

Modica Group Limited

Submission to Commerce Commission on draft review of Mobile Access Termination Service (MTAS)

Closing date 1 July 2020 5pm (extension granted to 3 July 5pm 2020).

Modica Group Limited is a New Zealand based company that provides mobile messaging platform services to companies and organisations worldwide. Modica provides a Platform as a Service solution that delivers a range of messaging and gateway services. For further information please see: <https://modicagroup.com/what-we-do>.

Summary

The Commerce Commission (Commission) is to decide if there are reasonable grounds to commence an investigation into whether to remove the Mobile Termination Access Services (MTAS) from the list of designated services in Schedule 1 of the Telecommunications Act 2001 (the Act) by 23 September 2020.

1. Modica's view is that maintaining the designation of MTAS as a regulated service provides certainty and stability to the short-message-service (SMS) and multimedia-message-service (MMS) market, and that the regulation is necessary to prevent price distortion and increased costs being passed on to the end user.
2. Modica considers that there are no reasonable grounds to commence an investigation into omitting SMS and (MMS) termination from the MTAS service description as a whole in the future.
3. Modica notes the Commission has not to date considered the issue of regulating the pricing for Application 2 Person (A2P) messaging. At the present time, the high charges for those A2P message services is preventing A2P Message Providers from competing effectively. In turn, this limits the benefits to end-users that could be realised from A2P message services. Regulation of the charges imposed by MNOs will likely lead to significant benefits for end-users.
4. This Submission therefore also seeks a Commission investigation under the Telecommunications Act 2001 into the charges imposed by MNOs for A2P messages.

Submissions:

1. There are no reasonable grounds to commence an investigation into whether to remove the Mobile Termination Access Services (MTAS) from the list of designated services.

Modica considers that there are no reasonable grounds to commence an investigation into whether to remove the MTAS from the list of designated services and because:

- there remain strong commercial incentives in markets dominated by Spark and Vodafone to abuse market position and the dominant MNOs are incentivised to increase their competitor's costs and impose barriers to access;
- Each MNO continues to have a monopoly over wholesale access to its mobile subscribers and has an incentive to raise MTAS rates as its own subscribers are not paying the MTAS rates. This means the MNO may increase the wholesale MTAS price without risk of losing its own subscribers;
- Increased competition through regulation has benefited end users through lower retail prices for messaging and gateway services, increased choice, and more innovative service offerings from messaging and gateway service providers.

A2P messages are already expensive with small margins for the A2P Message Providers. Any further increases in costs as a result of deregulation may mean:

- A2P Message Providers, such as Modica passing on costs to end users - many of whom are small business and are already struggling due to Covid19 restrictions;
- Retail customers of A2P Message Providers may choose to use grey routes as an alternative to paying higher costs for bulk SMS or MMS. Grey routes are not subject to regulation and increase the likelihood of bulk spam messages being sent and fraudulent activity in the SMS space. End users need to be encouraged to use legitimate SMS routes that can be monitored by service providers and MNOs in New Zealand.
- Unlike Modica, OTT providers are generally hosted outside of New Zealand, leading to issues around data sovereignty, security implications and consumer legislation effectiveness.

2. No reasonable grounds to commence an investigation into omitting short-message-service (SMS) termination from the MTAS service description

In the Draft Report on MTAS dated 10 June 2020 the working party notes:

“94. We consider that MNOs have the ability to increase MTAS rates due to their monopoly on termination access on their networks, but MNOs may no longer have an incentive to profitably increase MTAS rates for SMS. This is based on our view that OTT services are likely to be an effective constraint in the absence of regulation.”

The working party goes on to say that there may be reasonable grounds to commence an investigation into removing SMS regulation due to the popularity of competing over-the-top messaging services such as Facebook Messenger and WhatsApp.

Modica respectfully disagrees with this approach as, in the New Zealand context at least, there is not have sufficient evidence to indicate that OTT services are an effective substitute for mobile messaging services at this time for the following reasons:

- OTT services differ from SMS services as OTT services are not ubiquitous, i.e. every phone handset is SMS enabled but not all phone handsets are able to receive OTT services. This is part of the reason A2P Message Providers choose to provide SMS rather OTT services;
- While OTT messaging services in respect of Person to Person (P2P) messaging may be an effective substitute for SMS this is not the case for A2P. Some businesses (for example, GP practices) rely solely on SMS to contact their customers, because they are aware not all customers use OTT messaging services. This is particularly true of elderly customers and customers without internet access. Therefore businesses using Modica's mobile messaging platform may not regard alternatives such as OTT services as close substitutes to SMS.
- When credit limits are met by end users of PrePaid Mobile services, access to mobile data services are suspended, thus preventing OTT messages to be received. In comparison, traditional SMS services will maintain delivery to the end user, despite credit limitation enforcement.
- In the event of congestion on mobile networks, operators will prioritise Mobile Voice and Mobile SMS services above Mobile Data connectivity. Hence, during times of large public gatherings, general network congestion or natural disasters, accessibility to these mobile users is more efficient and likely to be reached via standard SMS services. But current wholesale rates does restrict this approach given current wholesale rates.
- For reference, Modica sends over 20 million A2P SMS messages to 3m+ New Zealanders monthly.

3. Proposal for the Commission to consider regulating the pricing for A2P messaging

Modica notes the Commission has not to date considered the issue of regulating the pricing for A2P messaging. While there has been good growth in P2P messaging, the high pricing for A2P messages pricing by MNOs has prevented an even better up-take of A2P message services. As A2P message services are subject to much of the same market conditions as MTAS there is no reason why they should not come within the MTAS ruling.

The key issues are:

- The high charges imposed by the MNOs for A2P messages, of 4.5-7.5c per sms message, and 20c per MMS message. This cost is significant above the

0.06 cents per message set in the Commerce Commission's MTAS rates determination, for what is technically the same service;

- The use in New Zealand of individual Short Codes is a strong tool to regulate and manage senders of A2P to end users. However, current MNO setup costs of \$475 and Monthly \$150 per shortcode present significant cost barriers to organisations needing to use these codes. These high costs (when compared against an assumed low actual cost to manage) promotes the use of shared short codes and makes grey-routing options financially attractive. Use of these two messaging transportation options does not assist in regulation and management of content and providers; and
- The requirement to contract with each MNO creates significant business costs for A2P Message Providers in terms of negotiating and managing each contract. This means that each MNO can operate as a monopoly in respect of the A2P messages sent to their customers. It also contributes to MNOs ability to maintain the artificially high prices against solutions with a low actual cost based to MNO's. Current pricing offered by all MNO is flat based, with no volume tiers to provide scaled cost benefits to A2P providers to then base on as savings to organisations who leverage the use of SMS to communicate to both their internal and external customers.

In addition, MNOs discriminate in their pricing in two ways:

- Selective internal pricing – because the operators control messaging access, they have the ability hold prices high to external service providers, whilst giving themselves preferential pricing when competing with A2P Message Providers;
- Global competition – global A2P Message Providers (which may themselves be global MNOs) are receiving preferential pricing to compete against New Zealand A2P Message Providers.

This lack of regulation in the market therefore means that:

- Independent A2P message service providers face higher costs in providing A2P message services than MNOs. The independent A2P message service providers either have to absorb those costs themselves or seek to pass them on to customers, in both cases making it more difficult for them to compete with MNOs for A2P message customers; and
- Independent New Zealand A2P message service providers are hindered in their ability to set and sustain a price for their services that is as competitive as it could be against other alternatives for businesses to communicate with their customers. For example, this could be an issue with OTT providers in the future which are not subject to the same artificial pricing inflation from MNOs.

Conclusion:

Modica considers that MNOs have the ability to increase MTAS rates due to their monopoly on termination access on their networks and consequently MNOs have an incentive to profitably increase MTAS rates for SMS and MMS messaging services, which will ultimately lead to increased pricing for the end user, defeating the purpose of the Act.

Proposal for Commerce Commission Investigation

We consider that there are reasonable grounds for the regulation of A2P messaging provided by MNOs under the Telecommunications Act. While we consider that the case for regulation is sufficiently clear to justify regulation directly by a legislative amendment, we recognise that the usual approach is for the Commission to investigate whether regulation is justified. We therefore request that the Commission commence an investigation under the Telecommunications Act into whether the designated MTAS should be expanded to include A2P messaging services. The reasons we consider that an investigation is justified are:

- If the charges from MNOs to A2P service providers are regulated on the same basis as the charges for SMS messages between networks, the costs for independent A2P Message Providers would be reduced which would in turn lead to reduced pricing for end-users of telecommunications services.
- As a result, if A2P messaging services were added to the MTAS determination, the ability of A2P Message Providers to compete in the market for the provision of those A2P messaging services, and against alternatives to A2P messaging services, would be considerably enhanced, and efficiencies are likely to arise, leading to significant benefits to end-users of telecommunication services, thereby promoting the purpose in section 18 of the Telecommunications Act.

