Submission by AAPT Limited

27 July 2011

to

ACCC Discussion Paper

Public inquiry to make an access determination

for the

declared domestic digital mobile terminating access service,

dated June 2011

Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) discussion paper "Public inquiry to make an Access Determination" for the declared domestic digital mobile terminating access service (**MTAS**), dated June 2011 (**MTAS Discussion Paper**).

2. AAPT agrees with the ACCC's views expressed in its Final Report on reviewing the declaration of the MTAS, dated 2009:

   " [T]he ACCC is of the view that mobile call termination is a separate market and is unlikely to be substitutable with other services because each provider of call termination has exclusive control of the access to end-users on its own network. Call termination is therefore considered by most regulators as an essential bottleneck facility…The ACCC maintains the view that the MTAS is in a separate market to that of retail mobile services on the basis that it is not constrained by the retail stage of production and that the MTAS is an input used by telecommunication service providers to provide retail FTM and MTM services."[1]

3. The MTAS service is an essential input into AAPT's supply of fixed to mobile **(FTM)** calls in the Australian market. The price paid for termination rates including MTAS services acquired from mobile network operators (**MNOs**) has a direct and significant impact on the ability of AAPT and other competitive carriers to compete in the provision of FTM calls and a bundle of preselection services, i.e. long distance, international and FTM (the downstream markets). AAPT considers that MNOs have bottleneck control over access to an essential input in the provision of these services.

[1] At pages 15-16.

Executive summary

4. AAPT agrees with many analysts including the highly regarded Wik-Consult and Ovum which have both predicted that interconnection pricing for both fixed and mobile networks is ultimately heading towards bill and keep (i.e. zero) and that as a result AAPT considers that both fixed and mobile termination rates should be trending that way.

5. AAPT considers that, in heading towards a zero or bill and keep end point, a glide path would be necessary in order to enable operators to adjust their retail payment plans over time to match evolving wholesale arrangements. While AAPT in principle supports an MTAS end point which is zero or bill and keep, it would not be opposed to an end point based on cost-based rates, provided mobile-to-mobile (**MTM**) and FTM MTAS and PSTN OTA[2] rates trend towards the same rate.

6. AAPT considers that the lack of pass-through of MTAS price reductions to end users of FTM services warrants a separate regulatory approach involving the introduction of a pass-through safeguard for integrated operators only. AAPT considers such a pass-through safeguard should be substantially in the form of a "linked approach" as proposed, and set out, in the submission of the Competitive Carriers' Coalition dated 27 July 2011 made in response to the MTAS Discussion Paper (**CCC MTAS Submission**), which AAPT supports.[3]

7. AAPT considers that any-to-any connectivity will best be promoted if a requirement to provide the MTAS is maintained and anti-competitive on-net/off-net price discrimination is discouraged.

[2] Public switched telephone network (PSTN) originating access service and PSTN terminating access service are together referred to as 'PSTN OTA'.

[3] Under the "linked approach", the MTAS rate for integrated operators is linked to FTM pass-through (see paragraphs 27 to 29).

8. AAPT supports the adoption of a three year regulatory period, but considers that, in any case, the expiry date of the final access determination (**FAD**) for the MTAS should be aligned with the expiry date of the FAD for PSTN OTA.

Both fixed and mobile termination rates should trend towards zero or bill and keep

9. AAPT considers that interconnect prices should, for efficiency reasons, trend towards the same price for both PSTN OTA and MTAS (including MTM and FTM). This price should ultimately be zero or bill and keep.

10. AAPT agrees with the views expressed by the European Commission that large gaps between fixed and mobile termination rates (which AAPT considers penalises users of fixed services over users of mobile services) is not in line with the increasing convergence between fixed and mobile telephony and can lead to serious distortions of competition, which in turn can deter investment into upgrading fixed networks to fibre at the expense of the welfare of end users.[4]

11. According to the ACCC, convergence promotes competition by offering wider consumer choice: '…*as the technology and infrastructure that underpin emerging services and platforms continue to evolve, developments to date suggest significant potential to deliver a wide range of new services to consumers… Emerging platforms also offer opportunities for a range of businesses to enter the industry… [and] also offer real opportunities for traditional media businesses to innovate to improve their offerings.*" [5]

12. This position is also supported by Wik-Consult which stated that if interconnect fees remain as high as they are today, mobile operators and some fixed operators may choose not to evolve their networks to IP based

[4] European Commission press release: *Telecoms: Commission acts on termination rates to boost competition*, IP/09/710, Brussels, 7 May 2009.
[5] ACCC, *Submission to the Convergence Review Framing Paper*, June 2011, page 7.

interconnection thereby denying consumers the benefits of convergence: *"If termination fees were to remain at current levels, we anticipate that many mobile operators and some fixed operators might chose not to evolve their networks to IP based interconnection. They might perceive the migration as an unacceptable regulatory risk. Alternatively, they might choose an IP interconnection strategy that attempts to lock in the current inefficient arrangements, or a modernized version of them, rather than enabling IP-based interconnection arrangements to evolve in a healthy and natural way. These concerns suggest that waiting for the migration to IP-based NGNs to implement changes might be a self defeating strategy*.[6]

13. Wik-Consult has also stated that societal welfare would be substantially enhanced if mobile termination rates were much lower than they are today, and possibly no higher than the rates that prevail today for fixed termination rates.[7] In considering how current 'calling party network pays' arrangements in Europe have already had a substantial negative effect on welfare (due to inefficiently high wholesale termination fees and high retail prices that have depressed the use of the service to far below efficient levels), Wik-Consult concluded that: "*interconnection fees should be much lower than they are today, preferably zero*."[8]

14. In further support of this, AAPT notes that Ovum also anticipates a move to zero interconnect rates (or bill and keep arrangements) as noted in its report: "*In 2020, developments in network technology will of course have impacted the regulatory regime for the interconnection of fixed and mobile networks. The migration to NGN, increased use of mobile broadband and convergence are all important factors driving significant changes. Two of the most likely future charging principles will be capacity-based charging (CBC) and 'bill*

6 J. Scott Marcus et al, *WIK-Consult Final Report - Study for the European Commission - The Future of IP Interconnection: Technical, Economic, and Public Policy Aspects*, Bad Honnef, 29 January 2008, page XI (**Wik-Consult Report**).

7 Wik-Consult Report, page XIII.

8 Wik-Consult Report, pages X and XI.

and keep' (BaK)…BaK is the more likely option in the long term. Given that most NRAs will likely ***impose symmetric termination rates for fixed and mobile at very low levels****, and the expense associated with tracking and billing for small increments is not worthwhile,* ***BaK will probably become the common choice for most operators****."* [9] [Emphasis added]

Glide path for MTAS reductions

15. AAPT agrees with WIK-Consult that although the outright elimination of call termination fees would be simpler (because it minimises economic distortions, and involves the fewest impediments to the evolution over time of interconnection arrangements as networks evolve to an IP basis), a glide path would nevertheless be necessary in order to enable operators to adjust their retail payment plans over time to match the changing wholesale arrangements.[10]

16. AAPT considers that an accelerated move from 9 cents per minute (cpm) to 4 cpm for the year ending 2012 is appropriate and warranted because:

    - it is necessary to bring MTAS rates in line with those in overseas jurisdictions[11];

    - the indicative MTAS rate at 9 cpm set by the ACCC was noted to be a conservative upper bound estimate[12]; and

    - MNOs have had the benefit of that same "conservative" rate since 2007, which more than meets the period of certainty required to allow for planning and investment decisions to be made.

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9 Ovum, *Telecoms in 2010: regulation*, dated 24 December 2009, pages 7 and 8.

10 MTAS Discussion Paper, pages 7-8.

11 For example see: New Zealand Commerce Commission, *Standard Terms Determination for the designated services of the mobile termination access services (MTAS) fixed-to-mobile voice (FTM), mobile-to-mobile voice (MTM) and short messaging services (SMS))- Decision 724*, 5 May 2011, page iii (**NZCC MTAS Determination).**

12 MTAS Discussion Paper, page 2.

17. Moreover, previous MTAS reductions have not been detrimental to MNOs but rather have shown to be in the long term interest of end users (**LTIE**). As noted by the ACCC, the market for retail services in which MTM calls are supplied experienced material price declines exhibited through the increasing value and variety of bundles and lower priced calls being offered.[13] AAPT acknowledges the concerns regarding the lack of pass-through of reductions in the MTAS rate in the form of lower FTM calling prices for end users and addresses this issue at paragraphs 27 to 29 below.

18. Accordingly, AAPT supports the following 'fast' glide path for further reductions in MTAS:

	1 Jan – 31 Dec 2012	**1 Jan – 31 Dec 2013**	**1 Jan – 30 Jun 2014**
MTAS	4 cpm	2 cpm	zero or bill and keep or alignment with PSTN OTA rate

19. While AAPT in principle supports an MTAS end point which is zero or bill and keep, it would not be opposed to an end point based on cost-based rates. Should the ACCC be minded to adopt a cost-based approach for MTAS rates, AAPT considers the following to be in the LTIE:

   - if the ACCC decides to have regard to different MTAS cost figures provided by MNOs for this purpose, the ACCC should use the lowest MTAS cost figures as this is likely to represent the most efficient costs;
   - any reductions in MTAS for both MTM and FTM calls should be the same and follow the same glide path; and

[13] MTAS Discussion Paper, page 5.

- for the reasons set out at paragraphs 9 to 14, the end point of that glide path should ultimately align with fixed termination (i.e. PSTN OTA) rates, which in any case, are likely to trend to zero or close to zero.

20. AAPT considers that termination rates, and any glide path applied, should be consistent for MTM and FTM calls because:

    - interconnection prices for all calls type are trending towards a single price which is likely to be zero or bill and keep;
    - the MTAS is the same regardless of the origination technology and therefore pricing should be consistent, whether that price is ultimately a low cost-based rate or zero; and
    - as noted by the ACCC in the MTAS Discussion Paper, having different pricing principles apply to FTM and MTM termination could generate arbitrage opportunities.

21. AAPT acknowledges the ACCC's offer to work with the industry to ensure that concerns about arbitrage are adequately addressed before or as part of the FAD. However, AAPT considers that such measures would entail unnecessary compliance costs associated with ongoing monitoring of traffic for this purpose. In its Standard Terms Determination for the designated services of MTAS[14], the New Zealand Commerce Commission (**NZCC**) decided against separate glide paths for MTAS for MTM and FTM termination because of the risk of arbitrage and practical difficulties and compliance costs associated with addressing that risk.

22. The solution is to simply determine the same price for MTAS for MTM and FTM termination.

14 NZCC MTAS Determination, paragraphs 383 to 385 and 592.

On-net/off-net price discrimination

23. AAPT considers that even if mobile termination rates trend towards zero or bill and keep, without corresponding alignment with fixed termination rates, large MNOs (and in particular integrated operators such as Telstra and Optus) will still be in a position to engage in on-net/off-net price discrimination that would make it difficult for smaller MNOs or fixed-line only operators to compete.

24. In its Standard Terms Determination for the designated services of MTAS[15], the NZCC noted that although it expects a reduction in mobile termination rates (**MTRs**) to reduce on-net/off-net price differentials in the New Zealand market, even a move to bill and keep would be unlikely to eliminate on-net/off-net price differentials in the retail mobile services market per se. This is because a bill or keep arrangement does not address the strategic incentive which large networks have to use off-net surcharges to make a small network unattractive to end-users.[16] Unless the introduction of cost-based MTRs leads to a significant reduction in on-net/off-net price differentials, high off-net calling prices are likely to continue to limit the expansion of small operators and thereby prevent effective competition from evolving in the New Zealand retail market.

25. The New Zealand Commerce Commission also noted that the ability of non-integrated fixed-line operators (of which AAPT is one) to compete is constrained in retail telecommunications markets and they are at a competitive disadvantage in the retail FTM market. This is because a fixed-line operator that does not have its own mobile network is required to pay mobile operators the applicable MTAS in respect of all FTM calls supplied to its retail customers. In contrast, an integrated operator, who operates both

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15 NZCC MTAS Determination, page 115.

16 By setting high off-net calling prices, a large MNO is able to reduce the number of outgoing calls to the subscribers of a small MNO. The customers of the small network are less likely to receive calls as a result, so the utility derived from subscribing to that network is reduced. This has the effect of making the small network less attractive.

a fixed-line network and a mobile network, will only pay the applicable MTAS in respect of off-net FTM calls (i.e. calls from its fixed-line network to another operator's mobile network).[17] This barrier to effective competition could have adverse impacts on the LTIE.

26. AAPT considers that the ability for smaller MNOs or fixed-line only operators to compete will be improved by the following:

    - Alignment between fixed and mobile termination rates - As observed by WIK-Consult, if mobile termination fees were to be in the same range as current fixed termination fees, one could reasonably expect that flat rate retail plans would emerge that included off-net calls to mobile phones. [18]

    - Monitoring of on-net/off-net price discrimination - The ACCC should, like the NZCC, seek to monitor the market very closely after the MTAS FAD has come into effect to assess whether a condition limiting on-net/off-net price differentiation may need to be introduced.[19]

Pass-through safeguard and separate glide path for integrated operators

27. AAPT considers that, given the lack of pass-through of industry-wide reductions in the MTAS rate in the form of lower FTM calling prices for end users, the following should be implemented:

    - a mechanism to encourage FTM pass-through of the MTAS cost reductions by integrated operators; and

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[17] NZCC MTAS Determination, paragraph 49.
[18] Wik-Consult Report, page XIV.
[19] NZCC MTAS Determination, page 123.

- separate glides paths for MTAS reductions for non-integrated fix and mobile operators and integrated operators where there is a failure by the latter to pass-through MTAS cost reductions,

in the form of a "linked approach" as proposed and set out in the CCC MTAS Submission, which AAPT supports.

28. Under the "linked approach", the MTAS rate for integrated operators is linked to FTM pass-through. Pass-through by integrated operators is encouraged by implementing an MTAS reduction glide path for integrated operators that is separate from and slower than, the glide path for non-integrated fixed and mobile operators, where the integrated operators fail to pass-through MTAS cost reductions that meet certain FTM pass-through thresholds.

29. AAPT considers that while the pass-through safeguard should apply to encourage FTM pass-through by integrated operators, the same glide path should be applied for any reductions in MTAS for both MTM and FTM calls (for the reasons set out at paragraphs 20 -22).

Any-to-any connectivity

30. AAPT considers that any to any connectivity is promoted through the declaration of MTAS. Accordingly, the obligation to provide MTAS for MTM and FTM calls should be maintained, even where prices are to be commercially agreed.

31. While commercial considerations make it unlikely that an MNO would withhold supply of the MTAS service, the ability for on-net/off-net price discrimination to occur has the potential to discourage any-to-any connectivity. This was observed by the NZCC which noted that low proportions of cross-net traffic exhibited in the New Zealand market

demonstrate a lack of any-to-any connectivity and are a symptom of the on-net/off-net price differentials.[20]

32. AAPT considers that a requirement to provide the MTAS and the prevention of anti-competitive on-net/off-net price discrimination will best promote any-to-any connectivity.

Regulatory period

33. While AAPT considers that a three year regulatory period would provide the optimal balance between certainty and competitiveness, its ultimate view is that the expiry date of the FAD for the MTAS should be aligned with the expiry date of the FAD for PSTN OTA, given that MTAS and PSTN OTA should eventually trend towards the same price.

34. AAPT considers that indicative pricing should be assessed against international benchmarks during the regulatory period to ensure access pricing in Australia does not become expensive relative to the rest of the world (which AAPT submits has in fact happened with the ACCC's current indicative prices for MTAS).

[20] NZCC MTAS Determination, page 23.