Date: 12 June 2007

Infocomm Development Authority of Singapore
8 Temasek Boulevard
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Singapore 038955

Attention: Mr Andrew Haire
Deputy Director-General (Telecoms)

PUBLIC CONSULTATION ON THE DRAFT CODE OF PRACTICE FOR PROVISION OF PREMIUM RATE SERVICES

1. Sybase 365 Pte Ltd ("Sybase 365") welcomes the opportunity to provide comments on the proposed Code of Practice for Provision of Premium Rate Services (the "Code").

ABOUT SYBASE 365

2. Sybase 365 Pte Ltd is a subsidiary of Sybase 365, Inc which is ultimately owned by Sybase, Inc. (NYSE: SY), following the acquisition of Mobile 365. As a global enterprise, Sybase 365 leads the world in the global delivery and settlement of mobile messaging interoperability, and the management and distribution of mobile content. Processing more than 5 billion messages per month, Sybase 365 reaches more than 700 mobile operators around the world.

3. In Singapore, Sybase 365 Pte Ltd provides SMS gateway services and SMS aggregation services to content provider clients who wish to provide SMS based services to end-users in Singapore.

4. In essence, Sybase 365 is a technology service provider which provides the infrastructure upon which content provider clients provide SMS and MMS based services to end-users in Singapore (much in the same way that network operators such as SingTel Mobile, M1 and StarHub Mobile provide connectivity to their mobile network infrastructure, or how Internet Service Providers are conduits through which end-user retrieve information from the Internet).

5. Sybase 365 does not create the content, but merely assists (from a technology perspective) in the delivery of the content. Further, due to the sheer volume of messages which pass through the infrastructure of technology providers, it is impossible for all messages to be vetted and screened at the point of entry and exit of the system.

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GENERAL OBSERVATIONS ON THE CODE

6. Sybase 365 would like to preface its specific comments with some general observations on the Code.

7. Sybase 365 welcomes the introduction of guidance from IDA on the applicable rules and regulations which premium rate service providers must comply with.

8. However, Sybase 365 is, at the same time, concerned with the feasibility and the burden of some of the obligations which the Code places on premium rate service providers. Our concerns are laid out in our specific comments below.

9. Sybase 365 is also concerned by some sections in the Code that seem to have inappropriately allocated the burden of obligations onto premium rate service providers. As IDA will note in our specific comments below, it is inappropriate for premium rate service providers (who do not have control over the billing systems of network operators) to be responsible for matters which should more appropriately managed by network operators.

10. Sybase 365 would also like to highlight that SMS aggregators are not similarly situated as content providers, and there should be some differentiation in the treatment in the Code between SMS aggregators and other premium rate service providers:

    (a) As mentioned previously, SMS aggregators merely provide the technology over which the messages are sent and received by content providers and end-users. In that context, Sybase 365 notes that while Network Operators (assuming that they are similarly situated and do not provide premium rate services) and SMS aggregators merely provide the technology, it is the SMS aggregators which bear the burden of the obligations in the Code.

    (b) SMS aggregators do not create content, or review the messages (due to the volume of messages involved). Hence, while it is possible for services and messages to be approved at a pre-launch stage, it is impossible for the SMS aggregator to monitor every message which is sent through its network thereafter. This has to be contrasted with content providers and network operators that provide premium rate services and create messages.

    (c) SMS aggregators generally have considerable investments (financially and otherwise) in building the infrastructure to support the transit and delivery of SMS. Whereas, for content providers, the content services delivered via the SMS medium are either a small part of their overall business, or the quantum of investments in that area of their business is relatively small.

11. That said, Sybase 365 recognises the need to ensure accountability for the services (and hence recognizes that the services-based operator license and the licensing

regime is the mechanism which IDA utilizes to ensure accountability). In raising the abovementioned points, Sybase 365 merely wishes to highlight to IDA that SMS aggregators should be afforded some form of differentiation in the Code. Sybase 365 will, in its specific comments, be proposing areas where differentiation should be made between SMS aggregators and premium rate service providers (in the same way that Billing Network Operators, that are not providing any premium rate services, are treated differently). This would not be the first time that technical service providers merely providing access are differentiated in the eyes of the law (see for example, section 10 of the Electronic Transactions Act).

12. Finally, Sybase 365 suggests that IDA produce an explanatory note describing the intention behind each section of the Code. The cover document which IDA has produced, while providing the general raison d'etre and background to the proposed Code, would have served the industry better by providing an explanatory paragraph for each section of the Code, and perhaps the foreign rules and regulations which IDA had relied on in drafting the Code (much in the same way the public consultation document for the Spam Control Bill had a table which referred to foreign sources of legislation).

SPECIFIC COMMENTS ON THE SECTIONS OF THE CODE

13. Section 1.2.1

13.1 The definitions in Section 1.2.1 are currently not in alphabetical order.

13.2 For ease of reference, the definitions in Section 1.2.1 should be reordered in alphabetical order.

14. Section 1.2.1 (Definition of "subscription-based")

14.1 The current definition of "subscription-based" is as follows:

> "subscription-based", in relation to a premium rate service, means a premium rate service where the end user is committed to the service for a fixed (e.g. weekly, monthly, etc) or continuous duration; and"

14.2 We propose that the definition be amended as follows:

> "subscription-based", in relation to a premium rate service, means a premium rate service where the end user is <u>or will be</u> committed to the service for a fixed (e.g. weekly, monthly, etc) or continuous duration; and"

14.3 The rationale for the amendment is that the defined term is used in respect of advertisements (section 2.2), and in the context of advertisements, the end user has

not yet committed to any service. Hence, the definition should be amended so that it can be more accurately used in the context of section 2.2.

14.4 The rationale for the amendment is that the defined term is used in respect of advertisements (section 2.2), and in the context of advertisements, the end user has not yet committed to any service. Hence, the definition should be amended so that it can be more accurately used in the context of section 2.2.

14.5 We would also suggest that IDA use a word other than "committed" as the word connotes a form of dedication or covenant which would not be broken for the duration stated. As we all know, end-users are able to unsubscribe to a service, and hence the word "committed" would be out of place. IDA may wish to consider using the words "obtaining a service" rather than "committed to the service".

15. Section 2.1.1, 2.1.2, 2.2.1

15.1 Sections 2.1.1 and 2.1.2 state:

"2.1.1 Prior to providing a premium rate service to any person, a premium rate service provider must disclose to that person the prices, terms and conditions on which the service is provided to him.

2.1.2 When disclosing the prices, terms and conditions required under section 2.1.1, the premium rate service provider must include the information and comply with the requirements specified in section 2.2. "

15.2 Section 2.2.1 states:

"A premium rate service provider shall, in disclosing the prices, terms and conditions required under section 2.1, and in relation to all advertisements relating to its premium rate service, comply with the following requirements -"

15.3 It is unclear why IDA has included section 2.1 in the Code. It does not add anything to the current state of the rules that apply to telecommunication licensees. This section 2.1 effectively repeats section 3.2.2 of the Telecom Competition Code. If it is the intent of IDA to illuminate and expound on the application of section 3.2.2 of the Telecom Competition Code to premium SMS services, it would not be appropriate to do so in a new Code. We are of the view any such clarification or guidance provided by IDA in relation to an existing obligation under an existing Code should be done by way of written guidelines issued by IDA. We note that IDA has done this before in the form of the Consolidation Review Guidelines and Tender Offer Guidelines wherein the workings of section 10 of the Telecom Competition Code are elaborated.

15.4 We would therefore recommend the deletion of section 2.1 as it merely repeats section 3.2.2 of the Telecom Competition Code.

15.5 Section 2.2.1 then makes a distinction between a "disclosure" and an "advertisement". We are of the view that the distinction is unnecessary as the definition of advertisement used in the Code essentially covers everything that a disclosure could possibly cover. We have found it difficult to identify when a disclosure would not be an advertisement (as defined under the Code). It is also telling that the examples/illustrations to section 2.2.1 relate only to "advertisements" and not "disclosures".

15.6 We would therefore suggest that IDA delete the reference to "disclosure" in section 2.2.1 for the reason that the references to "disclosure" are superfluous given the all-encompassing definition and obligations relating to "advertising" in section 2.2.1.

15.7 It is proposed that section 2.2.1 shall therefore read as follows:

> "A premium rate service provider shall in relation to all advertisements relating to its premium rate service, comply with the following requirements -"

Consequential amendments would be required in relation to sections 2.2.1(a), (b), (c) and (d) to remove the references to "disclosure".

16. Section 2.2.1(b)(ii)

16.1 Section 2.2.1(b)(ii) requires all advertisements relating to a premium rate service to contain the name of the premium rate service provider as registered with the Accounting and Corporate Regulatory Authority.

16.2 We are of the view that this requirement should be removed. The requirement would effectively reduce the effectiveness of SMS as a medium of providing services and would only serve to cause more confusion amongst end-users:

(a) as mentioned above, SMS aggregators like Sybase 365 merely provide the technology to the content provider who ultimately provides the content service. Our experience has been that some consumers have ended up confused as to the identity of the actual provider of the service as they were unable to appreciate the distinction between the content provider and its technology service provider. Further, it might mislead consumers into thinking that SMS aggregators are the actual service providers when they had originally subscribed to a service advertised by the content provider.

Please refer to Annex A for additional details.

(b) In some instances, it is not possible for the advertisement to contain the name of the service provider. To force service providers to include their names into all advertisements would be to unreasonably limit the possible use and effectiveness of SMS as a marketing tool.

Please refer to Annex A for additional details.

(c) By imposing this requirement, there would be unnecessary interference with the branding (brand equity and the look of an advertisement) and marketing of services by brand owners.

Please refer to Annex A for additional details.

(d) if IDA's concern is that end-users do not know who to call in relation to disputes, our view is that the current practices of the industry appear to be working sufficiently to address any potential concerns about end-users being unaware of who to contact in the event of a dispute. In situations where end-users are billed through their monthly mobile phone bill, the bill would contain the service name and the customer service hotline. In the event of a dispute, the end-user would invariably first contact the network operator (as the bill was sent by the network operator). As is the current practice, the network operator would then contact the premium rate service provider or refer the end-user to the premium rate service provider. Therefore the end-user would be informed by the network operator as to the appropriate persons and hotline number to contact.

(e) In the case of SMS aggregators, it would not be accurate to represent that the SMS aggregator is the entity that provides the underlying content service. In fact, this is acknowledged in part (c) of the definition of premium rate service provider when it describes the situation where licensees facilitate the provision of *another* entity's premium rate service. SMS aggregators are facilitators. As an analogy, an automated teller machine (ATM) is the technology over which a banking service is provided by a bank. The company which operates and maintains the ATM machine (e.g. companies like NCR) would surely not be labeled as the entity providing banking services.

(f) it would not be practicable to include both the name of the content provider and the technology service provider in the advertisement (where the advertisement is in the form of an SMS). The additional characters would limit the number of characters which are actually usable for describing the service in the SMS. As an example:

> [ADV]Send START to subscribe to [XXXXX]. Receive 3 SMS/week @ $3/SMS until u reply STOP to 12345. T&Cs at www.XXXXXX.com. Sybase 365 Pte Ltd. Hotline:800XXXXXXX

That only leaves about 7 characters for the description of the service as indicated by the part "[XXXXX]". This is hardly enough space to provide a description of a service.

16.3 To reiterate, we believe that section 2.2.1(b)(ii) should be removed. If IDA is of the view that this requirement should not be removed, we propose that either:

(a) this requirement not apply to entities described under paragraph (c) of the definition of premium rate service provider in the Code (or more specifically, SMS aggregators); or

(b) as we understand that one of the concerns of IDA is to ensure that end-users are made aware of who the provider of the content service is, then we would request that the name of the *actual* content service provider be inserted in the advertisement (rather than the name of the licensee which would be different from the content provider in the case of SMS aggregators). Again, end-users subscribe to a content service, and not the SMS gateway service of the SMS aggregator, and it would be misleading to reflect the SMS aggregator as the actual provider of the content service.

16.4 For completeness sake, we also propose that IDA remove the requirement under paragraph 5 of the First Schedule of the Telecommunications (Class Licenses) Regulations. In addition to our comments above, we note that IDA does not subject Facilities Based Operators or Services Based (Individual) Operators to the same naming convention requirement in their advertisements of their services. It is not clear why IDA treats Class Licensees differently in this respect, and in our view, it does not seem reasonable to treat this class of licensees differently.

17. Section 2.2.1(C)

17.1 Section 2.2.1(C) requires the advertisement to contain "step-by-step" instructions on how an end-user can unsubscribe to a service.

17.2 We are concerned with the use of the words "step-by-step". Taken literally, it would require service providers to describe each step which an end-user must take in order to unsubscribe to a service. For example, would service providers be required to include instructions on how to type in the unsubscribe words and how to send an SMS, or how to call a telephone number?

17.3 Given the potential of end-users to interpret such words literally, and to address the potential of frivolous complaints by end-users, we would suggest that IDA:

(a) delete the reference to "step-by-step instructions" and replace it with the word "information"; and/or

(b) include the following example in relation to Section 2.2.1(C) to provide guidance as to what would be considered as acceptable instructions:

"For example: 'To unsub reply STOP' or 'To unsub reply STOP to XXXXX' or 'Call XXXXXXXXX to unsub' "

18. Section 2.2.2, Example A

18.1 Section 2.2.2, Example A states:

> "*Example A: The advertisement for a premium rate service only sets out a description of the service and the short code for consumers to call to purchase the service. The advertisement does not contain the applicable prices and key terms of the service but instead refers consumers to other sources for this information.*
>
> *Illustration: A premium rate service provider advertises for its service by sending marketing messages to mobile phone subscribers. The advertisement omits to state the applicable prices and key terms affecting charges but instead refers consumers to the premium rate service provider's website for all terms and conditions. Such advertising is unacceptable as consumers should, at the minimum, be informed upfront of the prices and key terms affecting the charges that they will incur for use of the service and should not be expected to search elsewhere for such basic information."*

18.2 We are of the view that it would be useful to have a clarification that the accepted commercial practice of incorporating terms by reference is not being prohibited, and we propose that the words "key terms" be removed from the example.

18.3 We accept the requirement that advertising should always contain the charges and frequency of charges. However, we propose that the words "key terms" be deleted. The concern here is that the words "key terms" are ambiguous and would incorporate an element of subjectivity. What is not a "key term" to one person may be a "key term" to another person, and the ambit of the term "key term" would potentially be the source of disputes and disagreement by end-users. In our view, the primary area of concern in relation to premium rate services is the disclosure of the charges and frequency of charges. As such, we propose that the disclosure requirements in relation to an SMS advertisement be limited to specifying the charges and the frequency of charges. Further, an SMS can only contain 160 characters (in the latin script), and it would be difficult to include terms in addition to the description of services, charges, frequency of charges and unsubscribe information.

18.4 In relation to the clarification on incorporation by reference, we believe that such a clarification would be useful to address any uncertainty arising from Example A. On a fundamental level, incorporation by reference of terms other than charges or frequency of charges should be permitted. It is an accepted legal principle that terms and conditions can be incorporated by reference. This is accepted in many other industries including the financial services industry which involves transactions which have a monetary value of a much larger scale. In fact, it is common to see or hear the

words "terms and conditions apply" on mass media advertisements or even references to extraneous documents (e.g. application of IPO securities through ATM machines would require applicants to refer to an offline prospectus). We also note that Starhub's terms and conditions for consumer services are contained on its website www.starhub.com (which are incorporated by reference in its hard-copy subscription forms).

18.5 We would therefore propose that the following words be included at the end of Section 2.2.1:

> "Without prejudice to the foregoing requirements, advertisements may contain information (e.g. a web-link) on where further terms and conditions may be obtained."

19. Section 2.4.2

19.1 Section 2.4.2(a) requires that a purchase keyword command must not be misleading in any way.

19.2 We do not understand how a purchase keyword command may be misleading. We would propose that IDA provide more details or, at least, examples of how a purchase keyword can be misleading. Otherwise, we believe this section 2.4.2(a) to be unnecessary.

20. Section 2.4.3

20.1 Section 2.4.3 states that:

> "Where a premium rate service provider provides more than one premium rate service, it must designate a different purchase keyword command for each premium rate service."

20.2 It would appear that this section assumes that the premium rate service is provided on the same short-code (i.e. a shared short-code). This ignores the possibility that a premium rate service provider such as SMS aggregators may maintain several different short-codes (both dedicated and shared) for its content provider clients. For example, an SMS aggregator may have two short-codes, and may have several content provider clients providing different premium rate services with the same purchase keyword command (e.g. START) but on different short-codes. Therefore, if the section were to remain unchanged, SMS aggregators (being premium rate service providers) would be forced to ensure that their clients each use a different purchase keyword notwithstanding that the premium rate service is advertised, branded and ultimately provided over different short-codes.

20.3 Presumably, the intention of section 2.4.3 is to ensure that end-users do not end up subscribing for services which they did not intend to subscribe to. We acknowledge

that such a requirement is necessary for services provided over the same short-code. However, in the case where the different premium rate services could be provided by the same premium rate service provider over different short-codes, we are of the view that there would be no confusion on the part of the end-user as to the service that he signs up to. As such, we would propose that the section be amended as follows:

> "Where a premium rate service provider provides more than one premium rate service, it must designate a different purchase keyword command for each premium rate service unless the premium rate services are on different short-codes."

Alternatively, the section may be amended as follows:

> "Where a premium rate service provider provides more than one premium rate service, it must designate a different purchase keyword command for each premium rate service. The foregoing shall not apply to premium rate services which are provided by entities described under paragraph (c) of the definition of premium rate service provider and which entities provide premium rate services on different short-codes."

21. Section 2.5.1(iii)

21.1 Section 2.5.1(iii) requires the confirmation message to contain "step-by-step" instructions on how an end-user can unsubscribe to a service.

21.2 As mentioned previously, we have concerns with the use of the words "step-by-step", and our comments there apply equally here.

21.3 Given the real potential of end-users to interpret such words literally, and to address the real potential of frivolous complaints by end-users, we would propose that IDA:

(a) delete the reference to "step-by-step instructions" and replace with "information"; and/or

(b) include the following example in relation to Section 2.5.1(iii) to provide guidance as to what would be considered as acceptable instructions:

> "For example: 'To unsub reply STOP' or 'To unsub reply STOP to XXXXX' or 'Call XXXXXXXXX to unsub' "

22. Section 2.5.2

22.1 Sections 2.5.2 (a) and (b) requires that the subscription reminder be sent to an end-user at least once a week.

22.2 We are of the view that the frequency of the reminders should be changed to a monthly reminder instead of a weekly one.

22.3 A requirement to send weekly reminder is onerous and imposes considerable business costs (see Annex A), and which would ultimately not be in the interests of consumers (as such business costs are usually passed down to the consumers). Further, it is probable that the frequency of the weekly reminder would be more of a nuisance, and turn end-users off continuing with the premium rate service which they had subscribed to.

22.4 Further, we note that other jurisdictions impose monthly reminders (e.g. see section 3.2.4 of the Australia Guideline to the Mobile Premium Service Industry Scheme). In the case of Malaysia, reminders are only required prior to the renewal of the subscription service.

23. Section 2.5.2(i)

23.1 Section 2.5.2(i) requires the reminder message to contain, inter alia, the date on which the subscription will be automatically renewed if the end-user does not unsubscribe.

23.2 We propose that the requirement to indicate the date be removed.

23.3 The date indication requirement is unnecessary. The end-user would be provided with the reminder notice that he is currently subscribed to the service. In our view, and from our experience, that is sufficient information for end-users to know that they are currently subscribed to a charged subscription service. Upon receiving the notice, the end-user would either unsubscribe or continue to subscribe to the service.

23.4 Customisation of the SMS to include user-specific information would also impose additional business costs.

24. Section 2.5.2(iii)

24.1 Section 2.5.2(iii) requires the reminder message to contain “step-by-step” instructions on how an end-user can unsubscribe to a service.

24.2 As mentioned previously in relation to Section 2.5.1(iii), we have concerns with the use of the words “step-by-step”, and our comments there apply equally here.

24.3 Given the real potential of end-users to interpret such words literally, and to address the real potential of frivolous complaints by end-users, we would propose that IDA:

(c) delete the reference to “step-by-step instructions” and replace with “information”; and/or

(d) include the following example in relation to Section 2.5.1(iii) to provide guidance as to what would be considered as acceptable instructions:

> "For example: 'To unsub reply STOP' or 'To unsub reply STOP to XXXXX' or 'Call XXXXXXXXX to unsub' "

25. Section 2.5.5

25.1 Section 2.5.5 prohibits premium rate service providers from imposing any charges for any confirmation or reminder messages sent to end-users.

25.2 We propose that the section be amended to clarify that end-users may incur standard text charges. The existing section 2.5.5 should be replaced with the following:

> "End users must not incur any charges beyond the standard text charge for receiving confirmation or reminder messages"

26. Section 2.6.5

26.1 As section 2.6.5 and section 2.4.3 are essentially the same clause, our comments and proposed amendments in relation to Section 2.4.3 would also apply to Section 2.6.5.

27. Section 2.7.1

27.1 Section 2.7.1 states that, inter alia, that a premium rate service provider must ensure that it does not charge end-users for messages which do not contain actual content or relate to the person's use of the premium rate service. The section then proceeds to identify information which would be considered to not contain actual content (and hence premium rate service provider are not able to charge for).

27.2 The drafting in section 2.7.1 suffers from several deficiencies:

(a) It is open to different interpretations. As a charged SMS-MT which delivers content may sometimes contain information on how to unsubscribe from a service, it may be argued (based on the drafting of section 2.7.1), that premium rate service providers are not to charge for any message or communication which contains any information which is listed in section 2.7.1;

(b) Sections 2.7.1(e) and (f) are superfluous, in part, given that there is already a requirement in section 2.5.5 which states that no premium charges should be imposed on confirmation / reminder messages;

(c) Section 2.7.1(i) is repetitive of section 2.7.1(c) as instructions and information on how to unsubscribe are essentially the same;

(d) the prohibition on charging for advertisements (section 2.7.1(a)) limits the use of the SMS medium for providing services. We can envisage a premium rate service where the advertisement is the service, and where consumers may wish to pay to obtain specific information/advertisements which no other person receives. So long as the end-user is provided with all the necessary information relating to charges and frequency of charges, we do not see why an end-user cannot pay for an advertising service. Ultimately, it is the free choice of the end-user to subscribe to receiving charged messages as long as the necessary pricing and unsubscribe information is provided to the end-user. If an advertisement is in itself "content", and end-users want to pay to receive such advertisements, then they should be entitled to receive such paid advertisements; and

(e) Further, the wide and all-encompassing definition of advertisements in the Code would capture every form of digital communication (see sub-paragraph (j) in the definition of advertisements) and could be interpreted to include the communication containing the actual content itself.

27.3 Based on the foregoing, we propose that section 2.7.1 be deleted in its entirety.

27.4 If IDA is not minded to remove section 2.7.1 without a section to replace it, we would propose, in the alternative, that the following section replace section 2.7.1:

> "Premium Rate Service Providers shall ensure that end-users shall only be charged for premium rate services for which they had subscribed from the Premium Rate Service Providers."

Presumably the intention behind section 2.7.1 is to ensure that end-users are only charged for receiving content which they had subscribed for.

28. Section 2.7.2

28.1 Section 2.7.2 states that a premium rate service provider which charges an upfront membership or subscription fee may charge for confirmation messages which are sent to end-users upon their subscription to or renewal of the service.

28.2 The relationship between sections 2.7.2 and 2.5.5 should be clarified as section 2.5.5 states clearly that no charges shall be imposed for "any confirmation or reminder messages" sent to end-users.

29. Section 2.8.2, Example B

29.1 We note that Section 2.8.2, Example B illustrates the situation whereby chat messages must include the per message charge.

29.2 We propose that chat services be excluded from the per message charge indication requirements under section 2.8.2. We fail to see how this would be in the interest of end-users given that the inclusion of the words "$0.30 charged" would take up space in the message and may potentially require the end-user to receive more messages in the event that the message is more than 160 characters long, and ultimately, the end-user would be charged more than is necessary.

29.3 Again, end-users would have seen advertisements which stipulate the charges and would have been informed of the charges prior to commencing the chat. The end-user would therefore have notice of the charges. Requiring the per message charge to be incorporated in every premium message does not seem to serve a meaningful purpose other than to reduce the space in an SMS which end-users can use.

29.4 Further, we note that there are many other instances where IDA has not required other telecommunication service providers from providing charge information to users at the time of use. For example, international direct dial services (which can be costly and which can be used by consumers) are not required to indicate the charges utilized at the end of each call. The IDD charges only appear in the end-users' monthly bills.

30. Section 2.8.3(a) and (b)

30.1 First, there appears to be a typographical error in that there are two sections 2.8.2. The later section 2.8.2 should be renumbered as section 2.8.3.

30.2 Second, presumably sections 2.8.3(a) and (b) are intended to be separate elements, and are not intended to be read conjunctively. Hence, the word "and" at the end of section 2.8.3(a) should be amended to "or". Alternatively, the words "any of" should be inserted in the first sentence of section 2.8.3 before the words "the following transmissions -".

30.3 There also exists a hybrid situation where a WAP download link is provided to the end-user where there is no further interface. In such a situation, the end-user would receive an SMS with a WAP link (following all the necessary opt-in and confirmation messages), and the end-user would click on the WAP link to immediately download the content (without a further interface). We are of the view that such a situation be addressed in section 2.8.3.

31. Section 2.9

31.1 Section 2.9 requires clarification as to whether instant messaging mobile services (which are essentially person to person) would be considered as chat services.

31.2 In our view, instant messaging mobile services should not be considered as a chat services as instant messaging essentially is a conversation between 2 persons (who know each other and who need to be invited onto each other's contact lists). Chat

services, on the other hand, elicit multiple responses from multiple persons (whose identities are usually unknown to the participant in the chat service). As such, the safeguards in relation to chat services would not be appropriate for instant messaging services whereby the conversation and hence the number of messages sent and received are dictated by the end-user.

32. Section 2.10

32.1 Section 2.10.1 requires premium rate service providers to be responsible for ensuring that the bills for its premium rate services are clear, accurate and timely.

32.2 Section 2.10.2 requires premium rate service providers to ensure that bills are sent on a monthly basis.

32.3 Section 2.10.3 requires premium rate service providers to ensure that bills contain certain minimum information.

32.4 While we can agree to this approach *if* the premium rate service provider has full control over the billing system and where the premium rate service provider issues the bills directly to the end-user, we would strongly disagree with this approach if the premium rate service provider has no control over the billing system.

32.5 Most end-users are billed for premium rate services through the billing system of the network operators. These billing systems are operated and maintained by network operators. The capabilities of the billing systems to capture and reflect information is not fully transparent to the premium rate service providers (to our knowledge, bill descriptions depend on network operators' billing system capabilities and there are limitations in terms of the number of characters and the service differentiation per short-code). The network operators would not allow any person / entity to have access to, or to have control or dictate control over their billing systems. It is therefore an impossibility for premium rate service providers (who are not network operators) to "ensure" what is being required in Section 2.10 of Code.

32.6 Further, we would like to highlight that network operators bill their end-users based on their traffic statistics and logs, and *not* on the basis of premium rate service provider traffic statistics and logs. Therefore, network operators, in billing their subscribers, do not wait for premium rate service providers to provide them with traffic statistics and logs.

32.7 It would also be unreasonable to expect premium rate service providers to force or compel network operators to comply with these obligations due to the relatively superior negotiating power which network operators wield in contractual negotiations.

32.8 Therefore, the onus of administering clear, accurate and timely bills, the billing cycles, and incorporating the requisite information that must appear on the bills should fall on network operators and premium rate service providers who have sole and exclusive control over their billing systems.

32.9 The (unlikely) alternative is for IDA to *direct* network operators to ensure that premium rate service providers have access to the network operators' billing systems so as to allow premium rate service providers to comply with the Code.

33. Section 2.11.2

33.1 We note that IDA considers a person who has received a bill for the service as being "charged" for that service. The consequence of this is that an end user who receives unsolicited premium messages would be considered to have charged based on what is reflected on his bill.

33.2 We are of the view that this unfairly exposes premium rate service providers to a breach of the Code especially if the circumstances which led to the breach were not within its control, and where the premium rate service provider has the full intention of processing waivers to the affected end-users (but was unable to prevent the bills being sent out due to its inability to control the billing system of the network operators).

33.3 In this context, we would urge that IDA, retain proportionality and have regard to the context (especially in the context of SMS aggregators) in the exercise of its discretion in its enforcement actions.

33.4 As IDA is aware, there is exists the possibility that the charging for the unsolicited services may not be intentional and may have been the result of a technical fault, or due to human error. No technology is 100% error-free. If one were to consider the human element in the equation, the possibility of an error or oversight resulting in a breach occurring is not small. While it would be easy for one to say that premium rate service providers should ensure that no breaches occur, it is impossible to guarantee that.

33.5 We appreciate the fact that technical faults and accidents may be mitigating factors, but it is cold comfort as IDA would still treat accidents and technical faults as breaches, and would still initiate enforcement action against the premium rate service provider, and would consider that breach to be an aggravating factor in respect of future breaches.

33.6 Further, we would add that currently, the network operators usually reflect the charges on the bills first, and then refunds are made through the end-users' subsequent bills. As the premium rate service providers do not have control over the billing systems

and the billing cycles implemented by the network operators, it would be difficult for premium rate service providers to head-off a charge being reflected on the bill.

34. Section 2.12.1

34.1 As mentioned previously, premium rate service providers (who are not network operators) do not have control over the billing system and billing cycles of the network operator (the billing cycles from network operator to network operator differ). It is impossible for premium rate service providers to ensure that payment is not collected if there is no control over the billing systems of the network operator.

34.2 Further, we would add that in the current practice, the network operators usually reflect the charges on the bills first, and then refunds are made through the end-users subsequent bills.

35. Section 2.12.3

35.1 In most cases, network operators act as the collectors of the payment from end-users.

35.2 As such, the obligation should instead be placed on the network operators. Further, it should be clarified that the premium rate service provider would provide the confirmation to the network operator that the charge is correct.

36. New Section 2.12A

36.1 From our experience, there have been numerous occasions where end-users have disputed charges and/or lodged complaints with IDA with full knowledge that the charges were incurred by either them or persons whom the end-users had allowed the use of their mobile phones (e.g. the children of the end-users). Such complaints form a large proportion (50%-60%) of the calls that we receive in relation to premium rate services.

36.2 In some instances, these end-users had even admitted that their children had subscribed to these premium rate services, but had still demanded for waivers (in an attempt to absolve their children and themselves from the financial responsibility of their actions). End-users presumably resort to such tactics as they believe that complaining to IDA, would apply pressure on the premium rate service providers to process waivers.

36.3 We would propose that IDA incorporate the following clause to send a clear message to such end-users and to disincentivise such end-users from lodging disputes where they have full knowledge of the pricing structure, or had authorized or otherwise acquiesced in the incurring of the charges:

> "Where the premium rate service provider is able to prove that an end-user has (i) consented to subscribing to the premium rate service, or (ii) that there is reasonable evidence to show that the end-user has knowledge of pricing, or (iii) that the end-user has authorized or otherwise acquiesced in the incurring of the charges, then the premium rate service provider may charge the reasonable costs of the investigation to the end-user, and the billing network operator shall liaise with the premium rate service provider to include the reasonable costs of the investigation in the end-user's next bill."

36.4 As IDA would appreciate, if there is nothing to disincentivise end-users from lodging baseless disputes and complaints, legitimate businesses would face ever-increasing costs to resolve such disputes. As IDA is requiring premium rate service providers to take responsibility for their services, IDA should also ensure the proper development of the market wherein end-users take responsibility for the use of their mobile phones. As an analogy, if a child uses his parents' credit cards for purchases over the Internet, the issuing bank (of the credit card) would generally not grant any waivers for the charges (notwithstanding that the parents were not aware of the child's actions).

36.5 Please also see our further comments below on public education.

37. Section 2.12.5

37.1 We are of the view that the one year period in section 2.12.5 wherein the end-user is able to dispute charges is too long.

37.2 Practically, an end-user generally receives his bill from his network operator on a monthly basis, and would usually promptly dispute any charges which he does not agree with.

37.3 Further, the one year period is not consistent with commercial reality. To our knowledge, there is no other industry which allows bills to be disputed over a period of anything more than two or three months (e.g. public utilities, credit card statements, phone bills).

37.4 There would be business costs associated with this as well. The longer the period which end-users are allowed to raise disputes, the longer the uncertainty for businesses, and the larger the accounting provisions that must be made in the financial books of the company in relation to disputes that may possibly be lodged within the year.

37.5 We therefore propose that the period be reduced to two months from the due payment date of the charge.

38. Section 2.14.2 and 2.14.3

38.1 The prohibition in section 2.14.3 should be combined with the prohibition in section 2.14.2. This is because the exclusions in section 2.14.2 apply equally to disclosures in section 2.14.3.

38.2 An additional exclusion should be added to section 2.14.2 whereby premium rate service providers should be permitted to disclose the EUSI to its professional advisors (e.g. lawyers, auditors). Further, there should be an exclusion which would allow premium rate service providers to provide the EUSI to network operators (who invariably adopt the position that the subscribers' data belong to them).

38.3 Therefore the new section 2.14.2 should read as follows:

> "Unless an end user has expressly provided his prior consent, a premium rate service provider shall ensure that it does not use <u>or disclose</u> his EUSI for any purpose other than –
> (a) planning, provisioning and billing for the premium rate service requested by the end user and provided by the premium rate service provider;
> (b) managing bad debt and preventing fraud related to the provision of premium rate services;
> (c) facilitating interconnection and inter-operability between premium rate service providers for the provision of premium rate services;
> <u>(d) obtaining professional advice from the premium rate service provider's professional advisors;</u>
> <u>(e) providing network operators with the EUSI of its subscribers;</u>
> (f) providing assistance to law enforcement, judicial or other government agencies; and
> (g) complying with any regulatory requirement imposed by IDA authorising the use of EUSI."

38.4 Section 2.14.3 should then be deleted.

39. Section 3.3.2

39.1 Section 3.3.2 must be amended to require network operators to also provide "all necessary assistance as requested by premium rate service providers".

40. New section 4.6.3.(f) and (g)

40.1 As mentioned above, no technology or service can be 100% error-free (given the variables of software, hardware and human fallibility).

40.2 As such, we propose that the following wording be added as a new section 4.6.3(f) to cater for incidents beyond the reasonable control of premium rate service providers:

> "(f) whether the contravention is due to a technical fault or other incidents which are beyond the reasonable control of the premium rate service provider"

40.3 We would also propose that a mitigating factor be added for SMS aggregators which are merely technology service providers providing content providers with access to their infrastructure (much in the same way that network operators are providing access to their infrastructure). This would be consistent with our comments in paragraphs 10, 11 and 12. Therefore, we would propose the following mitigating factor:

> "(g) where the premium rate service provider is an entity described under paragraph (c) of the definition of premium rate service provider, such premium rate service provider had (i) implemented reasonable audit measures to ensure that the services provided over its facilities by third parties comply with the Code, and (ii) at the time of the breach, no knowledge of the said breach, and (iii) taken reasonable steps to address and rectify the damage (including but not limited to processing waivers of any unsolicited charges)."

COMMENTS ON PROCEDURE

41. Following this public consultation, we would request that IDA hold a second round of public consultation following a revision of the Code based on the comments that it receives from this first public consultation. This will allow respondents to provide comments on the revisions that IDA will make to the Code.

42. We also note that IDA is proposing to give premium rate service providers a period of 30 days lead time following the finalization of the Code to ensure that their services comply with the provisions of the Code. As some premium rate services are provided on a global or regional basis, and which would require some rework to reconfigure the service for Singapore, we would request that IDA provides a total of 90 days lead time to premium rate service providers to make the necessary changes to ensure compliance with the Code.

COMMENTS ON PUBLIC EDUCATION

43. We also hope that IDA will engage in rigorous and effective public education on the proper use of premium rate services and educating the public (especially parents in relation to their children) on the proper and responsible use of mobile phones. Such public education should also reinforce the responsibility that they must shoulder in managing their children's use of the mobile phone. It would be disappointing if the only public education which emerge from IDA are seminars informing the public of their rights under the Code.

44. Such public education would be similar to public education programmes in respect of the proper and responsible use of the Internet by children. As is the case with children who use the Internet, parents should be supervising and managing their children's use of the mobile phones (especially with the convergence of high speed data access through mobile phones and the Internet). The consequences and costs of the abdication of this responsibility should not be transferred to legitimate businesses.

45. We trust that you will find these comments useful. If you should have any questions on the above, please do not hesitate to contact us at +65 6836 4430 or via email at matthew.talbot@mobile365.com or derek.ho@mobile365.com.

Yours faithfully,

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