



15 August, 2014

John Stanton – CEO
Level 12, 75 Miller Street, North Sydney NSW 2060
Communications Alliance

Dear John,

ACCAN would like to thank Communications Alliance (CA) for the opportunity to comment on a review of the Mobile Premium Services Industry Code ('the Code'). ACCAN believes most of the suggested amendments are useful updates which help clarify consumer protection obligations. However we are concerned that the wholesale removal of compliance reporting is likely to significantly undermine self-regulatory best practice, lead to an increase in consumer complaints and subsequent reputational damage for telecommunications providers.

Privacy and charging for STOP Messages amendments (amendments 1 and 2)

ACCAN is pleased to see these amendments bring the Code up to date with the Australian Privacy Principles and plug a loophole in charging excessive rates for processing opt-out requests. It is important that codes remain responsive to change and that their intent is not undermined. Therefore we endorse these two proposed amendments.

Telstra proposed amendments

We are disappointed that some of Telstra's proposed amendments are not adopted and encourage Communications Alliance to reconsider these suggestions.¹

Telstra's first amendment would lead to improved consumer understanding that some Mobile Premium Services (MPS) are offered on a subscription basis, making it clearer that there are *ongoing* cost implications. The second proposed amendment relates to automatically ending the relationship with a Customer when messages fail to send and receive for 30 days, rather than the currently stipulated 60 days. The third amendment would create a new requirement to reconfirm a subscription service every three months, otherwise it would automatically lapse. Both of these measures would vastly reduce the risk of consumers accumulating large debts for subscription services. Both appear sensible and it is telling that Telstra believes the measures are necessary to improve accountability between Content Suppliers and Customers. As such we encourage Communications Alliance to reconsider these proposed amendments.

¹ Telstra, 2014, 'INDUSTRY CODE REVIEW: MOBILE PREMIUM SERVICES (C637:2011) SUBMISSION # MPS 2014_06: TELSTRA', 28/03/2014

Recommendation: Adopt Telstra’s proposed amendments targeted at improving consumer understanding of subscription services and automatic lapsing.

TIO proposed amendments

The TIO highlighted that its complaint statistics indicated the Code would benefit from clarification, particularly around the role that service providers play in giving information about MPS services and resolving consumer complaints about MPS.² These suggestions related to ensuring service providers are aware of their obligation to help resolve MPS complaints and improving point of sale information. The complaint examples provided by the TIO showed situations where consumers were being referred by carriage providers, often on multiple occasions, to content providers who were uncontactable. This poor complaint management practice led to the TIO having to commence conciliation over relatively minor charges. The TIO makes a number of useful suggestions about how the Code could be amended to clarify confusion in these situations.

Another TIO suggested method of future proofing the MPS Code is to include clarification around app and in-app purchases. Complaints from these services are likely to present to telecommunications providers in a similar manner to MPS, when app purchases are charged via ‘carrier billing’ as is the case for MPS. With Optus and Telstra recently activating carrier billing through the Google Play Store, this payment method is likely to become more popular.³ As the TIO sample complaints highlight, there is confusion among consumers and service providers about the appropriate remedy for this problem.⁴ Some providers appear to be giving advice which is targeted at MPS when the problem relates to an app. Therefore, clarifying appropriate processes for dealing with app complaints and adequately distinguishing them from MPS complaints will improve the operation of the MPS Code long term.

Replacing sections of the Telecommunications Service Provider (Mobile Premium Services)

Determination 2010 (No. 1) (amendment 3)

We are aware the ACMA is currently reviewing sections of this Determination with a view to removing some obligations. ACCAN remains supportive of maintaining the obligations to inform consumers about barring when a public mobile telecommunications service is acquired, and when a consumer makes an inquiry or complaint. We are glad to see the Code adopting the information requirements in the later obligation. However, we believe there is merit in also transferring the obligation to inform upon purchase from the Determination to the Code, so that consumers are better able to proactively avoid incurring unwanted MPS charges.

The proposed amendment to include Section 12(6) of the Determination does not carry with it the specific information a customer should be told when inquiring or complaining about MPS. The second and third highest TIO complaint issues for MPS relate to inadequate/incorrect advice and assistance about an MPS problem.⁵ The information requirement in Section 11 of the Determination is designed to remedy this very problem. The section precisely outlines what a consumer would

² TIO, 2014, ‘Review of the Mobile Premium Services Code (C637:2011)’, 7 April, 2014

³ <https://support.google.com/googleplay/answer/2651410?hl=en-AU>

⁴ TIO, 2014, ‘Review of the Mobile Premium Services Code (C637:2011)’, 7 April, 2014

⁵ TIO, 2014, ‘Telecommunications Industry Ombudsman submission – Review of the Mobile Premium Services (MPS) Code’, April 2014, p.5

reasonably be required to know in order to bar a service. In other forums industry has argued that precise information requirements unduly limit the flexibility in how service providers communicate with their customers. We do not believe this is the case in this instance. The information requirements in Section 11 include:

- Describing what a premium SMS and MMS service is,
- How charges are incurred,
- How MPS may be barred,
- The barring process, and
- Complaint mechanisms

Further, mobile carriage providers are directed to give this information in a clear, concise, efficient and prominent way. Rather than onerous requirements, this section could be better described as a model approach to providing useful information on which consumers can act. ACCAN believes that not transferring this requirement into the Code may lead to spikes in these complaint categories.

Recommendation: Amend Code to include obligation to inform about barring when a mobile telecommunications service is acquired.

Recommendation: Amend to include specific barring information.

Removal of compliance reporting (amendment 4)

While ACCAN notes commitments from Optus, Telstra and Vodafone Hutchinson Australia to undertake 'industry monitoring activity, we maintain this is a poor substitute for open and accountable compliance monitoring and reporting. We acknowledge that the current obligation for quarterly reporting of monitoring activities to the ACMA may not be ideal. Firstly it may now be out of proportion with the extent of the problem in view of the decline in MPS complaints to the TIO. Secondly this reporting is not open to public scrutiny. In recognition of the reduction in complaints, ACCAN would be in favour of a reduced requirement from quarterly to six monthly reporting, but should a sustained downward trend in complaints emerge, we would be open to further engagement with industry on this issue. We also believe that the ACMA should publish a summary of 6 monthly compliance reports and trends, in order to refresh public awareness of MPS, increase accountability by unscrupulous MPS providers, and drive better practices.

A number of Content Service Providers appear to operate a business model built on consumer ignorance and inexperience. This is evident in the nature of the complaints received by the TIO. The overwhelming majority of complaint issues were from consumers claiming they had not requested the service.⁶ This is not the hallmark of a product which should have an obligation for compliance monitoring and reporting removed.

Recommendation: Maintain the obligation for CSPs to monitor MPS, while reducing current reporting obligations to every 6 months, so they are proportionate with the level of consumer detriment. These reports should be made publically available by the ACMA soon after receipt.

⁶ TIO, 2014, 'Telecommunications Industry Ombudsman submission – Review of the Mobile Premium Services (MPS) Code', April 2014, p.5

Conclusion

We recognise MPS complaints are now lower than at their peak when the Code was introduced. While technology change has played a part, we maintain this reduction is largely a result of the success of the MPS Code and Determinations, so consumer protection in this space remains relevant. As such we would urge Communications Alliance to reconsider its draft Code amendments in light of the proposals above. It is also particularly important to heed the future proofing advice of Telstra and the Ombudsman to ensure the Code's consumer protection intent is not undermined.

Sincerely,

A handwritten signature in black ink that reads "Teresa Corbin". The signature is written in a cursive style with a long horizontal flourish at the end.

Teresa Corbin
ACCAN CEO