



**Telecommunications
Industry
Ombudsman**

Simon Cohen
Ombudsman

30 July 2010

Mr John Stanton
Chief Executive Officer
Communications Alliance Limited
P.O. Box 444
Milsons Point NSW 1565

Dear Mr Stanton

Review of the Mobile Premium Services Code

Thank you for providing the Telecommunications Industry Ombudsman (TIO) with this opportunity to contribute to the review of the Mobile Premium Service (MPS) Code.

I would like to begin by commending the industry and Communications Alliance Limited (Communications Alliance) on the various initiatives undertaken over the past 15 months, including the issuing of the MPS Code in July 2009, to improve practices and customer service/complaint handling in the mobile premium services sector. One effect of these measures, we believe, has been a significant decline in MPS complaints received by the TIO over the past financial year.

The TIO proposes to provide broad comments and suggestions for consideration by Communications Alliance in its review of the MPS Code (the Review), as follows:

- complaints registered by the TIO about MPS
- continuing areas of concern about MPS
- language and structure of the MPS Code
- carriage service provider obligations in the MPS Code
- compliance monitoring of the MPS Code.

Complaints registered by the TIO about MPS

As you are aware, the TIO records complaints according to 4 main service types – landline, internet, mobile and MPS.

In the 2009-2010 financial year MPS complaints formed approximately 2% of all TIO complaints. This is significantly better than previous financial years, where MPS complaints accounted for about 7% to 9% of all TIO complaints.

“... providing independent, just, informal and speedy resolution of complaints”

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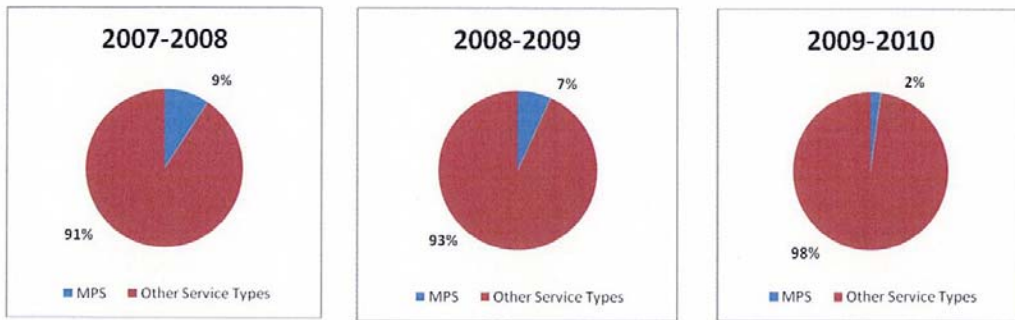
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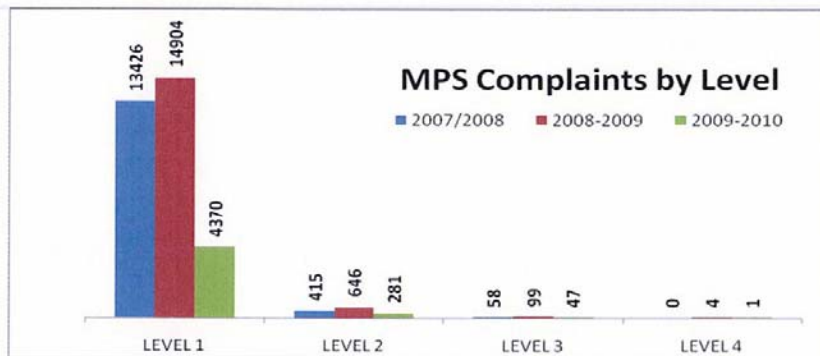
*calls from mobile phones may incur charges

Figure 1: MPS complaints over the past 3 financial years



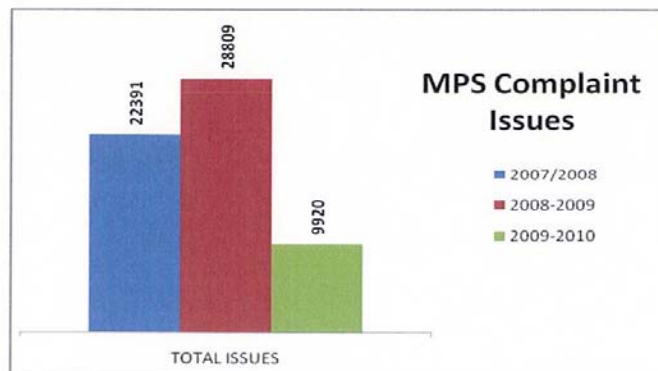
Overall, the drop in MPS complaints between the 2008-2009 and 2009-2010 financial years has been approximately 69.98%. This consists of a 70.67% drop in Level 1 'new' complaints, which follows an increase of approximately 11% between 2007-2008 and 2008-2009. It is also the result of a 56.07% drop in 'existing' complaints requiring investigation at Level 2 or above in order for resolution to be achieved, which follows an increase of 58.35% in the preceding financial years.

Figure 2: MPS complaints by Level



Correspondingly, the number of complaint issues recorded by the TIO in 2009-2010 has significantly reduced by 65.56% compared to the previous financial years.

Figure 3: MPS complaint issues

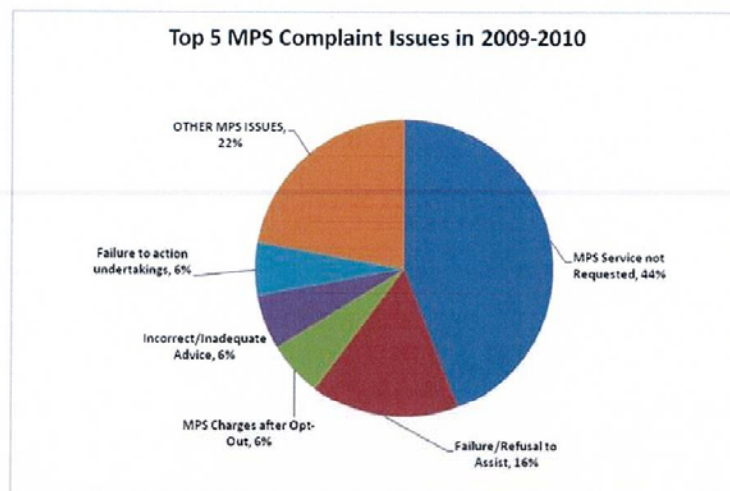


We are encouraged by the concerted efforts to improve industry practices in mobile premium services, which we believe have contributed to the significant decline in MPS complaints and complaint issues recorded by the TIO over the past financial year. We hope to see a continuation of this trend in this current financial year.

Continuing areas of concern about MPS

Despite the above successes, the TIO notes that a number of consumers continue to experience ongoing issues with MPS. The most significant of these is in relation to charges being imposed for MPS products that the consumer claims not to have requested nor consented to. Other common problems include the failure of a content supplier or carriage service provider to provide assistance to a consumer with a MPS related complaint, and the failure of content suppliers to cease billing immediately upon receipt of a consumer's opt-out request.

Figure 4: Main MPS complaint issues in 2009-2010



We have included as an appendix to this submission, a schedule of the most common MPS complaint issues received by the TIO during 2009-2010 including their corresponding MPS Code provisions, for your further information.

It is the TIO's view that the ongoing issues that consumers face in relation to MPS may be the result of the following:

- important consumer protections within the MPS Code may be obscured by complexity in the structure of and language in the MPS Code
- the MPS Code does not provide sufficient guidance for carriage service providers
- limited compliance monitoring of the MPS Code across all industry participants.

These issues are discussed in greater detail below.

Structure and Language of the MPS Code

The TIO is concerned that the existing provisions of the MPS Code may not be easily comprehensible to consumers, members of the TIO Scheme or content suppliers, because of the complex language and structure in the document. The specific concerns about this complexity include the following:

- The MPS Code places considerable emphasis upon the difference between subscription MPS products and non-subscription MPS products, the result being that the Code contains a great deal of repetition. By way of example, we note the wording of Clauses 4.3.4 and 4.4.5, which both mandate the provision of an expenditure notice to a consumer each time they spend another \$30 on an MPS product. The TIO suggests that a single clause requiring the expenditure notice for all types of MPS products would suffice.
- Another characteristic of the MPS Code that makes the document difficult to navigate and understand is the segregation of obligations according to how an MPS product is purchased by the consumer. The effect of this, in the TIO's view, is that important consumer protections are not only repeated within the Code, they may be obscured by complex language and multi-tiered clauses. This is of particular concern for the 'double opt-in' obligations, of which there are currently four different versions in the MPS Code. The issue of charges imposed for unrequested MPS products remains easily the most common MPS issue handled by the TIO, and any steps to reinforce these obligations or make them easier to understand and apply, would benefit consumers.
- A reader can lose track of the overarching intent of an MPS Code provision because a clause may contain obligations within obligations, and often also refers to obligations contained under clauses within entirely different chapters. By way of example, we note the complexity in Clause 4.4.3(a)(iii)(D)(bb) and Clause 5.2.2(d)(ii)(B)(aa)(2).

Although the TIO appreciates that the highly prescriptive and operational nature of the MPS Code may have been chosen to set minimum standards for mobile premium content suppliers and carriage service providers, there is a risk that the document is regarded more as an operations manual rather than a consumer protection Code. The underlying consumer protection principles may be lost.

As the MPS Code is designed to protect consumers, it should be capable of being easily understood by consumers and by the customer-facing employees of a content supplier or carriage service provider dealing with MPS matters. To some extent, this issue is reflected in a perceived failure by providers to give assistance to consumers, who then approach the TIO – where this is the second most common MPS complaint issue we deal with.

As such, we suggest that the following general structural matters might be considered in the Review:

- The use of plain English, short sentences and simpler structure throughout the MPS Code would make the document far more comprehensible to consumers. This would also make the Code simpler for service providers to apply. One possible mechanism to achieve this may include plain English summaries of the various protections in the Code.
- It may be useful for the language of the MPS Code to reflect 'what the customer has the right to expect' as opposed to 'this is what the industry should do'.

Carriage Service Provider Obligations

Although the MPS Code is very prescriptive about the obligations of content suppliers, the TIO notes that the MPS Code contains limited guidance for carriage service providers. The TIO considers this may be a particular problem for proprietary network services, and the information about MPS that consumers should be getting from their carriage service providers at the point of sale.

Whilst the Australian Communication and Media Authority's new MPS Barring Determination has addressed some of the gaps in relation to the point of sale advice about MPS, the issue of proprietary network services remains a point of concern for the TIO. By way of example, the MPS Code does not currently provide the same level of assistance/protection to consumers wanting to opt-out of proprietary network subscriptions as it does to consumers using other types of MPS subscriptions, and

that this in turn provides limited guidance to service providers about how to address this issue. The following case study illustrates this issue:

Case Study (Note that this complaint is relevant to both the MPSI Scheme and the MPS Code)

The complainant contacted the TIO on 18 September 2009 regarding an MPS subscription that he claimed to have been receiving for approximately one year at a cost of \$4 per week. The complainant claimed that he had never requested the MPS subscription, and that despite his carriage service provider repeatedly advising him that MPS would be blocked, he continued to receive the MPS. The complainant advised the TIO that he was seeking a waiver of all charges imposed for the unwanted MPS, and that he would like MPS to be blocked from his handset as he has previously been promised.

When it responded to the TIO at Level 2, the carriage service provider advised that it had barred the complainant's service from receiving MPS, and that it would apply a credit of \$223.63 to cover the MPS charges billed to the complainant's account. Although the complainant advised the TIO that he was happy with this resolution and his complaint was subsequently closed, the TIO was required to re-open and escalate the complaint to Level 3 in December 2009, because the complainant asserted that he was again receiving unsolicited MPS on his mobile.

In the carriage service provider's Level 3 response, it advised that the disputed MPS charges were for a 'ringtone of the week' product supplied via the carriage service provider's own proprietary network service. The carriage service provider confirmed to the TIO that the complainant was now unsubscribed from the unwanted ringtone product, and supplied an additional account credit of \$17.57 to cover the amounts charged in error. As a gesture of goodwill, the carriage service provider also credited the complainant's account with an additional \$63.30.

The complainant informed the TIO in late December that he appeared to have finally stopped receiving MPS messages, and the complaint was closed in late January 2010.

The TIO considers it important that the users of proprietary network services have access to the same protections as the other users of mobile premium content – such as the double opt-in, the ability to opt-out using a STOP message, and receiving a subscription cancellation confirmation message. The TIO proposes that the MPS Code incorporates greater clarity and guidance for carriage service providers in relation to their obligations when providing proprietary network services, to the extent this may not already be addressed by the TCP Code.

Compliance monitoring of the MPS Code

Although complaints about MPS to the TIO have decreased significantly since the MPS Code was issued, there are still a substantial number of consumers who still require the TIO's assistance to resolve their MPS complaints. In all likelihood, this reflects only a small proportion of consumers who are not satisfied with or have issues about the MPS products they receive.

To further improve the effectiveness of the MPS Code, a proactive process of monitoring compliance with its provisions will enhance consumer protection in this area.

Conclusion

In conclusion, the TIO believes a strengthened and improved MPS Code will continue to drive improved industry behaviour and enhanced consumer protection. Better monitoring of compliance with the MPS Code provisions needs to also be a key outcome of the Review.

We would be pleased to provide Communication Alliance with further complaint or code data, or case studies if these are required.

Please contact Shobini Mahendra, Manager Policy, Research & Quality Assurance, on 03 8600 8700 if you have any questions about this submission.

Yours sincerely


Simon Cohen
Ombudsman

Appendix

Top 10 MPS Complaint Issues 2009-2010	No. of Issues 2009-2010	Examples of Relevant Code Clauses
Charges imposed for an unrequested MPS product	4,089	MPS Code - 5.1.1(b)
Failure of a content supplier or carriage service provider to provide assistance to a person with a MPS related problem	1,498	MPS Code - 6.1.1(a), 6.1.6 and 6.1.8
Charges imposed for an MPS subscription after the customer has asked to opt-out of the subscription	563	MPS Code - 7.1.1(b)
Failure of a content supplier or carriage service provider to provide correct and/or adequate advice about MPS	547	MPS Code - 4.1.3, 4.4.2 and 4.4.3
Failure of a content supplier or carriage service provider to action the undertaking it has made to resolve a consumer's complaint	533	MPS Code - 6.1.1(e) TCP Code - 9.1.1(f)
Inability to contact an MPS content supplier	491	MPS Code - 6.1.1(b) and 6.1.4
Failure of a content supplier or carriage service provider to action a customer's request to opt-out of an MPS subscription	319	MPS Code - 7.1.1(a) and 7.2.2
Consumer has not been made aware that they are entering into an MPS subscription service instead of making a once-off purchase	131	MPS Code - 3.1.2(a)(ii), 4.1.3(e), 4.1.3(f) and 4.4.3
Failure of a content supplier or carriage service provider to refer a dissatisfied complainant to the TIO where their own attempts at resolution fail, or where the customer asks for this referral information	117	MPS Code - 6.1.16 TCP Code - 9.4.1(b) and 9.4.2
Failure of a content supplier to issue an expenditure notice each time their customer spends an additional \$30 on MPS within a calendar month	95	MPS Code - 4.4.5 and 4.3.4