

COMMUNICATIONS  
ALLIANCE LTD



Australian Communications and Media Authority's  
Draft Determination 2009 consultation: *New rules for implementing of  
premium SMS/MMS Barring*

Submission by Communications Alliance

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**Australian Communications and Media Authority's**  
***New rules for implementation of premium SMS/MMS barring***  
**Consultation Paper**  
**Submission by Communications Alliance**

## **1 INTRODUCTION**

Communications Alliance is pleased to have the opportunity to comment on the Australian Communications and Media Authority's Consultation Paper on *New rules for implementation of premium SMS/MMS barring* (the Consultation Paper).

Communications Alliance believes it is in the best interests of industry, customers, regulators and government that the industry takes responsibility for assisting with the development of practical consumer protection measures which facilitate both increased consumer confidence and opportunities for industry growth.

In doing so, Communications Alliance seeks to facilitate open, effective and ethical competition between service providers while ensuring efficient, safe operation of networks, the provision of innovative services and the enhancement of consumer outcomes.

The themes presented in this submission reflect the views expressed by the members of Communications Alliance involved in the delivery of premium sms/mms in response to the ACMA consultation paper and draft 2009 Barring Determinations. Those members comprise the majority of providers involved in the delivery chain, that is mobile carriers, resellers, aggregators and content providers.

The structure of this submission reflects industry's response to the key issues raised by the ACMA in the Consultation Paper. Members of Communications Alliance may also make individual submissions directly to ACMA following consideration of both the Consultation Paper and the draft Determinations. This submission is intended to represent a consolidation of industry's position which complements the submissions of individual members but does not derogate from the individual positions advanced.

Based on experience as facilitator of industry codes over more than a decade, Communications Alliance has provided constructive responses to the questions posed by the ACMA and also makes a number of general observations about the likely impacts on industry of a proposed default barring determination. Industry supports the implementation of a capability of barring premium sms/mms services as outlined in the Consultation Paper.

## ***Communications Alliance***

Communications Alliance is the peak telecommunications industry body in Australia. Its membership is drawn from a wide cross-section of the communications industry, including service providers, vendors, consultants and suppliers. Its vision is to provide a unified voice for the telecommunications industry and to lead it into the next generation of converging networks, technologies and services. The prime mission of Communications Alliance is to promote the growth of the Australian communications industry and the protection of consumer interests by fostering the highest standards of business ethics and behavior through industry self-governance. For more details about Communications Alliance, see <http://www.commsalliance.com.au>.

## 2 EXECUTIVE SUMMARY

Industry supports the development of the service provider determination under section 99 of the *Telecommunications Act 1997* to require mobile carriage service providers, including mobile carriage service intermediaries, to implement a capability of barring premium SMS/MMS services across all of their pre-paid and post-paid customers by 1 July 2010.

Such a capability would further strengthen the existing suite of consumer safeguards that are currently in place with regards to mobile premium services.

However, industry strongly contends that the model for such implementation must be the opt-in barring model, and not the default barring model.

The impact of default barring would have negative consequences for legitimate, sought-after and compliant entertainment –based services, as well as for the wider suite of valuable community services delivered through premium SMS/MMS.

Industry notes that there is no apparent precedent for an industry wide default barring of potential and existing telecommunications subscriber lists or in relation to specific services.

Industry submits that the costs and benefits of the call-barring options need to be considered within an assessment of the costs and benefits of the entire regulatory framework for premium SMS/MMS.

Call-barring is one part of the suite of measures in regulatory framework for premium SMS/MMS:

- the implementation of *the Mobile Premium Services Code (C637 )* on 1 July 2009, notably including a mandatory double opt-in requirement;
- the upgrading of carrier contracts to include more stringent consumer related processes;
- the contracting of an independent Code monitor to audit all premium sms/mms services traversing the Optus network. Telstra also expects to engage a code monitor in the near future.;
- the efforts by industry to increase consumer empowerment and awareness by way of the 19SMS website, including a 19 Service Finder tool and a carrier expenditure management page;
- the Communications Alliance facilitated development of a Mobile Premium Services industry Register to allow for greater levels of accountability with regards to the ACMA's ability to identify and contact providers, both locally and offshore based; and

- the ability for content providers and aggregators to implement blacklisting at an MSISDN level.

Call-barring is not a stand-alone regulatory response and the costs and benefits of the model to be implemented need to be assessed in this context.

Industry submits that the implementation of default-barring in this regulatory suite would impose higher costs for both industry and consumers than would opt-in barring. As a part of the regulatory suite, opt-in barring will deliver the benefits identified in the Consultation paper which is to increase the consumer protections with respect to premium SMS/MMS services. The particular target group identified as likely to want to bar the services are parents or minors and users with particular vulnerabilities. The measures to promote awareness of the barring option discussed later in this paper will significantly address this concern.

Industry submits that the significant suite of measures which comprise the regulatory framework for premium SMS/MMS should be given the appropriate opportunity to take full effect. To impose a default barring option would in effect negate all of the efforts undertaken to this point to develop and implement these measures.

In support, industry draws to the ACMA's attention the significant decrease in complaints related to mobile premium services to the Telecommunications Industry Ombudsman in the preceding 12 month period. Monthly premium sms/mms complaint issues recorded by the TIO have decreased by 65% during the period September 2008 to September 2009. The current level of monthly complaint issues represents the lowest monthly total since mobile premium services complaints were recorded separately in May 2007. Clearly these figures indicate that the existing suite of measures, allied with industry's commitment to compliance, are having a positive effect on the overall consumer experience with regard to the use of premium sms/mms services.

Further, as has been indicated to the ACMA, there is a strong desire within industry to initiate the development of WAP Billing type services offering a more secure payments mechanism than the models currently associated with premium SMS/MMS. Industry contends that the development of such offerings would be made redundant if a default barring option were to be implemented, thus depriving Australian consumers of service facilities currently enjoyed by consumers in overseas markets.

With regard to providing a formal structure to specify industry processes to comply with obligations relating to barring, industry draws attention to the *Customer Requested Barring Industry Guideline (ACIF G612)*, the review of which is currently on hold pending the outcomes of the ACMA's PSMS barring consultation. It is proposed that this Guideline could represent the vehicle for the interpretation of industry's obligations with regard to barring.

With regards to the technical scope of a premium sms/mms barring mechanism, industry contends that barring should only be mandated at a service level as

opposed to an account level, noting that it is common for a mobile account to contain more than one service registered against it.

### **3 GENERAL OBSERVATIONS**

Industry supports the development of the service provider determination under section 99 of the Telecommunications Act 1997 to require mobile carriage service providers, including mobile carriage service intermediaries, to implement a capability of barring premium SMS/MMS services across all of their pre-paid and post-paid customers by 1 July 2010.

Such a capability would further strengthen the existing suite of consumer safeguards that are currently in place with regards to mobile premium services.

However, industry strongly contends that the model for such implementation must be the opt-in barring model, and not the default barring model.

Industry is concerned that that the underlying premise for the proposed default barring option appears to be based on a flawed assumption - that being that all premium sms/mms content services are purely 'entertainment' based services that provide little or no tangible benefit to consumers and that these generate high levels of customer complaint.

The reality is that there are many entertainment services provided which are Code-compliant and which do not generate high levels of customer complaint.

The other significant reality is that there are many content services falling within the premium sms/mms scope which provide valuable and sought-after services to consumers. These include:

- high demand voting services;
- services providing customers with a mobile means of conducting normal day-to-day activities (information services, transport timetables, trade finder services); and
- services providing tangible benefits or assistance to vulnerable or disadvantaged consumers (charity campaigns, 1800 MUM DAD, medical assistance services).

The impact of default barring would therefore have negative impacts for legitimate, sought-after and compliant entertainment -based services, as well as for the legitimate and valuable community services.

To impose default-barring and so limit customer choice for services which the market indicates they want appears to the industry to be contrary to the principles of good regulatory practice.

Industry also notes that there is no apparent precedent for an industry wide default barring of potential and existing telecommunications subscriber lists or in relation to specific services.

We refer to the Productivity Commission's Report on 'Rethinking Regulation' in January 2006 and its recommendation that the 6 principles of good regulatory process should be followed, which include considering a range of feasible policy options, their benefits and costs, including compliance costs, with an appropriate framework.

In this context, industry submits that the decision on the appropriate call-barring options needs to be considered within an assessment of the costs and benefits of the regulatory framework comprising the rules in the MPS Code, the register, the 19 SMS website, and the 1-year review period and the determination to implement call-barring.

It needs to be noted that call-barring is one part of the suite of measures in this regulatory framework.

It is the industry's submission that the implementation of default-barring in this regulatory suite would impose higher costs for both industry and consumers than would opt-in barring. As a part of the regulatory suite, opt-in barring will deliver the benefits identified in the Consultation paper which is to increase the consumer protections with respect to premium SMS/MMS services. The particular target group identified as likely to want to bar the services are parents or minors and users with particular vulnerabilities. The measures to promote awareness of the barring option discussed later in this paper will significantly address this concern.

In addition to the above, initial representations have already been made to the ACMA with regard to internal industry discussions on the future of the premium services industry in Australia and whether the existing digital content based model is sustainable in the medium to long term.

Industry acknowledges that the current complex delivery and payment models represent an obstacle from a consumer perspective, particularly with regards to the security of payment mechanisms. Discussions have commenced drawing on the experiences of aggregators and content providers with experience in more developed offshore markets and there exists a strong desire within industry to initiate the development of WAP Billing type services offering a more secure payments mechanism than the models currently associated with premium sms/mms. Industry contends that the development of such offerings would be made redundant if a default barring option were to be implemented, thus depriving Australian consumers of mobile transaction and service facilities currently enjoyed by consumers in European markets.

Industry also submits that any introduction of a default barring mechanism would undermine the significant efforts of both industry and the AMCA to put together the package of consumer protection measures that currently exist at this time:



- the implementation of *the Mobile Premium Services Code (C637 )* on 1 July 2009, notably including a mandatory double opt-in requirement;
- the upgrading of carrier contracts to include more stringent consumer related processes;
- the contracting of an independent Code monitor to audit all premium sms/mms services traversing the Optus network. Telstra also expects to engage a code monitor in the near future.;
- the efforts by industry to increase consumer empowerment and awareness by way of the 19SMS website, including a 19 Service Finder tool and a carrier expenditure management page;
- the Communications Alliance facilitated development of a Mobile Premium Services industry Register to allow for greater levels of accountability with regards to the ACMA's ability to identify and contact providers, both locally and offshore based; and
- the ability for content providers and aggregators to implement blacklisting at an MSISDN level.

Industry submits that these measures should be given the appropriate opportunity to take full effect, and to impose a default barring option would in effect negate all of the efforts undertaken to this point to develop and implement these measures.

In support, industry draws to the ACMA's attention the significant decrease in complaints related to mobile premium services to the Telecommunications Industry Ombudsman in the preceding 12 month period. Monthly premium sms/mms complaint issues recorded by the TIO have decreased by 65% during the period September 2008 to September 2009. The current level of monthly complaint issues represents the lowest monthly total since mobile premium services complaints were recorded separately in May 2007. Clearly these figures indicate that the existing suite of measures, allied with industry's commitment to compliance, are having a positive effect on the overall consumer experience with regard to the use of premium sms/mms services.

It is noted earlier that whilst industry does not see a default barring option as being either appropriate or beneficial, there is industry wide support for the introduction of an opt-in barring mechanism, noting that opt-in barring would provide for an additional layer of customer control over access to premium sms/mms to complement the existing suite of consumer protection safeguards measures noted earlier. The default barring option however by its very nature assumes that no other measures are in place and that the most appropriate means of protecting consumers from unwanted services is to prevent access to these services by default.

Industry also contends that the implementation of an opt-in barring model, when combined with the obligations within the Code and the introduction of the independent Code monitor would provide Australian consumers with a global market leading solution in terms of the level and scope of consumer protection measures. It is noted that at this time there are no instances of legislated barring mechanisms (neither opt-in nor default) being in place in offshore premium sms/mms markets.

With regard to providing a formal structure to specify industry processes to comply with obligations relating to barring, industry draws attention to the *Customer Requested Barring Industry Guideline (ACIF G612)*, the review of which is currently on hold pending the outcomes of the ACMA's PSMS barring consultation. It is proposed that this Guideline could represent the vehicle for the interpretation of industry's obligations with regard to barring.

With regards to the technical scope of a premium sms/mms barring mechanism, industry contends that barring should only be mandated at a service level as opposed to an account level, noting that it is common for a mobile account to contain more than one service registered against it.

## 4 RESPONSE TO QUESTIONS

### Question 1

#### **a) What are the expected effects of the opt-in barring model on customers, mobile carriage service providers, aggregators and content suppliers?**

From a customer perspective, the opt-in barring model provides an additional level of consumer empowerment with regards to managing the level of access to premium sms/mms which complements the protections afforded by the Code and other industry initiatives such as the contracting of an independent code monitor and the development of the consumer awareness website 19SMS.com.au. As a combined suite of consumer protection measures this would provide Australian consumers with an unprecedented and unparalleled level of control and protection not evident in other offshore premium sms/mms markets.

Mobile carriers acknowledge that investment in network infrastructure in order to meet the technical requirements of an opt-in barring mechanism will be required.

The benefit of opt-in barring to aggregators and content providers lies in having access to customers who are aware of the potential for them to receive premium sms/mms marketing messages from providers of these services. This would likely lead to a decrease in complaints related to unwanted subscriptions, thereby lessening customer front of house and administrative workload for all members of the premium sms/mms supply chain.

#### **b) What are the expected effects of the default barring model on customers, mobile carriage service providers, aggregators and content suppliers?**

Implementation of a default barring mechanism would result in the Australian consumer being deprived of access by default to a number of high demand, consumer-friendly and 'public good' PSMS services based on a flawed assumption that all services utilising short codes as a means of delivery fall within the traditional 'mobile premium services' scope and further that all services using short codes as a means of delivery to the end customer are resulting in customer complaints.

Examples of these high demand and 'public good' services include:

- Store finders, e.g. St George bank "find a branch" service "199 44 ATM"
- Reverse charge calling, e.g. 1800 MUM DAD
- International calling, e.g. Super call SMS
- TV Voting, e.g. Australian Idol, Big Brother
- Charity campaigns, e.g. Red Cross appeal
- On pack promotions, e.g. Lays chips and Pepsi "win an iPod"
- Information services, e.g. share price updates, car and house valuations, sports results, news headlines, etc

- Real estate virtual tours via MMS, e.g. McGrath
- Radio talkback, e.g. ARN's 96fm The Edge service 'SMS Ya Back', Nova 969 SMS line "199 11 969"
- Real time flight updates
- Web micro-billing
- Real time traffic info, e.g. "197 DRIVE"
- Public transport timetable info, e.g. Yarra trams "199 YARRA"
- Trade finder, e.g. Master Tradie, Tradie finder "199 TRADE"
- Religious guidance, e.g. "The Lamb of God"
- Australian Red Cross- download CPR instructions from 1995 1515

As new technologies emerge and consumer demand for mobile access to everyday products and services increases, industry envisages moving down the path of migration to m-commerce offerings that consumers in European markets already enjoy the benefit of on a day to day basis. Any implementation of default barring would likely deter any further resource being invested into the development of these products, thus putting the Australian consumer at a disadvantage when compared to their European peers.

Default barring would also undermine the substantial efforts of the ACMA and industry to develop and implement the package of consumer protections that currently exist at this time, most specifically the MPS Code; more stringent carrier contracts; the contracting of an independent industry monitor to audit compliance; the development of the 19SMS website to promote consumer awareness and education; and the development of the MPS Industry Register.

## Question 2

### **a) Are there any compelling reasons for requiring the implementation of a premium SMS/MMS barring capability earlier or later than 1 July 2010?**

Industry does not see any compelling reason to implement a premium sms/barring capability earlier or later than 1 July 2010. Mobile carriage service providers were made aware of the barring requirement upon the registration of the Mobile Premium Services Code and have devoted resources in order to meet their commitments by this date.

### **b) What consequences would any earlier or later implementation of a barring capability have for customers, mobile carriage service providers, aggregators and content suppliers?**

As mobile carriers have been working towards an implementation date of 1 July 2010 any earlier implementation may result in a hurried unrefined barring mechanism which may not adequately provide consumers with the appropriate and intended protections afforded by an opt-in barring mechanism.

A delayed implementation is not likely to occur from an industry perspective as resources have already been devoted to meeting the 1 July 2010 implementation date.

### Question 3.

#### **a) How do mobile carriage service providers, including mobile carriage service intermediaries, propose to inform existing and new mobile phone customers about premium SMS/MMS barring under the opt-in barring model?**

Industry acknowledges that the promotion of the existence of opt-in barring to existing and new customers is crucial in order for awareness of its availability to reach its maximum possible audience, and the intended effect of providing customers with an effective expenditure management tool to be realised. This is particularly pertinent to the protection of minors and vulnerable consumers from high bills generated by unwanted subscription services. Industry's support for the opt-in barring model and its benefits for the customer is reinforced by its commitment to raising awareness of opt-in barring via a number of avenues spanning all industry sectors.

Mobile carriage service providers and mobile carriage service intermediaries acknowledge that complementary to enhancing their customers' experience via the protections afforded by opt-in barring, there are also other clear business related incentives for mobile carriage service providers to promote awareness of it. Acknowledging the importance of effective and efficient customer care processes, the reduction in premium sms/mms related calls to customer care and the subsequent alleviation of workload and resource requirements required to deal with these enquiries is the most apparent benefit. The provision of customers with greater control over their account and the ability to manage levels of access to specific products would have a similar beneficial impact on customer care workload.

From a commercial perspective the fact that mobile carriage service providers have already commenced investing in the development of opt-in barring mechanisms looking ahead to 1 July 2010 in itself generates an incentive for the mechanisms to be promoted to ensure that this investment is utilised. Mobile carriage service providers are also conscious of the consequences of customers being financially burdened with high bills resulting from unwanted premium sms/mms charges.

Noting existing obligations under clauses 4.1.9 and 4.1.10 of the Mobile Premium Services Code in relation to the mandatory disclosure of existing expenditure management tools on the 19SMS website, there is also a regulatory incentive for mobile carriage service providers and intermediaries to provide details of the opt-in barring model. Links to the opt-in barring activation page and promotion of its existence could also be promoted via aggregator and content provider websites; via a dedicated page on the 19SMS website and via promotion on consumer facing websites, ACCAN being amongst them. Industry would also explore opportunities to raise awareness of opt-in barring via cross promotion on regulator websites.

In light of the ACMA's legislative responsibility for consumer information and awareness, industry looks forward to a strong partnership with the ACMA to ensure that all messaging is comprehensive, aligned and complementary.

**b) How do mobile carriage service providers, including mobile carriage service intermediaries, propose to inform existing and new mobile phone customers about premium SMS/MMS barring under the default barring model?**

Mobile carriage service providers and intermediaries would utilise means similar to those noted above to ensure visibility of the default barring option is maximised. Customer Care will also provide a direct interface with the customer for purposes of advising customer of the barring option.

Awareness of the default barring option could also be raised via links on supplier websites and from a whole of industry perspective, on the 19SMS website.

**c) What should be regarded as an appropriate level of customer awareness of premium SMS/MMS barring? How do mobile carriage service providers, including mobile carriage service intermediaries, propose to measure customer awareness of premium SMS/MMS barring?**

Industry requests the opportunity to further consult with the ACMA on the most efficient and productive means of measuring customer awareness of premium SMS/MMS barring.

**d) Should the Barring Determination contain an obligation to raise customer awareness of premium SMS/MMS barring? If so, what form should such an obligation take?**

Industry does not believe that the introduction of an obligation to raise customer awareness of premium SMS/MMS barring is justified. The means of measuring compliance with such an obligation would be ambiguous in the absence of predetermined means of measuring awareness as noted above. As noted previously, incentives already exist for carriage service providers to increase awareness of the availability of barring facilities, with an enhanced consumer experience and reduction of calls to customer care being an immediate and obvious benefit. Carriage service providers acknowledge the need to raise customer awareness and are strongly committed to this but contend that regulation would not represent an appropriate means of addressing this.

**Question 4.**

**Are there any unintended effects of applying barring to both outgoing and incoming PSMS/MMS messages?**

The most obvious impact of barring to both outgoing and incoming premium sms/mms messages is the reduction in effectiveness of the STOP MO message for purposes of unsubscribing and opting out of subscription services and marketing messages. This is because barring of outgoing messages would prevent the

customer from being able to send the STOP MO message to the content provider.

While barring would prevent subscription service messages from reaching a consumer who has put a bar in place, it would be expected that marketing messages would continue to be received by the consumer for up to 60 days (consistent with the MPS Code). This is because marketing messages are usually not sent from a premium sms/mms number.

The inability to send a STOP MO message to opt-out of marketing messages would be a poor experience for the consumer but would also appear to prohibit the functioning of key requirements of the SPAM Act whereby a consumer must be able to send a STOP message to a marketing message.

Barring both incoming and outgoing premium sms/mms messages would also remove access to services, such as reverse charge services (e.g. 1800 MUM DAD), provided by organisations which utilise premium sms purely for billing purposes to bill their customers. This would be especially detrimental to minors and vulnerable consumers.

The above likelihoods would result in an increase in consumer complaints.

#### **Question 5**

**Are there circumstances in which it may be reasonable or acceptable for the provision of other services supplied to a mobile phone customer to be affected when barring of PSMS/MMS services is applied?**

Industry is not aware of any circumstances in which it may be reasonable or acceptable for the provision of other services supplied to a mobile phone customer to be affected when barring of PSMS/MMS services is applied.

#### **Question 6**

**How long is it reasonable for a mobile carriage service provider, including a mobile carriage service intermediary, to take before implementing a request to activate or deactivate premium SMS/MMS barring?**

Industry submits that a reasonable timeframe for implementing a request to bar would be one that is consistent with the Code's specifications for actioning of an unsubscribe request ie: as quickly as possible or within one business day.

#### **Question 7**

**Are there likely to be any difficulties for mobile carriage service intermediaries in implementing a barring capability arising from their reliance on the provision of relevant technical capabilities by the mobile network operators from whom they derive services?**

Mobile carriage providers are incorporating mobile carriage service intermediaries into the business scope for the development of barring mechanisms.



## 5 CONCLUSION

Industry is committed to working closely with the ACMA to ensure that there are appropriate and effective community safeguards in place in the provision of premium sms/mms services, and that compliance is at the forefront of all activity.

At this time however industry feels strongly that the implementation of a default barring mechanism would both undermine the efforts of both the ACMA and industry to develop and implement the existing package of measures which currently form the co-regulatory blueprint for the provision of premium sms/mms in Australia by not allowing time for these measures to take full effect. Industry on the other hand feels that the introduction of an opt-in barring model would complement this package of measures and allow for increased consumer empowerment in terms of managing access to these services and provide Australian consumers with a market leading suite of protection measures.

As noted in this submission, industry is currently in the process of evaluating non-traditional service offerings and payments mechanisms such as WAP Billing platforms with an eye to the evolution of premium sms/mms as it currently exists in Australia. The potential for consumers being denied access to these services by default would negatively impact on the prospective business cases for the development of such products and tools. Even at this time there are examples of beneficial services falling outside the traditional premium sms/mms scope to which access would be denied should a default barring scheme be implemented. This submission contends that the proposed default barring model may actually result in a degradation of existing and future product offerings. This would be to the detriment of Australian consumers and would nullify any anticipated enhancement in consumer protections.

Industry would welcome the opportunity to discuss the issues raised in this submission in greater detail with the ACMA.

## 6 CONTACTS

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