Dialogue Communications Ltd

and

Dialogue Communications Pty Ltd

SUBMISSION IN RESPONSE TO ACCC

Mobile Terminating Access Service

Final Access Determination

Draft Decision

PUBLIC VERSION

5 June 2015

Contents

1. Introduction

Dialogues submission disputes the proposals set out in the Draft Decision in regards to regulated pricing for A2P SMS but not for peer to peer SMS

This submission makes no recommendation on the Draft Decision in regards to its proposals for peer to peer SMS.

Dialogue disputes the commercial and technical basis for the Draft Decision and believes that the Draft Decision particularly its imposition of an SMS termination rate of .03 cents per SMS fails to take into account the true costs providing an A2P SMS service compliant to Australian regulations.

As set out in section 3, Dialogues operates a A2P SMS services globally and does not provide voice services.

This submission relates primarily to the proposed price terms for A2P SMS termination.

2. Executive Summary of points made in Submission

Dialogue considers that the proposed rate for A2P SMS termination as the calculation of the .03 cents per SMS termination does not take into account direct costs of compliance with the regulatory requirements such as compliance management (SPAM act enforcement, provisioning, technical support, credit control and collections and management of customer account and customer expectations.

Dialogue asserts in this Submission that the Draft Decision if implemented will destabilize the existing industry and consumer safeguards, expose consumers to abuses due to non compliant A2P messages and put Australia regulation of A2P SMS at odds with the overseas regulation.

Further, if the ACCC acts to set prices substantially below current market costs for SMS traffic there is no mechanism requirement the integrated mobile network operators to require MNO's to pass on any saving from reductions in the mobile voice termination rate to their service users.

3. Dialogue's A2P SMS business globally and in Australia.

This submission is made by Dialogue Communications Ltd (UK) and Dialogue Communications Pty Ltd, (ACN 108 346 854) its subsidiary in Australia.

The Dialogue business specializes in delivering A2P messaging solutions.

Dialogue is the longest running A2P SMS provider in the world and uses its experience to deliver efficient , reliable and secure message delivery services for its clients.

Dialogue was first established in the UK in 1994 and its global headquarters is in Sheffield, UK. In addition to its Sheffield headquarters, it has offices in London, Sydney [and Singapore.

3.1 Overview of current A2P messaging industry structure in Australia

SMS has been widely adopted in Australia as a transport service for the delivery of Application to Person mobile messaging.

Typical applications for A2P SMS are real time alerting, such as a notification that a bill payment is overdue, and commercial messaging, such as an advertisement for a discount offer at a retail store.

3.2 This submission asserts that there are different costs structures imposed on the P2P market and the A2P SMS Market. Dialogue defines these markets as follows:

P2P Market or **Person to Person SMS** is messaging exchanged between two subscribers of mobile networks. The subscribers can be either on the same or different networks. Usually the messages originate from and terminate to the SMS "app" on the mobile phone of the subscribers.

A2P Market or **Application to Person SMS** is messaging exchanged between an application service (usually operated by a Content Provider as per the definition in the Telecommunications Act (Aust)) and a subscriber of a mobile network.

Usually these messages originate from a server hosting the application software and are terminated to the recipient subscriber's mobile phone SMS "app". Often the messages transit from the content provider to the mobile network through an intermediary gateway or aggregator.

3.3 The A2P SMS industry has three major groups of service provider stakeholders:

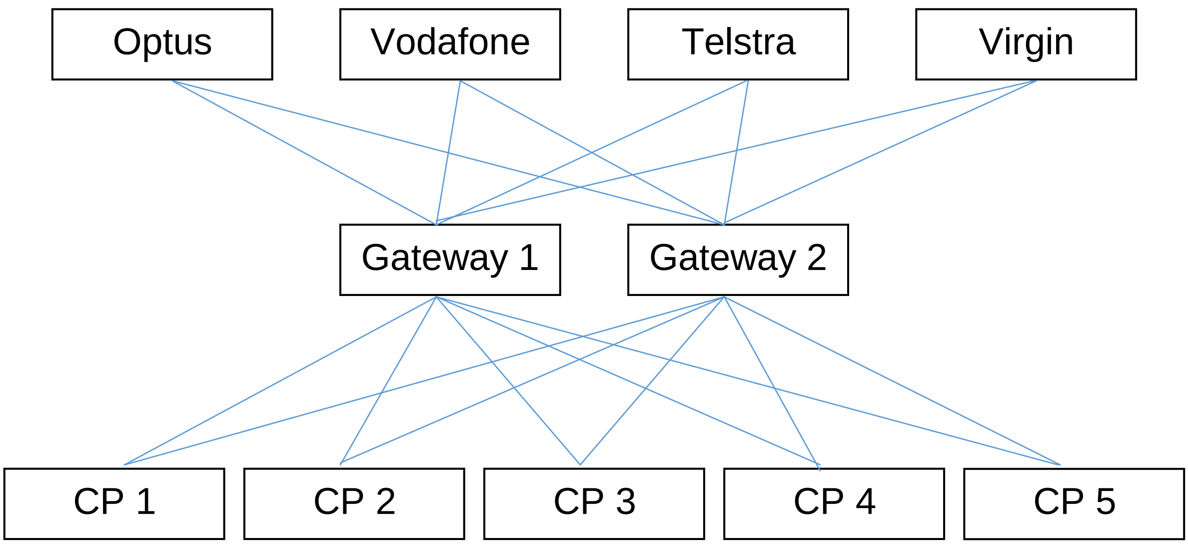
Carriers – Who operate the networks to over which SMS are delivered

Gateways/Aggregators – Who act as the wholesale channel for application service providers to access the carrier's SMS services.

Dialogue is a member of the Gateway group in Australia and overseas.

Content providers – Who deliver retail communication services to end users

3.4 These stakeholders typically interconnect as per the following diagram:



3.5 Under this structure the gateways act as a buffer between the Carriers and the content providers, providing the following services on behalf of the Carriers to gateway customers:

- Access controls and authentication services
- Billing and reporting
- Regulatory compliance management and enforcement (e.g. SPAM act enforcement)
- Provisioning
- Technical support
- Credit control and collections
- Account management

3.6 We submit that the ACCC may not have taken into consideration the costs of the provision of the services set out in section 3.3 of this submission in the processes set out in Draft Decision sections 2.2.2, 4.1.2 and section 152BCA as it sought to derive or estimate the relevant costs of providing the MTAS.

3.7 Based on its review of the Draft Decision we respectfully assert that we are not in a position to disagree with the conclusion in the Draft Decision at Key Points, before section 3.2 that the benchmarks that were used to create the termination price point were produced from the cost models of the bench mark countries.

However, we do assert that neither the ACCC or WIK-Consult included all of the costs associated the provision of the services provided by Dialogue and other gateway service providers that are set out in section 3.3 of this submission have not been taken into account as a part of the Australia specific factors including in its cost determination exercise.

3.8 Dialogue confirms that section 3 of the Draft Decision relates to terms for mobile voice termination. However the Draft Decision relies on the WIK-Consult price points for service provision and assertions that voice and SMS termination should be considered together and refers to section 3 of the Draft Decision in this submission on that basis.

3.9 The gateways are able provide these services on a highly efficient basis as they operate these services not just for Carriers in Australia but on a global basis (for example Dialogue acts as a gateway for over [CIC](Carriers worldwide). As a result of this aggregation of customers, if the gate way industry is marginalized due to lost of revenue due to the ACCC proposed reduction in termination fee, these Carriers (and their end users) would (be obliged to) deal directly with Carriers who do not have current infrastructure to handle increase in demands on their services.

Some of the costs structures applicable to the A2P SMS industry including those set out in 3.5 would also apply to P2P SMS. The MNO/gateway/aggregators manage the costs by aggregating content providers allowing Carriers to deal directly with MNO/gateway/aggregators and not the hundreds or thousands of the content providers.

3.10 The Carriers set minimum spend thresholds for access to wholesale pricing, for example the minimum spend threshold for access to the most competitive wholesale pricing on the Optus network is currently approximately [CIC]. We understand that this carrier service fee allows the Carriers to effectively outsource the activities associated with the management of content providers to Gateways

3.11 This structure allows the Carriers to work with a small number of gateways who then efficiently manage the provision of SMS termination services to the thousands of content providers who use SMS. The gateways fund the activities associated with management of the applying providers by applying a small margin to the price of each SMS terminated.

3.12 Intense competition between gateways ensures maximum efficiency in the operation of these management services – Dialogue operates on a typical margin of less [CIC]

4. Draft Decision does not effectively support calculation of proposed termination fee cap

4.1 Dialogue understands that Carriers currently provide wholesale A2P SMS services at a rate substantially below the rate they charge each other for P2P SMS [CIC]

4.2 Dialogue believes that the Carriers impose these fees in part as SMS competes against other communication mediums (e.g. automated voice calls or apps), and if Carriers set the price too high then the application services would move away from SMS to these competing transport mechanisms.

4.3 Based in industry reports, Dialogue understands that A2P SMS traffic is a small component of the overall SMS traffic and that as a result it would be overly burdensome on the industry to have it split out from the MTAS with specific terms separate to those for P2P SMS. Dialogue believes a more effective method for ACC to consider would be to exclude A2P SMS from MTAS

5. Impact on the A2P industry of the MTAS determination

5.1 The ACCCs proposal to regulate A2P SMS as part of the MTAS will significantly change the structure of the A2P industry.

5.2 In particular Dialogue disagrees with the ACCC assertions set out in the Final Declaration decisions (specifically at page 58) that implementation of the MTAS will not affect the current relationships between MNOs and A2P service providers in Australia..

5.3 Specifically as the ACCC has confirmed in the Draft Decision and elsewhere that content providers will be eligible for access to the MTAS, Dialogue experience as a gateway, believes these assertions of the ACCC to be based on incorrect assumptions around the technical capabilities of content providers. If content providers access MTAS directly, content providers inevitably will technically integrate directly with the MNO SMSC to access the MTAS and bypass the existing wholesale service agreements.

5.4 Once SMS is made a declared service the Carriers will be required by Australian legislation including the Competition and Consumer Act 2010 and the Telecommunications Act 1997 to provide content providers access to SMS terminations services directly via the MTAS, rather than content providers accessing SMS services indirectly via gateways as currently.

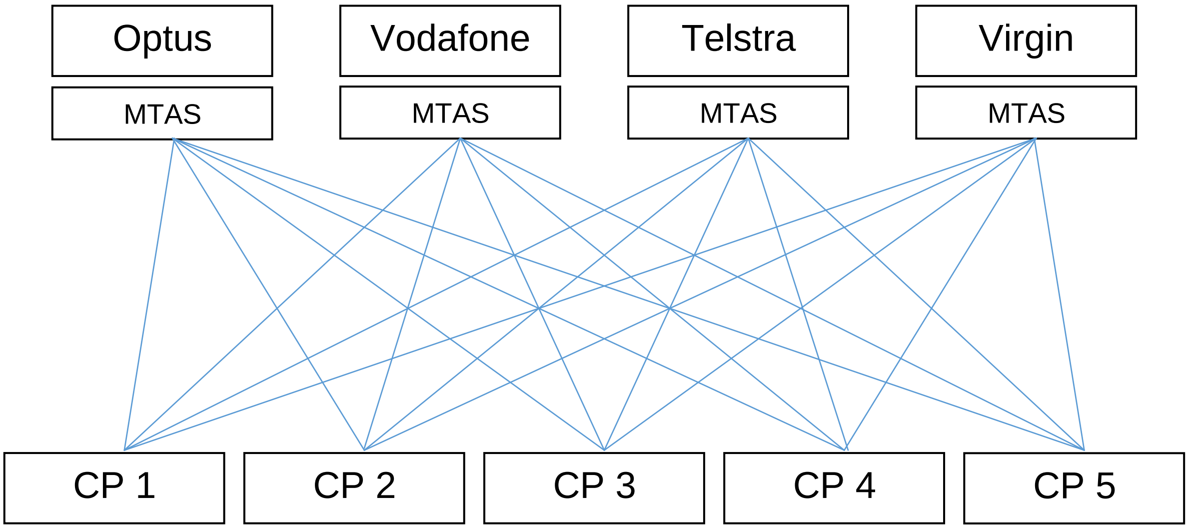
5.5 As there is no minimum spend requirement under the proposed MTAS FAD content providers of any size will be able to request access to SMS services via the MTAS.

5.6 Dialogue believes that most content providers have the technical capability to integrate with low level SMSC APIs. As a result the industry must expect that there can be expected to be little if any technical barrier to content providers accessing the MTAS.

5.7 Given the significant cost differential between the price of the wholesale A2P SMS services offered by the carrier and the regulated price under the MTAS FAD there will be a very strong commercial driver for content providers to migrate their service offerings away from the existing wholesale termination services to use termination via the MTAS.

5.8 Table

Accordingly the interconnection map can be expected to reshape as follows:



5.9 Dialogue submits that this model is less efficient than the current industry structure as each carrier will be required to implement dedicated infrastructure to provide the MTAS service to the content providers, essentially directly replicating the functionality currently provided by the gateways. This contrasts to the current use of shared infrastructure by the gateways to provide the same services to a large number of Carriers on a global basis.

5.10 In order to effectively manage and provide compliant the MTAS services to the content providers each carrier will be required to implement the management services currently provided by the gateways.

5.11 The MTAS FAD does not make allowance for the provision of these management services, so the associated costs will presumably need to be borne by the Carriers.

6. Complete Costs of the A2P service not considered

6.1 In section 2.2.1 of the Draft Decision, the ACCC states that "[it] considers that the pricing framework adopted should ensure that MNO's are not exposed to the risk of cost under - recovery in providing the service.

6.2 Further in the same section the ACCC states that "while lower MTAS prices tend to better promote competition, they can only be sustained in the short term if the MTAS prices are not so low as to discourage the MNOs from making efficient investment in or maintaining the infrastructure in the long run.

6.3 In the case of Gateway/Aggregators such as Dialogue, our costs are incurred in customer attraction and retention and in the provision of the services. Our costs increase with the volume of SMS messages sent due to compliance and reporting issues set out in section 3.3 of this Submission.

6.4 I the provision of the service our margins already thin due to strong local and overseas competition will be challenged to continue to provide its service in the Australian market at all.

6.5 Carriers refer to Draft Decision section 4.1.2:

"The ACCC found in the 2013 MTAS declaration inquire that the commercial SMS termination rates have been well above cost for many years and this may have constrained the ability of some MNOs to offer more competitive retail SMS packages.

Dialogue experience as a provider of A2P SMS services on a global basis that is that the A2P SMS market is competitively priced. Barriers to entry at the retail end of the A2P market are comparatively low. This has resulted in a proliferation of retail Carriers of A2P who primarily compete with each other on price. This price pressure is passed back to Dialogue as market volumes grow, resulting in lower prices from Dialogue to the retail market across time.

Dialogue notes that over the prior twelve (12) month period, the A2P SMS market has had downward pressure in SMS termination rate due to market forces. Dialogue anticipated that continued competitive market forces will continue to lead to increase service volume and service efficiencies including continued downward price pressure in the marketplace. Dialogue firmly believes that market competition is more effective than regulatory fiat to determine proper pricing for A2P SMS service.

6.6 We refer to the Draft Decision, section 4.1.2 after heading "Setting the SMS termination rate", second paragraph. Specifically the methodology set out in the second and third sentences:

> *The approach [taken by the ACCC] uses a conversion factor based in the number of SMS that can be sent using the amount of network capacity required to carry one minute of voice call. This conversion factor is then applied to the cost of mobile voice termination resulting from the benchmarking exercise, in order to estimate the cost of SMS termination.*

As set out throughout this submission, Dialogue rejects the assertion that the price of SMS termination should be determined based on the cost of provision of the SMS on a technical basis. The provision of *A2P* SMS service compliant with Australian legislation and regulation requires a costly infrastructure of human and technical resources which are provided in part by the carrier and by the gateways.

The ACCC does not propose to change the regulation imposed on A2P SMS service in Australia. There is no suggestion or assertion in the Draft Decision that the costs of provision of a compliant A2P SMS service will be diminished in the future either by possibility of lower cost methods of compliance or a reduction in regulation.

Conversely, the ACCC asserts that lowering the costs to end users A2P SMS service will increase the number of SMS messages sent. Higher message volume will increase cost of compliance with regulation as the number of non compliant messages must also rise with the number of messages generally.

As an inexact example to illustrate this point is that the cost of an additional software license is not determined by the technical cost to copy the code one more time, but instead includes the cost of creation, marketing and distribution of that software and the requirement to provide support and maintenance to new user as well as actions to enforce licensors rights.

To apply that example, new SMS volume will need to be serviced to comply with existing regulation. There will be increased costs to service the expanded volume. The ACCC action to limit fees limits ability to recover costs from service users.

As set out in diagrams at sections 3.4 and 4.4 of this submission, the compliance function performed by Gateway organizations will have to be replicated (or enhanced) at both the carrier and the content provider levels.

Dialogue confirms that the examples and its assertions above apply equally to the ACCC and WIK-Consult's statements in 4.2

7. No reasonable expectation advanced that SMS costs reduction would be passed on from MNO's to end users.

Dialogue experience is that the A2P SMS market in Australia is already competitive. There are multiple operators at the carrier, gate way and content provider levels of the market.

Dialogue's current experience is that A2P SMS service providers in Australia are competitively struggling to gain market share.

Dialogue firmly believes that If any of the A2P SMS service providers was able to reduce its service fees/prices to gain market share it would.

The barrier to reduction of A2P SMS service fee/prices is solely the cost of SMS service it is, as set out in this submission, the associated costs of compliance with regulation and costs of doing business in Australia.

In this respect Dialogue agrees with the conclusions set out in the 2009 Analysys Mason report that; (1) in the absence of intervention to increase pass through, substantial pass-through would not be expected to occur; and (2) regulators are able to estimate and enforce a pass through mechanism that results in lower FTM retail prices and improves economic efficiency.

While Dialogue does not support the imposition of fixed termination fee, we believes that without an enforceable requirement that any reduction in SMS cost imposed by government is action is passed through to end users, the cost savings will be retained in large part by service providers and not passed on to the end user.

8. Conclusions

Dialogue asserts that the Draft Decision does not offer compelling rationale to support imposition of a SMS termination rate of .03 cents per SMS

In particular Dialogue asserts that the Draft Decision proposed justification of SMS termination rate of .03 cents per SMS fails to take into account the true costs providing an A2P SMS service compliant to Australian regulations.

Dialogues review of the Draft Decision the ACCC seems to have focused solely on the technical costs to provide the service and not the costs at all points of the A2P value chain imposed by regulation and requirements to efficiently provide and maintain quality service in Australia. .

Extension of the MTAS to A2P SMS is unnecessary as the Australian A2P SMS marketplace already offers robust competition.

Further Dialogue asserts that a mandated reduction in SMS termination fees of the magnitude proposed would disrupt the market, force exit or reduction in services offered by existing A2P service providers and force remaining service providers to shift costs imposed on the A2P service by regulators to other sections of their business as their per A2P SMS revenue is capped by actions contemplated in Draft Decision.

Finally, Dialogue asserts that based on the material set out in the Draft Decision and related documents ACCC, and Australian consumers can not have a reasonable expectation advanced that SMS costs reduction would be passed on from MNO's to end users.