



# Mobile Termination Access Service (MTAS) review draft decision

Submission | Commerce Commission

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## Executive Summary

Thank you for the opportunity to provide feedback on the Commission's draft decision that there are reasonable grounds exist to commence an investigation to determine whether MTAS should be omitted from Schedule 1 of the Act (**the draft**).

We support the Commission's proposed approach. The market has changed significantly since 2010 when MTAS was designated:

- We operate in a highly competitive market that is demonstrably delivering great investment, innovation and service outcomes for end users.
- 2Degrees is now an established operator in the market and the original competition rationale for regulating termination rates – a concern that a combination of high termination rates and low on-net retail prices would stifle competition – is no longer a realistic concern.
- At the same time as traditional voice and texting services are declining, we are seeing increasing use of substitute OTT voice and messaging services such as Facebook Messenger and WhatsApp. Mobile competition now occurs predominantly based on service quality and data inclusions, with many plans including unlimited texts and call minutes. Looking forward, the importance of data inclusions will increase with 5G deployments and new OTT services.
- The potential structural and market concerns MTAS was designed to be a regulatory backstop for are no longer a feature of the market, which has matured substantially.

The Commission is right to consider further MTAS deregulation – continued regulation is unlikely to promote competition and more likely to distort competition by preserving legacy approaches.

As importantly, the Commission's draft approach demonstrates how a mature regulatory framework should work, with deregulation as important as regulation in terms of creating healthy incentives on market participants.

MTAS services should be omitted from Schedule 1 of the Act.

## Introduction

1. Thank you for the opportunity to provide feedback on the Commission's draft decision that there are reasonable grounds exist to commence an investigation to determine whether MTAS should be omitted from Schedule 1 of the Act (**the draft**).
2. The Commission must consider at intervals of not more than 5 years, whether there are reasonable grounds for commencing an investigation into whether the service should be omitted from the Act.
3. The consideration of whether a service should be omitted from the Act is an important reminder that regulation comes with significant costs and distortions and should be rolled back where possible, and that potential deregulation is an important part of the regulatory framework

## Comment

4. The Commission's draft view is that there is at least a realistic possibility that continued regulation is no longer necessary and that a deregulation review is warranted.
5. We agree. We operate in a highly competitive market delivering great investment, innovation and service outcomes for end users. Further, the original competition rationale for regulating termination rates – a concern that a combination of high termination rates and low on-net retail prices would stifle competition – is no longer a realistic concern.

### We operate in a highly competitive and dynamic market

#### Consumers can access world class mobile networks and services

6. New Zealand's mobile networks, mobile services and mobile prices are world-class. The Commission's most recent annual market monitoring report highlights that:
  - a. Consumers have access to innovative offers and prices that, overall, compare well against those available in other OECD countries. Spark recently launched new 'big data' mobile plans that include a significant increase in full speed data. Opensignal analysis also confirmed that Spark has the most reliable mobile network with the widest coverage experience<sup>1</sup>.
  - b. Usage has increases across the board with mobile data used per customer increasing by 30% over the past year alone. While the number of SMS messages has fallen, this likely reflects consumer uptake and use of substitute over-the-top (OTT) services. Mobile competition now occurs predominantly based on service quality and data inclusions, with many plans including unlimited texts and call minutes.
  - c. Operators have continued to make significant investments in mobile networks and new generations of mobile technology, with increasing 5G coverage and satellite to device services planned. Modern technologies are widely deployed, and service quality compares favourably to overseas markets. Average 5G download speeds of over 250Mbps place New Zealand in the Top 15 global markets in Opensignal's testing<sup>2</sup>.

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<sup>1</sup> As awarded by Opensignal in the September 2024 NZ Mobile Network Mobile Experience Report <https://www.opensignal.com/reports/2024/09/newzealand/mobile-network-experience>

<sup>2</sup> Commission Annual Monitoring 2023 Report as page 170 referencing Opensignal's June 2023 benchmarking report. Opensignal report this has increased to 294Mbps in its September 2024 benchmarking report.

## Data inclusions and OTT services are a key feature of the market

7. We also operate in a dynamic market. Again, as set out in the draft, we are seeing a fundamental shift in the market to services and competition based on data inclusions and consumer adoption of substitute over-the-top services.
8. The draft outlines the decline in text demand, and voice minute volumes are largely static. Conversely, at the same time as legacy mobile services are in decline, we've seen significant growth in substitute OTT services.
9. Consumers are increasingly attuned to using the internet, with The World Internet Project New Zealand reporting<sup>3</sup> that internet users (over 83%) use the internet several times a day, with most of the remainder using it daily. 83% connect using mobile data.
10. And these consumers have ready access to voice and messaging platforms such as Facebook and WhatsApp:
  - a. InternetNZ/Verian Research report that Facebook Messenger is now more frequently used than texting (on average 4.2 versus 4.1 times per week), with over 50% of respondents report checking Facebook Messenger more than once a day<sup>4</sup>.
  - b. According to Meltwater/We Are Social research<sup>5</sup>, around 81% of kiwis are active social media users, with 77% using Facebook Messenger and 46% Whatsapp every month.
11. Over the top social media and messaging applications are now perfect substitutes for voice calling and text messaging among groups and individuals. The kinds of concerns that drove the Commission to regulate MTAS in the first place are accordingly no longer features of mobile calling and text service markets.
12. The new currency is data and each of New Zealand's 3 networks are well positioned to provide compelling data offerings to end users. Further analysis would no doubt provide additional evidence that the market is working well and there are no enduring structural challenges.

## The original competition concerns have fallen away

13. Accordingly, the market context has also changed significantly since 2010 when the services were designated.
14. The Commission's original concern was that the combination of MTAS prices and discounted on-net voice and SMS prices could restrict the ability of the 2degrees to compete to attract new subscribers to its network.
15. 2Degrees is now an established operator and off-net/ on-net differentials are no longer a significant feature of mobile markets. The volume of off-net call minutes has increased relative to on-net call minutes. Spark's new post-paid mobile plans include unlimited minutes and texts to NZ/Aus numbers.
16. There are also now three nationwide 4G mobile networks, and mobile providers are in the process of rolling out new 5G networks. As noted in the draft, 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<sup>6</sup>. Consumer

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<sup>3</sup> Work Research Institute in collaboration with InternetNZ 2023  
[https://nzpri.aut.ac.nz/data/assets/pdf\\_file/0010/845371/WIP-NZ-2023-28Nov.pdf](https://nzpri.aut.ac.nz/data/assets/pdf_file/0010/845371/WIP-NZ-2023-28Nov.pdf), table 3

<sup>4</sup> <https://internetnz.nz/assets/Uploads/New-Zealands-Internet-Insights-2023-v2.pdf>, Figure 1

<sup>5</sup> Reported by Socialmedia [NZ Social Media Statistics 2024 - SocialMedia.org.nz](https://socialmedia.org.nz)

<sup>6</sup> Draft at 3.38

demand and offers are dominated by data inclusions are consumers are increasingly using OTT services such as WhatsApp and Facebook messenger for voice and messaging applications.

17. MTAS was added Schedule 1 to address a specific competition concern that is no longer apparent, and the current market dynamics suggest it is unlikely to be a future concern.

### **The regulatory framework**

18. Given the changes in key market dynamics since 2010, we believe that there are now good reasons for the Commission to consider omitting MTAS from the Act.
19. The original on-net pricing competition concern is no longer a feature of the market, and no evidence to suggest that termination rates can act to stifle competition or that operators have incentives to attempt to use termination rates to do this. Data is the new currency, with calling and messaging via OTT applications, providing ready substitutes for the services historically regulated by MTAS. Going forward, as 5G and even 6G become more ubiquitous, any concerns relating to calling and messaging rate differentials will be almost completely mitigated by the strength of unregulated and abundant substitutes.
20. As importantly, the Commission's draft approach demonstrates how a mature regulatory framework should work, with deregulation sometimes just as important as regulation in creating healthy incentives on market participants and maintaining the credibility of the regulatory framework. MTAS regulation was implemented to address a specific concern and maintaining regulation where that specific concern is no longer valid – undermines the access providers' incentives to resolve competition concerns (or to rely on regulatory protections and business models long after they remain in end-user interests).
21. The Commission is right to consider whether MTAS should be omitted from Schedule 1 of the Act.

**[end]**