



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

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31 May 2019

Dear Ms Morice and Ms Sheehan

**ACCC Draft Report on the Domestic Mobile Terminating Access Service Inquiry  
Submission by Engage Australia**

**1. Introduction**

1.1 This is a submission by Engage Australia 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 Engage Australia**

2.1 *We are a Mobile engagement solutions business providing partners and direct customers with the ability to add SMS / Mobile engagement to their cross channel customer communications.. We use Pivotal as our SMS supplier.*

2.2 *We provide our integration partners and direct customers with the ability to deliver low cost mobile messaging compared to the major Telcos, cheaper prices, better service levels.*

2.3 *We have been providing SMS services in Australia since 2004.*

2.4 As this information shows, Engage Australia 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 Engage Australia 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 Pivotal 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 Engage Australia's response to the Draft Report

- 4.1 This submission outlines why, in Engage Australia'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. And to our knowledge, bulk deliveries are not readily available via these common OTT applications.
  - (c) Further, read rates are higher with SMS, which is a key success metric for end-customers running an A2P SMS campaign.
  - (d) We do not have an OTT option in our portfolio. We do not see any customer demand for OTT services as an alternative to A2P SMS. Accordingly we do not perceive that end-users are looking to OTT as a substitute for A2P SMS.
- 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' (emphasis added). 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 Engage Australia and our customers. This is for the following reasons.

- (a) 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 and lower service quality.
  - (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.
  - (ii) The lower service quality occurs for two reasons.
    - (A) First, an aggregator cannot investigate or resolve any network or delivery issues as readily as an MNO which is involved in the origination or termination of the A2P SMS.
    - (B) Secondly, where the customer might otherwise compete with the aggregator to supply A2P SMS to retail customers down the supply chain, then the aggregator has a commercial incentive to deprioritise that customer's traffic



in favour of their own, thereby enticing the retail customer to deal directly with the aggregator instead.

- (b) 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 for us and our customers, because it avoids negative pricing and service impacts described above that arise when dealing with an aggregator instead of a MNO. 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 Engage Australia acquires SMS termination 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 Our experience of the change in input pricing and our own customer pricing since 2014 is set out in Part 1 of Confidential Annexure A to this submission. This illustrates our experience of the market prior to and since the FAD. The Draft Report states (at page 38) that there is little evidence that retail A2P SMS prices have fallen and that any price savings at the aggregator level may not be passed on to the end-customer. We suggest that our confidential data provides evidence that downstream A2P SMS pricing has fallen, and that savings in input prices are being passed on to our customers, contrary to the suggestions in the Draft Report.

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 2 of Confidential Annexure A provides further detail.

7.4 In addition to the pricing reduction and market growth, the entry of off-net supplier Pivotel to the market has also represented an improvement in service quality for SMS termination services. In particular, the acquisition of off-net services avoids the necessity to negotiate with each MNO



separately which is time consuming and expensive. Further, if acquiring an on-net supply, Engage Australia has limited bargaining power given the MNOs' respective monopolies.

7.5 The data in Parts 1 and 2 of Confidential Annexure A illustrates the downstream benefits for Engage Australia and our customers flowing from the ACCC's declaration of SMS termination services. The information in Part 3 of Confidential Annexure A outlines our experience in the difficulty of acquiring on-net supply from an MNO.

## 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 or to maintain service quality for retail A2P market participants and customers up the supply chain.

8.2 Further, there will be little commercial incentive for the large MNOs to continue supplying SMS termination services to the smaller MNOs for A2P SMS, either at competitive prices or at all. This will have downstream effects, including for our business, as follows.

- (a) Off-net suppliers will need to either increase their pricing or cease offering SMS termination altogether, depending on the SMS termination terms offered by the large MNOs.
- (b) In either case, we and other customers of off-net suppliers will need to review the means by which we acquire SMS termination. An input pricing increase is likely regardless of whether we acquire on-net or off-net services. Where off-net services are likely to increase their prices or leave the market as described in (a), there would be no commercial incentive for the on-net suppliers to maintain low prices matching the off-net suppliers.
- (c) Where our input pricing is likely to increase, so may our customer pricing in order to maintain our business viability. This will flow through to the end-users of A2P SMS services. A pricing increase is not in the LTIE.
- (d) If off-net supplies become less commercially viable or ceases altogether, then our only other alternative is to deal with an aggregator that has on-net supply agreements with all the MNOs. This is because of the difficulty in obtaining on-net supplies for all but very large corporations. Dealing with an aggregator carries the detriments described in paragraph 6.2(c) above.
- (e) If Engage Australia deals with an aggregator, then this would reflect a concentration in the downstream market for the supply A2P SMS. When we can access direct, off-net connection via a MNO, we occupy a competitive position with an aggregator that has on-net supply agreements with all the MNOs. More competitors at this level is in the LTIE because it generates greater competition on price and service quality. In contrast, if we become a customer for an aggregator that has on-net supply agreements with all the MNOs, then we no longer compete against them and they are no longer subject to the



greater level of competitive constraint. This is a particular concern given the heavy concentration of the aggregation market in favour of Sinch.

- 8.3 Some of these market conditions were observed prior to declaration. The ACCC's Final Decision on the Domestic Mobile Terminating Access Service Declaration Inquiry issued in June 2014 observed that "competition in the wholesale market for A2P SMS services is limited due to significant on-net / off-net pricing differentials caused by high SMS termination rates."
- 8.4 For the reasons outlined above, we have strong concerns that the same position will result if the current declaration lapses.
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 Engage Australia provided in Confidential Annexure A illustrates that the declaration since 2014 has produced downstream benefits in pricing for both Engage Australia 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 Engage Australia makes no submission as to P2P SMS. If the ACCC concludes that P2P SMS should not remain declared, then Engage Australia 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 Ian Hales, Commercial Director – Engage Australia 0418960238 [ian.hales@engage-au.com](mailto:ian.hales@engage-au.com).

Yours Sincerely,

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Commercial Director