



Communications Alliance
Level 9, 32 Walker Street,
North Sydney, NSW, 2060

29 July 2010

RE: Mobile Premium Services Code Review

Dear Communications Alliance,

Be.interactive appreciates the opportunity to provide input to the Mobile Premium Services Code review committee.

Overview

Be.interactive supports the concept of an Industry Code which is jointly agreed, universally and impartially applied and subject to monitoring and penalty for breach.

Be.interactive believes that the Code and monitoring have reduced complaint levels, both for TIO complaints and for carrier front-of-house complaints. We feel that the code in its current form is largely achieving the industry's stated goals for consumer protection, and any substantive change at this time would be unnecessary and unwarranted.

The review of the Code allows an opportunity to address some of the areas that the Code itself is unintentionally unclear. This leaves the Code and the Guidelines open to interpretation which has caused some frustration in the compliance and monitoring of the code. The situation has been further compounded since WMC, who are actively monitoring the market, are contracted to the carriers and are monitoring based on carrier standards based on the Code, rather than on the Code itself.

At the time of the Code being drafted, there was a focus on the main 'problem area' of subscription services, which meant that the impact on other service types was not always fully thought through, but became evident after acceptance and implementation.

Detailed comments below are intended mostly to clarify, with minimal change to the requirements of the Code itself.

Detailed Comments

Sections of the Code are referenced throughout.

3.1.2.iii	We note that 'sufficient proximity' has been the subject of much dispute and varied interpretation.
-----------	---

	The various interpretations of 'sufficient proximity' has resulted in the SMS cost being requested to be printed numerous times on the one page where the SMS number is printed more than once on the same page as well as being included in the fine print. This seems excessive when it can be within one paragraph.
4.1.3 (d)	We understand that this may have been an error in drafting and that the intent here was to advise where 'additional data carriage fees' may apply. We suggest rewording to 'additional fees including but not limited to data carriage fees'.
4.2.2	We note that the Short Code Lookup Database is not yet live, although we understand the launch is imminent.
7.1.3.b.ii	See comments in Definitions section above. It appears that legalistic application of this clause would mean each and every 'STOP' message required the CP to issue a refund of (\$0.25 less carriage fee). The only way to do this would be to contact asking for full details and then send a cheque. We do not believe this is what the industry or the regulator intended, and recommend revision of this clause using a 'Standard Cost SMS' definition.

The STOP Command: interaction of the MPS Code, the Spam Act and Barring

Recent PSMS Barring changes have had an effect on how well this command works – it is no longer the 'universal opt out' which was set as an industry standard years ago.

The key points are:

- Clause 7.2.1 (b) of the MPS Code states that Content Suppliers are 'where practical' required to use 'reply STOP' as an unsubscribe or opt-out mechanism.
- Carrier implementation of barring has rendered this 'reply STOP' methodology unworkable for any Customer who has barred PSMS, yet receives a marketing message.
- The Spam Act requires all commercial electronic messages (including PSMS marketing messages) to include a functional unsubscribe capability. ('Unsubscribe' in the context of the Spam Act being 'opt out' in the context of the MPS Code.)

The interaction of the three points above in essence mean that all PSMS marketing messages should now include TWO opt-out mechanisms: a STOP reply, plus either a website or a 1300/1800 number for consumers whose access to PSMS is barred. This increases the 'compliance' character usage and leaves less space for the actual marketing message.



From a consumer perspective:

- The promise of the last few years ‘just send STOP and it will go away’ is no longer universal. This is especially disappointing after the industry-wide progress and improvements of the last 12 months.
- Getting explanation of when STOP will work and when it won’t work just got complicated.
- Easy opt-out functionality with no change of device / communication methodology is no longer universally available.

While this may not be strictly a MPS Code Review issue, we raise it because of its impact on what we understand to be the fundamental purpose of the Code – a universally applicable set of standards which underpin consumer confidence and trust in the industry.

As an industry, we are ‘letting down’ consumers by not having a universally functioning STOP command. Anything we can do to bring this universal functionality back should be considered.

Regulation of 55 cent MO services (Non-subscription)

55 cent MO services are primarily used for trade promotions, competitions and television voting services. 55 cent MO is deemed by ACCC to be a "free entry mechanism" since it is the same price as a postage stamp. Yet it is treated by MPS code the same as higher MT tariffs. Bearing in mind this and also the fact that 55 cent MO services (in Be.interactive's experience) account for a very low proportion of consumer complaints and are predominantly used by major brands and media companies.

Clarification within the Code on requirements for these 55 cent MO (non-subscription) services as opposed to subscription, content and other higher tariff services would be welcomed.

Yours sincerely

Leah Handley
Client Service Director