

Optus submission to the Mobile Premium Services Code review – July 2010

Optus is a leading integrated national telecommunications provider, delivering innovative communications, information technology and entertainment services to our customers.

Our objective with respect to the Premium SMS (PSMS) industry is for services to be provided in a responsible, well managed, innovative and sustainable market in which consumers can benefit from and enjoy services in an environment they can trust.

As such, Optus has consistently taken a leadership role regarding industry initiatives and activities related to PSMS services. This has included our involvement in the development of the current MPS Code and its Guidelines; our engagement of a third party (WMC Global) to undertake a comprehensive and ongoing in-market PSMS compliance monitoring and enforcement program; and our role in the creation of the 19sms.com.au consumer information website (hosted by Communications Alliance).

Contemporary PSMS environment

The contemporary PSMS environment is dramatically different – and improved - to that which existed 12-18 months ago:

- The Code itself provides substantial and improved consumer protections which cover each stage of the customer lifecycle.
- Since the Code came into force on 1 July 2009, consumer complaints have reduced consistently and significantly.
 - For example, industry-wide complaints to the TIO declined by over 70% between July 2009 and April 2010; for Optus, the decline was over 80%.
 - Less than half of one percent of Optus customers who use PSMS services raise a complaint to Optus.
- Since September 2009 Optus has managed, through a specialist third party, WMC Global, a comprehensive in-market monitoring and compliance program.
 - This program focuses on intercepting and analysing PSMS advertisements and SMS message flows for compliance with the MPS Code and Optus' own compliance policy. Since it began, over 30,000 PSMS advertisements have been intercepted and analysed.
 - The results have been very positive. For example, compliance with PSMS advertising obligations (such as prominently stating that a service is a subscription, providing a local- or free-call helpline, and displaying pricing information in close proximity to the call-to-action) has increased in the order of 65-85% since September 2009.
- ACMA has also been engaging in compliance monitoring of the Code.

- For example, according to an ACMA media release on 14 September 2009, the regulator had 14 formal investigations into Code compliance on foot.
- ACMA has also used its information-gathering powers to require Optus to provide detailed information related to customer service and complaints-handling matters.
- Furthermore, additional PSMS-related regulations have been made by ACMA or are in the process of being made – with respect to PSMS barring; and forthcoming restrictions on contracting with PSMS content providers and billing for PSMS services under specific circumstances.
- And greater consumer resources and information is available from a variety of sources, such as the 19sms.com.au website hosted by Communications Alliance, which also includes a “service finder” tool to provide information on specific 19x numbers; and web-based information provided by Optus and other carriers, the industry association AMTA, and regulators.

Code review scope

Further to the points outlined above, Optus believes that a solid framework is in place to provide substantial and sustainable consumer protections with respect to PSMS services; and that key areas of earlier concern have been (and are being) addressed.

As such, Optus does not believe that a fundamental revision of the Code is necessary or warranted. However, based on our practical experience over the last 12 months of being subject to the Code and, more pertinently, seeking to monitor compliance with it, we feel that there could be benefit in re-opening the Code to consider some limited revisions to particular sections that may improve clarify, close gaps and/or make implementation more efficient:

The issues that we consider worth considering for revision include those related to:

- With respect to double opt-in obligations, clarifying the specific circumstances in which it is necessary for a Content Supplier to send a subscription request message;
- Improving the obligations related to Content Supplier and PSMS service information provision in circumstances where a Content Provider may sub-aggregate a short code to other parties - to ensure that consumers have clear information about which party to direct any queries/complaints in all cases;
- Revision of clause 4.1.3(b) to require a Content Supplier to advise that carriage fees will/may apply only when this may occur, recognising that some PSMS services do not incur carriage fees;
- Including a requirement that for PSMS services which are priced on a per message basis but structured such that multiple messages are sent per customer message, that this is made clear to the customer in advertising.

Notwithstanding our comments above, Optus notes that we and other parties subject to the Code have made significant investments in systems and processes to fulfil our obligations under it. It needs to be acknowledged that there can be costs as well as benefits to providers and consumers in making changes to regulatory rules, such as the costs associated with redesigning and restructuring systems and processes.

Any consideration of revisions to the Code should therefore consciously and genuinely take into account in its decision-making the benefits and the costs of all potential changes – with changes made only if the benefits outweigh the costs.

Proprietary network services

Optus notes that proprietary network services, such as Optus Zoo services, are also regulated by the Code, though the obligations placed on these services differs from that placed on PSMS services.

This differential regulation recognises that proprietary network services operate fundamentally differently than PSMS services. With respect to Optus' provision of proprietary network services, the former are Optus Zoo services offered by Optus directly to our customers in the same way that we offer other services to our customers; whereas PSMS services are content services provided by relatively anonymous third party providers using our mobile network as a channel to market.

Optus does not believe that it is necessary to revise the rules governing proprietary network services.

Emerging mobile-based services

The mobile-based commerce and content services space is at an early stage of development and innovation as new technologies emerge and new business models and opportunities are explored; for example, RFID ("wave and pay"), WAP-based payment services and other mobile payment services.

Optus would note though that the MPS Code consists of detailed service-specific rules crafted to address particular matters related to (primarily) PSMS. That is, the Code has limited direct relevance to these types of emerging services – not least because as at the time of writing it is not even clear how such services may ultimately evolve.

As such, Optus believes that the MPS Code review should ensure that its focus remains on the issue at hand – specifically, what revisions may be appropriate to improve its functionality as the code governing PSMS and proprietary network services.