

**PROPOSED VARIATION TO MAKE THE GSM SERVICE
DECLARATIONS TECHNOLOGY NEUTRAL - ACCC DISCUSSION
PAPER**

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PRIMUS' SUBMISSION

1. Background

In September 2001 the Commission released a discussion paper examining a proposed variation to make the domestic GSM originating and terminating access service technology neutral with respect to technologies currently in use.

This is Primus' submission to that paper.

2. Summary

In principle Primus supports the proposed variation to the GSM service declarations.

In support of its position Primus contends the following.

- It is generally accepted as sound regulatory policy that regulations should not be technology specific but rather service and/or functionality based.
- Generally the conditions and considerations in the GSM declarations apply equally to CDMA.
- There is no fundamental difference in service functionality between GSM and CDMA technologies.
- CDMA networks demonstrate the same bottleneck characteristics as GSM networks when considering the market for fixed to mobile services.

3. Specific Arguments (aligned with discussion paper)

3.1 Control over access and consumer ignorance

Primus agrees with the Commission that control over access and consumer ignorance are not specific to particular mobile technologies. There has been no evidence to suggest that consumers are any more aware of FTM (fixed to mobile) charges for CDMA than they are for GSM or in fact make any connection between such mobile technologies and the charges that apply for making FTM calls.

As with GSM there are a limited number of CDMA carriers. This, as with GSM, creates a degree of bottleneck power over terminating access services to those

networks. In fact due to the more limited competition in CDMA services the possibility exists for a greater degree of bottleneck power over the fixed to CDMA mobile market.

Primus contends that the definition for the CDMA terminating access service is essentially no different to that contained in the deeming statement for the domestic GSM terminating access service. That is, for CDMA the definition would be

“...an access service for the carriage of telephone calls (ie. voice, data over the voice band) from a POI to B parties assigned numbers from the CDMA number ranges of the Australian Numbering Plan and directly connected to the Access Providers network...”

To not extend the declaration to CDMA networks would clearly give greater freedom to CDMA carriers (over GSM carriers) to engage in uncompetitive behavior.

3.2 Other technologies

Primus is not aware of any other technologies to be deployed in the foreseeable future which will provide similar functionality, that is, second generation mobile services. However should such technologies be deployed then the Commission should conduct an inquiry into whether those services should be declared.

Similarly, should 2.5G and/or 3G mobile technologies be deployed (as is proposed) and such networks display similar regulatory characteristics to 2G services such as bottleneck control for fixed to mobile services, then the Commission should conduct an inquiry into declaring those services.

3.3 Short Message Service

Primus can see no reason to differentiate between delivering a voice or data message over a voice channel or a control channel. The service functionality is independent of which channel the message is sent over. The fact that using control channels may be a more efficient means of delivering SMS (from the mobile carriers' perspective) is irrelevant to the issue of whether SMS should be included in the service declaration.

Therefore the reference to “voice channel” in the service declaration should be removed.

Given that SMS messages can also be delivered from fixed line services (via an ISP) to mobile customers, the issue of SMS being included in the service declaration is important for fixed line carriers. The same bottleneck issue arises for FTM SMS calls as it does for FTM voice calls. To intentionally exclude SMS from the service declaration would create an artificial distinction between services using GSM and/or CDMA networks.

Primus contends that SMS should be included in the service declaration.

The focus of this declaration should be on the **nature** of the service, that is mobility, not on the specific **types** of services provided over the network. It is important that the declaration cater not only for existing services but also future services (ie. 2.5G) that can or may be delivered over GSM and CDMA networks. That is, declaration should be about the “mobile to mobile”, “fixed to mobile” and “mobile to fixed” markets. It should not be based upon the services that can be delivered over the networks or about making service distinctions. Issues to do with bottleneck characteristics, facilities control and pricing behavior are not dependent on the services provided. These issues relate to the characteristics of the networks and the market for services in which they operate.

3.4 Proposed Variation (Domestic GSM and CDMA Terminating Access Service)

For the reasons expressed above, Primus agrees with the proposed declaration subject to the following amendment.

“...an access service for the carriage of ~~telephone calls services~~ (ie. including voice, data and SMS over the voice band) from a POI to B parties assigned numbers from the GSM or CDMA mobile services number ranges of the Telecommunications Numbering Plan 1997 and directly connected to the Access Providers GSM or CDMA network...”

Similarly an equivalent definition should be used for the declared originating access service.

3.5 Pricing Principles

For the same reasons pricing principles have been developed by the Commission for the GSM declared service, so should pricing principles be developed for the CDMA declared service.

Whilst Primus supports the development of pricing principles for CDMA it reiterates here the concern it has with the GSM pricing principles. Primus does not support the “benchmarking” approach adopted in the GSM pricing principles and therefore reserves its position regarding the approach the Commission may adopt for CDMA pricing principles.

3.6 Market Definition

Whilst Primus has no fundamental objection to the way in which the Commission has identified the relevant markets, it disagrees with the Commission’s finding that there is sufficient competition in the fixed to mobile market.

The reasons behind Primus’ position on this issue have been expressed in submissions to the Commission’s development of the pricing principles and therefore Primus will not repeat them in this submission.

3.7 Impact on competition and any to any connectivity

Primus supports the Commission's view that the proposed variation will promote competition in the fixed to mobile market.

As the Commission has noted there is concern that integrated mobile carriers have the opportunity to engage in anti-competitive pricing in the fixed to mobile market. In particular the ability of the carrier to charge itself a lower internal transfer price than it charges its fixed competitors. Primus contends that this is a concern that exists presently in regard to GSM operators.

Primus also contends that the variation can only have a positive effect on the objective of any to any connectivity because it will provide a degree of regulatory support for the provision of fixed to mobile services. This will ensure that fixed line customers have greater certainty of access to CDMA mobile customers.
