

One NZ submission on the Commerce Commission's review of MTAS draft decision

10 December 2024

Introduction

1. We welcome the opportunity to comment on the Commerce Commission's (**the Commission**) draft decision on whether there are reasonable grounds to commence an investigation into whether Mobile Termination Access Service (**MTAS**) should be omitted from Schedule 1 of the Telecommunications Act 2001 (**the Act**). The Commission has a responsibility to manage the stock of regulations, and it is part of good regulatory practice to give proper consideration to whether regulations continue to service a purpose.

One NZ position

2. One NZ supports the Commission's draft decision that there are reasonable grounds to commence an investigation into whether MTAS should be omitted from the Act. We agree with the legal and economic frameworks applied by the Commission to reach its draft decision, particularly on the need to ensure that sufficient competitive constraints exist in the absence of regulation.
3. MTAS regulations were first introduced in 2010 when the mobile market was dominated by two large Mobile Network Operators (**MNOs**) and mobile traffic was predominantly based on calls and SMS. The regulations were aimed at addressing the Commission's concerns of limited competition and monopolistic pricing acting as a barrier to entry and expansion by a new entrant into the market. Specifically, the Commission was concerned that significant on-net/off-net pricing differentials and high mobile termination rates (**MTRs**) would hinder the ability of a small entrant to compete.

4. The concern around mobile traffic imbalances favouring larger MNOs was justified at the time. However, as recognised by the Commission in its draft decision, market conditions have changed significantly since then, meaning that the issues the Commission sought to address back in 2010 are no longer warranted.
5. Consumer demand has shifted significantly towards mobile data usage. Mobile plans are now predominantly distinguished by data, with most operators offering unlimited calls and SMS (and where call minutes are capped, they are offered in large quantities). As the Commission acknowledges, mobile call minutes have started to fall following a period of stagnation, while SMS have been in decline consistently since 2012.¹ Mobile operators are now competing largely on data allowance and speed, add-ons such as group plans and streaming subscriptions, and bundled services (e.g. with energy).
6. Relatedly, a number of alternatives to traditional calling and SMS now exist in the downstream retail markets. The shift to data usage is reflected in the significant rise in the use of over-the-top (OTT) services such as WhatsApp, Facetime, MS Teams and Messenger. These services are providing alternatives to traditional voice and SMS, and act as a competitive constraint on mobile voice and SMS services. For example, end users could easily switch to those services if an MNO were to increase voice call prices. When the Commission last carried out the reasonable grounds assessment on MTAS in 2020, it decided that OTT services were not yet an effective constraint on MTAS, particularly in relation to voice services.² There has been no reduction in the use of voice calling alternatives since then. On the contrary, these services are fully embedded in the market now and usage is likely growing as reflected by falling mobile calling minutes. In addition, the majority of consumers are using smartphones that enable easy access to these alternatives.
7. At the time when MTAS regulations were introduced, the retail price of the call was largely determined by the wholesale price of the termination service. We don't think that this plays a

¹ The Commerce Commission, *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*, 13 November 2024, p. 5

² *Ibid.*, p. 9

big role in determining call prices for end users today, largely because of the growth of easily accessible alternatives that are data-based, as set out above. As such, we agree with the Commission's preliminary view that 'even if MRTs were to increase, the impact on retail mobile prices would likely be minimal.'³

8. Meanwhile, competition in the mobile market has also increased materially since 2010. We now have three strong MNOs, with a growing number of mobile virtual network operators. As a result, there is now greater balance of MNOs being both access seekers and access providers of MTAS, meaning that there is less ability for MNOs to leverage over each other. Competition, the rise of alternatives to traditional calls and SMS, and MTAS regulation have also led to reduced difference in the cost of supplying on-net and off-net calls and SMS, with operators now usually offering mobile bundles with call minutes to any network.
9. A key test when considering omission of MTAS from Schedule 1 of the Act is whether there is a risk of higher retail prices and distortions in the retail markets. All of the above reasons mean that there would be no material incentive for MNOs to increase or maintain higher MTRs if MTAS were deregulated, and the impact on competition would be minimal (if any).
10. We therefore agree with the Commission's draft decision that MTAS regulations are no longer necessary to best promote competition in telecommunications markets for the long-term benefit of end-users and the Commission should commence a review of MTAS deregulation in 2025. We note that Australian regulator removed regulation of the MTAS for SMS services five years ago.
11. Please contact the following regarding any aspect of this submission.

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³ Ibid., p. 19

