MPS Code Review - Oxygen8 Comments - 2010

30/07/10

Dear Communications Alliance,

Oxygen8 Communications thanks the Communications Alliance for the opportunity to present our comments for the latest MPS Code review.

Oxygen8 Communications continues to support the co-regulatory industry framework for Mobile Premium Service and has observed that since the introduction of the MPS Code on July 1st 2009 overall industry figures presented by the TIO show significant decreases in consumer complaints, indicating the success of the measures taken both within the Code, In Market monitoring and other industry measures.

The enormous success achieved in reduced complaint levels has also resulted in substantial declines in revenues generated by the industry. This has impacted equally so called "problem services" and consumer friendly services operated by major blue chip brands. This, coupled with the administrative burdens generated by in marketing monitoring this has resulted in some major blue chip brands specifically operating in the 55 cent MO trade promotion market indicating that they no longer wish to use mobile in their communication strategies. Oxygen8 believes firmly that it is these types of businesses the industry should be encouraging to participate in the Mobile Premium Space to the benefit of the entire industry.

Given the success of the MPS Code and other measures in decreasing consumer complaints Oxygen8 now believes that it is an ideal time to address some of the areas where the Code is unclear or ambiguous to provide a more user friendly environment, particularly for major blue chip brands, to stimulate growth in the market.

Yours sincerely,

Louise Ford
Chief Executive Officer
Oxygen Communications PTY Ltd

## General Comments

### Scope of the Code

Oxygen would welcome further clarification on which parties the Code covers, as well as consistency in the nomenclature of the different parties within the Code. For example, The term Content Provider is inconsistent with MPS register, which names Service Provider and Service Name, not Content Provider.

### Definitions within the Code

Oxygen8 notes that a number of the definitions are confusing to the consumer, service providers and content providers and need to be modified. Furthermore, some definitions are surplus to requirements, essentially being a repetition. Furthermore, some definitions are missing from the Code. See detailed comments.

Missing definitions:

- Longcode
- IVR
- Service Provider
- Service Name
- Scam
- Nature
- Standard SMS Cost

### Regulation of 55 cent MO services

55 cent MO services are primarily used for trade promotions and competitions. 55 cent MO is deemed by ACCC to be a "free entry mechanism" since it is the same price as a postage stamp. Yet it is treated by MPS code the same as higher MT tariffs. Bearing in mind this and also the fact that 55 cent MO services (in Oxygen8's experience) account for a very low proportion of consumer complaints and are predominantly used by major brands and media companies. Yet they are currently accounting for a large number of WMC infringements and we are receiving indications from major blue chip players that this level of infringement activity is unsustainable and may result in their withdrawal from the market. Oxygen8 would argue that it is precisely these clients that should be encouraged to participate in the industry and therefore there is an argument that 55 cent MO services should either be exempted from the MPS Code or be specifically exempted from some of the obligations of the Code. Oxygen8 can and will provide more data on our current levels of enquiries on 55 cent MO codes, vs. number of infringements issued. This would apply providing that the 55 cent MO code is not used in conjunction with any other tariff for the service.

### Definition of a Minor and Services to Minors

The code defines a minor as a person below the age of 18 (pg 8) however in clause 3.1.16. – Advertising to children, it defines a child as below the age of 15. There is no consistency. This is also inconsistent with the TISSC Code of Conduct. Oxygen8 proposes bringing the MPS Code into line with the TISSC Code of Conduct and removing inconsistencies of the definition of a Minor.

### Definition of Chat Services within the Code

The MPS code currently defines a chat service as a “Mobile Premium Service which facilitates the exchange of messages between <u>three or more</u> people who are not otherwise known to each other. The definition of chat is incorrect, confusing and can be simplified to aid CPs with application of the Code.

There needs to be a clear distinction between "dating services", whereby the interaction is between 2 people who are unknown to each other and "chat services", where the interaction is between an end user and someone engaged by the content provider to interact, ie. in the case of 121 chat or psychic.

In the instance of a Chat Service, where the interaction is with someone engaged by the content provider to interact, Chat Safety Warning messages should not be required. Indeed, the provision of a Chat Safety Warning message may actually give the user the impression that they are talking to a real person, rather than someone engaged by the Content Provider. Furthermore, in the case of psychic services, users are specifically requested by the psychic to provide personal information as part of the reading and therefore the Chat Safety Warning message becomes contradictory. The Chat Safety Warning message should only apply in the case of a true Dating or Social Networking service, where the chat is peer to peer and the users are truly unknown to each other.
Oxygen8 would propose creating a new Dating & Social Networking Service category / definition whereby the definition is:

***A Dating Service*** means a Mobile Premium Service which:
(a) facilitates the exchange of messages between two or more people who are not otherwise known to each other

***A Social Networking Service*** means a Mobile Premium Rate Service which:
(a) facilitates the exchange of messages between two or more people who may or may not be otherwise known to each other.

***A Chat Service*** means a Mobile Premium Rate Service which:
(a) facilitates the exchange of messages between an end user and someone engaged by the Content Provider to provide message content for entertainment purposes to the end user

The phrase "where the content of those messages is not primarily about the supply of the mobile premium rate service" is not helpful or clear. The messages are for entertainment purposes and are the prime reason for the end user interacting with the Mobile Premium Rate service.

**Definition of Subscription Services within the Code - User initiated or Ad-Hoc Subscription Periods**
Oxygen8 notes that many services are moving to M-Wallet concepts, whereby the user buys x credits. Billing is auto triggered when the user runs out of credits - auto top up., not for a set specific time period. The Code does not currently include a definition for a user initiated variable subscription period, nor is it clear on how pricing should be presented both in advertising and messaging for such a service. These types of services are becoming increasingly common.

**Subscription Message Flows and Subscription Confirmation**
When a customer requests to subscribe to a Premium Messaging Subscription Service via a non-mobile, WAP or IVR mechanism the content provider is required under the code to send two information messages to the customer in the following manor:

1) Customer requests service via non-mobile, WAP or IVR mechanic
2) Content Provider sends subscription request message (as per 4.4.2)
3) Customer confirms subscription by sending an MO message to a shortcode
4) Content provider sends subscription confirmation message (as per 4.4.3 a)
5) Customer is subscribed

The content of the subscription request message (4.4.2) and the subscription confirmation message (4.4.3 a) is almost exactly identical. This has lead to issues on occasion where the customer has become confused as to their subscription status, believing that they may have been subscribed to a service twice.

This is further compounded by the discrepancy between the above flow and the mobile opt-in flow which requires only a single information message to be sent:

1) Consumer requests service via an MO message
2) Content provider sends subscription confirmation message (as per 4.4.3 b)
3) Customer confirms subscription by sending an MO message to a shortcode
4) Customer is subscribed

This difference between these two flows is not only confusing for customers but also for content providers, requiring them to use two different formats for the subscription confirmation message depending on the method the customer uses to request the service, with no apparent logic for this discrepancy.

In fact the current discrepancy in the requirements would appear to be a purely a by-product of “double MO opt-in” being drafted into the code at a very late stage in the code development cycle and we would suggest that this area of the code could benefit significantly from a minor reworking to ensure consistency and clarity in the subscription customer experience.

We would propose that the subscription opt-in requirements be revised to standardise on one common double opt-in flow for all service request types as follows:

1) Customer requests service via non-mobile, WAP, IVR or MO message mechanic
2) Content provider sends subscription confirmation message (as per 4.4.3 b)
3) Customer confirms subscription by sending an MO message to a shortcode
4) Customer is subscribed

Such an approach would remove the current duplication of information that is the apparent driver for customer confusion while still maintaining the current high level of service information being passed to the customer.

**The use of Max and Min in pricing information**
Oxygen8 notes that many services use the concept of a maximum charge or a minimum charge per charging period. Oxygen8 notes that there is some confusion at during in market monitoring as to how this should be presented in both advertising and messaging and clarification in the code would be helpful.

**The use of Unit based pricing information**
Oxygen8 notes that it is increasingly common for services to use a high tariff for x units of service, i.e. $5.00 gets 5 chat messages. Oxygen8 notes that there is some confusion at during in market monitoring as to how this should be presented in both advertising and messaging and clarification in the code would be helpful.

**Carriage Fees / Mobile Content Fees:**
Oxygen8 notes there is conflict between the definitions in the Code and the practical realities of operating in the MPS industry space. This is specifically an issue with MO traffic. MOs to a particular Short Code are all billed at one price point. A number of the carriers require this to be a price point

above $0.00, in order to create a billing record and support their frontline customer service. The accepted price point is $0.25. This MO tariff is made up of both Carriage Fee and Mobile Content Fee, yet the MO is used to unsubscribe and opt out of databases. From a legalistic viewpoint, this means the consumer is being billed a Mobile Content Fee for every unsubscribe or opt-out message, which is against Code requirements. We suggest resolving this issue by inclusion of a new definition of Standard SMS Cost

**Standard SMS Cost**
There is no definition of a Standard SMS Cost. In day to day usage, both industry and consumers work on the principle that a $0.25 premium SMS message 'counts as' a standard cost SMS.
We propose the inclusion of a "Standard SMS Cost" definition along the lines of

- An MT message which costs the consumer nothing to receive
- An MO message which is charged to the consumer according to their overall plan with their carrier
- An MO message which is charged to the consumer at the minimum Premium SMS tariff available on all carriers. (Currently $0.25)

Relevant sections of the Code could then be reworded to require unsubscribe and opt-out actions must cost 'no more than a Standard Cost SMS'. This would simplify language, reduce confusion and recognise reality, with no negative impact on consumers.

**Definition of Exempt Services**
Oxygen8 would welcome clarification of this clause and the applications of it.

**Repetition**
There is a great deal of repetition across different sections of the Code which can be tidied into a much more concise and clear document. Common requirements do not need to be repeated from one section to another, only the additional provisions stated.

**Double Opt In** Section 4.4.2 and Section 4.4.3
Oxygen8 suggests that Double Opt-in process needs to be simplified. In addition, the double opt regulations regarding web opt in assume that the web opt in will always be 1st step, followed by an MO opt in, with service flow specified to include a free subscription confirmation message.
Services may quite legitimately be an MO opt in, followed by a web opt in, in which case there is no opportunity for a free subscription confirmation message to be sent. Subscription confirmation will actually be web based, which potentially may become a message flow breach under the code and WMC audit standards despite complying with the "double opt in" standard set by the code.

Furthermore, the same information is repeated in both the subscription confirmation and the subscription welcome message resulting in the user receiving pricing and unsubscription information both before they subscribe and after they susbcribe. This is unneccessary repetition in quick succession and results in twice the free SMS costs for Service Providers and confusion for the user, potentially thinking they have been subscribed twice. Oxygen8 would propose to remove the subscription welcome message, so that pricing is supplied to the customer before subscription, but not duplicated after subscription, unless the service flow means there is no opportunity to provide a subscription request message, ie. in the event that the web op in is the 2nd stage of opt in.

**The STOP Command: interaction of the MPS Code, the Spam Act and Barring**
Recent PSMS Barring changes have had an effect on how well this command works – it is no longer the 'universal opt out' which was set as an industry standard years ago.

The key points are:

- Clause 7.2.1 (b) of the MPS Code states that Content Suppliers are ‘where practical’ required to use ‘reply STOP’ as an unsubscribe or opt-out mechanism.

- Carrier implementation of barring has rendered this ‘reply STOP’ methodology unworkable for any Customer who has barred PSMS, yet receives a marketing message.

- The Spam Act requires all commercial electronic messages (including PSMS marketing messages) to include a functional unsubscribe capability. (‘Unsubscribe’ in the context of the Spam Act being ‘opt out’ in the context of the MPS Code.)

The interaction of the three points above in essence mean that all PSMS marketing messages should now include TWO opt-out mechanisms: a STOP reply, plus either a website or a 1300/1800 number for consumers whose access to PSMS is barred. This increases the ‘compliance’ character usage and leaves less space for the actual marketing message.

From a consumer perspective:

- The promise of the last few years ‘just send STOP and it will go away’ is no longer universal. This is especially disappointing after the industry-wide progress and improvements of the last 12 months.

- Getting explanation of when STOP will work and when it won’t work just got complicated.

- Easy opt-out functionality with no change of device / communication methodology is no longer universally available.

While this may not be strictly a MPS Code Review issue, we raise it because of its impact on what we understand to be the fundamental purpose of the Code – a universally applicable set of standards which underpin consumer confidence and trust in the industry.

| Location | Specific Comments on the Code |
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| **1.2.3** | What is the current status of the Database and Look Up Tools – This needs to be updated accordingly |
| **Page 6** | Carriage Fees – definition – “means the fees charged for supply of a carriage service”<br>In the Act "carriage service" means a service for carrying communications by means of guided and/or unguided electromagnetic energy - but this is actually a very poor definition for the consumer and does not help to clarify what they are paying for<br>The commonly understood industry definition and WMC audit standard is that carriage fees specifically apply to the data charges associated with the use of a service.<br>How are consumers supposed to know what “carriage” means. This is an opportunity for us to change it and make the description friendlier to the consumer and clear up confusion between Standard Message charges, ie. 25 cent MO and Data Charges, ie. GPRS charges for using the service. |
| **Page 6** | Charge Period – definition – Oxygen8 suggests adding the definition of a “user initiated” or variable / ad-hoc subscription period to the definition. When the user uses the credits they have for the service the subscription billing is triggered. At the moment the code is unclear on how the pricing for such services is presented to consumers, but this will be an increasing trend as services move to M-Wallets¸i.e. $10 top up for x credits |
| **Page 6** | Chat Service (c) – Please see detailed comments on Chat Services in general context section |
| **Page 7** | End Carriage Supplier – (b) – “is the entity responsible for charging the customer any carriage fees in respect of that carriage” – lack of clarity about what the carriage fee is, as per above. |
| **Page 7** | Exempt Service – need clarity here? |
| **Page 8** | Mobile Content Fees – this definition is unclear and possibly unnecessary. Implies the premium rate stage, but is not clear enough and could cover data charges. Needs to specifically refer to Premium SMS billing, either MO or MT |
| **Page 8** | Mobile Terminated Message – this definition is incorrect – an MT can be Free or Premium – this should be changed and clarified accordingly |
| **Page 11** | Subscription - requires better definition to include user initiated or variable subscription periods - the main characteristic is repeat billing, not repeat delivery of content and this should be modified. You could delivery content over a time period, but it still not be a subscription service. |
| **3.1.2 (a)** | Oxygen8 notes that use of the word “Prominent” has been the subject of much dispute and varied interpretation. This word can be subjectively judged by different individuals – the code allows for “prominence” to be specifically defined using font sizes, location, orientation, etc.  Two different people can have an entirely subjective opinion of whether something is prominent or not. This could be backed with medical evidence to show prominence can be different between users. I.e. a colour blind user vs. a non-colour blind user. Even something as simple as right hemisphere brain vs. a left hemisphere brain may change what is prominent to any given user. The lack of any standardised testing process would also support this being impossible to define and measure. |
| **3.1.2 (vi)** | “for long enough to allow it to be read or heard, and understood, by an average person” – this is ambiguous and open to subject interpretation by different individuals and is already defined adequately by (v) |
| **3.1.2 (b)** | “carriage fees” – is this definition clear enough to End Users given previous comments? |
| **3.1.3 (a)** | “next to the offer” – is this too ambiguous – does it need to be more prescriptive? |
| **3.1.4 (c)** | How does this tie into the Trade Practices Act? Does it need to be stated in the MPS Code as long as it is governed by Trade Practices – possibly unnecessary duplication of Acts |

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| **3.1.9** | Propose to REMOVE 3.1.9 a, & c and f - MOVE b, d and e into 3.1.8 |
| **3.1.9 (f)** | This clause should be removed – Impossible to regulate – subject to subjective interpretation by different individuals – As long as the price is clearly stated then it should up to the individual purchaser to judge whether the Free element is “good value” |
| **3.1.11** | This could be subjectively interpreted by different individuals and is adequately covered by the Trade Practices Act and therefore should not be needed to be duplicated in the Code |
| **3.1.13 (b)** | Oxygen8 would like to see more clarity on this – does this mean that if you have opt in data on the client you may not say “dear David” in the messaging. My understanding is that it relates specifically to Chat Messaging of a certain type? However, this is once again adequately covered by the Spam Act and is therefore unnecessary repetition in the MPS Code. |
| **3.1.13 (e)** | Oxygen8 proposes a re-draft this specifically to talk about “opt out” as opposed to STOP – since this could be confused with unsubscription to a subscription service |
| **3.1.15** | Scam is not defined in the Code. Is this supposed have a specific meaning from another Act – in which case it should be a capital S? With a small s, it becomes subjective and is open to individual interpretations. Spam Act? If so, is this necessary to put in the Code, since it will covered by the Spam Act and Trade Practices Act. |
| **3.1.16** | Advertising to Children – this is inconsistent with TISSC guidelines on marketing to children. |
| **3.2** | Why differentiate between 3.1 and 3.2 – propose that sections are merged |
| **3.2.2** | Specifies 10 seconds regardless of the actual length of the advert |
| **3.2.3 (a) (i)**<br>**3.2.3 (b) (i)**<br>**3.2.3 (c) (i)**<br>**3.2.3 (d)** | “Prominent and highly visible” – this is purely subjective and open to individual interpretation – should be removed – the code is already highly prescriptive |
| **3.2.4 (b)** | Should be moved to 3.3, since it has crept into wrong section |
| **3.2.5** | This refers to 3.1.13 (e) and is duplication? |
| **3.2.5, 3.2.6 and 3.2.7** | Move from Advertising section into a Messaging Section - it doesn't fit here. |
| **3.2.7 (b)** | Add "And regulators" |
| **3.3.2 (a)** | This contravenes the Spam Act – You can’t put a call to action in an unsubscribe confirmation? |
| **3.3.3 (a)** | Prominent - see previous comments |
| **3.3.3 (e) (i) (A)** | Prominent - see previous comments |
| **3.3.3 (e) (ii) (A)** | Prominent - see previous comments |
| **3.3.3 (e) (iii) (A)** | Prominent - - see previous comments |
| **4.1.3 (b)** | Renewing a subscription service - what is "renewing" defined as....is this a new charging period, or something more specific? Oxygen8 would welcome clarification |
| **4.1.3 (e)** | Nature –this not defined anywhere? |
| **4.1.3 (g)** | Don’t understand this point and why voting is in the same category? Are there some specific rules as to refunds that apply to competitions? If so, it is not very clear? |
| **4.1.4** | This is unclear - if the end user has read the terms of a single purchase service in print, or some other media, then the 1st message they receive after service initiation will be a billed message which may have the pricing information in it, not a free message confirming the pricing that they already read? What is the purpose of this clause? That a consumer must have access to the pricing information before they initiate the service and receive billed messages? |
| **4.1.7** | Note that this clause is not specific as to how the info should be provided or that it must be free. Should be specific to Dating and Social Networking services, as per general introduction |
| **4.3** | This doesn't sit well in this section and should be moved into a different section - 4 is |

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| | partially about providing regulatory info to the correct parties, not to the End User - I would be tempted to move 4.1.1 and 4.1.2, 4.1.9, 4.1.10 and 4.1.11 and 4.2.1, 4.2.2 and 4.2.3 into a separate section in themselves which are more about obligations of the parties, closer up to the Scope of Code and then separate out the rest which is pertinent to the End User into a separate section. |
| **4.3.1** | This section should be expanded to encompass all services which are not initiated by an MO from the handset, ie. WAP initiation, IVR initiation, web initiation and any other i.e. merge 4.4.1 into this section |
| **4.3.2 (b)** | Add "As registered on the MPs register" |
| **4.3.2 (g)** | Propose to remove or modify, so that Content Provider may send a purchase confirmation reminder during the 24 hour period should the end user fail to respond to the 1st purchase confirmation message |
| **4.3.3** | Opportunity to extend this period from 24 hours? Welcome Content Provider feedback on this? |
| **4.3.4** | Should be moved into a Messaging section<br>Creating a Messaging Section would be more consistent with the WMC monitoring and structure<br>Structured as follows:<br>1. All Premium SMS billed Services<br>2. Premium SMS billed Subscription Services<br>3. Chat Services<br>Note that the following is not requested in 4.3 (only in 4.4) – Service Provider, Service Name, helpline |
| **4.3.6 (b) (i)** | As registered on the MPs register |
| **4.3 and 4.4** | The demarcation between these 2 is really confusing – a non mobile opt in is equally relevant to non subscription and subscription services. 4.4.1 should be moved into 4.3 and the specifics to do with subscription moved solely into 4.4 – Break sections into Mobile and non Mobile service initiation, including WAP; and single event and subscription billing – can be presented in a table format pretty much. 4.3 = section for all of the standard messaging that goes across all services – 30 day reminders, etc. 4.4 = section for all of the standard messaging that goes across all subscription services specifically. 4.5 = section for an additional messaging for services not initiated by mobile (both non subscription and subscription. 4.6 – section for an chat specific messaging - In actual fact, the parts about actual initiation of the service should be moved into section 5, which is about Supply of the service - Make Section 4 about required messaging. Make section 5 about Supply and initiation of Supply of services. |
| **4.4.1** | Remove reference to WAP – this is already covered under 4.3.1 |
| **4.4.1 (a) and (b)** | “subscription mechanism” – this is confusing and contradictory use of the word subscription and could be confused with “subscription” – should be amended to “initiation” or “opt in” |
| **4.4.1 (d) (i) (A)** | Why limited to Subscription service – this applies to all service initiated from non mobile means – single event or subscription |
| **4.4.1 (e)** | Change from Subscription request to Service Confirmation message |
| **4.4.2** | Change from Subscription request to Service Confirmation message * This message breaches the Spam Act 2003 and must contain unsubscribe information. |
| **4.4.3** | Duplication of 4.4.1 and 4.4.2 - the subscription confirmation message is the same whether the user opts in via a non mobile method or a mobile method. No need for differentiation - unnecessary duplication |
| **4.4.2 / 4.4.3** | The subscription request and subscription requirement messages are required to contain a significant amount of information, in a limited number of characters. We are aware of cases where content providers have wanted to use two messages in order to provide more detail, but this has not been approved by the in-market monitors. We seek a clear industry consensus around whether using two messages and having the option to include more characters and less abbreviation is appropriate. |
| **4.4.9** | We note that this clause has caused some difficulties in interpretation within the |

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| | industry, specifically in terms of identifying the 'Content Supplier'. It is unclear whether the Content Supplier must be identified by the name of its legal entity or whether use of a brand name is appropriate. Inclusion of both is problematic due to the limited number of characters available in the message.<br>Industry consensus would be useful for the future |
| **4.4.3 (a) (iii) (A)** | As registered on the MPs register |
| **4.4.3 (b)** | Is this entirely necessary? – Duplication for no reason? |
| **4.4.5 & 4.4.6** | Unnecessary duplication and can be covered off in a previous section |
| **4.4.9** | Note, this only says sufficient info. It does not specify that it must match what is on the MPs Register? |
| **5.1.3** | This does not belong in this section - belongs up front in a separate section near the Scope of document - |
| **5.1.4** | Neither of these are possible for an aggregator or content supplier? - belongs up front in a separate section near the Scope of document - |
| **5.1.7** | Move into Section 4 – generic messaging. |
| **5.1.8** | Move into section 4 – generic messaging |
| **5.1.9** | This does not belong in this section - belongs up front in a separate section near the Scope of document - Obligations |
| **5.2.1** | This does not belong in this section - belongs up front in a separate section near the Scope of document – Obligations. This clause states that "A content supplier must retain records but does not specify an exact timeframe. A reasonable timeframe should be applied. |
| **6.1.1 (i)** | Some repetition - merge |
| **6.1.15** | In the event that a complainant claims that the amount they have been billed exceeds the amount shown by the aggregators / content providers records, then the aggregator / content provider may request evidence of the users bill in writing to deal with the complaint. |
| **6.1.17 (d)** | Define exactly what a "reasonable timeframe' is. |