Twilio Submission to ACCC Draft MTAS Declaration Inquiry Report

Twilio is grateful for the opportunity to respond to the Australian Consumer and Competition Commission's (ACCC) Draft Mobile Termination Access Service (MTAS) Declaration Inquiry Report (Draft Report).

About Twilio

Twilio is a globally available cloud communications platform whose web service application programming interfaces (APIs) provide millions of software developers with building blocks to build communications like SMS, voice, video and authentication into their applications.

Founded in 2008, Twilio powers more than 600 billion annualized interactions every year for more than 140,000 customers. Twilio is based in San Francisco, with offices located in Europe, Asia and the Americas.

Twilio enables millions of innovators, across every industry, to reinvent how their companies communicate and engage with their customers.

Twilio in Australia

In Australia and New Zealand, Twilio has over 2500 active monthly customers using the Twilio API platform to create and deliver unique customer engagement experiences at competitive cost and scale compared to replicating this functionality with mobile network operators (MNOs) directly. Through Twilio, businesses are able to integrate reliable voice and SMS into their applications and websites.

Twilio's customers range from start-ups to the top 50 companies in Australia. Companies of all sizes and across a range of industries can rely on Twilio for a cost-effective, easy-to-use platform to build unique engagements with customers, across SMS, voice, email and WhatsApp. Our customers include organisations like Zip Money, Lendi, Indebted, Mad Paws and many others. We also count three of the largest five banks, 50% of insurance companies, as well as food and retail outlets, such as Domino's Pizza, Menulog, Deliveroo as our customers. Logistics companies, such as Shippit, also take advantage of our competitive SMS transaction costs to help fulfil customer orders. Customers are able to interact with services they need wherever they are, without needing to be in range of a reliable Internet connection, which is valuable for the 11% of Australians considered 'offline'.

Draft MTAS Declaration – Regulation of MTAS for SMS has benefited A2P operators directly and indirectly

The ACCC's draft MTAS Declaration Inquiry decision would deregulate the pricing of SMS termination, which could create instability in the wholesale market for acquiring application-to-person (A2P) SMS termination. This could inhibit innovation, raise costs or degrade customer service quality, particularly for those who have not adopted OTT messaging apps in their lives, or where there is a need to reach a customer base spread across a range of OTT platforms.

The regulated price of off-net SMS termination at the wholesale level has opened up the A2P market and allowed businesses to leverage A2P messaging in their customer engagement strategies. Regulation has consistently driven pricing of SMS termination competitively lower on a regular annual basis that is expanding volume growth. Twilio has relied on this momentum to support investment and to create a number of new jobs in our Australian business alone since January 2018. It also supports our plans to further increase our headcount to support our market growth in the next 12 months.

We believe that absent regulation, the likely outcome would be that SMS termination rates would rise, because each MNO would continue to have a virtual monopoly over access to termination services to reach their own subscriber base. Recipients of A2P SMS could lose the benefit of the services altogether in the longer term and we do not believe that OTT messaging services are an effective substitute.

Twilio would support an MTAS service description that includes SMS termination and one which applies to termination of SMS to a mobile number regardless of whether the message also originated on a mobile network.

We disagree with the ACCC's finding that OTT messaging is a substitute for SMS termination

The ACCC has proposed to exclude SMS termination from the MTAS service description, believing that market forces can constrain pricing. In particular, in the Draft Report, the ACCC places significant emphasis on the increasing uptake of OTT messaging apps (such as WhatsApp, Messenger or Telegram) mitigating the risk of MNOs reversing the competitive downward pressure on wholesale SMS termination rates. However, we think this view is flawed, because it:

- takes as given that OTT messaging and SMS are fully substitutable;
- does not take into account that OTT messaging does not provide any-to-any connectivity; and
- does not acknowledge the degree to which regulation to date has provided an important constraint on MNO conduct in negotiations with A2P providers or aggregators of A2P traffic;
- does not take into account that OTT providers may also structure their termination rates relative to local market rates for SMS termination.

OTT messaging is not a substitute for SMS termination

While for many things and for many end-users, SMS and OTT messaging may be functionally similar, in the A2P market, this is not the case. Many OTT messaging applications are designed primarily to support personal or social communications and many do not permit business-to-consumer communications. More fundamentally though, to reach end users through an OTT messaging service requires those end users to have a smartphone, or similar device.

Given that 17% of people do not own a smartphone, for a significant segment of the A2P market, SMS is in effect the only solution.

In some applications, Twilio enables participation in the digital economy without a smartphone, by enabling access to a digital-first business or by digital-first government services through interactive SMS. The ACMA's Communication Report notes that 11% of Australians over 18 had not used the Internet in

the past six months,[1] indicating a still-significant minority of Australians who could lose out from upward price pressure inhibiting adoption of A2P through SMS.

SMS is differentiated by its penetration across Australians relative to various OTT messaging applications and thus represents the most reliable way to reach an end-user. The Australian Communications and Media Authority's 2017/18 Communications Report (ACMA Communications Report) notes that 36% of people do not use a messaging or calling app, indicating a significant proportion of customers preferring to use SMS.[2]

SMS is also often the most reliable way for a user of A2P services to reach their customers when considering smartphone users also need to be in range of a reliable enough Internet connection to receive a message through an OTT messaging service.

Further, Twilio's experience is that read and response rates are higher with SMS, which is a key success metric for enterprises running an A2P SMS campaign. Twilio has an OTT option available to our customers. It has been available since 2018. Since then we have not observed any traffic loss from our A2P SMS business to the OTT product.

OTT Messaging does not provide any-to-any connectivity
Even within the population base that has smartphones or similar devices, there is no single OTT messaging service that will reach a government or enterprise customer's entire end customer base. OTT services such as WhatsApp, Facebook Messenger etc. may each only reach a subset of the intended recipients, being those who use the relevant OTT service.

In this respect each OTT messaging service provider has a monopoly over access to its own end user base. Twilio's A2P clients would need to require their entire customer base to sign up to a specific bundled OTT messaging service in order to ensure that they could reach all of their customers through a single OTT messaging service.

Over all, SMS offers a far greater degree of certainty as to the ability to reach those customers, and a single, ubiquitous delivery method. It reaches customers regardless of their handset type, availability of data services, and regardless of which, if any, OTT messaging services they have chosen to use in addition to their mobile services, which is particularly important for all enterprise customers (small, medium and large) with a diverse customer base, and for government entities, who need to reach all sectors of the community, regardless of age, technical know-how or OTT application preferences.

For these reasons, we do not consider that OTT messaging services are substitutes for A2P SMS. We do not foresee that our customers would shift to OTT platforms should A2P SMS pricing increase

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[1] *Ibid.,* p. 58
[2] Australian Communications and Media Authority (2018), *Communications Report 2017/18*, p. 32, available from: https://www.acma.gov.au/-/media/Research-and-Analysis/Report/pdf/Communications-report-2017-18-pdf.pdf?la=en

substantially, however their overall use of A2P SMS may decline in these circumstances. We believe that data relating to relationship between OTT messaging services and P2P SMS does not logically extend to A2P SMS, and is inconsistent with our own experience as outlined above.

Regulating SMS termination is an important competitive constraint on MNOs

Our experience is that regulation of MTAS SMS termination has been and remains an important competitive constraint on MNOs in arrangements for access to off-net customers.

There are three ways in which Twilio may source mobile terminating access in order to supply A2P SMS services to our customers:

- Via a direct carrier connection with each MNO, which could also be described as purchasing 'on-net' supply of wholesale SMS termination services;
- Via a connection to an MNO which can originate A2P SMS for termination on each other MNO's network, which could also be described as purchasing 'off-net' supply of wholesale SMS termination services; and
- Via an aggregator, which has itself sourced bulk A2P SMS from various MNOs through one of the above two methods – typically by purchasing on-net supply from each.

The second option, purchasing through connection with an existing MNO, has been the strongest commercial proposition for Twilio and our customers, for the following reasons:

- Direct carrier connection, or on-net supply, is difficult to obtain for any party other than large corporate customers. Our experience has also been that MNOs are generally reluctant to condition their networks to be able to originate or terminate messages other than from or to an interconnecting mobile network. The large MNOs do not readily offer this service to smaller businesses. [C-I-C] On the ACCC's own analysis this is the scenario in which an MNO is best placed to charge monopoly rates, and the scenario in which A2P operators do not have the ability to negotiate preferential arrangements for mutual exchange of terminating traffic volumes;
- MNOs that will not offer on-net supply typically refer A2P SMS suppliers to an aggregator as the alternative source of A2P SMS termination. Dealing with an aggregator adds another level to the supply chain. The result of this is typically a higher price and lower service quality; and
- Leveraging the existing off-net supply arrangements of a single local MNO gives us access to A2P SMS termination across all other MNO networks. This has both pricing and service quality upsides for us and our customers, because it avoids negative pricing and service impacts described above that arise when dealing with an aggregator instead of an MNO. Our experience has been that the service quality offered by off-net and on-net supplies are the same.

If regulation of SMS termination were removed altogether, we believe the likely impact would be to move A2P providers from an acquisition model based on the second option above (which is made possible through the currently regulated MTAS SMS rates) to a model based on the first option above. Under that model the commercial proposition becomes dependent on an A2P provider negotiating direct

access to on-net customers with MNOs or OTT messaging providers who each have a virtual monopoly over their respective customer bases.

Australia's market would be dependent on a new competitive environment among 3-4 MNO and 2-3 OTT providers to allow for a dynamic market in A2P and to deliver comparable benefits to the end-user. The impact on the competitive messaging market of OTT players is unclear and untested, and action now could result in A2P players being detrimentally affected without corresponding benefits to end-users, who may find their ability to interact with new services degraded, and enterprises having to conclude multiple agreements to replicate the same penetration available through services like Twilio's.

We would ask the ACCC to re-consider its position in particular in light of the potential impact on A2P providers who do not have the ability to negotiate commercial rates on the basis of a reciprocal exchange of network traffic, and who stand to lose the benefit of a regulated SMS termination rate as a pricing anchor in negotiations.

Removing regulation could remove the benefit of A2P messaging for Australian users of mobile telephony services

Absent regulation, we believe there remains an incentive for MNOs to either restrict access to SMS termination services to MNOs and/or to increase the price of access to their on-net termination services in a way that is not linked to any regulated rate for termination of voice MTAS traffic. We note that the users who benefit most from the provision of A2P messaging are the end users who receive important reminders or notifications from businesses of any size or from government agencies as a result of A2P services. Users do not pay to receive those A2P messages. The price signals for A2P messaging are indirect. A price increase will not cause a shift in demand for the service overall, but over time could negatively impact the availability of the service for the benefit of those end users.

Conclusion

Twilio would recommend retaining the reference to SMS in the MTAS service description and to maintain regulation of off-net mobile terminating access prices for SMS pending more evidence about the potential impact:

- on the wholesale markets for access to SMS terminating access, particularly in the case of A2P providers, who do not have an ability to negotiate access arrangements on the basis of reciprocal exchange of terminating traffic; and
- of OTT messaging providers on the Australian markets (wholesale and downstream) for A2P services.

In particular, the relationship between the emerging OTT messaging termination market and the SMS termination market should be considered before SMS termination is removed from the MTAS service description. Otherwise, rather than OTTs constraining SMS termination prices, it may be that deregulation causes upward price pressure in both markets.

Such pressure would be detrimental to the adoption in Australia of technologies like Twilio's. This would not only have consequences for Twilio but on government and private enterprises and their customers. If upward price pressure forces enterprises to reconsider using this communication channel, those without smartphones could find themselves disadvantaged, as could those with smartphones but away from a reliable Internet connection. In this respect, SMS termination remains a strongly differentiated service, an advantage MNOs will continue to hold vis-a-vis OTTs for at least the medium term.

As such, we do not believe it is the time to deregulate SMS termination.

[C-I-C Annexure]