



**Submission to Optus Domestic Mobile Terminating Service  
Undertaking**

**March 2007**

## **Introduction**

The CCC is pleased to have the opportunity to comment on the Optus Domestic Mobile Terminating Service undertakings. The CCC represents non-dominant carriers in the Australian market, operating in retail, wholesale, fixed, mobile voice and data markets.

The members of the CCC are strongly affected by the cost of MTAS, both directly and in terms of their ability to compete in the markets for other services, and for many years have strongly advocated cost-reflective regulated prices for this important “bottle neck” service.

## **Summary Response to the Optus Undertaking**

The CCC submits that it would be inconsistent with the Commission’s LTIE test to accept the Optus undertaking. This is because:

- It is clear from the most recent work looking at the cost of termination that 12cpm is substantially above cost.
- The CCC submits that the Optus undertaking provides no valid justification for maintaining above cost termination prices. Rather, the undertakings appear vexatious and would cause further uncertainty and planning disruption to access seekers who have a legitimate expectation that rates will continue to move toward cost, consistent with the stated objectives of the Commission.
- The Commission is presently in the process of determining new indicative prices for MTAS, and accepting the Optus undertakings would preemptively preclude options for both the Commission and access seekers in coming months.
- The work commissioned by the CCC to the Commission’s WIK model inquiry demonstrates clearly that the use of a price glide path in the indicative prices from 2004 to June 30 2007 had significant negative impacts on access seekers and end users connected to access seekers’ networks.
- Conversely, the same work demonstrates that the negative impacts on access providers predicted by some parties did not eventuate.

## **Negative Impacts on Access Seekers**

The Commission’s decision in 2004 to step down its indicative prices toward cost-based prices was based on the concern that moving from the then inflated rates in the market too quickly would cause “regulatory shock” for access providers.

The CCC has never accepted that this is an argument that is consistent with the LTIE and feels that the evidence of the past three years supports the view that access seekers have been seriously disadvantaged, to the detriment of competition and end users, by this approach.

Access seekers still confront prices for retail fixed to mobile calls that are well below the wholesale price of termination, even with prices today having fallen to 12cpm for those who have been to arbitration. Further, analysis of Telstra's accounts by Access Economics commissioned by the CCC and submitted in response to the Commission's discussion paper on the WIK cost model<sup>1</sup>, found that its average price of FTM calls for business was about 10cpm lower than the average price for residential consumers. This indicates that the above cost termination margins are being used to price discriminate in the more competitive markets to undermine the competitiveness of fixed-only network operators.

### **No Evidence of "Shock" on Access Providers**

The impacts that have been observed during the period of the price glide path suggest no evidence in support of the negatives mobile network operators claimed would result from the price falls.

Retail outgoing mobile prices have fallen and handset subsidies have increased. The opposite would be expected if the claims by some MNOs about the so-called "waterbed effect" were valid.

Whilst there has been a degree of retail "pass through", the maintenance of the above cost MTAS as sought by Optus in the Undertaking allows Optus to discriminate in its retail pricing to adversely impact on fixed line only competitors.

### **"Glide Path" Price Reductions Must Not be Repeated**

Fixed line operators opposed the Commission's decision to employ a glide path to reduce MTAS pricing in its 2004 decision. As described above, experience shows there was no need for concern about negative market consequences that some access providers warned of at that time. CCC member companies argued in 2004 that to delay the implementation of a reduction in MTAS prices was contrary to the object of Part XIC of the Act,<sup>2</sup> in that it would not promote the LTIE; indeed, there was a strong likelihood that it would harm the LTIE. The CCC continues to be of that view.

In examining the experience since 2004, the Commission should consider the negative impacts of the approach on competitiveness in the market, particularly in relation to the competitive position of fixed line only and mobile only operators as against Telstra and Optus. The Access Economics report submitted to the WIK model review outlines clearly the costs to consumer welfare of the glide path employed over that period.

In these circumstances, it is clear that the Commission cannot satisfy the LTIE if it again proceeds with a glide path approach for the following reasons

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<sup>1</sup> Access Economics: Response to the ACCC MTAS Pricing Principles Determination 16 March 2007

<sup>2</sup> See section 152AB of the Act.

- The Commission acknowledged in 2004 that it needed to move to a cost-based pricing approach for MTAS because the previous retail minus approach had been unsuccessful in achieving the appropriate regulatory outcome. As the CCC argued at that time, the use of a glide path prolonged that mischief.
- A glide path therefore results in a loss of consumer welfare. Consumer welfare is at the core of the LTIE test.<sup>3</sup>
- MNOs have now had four years to prepare for prices to continue to move toward cost. Any suggestion that they require a delay in prices being reduced further to achieve certainty in their business planning is clearly unfounded should be rejected.

## **Conclusion**

The Commission should reject the Optus undertaking as it would lock the industry into costs that are double the cost calculated by the commission's own modeling adviser. The priority for the Commission should be to reduce MTAS prices towards its calculation of cost.

The process of moving to cost-reflective prices has already taken three and a half years, during which time access seekers have suffered from great uncertainty as Optus and Vodafone repeatedly tested the Commission's powers and processes and delayed reaching commercial outcomes that reflected the Commission's indicative prices. Access seekers, competition and consumers have suffered great damage throughout this period.

Accepting the Optus undertakings would prolong this damage beyond the end of 2007. The CCC believes this would be an unacceptable outcome and not consistent with the Commission's obligations.

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<sup>3</sup> Section 2 of the Act provides: "The object of this Act is to enhance the welfare of Australians through the promotion of competition and fair trading..."