

Australian Consumers' Association
response to
ACCC Discussion Paper
MOBILE SERVICES REVIEW 2003¹

Introduction

The Australian Consumers' Association (ACA) is a not-for-profit, non-party-political organisation established in 1959 to provide consumers with information and advice on goods, services, health and personal finances, and to help maintain and enhance the quality of life for consumers. The ACA is funded primarily through subscriptions to its magazines, fee-for-service testing and related other expert services. Independent from government and industry, it lobbies and campaigns on behalf of consumers to advance their interests.

This submission will briefly review the state of the mobile services market and identify key characteristics that indicate there is a need for focussed and effective regulation of mobile voice termination rates. Our view is that the regulated rates must be set with reference to underlying cost, in a way that minimises delay and gaming opportunities. It is essential that a mechanism be in place to ensure regulated wholesale rates are delivered as price outcomes in the retail market for ordinary consumers. We are not convinced that market forces will effectively forestall the potentially perverse effects of simply depressing the wholesale price. It is the absence of such market forces that creates the regulatory necessity in the first place. Therefore we submit that the ACCC will need to make strong representations on the need to link regulatory action to reform the market at the wholesale termination level with steps to bring price benefits to the retail market, specifically creation of fixed-to-mobile calling in a specific sub-basket of the Telstra price cap regime. The core expectation we have from this review is that if wholesale termination charges fall, so should retail prices of fixed-to-mobile calls to residential consumers – in fact they should probably fall in any case.

The mobile services market

In the view of the ACA, it is important to distinguish between mobile voice services and mobile data services. The former (voice) is essentially mature – subscriber numbers have reached a plateau and the industry focus is on churn, high value customers and increasing network utilisation. The latter (data) is largely immature, particularly in terms of data services other than SMS. They are sufficiently different to be considered as different markets. The two should not be considered together, and there is definitely no case in our mind that would justify some form of specific pricing cross-subsidy from mobile voice to build or invest in mobile data capability or capacity. These should be self-funding as capital expenditure in the normal course of business.

A frequent assertion is that the mobile services market is among the more competitive segments of the Australian telecommunications market – this was the rationale for dropping the mobile sub-baskets from the Telstra Price Cap regime. However, it is the view of the ACA that this is a somewhat misguided view. Generally we conceive

¹ ACA File Ref 030435/1; 11 June 2003

of this market as contesting rather than deeply competitive, and specifically have concerns about the termination of mobile services. When the calling party pays (a principle we support completely) they do not have any choice of the end network. This is within the gift of the handset owner. Even if there were good transparency and visibility of termination charges (which is not the case in the Australian market) there is no inevitable conclusion that receiving parties will make choice that are rational for calling parties. This may occur simply as the consequence of individual behaviour, or may be susceptible to commercial manipulation by marketing, bundling and other incentives, since it suits mobile operators to have high termination rates.

We are concerned by indications of significant pricing distortions in mobile voice termination charges. These seem to be significantly above the cost base, certainly hugely in excess of fixed line termination charges. This is where the maturity of the voice market must be recognised. Pricing should at least be trending towards cost, and this does not appear to be the case at all. In addition, there are indications of significant price discrimination between rates for fixed-to-mobile calling available to residential and SME consumers as compared with those enjoyed by corporate customers. These distortions are possible and persist because of the absence of competitive pressures.

These considerations lead ACA to the conclusion that there remains a significant need for ongoing regulatory intervention in the market for mobile voice termination in particular. We definitely do not consider the declaration should be revoked, although as discussed below, its operation needs re-tuning. Data termination services probably need such supervision, but the two must not be conflated. In our opinion, this regulatory intervention is not required as some sort of transitional arrangement, but is likely to remain a structural requirement of achieving and maintaining fairly priced any-to-any connectivity in Australian telecommunications.

Regulatory response

The current regulation of mobile termination using a retail benchmark does not seem to be working to the benefit especially of small consumers. As noted above, we are not persuaded of the competitive nature of the mobile market, and therefore are unsurprised by the apparent absence of a retail price driver. Given the unfortunate experience of cost based regulation in the fixed line environment at the hands of the incumbent, it is appreciated that the regulator may have decided to adopt a proxy approach. However in this instance the proxy is flawed. In our view the retail benchmark is flawed and hostage to the vagaries of the general market. The fundamental problem is that mobile termination charges are way above cost; that market discipline is not driving them in the appropriate direction; and that this is a structural issue. What is required as a consequence is a regulatory methodology that addresses this divergence from cost.

We are certainly persuaded that this cost oriented approach should not be subject to delay and gaming. We do not believe such an approach necessarily requires a complete bottom-up modelling exercise to deliver reform beneficial to consumers. We would be comfortable with an exercise that drew on information about internal transfer pricing by integrated incumbents, knowledge of fixed line pricing and the work of overseas regulators to create benchmark costs for termination charges. The onus should then be on parties to demonstrate cost variance from these benchmarks.

Consumer outcomes

The key issue for the ACA is the extent to which any reform of regulation of mobile services delivers outcomes on the street for residential consumers. Coupled with retail price pass-through, the negative impacts of lowered termination charges on pure mobile providers would be redressed through increased call volume and duration with consequent revenue growth. Regulatory intervention must be effective in addition to being well founded in theory. In that context we are unimpressed with the semantics in the discussion paper about the necessity of causing competition or efficiency to deliver long-term benefit to end-users². In our view the LTIE test embodies a positive burden on regulation and regulators to be active in the promotion of the interests of end-users, not to pursue a passive strategy of 'set it and see'. Without tangible outcomes for the residential and SME classes of consumer, the exercise will remain a potentially arid exercise in regulatory correctness.

We are aware of the paucity of tools available to the ACCC to achieve this 'pass through' directly. Our observations above will convey our distrust of market mechanisms to achieve a retail effect unassisted. The key bottleneck in the Australian telecommunications marketplace is the local loop, and the delivery of lower fixed-to-mobile calls for residential consumers is inextricably linked to this. While the ACCC can perhaps contribute by setting benchmark retail pricing (although this carries the risk of making a floor for the market), by forcing better visibility and transparency of pricing in the marketplace and by playing a monitoring and reporting role, we think there is a case for direct price intervention.

We do not think the current broad basket price cap is likely to achieve the reductions required. Therefore the logic leads inexorably to an amendment of the Telstra price cap regime to create a specific fixed-to-mobile calling sub-basket that mandates retail pass-through of termination charges reductions as they are brought closer to cost. This is clearly a responsibility of Government rather than the ACCC, however we feel it is imperative that the ACCC indicate in any determination that without retail results, amendment to mobile termination charge regulation will be a largely fruitless cause from the point of view of the end consumer. Therefore there is a strong case for constructing a linkage between wholesale pricing reform and a retail price cap mechanism to deliver benefits to small consumers and for the ACCC to couch its outcome in these terms.

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