



# **Review of the declaration of the Domestic Mobile Terminating Access Service**

Submission by the Australian Communications Consumer Action  
Network to the Australian Competition and Consumer Commission

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## **About ACCAN**

The Australian Communications Consumer Action Network (ACCAN) is the peak body that represents all consumers on communications issues including telecommunications, broadband and emerging new services. ACCAN provides a strong unified voice to industry and government as consumers work towards availability, accessibility and affordability of communications services for all Australians.

Consumers need ACCAN to promote better consumer protection outcomes ensuring speedy responses to complaints and issues. ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. As a peak body, ACCAN will activate its broad and diverse membership base to campaign to get a better deal for all communications consumers.

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# 1. Should mobile voice termination still be declared?

ACCAN believes an extension of the MTAS declaration is the best way of achieving the ACCC's objectives in promoting the long-term interests of end-users through:

- Promoting competition in markets for telecommunications services,
- Achieving any-to-any connectivity in relation to carriage services that involve communication between end-users; and
- Encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied.<sup>1</sup>

Recommendation 1: That the Mobile Terminating Access Service (MTAS) Declaration should be extended and updated to make reference to the *Competition and Consumer Act 2010*.

## 1.1. Promoting competition

ACCAN notes that there are a range of factors which impact on market competitiveness in the mobile market. The MTAS is one lever by which the ACCC can encourage competition. It would be disingenuous to argue that the MTAS declaration is the sole or even primary contributor to competition. The following is an analysis of the level of competitiveness in the market. It is meant as a snapshot of key issues ACCAN believes should be taken into account when considering the re-declaration of MTAS. It analyses factors such as market concentration, competition on pricing and advertising spending.

### Market concentration

The ACCC recognised in its discussion paper, that since the last declaration, there have been significant changes in the ownership and retail market shares of Australian Mobile Network Operators (MNOs).<sup>2</sup> The last declaration period is marked by greater concentration of market players, with Telstra steadily increasing its share. The most recent Australian Communications and Media Authority (ACMA) report put Telstra's mobile services market share at 46 per cent, up 4 percentage points on the previous year.<sup>3</sup> Optus remained the same at 31 per cent, while VHA's share slipped 4 percentage points to 23 per cent.<sup>4</sup>

In the current climate of increased market concentration, it becomes particularly important that the MTAS be re-declared. As the ACCC outlined in the 2009 declaration, competition is not best served

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<sup>1</sup> *Competition and Consumer Act 2010* s154AB(2)

<sup>2</sup> ACCC, 2013, 'Review of the declaration of the Domestic Mobile Terminating Access Service: Discussion Paper', May 2013, p.14

<sup>3</sup> ACMA, 2012, 'Communications Report 2011-12', p.22

<sup>4</sup> ACMA, 2012, 'Communications Report 2011-12', p.22

where operators control pricing to connect to their network.<sup>5</sup> The fact that operators maintain a monopoly over their networks means they can potentially set connection prices well above cost, thus staving off competition from smaller operators and new entrants.

On its own, increased market concentration does not mean there has been a softening in competition. Competition in mobile service pricing and other factors, such as advertising spending, are important indicators of the current level of competition in the market.

### Mobile to mobile pricing

As the ACCC notes, there is a real difficulty in measuring actual reductions in mobile telephony pricing over the last declaration period.<sup>6</sup> This is because of the differences in plan structures across the industry. The use of ‘included value’ and additional charges such as ‘flag fall’ all complicate price considerations. On top of this, there is a tendency for providers to fix nominal prices in their plans at certain price points (eg: \$29, \$49, \$69) and then over time change the inclusions within those plans.<sup>7</sup> Changes in these inclusions are not directly reflected in the ACCC’s mobile pricing data.

Without accurate data it becomes very difficult to assess the degree to which the long term interests of end users are being met. As such ACCAN believes the ACCC should review its metrics around measuring retail mobile pricing, in an attempt to get a better picture of year on year changes.

**Recommendation 2:** The ACCC review its metrics for measuring retail pricing in the mobile market to better assess the impact of MTAS regulation.

Keeping in mind these difficulties, the ACCC’s data indicates a decline of just 1per cent in the real average price for mobile services during 2011-2012.<sup>8</sup> This is despite a 3 cents per minute or 33 per cent drop in the MTAS fee over the same period.<sup>9</sup> As a result of such a large drop in wholesale pricing we would have expected to see increased competition on retail pricing and pass through to consumers. This lack of competition is confirmed in the latest Goldman Sachs pricing survey, which suggests competition in the Australian mobile market remains relatively benign.<sup>10</sup>

It is possible that it will take time for wholesale price reductions to work their way through to retail pricing. Without pre-empting the next phase of MTAS, in developing its pricing principles we would be encouraged to see ACCC modelling that pass through was in fact occurring. Failing this, we would like to see some explanation from industry as to why the price reduction is being absorbed.

### Fixed to mobile pricing

ACCAN is concerned there is little consideration of fixed to mobile pricing in the ACCC discussion paper. However, we are encouraged to see fixed to mobile prices have fallen, albeit from a very high

<sup>5</sup> ACCC, 2009, ‘Mobile Terminating Access Service – Final Report’, May 2009

<sup>6</sup> ACCC, 2013, ‘Review of the declaration of the Domestic Mobile Terminating Access Service: Discussion Paper’, May 2013

<sup>7</sup> ACCC, 2013, ‘Report 2 – Changes in prices paid for telecommunications services in Australia, 2011-12’, <http://www.accc.gov.au/>

<sup>8</sup> ACCC, 2013, ‘Report 2 – Changes in prices paid for telecommunications services in Australia, 2011-12’, pp. 91-94

<sup>9</sup> ACCC, 2011, ‘Final Access Determination No.7 of 2011 (MTAS)’, Date of decision: 7 December 2011

<sup>10</sup> Goldman Sachs, 2013, ‘Australia: Telecom Services’, June 19, 2013

base, over 10 per cent each year on residential lines for the last three years.<sup>11</sup> Historically there has been a large gap between Telstra's unit revenue from fixed to mobile calls and network unit costs.<sup>12</sup> The reductions in 2011-2012 represent a 10.4 per cent decrease in retail pricing on residential lines despite a 33 per cent decrease in the MTAS rate over the same period.<sup>13</sup> So while the reductions are welcome, they come off a high base and are not keeping pace with reductions at the wholesale level. ACCAN would like to see more attention given to the fixed to mobile market in future consultations, especially given the vital role fixed lines still play for many Australians, including older, rural and regional consumers.

According to research commissioned by the ACMA, 8 per cent of adult Australians have access to a fixed line but no mobile.<sup>14</sup> This propensity to rely solely on a fixed line increases with age, as 23 per cent of older Australians (65+) have a home phone and no mobile.<sup>15</sup> Fixed lines also remain important for those living in regional Australia, with 43 per cent nominating it as their main form of communication, compared with 29 per cent of those in capital cities.<sup>16</sup>

According to Telecommunications Industry Ombudsman (TIO) data, mobile network coverage continues to be the most common issue for mobile complaints.<sup>17</sup> In some situations poor mobile coverage means consumers are reliant on fixed lines to make and receive calls to mobiles. In most circumstances mobiles are a substitutable service for fixed lines, but this is by no means the universal experience.

Consumer preference also plays some part in fixed-line telephone use. Currently 22 per cent of the population prefer to use their fixed line over other services.<sup>18</sup> ACCAN believes these consumers are being punished with high fixed to mobile call rates for their preference.

Despite reductions, ACCAN maintains there are still relatively high rates for fixed to mobile calls and many end users are reliant on fixed lines. We would be encouraged to see greater modelling of the impact of MTAS on competitive retail pricing for fixed to mobile calls in future deliberations. In principle ACCAN believes renewing the MTAS declaration will be the best measure in serving the interests of older consumers and those with poor mobile coverage. However, we would like to see greater evidence from industry and the ACCC that all previous reductions in MTAS pricing have been fully passed through to end users.

**Recommendation 3:** The ACCC review historic price reductions on MTAS and pass through to fixed to mobile retail pricing.

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<sup>11</sup> ACCC, 2013, 'Report 2 – Changes in prices paid for telecommunications services in Australia, 2011-12', p.76

<sup>12</sup> Telstra, 2012, 'Telstra TEM Substantiation Report Quarter 1 – 2012/13', 14 December 2012

<sup>13</sup> ACCC, 2013, 'Report 2 – Changes in prices paid for telecommunications services in Australia, 2011-12', p.76

<sup>14</sup> ACMA, 2012, 'Communications Report 2011-12', p.24

<sup>15</sup> ACMA, 2012, 'Communications Report 2011-12', p.24

<sup>16</sup> ACMA, 2011, 'Numbering: Implications of research into consumer issues consultation paper 4', p. 74

<sup>17</sup> TIO, 2013, 'TIO talks', Telecommunications Industry Ombudsman No. 2, 2013, p.3

<sup>18</sup> ACMA, 2012, 'Communications Report 2011-12', p.19

## Advertising spending

One measure of competition within a market is to view the relative level of advertising spending being undertaken by competitors. These figures can give some indication of a provider's investment in attracting new customers to their range of offerings. The latest research on advertising spending shows it was down 19.1 per cent in the first five months of 2013 compared with 2012 levels.<sup>19</sup> While this might be partly explained away by seasonality, the Goldman Sachs report concludes that the current level of competition for customers is relatively benign.<sup>20</sup>

## Conclusion on competitiveness

Overall ACCAN believes the current snapshot of the market shows low levels of competition. Taking into account increased market concentration, limited competition in mobile pricing and low rates of advertising spending, it is in the best interests of consumers to maintain ACCC oversight of wholesale MTAS pricing.

## 1.2. Any-to-any connectivity

ACCAN concurs with the ACCC on the importance of MTAS in maintaining any-to-any connectivity. Mobile termination schemes are in use all over the world to ensure any-to-any connectivity is maintained. It is particularly important in the Australian market, where the disparity in market size between players has the potential to lead to disparity in bargaining power. Contained below is an assessment of substitutable services and the importance of the MTAS declaration in their development.

### Substitutes to MTAS: VoIP and OTT services

When coupled with appropriate pricing principles, re-declaring MTAS has the potential to make mobile call costs significantly cheaper for end users. A re-declaration will mean lower barriers to entry for new players and smaller operators. This is especially valuable to end users, where those new players develop technology which greatly reduces the cost of providing voice calls. Gmail, for example, allows users to make free or very cheap calls to local and international mobile networks when originated from an IP network.

ACCAN believes re-declaring MTAS at this stage may be important to the survival of new entrants operating IP to switch based network business models. Google and Microsoft offer these services through Gmail and Skype respectively. The heightened use of these services, indicated in the ACMA data, shows the importance consumers are placing on them as viable alternatives. Skype for example, on its most cost effective plan, offers calls to mobiles at a per minute rate of just \$0.014 above the current MTAS determined price of \$0.048.<sup>21</sup> Skype estimates these calls use just 1MB of data for one minute of calling time.<sup>22</sup>

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<sup>19</sup> Goldman Sachs, 2013, 'Australia: Telecom Services', June 19, 2013

<sup>20</sup> Goldman Sachs, 2013, 'Australia: Telecom Services', June 19, 2013

<sup>21</sup> Skype rates page, accessed 1/7/2013 <<http://www.skype.com/en/rates/>>

<sup>22</sup> Skype, 2013, 'How much data will Skype use on my mobile phone?' accessed 1/7/2013 <<https://support.skype.com/en/faq/FA10853/how-much-data-will-skype-use-on-my-mobile-phone>>

ACCAN acknowledges that the rise of substitutes to traditional mobile voice calls may eventually obviate the need for regulation to protect any-to-any connectivity. Voice over Internet Protocol (VoIP) and 'Over The Top' (OTT) services like Skype, Google Voice and 'Whatsapp' allow for voice calls in an almost barrier-free way. Mobile VoIP grew 133 per cent in 2011-12, to 616,000 users out of 24 million mobile subscribers.<sup>23</sup> As smartphone uptake increases so too will the use of these substitutes.

We note that now and in the foreseeable future, voice calls are likely to remain the dominant revenue source for mobile service providers.<sup>24</sup> OTT services are a potential threat to these revenues. As such, close attention needs to be paid to competition between traditional providers and these new entrants. Traditional providers have control over the data networks used by OTT services to connect with end users. In a similar fashion to the way MTAS regulates the bottleneck between networks, there is potentially a developing bottleneck in OTT services accessing data networks. At this stage ACCAN is unaware of any evidence that service providers are restricting access or bandwidth to OTT services. However, ACCAN believes it would be valuable to maintain a 'watching brief' over this potential bottleneck.

Despite the developments in OTT and VoIP technology, ACCAN maintains that due to limited uptake and their reliance on a robust data connection, they are not yet substitutable for traditional mobile voice calls. We believe in the current environment of continued disparity in market size, network monopolies and new entrants gaining prominence, any-to-any connectivity is best served by a re-declaration.

### 1.3. Efficient use and investment in infrastructure

Encouraging the economically efficient use of, and the economically efficient investment in, the infrastructure by which telecommunications services are supplied is another important goal of the MTAS declaration. ACCAN agrees with the ACCC's view that efficient use and investment is most likely to occur in circumstances where regulated prices are closely aligned with costs.<sup>25</sup> If these prices are passed through to consumers, the market can then direct investment decisions towards efficient outcomes.<sup>26</sup>

The most important infrastructure investment over the life of the next MTAS, if re-declared, will be the National Broadband Network (NBN) and the Long Term Evolution (LTE) network. Both technologies have the potential to offer higher quality voice calls at cheaper rates.<sup>27</sup>

The current focus of LTE in Australia has been to improve data services. Australian providers are currently yet to commit to Voice over LTE (VoLTE) or are in the testing phase of their VoLTE development.<sup>28</sup> This technology has already been rolled out on networks in the United States and

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<sup>23</sup> ACMA, 2012, 'Communications Report 2011-12', p. 21

<sup>24</sup> Qunhui, C., 2011, 'Evolution and development of VoLTE', *Huawei Communicate*, Sep 2011, Iss. 61, p.52

<sup>25</sup> ACCC, 2009, 'Mobile Terminating Access Service – An ACCC Final Report', May 2009, p.34

<sup>26</sup> ACCC, 2009, 'Mobile Terminating Access Service – An ACCC Final Report', May 2009, p.34

<sup>27</sup> ABC, 2012, 'Baby Boomers embrace the NBN for cheap, high-quality phone calls', 19/11/2012, accessed: <<http://www.abc.net.au/technology/articles/2012/11/19/3635997.htm>>; Qunhui, C., 2011, 'Evolution and development of VoLTE', *Huawei Communicate*, Sep 2011, Iss. 61

<sup>28</sup> Communications Day, 2013, 'Ericsson pegs VoLTE, other IP comms services to help operators 'monetise beyond telephony'', 11/06/2013



South Korea.<sup>29</sup> Research suggests that VoLTE may be up to four times more efficient in its frequency utilisation.<sup>30</sup> It also has the potential to offer faster call connection time and better call quality than traditional switch based networks.<sup>31</sup> ACCAN maintains that if there is a re-declaration, consideration of the appropriate pricing principles should have strong reference to investment in the potentially more efficient VoLTE.

### **Need to declare LTE networks?**

ACCAN understands that the declaration is currently technology neutral. If voice calls are eventually offered over the LTE network, then MTAS should apply. Given the potential for the LTE network to be used for voice calls, it stands to reason that it should be a declared network. Moving away from a technology neutral declaration could lead to a two tier system for voice calls. An undeclared network would be just as susceptible to the problems already outlined in this submission.

Given the importance of any-to-any connectivity and existing network monopolies the need for a further declaration remains as strong as ever. The technology neutral approach of MTAS is important to ensuring a two tier market for voice calls does not occur.

## **1.4. Should SMS be declared?**

ACCAN is unaware of any evidence that a lack of declaration for SMS has resulted in detriment to consumers. There are a number of well-developed and commonly used substitutes to SMS available to smartphone users. Services like iMessage, Whatsapp, and various social media apps offer essentially the same capability as SMS for free and only require the use of small amounts of data. At this time we do not believe SMS should be a declared service.

## **1.5. How long should an MTAS declaration apply?**

The new declaration should take into account the need for business to have certainty in investment. The last declaration lasted five years and ACCAN believes a similar duration is reasonable in the circumstances.

The next five years is a potentially crucial time for wholesale connection regulation. As the NBN and LTE are harnessed, barriers to market entry should decrease and there will be opportunities for new entrants. Ensuring these entrants have access to existing networks will be important in promoting sustainable competition in the market. It should also encourage innovation, as existing and new participants seek to make use of the expanded data capabilities.

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<sup>29</sup> Wireless Industry News, 2012, 'Which country will be first to provide Voice over LTE (VoLTE)', 9/8/2012, accessed 1/7/2013, <<http://www.wirelessindustrynews.org/news-aug-2012/3204-08092012-win-news.html>>

<sup>30</sup> Qunhui, C., 2011, 'Evolution and development of VoLTE', *Huawei Communicate*, Sep 2011, Iss. 61

<sup>31</sup> Qunhui, C., 2011, 'Evolution and development of VoLTE', *Huawei Communicate*, Sep 2011, Iss. 61