year declaration period will provide a degree of certainty for TPG Telecom to undertake investments and enter into longer term agreements.