

BICS

ACCC MTAS Inquiry
Australian Competition and Consumer Commission
GPO Box 3648
SYDNEY NSW 2001
Attention: Ms Tara Morice and Ms Alison Sheehan

By email: MTASinquiry@accc.gov.au
Cc: tara.morice@accc.gov.au, alisonsheehan@accc.gov.au

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Dear Ms Morice and Ms Sheehan

ACCC Draft Report on the Domestic Mobile Terminating Access Service Inquiry Submission by BICS

1. Introduction

1.1 This is a submission by BICS in response to the ACCC's Draft Report on the Domestic Mobile Terminating Access Service Inquiry dated 2 May 2019 (**Draft Report**). The submission addresses in particular the continuing need for the declaration of SMS termination services for A2P SMS.

2. About BICS

2.1 BICS is a leading international communications enabler, one of the key global voice carriers and the leading provider of mobile data services worldwide. Our headquarters is in Brussels and we have regional offices in Bern, Madrid, Dubai, New York, San Francisco and Singapore, a satellite office in Beijing and local representation in Accra, Miami, Montevideo, Nairobi and Toronto. Designed for SMS Aggregators and Enterprises, the SMS A2P Service is the perfect solution for any communication provider looking to deliver high-quality SMS services, through a fast and easy process within days, without having any extensive investment costs.

2.2 In the A2P industry, BICS is acting as an A2P aggregator, collecting traffic from direct digital customers and other aggregators and delivering A2P traffic to mobile operators (in)directly. BICS is aiming to optimize the A2P delivery for all involved parties (mobile operator/A2P message initiator/end user).

2.3 BICS has been operating in the A2P industry since 2011. BICS has experienced the development of A2P SMS in Australia since June 2017. This coincides with BICS and Circuit4 cooperation. It has giving BICS competitive arguments (price and quality) to become important player for Australian A2P market.

2.4 As this information shows, BICS is a participant in the downstream A2P SMS market. Accordingly, our experience and business data may inform the ACCC's view on the state of competition in the downstream markets, and its decision on whether declaration is necessary to promote competition in those markets.

3. **ACCC's position on A2P SMS in the Draft Report**

3.1 The purpose of declaration is to promote the long term interests of end users of carriage services or of services provided by means of carriage services (LTIE). This involves considering the extent to which the following objectives are achieved.

- (i) The objective of promoting competition in markets for listed services.
- (ii) The objective of achieving any-to-any connectivity in relation to carriage services that involve communication between end-users.
- (iii) The objective of encouraging the economically efficient use of, and economically efficient investment in, telecommunications infrastructure.

3.2 In relation to A2P SMS, the main focus of the Draft Report is on the first of these considerations. The Draft Report states that the 'key question' in considering A2P SMS is "whether declaration is necessary to prevent MNOs from exercising their market power and to promote competition in the downstream market for A2P SMS services".

3.3 The ACCC has concluded in the Draft Report that declaration is not necessary to prevent MNOs from exercising market power, or to promote competition in the downstream A2P SMS markets, in which BICS is participant. The Draft Report indicates that the ACCC's conclusion is based on the following matters (at page 40).

- (a) MNOs are likely to be constrained from refusing SMS termination or setting unreasonably high SMS termination charges due to competition from OTT services in the retail market for messaging.
- (b) The current arrangements in which aggregators and A2P SMS service providers negotiate with each MNO to deliver SMS are likely to remain in place. These agreements are not dependent on MTAS, so no continuing declaration of SMS MTAS will have no impact on these arrangements.
- (c) Any effect declaration had in reducing the price of off-net A2P SMS would likely continue if declaration is removed. And further it is likely that each MNO will continue to provide SMS termination access agreements to Pivotel and aggregators and that is likely to remain the case even in the absence of declaration.

3.4 We respectfully disagree with each of these conclusions. Below we outline the reasons for which we request that the ACCC revise its conclusion and determine that A2P SMS is in the LTIE and should remain declared.

4. **Summary of BICS's response to the Draft Report**

4.1 This submission outlines why, in BICS's view, the ACCC's position in the Draft Report should be revised to maintain the declaration of SMS termination services in respect of A2P SMS. In summary:

- (a) OTT services are not a substitute for A2P SMS, and therefore do not provide any material competitive constraint on the MNOs' monopolies over termination services on their networks.
- (b) Rather, the most effective source of competitive constraint for direct carrier connections, or on-net services, is off-net services, such as those provided by Pivotel.
- (c) Our business has observed reduced pricing and increased service quality following the declaration of SMS termination, the introduction of the Final Access Determination (**FAD**) in 2016 and the entry of Pivotel into the wholesale market for SMS termination.

5. **OTT services are not an effective substitute for A2P SMS**

5.1 The Draft Report concludes that OTT services are an effective substitute for P2P SMS. It then extrapolates that the same would apply for A2P SMS. This conclusion is not supported by our own experience, or the ACMA report on which the ACCC's P2P conclusion is apparently based.

5.2 For our business, OTT is not a substitutable product for A2P SMS, for the following reasons.

- (a) Our customers seek the delivery A2P SMS to a specified set of customers. SMS offers a far greater degree of certainty as to the ability to reach those customers, and a single, ubiquitous delivery method. It reaches customers regardless of their handset type, availability of data services, and regardless of which, if any, OTT services they have chosen to acquire in addition to their mobile services.
- (b) In contrast, OTT services such as WhatsApp, Facebook etc. may each only reach a subset of the intended recipients, being those who use the relevant OTT service. This is a fundamental limitation on the viability of OTT services for bulk or commercial message applications.
- (c) Further, read rates are higher with SMS, which is a key success metric for end-customers running an A2P SMS campaign.

5.3 For these reasons, we do not consider OTT services are strong substitutes for A2P SMS. We do not foresee that our customers would shift to OTT platforms should A2P SMS pricing increase substantially, however their overall use of A2P SMS may decline in these circumstances.

5.4 Further, the data relating to relationship between OTT services and P2P SMS does not logically extend to A2P SMS, and is inconsistent with our own experience as outlined above. The Draft Report relies on the Australian Communications and Media Authority's *Communications Report 2017-2018* in concluding that OTT services operate as a substitute for P2P SMS. The section of the report on which the ACCC relies is 'Consumer engagement with communications and media'. It relates specifically to personal use of messaging, rather than commercial messaging.

That is, the survey data only considers individuals sending messages and not commercial entities. As such it cannot inform any conclusion as to whether there is substitutability between OTT services and A2P SMS.

5.5 Coupled, these two points displace any assumption that OTT services operate as a substitute for A2P SMS.

6. **Off-net services apply competitive constraint to on-net service suppliers**

6.1 There are three ways in which our business may source A2P SMS to supply to our customers.

(a) Via a direct carrier connection with each mobile network operator (**MNO**), or 'on-net' supply of wholesale A2P SMS termination services.

(b) Via a connection to a MNO which can originate A2P SMS for termination on each other MNO's network, or 'off-net' supply of wholesale A2P SMS termination services.

(c) Via an aggregator, which has itself sourced bulk A2P SMS from MNOs through one of the above two methods – typically via on-net supply.

6.2 Our experience has been that the second option, off-net supply via a MNO, has been the strongest commercial proposition for BICS and our customers in view of Australia SMS. This is for the following reasons:

(a) Direct carrier connection is, or on-net supply, is difficult to obtain. We have described our personal experience on this front in Part 2 to Confidential Annexure A.

(b) MNOs that will not offer on-net supply typically refer A2P SMS suppliers to an aggregator as the alternative source of A2P SMS termination. Dealing with an aggregator adds another level to the supply chain. The result of this is typically a higher price.

(i) The pricing effect is the result of adding another layer to the supply chain. Aggregators take a margin on the A2P SMS that they acquire from the MNOs and resupply.

(c) Off-net supply gives us access to A2P SMS termination across all networks via a relationship with an MNO. This has both pricing and service quality upsides. Our experience has been that the service quality offered by off-net and on-net supplies are the same. Both involve MNOs which have visibility into any network issues, and which do not have any incentive to prioritise traffic.

6.3 BICS acquires SMS termination into Australia via off-net supply via Pivotel.

6.4 The supply of on-net SMS termination is not subject to MTAS. However, it is relevantly affected by MTAS. Off-net supplies are a direct substitute for an on-net supply, and are subject to MTAS. Off-net supplies benefit from the pricing regulation in the FAD. As a result, this places competitive pressure for on-net suppliers not to substantially exceed the regulated pricing for off-net supplies.

- 6.5 On this basis, off-net services introduce competition to the market for the wholesale supply of SMS termination services. The same pro-competitive effect will occur in the retail A2P SMS market where MNOs supply services directly to large enterprises, as is stated in the Draft Report at page 38.
- 6.6 In fact, off-net supplies are the only true source of competitive constraint for on-net supplies of wholesale A2P SMS termination. OTT services are not substitutable for the reasons outlined above. Aggregators are not substitutable as they cannot themselves offer SMS termination; they are themselves dependent on acquiring wholesale SMS termination from a MNO.
- 7. The positive competitive impact of declaration on downstream A2P SMS services**
- 7.1 Since 2016 we have observed a strong pro-competitive impact of the declaration of SMS termination services and the introduction of the FAD throughout the A2P SMS supply chain.
- 7.2 BICS has experienced a positive impact on SMS A2P into Australia since cooperation with Circuit4 started. Since June 2017, by cooperation with Circuit4, having access to quality route and more competitive pricing, BICS has been able to collect 80 times more A2P traffic compared to when the cooperation started. BICS has been able to achieve this by reselling its direct reach through Circuit4 into Australia by offering lower prices and guaranteeing higher quality delivery to its customers. In this process, BICS and Circuit4 have been able to shift traffic in the market away from bypass routes that have been massively available in Australia.
- 7.3 Further, we have observed an overall growth trend in the demand for A2P SMS reflected in our sales volume for the same period. Part 1 of Confidential Annexure A provides further detail.
- 8. The market impact if declaration ceases for SMS termination services**
- 8.1 If declaration ceases, on-net suppliers will have no meaningful competitive constraint and will continue to maintain a monopoly over SMS termination on their own networks. There will be no commercial incentive for the on-net suppliers to maintain currently low pricing for retail A2P market participants and customers up the supply chain.
- 8.2 BICS believes that losing the competitive advantage as it exists today will result in an increasing termination cost throughout the whole supply chain. This will result in increasing prices towards our existing and future customers. A pricing increase is not in the LTIE. It may also negatively impact the existing volumes on the current A2P market into Australia.
- 9. Conclusion**
- 9.1 Continuing declaration in respect of A2P SMS termination is in the LTIE for the following reasons.
- (a) It is the only way to ensure continuing competition in the wholesale supply of A2P SMS.
- (b) The business data of BICS provided in Confidential Annexure A illustrates that the declaration since 2014 has produced downstream benefits in pricing for both BICS and our customers.

- 9.2 Accordingly, the answer to the 'key question' as to "*whether declaration is necessary to prevent MNOs from exercising their market power and to promote competition in the downstream market for A2P SMS services*" must be yes. We strongly urge the ACCC to maintain declaration in respect of A2P SMS termination services.
- 9.3 BICS makes no submission as to P2P SMS. If the ACCC concludes that P2P SMS should not remain declared, then BICS submits that the relevant service description may be amended so that the declaration applies solely to A2P SMS.
- 9.4 We request that the ACCC treat Confidential Annexure A as confidential and exclude it from the published version of this submission. We would be happy to answer any questions or provide any further information that may assist the ACCC. For any enquiries please contact Bart Vandekerckhove, bart.vandekerckhove@bics.com ; 0032 2 547 52 74.

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