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CONSIDERING THE IMPLICATIONS OF M-COMMERCE – A CONSUMER PERSPECTIVE

The Australian Mobile Telecommunications Association (AMTA) welcomes the opportunity to respond to the Standing Committee of Officials of Consumer Affairs' (SCOCA) M-commerce issues paper. AMTA is the peak industry body representing Australia's mobile telecommunications industry. AMTA's mission is to promote an environmentally, socially and economically responsible and successful mobile telecommunications industry in Australia. AMTA members include mobile phone carriers, handset manufacturers, retail outlets, network equipment suppliers and other suppliers to the industry. For more details about AMTA, see <http://www.amta.org.au>.

This submission is supported by the following AMTA members: Telstra, Optus, Vodafone, Hutchison, Motorola, Ericsson and Nokia.

Executive Summary

AMTA commends the SCOCA on its initiative in conducting an independent consultation on the M-commerce consumer issues at this early stage of M-commerce services in the Australian market. However AMTA notes that the SCOCA issues paper considerably overlaps with the discussion paper issued by the Australian Communications Authority (ACA) in August 2003, and hopes that the combined efforts of the SCOCA and the AC – in conjunction with established commercial parameters – will generate a positive platform for the future growth of M-commerce and protection of consumers.

AMTA recognises that as M-commerce develops, new consumer protection issues may arise and it will be important to the future growth and development of M-commerce services that consumers be afforded adequate protection. AMTA's principled position is that regulatory intervention should only be considered where there is evidence market failure. AMTA welcomes further opportunities to contribute to the consultation process and assist in the development of appropriate measures for the continued protection of consumers as service offerings continue to grow.

M-commerce is an additional enabler of commerce. Contrary to the SCOCA's predictions, AMTA considers that M-commerce is unlikely to test the regulatory regime for transactions in any way that existing commercial transactions have not already done so.

The differentiator of M-commerce is the billing platform – the consumer’s carrier/carriage service provider (C/CSP) bills the consumer for the purchase of goods and services provided by another vendor. The M-commerce and generic commercial consumer issues are similar in nature and accordingly new regulatory measures for M-commerce should be limited to issues that are evidenced market failures.

Where a regulatory response is required, AMTA strongly recommends that all stakeholders and regulators actively contribute towards and be involved in the development of a coordinated and effective solution that is proportionate with the identified problem.

Defining M-commerce

The definition of M-commerce has a direct bearing on the question of whether there needs to be a separate regime for regulating M-commerce. The SCOCA defines M-commerce as:

The use of a wireless terminal, such as a cellular telephone or personal digital assistant (PDA), and a network, to access information and conduct transactions that result in the transfer of value in exchange for information, services or goods.

This definition is fraught with difficulty. The definition incorporates information and transactions that fall within the general meaning of E-commerce where internet access is provided through a wireless device. The definition also includes the use of laptops to access information both with and without internet access. The reference to ‘transfer of value’ suggests that a successful payment must have been made before a transaction falls within the meaning of M-commerce. It is unclear whether SCOCA intended this to be the case.

Devices using mobile access technologies merely provide additional means through which commerce is facilitated. Such devices include, but are not limited to, mobile handsets, laptop computers with wireless cards and handheld PDAs including the new Blackberry devices. These devices may offer access and connectivity to voice and/or data services. The only distinguishing feature of M-commerce is the platform through which consumers are billed, and pay for, transactions. Payments for purchases are made directly to the C/CSP rather than the vendors of the goods or services – as in traditional transactions. This is facilitated as an element of the C/CSP’s billing for the consumer’s carriage service. AMTA believes a more useful definition of M-commerce would be one that recognises M-commerce as a subset of commerce differentiated by reference to the C/CSP payment platform.

Anticipated availability and uptake of M-commerce

The availability of M-commerce will depend on the existence of commercial opportunities for vendors and C/CSPs to benefit from the ability to mobilise commerce subject to environmental factors, including the limitations of the regulatory

environment. While cooperation between network operators, financial services providers and content providers will be important, it is not essential to the delivery of M-commerce. The most significant driving force will be the commercial opportunities presented by M-commerce, which ultimately depends on consumer demand for and response to such services being offered. The majority of growth is likely to be in the area of payments under \$50 (micro payments), though the capacity to conduct higher value transactions may be realised if market and commercial forces provide sufficient support for it.

AMTA is aware that it is vital in any business operation to have measures in place to ensure that consumers are protected, including measures for the development of authentication and security system features and service platforms. These systems and services will also be essential to driving market demand for M-commerce. Accordingly, the provision of consumer protection measures is already commercially driven with consumers requiring high standards of assurance before being willing to embrace services and the industry is already taking action to deliver this. It is well understood within the industry that security measures will be a precondition to the uptake of M-commerce by consumers, especially in respect of strategies to introduce e-wallets. By comparison, handset capabilities are not expected to be a significant driver of M-commerce.

The existing mobile market is highly competitive and this is likely to increase through convergence, including the opportunity for increasing depth in M-commerce services. In the arena of e-wallets, it remains to be seen whether financial services providers will compete with C/CSPs or look to form partnerships with industry.

SCOCA has suggested that M-commerce may be hampered by the lack of standards for M-commerce and M-payments. While there may not be formal regulations and standards, the industry experience has been that de-facto industry standards have developed. These have allowed outcomes to be reached, enabling the faster delivery of new services to market, without the need for heavy handed regulation and standards development. This has been so because of industry's recognition of the commercial incentives to meet consumer demands and expectations, and the freedom afforded by industry standards in allowing C/CSPs to be innovative and trial services, observe the market response and to deliver services in accordance with the standards expected by consumers.

Consumer Disclosure Issues

The assertion that 'there has not been much thought given to the issue of providing adequate product information' is inaccurate. Discussions within the industry have already progressed beyond the issue of whether there should be adequate product disclosure to the more pertinent question of who should be responsible for that disclosure.

AMTA shares SCOCA's concerns that consumers need to be able to make informed choices at the time and point of purchase. In particular, consumers should be fully aware of circumstances where they may be liable to pay for a good or service, even where the good or service purchased is not delivered. AMTA also recognises that M-

commerce presents an increased risk of consumers becoming targets of misleading and deceptive conduct by vendors who abuse the C/CSP billing platform.

As outlined above, M-commerce enables payments for purchases to be made by customers to C/CSPs as an element of the CSP's billing for the consumer's carriage service rather than directly to the vendors of the goods or services. The C/CSP will usually have a contractual arrangement with the vendor and make payments for the goods and services subject to the terms of the agreement. AMTA's C/CSP members provide a central tool – billing – to enable vendors to provide a wider choice of payment systems, and thereby increase convenience for consumers.

In the case of a credit card purchase, the credit card operator is simply the facilitator that bills for the transaction. Similarly, in M-commerce transactions, the C/CSP is simply the facilitator that bills for the transaction (this should not be confused with providing funds or credit for the transaction). Carriers, like credit card operators, have limited control over the behaviour of vendors that supply goods and services using M-commerce. In line with other commercial transactions where responsibility does not rest with internet service providers, in M-commerce transactions the responsibility for the behaviour of vendors –including consumer disclosure – should not rest with the C/CSP. By way of example, credit card providers are not required to be responsible for the behaviour of vendors in their provision of goods and services for which the credit card is used as the method of payment. Similarly, C/CSPs should not be held responsible for the actions of vendors where the C/CSP provides the payment platform for the purchase of goods and services.

Vendors offering the option of payment via C/CSP billing must, like vendors of offering the option of payment by credit card, cash, or any other means, comply with state and federal laws such as the *Trade Practices Act 1974* eg. ensure the product provided is suitable for its purpose and ensure that the vendor has not does not engage in misleading or deceptive conduct. These vendors should also ensure they provide customers with adequate information to understand such M-commerce services and to be able to making informed choices and choose to access services through appropriate service controls. AMTA considers that the *Trade Practices Act 1974* (TPA), state Fair Trading Acts (FTA) and Australian Communications Industry Forum (ACIF) codes such as the Prices Terms and Conditions Industry Code (currently under review) and Billing Industry Code already provide for adequate disclosure of information in both a pre-contractual and post-contractual setting. AMTA therefore believes that the current legislative and regulatory environments for product supply and sale are adequate to deal with M-commerce transactions. Specifically, M-commerce does not require additional product disclosure statements.

Although the issues surrounding consumer disclosure issues are matters for the responsibility of M-commerce vendors, C/CSPs encourage high standards and compliance from commercial partners with whom they deal. C/CSPs generally require their partners to distribute and sell their products responsibly and comply with relevant legal and regulatory obligations.

Confirmation of contracts

Legal status

In AMTA's view the law of contract should apply to M-commerce transactions as they apply to commercial transactions and all other contracts. M-commerce merely provides another means by which contracts may be formed; it should not affect the underlying rights and obligations of the parties to the contract.

AMTA notes that details on:

- The enforceability of M-commerce contracts generally;
- when and how an M-commerce contract is formed, and the parties to the contract;

are already covered by the Electronic Transaction Act(s) (Commonwealth and State).

Commonwealth and State e-commerce guidelines also cover issues such as:

- the ability of consumers to be able to reverse orders before delivery;
- whether technology supporting M-commerce having security mechanisms affects the legal rights of any party in respect of repudiation of an M-commerce contract; and
- the rights and obligations of all parties where purchased goods are not received by the consumer.

Standard forms of agreement between carriers and their customers generally include terms that address issues arising out of the carrier's billing for goods and services provided to the carrier's customer by third party vendors.

As already stated, AMTA holds that m-commerce is simply a subset of commercial transactions and the obligations of all parties involved is significantly covered by existing regulation.

Confirmation

The question of how and when an M-commerce contract has been entered into is essentially a question of contract law. Outside the legal issues of contract formation, AMTA notes that the Australian Direct Marketing Association (ADMA) promotes processes to enable consumers to:

- Identify the goods or services they wish to purchase;
- Identify and correct any errors or modify the order;
- Express informed and deliberate consent to the purchase;
- Retain a complete and accurate record of the transaction; and
- Cancel the transaction before concluding the purchases.

AMTA is supportive of any process that assists consumers understand and have trust in transactions. As such AMTA is supportive of ADMA's work in the above areas, supplementing the consumer protection measures contained in the *TPA* and state *Fair Trading Acts*.

Consumers who conduct online transactions using mobile networks may already have the capability to review and print transactions through a web-based interface. The SCOCA has suggested that all users be able to do the same in respect of non-online transactions conducted through mobile phones. The *Electronic Transactions Act 1999* already provides for receipts being valid in an electronic format. AMTA proposes that the ability to be able to print paper receipts directly from handsets will be dependent on the availability of applications to provide for this and ultimately the market demand for such facilities – with significant consideration given to the nature of the good supplied (eg do customers need a receipt for an m-commerce transaction for a bottle of soft drink).

Consumer Accounts

Linking with third party providers

Most C/CSPs currently provide online management of mobile phone accounts. In cases where the C/CSP bills for goods and services provided by third party vendors, any linking of these accounts with further information from the third party vendor is unlikely to add value for consumers at the point of purchase. Given that the operation of M-commerce is likely to be focused on micropayments, requiring the linking of online mobile phone accounts with other accounts or information would make purchases unduly more onerous. In addition, the cost of establishing and maintaining such links is likely to be distributed between all the carrier's customers, even those that do not make M-commerce transactions.

Tracking transactions

AMTA notes that the industry has invested heavily in billing systems to ensure that transactions are recorded correctly. Efforts towards cooperation between other players in the market have also enabled assurance of payment authentication.

The SCOCA states that 'consultation with industry has identified the role that industry will play in ensuring that transactions can be tracked' however the issues paper fails to set out what that industry role is, or the nature or extent of the consultation with industry was undertaken.

While AMTA agrees that consumers need to be able to identify transactions on their mobile phone bill, mandated naming of third party vendors may not be adequate identification of the transaction because a third party vendor may provide multiple good and services (eg a confectionary or soft drink company); also, the vendor may be an aggregator (an organisation that represents multiple third party vendors and their products and services) and the appearance of the aggregator's name alone will not necessarily identify the particular good or service purchased. In the context of the micropayments that may be facilitated by M-commerce, measures requiring specific detail about items or services purchased present a risk of disproportionate regulation, especially where credit card providers are not currently required to provide billing information to that level of detail.

Complaints resolution

Who is responsible for resolving issues with products or contracts?

The general approach for consumer complaints is that where a consumer has an issue with a product or service, in the first instance the consumer will probably contact the C/CSP. If the concern is not associated with the C/CSP role in the transaction – the carriage and/or billing – the C/CSP will refer the customer to the vendor for resolution of the issue.

This general approach however, may differ depending on the nature of the goods and services and the nature of the problem. Where the goods or services being provided are dependant on a C/CSP network for delivery, the C/CSP should take responsibility for carriage and/or billing component of the transaction.

As a specific illustration of where the responsibility lies in the M-commerce context, consider a situation where a C/CSP purchases a wallpaper (static image) from a supplier and it is delivered to the customer's mobile device via MMS and billed to the customer's mobile account. The customer may:

- Receive an image that is 'fuzzy' or of a bad quality. The customer would contact the C/CSP in first instance and the C/CSP would refer the customer to the vendor (image provider) to remedy the issue as it is an issue unrelated to the carriage of the service. An image of an inferior quality is the responsibility of the content provider; or
- Not receive any image. The customer would contact the C/CSP in first instance and the C/CSP would explore the possible reasons that might be related to the carriage component of the service, for which the C/CSP is responsible;
 - If the C/CSP finds that the issue arises out of an element associated with the carriage service, for example a network outage in the customer's vicinity, the C/CSP would then take appropriate action such as crediting the customer's account for the value of the transaction, and directing the customer to undertake the transaction again.
 - If the C/CSP finds that the issue does not arise from any element associated with the carriage service, the customer is then referred to vendor (image provider) to remedy the issue.

As discussed above, the C/CSP is responsible for matters related to the provision of the carriage and/or billing. Where complaints concerning carriage and/or billing service cannot be resolved by carriers, they may be escalated to the TIO.

Where complaints pertain to elements of the goods and service which are the responsibility of the vendor (for example an 'off' soft drink) and the issue is unresolved by the vendor, the escalation path for the issue is to the state Fair Trading offices or other consumer bodies charged with regulation of the particular vendor's business.

Billing disputes

ACIF has prepared two Codes, enforceable on all C/CSPs, that provide for the resolution of disputes over unauthorised charges:

- [ACIF C518:2000 Call Charging and Billing.pdf](#); and
- [ACIF C542:2003 Billing.pdf](#).

AMTA considers that current approaches to billing provide adequate protection and no additional consumer protection measures are required.

Role of the Telecommunications Industry Ombudsman (TIO)

The TIO is an effective escalated complaints handling body for C/CSP consumer complaints. AMTA believes the TIO will continue to be effective in resolving escalated M-commerce complaints where the unresolved issue specifically involves the C/CSP responsibilities in an M-commerce transaction –ie. carriage and billing.

M-commerce issues that directly involve vendors may fall outside the cope of the TIO, however as discussed above most of these matters already fall under the jurisdiction of other agencies and regulatory schemes such as the TPA and state *Fair Trading Acts*.

Theft and fraud

Customers usually notify the C/CSP of lost/stolen SIM cards and handsets to suspend the service. Additionally, most standard forms of agreement between C/CSPs and their customers require customers to advise the C/CSP of lost or stolen SIM cards. The C/CSP will then be responsible for suspending or blocking the SIM card so that calls cannot be made on that card. Customers will not be liable for any charges incurred after the SIM card has been blocked or suspended. Additionally, customers have a range of tools which they can activate to protect themselves against unauthorised use of their handset, including handset PIN locks and various call bars. These are well promoted. For more information on IMEI blocking and other lost and stolen issues, see: <http://www.mindyourmobile.com>.

AMTA recommends that SCOCA seek legal advice on whether the *Electronic Funds Transfer Code of Conduct* applies to m-commerce as AMTA has defined it.

Over commitment

AMTA is concerned about cases of 'over commitment', but notes that such problems appear limited as regards both their incidence and size. While there are individual cases of financial hardship caused by unexpected high (mobile) phone bills, the vast majority of consumers enjoy the benefits of mobile phones without running into financial difficulty. The continued, and increasing, popularity of prepay services combined with numerous other initiatives to facilitate account management, indicates that the market is already responding to such issues.

The problem of unexpected high bills/over commitment is at its very core an issue of consumer disclosure. High bills do not create problems where they are expected. Accordingly, addressing the issue of high unexpected bills fundamentally requires addressing the issue of customer expectations. This involves ensuring full and frank disclosure at each point of purchase, and the continual development of tools to assist consumers to manage their spending. C/CSPs already offer a range of measures to assist consumers to make informed account management decisions.

As it appears that over commitment is most likely associated with unsustainable use of phones for socially-driven reasons – which are most appropriately addressed through financial literacy programs and through provision of information – AMTA believes that it is best to focus efforts in this area. AMTA and its members have produced and are distributing information to better educate consumers. Additionally AMTA and its members are working with relevant agencies including the ACA on its recent “Unexpected High Bills” paper, and the Financial Literacy Taskforce. AMTA continues to work with these entities to provide an appropriate response to the issue.

Content

AMTA agrees that technology is constantly and rapidly developing and has the potential to succeed in restricting access by particular classes of people to particular content. Some consumers may wish to bar all restricted content unless express requests have been made for access. Other consumers may wish to have the full range of content services made available to them to then restrict as necessary. The issue is how to assist account holders, in this case parents and carers, to manage this risk of end users who are minors accessing inappropriate content.

AMTA and its members have made submissions to the relevant agencies and authorities regarding the issue of access to content, including the Department of Communications, Information Technology and the Arts (DCITA), the Australian Communications Authority (ACA) and the Australian Broadcasting Authority (ABA). AMTA holds that these entities are best positioned to continue to deal with the content issue. AMTA continues to work with these entities to provide a consistent regulatory approach to content.

Privacy

AMTA considers that the *Telecommunications Act 1997* and *Privacy Act 1988* provide suitable protection for consumers in the e-commerce space and are therefore adequate in the M-commerce sphere. Protections are also provided by the ACIF SMS code and the ADMA Mobile Marketing Code of Practice. In addition, C/CSPs have contractual measures in place to safeguard consumers' personal information.

Camera phones

AMTA has issued two media releases in respect of camera phone issues:

[Camera phones: fun when used wisely Wednesday, 30 June 2004](#)

[AMTA Position Statement Mobile Camera Phones: User Sensitivity not Extra Legislation Thursday, 24 June 2004](#)

AMTA does not consider it necessary to follow the approach of the Korean government to require domestic mobile phone manufacturers to ensure that mobile phones emit a loud, shutter-like click or noise when the camera is activated. Such measures are disproportionate to the issue and would need to apply to all digital cameras, VCRs and recording devices.

Spam

AMTA is of the view that all M-commerce related spam issues are already effectively addressed by the *Spam Act 2003*.

E-money

Since M-commerce currently operates in the context of micro-payments, AMTA believes there is no need for mandated levels of disclosure from companies involved in m-commerce transactions about the sorts of security systems used as SCOCA suggests. Such companies may choose themselves to market security as a competitive advantage; however market forces will enable consumers to choose the best security features to suit their circumstances.

The regulatory framework

The current commercial environment, including the TPA, FTAs and various industry Codes, as applicable, provide sufficient framework and consumer protections for the delivery and use of M-commerce services. Again, AMTA's believes (sounds less aggressive) that additional regulatory measures are unnecessary unless there is evidence in market failure.

The role of regulation in the M-commerce space is to assess the operation of the market, identify any inefficiencies or market failures, and to propose measures to address these inefficiencies without detracting from successful market outcomes that have already been achieved. This same role also applies in respect of other emerging mobile phone products or services. Both industry and regulators should combine their efforts in addressing consumer issues so as to further the growth and development of mobile services in an innovative, competitive and efficient environment. Regulatory approaches that are inefficient, inappropriate or inequitable in their application to the issues will only discourage investment and innovation and ultimately hamper the development of M-commerce and the mobile communications market generally.

AMTA observes that regulatory responses tend to be targeted at C/CSPs, however other more appropriate responses to the M-commerce issues will need to be considered as m-commerce becomes more complex, especially through increasingly complex supply chains. This is especially so with the increase in both the range of products that may be received by customers and the mechanisms by which they may be received; however the common link in M-commerce remains the C/CSP billing platform regardless of who the supplier or vendor of the services is.

AMTA strongly encourages close liaison amongst the mobile industry on issues at first instance to identify and define evidenced issues, and secondly to provide a platform for constructive discussion and consultation with all stakeholders to develop options to address those issues. In the M-commerce space the operation of the market itself is likely to drive the availability of M-commerce and the development of consumer protection measures that will underpin consumer demand and take up of M-commerce without the need for a dramatic increase in regulation. AMTA recognises that there will be cases that arise where the market has failed to adequately respond to an issue and in these instances AMTA welcomes the opportunity to contribute to the policy making process towards a solution.