EXPLANATORY STATEMENT

Issued by the Australian Communications and Media Authority

Telecommunications Service Provider (Premium Services) Revocation Determination 2010 (No. 1)

Purpose

The Telecommunications Service Provider (Premium Services) Revocation Determination 2010 (No. 1) (the Revocation Determination) revokes the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 2) (the 2004 Determination).

Legislative Provisions

Subsection 99(1) of the Telecommunications Act 1997 (the Act) provides that the Australian Communications and Media Authority (the ACMA) may make a written determination setting out rules that apply to service providers in relation to the supply of specified carriage services or specified content services.

The predecessor to ACMA, the Australian Communications Authority (ACA), made the 2004 Determination. In accordance with the Australian Communications and Media Authority (Consequential and Transitional Provisions) Act 2005, ACMA is taken to have made the 2004 Determination as previously made by the ACA.

Subsection 33(3) of the Acts Interpretation Act 1901 provides that where an Act confers a power to make an instrument, that power shall, unless the contrary intention appears, be construed as including a power exercisable in a like manner and subject to like conditions, to revoke that instrument.

Background

On 13 April 2004, the Hon Daryl Williams, the then Minister for Communications, Information Technology and the Arts made the Australian Communications Authority (Service Provider Determination) Direction 2004 (No. 1) (the Direction) which directed the former ACA to make a service provider determination to set out an obligation on a carriage service provider to notify customers about matters relating to premium services. The Direction was issued in response to concerns that Australian consumers and in particular vulnerable sections of the community, were at risk of incurring unexpectedly high telephone bills through the use of various content and information services supplied on premium rate numbers on prefixes 191, 193, 194, 195, 196, 197 and 199 or a proprietary network. The Direction recognised the importance of assisting consumers to manage and prevent this problem.

At the time of developing the 2004 Determination mobile premium services had only been available to the public for a period of 12 months and there was little awareness of these services and their higher rate of charging. Only one of the mobile network operators, Telstra Corporation Limited offered their customers the capability to bar all premium SMS and MMS services. Consequently, it was considered essential that mobile phone customers be made aware of what such services were, how they were charged, who was liable for charges incurred and what action could be taken by customers to reduce the risk of incurring an unexpectedly high bill.
Introduction of the Barring Determination

On 5 March 2010, the ACMA made the Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1) (the Barring Determination) which requires all mobile carriage service providers to implement a capability to bar all premium SMS and MMS services. Additionally, they must also provide their customers with information about the availability of barring and how they can request barring at different stages in the lifecycle of the mobile phone service.

The Barring Determination and its information requirements are intended to provide a greater level of protection to mobile phone customers, particularly vulnerable sections of the community including children, from incurring unexpectedly high bills from using premium SMS and MMS services. As premium SMS and MMS services have been in operation for some years, information requirements set out in the Barring Determination take into account the greater level of awareness of such services within the community, the evolving nature of the services and technical matters, and the greater protection available from barring which will be available to all mobile phone customers from 1 July 2010.

The information provision obligations in the 2004 Determination are either replicated in the Barring Determination, or are no longer considered to be relevant or useful. Mobile portals or proprietary network services have not been found to be a source of complaints unlike premium SMS and MMS services and the information obligations about these services is no longer required. The information obligations in the Barring Determination relate to the operation of premium SMS and MMS services.

Consultation

Section 17 of the Legislative Instruments Act 2003 (the LIA) requires the ACMA to be satisfied that any consultation it considers to be appropriate and that is reasonably practicable to undertake has been undertaken. Additionally, subsection 99(4) of the Act requires the ACMA to consult with the Australian Competition and Consumer Commission (ACCC) before making a service provider determination.

The ACMA has consulted widely on its intention to repeal the 2004 Determination. The revocation of the 2004 Determination was canvassed as part of a public and industry consultation on the draft of a new service provider determination, the Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No.2). A consultation paper seeking comment on both matters together with a media release was issued on 7 March 2010 inviting comment from the public and industry.

A period of 6 weeks was provided for public, industry and representative bodies to provide comment. Additionally, all mobile carriage service providers operating their own mobile networks, a mobile carriage intermediary and industry bodies including Communications Alliance Ltd, Australian Interactive Media Industry Association, Australian Mobile Telecommunications Association, and consumer groups including the Australian Communications Consumers Action Network (ACCAN) and CHOICE, Telecommunications Industry Ombudsman (TIO), Telephone Information Services Standards Council (TISSC), ACCC, Fair Trading Victoria, and Industry Number Management Services Ltd were sent a copy of the consultation paper and were invited to comment.

15 submissions were received from mobile carriage service providers, mobile carriage intermediaries, content providers, an organisation representing the interests of consumers, ACCAN, the TIO, TISSC and the ACCC. All submissions are published on the ACMA website unless the submitter raises an objection to publication which is accepted by the ACMA. No objections to publication were made to the ACMA.
Only 5 submissions addressed the issue of revocation of the 2004 Determination. The two mobile network operators, one mobile carriage intermediary and one content supplier together with the industry representative organisation, Communications Alliance Ltd, all supported the revocation of the 2004 Determination and identified the need for the revocation determination to commence on the day that the Barring Determination is to commence to avoid the overlap of the obligation for mobile carriage service providers to provide information to their customers about premium SMS and MMS services.

All issues raised in the submissions associated with the revocation of the 2004 Determination were considered and informed the content of the final Revocation Determination.

Accordingly, the ACMA is satisfied that consultation has been conducted in accordance with the requirements under section 17 of the LIA. The ACCC has been consulted in accordance with subsection 99(4) of the Act.

Regulation Impact Statement

The ACMA obtained advice from its SES contact officer for the Government’s regulation impact analysis arrangements that the Revocation Determination has no or low impact. For those reasons under the self-assessment regime administered by the Office of Best Practice Regulation, the ACMA has determined that there is no need to produce a Business Cost Calculator Report or to prepare a Regulation Impact Statement. The ACMA RIS exemption number is ACMA 150.

NOTES ON SECTIONS

Section 1 – Name of Instrument

Section 1 provides for the citation of the instrument.

Section 2 – Commencement

Section 2 provides that the Revocation is to commence on the day on which the Telecommunications Service Provider (Mobile Premium Services) Determination 2010 (No. 1) commences. This is to ensure that there is no ‘overlap’ period where carriage service providers might be subject to both the respective obligations in the 2004 Determination and the Barring Determination or that there is no period where neither of the instruments apply.

Section 3 – Revocation

Section 3 provides that the Telecommunications Service Provider (Premium Services) Determination 2004 (No. 2) is revoked.