



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

26 July 2023

Commpete welcomes this opportunity to make a submission to the Australian Competition and Consumer Commission (**ACCC**) in relation to its public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service.

In its discussion paper, the ACCC acknowledged the “*major changes in the telecommunications landscape [in recent years], with the completion of the NBN rollout, substantial expansion and improvements to mobile networks, the introduction of low Earth orbit satellite networks and deployment of new fixed line infrastructure.*”¹

Commpete agrees. Technology has developed and progressed exponentially since many of the services under discussion today were first declared. In contrast, while there have been some changes to the regulatory regime in the intervening period, the basic structure of the regime remains the same.

Commpete believes that needs to change – and there has never been a better opportunity to rethink our approach to telecommunications regulation.

A number of the services being considered for redeclaration are largely relics from the time prior to the advent of the NBN, when the Telstra copper network dominated the fixed telecommunications landscape in Australia. As discussed in this submission, many of these declared services still have some utility. But while the declared services remain important, a more modern and sophisticated approach to wholesale access is needed in order to best promote competition in markets for telecommunications services.

The main bottlenecks in the system today are in the mobile network. Given the continuing development of mobile technology and ever increasing reliance on mobility in all aspects of business and life, it is unfathomable that the owners of mobile infrastructure continue to be immunized from competition by virtue of their incumbent position.

Wholesale access and open access play a key role in improving value, flexibility and choice for end-users, particularly in the mobile network. The regulatory regime should adjust to reflect the expanding range of services and applications, and the evolution of technologies.

The ACCC has the opportunity to use the declaration process to significantly enhance competition in mobile markets, facilitate the efficient use of telecommunications infrastructure and ultimately promote the long-term interest of end-users.

Achieving these significant benefits for the long-term interest of end-users requires the right regulatory enablers to be in place. More specifically, Commpete urges the ACCC to:

- hold a public inquiry under Part 25 of the *Telecommunications Act 1997* (Cth) in relation to the declaration of a new service, namely, wholesale access to mobile networks;
- redeclare the domestic transmission capacity service with some adjustments to the service description, as it remains critical in the modern telecommunication environment, and access to this service persists as a potential bottleneck;

¹ ACCC, *Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service* (Discussion paper, May 2023) at page 21.

- redeclare the wholesale Asymmetric Digital Subscriber Line (**ADSL**) service given it is still being used by many end-users and there is no comparable alternative for such end-users at present;
- investigate whether the unconditioned local loop service (**ULL**), line sharing service (**LSS**), wholesale line rental (**WLR**) and local carriage service (**LCS**) are still in use in the industry, and redeclare such services if necessary; and
- redeclare the FTAS and MTAS services but amend the MTAS service description to include SMS once again, given that over-the-top (**OTT**) messaging does not impose a sufficient competitive constraint on the supply of retail and wholesale SMS services.

In summary, the ACCC should be looking to adopt new principles of regulation and new forms of access regulation that are appropriate for 2023 and beyond. The rest of this submission goes into further detail on the points above.

Commpete has summarised its responses to the ACCC's questions in relation each of the services in **Attachment A**.

Wholesale access to mobile networks should be a new declared service type in order to remedy the sub-optimal level of competition in mobile markets in Australia

A major problem in mobile service markets in Australia is that while there is a degree of competition in the retail mobile services market, there is considerably less at the wholesale level.

The market for mobile telecommunications in Australia is dominated by the largest mobile network operators (**MNOs**). A common position taken by MNOs is that they are prepared to accept MVNO access, but only on their own terms. MNOs are set up as integrated operators and typically invest in their own networks with a view to offering retail services only; as a consequence they are reluctant wholesalers.

No mandate or incentive is provided to require MNOs to provide:

- wholesale access to MVNOs (let alone to do so at layer of access that allows for or will enable service-layer based competition across technology neutral access and applications).

Given the continuing development of mobile technology and ever increasing reliance on mobility in all aspects of business and life, it is simply unacceptable that the owners of mobile infrastructure continue to be immunized from competition by virtue of their incumbent position.

In light of the history of intervention in fixed markets, it is also perplexing that such a light touch approach has been taken to the regulation of mobile networks with only the most basic access service – mobile termination – having been declared.

As the economy develops, the need to ensure that it is not only infrastructure owners who are able to compete effectively at the service-based layer becomes more urgent. Unless steps are taken to ensure that appropriate wholesale access to mobile infrastructure is available, the Australian population will be deprived of the full benefit of technological advances in this space.

Regulated open access to mobile infrastructure will encourage new and stronger competition among MNOs, including allowing new, small MNOs to develop and compete. End-users will be better connected and have more choice in mobile services.

Commpete considers the declaration of a new service, that is, wholesale access to mobile networks, will promote the long-term interests of end-users of telecommunications services. Commpete envisions an obligation on MNOs to provide high quality wholesale access to the whole of their mobile networks on reasonable terms to any party which requires such access.

Such mandated access would need to be made available to both MVNOs and MNOs would need to provide sufficient functionality to enable wholesale customers to differentiate their product offerings and offer innovative solutions to their customers (i.e. “thick” MVNO services). Such access would need to be priced to ensure that MVNOs are able to compete vigorously in the retail market, while also providing a reasonable wholesale return to MNOs.

Commpete will submit a proposal to the ACCC to declare mobile services on this basis which will provide more detail of the proposed service declaration.

The domestic transmission capacity service should be re-declared

Commpete considers that the provision of transmission services remains critical in the modern telecommunications environment, and that access to these services remains a potential bottleneck.

Access to transmission services is particularly important in the evolving mobile and wireless telecommunications markets, where a trend towards independent (or quasi-independent) ownership of infrastructure assets, and the emergence of neutral hosting models creates potential opportunities for the development of greater competition. These opportunities will not develop if the traditionally dominant MNOs (particularly Telstra) are able to leverage control of their ubiquitous transmission network to limit the scope for potential competitive developments.

However, the existing service description and deregulation regime is overly complex and outdated. A simpler and a more robust approach is needed. In particular, the geographic areas should be redefined to reflect the transition from copper network exchange areas to nbn POI locations, taking account also of the location or potential location of new mobile infrastructure and small cells.

Transmission access to nbn POIs and actual or potential locations of new mobile infrastructure is particularly critical as access seekers require this service to connect from network points of presence (POPs) to nbn POIs and to the actual or potential locations of new mobile cell site. Without access to this transmission service, not only will retail service providers who do not possess the infrastructure to connect directly to nbn POIs not be able to provide services other than as resellers, but the development of innovative and competitive solutions in the delivery of new and competitive mobile infrastructure will also be made difficult or impossible.

Mobile networks are becoming more dense in urban areas in order to meet growing consumer demand. In addition, there is substantial demand for improved mobile network coverage in rural and regional areas. With the rapid development of neutral host models and technology which enhances the ability to share networks, there is an opportunity for these processes to lead to a more competitive mobile environment. However, if adequate transmission services to link these network elements together is not available, these opportunities for enhanced competition in the mobile space will be lost.

There is little commercial incentive for wholesale providers to provide transmission services to mobile cell site or nbn POIs and therefore, if these services are not regulated, vertically integrated providers will have every reason to increase prices or limit service offerings such that it will be impossible for smaller providers to compete in this space.

DTCS services to and from nbn POIs should be declared unless it is clear that there is a properly competitive wholesale market at that point. In addition, the Commission should ensure that declared transmission services are available to actual or potential new mobile cell sites unless it is clear that a vigorous, competitive wholesale market for such services already exists.

In addition, the experience of Commpete’s members has been that Telstra, for example, has sought to avoid the existing regime by making it commercially unattractive to acquire the declared services by way of various bundling strategies. Any new declaration should accordingly be framed to avoid the possibility of access providers evading their obligation to provide regulated access by bundling what would otherwise be declared services with other components (such as service management).

The wholesale ADSL service should be re-declared as it remains important for many end-users, with no comparable alternative

Commpete considers that wholesale ADSL should continue to be a declared service.

Although ADSL connections are declining, many end-users continue to rely on ADSL services as they may not have access to equivalent or better services. This is particularly the case in NBN fixed wireless and satellite areas. Figures from the ACCC's NBN Wholesale Market Indicators Report show that despite the migration from DSL to NBN services, there remained 128,709 DSL services as at the end of the March 2023 quarter.² Such end-users include those who live in regional and remote areas, those with no or poor mobile coverage and the elderly.

Notwithstanding improvements in mobile coverage and the emergence of Low Earth orbit satellites, such services are not a comparable alternative to ADSL for many end-users. LEOs are still in their infancy and, as noted by the ACCC, there are some price and quality differences when compared to the legacy fixed line services.³

Accordingly, Commpete considers that the wholesale ADSL service should be re-declared until such services can be migrated and end-users can access equivalent alternatives.

A number of the fixed line services are of limited ongoing relevance, but should be redeclared unless the ACCC confirms they are no longer in use in the industry

Commpete considers that ULL, LSS, WLR and LCS are legacy services of limited ongoing relevance given the deployment of the nbn network and related developments. However, prior to expiry of the existing declarations, the ACCC should determine the extent (if any) to which these services are still being utilised and appropriate transition arrangements should be put in place to the extent necessary.

The fixed originating access service (FOAS), fixed and mobile terminating access services (FTAS and MTAS) should be redeclared

Commpete considers that the FOAS remains relevant for the competitive provision of services such as 1300 free call and related services and should be redeclared. Commpete notes there is no mobile originating service declared and therefore this has not made the regulation of mobile services closely aligned with the regulation of fixed services to facilitate the provision of free call services to mobile customers.

The continuation of the declared termination services and associated mandated pricing is essential to ensure that network operators are able to interconnect their networks without the risk of dominant operators either refusing to supply interconnection services, or engaging in anti-competitive pricing strategies.

Interconnect-based termination access services for both the fixed and mobile networks services are significant as they ensure all operators are able to offer a service to complete a call originating on their network to an end user on any other network.

This is the essence of 'any-to-any' calling, which is an essential underpinning of a competitive telecommunications environment.

In the case of MTAS, Commpete considers that the ACCC should thoroughly investigate re-including SMS termination within MTAS. SMS remains particularly important in respect of vulnerable market segments such as low-income and elderly end-users who rely on person-to-person (P2P) SMS

² ACCC, *NBN Wholesale Market Indicators Report* (Report, 9 June 2023) accessible at <https://www.accc.gov.au/by-industry/telecommunications-and-internet/national-broadband-network-nbn-access-regulation/nbn-wholesale-market-indicators-report/march-quarter-2023-report>.

³ ACCC, *Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service* (Discussion paper, May 2023) at page 22.



messaging and business end-users who rely on application-to-person (**A2P**) SMS messaging to add significant value to their own customers.

While OTT services provide a limited alternative to conventional mobile voice services in some circumstances, Commpete considers that OTT messaging services are not sufficiently substitutable with SMS services, for the following reasons:

- OTT services are unable to provide true any-to-any connectivity, instead only allowing messages to be sent to other users on the same platform (who have the same application or are otherwise able to access the same service). This limits the ability of OTT messaging to substitute for SMS messaging in all circumstances, both for P2P and A2P messaging; and
- OTT services can only be accessed through a smartphone with a data connection, which involves such services having a high indirect cost (even where the direct cost of sending/receiving a message is zero). This particularly limits the take-up of OTT services among vulnerable groups of consumers, such as a low-income or elderly consumers.

Only conventional mobile termination can facilitate true 'any-to-any' connectivity. Accordingly, the ACCC should thoroughly investigate whether the removal of SMS has had a detrimental impact on the market for the provision of SMS services which plays a relevant role in the mobile services basket.

Commpete notes that the LCS services, a declared resale product, played an important role in facilitating greater competition in the fixed telecommunications market, supplementing the range of declared interconnect services.

As noted above, Commpete believes the ACCC should declare a mobile resale service which facilitates the provision of 'thick MVNO' services, in addition to MTAS, in order to facilitate a greater level of competition in the market for mobile services.

About Commpete

Commpete is an alliance for competition in digital communications representing non-dominant providers. Our members include specialised regional providers, mobile operators including MVNOs, datacentre, fibre owners and wholesalers servicing the 500+ small telco businesses located across metropolitan and regional Australia.

Commpete advocates open access regimes, the ability for new entrants to both enter and thrive and diversity in the industry of both large and small providers. We believe a dynamic wholesale market nationwide is important to the successful delivery of competition in retail markets particularly in infrastructure intensive industries with high barriers to entry.

Commpete would welcome the opportunity to discuss its submission with the ACCC to address any queries that may arise.

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Attachment A: Commpete response in relation to the domestic transmission capacity service, each of 7 fixed line services and mobile terminating access service

Item	Question	Domestic transmission capacity service	Unconditioned local loop service	Line sharing service	Wholesale line rental	Local carriage service	Fixed originating access service	Fixed terminating access service	Domestic mobile terminating access service	Wholesale Asymmetric Digital Subscriber Line
1.	Should the declaration of the service be extended, revoked, varied or allowed to expire ? Please provide reasons in support of your position, including how declaration does/doesn't promote the long-term interests of end-users.	The declaration should be extended and varied. The service description needs to be broadened and simplified. The current service description is too complex and unwieldy. In addition, Telstra has sought to avoid and manipulate the service declaration by bundling services together with additional 'managed' elements to avoid the service declaration and has implemented various exclusivity provisions to discourage take up of the declared service.	These services should be extended. While the significance of these service has been reduced with the advent of the NBN, Commpete considers the services continues to be relevant for some customers				This service should be extended	This service should be extended	Should be extended and varied to once again cover SMS. Fixed and mobile terminating services should be gradually merged and the pricing of mobile termination should be reduced to match the price of fixed termination as soon as possible. A mobile originating access service should be added.	This service should be redeclared, given it is still being used by vulnerable and elderly people. As noted by the ACCC, there are still consumers who continue to rely on analogue telephones and VoIP landlines delivered through ADSL, generally in regional or remote areas where there may be no or poor mobile coverage. Commpete considers that there are not perfect alternatives to these particular ADSL services at present which provide the same assurance of services. The availability and quality of LEOs is improving but such services are still in their infancy.
2.	What are the relevant markets applicable to the service? What are the relevant developments in those markets that we should consider in our decision on whether to declare the service?	The market for the supply of wholesale telecommunications services, as well as the downstream markets for the retail supply of telecommunications and related services to residential and commercial end users.								
3.	What is the state of competition in those relevant markets ? Does competition in those markets differ by geographic area (i.e. metro/regional/remote)? Would declaration promote competition in those markets?	Acquirers of telecommunications services are generally in a weak bargaining position relative to the suppliers of wholesale services who are the infrastructure owners (in particular Telstra and nbn Co, as well as Optus and TPG). In the case of Telstra, it is both a supplier of essential wholesale services and the dominant player in the retail market. As a result wholesale customers have little bargaining leverage and Telstra has little incentive to supply its wholesale customer (who are also retail competitors) on reasonable terms. Obviously this problem is particularly acute in relation to mobile services. In the absence of service declarations, wholesale customers are frequently subject to outright refusal to supply, significant restrictions on supply or price squeezes which restrict their ability to compete in retail markets. These problems are particularly acute in areas outside the major metropolitan areas where alternative wholesale suppliers are limited or non-existent.								
4.	If applicable, will declaration promote	For the reasons discussed above in relation to the state of competition, failure to extent the declarations (particularly in relation to the termination services) is likely to reduce any-to-any connectivity.								

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	any-to-any connectivity? Please provide reasons in support of your position.									
5.	Will declaration promote efficient use of, and investment in, infrastructure? Please provide reasons in support of your position.	<p>Yes, extending the declaration will result increase the level of competition in the wholesale market for telecommunications services (as compared to a counterfactual) and increase the ability of non-dominant market players to participate fully in the market. This will promote efficiency in investment and utilisation of infrastructure. Unless non-dominant players are able to get access to bottleneck services, they will have no incentive to invest in infrastructure.</p> <p>A good example is the regional mobile market. Non-dominant players have the expertise and resources to deploy regional mobile infrastructure, but a lack of regulated access to the dominant Telstra regional mobile network creates a disincentive to engage in this highly efficient investment, as an 'island' of regional coverage without reasonable access to the existing dominant regional network, is not commercially attractive.</p>								
6.	If the service continues to be declared, is the service description still appropriate? If not, what needs to change? And when should the declaration expire?	As noted above, the service description should be broadened and simplified.						Updates are required to incorporate newer protocols, such as SIP.	SMS should be re-included in the service description.	
7.	If the domestic transmission capacity service continues to be declared, is the competition assessment method still appropriate? If not, what needs to change?	The price set for the declared service is designed to provide a reasonable return on investment for the access provider. Accordingly there should be no detriment to the dominant provider (other than to prevent the extraction of monopoly rents) in simplifying and extending the scope of the service declaration.								
8.	If the mobile and fixed terminating access services continue to be declared services, should they be combined into a single service description? Please provide reasons for your position.							Yes, Commpete considers that the ACCC should work towards merging these services to support a more technology neutral environment and assessing the mandating of the same price for both and ensuring it is fit for purpose to support cloud based services.		

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9.	Does the separation between Telstra and Telstra InfraCo mitigate concerns that the infrastructure entity may operate in a manner that unfairly preferences the retail entity? Please provide reasons for your position.	In Commpete's observation this separation has not resulted in a more reasonable approach to the provision of wholesale services to other carriers. For example, Telstra remains a reluctant wholesaler. In relation to its mobile network it deliberately restricts both the geographic scope and functional capability of the wholesale service which it provides to wholesale customers. This makes it difficult for such wholesale customers to compete effectively with Telstra in downstream markets.								
10.	Stakeholders have previously raised questions about the future of the Universal Service Obligation. Does the introduction of the Universal Service Guarantee mitigate these concerns or is there still uncertainty? If there is still uncertainty, how does this impact the ACCC's inquiry into the declared services that underlie voice connections?	Commpete considers that steps should be taken to ensure that any provider who has the relevant capability should be accredited to provide USO capability to particular regions on a competitive basis, with USO funding distributed on the basis of customers served.								