



Commpete response to ACCC on its draft report into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service

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(public version)

Commpete appreciates the opportunity to comment on the Australian Competition and Consumer Commission's (ACCC) draft report regarding the public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service (Draft Report).

Commpete supports and endorses all major findings in the Draft Report. ACCC's declarations greatly assist in contributing to a level playing field for all participants in the industry. In Commpete members experience, these declarations create certainty and are a crucial wholesale input that promotes competition in markets for telecommunications services improving value, flexibility and choice for end-users.

Mobile Terminating Access Service (MTAS) (Voice and A2P SMS termination)

Commpete wholeheartedly agrees with the ACCC's draft decision to extend the declaration of the mobile terminating access service (MTAS) for a further 5 years and to include A2P SMS in the MTAS service definition.

As recognised by ACCC in its draft report, mobile network operators (MNOs) "*continue to have exclusive access to end-users on their own networks and control the termination of voice calls to the mobile number being used by that end-user*"¹ and have "*exclusive control over the delivery of A2P SMS to their mobile subscribers*"².

We agree with this observation. There are indeed no relevant substitutes for voice termination on MNO's networks, and OTT services are not a close substitute for mobile-to-mobile calls currently.

There are also no effective substitutes for A2P SMS termination to subscribers on MNO's networks. SMS is the only ubiquitous messaging service, as opposed to OTT and in-app messaging which require a specific application to be downloaded, and depend on non-homogenous mobile operating systems (e.g., Android or iOS).

Businesses require A2P SMS termination to reach all their customers/clients at scale (irrespective of their mobile service provider or mobile operating system) for business-to-consumer and business-to-business use cases such as 2-factor authentication, appointment reminders and confirmations, fraud

¹ Draft Report, section 4.3.1, at page 40.

² Draft Report, section 5.3.1, at page 63.

prevention, etc. P2P is not a viable alternative for such communications at scale. SMS also remains particularly important in respect of vulnerable market segments such as low-income and elderly end-users, who rely on these messages maintain an open communication channel with their service providers (e.g., healthcare and various service industries).

The extension of the MTAS declaration, and the inclusion of A2P SMS in the MTAS service definition, is in the interest of end-users and promotes competition, achieves any-to-any connectivity, and encourages the economically efficient use of infrastructure. Otherwise, given the lack of effective substitutes for voice and A2P SMS termination to subscribers on the MNO's networks, the MNOs will have the ability and every incentive to increase mobile voice and A2P SMS termination rates, restrict access to their subscribers, and/or provide access on unreasonable terms. This would undermine competition in the wholesale and retail markets, ultimately leading to consumer detriment.

Scam Traffic

In the Draft Report, the ACCC also discussed the treatment of scam blocking obligations, and invited early feedback and engagement on the matter³. Commpete is strongly in support of stopping and disrupting scams on the Australian telecommunications network in a manner that does not compromise legitimate traffic, and welcomes this opportunity to provide early comments.

Concerning the **MTAS for voice**, Commpete agrees that the subsequent access determination inquiry process, following the ACCC's proposed extension and revision of the MTAS declaration, would be the appropriate juncture to consider the issue of the intersection of an access provider's standard access obligations and the telecommunication industry's scam blocking obligations. We urge the ACCC to rigorously examine this issue at that point, and consider appropriate safeguards in the access determination to avoid giving access providers a powerful blunt instrument to disrupt legitimate traffic from access seekers, and to ensure the underlying objective of achieving any-to-any connectivity is not compromised.

We would also highlight that such disruption of legitimate traffic is already occurring. Some MNOs have already (since early 2023) unilaterally refused to terminate, or inserted hurdles into the termination process for, calls that display a number belonging to a different network from the one the network the call is originating from (e.g., a call originating from a non-Telstra network, but displaying a Telstra number). Based on the discussion in the Draft Report on the treatment of scam blocking obligations, it is unclear how such unilateral action is consistent with the obligations under the existing MTAS determination. While the MNOs have claimed that these blunt-tool restrictions they have placed on call termination are in the name of scam prevention, they have not cited any evidence of how these have been or would be effective at reducing scam, nor have they sought to address the issue of such restrictions affecting legitimate calls. It also does not appear that the MNOs have comprehensively explored the scam identification and tracing processes contemplated in the *Industry Code C661:2022 Reducing Scam Calls and Scam SMS*, before resorting to these restrictions.

In this regard, having a call display a different number from the originating network is widely practised around the world and is referred to as "CLI (caller line identification) over stamping". CLI over stamping has a variety of legitimate uses – for example, in Australia, it helps businesses and non-profits communicate with their customers using legitimate phone numbers associated with their operations,

³ Draft Report, section 4.4.2, at page 55.

while ensuring the privacy and security of their staff by keeping their mobile and other personal numbers confidential. It is also explicitly recognised by the Australian Communications and Media Authority as being “*legal in Australia unless it is being done for unlawful or malicious purposes*”⁴.

The MNOs have offered to ‘whitelist’ numbers to bypass the restrictions, but Commpete questions why access seekers are being saddled with additional burdens to terminate legitimate calls on the MNOs’ networks. We are also concerned that:

- the whitelisting process could be used by access providers to gain insight into the access seeker’s customer base (e.g., requiring full disclosure of customer details before whitelisting the relevant numbers); and
- access providers can also start to charge for ‘whitelisting’ legitimate numbers – which would add additional cost burdens on access seekers and ultimately make access seekers’ services less competitive.

Concerning the **MTAS for A2P SMS**, Commpete also agrees with the ACCC’s findings that “*the ACCC does not consider raising A2P SMS prices is an appropriate way to deter scam traffic, as it also deters legitimate traffic. In other words, raising commercial prices is a blunt tool to deal with the scam issue as it is not targeted at scam traffic and can in fact result in overall inefficient use of infrastructure by suppressing legitimate use*”⁵. Further:

- There is no direct correlation and/or causation relating to higher termination rates and a reduction in scam or spam;
- The cost for engaging in a scam operation is likely to continue to fall as AI tools become better and cheaper, as pointed out by TPG Telecom.

Other MTAS matters

Commpete agrees and strongly backs the ACCC’s current and prior positions position of keeping termination of **internationally-originated voice calls** within the MTAS service description. Any exclusion of internationally-originated voice calls from the MTAS service description would result in differential regulation and prices, terms, and conditions for access seekers to access exactly the same infrastructure belonging to the MNOs as that for terminating domestically-originated voice calls. There is no justification for the different treatment of internationally-originated voice calls vs domestically-originated voice calls, as the MNOs would incur exactly the same network resources/costs for terminating both types of calls. The differential treatment of internationally-originated voice calls would also likely result in higher wholesale charges and also lead to a more complex regulatory regime, with higher implementation, compliance, and monitoring costs for industry (which will ultimately translate into higher costs for consumers).

Commpete is also supportive of updating the MTAS service description to recognise **alternative bearer technologies** such as Voice over WiFi, which removes the restriction to calls or SMS over MNO radio access networks.

⁴ See <https://www.acma.gov.au/calling-line-identification-cli-overstamping-and-spoofing>

⁵ Draft Report, section 5.3.3, at page 74.

Fixed originating access service (FOAS) and fixed terminating access services (FTAS)

As previously submitted Commpete considers that the FOAS and FTAS remain relevant for the competitive provision of services such as 1300, free call, and related services, and should be broadened to include reference to termination onto 13/1300 numbers as well as geographic numbers. We again recommend that updates are required to incorporate newer protocols, such as SIP.

Interconnect-based termination access services for both 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.

Conclusion

In summary, Commpete welcomes these reforms and re-declarations in the ACCC draft proposals and supports its findings to:

- Extend the declaration for resale fixed voice services for a further 5 years;
- Extend the declaration of wholesale ADSL for a further 5 years;
- Remove the declaration for ULL and LSS which expire on 30 June 2024;
- Extend FTAS declaration for a further 5 years;
- Extend MTAS declaration for a further 5 years and update the service definition to include A2P SMS and the nature of calls terminating on a mobile number; and
- Extend the declaration of DTCS for a further 5 years with relevant variations to the service description to reflect the current market and the inclusion of mobile base station backhaul and other respective updates that take into account the rollout and presence of the NBN.

Lastly, Commpete requests that the ACCC act swiftly in confirming and finalising the draft decisions in its final report, and commence and conclude the access determination process expeditiously. The continuation of the declared termination services and associated mandated pricing is essential to ensure that carriers and carriage service providers are able to interconnect their networks without the risk of dominant operators either refusing to supply interconnection services, or engaging in anti-competitive pricing or non-price strategies.

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

