

Aloha welcomes the opportunity to provide feedback to Ofcom's consultation on A2P Termination in an attempt to prevent end user harm and create a fairer, competitive and innovative market.

NOTE: This response to the consultation is based on our interpretation and understanding of the current supplier, regulatory and technical landscape proposed which may be subject to change.

Introduction

SMS is one of the original functions of a mobile service that is several decades old. Until recently it had been declining, however in recent times Application 2 Person (A2P) has been able to reinvent its use as a defacto for allowing government, health care and businesses to stay connected with end users fostering convenient and effective communication.

Given this "utility" as highlighted in your consultation, its only right that serious consideration is taken to determine whether regulatory interventions is required. We applaud Ofcom for dedicating the resources to this as SMS as in our view has often been almost "forgotten" on the policy agenda.

Overall we are supportive of the measures proposed in this consultation, although we do have concerns around pricing (including potential harms the proposed charge control could have) and potentially other elements that have not been considered which we will go into more detail below. Therefore, for reasons given in our response, we feel it would be better for the market if the charge control tracked the Mobile Termination Rate (MTR) for the proposed review period until such a time a detailed cost model has been done (similar to other charge controls). We feel, among other reasons (as detailed below), this is because on the balance of probabilities the cost of delivering an A2P SMS to a user is not going to be greater than 4 times the cost of delivering a phone call and realistically is most probably substantially less than the cost of a 1 minute mobile phone call, allowing for sufficient cost recovery in lieu of a detailed cost model.

Answers provided for Questions 4 & 6 have been provided in Question 4 and thus should be considered as an answer combined for those 2 questions.

Questions

Question 1: Do you agree with our provisional conclusion regarding market definition? Please provide reasons and evidence in support of your views.

Yes, we agree with your provisional conclusion of market definition.

Question 2: Do you agree with our provisional conclusion regarding SMP? Please provide reasons and evidence in support of your views.

Yes, we agree with your provisional conclusion of SMP.

Question 3: Do you agree with our provisional conclusion regarding the three-criteria test set out in section 79(2B) of the Act? Please provide reasons and evidence in support of your views.

Yes, we agree with the conclusions of the three-criteria test set.

Question 4: Do you agree with our provisional view that setting a price cap on A2P SMS termination rates (based on historical pricing with indexation) would be the most appropriate and proportionate response for addressing our competition concerns arising from SMP (identified in section 5)? If not, please explain why.

No, we do not.

Although highlighted in part in your third party market research around respondent concerns of pricing, we feel that the market effect of pricing was touched little upon in the actual consultation. Specifically, we are concerned the proposed charge control (which is similar to current pricing with indexation) may continue to:

- Harm innovation as it makes certain use cases (that rely more on A2P or situations that are price sensitive) and/or by certain groups commercially unviable (this was a partially highlighted concern in your 25th September 2023 letter to MNOs).
- Push businesses/organisations towards unethical means of obtaining A2P (e.g sim banks; typically obvious when you've received a business communication from a standard mobile number; businesses maybe unaware upstream these are being used and thus creating a distortion in the market).
- Maintain a high barrier to entry when compared to alternative means (as highlighted in your research)
- Impair the ability for private and public sector to substantially increase a more connected society where A2P could play a major part.
- Prevent the encouragement of more businesses to adapt A2P which create a more secure (adaption of 2FA) and connected society due to cost concerns.

Although we agree in some situations the current cost is negligible to the overall cost to a business (as highlighted in your restaurant booking example), however in our view the majority of uses of A2P do not have such a clear cost benefit and in many cases the current cost is a barrier to increased adaption.

We note that there has been no cost model used when compared to other regulated charge controls (FTR and MTR). Although we agree with the starting point of taking the mean cost from before significant price rises occurred, we feel that this a fundamentally flawed argument because it was essentially a commercial offering beforehand and arguably for the MNOs was a retail product (regardless if it was consumed by aggregators). This is reinforced that from our understanding in your consultation that P2P would typically be less than A2P in cost. Furthermore, there has been in our view little to no consideration of the technical input costs considerations or any other cost considerations.

Although we cannot be certain of the proposed wholesale cost input, we are almost certain on the balance of probabilities it is nowhere near where the proposed charge control to be. Furthermore, taking an educated guess (unless we have materially misunderstood unknown cost factors) on the balance of probabilities we expect the actual cost input to be substantially less than the MTR charge control.

Given the technical overhead of a call being far higher than a single message (and involving many more network components), we would envisage the true cost to be closer to the FTR than the MTR (considering only the SMS element and slightly shared recovery of mobile network costs). This is just conjecture based on the technical signalling, packet contents (i.e. a handful of packets required to send a SMS, compared with several thousand packets overhead for a 1 minute phone call all over mostly the same infrastructure) and overall less core network elements required when compared to a phone call. However, it does ask the question is it right that the proposed charge control for 1 SMS is greater than 4 times the price of a 1 minute mobile call? We note that in your footnote 156 you discuss costing and ask whether the benchmark is of that of an “efficient” operator.

We agree with your considerations and comments in 6.19-6.21, however we believe a good starting point would have been the MTR. We suggest this as detailed cost models have been done here and that voice is typically more costly to handle than a simple message (i.e. a lot more goes into the cost/operation of a phone call than an SMS). We feel a charge control should track the MTR where no detailed cost model has been developed and we suspect would still allow for excessive cost recovery by the MNO.

In conjunction with your 5.53 comment, given the expected cost inputs and other charge control that apply to mobile number ranges (i.e. for voice termination), then anything higher than the MTR in our view would be excessively high (when considering the comparison of cost inputs for voice), risking end user harm, some of which we noted your research implies through some user pricing concern and our view that innovation use case impact is occurring (i.e. lower cost enable higher volumes through current/innovative use cases which become cost effective to more business).

Furthermore, for reasons set out above, we believe the proposed charge control will continue to enable excessive and unfair levels of profits (potentially at the expense of aggregators and further down the value chain) restricting and impeding innovation in A2P.

Therefore, for the proposed review period as an absolute minimum we would ask Ofcom to consider that given the lack of any cost model done (as compared to FTR/MTR charge controls), that the charge control tracks the MTR until such a time a true cost model is created to better accurately determine what the charge control rate should be. We believe that based on the balance of probabilities (when taking an objective view of technical cost inputs compared to voice) the cost to the range holder for 1 SMS is going to be less than a 1 minute mobile phone call. We feel this is a middle ground and would overcome some of the concerns we have discussed, but also hope it would encourage more uptake of A2P as reductions should filter to the retail level.

Question 5: Do you agree with our provisional view that Option 2 would be effective in addressing the risk (identified in Section 5) that terminating MCPs have the ability and incentive to set and maintain prices for the termination of A2P SMS at an excessively high level, while Options 1 and 3 would not fully address that risk? If not, please explain why.

We agree with Option 2.

Question 6: Do you agree with our proposal to set the price cap at a level based on an average of the four large MNOs' December 2020 prices, adjusted using CPI? If not, please explain why.

No, please see our answer to question 4.

Question 7: Do you agree with our impact assessment? If not, please explain why

Primarily we do agree with your impact assessment, however we do have concerns around charge control effects which we go into more depth in Question 8.

Question 8: Do you agree with our assessment of the potential impacts on specific groups of persons, as set out in paragraphs 2.36-2.37? If not, please explain why.

We feel detailed consideration is lacking and that P2P SMS costings could specifically rise for MVNOs due to the potential MNOs may not be able to separate P2P and A2P interconnect traffic. We agree there could be commercial work arounds, however an MNO may now not be incentivised to do this as this could be seen as the endorsed SMS rate moving forward (regardless of purpose). Thus, impacting end users and therefore needing additional regulatory intervention.

We'd also argue that given the proposed charge control being already fairly high when compared to other regulated rates (more than 4 times the MTR) and in findings from your independent research that some had cost concerns, we feel there could be an argument that it could limit additional organisations/businesses to take up A2P services which are far more cost focused (such as charities for appointment reminders etc) who assist those who have protected characteristics defined by the equality act (and also more likely not to possess a smart phone; meaning an alternative method would not be possible) so are less likely to benefit from the benefits A2P, thus meaning they maybe more likely to be indirectly discriminated against because of the cost (because a thorough cost exercise was not conducted). This is only conjecture, but do feel strongly that the approx. 2p charge control is excessive and without merit and could limit accessibility to A2P due to cost constraints and harm uptake of the market.

Question 9: Do you agree with our proposal for a three-month implementation period following the publication of our final Statement? If not, please explain why.

We believe a three month implementation period following the publication of your final statement is sufficient.