



MTAS review

Submission | Commerce Commission

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Public Version

Contents

Executive Summary	1
Introduction	2
Comment	2
The Commission should act to remove regulation wherever possible	2
When to look at this further	3

Executive Summary

The Commission is considering whether there are reasonable grounds to commence an investigation into whether the regulated Mobile Termination Access Service (**MTAS**) should be omitted from Schedule 1 under section 66(b).

The draft decision highlights the highly competitive nature of the market and beneficial outcomes for consumers across a range of measures: services provided over leading edge technology are widely available, prices have fallen, usage is up, and competition has continued to improve. The Commission's ongoing market monitoring activities consistently show a competitive and innovative market, with increasing demand and falling prices¹.

Further, the original 2010 MTAS concern that aggressive on-net discounts might undermine a small new entrants' ability to attract customers have fallen away²:

- As noted in the draft, the market shift to unlimited calling and SMS to any network bundles and converging of on and off-net traffic patterns all point to this no longer being a concern.
- 2Degrees is now an established and independent competitor.
- Changes in technology, consumer demand and industry structure result in operators likely having less incentives and ability to set interconnect terms that undermine competition

In this context, it is unclear what the residual Part 2 competition concern could be.

Accordingly, we agree that the regulated mobile to mobile SMS termination service should be omitted from the Act. However, the draft could have gone further and – in light of changes in demand and operator incentives - concluded that a closer look at the mobile voice termination service was also warranted.

Nonetheless, we recognise that the market is evolving quickly and at least one other party may consider that MTAS should be retained in Schedule 1. The Commission may wish to retain the contingent ability to regulate voice terminations in the Act.

If the Commission decides not to omit the service, we would support the Commission coming back to the matter after 2022. This would give the Commission time to monitor developments further, particularly rapidly evolving voice related technology changes. Further, RSPs already face short term uncertainty and change as the Commission bedded down the fibre access regime³.

In all cases, the Commission should not review current regulated terms ahead of a full review of the need for designation in the Act in the first place. Material changes to regulated terms and conditions results in significant costs as firms must adjust for the new incentives and structure, and a change of this nature should be based on a sound need for regulation.

¹ The Commission assesses market developments annually and has recently completed the Mobile Market Study.

² Reported in the Commission draft at para 98.

³ The Commission will set fibre network service terms by 2022 and is current considering the fibre network open access obligations required by the Act. These are important decisions with material implications for RSPs.

Introduction

1. Thank you for the opportunity to comment on the Commission's *Draft Review of Mobile Termination Access Service* (MTAS) paper (**the draft**).
2. The Commission must consider, at intervals of not more than 5 years after the date on which a designated service or specified service came into force, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from Schedule 1 under section 66(b). This is an important reminder that regulation risks significant costs and distortions and should be rolled back when no longer required.
3. In this case, the Commission is considering whether there are reasonable grounds to commence an investigation into the MTAS service. MTAS provides for the termination of voice calls on a mobile network, and SMSs originating from another mobile network.
4. The Commission last considered MTAS terms and conditions in 2011 and there has been significant changes in the market since then. We agree that the Commission should periodically consider whether to omit services from Schedule 1 as required by the Act.

Comment

The Commission should act to remove regulation wherever possible

5. As a matter of principle, we support rolling back regulation when it is no longer required. Economic regulation should be proportionate to the potential harms it seeks to remedy.
6. The draft decision sets out the highly competitive nature of the market and beneficial outcomes it is delivering to consumers across a range of measures. Further analysis would no doubt provide additional evidence that the market is working well and there are no enduring structural challenges.
7. We can confidently say that New Zealand's mobile networks, mobile services and mobile prices are world-class. The draft decision and Mobile Study highlight that since the Commission last reviewed the MTAS service:
 - a. Prices of mobile services have continued to fall and New Zealand offers, overall, compare well against those available in other OECD countries.
 - b. Usage has increases across the board for voice and data services, with the amount of mobile data used per subscriber more than doubling over the last two years alone. SMS messages per subscriber has fallen, likely reflecting consumer uptake and use of substitute OTT services.
 - c. Operators have continued to invest in mobile networks and new generations of mobile technology. Modern technologies are widely deployed, and operators perform well on most measures of quality.
8. We noted in our contribution to the study that we have three nationwide 4G mobile networks – the same number as the United States⁴ - that are delivering network performance that is above OECD averages and pricing that is both below OECD averages and falling faster than the OECD average.

⁴ Following the announcement of the Sprint-T-Mobile merger

9. Further, this is a dynamic market and since the Commission last reviewed MTAS:
- a. Technology change means that substitutes for mobile voice, text and data have become widespread. Voice, video calling, data and messaging now take place across a variety of applications which work as well on mobile handsets connected to a series of Wi-Fi connections, Wi-Fi on the go across transport networks, and e-sims.
 - b. The Commission concerns, in recommending MTAS regulation due to a concern that above cost termination rates and on-net discounting created a barrier for new entrants⁵, have likewise fallen away:
 - i. There has been significant uptake of unlimited calling and SMS to any network bundles by consumers and a converging of on and off-net traffic patterns,
 - ii. Commission monitoring reporting shows that there has been strong growth in off-net calls and SMS between networks, resulting in a convergence in on-net and off-net traffic⁶, and
 - iii. While 2Degrees has less market share than other operators, it is an established and independent competitor in the mobile market and less susceptible to concerns over off-net pricing.
10. We believe that technology, consumer demand and structure market change all result in operators likely having less incentives and ability to increase termination prices to undermine competition. In all cases, it is unclear how any operator could do this in practice given the number of existing termination agreements and operators in our sector. Rather, operators have every incentive to provide increasingly attractive services to attract and retain customers on mobile in a competitive ecosystem where there is no ability to exercise market power.
11. Given how far the market has evolved and unclear benefits of an on-net pricing strategy, it's unclear what residual Part 2 concern there might be that justifies ongoing regulation.

When to look at this further

12. Accordingly, we believe that the Commission, with further investigation, could reasonably conclude that both SMS and voice termination services should be removed from Schedule 1 of the Act.
13. Nonetheless, we recognise that the market is evolving quickly, and the Commission may wish to retain the contingent ability to regulate voice terminations in the Act. We understand that at least one other party may consider that MTAS should be retained in Schedule 1 as a useful backstop provision.
14. If the Commission was to conclude that full deregulation of MTAS is not warranted at this time, we would support the Commission coming back to the matter after 2022. RSPs already face uncertainty and change as the Commission beds down the fibre access regime over this period⁷.
15. In all cases, the Commission should review the service description, having a closer look at the issues, before contemplating any review of interconnection terms. It can be difficult to identify

⁵ Reported in the Commission draft at para 98.

⁶ Summarised in the draft at para 33.

⁷ The Commission will set fibre network service terms by 2022 and is current considering the fibre network open access obligations required by the Act. These are important decisions with material implications for RSPs.

a specific regulatory cost for established regulation, particularly as the industry and operators have adjusted their businesses for these terms and regulation in practical terms is simply a regulatory backstop. However, material changes to regulated terms and conditions results in significant greater costs as firms must adjust for the new incentives and structure. The Commission should review whether regulation is required in the first place before considering amending standard terms.

[END]