

Mobile Terminating Access Service Declaration Inquiry
Application-to-person SMS preliminary views

Email to stakeholders on 23 May 2014

Dear All

The ACCC has been considering submissions to the ACCC's MTAS Declaration Inquiry Draft Decision (Draft Decision) published in December 2013. As you are aware, in the Draft Decision, the ACCC proposed to vary the MTAS Declaration service description to cover SMS termination.

In response to the Draft Decision, some stakeholders submitted that if SMS termination services are to be declared, application-to-person SMS (A2P SMS) should be excluded from the type of SMS messages covered. That is, a declared SMS termination service should only apply to termination of peer-to-peer (or mobile-to-mobile) SMS and not to the termination of A2P SMS.

Following these submissions, the ACCC conducted targeted market inquiries with a range of A2P SMS providers and SMS aggregators and also sought additional views and information from the mobile network operators (MNOs).

The ACCC has now reached a preliminary view in relation to whether application-to-person SMS (A2P SMS) should be excluded from the proposed declaration of SMS termination services, which is set out below with reasons for arriving at this view.

In the interests of procedural fairness, we are providing stakeholders with an opportunity to consider and respond to our preliminary view on A2P SMS. We are seeking comments by **Friday 30 May 2014**.

Kind regards

MTAS Declaration Inquiry Team

Preliminary view – SMS termination services

1. The ACCC has reached the preliminary view that a declared SMS termination service should not exclude termination of A2P SMS services.

Reasons for including A2P SMS

2. The ACCC does not consider that the termination of some SMS services should be distinguished from other services based on the origination of these services and when they display similar characteristics. A specific type of SMS service should only be excluded from declaration if there are good reasons to do so.
3. The ACCC has found that the termination of A2P SMS share the same bottleneck features as peer to peer SMS termination. Each MNO has a monopoly over SMS that terminate on their network and an incentive to keep the prices of A2P SMS above cost. In order to send an A2P SMS to a mobile subscriber connected to another network, an MNO will need an SMS termination service from the destination MNO in order to deliver the message.
4. The ACCC has considered submissions regarding the potential increase in SMS spam and/or congestion should A2P SMS be declared. The ACCC considers that the risk for either increased spam or congestion that may result from including A2P SMS in the declaration is small.
5. The ACCC has found that declaring A2P SMS would promote competition for wholesale A2P services and in the downstream A2P SMS markets by placing downward pressure on the costs of providing A2P SMS services.
6. Having taken these matters into account, the ACCC has found that it is in the long-term interests of end-users (LTIE) to include A2P SMS termination services in the MTAS declaration.

Discussion

The A2P market

7. A2P SMS messages are SMS messages sent from software applications enabled by an internet connection and access to a mobile network. A2P SMS messages are generally used by businesses to communicate with their customers. For example, A2P SMS services can be used to send appointment reminders to patients/clients, banks use them to provide password verifications to customers, small-to-medium enterprises (SMEs) can use them to circulate staff rosters and businesses can use them for advertising.

8. To provide an A2P SMS service to a business or end-user, an A2P SMS service provider obtains an A2P SMS service from an SMS aggregator or directly from an MNO. SMS aggregators generally resell A2P SMS services to A2P SMS providers. MNOs provide a wholesale service to SMS aggregators. The MNO establishes a dedicated SMS gateway and charges according to the volume of SMS sent on behalf of the SMS aggregator or A2P SMS service provider. In some cases, SMS aggregators and MNOs provide a retail A2P SMS service to end-users.
9. The mobile subscriber receiving the A2P SMS may be on the same network as the MNO sending the A2P SMS (on-net), or on another MNO network (off-net). To send A2P SMS to mobile subscribers on other networks, the MNO sending the A2P SMS will acquire SMS termination from other MNOs.

Service description

10. In general, the ACCC takes a technology neutral approach to developing service descriptions for declared services. The service description that was proposed by the ACCC in its draft decision was consistent with this principle and covered all SMS messages from a point of interconnection (or potential point of interconnection) to a B-party directly connected to an access provider's digital mobile network.
11. Because A2P SMS messages only differ from other SMS in terms of their technical origin (ie. software application), the ACCC considers that they should only be excluded from the service description if there are good reasons to do so. The origination of an SMS message does not affect the termination of the SMS message.

Spam and network congestion

12. The ACCC has considered submissions from Telstra and Optus that declaration of A2P SMS termination services will result in increased levels of spam SMS and increased network congestion. The ACCC is not satisfied that these concerns would justify excluding A2P SMS from declaration for the following reasons.
13. First, it is not clear that SMS spam would increase significantly if there is downward pressure on SMS termination rates as a result of declaring SMS termination. Declaration of SMS termination services will not directly affect MNOs' relationships with SMS aggregators or A2P service providers. Only MNOs are able to purchase termination services and as such, the terms and conditions in any FAD will only be available to MNOs when acquiring A2P SMS termination services from another MNO. This means that MNOs would be free to set terms and conditions of access to the service as they consider appropriate to deter the sending of SMS spam or to manage network traffic.

14. Secondly, the ACCC considers that there are already a number of ways to control and deter SMS spam. The ACCC has obtained information in response to its market inquiries which shows that there are already a number of ways to control or deter the sending of spam. Most A2P SMS service providers and SMS aggregators have policies and procedures in place to manage or discourage the sending of spam. Further, the *Spam Act 2003* prohibits the sending of spam, including SMS spam and imposes significant penalties. The ACCC regards the *Spam Act* as an appropriate regulatory safeguard to deter SMS spam.

On-net and off-net pricing of termination services

15. SMS aggregators and A2P SMS service providers can purchase on-net and off-net SMS from MNOs. In general, off-net SMS prices tend to be higher than on-net SMS prices. To provide off-net SMS services, an MNO must acquire SMS termination from another MNO.

16. Market inquiries indicate that SMS aggregators generally acquire only on-net SMS services because of this price difference. This means that currently, competition between MNOs for wholesale A2P SMS services is limited.

Long term interests of end-users

17. Overall, the ACCC has found that the declaration of SMS termination services is in the long term interests of end-users. For similar reasons, the ACCC considers that including A2P SMS in the declaration will promote competition in relevant markets and would be in the long term interests of end-users.

18. The ACCC considers that there are two relevant downstream markets:

(a) The wholesale market for A2P SMS services - This is the market in which the MNOs provide a wholesale service to SMS aggregators and sometimes, A2P service providers.

(b) The downstream markets for A2P SMS services –These include the market in which SMS aggregators supply A2P SMS services to A2P SMS providers, and the market in which the A2P service providers supply A2P SMS service to end-users.

19. The ACCC considers declaring SMS termination will lead to downward pressure on SMS termination rates and encourage MNOs to offer lower prices for off-net A2P SMS to SMS aggregators. The ability for MNOs to offer lower off-net prices means that it may become commercially viable for SMS aggregators to buy on-net and off-net A2P SMS services from a single MNO. MNOs will then need to compete with each other to acquire wholesale A2P SMS customers, which is likely to lead to reductions in both off-net and on-net A2P SMS prices.

20. A reduction in the prices MNOs charge SMS aggregators are likely to be passed on to the downstream markets for A2P SMS services. That is, the reduced wholesale cost to SMS aggregators is likely to be passed on to A2P SMS service providers and in turn, in lower retail prices offered to end-users.

The ACCC has therefore concluded that including A2P SMS services in the declaration will promote competition in the wholesale market for A2P SMS services and in the downstream markets for these services.