

Review of Mobile Termination Access Service (MTAS)

Draft decision on whether to commence an investigation under clause 1(3) of Schedule 3 of the Telecommunications Act

Reasonable grounds assessment draft decision

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Date of publication: 13 November 2024



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Associated documents

Publication date	Reference	Title
16 June 2010	n/a	<u>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</u>
5 May 2011	ISBN 978-1- 869451-48-6	<u>Standard Terms Determination for the designated services of the mobile termination access services (MTAS) fixed-to-mobile voice (FTM), mobile-to-mobile voice (MTM) and short messaging services (SMS)</u>
23 September 2015	n/a	<u>Consideration of whether to commence an investigation into whether to omit the Mobile Termination Access Services from Schedule 1 of the Telecommunications Act 2001</u>
2 September 2020	ISSN 1178-2560	<u>Final decision on whether to commence an investigation under clause 1(3) of Schedule 3 of the Telecommunications Act</u>

Glossary

Table of terms and abbreviations		
The Act		The Telecommunications Act, 2001
AMR	Annual Monitoring Reports	Reports of information gathered by the Commerce Commission under our section 9A powers
CAGR	Compound annual growth rate	The annualized growth rate for compounding values over a given time period
Commission		The Commerce Commission
CPP	Calling party pays	A basis for billing where the party making the call is responsible for paying the call charges
End-user		A person who is the ultimate recipient of a service or of another service whose provision is dependent on a service
FTF	Fixed-to-fixed	Calls from a fixed network to a fixed network
FTM	Fixed-to-mobile	Calls from a fixed network to a mobile network
FWA	Fixed wireless access	Services delivered to a fixed address over wireless (usually cellular in NZ)
IPP	Initial Pricing Principle	The initial setting of a regulated price, usually by benchmarking similar services in comparable countries
LEO	Low earth orbit	Satellites that orbit the earth at altitudes less than 2,000kms
MNO	Mobile network operator	An operator of a mobile network
MTAS	Mobile termination access services	A regulated wholesale termination service
MTF	Mobile-to-fixed	Calls from a mobile network to a fixed network
MTM	Mobile-to-mobile	Calls from a mobile network to a mobile network
MTR	Mobile termination rates	Charges for completion of calls originating in another network and terminating on a mobile network
MVNO	Mobile virtual network operator	A retailer of mobile services who does not own their own network, but buys services (call minutes, SMS, data) in bulk from an MNO and resells them
OIA	Official Information Act 1982	An Act to make official information more freely available
OTT	Over-the-top	Application-based services that allow end-users to access internet-based communications services (such as voice and messaging) eg, WhatsApp, Facebook Messenger, Microsoft Teams, Apple Facetime, Google Meet, Instagram, Zoom, Viber, WeChat
RSQ	Retail Service Quality	Relating to provisions in Part 7 of the Telecommunications Act 2001 intended to improve retail service quality of telecommunication services
SMS	Short messaging services	A service offered over a mobile network that allows customers to send and receive short text-based messages
STD	Standard Terms Determination	A determination issued under s 30 of the Telecommunications Act 2001 that details the price and non-price terms under which a regulated service must be offered
UFB	Ultra-Fast Broadband	A government initiative to make fibre to the home services available to at least 75% of homes
VoIP	Voice over Internet Protocol	One of a series of protocols for carrying voice over broadband

Executive summary

- X1 The Commerce Commission (**Commission**) is required to consider, at intervals of not more than 5 years, whether there are reasonable grounds to commence an investigation into whether the Mobile Termination Access Service (**MTAS**) should be omitted from Schedule 1 of the Telecommunications Act 2001 (the **Act**).¹
- X2 MTAS was last reviewed on 2 September 2020 and the Commission is required to consider if there are reasonable grounds to commence an investigation by 2 September 2025.
- X3 This paper sets out our draft decision that reasonable grounds exist to commence an investigation to determine whether MTAS should be omitted from Schedule 1 of the Act.
- X4 We invite submissions on our draft decision by 5pm on 11 December 2024. We will take account of relevant points raised in submissions on our draft decision and provide our final decision by 30 June 2025.
- X5 MTAS was initially regulated in 2010 due to concerns of limited competition and monopolistic pricing acting as a barrier to entry and expansion by a new entrant. Specifically, significant on-net/off-net pricing differentials and high mobile termination rates (**MTRs**) hinder the ability of a small entrant to compete.² Regulated MTRs were set by the Commission in 2011.
- X6 Market conditions have changed since then. Competition in the retail mobile market has continued to improve, in part due to the regulated reduction in MTRs, reducing the difference in the cost of supplying on-net and off-net calls and short messaging services (**SMSs**). This lowered the barriers to expansion faced by a new entrant such as 2degrees. 2degrees has now become an established market participant.
- X7 Consumer demand has also shifted towards mobile data usage, which has grown rapidly. This surge in data usage is mostly driven by widespread use of smartphones and availability of faster internet (4G/5G). Mobile call minutes plateaued in 2020 before starting to fall for the first time in 2022/23, whereas SMS have consistently been in decline since 2012/13.
- X8 Data is now the distinguishing feature of most mobile plans – which now often include unlimited SMS, with voice minutes either unlimited or offered in larger quantities and often carried over month on month.

¹ Clause 1(3) of Schedule 3 of the Act.

² On-net means traffic that terminates on the same network; off-net means traffic that terminates on a different network.

- X9 Over-the-top (**OTT**) services such as WhatsApp and Facebook Messenger (which are application-based services provided to smartphone users over a data connection) provide ready alternatives for both traditional voice and SMS – bypassing the network termination monopoly that MTAS regulation is intended to address. While there are varying rates of adoption for OTT messaging and voice, we consider these differences in usage to be inconsequential given the integrated nature of OTT services that makes both voice and messaging functionality easily accessible within the same application.
- X10 Now that 2degrees has consolidated its position in the retail mobile market, along with the indirect competitive constraint offered by ubiquitous OTT voice and messaging services, and low incentives to increase MTAS prices in the current market, our draft decision is that there are reasonable grounds to commence an investigation into whether MTAS should be omitted from the Act.

Chapter 1 Introduction

Purpose and structure

- 1.1 This paper sets out our draft decision under clause 1(3) of Schedule 3 of the Act. Clause 1(3) of Schedule 3 of the Act requires the Commission to consider, at intervals of not more than 5 years after the date on which a designated service or specified service came into force, if there are reasonable grounds to commence an investigation into whether the service should be omitted from the list of designated services in Schedule 1 of the Act, under section 66(b) of the Act.
- 1.2 This paper is structured as follows:
 - 1.2.1 Chapter 1 is an introduction;
 - 1.2.2 Chapter 2 outlines the assessment framework we have applied in reaching our draft decision on whether there are reasonable grounds under clause 1(3) of Schedule 3; and
 - 1.2.3 Chapter 3 outlines our draft decision on whether there are reasonable grounds.

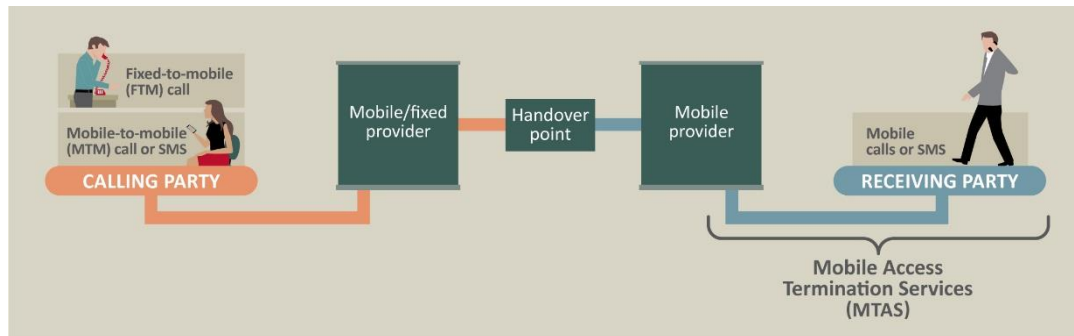
Background to MTAS

- 1.3 Service providers sell a range of services including voice calls, SMS, and data services in the retail mobile market.
- 1.4 A mobile network needs to be able to interconnect with other networks to ensure its subscribers can communicate. A fixed network operator or Mobile Network Operator (**MNO**) needs to have interconnection arrangements in place in order to allow their subscribers to communicate with the subscribers of another mobile network.
- 1.5 The key elements required to provide voice and SMS retail services are network access, call origination, call conveyance, and termination. Termination is generally defined as the last leg of routing a call from the originating customer to the terminating customer.
- 1.6 MTAS is a regulated wholesale termination service which is supplied and used by MNOs as an input to complete or connect mobile-to-mobile (**MTM**) calls and SMS to other mobile networks.³ MTAS is also used by fixed network operators to complete fixed-to-mobile (**FTM**) calls.

³ Termination of calls on fixed networks is subject to regulation under the designated service 'Interconnection with a fixed PSTN'.

- 1.7 MTAS allows cross-network calls and SMS to be completed, with the network receiving the call or SMS charging the originating network a fee for completing the connection. MTAS incorporates MTM voice termination, FTM voice termination and SMS termination. MTAS is illustrated in Figure 1.1.

Figure 1.1 Mobile Termination Access Services



- 1.8 Under the calling party pays (**CPP**) model as used in New Zealand, the price of a call (or SMS) is paid for by the calling party. In the case of a call between subscribers on different networks (**off-net**), the retail price of the call will include the wholesale price of the termination service. The wholesale termination charge is also the major cost of calls from a fixed network to a mobile network. The calling party pays for the termination service, rather than the receiving party.
- 1.9 As a result, the network operator that terminates the call can increase the wholesale termination rate without risk of its subscribers switching to another network. This gives rise to a termination monopoly in respect of each mobile network.

MTAS regulation

- 1.10 MTAS initially became a designated service in Schedule 1 of the Act, on 23 September 2010, following a recommendation by the Commission to the Minister for Communications in June 2010.
- 1.11 The recommendation was the culmination of an investigation conducted by the Commission under clause 1(1) of Schedule 3 of the Act into whether to regulate MTAS. During the investigation, the Commission had identified competition concerns in the downstream markets in which MTAS is used to offer retail services.
- 1.12 In particular, 2degrees had entered the retail mobile service market as a third MNO. The Commission was concerned that the combination of high wholesale prices for MTAS ie, MTRs, and significant discounting of retail prices for calls and SMS that remain on the same network (**on-net**), would restrict the ability of the 2degrees to compete to attract new subscribers to its network.

- 1.13 Since each MNO has a monopoly over the termination of calls on its network under the CPP principle, the ability to increase MTRs can distort downstream competition.
- 1.14 The Commission concluded in June 2010 that regulation would likely remove barriers to efficient entry and expansion in the retail markets. Specifically, it was noted that a new entrant having a small customer base of on-net subscribers on its network may have to offer low retail prices for off-net calls to attract customers. This would likely lead to traffic imbalances in favour of the larger networks, and where termination rates are significantly above cost, this could hinder the ability of the new entrant to compete.⁴
- 1.15 The inclusion of MTAS in Schedule 1 of the Act enabled the Commission to set the prices and terms by which MNOs terminate calls and SMS messages on their networks. On 5 May 2011, the Commission issued a Standard Terms Determination (**STD**) which set price terms for MTAS in accordance with the Initial Pricing Principle (**IPP**).⁵
- 1.16 Following its addition to Schedule 1 of the Act in September 2010, MTAS regulation was reviewed under clause 1(3) of Schedule 3 of the Act in both 2015 and 2020. Both reviews concluded that there were no reasonable grounds to commence an investigation into whether MTAS should be omitted from the list of designated services in Schedule 1 of the Act.
- 1.17 It was noted that regulation of MTAS remained necessary to best promote competition in telecommunications markets for the long-term benefit of end-users, and that omitting MTAS from Schedule 1 would likely result in higher retail prices and distortions in the retail markets that were apparent before MTAS was regulated. In 2020, the Commission also noted that OTT services were being increasingly used by consumers, although were not yet an effective constraint on MTAS, particularly in relation to voice services.⁶

⁴ Commerce Commission “Final 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” (22 February 2010).

⁵ Commerce Commission: “Standard Terms Determination for the designated services of the mobile termination access services (MTAS) fixed-to-mobile voice (FTM), mobile-to-mobile voice (MTM) and short messaging services (SMS) Decision 724” (5 May 2011).

⁶ Commerce Commission “Final decision on Mobile Termination Access Services (MTAS) - Final decision on whether to commence an investigation under clause 1(3) of Schedule 3 of the Telecommunications Act” (02 September 2020) at 104.

Requirement to review MTAS regulation

- 1.18 The Commission’s last decision under clause 1(3) of Schedule 3 was released on 2 September 2020. We are required to consider whether there are reasonable grounds for commencing an investigation into whether MTAS should be omitted from Schedule 1 of the Act by 2 September 2025.⁷ We refer to this step throughout this paper as the ‘reasonable grounds assessment’.
- 1.19 Our reasonable grounds assessment must consider the MTAS service description ‘as a whole’ and not as individual components ie, FTM, MTM or SMS. That is, the Commission’s review is limited to considering whether there are reasonable grounds for commencing an investigation into whether the service should be removed from Schedule 1. It does not extend to considering introducing a new service or amending the existing service.⁸

Our process and next steps

- 1.20 Table 1.1 sets out our intended timetable and indicative dates for the reasonable grounds assessment.

Table 1.1 Reasonable grounds assessment process

Milestone	Details	Date
Draft decision paper (this paper)	Draft decision on whether there are reasonable grounds to commence an investigation into whether to omit MTAS from Schedule 1 of the Act	13 November 2024
Submissions	Submissions on our draft decision received	11 December 2024
Final decision	Final decision on whether there are reasonable grounds to commence an investigation into whether to omit MTAS from Schedule 1 of the Act	By 30 June 2025

⁷ Clause 1(3) of Schedule 3 of the Act.

⁸ Under clause 1(1) of Schedule 3, we are able to initiate at any time an investigation into whether a new service should be added to Schedule 1, or whether an existing service should be altered or omitted. Additionally, under section 30R of the Act, we have the power to initiate a review the terms of the STD which sets out the price and nonprice terms that apply to MTAS. Both of these powers are separate from our obligation to consider at intervals of not more than 5 years whether there are reasonable grounds to start a clause 1(3) investigation.

Information for interested parties on making a submission

Process and timeline for making submissions

- 1.21 We are seeking submissions on our draft decision contained in this paper by 5pm, 11 December 2024.
- 1.22 You should address your responses to:
 - 1.22.1 Toni Shuker (Manager, Regulatory Rules and Compliance)
 - 1.22.2 c/o Telecommunications@comcom.govt.nz
- 1.23 Please include “MTAS review - Submission” in the subject line. We prefer responses to be provided in a file format suitable for word processing in addition to PDF file format.

Confidentiality

- 1.24 The protection of confidential information is something that we take seriously. If you need to include commercially sensitive or confidential information in your submission, you must provide us with both a confidential and non-confidential/public version of your submission that are clearly identified. We intend to publish the non-confidential/public version of all submissions we receive on our website.
- 1.25 You are responsible for ensuring that commercially sensitive or confidential information is not included in a public version of a submission that you provide to us.
- 1.26 All submissions we receive, including any parts of them that we do not publish, can be requested under the Official Information Act 1982 (**OIA**). This means we would be required to release material that we do not publish unless good reason existed under the OIA to withhold it. We would normally consult with the party that provided the information before we disclose it to a requester.

Chapter 2 Assessment framework

Purpose and structure

- 2.1 This chapter sets out the assessment framework, including the legal and economic frameworks, that we have used in reaching our draft decision on whether there are reasonable grounds to commence an investigation into whether MTAS should be omitted from Schedule 1 of the Act.⁹
- 2.2 This chapter is structured as follows:
- 2.2.1 Legal framework; and
 - 2.2.2 Economic framework.

Legal framework

- 2.3 This section sets out the legal framework we have applied when reaching our draft decision.
- 2.4 Part 2 of Schedule 1 of the Act describes MTAS as:
- Termination (and its associated functions) on a cellular mobile telephone network of any or any combination, of the following:
- (a) voice calls originating on a fixed telephone network:
 - (b) voice calls originating on another cellular mobile telephone network:
 - (c) short-message-service (SMS) originating on another cellular mobile telephone network
- For the avoidance of doubt, these services include the termination of internationally originated voice calls and SMS, and voice-over-Internet-protocol-originated voice calls, where these are handed over at a mobile switching centre in New Zealand
- 2.5 Since 23 September 2010, providers of regulated MTAS have been subject to regulation under Schedule 1 of the Act.¹⁰
- 2.6 Clause 1(3) of Schedule 3 of the Act requires that the Commission consider, at intervals of not more than five years after the date on which a designated service or specified service comes 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) of the Act. We refer to this type of investigation as a “Clause 1(3) Investigation”.

⁹ This framework is similar to frameworks applied in previous reviews.

¹⁰ In Schedule 1 of the Act, an access provider of MTAS is defined as “A person who operates a cellular mobile telephone network”.

- 2.7 Our decision on whether there are reasonable grounds for commencing a Clause 1(3) investigation, and the actual Clause 1(3) investigation (if we decide reasonable grounds exist), do not extend to considering whether to introduce a new service or amend an existing service. It is also not a review of the STD.¹¹
- 2.8 The Commission must consider whether there are reasonable grounds to commence an investigation into omitting MTAS from Schedule 1 of the Act by no later than 2 September 2025, which is the end of the current five-yearly interval.
- 2.9 If we decide that there are reasonable grounds for commencing an investigation into whether a designated service or specified service should be omitted from Schedule 1 under section 66(b), we must commence the investigation not later than 15 working days after making that decision.¹²
- 2.10 In reaching a decision on whether there are reasonable grounds to start a Clause 1(3) Investigation, we must make the decision that will best give, or is likely to best give, effect to the purpose set out in section 18 of the Act.¹³
- 2.11 The section 18 purpose is:
- to promote competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand by regulating, and providing for the regulation of, the supply of certain telecommunications services between service providers.
- 2.12 In deciding under clause 1(3) of Schedule 3 of the Act whether there are reasonable grounds for commencing an investigation, we are therefore required to make a decision that promotes competition for the long-term benefit of end-users. In determining what promotes competition in telecommunications markets for the long-term benefit of end-users, sections 18(2) and (2A) of the Act require us to consider the impact of our decisions on efficiencies as well as investment in capital intensive new telecommunications services.¹⁴

¹¹ Under clause 1(1) of Schedule 3, we are able to initiate at any time an investigation into whether a new service should be added to Schedule 1, or whether an existing service should be altered or omitted if we are satisfied there are reasonable grounds to do so. Additionally, under section 30R of the Act, we have the power to initiate a review of the terms of an STD which sets out the price and non price terms that apply to MTAS. Both of these powers are separate from our obligation to consider at intervals of not more than 5 years whether there are reasonable grounds to start a Clause 1(3) investigation, as well as the Clause 1(3) investigation itself. An example of an investigation under clause 1(1) is: “Final 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” (22 February 2010).

¹² Clause 1(5) of Schedule 3 of the Act.

¹³ Section 19(c) of the Act.

¹⁴ The High Court in *Chorus Ltd vs Commerce Commission* [2014] NZHC 690 at [34] has observed that section 18(1) is the “dominant” provision in section 18, and subsections (2) and (2A) “are specified for the

- 2.13 We consider there will be reasonable grounds to investigate whether a service should be omitted from Schedule 1 where there is at least a realistic possibility that continued regulation is no longer necessary to best promote competition in relevant telecommunications markets for the long-term benefit of end-users. We will approach this assessment on an objective basis and in the round, having regard to the section 18 purpose and taking account of the costs and benefits of removing regulation and of carrying out the review.
- 2.14 Our reasonable grounds assessment will be forward-looking and take account of present and expected market conditions compared to market conditions when MTAS became a designated service. Our assessment will not, however, be limited to assessing whether there has been a significant change in market conditions.
- 2.15 We note that a significant change in market conditions, such as a significant increase in the availability of telecommunications technologies that are sufficiently close substitutes for the regulated service under consideration, may nevertheless be highly relevant to our reasonable grounds assessment.

Economic framework

- 2.16 This section sets out the economic framework we have applied when reaching our draft decision.
- 2.17 The approach initially focuses on the regulated service and how it is used to deliver retail services to end-users, and then seeks to identify competitive constraints, including those that may continue to operate in the absence of regulation. If there are sufficient competitive constraints that would exist in the absence of regulation, there are likely to be reasonable grounds to investigate omitting the service from Schedule 1 of the Act.

Step 1: Describe the services

- 2.18 Our first step is to describe the regulated services and the purpose they serve, applying the description of MTAS in Schedule 1 of the Act.
- 2.19 We start with the regulated services in question (MTAS supplied at the wholesale level), and then look at how that service is being used to offer retail services to end-users.

purpose of assisting analysis under section 18(1)". In this sense, subsections (2) and (2A) are not isolated considerations on their own. Rather, they form part of the consideration of whether competition is promoted for the long-term benefit of end-users.

- 2.20 Doing this involves considering the following:
- 2.20.1 first, how the service is described in existing legislation and regulatory decisions, as this directs (and informs) the role the regulated service is intended to play in the market; and
 - 2.20.2 second, how the service is used, including in the supply of services in downstream markets.¹⁵ There may be multiple uses at different levels of the value chain (ie, wholesale and retail) that are influenced by the service. Recognising that the service was initially regulated due to potential or actual end-user harm, it will be important to consider how services are supplied to end-users using the regulated service.

Step 2: Identify alternatives

- 2.21 The next step is to identify alternative services that could be used as a substitute for the defined regulated services.
- 2.22 We consider any alternatives that could provide direct competitive constraints to the components of MTAS (ie, wholesale alternatives). We also consider any alternatives which could provide indirect competitive constraints, such as via downstream retail markets.
- 2.23 We view steps 1 and 2 as defining the market for the purposes of assessing reasonable grounds.¹⁶
- 2.24 Due to the nature of MTAS and the CPP principle in New Zealand, there are no direct alternatives at the wholesale level for regulated MTAS. Instead, any competitive constraints are likely to operate indirectly, by way of services in downstream retail markets (such as the retail markets for voice and messaging services). As such, we primarily focus on downstream retail markets for analysis of the competitive constraints that exist for the components of MTAS.

¹⁵ A downstream market is one further down the supply chain. In the case of telecommunications, the retail mobile services market (where the end-user buys a mobile service) is downstream from the wholesale mobile services market (where a wholesaler sells a mobile service to a provider who then on sells it to the end-user).

¹⁶ Defining markets is a distinct step in several review frameworks. However, we deem it most appropriate to combine this with into steps 1 and 2 for ease of understanding. For further information on market definition, see Commerce Commission, "[Mergers and acquisitions Guidelines](#)" (May 2022), Chapter 3.

Step 3: Competition assessment

- 2.25 The third step involves consideration of the effectiveness of competition. In line with our forward-looking, objective approach, we consider how much competition MTAS faces and could be expected to face into the foreseeable future, and whether there is at least a realistic possibility that continued regulation is no longer necessary to best promote competition in telecommunications markets.
- 2.26 Both direct and indirect competitive constraints are considered in this step.
- 2.27 Consideration of market competitiveness includes analysis of factors such as:
- 2.27.1 whether the alternatives rely on regulated MTAS;
 - 2.27.2 the market structure and trends;
 - 2.27.3 the extent to which identified alternatives represent (sufficiently) close substitutes to regulated MTAS including their availability (the same applies for alternatives in downstream markets constraining services using MTAS);
 - 2.27.4 actual switching behaviour by end-users; and
 - 2.27.5 any other factors that may constrain the providers from raising MTRs.
- 2.28 We take expected future developments into account in assessing the competitive constraints on providers of the regulated service.

Step 4: Testing alignment with the purpose of the regulation under section 18 of the Act

- 2.29 Finally, we consider whether a review is warranted on an objective basis, having regard to whether there is at least a realistic possibility that continued regulation of MTAS under Schedule 1 is no longer necessary to best promote the section 18 purpose and taking account of the costs and benefits of removing regulation and of carrying out the review.

Evidence for the assessment

- 2.30 We use evidence such as the following in our reasonable grounds assessment:
- 2.30.1 the availability of alternatives;
 - 2.30.2 whether alternatives rely on regulated MTAS;
 - 2.30.3 actual uptake (market share) of alternatives (including in downstream markets);
 - 2.30.4 whether alternatives represent a sufficiently close substitute to MTAS (in terms of key price and non-price performance features);

2.30.5 actual switching behaviour by end-users.

- 2.31 For our draft decision on reasonable grounds, this evidence has been primarily sourced from existing Commission data sources, and unless specified otherwise, is as of 30 June 2023. We primarily use data collected via the Industry Questionnaire and refer to such data throughout the paper as ‘Commission data’. We have used the Commission’s Annual Monitoring Reports (AMR), and reference each where relevant throughout the paper.¹⁷ Where available, we have also used relevant information publicly available.
- 2.32 We are aware that our various data sources were collated at different points in time. We have had regard to how current our data is when undertaking our analysis. We will continue to do this as we receive submissions on this draft decision and finalise our decision.

¹⁷ The Commission data collected through the Rural Connectivity Study and Industry Questionnaire were used to form the figures and stats in the 2023 AMR, however, where relevant we directly reference figures also used in the 2023 AMR to provide further visibility and consistency.

Chapter 3 Draft decision on the existence of reasonable grounds

Purpose and structure

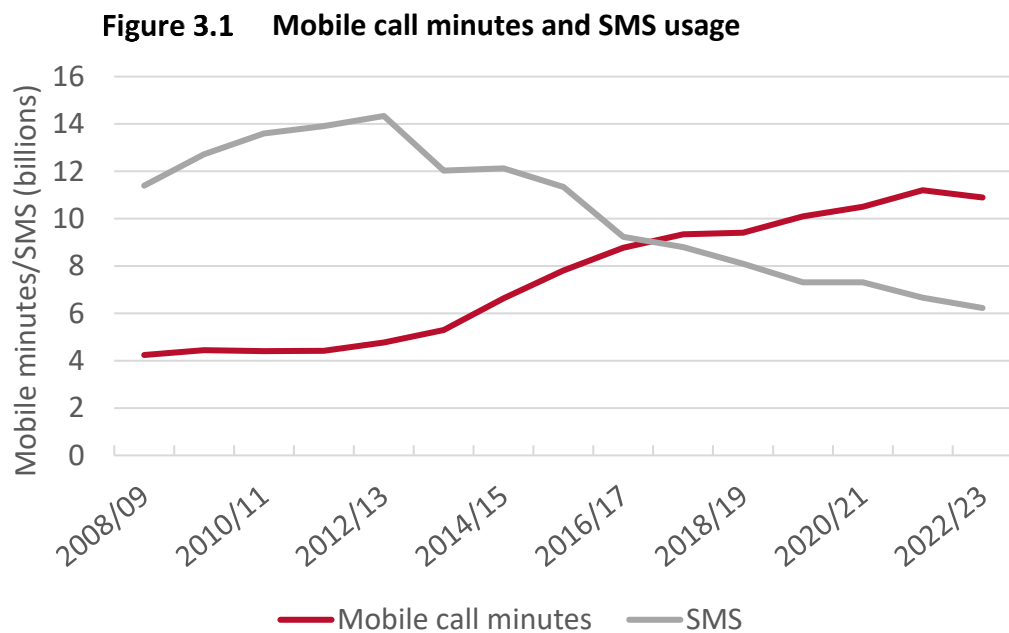
- 3.1 This chapter sets out our draft decision under clause 1(3) of Schedule 3 of the Act on whether there are reasonable grounds to commence an investigation into whether MTAS should be omitted from Schedule 1 under section 66(b) of the Act, applying the assessment framework.
- 3.2 This chapter is structured as follows:
 - 3.2.1 context for the assessment;
 - 3.2.2 description of MTAS and how it is used (step 1);
 - 3.2.3 assessment as to whether reasonable grounds exist to investigate whether MTAS should be omitted from Schedule 1, through:
 - 3.2.3.1 the identification of alternatives (step 2);
 - 3.2.3.2 competition assessment (step 3); and
 - 3.2.3.3 testing alignment with the section 18 purpose of the regulation (step 4).

Context for the assessment

- 3.3 With the evolution of networks, New Zealand is shifting from legacy fixed line and 3G networks to more advanced Voice over Internet Protocol (**VoIP**) technologies and 5G networks, which support higher data speeds. While legacy networks still support a segment of the market, demand is moving towards the capabilities of 4G/5G.
- 3.4 Mobile services prices have remained relatively stable over the past few years,¹⁸ and most mobile plans now emphasize data allowance and data speeds, with many retail mobile plans offering unlimited call minutes and SMS. The shift highlights that competition among providers has moved away from call and text limits to focus instead on differentiation based on data allowance and data speeds.

¹⁸ See Figure 3.7.

3.5 Figure 3.1 shows a significant year on year declines in SMS volumes since 2012/13. Mobile call minutes have generally continued to increase, although the growth in minutes seems to have plateaued in 2020 with the volume of mobile minutes declining for the first time in 2022/23. There has been a significant increase noted in the usage of data and the growth rate significantly outweighs the growth in mobile minutes and SMS.¹⁹



Source: Commission data

3.6 Mobile connections have reached an all-time high, with most smartphones now supporting popular OTT services, as an alternate means of communication.

3.7 Mobile market shares have been relatively stable over the past decade,²⁰ and the gap in the volume of on-net and off-net traffic has been decreasing.²¹ The current market conditions and available alternatives suggest minimal incentive to raise MTRs. Our preliminary view is that, even if MTRs were to increase, the impact on retail mobile prices would likely be minimal.

Description of MTAS (step 1)

3.8 MTAS are the regulated termination services a fixed or mobile network operator purchases to allow its subscribers to communicate with the subscribers of another mobile network.

¹⁹ See Figure 3.10, 3.11.

²⁰ See Figure 3.5.

²¹ See Figure 3.6.

- 3.9 MTAS is a designated access service under Schedule 1 of the Act, which allows us to determine the price and non-price terms of the service.
- 3.10 We set out our description of MTAS for the purpose of our reasonable grounds assessment below, applying the description of MTAS in Schedule 1 of the Act.
- 3.10.1 MTAS is the termination (and its associated functions) on a cellular mobile telephone network, and comprises of any or any combination, of the following:
- 3.10.1.1 voice calls originating on a fixed telephone network, ie, the FTM call termination service.
- 3.10.1.2 voice calls originating on another cellular mobile telephone network ie, the MTM call termination service.
- 3.10.1.3 SMS originating on another cellular mobile telephone network ie, the text message or SMS termination service.
- 3.10.2 For the avoidance of doubt, these services include the termination of internationally originated voice calls and SMS, and voice over Internet protocol originated voice calls, where these are handed over at a mobile switching centre in New Zealand.²²
- 3.11 Retail MTM calling services, FTM calling services and SMS are comprised of origination, conveyance, and termination elements:
- 3.11.1 Where the call or SMS is between subscribers on the same network (ie, on-net calls or SMS), all of these functions are undertaken (self-supplied) by the same network;
- 3.11.2 Where the call or SMS is between subscribers on different networks (ie, off-net calls or SMS), the network on which the call or SMS is originated must acquire a wholesale termination service for the call or SMS to be completed.
- 3.12 For our analysis, we discuss the components of MTAS separately ie, split into ‘voice termination services’ (the two components FTM and MTM are collectively referred to as voice termination services) and ‘SMS termination services’.

²² Web interfaces that enable SMS functionality that originate from a cellular mobile telephone network and have an associated MTAS reply path are included. However, other forms of SMS, such as machine/application originated SMS are excluded from MTAS. Service description (MTAS) - Commerce Commission: “Standard Terms Determination for the designated services of the mobile termination access services (MTAS) fixed-to-mobile voice (FTM), mobile-to-mobile voice (MTM) and short messaging services (SMS) Decision 724” (5 May 2011).

- 3.13 The regulated voice termination services component enables the completion of off-net voice calls between a fixed landline and a mobile (FTM), and between mobiles (MTM).
- 3.14 The regulated SMS termination services component enables delivery of SMS to a receiving party's mobile device, across a different mobile network.

Identification of alternatives (step 2)

- 3.15 We consider the current market in which voice termination services and SMS termination services compete to comprise wholesale services that can be used to offer retail voice services and SMS to end-users.
- 3.16 We first consider the wholesale market, and any competitive constraints that exist there. We then look at any indirect competitive constraints that may exist for voice termination services and SMS termination services in the downstream retail market.

Wholesale market for voice services and SMS

- 3.17 If the MTRs were to increase, parties to a call, or SMS requiring MTAS would have several options to respond. The reasonable grounds assessment considers these options and whether such responses would constrain the terminating MNO's ability to sustain the price increase.
- 3.18 The receiving party would not respond, as they do not face the MTR under CPP. An end-user making a voice call typically cannot choose the network a given number (receiving party) is connected to. The calling party's network requires termination services to make a fixed or mobile voice call to the receiving party, and the termination service is only provided by the receiving party's network. Further, with number portability, the calling party cannot identify which network is being called. Similarly, an end-user sending a message typically cannot choose the network a given number is connected to.
- 3.19 Under CPP, the receiving party's MNO has monopoly power over access to its mobile subscribers as another MNO cannot offer termination services for calls and SMS directed to those subscribers. The calling party's network operator has no alternative but to purchase MTAS.
- 3.20 The calling party typically has no influence on the receiving party's choice of network and has no visibility of wholesale termination rates. This is because wholesale termination rates are paid by the calling party indirectly through the retail price of the mobile plan. Furthermore, these two factors limit downward pressure on mobile termination rates, making each MNO a monopolist in this market with an ability to set MTRs.

- 3.21 Effectively, there are no substitutes in the wholesale MTAS market ie, no direct substitutes that other MNO networks can provide.
- 3.22 Substitutes, however, may exist in the downstream retail markets. Subscribers may respond indirectly by switching to other means of contacting the called party which do not rely on MTAS.

Retail market for voice services and SMS

- 3.23 We consider the retail market in which MTAS is used to supply end-users with voice and messaging services across networks.
- 3.24 As there are no direct substitutes, we are interested in whether subscribers might respond to an increase in MTRs indirectly by switching to other means of contacting the called party which do not rely on MTAS. Specifically, in the event that MTRs were to increase, and the increase were to flow through to the retail level (for example, in the form of a higher retail price for a given bundle, or a less attractive bundle of minutes or SMS), we will consider the extent to which mobile subscribers would switch to other means of contacting the party that do not rely on MTAS.
- 3.25 Given that retail plans now often involve unlimited minutes and SMS, with focus on data, our preliminary view is that any increase in MTRs might now have a muted effect on retail prices.
- 3.26 Various retail voice and messaging alternatives exist, which are broadly available for use on a basic smartphone, including using an OTT service such as WhatsApp, Facebook Messenger, Microsoft Teams, Apple Facetime, Google Meet, Instagram, Zoom, Viber, and WeChat.
- 3.27 Additionally, for voice services, end-users can use a fixed line (ie, a fixed-to-fixed (**FTF**) or a mobile-to-fixed (**MTF**) instead of a MTM or a FTM call).

Competition assessment (step 3)

- 3.28 As step 2 has identified, there are no effective substitutes in the wholesale market, so we focus our discussion on competition for voice services and SMS in the retail market and whether there are any indirect competitive constraints on MTAS.
- 3.29 In assessing whether there are reasonable grounds to commence an investigation, we have taken account of present and expected market conditions, including the level of competitive constraint on the provision of MTAS, compared to when MTAS became a designated service.

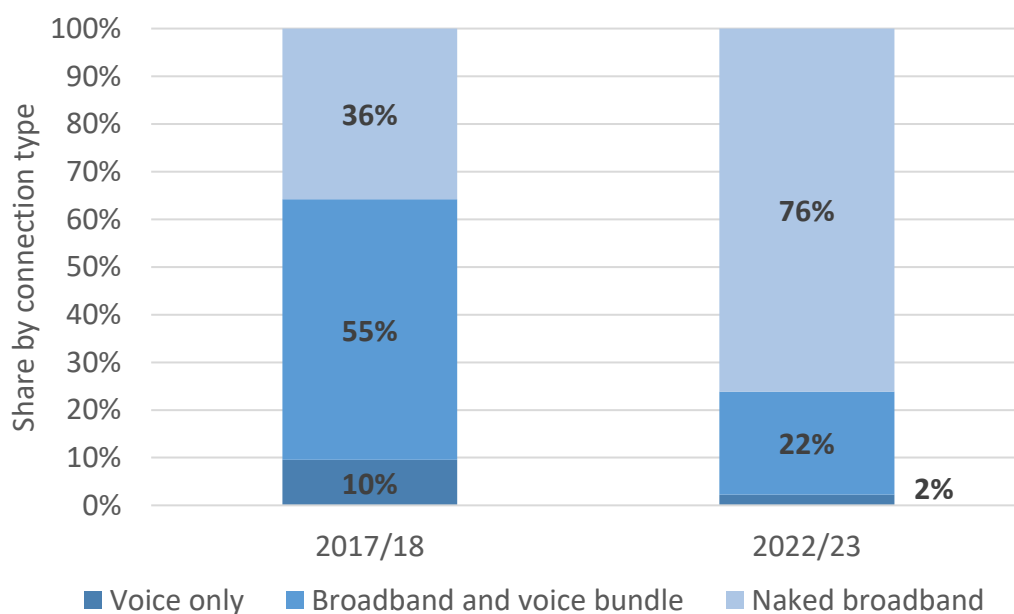
- 3.30 We also consider whether there are any incentives for the MNOs to increase or maintain higher MTRs, if MTAS were deregulated, in the current market, given that all MNOs have a relatively stable market share, and are both providers and receivers of the service.
- 3.31 Recent entry into the mobile market has been in the form of MVNOs, although the implications for MVNOs of a change in MTR is likely to depend on the commercial arrangements between the MVNO and the host MNO, an area that we would explore in the context of an investigation.

Voice termination services

Market structure of the retail voice market

- 3.32 Both retail fixed voice services and retail mobile voice services are relevant downstream services, as MTAS is an input used to supply retail fixed voice services (ie, FTM calls), and retail mobile services (ie, MTM calls).
- 3.33 Fixed line calls can be made via legacy copper-based technologies or newer technologies such as VoIP. With the decline in copper landline services, there has been an increased uptake in VoIP calls – which are provided over a broadband connection (whether that be fibre or any other broadband access technology).
- 3.34 While fixed ‘voice only’ and ‘broadband and voice bundles’ continue to decline (Figure 3.2), the total number of fixed lines has been almost stable (Figure 3.3). This is mostly due to an increased uptake in ‘naked’ broadband connections.

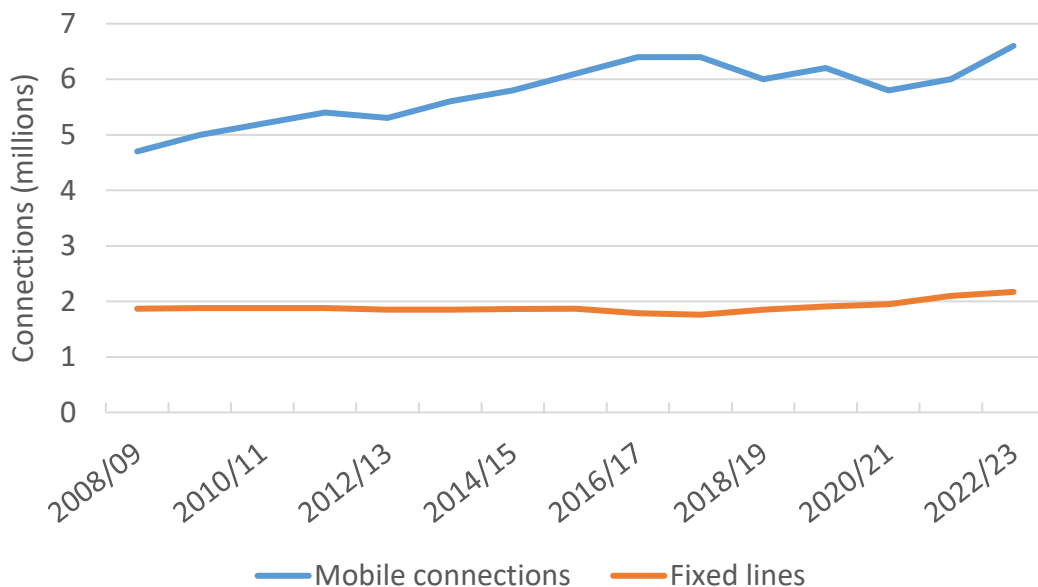
Figure 3.2 Residential fixed lines by connection type - 2017/18 vs 2022/23



Source: Commission data

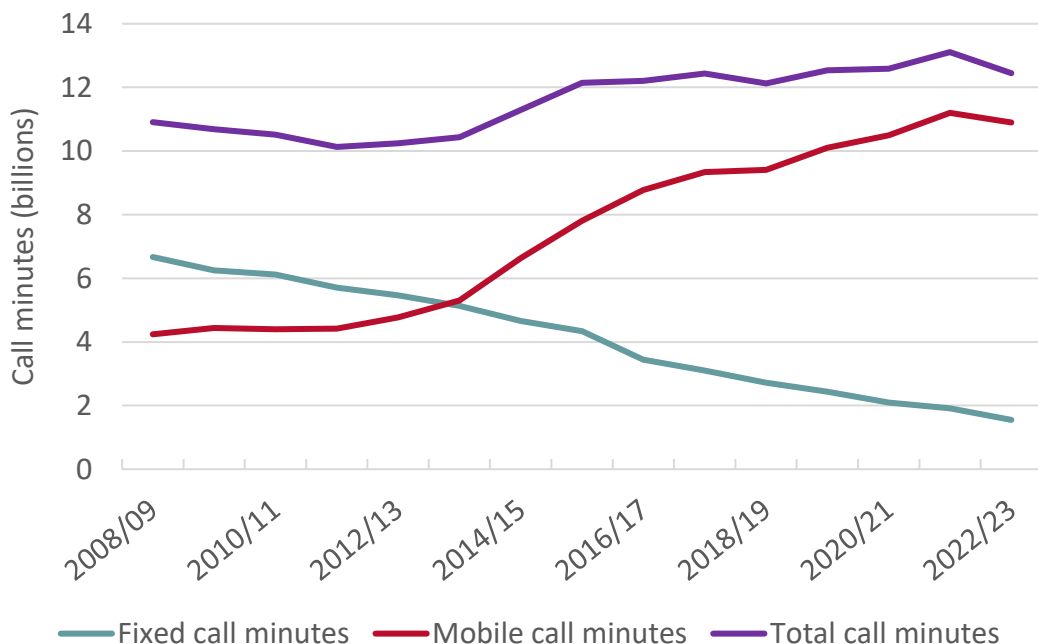
3.35 The ownership of mobile phones and total mobile connections continues to rise (Figure 3.3). Since 2013/14, the total volume of mobile call minutes relative to the total volume of fixed call minutes has increased considerably (Figure 3.4).

Figure 3.3 Mobile and fixed line connections



Source: Commission data

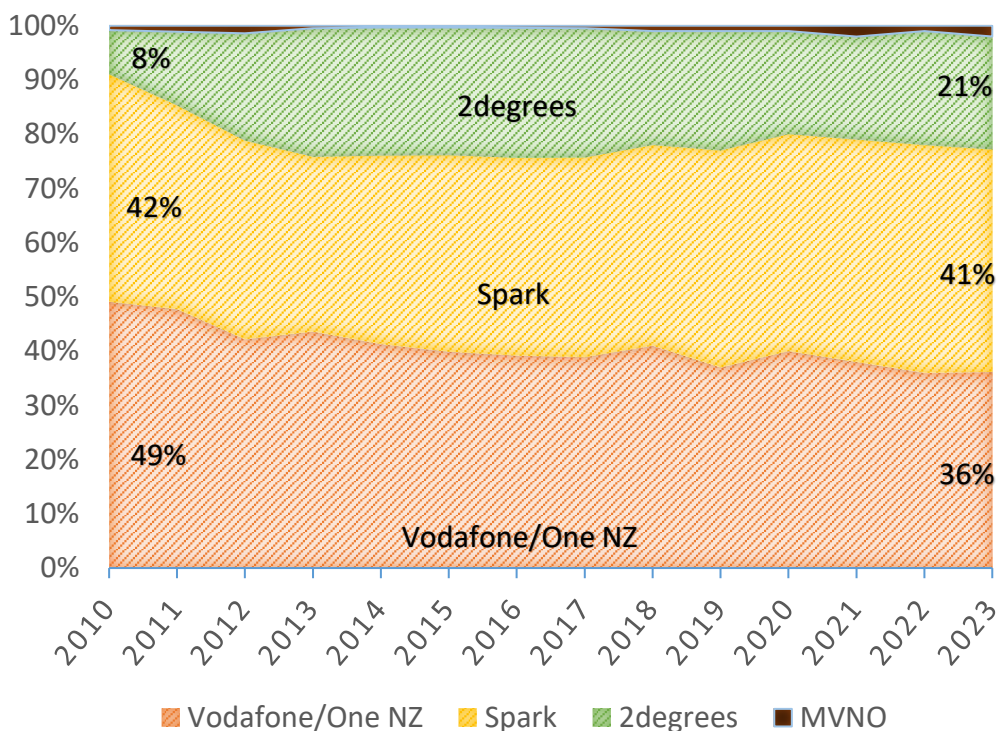
Figure 3.4 Mobile and fixed call minutes



Source: Commission data (excludes MVNOs)

3.36 The retail mobile market in New Zealand is highly concentrated,²³ with the three MNOs making up 98% of the market.

Figure 3.5 MNO market share



Source: Commission data

3.37 At the time of regulation of MTAS, the Commission noted that a new entrant having a small on-net customer base may have to offer low retail prices for off-net calls to attract customers, leading to traffic imbalances and hindering the ability of the new entrant to compete.²⁴

3.38 Since its entry, and facilitated by cost-based prices for MTAS, 2degrees has been able to expand its own mobile network infrastructure, and has become an established and independent competitor, offering similar levels of mobile coverage as Spark and One NZ.²⁵ Current market shares show that 2degrees maintains its position as a more established and independent competitor in the mobile market. The share has been relatively stable over the last decade (Figure 3.5).

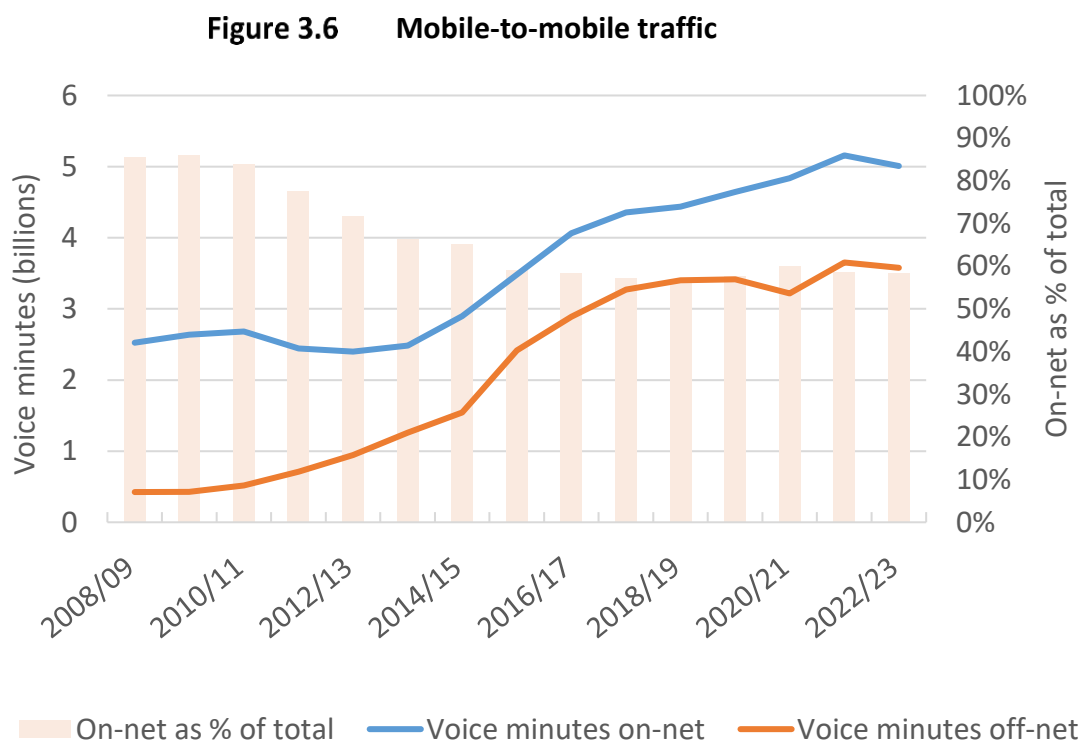
²³ Commission 2023 AMR, page 159.

²⁴ Commerce Commission “Final 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” (22 February 2010)”.

²⁵ Commission 2023 AMR at pages 142 and 147.

3.39 The incentive to increase MTRs in a market with such market shares may be limited as MNOs are both access seekers and access providers of MTAS, having less leverage over each other. This will depend on the traffic balances between the MNO networks. In any case, the link between MTRs and retail prices is likely to have weakened as a result of the emergence of retail bundles, such that any increase in MTR may have a more muted effect on retail mobile plans.

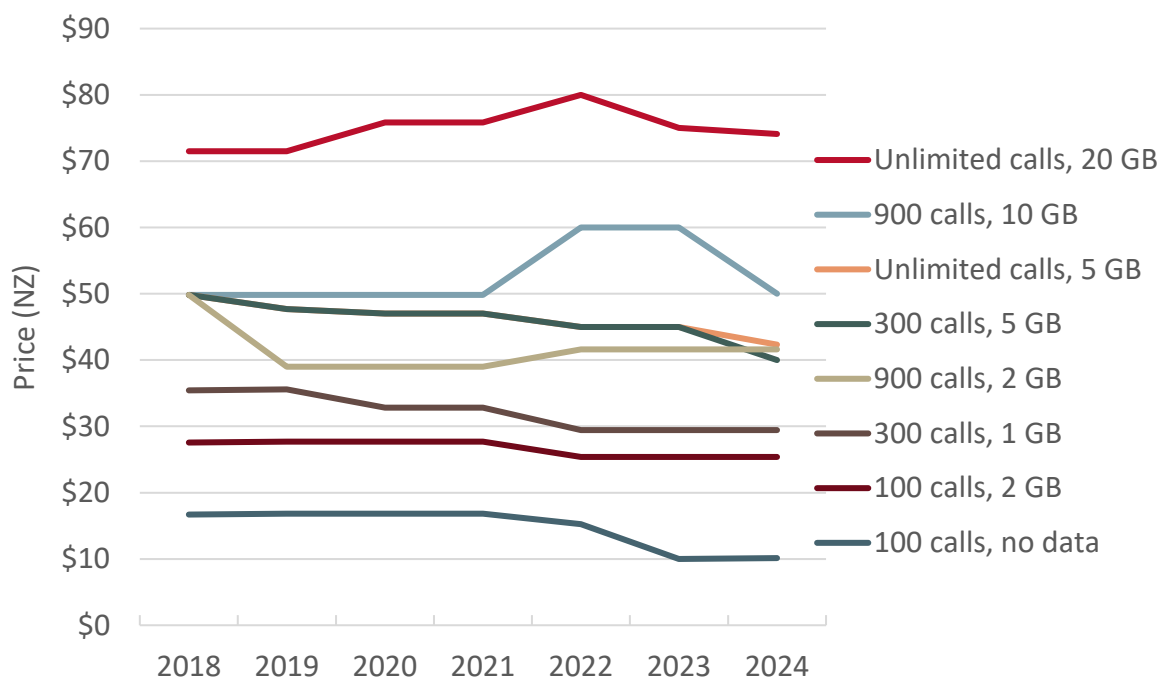
3.40 MTAS was initially regulated due to heavy on-net discounts at a retail level, causing a high proportion of on-net calling relative to off-net calling, and prevailing MTRs at the time that were considerably above cost. Since MTAS has been regulated, MNOs have moved away from offering aggressive on-net discounts, and towards retail mobile bundles that offer mobile call minutes to any network. As a result, the volume of off-net mobile call minutes has steadily increased relative to on-net minutes. Figure 3.6 shows that the proportion of mobile minutes carried on-net has dropped from 86% in 2008/09 to 58% in 2022/23.



Source: Commission data (excludes MVNOs)

3.41 As competition has developed, consumers have benefitted from improvements and evolutions in mobile networks, including expanded network coverage, while mobile services prices have remained relatively stable over the past few years, as shown in Figure 3.7.

Figure 3.7 \$NZ price of mobile plans



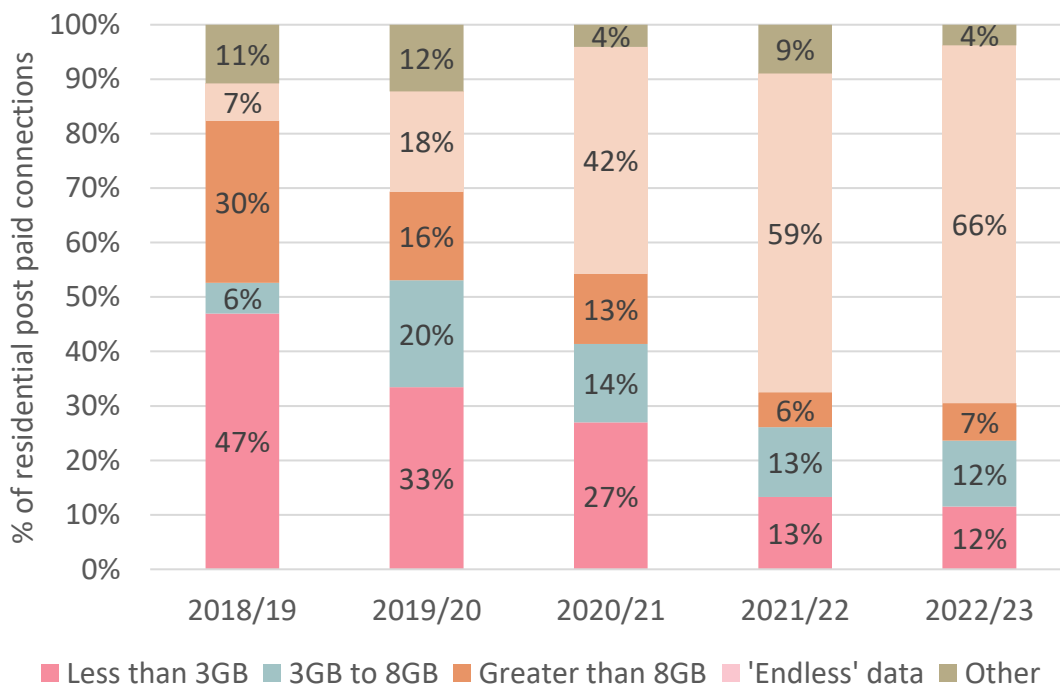
Source: Strategy Analytics – Teligen benchmarking results, as of May 2024 (excludes MVNOs)

- 3.42 The MNOs have each announced that planned 3G network shutdowns will occur between 2024 and 2025.²⁶ The current focus of MNO investments is 5G deployment, with coverage reaching 26.8% of the population as of June 2023.²⁷
- 3.43 The key components of retail mobile offers include plan allowances for data, data speeds, texts and calls. Figures 3.8 and 3.9 show that consumers have been moving towards plans with higher data allowance or ‘endless’ data plans (where data continues to be available beyond a threshold at which speeds are reduced) in recent years. Most mobile plans now offer unlimited call minutes and messages, which indicates that the focus of differentiation has now shifted to data allowance and data speeds.

²⁶ As of June 2023, average population coverage of 3G and 4G remained at 98%. Commission 2023 AMR at pages 147 and 149.

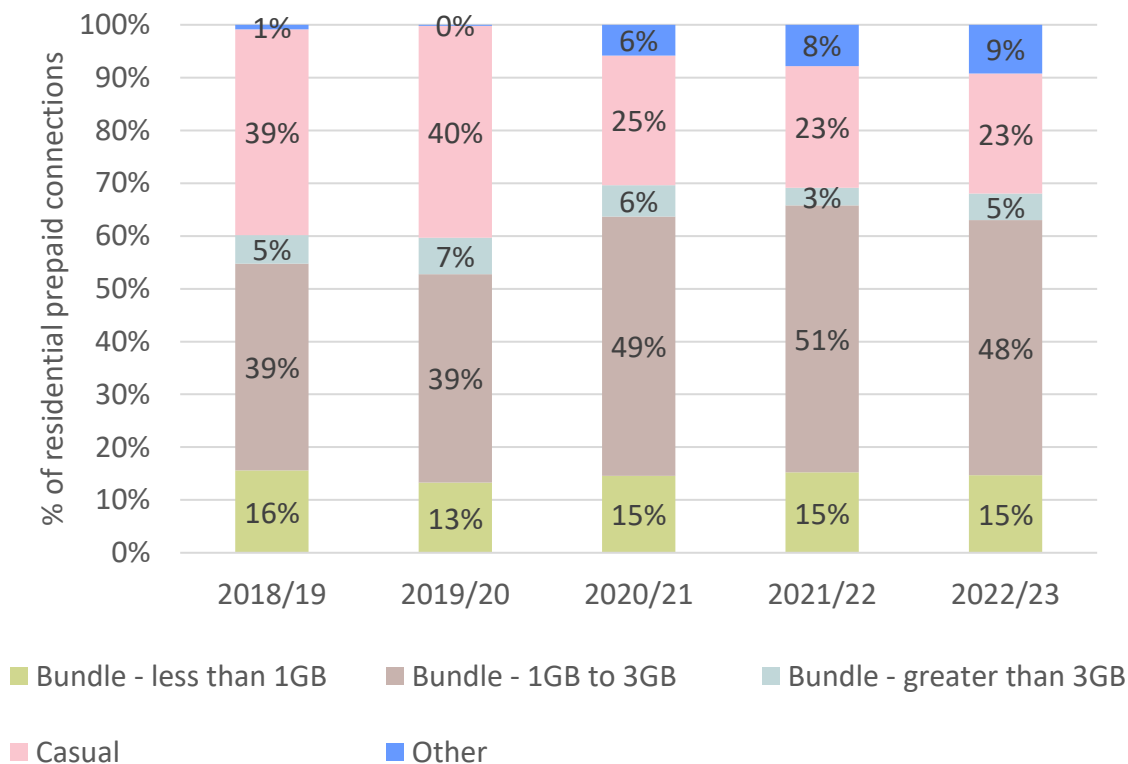
²⁷ Commission 2023 AMR at page 141.

Figure 3.8 Data allowances of residential post-paid plans



Source: Commission 2023 AMR

Figure 3.9 Data allowances of residential pre-paid plans

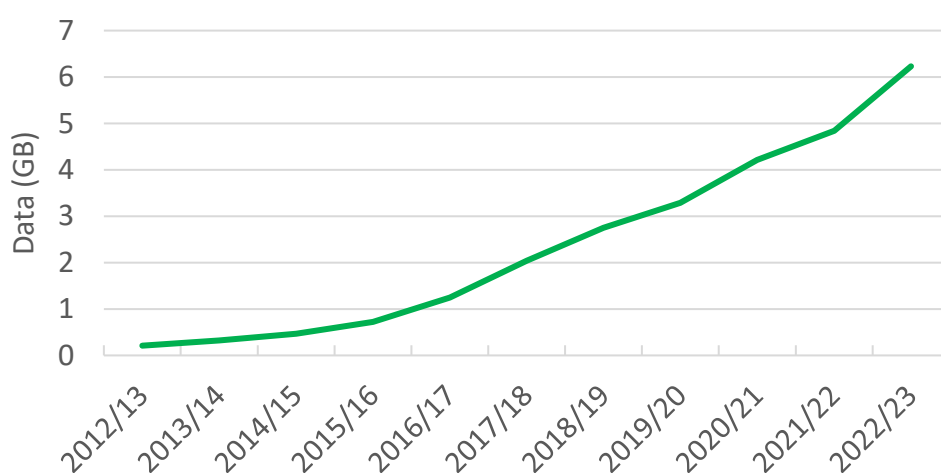


Source: Commission 2023 AMR

Other includes data-only and endless plans

- 3.44 Voice and in particular SMS allowances appear to no longer be such a distinguishing feature of mobile plans. Retail mobile product offers instead have an increased focus on data, data speeds, 5G access and coverage, and other add-ons such as streaming subscriptions, hotspotting, data rollover and group plans.
- 3.45 High mobile ownership, higher mobile and internet coverage, along with availability of higher data cap plans (including ‘endless data’ plans) has led to increased data usage (Figure 3.10), supporting an increase in adoption of OTT services – which can be originated and delivered over the internet.^{28,29}

Figure 3.10 Average monthly mobile data usage



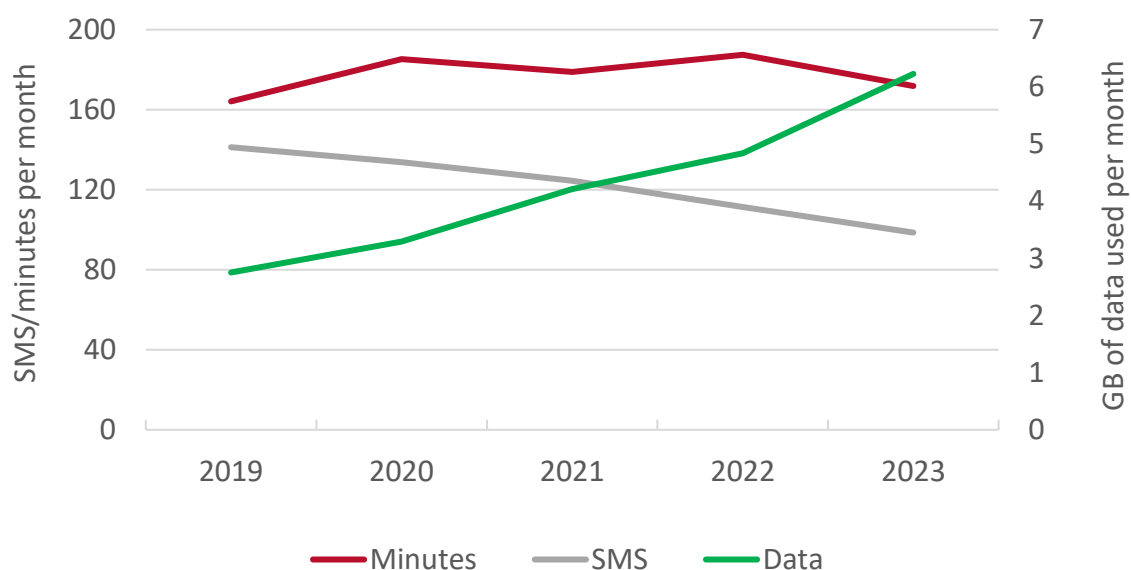
Source: Commission data

- 3.46 Figure 3.11 shows the average monthly SMS, mobile minutes and data usage. Over the last 5 years the compound annual growth rate (**CAGR**) of the usage of mobile data (17.7% per annum) significantly outweighs the growth of usage of mobile call minutes (0.9% per annum) and SMS (-6.9% per annum) indicating a shift in consumer demand and preference for data.

²⁸ OTT voice services rely on internet connectivity and can offer voice calls with additional features such as video calls, group calls, screen sharing and integration of messaging alongside voice. These services require internet access and run on smartphones, tablets and personal computers, including web-based platforms. Most platforms, however, require participants to use the same OTT service to connect.

²⁹ The Ultra-Fast Broadband (UFB) rollout was completed in December 2022, making fibre available to 87% of New Zealand households. Fibre uptake is currently around 75% in areas where fibre is available. This is accompanied by the rise in availability of wireless technologies such as 4G/5G FWA and low earth orbit (LEO) satellite-based internet services. 4G mobile network coverage has reached 98% of population, with an expansion in 5G mobile network coverage (26.8% of population as of June 2023).

Figure 3.11 Average monthly SMS and mobile minutes vs data usage



Close substitutes in the retail voice market

3.47 While we have identified that end-users can use a fixed line by way of FTF or MTF instead of a MTM or a FTM call, we do not consider these services to be an effective substitute for calls that rely on MTAS, for the following reasons:

3.47.1 From a pricing perspective, mobile voice services largely offer better value for money than fixed voice services offered over copper-based technologies and VoIP (which can be provided over fibre or fixed wireless access (**FWA**)), with much cheaper minutes to a wider range of devices (eg, mobiles and landlines).³⁰

3.47.2 From a quality perspective, the availability of FTF calls will depend on the receiving party having a landline, and the ability to make phone calls independent of location is important to end-users.

3.48 While OTT services such as WhatsApp and Facebook Messenger are popular messaging applications, we are yet to see a significant shift away from mobile voice to the voice functionality within the same OTT applications.³¹ This could partly be for the following reasons:

³⁰ Commerce Commission “Fibre fixed line access service deregulation review under section 210 of the Telecommunications Act - Reasonable grounds assessment draft decision at 3.38.

³¹ As shown in Figure 3.1, the volume of mobile voice minutes only dropped for the first time in 2022/23.

- 3.48.1 From a pricing perspective, with MNOs bundling voice with data, there isn't much visibility of voice only prices to the user, giving less incentive to switch to OTT services if voice only prices increase.
- 3.48.2 From a quality perspective, the core features offered by OTT voice services are similar to mobile voice calls unlike SMS, where OTT messaging services provide additional features and functionality such as group chats, read receipts, voice notes, encryption and media sharing. Though the rates of adoption may vary for OTT messaging and voice, the usability of applications to access OTT services is similar.
- 3.49 However, we consider that this ready access to the voice calling capabilities of OTT services means there is a realistic possibility that OTT services may represent a potential constraint on mobile voice, with users being able to shift in the event that MNOs were to increase voice call prices. With the rise in smartphone ownership, most users would already have OTT applications for messaging, so the option to switch to OTT for voice still exists.
- 3.50 OTT voice services do not rely on MTAS and use mobile data or a broadband connection/Wi-Fi instead. Therefore, any competitive constraint arising from OTT services on MTAS (and on services that rely on MTAS) is likely to continue in the absence of MTAS voice regulation.
- 3.51 By offering more affordable calls with added features, OTT services offer some degree of workable competition on retail mobile voice services (applying competitive pressure on MTM voice calls).
- 3.52 Our preliminary view is that competition has developed to a level where MNOs are sufficiently disincentivised from raising MTRs, making these prices largely irrelevant. Even if this were not the case, the prevalence of OTT services will continue to limit any potential increase in retail prices, should MNOs seek to raise MTRs.

Consumer demand and switching behaviour

- 3.53 Consumers are switching away from landline services towards mobile services, with OTT adoption on the rise. Nationwide, landline connections across all access technologies have continued to decline in 2023, down 33% on 2022.³²

³² Commission 2023 AMR.

- 3.54 The number of chargeable fixed voice call minutes has decreased 71% from 5.47 billion minutes in 2012/13 to 1.55 billion minutes in 2022/23, while mobile voice call minutes has grown 127% from 4.8 billion minutes to 10.9 billion minutes over the same period (Figure 3.4).
- 3.55 Landline only connections still exist across both urban and rural areas, but disproportionately remain in rural areas where there may be no mobile coverage or where households prefer to have a back-up connection.³³ In this regard, we note that it is possible that raising FTM MTRs could disadvantage rural customers.
- 3.56 The Commission’s research programme into customer satisfaction with telecommunications Retail Service Quality (**RSQ**) gathers insights and monitors RSQ to assess end-users needs. The consumer demand and preference for data is reflected in the Commission’s Telecommunications Consumer Satisfaction Monitoring Report, which found:³⁴
- 3.56.1 Of the reasons for choosing a new provider, 34% of respondents indicated lower prices with similar plan inclusions (calls, texts or data), 21% more data, 7% faster speed, while only 7% prioritise more texts or call minutes. Preference for more texts or call minutes fell from 11% in Jan-June 2023 to 7% in Jan-June 2024.
- 3.56.2 When looking at leaving a provider, 20% indicated more data was a reason, with 11% indicating better coverage, and 8% faster speeds.
- 3.56.3 When looking to switch plans with same provider, 31% indicated a lower price for similar plan inclusions (calls, texts or data) was a reason, 23% prefer cheaper plans with fewer plan inclusions (calls, texts or data), 27% want more data, with only 6% choosing more texts or call minutes. Preference for more texts or call minutes fell from 11% in Jan-June 2023 to 6% in Jan-June 2024.
- 3.57 Increased internet accessibility has led to more consumer choices, with increased use of data and a shift to OTT services for voice calling, video calling and messaging. Internet NZ’s survey (December 2023) reports that 63% of New Zealanders spend two to four hours a day using the internet with 48% spending most of this time on social media. OTT applications such as Facebook Messenger and WhatsApp appear to continue to be popular.³⁵

³³ Commerce Commission “Fibre fixed line access service deregulation review under section 210 of the Telecommunications Act - Reasonable grounds assessment draft decision at 3.44.

³⁴ [Telecommunications Consumer Satisfaction Monitoring Report – January – June 2024](#). Respondents were able to select more than one option.

³⁵ [Internet NZ “New Zealand’s Internet Insights” \(December 2023\)](#) at page 6.

- 3.58 We see greater OTT substitution in SMS compared to voice services. InternetNZ reports that 24% of respondents spend time on the internet messaging friends as compared to 7% for voice and video calls.³⁶
- 3.59 We do not have any further data on end-users switching to OTT, or on voice quality to compare non-price performance between voice services on the different technologies.
- 3.60 We will consider sourcing FTM volumes, OTT usage and switching data, potentially in the form of a representative survey, to inform an investigation.³⁷

SMS termination services

- 3.61 The Commission's last MTAS review (2020) noted that OTT services were effectively constraining MNOs from raising the SMS MTRs. While each MNO controls the termination of SMS to mobile subscribers on its network, they were likely to be indirectly constrained by substitution of OTT services.³⁸

Market structure of the retail messaging market

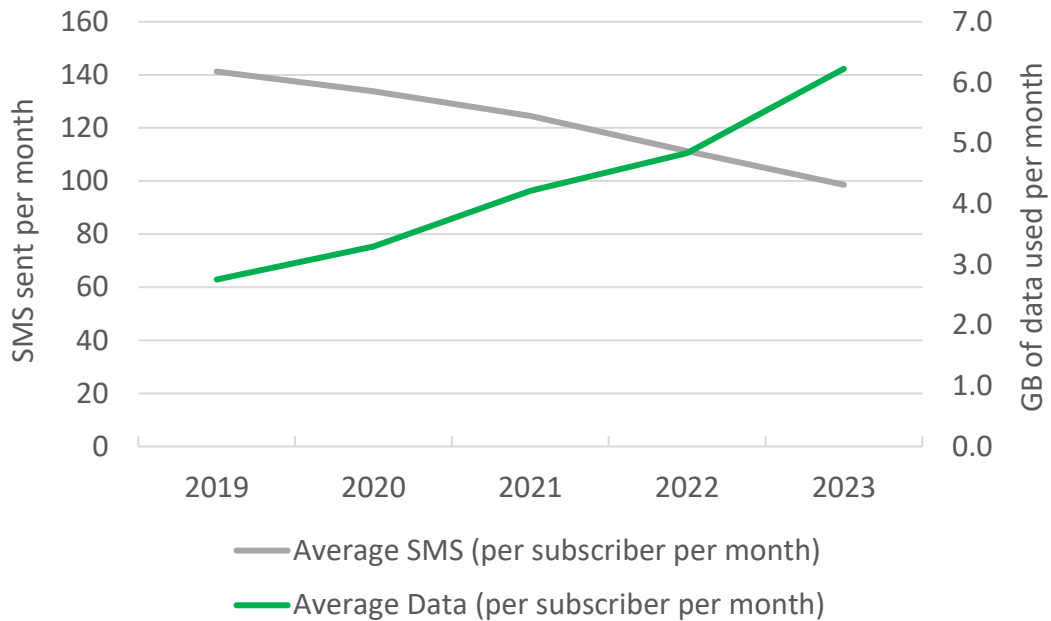
- 3.62 The retail mobile services market is the relevant downstream market, as MTAS is an input used to supply retail messaging services (SMS).
- 3.63 As discussed in the retail voice market section, OTT services are widely available as alternatives to mobile (MTAS) messaging services wherever mobile data is provided by the MNO networks. These services can be easily accessed with basic smartphones now prevalent among end-users.
- 3.64 As noted earlier, voice and in particular SMS allowances no longer appear to be a distinguishing feature of mobile plans that MNOs compete on, with an increased focus on data, data speeds, 5G access and coverage, and other add-ons such as streaming subscriptions, cloud storage, data rollover, family plans.
- 3.65 The average monthly data usage continues to rise while the average monthly SMS usage continues to decline (Figure 3.12).

³⁶ Ibid at page 11.

³⁷ It is possible that this information may lead to refinement of the market definition. However, we do not consider that concluding on any such refinement is required for the purposes of our reasonable grounds assessment.

³⁸ Commerce Commission "Final decision on Mobile Termination Access Services (MTAS)" (2 September 2020) at 117.

Figure 3.12 Average monthly SMS vs mobile data usage



Source: Commission 2023 AMR

- 3.66 High adoption of OTT messaging services has likely played a significant role in the sharp decline in traditional SMS usage. Competition from OTT messaging services may have contributed to the inclusion of unlimited SMS on mobile plans.

Close substitutes in the retail messaging market

- 3.67 In our last MTAS review (2020) we found that there are strong competitive constraints on SMS termination services from OTT services. In addition to this competitive constraint our preliminary view is that current market structure sufficiently disincentivises MNOs from raising MTRs.
- 3.68 SMS usage continues to decline, even though unlimited SMS allowances feature in most mobile plans (that is, SMS allowances are not a differentiating factor).
- 3.69 Ubiquity of internet coverage has driven high adoption of OTT services which offer a strong degree of substitutability to traditional SMS.

Consumer demand and switching in the retail messaging market

- 3.70 Consumer preference for data is reflected in the Commission’s Telecommunications Consumer Satisfaction Monitoring Report, which found that respondents do not prioritise SMS when choosing a provider or switching plans.³⁹

³⁹ [Telecommunications Consumer Satisfaction Monitoring Report – January – June 2024.](#)

- 3.71 Annual SMS volumes have declined to an all-time low (Figure 3.1). In terms of daily usage, 49% of people use SMS once a day or more, compared to 55-60% in the prior four years.^{40, 41}
- 3.72 As shown in Figure 3.12, SMS usage has been declining while mobile data usage has been increasing. OTT usage is on the rise, with 53% of respondents using applications like Facebook Messenger once a day or more, up from 49% in 2019. Similarly, WhatsApp usage has grown to 24% using it once a day or more, compared to 19% in 2019.⁴² This trend suggests that SMS is increasingly being replaced by OTT messaging.
- 3.73 OTT messaging services offer free messaging over the internet, making SMS less attractive, particularly in markets such as New Zealand with high internet penetration and accessibility.

Competition summary – MTAS voice and SMS

- 3.74 MTAS was included as a designated service in Schedule 1 of the Act (and therefore subject to price regulation) due to concerns about limited competition and potential for monopolistic pricing.
- 3.75 In a relatively stable mobile telecommunications market such as New Zealand, the strategic advantage to increase and maintain higher MTRs may have diminished, as the incentives to increase MTRs in a market with established and stable market shares may be low as MNOs are both access seekers and access providers of MTAS.
- 3.76 The distinguishing/competitive feature of most mobile plans is now data and data speed, with most retail plans including unlimited SMS to any network, and significant or unlimited call minutes (often to any network). Consumers have limited visibility on the unit prices of ‘voice calls’ or ‘SMS’ only as most plans are sold as voice, SMS and data bundles.
- 3.77 Consumers prioritise lower prices, more data, and faster speeds, with lesser interest in call minutes and SMS. Increasing data usage reflects a shift in consumer focus towards data-driven services, indicating that competition is likely to be more centred around data offerings rather than termination-based services.
- 3.78 Further, we have also considered whether retail voice alternatives represent close substitutes to retail voice services that use the regulated MTAS as an input. This involves consideration of both price and non-price performance characteristics.

⁴⁰ Commission 2023 AMR.

⁴¹ [InternetNZ “New Zealand’s Internet Insights 2023” \(December 2023\)](#) at page 13.

⁴² Ibid at pages 13 and 14.

- 3.79 We do not consider that calling a fixed number is a competitive alternative to MTAS voice, due to higher retail prices and lack of mobility.
- 3.80 However, OTT services appear to provide competitive alternatives for both mobile voice and SMS, bypassing the termination monopoly that regulation is intended to address.
- 3.81 Given the structure of the retail mobile market, with three established MNOs; given the uptake of OTT services which do not rely on MTAS; and given the features of retail mobile plans (where data is often the key differentiating feature, and SMS and minutes are often unlimited), our preliminary view is that there is limited incentive and ability for each MNO to raise MTRs. This indicates that reasonable grounds exist to commence an investigation into whether MTAS should be omitted from Schedule 1 of the Act.

Alignment with the purpose of the regulation – section 18 (step 4)

- 3.82 We have considered whether a review is warranted on an objective basis, having regard to whether there is at least a realistic possibility that continued regulation of MTAS under Schedule 1 is no longer necessary to best promote competition in relevant telecommunications markets for the long-term benefit of end-users.
- 3.83 In our judgement a review is warranted, since our analysis and preliminary findings above suggest that market conditions have changed significantly, and competition and market conditions are likely to continue to sufficiently constrain MNOs from raising MTRs.

Costs and benefits

- 3.84 The balance in considering whether to conduct a review into a regulated service like MTAS lies in ensuring that the benefits, such as consumer protection and promotion of competition, outweigh the administrative, compliance and implementation costs imposed by regulation, and that the costs of conducting that review will not be disproportionate to the benefits which may accrue from it.
- 3.85 Since we consider there is at least a realistic possibility that continued regulation of MTAS under Schedule 1 is no longer necessary to best promote competition in relevant telecommunications markets for the long-term benefit of end-users, it follows that the costs imposed by the regulation may outweigh its benefits. We also consider that, taking account of the scope of a review, the anticipated costs of conducting a review of MTAS do not materially impact our assessment.
- 3.86 This leads us to our draft decision under clause 1(3) of Schedule 3, which we summarise below.

Draft decision and next steps

- 3.87 Our draft decision under clause 1(3) of Schedule 3 of the Act is that there are reasonable grounds to commence an investigation into whether the MTAS service should be omitted from Schedule 1 of the Act.
- 3.88 We are seeking views on our draft decision.
- 3.89 After considering submissions on our draft decision, we will publish our final decision under clause 1(3) of Schedule 3 of the Act on whether to investigate omitting MTAS from Schedule 1 of the Act.
- 3.90 If our final decision is the same as our draft decision, we must commence the investigation not later than 15 working days after making that decision.⁴³

⁴³ Clause 1(5) of Schedule 3 of the Act.