



Submission on the Australian Competition and Consumer Commission public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service.

17 November 2023

Commpete wishes to provide a supplementary submission to the ACCC public inquiry into the declaration of the domestic mobile terminating access service.

Commpete notes that all 3 MNO's, Telstra, TPG and Optus, have based a large component of their justification for a higher termination rate for A2P SMS arguing that it will help prevent and reduce SCAM / SPAM SMS. There is no direct correlation and/or causation relating to higher termination rates and a reduction in SCAM / SPAM. As pointed out by Pivotel and their independent expert report these claims are largely unfounded and unsubstantiated.

A2P traffic is by its nature more managed and monitored than 'grey route traffic' such as SIM boxing and rouge international routes. It is these channels that should be closely managed by the MNO's rather than enforcing an artificially high rate for termination at levels that far exceed the cost of delivering the termination as previously determined by the ACCC in 2015.

Of most concern to Commpete, is the monopoly market power that the 3 MNO's have over terminating A2P SMS on their respective networks. Declaration exists to "promote the long-term interests of end-users of carriage services or of services provided by means of carriage services". As noted in Commpete's initial submission to the inquiry 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 messaging and business end-users who rely on application-to-person (A2P) SMS messaging to add significant value to their own customers.

Should the ACCC decide to not re-declare SMS, Commpete is extremely concerned that the MNO's will have *carte blanche* ability to set termination rates at whatever levels they like, earning excessive rents for the service that far exceeds the efficient cost, and forcing smaller competitors out of the market. There is no doubt in Commpete's mind that this will result in market failure where the incumbent MNOs are able to exercise their market power and monopoly positions to dictate terms and prices to the rest of the industry.

It is only through the threat of regulation and this pending declaration inquiry that the MNO's have been somewhat open to negotiating access. Even in this scenario, MNOs have been able to set rates at levels that far exceed cost engaging in anti-competitive pricing strategies. Absent regulation and should the ACCC decide not to re-declare SMS MTAS, there is no doubt this will have major ramifications for the A2P SMS market and competition more generally.

Commpete also takes exception to Telstra's 'willingness to pay' argument. Access to SMS termination is an essential requirement in order for the A2P market to exist. Absent regulation, MNO's can price this service at whatever levels they like as the MNO's have a monopoly over access to SMS termination on their networks.

Every submission is in agreement that A2P SMS has become an essential service delivering 2 Factor authentication, appointment and reservation reminders and other essential services and Commpete believes the ACCC to thoroughly consider re-declaring SMS MTAS to ensure a competitive and dynamic market going forward.

Commpete is willing to discuss this additional response with you further to address any queries that may arise