



Our ref: 51163  
Your ref: DR C637:2019  
Contact officer: Clare O'Reilly  
Contact phone: 02 9230 3854

Level 20, 175 Pitt Street  
Sydney NSW 2000  
GPO Box 3648  
Sydney NSW 2001  
tel: (02) 9230 9133  
[www.accc.gov.au](http://www.accc.gov.au)

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Craig Purdon  
Project Manager  
Communications Alliance  
Level 12, 75 Miller Street  
North Sydney NSW 2060

By email: [c.purdon@commsalliance.com.au](mailto:c.purdon@commsalliance.com.au)

Dear Mr Purdon,

**RE: Mobile Premium Services Code – ACCC submission to public consultation**

Thank you for the opportunity to comment on the revised Mobile Premium Services Industry Code (DR637:2019) (MPS Code) issued on 11 April 2019 for public comment.

As you know the ACCC has received many complaints about third party charges, and has taken enforcement action against both Telstra and Optus. In both cases, pecuniary penalties of \$10 million were imposed on the mobile network operators and millions of dollars in refunds made to consumers. In the Optus case, its customers were charged around \$195 million for the content and Optus earned about \$65.8 million net revenue from its third party billing service.<sup>1</sup> In the Telstra case, its customers were charged around \$202 million for the content and Telstra earned \$61.7 million net revenue from its direct carrier billing service.<sup>2</sup>

The ACCC has a strong interest in ensuring that these types of breaches of the *Competition and Consumer Act 2010*, and the related magnitude of consumer harm, are not repeated. With this as our starting point, we have considered the proposed changes to the MPS Code and note that while there are some important improvements, such as the broadening of the scope of the Code to include Premium Direct Billing Services, the proposed changes do not address all of our concerns.

**ACCC's key issues**

We have long advocated for stronger safeguards for consumers in relation to third party charges (or 'premium direct billing') as is evidenced through our submissions to the most recent review of the Telecommunications Consumer Protections Code (TCP Code). We understand the forum for considering those submissions has been shifted to the present MPS Code Review.

In summary we support the following safeguards in relation to third party charges:

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<sup>1</sup> See: <https://www.accc.gov.au/media-release/optus-penalised-10-million-for-misleading-customers-over-digital-purchases>, and see para 16 of the Amended Statement of Agreed Facts and Admissions: <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2019/2019fca0106>

<sup>2</sup> Telstra: <https://www.accc.gov.au/media-release/telstra-to-pay-10-million-for-misleading-premium-billing-charge-representations> and see Para 25 of the SOAF: <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2018/2018fca0571>

### *Activation, Double opt-in and customer identity verification*

- Two mandatory steps should occur before content can be purchased (as suggested by ACCAN), namely: activation of the Direct Carrier Billing facility by a customer and double opt-in for each third party billed service.
- Importantly both of these mandatory steps should require customer identity verification, to prevent the possibility of unauthorised charges and to be sure purchasing of the service is intentional and not inadvertent.
- Double-opt in needs to be carefully defined if it is to function as an adequate safeguard. For example, a 'double-opt in' which simply includes a second 'click' by a customer (e.g. tickbox or other hyperlink) is inadequate. We know this approach is inadequate because of the amount of unauthorised purchases that occurred after Telstra and Optus each introduced a 'double-opt in' tick-box process.
- The use of the term 'double-opt in' should not be used where the process only involves a second click. As noted above and based on complaints to the ACCC and TIO, a second click is unlikely to be a sufficient safeguard to prevent unauthorised charges occurring. There is also a risk that family members such as children would be at risk of incurring charges on an account holder's bill given the ease with which a consumer using an application can deliberately or inadvertently click on a 'purchase trigger'.<sup>3</sup>
- Finally, customers should be required to complete identity verification for each new purchase or subscription in the form of a password, PIN, SMS code, login to RSP account or similar.

### *Spend limit of \$50 is high and should include new and existing customers*

The proposed new spend limit is a significant improvement. However, it would be even more effective at minimising consumer harm (by limiting charges from inadvertent, unauthorised, and fraudulent services) if it was set at \$0 or, if that is unacceptable, at the lower end of the spectrum, for example \$20. The limit should apply to all customers, new and existing.

The ACCC considers that these basic safeguards are required in the MPS Code to protect consumers from unknowingly acquiring content services and incurring third party charges and to ensure RSPs refrain from contravening the Australian Consumer Law.

Industry members have submitted that additional changes would impose significant business costs. However, we consider that the provisions could be included in the Code, but only activated if a provider proposes to, or is offering third party billing services. As both enforcement actions demonstrate, the costs to consumers is also very significant and it is unlikely that all consumers would have been aware they had purchased services, and therefore may not receive refunds. If there is to be an improvement in this sector, proper and meaningful incentives need to be in place to ensure that service providers act in the best interests of their customers.

We thank you for considering our submission to your review.

Yours sincerely



Delia Rickard  
Deputy Chair

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<sup>3</sup> See: *ACCC v Telstra Corporation Ltd* [2018] FCA 571 at paragraph 67 of the Statement of Agreed Facts and Admissions <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2018/2018fca0571>; and see *ACCC v Optus Mobile Pty Ltd* [2019] FCA 106 at paragraphs 60-61 of the Statement of Agreed Facts and Admissions <http://www.judgments.fedcourt.gov.au/judgments/Judgments/fca/single/2019/2019fca0106>