

Australian Competition & Consumer Commission Mobile Services Review

Draft Decision on Mobile Originating Access Service May 2004

Submission by PowerTel Limited

Introduction

PowerTel has taken this opportunity to provide comments on the Australian Competition & Consumer Commission's (**Commission's**) Draft Decision to allow the Mobile Originating Access Service (**MOAS**) declaration to expire on 30 June 2004.

PowerTel believes the expiry of the existing MOAS declaration and the absence of continued regulation over the MOAS will not be in the long term interests of end-users (**LTIE**) as it ignores the power and control the Mobile Network Operators (**MNOs**) wield over the MOAS. PowerTel recommends the Commission review its Draft Decision in light of its own findings as detailed in the discussion paper, i.e.:

- i. despite claims by Vodafone that it does not provide a MOAS¹, the Commission believes mobile carriers do technically provide a MOAS;
- ii. the Australian Communications Industry Forum (**ACIF**) Interconnection Model G538 (an industry guideline that is universally adopted by all major carriage service providers including Telstra, Optus and Vodafone) sets out how a MOAS is provided;
- iii. similar to the Mobile Terminating Access Service (**MTAS**), the MOAS is not a substitutable service but a bottleneck service.

The suggestion that the MOAS be unregulated ignores the frustration experienced by the non-MNO service providers (who already face excessively high interconnection rates with MNOs) and rewards the MNOs with further opportunities to potentially abuse their market power.

PowerTel notes the Commission has indicated that it has not been provided with evidence to suggest continued declaration of the MOAS would be in the LTIE. It would appear that the Commission has drawn this conclusion due to the absence of CSPs arguing for the continuation of the MOAS declaration. PowerTel believes it is incorrect to conclude that the lack of evidence or of counter arguments from non-MNOs indicates that the declaration is not worth continuing for the LTIE.

The focus of the Mobile Services Review has been the Mobile Terminating Access Service (**MTAS**). Although PowerTel believes the MOAS is no less important, the MTAS has wider application and has been subject to inappropriate pricing methodology since the last review in 2000. PowerTel has previously suggested that the MOAS and the complexity of interconnection arrangements to 1800/13/1300 numbers should be the subject of further review after the pricing methodology for MTAS is rectified and finalised. PowerTel's view on the need for review remains the same.

¹ ACCC, *Mobile Services Review - Mobile Originating Access Service- Draft Decision*, May 2004, p.18.

PowerTel believes the Commission has underestimated the consequences of how the expiry or revocation of the existing MOAS declaration will affect access seekers and ultimately consumers and strongly suggests the Commission reconsider its Draft Decision.

The existence of MOAS

The originating access service is designed to compensate CSPs when they cannot recover their costs directly from their customer. This is not the case for the MOAS.

The MOAS declaration promotes any-to-any connectivity by ensuring that access seekers have access to the critical inputs needed to supply competitive communications services to end-users.

The MOAS allows mobile subscribers the opportunity to dial a Freephone & Local Rate Number (**FLRN**). Without the declaration, MNOs may choose to block access to FRLNs for their mobile subscribers but more realistically, may ransom FLRN service providers into paying excessive access fees for a service that should be offered at cost.

For the MNOs to state that they do not offer this service defies logic, and is incorrect. There is no doubt the MOAS exists and that it must be regulated via a declaration and governed by appropriate pricing principles.

The complexity of FLRN interconnection arrangements

Network operators seek interconnection with each other to achieve any-to-any connectivity thereby providing subscribers on their network the opportunity to call services and subscribers on other networks. These interconnection agreements invariably include terms and conditions governing provision of access.

Network operators will collect retail revenue off their subscriber for an end-to-end call factoring into its price, an interconnect (or wholesale) fee payable to the terminating access provider.

However, with calls to FLRN services, a normal terminating access model does not apply. This is because it is recognised that the network operator that originates the call, should be compensated by way of an originating access service fee to ensure it covers any unrecoverable costs.

With respect to mobile calls to FLRNs, MNOs receive originating access fees from FLRN service providers while still collecting a retail charge from its subscribers.

Similarly, FLRN service providers receive terminating access fees off the MNOs for terminating calls to FLRN services. The end result is one net payment but irrespective of which party is the beneficiary, a net payment does not correlate to the absence of the MOAS.

There is currently no consistency between how the MOAS is offered by the different MNOs for calls to FLRNs. PowerTel believes that such inconsistency outlines the need for continued regulation to prevent future exploitation of this market through potential anti-competitive behaviour. Further investigation is required.

Conclusion

PowerTel believes the priority for the Commission should be to fix the MTAS pricing principles first. This is the crux of the Mobile Services Review. Following that, the decision regarding MOAS and other aspects that were included in the review such as roaming can be considered in due course.

However, regarding the Commission's Draft Decision on the MOAS, PowerTel believes the MOAS needs to be regulated via a declaration. As clearly stated in the Mobile Services Review MOAS *Draft Decision* paper, the MOAS does exist, despite unsubstantiated claims by the MNOs that it does not.

Although the MOAS may be limited in scope to mobile calls to FLRNs, the importance of a continued declaration cannot be over emphasized. The complexities surrounding the interconnection arrangements for calls to FLRNs and the inconsistency of how the MOAS is charged is an indication that the declaration should not be allowed to expire or be revoked. It highlights the need for further investigation as to the appropriateness of the current models.

As PowerTel has previously outlined, the absence of CSPs providing submissions requesting continued declaration of the MOAS should not be a trigger for the termination of the declaration. Both the MTAS and the MOAS are bottleneck services and cannot be substituted. For the MTAS to remain regulated (preferably heavy handed regulation) and for MOAS to be undeclared does not make sense.

To revoke the declaration provides the MNOs with more opportunities to exert their market power and to distort the economic efficiencies of the industry, none of which is in the LTIE. Continued declaration is essential to the promotion of any-to-any connectivity and to encourage incumbent MNOs to become more efficient.