



Submission by AAPT Limited (21 October 2011)

to

ACCC Explanatory Statement

***Inquiry to make a final access determination for the Domestic
Mobile Terminating Access Service (MTAS) Draft Access
Determination (dated 23 September 2011)***



Introduction

1. AAPT Limited (**AAPT**) welcomes the opportunity to comment on the Australian Competition and Consumer Commission (**ACCC**) draft final access determination (**Draft FAD**) for the Domestic Mobile Terminating Access Service (**MTAS**) and accompanying explanatory statement titled *Inquiry to make a final access determination for the Domestic Mobile Terminating Access Service (MTAS) Draft Access Determination Explanatory Statement*, dated 23 September 2011 (**Explanatory Statement**).
2. AAPT welcomes and agrees with the ACCC's decision to reduce MTAS pricing. However, AAPT considers that the glide path proposed by the ACCC in the Draft FAD from 6 cpm to 3.6 cpm (**Draft FAD Glide Path**) is overly conservative and does not adequately promote the long term interests of end users (**LTIE**).

Executive summary

3. It is AAPT's view that, while the reduction in the MTAS rate is welcomed (especially since it has been at the same rate of 9 cpm since 2007), AAPT does not agree with the Draft FAD Glide Path.
4. Had the ACCC provided for a glide path with an 'end point' that more accurately reflects the efficient costs of providing the MTAS (ie approaching zero or which aligns with the fixed termination rate), AAPT would support a glide path in order to allow industry to adjust to that lower 'end point'.¹ However, AAPT sees no valid reason for the ACCC to implement a glide path when moving from the current 9 cpm charge to 3.6 cpm.

¹ Consistent with this, in AAPT's submission to the initial ACCC MTAS Discussion Paper released on 15 June 2011, AAPT had supported a glide path from 4 cpm to zero or an 'end point' which aligns with the fixed termination rate.



5. AAPT does not understand, and the ACCC does not adequately explain why, a glide from the current MTAS rate of 9 cpm to 3.6 cpm is necessary. AAPT has reviewed the ACCC's reasons for the Draft FAD Glide Path and considers that none of those reasons (one of which is to avoid regulatory shock) warrant further delaying the benefits to be enjoyed by end-users as a result of an immediate movement to a lower MTAS price of 3.6 cpm. On the contrary, the AAPT considers there are compelling reasons (as discussed below) to move straight to 3.6 cpm without any glide path.
6. **Draft FAD Glide Path does not promote competition** – AAPT considers that the overly conservative Draft FAD Glide Path will do little to promote the LTIE because so long as the MTAS rate is (unnecessarily) much higher than the underlying cost of production:
 - mobile network operators (**MNOs**) will continue to have an incentive to use their market power in their individual markets to extract monopoly rents from the provision of the wholesale MTAS; and
 - integrated network operators (like Optus and Telstra) will have an incentive to exercise on-net/off-net price discrimination, which will always put non-integrated fixed-line operators (like AAPT) and smaller MNOs at a competitive disadvantage.
7. Accordingly, the longer the ACCC delays in introducing more efficient pricing, the longer competition in the FTM and retail mobiles markets will continue to be hindered rather than promoted. For example, AAPT has often contemplated building and offering new and innovative voice products and services in order to compete in the FTM and retail voice markets, but has been unable to do so due to the high MTAS pricing.
8. AAPT considers that an immediate move to 3.6 cpm would give AAPT more ability to offer new and innovative voice products which would not only give consumers a wider choice of products but would also promote



price competition in those markets and encourage investment in infrastructure required as part of the product development process. In contrast, the Draft FAD Glide Path would do little to remove the competitive barrier of inflated MTAS prices and thereby hinders the provision of such benefits to the detriment of end users.

9. **Efficient investment in infrastructure** – AAPT considers that:

- An immediate move to an MTAS rate of 3.6 cpm with further reductions approaching zero or alignment with fixed termination rates will act to encourage investment in more efficient IP networks, such as LTE.
- The ACCC has stated that it considers “*that the deployment of LTE technology and all IP networks represents best in use technology for mobile networks and mobile termination*” and that “*over time the deployment of all IP networks such as LTE networks will mean that the cost of providing the MTAS will tend towards 0 cpm*”.²
- Although the incentive from MNOs to deploy new technology in order to remain competitive already exists, this may be countered by the ability to continue obtaining monopoly rents from inflated MTAS rates. However, a steeper reduction in the MTAS rate would mean that, as the amount of monopoly rent that can be extracted is substantially reduced, the incentive for MNOs to deploy LTE technology increases as MNO’s will seek to drive down their cost of providing the MTAS to efficient levels, approaching 0 cpm.

10. **Pass-through safeguard** – AAPT is confused by, what appears to AAPT to be, the ACCC’s out of hand dismissal of the idea of a pass-through safeguard, despite having raised it as a major issue and stakeholders

² Explanatory Statement, p 10.



consequently spending substantial time and effort addressing that matter in their submissions to the initial Discussion Paper³.

The Draft FAD glide path is not in the LTIE

11. AAPT notes that in the Explanatory Statement, the ACCC stated that: “...*in determining the extent to which terms and conditions are likely to result in the objective of promoting competition, regard must be had to the extent to which the terms and conditions will remove obstacles to end users to gaining access to listed services*”.⁴ [Emphasis]
12. AAPT considers that, until the MTAS rate is immediately brought to a level that is much closer to the underlying cost of production (which the ACCC has accepted will tend towards zero), “obstacles” to end users to gaining access to new and innovative products will remain, to the detriment of the LTIE.
13. AAPT has (as other competitive carriers are likely to have) devoted considerable time, effort and resources to the possibility of developing new and innovative voice offerings to customers in competition to mobile voice services offered by MNOs and integrated network operators but have been unable to make a business case to proceed to commercially offering these products.
14. Any new and innovative product will only be viable for AAPT if MTAS, in particular FTM, is at a level to allow AAPT to effectively compete with integrated service providers. Based on the Draft FAD Glide Path, AAPT remains unable to build or offer viable new voice products to compete in the FTM and retail voice markets.

³ ACCC, *Public Inquiry to make a final access determination for the mobile terminating access service: Discussion Paper*, 15 June 2011.

⁴ Draft FAD Explanatory Statement, p. 12.



15. As previously submitted, 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 MTAS services acquired from 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 in the retail market. Accordingly, AAPT (and other competitive carriers) will more than likely continue to put on hold the commercial offerings of any innovative voice products and services unless the ACCC immediately reduces the MTAS rate to 3.6 cpm. AAPT is happy to meet with the ACCC to discuss this issue further.
16. In the Explanatory Statement, the ACCC stated that it had regard to the following matters in deciding upon the Draft FAD Glide Path:
- a TSLIRC+ upper bound based on the 2007 WIK model, but noting the significant industry changes since the model input parameters were finalised;
 - current international indicators of efficient costs of providing the MTAS; and
 - a lower bound approaching zero for the efficient cost of providing voice termination on a LTE network, but taking into account that the industry in Australia may not reach this position prior to 30 June 2014.⁵

2007 WIK Model outputs are no longer relevant

17. AAPT considers that 2007 WIK model outputs (which the ACCC relied upon to set the overly conservative 'start point' or upper bound of the Draft

⁵ Explanatory Statement, p. 7.



FAD Glide Path of 6 cpm are out-dated and no longer relevant. As the ACCC noted, the WIK output was based on older 2G technology.⁶

There is no regulatory shock to avoid

18. The ACCC also stated that the “*glide-path in the draft FAD is a measured approach when considered against industry developments regarding WIK model parameters and recent international efficient cost regulation of the MTAS. The ACCC is also cognisant of avoiding regulatory shock in implementing reduced MTAS prices.*”⁷ [Emphasis added]
19. AAPT considers that the avoidance of regulatory shock or uncertainty is not a valid reason for the ACCC to implement a glide path when moving from the current MTAS rate of 9 cpm to 3.6 cpm because:
 - the industry, in particular the MNOs, have been put on notice since 2004 that the price of MTAS would come down and this reduction path was implemented by the ACCC’s original glide between 1 July 2004 and 30 June 2007;
 - the industry has always been aware that the MTAS pricing was based on the efficient cost of providing voice termination, and that as the technology evolved, the relevant pricing principles would dictate that the price would come down (and based on an LTE network would tend towards zero);
 - AAPT notes that had the ACCC continued to implement its original glide path, the ‘end point’ of zero would already have been reach by the end of 2010; and
 - any regulatory shock or uncertainty that might arguably have been experienced by MNOs due to further reductions were adequately

⁶ Explanatory Statement, pp. 7-8.

⁷ Explanatory Statement, p 6.



‘absorbed’ and addressed by the MTAS rate reduction path being stalled at 9 cpm for over four years between 1 July 2007 and 31 December 2011.

20. As the MNOs have enjoyed over four years’ worth of monopoly rent, a glide path to an MTAS rate of 3.6 cpm is neither necessary nor appropriate.
21. If the ACCC still considers a glide path is necessary, AAPT considers that a balanced approach would be to:
 - apply the Draft FAD Glide Path to integrated operators (like Telstra and Optus) to set the MTAS rates that they must pay; but
 - immediately drop the MTAS rate to be paid by smaller MNOs and non-integrated fixed-line operators like AAPT to 3.6 cpm.
22. This would better promote the LTIE than a straight application of the Draft FAD Glide Path as it would allow AAPT and smaller MNOs to more effectively compete by countering some of the competitive advantage Telstra and Optus would have as integrated operators.

Insufficient weight given to international benchmarks

23. The ACCC also noted that, in setting the Draft FAD Glide Path, it had regard to current international indicators of efficient costs of providing the MTAS. AAPT considers that such indicators are far more relevant and reflective of the current efficient cost of providing voice termination than the now outdated 2007 WIK model outputs and therefore should be given more weight and authority than is reflected in the Draft FAD Glide Path. AAPT considers that the international benchmarks quoted by the ACCC in the Explanatory Statement (ie from New Zealand and European regulatory authorities) support an immediate to move to 3.6 cpm.



A lower ‘end point’ for the FAD glide path will promote efficient investment

24. AAPT considers that the MTAS should continue to be decreased towards an ‘end point’ approaching zero or alignment with fixed termination rates.
25. In setting the ‘end point’ or lower bound of the Draft FAD Glide Path, the ACCC noted that while the efficient cost of providing voice termination on an LTE network was approaching zero, the industry in Australia may not reach this position prior to 30 June 2014.⁸ AAPT does not agree with this assessment and notes that Telstra has already launched its LTE network.
26. If the ACCC is still minded to set an ‘end point’ that is not a value close to zero or aligned with the current fixed termination rate (which AAPT considers is the correct ‘end point’), AAPT considers that setting an ‘end point’ of 2 cpm to be applied between 1 January 2014 – 30 June 2014 in the MTAS FAD will better promote competition and the LTIE than the Draft FAD Glide Path end point.
27. An ‘end point’ of 2 cpm is preferable to the Draft FAD Glide Path end point because it:
 - better provides MNOs with the correct signal that, post the declaration period (ie after 30 June 2014), the MTAS rate will likely tend towards the underlying cost of production of zero or, at the very least, a alignment with fixed termination rates;
 - be more in line with international benchmarks; and
 - encourage other MNOs to invest in “best in use technology” such as LTE technology (for the reasons set out at paragraph 9 above) and this

⁸ Explanatory Statement, p. 7.



will further lead to improved products services for end users as well as price competition in the retail voice market.

28. For the reasons expressed above, AAPT considers that an immediate move to 3.6 cpm, with further reductions tending towards an MTAS rate of zero or alignment with the fixed termination rate will best promote the LTIE.