

Review of the MTAS STD monitoring requirements – draft determination

Under section 30R of the Telecommunications Act 2001

The Commission:

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Executive summary

1. This paper invites submissions on our preliminary view to vary the Mobile Termination Access Service Standard Terms Determination (the MTAS STD)¹ under section 30R of the Telecommunications Act 2001 (the Act). We are proposing to delete the requirement for mobile network operators to provide monthly information as specified under the MTAS STD.
2. We will continue to monitor competition in mobile markets, including on-net and off-net voice traffic trends, under section 9A of the Act. Section 9A requires us 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.
3. Mobile markets have changed significantly since the MTAS STD was published in May 2011. In response to these changes we changed aspects of our process for monitoring mobile markets under section 9A. In particular we:
 - 3.1 updated our questions to reflect usage of new mobile telecommunications services and retail plans;
 - 3.2 started collecting some mobile data half-yearly rather than yearly; and
 - 3.3 updated our reports accordingly.
4. Having now had the opportunity to review the information from this updated section 9A monitoring process, 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. This can be, and is now, more appropriately achieved within the scope of our section 9A powers and functions, including, if necessary, use of our powers to compulsorily require information to be provided under section 98 of the Commerce Act 1986 (via section 15 of the Telecommunications Act). Monitoring in this way will provide us with greater flexibility to respond to the dynamics of mobile market competition.
5. 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.
6. We invite submissions on our preliminary views. Submissions are due by 5 February 2016.
7. We are expecting to issue a final decision on our review before the end of March 2016.

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

8. The MTAS STD regulates the cost of termination on a cellular mobile telephone network of voice calls and the short-message-service (SMS) from either a fixed telephone network or another cellular mobile network. 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 was to be provided in the format set out in Appendix 11 to the MTAS STD, following the guidelines specified in the same Appendix.²

We introduced changes to our process of monitoring the mobile markets

12. On 30 October 2014 we released the paper “Updated metrics for monitoring the mobile telecommunications markets”, which sets out the information we currently collect (on a voluntary basis) from Vodafone, Spark, and 2Degrees. This paper was preceded by an initial discussion paper, published on 13 June 2014 and a request for comments paper, published on 28 August 2014.³
13. We said in our initial discussion paper that, following the review, we were likely to commence a section 30R review of the disclosure obligations contained in paragraph 567 of the MTAS STD to amend the information disclosure obligations of the STD. We also said that we would consider whether disclosure obligations related to the MTAS should be retained in the MTAS STD, or whether they should be included, as appropriate, in our annual mobile monitoring activities under our general section 9A powers.

² See attachment 1.

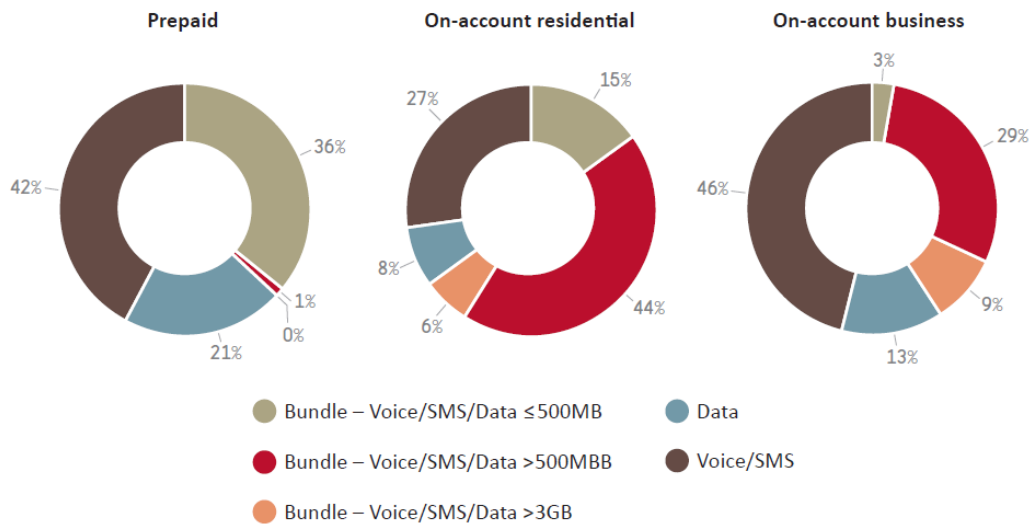
³ Metrics for mobile monitoring, 13 June 2014. Available at: <http://www.comcom.govt.nz/regulated-industries/telecommunications/monitoring-reports-and-studies/monitoring-strategy/>
Documents attached.

14. We then noted in our request for comments paper that we expected to commence a section 30R review following receipt and review of the information provided in response to our annual telecommunications industry questionnaire. Last year we received the responses to our first revamped questionnaire and are confident that the information received provides the Commission with adequate insight into competition in mobile telecommunications markets.

Our questionnaire

15. Mobile markets have changed significantly since we determined the MTAS STD. We found that the monthly data provided under the MTAS STD was no longer providing enough insights into competition in, or performance or development of, mobile telecommunication markets so we updated the questionnaires we send under section 9A to reflect current mobile plans and services.
16. The most popular mobile plans now include a bundle of services that combine voice, SMS and data and have an allowance of traffic. The revenue questions were therefore updated to relate to plans as opposed to stand-alone services (see Figure 1 below) because the exercise of allocating revenue to specific services, when sold in a plan, was getting increasingly difficult.

Figure 1 Revenue by customer segment and plan 2013-14

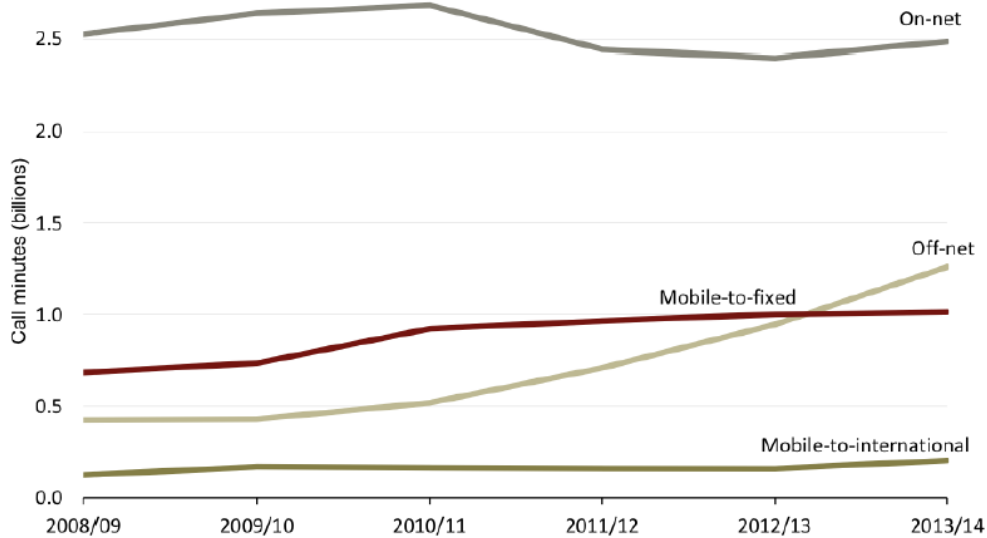


Source: Commerce Commission Annual Telecommunications Monitoring Report

17. Preferential pricing for on-net traffic may still constitute a threat to competition, but its importance has reduced. Nowadays, most mobile plans include unlimited calls and SMS or a voice call allowance to any network, rather than all calls priced per-minute with a discount for on-net calls.
18. We are still monitoring the promotion of on-net services and the possible effect on competition. However, we are not asking operators to provide us the value of revenue obtained from on-net and off-net traffic separately. To understand how on-net special rates are influencing competition, we opted to ask about the number of

subscribers with such mobile plans/add-ons. We then compared that number with the total number of subscribers and found the proportions are not a cause for concern. This information is complemented, as previously, with information about on-net and off-net traffic trends – see Figure 2 below.

Figure 2 Mobile call volumes by type of call



Source: Commerce Commission Annual Telecommunications Monitoring Report

19. We are also still requesting information about churn, which complements the information we receive from the New Zealand Telecommunications Forum about mobile number portability.
20. However, we consider that to understand competition in the mobile market, we need a broader view. The information we are now collecting on a voluntary basis allows us to monitor more than just voice and SMS services.⁴ For example, we are now able to understand providers' competitive position regarding mobile broadband plans in each customer segment.
21. Our questionnaire is now more detailed, but the questions about revenue are easier to answer as they do not require the allocation of revenue to each individual service included in a plan.

⁴ Attachment 2 – How monitoring has evolved from MTAS, includes a table comparing the MTAS requirements with the new ones.

The frequency of our questionnaire

22. We are currently collecting information twice a year:
 - 22.1 we are sending out a comprehensive questionnaire in October each year, which is the basis of our Annual monitoring report, to be completed by the end of November; and
 - 22.2 a half-year questionnaire in the beginning of May, which contains a subset of the questions included in the annual questionnaire, to be completed by the end of the month.

23. The reasons for the new periodicity are as follows:
 - 23.1 We acknowledge the potential difficulties and costs of providing all the information we ask;
 - 23.2 We consider that we need a few months to establish a change in trends; but
 - 23.3 We consider that looking at trends only once a year is insufficient and ineffective in case our intervention is required to stop some anti-competitive practice in the market.

Our reports

24. We report annually on the information collected in accordance with section 9A of the Act. We will continue to produce an annual report using information provided in response to our annual questionnaire, followed by the publication of a spreadsheet containing aggregate non-confidential questionnaire results.
25. We will also produce a short report following the analysis of the responses to our half-year questionnaire. Last year we opted not to release a half-year report because we prefer to have more than one period of historical half-year information to check for consistency and reasonableness.
26. We will continue to report on on-net/off-net voice call traffic trends, as we did in our reports under the MTAS STD. However, for the moment, we are not analysing on-net/off-net SMS traffic given that at present most popular mobile plans include unlimited SMSs to all New Zealand mobile networks.

Preliminary view on the MTAS STD monitoring requirements

27. Our preliminary view is 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. Mobile telecommunications services and plans change frequently and we need the ability to update our monitoring questionnaire regularly to reflect those changes.
28. 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.

29. 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). We will continue to engage with industry to help us define the questions in a clear way in order to reduce ambiguity. We will also continue to verify the information provided to us under section 9A to ensure that our evidence base is robust and complete.
30. We are confident that the process we now 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. The new process allows for a wider view of competition in mobile markets while reducing the burden on the parties by eliminating the exercise of allocating revenue to individual services, reducing the periodicity of providing information and also eliminating the need to have a certification of compliance by a Director or the Chief Executive Officer of the Access Provider.

Submissions to this consultation

31. We invite submissions on our preliminary views.
32. Submissions are due by 5pm on 5 February 2016. Your response should be provided as an electronic copy in an accessible form. Submissions should be sent by email to: telco@comcom.govt.nz. If you have any inquires please contact filomena.antunes@comcom.govt.nz.
33. We intend to publish all submissions on our website. Any confidential information should be clearly marked. When confidential information is provided, submitters should provide both confidential and public versions of their submissions. The responsibility for ensuring that confidential information is not included in a public version of a submission rests with the party making the submission.

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

34. 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,⁶ with a particular focus on on-net/off-net price discrimination.
35. 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.
36. 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.

⁶ *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.

37. 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.

38. 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.