

Richard York
Director – Regulatory
Telecommunications
Australian Competition and consumer Commission
GPO Box 520J
Melbourne VIC 3001

Dear Richard

ATUG wishes to make the following comments on the Draft Decision on Mobile Terminating Access Services, March 2004.

CORE ISSUES FOR USERS

The issues for users in regard to mobile termination services and whether they should continue to be declared and if so what pricing principles should be applied, are:

termination rates are not cost related
termination rates are not subject to competitive forces
retail fixed to mobile prices are too high as a result
retail benchmark reductions are too slow.

ATUG PRICE RESEARCH

ATUG's price research (using ATUG benchmark data based on what is paid rather than what is advertised) indicates the following % reductions in prices from 1998 to 2002, (offset in part by increases in access charges during the same period):

International spend per minute - down 64%
National spend per minute - down 57%
Local spend per minute - down 44%
Mobile spend per minute - down 36%
Fixed to mobile per minute - down 28%

Even for these high volume buyers who do not avail themselves of handset "subsidies" the fixed to mobile charges are orders of magnitude higher than local or long distance charges.

During this time the volume of spend on fixed to mobile has grown in line with the increased number of mobiles in the market but the fall in prices has not matched the falls experienced in other telecommunications services at the same stage of market maturity. The same is true for mobile prices generally.

ATUG's recent analysis (using Telstra published data for 2000, 2003 and 9 months ONLY for 2004) indicates average prices paid for mobile and fixed to mobile minutes are very significantly higher than fixed minutes and reducing much more slowly.

	2004 3Q		2003		2000		% Reduction
Call type	\$m	Calls mil	\$m	Calls mil	\$m	Calls mil	
Local	1148	7155	1567	9794	2646	11346	
Avg	16c		16c		23c		30%
NLD	\$m	Mins mil	\$m	Mins mil	\$m	Mins mil	
	856	6471	1162	9161	1406	9396	
Avg	13c		12.6c		15c		13%
Mobile	\$m	Mins mil	\$m	Mins mil	\$m	Mins mil	
	2583	4565	3227	6335	2667	4464	
Avg	56c		51c		60c		13%
F2M	\$m	Mins mil	\$m	Mins mil	\$m	Mins mil	
	1206	3169	1517	3944	1220	3022	
Avg	38c		38c		40c		5%

These figures draw attention to the problem of relying on the market to drive retail mobile prices down and hence call termination rates. The Commission's comments about possible increases to mobile retail rates showing up in its as yet unpublished 2003-03 Annual Report on Price Changes for Telecommunications Services are further evidence of the inadequacy of the retail price benchmarking methodology.

INTERNATIONAL PERSPECTIVES

Given the focus of the Telecommunications Act 1997 on international competitiveness, it is also worth noting Australia's position in the following OECD Outlook 2003 figures for retail telecommunications prices:

Fig 6.4 OECD Residential tariff basket (domestic only) - Australia is ranked at 13 i.e. 17 countries have a cheaper residential basket than Australia.

Fig 6.5 - OECD composite residential tariff basket (includes international and fixed to mobile) - Australia is ranked at 13 i.e. 17 countries have a cheaper residential basket than Australia

Fig 6.6 OECD business tariff basket (domestic only) - Australia is ranked at 10 i.e. 20 countries have a cheaper basket than Australia

Fig 6.7 OECD business tariff basket (includes international and fixed to mobile) - Australia is ranked 11 i.e. 19 countries have a cheaper basket than Australia

Fig 6.10 OECD basket of low user mobile charges, August 2002 - Australia is ranked 24 i.e. 6 countries have a cheaper basket than Australia

Fig 6.11 OECD basket of average mobile user charges, August 2002 - Australia is ranked at 17 i.e. 13 countries have a cheaper basket than Australia

Fig 6.12 OECD basket of high user mobile charges, August 2002 - Australia is ranked at 13 i.e. 17 countries have a cheaper basket than Australia.

This information suggests that however much progress may have been achieved through competition over the last decade in Australia, we still have progress to make to achieve our objective of international competitiveness in the Australian telecommunications industry.

The OECD in its Communications Outlook 2003 at Table 2.9 summarises the current range of regulatory approaches to achieve competitive fixed to mobile termination rates and retail prices. While the solutions vary according to the principles underlying the regulatory framework, there is a shared view that operators with significant market power will not deliver competitive outcomes without regulatory supervision.

The OECD Communications Outlook 2003 at page 29 makes particular reference to the issue of fixed to mobile interconnection:

"Interconnection remains an important issue preoccupying regulators. The last several years have seen increased concern with regard to fixed to mobile termination where mobile operators terminating calls are viewed as having a bottleneck position. In a number of OECD countries rates for terminating calls on mobile networks have been steadily decreased in the last several years.

However, a number of initiatives have been taken by regulators to put further pressure on mobile termination charges, Within the European Union, the designation of mobile operators as having significant market power in the interconnection market has led to the imposition of cost-oriented termination charges which are applied on a non-discriminatory basis in a number of countries. Operators in some countries are required to publish their termination rates and some countries have intervened directly to set maximum termination prices, impose price caps or impose reductions on these charges."

INTUG (International Telecommunications Users Group) has been monitoring

and representing the issue of over priced mobile termination services to regulators in the EU for many years. It is worth noting that a number of regulators have recently found evidence of market failure in fixed to mobile (and international roaming) prices related to market power over call termination and have mandated cost reductions and time frames for implementation.

ATUG sees no difference between the arguments in those jurisdictions and the situation prevailing in Australia.

ATUG has seen no evidence from these markets that mandated reductions in termination rates have caused harm to competition or individual competitors. Instead it seems to ATUG that the reaction of operators to the mandated reduction has been to introduce innovative products such as mobile data products and 3G networks to replace lost revenues. This has led to increased choice for end users and greater innovation.

DRAFT DECISION - DECLARATION

ATUG agrees with the Commission's reasoning in the Draft Decision that termination services are bottleneck services which are not subject to market based competitive pressure, with the result that prices for this service are well above underlying costs. Users cannot choose which termination service to use when calling another user. Users buying mobile phones from an operator are not informed of the cost to other users to call them and do not have sufficient incentive to take this into account when buying mobile services.

ATUG accepts the concerns of fixed line only operators in regard to the more favourable position of vertically integrated operators and in regard to possible anti-competitive effects of bundling. However, ATUG's membership still has significant concerns over the price of fixed to mobile calls which do not support the proposition that corporate customers are paying "efficient" prices for fixed to mobile services. Fixed to mobile prices for this segment reflect the same problem of over pricing that exists in the residential market.

ATUG supports the Commission's Draft Decision that mobile termination services should remain declared services, and that declaration will:

- 1) promote competition
- 2) achieve any-to-any connectivity, and
- 3) encourage efficient investment

DRAFT DECISION – PRICING PRINCIPLES

ATUG does not think the retail benchmark pricing principle previously adopted has been effective in bringing prices closer to cost, as would be expected if the market were truly competitive.

ATUG is also aware that the Commission's Annual Reports on price changes for telecommunications services reveal the same very slow reduction in fixed to mobile call prices in the face of significantly increased volumes due the increased number of mobile handsets.

ATUG has not yet seen the Reports for 2002-03 and the Commission's comments about increasing prices for residential users of fixed to mobile services and retail mobile services are concerning. Mobile services were removed from the Price Control Regime on the expectation that the market was sufficiently competitive to no longer require this regulatory measure. Evidence that this was not the case is of concern.

Lack of information such as these reports is a considerable impediment to proper policy analysis and development and an unwelcome development given the difficult time constraints that now apply to Commission decision-making in other areas of its regulatory responsibilities.

ATUG accepts the Commission's target price" pricing principle and the Commission's concerns about the suitability and timeliness of a TSLRIC based price.

ATUG accepts the Commission's argument about "rate shock" with reluctance given the time taken thus far to conduct the Inquiry and the awareness many of the industry players would have had about relevant developments overseas. The time frame allowed by the Commission under the proposed "glide path" means users will not see the full benefit of this decision until January 2007, assuming that there is full pass through. ATUG suggests amending the timeframe to conclude at January 2006.

ATUG agrees that the Commission's suggested price of 12c per minute for termination services is at top of a range of cost estimated for mobile termination services. ATUG's views are that 8c per minute is more appropriate.

ATUG is also concerned that the Price Control Regime may allow mandated reductions to be recovered through mechanisms such as call connection charges – e.g. Telstra's recent announcement of a 2c per call rise in connection charges for all timed calls included fixed to mobiles – meaning the foreshadowed positive impacts on end user demand may be thwarted.

FORM OF REGULATION

ATUG is one of the parties concerned as to whether the Commission mandated price reductions will be passed onto end users. However, the range of powers available to the Commission in Part IV, Part XIB and Part XIC of the Trade Practices Act should be sufficient to secure the right outcome - competitive prices for mobile termination services and reduced prices for end users for fixed to

mobile calls.

ATUG supports the emphasis on information gathering, monitoring and publication by the Commission as important regulatory tools. Monitoring of competition, bundling, accounting separation, price controls are all clearly part of the Commission's role in regulating the telecommunications industry.

Recent work by the ACA in regard to consumer toolkits and consumer code compliance are also important to the task of ensuring the consumers in the telecommunications services market are well informed as they make their choices. The profile of the ACCC among users should be used where necessary to ensure consumers are properly informed about developments in the industry.

ATUG recommends an annual program of information to consumers to alert them to the staged reductions in termination prices and the benefits they should be seeing in reductions in retail prices for fixed to mobile calls.

SUMMARY

ATUG supports the Draft Decision to vary declaration of mobile termination to include voice services terminating on 3G networks provided the Commission monitors the situation with regard to mobile data services. From ATUG's perspective there is early and unwelcome evidence from members of prices significantly above costs for this service also.

ATUG supports continued declaration of mobile termination services.

ATUG believes the target price of 12c per minute is at the top end of benchmark prices and that 8c per minute is more realistic.

ATUG believes (using 12c as a model only) the timeframe suggested should be altered to:

July 04 – 21c

Jan 05 – 18c

July 05 – 15c

Jan 06 – 12c

Yours sincerely

Rosemary Sinclair
Managing Director
ATUG