

Case Reference	R/E/I/075
Title	Sybase's Multiple Breaches of the Premium Rate Services Code
Case Opened	18 March 2009
Case Closed	27 July 2009
Complainant	IDA-initiated enforcement proceedings
Respondent	Sybase (Singapore) Pte Ltd (" Sybase ")
Case Summary	<p>IDA had received three separate complaints from members of the public regarding three premium rate services ("PRS") offered by Sybase. The services and the corresponding complaints are as follows:</p> <p><u>"Honey" Service</u> The "Honey" service is offered as an ongoing chargeable service whereby subscribers receive three chargeable SMS messages a week. Arising from a consumer's complaint, IDA discovered that Sybase had erroneously charged nine subscribers for a fourth message in a particular week, on top of the three that the subscribers had signed up for. Sybase explained that the erroneous charging occurred as a result of a technical glitch.</p> <p><u>"Silent" Service</u> Similar to the "Honey" service, the "Silent" service is also offered as an ongoing chargeable service. Arising from a consumer's complaint about being charged for the "Silent" service which he had not subscribed for, IDA investigated the complaint and it was established that the complainant's mobile number is a recycled number – it had been terminated by a previous owner, placed under quarantine and then subsequently reassigned to the complainant. The "Silent" service was subscribed by the previous owner of the mobile number, who terminated the mobile line without terminating the subscription to the "Silent" service. Sybase had continued to send chargeable SMS messages to that mobile number while it was placed in quarantine by the mobile operator for about 8 months. As such, when the mobile number was reassigned to the complainant, the complainant was erroneously billed for the "Silent" service. When IDA had first asked Sybase to investigate the complaint, Sybase failed to conduct the necessary investigations into the matter, and had then informed IDA that the subscription was solicited, when this was not the case.</p> <p><u>"MSN" Service</u> The "MSN" service is offered as an ongoing subscription service that provides end users with brief incoming email</p>

	<p>alerts/instant messages via SMS. Subscribers who wish to view more details will have to send a reply SMS message to Sybase. Originally, the “MSN” service imposed a charge on <u>all</u> SMS messages sent to and from subscribers’ mobile phone. Sybase explained that, with the introduction of the PRS Code in December 2007, its original intention was to provide the “MSN” service <u>entirely</u> free-of-charge. However, an oversight on its part resulted in Sybase continuing to provide the “MSN” service as an ongoing subscription-based PRS, such that messages sent from end users’ mobile phones, in relation to the “MSN” service, continued to be charged at \$0.15 each.</p> <p>IDA had received a complaint from a consumer about being charged for the “MSN” service even though he had not subscribed for the service. IDA’s investigations revealed that the complainant was also the recipient of a recycled mobile number. As a result of Sybase’s oversight and the continued provision of the “MSN” service as a PRS, the complainant here was charged for the “MSN” service which had been subscribed for by the previous owner of the number.</p> <p>IDA also discovered that Sybase’s oversight resulted in some 2,766 end users being erroneously charged a total of \$1,960 for their subscription to the “MSN” service, for a period of 13 months up to January 2009. Furthermore, though Sybase received four separate complaints from end users disputing the charges for the “MSN” service, Sybase did not take action to rectify the situation, and continued to provide the “MSN” service as a chargeable PRS. Resulting from its oversight, Sybase also failed to comply with various requirements of the PRS Code. Specifically, Sybase failed to:</p> <ul style="list-style-type: none"> (a) indicate its company name or hotline number on the website advertising its “MSN” service; (b) indicate in its website advertisement that the “MSN” service is provided as an ongoing subscription service and that the onus is on subscribers to quit if they wish to unsubscribe; (c) ensure subscribers to the “MSN” service are properly authenticated via SMS messaging; (d) provide confirmation and reminder messages for subscribers of the “MSN” service; and (e) charge only for content (Sybase had charged end users who had sent in messages which are unrelated to the provision of the “MSN” service, i.e. messages requesting for unsubscription from the “MSN” service or containing the wrong keywords).
<p>IDA’s Determination</p>	<p><u>For the “Honey” Service</u> Section 2.12 (Duty not to charge for unsolicited services) of the PRS Code states that “<i>A premium rate service provider shall not charge any person for any service that the person did not purchase or subscribe for</i>”. As Sybase had charged the</p>

affected end users for a service (the additional message) which they had not subscribed for, IDA found Sybase in contravention of Section 2.12 of the PRS Code.

IDA considered the following as relevant mitigating factors:

- (a) the impact of the contravention is minor, given that the glitch occurred in a single week out of the seven months that the service was provisioned;
- (b) Sybase had since put in place additional safeguards to prevent future contraventions;
- (c) Sybase had made full refunds to all affected end users; and
- (d) Sybase had suspended this service since October 2008 and had also required its third party content provider to comply with measures to safeguard against similar technical glitches.

For the “Silent” Service

As Sybase charged the complainant in this case for a service he had not subscribed for, IDA found Sybase in contravention of Section 2.12 of the PRS Code.

Furthermore, Section 2.13 (Duty relating to disputes over charges) of the PRS Code provides that “[i]n all cases where a reasonably disputed charge is notified to a premium rate service provider by the person charged, whether directly or through its billing network operator, the premium rate service provider must take all necessary action to carry out a full and complete investigation at its own expense on the disputed charge”. As Sybase had failed to “take all necessary action to carry out a full and complete investigation” on the disputed charges in the complaint, despite having been alerted by IDA, IDA found Sybase in contravention of Section 2.13 as well.

For this case, IDA identified the following mitigating factors:

- (a) Sybase’s contraventions in relation to the “Silent” service affected only one end user, who had since been refunded; and
- (b) Sybase had put in place a system to reduce the risk of future contraventions.

However, IDA identified the following aggravating factors:

- (a) Despite having been warned for a similar breach of Section 2.12 of the PRS Code in August 2008, Sybase failed to correct its system to prevent future contraventions, disregarding IDA’s warning; and
- (b) Sybase had initially represented to IDA that the complainant’s subscription was solicited when this was in fact not the case.

For the “MSN” Service

Given that Sybase’s oversight resulted in its continued provision of the “MSN” service as a PRS in a manner that is not compliant with the provisions of the PRS Code, IDA found Sybase in contraventions of the following sections of the PRS Code: Sections 2.2.1(b)(ii) & (b)(iii), 2.2.1(d)(ii)(A) & (d)(ii)(B), 2.5, 2.6, 2.8 and 2.12.

As Sybase has since refunded all affected end users, IDA took this into consideration as a mitigating factor. However, IDA found the following aggravating factors:

- (a) Sybase had operated the “MSN” service in contravention of the PRS Code for a considerably long period of 13 months;
- (b) During this period, Sybase had continued to collect payment on an ongoing basis from 2,766 subscribers to the “MSN” service; and
- (c) Sybase had persisted with the contravention despite receiving four separate complaints from end users relating to a dispute over the charges for the “MSN” Service. The first of the series of complaints had been received by Sybase as early as December 2007. Sybase had allowed the contraventions to continue despite the ample time and opportunities afforded to it to rectify the contraventions.

Taking these factors into consideration, IDA decided to:

- (a) issue **a warning** to Sybase for its contravention of Section 2.12 of the PRS Code, in relation to the “Honey” service;
- (b) impose **a financial penalty of \$15,000** on Sybase for its *repeated* contravention of Section 2.12 and contravention of Section 2.13 of the PRS Code, in relation to the “Silent” service; and
- (c) impose **a financial penalty of \$50,000** on Sybase for its contravention of Sections 2.2.1(b)(ii) & (b)(iii), 2.2.1(d)(ii)(A) & (d)(ii)(B), 2.5, 2.6, 2.8 and 2.12 of the PRS Code, in relation to the “MSN” service.