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Australian Competition and Consumer Commission
Infrastructure Regulation Division
By email to: MTASinquiry@accc.gov.au

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PUBLIC INQUIRY INTO THE DECLARATION OF THE DOMESTIC MOBILE TERMINATING ACCESS SERVICE

Over the Wire thanks the Australian Competition and Consumer Commission (**ACCC**) for the opportunity to make a submission in relation to the Inquiry into the Declaration of the Domestic Mobile Terminating Access Service.

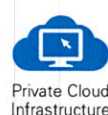
Please note that confidential information has been appropriated identified with the “c-i-c” symbol and shaded grey.

About Over the Wire

Over the Wire Holdings Limited is an ASX listed telecommunications, cloud and IT solutions provider that has a national network with points of presence in all major Australian capital cities and Auckland, New Zealand. The company offers an integrated suite of products and services to business customers including Data Networks and Internet, Voice, Data Centre co-location, Cloud and Managed Services.

The Over the Wire group includes Over the Wire, NetSIP, Faktortel, Sanity Technology, Telarus and VPN Solutions.

Entities in the Over the Wire Group, NetSIP and Faktortel, provide voice phone services over the internet (**VoIP**) using Session Initiation Protocol (**SIP**), to allow customers to make



local, interstate and overseas telephone calls to both fixed line and mobile numbers using their broadband internet connection.

[Start c-i-c] [REDACTED]
[REDACTED]
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[REDACTED]. [End c-i-c]

Agreements for Mobile Voice and SMS Termination

Mobile Network Operators (**MNOs**) continue to hold a monopoly over the termination of mobile voice calls and Short Message Service (**SMS**) messages on their respective networks.

The ACCC specifically asked whether smaller network operators have difficulty securing commercial arrangements to terminate voice calls on behalf of their customers. In Over the Wire's experience, some MNOs will offer their template commercial agreement to smaller operators. While most MNO offer wholesale agreements for mobile voice termination, fewer MNO offer wholesale agreements for SMS termination. [Start c-i-c] [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]. [End c-i-c]

Typically, in wholesale agreements that have been provided to Over the Wire entities for termination, pricing is linked to volume with higher volume receiving better pricing. Rates offered under wholesale agreements that have been provided by MNOs to Over the Wire are much higher than the price terms set out in the MTAS Final Access Determination (**FAD**).

The difficulty comes in negotiating the terms of such agreement. Requests to amend terms of an agreement supplied by an MNO are met with significant delay. MNOs will not agree to wholesale pricing that is even remotely comparable to the pricing in the MTAS FAD, and when such pricing is demanded under the MTAS declaration by a smaller network operator,

the MNO may apply significant road blocks. [Start c-i-c] [REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] [End c-i-c]

Service Description

The ACCC has posed several questions in relation to the current service description, in particular as to fitness for purpose, technology neutrality, and whether it adequately addresses the issue of monopoly power held by MNOs.

The current service description is intended to be technologically neutral with a view to encouraging the supply of innovative services, which is in the long-term interests of end-users. However, Over the Wire notes that while the ACCC considered that while an access seeker's network was not required by the service description to be a digital mobile network, the ACCC considered that only MNO's would have the required infrastructure to actually be in a position to interconnect and apply the MTAS and that the building or acquiring of necessary infrastructure for interconnection by non-MNO entities would be a matter for [the non-MNO entity's] commercial decision.¹

Over the Wire entities have the necessary infrastructure to interconnect with an MNO network to acquire voice or SMS termination services. However, in Over the Wire's experience, MNO's will attempt to interpret the service description narrowly and technology specifically with a view to discouraging the application of the MTAS declaration by non-MNO access seekers. Examples experienced by Over the Wire group entities include:

- asserting that the access seeker's network must be a digital mobile network, despite that interpretation being inconsistent with the explanatory note

¹ <https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/mobile-terminating-access-service-declaration-review-2013/final-decision>

published by the ACCC on its website after finalizing the 2013-2014 MTAS declaration review;²

- insisting that an access seeker must take technologically unnecessary steps such as interconnecting at inconvenient or additional unnecessary points of interconnect (**POI**) operated by the access provider, or at POI that are geographically inconvenient to the access seeker, in order to gain access under the MTAS; and
- questioning the usage case that raised the access seeker's request to interconnect, and suggesting that particular usage cases (such as A2P) are not permitted under the MTAS declaration, which is contrary to the ACCC's Final Access Determination.

If experiencing such behavior by MNO's, access seekers may be hesitant to invest in the infrastructure required to interconnect unless the access seeker is confident that an MNO will provide access under the MTAS declaration.

To discourage the tactics mentioned above, and thereby encourage the supply of innovative services, it would be helpful to access seekers for the service description to be amended to make clear:

- any specific default network infrastructure or architecture for interconnection;
- whether the access provider can determine the location of the point(s) of connection, and whether the access provider must act reasonably in doing so; and
- that SMS includes A2P SMS.

² <https://www.accc.gov.au/regulated-infrastructure/communications/mobile-services/mobile-terminating-access-service-declaration-review-2013/final-decision>

Relevance of the MTAS declaration

The MTAS declaration allows a broader range of entities to provide a wider range of services to end users. In Over the Wire's case application of the MTAS declaration is particularly effective in allowing us to offer competitive services to retail customers with a larger volume of use, for example call centers.

Accordingly, the MTAS declaration has resulted a continued increase in competition since the 2014 declaration, as evidenced by an increase in service offerings, and continued lowering of prices during that period. A specific example in the market is the dramatic increase in calling plans which feature unlimited calls to mobile. This would not have occurred without the MTAS declaration.

Over the Wire group entities are not MNOs, so cannot speak to the MTAS declaration as an input to the MTM market, but we would note that the pricing of mobile services have steadily decreased and inclusions in plans for mobile services have improved during the period that the MTAS declaration has been in place. In this way, the reduction in the MTAS rate does get passed on to customers – not proactively by MNOs to customers still within their contract term, but the reduced price is reflected in subsequent customer contracts (for example upon the expiration of an existing contract).

However, we strongly believe that mobile voice termination is an essential input into the FTM market. Removal of the MTAS declaration may result in the price of FTM termination rising in response to customers moving to over the top services (such as Whatsapp, Google Hangouts, Facetime). Over the Wire submit that continued declaration for the MTAS will continue to promote competition in the FTM.

Over the Wire believes that the historical period of approximately 5 years between re-declaration of the MTAS has worked well. We suggest that in considering re-declaration, the appropriate duration would be no less than three (3) years and up to five (5) years.

Conclusion

For the reasons above, Over the Wire strongly believes that it is important that the MTAS continues to be declared to:

- promote competition by encouraging a broader range of telecommunications providers, especially smaller telecommunications providers; and
- incentivise innovate service offerings.

Over the Wire suggests that taking steps to clarify the application of the MTAS declaration and encourage MNO to provide access to access seekers swiftly and without high set-up costs or technical inconveniences in order to encourage investment by telecommunications access seekers in the infrastructure required to interconnect which is essential in encouraging the development and supply of innovative services, which is in turn in the long-term interest of end-users.

Over the Wire is available to provide further information or assistance that the ACCC may need in considering this matter. Please do not hesitate to contact Jay Binks, General Manager - Voice at jay.binks@overthewire.com.au or the Over the Wire Regulatory team at [Start c-i-c] [redacted] [End c-i-c].

Yours faithfully,



Jay Binks
General Manager - Voice