

The logo for Optus, consisting of the word "OPTUS" in a bold, teal, sans-serif font.

Submission in response to  
ACCC Draft Report

**Public inquiry into the  
declaration of the DTCS,  
FLS and domestic MTAS**

Public Version

February 2024

## Section 1. EXECUTIVE SUMMARY

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1. Optus welcomes the opportunity to provide feedback on the Australian Competition and Consumer Commission's (ACCC) *Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service* (the Draft Report).
2. The Draft Report proposes that:
  - (a) Existing resale fixed voice services (WLR and LCS) and Wholesale ADSL services be extended for a further five years. This will enable access seekers to continue to resell landline and provide a fixed broadband service without installing equipment in Telstra exchanges.
  - (b) The declaration of network access services (ULLS and LSS) should not be extended, given the considerable decline in the demand for ULLS and LSS services since the last declaration period.
  - (c) Existing fixed voice interconnection services (FOAS and FTAS) be extended for a further five years. There are no close substitutes for these services and interconnection services are particularly relevant to any-to-any connectivity.
  - (d) MTAS voice termination should remain declared as there remains no effective substitute for voice calls for which voice MTAS is an essential input.
3. Optus supports these proposals for the fixed line and voice interconnection services.
4. However, proposed changes to the MTAS service description, including the extension of MTAS to mass volume business SMS are without justification and fails to promote the long term interest of end users (LTIE). The proposed changes do not address any existing competition issue and, if introduced, may lead to unintended consequences. The service description should also retain the distinction that it applies to an end user "directly connected to the access provider's digital mobile network," or alternatively make clear make clear that MTAS is an agreement between carriers.
5. The Draft Report appears to rely on other regulatory or market instruments to ensure end users are not adversely impacted – for example, relying on scam blocking regulations or numbering regulations. It is not clear the extent to which the ACCC can rely on effective operations of other instruments to conclude MTAS promotes the LTIE.
6. Effective scam management requires a whole of eco-system approach which includes blocking technologies as well as addressing the underlying business model of scammers. Optus is concerned that the proposed changes are likely to undermine efforts across government and industry to make Australian consumers difficult targets for scammers. While the Draft Report is confident that blocking technology will be sufficient to protect Australians, it fails to recognise the importance of reducing the incentive for businesses to engage in scams.
7. The Draft Report further fails to appropriately consider the role of key messaging substitutes, such as over-the-top messaging and rich communications services, in its competition assessment for A2P messaging. The ACCC therefore defines too narrow a market for A2P SMS services. The Draft Report also fails to identify any market failure that would be addressed through declaration. The Draft Report further errs in the following ways:

- (a) The definition of a termination service cannot be dependent on aspects of the service that lie on the originating side of the point of interconnection. Providers of termination have no knowledge / visibility of this and therefore cannot supply a service on this basis.
  - (b) Incorrectly states that SMS can be originated from non-mobile networks. Such a statement confuses SMS technology with other messaging technologies. This error flows into the service description, which contains no statement outlining that network interconnection services are services between telecommunications networks, i.e. between carriers. The proposed MTAS definition risks transferring network interconnection into a retail service.
  - (c) Fails to identify any competition concerns in related downstream wholesale or retail messaging markets. Evidence supplied to the ACCC demonstrate that both markets are effectively competitive and further, if any one party decided to exercise market power, there is ample bypass opportunities.
8. Finally, the purpose of the LTIE test and declaration is to promote competition and protect Australian consumers. It is not the role of the ACCC to protect the business model of any one company in the telecommunications eco-system.

## Section 2. MTAS DECLARATION

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1. The Mobile Terminating Access Service (MTAS) has been a declared service since 1997. The ACCC most recently considered declaration of the MTAS in 2019 and found that declaration was in the LTIE, where:
  - (a) Declaration would promote competition in the retail markets for mobile services and fixed voice services by ensuring that wholesale mobile voice termination charges are aligned with the efficient cost of the service;
  - (b) Declaration would promote the achievement of any-to-any connectivity by ensuring that MNOs are not able to set unreasonable terms or conditions of access to mobile voice termination services; and
  - (c) Declaration, combined with cost-based pricing, would promote the efficient use of, and investment in telecommunications infrastructure.
2. The mobile industry continues to face change and commercial challenges, including rising network costs, market saturation, stagnant revenue growth, and increasing customer care and subscriber acquisition costs.
3. Despite these challenging conditions, mobile pricing has remained constant since the last declaration inquiry – yet there has been considerable expansion of and improvements to mobile networks over the same period.
4. Optus acknowledges while there has been a continued shift in demand for mobile voice to mobile data, which has had the further effect of lessening any retail market power that may arise due to the ability of an MNO to control termination of voice services over its network, the benefits to end users from continued declaration likely remains marginal.
5. Advertised prices for mobile phone services have also been shown to be mostly unchanged overall, for pre-paid and post-paid services. For example, since the last declaration the median in mobile advertised prices has remained relatively stable.<sup>1</sup> Unlimited call inclusions are now prevalent on almost all in-market plans, with data inclusion increasingly being used as the key point of differentiation to attract customers.
6. However, due to the long-standing regulation of the voice MTAS, the transition costs of removing declaration are most likely greater than the benefits of removal. As such, we support extending the MTAS declaration for mobile voice termination services for a further five years.
7. In summary, Optus supports:
  - (a) Continued declaration of MTAS voice interconnection as there remains no effective substitute for voice calls for which MTAS is an essential input.
  - (b) No declaration of the MTAS SMS termination service is required. There is sufficient competitive pressure from over-the-top (OTT) messaging services in the broader retail market for messaging services to restrict the ability of MNOs to exploit any monopoly power in the termination of SMS message on their network.
  - (c) There should be no change to the current MTAS service description. The existing service description is fit-for-purpose and supports a technology-neutral approach. In any case, the service description should retain the distinction that it applies to an

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<sup>1</sup> ACCC, Communications market report 2021-22, December 2022, pp.12-13

end user “directly connected to the access provider’s digital mobile network,” or that it is a service between carriers.

### **Continued MTAS declaration without change will promote the LTIE**

8. The declaration of the MTAS voice termination with no change to the current MTAS service description will promote the LTIE as it promotes of competition in markets for telecommunications services; achieves any-to-any connectivity; and promotes the efficient use of, and investment in, infrastructure.
9. These are further discussed below.

#### Promotion of competition

10. The ACCC considers that the continued declaration of MTAS voice termination is likely to promote competition in the retail mobile services and retail market for fixed services.
11. Optus considers these observations are generally relevant to all three markets related to the supply of MTAS. Optus generally agrees with the ACCC’s views that MTAS is an essential input for terminating voice calls on a mobile network and that there are no effective voice termination substitutes for MTAS, which would otherwise exert competitive pressure on providers of MTAS. However, we disagree that MNOs have the ability to increase voice termination rates.

#### Achieving any-to-any connectivity

12. Any-to-any connectivity is clearly the most relevant objective in considering the declaration of MTAS and the LTIE assessment. Terminating access is essential for a call to be completed on a mobile network operator’s network and MNOs have monopoly control over this voice terminating access.
13. Without terminating access a call cannot be connected to the end user recipient – whether the call originates from a mobile network or fixed network. Therefore, terminating access is critical to the achievement of any-to-any connectivity. Continued declaration of the MTAS will ensure that access is provided on reasonable terms and any-to-any connectivity continues to be achieved.
14. Despite a decline in recent years, Optus also notes that its mobile termination traffic is approaching similar levels to 2019. This suggests that access to voice MTAS continues to play an important role in providing any-to-any connectivity for end users.

#### Efficient use of, and investment in, infrastructure

15. There is broad consensus amongst submitters that the continued declaration of MTAS would continue to promote the efficient use of and investment in infrastructure.
16. The operation of the existing MTAS service declaration has been effective in ensuring the ongoing interconnection of domestic mobile voice calls. Mobile voice calls between mobile network operators have been, and will continue to be, the relevant carriage consideration in the supply of the MTAS voice service. In any case, the service description should retain the distinction that it applies to an end user “directly connected to the access provider’s digital mobile network.”
17. Absent this distinction, calls cannot in reality be connected. Any change to this service description also risks undermining the considerable expansion of and improvements to mobile networks since the last declaration inquiry.

18. As such, we support extending the existing MTAS declaration for mobile voice termination services for a further five years.

### **Declaration of SMS termination services will not promote the LTIE**

19. Optus considers that SMS termination is not a bottleneck service as there are sufficient competitive pressure from OTT messaging services in the broader retail market for messaging services to restrict the ability of MNOs to exploit any monopoly power in the termination of SMS message on their network.
20. In respect of the wholesale market for SMS termination services, there are effective substitutes available for SMS termination. Importantly the impact on the delivery of legitimate SMS messages to end users remain unchanged.
21. This is true for both P2P SMS and A2P SMS termination services.
22. We remain of the view that OTT services are substitutes for SMS, due to the simple need for data connectivity for both users. OTT messaging services do not have the same quality, practicality or reliability issues as OTT calls, nor are they a method for contacting triple zero (unlike voice calls). Therefore, as there are fewer factors to take into account when considering the substitutability for SMS, we consider that OTT services are substitutable for SMS and contribute to the diminishing need for SMS regulation.
23. The relevant market is not a market for SMS, but rather a market for messaging (both retail and wholesale). SMS is but one technology to deliver messages that competes with many other technologies (such as iMessaging for iOS and RCS messaging used by both Android and iOS). Messaging market also includes all other forms of text based messaging applications, such as Messenger and WhatsApp to name but a few.
24. It follows that the relevant LTIE considerations include:
- (a) The promotion of competition in markets for telecommunications services;
  - (b) Achieving any-to-any connectivity; and
  - (c) The efficient use of, and investment in, infrastructure.
25. These are further discussed below.

### **Promotion of competition**

26. The ACCC examined in 2019 the need for declaration in regards to both P2P and A2P SMS services and concluded that:
- Unlike OTT voice services, there are few limitations to substitution between P2P SMS and OTT messaging. Therefore, in the absence of declaration, there is less incentive for MNOs to exercise their market power to deny supplying SMS termination on reasonable terms, or to set the price of access to inefficiently high levels. This also means that the removal of declaration is unlikely to materially affect the state of competition in the provision of A2P SMS services for which SMS termination serves as a possible input. <sup>2</sup>
27. This view has not changed since the last declaration inquiry. There is no evidence of market failure which would support the case for the regulation of SMS to be reintroduced

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<sup>2</sup> ACCC, Domestic Mobile Terminating Access Service Declaration Inquiry, Final Report, June 2019, p.2

in the Australian market. OTT services do not require the provision of SMS termination services. MNOs, therefore, are unable to exploit any monopoly power they may have in the termination of SMS messages on their mobile networks.

28. Importantly, deregulation has provided MNOs discretion in differentiating between personal SMS (P2P) and business application messages (A2P). The ability to differentiate between these services has enabled MNOs to target the provision of scam SMS and to challenge the business model of scammers – while ensuring that legitimate messages are not impacted and that consumers are protected. Addressing this issue is a key aspect of industry’s response to illegal scam traffic – an objective supported by current government policy. It is not clear the extent to which the draft decision is consistent with government policy or the legislative criteria.
29. First, there has been no detriment in any related market – consumer or corporate. The retail market continues to see unlimited SMS inclusions in all retail mobile products. In response to competition from data-based messaging services provided by OTT companies, MNOs have had to offer unlimited SMS in their retail services. Optus also notes that the ACCC has not undertaken analysis as to the impact of deregulation in related downstream corporate messaging markets; nor has any attempt been made to assess the impact of the draft decision on the downstream retail corporate messaging market. This issue is discussed in more detail below.
30. Second, deregulation has enabled material benefits in related markets. A key industry improvement has been the take up and deployment of technology to minimise scam traffic that have risen in recent years. In particular, MNOs have been proactive in their attempts to minimise scam activity occurring on their own networks. These are largely operator-led initiatives offered to their own customer base, and have increasingly also supported government policy to combat spam and scam activity.
31. Finally, Optus also addresses the distinction between P2P SMS and A2P SMS services.

#### Consideration of P2P SMS and A2P SMS as separate service types

32. The ACCC considers SMS termination services to comprise two types of SMS: P2P SMS and A2P SMS. In the case of A2P SMS, these SMS are sent using an online application and will generally be associated with an asymmetric flow of SMS interconnection traffic between the originating network and the MNO to which the end user (A2P SMS recipient) may be connected.

As P2P SMS are SMS sent between mobile subscribers’ mobile devices, it is generally the case that the originating network is also a mobile network. On the other hand, as A2P SMS do not originate from a mobile subscriber, the originating network need not be a mobile network operator, as long as they have the necessary interconnection arrangements with the terminating mobile network operator.<sup>3</sup>

33. First it is necessary to correct an error in the above statement by the ACCC. The ACCC claims the originating network does not need to be an MNO to send an A2P SMS – as long as they have an interconnection arrangement in place. Both statements are incorrect. Only MNOs can originate and terminate an SMS. SMS can only be created and sent on an SMSC that is part of a mobile network. Second, only networks (carriers) can obtain and supply interconnection arrangements. Only arrangements that involve

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<sup>3</sup> 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, p.56

the connection of two different carriers are called interconnection agreements. All other types are forms of wholesale or retail service agreements.

34. Optus is concerned that many positions put in the draft decision may come from an incorrect knowledge of how SMS are sent and how networks interconnect and provide services to non-networks. We welcome further discussion with the ACCC on this.
35. Although the actual messages that recipients receive to their devices may appear no different, there are differences in the delivery mechanism to cater for the high-volume nature of A2P traffic. Also called business SMS or enterprise SMS, A2P messages are generally high-volume automated messages sent through a communication platform for informational and transactional purposes. Companies that provide such communications platforms have agreements with MNOs to utilise their SMSC to send messages.
36. A key distinction between P2P and A2P is therefore the difference in the flow of SMS interconnection traffic types. Because P2P SMS are generally direct messages sent between two parties, there is a high likelihood of return messages (e.g. replies) sent, which would result in a more balanced SMS interconnection distribution. In contrast, the nature of A2P SMS will be significantly asymmetric given the nature of the messages being sent and the one-way communication flows. In some cases, there may also be no direct path for return messages.
37. In A2P, messages are often sent from an Alphanumeric Sender ID (also referred to as alphanag) to take advantage of the scalability and efficiency that this provides. This means that in A2P the same message can be sent to a very high number of people simultaneously. This in turn may require mobile networks to have adequate capacity rules in place to enable the high volume communication flows, both within their own networks as well as with other mobile networks.
38. A key development since the last declaration has also been the ability of MNOs to distinguish A2P SMS from P2P SMS termination. This is a relatively recent development that has been introduced, facilitated by upgrades to legacy mobile and SMS infrastructure in the network to enable SMPP interconnection, including between MNOs, more broadly. **[CiC]**
39. **[CiC]**
40. **[CiC]**
41. This allows both MNOs and their downstream customers (such as SMS aggregators or wholesale customers) to better utilise and make more efficient use of the mobile network infrastructure. P2P messages are typically delivered between two distinct mobile users on SIM-driven devices where both the A-party and B-party are connected to a carrier's network for the carriage of the SMS and are interchangeable in any exchange. P2P SMS also should not be confused with OTT messaging which instead relies on carriage of the message via data-only channel. In contrast, A2P messages are application driven where the A-party may send to multiple B-party end users, using the SMSC of a mobile carrier, akin to a broadcast message. The application driven nature may also mean a single SMS may be sent, e.g. issuing a one-time passcode (OTP), but the message is still initiated from an application or online platform, hence will still be considered an A2P message.
42. As such, A2P messaging can offer businesses and other organisations the ability to automate text messaging for things like reminders, text alerts, text-based sales offer, amongst other use cases. Importantly, by ensuring A2P messages can be appropriately identified upfront and managed to ensure successful delivery to end user/handset customers, this is a value-added functionality that businesses seek and may choose



over other alternatives in the A2P retail market, including other methods of communicating with their customers.

43. For example, Sender ID is a form of short code that can be used to allow businesses to send SMS to their customers from a recognisable brand name rather than an unknown number. However A2P can also use a ten-digit long number to both send and receive SMS. The ability to send bulk messages also needs to be supported by appropriate network capacity to support this capability, e.g. the network needs to be able to support bulk messaging to ensure that such message can be successfully delivered.
44. Put simply, messages which do not originate from a mobile device with a SIM card are referred to as A2P messages.

#### *The downstream market for A2P SMS is competitive*

45. There is no evidence of market failure which results in the loss of consumer welfare, that would warrant the need to regulate SMS termination. MNOs cannot set unreasonable terms of access, as an end user could bypass SMS and use another technology to deliver messages.
46. The market for SMS termination, including A2P SMS, is highly competitive at both the retail and wholesale levels. This can be evidenced by the presence of numerous suppliers of such services, including A2P SMS solutions. The ACCC also considers that A2P SMS has become an increasingly prevalent form of communications. In Australia, volumes of A2P SMS have increased from 9.2 billion in 2019 to 13.9 billion in 2023 and is expected to increase to 16.6 billion in 2027.<sup>4</sup> The same report cited by the ACCC also refers to A2P revenues being \$475 million in 2019, increasing to \$540 million in 2023 before an expected decrease to \$516 million in 2027<sup>5</sup> – which would infer a reduction in the effective unit cost of retail A2P messages over time.
47. Competition in the A2P market remains strong.<sup>6</sup> **[CiC]**  
**[CiC]**
48. Optus submits that the retail prices for A2P SMS have remained relatively constant in recent years. In turn, wholesale prices are constrained by retail A2P competition. **[CiC]**
49. The ACCC noted in 2019 that it was difficult to conclude that retail prices for A2P SMS had significantly changed during the period of declaration. For example, it noted that “In 2014, we surveyed 28 A2P SMS service providers and, depending on volume, retail prices ranged from 4 cents to 18 cents per SMS. We compared the same 28 A2P SMS service providers in 2019, and found that prices now range from 3.7 cents to 22 cents per SMS.”<sup>7</sup> **[CiC]**
50. Pivotel in their submissions also noted the role of grey route SMS being used by some aggregators or A2P service providers as a way to bring their costs down.<sup>8</sup> It follows that the use of a blended rate comprised of a mix of white and grey route SMS traffic should not be considered on equivalent terms. Optus notes that grey route SMS traffic is not a

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<sup>4</sup> 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, p.48

<sup>5</sup> 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, p.48

<sup>6</sup> ACCC, , Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.70

<sup>7</sup> ACCC, Domestic Mobile Terminating Access Service Declaration Inquiry, Final Report, June 2019, p.32

<sup>8</sup> Pivotel, Submission on the public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, July 2023, p.34

legitimate SMS service and should not be considered to be substitutable to a legitimate A2P service.

51. The ACCC similarly notes that “So far, the wholesale and retail markets relevant to this service do not appear to have materially changed since SMS termination was removed from MTAS in 2019. However, evidence suggests that commercially negotiated prices for terminating A2P SMS are increasing.”<sup>9</sup> A change in commercial pricing is however not necessarily evidence of market failure – especially where the ACCC pricing intervention was so extreme.
52. Optus considers that the ACCC’s concern “that sustained increases in A2P SMS termination rates and any subsequent increase in wholesale A2P SMS prices will ultimately result in increased retail A2P SMS prices, due to the lack of close substitutes presently”<sup>10</sup> is based only on the observation that commercial arrangements of A2P termination have taken a significant period of time to be negotiated and implemented. However, it is our experience that the protracted nature of commercial negotiations and implementation is a feature of normal market behaviour. **[CiC]** Ongoing commercial discussions are an indication of an effectively competitive market. Little or no negotiation would be an indicator of the use of market power. The ACCC’s concern does not seem consistent with how an effectively competitive market operates.
53. We similarly acknowledge the ACCC’s view that “Similar to mobile voice termination service and P2P SMS termination service, there is no substitute for the provision of A2P SMS termination service on each mobile network operator’s network.”<sup>11</sup> However, we also note that MNOs do not have any incentive to deny access to these termination services for those that are able to acquire them. It is in the interest of all parties that any-to-any connectivity can be achieved. The ACCC also fails to note that the existence of A2P aggregators limits the ability of MNOs to exercise this power (if it is present). That is, any originating MNO can bypass interconnection by utilising a directly connected aggregator. Optus is concerned that the ACCC has not paid sufficient attention to the operation of the messaging market.
54. Importantly, all parties that are able to acquire SMS termination from MNOs have existing commercial agreements. Any change to the terms and conditions of these agreements require agreement of both the parties. Optus does not believe that it is possible for MNOs to unilaterally change terms and conditions in interconnection agreements.
55. For all other wholesale and retail service agreements, parties may acquire SMS services (P2P and/or A2P) through commercial agreement. Price terms are set through commercial negotiations. Similar to interconnection agreements, any change to the terms and conditions of these agreements require the agreement of both the parties.
56. The ACCC’s Discussion Paper similarly highlighted that “Preliminary inquiries by the ACCC have found that at the retail level, prices for application-to-person SMS appear to have remained relatively stable following deregulation. This may indicate that mobile network operators have been unwilling or unable to leverage their monopoly over

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<sup>9</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.7

<sup>10</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.70

<sup>11</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.69

wholesale termination of SMS on their respective networks to earn rents in excess of the efficient cost of providing SMS termination.”<sup>12</sup>

57. Despite no evidence to show market failure, the Draft Report notes that:

Whether the mobile network operators have the ability to continue to raise A2P SMS termination rates, and in turn wholesale A2P SMS prices, would depend on whether there are close substitutes at the retail level that would constrain their ability to exercise market power at the wholesale level.<sup>13</sup>

58. It is evident from the range of retail A2P rates that competition at the retail level is continuing to constrain the prices set at the wholesale level. We similarly understand there is currently no differential rates for on-net and off-net A2P SMS. It follows that statements, such as, “Without competition from off-net services, on-net prices will likely go up resulting in higher costs for SMS aggregators and A2P SMS providers and potentially deterring further entry into the downstream markets”<sup>14</sup> are not based on facts and remains highly speculative.

59. Furthermore, we have concerns with the observation that:

In a future with declaration, the ACCC’s preliminary view is that competition in the wholesale A2P SMS market is likely to be enhanced. Declaration would require the mobile network operators to provide A2P SMS termination on terms set by the ACCC, and this restricts the mobile network operators’ ability to exercise market power in the provision of A2P SMS termination services. This would likely enhance the ability of operators that could access A2P SMS termination services to compete with the mobile network operators in providing off-net services at the wholesale level. It would also likely incentivise the mobile network operators to compete with each other in the wholesale markets. Increased competition at the wholesale level following declaration would be more conducive to creating a more competitive retail A2P SMS market with increased choice of providers and lower prices.<sup>15</sup>

60. It appears that the conclusion is backwards-looking noting that a more competitive retail A2P SMS market would benefit from increased competition at the wholesale level, which would in turn be achieved by declaration of the A2P SMS market. This however does not recognise that since SMS declaration was removed, there has been no adverse change to the downstream retail A2P SMS market – prices have not significantly increased and there are many retailers operating in the market.

61. Because SMS is not regulated, MNOs already compete with each other in the wholesale market, and in which wholesale prices are constrained by retail A2P competition. There continue to be numerous retail A2P providers, of which the ACCC has acknowledged the presence of at least 35 retail A2P providers, yet it does not consider this representative of a competitive market.

62. Optus submits the ACCC does not have sufficient evidence to conclude that the market is not effectively competitive.

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<sup>12</sup> 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, p.48

<sup>13</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.70

<sup>14</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.70

<sup>15</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.71

### *Substitutes for A2P SMS termination services*

63. There are many other technology solutions to deliver marketing material other than SMS A2P messages. The ACCC considered in 2019 that “there are alternatives to A2P SMS that end users can use to communicate with their customers, including but not limited to an OTT messaging service. For example, emails, OTT business messaging services such as WhatsApp for business, in-app chat platforms or in-app push notifications, all provide similar outcomes as A2P SMS, which is essentially an ability to communicate with a customer.”<sup>16</sup> These continue to be available today.
64. Similar to P2P SMS, OTT services are substitutes for SMS and constrain SMS price. OTT messages already and will increasingly dwarf SMS rates of use.
65. There are also other technology developments that can also offer innovative alternatives to A2P messaging. For example, Rich Communication Services (RCS) is a messaging technology evolution that is effectively an OTT service that relies on data connectivity. Notably, RCS will offer enhanced features and functionality that will not only provide similar outcomes as A2P SMS but also other messaging and voice services more broadly. RCS is supported by Android and Apple has just announced that it will introduce RCS into the iOS ecosystem.
66. There are also other innovative alternatives such as flash calling and silent authentication that may directly compete with one of the major use cases of A2P messaging, e.g. issue of OTP for authentication processes. While this is currently not prevalent in the Australian market, they are considered and used elsewhere as alternatives for A2P.
67. Examples of other contributors in the A2P market, such as grey traffic, should also be considered with care. While they may represent traits similar to A2P messages, these are not legitimate SMS services for the purposes of assessing the LTIE criteria. As such, grey route may be a path chosen by bad actors as a way to send A2P messages and bypass legitimate routes. This should not be supported.
68. These are further discussed below.

### *Presence of grey route traffic is overstated and difficult to substantiate.*

69. Proponents in support for the re-declaration of SMS terminations services appear to overstate the presence of grey route traffic as a substitute for A2P SMS traffic.
70. For example, Pivotel claims that it “does not consider that there are viable substitutes for A2P messages”<sup>17</sup> yet focuses on the presence of grey route SMS traffic as a significant contributor of messages in the A2P market. For example, “Pivotel considers that much of the scam traffic comes via grey routes (i.e. routes which avoid incurring a termination fee such as via international bypass and SIM-boxing) and is precisely because of the cost of sending traffic via legitimate routes. MNOs such as Pivotel have anti-scam filtering products in place that is designed to identify and block scam SMS carried over its network. Grey route SMS traffic can bypass this technology.”<sup>18</sup>
71. Pivotel also argues that “Grey route SMS traffic also increases inefficiency for a number of other reasons. Firstly, not all legitimate end users will be aware that their messages are being sent via grey routes, some aggregators or A2P service providers send SMS

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<sup>16</sup> ACCC, Domestic Mobile Terminating Access Service Declaration Inquiry, Final Report, June 2019, p.26

<sup>17</sup> Pivotel supplementary submission, September 2023, para 1.10

<sup>18</sup> Pivotel submission, July 2023, para 7.77

messages using a blended rate that comprises a mix of white and grey route traffic in order to bring their costs down. Secondly, grey route messages are more likely to be of poor quality or fail to be delivered. This is because grey route messages are often subject to delay, may not support delivery reporting or the use of sender IDs and do not support the use of all characters.”<sup>19</sup>

72. Pivotal therefore concludes that “The prevalence of grey route traffic is likely to increase further in a future without declaration as the cost of termination via legitimate routes becomes prohibitive.”<sup>20</sup>
73. The discussion on grey routes however remains mute on the fact that it is not a legitimate service, as it is not equivalent to a traditional SMS service. There is no requirement to terminate a SMS that is not delivered via legitimate routes. Where grey routes are provided in breach of the terms and conditions of the SMS service, they can be blocked and services terminated.
74. It is not clear to Optus how the declaration of SMS termination will impact ‘grey route’, when such routes are not permitted and are often illegal (such as SIM-boxing). Pivotal’s argument appears to state that grey routes are an effective substitute for their traffic. In so far as grey routes should be considered substitutes, this would actually argue against the regulation of SMS termination.
75. The prevalence of OTT services, including ability to send voice, messages and increasingly other forms of communications media, will also have a significant impact on the continued reliance of grey routes. OTT services are delivered over data channels and as demand for OTT increases, the substitutability between the use of OTT for voice/messaging and traditional voice/SMS will continue to be challenged.

#### *Future growth in SMS A2P substitutes*

76. Rich Communication Service (RCS) is expected to increase over the next regulatory period. RCS is a messaging technology evolution that is effectively an OTT service that relies on data connectivity. It is already in operation today in RCS-enabled handsets, e.g. Android devices can already send RCS messages from one Android device to another Android device and are treated as normal data traffic flows. Where the recipient is either not an Android device or may be outside data coverage areas, then the message may be delivered as a traditional SMS as it goes through the network SMS infrastructure to reach the relevant B-party.
77. This will be further propelled by the recent announcement by Apple that it will begin to implement RCS in the near future.

In a surprise move, technology giant Apple says 2024 will see it adopt the RCS messaging standard that aims to eventually replace SMS, allowing for improved messaging between smartphones running different operating systems, such as Google’s Android.<sup>21</sup>

78. RCS use case is local market dependent but will continue to increase as the deployment and interoperability of RCS between the two major handset operating systems becomes

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<sup>19</sup> Pivotal submission, July 2023, para 7.83

<sup>20</sup> Pivotal supplementary submission, September 2023, para 1.3

<sup>21</sup> See: ABC News, “Apple announces surprise adoption of RCS messaging, ‘the new SMS’ Android-maker Google spent years pushing for,” 17 November 2023, <https://www.abc.net.au/news/2023-11-17/apple-rcs-adoption-2024-messaging-android-google-sms/103117468> [accessed 21/11/23]

entrenched. RCS also offers additional functionality to SMS, in that it extends beyond just the ability to send messages within the defined construct of a traditional SMS.

79. The ACCC is aware of this and notes that “Importantly, RCS allows messages to be sent to mobile numbers, rather than requiring users to have the same app. The messages are carried over the internet and therefore do not require termination services.”<sup>22</sup> RCS only requires the end user to have an active data connection such as data on a mobile carriage service, and as such may also increasingly become effective substitutes for all mobile voice and messaging services in the long term.
80. There are also other technology developments that can also offer innovative alternatives to A2P messaging. As discussed above, automated text-based messaging for use cases such as OTP, may be substitutable with the introduction of flash calling and silent number verification services. These are potential authentication solutions that, rightly or wrongly in the case of flash calling, can offer a direct substitute for A2P use cases such as OTP, by allowing for a way of authenticating a mobile phone number without the mobile user having to take any action.
81. For example, flash call verification may rely on the use of a near-instant dropped call that is automatically placed to a mobile number. This is done using APIs and replaces the need to manually enter a code that is sent via an A2P SMS. By default, there is no MTAS for the call as it is not answered, and it is simply recorded as a missed call in the phone’s log.
82. These are all significant developments and will likely impact on the A2P messaging market in the short term. The most immediate impact will likely be the development of the RCS ecosystem, particularly with the introduction of Apple RCS later this year. **[CiC]**

#### Any-to-any connectivity

83. As noted by the ACCC, “While A2P SMS termination service is technically an interconnection service, it is not used to enable end-users on two networks to communicate with each other using SMS. As such, the nature of the service is different to P2P SMS termination.”<sup>23</sup>
84. For this reason, the ACCC’s preliminary view is that any-to-any connectivity is not relevant to the declaration of A2P SMS termination services.<sup>24</sup>

#### Efficient use of, and investment in, infrastructure

85. There has been significant investment made to mobile interconnection infrastructure since the last declaration inquiry. This has largely been to facilitate the transition from SS7 based interconnection to SMPP interconnection. SS7 is legacy technology that is being phased out, and will likely be obsolete in line with the completion of 3G shutdown by all three MNOs.
86. The move to SMPP interconnection has allowed MNOs to offer enhanced features, including improved ability to monitor and block spam SMS activity by appropriately directing different traffic types. In the case of SMS termination, the ability to differentiate

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<sup>22</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.66

<sup>23</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.72

<sup>24</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.72

between P2P and A2P traffic will allow for MNOs to proactively monitor SMS volumes and to more readily identify potential instances of spam and scam SMS activity.

87. The Draft Report further notes:

The ACCC's preliminary view is that declaration of A2P SMS termination services is likely to promote the economically efficient use of and investment in infrastructure. In this case, given the multiple layers of the supply chain associated with A2P SMS services, declaration of A2P SMS termination may also provide more certainty to downstream market participants that essential inputs, the A2P SMS termination services, will be supplied on regulated terms. The ACCC's preliminary view is that this additional certainty will facilitate increased confidence to invest in infrastructure and innovation.<sup>25</sup>

88. Optus submits that it is not clear that the multiple layers of the supply chain associated with A2P SMS is appropriately characterised in this context. A2P SMS termination is a carrier-only concept, and can only be offered in form of a carrier-to-carrier agreement (ie. interconnection agreement). All other A2P SMS services in the A2P supply chain are subject to other commercial wholesale or retail service agreements.

89. While the A2P termination rate is an essential input, this remains highly constrained by the services offered at the retail level. The wholesale level is similarly constrained by services offered in the retail level. Given the competitive nature of the retail A2P market, it is not clear that MNOs will have any incentive to set A2P termination rates at levels which would upset the current market balance.

90. Furthermore, given the future of technology innovations and substitutes likely to proliferate in the retail SMS market more broadly over the next 2-3 years, such as RCS and other OTT-based solutions, it is clear that the traditional SMS market will continue to be challenged.

91. It is also not clear how the draft decision will result in increased confidence to invest in infrastructure and innovation when the decisions appear to be in reaction to attempts to innovate and invest in anti-scam technologies and business models. Introducing regulation to stymie innovation is unlikely to encourage further innovation.

### **Changes to the current MTAS service description are not warranted**

92. The declaration of the MTAS voice termination with no change to the current MTAS service description will promote the long term interest of end users.

93. Optus considers the current voice service description is fit-for-purpose and should be retained. Optus supports a technology-neutral approach – the purpose of the MTAS service is to allow a voice call to be terminated to an end user connected to a mobile network. The only difference between mobile and fixed termination relates to the additional voice-related access network costs associated with mobile networks.

94. Termination services over a non-mobile network are not, and cannot be, mobile termination services. MTAS cannot be provided over a non-mobile access network.

95. The provision of the MTAS service is a carrier-to-carrier arrangement. In any case, the service description should retain the distinction that it applies to an end user “directly

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<sup>25</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.73

connected to the access provider's digital mobile network." This is important to ensure the ongoing certainty and continuity in the operation of the existing MTAS.

96. We further discuss the proposed service description below.

#### *Proposed changes to the service description*

97. The Draft Report proposes to vary the MTAS service description to facilitate two distinct changes – applying MTAS at a mobile number level *and* expanding the service description for the inclusion of SMS A2P termination services.

98. Optus does not support the proposed variation for the following reasons:

- (a) Reference to a digital mobile network already supports a technology-neutral approach for the provision of mobile termination services. The purpose of the MTAS service is to allow a voice call to be terminated to an end user connected to a mobile network.
- (b) Reference to termination on a mobile number should remain linked to a digital mobile network. A mobile number, which can be issued to any CSP, in and of itself is not a digital mobile service unless it is used in conjunction with mobile carriage service (i.e. the mobile number holder has a carrier interconnection agreement in place that allows for the number to be directly connected to the access provider's digital mobile network).
- (c) Carriage of mobile voice calls between mobile networks is dependent on an active interconnection agreement between mobile carriers. While MNOs may maintain exclusive access to subscribers on its mobile network, all domestic mobile users are connected to a primary mobile network in some form to use their service.

99. We consider the existing service description to be fit-for-purpose and should not be varied. We also express concerns on the potential unintended consequences that may arise from the proposed changes.

#### *Reference to a digital mobile network should be retained*

100. Optus considers that the existing MTAS service description is fit-for-purpose and supports a technology-neutral approach – the purpose of the MTAS service is to allow a voice call to be terminated to an end user connected to a mobile network. While not regulated, the same principle applies for the provision of SMS termination.

101. We acknowledge the ACCC's observations that:

Currently, the MTAS service description applies only to calls terminating on a digital mobile network. However, mobile network operators routinely carry calls to their end-users via WiFi networks and in the future, it is likely that other networks such as satellite will be used.<sup>26</sup>

102. However, it is also important to note that even if calls/messages are carried in part through other networks, the termination of the service remains the same – that is, the call/message is terminated to an end user connected to a mobile network.

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<sup>26</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, pp.5-6



103. It follows that there is no reason to remove the existing distinction that it applies to an end user “directly connected to the access provider’s digital mobile network.”

*Reliance on reference to mobile numbers*

104. The allocation of mobile numbers is governed by the Numbering Plan, but in practice is managed by a commercial operator on behalf of the ACMA. This means that in making direct reference to a mobile number the ACCC becomes solely reliant on the operation of a legislative instrument managed by another agency, and with which there is limited recourse in the event that issues arise.
105. For example, there have been instances where mobile numbers have been incorrectly allocated, such as to a fixed operator. They may also be legitimately allocated for private network use. In both instances, this may give rise to unintended consequences as a digital mobile number owner may unintentionally fall within the literal interpretation of the proposed service description which is not the intention of the proposed change.
106. The Numbering Plan acknowledges that mobile numbers, insofar that they are currently unallocated, can be allocated to CSPs. The onus is then on the CSP to ensure that arrangements are reached with a carrier for the use of that number. As such, the Numbering Plan recognises a close association between a digital mobile number and a digital mobile service. That is,

**digital mobile number** means a special services number specified in Schedule 5 for use with a digital mobile service

**digital mobile service** means a public mobile telecommunications service supplied by a network using digital modulation technique <sup>27</sup>

107. Further that “**mobile carriage service provider** means a carriage service provider that supplies or arranges for the supply of a public mobile telecommunications service.” <sup>28</sup>

108. To this end, the ACCC notes that:

The risk of misuse of numbers or non-compliance with regulatory obligations of number holders are a matter for the ACMA. Changing the MTAS service description would have no effect on the operation or enforcement of regulatory provisions relating to numbering.<sup>29</sup>

109. However Optus is concerned that in the event of an access dispute relating to misuse of numbers for the provision of the MTAS service, this introduces potential uncertainty and ambiguity regarding the relationship of the mobile number holder and the MTAS service.
110. This also gives rise to regulatory uncertainty for MNOs and their future network investment incentives. Simply ‘owning’ a mobile number from the ACMA should not be the condition for seeking access to the MTAS service, rather the mobile number should be considered secondary as it cannot be used for mobile services without agreement for use on a mobile network (ie. with the supply of relevant originating/terminating services).
111. In any case, the service description should retain the distinction that it applies to an end user “directly connected to the access provider’s digital mobile network.” Optus also

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<sup>27</sup> Telecommunications Numbering Plan 2015

<sup>28</sup> Telecommunications Numbering Plan 2015

<sup>29</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, pp.51-52

sees merit in marking clear that MTAS, like all interconnection services, are services provided between two carriers.

Proposed definition of A2P is not necessary

112. Optus considers the proposed variation to include A2P SMS does not necessarily address any of the concerns raised in the Draft Report. While the ACCC's preliminary view is that there are currently no close substitutes to A2P SMS in the retail market for the purpose of business to consumer communications, this is also countered by other market observations on the dynamic nature of the market. For example,
- (a) The ACCC is cognisant that the business communications markets are extremely dynamic and are characterised by continuous innovations and market developments.
  - (b) The ACCC is aware that concerns with the vulnerability of SMS as a means of authentication have driven the development of other more secure forms of mobile authentication methods.
  - (c) The ACCC considers that Apple's adoption of RCS protocol could be significant as it allows RCS interoperability between different mobile operating systems and could potentially open the path to a complete replacement of SMS in the future.<sup>30</sup>
113. These are significant developments expected in the short-term that will directly impact on the operation of the A2P messaging market more broadly.
114. Within the context of MTAS voice, the ACCC acknowledges that:
- Generally, competitive markets provide the right incentives for operators to make efficient investments to improve the quality of services and develop innovative products in response to end-user preferences. However, voice traffic has become increasingly insignificant in terms of network usage, representing only about 1% of overall mobile traffic in 2023.<sup>31</sup>
115. This is similarly true for the SMS market – with an increased dominance of OTT services providing effective substitutes for both P2P and A2P messaging. We understand that this will also increase in the next 2-3 year as further technological innovations, such as RCS, become more widespread.
116. The A2P SMS market is competitive (i.e. ACCC cites ~35 retail A2P operators) and there is no immediate case to support varying the existing MTAS service description.
117. Optus is also concerned the acceptance of both proposed changes – applying MTAS at a mobile number level and inclusion of A2P SMS – will give rise to potential unintended consequences. Termination services over a non-mobile network are not, and cannot be, mobile termination services. Where the scope of MTAS is broadened to include non-MNOs, this will undermine existing commercial agreements and increase regulatory uncertainty for existing MNOs. In turn, this may deter future network investment incentives for MNOs.

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<sup>30</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.67

<sup>31</sup> ACCC, Public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, Draft Report, December 2023, p.49