



ACCC Public Inquiry into the Declaration of the Domestic Transmission Capacity Service, Fixed Line Services and Domestic Mobile Terminating Access Service

Telstra Group Limited

Response to ACCC Draft Report – Mobile Terminating Access Service

Non-confidential Version

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1 Introduction and executive summary

1.1 Introduction

Telstra welcomes the opportunity to provide this submission in response to the Australian Competition and Consumer Commission's (**ACCC's**) draft report on its public inquiry into the declaration of the domestic transmission capacity service (**DTCS**), fixed line services and domestic mobile terminating access service (**MTAS**) (the **Draft Report**)¹. This submission responds only to those aspects of the Draft Report concerning declaration of the MTAS. Telstra has provided a separate submission regarding the elements of the Draft Report concerning declaration of the DTCS and fixed line services.

1.2 Overview of Telstra's position

Telstra does not consider that expanding the declared MTAS to include termination of application-to-person (**A2P**) short message service (**SMS**) messages is required to promote the long-term interest of end-users (**LTIE**). Telstra is also concerned there could be unintended consequences of the other changes to the MTAS definition proposed in the Draft Report, which could harm the LTIE. Telstra therefore considers the LTIE is best served by simply extending the declaration of the MTAS and retaining the existing service description.

In summary, Telstra's position is that:

1. There is no evidence that extending the declared MTAS to include A2P SMS termination will advance the LTIE:
 - There is an increasingly strong competitive constraint on the A2P SMS termination services supplied by the Mobile Network Operators (**MNOs**) from current and emerging alternatives over the short to medium term (next 3 to 5 years).
 - The market for A2P SMS is highly competitive at both the retail and wholesale levels. As set out in the Draft Report, there are numerous active alternative suppliers in addition to the three MNOs, as well as a range of substitute products strongly constraining the market.
 - A2P SMS termination is currently being provided on a commercial basis at commercially negotiated rates. The ACCC accepts that "*the wholesale markets for A2P SMS services have been competitive. In particular, there is evidence that Pivotal have been able to effectively compete with the national mobile network operators in these markets*".² The concerns expressed in the Draft Report about the implications of past increases in commercially negotiated A2P SMS termination charges are misconceived.
 - International best practice supports an approach of refraining from regulating SMS termination.
 - The ACCC has alternative powers to deal with any future competition concerns.
2. The service description for MTAS is already technology neutral and should be retained in its current form. There is a risk of harmful unintended consequences if the ACCC departs from its long-standing approach.
3. The declared MTAS should not be expanded to include A2P SMS termination. If the ACCC nevertheless proceeds with this expansion, care must be taken to ensure only the true monopoly

¹ See <https://www.accc.gov.au/system/files/Combined%20declaration%20inquiry%20-%20draft%20report.pdf>

² Draft Report, p 69.



interconnection service of A2P SMS termination is declared. This can be done by applying the same approach taken by the ACCC in 2014.

2 Declaration of A2P SMS termination will not promote the LTIE

2.1 Overview of Telstra's submission

Regulation should only be introduced in instances where there is evidence of clear market failure that results in loss of consumer welfare. In Telstra's view, there is no evidence to suggest this is the case in either the wholesale market for A2P SMS termination or in the downstream markets for A2P SMS services in Australia, nor is there any evidence that redeclaration of A2P SMS termination services will promote competition in these already competitive markets in future. It would be inappropriate to default to regulation in circumstances where it is not clearly required as a failsafe.

For the reasons we set out below, we submit it remains as correct today as it was in 2019 that: "*extending declaration of SMS termination services is not necessary to promote competition.*"³

The concerns expressed in the Draft Report by the ACCC about the implications of past increases in commercially negotiated A2P SMS termination charges are misconceived. These do not illustrate the MNOs' ability and incentives to increase A2P SMS termination rates absent declaration to reduce competition in A2P services⁴, for the following reasons:

- The ACCC's 2019 decision to de-regulate SMS termination was driven by the rapid emergence of over-the-top (OTT) services. While past growth in OTT has been mainly in mass consumer messaging (person-to-person or P2P), technological and market developments are now focused on enterprise applications (A2P). As discussed below, Telstra believes the ACCC has underestimated the scope and pace of competition from OTT services and providers in business messaging.
- The increases in commercially negotiated A2P SMS termination charges since deregulation are reflective of the function of a competitive market, and not as the ACCC suggests of the exercise of market power by the MNOs. In its 2019 decision, the ACCC said it expected that, following the decision to deregulate, there would be increases in the A2P SMS termination charges. These increases have been justified by the growth in the cost and value of this service since that time, including the extensive anti-scam systems which MNOs have introduced.
- As the ACCC acknowledges, notwithstanding these increases in the commercially negotiated A2P SMS termination rates, the retail and wholesale markets for A2P services remain competitive and Pivotal itself remains competitive. There is no evidence of competitive harm arising from commercially negotiated A2P SMS termination rates.

2.2 There are increasingly strong substitutes for A2P SMS termination

2.2.1 A2P SMS already represent only 1% of total business messages in Australia

We endorse the ACCC's recognition in the Draft Report that "*business communications markets are extremely dynamic and are characterised by continuous innovations and market developments*".⁵

Looking first at the market for P2P SMS in Australia, as reflected in Figure 5.2 in the Draft Report, the research by Omdia indicates that, in just three years, OTT P2P messages have grown by roughly a third, from 429 billion messages in 2020 to 575 billion messages in 2023. These volumes utterly dwarfed

³ ACCC, 2019, MTAS Final Report s5.4.

⁴ Cf Draft Report, p 6.

⁵ Draft Report, p. 67.



volumes of traditional P2P SMS throughout the entire period, leading the ACCC to correctly conclude in its Draft Report that:

*“over-the-top messaging services are a close substitute to P2P SMS. In fact, based on the disparity of usage, it appears that over-the-top messaging has displaced P2P SMS as the predominant form of personal messaging in Australia”.*⁶

Importantly, while business messaging market sizing estimates do differ by source, research by Omdia indicates the same trends are occurring in the market for A2P SMS in Australia, but at an even faster pace than for P2P SMS. As set out in Figure 1 below, Omdia’s October 2022 Business Messaging Market Sizing Tool indicates that business messages sent using alternatives to A2P SMS (i.e. via messaging apps or RCS A2P) have more than doubled between 2019 and 2023, from c. 323 billion messages in 2019 to c 701 billion messages in 2023. While traditional A2P SMS volumes have also increased by 116% during this period, by 2023 A2P SMS volumes represented only around 1% of total business messaging traffic (from a high watermark of around 1.5% in 2019), with this percentage predicted to further decline to around 0.9%.by 2026.

Figure 1⁷

Business messaging traffic (millions)	2019	2020	2021	2022	2023	2024	2025	2026
RCS A2P	-	-	0.05	0.60	2.74	7.73	16.85	32.87
SMS	4,886	5,839	6,769	7,323	7,708	7,989	8,139	8,565
Messaging apps	323,478	517,564	579,672	643,436	701,345	757,453	818,049	875,312

This research by Omdia strongly suggests that not only are OTT messaging services a close substitute for P2P SMS, displacing P2P messaging as the predominant form of personal messaging, they are also a close substitute for A2P SMS⁸ and the predominant form of business messaging in Australia⁹. Which is, when you consider that the end-users who have so overwhelmingly adopted OTT messaging over P2P SMS for their personal messaging needs are the same end-users that the senders of business messages are trying to reach, hardly surprising.

Since the last MTAS declaration, the pandemic has accelerated the use of A2P SMS by retail end-users (i.e. business and government customers), with an estimated global 24% year-on-year growth of business adoption between 2019 and 2020. However, there are indications that global growth in business adoption has slowed since 2020, with estimates of 7.33% of businesses using SMS in 2021, 7.98% in 2022, and 8.52% by the end of 2023. Consequently, in July 2023 Mobilesquared predicted that by the end of their forecast period in 2027, only 9.54% of total businesses would be using A2P SMS – leaving more than 90% of businesses communicating with their customers via other means.¹⁰

The substitutability of A2P SMS for other means of communications by business messaging customers in Australia is reflected by the data in Figure 5.3 in the Draft Report. Of the eleven different business to customer communications use cases listed in Figure 5.3, in only one instance was SMS used the majority of the time (in 58% of cases for receipt of authentication or verification codes) and in one other use case 50% of the time (for appointment reminders). For all other use cases, SMS was only the typical means of communication around one third of the time or less, with substitutable means of communication used at least two thirds of the time. While we agree with the ACCC that businesses are likely to view some

⁶ Draft Report, p. 60.

⁷ Source: Omdia, Business Messaging Market Sizing Tool, October 2022.

⁸ There is also a wealth of other material establishing the close substitutability of OTT messaging services for A2P SMS – such as this recent article by Analysis Mason [Business A2P messaging will continue to migrate away from SMS, but operators can help to stem the flow \(analysismason.com\)](https://www.analysismason.com), indicating the main action operators can take to reduce their revenue risk from substitution is to reduce their prices for A2P SMS.

⁹ This represents a very different view to that formed by the ACCC in its Draft Report (p. 67).

¹⁰ [SAMPLE Global-A2P-SMS-Report-2017-2027.pdf \(mobilesquared.co.uk\)](https://www.mobilesquared.co.uk), p.20.



communications methods as complementary¹¹, we consider there is unassailable evidence of Australian businesses substituting A2P SMS with alternatives, including the growing use of OTT messaging products.¹²

We discuss below the likelihood of businesses turning to substitutes for A2P SMS over the declaration period, with a particular focus on the use cases of authentication and appointment reminders.

2.2.2 Impact of fraud on adoption of substitutes for A2P SMS, especially for authentication and verification codes

Since the ACCC's last MTAS declaration in 2019, the pandemic acted as an accelerant for A2P SMS, as most businesses were forced to operate in a constrained way during the lockdowns, and then adopt a policy incorporating social distancing post-lockdowns. A2P SMS was a key channel during that period for connecting a business with all its customers in a timely manner, with Government also turning to SMS to disseminate vital communications.

The rapid move to digital transactions and communications for many businesses and government services spurred on by the pandemic has seen the equally rapid increase in the use of A2P SMS to send authentication and verification codes such as One Time Passcodes (**OTPs**) to authenticate end-users. Mobilesquared research suggests that globally in 2022 OTPs accounted for 88.57% of international A2P SMS traffic, and will account for between 35% to 40% of total global combined international and domestic A2P SMS traffic.¹³

However, significant instances of A2P SMS fraud have also been detected¹⁴, suggesting much of this traffic may be being inflated by bad actors, as well as historically by the unique pandemic situation. In their July 2023 Global A2P SMS Report 2017-2027¹⁵, for example, Mobilesquared report the following alarming statistics from their online industry survey results:

- Grey route traffic accounted for up to 33% of total domestic traffic in 2022 and is expected to increase by 4% on average in 2023.
- SIM farm domestic traffic varied between 1% to 40% in 2022, depending on the market, and is expected to increase by an average of 7% in 2023.
- Grey route traffic accounted for up to 35% of total international traffic in 2022 and is expected to increase by an average of 9% in 2023.
- SIM farm international traffic varied between 1% to 30% in 2022, depending on the market, and is expected to increase by an average of 8% in 2023
- The A2P SMS market lost 18% of A2P SMS revenue to fraud in 2022.
- The biggest threats to A2P SMS in 2023 as identified by the people within the industry are, in order, Artificial Inflation of Traffic (**AIT**), followed by grey routes and SMS phishing.
- AIT accounted for over 20% of international A2P SMS traffic in 2022, and this is expected to increase by 40% in 2023.

At the "grey end" of activities, substitution for A2P SMS is seen via deployment of SIM boxes, SIM farms and distributed SIM farms – which allow mobile subscribers to sell their unused SMS to SIM farm operators. These messages are then sold down the SMS value chain to enterprises to send business messages to their customers, bypassing standard A2P messaging channels.¹⁶ While this option carries a number of compliance and reputational risks for enterprises, they may not always be aware of the routes

¹¹ Draft Report, 67.

¹² International research also supports this conclusion – see e.g. this 2019 Harvard Business Review article - [504d17233468114fdb006ad1baf3b204d42e31154bcae76583184ff393b7c135274dba05b30a94c2af70734f5ead957d0506bdae286a08ae229a87c2e88521](https://doi.org/10.1146/annurev-060620190606ad1baf3b204d42e31154bcae76583184ff393b7c135274dba05b30a94c2af70734f5ead957d0506bdae286a08ae229a87c2e88521) (googleusercontent.com)

¹³ [SAMPLE Global-A2P-SMS-Report-2017-2027.pdf](#) (mobilesquared.co.uk), p. 28.

¹⁴ See e.g. [Why Banks Are Moving Away From One-time Passwords](#) (globalbankingandfinance.com) and [Malaysia is migrating from the usage of SMS OTP. Is biometrics the answer?](#) (techwireasia.com)

¹⁵ [SAMPLE Global-A2P-SMS-Report-2017-2027.pdf](#) (mobilesquared.co.uk)

¹⁶ [Combating SIM farms and SIM boxes: Protecting A2P messaging - Infobip](#)



used to send messages by their A2P SMS supplier¹⁷, and may be attracted by lower pricing especially for lower value communications such as marketing information on offers and discounts.¹⁸

AIT fraud occurs when fraudulent parties generate large volumes of fake SMS messages through apps or websites. There are many instances of AIT fraud involving OTPs.¹⁹ Twitter, for example, is reported to have lost \$60 million per year to artificially inflated OTP SMS traffic.²⁰ Another example is a supermarket chain in Europe, which unwittingly ran up tens of thousands of euros in SMS fees in a very short period of time as a result of OTP messages being generated by fraudsters who scammed an online form to sign up for a loyalty program and generate the OTP messages.²¹

As a consequence, many industry commentators are predicting that while AIT has boosted A2P SMS volumes and revenues in the short term, it will have potential catastrophic consequences for MNOs for the medium and long term.²² As summarised by Joanna Kuligowska, Head of Global Market Intelligence at A2P network security specialists HAUD:

“Artificial Traffic Generation currently poses the biggest threat to the A2P industry as it affects both the customer experience and the enterprises who are losing trust in A2P and actively looking for alternative channels to reduce their inflated spend on SMS messaging.”²³

In the Draft Report, the ACCC has expressed its view that A2P SMS appears currently to be the single most important method for multi-factor authentication in Australia.²⁴ However globally, and in Australia, there has been a growing shift from two-step authentication via SMS to other forms of authentication. In Europe, new regulations are encouraging this transition. Under the revised Payment Service Directive (**PSD2**), European financial institutions now have to offer consumers the ability to explicitly authenticate via a second channel, defined in PSD2 as “strong customer authentication” (**SCA**). SCA means that consumers can identify themselves with at least two of the three possible factors – something the person knows (e.g. a password), something the person owns (e.g. a card), and something the person is (e.g. a voice or fingerprint).²⁵ Recently, the Monetary Authority of Singapore and the Central Bank of Malaysia announced measures for financial institutions to take actions designed to strengthen safeguards against financial scams, including moving away from SMS OTP and shifting towards the use of mobile banking apps to authenticate customers, authorize transactions and send alerts to customers.²⁶

In Australia, the Australian Cyber Security Centre is also warning businesses and end-users that SMS and email authentication is less secure than other forms of multi-factor authentication.²⁷ As mentioned in our previous submission, in August 2023 Telstra **[c-i-c] [c-i-c]**. Other examples of businesses in Australia moving to alternative forms of multi-factor authentication include accounting software provider Xero²⁸ and financial services platform provider Hub24.²⁹

A number of more secure alternatives to A2P SMS for authentication purposes are currently available³⁰ and predicted to increase and then eventually overtake A2P SMS for this purpose. Deloitte, for example, predict smartphones will be increasingly used to generate passkeys as the likely medium-term

¹⁷ See e.g. [Grey Routes versus Direct Routes in SMS Marketing | ClickSend](#)

¹⁸ Noting that this use-case is one of the top 5 for A2P SMS as per Figure 5.3 in the Draft Report.

¹⁹ See e.g. [Understanding Different Types of Artificial Traffic Inflation: Minimising Voice and A2P Fraud and Maximising Telecoms Trust \(xconnect.net\)](#)

²⁰ [Elon Musk Says Twitter Lost \\$60mn a Year Because 390 Telcos Used Bot Accounts to Pump A2P SMS | Commsrisk](#)

²¹ [Artificially inflated traffic in SMS | Openmind Networks](#)

²² [Warning that growing fraud could spell the downfall of SMS - TechCentral](#)

²³ [Why should a Mobile Network Operator worry about artificially inflated traffic? - Blog - MEF \(mobileecosystemforum.com\)](#)

²⁴ Draft Report, p. 67.

²⁵ [Why Banks Are Moving Away From One-time Passwords \(globalbankingandfinance.com\)](#)

²⁶ [Malaysia is migrating from the usage of SMS OTP. Is biometrics the answer? \(techwireasia.com\)](#)

²⁷ See e.g. [ACSC - Protect Yourself: Multi-Factor Authentication \(cyber.gov.au\)](#), p. 5.

²⁸ [Multi-factor authentication | Xero AU](#)

²⁹ See [New multi-factor authentication measures with HUB24 - HUB24](#)

³⁰ See some of the choices at: [SMS OTP Risks & Alternatives: Protect Your Accounts! \(fazpass.com\)](#) and [Best User Authentication Reviews 2024 | Gartner Peer Insights](#)



replacement for passwords, with usage expected to become so high by 2030 that it may supplant two-factor-authentication (TFA) using OTPs as a means of authentication.³¹

In support of this prediction, Deloitte note that while TFA using OTPs delivered via SMS typically incurs a fee, with this cost limiting how frequently this is done, passkeys cost enterprises nothing, apart from bandwidth usage. In one successful deployment of passkeys by the National Health Service (NHS) in the United Kingdom, the NHS found that using smartphone-based biometric authentication enabled a two-thirds reduction in the number of OTPs per user, saving 1.9 pence per message.³²

Deloitte also predict the momentum behind passkeys is likely to grow due to commitments by Apple, Microsoft, and Google in May 2022 to support the same passkey standard. They have advised Apple launched support for passkeys with iOS 16 in September 2022, and that Google supports these for all operating systems from Android 9.0.³³

Australian banks are already engaging in very successful experiments with the use of OTT business messaging apps such as Google's Business Messages, with National Australia Bank (NAB) finding it has offered their customers "convenient entry points from Google Search and Google Maps, which NAB customers were already using in droves to engage with the bank".³⁴ The likelihood of future increases in the use of secure OTT, online and in-app messaging as alternatives to A2P SMS by banks and other financial institutions in Australia is reinforced by statistics such as Salesforce's 2022 global survey of financial services customers finding that an overwhelming 78% of banking customers now initiate their relationship on a website or an app – having become accustomed to addressing their financial needs online during the pandemic.³⁵ Other international research also supports the strong and growing popularity of these alternatives to traditional A2P SMS communications for both banks and their customers.³⁶

A range of OTT business messaging products tailored to the needs of banks and financial institutions are also emerging on the aggregator supply side – such as Sinch Engage (which is an all-in-one messaging platform specifically designed for business with security at the core of its platform, guaranteeing data privacy and carrying ISO 27001 IT certification).³⁷ Other proven alternatives to sending OTPs via SMS available to financial institutions include push authentication technology. Push authentication does not require the user to switch between mobile banking apps, copy or remember pins or passwords, or wait for a message to arrive. Instead, communication between the financial institution and the user takes place via an isolated, encrypted channel that is not susceptible to the same external attacks as passwords or SMS OTPs. This practically frictionless and highly secure approach offers huge incentives for financial institutions to migrate from OTPs via SMS, with analyst Gartner expecting this technology to dominate the authentication market within the next two years.³⁸

Overall, there are many indications that the stimulus for A2P SMS retail customers to look for alternatives for their authentication needs and the growing range of alternatives available to them will constrain prices for A2P SMS and impact future A2P SMS market growth in the near to medium term.

2.2.3 Substitutability of A2P SMS for appointment reminders

We note the ACCC's observations in the Draft Report that data from 2022 suggests SMS was used in 50% of cases for appointment reminders, with more limited use of messaging apps (23% of cases) and much more limited use of dedicated apps (4%).³⁹ Over the course of the declaration period, we expect these ratios to continue to shift towards substitutes to A2P SMS, as they had already done by 2022 for every other use case except OTPs (which we discuss above in section 2.2.2).

³¹ [Mobile authentication killer app | Deloitte Insights](#)

³² [National Health Service uses FIDO Authentication for Enhanced Login - FIDO Alliance](#)

³³ [Mobile authentication killer app | Deloitte Insights](#)

³⁴ [nab-case-study.pdf \(google.com\)](#)

³⁵ [The Future of Financial Services - Salesforce](#) – survey of 2,250 financial services customers in Australia, the US, UK, New Zealand, Canada, France, Germany, Singapore and Japan.

³⁶ See [RCS Business Messaging- a whole new banking experience - Routemobile](#)

³⁷ [How banks can use messenger apps safely and successfully \(sinch.com\)](#)

³⁸ [Why Banks Are Moving Away From One-time Passwords \(globalbankingandfinance.com\)](#)

³⁹ Draft Report, p. 66 and Figure 5.3.



The experience of the NHS in England, with a client base spanning a very wide demographic range, provides an insightful case study. As of October 2020, the NHS app was successfully being used to provide simple and secure access to a range of NHS services such as booking medical appointments and ordering repeat prescriptions on iOS and Android devices by a user base of approximately 1.2 million NHS patients, growing at a rate of 32,000 new users per week. The use of biometric authentication for access to the app has enabled the NHS to reduce the number of SMS OTPs it has to send to users by nearly two-thirds, to 1.5 users a month down from about four per user per month (making access both more convenient for NHS patients, and representing significant cost savings on the SMS for the NHS).⁴⁰

The NHS' experience illustrates the ability and incentives for larger enterprises to move many of their users to in-app notifications for appointment reminders and away from costly A2P SMS. For smaller organisations, there are also a large range of affordable "off-the-shelf" appointment booking apps available, which we expect to continue to grow in attractiveness and uptake.⁴¹ For medical practitioners, for example, Hot Doc now supports access to over 21,000 listed doctors in Australia and is in use by eight million active patients.⁴²

Importantly, usage of OTT messaging alternatives to SMS is growing even amongst traditionally less "digitally savvy" cohorts of end-users, such as older Australians. ACMA data shows use of messaging apps by 65 to 74 year-olds has grown from 21% in 2019 to 61% in 2023, having increased by 4% in just the last year.⁴³ Customer insights suggest that benefits to end-users of alternatives to A2P SMS appointment reminders such as in-app notifications may also help to drive increased adoption. These include the ability to turn notifications on only for certain apps and even for different types of notifications from the same app – such as those considered critical to the end-user like medical appointments.⁴⁴ With SMS notifications, there is only one option – all off, or all on, including for the variety of marketing, spam and scam SMS users may also encounter.

2.2.4 Expected impact of improved OTT messaging interoperability on the A2P SMS market

Spurred on by the Covid years, the growth of e-commerce in sectors such as banking and finance, retail, transport services (food and wholesale delivery), education, government services, accommodation and healthcare and the growing use of multi-factor authentication for many of these services have seen material worldwide growth in A2P SMS volumes since 2019. However, there are many indications that enterprise and government customers are hungry for and experimenting with cheaper, more secure, and more dynamic business messaging alternatives.⁴⁵

Business messages delivered using Rich Communications Services (**RCS**) are significantly more advanced than A2P SMS apart from, currently, reach. RCS is typically cheaper for businesses to use, more secure (supporting end-to-end encryption), and offers more advanced features - including support for longer messages, high-resolution photos and videos, read receipts, conversational commerce, typing indicators, group chats, stickers and reactions.⁴⁶

Consequently, RCS is already being successfully deployed as a mass customer communications channel by major financial institutions, such as UK based Nationwide Building Society – the world's largest building society and sender of around 200 million SMS per year. Based on their experience, Nationwide have noted that while in the banking sector traditional SMS campaigns generally have a unique click-through rate (**CTR**) of about 10% and an engagement rate of around 22%, a campaign using RCS could generate a much higher CTR of 47.6% and an astounding engagement rate of 90.7%.⁴⁷

Despite these advantages, to date the uptake of RCS has been hindered by a lack of support from Apple, with RCS only available to users on the Android platform – limiting the ubiquity of reach as compared with

⁴⁰ See [FIDO-Alliance-case-study_NHS-FINAL.pdf](#) (fidoalliance.org)

⁴¹ See e.g. [Our Pick of The Best Scheduling Apps – Forbes Advisor Australia](#)

⁴² [About HotDoc for Practice - Patient Engagement Platform Australia](#)

⁴³ [Communications and media in Australia: How we communicate | ACMA](#)

⁴⁴ See e.g. [7 simple tips to manage your Android phone's notifications](#) (androidpolice.com)

⁴⁵ See, for example: [SMS OTP Risks & Alternatives: Protect Your Accounts!](#) (fazpass.com)

⁴⁶ See [What is RCS messaging, how does it work, and will it replace SMS? | Digital Trends](#). See further details of benefits and applications at [GSMA | RCS – The Breakthrough Tech in Customer Messaging - Membership](#)

⁴⁷ [How Nationwide supported members in a pandemic with Sinch Rich SMS](#)



A2P SMS. However, Apple announced in November 2023 that in 2024 it would be adding support for RCS Universal Profile, the standard as currently published by the GSMA. We understand Apple intend for RCS to work alongside iMessage to improve messaging interoperability between iPhone and Android users, with iMessage continuing to be the default for iPhone to iPhone messaging, but RCS serving as a replacement for the existing SMS and MMS standards and with traditional SMS and MMS remaining available as a fallback only.⁴⁸

This news has been welcomed by many in the downstream markets for A2P SMS. For example, Sinch has recently stated:

“Primarily, this announcement sparks a wave of optimism. RCS Universal Profile support suggests the potential for business-backed features of RCS, which has the potential to transform person-to-person and business communications on both Android and iPhone so that businesses can engage with a significantly broader audience...”

Jonathan Campbell, Senior Director of Messaging at Sinch says it best:

“With Apple’s full commitment of RCS, it’s evident that RCS Business Messaging as a channel will dominate. Enhanced security, superior customer experience, and advanced features make it a crucial channel for businesses. Going into 2024, RCS will be available on 1+ billion devices, and accelerating everything from simple, secure branded text only messaging to AI-driven interactions. At Sinch, we’re thrilled for the future!”⁴⁹

Soprano is also advising its customers that RCS is the:

“future of text messaging...that is already replacing SMS worldwide. It is more powerful, more versatile, and more future-proof than the texting software we’ve been using since the 90s.

...

When comparing RCS and SMS, there is a clear winner. Since RCS is created specifically to be the successor to SMS, every aspect of the software has received a significant upgrade.

From more consistent connectivity to richer message quality, as well as new features like location sharing and video calling, RCS marks a clear improvement in the way text messages will be sent from now on

...

RCS messaging brings huge advantages in business communications. It’s a more reliable, more scalable, and more secure technology over SMS. It fills a niche communications channel that email and calling can’t fill, and that SMS is too outdated to take up”⁵⁰

Another recent development is Meta’s announcement that it will, from September 2023, no longer support Android users to share SMS via cellular over messenger. Instead, all traditional SMS chats will be automatically transferred to Google Messages.⁵¹

We are already seeing MNOs act in light of these expected market changes, such as SingTel’s recently announced collaboration with Google to offer Rich Business Messaging services to their business customers from the first quarter of 2024.⁵²

At the same time, European Union requirements imposed under the Digital Markets Act for messaging app interoperability by digital gatekeeper Meta will see its highly popular messaging platforms Messenger and WhatsApp required to support interoperability with other messaging platforms, without the need for

⁴⁸ [Apple to Adopt RCS Messaging Standard for Better Interoperability With Android Devices - MacRumors](#)

⁴⁹ [Apple announces RCS is coming to iPhones in 2024 | Sinch. See also - What is RCS Messaging? All You Need To Know in 2024 \(sinch.com\)](#)

⁵⁰ [What is RCS Messaging - How Does RCS Messaging Work | Soprano \(sopranodesign.com\)](#)

⁵¹ [Facebook Messenger will stop supporting SMS - what does it mean \(decisiontele.com\)](#)

⁵² [Singtel collaborates with Google to bring Rich Communication Services to businesses – a first in Singapore](#)



users on those other platforms having to create a WhatsApp or Messenger account.⁵³ Already, a new beta version of WhatsApp features a new screen called “third-party chats”, which is separate from the default WhatsApp inbox, but will allow users to open a dedicated menu to see incoming messages from people who are using other messaging apps.⁵⁴ While it may still take some time for arrangements with other messaging platforms to be established⁵⁵, a higher level of interoperability between these very popular messaging platforms and with others seems likely over the medium term.

Combined with enhanced functionality of OTT business messaging services⁵⁶ as compared with legacy A2P SMS, the adoption of the RCS protocol on both Android and Apple operating systems and enhanced interoperability of WhatsApp and Messenger with other OTT messaging platforms will, in our view, strongly accelerate the strength of substitutability between A2P SMS and other forms of business messaging, leading to an even greater dominance of OTT substitutes than there is today. We note, for example, the ACMA reports 58% of Australians currently use Facebook messenger to send messages, and 36% per use WhatsApp.⁵⁷ The ability to send messages just to this combined user base could see a reach of somewhere in the vicinity of 80% of Australians, across both metropolitan and regional areas.

Consequently, as we have seen in the case of P2P SMS termination, we expect downstream competition from OTT messaging services including RCS to strongly constrain the ability of MNOs to raise prices for A2P SMS termination over the next 3 to 5 years.

We therefore do not believe the threshold is met for establishing a need to declare A2P SMS termination in order to protect the LTIE.

2.3 The A2P SMS market is currently competitive

2.3.1 Increases in A2P SMS termination rates are consistent with a competitive market

It is clear rates have continued to be commercially agreed for A2P SMS termination since the service was deregulated. However, in its Draft Report, the ACCC has determined certain of the bilateral A2P SMS termination rates commercially agreed between the MNOs and with Pivotal have increased significantly since 2019.⁵⁸ The ACCC also considers it to be a significant development that MNOs are now able to distinguish A2P SMS termination from P2P SMS termination.⁵⁹

At the same time, the ACCC has correctly found in its Draft Report:

“Information provided to the ACCC indicates that the wholesale markets for A2P SMS services have been competitive. In particular, there is evidence that Pivotal have been able to effectively compete with the national mobile network operators in these markets.”⁶⁰

Telstra reiterates our earlier submission that, 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 Pivotal. 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 Pivotal, 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 Pivotal and aggregators and that is likely to remain the case even in the absence of*

⁵³ The EU Digital Markets Act requires designated gatekeepers to comply with a messaging interoperability obligation on request by third party providers, supporting basic functionalities including text messages between two individual end-users as from March 2024 – see [Q&A: DMA: Ensuring fair and open digital markets \(europa.eu\)](#).

⁵⁴ [WhatsApp has reluctantly started work on cross-platform messaging due to EU regulation | TechCrunch](#)

⁵⁵ [WhatsApp Chats Will Soon Work With Other Encrypted Messaging Apps | WIRED](#)

⁵⁶ For example, the ability for WhatsApp’s business messaging platform to support ticket booking service provider RedBus to send a confirmed ticket to passengers, cancel bookings, check their refund status, see live bus locations, bus reviews and offers – see [redBus Revolutionizes Bus Booking with WhatsApp Chatbot Integration - redBus Blog](#)

⁵⁷ [ACMA How we communicate Executive summary and key findings.pdf](#), December 2023, p. 4.

⁵⁸ Draft Report, p. 68.

⁵⁹ Draft Report, pp. 57; 68.

⁶⁰ Draft Report, p. 69



declaration.

- *While it is likely that Pivotal 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.”⁶¹*

This is exactly what has happened. The Draft Report indicates no evidence of Pivotal (or any of the MNOs) being any less of a vigorous competitor in the A2P SMS market because of any increases in the price for A2P SMS termination incurred since 2019. Nor does it indicate evidence of MNOs failing to compete with each other, nor of wholesale prices charged by MNOs for A2P SMS termination constraining margins or competition by A2P SMS aggregators or service providers.

Pricing for A2P SMS services is constrained both by competition within the market and from substitute messaging and communications services. At the same time, A2P SMS services provide value to end-user enterprise and government customers, and in turn to their customers. The current charges for A2P SMS termination are reflective of growth in both the cost and value of this service since 2019, rather than any exertion of market power.

First, there have been the substantial costs involved in establishing advanced MNO anti-spam systems. In just 15 months between the *Reducing Scam Calls and Scam SMS Code* anti-scam rules coming into effect in July 2022 and October 2023, the ACMA has recorded almost 257 million SMS scams having been blocked by Australian operators.⁶² [c-i-c] [c-i-c].

A very material amount of time, effort and resources has been invested by the MNOs in blocking these scam SMS to promote the LTIE. [c-i-c] [c-i-c]. We have also recently invested in supporting our customers to forward suspected scam SMS or MMS message to us at “7226”.⁶³

Many of these scam messages are delivered using A2P SMS.⁶⁴ [c-i-c] [c-i-c]

Most of the costs incurred by industry to promote the LTIE by combatting SMS scam and other forms of SMS fraud, including the substantial initial set-up costs, have been incurred since the ACCC's 2019 MTAS declaration. It is entirely appropriate for Telstra and other MNOs to seek to recover these costs through their commercially negotiated charges for A2P SMS termination.

Second, there is also no market failure involved in prices for A2P SMS services being based on the willingness to pay (WTP) of customers, particularly where providers faced large fixed costs to be recovered across services with very different demand and customer profiles and therefore WTP. 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 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.

Third, Telstra submits the MNOs and Pivotal have strong incentives to continue to supply A2P SMS termination to each other on a commercial basis, as they have been doing since the service was deregulated in 2019. They are also constrained in their ability to renegotiate the terms of access under their interconnection agreements, which cover a range of different interconnect services of mutual benefit to each party. [c-i-c] [c-i-c].

Lastly, off-net services provide a competitive constraint on MNOs. Operators in Pivotal's position have a choice between off-net and on-net services. As the ACCC correctly observes in the Draft Report, on-net delivery of A2P SMS does not require interconnection, so there is no A2P SMS termination service

⁶¹ [MTAS declaration inquiry draft report.pdf \(acc.gov.au\)](#), p 41.

⁶² [Vonage and Twilio breach anti-scam rules | ACMA](#)

⁶³ [Snitch a scammer: our new reporting number to help customers fight SMS and MMS scams \(telstra.com.au\)](#)

⁶⁴ See as an example - [Vonage and Twilio breach anti-scam rules | ACMA](#)



needed.⁶⁵ Currently 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 in the market today 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)⁶⁶, [c-i-c] [c-i-c]. This is very different from the position in 2014 when the ACCC found that competition in the wholesale market for A2P SMS services was being limited “*due to significant on-net/off-net pricing differentials*”⁶⁷

The evidence supporting a case that expanding the scope of the declared MTAS to include A2P SMS termination will promote the LTIE is very weak. If the ACCC proceeds with its proposal to declare A2P termination services, it would be imposing A2P SMS regulation:

- in markets in which the ACCC acknowledges that retail and wholesale competition is currently effective;
- by incorrectly using past rate increases as evidence of a risk of MNOs leveraging their market power in the future when:
 - the ACCC acknowledged in 2019 that rate increases could be anticipated on de-regulation and would not be damaging to competition;
 - those increases are plainly explicable by the normal operation of the market, including cost increases; and
- by underestimating the rapidly increasing degree of competitive constraint the MNOs face from OTT enterprise applications.

2.4 Waning international precedent for SMS regulation

It is notable that, in contrast to the approach of ex ante regulation of A2P SMS termination proposed by the ACCC in the Draft Report, the weight of international regulatory precedent has favoured deregulation of SMS termination.

When the ACCC decided to regulate SMS termination in 2014, there was already limited international precedent to draw from. A decade later, even fewer jurisdictions are taking this approach. This includes several regulators who previously adopted SMS termination regulation moving away from such an approach. For example, in Bahrain, the TRA decided to deregulate SMS MTAS in 2019, deciding that OTT services are an effective substitute for SMS and noting the flexibility this decision would provide to Bahraini licensees to compete with foreign companies in providing SMS services specifically to business customers.⁶⁸ Similarly, in 2020, the European Commission in its review did not recommend ex-ante regulation for SMS termination.⁶⁹

The driving force behind this international trend is the consistent experience globally that traditional SMS messaging is being surpassed by, and subject to a growing constraint exerted by, various forms of OTT communications including RCS. We see no evidence that market conditions in Australia are so unique as to warrant a divergence from the prevailing international regulatory approach. That is, abstaining from heavy handed ex ante regulation in this fast-moving market and simply monitoring market dynamics, preserving the option to intervene using ex post competition law powers if necessary.

Lastly, we consider it important to raise that a lack of international precedent for A2P SMS termination regulation could also markedly increase the risk of regulatory error for the price terms of any FAD, should the ACCC decide to regulate. In 2014, the ACCC pricing for SMS termination was informed by WIK international benchmarking. However, as noted in the 2014 Final Decision, there were significant challenges in finding a reasonable set of comparator jurisdictions to form the basis for the price terms of

⁶⁵ Draft Report, p. 64.

⁶⁶ Telstra, 2019, [Public \(acc.gov.au\)](https://www.accc.gov.au)

⁶⁷ ACCC 2014 MTAS Declaration Inquiry Final Decision, p. 45

⁶⁸ [Press Releases | Telecommunications Regulatory Authority, Kingdom of Bahrain \(tra.org.bh\)](https://www.trb.gov.bh/press-releases)

⁶⁹ European Commission “Recommendation on Relevant Markets” (18 December 2020). Available at [Commission updated the Recommendation on Relevant Markets | Shaping Europe’s digital future \(europa.eu\)](https://ec.europa.eu/commission/presscorner/detail/en/ipr/20_1911)



the FAD.⁷⁰ Given the significant prospect for regulatory error, it makes little sense in our view for Australia to be an outlier. We consider the ACCC should follow the lead of international markets (and its own precedent in 2019) in taking a lighter touch regulatory stance to SMS access regulation.

2.5 The ACCC has alternative powers to deal with any future competition concerns

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 reasonable⁷¹.

The submissions to the ACCC by Pivotel and Commpete suggest that this simple threat of regulation, should the MNOs seek to engage in anti-competitive conduct, has in their experience been effective in supporting a commercial environment in which the MNOs remain open to negotiating access.⁷²

Telstra considers 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 or evidence to support a belief this state of affairs will change in the short to medium term.

3 Telstra's submissions in the event the MTAS is redeclared

3.1 Scope of declared MTAS must be clarified

3.1.1 Risk of unintended consequences of proposed new MTAS definition

Telstra is concerned the change proposed by the ACCC to the MTAS service description - to calls terminating to a digital mobile number - could have an unintended adverse impact on the LTIE.

The changes to the MTAS definition proposed in the Draft Report are based on the ACCC's understanding that: "...the mobile number identifies the subscriber and reflects the exclusive access that the access provider has over this subscriber."⁷³ Telstra respectfully submits the ACCC's understanding is incomplete and incorrect. The link between the called party and the MTAS provider's digital mobile network is integral to the definition of the MTAS. Amongst other reasons, this is because the called party's mobile phone number does not actually reflect exclusive access over that party by the access provider. Even assuming the called party's mobile phone number was allocated to the access provider in accordance with the Numbering Plan (which is not even a requirement in the new MTAS definition proposed by the ACCC):

- the subscriber may have ported this number to another carrier or carriage service provider;
- the number may be in use by a wholesale customer of the access provider such as an MVNO or other non-mobile network operator⁷⁴ (who may in-turn have sub-allocated the number to another service provider); or

⁷⁰ See e.g. [MTAS FAD final decision on primary price terms.pdf \(acc.gov.au\)](#), pg. 34

⁷¹ [DORIS - D19-95275 MACE - MTAS Declaration Inquiry 2018-19 - Final Report - PUBLIC - FINAL - 28 June 2019.PDF \(acc.gov.au\)](#), p 41.

⁷² Draft Report, p. 68.

⁷³ Draft Report, p 51.

⁷⁴ To date, the declared MTAS has only ever applied to MNOs as access providers, not to MVNOs or any other non-MNOs (see e.g. [Final-Decision-Domestic-Mobile-Terminating-Access-Service-Declaration-Inquiry-independent-review-report.pdf \(pmc.gov.au\)](#), p 23). We see nothing in the Draft Report to suggest the ACCC intentionally means to alter this long-standing arrangement. This would entail a considerable departure from the regulatory status quo, for which we see no justification in terms of any benefit to the LTIE being likely to outweigh the risk of harm from regulatory uncertainty, disruption and potential unintended consequences.



- the number may be in use for the sending of calls or messages to the end-user via an over-the-top service (**OTT**), such as WhatsApp.⁷⁵

As raised by TPG and mentioned in the Draft Report⁷⁶, there is also a risk that removing the requirement for the called party to be directly connected to a digital mobile network in the current MTAS definition could cause fixed service providers who have (properly or improperly) been allocated with mobile numbers for use in connection with their non-mobile services to claim an entitlement to the regulated MTAS rates – undermining the ACCC's preliminary position not to combine the declared FTAS and MTAS services.⁷⁷

If the proposed MTAS definition is adopted, these issues and the departure from the ACCC's long-standing approach to MTAS regulation have the potential to cause material regulatory instability and uncertainty. They could potentially also incentivise fraudulent traffic, in the event there continues to be a differential between the MTAS and the FTAS regulated rates for termination given the higher incremental costs of MTAS providers who operate a digital mobile network.⁷⁸ While the ACCC may be correct that the risk of misuse of numbers or non-compliance with regulatory obligations of number holders are a matter for the ACMA⁷⁹, it would still risk harming the LTIE for ACCC access regulations to incentivise such behaviour⁸⁰, which could undermine end-user confidence in the numbering system. This result would be the very antithesis of the ACCC's objective to promote the LTIE by avoiding uncertainty as to what the declared service is, or leaving regulatory gaps.

As there is, for the reasons explained in section 3.2, no reason to amend the current definition of the MTAS for reasons of technology-neutrality, Telstra therefore strongly recommends no change to this definition.

3.1.2 Regulation should not extend to downstream A2P SMS services

Telstra considers there is some unhelpful ambiguity in the wording of the Draft Report. In the event the MTAS is redeclared, we are concerned this could cause confusion as to:

- the ability for MNOs to continue to set commercial terms and conditions for the wholesale A2P SMS services they currently provide to A2P aggregators and service providers; and/or
- the entitlement for A2P providers to access the MTAS, should the declared service be expanded to include A2P SMS termination.

Specifically, we are concerned about the ACCC's comment that:

*“Declaration would require the mobile network operators to provide A2P SMS termination on terms set by the ACCC... This would likely enhance the ability of operators that could access A2P SMS termination services to compete with the mobile network operators in providing off-net services at the wholesale level. It would also likely incentivise the mobile network operators to compete with each other in the wholesale markets”.*⁸¹

This would be a departure from the ACCC's previously stated position, and the Draft Report provides no

⁷⁵ We understand a valid mobile number can be used to establish a WhatsApp account to enable the customer to receive messages and calls via WhatsApp (see [How to register your phone number | WhatsApp Help Center](#)). We further understand that the customer may continue to use this number to receive WhatsApp messages and calls even if their mobile account is no longer valid, until such time as verification of the account by WhatsApp is required.

⁷⁶ See Draft Report, pp 51-52.

⁷⁷ Draft Report, p 54.

⁷⁸ For example, where the opportunity for non-MNOs to access to the regulated mobile termination rate incentivises the artificial inflation of traffic - see e.g. - [Artificially inflated traffic in SMS | Openmind Networks](#)

⁷⁹ Draft Report, pp 51-52.

⁸⁰ Noting that operators such as Virtutel have expressly advocated for an opportunity for fixed operators to use mobile numbers for their OTT customers – see Draft Report, p 50.

⁸¹ Draft Report, p 71 (emphasis added).



justification for this expanded regulatory intervention.

In its 2014 MTAS Declaration Inquiry, the ACCC found the wholesale interconnection service of A2P SMS termination provided by MNOs to each other to be a bottleneck, on the basis that:

- there was “*technically no alternative to the SMS termination service for delivering an SMS message to an end-user on a different mobile network*”⁸²; and
- “*only an MNO can send an SMS to another mobile network (that is, only MNOs interconnect with each other to exchange SMS traffic)*”.⁸³

Conversely, in the context of wholesale supply of A2P SMS the ACCC found that:

- “*an SMS aggregator can have an A2P SMS sent to a mobile subscriber either by buying an on-net wholesale service from the MNO the subscriber is connected to, or buying off-net wholesale A2P SMS services from another MNO*”⁸⁴ and
- “*A2P SMS providers and SMS aggregators... generally offer similar types of services, applications and value-added features and functions...the barriers to entry into these markets are likely to be low. In general, an A2P SMS service provider, or SMS aggregator, needs to have web connectivity, an online platform and SMS applications in order to provide services*”.⁸⁵

The ACCC therefore determined in 2014 that:

“...the declaration of A2P SMS termination services, coupled with regulated pricing, will significantly reduce the cost to the MNOs of providing off-net services by reducing SMS termination rates. This will enable and encourage MNOs to offer lower prices for wholesale off-net SMS services... Reductions in the wholesale A2P SMS prices charged by MNOs will reduce the costs to SMS aggregators and A2P SMS service providers in the downstream markets.”⁸⁶

Very importantly, however, the ACCC also clarified in its 2014 Final Decision that:

*“Declaration of SMS termination services will not directly affect MNOs’ relationships with SMS aggregators or A2P service providers...the terms and conditions in the FAD will only be available to MNOs when acquiring A2P SMS termination services from another MNO... MNOs will still be free to set the terms and conditions of access to wholesale A2P SMS services, or refuse to supply the service, as they see fit”*⁸⁷

During the ACCC’s 2014-2015 MTAS final access determination inquiry, the ACCC received some queries as to whether A2P providers could request the MTAS SMS final access determination pricing directly from MNOs. In response, the ACCC published its view that A2P SMS providers could not access the MTAS.⁸⁸ The ACCC further clarified that:

“... wholesale A2P SMS services are provided to A2P SMS providers or aggregators as an end-to-end service rather than a standalone SMS termination service. This end-to-end service is made up of different components and SMS termination is only one part of this bundle of services. The regulated

⁸² ACCC 2014 MTAS Declaration Inquiry Final Decision, p. 41 (emphasis added).

⁸³ ACCC 2014 MTAS Declaration Inquiry Final Decision, p. 45.

⁸⁴ Ibid. In its 2019 final decision the ACCC continued to find 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 - [DORIS - D19-95275 MACE - MTAS Declaration Inquiry 2018-19 - Final Report - PUBLIC - FINAL - 28 June 2019.PDF](#) (acc.gov.au), p 23

⁸⁵ Ibid.

⁸⁶ Ibid, p. 52 (emphasis added).

⁸⁷ Ibid, p. 58.

⁸⁸ Explanatory Notes on the MTAS Declaration - [Final decision | ACCC](#)



MTAS is therefore one component of an A2P SMS service. The other components of the end-to-end service are not subject to regulated pricing”.⁸⁹

At the time the ACCC formed this view, the only parties who had the capability to interconnect to an MTAS provider’s network were other MNOs. However, the ACCC clarified that other access seekers were not precluded from investing in building or acquiring the necessary interconnection infrastructure to obtain access to the MTAS.⁹⁰

In the current Declaration Inquiry, Commpete has made a request for the declaration of a new service; that is, wholesale access to mobile networks. In its Draft Report, the ACCC has rightly rejected this request as being outside the scope of its inquiry into the declaration of the MTAS.⁹¹ The supply of downstream wholesale A2P services is highly competitive and, for the reasons consistently identified by the ACCC in the past, regulation at this level of the market is not justified. A decision to extend the reach of regulation would require a thorough evaluation of the impact this would have on the structure of competition, including the potential to substantially undermine the aggregator business model.

We trust therefore the ACCC does not intend to declare a new service of wholesale access to mobile networks, and that this is simple lack of drafting clarity. For regulatory certainty however, we respectfully urge the ACCC in its final decision to clarify that the scope of any declared MTAS including A2P SMS termination is no broader than the scope of the wholesale interconnection service of SMS termination previously declared by the ACCC in 2014.

3.1.3 No change to market structure which would justify a departure from the ACCC’s 2014 approach

We note the wholesale A2P SMS service market remains fundamentally unchanged since the ACCC originally extended the declared MTAS to include SMS termination (both P2P and A2P) in 2014. In the ACCC’s Final Decision on the 2014 MTAS Declaration Inquiry⁹², the ACCC concluded:

“The wholesale A2P SMS service market is the market where MNOs provide wholesale A2P SMS services to SMS aggregators and on some occasions directly to A2P SMS service providers. The wholesale services basically operate as follows:

- *an MNO accepts A2P SMS sent by SMS aggregators or A2P SMS service providers at an SMS centre and send it to the intended mobile subscriber;*
- *the recipient mobile subscriber can be connected to either the MNO’s network (on-net service), or another MNO’s network (off-net service); and*
- *the MNO may also provide a reply path, so that the mobile subscriber can reply to the A2P SMS if required.*

*Because SMS termination services are required to provide off-net A2P SMS services, the ACCC considers that declaration of SMS termination services is likely to affect this market.”*⁹³

The downstream A2P SMS services markets in which wholesale A2P SMS services are an input also remain fundamentally unchanged since 2014, when the ACCC found:

“...there are broadly two downstream markets:

- *the market in which SMS aggregators supply services to A2P SMS service providers, and*
- *the market in which A2P SMS service providers (and sometimes MNOs and SMS aggregators) sell retail A2P SMS services to end-users.*

The ACCC understands that some market participants may acquire and supply services slightly differently to this. For example, it is possible that an A2P SMS service provider acquires some services from an SMS aggregator and others directly from MNOs. It is also possible that some

⁸⁹ Ibid, emphasis added.

⁹⁰ Ibid.

⁹¹ Draft Report, p 53.

⁹² [MTAS declaration inquiry final decision report.pdf \(acc.gov.au\)](#)

⁹³ ACCC 2014 MTAS Declaration Inquiry Final Decision, p. 38 (emphasis added).



A2P SMS service providers resell services to other A2P SMS service providers, thereby creating further layers in the supply chain. However, the ACCC considers that even if the exact nature of the arrangements differ, they all depend on the services provided in the upstream wholesale A2P SMS services market.

For the purpose of examining the competitive effects of declaring SMS termination, the ACCC considers it useful to group the two downstream markets together.⁹⁴

Lastly, there has been no change to the end-users of downstream retail A2P SMS services, which the ACCC found in 2014 to “include the businesses who acquire services from A2P SMS providers as well as their customers to whom the SMS are sent”, noting that an “end-user does not have to be a household or individual and can be a business which uses the service in the supply of its goods or services”.⁹⁵

3.2 The MTAS service description is technology neutral and should be maintained

The Draft Report sets out the ACCC’s view that the MTAS service description should be amended so that it identifies the called party as a party that is assigned a digital mobile number, rather than a party that is directly connected to any specific technology or network. The driver for this amendment is to ensure the service description is appropriately technology neutral and thus enables the supply of innovative services.

As set out in our previous submission, Telstra considers the current MTAS service description already defines the MTAS on a technology-neutral basis, remains fit for purpose, and should not be changed. This section of our submission sets out our position in further detail.

The mobile market is characterised by high levels of competition, innovation, and investment by the MNOs. The current technology neutral MTAS description supports this competition, innovation, and investment. It does this in part by avoiding linking the declared service description to specific mobile technology generations or formats – such as Voice over Long-Term Evolution (**VoLTE**). It also supports MNO competition, innovation, and investment by remaining silent as to *how* the MTAS provider may choose to terminate the declared voice call (i.e. deliver it to the called party).

All that is necessary is a direct connection between the called party, and the MTAS provider’s digital mobile network. However, very importantly, the manner and form of the direct connection with the MTAS provider’s digital mobile network is neither transparent to the access seeker, nor an integral component of the MTAS definition.

Most commonly today, a mobile subscriber will be connected to the digital mobile network of their provider via a Home Subscriber Server (**HSS**) using the MNO’s Radio Access Network (**RAN**). The HSS is a key component in the mobile core network that authenticates the called party’s SIM card to determine whether they have a valid, active, mobile service permitting the called party to receive calls and SMS on the access provider’s digital mobile network. The HSS is also used by the MTAS provider to determine the form of network connectivity being used by the called party at any particular point in time – e.g. whether the connection is via mobile spectrum to the MNO’s eNode-B network (base station); whether over WiFi; or whether the b-party is in fact roaming on another mobile network – such as on a holiday overseas.

Because of the technology neutral way in which the MTAS is currently drafted, an access seeker who is interconnected with the MTAS provider gains the benefit of the regulated MTAS *regardless* of whether the called party directly connected to the MTAS provider’s digital mobile network is, at the time of the call:

- connected via mobile spectrum;

⁹⁴ Ibid, pp. 38-39.

⁹⁵ Ibid, p. 39.



-
- connected over WiFi using a voice over WiFi calling function supported by the MTAS provider;
 - roaming on a third-party network with whom the MTAS provider has a roaming arrangement; or
 - connected by some other means authorised by the MTAS provider (which could, in future, potentially include a connection via direct to handset low earth orbit satellite services).

Telstra therefore disagrees with the ACCC's findings in its Draft Report⁹⁶ suggesting that technological advances in telecommunications markets (such as the ability for an MNO to carry a call from its points of interconnection to its mobile subscribers using access networks other than its radio access network) mean that the MTAS service description needs to be amended to ensure that it does not create uncertainty as to what the declared service is, or create a regulatory gap which would undermine the objective of promoting the LTIE.

In Telstra's view, there is no ambiguity in the current service description as to whether the access provider is required to provide the MTAS in circumstances where the calls are carried over networks other than the MNO's radio access networks. This scenario is, and always has been, captured by the current definition – provided that the b-party being called is nevertheless in some way still directly connected to the access provider's digital mobile network (such as via the HSS for the purposes of authentication etc).

For the reasons set out in section 3.1 above, we are also concerned that the departure now proposed by the ACCC from the current, long established and technology neutral MTAS definition (in place since at least 2009 and remaining appropriate through over 15 years of mobile innovation) could have an unintended adverse impact on the LTIE.

We therefore recommend the ACCC does not adopt the changes to the MTAS definition proposed in the Draft Report.

3.3 Telstra's proposed MTAS definition, if this is to include A2P SMS termination

For the reasons set out in the remainder of this submission, Telstra does not support the extension of the MTAS declaration to include A2P SMS termination. However, if the ACCC nevertheless decides to proceed with this extension, we recommend the ACCC base the declared MTAS service description on that adopted in 2014, rather than the definition proposed in the Draft Report. We believe this is an appropriate approach as:

- There is a material risk that broadening the service description as proposed by the ACCC could have a distortionary affect adverse to the LTIE.
- We believe this approach will support legal and regulatory certainty for both access providers and access seekers.

We note that, while the 2014 MTAS service description included a definition for SMS, it did not include a definition for A2P SMS. For clarity regarding the regulated service and in light of network technology changes since 2014, we have proposed an amended definition of A2P SMS termination to that set out in the Draft Report, should the ACCC proceed down the path of regulation. These changes are shown in mark-up below.

In the event MTAS is redeclared and expanded to include A2P SMS termination, we therefore recommend the service definition read as follows:

⁹⁶ See Draft Report, p 51.



Domestic Mobile Terminating Access Service

The domestic mobile terminating access service is an access service for the carriage of voice calls and application-to-person short message service (A2P SMS) messages from a point of interconnection, or potential point of interconnection, to a B-Party directly connected to the access provider's digital mobile network.

Definitions

Where words or phrases used in this Declaration are defined in the Competition and Consumer Act 2010, or the Telecommunications Act 1997 or the Telecommunications Numbering Plan 1997, they have the meaning given in the relevant Act or instrument.

Other definitions

B-Party is the end-user to whom a telephone call is made or an SMS message is sent.

Digital mobile network is a telecommunications network that is used to provide digital mobile telephony services.

Point of interconnection is a location which:

(a) is a physical point of demarcation between the access seeker's network and the access provider's digital mobile network, and

(b) is associated with (but not necessarily co-located with) one or more gateway exchanges of the access seeker's network and the access provider's digital mobile network.

Short message service (SMS) is the provision of messages up to 160 characters of text using capacity ~~in the voice signalling channel~~ of a mobile network.

Application-to-person SMS (A2P SMS) is an SMS ~~sent from an online interface to a mobile number~~ initiated by a software application for delivery to an end user's mobile device.

3.4 MTAS obligations must allow providers to continue to combat scam traffic

Telstra supports the ACCC's proposal in the Draft Report to consider the intersection of the standard access obligations (**SAOs**) and industry's scam blocking obligations as part of any access determination inquiry process for the MTAS, should it continue to be declared.⁹⁷

Telstra considers it integral to the LTIE that the scope of any MTAS declaration and the terms of any associated access determination enable and support industry to continue to take measures that address scam (and spam) SMS and call traffic.

Developments since 2014 mean the prevalence of scam calls and SMS now rate as a leading cause of harm to end-users, not just unwanted spam messages and calls. However, the principles applied by the ACCC when extending the declared MTAS to include A2P SMS in 2014 are equally important to ensuring the MNOs will be able to take effective action to combat these forms of harmful traffic under any future MTAS declaration. In particular, we note the ongoing importance of the ACCC's 2014 clarification that:

"...even if the ACCC declares termination of A2P SMS services, MNOs will still be free to set the terms and conditions of access to wholesale A2P SMS services, or refuse to supply the service, as they see fit. For example, MNOs will still be free to price wholesale A2P SMS service in a way they consider will discourage the sending of spam SMS over their networks, or that would manage network traffic. Declaration of A2P SMS services will not force MNOs to price A2P SMS services at such a low level that there will be an increase in spam SMS"⁹⁸

In addition, we welcome the ACCC's openness in the Draft Report to considering appropriate limits on the SAOs associated with any future declared MTAS⁹⁹, to ensure MTAS providers can comply with their scam blocking obligations and take other appropriate action to promote the LTIE by refusing to terminate

⁹⁷ Draft Report, p. 55.

⁹⁸ [Final decision | ACCC](#), p. 63.

⁹⁹ Draft Report, p. 55.



interconnect traffic they suspect is scam or harmful to their end-users. We wholeheartedly agree with the ACCC's conclusion in the Draft Report that the carriage of scam or other A2P SMS with a fraudulent purpose is not an efficient use of infrastructure, and that it is imperative MTAS providers have the ability and incentive to monitor, detect and disrupt scams.¹⁰⁰

¹⁰⁰ Draft Report, pp. 73-74.