

Manager, Education & Telephone Content
Australian Communications and Media Authority
PO Box 13112, Law Courts
Melbourne, Victoria, 8010

30 October 2009

Dear Manager,

ACCAN would like to thank the ACMA for the opportunity to respond to the call for public comments on the *Consultation paper relating to the Telecommunications Service Provider (Mobile Premium Services) Determination 2009 (No. 1)*.

About ACCAN

The Australian Communications Consumer Action Network (ACCAN) is Australia's new communications consumer watchdog. The purpose of ACCAN is to improve consumer advocacy, undertake research and analysis from a consumer perspective and to make the market work for communications consumers. The operations of ACCAN are made possible by funding provided by the Australian government.

Introductory Comments

ACCAN welcomes the ACMA's forthcoming Determination that will allow the capability of barring premium SMS/ MMS Services for both post-paid and pre-paid consumers. A Determination that incorporates default barring is not just a complementary safeguard to the Mobile Premium Services Code, it is a fundamental one to ensure the improved safety of Mobile Premium Services (MPS).

While default barring will provide the consumer protection for all Australians, the greatest protection will be for minors, which our research has shown are still heavily vulnerable to false advertising and claims in the relation to Mobile Premium Services.

We are concerned that many of the questions posed in the consultation paper are very specific to Industry. In doing so, they may inadvertently preclude meaningful input from consumer groups. ACCAN notes that the ACMA issued a reminder about comments being due, which appeared specifically aimed at soliciting consumer submissions. ACCAN would appreciate future consultations to be more generically framed, to ensure all stakeholders can provide useful input.



Enforcement of the new Determination will be critical. The 2009 Telecommunications Industry Ombudsman (TIO) Statistics have shown an increase of 28.7% in complaints regarding Mobile Premium Services. ACCAN is aware that the ACMA is currently undertaking 14 formal investigations into service providers who may have breached the MPS Code. To ensure the Barring Determination is effective, the new powers ACMA will have to enforce infringement notices must be applied to service providers who breach the default barring regulation.

Most crucially, ACCAN advocates for default barring to be implemented as part of the Barring Determination for all current and new service providers, beginning July 1 2010. ACCAN suggests that all customers using existing services opt-in to continue their Mobile Premium Services. In order to achieve this outcome, from now until July 1, service providers should take appropriate measures to bar all premium SMS/MMS services and inform consumers of the changes that will occur, specifically highlighting that there is the option to opt-in to Mobile Premium Services if they wish.

Consumer representatives have been campaigning for an adequate MPS resolution for 6 years and believe it is important for regulators to act without delay. This is to contain the sky-rocketing consumer complaints about MPS and manage a significant issue that has caused financial grief for consumers and for Industry, who are forced to address consistent consumer dissatisfaction.

MPS Complaints: A need for default barring

The automatic barring of MPS would involve little or no action to be taken on the part of consumers. This straight-forward approach takes the burden of MPS from consumers and empowers those who wish to utilise such services to opt-in; aiming to provide a solution to and drastic decrease in MPS complaints.

The TIO was the body charged with handling complaints under the MPSI Scheme and now under the MPS Code. In 2008 it recorded the receipt of 13,899 complaints or 1158 complaints per month. 2009 has seen an increase of complaints to 15,653 or 1304 complaints per month.

For the two reporting periods, the complainants' main concern was disputed usage charges; whereby consumers received SMS/MMS services that they had not requested. This was followed by complaints that, in spite of opting out of receiving further services, the opt out request was not acted on. Further issues faced by consumers included: Complaint handling, Information/Advertising and Disputed Admin Charges.

Clearly, the MPS Code and its requirements for customer information, particularly information on opting out of services, have not been effective in stopping industry practice on mobile premium services that has caused such significant detriment to consumers. For consumers, therefore, it is vital that the regulatory mechanism that replaces the MPSI Scheme provides more than just a right for consumers to receive



more information, there must also be a robust safety net that can be understood by consumers.

ACCAN firmly believes that default barring on SMS/MMS services will provide easy to understand and effective protection for Australian consumers.

Default Barring

ACCAN's aim is to promote better protection for consumers ensuring prompt responses to complaints and issues. In light of this, ACCAN's area of expertise and focus lies with the needs of everyday consumers and we will therefore comment on matters relating to this group.

The implementation of the Barring Determination will provide the most benefit to Australian minors. ACCAN applauds the ACMA's various initiatives, including the SpamMATTERS reporting system and the launch of the Cybersmart website, which empower young people to be smart and pro-active in telecommunications. It is important to build on these in default barring regulation and protect the rights of minors in the process.

According to the *United Nations Convention of the Rights of the Child*, which was sanctioned by Australia in 1990, basic protections for youth include:

- right of a child to have their best interests considered (article 3)
- right of a child to receive and have access to information (article 13)
- right of a child to be protected from economic exploitation (article 32)

ACCAN's predecessor the Consumers' Telecommunications Network undertook research in 2008 which highlight young people are vulnerable to misleading MPS advertising which remains problematic despite provisions of the MPS Code. It was found that only 35% of magazine advertisements for Mobile Premium Services indicated an age requirement to subscribe to the service. Moreover, the Internet sites revealed that 26% of advertisements had an age requirement clearly shown. For those that did not make this figure, issues include the age being hidden by a small font, through a separate link in 'terms and conditions', consumers having to scroll down to the very bottom of the page to see the age restriction and also the age written in words instead of numerically, making it harder to see.

The Default Barring Determination would allow children to be protected against the misleading advertising and financial loss experienced through subscribing to premium SMS/MMS services. ACCAN advises that to ensure maximum protection, it is necessary to include a clause about parents' permission if a child wishes to opt into receiving MPS on their handset.



ACCAN Recommendations

1. The ACMA prioritise the protection of Australian children and that the Barring Determination be a provision that ensures minors are automatically protected from misleading MPS advertising.
2. Parental authorisation must be received before a minor can opt in for premium SMS/MMS services.

Timeline for Implementation

It is crucial that default barring of premium SMS/MMS services is implemented as soon as possible and definitely no later than July 1, 2010. Consumer representatives agreed to a compromised version of the MPS Code on the premise that default barring would be a key component of this regulation.

Consumers have experienced ongoing problems regarding bill shock and financial hardship due to MPS use. The ACMA must consider the future financial detriment to consumers if barring is not implemented. In order to do this, it is necessary to access the real complaints levels to service providers about bill shock. This must be included in the deliberations of the ACMA, otherwise the evidence provided and considered by providers is biased and one sided.

ACCAN Recommendations

1. Premium SMS/MMS services to be barred by default from mobile phones no later than July 1, 2010.
2. All current users of MPS to opt-in to receiving the services again if they wish to and actively consent to unbarring MPS from their service.
3. There should be no cost incurred on the part of consumers in either opting in or barring of premium SMS/MMS. Charging for this service may act as an impediment to using this important consumer protection mechanism. It would be difficult to argue that this is a cost-based charge rather than a penalty.



Awareness Raising

ACCAN believes there must be more incentive for service providers to follow provisions of default barring.

In the development of the MPS Code a year ago, there was evidence that providers will not put enough resources into consumer awareness. Consumers were given undertakings by Industry that they would run a campaign about new protection available under the code. This has not occurred even though it was agreed by Industry, consumers and the government that it was an integral part of ensuring the new safeguards actually were beneficial as they relied heavily on proper disclosure.

The Determination must include provisions to enable consumer awareness of MPS barring to increase to adequate levels – similar to when Caller Number Display was introduced to the Australian marketplace. 90% awareness is acceptable - this measurement should be measured by independent marketing research.

Customers should be informed at point of sale in conjunction with Corporate Social Responsibility and through other various forms of communication. ACCAN also suggests an advertising campaign where every MPS advertisement is required to include the contact details of the Telecommunications Industry Ombudsman.

ACCAN Recommendations

1. Consumer awareness to be measured by independent marketing research, with a success rate of 90% awareness in the general community.
2. Premium SMS/MMS advertisements must note the TIO contact details.

Application to outgoing and incoming premium SMS/MMS messages

ACCAN advises that the consequences of lifting default barring must be advised to consumers as part of the Barring Determination.

ACCAN would like the opportunity to respond to any claims of unintended consequences. The occasional irate customer who wants open access to MPS is not an adequate unintended consequence of MPS default barring and should not dictate policy choices. ACCAN firmly believes that if service providers implement the barring of premium SMS/MMS appropriately, consumers will not be adversely affected. Given the unsatisfactory record the telecommunications industry has with customer service, it is likely that this could become an issue. However, it needs to be seen for what it is in that circumstance –namely bad customer service and not a legitimate reason for not implementing a provision with MPS barring options.



ACCAN Recommendation

1. As part of the Barring Determination, service providers explain to consumers, in easy to understand language, the consequences of lifting default premium SMS/MMS barring.

Response to request to activate or deactivate barring

Having regular consultation with consumers, ACCAN emphasises that prolonging the process of default barring is resulting in thousands of complaints lodged and financial detriment experienced by Australians. There should be no justification for either delaying turning barring on or off.

Default Barring should be introduced without delay, as was the case when International Roaming came into existence. The International Roaming model was hastily available and consumers simply had to opt in via telephone and the service would then be active. Default barring of premium SMS/MMS services would prove to be more agreeable to consumers than the International Roaming model, as Australians are not required to do anything unless they would like a service back on their mobile phone.

The MPS Code allows service providers 24 hours to act on a request to unsubscribe from premium services. The Barring Determination should parallel this set time in the case of removing the MPS bar if requested by a customer. ACCAN suggests that if a customer expresses the wish to lift the bar, their request must be recorded by the service providers and the bar is to be deactivated in the following 24 hours.

The impact on the consumer being far greater and the cost of the complaint handling justifies that the choice of default barring of premium SMS/MMS for consumers should be immediately implemented.

ACCAN Recommendations

1. The ACMA ensures default barring is implemented immediately and no later than 1 July 2010 with 24 hours to enact the removal of the bar, when requested.
2. Consumer consent to remove premium SMS/MMS barring must be recorded.
3. Service providers must ensure lifting the premium SMS/MMS service barring is user-friendly, in the same manner as International Roaming.



In summary, ACCAN aims to empower consumers so that they are well informed and can make good choices about products and services. In conjunction with this, ACCAN strongly advises that Australian consumers only utilise service providers that offer adequate barring protections, in relation to Mobile Premium Services.

Should you require more information, please contact Kirisha Thanapalasuheram (Policy Assistant) or Sarah Wilson (Campaigns and Community Liaison Officer) on (02) 9288 4000.

Yours sincerely,



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