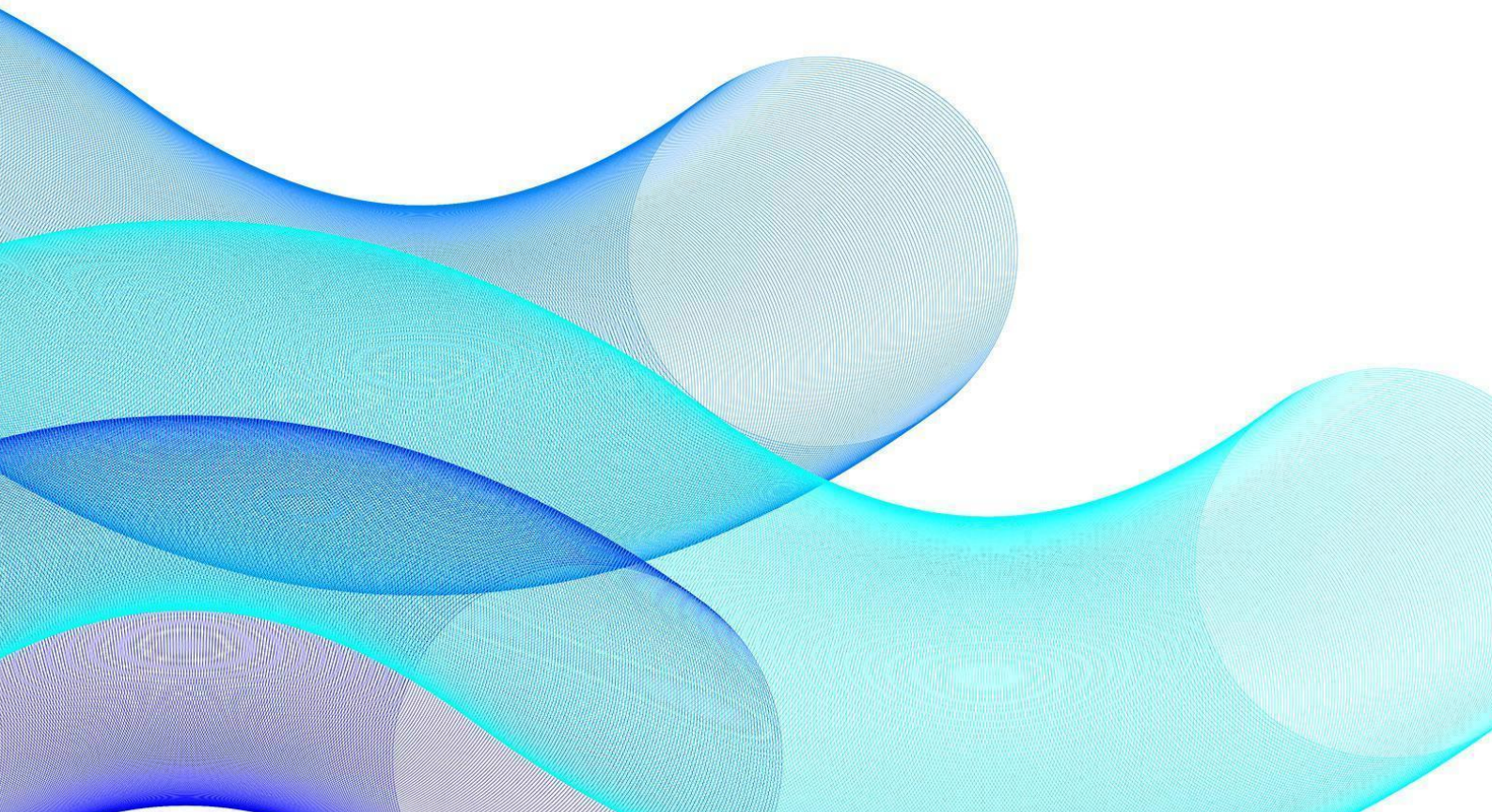

Vocus' submission in response to ACCC discussion paper -

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

July 2023



Response to ACCC's discussion paper

As Australia's specialist fibre and network solutions provider, we own and operate approximately 25,000 kilometres of secure, high-capacity fibre connecting all Australian mainland capitals with New Zealand, Asia and the USA. Our network includes the 4,600-kilometre Australia Singapore Cable from Perth to Singapore via Indonesia and the 2,100-kilometre North-West Cable System from Port Hedland to Darwin.

Vocus welcomes the opportunity to respond to the ACCC's [discussion paper](#) in relation to the declaration of the domestic transmission capacity service (DTCS), fixed line services and the domestic mobile terminating access service.

Domestic transmission capacity service

The DTCS is a type of high-capacity transmission service used by carriers or carriage service providers to carry data between network nodes. Wholesale transmission services essentially allow access seekers to connect their downstream service nodes in places where they do not have their own transmission infrastructure.

In the past, the ACCC has maintained regulation of the DTCS in areas where it is not satisfied that there is effective competition and removed regulation in areas that have been found to be competitive. It is now timely for the ACCC to reassess the requirement for regulation of DTCS given the changes in the market structure and competitive environment since the previous declaration review in 2018.

Relevant markets and market developments

As part of assessing the long-term interests of end-users, the ACCC has to consider whether declaration is likely to achieve the objective of promoting competition in relevant markets.

The relevant downstream markets that rely on transmission services include:

- Mobile services
- Residential voice and broadband services
- Corporate and government voice and data services
- Broadcasting services
- Datacentre and cloud services
- International data traffic (interconnection of subsea cables).

Vocus agrees with the examples of transmission services in Australia set out by the ACCC in its discussion paper. We note that transmission services and the market for them have rapidly evolved since 2018:

- Mobile services: The market has consolidated so that the three mobile providers are vertically integrated with their own transmission networks
- Residential voice and broadband services: have largely shifted from local exchanges to the NBN points of interconnect

- Corporate and government voice and data services: have largely shifted from local exchanges to the NBN points of interconnect
- Broadcasting services: Have moved to the Internet
- Datacentre and cloud services: Have moved to Data Centres and are now served by multiple Dark Fibre providers
- International data traffic (interconnection of subsea cables): Require access to dark fibre to service Tbps capacity needs.

Further, over-the-top providers (OTTs) are now very significant consumers of inter-capital transmission services and are also making their own infrastructure investments but are not subject to the DTCS. This growth in market demand, particularly from OTTs, has led to an increasingly competitive market for the supply of transmission services for the interconnection of datacentres, with various carriers building fibre networks to target this market.

NBN Co has also been competing very aggressively in the enterprise market with its NBN Enterprise Ethernet product. Unlike 2018, NBN Co now have products in the business market that are a competitor to current DTCS services. Telstra has responded to NBN Co's prices for its enterprise ethernet product resulting in significant reductions in prices for transmission services across their very substantial fibre network. Accordingly, the market for regional transmission services is very different to what it was in 2018. Not only do Telstra and NBN Co now compete for enterprise business in this market, this competition is being augmented by low earth orbit (LEO) satellite providers. For example, Vocus offers Vocus Satellite – Starlink services to enterprise and government customers providing low-latency, high-bandwidth connectivity across Australia.

Vocus submits that continued declaration of the DTCS requires significant change to the competition assessment method and the regression model that accompanies it. The market price regression model has little regard for the long-term incremental running cost of new systems and has led to pricing for regional routes that is under cost, as Vocus experienced in relation to the Perth to Christmas Island route. The cost of building out to regional centres that are away from backbone routes is much higher and the regulation of DTCS leads to pricing for regional routes that is under cost, providing significant incentives for network builders to bypass them. Vocus submits that there is currently a significant investment pipeline for intercapital fibre being promoted by companies such as Vocus, Telstra, HyperOne and Inligo. Reviewing the competition assessment method and the regression model should be focused on promoting augmentation of current and planned terrestrial builds to better serve regional Australia's specific problem locations.

If the domestic transmission capacity service continues to be declared, is the competition assessment method still appropriate? If not, what needs to change?

The ACCC currently determines the scope of the regulated service by assessing the level of infrastructure-based competition at the exchange service level. If the ACCC continues to declare the DTCS, Vocus submits that industry developments means that the exchange service area-based assessment of competition is no longer relevant.

Service providers cannot serve the relevant markets by buying transmission services to exchanges. (The only example of transmission services relevant to exchanges is legacy residential and voice networks.) The level of infrastructure-based competition can only be appropriately assessed by reference to presence at data centres and NBN points of interconnect. However, Vocus submits that this would result in a finding of a thriving market and competition, therefore the ACCC should consider isolating the limited locations where competition is limited and consider the specific investment incentives required for providers to change this.

Other services

Fixed voice interconnection services

The fixed voice interconnection services enable network operators to exchange call traffic between their networks by providing:

- Fixed originating access service (special numbers) allowing a retail business customer (b-party) to receive special services such as 13/1300/180/1800 calls from end-users directly connected fixed networks other than the network of the B-party's service provider
- Fixed terminating access service allowing a call from one network to be carried from the point of interconnection to a party being called using a geographic number on another network.

These services support any-to-any connectivity between users.

Vocus agrees that one of the relevant markets is the wholesale fixed voice interconnection services market. The provider of a retail voice service has no choice but to acquire the fixed termination service. As a result, the provision of wholesale interconnection is an essential input to the provision of retail voice services, and a bottleneck to achieving any-to-any connectivity.

There are some consumers still reliant on fixed voice calling, including older Australians, those in remote and regional Australia and businesses which may not be contactable via a mobile phone number. Vocus agrees with the ACCC's observations that fixed line voice services remain critical for certain cohorts of consumers and business who require access to a reliable and affordable service. Network operators have market power in respect of calls terminating on their network and calls to special numbers that originate on their network. In the absence of declaration, network operators with a large number of users have the ability and incentive to use their market power to impose above-cost charges for interconnection.

In this context, Vocus submits that the fixed voice interconnection services should remain regulated, despite the increasing trend for voice calls to be made using mobiles and over-the-top services. The continued declaration of the voice interconnection services would promote competition in the related retail markets for end-users.

The mobile terminating access service

The mobile terminating access service (MTAS) is a wholesale interconnection service provided by a mobile network operator (MNO) to fixed line network operators and other MNOs to connect or 'terminate' a voice call on its mobile network. It is a service that ensures "any-to-any" connectivity.

Vocus submits that the declaration of mobile voice termination remains in the long-term interests of end-users (LTIE). Extending the declaration of MTAS would likely promote the LTIE as it would:

- promote competition in the retail markets for mobile services and fixed voice services, by ensuring that mobile voice termination charges are aligned with the efficient cost of the service,
- promote the achievement of any-to-any connectivity,
- promote the efficient use of, and investment in telecommunications networks, as in the absence of declaration, MNOs have incentives to set above cost pricing.

Relevant markets

The relevant markets applicable to the MTAS include the separate wholesale markets for voice termination services on each MNO's mobile network.

There is no effective substitute at the wholesale level for interconnection services provided by an MNO to terminate calls on its network. Within this wholesale market, each MNO is a bottleneck to any-to-any connectivity as MNOs have a monopoly over access to subscribers connected to their respective networks. In these circumstances the need for continued declaration of the MTAS is fundamental.

Vocus submits that relevant retail markets are the retail market for fixed mobile services and the retail market for fixed voice services. Mobile voice termination is an essential input to voice calls made from an end-user on either a fixed or a mobile network to an end-user on a mobile network.

Market developments

Vocus agrees with the ACCC's observations that the use of over-the-top (OTT) services has grown significantly in Australia in the recent years with the proliferation of services that provide instant messaging, audio calls, and video calls. However, OTT services are not effective retail substitutes for mobile voice such that regulatory intervention in the wholesale market is no longer required to promote the LTIE.

Vocus submits that OTT services, while increasingly used by end-users, only provide a partial retail substitute to mobile voice. The substitutability of these services is not fully effective to act as a sufficient pricing constraint on MNOs for reasons which include:

- OTT services rely on and are subject to the reliability of the underlying internet connection
- all participants in the call are required to use the same service
- many businesses, services and government organisations are not contactable via OTT voice services, relying instead on fixed or mobile services.

The difficulties for end-users to fully substitute away to an OTT service means that in the absence of regulation, there are limited constraints to MNOs raising prices.

Absent regulation, MNOs would be able to leverage their market power to charge termination fees in excess of their efficiently incurred costs. Accordingly, continued declaration will promote the long-term LTIE, noting that the LTIE refers to the end-users' economic interests, which includes lower prices¹.

¹ ACCC, A guideline to the declaration provisions for telecommunications services under Part XIC of the Competition and Consumer Act 2010, August 2016, page 28.

The MTAS represents a material direct cost for Vocus in providing fixed voice services. As a carrier originating FTM calls, Vocus highlights that the level of substitutability from FTM calls to OTT calls is even weaker than the substitutability from MTM to OTT calls and would not prevent an MNO from raising mobile wholesale termination prices to carriers originating FTM calls. There are a range of reasons why some consumers have retained fixed-line voice services. These include consumers who require access to a reliable voice service in remote and regional Australia, those with limited or no mobile coverage, some older Australia and individuals with complex medical needs. Voice services are still in high demand as evidenced by the volume of mobile minutes that originated on our voice network in April 2023. Many businesses, including small businesses, also still make FTM and MTM calls to communicate with customers and the general public. As a result, MTAS continues to be an essential upstream input into the supply of retail voice calls.