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Mr Vince Humphries  
Manager  
Education & Telephone Content Section  
Australian Communications and Media Authority  
PO Box 13112, Law Courts  
Melbourne, Victoria, 8010

Dear Mr Humphries,

## **REGULATION OF MOBILE PREMIUM SERVICES**

I refer to the consultation paper entitled: *Changes to the restrictions on access to Mobile Premium Services*, published by ACMA.

The Office of Consumer and Business Affairs (OCBA) has become aware of an increasing level of concern about the regulation of mobile phone services in Australia. This concern focuses, in particular, on the nature of SMS competitions and services that are advertised on television.

In short, OCBA considers that the main terms and conditions to which these services are subject should be directly disclosed to the consumer by SMS message, at no cost, before the consumer is charged for the service. This ensures that consumers are aware of their obligations and have the opportunity to opt out before significant costs are incurred.

The services of particular concern are those linked to 19x prefix phone numbers. The nature of the advertisements for these services appears insidiously designed to entangle the younger, and perhaps more vulnerable, mobile phone user. This is particularly worrying given what appear to be particularly onerous contractual terms in certain cases.

The form of the services and the terms to which the mobile phone user will ultimately be subject vary in many ways, however generally it seems consumers are offered the chance to play simple games of skill (i.e. sending a response to a simple question) by SMS which may result in winning a prize or receiving some form of entertainment by way of return SMS message. It is often not at all clear that in responding by SMS the consumer will be taken to be assenting to a subscription service.

While the advertisements do appear to list terms and conditions in relation to the services on offer, the terms:

- only appear for the very brief duration of the advertisement,
- are often written in miniscule font (certainly in comparison to the font of the SMS contact number);
- are worded in a truncated manner;
- are often obscured on the television screen (i.e. on a smaller, low resolution screen the terms may be very difficult to decipher).

Furthermore, the full duration and cost of the services on offer is often unexpectedly high given the relative cost of SMS services. Consumers who are accustomed to paying as low as 20 cents per each SMS message sent may simply not expect costs around \$5 per each message sent *and received* by the consumer.

An unsuspecting consumer may not realise the full cost of the subscription service until they receive a mobile phone bill. Anecdotally, unexpected costs of up to \$50 per user do not appear to be uncommon. While it may be that up to \$50 *per user* will not necessarily be financially crippling (at least for some), the full cost of these unexpected bills for consumers *as a whole* is considered by OCBA to be significant.

OCBA considers that consumer detriment in respect of these services is caused primarily by inadequate disclosure requirements. The very brief, difficult to read and truncated version of contractual terms that appear on television advertisements are considered by OCBA to be woefully inadequate disclosure given:

- the ease by which a consumer can assent to contractual terms (by SMS response); and
- the high cost of the services, (in particular subscription services), relative to SMS messaging costs in general.

It is of further concern to OCBA that the manner by which a consumer may seek redress or refunds for unwanted services is relatively complex. Consumers may be entirely unaware of the party with whom they have contracted because, in many cases, the full terms of an agreement are only accessible by reference to a website listed on the television advertisement (which may only appear intermittently and for short periods of time).

As the ACCC, Commonwealth Treasury, ACMA, the TIO, TISSC, DCITA, and the Communications Alliance group all have some involvement in the regulation of telecommunications services, it is not surprising that the average consumer may experience some difficulty in determining the appropriate body with which to lodge a complaint. Indeed, the process by which a consumer may seek resolution of a complaint (for example, the repayment of money they never knowingly agreed to spend) is neither easy nor fast.<sup>1</sup> OCBA suspects that many consumers simply 'write-off' the extra cost rather than expending the time and energy necessary to fully resolve a concern.

Your consultation paper states that:

“ACMA seeks feedback from stakeholders on the most appropriate regulatory mechanism to achieve safeguards for consumers while being mindful of costs to industry.”

Currently the industry is regulated under the MPSI and default schemes. The consultation paper seeks input on whether the industry should remain regulated under the MPSI, or, alternatively, under a Part 6 Code (of the *Telecommunications Act 1997* (Cth)). In respect of this invitation to comment, OCBA considers that the most appropriate scheme should be that which allows for the most effective protection of consumer's interests.

Whether the MPSI scheme is amended, or whether a new Part 6 code is developed, OCBA would endorse replication of the United Kingdom's mechanism of regulation. Under the UK "*Code for Premium Rate Services Approved under Section 121 of the Communications Act 2003*", the pricing information in promotional material for premium rate services that is transmitted on television or in

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<sup>1</sup> [http://www.commsalliance.com.au/Activities/Mobile\\_Premium\\_Services/customer\\_information](http://www.commsalliance.com.au/Activities/Mobile_Premium_Services/customer_information)

another audio-visual format must be *spoken* as well as being visually displayed if the cost of the service generally exceeds £2.<sup>2</sup>

Furthermore, in respect of subscription services, the following requirements apply:

- Users must be sent a free initial subscription message containing the following information before receiving the premium rate service:
  - name of service,
  - confirmation that the service is subscription-based,
  - what the billing period is (e.g. per day, per week or per month) or, if there is no applicable billing period, the frequency of messages being sent, the charges for the service and how they will or can arise,
  - how to leave the service,
  - service provider contact details.
- Once a month, or every time a user has spent £20 if that occurs in less than a month, the above information must be sent free to subscribers.<sup>3</sup>

OCBA would further endorse a requirement to disclose, by SMS, the full cost of a service for a standard billing period (i.e. per month). Essentially, if consumers are notified by text message of the cost of a service they are in a far better situation to provide their explicit, informed consent to receive and pay for that service. In this respect, it does not appear that the regulations governing this industry provide sufficient protection to consumers at present.

Thank you for the opportunity to comment on the matters contained in the consultation paper.

Yours sincerely

**Mal Hemmerling**  
Commissioner for Consumer Affairs

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<sup>2</sup> Item 5.7.4 of the code: [http://www.phonepayplus.org.uk/pdfs\\_code/11th\\_edition.pdf](http://www.phonepayplus.org.uk/pdfs_code/11th_edition.pdf)

<sup>3</sup> Items 7.12.4 to 7.12.6 of the code.