



**AMTA Submission to DCITA on the ACA's report:
*Preventing Unexpectedly High Bills: Credit Management in Telecommunications.***

1 April 2005

1. INTRODUCTION AND SUMMARY

The Australian Mobile Telecommunications Association (**AMTA**) is the Australian mobile industry's peak body. AMTA's members include mobile phone carriers, handset manufacturers, retail outlets, network equipment suppliers and other suppliers to the industry. AMTA's mission is to promote a socially, environmentally and financially responsible and successful mobile telecommunications industry in Australia.

AMTA welcomes the opportunity to provide comments to the Department of Communications, Information Technology and the Arts (the Department) on the Australian Communications Authority's (ACA) final report on *Preventing Unexpectedly High Bills: Credit Management in Telecommunications* (credit management report).

AMTA and its members are aware of concerns relating to unexpectedly high bills and take these concerns seriously. AMTA and its members are keen to help users of all ages enjoy the benefits of mobile phones without running into financial difficulties, and both AMTA and its members have introduced a number of initiatives to minimise credit management difficulties. For example, AMTA is actively participating in the Commonwealth's Financial Literacy Task Force, and has also produced, and is continuing to actively promote, its various 'consumer tips' which include two plain-English guides to assist consumers (of all ages) to buy and use mobile phones that are appropriate for their needs and budget. AMTA members have a range of policies, measures and an ever-increasing array of tools in place to minimise the likelihood of problems relating to unexpected or problem expenditure. These initiatives are regularly reviewed and updated as appropriate.

AMTA and its members are willing to work with the appropriate bodies to assess and appropriately address the ACA's concerns about unexpectedly high bills and credit management. In this process, AMTA stresses the importance of ensuring action is based on sound empirical data and that it treats the different sectors of the telecommunications industry in a consistent and holistic manner wherever possible.

In this context, AMTA is concerned that the ACA's credit management report understates the protections currently offered by mobile CSPs and overstates the scale of the credit management issue. AMTA is concerned that the report relies heavily on anecdote and inconclusive data. It also suggests that some confusion is caused by the report's terminology, with the terms 'credit management' and 'unexpected(ly) high bills' used interchangeably. Reasons for 'extreme' usage are complex, and there is considerable difficulty in defining an 'unexpected(ly) high bill' and whether it will cause any financial difficulties for the recipient. The term 'credit management' is clearer, referring to an arrangement for deferred payment. It would appear many of the issues raised in the report would be relevant to credit management.

The picture is further confused by the report not clearly separating out, where appropriate, the issues and measures by the different sectors of the telecommunications industry (fixed line, mobile and broadband). For example, the 'selection of illustrative cases' is very broad, relating to all telecommunications services, not just mobiles. This provides a misleading picture of the size of the problem for the mobile sector and also causes some confusion. For instance, the

report makes mention of viruses, the inference being that these can be a cause of high bills. AMTA notes that this is not relevant in the case of mobile phones.

The combined result of all these issues is that the recommendations in the report would impose an overly onerous and operationally clumsy framework. Moreover, the proposed framework would not meet the stated intention of preventing financial hardship arising out of unexpectedly high (mobile) phone bills.

In this submission, AMTA proposes an alternative approach to addressing community concerns about credit management and unexpected high bills. The approach would involve a review of the ACIF Credit Management Code (C541) with a view to embodying in the Code the main objectives outlined in the credit management report; that is:

- appropriate credit assessments;
- appropriate, accessible information to customers about the risks of certain services;
- empowering consumers to protect themselves from unauthorised usage; and
- providing the means to allow consumers to protect themselves from excessively high bills.

AMTA considers that such a co-regulatory approach would avoid inflexible or 'one-size-fits-all' regulation. It would allow and further encourage competition on the basis of offering consumers the best suite of protections, and provide consumers with flexibility and the ability to find a service to best match their individual circumstances and needs.

AMTA looks forward to discussing with the Department and the ACA the solutions put forward in this paper in a positive and constructive manner.

2. BACKGROUND

On 13 April 2004 the then Minister of Communications, Information Technology and the Arts directed the ACA to develop two service provider rules requiring carriage service providers (CSPs) to provide information to their customers about the risks associated with using premium services and the actions those customers can take to lessen the risk of unexpected high bills for those services. The first of these rules, the *Telecommunications Service Provider (Premium Services) Determination 2004 (no. 1)* which applies to premium services using numbers with the prefix 190 and international numbers, came into effect in August 2004. The second, the *Telecommunications Service Provider (Premium Services) Determination 2004 (no. 2)*, which applies to premium messaging services which use the short message service (SMS) or multi-media messaging (MMS) and to content accessed via mobile carrier portals, came into effect on 15 December 2004.

The ACA was also directed to investigate and report to the Minister on the 'credit management measures the telecommunications industry has put in place or is developing to address the issues of unexpected high bills for carriage or content services'. As part of that process, the ACA released a discussion paper on credit management in the telecommunications industry and invited submissions on the issues raised. It subsequently held a number of public meetings on the subject. AMTA

and individual CSPs provided submissions to this ACA review and also attended the public meetings.

The ACA presented its final report to the Minister in October 2004, and in February 2005 this report was released publicly by the Department of Communications, Information Technology and the Arts, with a call for comments on the report and its recommendations. This submission responds to the Department's request for comments.

3. SCOPE AND STRUCTURE OF THIS SUBMISSION

As an Association representing the mobile telecommunications sector, AMTA's submission primarily responds to mobile-related issues.

AMTA understands that the Department has read the submissions made to the ACA in response to its August 2004 discussion paper, *Preventing Unexpected High Bills: Credit Management in the Telecommunications Industry*. Therefore, in this response to the Department's request for comments on the ACA's subsequent credit management report, AMTA concentrates on addressing the report's suggestions and recommendations rather than repeating statements made in its original submission (except where it believes that this is again necessary in answering the issues raised in the report). Note that the earlier submission included details on a number of new mechanisms for customers for checking bills, as well as an outline of the AMTA initiatives to address credit management issues.

This submission begins by proposing solutions, outlining how AMTA believes key concerns relating to credit management in the telecommunications industry could be best addressed. It then provides both a general and more detailed critique of the report and the proposed star rating system.

4. SUGGESTED APPROACH

As already indicated in this submission, AMTA is concerned about credit management difficulties encountered by any mobile phone user and is keen to work with government and consumers to develop practical, workable solutions.

AMTA's proposals about an appropriate way forward in this regard are outlined below. AMTA has held preliminary discussions with ACIF on the proposals and has in principle support for the approach, subject to ACIF's normal approval processes for the review and terms of reference for the Credit Management Code. AMTA would be keen to discuss its proposals further with the Department.

4.1 Self-regulatory response

AMTA believes that a self-regulatory approach is a positive and robust way of producing the best solutions to the issue of credit management. AMTA suggests that a review of the ACIF Credit Management Code would be appropriate. It believes this approach is sound for the following reasons:

- The existing ACIF Credit Management Code is now due for review, it being two years since its last review. AMTA acknowledges that there are some

improvements that could be made to this Code, and believes it would be efficient and effective to widen this review to include current concerns about credit management.

- Industry codes are self-regulatory, which is consistent with Parliament's intention that telecommunications be regulated in a manner that promotes the greatest practicable use of industry self-regulation and does not impose undue financial and administrative burdens on participants in the industry¹. As stated in the explanatory memorandum to the Telecommunications Bill 1996, this regulatory policy was intended to give guidance to the Minister, the ACA and the Australian Competition and Consumer Commission (ACCC) in the exercise of their powers and functions under the Act, especially in relation to industry codes and industry standards.
- Industry codes foster innovative responses and solutions which recognise and cater for the differences between providers, and the different systems that have evolved. Indeed, as stated in the Second Reading Speech to the Telecommunications Bill 1996, facilitating the development of a truly competitive market 'must increasingly shift responsibility for regulation to the industry itself'. It goes on to state that 'significant efficiency gains can be achieved through greater reliance on self-regulation in networked industries such as telecommunications because regulatory structures and arrangements can be better designed to reflect industry and community needs' (House of Representatives, 5 December 1996, p.7799-7800).
- Codes of practices are regularly reviewed and therefore more easily amended than regulation in order to address technological and market changes.
- Allowing ACIF to address the issues raised by the ACA report is in keeping with industry's significant financial support of ACIF and the Government's stated support for the self-regulatory model.
- Consumers and regulators would be actively involved and able to provide input in line with the ACIF Code review process. The Code review working committee itself is comprised of representatives from industry and consumer groups, enabling each of the participants to influence the revision of the Code rules, and the outcomes to be achieved by the Code. Generally, the ACA, ACCC and TIO participate in consumer Code committees, with the Office of the Federal Privacy Commissioner providing a certificate of mandatory consultation for Codes which address privacy issues. A final opportunity for broad involvement in the Code is via a public comment phase.
- ACIF works across all the relevant telecommunication sectors and is therefore in an excellent position to consider all the issues in an holistic manner, avoiding duplication, ensuring consistency across the different sectors, and ensuring technologically-neutral responses to the greatest practicable extent possible while taking into account and appropriately dealing with sector-

¹ But does not compromise the effectiveness of regulation in achieving the objects mentioned in s.3 of the *Telecommunications Act 1997*.

specific issues. AMTA notes that ACIF has already initiated work in a related area: considering cases of financial hardship.

- The ACIF Credit Management Code is a registered Code and is thus binding on relevant industry participants (whether or not individual organisations are signatories to the Code). The ACA has the ability to monitor compliance with the Code and actions of all relevant players through its Telecommunications Performance Monitoring Report (Section 105 Report).

4.2 Parameters for the proposed review of the Credit Management Code

As outlined above, AMTA believes that a review of the ACIF Credit Management Code would enable the key issues identified in the ACA's credit management report to be addressed in a flexible and efficient way, to provide robust consumer protection.

Based on the key objectives outlined in the ACA's credit management report (p.45-46), AMTA recommends that the key objectives of any review of the Credit Management Code should be to consider embodying the following principles for CSPs in the Code:

1. Conduct credit assessment, to provide the customer with an appropriate service for their circumstances
2. Inform consumers of the risks associated with particular products and services through easily accessible information
3. Assist consumers to protect themselves from unauthorised usage
4. Provide the means, or ensure measures are in place, to assist consumers to protect themselves from excessively high bills.

To that end, AMTA principally suggests that the Credit Management Code could be amended to include a requirement on CSPs to demonstrate that they meet the above objectives by reporting on an annual basis to ACIF on their credit management consumer protections measures.

AMTA also suggests that these reports could be publicly available. Unlike some of the suggested solutions in the credit management report, this proposed reporting requirement would positively impact on competition, as it would ensure that CSPs would be openly competing on the basis of the 'best suite of protection' for consumers.

AMTA believes that the above proposed code objectives would, in combination with existing regulations and Codes, provide appropriate protection, with customers:

- undergoing appropriate credit assessment
- provided with the necessary information to understand the package they are signing up for and costs of the services before committing to the services (whether post- or pre-paid)
- informed about unusual expenditure (unbilled) that may be associated with fraud or inadvertent over use
- provided the opportunity to decide whether to restrict access to potential high cost services (international, premium rate).

It would also encourage business to:

- compete openly on the basis of providing the best ‘suite of protection’ for consumers
- innovate to better meet customer credit management needs, thereby expanding the range of credit management tools offered
- incorporate appropriate technological changes efficiently, thereby providing the opportunity to pass on to customers the advantages of technological improvements.

Finally, it would allow Government to:

- ensure consumer protection within a flexible and responsive framework
- ensure such protection stimulates, rather than stifles, competition
- be confident that the measures reasonably represent both consumer and industry interests, and are subject to regular review. (The ACIF process ensures consumer groups, government and industry are represented in both the initial, and subsequent, code review.)

AMTA believes these benefits are not offered by the star rating scheme suggested in the credit management report. Some analysis of that proposed scheme are outlined in the next section.

5. GENERAL COMMENTS ON THE CREDIT MANAGEMENT REPORT

As noted earlier, AMTA is concerned that the credit management report overstates the scale of the credit management issue, and that the debate and media coverage around unexpectedly high bills has unjustifiably focused on mobile services. AMTA is further concerned that the ACA’s proposed regulatory framework (as drafted) is operationally clumsy and that the proposed effectiveness ratings undervalue many of the protections currently offered by mobile CSPs. Further, many of the proposed measures would be technically infeasible to implement in a reasonable timeframe and would effectively stifle innovation and reduce competition. They would offer little if any extra protection for the majority of mobile users, and arguably also not afford the added protection sought for the small minority of users with credit management problems.

5.1 Extent of the credit management issue

AMTA is concerned about any cases of mobile-related financial difficulty and is keen to consider how such cases might be reasonably addressed. In considering relevant action however, AMTA holds that solutions must not only be practical and practicable, but commensurate with the problem. It is concerned that the ‘problem’ is over-stated in the ACA Report, with anecdotes and inconclusive data presented as clear evidence, providing an analysis of the problem which is at best inconclusive, and at worst, misleading.

For example, the TIO industry complaint data referenced within the ACA report is that categorised as ‘Credit Control’. Credit Control includes the following sub-categories: Barring, Debt Recovery, Disconnection, Over-commitment and Payment Arrangements. AMTA contends that the total Credit Control data is inconclusive with

regards to providing an understanding of the scope of unexpectedly high bills. For example, 'Barring' generally relates to customers who object to suppliers imposing protection from higher risk products in the form of (zero dollar) hard caps, generally following a credit assessment. 'Debt Recovery' includes matters such as factoring, receipt and content of overdue notices and customer contacts. Whilst representing issues for industry, it is evident that these categories do not reflect trends with regards to unexpectedly high bills. Consideration of the 'Over-commitment' category in isolation might perhaps be more indicative of unexpectedly high bills.

Further, the ACA notes that the quantity of industry default listings is disturbing. Yet the ACA's own data indicates that the volume of listings actually decreased by 27 per cent in the last year reported, 2003/2004. Notwithstanding this, AMTA believes that it is inappropriate to conclude that default-listed accounts are a direct result of unexpectedly high bills and finds comparisons to average debt within the banking and financial sector to be irrelevant and unhelpful. By discussing the 'average' rather than the 'median' level of debt, they are also very misleading. The median is affected less by extreme values and therefore gives a much better indication of the debt of the majority.

AMTA is of the view that CSPs are in the best position to assess the volumes and levels of unexpectedly high bills through their own systems and TIO complaint data, which is supplier-specific and segmented into those categories identified earlier in this section. Fundamentally, it is not in a business' interest to allow customers to accrue service charges that they cannot afford to pay. Any consideration of direct government regulation (as opposed to an industry code of practice) would need to be underpinned by more research to provide a better understanding of the volumes and characteristics of unexpected high bills than provided in the ACA's credit management report.

Finally, AMTA draws the Department's attention to a recent study released by the Australian Psychological Society, and an associated article by one its authors². The Australian Psychological Society is the largest professional association for psychologists in Australia, representing more than 14,000 members. It provides essential professional support in areas ranging from ethical advice and industrial relations to professional development and business marketing. Its work provides a useful analysis and insight into important social issues facing Australian society. AMTA draws particular attention to the following comment:

"The results of this study suggest that we should be mindful of media reports which often project a negative view of mobile phone behaviour, such as excessive bills and overuse, that may not be entirely accurate. While problems with mobile phone usage among adolescents clearly exist, and were identified in this study, these problems are not as widespread as recent media reports imply. This comprehensive survey indicates that mobile phone usage among adolescents does not create major problems for adolescents and their families and has highlighted many positive aspects of mobile phone use for this group."³

² Copies of the article and the study are included at appendix 1, attached.

³ Psychosocial impact of mobile phone use amongst adolescents, *INPSYCH*, December 2004.

5.2 ACA concerns relating to self-regulation

As outlined, AMTA believes that an ACIF review of the credit management code would be an efficient and effective means of addressing credit management issues in the telecommunications industry. AMTA notes, however, that, while the credit management report acknowledged some advantages to an ACIF review of the Credit Management Code – specifically that it would be consistent regulatory policy for self-regulation, involve cooperation between CSPs and consumers and be underpinned by the ACA’s power to make standards – it outlined what it saw to be a significant number of disadvantages to the strategy.

The ACA stated that the strategy would require the commitment of the majority of CSPs and given ‘the modest achievements of the industry to date in addressing these problems ... this strategy may be questionable’ (p. 51). However, AMTA wishes to make clear that the proposal to review the ACIF Credit Management Code is supported by mobile CSPs. Moreover, ACIF has already demonstrated its awareness of community concerns about this issue by conducting a forum on Unexpected High Bills in late 2004.

The ACA also suggested that the approach may be perceived by consumer advocacy groups as an ‘overly light approach’ and ‘likely to fail’. AMTA considers that such perceptions are hypothetical and would not be justified. It also understands from informal discussions with consumer representatives that a review of the ACIF Credit Management Code to consider the main objectives as identified in this submission would, in fact, be supported as a useful and worthwhile way forward.

Similarly, the ACA suggested that there is ‘some question’ as to whether CSPs and consumer groups could cooperate effectively in reviewing and redeveloping the existing codes as there have been differing perspectives between CSPs and consumer groups regarding provisions in the codes. AMTA considers that such an argument is speculative. In particular, AMTA draws the Department’s attention to the successful completion of the recently released ACIF Consumer Contracts Code (C620:2005). Involving equal representation from both CSPs and consumer groups, the code working committee reached consensus on many commercially sensitive issues to produce a practical industry code. AMTA notes that the Minister issued a media release supporting this code when it was publicly released, claiming: ‘I applaud the efforts that ACIF itself has put into this code development process, to achieve a timely and effective outcome’.

The ACA also expressed concern about the ability of ACIF to deal with the issue in a timely and unified manner. AMTA again notes the successful completion of the ACIF Contracts Code and again refers to the Minister’s positive endorsement of the efforts as ‘timely and effective’. AMTA also notes the success of the industry in working constructively together in short timeframes to provide a unified response and solution to the ACA’s draft determination on mobile content, within 12 weeks of the release of that draft determination⁴. The industry is committed to addressing concerns relating to high bills and credit management, and AMTA is confident that an ACIF review of the Credit Management Code would be efficient and effective.

⁴ Joint AMTA and ADMA submission to the ACA’s Discussion Paper: Regulation of Mobile Premium Services, 1 March 2005.

Finally, the ACA claimed there would be few incentives for CSPs to develop effective and robust codes, and that there would be no strong financial incentive for CSPs to comply with codes (p.51 to 52). AMTA considers such arguments do not take into account the basic commercial principle that it is not in business' interest to have high levels of bad debt. AMTA believes there are very strong commercial incentives for business to develop effective and robust solutions, as it is basic to commercial management that businesses assist customers to manage their spending so they are able to pay their bill. In addition, it should be noted that it would appear that the ACA's concerns seem to relate to the effectiveness of the regulatory framework and the ACA's willingness to enforce codes, rather than with the process under the current framework, or CSPs' willingness and ability to cooperate. Code compliance will also be promoted through ACIF's recent appointment of a full-time compliance manager.

5.3 ACA's analysis of credit management tools and proposed solutions

The ACA report identifies the following key outcomes as essential: understanding products and cost; means to manage expenditure; and expenditure limited in line with ability to pay. It then analyses the current offerings and procedures in the telecommunications industry and concludes that the 'range, quality and comprehensiveness' of credit management tools and practices 'fall short' of achieving these outcomes (p.45). It then goes on to suggest a framework for the provision of credit management tools that are 'technically and financially practicable to implement'.

Although AMTA believes the broad objectives are laudable (as demonstrated by AMTA's proposed way forward), AMTA has major concerns with the approach outlined in the report for achieving them, believing it inappropriate and unworkable.

5.3.1 Flawed and inconsistent framework and conclusions

AMTA does not believe the proposed framework or analysis of individual tools or procedures is robust and disagrees with many of the ratings awarded to the various credit management tools.

'Desired outcomes' unclear

The report refers to three key outcomes that must be met in order to reduce the problem of unexpectedly high bills to a reasonable level:

- 1) Consumers possess a reasonable understanding of the telecommunications products and services that they use and have certainty about the costs of telecommunications services, the associated risks and their expenditure of these services;
- 2) Consumers have the means to properly manage their expenditure on telecommunications services
- 3) The expenditure of consumers on telecommunications services is limited in line with their preferences or their ability to pay.

AMTA does not believe that these objectives are clear. For example, objectives two and three above appear to be somewhat similar.

Restrictive and limited range of 'solutions'

Given the minimum performance levels proposed, there are no alternatives in Outcome One but to 'advise of the charge during the call or session'. In addition to exposing a flaw in the criteria for the outcomes, AMTA contends that this measure is likely to generate significant customer objection and intolerance.

Moreover, AMTA is of the view that the measure would be technically infeasible to introduce and, if required, could merely mislead customers. CSPs provide many different rate plans, free minutes or extra value caps. Calculating service charges across these different products and across the customer base is extremely complicated and conducted at the billing stage. The proposal to require CSPs to provide service charge information in real time during calls could not be met by current billing systems. In other words, it would effectively require CSPs to build from scratch and to introduce new real-time billing systems. The costs of this would depend on the size of the business but in general terms would be prohibitively expensive.

AMTA also notes that there are actually fewer options than it first appears when considering the report, as many of the listed measures cannot be used by all types of telecommunications providers (some are appropriate only to broadband, for example).

Flawed assessment of available measures

AMTA finds much of the analysis of available credit management measures to be subjective and inconsistent.

Pre-paid services

For example, pre-paid accounts are given only a 'medium' effectiveness rating. Reasons listed include that when compared to 'equivalent post-paid services' there are in many cases 'higher charges' and 'limited or no access to certain services', and because 'it remains possible to incur significant expenditure within a short period of time' (p.38).

AMTA finds this analysis bewildering. In relation to the service charges, charges for pre-paid services are often no different to those for post-paid services, and are sometimes cheaper. Further, even if one supplier's pre-paid service charges were more than its post-paid service charges it is unjustified and meaningless to base any 'star rating' on the 'lowest common denominator'. Furthermore, there are a number of operators offering competitive pre-paid services that compete against both other pre-paid and post-paid services. This would indicate that competitive forces are operating, which, AMTA would suggest, is the desired outcome for consumers.

In relation to the criticism that pre-pays provide 'limited or no access to certain services', AMTA acknowledges that this is indeed the case; and rightly so. One of the main advantages of pre-paid mobile services is that it offers protection from unexpectedly high bills. Services such as 'premium services', which are, by definition, more expensive, cannot be offered because delayed billing of such services means charges may be accrued a few days after the service is supplied. The credit management report appears to be calling for services such as these to be restricted, while simultaneously criticising pre-paid services for imposing such restrictions.

Finally, AMTA holds that the ability to ‘incur significant expenditure within a short period’ is irrelevant to assessing the effectiveness of pre-paid services in assisting customers to manage their spend. ‘Significant expenditure’ is a subjective definition, and the pre-paid customer’s ability to exceed their mobile phone budget is limited in that they are paying in advance. As such, they cannot receive an ‘unexpectedly’ high bill. If they choose to, or unintentionally manage to spend all their pre-paid credit quickly, they do not have to immediately re-charge. Indeed, they do not have to re-charge ever if they do not wish to – they are not bound by a fixed long-term contract. Further, for a generous period of six months, and in some cases up to one year, the service provider continues to provide the customer with a basic level of service - the ability to receive calls and perhaps more importantly, the ability to use their mobile to contact the emergency services.

Clearly, pre-paid mobile phone services present an excellent option for credit management, offering an established and effective way to control expenditure. Indeed, AMTA considers that the level of protection offered by prepaid services is demonstrated in part by their very significant uptake by consumers, many of whom want greater control over their spending.

New services

AMTA also believes that the report does not give adequate weight to the newer services available. For example, there are a number of new products in the market place that provide consumers on post-paid contracts with an easy and convenient way to ensure their mobile phone bill is within their budget. These include ‘bucket’ or ‘capped deals’.

Hard caps

AMTA also has concerns with the focus on hard caps in the report. In addition to the potential impact on competition (discussed below), there are issues relating to the implementation of such caps. For example, how would it be decided at what level such a cap would be set? Who would take responsibility for any problems associated with this set level – for example cases where delayed billing caused the cap to be exceeded (eg. if a customer used premium rate services)? As the ACA’s initial Discussion Paper illustrated, caps do not necessarily prevent high bills⁵.

Practical, technical and billing arrangements are ignored

The ACA’s proposed credit management tools fail to take into account the technical and billing arrangements in the industry. Many telecommunications services are provided by third parties. Such services, in particular 190X premium voice may be billed to CSPs several days after the service is used. The effect of delayed billing is that tools like real-time monitoring cannot be provided in practice. A customer using a premium service could ring up additional charges in the time between exceeding their cap and the CSP being advised of the charges. As noted above in relation to the proposal for charge advice during a call, real-time monitoring and advice to customers of costs would be extremely costly and very difficult to provide.

In addition, the suggestion that CSPs monitor every account for ‘excessive usage’ fails to take into account the number of services involved. A significant investment in

⁵ Case study 3 (fixed environment)

established systems may be required to provide the kind of functionality envisaged by the ACA. Such a proposal also fails to consider what constitutes excessive usage. In some cases excessive usage may be \$200 and in other cases \$2000. It is a complicated question to consider at what point a CSP should bar a service if the charges are in keeping with previous usage.

Competition limited

The credit management report lists a range of credit management tools and rates each individually. AMTA believes that this approach would have the effect of negatively impacting competition, as the motivation to develop new credit management tools/systems would be reduced. This is because such a system would create uncertainty about the 'rating' any new system/process might achieve. There would also be process issues associated with the time and expense of rating any new system/process. This problem would be most pronounced if the carriage for any such framework were a legislative instrument.

The high costs that would be imposed on CSPs to implement the full suite of the ACA's proposals, in particular mandatory hard caps, may have significant implications for the financial viability of smaller industry participants and impact the development of new market entrants.

It is also highly likely that specific measures proposed in the ACA report will directly impact the ability of CSPs to continue to provide or to develop new competitive offerings. Proposals such as mandatory hard caps have the potential to limit the ability of CSPs to offer a range of products that provide an amount of "value" different to the amount paid into an account. Capping such services may require a level of sophistication and subsequent expense as to render them commercially unsupportable.

5.3.2 Other issues: Regulatory forbearance.

AMTA is concerned that there appears to be a push for regulation based on unsubstantiated beliefs. The report's statement that there is 'a high probability that problems associated with credit management practices... will be exacerbated by new high cost products which are now becoming used more widely' is speculative. AMTA is opposed to the introduction of 'just in case' legislation for emerging services. AMTA believes that the impact of such services should be carefully monitored, with new regulation only introduced if there is clear evidence of market failure. AMTA also notes similar presumptions were made in relation to m-commerce and that this issue is currently being examined by various organisations, including the Australian Securities and Investment Commission. AMTA urges all organisations to work together to consider any appropriate regulation on this matter, to ensure regulatory efficiency and clarity.

6. CONCLUSIONS

AMTA and its members acknowledge that there are some concerns relating to unexpectedly high (telecommunication) bills. We believe, however, that the number of individuals affected is relatively small. We also suggest that the competitive mobile market is responding to issues relating to credit management and unexpectedly high bills in its sector, with increasingly competitive pre- and post-paid services, combined with a wide range of bill management tools such as on-line bill checking and spend

alerts. Notwithstanding this, the industry takes the concerns raised seriously and is keen to continue working, with the appropriate stakeholders, to address the issues.

While AMTA believes the broad objectives set out in the ACA report are laudable, AMTA has major concerns with data, analysis and proposed 'solutions' [for preventing unexpectedly high bills] presented, believing the analysis is not only flawed, unworkable, and incapable of meeting the stated intention of preventing financial hardship arising out of unexpectedly high (mobile) phone bills. AMTA therefore suggests a review of the ACIF Credit Management Code with a view to considering embodying in the Code the main objectives outlined in the credit management report; that is:

- appropriate credit assessment;
- provision of information to customers on the risks associated with particular products and services;
- empowering consumers to protect themselves from unauthorised usage; and
- the means to allow consumers to protect themselves from excessively high bills.

This would provide a framework for consumer protection that is flexible, responsive and transparent and encourages innovation and competition on the basis of offering consumers the best suite of protection from excessively high bills. It also ensures representation from all relevant stakeholders – consumers, government and industry – in both the initial and subsequent Code review.

AMTA believes that its proposed way forward offers a robust and viable alternative to that outlined in the report, addressing the concerns raised in a way that it believes will be acceptable to consumers, government and the industry.

AMTA looks forward to discussing with the Department and the ACA its proposed solutions in a positive and constructive manner.