



# Vodafone Submission on the Draft Review of Mobile Termination Access Service

*3 July 2020*

Thank you for the opportunity to provide our views on the draft review of the Mobile Termination Access Service (MTAS).

We agree with the Commission's conclusion to not commence a Schedule 3 investigation at this time. We do not consider the regulations to be necessary in the current market, but they are causing no harm. We are also in the midst of a significant regulatory programme, including items directly related to the national response Covid-19, that requires significant resources and attention, and must take priority.

Our main submission is to advise the Commission to not consider a review of the MTAS standard term determinations (STDs). We also provide some views on why MTAS regulation is no longer necessary, and why we disagree with the Commission's analysis of the impact of MTAS on voice services. We recommend deregulation of this service when more pressing parts of the work programme are completed.

## **There must be no review of the MTAS STD**

We cover below why the current MTAS regulation is unnecessary, but benign – in the sense that while maintaining this regulation has no clear purpose of value, retaining it is not impeding competition or long term benefits for end users of telecommunications services. Although we would ordinarily consider this to be grounds for deregulation, we do not consider this is a priority in the current context of establishing a fibre regulatory regime, establishing various regulated codes, and the Commission's new role in service regulation.



However, we would strongly oppose any review the current MTAS STDs on two grounds:

1. The case for regulating MTAS no longer exists as we cover below. Amending the service terms of unnecessary regulations would be nonsensical.
2. Even if MTAS is thought necessary, the draft decision shows that the current terms are sufficient to deliver the market outcomes sought from the regulation.

### **MTAS regulation is no longer necessary**

For both voice and messaging we now operate in a much larger market in 2020 than we did when MTAS was first set (or even when it was last reviewed in 2015). As shown in the draft report, over-the-top (OTT) providers are now a significant force, and we expect this trend to continue.

Some OTT providers are amongst the largest corporations in the world, such as Google, Facebook and Apple. It is a constant struggle for us to compete against these operators. OTT services are offered at a price we can't beat (free), so we can only compete on service quality and functionality. Above all else, this is the reason that 'mates rates' on net discounting is now no longer in the New Zealand market.

In this context MTAS regulation is a relic of the past and represents asymmetric regulation, in the sense that OTT providers of functionally similar services do not face the cost of compliance with this regulation. As it currently stands MTAS regulation is doing no harm but it is entirely unnecessary. We therefore recommend deregulating this service in future when including this in the regulatory work programme can be justified.

### **We disagree with the Commission's analysis on voice services**

We do not consider the Commission's analysis of the market constraints on the voice service to be compelling. In particular paragraph 71 misunderstands the nature of the regulatory problem MTAS is intended to solve. It states:



*Where traffic between networks is balanced, the incentive for an MNO to increase MTAS rates may be reduced by the threat of retaliation by other MNOs. However, it is likely that traffic flows are asymmetric in the mobile and fixed retail markets as there are more than two providers, and Spark and Vodafone have higher subscriber market shares than other providers*

This is factually incorrect. Market share on its own is not sufficient to create asymmetric traffic flows. If people are distributed randomly across any number of networks, then calls into and out of a network with any market share will be symmetric.<sup>1</sup>

The harm MTAS is intended to solve for is minimising the incentive for on-net discounting to create network effects that make larger operators more attractive.<sup>2</sup> So the question the Commission should have considered is if there is any way in the current market for on-net discounting to become common again.

To move back to on-net discounting there would need to be a fundamental shift in the way we offer services:

- All of our pay monthly services now have unlimited calls. Any provider looking to move away from this norm will likely see a significant loss of market share that would not be sustainable.
- For pre-pay customers, we would have to consider the impact of OTT services:
  - On net discounting would incentivise more customers to use OTT voice calling, reducing our voice revenue for the majority of customers
  - Those customers unwilling to use OTT services are likely to spend less on their connectivity, making the prize of attracting them relatively small.

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<sup>1</sup> For example, a network with 10% market share will make 10% of off-net calls, but will also receive 10% of off-net calls, making the MTAS rate cost neutral.

<sup>2</sup> Commerce Commission, 'Reconsideration Report on whether the mobile termination access services (incorporating mobile-to-mobile voice termination, fixed to-mobile voice termination and short-message-service termination) should become designated or specified services', 16 June 2010, para 45.



Furthermore, customer choice of mobile network in 2020 is now primarily driven by data, not voice calling. On-net discounting is simply not a big enough draw card to attract any change in customer behaviour. The Commission appears to agree with this view in paragraph 82, but misinterprets its significance. In a mature competitive market like in New Zealand, there can only be a network effect if customers are influenced to switch because of on-net discounts. If this incentive is ineffective, there is no problem for the regulation to solve.<sup>3</sup>

Overall the incentives for on-net discounting do not add up no matter the MTAS rate. Therefore, in the absence of regulation there would be no incentive to increase MTAS, as each provider would respond by increasing their MTAS rates, and in-flows would still match out-flows.

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<sup>3</sup> To reduce MTAS exposure we would have to encourage more on-net calling. We can only do this by encouraging switching so groups of people who commonly call each other are on the same network. Without the incentive to switch we cannot achieve this outcome.