

EXECUTIVE OFFICE



**Australian
Competition &
Consumer
Commission**

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Executive Director
Office of Best Practice Regulation
Department of the Prime Minister and Cabinet

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Dear Mr McNamara

This letter certifies that the Domestic Mobile Terminating Access Service (MTAS) public inquiry process undertaken by the ACCC satisfies a similar process to that required for a Regulatory Impact Statement (RIS) as set out in the Australian Government Guide to Regulation March 2014 (the Guide).

MTAS public inquiry process

Under section 152AL of the *Competition and Consumer Act 2010*, the ACCC must hold a public inquiry under Part 25 of the *Telecommunications Act 1997* before declaring a service. The ACCC commenced a public inquiry into the MTAS with the release of a discussion paper in May 2013. Following consideration of the submissions to the discussion paper the ACCC released a draft decision in December 2013. Following further consultation a final decision was made in June 2014.

Addressing the RIS questions

The ACCC considers that in meeting its statutory obligations relating to declaration, the ACCC has addressed the seven RIS questions set out in the Guide.

- *Questions 1 & 2* - The initial discussion paper outlines the problem and the final decision document explains why government action is needed.

The ACCC has considered the MTAS a bottleneck to access since 1997, and it has been declared since that time. This is because without declaration, each Mobile Network Operator (MNO) has the ability and incentive to restrict access and/or set unreasonable terms of access in the form of high access prices with anti-competitive implications for downstream retail mobile services. The ACCC consulted on this view in the 2013-14 MTAS declaration inquiry and found stakeholder consensus that this remained the case, and consequently maintained the declaration of the MTAS. The MTAS service description was varied to include termination of SMS as well as calls because there was sufficient evidence that current prices for terminating SMS did not reflect efficient costs.

- *Questions 3 & 4* - The declaration process requires the consideration of the statutory criteria in two scenarios – a future with regulation and a future without regulation. The options open to the ACCC are to declare or not declare the service. We are therefore not able to consider a range of regulatory options, or the net benefit of a range of options, as envisaged by the Guide.

In the 2013-14 MTAS declaration inquiry, the ACCC was subject to the statutory obligation to consider whether to maintain, extend, vary or revoke the existing declaration, which was made in 2004 and extended in 2009. In forming a view on these options, the ACCC considered whether the Long Term Interests of End-users (LTIE) would be promoted by extending declaration. An LTIE assessment includes considering the efficient costs of providing the MTAS and implications for industry innovation in downstream services, as well as the efficient use of and investment in infrastructure.

The total regulatory burden arising from MTAS declaration is low, and the increase in the regulatory burden arising from extending declaration for a further 5 years and including termination of SMS is negligible.

We note that in the Vodafone submission to the May 2013 discussion paper it stated:

When deciding whether or not to regulate the MTAS, the ACCC is required to weigh the cost of declaration against the benefits arising as a result of declaration. The benefits are discussed above and seem relatively uncontroversial. Generally speaking, the cost of MTAS declaration has also been relatively low. For example, there have been few disputes in relation to MTAS and (in comparison with fixed network declarations) a limited need for regulatory intervention, particularly in recent years. There is also no evidence to suggest a material increase in the costs associated with regulating the MTAS in recent times. Accordingly, VHA considers that the benefits of regulating the MTAS continue to outweigh the costs¹

- *Question 5* - The public inquiry provided access providers and access seekers, as well as other interested stakeholders, the opportunity to comment on the proposal. The ACCC commenced the MTAS declaration inquiry with the release of a public discussion paper in May 2013. Market inquiries were undertaken with specific stakeholders in August 2013 to obtain further information. A draft decision was published for consultation in December 2013, and further targeted market inquiries were undertaken in May 2014. Throughout the inquiry, the ACCC received submissions from, and closely engaged with, MTAS service providers, MTAS access seekers, downstream service providers and consumer representatives. The ACCC has explained how it has taken account of all the views received in both its draft decision and its final decision.

¹Vodafone Hutchison Australia, *Submission to the MTAS Declaration Inquiry Discussion Paper*, 5 July 2013, p.5

- *Questions 6 & 7* - The draft and final decision documents provide detailed reasons as to why continuing the declaration is the best option, with respect to the statutory criteria. As the only options are to declare or not to declare, there is no scope to vary the implementation of the decision. We note that the CCA requires the ACCC to conduct another public inquiry into declaration of services before a declaration expires.

Estimation of the regulatory burden

The table below sets out the additional regulatory burden arising from the recent MTAS declaration decision and has been agreed with the OBPR. The ACCC recently removed three Telstra accounting separation record keeping rules and the savings from removing these rules will more than off-set the increase in the regulatory burden as a result of the June 2014 MTAS declaration.

| <i>Regulatory Burden and Cost Offset (RBCO) Estimate Table</i> | | | | |
|--|----------|-------------------------|-------------|-----------------|
| Average Annual Compliance Costs (from Business as usual) | | | | |
| Costs (\$m) | Business | Community Organisations | Individuals | Total Cost |
| Total by Sector | \$0.002 | \$ | \$ | \$0.002 |
| Cost offset (\$m) | Business | Community Organisations | Individuals | Total by Source |
| Agency | \$0.002 | \$ | \$ | \$0.002 |
| Within portfolio | \$ | \$ | \$ | \$ |
| Outside portfolio | \$ | \$ | \$ | \$ |
| Total by Sector | \$0.002 | \$ | \$ | \$0.002 |
| Proposal is cost neutral? yes | | | | |
| Proposal is deregulatory? no | | | | |
| Balance of cost offsets \$0.162 | | | | |

Should the OBPR have any queries in relation to this matter please contact Steve Goodridge on 03 9290 1435 or at steve.goodridge@accc.gov.au.

Yours sincerely

Rod Sims
Chairman