

15 January

Craig Purdon  
Project Manager  
Communications Alliance  
By email: [c.purdon@commsalliance.com.au](mailto:c.purdon@commsalliance.com.au)



Dear Craig

**Re: DR C637:2019 Incorporating Variation No.1/2020 (Mobile Premium Services Industry Code)**

ACCAN welcomes the opportunity to offer feedback on *DR C637:2019 Mobile Premium Services Industry Code* (the **draft Code**).

ACCAN has engaged extensively with the Mobile Premium Services (**MPS**) policy context in the past. Historically, there has been significant and systemic consumer harm associated with poorly managed and fraudulent MPS billing arrangements.<sup>1</sup> According to ACCAN's past estimates, the material consumer loss incurred by some industry players through unlawful MPS conduct sits at a minimum of \$47.64 million.<sup>2</sup> Consequently, it is of the utmost importance that careful consideration is taken when amending existing consumer safeguards surrounding MPS rules.

In ACCAN's view, it is reasonable to transfer safeguards currently contained in *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1) (Determination 1)* into the MPS Code, so long as all provisions in Determination 1 are captured within the Code. This is largely the case. However, ACCAN has identified one key provision in Determination 1 that appears not to have been incorporated in the draft Code: the requirement to provide a customer-convenient service to facilitate the barring of MPS services.

Part 8 of Determination 1 outlines the requirement to provide a customer-convenient service:

*(1) Without limiting subsection 7(3), the mobile carriage service provider must provide a **customer-convenient service** that assists a customer to request the barring of all premium SMS and MMS services in relation to a public mobile telecommunications service supplied by it to the customer.*

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<sup>1</sup> Ipsos 2017, *Mobile third party billing: Consumer experiences and expectations*, prepared for ACCAN, <https://accan.org.au/our-work/research/1400-third-party-charges-consumer-experiences-and-expectations>

<sup>2</sup> ACCAN 2019, *Draft Mobile Premium Services Code (DR C637:2019) – Submission by the Australian Communications Consumer Action Network*, <http://accan.org.au/files/Submissions/ACCAN%20submission%20to%20the%20Draft%20Mobile%20Premium%20Services%20Code%20DR%20C637%202019.pdf>

- (2) A customer-convenient service means a service which:
- (a) ensures that a request mentioned in subsection (1) is **received promptly** by the mobile carriage service provider; and
  - (b) is **convenient** for the customer to use; and
  - (c) does not require the customer to **use a postal service or to attend at any location in person**; and
  - (d) can be **accessed by each of the methods by which the mobile carriage service provider ordinarily enables the customer to communicate** with the mobile carriage service provider in relation to the customer's public mobile telecommunications service.<sup>3</sup>

It is essential this provision is transferred to the draft Code to ensure consumers do not become subject to unduly onerous processes for barring MPS. Retaining this rule will build consumer confidence that the industry can and will effectively manage the barring of MPS in a co-regulatory context.

Additionally, it is ACCAN's view that the ACMA's Do Not Bill powers contained in Part 3 of *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2) (Determination 2)* must be retained in a directly enforceable instrument to ensure swift regulatory intervention in the event that an MPS aggregator contravenes the MPS Code and causes significant consumer detriment.<sup>4</sup>

We acknowledge that market changes and comparably low numbers of MPS-related TIO complaints indicate the prevalence of MPS usage is steadily decreasing. However, it has not been demonstrated that appropriate conditions have been met to justify revoking the Do Not Bill powers. These powers should be in place for as long as there is a risk of MPS aggregator misconduct, however minor; this risk will persist so long as MPS is available to in the consumer market.

Additionally, ACCAN's view is that the Do Not Bill powers should be expanded to incorporate any form of third-party billing in order to effectively mitigate the risk of consumer harm. This is because ACCAN is aware that fraudulent third-party billing remains a persistent consumer issue. We are including our recommendations surrounding the Do Not Bill powers to the separate ACMA review on sunseting Determinations 1 and 2.

Thank you again for the opportunity to provide feedback on DR C637:2019. Please do not hesitate to contact me at [Rebekah.Sarkoezy@accan.org.au](mailto:Rebekah.Sarkoezy@accan.org.au) or at 02 9288 4000 should you require further clarification on any of the points raised.

Yours sincerely,

Rebekah Sarkoezy  
Policy Officer

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<sup>3</sup> *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1)* (Cth), S 8, <https://www.legislation.gov.au/Details/F2014C011654>

<sup>4</sup> *Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 2)* (Cth), S 3.10(1), <https://www.legislation.gov.au/Details/F2013C00124>