ACCC Public Inquiry into the Declaration of the Domestic Transmission Capacity Service, Fixed Line Services and Domestic Mobile Terminating Access Service

Telstra Group Limited

Supplementary Response to ACCC Draft Report – Mobile Terminating Access Service

Non-Confidential Version

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[CIC begins] = information not to be released without consent

CONTENTS

1 Introduction and executive summary

1.1 Introduction

On 25 March 2024, the Australian Competition and Consumer Commission's (**ACCC**) gave stakeholders a final opportunity to provide submissions prior to the planned release of the ACCC's final report on declaration of the domestic mobile terminating access service (**MTAS**). Telstra appreciates this opportunity, which is the subject of this supplementary submission.

Telstra's views on the ACCC's draft report on its inquiry into the declaration of the MTAS (the **Draft Report**)[1] were set out in detail in our original submission,[2] (**Original Submission**) and we do not repeat them here. The focus of this supplementary submission is to:

- Provide updated evidence of the strong competitive constraint on the application-to-person (**A2P**) short message service (**SMS**) termination services supplied by the Mobile Network Operators (**MNOs**) from current and emerging alternatives and of the risks of harm from regulatory intervention, supporting our view that expanding the declared MTAS to include termination of A2P SMS messages will not promote the long-term interest of end-users (**LTIE**).
- Address some of the points made in responses to the Draft Report (in some cases endorsing these, and in others setting out what we believe to be important clarifications or corrections).
- Provide additional detail as to why Telstra considers the current MTAS description is already appropriately technology neutral and should be retained in its current form.

1.2 Overview of Telstra's position

Telstra does not believe expanding the declared MTAS to include termination of A2P SMS messages will promote the LTIE. We consider the LTIE is best promoted by simply extending the current declaration of the MTAS and retaining the existing service description. In this submission we expand on these views by:

- Highlighting shortcomings in the preliminary views reached by the ACCC in the Draft Report (and of those supporting re-regulation) that declaration will benefit what is acknowledged by the ACCC to be an already competitive market under the status quo.
- Providing further evidence of the many substitutes that currently exist for A2P SMS – some as simple as email and voice calls and messages, alongside the rapid development of other alternatives. Meaning there is limited (if any) ability for MNOs to increase the price of A2P SMS termination beyond a level that reflects the value of the service as contemplated by the ACCC.
- Expanding on the risks of deterring innovation and efficient investment posed by regulatory intervention going against the tide of international precedent. These include the risk the ACCC's intervention could 'lock in' use of the aging, less innovative and less secure technology of SMS by Australian businesses, serving to delay, divert or undermine their switch to superior technologies and causing them to lag behind their international counterparts.
- Further explaining why differentiated pricing for A2P and P2P SMS termination is not inefficient.
- Elaborating on why the proposed removal from the definition of MTAS of the nexus with the access provider's digital mobile network is both unnecessary and liable to cause confusion and harm.

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[1] See https://www.accc.gov.au/system/files/Combined%20declaration%20inquiry%20-%20draft%20report.pdf

[2] Available at: TELSTRA CORPORATION LIMITED (accc.gov.au)

2 There is no evidence to suggest declaration of A2P SMS will promote the LTIE

We agree with the view set out in Optus' submission on the Draft Report[3] that in reaching its preliminary view that declaration of A2P SMS termination will promote the LTIE, the ACCC has given insufficient consideration to the likely magnitude of any benefits of declaration for end-users in the downstream market. It is difficult to understand how declaration of a service will benefit what is acknowledged by the ACCC to be an already competitive market,[4] as confirmed by many of the responses to the Draft Report.

We note in particular observations by Sinch (one of the anticipated downstream beneficiaries of the ACCC's proposed regulatory intervention) that:

> "*The commercial realities of the wholesale and retail market for A2P SMS services mean that declaration is unlikely to have an immediate effect on the LTIE…*
>
> *As a global aggregator and A2P SMS provider, Sinch is privy to SMS rates in almost every country in the world. Sinch notes that it has conducted analysis of global SMS rates and determined that Australia is amongst the cheapest 5% of A2P SMS wholesale markets in the world…Sinch has identified steady price reductions in retail rates for its customers over the past 4 years… Sinch submits that this price decrease in downstream markets demonstrates healthy competition…*"[5]

Further, even if there were some limited potential benefits of declaration for down-stream end-users of A2P SMS, it is most unclear that these would outweigh the significant risks of regulatory error involved in the novel declaration of MTAS voice and A2P (but not P2P) SMS termination. As explained in our Original Submission and below, as well as in the submissions of Optus, TPG and Sinch on the Draft Report, these risks include the risk of deterring innovation or efficient investment,[6] which are especially high when setting regulated prices in the absence of any meaningful international precedent to draw from and without an established local model for determining the long-run efficient costs of supplying such a service. Giving due weight to these risks is particularly important as the ACCC appears to be primarily concerned about a perceived lack of alternatives for a small subset of A2P use cases, rather for than the market as a whole.[7] On balance, Telstra considers there is a high risk of regulation harming rather than promoting the LTIE, given the proposed intervention is disproportionate compared to the (hypothetical) identified problem.

The substitutes that currently exist for A2P SMS, alongside the rapid development of other alternatives, mean there is limited (if any) ability for MNOs to increase the price of A2P SMS termination beyond a level that reflects the value of the service as contemplated by the ACCC. There has been no evidence provided to date that, to the extent there has been an increase in price of A2P SMS termination since the previous declaration inquiry, this represents anything other than a recalibration to value-based pricing.

Telstra's position continues to be that there is no concern in the market for A2P SMS that suggests declaration would promote the LTIE. The ACCC draft decision to include A2P SMS termination in the MTAS declaration is based on a hypothetical future scenario where MNOs have an incentive to raise the price of A2P SMS termination with resulting consumer detriment. However, this is based on a view that

[3] Optus submission on the Draft Report, §§29; 45-48; 58-62. - Submission (accc.gov.au)

[4] Draft Report, pp. 69-70.

[5] Sinch PUBLIC submission to ACCC draft report on combined declaration inquiries.pdf, pp 3-4

[6] Not only by MNOs, but also as noted in Sinch's submission on the Draft Report, by aggregators and A2P SMS retail providers - Sinch PUBLIC submission to ACCC draft report on combined declaration inquiries.pdf, p. 3.

[7] Draft Report, p. 66.

there is insufficient competitive pressure from substitute products. As set out below and in our Original Submission, this is clearly not the case.

2.1 There are strong competitive substitutes to A2P SMS

As noted by the ACCC in its Draft Report, a key question for the inquiry is whether there are close substitutes for retail A2P SMS services such that they should be included in the same retail market for assessing whether declaration would promote competition.

In the Draft Report, 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, particularly for time-sensitive applications such as multi-factor authentication*."[8] As set out in our previous submissions, Telstra does not agree with this view.

Unlike person to person (**P2P**) SMS, the assessment of substitutes for A2P SMS at the retail level is more complex, given the mix of use cases for A2P SMS as set out in Figure 5.3 of the Draft Report. The evidence provided to the Declaration Inquiry to date illustrates this complexity, as substitutes may exist more clearly for one use case compared to another.

The test for substitutability typically focuses on whether a product or service has similar characteristics such that a consumer would switch from one to another in the face of a price increase or quality decrease. In this case, the consumer is the business user of A2P SMS (including but not limited to business users located in Australia, given the scope of the MTAS). The purpose of the service is a critical characteristic for determining substitutability, as it is possible a substitute for one use case may not be a substitute for another. For example, there are very clear substitutes to A2P SMS when it is used for communications and marketing, with these substitutes including email and use of over-the-top (**OTT**) platforms, such as Facebook, Instagram and targeted google advertisements.

The Draft Report indicates the ACCC's main concern in relation to the availability of substitutes to A2P SMS termination over the next declaration period is when A2P SMS is used for time sensitive applications such as multi-factor authentication (**MFA**). Much of the focus to date on viable substitutes for this use case has been on the suitability of performing MFA using Rich Communications Services (**RCS**) and other OTT applications. As set out in our Original Submission, Telstra considers these are relevant particularly on a forward-looking basis (in line with the competition assessment), with RCS especially developing at a more rapid pace since Apple's announced plans to support it.

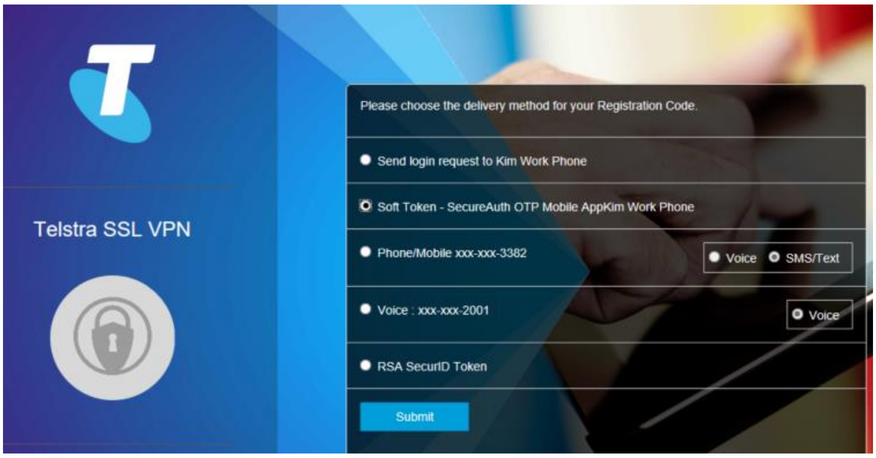
However, Telstra considers the ACCC has given insufficient weight to other, simpler, existing substitutes - such as email and voice calls and messaging. One example is "flash calling," which operates via the very simple technique of a missed call to the customer's mobile number.[9] These substitutes can fulfil the same purpose as A2P SMS for time sensitive applications by providing real-time MFA, appointment reminders etc. They can also generally be easily accessed on the same device as A2P SMS. Telstra is concerned that these products have been largely ignored or dismissed as substitutes when they are clearly already in place and being used by businesses and end-users.

In the Draft Report the ACCC takes a view that the fact "…*businesses use more than one method to communicate with their customers for the same purpose at the same time*"[10] (emphasis added) suggests they play a complementary rather than substitute role. Telstra does not agree with this view. Rather, businesses offer customers alternatives based on their individual preferences. A customer may choose to use one or more of these options (e.g. authentication via email or SMS or use of the business's app) but there is no evidence to suggest they do not perform the same purpose from a customer perspective. Similarly, the fact that a business offers more than one option – and does not require a customer to choose

[8] Draft Report, p. 67.
[9] See e.g. Flash Calling: The cheaper, faster alternative to SMS verification (symbio.global)
[10] Draft Report, p. 67.

more than one (to complement) - suggests they are also viewed as substitutes from a business perspective.

To illustrate, while as noted in our Original Submission to enhance security Telstra is now moving all employees to preferred VPN authentication via the SecureAuth app (which works in a similar way to other soft token authenticator apps like Microsoft authenticator[11] and Google authenticator[12]), below is the menu of alternative choices offered:



As set out in our Original Submission, and noted by the ACCC, many businesses are increasingly shifting away from SMS in response to concerns about security and in line with declining consumer confidence in SMS as scam messages continue to increase. A recent survey showed that in-app messaging is already the most trusted form of communication when interacting with businesses.[13] Further, the industry where consumers most prefer in-app messaging to come from is banking and finance. The shift towards in-app messaging is, despite Pivotel's assertions[14], evident in Australia. For example, Australia Post has shifted to in app notifications as "…*the most trustworthy way to get Australia Post-delivery updates…*" due to concerns about the legitimacy of other sources of information and increases in fraudulent activity[15]. Alternatives for MFA are also being implemented by Australian banks, including biometrics, passcodes, and behavioural biometrics, for enhanced security[16]. Telstra considers these developments are more significant in terms of providing existing substitutes to A2P SMS than the ACCC has contemplated in reaching its draft decision that regulating A2P SMS termination will promote competition in the wholesale and retail A2P SMS services market.[17]

2.2 Differentiated pricing for A2P and P2P SMS termination is not inefficient

2.2.1 Differentiated A2P termination charges are a reasonable approach to cost recovery

As set out in our Original Submission and in Optus' response[18] to the Draft Report, Telstra and the other MNOs have made significant investments in improving the A2P SMS commercial product, which need to be recovered. Since A2P was last examined by the ACCC, the challenge pertaining to illegitimate scam traffic has amplified. In response, it has been imperative to continue to innovate our service offerings by developing improvements in A2P interconnection through the establishment of A2P interconnection split

11 See Set up an authenticator app as a two-step verification method - Microsoft Support
12 See Get verification codes with Google Authenticator - Android - Google Account Help
13 See https://www.atomic.io/blog/australians-have-lost-trust-in-sms-phone-and-email/
14 Pivotel supplementary submission, §§3.15-3.16.
15 https://newsroom.auspost.com.au/auspostapp
16 https://bluenotes.anz.com/posts/2023/09/anz-identity-theft-protection
17 Draft Report, p. 74.
18 See Submission (accc.gov.au) §§85-86.

routes and scam blocking initiatives. In developing these product enhancements, it is important to recognise that MNOs have undertaken considerable investment and innovation and these innovations have led to better outcomes for end customers, with significant positive effect in the blocking of illegitimate traffic.

As the ACCC is aware, these investments include:

- **[c-i-c] [c-i-c]**
- Our considerable investment in deploying scam blocking technology, as outlined in our Original Submission (Section 2.3.1). **[c-i-c] [c-i-c]**

Pivotel alleges the differentiated A2P and P2P SMS charges MNOs may set to support their recovery of such investment costs represent "monopoly rents".[19] We dispute this characterisation. The prices Telstra and the other MNOs charge for A2P SMS termination are set in a market context of strong competitive constraints and in the face of significant substitutes (as detailed in our Original Submission). In setting our A2P rates, it is entirely appropriate to seek to recover costs incurred in delivering the service.

2.2.2 Differentiated charges for A2P SMS termination reflect commercial benefits of downstream services

Pivotel cites a claimed "*average increase in SMS termination charges well in excess of 4000% since the service was last declared*" as evidence "*that the wholesale market for SMS termination services is neither competitive nor efficient, and that market failure has occurred*".[20]

This allegation ignores the fact that the regulated rate of 0.03 cents for SMS termination set by the ACCC in 2016 was based on considerations regarding the efficient level of regulated charges *for P2P SMS termination* rather than A2P SMS termination[21], which is a very different service.

Importantly, access seekers of A2P SMS termination overwhelmingly use this service as a wholesale input for downstream A2P SMS services for which they are paid by their customers. A significant amount of the A2P SMS traffic supported by these A2P SMS services in turn supports commercial outcomes for business customers. Whether that is direct marketing SMS or customer support (such as delivery notification or travel confirmation), the ultimate beneficiary is typically a business customer choosing to use A2P SMS to encourage patronage by, and to make money from, its customers. Even multi-factor authentication is designed in many instances to ensure customers can access certain commercial services.

There is nothing inherently inefficient or indicative of market failure in differentiated charges for A2P and P2P SMS termination reflecting a sharing of the value created by A2P SMS services between the access provider and access seeker (and its downstream customers), which is absent in the case of P2P SMS services that are predominantly used for private, non-commercial purposes.

Further, measuring current A2P SMS termination prices against the regulated price in place immediately prior to the ACCC's decision to de-regulate provides a false and misleading picture of the current state of the unregulated market. The regulated price 'artificially' tied A2P termination services to P2P termination services, which, as noted above, predominated the ACCC's regulated price setting decision, while removal of regulation has allowed A2P SMS termination to find its market price reflecting its different demand and supply profiles and costs of supply (including increasing scam investments). As Telstra noted in its Original Submission, the market settling on differential pricing for A2P and P2P termination services, and a higher

[19] Pivotel supplementary submission, § 4.11

[20] Ibid, §2.8.

[21] ACCC, 2016, Mobile Terminating Access Service Final Access Determination Final Decision, available at https://www.accc.gov.au/system/files/MTAS%20FAD%20final%20decision%20on%20primary%20price%20terms.pdf

price for A2P, was an outcome contemplated by the ACCC is in deciding to deregulate SMS services. **[c-i-c] [c-i-c]**.

2.3 Regulating A2P SMS termination could incentivise Australian businesses to lag their global peers

Pivotel argues that international trends in OTT messaging as a substitute for A2P SMS should be disregarded by the ACCC because "*the overall penetration rates in Australia of OTT apps such as Whatsapp] remain comparatively low compared to other jurisdictions*"[22], claiming this shows Australian businesses are not yet ready to switch from legacy SMS technology. In Telstra's view, the evidence is clear that this switch is happening in Australia and this trend will continue. However, we see a key risk to the LTIE if the ACCC does become a global outlier in regulating A2P SMS termination, in that this action could 'lock in' use of the aging, less innovative and less secure technology of SMS by Australian businesses, serving to delay, divert or undermine their switch to superior technologies.

While the pace of technology change in different international markets may differ, the following is clear:

- There are a growing range of messaging technologies in Australia and globally, which provide both businesses and consumers with more innovative, richer, and secure messaging options than SMS.

- There is clear evidence that Australian businesses are already experimenting with and deploying these newer messaging technologies. The common experience of new technologies in communications markets is that customer uptake – both on the consumer and business side – is incremental, often with momentum building, as customers become more familiar with the new technology, as new applications and services using those technologies are brought to market and as suppliers shift their own marketing and business development activities. Therefore, even if it transpires (which Telstra highly doubts on current trends) that the substantial shift to OTT occurs beyond the 5-year term of the next MTAS declaration, the momentum towards that shift is underway now and, in the absence of declaration, will likely accelerate over the near term.

- These messaging technologies are supplied by powerful global providers and enabled by global handset providers (e.g. RCS will shortly be available across the 'universe' of IoS and Android mobile phones). These global trends will influence, if not drive, trends in the Australian market, as evidenced by Telstra's decision in 2022 to decommission its 'homegrown' RCS platform in favour of Google's solution[23].

- As we explain below in section 3.1 of this supplementary submission, overseas regulators which have specifically addressed regulation of SMS have recognised the growing competitive constraint on SMS of these newer messaging technologies (e.g. the Commerce Commission in New Zealand (**NZCC**) and Telecommunications Regulatory Authority (**TRA**) in Bahrain, despite Pivotel's assertions to the contrary).

In Pivotel's supplementary submission responding to Telstra's submission on the Draft Report (**Pivotel supplementary submission**)[24], Pivotel states "*Pivotel has provided evidence that RCS will only account for a relatively small number of users in the future, even allowing for Apple's entrance into the market*."[25] The publicly available evidence Pivotel refers to[26] consists of a 2024 forecast by Juniper Research that,

[22] 280723 - Public version - Submission on the public inquiry into the declaration of the DTCS (accc.gov.au), §7.35.
[23] See - Mobile Technology - Telstra.
[24] Pivotel PUBLIC supplementary submission to ACCC draft report on combined declaration inquiries.pdf
[25] Pivotel supplementary submission, §3.23.
[26] At §5.12 of Pivotel's first submission on the Draft Report - 160224 - Pivotel response to draft report (public version) (accc.gov.au)

within just two years (i.e. by 2026), global RCS business messaging (**RBM**) revenues will grow by 500%, and:

> *"Apple's entrance into the market, with support over iOS devices, will grow the number of active users by 900 million over the next two years; reaching 2.1 billion active users globally…. this will increase the value proposition of RBM (RCS Business Messaging) amongst enterprises. In turn, this will encourage more operators to roll out the technology over their networks, attracted by the significant growth in RBM termination revenue"*[27]

The competitive promise of RBM is also heralded by Mobilesquared (endorsed by Pivotel as an "*independent specialist organisation*"[28] on such matters), with their research finding that:

> *"RCS (Rich Communication Service) is the rich messaging platform provided by Google for mobile operators for Android devices, and from September 2024, it will be available over iPhones/iOS. The business messaging element is called RCS Business Messaging (RBM) and looks set to become a major marketing platform for brands big and small.*
>
> *RCS deployments and RBM campaign activity increased through 2023, and the key markets for RBM (Argentina, Brazil, France, Germany, India, Italy, Japan, Mexico, Nigeria, Spain, UK) will provide the platform for accelerated growth globally from 2024 onwards.*
>
> *Mobilesquared projects a bright future for RCS, with over 450 mobile operators expected to offer RCS/RBM in the coming years, making it one of the biggest messaging channels"*[29]

It is hard to see this as evidence in support of Pivotel's claim that RCS will fail to exert a relevant and meaningful competitive constraint on A2P SMS pricing during the declaration period.

Given that Australians have some of the highest smartphone penetration and usage levels in the world[30], slower uptake of these newer messaging technologies in Australia may be explained by other factors, including the current market-based prices for SMS being, on Sinch's evidence as a global acquirer of wholesale A2P services, amongst the lowest in the world. If declaration of A2P SMS termination results in even lower prices, as Pivotel says it should, there is a strong prospect that Australian consumers and businesses will be even less "ready to switch from SMS", and the Australian market will fall even further behind the curve of adoption of new, more innovative and competitively diverse technologies than comparable overseas markets.

In short, the effect of regulation will be to shelter from technological change the business models of current downstream providers of legacy A2P SMS, depriving Australian end-users of the competitive and other benefits of technological change. We consider the ACCC should be very wary of any regulatory intervention which could delay, impede, or divert that change.

3 Response to other submissions on the Draft Report

3.1 International precedent clearly favours leaving A2P SMS termination undeclared

In Pivotel's supplementary submission, Pivotel appears to agree with Telstra that the ACCC is on a path of its own relative to its international peers, when it comes to its proposal to regulate A2P SMS

[27] Apple's RCS Support to Grow RCS Business Messaging Revenue by 500% in Two Years (juniperresearch.com)

[28] Pivotel supplementary submission, §3.13.

[29] RCS Data Reports | View Datasets | Mobilesquared

[30] See e.g. Australia Has Second Highest | Business News | NeTT News.

termination.[31] As noted in section 2 above and in our Original Submission, we see this as a key regulatory risk – particularly should the ACCC put itself in the position where it must decide upon regulated terms of access likely to promote and not harm the LTIE.

There are several other statements made in the Pivotel supplementary submission on the matter of international precedent that Telstra believes are incorrect. We briefly set out our views on these below. Importantly, we consider the recent decisions concerning A2P SMS termination regulation by the TRA in Bahrain and the NZCC provide additional compelling evidence of strong competitive substitutes for this service and the availability of alternative powers to address any competition concerns which may emerge if the service is left unregulated, which the ACCC should take into account in its decision:

- Pivotel states "*the Bahrain TRA's decision was based on P2P (not A2P) messaging*".[32] We consider this statement to be inaccurate and note clear statements to the contrary in the relevant 2019 "Determination of Dominance in the Mobile Termination Markets"[33]. These include the following:

> *"The Authority has considered both A2P and P2P messaging services as part of its assessment of mobile messaging services. The Authority is further aware that domestic A2P messaging traffic volumes have been increasing in recent years… and now exceed those of domestic P2P messages…* [34]
>
> *"…the Authority has assessed the competitive dynamics in the market for retail and wholesale messaging services and has concluded that, on balance, there is no need for continued ex-ante regulation in mobile messaging termination services. This is based, amongst others, on its assessment on the limited potential consumer harm, both on P2P and A2P consumers, which could result from deregulation. Further, any potential adverse impact on alternative Licensed Operators could be addressed by the Authority's ex post competition powers. Given this, the Authority, remains of the view that there is no need for continued ex-ante regulation in mobile messaging termination services but instead proposes to rely on its ex post competition powers, where necessary."* [35]
>
> *"The Authority recognizes that, whilst termination rates might increase following deregulation, the impact of this on businesses and end users is expected to be limited….In particular, the Authority accepts that deregulating messaging termination services may result in termination rates increases (for A2P and/or P2P messaging services)…The Authority expects any resulting impact on Bahraini businesses and end-users would be limited…Given that bulk SMS services are commonly used by large businesses, such as financial institutions, it appears unlikely that such an increase in retail prices would pose a significant burden on their ability to serve their customer base, as the cost of these services only constitutes a small share of their overall customer relationship cost".* [36]

[31] See Pivotel supplementary submission, §1.3. See also §5.3.
[32] Ibid.
[33] Final-Determinat-on-of-Dominance-in-the-Mobile-Termination-Markets-PV.pdf (amazonaws.com)
[34] Ibid, p35.
[35] Ibid, p45.
[36] Ibid, pp 47-48.

- Pivotel's submissions correctly state that SMS termination continues to be regulated in New Zealand.[37] However, the context for the NZCC's 2020 decision to retain SMS termination regulation is important. In essence, as highlighted by the extracts from the NZCC's decision below, SMS regulation has been retained in New Zealand not because of the limited benefits found to be conferred by continued regulation, but due to the high costs involved in change to the legislatively designated MTAS service, which has included SMS termination since 2010.[38] This latter consideration does not apply to the present decision facing the ACCC.

> "*We have* ***not assessed the potential constraints on MNOs raising MTAS rates in relation to A2P providers as part of our final decision****. This is because we are assessing whether there are reasonable grounds to commence an investigation to omit MTAS from Schedule 1 as a whole*"[39] (emphasis added)
>
> *"We consider that MNOs may increase MTAS rates in the absence of regulation but would not be able to do so profitably as it is likely that enough customers have already switched to OTT services. We expect MNOs to be constrained further as we expect SMS volumes to continue falling and OTT usage to continue growing"*[40]
>
> *"Our final position is that there is growing evidence that OTT services have become an effective constraint against MNOs profitably raising SMS MTAS rates.* ***Although each MNO continues to have a monopoly over the termination of SMS sent to its mobile subscribers, each MNO is likely to be indirectly constrained by substitution at the retail level****. OTT messaging services have become popular and are increasingly being used as an alternative to SMS. An attempt by an MNO to increase SMS MTAS rates could lead to increased switching at the retail level"*[41] (emphasis added)
>
> *"We consider that the benefits of continuing to regulate voice MTAS are likely to be significant. This is because many subscribers would be affected given the popularity of traditional voice calls.*
>
> ***In the case of SMS MTAS, to the extent that OTT-based messaging services are now an effective constraint, the benefits of ongoing regulation are likely to be small****. There is likely to a regulatory cost and an opportunity cost from forgoing the benefits of deregulation mentioned above.*
>
> *We do not consider the regulatory and opportunity costs of continuing to regulate SMS MTAS to be significant in the short run. This is because relatively few subscribers would be affected due to the declining popularity of SMS messaging and availability of OTT services.*
>
> *We acknowledge that according to most submissions,* ***the costs of regulatory change are likely to be significant at this time, while the cost of continued regulation is likely to be low*** *and there are benefits to continuing to regulate MTAS.*

[37] Pivotel supplementary submission, §§1.3; 5.4 and 280723 - Public version - Submission on the public inquiry into the declaration of the DTCS (accc.gov.au) §7.66.
[38] Final-decision-on-Mobile-Termination-Access-Services-MTAS-2-September-2020.pdf (comcom.govt.nz) §§12; 39.
[39] Ibid, §81.
[40] Ibid, §115.
[41] Ibid, §117.

> *In conclusion, we consider* ***the benefits of continuing to regulate MTAS as a whole are likely to outweigh the costs of regulation***.”[42] (emphasis added)

- We further note the NZCC regulated SMS termination rate of 0.06 cents referred to in Pivotel's submission on the Draft Report[43] is the same rate set by the NZCC in 2011, based on international benchmarks from that time.[44] As such, the regulated price for SMS termination set in New Zealand could not be taken in raw form as a suitable benchmark for the setting of regulated A2P SMS pricing in Australia for a declaration period extending to 2029.
- Pivotel claims “*Telstra has also ignored developments in the UK*.”[45] This is incorrect. In Telstra's supplementary submission to the ACCC's Discussion Paper, we stated:

> “*While we note the recently expressed intention of Ofcom to monitor the market for wholesale SMS termination and its impact on the retail business messaging market in the UK based on concerns raised about a “lack of effective competition at the wholesale level that might otherwise constrain prices”[4], we do not believe there is any evidence to support such concerns in the Australian market. As we explain below, the market dynamics since SMS declaration was removed by the ACCC show signs of continued growth and innovation which is in the LTIE.*”[46]

3.2 Market data

Pivotel's supplementary submission[47] makes reference to the market data included in Telstra's Original Submission quoted from Omdia's October 2022 Business Messaging Market Sizing Tool.[48] We would like to clarify that, as described by Omdia, this data set comes from an “*Excel tool providing an at-a-glance data-based overview of the total addressable market for business messaging*”.[49] We also note ABS data indicates that some 97.3% of all business in Australia are small businesses (0-19 employees) and a further 2.5% are medium businesses, employing 20-199 employees.[50] Particularly for Australian small businesses comprising just a few employees, it cannot simply be assumed, as baldly asserted by Pivotel, that “*P2P messages…[are] not substitutable for A2P messages*”[51], nor for the OTT and other substitutes that are so clearly available for P2P messages. And when it comes to larger and more sophisticated enterprise customers, as shown in our Original Submission and as detailed in section 2.1 of this supplementary submission, any significant increase in the retail cost of A2P SMS may be expected to be met with a switching response to one of the many current and emerging alternatives available to such customers, depending on the purpose and nature of their desired customer communication.

Lastly, we note Pivotel takes issue with the age of some of the market data included in Telstra's Original Submission.[52] As a general matter, we agree with Pivotel that caution needs to be taken by the ACCC when considering the likely forward-looking relevance of historic market data in the fast moving and dynamic downstream markets in which A2P SMS termination is an input. We suggest this caution should

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[42] Ibid, §§ 127-131.
[43] 280723 - Public version - Submission on the public inquiry into the declaration of the DTCS (accc.gov.au) §7.66.
[44] See 2022-Annual-Telecommunications-Monitoring-Report-15-June-2023.pdf (comcom.govt.nz), pp 133-134.
[45] Pivotel supplementary submission, §1.3.
[46] TELSTRA CORPORATION LIMITED (accc.gov.au), p. 2.
[47] Pivotel supplementary submission, §§3.4-3.5.
[48] See Telstra's Original Submission, pp. 4-5.
[49] Business Messaging Market Sizing Tool: 2021–26 Omdia (informa.com)
[50] Australian Business Statistics 2024 | Money Matchmaker®
[51] Pivotel supplementary submission, § 3.5.
[52] See e.g. Pivotel supplementary submission, §3.11.

be applied, for example, to the Omdia data featured in Figure 5.3 of the ACCC's Draft Report[53], which is taken from survey responses given in advance of the report's publication in November 2022 – already nearly some 18 months ago.

3.3 Rich Communications Services (RCS)

We set out below a few important points of factual clarification on the references to RCS in Pivotel's supplementary submission:

- Pivotel mentions a requirement for users to have "*RCS enabled devices.*"[54] For clarity, RCS currently works on all android phones and as mentioned in our Original Submission, is expected to also be supported on Apple devices – covering both main smartphone operating systems. Even in 2020, an estimated 95% of Australians were using smartphones.[55] It is also worth noting that smartphone users are the mobile subscribers most likely to be using the online services that generate the demand for validation or notifications via traditional A2P SMS (MFA and confirmation messages etc).

- Pivotel claims "*Telstra shut down its RCS service in 2022 which is hardly a ringing endorsement of its viability as a substitute for A2P SMS*".[56] This submission is misleading. As explained in our FAQ for customers[57], in 2022 Telstra swapped to supporting RCS for our customers using Google's RCS solution, rather than Telstra's own RCS solution. Far from this move suggesting the future non-viability of RCS messaging, we made this change to allow our customers to use RCS messaging with more Android users, and to ensure a more consistent messaging experience on Android devices.

- Pivotel provides no evidence in support of their assertion that "*RCS will likely increase costs for businesses. For many small and medium business that use A2P SMS… the additional functionality may be unnecessary or inefficient*".[58] Given the competitive nature of the retail market in which A2P SMS, RCS and the many business communications alternatives for these services are supplied, it is not credible to suggest that businesses would accept additional charges for RCS features they do not value.

3.4 LTIE test

Pivotel alleges Telstra has mischaracterised the test for declaration.[59] We disagree. The legislative test for declaration under s 152AL of the *Competition and Consumer* Act 2010 clearly requires the ACCC to be satisfied, on a forward-looking basis, that the making of the declaration will promote the LTIE. This is not in dispute. Where we disagree with Pivotel, and with the ACCC's preliminary view in the Draft Report, is whether the ACCC has grounds to be satisfied that declaring A2P SMS termination will promote the LTIE.

For the reasons set out in our Original Submission and in this supplementary submission, we say there are insufficient grounds to support this view. When the ACCC decided to de-regulate SMS

[53] We note this data, positioned by Pivotel as "the most recent data from Omdia" is simply repeated at §3.4 of Pivotel's supplementary submission in response to Optus' submission on the Draft Report – see Pivotel PUBLIC supplementary submission to ACCC draft report on combined declaration inquiries 2.pdf

[54] Pivotel supplementary submission, §3.24.

[55] See Australian Mobile Phone Statistics And Trends in 2024 • Gitnux

[56] Pivotel supplementary submission, §3.24.

[57] See - Mobile Technology - Telstra.

[58] Pivotel submission on the Draft Report - 160224 - Pivotel response to draft report (public version) (accc.gov.au), §5.11.

[59] Pivotel supplementary submission, §1.3.

termination in 2019, the ACCC anticipated the unregulated market would settle on differential pricing for A2P and P2P SMS termination, with increases in A2P SMS termination rates likely. The market is also currently competitive, as confirmed by the ACCC in its Draft Report. Further, even if there may be disagreement about the pace of adoption, there are clearly even more technological substitutes for A2P SMS than when the ACCC decided to de-regulate SMS termination in 2019. Logically, it follows that re-regulation of SMS termination will only promote the LTIE if there is evidence that, despite these conditions, the market will not continue to work and grow in competitive intensity under the status quo. There is no such evidence.

4 Clarification – why the current MTAS description should be retained

For the reasons explained in our Original Submission, Telstra:

- Is concerned the change proposed by the ACCC to the MTAS service description - to calls terminating to a digital mobile number - could have unintended adverse consequences.
- Considers the current MTAS description is already appropriately technology neutral and should be retained in its current form.

Below, we provide some further clarifications explaining our position.

4.1 Lack of "exclusive access" nexus in proposed new MTAS definition

In the Draft Report, the ACCC explains it wishes to ensure the MTAS service description "*captures all services where an access provider has exclusive access to its subscribers*."[60]

In this respect, the ACCC finds that "*each mobile network operator continues to have exclusive access to end-users on their own networks and controls the termination of voice calls to the mobile number being used by that end-user"*[61]

The first part of this sentence is correct. Each MNO does have exclusive access to end-users <u>on their own network</u>. For these end-users – i.e. end-users on the MNO's own network, it is also generally true that the MNO controls the termination of voice calls to the mobile number being used by that end-user. As noted in our Original Submission, the main exception is where the end-user may be using the same mobile number as an identifier to receive calls via an OTT service, such as WhatsApp. MNOs do not control the termination of voice calls or messages delivered using OTT services.

By contrast, the new definition for MTAS proposed by the ACCC creates confusion and the potential for unintended consequences, because it removes any clear element of control over the end-user by the MNO access provider. It simply defines the MTAS as:

> *"an access service for the carriage of voice calls…from a point of interconnection, or potential point of interconnection, to a B-Party assigned numbers from the digital mobile number ranges of the Australian Numbering Plan'*[62]

This proposed new definition of MTAS is so broad that could potentially be interpreted as obliging, for example, Telstra to provide MTAS for the termination of voice calls to end-users over which it has no control whatsoever – e.g. customers of Optus who have been assigned numbers by Optus wishing to receive calls terminated on Optus' digital mobile network.

For the reasons we explain in our Original Submission, we consider it is preferable to simply retain the current simple, clear, effective and technology neutral definition for MTAS of:

> *"an access service for the carriage of voice calls from a point of interconnection, or potential point of interconnection, to a B-Party <u>directly connected to the access provider's digital mobile network</u>."*

[60] Draft Report, p. 5.
[61] Draft Report, p. 43.
[62] Draft Report, p. 117.

4.2 MTAS not designed to address end-to-end connectivity for non-mobile end-users

In the Draft Report, the ACCC proposes to amend the definition of the MTAS service description to remove the requirement for the called party to be directly connected to *"any specific technology or network"*[63] – i.e., to be directly connected to a "*digital mobile network*" as per the current definition.

This move has been supported in submissions by certain non-mobile network operators that are either using mobile numbers to provide services or are contemplating to do so.[64] Relatedly **[c-i-c] [c-i-c]**.

Telstra respectfully submits that this line of thought is misconceived. Firstly, there is the basic and extremely important point that this proposed use of mobile numbers by non-mobile network operators contravenes the Numbering Plan, which provides that a "*digital mobile number*" may only be used to supply a "*digital mobile service",* defined as a "*a public mobile telecommunications service supplied by a network using digital modulation techniques*."[65]

Secondly, since inception, the MTAS definition has covered the termination of calls "*from a point of interconnection, or potential point of interconnection*" regardless of the network technology being used by the originating party. For example, it has always been true that MTAS providers are obliged under the declaration to terminate not only mobile to mobile calls originated by other MNOs, but also fixed to mobile calls originated by other fixed network operators. Hence, there is no need to change the current MTAS definition to cover the termination of voice calls *from* non-MNO operators – this is already clearly in scope.

What is not currently in scope of the current MTAS definition is the termination of voice calls *by* non-MNO operators. However, we do not believe this creates any kind of gap in the declared MTAS liable to harm the LTIE. To consider otherwise would entail missing the point of the very specific market failure that declaration of the MTAS is designed to address, to promote the LTIE. As explained in the Draft Report:

> *"The terminating network … typically has market power in the provision of termination services to the originating network as it controls access to its subscribers. Absent regulation, the terminating network can have the incentive and ability to exercise market power to either refuse access or to provide call termination on unreasonable terms.*
>
> *While the originating network operator also has exclusive access to its own end-users, its ability to refuse to originate calls to another network is typically restricted by the ability of its own subscribers to switch providers if they cannot make calls to other networks.'*[66]

Even hypothetically assuming that it *was* permissible for non-MNO operators (e.g. fixed network operators) to use mobile numbers to provide services unconnected with a digital mobile network, there is no evidence to suggest these non-MNO operators would have the incentive or ability to refuse to terminate calls to these mobile numbers on their networks, or to provide call termination on unreasonable terms. Absent such evidence of the potential for abuse of market power, we see no case for expanding the current MTAS scope to regulate the termination of such calls.

Turning next to the matter of the *origination* of calls *to* mobile numbers which may be in use by non-MNO operators (such as fixed network operators), as noted in the Draft Report, the ability of an operator to refuse to originate calls to another network is typically restricted by the ability of its own subscribers to

[63] Draft Report, p.51.
[64] Draft Report, p.51.
[65] See Federal Register of Legislation - Telecommunications Numbering Plan 2015, Schedule 5, as read with ss 15 and 32(1) and s 32 of the *Telecommunications Act* 1997.
[66] Draft Report, p.32.

switch providers if they cannot make calls to other networks. Regulation of mobile originating access was accordingly removed by the ACCC in 2004.[67] If concerns were to emerge about harm from the non-origination of such calls to the long term interests of the non-mobile users of mobile numbers, this would be a matter for separate investigation outside of the scope of the MTAS – which concerns call termination, not origination. We note in this regard that the ACCC has already rejected Commpete's proposal for it to consider declaration of a mobile originating access service as being outside the scope of its current declaration inquiry and unrelated to the declaration of MTAS.[68]

[67] See https://www.accc.gov.au/system/files/Final%20report%E2%80%94mobile%20originating%20access%20service%20(June%202004).pdf

[68] Draft Report, p. 53.