Public inquiry into the declaration of the domestic mobile terminating access service – draft report

TPG submission to the ACCC

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Public version

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Summary

TPG Telecom Limited (**TPG**) welcomes the opportunity to provide this submission in response to the ACCC's draft report regarding its public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service (December 2023) (**Draft Report**).

While TPG supports the ACCC's preliminary position regarding the domestic transmission capacity service (**DTCS**), fixed line services, and mobile voice termination services, TPG disagrees with the ACCC's preliminary position to extend the domestic mobile terminating access service (**MTAS**) to SMS. TPG does not agree with the preliminary position to declare application-to-person (**A2P**) SMS termination.

The ACCC's preliminary position on A2P SMS termination is not supported by its evidence and is not in the long-term interests of end-users (**LTIE**). The ACCC has acknowledged there is no market failure. It has overweighted the perceived competition concerns and underweighted the real and broad social harms and economic inefficiencies caused by scam SMS – an issue likely exacerbated if A2P SMS termination was declared.

TPG implores the ACCC to reconsider its preliminary views and not declare A2P SMS termination.

1. Introduction

This submission focusses only on aspects of the ACCC's Draft Report related to its preliminary position to declare A2P SMS termination.

The ACCC's preliminary position appears to be finely balanced. The ACCC states:[1]

> *On balance, the ACCC's preliminary view is that varying the MTAS service description to include A2P SMS termination services is likely to promote competition in the wholesale markets for A2P SMS services and the retail market for A2P SMS services.*

To arrive at this view, the ACCC's reasoning is:

a. There are no close substitutes to A2P SMS in the retail market for the purpose of business to consumer (**B2C**) communications.
b. There are no substitutes for A2P SMS termination on each MNO's network.
c. A2P SMS termination costs set the floor price for the delivery of off-net A2P SMS on each MNO's network, which then sets the floor price for delivering on-net A2P SMS traffic on each MNO's network.
d. Each MNO has the incentive and ability to increase costs for termination on their network.
e. Without regulation, MNOs will increase A2P SMS termination costs, which will increase wholesale A2P SMS prices, which will in turn reduce competition in the retail market for A2P SMS.

While on first glance this logic may appear sound, the underlying premise is not sufficiently supported by evidence. We address this in detail below and explain why the evidence shows ample substitutes exist and business end-users have multiple alternatives to switch to if the A2P SMS channel becomes uncompetitive. Therefore, MNOs do not have the ability to raise termination rates to an extent that would harm end-users.

Our analysis shows there are likely no competition harms, but declaration will risk irreversible social harms when compared against the future without declaration.

Given this, the ACCC should not proceed with declaring A2P SMS termination.

2. Substitutes and countervailing power

TPG agrees the key question is whether there are substitutes at the retail level which would constrain the ability of MNOs to raise prices to a level where there would likely be harm to end-users of A2P SMS services.

The ACCC states:[2]

> *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*

[1] Draft Report, page 71.
[2] Draft Report, page 70.

there are close substitutes at the retail level that would constrain their ability to exercise market power at the wholesale level.

In the Draft Report, the ACCC relies on segmentation to form its preliminary view there are no close substitutes to A2P SMS in the retail market for the purpose of B2C communications. Specifically, the ACCC relied on the following:

a. An Omdia report showing A2P SMS is the preferred communication method for B2C communications regarding authentication codes (55%) and appointment reminders (50%).
b. Total A2P SMS delivered in Australia is growing.
c. OTT service innovation and reach has not replaced A2P SMS as the dominant means of B2C communications as they have for P2P SMS.

The evidence the ACCC relied upon does not support the ACCC's preliminary conclusions about substitutes. Each of the points above are assessed below.

2.1 Authentication codes

Firstly, the excerpt from the Omdia report (see Figure 5.3 of the Draft Report) shows there are a significant number of alternative means for organisations to communicate with consumers.

a. For marketing communications, A2P SMS is a minority channel and accounts for only:
    - 29% in communications about offers and discounts
    - 21% in communications on loyalty programs
    - 34% in communications about new services/upgrades, and
    - 17% in communications about feedback/answering consumer surveys.
b. For other time-sensitive communications <u>not</u> highlighted by the ACCC, A2P SMS is also a minority channel and accounts for only:
    - 21% in communications about order tracking
    - 38% in communications about service notifications (eg bill payment reminders, data usage alerts)
    - 12% in communications about making a payment/purchase, and
    - 32% in communications about emergency/public service announcements.

It is unreasonable for the ACCC to ignore the totality of the evidence and instead only rely on "authentications" and "appointment reminders" (only 2 of the 11 segments presented) use-cases to inform its decision. This approach is unreasonable because:

a. The ACCC has not indicated it is examining impacts on a narrow "market" for B2C communications for the purpose of authentication codes and appointment reminders. It has rightly indicated it is examining impacts of declaration on B2C communications generally.
b. Even if there is such a narrow focus on a niche "market" or "purpose" for a specific type of B2C communications, the Omdia report shows there are multiple other channels available for organisations to communicate with their customers – A2P SMS is only one of nine categories surveyed, therefore recognising end-users have optionality.

Figure 5.3 of the ACCC Draft Report is evidence end-users make decisions based on having such optionality. If the A2P channel is uncompetitive or not serving their needs, they can switch. Indeed, the extracted chart groups the various channels in effect to demonstrate visually they are substitutable channels for B2C communications.

It is unreasonable for the ACCC to narrow its assessment into niche segments when it has not established it is appropriate to do so.[3] Even if the ACCC were to take such a narrow view, the evidence does not demonstrate any end-user lock-in.[4] To the contrary, the evidence relied on by the ACCC shows the lack of lock-in.

The ACCC does not adequately explain its rationale for concluding effective substitution does not exist. The percentage of A2P SMS channel share required for the ACCC be satisfied effective substitution remains unclear.

2.2 A2P SMS volumes

Secondly, the fact A2P SMS volumes are growing is irrelevant to determining whether substitutes are available for B2C communications.

If the A2P SMS channel provides real value it will gain more end-users; conversely, if it does not provide value, end-users will abandon it. A2P SMS volume growth can coexist with competitive tensions from alternative services/products. They are not mutually exclusive.

TPG does not have access to the source material for Figure 5.3 of the Draft Report, however TPG has procured access to other Omdia reports on the topic of messaging which appears to rely on the same underlying data as Figure 5.3.

In the following excerpt, Omdia clearly points to the competitive threat of OTT messaging applications to A2P SMS and the stagnation of A2P SMS trends. It also forecasts social media channels as a developing competitive threat. This excerpt is taken from a report called: *Messaging Apps: User, Traffic, and revenue Forecast Report, 2022-27, January 2024*.[5]

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[3] This is akin to flaws in merger assessments where identifying a market too narrowly leads to misdiagnosing likely competitive harm.

[4] The ACCC's Draft Report is careful to avoid explicit references to end-user lock-in. However, it is implied in the way it has drafted its preliminary views by referencing the "popularity" of A2P SMS and "preferences" for A2P SMS. The bar for declaration in this case is evidence of end-user lock-in, ie the lack of alternatives to end-users in immediate and near future. The ACCC has not found evidence of such, and rather, it has presented evidence to the contrary.

[5] TPG will be happy to share the report with the ACCC. However, given it is a product of Omdia, TPG is unable to make this report public in its entirety.

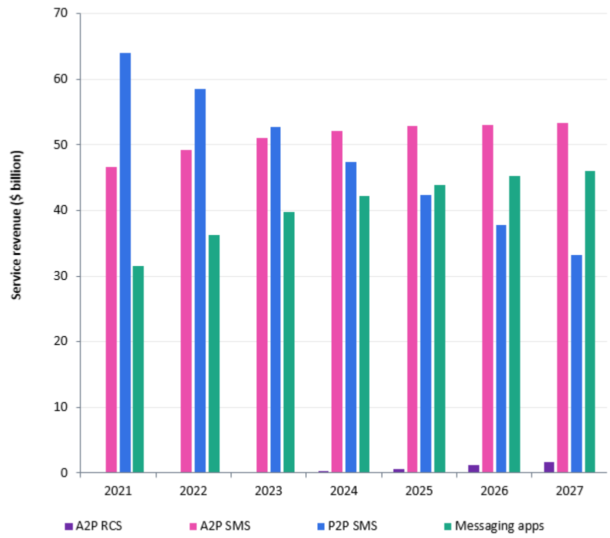
Recommendations

- **Telcos need to respond to the threat from messaging apps.** Revenue from application-to-person (A2P) SMS messages has been relatively stable in recent years, but this will not last forever and messaging apps are poised to steal this market away from telcos. Telcos should make sure that they have an A2P messaging product available that gives businesses a compelling reason to stay with them rather than switch to business messaging via messaging apps.
- **Telcos should understand that they have no momentum in the rich messaging market.** RCS rollouts have not been as swift as was promised and this has affected the ability of RCS to compete effectively against messaging apps. Even if telcos ramp up deployments and usage of A2P RCS, they will still be on the back foot against messaging apps which are making ground in the A2P messaging space (especially as the chance of RCS reproducing the ubiquity of SMS messaging is slim).
- **Aggregators and messaging platform providers need to prepare for true omnichannel flexibility.** In order to reach a wider target audience, businesses need to experiment with a variety of communication channels for customer care and commerce. It's down to the existing messaging ecosystem to enable the right capabilities to help businesses achieve their goals.
- **Messaging apps need to make sure they are competing effectively with social commerce platforms.** Millennials and Gen Z are increasingly buying on social platforms such as TikTok, so messaging apps need to ensure that they are enabling similar features. Messaging lends itself well to order updates and shipping notifications, so this can be an option to help consumers start to see a messaging app as a commerce destination.

Messaging market in context

- While RCS messaging has barely lifted off the ground, A2P SMS messaging is stagnating, and person-to-person (P2P) SMS messaging is in retreat, messaging app service revenue is set to see steady growth over the next five years.
- RCS messaging is expected to grow from just $70 million in 2022 to $1.6 billion in 2027, but it has been hampered by slow rollouts by telcos and lackluster trials.
- SMS messaging has lasted longer than anyone expected, with its ubiquity giving it a staying power that has outshone its lack of rich communications features.
- However, P2P SMS revenue will fall to $33 billion by 2027 (from $48 billion in 2022), while A2P SMS revenue will grow slightly from $49 billion in 2022 to $53 billion in 2027.
- Messaging app service revenue is expected to grow from $36 billion in 2022 to $46 billion in 2027 as both consumers and businesses move from SMS messaging to a richer communication platform.

Global telco messaging and messaging app revenue, 2021–27



Source: Omdia

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TPG agrees with the assessments made in the Omdia report. OTT applications are a real competitive threat right now, and the longer-term competitive threat is non-consumption as B2C communications (including authentications) bypass the A2P SMS channel entirely.

To check Omdia's data and forecasts, TPG also procured access to Analysys Mason's report:

Application-to-person messaging: worldwide trends and forecasts 2022-2027. It confirms the channel rivalry between A2P SMS and A2P OTT applications. It predicts the rapid growth of OTT channels, the stagnation of A2P SMS, and forecasts A2P OTT overtaking A2P SMS by 2027:[6]

Application-to-person messaging: worldwide trends and forecasts 2022–2027 4

Worldwide: third-party A2P messages will account for most traffic from 2027

1.4 trillion A2P SMS messages and 800 billion third-party app A2P messages were sent in 2022. We expect this to rise to 1.6 and 1.7 trillion, respectively, in 2027.

The number of A2P messages, and the associated value, continues to grow as brands add mobile and digital channels to interact with their existing customers and recruit new ones. Person-to-person (P2P) SMS traffic has progressively been overtaken by that from third-party application services (such as WhatsApp), but SMS is the most-used channel for A2P messaging and it will remain so until 2027.

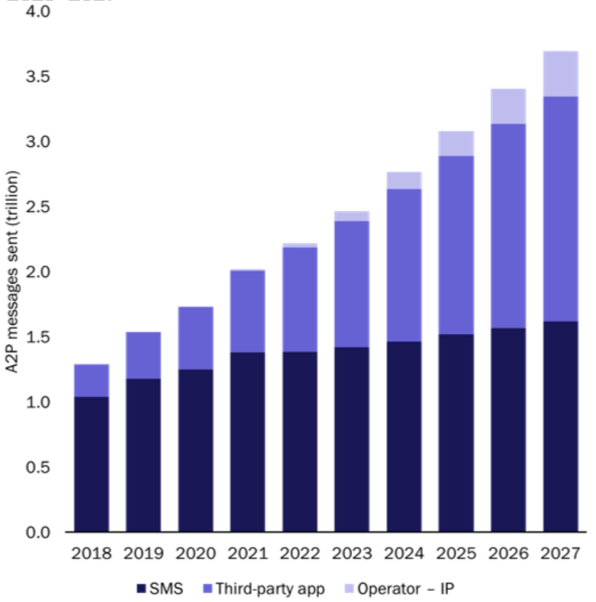
SMS will continue to be popular because of its reliability and reach.

.All handsets support SMS, and SMS read rates have historically been the highest of all A2P channels. SMS will remain the main fallback channel in the long term. SMS is a safe channel for businesses to use when interacting with customers because of traffic regulations that are beneficial for the wide adoption of anti-spam and anti-fraud filters.

The use of IP-based SMS alternatives from both third-party apps and operators[1] will grow more strongly than that of SMS.

Third-party apps and operator IP user interfaces are designed to support A2P (and person-to-application (P2A)) conversational use cases, which are the next step for business-to-consumer (B2C) interactions. Third-party apps will account for 47% of all A2P traffic by 2027 (from 36% in 2022), and the operator IP share will reach 9%.

Figure 1: A2P messages sent per year, by channel, worldwide, 2018–2027[1]



Source: Analysys

[1] Please see the appendix for metrics definitions. The operator IP channel includes RCS Business Messaging (RBM).

analysys mason

While this insight is a global view, it is helpful in confirming the competitive dynamics between OTT applications and A2P SMS. OTT applications are widely installed and most importantly the marginal cost per use is zero. Global technology companies such as Meta (WhatsApp, Facebook Messenger) and Google (Authenticator, Gmail) have very different business models and incentives compared to MNOs. Their business model is selling advertising and they have strong incentives to keep services that enhance their advertising business free.

In the Draft Report, the ACCC also specifically identifies the "popularity" of A2P SMS messaging in banking, finance and government services. However, popularity does not equate to user lock-in. The ACCC should recognise every bank and financial institution in Australia has its own digital application capable of B2C communications, including for

[6] TPG will be happy to share the report with the ACCC. However, given it is a product of Analysys Mason, TPG is unable to make this report public in its entirety.

authentication and notifications. Governments have also developed and deployed their own digital applications, for example, Victoria's Service Victoria app and NSW's Service NSW app. The Federal Government's myGov system uses three alternatives to SMS for multi-factor authentication (ie a code from the myGov Code Generator app, an answer to a secret question, or myGov app PIN or biometrics if using the MyGov app).[7] The Federal Government recently convened an advisory group to oversee the myGov application indicating a concerted effort to improve that channel, including to develop sign-in alternatives to safeguard against scams.

These apps are existing distribution channels, coupled with the strong incentive of zero marginal cost of in-app communications, giving these end-users' powerful countervailing ability constraining any attempts by MNOs to increase end-user costs for A2P SMS services. The fact the A2P SMS channel is popular with these end-users is because they believe it as the best 'value for money' channel when considering other competing alternatives, not because of a lack of alternatives.

Another technological change rapidly adopted by banks and other financial institutions is on-device biometric authentication. It is common now for on-device in-app transfers/payments to require authentication via fingerprint or face identification (in some cases a passphrase can be used instead). This technology is built directly into smart phones and PCs, allowing apps to leverage effectively for free. It is supported by Apple (iOS, MacOS), Android, and WindowsOS. Most relevant for this inquiry, it completely bypasses the need for any A2P SMS authentication.

2.3 OTT innovation and reach

Thirdly, the ACCC makes the claim innovation and distribution in OTT services has been marginal since 2018, without referencing any evidence in the Draft Report. It also does not explain how this, even if true, informs its conclusion there are no substitutes for A2P SMS in B2C communications.

Similar to the critique in the sub-section above, substitutability is not necessarily dependent on how OTT services are developing. They are not mutually exclusive. It is important to examine the range of options available to end-users, relative to their preference for A2P SMS. Popularity or preferencing is insufficient in this case.

The ACMA's communications report series illustrates the relevant trend, measuring changes in Australian communication channel preferences over time. The report uses 'usage', which can be considered a proxy for user base penetration.[8] However the 'usage' metric is likely to undercount actual user base penetration.

While the ACMA's data is not perfect, it is a very good proxy for understanding trends about

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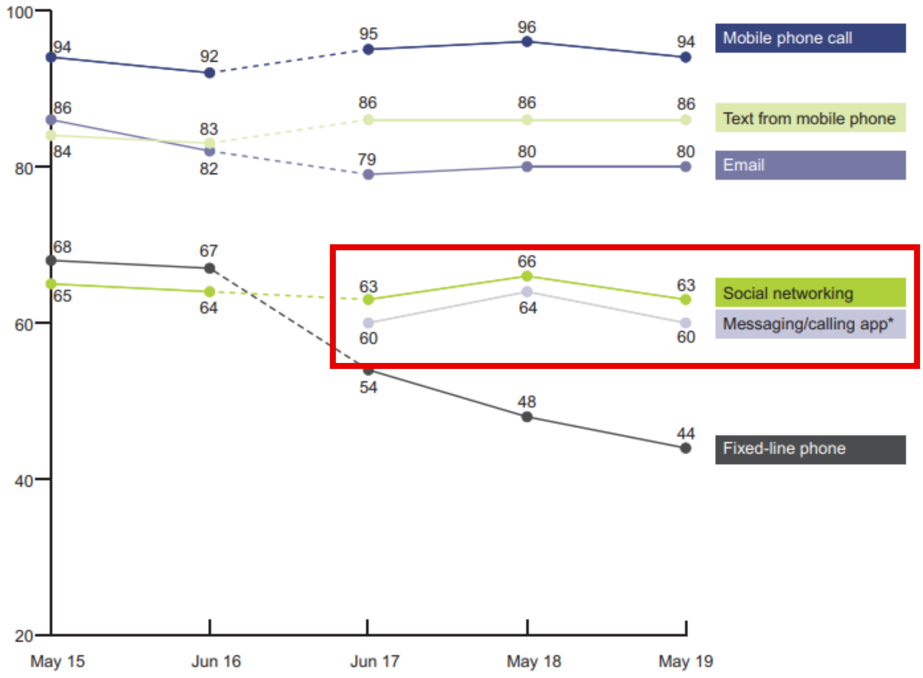
[7] See https://my.gov.au/en/about/privacy-and-security/security/how-we-protect-your-mygov-account.
[8] Penetration is more relevant than usage in this case as it is a closer data point to understanding whether end-users for A2P SMS have alternative routes to reach retail customers. Alternative routes can be competitively viable even if dormant.

the distribution of OTT applications and the extent to which Australians have adopted them.

In the 2018-19 edition of the report,[9] the ACMA found OTT messaging and social media application usage is approximately 60%:

Figure 2.1: Use of communications for personal purposes, by service type (percentage)



**Includes video calls. Data not available prior to June 2017.*

Base: Australians aged 18 and over.

Note: Broken line indicates a change in methodology in 2016 and 2017 and means that some differences between these and prior years may be explained by the methodology rather than any significant difference.

Source: ACMA-commissioned surveys, May 2015, June 2016 and 2017, May 2018 and 2019 (mobile phone call, email, text from mobile phone, social networking and instant messaging), in the six months prior to May/June of each year.

In the most recent edition of this research, the ACMA found usage of messaging/calling apps have increased even further:[10]

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[9] See: [Communications report 2018–19 (acma.gov.au)](#).

[10] See: [ACMA_How we communicate_Executive summary and key findings.pdf](#)

1. Services used

Base: Australian adults, 6 months to June 2023.

> Mobile calls, texts and messaging/calling apps were the main services used for personal purposes. More of us used a mobile phone for texts (96%, up from 91% in 2022) and used an app for messages and calls (84%, up from 81% in 2022).

> Messaging/calling apps has become more popular with older Australians. Use among those aged 45–54 increased from 82% in 2022 to 89% in 2023, and also increased among those aged 65–74 from 64% to 72%. Use was also greater among females (88%) compared with males (80%), and those living in metropolitan areas (87%) compared with those living in regional areas (79%).

> Landline (home) phone calls have dropped. Less than 1 in 5 (18%) used a landline phone for calls at home, down from 23% in 2022.

While the ACMA's data does not distinguish between peer-to-peer and B2C communications, it is clear the trend for OTT application usage is very high and increasing – 84% of Australians have used an OTT app for messaging and calling as of June 2023. This suggests a very high degree of community acceptance and a retail base primed for B2C communications in that channel. Importantly, the ACMA data found usage is high and increasing for older Australians.

The available evidence simply does not support the ACCC's assertion the reach and development of OTT applications has only been marginal since 2019.

2.4 Countervailing power

Finally, end-users in the context of A2P SMS are business or government users. These are sophisticated and value-maximising organisations. They have very strong incentives to cut costs. As demonstrated above, they have plenty of alternatives they can switch to for B2C communications if the A2P SMS channel does not represent value for money.

In the case of banks and financial institutions, proprietary applications are now so prevalent, there are comparison websites ranking various banks' apps.[11] This highlights how having a proprietary application is now seen as a 'must have' for banks and other financial institutions. Again, this is a compelling alternative channel that bypasses the need for A2P SMS entirely.

The ACCC must recognise the strong countervailing power end-users have. It is insufficient in this case for the ACCC to say, "the business communications markets are extremely dynamic". Its decision must also reflect it.

3. Incentives and ability

A key plank of the ACCC's preliminary position is that the MNOs have the ability to increase A2P SMS termination rates to a degree that will result in increasing prices in wholesale and retail markets for A2P SMS.

TPG disagrees with this preliminary view.

As the analysis in section 2 sets out, substitutes are strong and numerous, new B2C

[11] See for example: Which bank has the best mobile banking app? | Finder.

communication channels such as social media are being developed, and end-users have strong countervailing power.

If an MNO increases termination rates to an extent where end-user prices are increased, the MNOs will accelerate the demise of their own A2P channel business as those same end-users will simply switch away to another communication channel. Once an end-user switches to an alternative service, eg in-app authentication where the marginal cost per use is zero, it is very likely that end-user is lost forever. It is very difficult for a paid service like A2P SMS to compete against alternatives with zero marginal cost.

The ACCC's Draft Report failed to adequately consider this in its assertion MNOs have the ability to raise termination rates to a level that would harm end-users. It had not appreciated just how much choice end-users have in B2C communications (or more specifically, in relation to authentication communications) today, and the alternative channels that are still being developed.

Even if the ACCC were unsure, the facts suggest it should err on the side of not declaring A2P SMS termination because of the potential of greater social harms (more on this in section 4 below). In other words, the potential harms arising from a false positive decision are greater than the potential harms arising from a false negative decision.

If the ACCC is still unsure whether MNOs could raise prices to the detriment of end-users, it has other tools that enable it to address any market harms in the future in a rapid way (such as binding rules of conduct, Part XIB investigations, etc). The threat of regulation itself can be a deterrent against potential anticompetitive behaviour.

Lastly, the ACCC can choose to re-examine whether the status quo is working and consider declaration at any point in the future. Just as it found no evidence of end-user harm since 2019 when SMS termination became unregulated, it is unlikely it will find evidence in any future inquiries for the reasons outlined in this submission.

4. Real social harms and theoretical competition harms

The social harms arising from a false positive decision would be difficult to reverse. Like the previous 2015-2019 period, where SMS termination regulation led to a surge in scam SMS traffic on Australian mobile networks, a similar increase replicated today would cause significant social harm.

The ACCC has underweighted the potential harm, or 'costs' in economic terms, of a false positive decision (ie type I error) and overweighted the potential harm of a false negative decision (ie type II error) in the Draft Report. The totality of the evidence, history, and context favour the reverse.

The potential harm from a type I error is real and broad ranging. It is not an efficient use of infrastructure and not in the LTIE. Scam traffic has devastating consequences for its victims and their communities. Scam traffic does not discriminate between the poor or the well-off, man or woman, adult or child. Once a victim has been scammed, their money is lost. There is no recovering from, or reversing, this harm.

The potential harm from a type II error in this case is theoretical by the ACCC's own assessment. If they were ever to eventuate, the ACCC can always choose to re-examine any competitive harms and respond appropriately.

However, the ACCC is powerless in its ability to recover victim funds.

4.1 Theoretical competition harms

In the Draft Report, the ACCC implies the status quo of deregulation has not harmed competition. It has indicated any potential competition harms would only occur in the future.

The ACCC found even with increased termination rates (that are commercially agreed since deregulation), Pivotel still appears to be an effective competitor vis-à-vis the MNOs in the relevant wholesale markets.[12] The ACCC found no evidence of decreased competition between MNOs; instead it confirmed the wholesale market for A2P SMS services is competitive.

The ACCC outlined its theoretical concerns that without regulation the MNOs could increase termination costs so high it will:

a. undermine the ability of middle-men operators such as Pivotel to compete with MNOs in the future, and
b. undermine the incentive of MNOs to compete against each other in the future.

The fundamental flaw with this analysis is the starting premise, that there are no substitutes for A2P SMS from an end-user perspective, is wrong. As outlined in this submission, end-users have more than enough alternative options to discipline any attempted anticompetitive behaviour. Such attempts would inevitably fail and lead to the acceleration of the demise of MNOs' own A2P SMS business.

The ACCC also did not focus on the most relevant impact and has not recognised its negligible impact.

In the ACCC's 2019 decision to deregulate SMS termination, it correctly predicted its decision may negatively impact Pivotel's business. It also rightly concluded, and as the evidence since has shown, there would be limited impact on relevant retail markets.

The 2019 assessment remains true today. The ACCC found in 2023, while input costs have increased, Pivotel is still an effective competitor in wholesale markets, implying it is simply making less margin relative to the previous period of regulation. Furthermore, the ACCC found retail pricing remains steady while wholesale pricing is decreasing since its previous MTAS inquiry, suggesting what the ACCC does in regulating A2P SMS termination has had a limited impact on retail markets.

This evidence suggests retail providers and middle-men operators are capturing a significant portion of the value chain, rather than passing it on to end-users. This means any potential

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[12] Draft Report, page 69.

competition 'harm' would be narrow and limited to retail providers and those middle-men operators, such as Pivotel. TPG does not accept these are real competition harms as there will be no impact to end-users.

This is consistent with the analysis above that end-users have options and set the retail rate, meaning channel competition exists, and what the ACCC does or does not do in respect of A2P SMS termination has and will continue to have no impact on the retail market. The only justification for declaration by the ACCC would be it wishes to protect the likes of Pivotel. Protecting competitors is not good policy. It always comes at the expense of promoting competition.

Lastly, it is helpful to contextualise the scope of the theoretical competitive 'harm' in dollar figures, as it becomes relevant when put in context against the broad social harms arising from declaration. Again, TPG does not accept these are even real competition harms as there will be no impact to end-users.

The ACCC found 13.9 billion A2P SMSs were delivered in 2023. At **[c-i-c]** Again, it is important to acknowledge the evidence shows there would be no impact on end-users.

4.2 Broad social harms

In the Draft Report, the ACCC stated "*in 2022 alone Australians lost <u>$3.1 billion to scams with text messages being the most reported contact method</u>*."

This monetary value dwarfs the theoretical value of the theoretical competitive harms discussed above. This is also real harm, with genuine victims suffering significant financial losses in a single year. It is likely the $3.1 billion figure undercounts the actual impact, given the prevalence of victims underreporting. It is important to note, this amount will likely significantly increase in a future with declaration.

In the previous MTAS declaration inquiry, TPG provided compelling evidence the 2015 decision to regulate SMS termination significantly accelerated the prevalence of scam SMS in Australian public mobile networks. The ACCC never disputed that evidence.

In the current process, Pivotel has run a cynical argument alleging causation between declaration and increase in SMS scam traffic cannot be proved. This argument is very disingenuous, given the correlation is so strong a positive case must be assumed unless proven otherwise. Pivotel has failed to prove the negative.

The ACCC appears to accept there is a causal relationship between declaration and scam SMS traffic. In the Draft Report, it said "raising commercial prices is a blunt tool to deal with the scam issue" implying a causal relationship exists. It is worth emphasising again the evidence shows the retail market is disconnected from changes in termination cost, therefore it is not going to disincentivise (or incentivise) legitimate SMS traffic as the ACCC's preliminary view fears.

Anchoring on prices misses a more fundamental point: declaration means MNOs would lose the ability to shut off interconnection for bad actors. MNOs would no longer have an effective mechanism to police scam traffic landing on their networks, as declaration forces MNOs to whitelist any access seeker, however apathetic they are to whether Australians are scammed. Shutting off a route for scam traffic is unlikely to have any impact on legitimate traffic, given legitimate end-users will simply shift to different retail providers (or channels).

TPG is addressing this precise issue in regard to voice termination as, TPG has irrefutable evidence some non-MNO interconnectors are landing the vast majority of scam calls on TPG's mobile network, and they have been given ample opportunity to fix the problem but have not done so. **[c-i-c]** This situation is a very poor outcome for Australians. It is incomprehensible MNOs must operate under regulations that actively permit Australians to be scammed, and MNOs cannot do anything about it. This will happen to SMS traffic if the ACCC proceeds with declaring A2P SMS termination. The ACCC must include necessary conditions in its voice termination service description to allow MNOs to shut off bad actors and block scam traffic from entering Australia's public mobile networks.

In the status quo, MNOs have the ability to shut off interconnections and refuse to do business with aggregators/retail providers if they transit scam traffic and do nothing to rectify it. Like the threat of regulation, the threat of getting shut-off from Australian public mobile networks imposes a discipline of its own in ensuring all participants are sufficiently aligned in their incentives to keep Australian public mobile networks clean.

In a demonstration of misaligned incentives that would be introduced by declaration, the ACCC quotes Soprano's submission that high prices in A2P SMS market will drive illegal traffic onto grey routes.[13] This implies by declaration, scam traffic can be brought back into formal channels and monetised. This attitude is wrong and adopted by non-MNO participants and middle-men operators in this space. They have limited incentive to combat scams, as they do not operate a mobile service with Australian retail subscribers who would be negatively impacted by scam traffic. Their dominant incentive is to transit as much traffic as possible, regardless of what it is, to the benefit of their bottom line.

MNOs on the other hand, have a spiderweb of regulations that apply to them. MNOs are unofficially deemed to run "essential" infrastructure with no support from Government that suggests their essential nature. More fundamentally, MNOs' incentives are to eradicate scam traffic, as scam traffic may negatively impact their core business of selling mobile services to Australian consumers and businesses.

Given A2P SMS is not a primary revenue stream for MNOs, they would readily take action that could adversely affect this business line if it resulted in a reduction of scam traffic reaching their mobile subscribers. There is no incentive for middle-men operators like Pivotel to take similar action and do the right thing in the interest of Australian consumers.

Australian MNOs have invested significant resources in both technology and staffing to combat scams. Non-MNO participants and middle-men operators would not have to invest in

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[13] Draft Report, page 73.

these types of protections for retail subscribers because they do not have retail subscribers. For TPG, these investments include:

a. past and ongoing investments into a network firewall for SMS at a high-level estimate of over **[c-i-c]**
b. multiple staff teams committed to scam SMS detection and blocking, and customer support. This includes staff from the Fraud Detection team, network/IT engineers, the customer support division, the Corporate Security team, and the commercial teams all aligned on reducing harm to our customers from scam communications. The exact ongoing cost in terms of dollars is not straightforward to calculate given time spent allocated to SMS scams varies across teams, and some staff also volunteer time to assist in combating scam traffic (eg those staff that volunteer to work out of office hours, as scammers operate 24/7). **[c-i-c]**

It is also important to note that these investments are being made during a period of deregulation, and the future with declaration may be very different. It would be reasonable to assume if the ACCC proceeded with declaration and the opening of Australian public mobile networks, these types of costs could significantly escalate as MNOs will no longer have control over who gets to land SMS traffic on their networks. Similarly, regulators, particularly the ACMA, should expect the need for increased resourcing given their responsibilities relating to combating scams. Governments should be aware of the likelihood of increasing victims in the community and the need for resources to address it.

The worst outcome would be MNOs and governments simply give up trying to stop scam traffic, as any investments made to combat scam traffic are simply rendered ineffective by regulation, such as the declaration of A2P SMS termination.

In its presentation dated 19 October 2023 to the ACCC, TPG said the problem with scam traffic is now an enduring one. There is no putting the genie back in the bottle. The best we can hope for is careful management with a holistic approach that needs buy-in by industry, regulators and governments.

In the current case, the ACCC has an opportunity to make a decision that contributes to the fight against scams rather than increase the likelihood of scam traffic. It is unsatisfactory for the ACCC to attempt to minimise its responsibilities by taking the position ‘targeted’ measures should be used to combat scams, when it can make a decision that would have a material impact on reducing scam traffic.

The ACCC should not declare A2P SMS termination. It should not make a decision preventing MNOs from keeping scammers out of Australian’s public mobile networks.

The totality of the evidence and the history of SMS termination should convince the ACCC to maintain the status quo, particularly as any competitive harm is so narrow, limited and theoretical, whereas the potential harm due to a type I error is so broad, uncapped and real.

5. Conclusion

The evidence shows end-users of A2P SMS service have options to switch to if the A2P SMS channel does not provide value for money.

As such, the ACCC's preliminary conclusions about MNOs' ability to raise prices to a degree that would negatively impact end-users is incorrect.

Declaration of A2P SMS termination is unnecessary and there is no difference to competition in the future with or without declaration.

Significantly, the cost of declaration is an acceleration of scam SMS traffic (ie a repeat of the experience during the previous period of declaration 2015-2019) causing significantly increased harm to victims and their communities.

TPG's predominant argument relates to the competition analysis over the relevant markets based on the evidence the ACCC has identified in the Draft Report, demonstrating it is not in the LTIE to declare A2P SMS.