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| <b>Case Reference</b> | R/E/I/061  |
| <b>Title</b>          | Powercom's Failure to Disclose Terms and Conditions of SMS Chat Service and Charging for Unsolicited Services  |
| <b>Case Opened</b>    | 14 June 2006   |
| <b>Case Closed</b>    | 20 September 2006  |
| <b>Complainant</b>    | IDA initiated enforcement proceeding   |
| <b>Respondent</b>     | Powercom Interactive Media Pte Ltd ("Powercom")  |
| <b>Case Summary</b>   | <p>On 17 March 2006 and 8 April 2006, IDA received two separate complaints from End Users who had being wrongfully charged a fee by Powercom.</p> <p>In the first complaint, an End User, who received an SMS advertisement on 15 January 2006 from Powercom, replied with an SMS message indicating displeasure at receiving the said advert, and this was taken by Powercom as consent to proceed with a SMS chat service and the End User was charged \$0.60 for his reply and another \$0.60 after receiving another SMS from Powercom. Subsequently, after charging the End User \$1.20 in total, Powercom sent two further SMS advertisements for its SMS chat service, on 16 January 2006 and 24 January 2006, to the End User which contained relevant prices, terms and conditions for the service as well as clear instructions for opting out of receiving further SMS advertisements. However, when the End User sent an SMS message to opt-out after receiving the second SMS advertisement, he was charged \$0.60.</p> <p>In the second complaint, a different End User received a SMS advertisement for a live Audiotex service on 14 February 06, which did not indicate any terms, conditions or charges. When he sent an SMS message to opt out, he was charged \$0.60.</p> <p>In addition to the above, Powercom revealed that it had received a total of 27 separate consumer complaints in the period of October 2005 to April 2006. These were all by End Users complaining about either being charged for sending an opt-out SMS or being subscribed to a SMS chat service without their consent, after replying to Powercom's SMS advertisement.</p> |

**IDA's Determination**

Based on IDA's investigation, IDA determined that Powercom had breached Section 3.2.2 and 3.3.3 of the Code based on the following:

*Section 3.2.2 states that "[p]rior to providing any telecommunications service to an End User, a Licensee must disclose to that End User the prices, terms and conditions on which the Licensee provides such telecommunication service. In addition, a Licensee must also publish, in a form available to the public, the prices, terms and conditions of its standard telecommunication services. The information must be published in a manner that is readily available, current and easy-to-understand.*

(a) Powercom had provided its SMS Chat Service to an End User who sent an SMS to the short code 76969 to express his displeasure at receiving Powercom's SMS advertisement without first disclosing to that End User that he would be registered and charged for the SMS Chat Service for sending the SMS and without disclosing to the End User the prices, terms and conditions of the SMS Chat Service; and

(b) Powercom had failed to inform an End User to whom it sent an SMS advertisement that the End User would be charged for the SMS Chat Service if he sent an SMS to the short code 76969 to unsubscribe in accordance with the instructions contained in the SMS advertisement;

Based on the above, IDA concluded that Powercom has breached of Section 3.2.2 of the Code.

*Section 3.3.3 read with Section 3.3 states that "[t]he End User Service Agreement must provide that the End User will not be required to pay for any telecommunication service that the End User did not consent to receiving" and "IDA will treat a Licensee's willful, reckless or repeated failure to fulfil these obligations as a contravention of the Code".*

(c) Powercom had charged an End User for the SMS which he sent to the short code 76969 in response to Powercom's SMS advertisement and for a further chat message sent by Powercom to him despite the End User not having consented to receiving the Powercom's SMS Chart Service; and

(d) Powercom had charged an End User for sending an unsubscription SMS to the short code 76969 in accordance with the instructions contained in Powercom's advertisement message despite the End User not having consented to receiving Powercom's SMS Chat Service.

Based on the above, IDA concluded that Powercom had recklessly failed to fulfill its obligation under Section 3.3.3

of the Code by configuring its system in a manner which created a real risk of, and which resulted in, End Users being charged for a service which they did not consent to receiving.

IDA considered the following aggravating factors when determining the appropriate enforcement measure to be imposed on Powercom:

(a) Powercom had accepted any SMS message from End Users to be confirmation to be registered for their SMS Chat Service;

(b) Powercom had intentionally sent out unsolicited SMS advertisements to End Users and charged them a fee for opting out from receiving any further SMS advertisements; and

(c) Powercom had received 27 complaints over a seven month period lasting from October 2005 to April 2006, in which Powercom failed to either report any of the complaints to IDA, or take any appropriate remedial action.

Under these premises, IDA imposed a financial penalty of **S\$40,000** on Powercom for breaching Sections 3.2.2 and 3.3.3 (read with Section 3.3) of the Code.