



17 April 2009

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Dear Ms Philpott

**Mobile Terminating Access Service – Response to ACCC Draft Report on Reviewing the MTAS Declaration**

Telstra refers to the Commission's "Mobile Terminating Access Service: an ACCC Draft Report on Reviewing the Declaration of the Mobile Terminating Access Service" (**Draft Report**) of March 2009, wherein the Commission has reached the preliminary view to extend the MTAS declaration in its current form for a further five years.

Telstra agrees with the Commission's preliminary view for the reasons more particularly set out in Telstra's submission of 6 February 2009. However, Telstra does not agree with all of the reasoning provided for the Commission in its Draft Report, including the following matters on which Telstra wishes to make comment.

First, Telstra agrees with the Commission that there is no basis for extending the definition of the declared MTAS to include SMS, MMS and other data services. The Commission, however, says that:

*"it is not necessary, at this stage, to include SMS, MMS and other data services in the MTAS service description as they are still exhibiting significant growth and cannot be considered fully mature markets."<sup>1</sup>*

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<sup>1</sup> ACCC Draft Report, at p13.

Telstra repeats its view that regulation of any service should only be considered where there is **market failure**, rather than the maturity or otherwise of the market. To date, there has been no such market failure in relation to the provision of these services.

Second, at p20 of the Draft Report, the Commission rejects Telstra's previous submission that there is increasing substitution of calls across different technologies, and instead the Commission states that it does not consider MTM, VoIP, SMS and e-mail as being fully effective substitutes for FTM calls. The Commission reaches this conclusion after considering recent market analysis undertaken by ACMA<sup>2</sup>. However, Telstra contends that the Commission should not confuse mobile and fixed *line* substitution with *call* substitution. Telstra continues to believe that there is substitution occurring at the call level, between mobile and fixed technologies, VOIP and alternatives such as email.

Third, Telstra disagrees with the Commission's conclusion that the market within which FTM services is provided is not effectively competitive<sup>3</sup>. As Telstra mentioned in its submission of 6 February, there are now a myriad of options available to customers (business and consumers) wishing to contact others. In addition, since 2004, the barriers to entry into the market in which FTM services are provided have been further lowered by the declaration of WLR. Accordingly, Telstra remains of the view that the level of competition for fixed network services (including FTM) is much greater than that considered by the Commission.

Finally, Telstra is pleased to see the Commission's acknowledgements that:

"Above cost MTAS rates therefore tend to act as a barrier to providers considering entry into the FTM market"<sup>4</sup>; and

"Further, actual improvements in competition may emerge in a range of other ways, including price reductions in limited segments of the FTM services market. Alternatively, price reductions may be passed through in the form of lower prices for other services provided in the market in which FTM services are provided (for example, prices for NLD or IDD call services). Finally, rather than 100 percent pass through of price reductions, improved competition may manifest itself in the form of improved quality of service."

The above comments by the Commission lend support to Telstra's earlier claims, including that:

- the regulated price of the MTAS must be reduced below 9cpm to a level that reflects efficient cost – ie 6cpm; and
- the Commission's apparent concern regarding the level of pass through of MTAS price reductions to Telstra's retail FTM pricing is misplaced. The Commission's concern on FTM pass-through has been too narrowly focussed on isolated FTM pricing information (or more recently, on the basket of preselect calls), rather than considering the broader context in which FTM

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<sup>2</sup> "Convergence and Communications, Report 1: Australian household consumers' take-up and use of voice communications services", ACMA, March 2009.

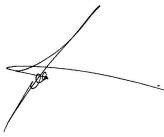
<sup>3</sup> ACCC Draft Report, at p24.

<sup>4</sup> ACCC Draft Report, at p27.

services are provided, and the ways in which benefits to consumers can manifest themselves.

Accordingly, Telstra believes that the Commission should proceed with its proposed re-declaration of the MTAS in its current form for a further 5 years, but believes that the declaration will only deliver benefits to consumers, and meet the LTIE, if it is accompanied by regulated pricing that reflects the efficient costs of providing the service.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Tony Warren', with a stylized flourish extending to the right.

Tony Warren  
Executive Director Regulatory Affairs  
Public Policy and Communications