

Review of the MTAS STD monitoring requirements

Under section 30R of the Telecommunications Act 2001
[2016] NZCC 11

The Commission:

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Executive summary

1. This decision under section 30R of the Telecommunications Act 2001 (the Act) varies the Mobile Termination Access Service Standard Terms Determination (the MTAS STD)¹ by deleting the requirement for mobile network operators to provide monthly information as specified in the MTAS STD.
2. Mobile communications are a central part of our modern lives and end-users are increasingly using and relying on mobile communications for personal or professional reasons. Competition in mobile markets is an essential mechanism to constrain prices as well as to ensure greater choice and quality of mobile services for end-users.
3. The purpose of the MTAS STD is to regulate the cost of terminating on a mobile network a call or a short-message-service (SMS) that was originated either on a fixed telephone network or on another cellular mobile network. The main purpose of introducing the MTAS STD, was to promote competition for the long-term benefit of end-users, thereby promoting the purpose of section 18.
4. The ways in which mobile operators compete have changed significantly since the MTAS STD was published in May 2011. We are of the view that the type and frequency of information required under the MTAS STD no longer provides the most appropriate information or means by which to assess the state of competition in mobile telecommunication markets. Rather, a broader view is required.
5. Removing information requirements on mobile operators from the MTAS STD does not mean that we will no longer monitor competition in mobile markets. Rather, we are of the view that monitoring of mobile markets is now more appropriately achieved within the scope of our section 9A functions. Under section 9A we are required to monitor competition in telecommunications markets and the performance and development of telecommunications markets, and to make available reports, summaries and information about the information gathered, as appropriate. If necessary we are able, when exercising our section 9A functions, to compulsorily require information to be provided under section 98 of the Commerce Act 1986 (via section 15 of the Telecommunications Act).
6. Monitoring mobile competition in this way provides us with greater flexibility to respond to the dynamics of mobile market competition. We have, for example, recently updated our section 9A monitoring of mobile markets to include usage of new types of mobile telecommunications services and retail plans with some data collected half-yearly rather than yearly.

¹ *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)* (Commerce Commission Decision 724, 5 May 2011).

Monitoring requirements in the MTAS STD

7. The MTAS STD regulates the price of terminating a call or a SMS on a cellular mobile telephone network. That price applies for calls originated from either a fixed telephone network or another cellular mobile network. We are of the opinion that the MTAS STD has been effective in promoting competition for the long-term benefit of end-users, this way promoting section 18 purpose.²
8. With the regulation of mobile termination rates (MTRs) at a cost-based price, the Commission expected to achieve an increase in competition in mobile markets resulting in:
 - an increase in cross-network traffic for voice and SMS;
 - a decrease in the difference in prices between on-net and off-net calls and SMS; and
 - a decrease in the customer churn-rate for the smallest operator.
9. Monitoring requirements were included as part of the MTAS STD to closely monitor whether these expected outcomes were being achieved. The MTAS STD monitoring requirements were in addition to the ongoing monitoring of competition in telecommunications markets under section 9A of the Act.
10. At the time, the Commission determined that it was appropriate to assess trends on a monthly basis so as to allow for a quick response in case a condition limiting on-net/off-net price differentiation needed to be imposed.
11. The information required to be provided by the mobile network operators consisted of a monthly report on the volume of calling minutes and SMS, revenue from calling and SMS and number of subscribers. This information was to be provided in the format set out in Appendix 11 to the MTAS STD, following the guidelines specified in the same Appendix as shown in Attachment 1 of this document

Process to review the monitoring requirements in the MTAS

12. Section 30R of the Act allows the Commission, on its own initiative, to commence a review, at any time, of all or any of the terms of a Standard Terms Determination.³ We may vary, add or delete any of its terms if we consider it necessary to do so after conducting a review, as described in detail in Attachment 2 - Legislative framework.

² In September 2015 the Commission decided that MTAS should remain in Schedule 1 of the Telecommunications Act. "In accordance with Clause 1(3) of Schedule 3 of the Telecommunications Act 2001 (the Act), the Commerce Commission New Zealand (the Commission) has considered whether there are reasonable grounds to commence an investigation into whether the designated Mobile Termination Access Service (MTAS) should be omitted from Schedule 1 of the Act. After careful consideration, the Commission has decided that there are no reasonable grounds to commence an investigation to determine whether MTAS should be omitted from the Act", see Commerce Commission, [Review of MTAS as a designated service](#)

³ Section 30R(1).

13. On 7 January 2016 we announced the start of a section 30R review of the monitoring requirements under the MTAS STD with the purpose of varying that STD by deleting the requirement for mobile network operators to provide monthly information.⁴ The reason for this review was that we considered that our goal of monitoring competition in mobile markets may be more appropriately achieved within the scope of our section 9A general monitoring functions. Monitoring mobile markets as part of our general monitoring function allows us to take a broader view on what information we monitor. Section 9A also allows for more flexibility in terms of adjusting both the questions and the frequency of reports in response to observed market trends and dynamics. Submissions to our consultation were due by 5 February 2016.
14. In their submissions stakeholders recognised the advantages of removing the MTAS STD monitoring requirements, to continue monitoring competition in mobile markets under section 9A of the Act, as the use of section 9A allows the Commission more flexibility to update its monitoring requirements as markets evolve.

Submissions received to our preliminary view on the MTAS STD monitoring requirements

15. In our draft decision our preliminary view was that the monitoring requirements in the MTAS STD should be deleted as the monitoring process under section 9A is more responsive to the dynamics of the mobile market.⁵ Mobile telecommunications services and plans change frequently and we need the ability to update our monitoring questionnaire regularly to reflect those changes.
16. We said that the information currently required to monitor competition in the mobile market goes beyond voice and SMS services to include data services and other services, which goes beyond the purpose of MTAS. The indicators that we now collect under section 9A allow us to collect information less frequently than under the MTAS STD but in more relevant detail. They provide a wider picture of any changes in the markets that may have a negative impact on consumers.
17. We received submissions from 2degrees, Spark and Vodafone. The three mobile providers supported our draft decision.⁶
18. 2degrees considered it appropriate to remove the monitoring requirements specified in the MTAS STD and that the revised regime represented a significant improvement to the monitoring of the mobile sector.

The Commerce Commission has recently revised its monitoring regime for mobile markets, with data collected now including detailed breakdown of prepaid, postpaid and business segments on a bi-annual basis, as well as data on on-net offers in the market. 2degrees

⁴ Commerce Commission, Review of the MTAS STD monitoring requirements – draft determination under section 30R of the Telecommunications Act 2001, 7 January 2016

⁵ [Commerce Commission, Review of the MTAS STD monitoring requirements – draft determination under section 30R of the Telecommunications Act 2001, 7 January 2016](#)

⁶ Submissions received to our consultation are available on our [webpage](#) .

consider this revised regime represents a significant improvement to the monitoring of this sector.

While we consider the MTAS STD monitoring regime has played a valuable role, in light of these developments 2degrees agree it may be more appropriate for the Commission to now monitor on-net/off-net competition issues under its section 9A monitoring powers. This is likely to provide more meaningful data to the Commission and provide the Commission with greater flexibility to adapt to market developments.

As such 2degrees does not object to the removal of the requirement for mobile network operators to provide monthly information as specified under the MTAS STD subject to:

The Commission continuing to monitor on-net trends under its section 9A powers.

Section 9A monitoring occurs on a regular basis, with the ability for the Commission to step up quickly if potential competition issues are identified. We agree with the Commission that annual monitoring is likely to be insufficient in case intervention is required to stop anticompetitive practices.

MTAS remaining a designated service under the Telecommunications Act. As set out in 2degrees' submission to the Commission on whether MTAS should remain a regulated service under Schedule 1 of the Act, MTAS remains a key wholesale input service for 2degrees and other market players, downstream retail markets remain highly concentrated and there are still strong commercial incentives on dominant players to raise rivals' costs, to the detriment of competition and ultimately end-users.

19. Spark also supported the Commission's decision to remove the monitoring requirements under the MTAS STD and to adjust the market monitoring process. Moreover, Spark urged the Commission to set in place an ongoing formal process to review the monitoring regime, not only of the mobile markets but of the overall telecommunications markets, to ensure that it continues to appropriately meet the statutory purpose over time, without imposing undue compliance costs on operators.

Spark urges the Commission also to carry out a "top down" review and consultation to ensure that the overall structure of telecommunications market monitoring under section 9A continues to be fit for purpose without imposing undue compliance costs on operators.(...).

This process should also consist of the same two aspects discussed above in the context of mobile telecommunications markets.

a. First, as takes place at the present, regular small adjustments should be made, as required, to recognise changes in the relevant markets, improve data quality, and maintain relevance to the regulatory purpose of monitoring. Spark thinks this process could be carried out more formally in consultation with the industry than is currently the case.

b. Second, we think it is important that the Commission establish a more formal internal process to carry out a periodic "top down" review and consultation to ensure that the overall structure of telecommunications market monitoring continues to be fit for that purpose, and without imposing undue compliance costs on operators.

20. Vodafone also supported our approach to delete the existing requirements to provide information under the MTAS STD and to update the monitoring requirements. In its submission Vodafone highlighted the merits of working closely with industry to do this review.

We appreciate that the Commission has also worked closely with the industry to streamline and refine the specific metrics under its current data collection under section 9A. This ensures that the information collected effectively informs the Commission's analysis of competition within telecommunications markets, while minimising the collection costs for telecommunications providers.

21. We appreciate the constructive contributions of the three mobile players and will continue to engage with operators in our ongoing formal process to adjust the monitoring requirements. The exercise of our monitoring function under section 9A provides the flexibility and ease with which we can adapt and respond to market dynamics.

Final decision

22. This decision under section 30R of the Act varies the MTAS STD by deleting the requirements for mobile network operators to provide monthly information. The requirements to be deleted are prescribed in paragraphs 564 to 569 of the STD, as well as in the Appendix 11 of the same STD, as shown in Attachment 1 of this document.
23. We are confident that the process we have in place to monitor competition in the mobile markets is consistent with good regulatory practice and will, in a broad sense, promote the objectives of section 18 of the Act. Monitoring competition in mobile markets under section 9A provides us with the information we need and allows for greater flexibility. We intend to continue engaging with industry to inform and help us define the issues we monitor and to ensure that our monitoring remains relevant and the data we collect is robust and complete.
24. We are satisfied that we will be able to obtain the information we require on a voluntary basis and, if necessary, using our powers under section 98 of the Commerce Act (via section 15 of the Telecommunications Act).
25. This section 30R review of the MTAS STD is effective from 19 of May 2016.

Attachment 1 – MTAS monitoring requirements to be deleted from STD

564. The Commission determines that the most appropriate approach is to monitor the market very closely after the MTAS STD has come into effect, and assess on a monthly basis whether cost-based MTRs are addressing the competition concerns the Commission has considered in this MTAS STD.

565. In a situation where MTRs are regulated at cost, and market forces are effective in delivering more competitive outcomes, the Commission would expect to see (within a reasonably short time):

- an increase in cross-network traffic for voice and SMS;
- a decrease in the difference in prices between on-net and off-net calls and SMS; and
- a decrease in the customer churn-rate for small operators.

566. Given the significance of on-net off-net price differentiation in the New Zealand market, the Commission intends to publish the results of monitoring of the first two indicators above on a monthly basis. These reports will provide comments on whether the Commission continues to have concerns such that a condition limiting on-net off-net price differentiation may need to be imposed. If such a condition were appropriate, the Commission could conduct a section 30R review to impose a condition relatively quickly

Monitoring information required

567. In order to assess whether on-net off-net price differentiation continues to undermine the pro-competitive benefits of the regulation of MTRs the Commission determines under section 30O that access providers of the MTAS must provide to the Commission, within 20 Working Days of the close of each calendar month, the following information:

- on-net and off-net traffic volumes for MTM calls and SMS;
- total customer numbers and customer churn-rates; and
- revenue and average prices for on-net and off-net MTM calls and SMS.

568. This information must be provided in a report in the form set out in the tables in Appendix 11, and must comply with the attribution guidelines specified in Appendix 11.

569. The report must be certified as compliant by a Director or the Chief Executive Officer of the Access Provider. The certificate of compliance must specifically certify that the data submitted is accurate and accords with these requirements.

I, {NAME}, certify, as {Named position eg Director or Chief Executive Officer}, that to the best of my knowledge after making reasonable inquiry, the data provided to the Commission is accurate and complies with the requirements of the information requested by the Commission in Decision 724.

This certificate is given in my capacity as an officer of {NAMED ENTITY} and on the basis of the information provided to me by persons within {NAMED ENTITY}'s business.

APPENDIX 11: REQUIREMENTS FOR MONITORING IN RELATION TO ON-NET OFF-NET PRICE DIFFERENTIATION

Purpose

18. The following tables specify the information that 2degrees, Telecom and Vodafone must provide to the Commission, as required under paragraph 568 of Section F of this MTAS STD. This information must be provided to the Commission within 20 Working Days of the close of each calendar month.

Table 39: Voice services information - volumes

	Month and year	
	Actual minutes	Billed minutes
Volume from mobile retail voice calls (in minutes actual and billed¹²⁸³)		
Outgoing off-net minutes to other mobile networks		
Total on-net minutes (to and from own mobile network)		

Table 40: Voice services information – revenue

Revenue from mobile retail voice calls (in \$)	Month and year
Revenue from outgoing off-net minutes to other mobile networks	
Total revenue from on-net minutes (to and from own mobile network)	

1283 Billed minutes when charged per minute and billed minutes forgone when charged by subscription.

Table 41: SMS service information - volume

Number of SMS messages received/sent (in numbers)	Month and year
Number of outgoing off-net SMS messages to other mobile networks	
Total number of on-net SMS messages (to and from own mobile network)	

Table 42: SMS service information - revenue

Revenue from SMS messages received/sent (in \$)	Month and year
Revenue from outgoing off-net SMS messages to other mobile networks	
Total revenue from on-net SMS messages (to and from own mobile network)	

Table 43: Subscriber numbers

Total number of retail mobile connections	Month and year
Cellular mobile telephone subscribers, active in the past 90 days (as at the end of month)	
Numbers of pre-paid subscribers that have ported off the network or have become inactive within the past month (ie have no activity in the past 90 days)	
Number of post-paid subscribers that have ported off the network or have ceased their post-paid service and have not replaced it with a pre-paid service within the past month	

19. In relation to the revenue figures in Table 40 and Table 42 above, 2degrees, Telecom and Vodafone must apply the following attribution rules:

- where an MNO receives a subscription fee for access to one service (voice or SMS), the entire access fee revenue should be allocated to the relevant service;
- where an MNO receives an access fee purely for an on-net voice or SMS package, this is attributed directly to the relevant on-net service; and
- where an MNO receives an access fee for a bundled product with voice and SMS components, then the voice and SMS services will be allocated revenue in line with

the “fair value accounting” principle (ie deriving a fair value for each component of the service and allocating the access fee to these components in proportion with the fair values). This is determined in two ways depending on the type of bundle under consideration, as set out below:

- Where the individual components of the bundle are limited to a certain volume, the value of the component is derived by pricing the maximum usage gained by paying the access fee at the headline retail rate; or
- Where the individual components of the bundle are unlimited in terms of usage, the fair value ratio of the components is derived by using historic analysis of the respective post-paid and pre-paid revenue splits.

The access fee revenue is then allocated across the voice and SMS services in the same proportion.

Attachment 2 - Legislative framework

26. In the MTAS STD, we imposed conditions upon access providers of the MTAS under section 30O of the Act to provide monthly information for the purposes of monitoring whether cost-based mobile terminate rates were addressing the competition concerns we identified in the MTAS STD,⁸ with a particular focus on on-net/off-net price discrimination.
27. We also monitor competition in mobile telecommunications markets as part of our sector monitoring and information dissemination function, set out in section 9A of the Act. Section 9A provides:

9A Functions of Commission in relation to sector monitoring and information dissemination

- (1) In addition to the other functions conferred on the Commission by this Act, the Commission—
- (a) must monitor competition in telecommunications markets and the performance and development of telecommunications markets; and
 - (b) may conduct inquiries, reviews, and studies (including international benchmarking) into any matter relating to the telecommunications industry or the long-term benefit of end-users of telecommunications services within New Zealand; and
 - (c) must make available reports, summaries, and information about the things referred to in paragraphs (a) and (b).
- (2) The function in subsection (1)(c) does not require the Commission to release all documents that the Commission produces or acquires under this section.
28. Section 30R of the Act allows the Commission, on its own initiative, to commence a review at any time of all or any of the terms of a Standard Terms Determination:
- (1) The Commission may, on its own initiative, commence a review, at any time, of all or any of the terms specified in a Standard Terms Determination.
 - (2) The Commission may replace a Standard Terms Determination or vary, add, or delete any of its terms, if it considers it necessary to do so after conducting a review.
 - (3) In exercising the power conferred by subsection (2), the Commission may specify how and when a replacement Standard Terms Determination, or a variation, addition, or deletion of terms specified in the determination, takes effect in relation to—
 - (a) the initial Standard Terms Determination:
 - (b) any relevant residual terms determination.

⁸ *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)* (Commerce Commission Decision 724, 5 May 2011), paras. 564-565.

- (4) The Commission may conduct a review in the manner, and within the time, that it thinks fit.
 - (5) The Commission must—
 - (a) consult all parties to the determination on the review; and
 - (b) give public notice of the commencement of the review; and
 - (c) include in the public notice under paragraph (b) the closing date for submissions; and
 - (d) give public notice of the result of the review.
29. Section 19 of the Act further provides that, in making its decision under section 30R, we must:
- (a) consider the purpose set out in section 18; and
 - (b) if applicable, consider the additional matters set out in Schedule 1 regarding the application of section 18; and
 - (c) make the recommendation, determination, or decision that the Commission or Minister considers best gives, or is likely to best give, effect to the purpose set out in section 18.
30. Section 18 provides:
- 18 Purpose**
- (1) The purpose of this Part and Schedules 1 to 3 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) In determining whether or not, or the extent to which, any act or omission will result, or will be likely to result, in competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand, the efficiencies that will result, or will be likely to result, from that act or omission must be considered.
 - (2A) To avoid doubt, in determining whether or not, or the extent to which, competition in telecommunications markets for the long-term benefit of end-users of telecommunications services within New Zealand is promoted, consideration must be given to the incentives to innovate that exist for, and the risks faced by, investors in new telecommunications services that involve significant capital investment and that offer capabilities not available from established services.
 - (3) Except as otherwise expressly provided, nothing in this Act limits the application of this section.
 - (4) Subsection (3) is for the avoidance of doubt.