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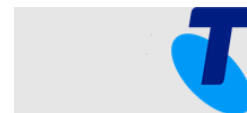
## **TELSTRA GROUP LIMITED**

### **Telstra supplementary response – SMS A2P services**

#### **Non-Confidential Version**

**27 October 2023**

**[CIC begins]** = information not to be released without a confidentiality undertaking



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## Introduction

This supplementary submission responds to several submissions<sup>1</sup> to the ACCC's Discussion Paper<sup>2</sup> that assert it would be in the long-term interests of end-users (**LTIE**) for the ACCC to redeclare SMS termination. In our response, we focus on the claimed case for declaration of A2P SMS termination, rather than P2P SMS termination, as this is mainly where market failure warranting regulation has been alleged.

In our view, none of the material included in the submissions to the ACCC's Discussion Paper is compelling in establishing a case for redeclaration of A2P SMS termination. We believe the position remains as set out in our primary submission<sup>3</sup>:

- The market for A2P SMS is highly competitive at both the retail and wholesale levels. There are numerous active alternative suppliers in addition to the three MNOs, as well as a range of substitute products strongly constraining the market.
- End-user access to A2P SMS and any-to-any connectivity have continued to take place unimpaired since the ACCC deregulated SMS termination in 2020. There is no evidence that this is at any risk.
- The proponents of redeclaring A2P SMS termination fail to establish that this is likely to encourage the economically efficient use of or investment in infrastructure, or that this will otherwise benefit end-users of A2P SMS.

We elaborate on these points below, in response to the claimed contrary position put forward by the proponents of A2P SMS termination redeclaration.

### 1 The market is competitive

Regulation should only be introduced in instances where there is evidence of clear market failure which results in loss of consumer welfare. There is no such evidence in either the wholesale market for SMS termination or in the downstream market for A2P SMS services in Australia.

While we note the recently expressed intention of Ofcom to monitor the market for wholesale SMS termination and its impact on the retail business messaging market in the UK based on concerns raised about a "*lack of effective competition at the wholesale level that might otherwise constrain prices*"<sup>4</sup>, we do not believe there is any evidence to support such concerns in the Australian market. As we explain below, the market dynamics since SMS declaration was removed by the ACCC show signs of continued growth and innovation which is in the LTIE.

HoustonKemp admit the fact that SMS declaration has been unregulated for nearly four years "*implies a future without declaration [which] reflects circumstances in which the status quo is maintained*."<sup>5</sup> For the reasons we set out below, this means it remains as correct today as it was in 2019 that: "*extending declaration of SMS termination services is not necessary to promote competition*."<sup>6</sup>

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<sup>1</sup> Pivotal (initial submission and report by HoustonKemp; supplementary submissions dated 5 and 18 October 2023), Aussie Broadband, Soprano, Commpete, Virtutel and Symbio.- at [Discussion paper | ACCC](#)

<sup>2</sup> <https://www.accc.gov.au/system/files/MTC%20-%20combined%20declaration%20inquiries%20-%20discussion%20paper.pdf>

<sup>3</sup> Telstra, 2023, [Submission to ACCC Declaration Review](#)

<sup>4</sup> [Pivotal PUBLIC submission - Ofcom letter.pdf \(accc.gov.au\)](#)

<sup>5</sup> [HoustonKemp report \(public version\) - Effect of declaration on competition in A2P SMS markets 270723 \(accc.gov.au\)](#), §19.

<sup>6</sup> [ACCC, 2019, MTAS Final Report s5.4.](#)



## 1.1 Since deregulation wholesale A2P SMS prices have been commercially agreed and retail prices have remained stable, whilst volumes continue to grow

Pivotal asserts that, “in the absence of declaration, MNOs have both the ability and the incentive to refuse to provide SMS termination on reasonable terms and conditions.”<sup>7</sup> The facts belie this claim. SMS termination has been unregulated since January 2020. [c-i-c] [c-i-c]

Telstra rejects Pivotal’s assertions<sup>8</sup> that the wholesale A2P SMS termination prices to which it has commercially agreed indicate any form of market failure. Despite the price increases for wholesale A2P SMS termination it complains about<sup>9</sup>, there is no evidence of Pivotal being any less of a vigorous competitor in the A2P SMS market. For example, total Pivotal SMS volumes terminated on Telstra’s network [c-i-c] [c-i-c]. The facts simply do not support the claim by Pivotal that “an increase in termination charges would render its A2P SMS service unsustainable.”<sup>10</sup>

Nor is there any indication of market failure in the wider wholesale A2P SMS market. Volumes have increased since the deregulation of SMS demonstrating a growing market, and we have seen no evidence that the pricing paid by aggregators is impairing their ability to effectively compete. Pivotal’s own submission highlights both volume and revenue growth in the SMS A2P market under the current regulatory conditions, with volume growth eclipsing revenue growth further indicating the pass-through of consumer welfare in a competitive market. Pivotal agree with the ACCC that ... “total volume of A2P SMS delivered in Australia rose from 9.2 billion in 2019 to 13.9 billion in 2023” (representing a 51% growth and “is likely to increase even further to 16.6 billion in 2027.”<sup>11</sup> Pivotal also provide research showing that A2P SMS revenue “increased from \$475 million in 2019 to \$540 million in 2023” (representing a 14% increase), with further growth predicted through to 2027.<sup>12</sup>

Looking at the different levels of the market, we do not see any evidence of wholesale prices charged by MNOs for A2P SMS termination (off-net or on-net) constraining margins or competition by A2P SMS aggregators or service providers. In Telstra’s case we earned [c-i-c] [c-i-c]

## 1.2 There are substitutes that promote competition

Pivotal and HoustonKemp claim that OTT messaging services are only limited substitutes to A2P SMS for Australian businesses.<sup>13</sup> They say this is because they do not reach all customers<sup>14</sup>, as businesses with a diverse customer base are unlikely to have the same messaging platforms installed on their devices.<sup>15</sup>

Telstra disagrees with these claims. They ignore the fact that OTT alternatives to SMS such as in-app messaging<sup>16</sup> don’t require customers to have the same third-party messaging platforms installed on their device – just the app from the business they are looking to engage with. Even more significantly, they fail to take account of changes in the A2P market occurring at a global level, particularly in parts of Asia, and the pressure on pricing that these substitutes will place on the Australian market, which is not immune to global trends. Analysys Mason has found that MNOs are facing increased competition from third party applications (such as WhatsApp) for business messaging to customers. Globally, most growth in the A2P messaging industry is expected to come from increased third-party app usage. It is forecast that by 2027

<sup>7</sup> Pivotal PUBLIC Response to public submissions.pdf (acc.gov.au), §1.16.

<sup>8</sup> Pivotal, 2023, Submission to Declaration Review (para. 7.19)

<sup>9</sup> See Pivotal supplementary submission - Pivotal PUBLIC Response to public submissions.pdf (acc.gov.au), §1.17.

<sup>10</sup> IBID, §123.

<sup>11</sup> Pivotal, 2023, Submission to Declaration Review (para. 7.51), supporting the ACCC’s Discussion Paper findings at p 48.

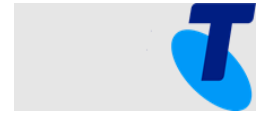
<sup>12</sup> IBID, para. 7.52

<sup>13</sup> Pivotal HoustonKemp Submission to ACCC, 2023 (paragraph 17), Pivotal, September 2023, Response to public submissions. (para. 1.8 – 1.13)

<sup>14</sup> Pivotal HoustonKemp Submission to ACCC, 2023 (paragraph 61)

<sup>15</sup> IBID, (paragraph 64)

<sup>16</sup> See examples at: [In-App Messaging Best Practices to Boost Customer Retention | Appetiser](#)



47% of A2P traffic will be generated over third party apps.<sup>17</sup> As shown in the figure 1, enterprise spend on A2P messaging channels is also predicted to generate solid revenue growth from third party apps.

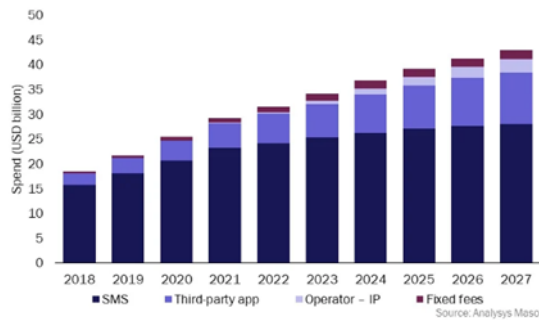


Figure 1: Enterprise spend on A2P messaging services, by channel, worldwide, 2018–2027 (source: Analysys Mason, 2023)

The increased penetration of these apps will result over time in businesses switching to these platforms and away from SMS, particularly as the price per message is generally cheaper than for A2P SMS messaging. Globally, on average, third-party app A2P messaging is 40–50% cheaper than SMS A2P messaging.<sup>18</sup> In China, WeChat is already the primary channel for A2P messaging rather than SMS. Competition from these apps will further constrain the ability of MNOs to raise prices for SMS and force them to find innovative approaches to deliver revenue growth, including changes to pricing models and encouraging the adoption of Rich Communication Services (**RCS**) by businesses<sup>19</sup>. RCS enable more dynamic and secure conversations than SMS and MMS (such as the sharing of high-resolution images and videos and features such as end-to-end encryption). OMDIA is forecasting RCS to experience compound annual growth rate (CAGR) of 160% to 2026, reaching \$1.3 billion, up from \$10 million in 2021.<sup>20</sup> The development of RCS will, in our view only accelerate the strength of substitutability, particularly as they will offer superior functionality to traditional SMS.

Pivotel is in agreement with the figures quoted in the ACCC's Discussion Paper showing declining overall revenue/price per A2P SMS between 2019 and 2023 under the status quo where SMS termination is not regulated.<sup>21</sup> We agree with the ACCC that these trends indicate a continued decline over the coming years.<sup>22</sup> We attribute this to a combination of a competitive A2P SMS market and pressure from strong substitute messaging alternatives at all levels of the market.

### 1.3 Further innovation in the market is expected, which will drive further A2P growth

Pivotel point to the value of A2P SMS as a communication channel<sup>23</sup>, which Telstra does not dispute. However, their submissions do not take adequate account of further innovation in the A2P market, which we believe will drive future revenue and volume growth for operators, further limiting the need for declaration.

Structural changes have also driven volume growth, and these will continue to drive innovation and competition. These structural changes include the growth of e-commerce including the use of A2P SMS in sectors such as banking and finance, retail, transport services (food and wholesale delivery), education, government services, accommodation and healthcare. The growth of multi-factor authentication is another example of structural changes that are delivering both growth in and change to the messaging market. At Telstra, as an example, we have moved from a single factor SMS authentication to enable access to our internal operating systems to multi-factor authentication using an in-app push notification from app publisher *Secure Auth Authenticate* that verifies user identity before allowing access to the network. Multi

<sup>17</sup> [Analysys Mason, 2023 A2P market](#)

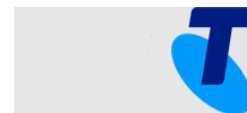
<sup>18</sup> [Analysys Mason, 2023 A2P market](#)

<sup>19</sup> [Telefonica, 2021 Future of Messaging](#)

<sup>20</sup> [OMDIA, 2021, RCS Traffic Report](#)

<sup>21</sup> [Pivotel, 2023, Submission to Declaration Review](#) (para. 7.51), supporting the ACCC's Discussion Paper findings at p 48.

<sup>22</sup> [ACCC Discussion paper, May 2023](#)



factor authentication is expected to see CAGR of 17.1% from 2022 to 2030 as businesses increase the rigour in their security measures.<sup>23</sup>

Over time, we expect further changes to the SMS market, with the market becoming more hyper personalised. This in turn will change market dynamics and innovations that will alter how A2P SMS is delivered to and used by customers in the future. It is expected that businesses, will in the future, work to turn one-way notifications into two-way conversations (e.g., from simple text messages to unlimited message sizes, document sharing) similar to the manner in which WhatsApp or Teams conversations are conducted).<sup>24</sup> An increased use of MMS and the rollout of RCS messaging will give businesses more scope to add multiple calls to action,<sup>25</sup> driving usage for SMS providers and aggregators and greater utility for consumers. A recent survey undertaken by Sinch identified that 89% of consumers want two-way conversations via messaging channels and apps, want rich experiences that give them the power to act on information they receive through text messaging services<sup>26</sup> and want messages to include rich content with 90% of customers indicating that they want to be able to reply in-message to ask questions.<sup>27</sup>

Telstra expect that A2P SMS will continue to be one of the primary forms of communication between businesses and their customers, with continued volume growth. The growth of the market, however, will be dependent on the value-add that is provided by operators to their customers including a more individualised approach to communication.<sup>28</sup> The call for regulatory assistance from the ACCC by Pivotal and the supporting HoustonKemp submission falsely assumes minimal change to the market. By contrast, when considering the risks and benefits of regulation in the fast-moving A2P market, we would ask the ACCC to take due account of innovations driving structural change and opening a dynamic range of possible ways for market participants to thrive and compete.<sup>29</sup>

## 2 The ACCC's 2019 market definition remains correct

In considering whether the redeclaration of A2P SMS termination would be likely to achieve the objective of promoting competition in the in the LTIE of A2P SMS services, the ACCC must consider the market(s) in which competition may be promoted. In most cases, this is likely to be the downstream market rather than the market in which the service is supplied. However, where relevant, the ACCC can also consider the market in which the service is supplied.<sup>30</sup> In its 2019 final decision<sup>31</sup>, the ACCC identified three relevant SMS related markets:

- a wholesale market for SMS termination services;
- a retail market for messaging services, which includes retail P2P SMS and OTT messaging services; and
- a downstream market for A2P SMS services.

Importantly, the ACCC found that SMS termination services are a possible, but not essential, input to A2P SMS services, because A2P SMS aggregators can negotiate on-net service agreements with each of the MNOs.<sup>32</sup>

By contrast, the HoustonKemp expert report accompanying the Pivotal submission seeks to artificially

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<sup>23</sup> [Acumen, 2022, Multi-Factor Authentication Market Size](#)

<sup>24</sup> [Digital Trends, 2023](#)

<sup>25</sup> [Pivotal, September 2023, Response to public submissions.](#) (para. 1.8 – 1.13)

<sup>26</sup> [Sinch, 2022, CX Trend Report](#)

<sup>27</sup> [IBID](#)

<sup>28</sup> [Sinch, 2023, SMS and mobile trends](#)

<sup>29</sup> [Pivotal, September 2023, Response to public submissions.](#) (para. 1.8 – 1.13)

<sup>30</sup> See ACCC Discussion Paper, p 7 - <https://www.accc.gov.au/system/files/MTC%20-%20combined%20declaration%20inquiries%20-%20discussion%20paper.pdf>

<sup>31</sup> [DORIS - D19-95275 MACE - MTAS Declaration Inquiry 2018-19 - Final Report - PUBLIC - FINAL - 28 June 2019.PDF \(acc.gov.au\)](#), p 23

<sup>32</sup> [IBID](#).



narrow the wholesale market definition by asserting three distinct wholesale markets, namely:

- a. the supply of A2P SMS termination services offered by each MNO on their respective networks;
- b. the supply of wholesale A2P SMS services for the delivery of A2P messages on a single network, currently offered as off-net services or on-net services by MNOs to SMS aggregators; and
- c. the supply of wholesale aggregated A2P SMS services for delivery of A2P messages across all networks offered by some MNOs and SMS aggregators to retail A2P service providers.<sup>33</sup>

Telstra does not consider the facts support the existence of such narrowly defined wholesale markets. [c-i-c] [c-i-c] This situation aligns with HoustonKemp’s conclusions that “*on-net and off-net services are likely to impose a competitive constraint on one another and be considered close substitutes by SMS aggregators in the market. Accordingly, MNOs providing on-net and off-net services compete against one another in these markets because we assume the service provided is functionally equivalent from the point of view of downstream customers*”.<sup>34</sup>

Accordingly, Telstra believes that the ACCC’s 2019 approach to market definition for SMS termination remains correct, with a focus on considering the impact of declaration on downstream retail end-users who purchase and use A2P SMS for their customer communications.<sup>35</sup>

### 3 Redeclaration is not required to support end user access, or any-to-any connectivity.

None of the responses to the ACCC’s Discussion Paper provide evidence that redeclaration is necessary to support end-user access to A2P SMS or is otherwise needed to achieve any-to-any connectivity. These have continued to take place unimpaired since deregulation.

#### 3.1 MNOs have no incentive to deny access and are constrained in their ability to renegotiate interconnection agreements.

Pivotel assert that price increases imposed by MNO’s are an attempt to deny access to MTAS for SMS on terms that are reasonable, particularly as prices imposed by MNO’s are above the cost of MNOs providing those services<sup>36</sup>. We do not consider that any of the specific concerns raised by Pivotel regarding MNO charges for SMS services (which appear to largely apply to specific instances of commercial negotiation) provide sufficient evidence to justify redeclaration of SMS.

Regulation is not necessary to act as a constraint on prices to enable A2P SMS aggregators to compete more effectively<sup>37</sup>. The market for A2P SMS at both wholesale and retail levels is already competitive such that prices are constrained and rent seeking behaviour by MNOs is restricted. The market for A2P SMS demonstrates signs of a competitive market with a focus on profit, including companies such as Pivotel who would not have entered (and remained in) the market if customers were not willing to pay for their product.

Telstra maintains it is preferable to continue to leave the prices for SMS termination to commercial negotiation between the various suppliers and acquirers, a process that has worked successfully post the removal of declaration. The success of the current approach in enabling, for example, [c-i-c] [c-i-c], as well the absence of any market failure in the provision of SMS termination services strongly suggests that regulatory intervention is not required. Commercial interconnect arrangements can be negotiated between mobile carriers based on competitive downstream wholesale and retail messaging markets which provide the backdrop for consistent commercially agreed interconnect arrangements.

<sup>33</sup> HoustonKemp, 2023, *Effect of declaration on A2P*, §124.

<sup>34</sup> HoustonKemp, 2023, *Effect of declaration on A2P*, §159.

<sup>35</sup> ACCC, 2019 *Final Report* s 5.1.1.

<sup>36</sup> Pivotel, 2023, *Submission to Declaration Review* (para. 7.28)

<sup>37</sup> Cf the position put by Pivotel - *Pivotel HoustonKemp Submission to ACCC, 2023* (para. 27)



### 3.2 There are no barriers to switching from on-net to off-net.

Telstra refute claims that any-to-any connectivity is potentially being undermined by off and on-net pricing and SMS termination practices.<sup>38</sup> There are no significant price or technical barriers that prevent A2P customers from choosing either on-net or off-net services. In other words, the market allows customers to exercise choice, a key indicator of a competitive market. It is our experience that wholesale customer decision making when choosing between the two is primarily driven by commercial preferences and business priorities (such as access to redundancy and accuracy of on-net delivery receipts, as well as commercial convenience of relevant arrangements)<sup>39</sup>, [c-i-c] [c-i-c].

### 3.3 The ACCC has alternative powers to deal with any competition concerns which may arise

When SMS termination was deregulated in 2019, the ACCC noted it would continue to monitor the downstream markets for A2P SMS markets to ensure access to markets remained reasonable<sup>40</sup>. Use of the ACCC's ex-post competition powers continues to be the best way to deal with any competition concerns which may arise in future in the A2P SMS market. This is a far more proportionate and appropriate approach than pre-emptive ex-ante regulation in the absence of any indication of present market failure, which is essentially what Pivotel is proposing.

## 4 No evidence that the LTIE will be enhanced by redeclaration.

The proponents of redeclaring SMS fail to establish that this is likely to encourage the economically efficient use of or investment in infrastructure, or that this will otherwise benefit end-users of A2P SMS. In particular:

- It is within the legitimate commercial interests of the suppliers of A2P SMS termination to set commercial charges in a competitive market that are reflective of both the cost and value of their services. There is no evidence to suggest that MNOs, A2P SMS aggregators or A2P SMS service providers are unable to compete on current margins available to them for the supply of downstream A2P SMS services. There is also no evidence that any profit transfer from suppliers to acquirers of A2P SMS termination under a scenario of redeclaration would benefit end-users of A2P SMS to any greater extent than is the case today. For example, in both cases should any excess profits be available to help fund investments in efforts to combat scam SMS, then this could benefit end-users.
- Even if SMS termination was reregulated, to the extent that the charge for termination of scam SMS onto the networks of the MNOs using legitimate routes is higher than zero (and/or to the extent that the MNOs are successful in their efforts to block this traffic), there will always be an incentive to use avoidance mechanisms, such as grey routes<sup>41</sup>. Similarly, there is likely to be no impact on the incentives of foreign threat actors.<sup>42</sup>
- By contrast, re-declaration of SMS termination could result in inefficient use of infrastructure considering the levels of scam and phishing SMS attributable to A2P SMS. Since *the Reducing Scam Calls and Scam SMS Code* anti-scam rules came into place in July 2022, almost 257 million SMS scams have already been blocked by Australian operators. Many of these are A2P SMS. For example, recently, the ACMA found Vonage allowed more than 11,780 non-compliant SMS to be sent, which included 3,387 scam texts impersonating businesses including

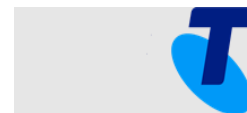
<sup>38</sup> 280723 - Public version - Submission on the public inquiry into the declaration of the DTCS ([acc.gov.au](http://acc.gov.au)), para 7.61

<sup>39</sup> Telstra, 2019, Public ([acc.gov.au](http://acc.gov.au))

<sup>40</sup> [DORIS - D19-95275 MACE - MTAS Declaration Inquiry 2018-19 - Final Report - PUBLIC - FINAL - 28 June 2019.PDF](http://acc.gov.au) ([acc.gov.au](http://acc.gov.au)), p 41.

<sup>41</sup> See an explanation of how these incentives work at: [Grey Routes versus Direct Routes in SMS Marketing \(clicksend.com\)](http://clicksend.com)

<sup>42</sup> Cf the contrary suggestion in Pivotel's supplementary submission - [Pivotel PUBLIC Response to public submissions.pdf](http://acc.gov.au) ([acc.gov.au](http://acc.gov.au)), §1.6.



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Commonwealth Bank, ApplePay and Australia Post.<sup>43</sup> Leaving the SMS termination service unregulated will support the MNOs in their continued efforts to combat scam SMS originated by A2P providers, by providing them with commercial flexibility when it comes to the termination of and/or charging for SMS demonstrating scam indicators.

#### 4.1 SMS pricing appropriately reflects willingness to pay (WTP)

When declaration of SMS termination was removed in 2019, the ACCC expected prices for SMS termination to return to being set via a process of commercial negotiation and for this process to result in price rises for Pivotel. This was not considered a concern, for the reasons set out below:

*“We consider that if declaration of SMS MTAS is not continued, it is likely that Pivotel, Sinch and MessageMedia will continue to compete in the A2P SMS market because:*

- *It is likely that each MNO will continue to provide SMS termination access agreements to Pivotel and aggregators and that is likely to remain the case even in the absence of declaration.*
- *While it is likely that Pivotel will face higher wholesale prices for SMS termination, the current retail prices it charges are significantly higher than the SMS termination rates (0.03 cents) and as such, may still provide a return, even if the margins reduce.*
- *Aggregators and A2P SMS providers (including MessageMedia) that do not directly interconnect with the MNOs have been able to acquire wholesale A2P SMS services and there is no evidence to suggest that this will change.”<sup>44</sup>*

A return to a regulated price as suggested by HoustonKemp on behalf of Pivotel<sup>45</sup> is the antithesis of how a competitive market should function. Price in an efficient, competitive market will be set by the forces of supply and demand. Telstra disagrees with submissions indicating that increases in the A2P prices are intended to “punish” operators sending A2P traffic for termination.<sup>46</sup> Further to this, we dispute that the redeclaration of A2P is necessary to adopt a “cost reflective” pricing regime for essential inputs, to ensure competition is maintained in the A2P SMS market.<sup>47</sup>

The A2P SMS market is characterised by a competitive market structure. While pricing for A2P SMS services is constrained both by competition within the market and from substitute messaging and communications services; A2P SMS services do provide value to end-user enterprise and government customers and in turn to their customers. It is appropriate for prices set at both the retail and wholesale level to reflect this value.

For businesses, the ubiquity of SMS enables them to reach customers cost-effectively and efficiently, and other features such as delivery receipts for on-net SMS also add value. However, businesses and consumers in the retail market have multiple communication alternatives (email, in-app notifications, OTT messaging services, voice messages and phone calls etc) available to them if prices in this market are higher than their willingness to pay (**WTP**). There is competitive pressure from substitutes, changes within how SMS is delivered to customers, and between MNO’s and aggregators on delivering cost-effective products to end-users.

There is no market failure involved in prices for A2P SMS termination and services being based on the WTP of customers alongside commercial incentives to make a profit in a highly competitive market. Telstra and other MNO’s provide value-add to their wholesale and retail A2P SMS customers, particularly in relation to preventing spam and scam SMS that are designed to enhance the end-user experience and limit unwanted and nuisance messaging to end-users. As with other products in a competitive market, if

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<sup>43</sup> [Vonage and Twilio breach anti-scam rules | ACMA](#)

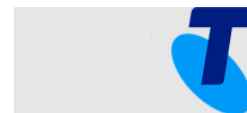
<sup>44</sup> [MTAS declaration inquiry draft report.pdf \(acc.gov.au\)](#), p 41.

<sup>45</sup> [Pivotel HoustonKemp Submission to ACCC, 2023](#) (§ 18).

<sup>46</sup> [280723 - Public version - Submission on the public inquiry into the declaration of the DTCS \(acc.gov.au\)](#), §7.22.

<sup>47</sup> [280723 - Public version - Submission on the public inquiry into the declaration of the DTCS \(acc.gov.au\)](#), §1.21.





consumers are not maximising their utility for a particular product, they will switch to substitutes that will maximise their utility and these substitutes are available in this market.

We do not believe there is any evidence that commercially negotiated A2P rates have been detrimental to end-user pricing in the A2P SMS market. [c-i-c] [c-i-c].<sup>48</sup>

There is no need for the ACCC to protect the LTIE by ‘guiding’ service providers towards particular price or quality outcomes through a declaration process. Further to this, any prospect of a supplier gaining market power in the dynamic A2P SMS market is likely to motivate other firms to innovate and to send signals for new firms to seek entry. Any position of market power is likely to be merely transitory and not inimical to competition, instead to be what invites it.<sup>49</sup>

#### **4.2 Redeclaration more likely to harm the LTIE by increasing scam and spam SMS than to promote the LTIE by reducing scam and spam SMS**

The deregulation of SMS termination provides MNOs with important commercial flexibility in relation to the terms on which they offer termination of A2P SMS on their networks, which is beneficial to MNO efforts to combat harmful scam SMS. Telstra considers that the redeclaration of A2P SMS termination risks making it harder for MNOs to combat incidences of scam SMS quickly and efficiently when detected, and submissions and evidence by the other MNOs support this position.<sup>50</sup>

Strictly speaking, it is not necessary for the ACCC to reach a view on the matter. What the ACCC must determine is whether the redeclaration of SMS termination by the MNOs is likely to promote the LTIE by *reducing* levels of scam/spam SMS, for the reasons put forward by the proponents of redeclaration. We submit this is an unlikely outcome of redeclaration.

Pivotel claims the redeclaration of A2P SMS termination will reduce the prospect of senders of scam SMS seeking alternative “grey” routes to send messages, hence making it easier to combat scam SMS.<sup>51</sup> Telstra disagrees with this claim. The use of “grey” routes enables SMS to be sent effectively free of charge – as Pivotel explains, these are “*routes which avoid incurring a termination fee.*”<sup>52</sup> To the extent that the charge for termination of scam SMS onto the networks of the MNOs using legitimate routes is higher than zero (and/or to the extent that the MNOs are successful in their efforts to block scam/spam SMS using legitimate routes), there will always be an incentive to use avoidance mechanisms, such as grey routes.<sup>53</sup> Similarly, redeclaration is unlikely to change the incentives of foreign threat actors<sup>54</sup>, for whom cost considerations are not likely to be a major factor. We therefore consider it unlikely that the current unregulated status of SMS termination is having any material impact on incentives of bad actors to use grey routes to send scam SMS.

By contrast, we consider there is a very real risk that the redeclaration of A2P SMS termination would restrict MNO flexibility to take measures to deter bad actors from using their networks to send scam SMS using legitimate routes, with negative consequences for end-users in terms of potentially increasing the number of harmful messages received.

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<sup>48</sup> Telstra, 2023, Submission to ACCC Declaration Review (c-i-c) – July 2023 p22

<sup>49</sup> [Productivity Commission, 2002](#)

<sup>50</sup> See e.g. - [Optus, 2023 Submission to ACCC Declaration Review, paragraph 47.](#)

<sup>51</sup> [Pivotel PUBLIC Response to public submissions.pdf \(acc.gov.au\)](#), §1.3.

<sup>52</sup> [Pivotel PUBLIC Response to public submissions.pdf \(acc.gov.au\)](#), §1.7. Grey routing involves SMS being delivered to an Australian MNO through international mobile phone networks purely to exploit certain concessional arrangements that apply to such traffic, with the purpose of avoiding a fee for the Australian MNO terminating the SMS.

<sup>53</sup> See an explanation of how these incentives work at: [Grey Routes versus Direct Routes in SMS Marketing \(clicksend.com\)](#).

<sup>54</sup> Cf the contrary suggestion in Pivotel’s supplementary submission - [Pivotel PUBLIC Response to public submissions.pdf \(acc.gov.au\)](#), §1.6.