

11 December 2024

Toni Shuker
Manager, Regulatory Rules and Compliance
Commerce Commission New Zealand

By email: Telecommunications@comcom.govt.nz

Subject: MTAS review - Submission

Dear Tony,

Pivotel Group Pty Limited ("Pivotel") is Australia's fourth Mobile Network Operator ("MNO"), and a substantial provider of wholesale CPaaS services including number hosting, voice and SMS transit and termination services in Australia and, and an acquirer of termination services into New Zealand networks from New Zealand end users utilising satellite services within New Zealand and abroad.

Pivotel welcomes the opportunity to respond to the New Zealand Commerce Commission (ComCom) investigation into whether the Mobile Termination Access Service (MTAS) should be omitted from Schedule 1 of the Telecommunications Act 2001 (the Act).

Pivotel considers that declaration remains an important tool to address structural issues in telecommunications markets and to prevent the exercise of monopoly power to the detriment of competition in downstream markets.

ComCom acknowledges the potential for monopolistic and anti-competitive conduct absent MTAS regulation in its draft decision, "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."¹

ComCom further notes that historically it "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"².

The above points acknowledge that MNOs have the ability to increase charges for MTAS beyond what is reasonable as a result of their monopoly on termination services, "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"³.

ComCom would be aware that the ACCC in Australia recently reviewed MTAS and decided that Voice MTAS should continue to be regulated and that SMS should not be re-regulated. Pivotel strenuously disagreed with the ACCCs logic and final decision in regard to A2P SMS

¹ 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" (13 November 2024), Clause 1.9.

² 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" (13 November 2024), Clause 1.12.

³ 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" (13 November 2024), Clause 1.13.

and was correct in its draft decision to regulate A2P SMS.

In its original submission Pivotel argued in favour of continued regulation of Voice MTAS; “Pivotel considers that the declaration of MTAS for voice to be in the LTIE because it will promote:

- a) competition in wholesale and downstream retail markets for fixed and mobile voice services by ensuring that large national MNOs cannot extract monopoly rents on essential inputs;
- b) any-to-any connectivity by ensuring that consumers and businesses are able to make and receive calls, no matter where they live or work; and
- c) the economically efficient use of communications infrastructure by which the services are provided by preventing incumbent mobile operators from charging monopoly rents for termination of calls on their networks. This in turn promotes productive, allocative and dynamic efficiency.”⁴

Further that “Without declaration, Pivotel considers that the national MNOs will increase termination rates above cost given that each MNO has the ability and incentive to do so because they have a monopoly over termination on their own networks (as the ACCC has previously acknowledged). This will have adverse impacts not only for small MNOs such as Pivotel and retail service providers (including MVNO’s) but also for new and emerging technologies reliant upon those termination services.”⁵

Similarly for SMS Pivotel argued for regulating SMS MTAS; “Pivotel considers the declaration of MTAS for SMS to be in the LTIE because it will promote:

- a) competition in the wholesale markets for termination of SMS and in the downstream retail markets for Person-to-Person (“**P2P**”) and Application-to-Person (“**A2P**”) messaging services by ensuring that essential inputs are supplied at cost reflective prices;
- b) any-to-any connectivity by ensuring that consumers and businesses are able to acquire and receive ubiquitous and cost-effective messages; and
- c) the economically efficient use of communications infrastructure by which the services are provided by preventing incumbent mobile operators from charging monopoly rents for termination on their networks and offering businesses and consumers a wider choice of messaging services to fit their particular needs. This in turn will promote productive, allocative and dynamic efficiency.”⁶

The ComCom review appears to be narrowly focused on Peer-to-Peer (P2P) traffic only and does not seem to have considered how their draft decision will impact the Application to Person (A2P) market. Whilst Pivotel continues to advocate for MTAS regulation on both Voice and SMS for both P2P and A2P, Pivotel believes ComCom should have particular focus and be especially vigilant in the market for A2P services due to recent developments in the Australian market and current structure for these services in the New Zealand (NZ) market. It is noted the existing MTAS service description for voice termination includes voice-over- internet-originated voice calls and strongly encourages the continued declaration

⁴ Pivotel ACCC Submission on the public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, 28 July 2023, clause 1.19

⁵ Pivotel ACCC Submission on the public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, 28 July 2023, clause 1.20

⁶ Pivotel ACCC Submission on the public inquiry into the declaration of the domestic transmission capacity service, fixed line services and domestic mobile terminating access service, 28 July 2023, clause 1.21

of MTAS for voice with the current service description. It is Pivotel view that the MTAS service description for SMS should be expanded to include application originated SMS termination (A2P SMS) for the reasons outlined below.

Despite their final decision the ACCC expressed concerns around the following; “On balance, the ACCC considers it is uncertain the extent to which wholesale prices for A2P SMS termination will rise (if at all) in a future without declaration of an A2P SMS termination service. The ACCC would be concerned, however, if evidence emerged of significant and sustained increases in wholesale A2P SMS prices in the future.”⁷

Unfortunately, within a very short space of time the ACCCs concerns have been realised with increases to wholesale prices and exercise of market power as a result of the MNO’s ability to extract monopoly rents.

Pivotel understands that the NZ market is different from the Australian market with respect to Interconnect and MTAS in that there are currently no off-net wholesale providers of SMS termination via regulated MTAS outside of the limited competition provided by the three national MNOs, and that MTAS applies only to the interconnected national MNOs, Spark, OneNZ and 2Degrees. As a result, all service providers who wish to terminate A2P SMS traffic onto existing MNO networks are subject to “commercial” rates that are set by the MNOs with little to no regulatory oversight or scrutiny.

Accessing A2P SMS termination on the NZ MNO networks has a high barrier to entry in that access seekers have to apply directly or through a 3rd party intermediary to enable voice and SMS termination to the mobile networks.

[REDACTED]

Additionally, the rates being charged by the NZ MNOs for terminating A2P SMS on their networks is extremely high relative to other developed markets. As a result, CSP providers of A2P Voice and SMS have not been able to grow the market and provide a range of innovative services and drive competition.

Pivotel believes the current declaration of MTAS should be continued and the service description expanded to include the termination of SMS that originates from an application (A2P SMS) as a necessary requirement to enable termination access to MNO networks on reasonable terms and pricing, helping to foster the growth of OTT services, which are still in their nascent stage. When properly established and embedded in the market, these services can foster competition and innovation and drives the efficient use of communications infrastructure.

[REDACTED]

The downstream implications of this should be a cause for concern for ComCom as there is

⁷ ACCC Public inquiry into the declaration of the domestic mobile terminating access service, Final Report, June 2024, page 46

little evidence of a competitive market for A2P services in the NZ market. The ubiquity of SMS services with the ability of application providers to reach all end users has seen the adoption of A2P SMS far outstrip the use of OTT applications such as WhatsApp and Facebook Messenger in the provision of services such as 2FA, reminders, delivery notices etc and it is only in markets where A2P SMS termination rates have been high that such OTT applications have captured a meaningful A2P market share.

[REDACTED] At this level of retail pricing, it is uneconomic to use SMS to help drive business productivity, enhance privacy and security and help promote products and services, leading users to use less ubiquitous OTT channels such as WhatsApp and Messenger.

The MNOs appear to have a triopoly where they can take advantage of near-zero cost of terminating voice and SMS on their own networks with the ability to charge business, enterprise and government customers uneconomic rates, leading to an inefficient use of infrastructure and lack of competitive market dynamics.

Even more concerning is where consumers are required to reply to an A2P generated message for important messages that rely on a reply, such as 2 Factor Authentication (2FA), confirming appointment reminders etc. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Lack of regulated access to termination of voice and SMS services appears to have led to the NZ market having inflated costs to access the termination services, ultimately hindering innovation and competition. NZ consumers and businesses are paying inequitable prices to access these services which has resulted in a less dynamic and innovative market relative to its international peers.

Pivotel acknowledges that voice and SMS SCAM is an issue in all markets. Many initiatives have been developed that have already helped reduce SCAM such as the Australian SCAM Code and recent policy developments such as the SCAMS Prevention Framework (SPF). There are also moves afoot to bolster Know Your Customer (KYC) and Know Your Traffic (KYT) including the establishment of a CSP Registry improving authentication and validation of A2P traffic. There is a fine balance that must be struck between fostering innovation and a competitive market versus fighting SCAM. **It is, however, abundantly clear that having artificially high termination rates does not help reduce SCAM as Scammers find ways to mitigate these costs through other means, such as the use of SIMBoxes to terminate voice calls and SMS messages.**

Pivotel recommends that ComCom continue to regulate Voice and SMS MTAS for P2P and A2P services, expanding the service description to include the termination of A2P SMS, and set pricing at levels that are more aligned with the economically efficient cost of accessing infrastructure. It has been observed that markets where regulation is in place, or the threat of regulation is sufficient, has led to more competition and better outcomes for end consumers.

Lastly, given the emerging state of the NZ A2P market, Pivotel recommends that ComCom further investigate other markets with a specific focus on A2P developments and capabilities that have evolved, resulting in more competitive market outcomes and improved access to new technologies and innovation.