

Case Reference	R/E/I/068
Title	Sybase 365's Charging for Unsolicited Services
Case Opened	28 January 2008
Case Closed	8 August 2008
Complainant	IDA-initiated enforcement proceedings
Respondent	Sybase 365 Pte Ltd (" Sybase 365 ")
Case Summary	<p>IDA received complaints from two members of the public about being charged for premium rate services ("PRS") offered by Sybase 365 that they had not subscribed to. The two complainants were subscribers of different mobile operators.</p> <p>It was established by IDA that the complainants' mobile numbers were recycled numbers – they had been terminated by a previous owner, placed under quarantine and then subsequently reassigned to the complainants. The Sybase 365 PRS were subscribed by the previous owners of these recycled mobile numbers, who had failed to unsubscribe from the PRS prior to terminating the mobile lines.</p> <p>For the first case, it was established that the mobile operator involved had instituted a system to inform all its PRS providers, including Sybase 365, of numbers that had been terminated. When Sybase 365 sent chargeable messages to the mobile number after it was terminated, the mobile operator's system would transmit a unique error code (Sybase 365 had already been informed of this code beforehand) to alert Sybase 365 of the mobile number's status. Despite that and the fact that the mobile number had been in an extended period of quarantine for 17 months, Sybase 365 continued to send chargeable messages to the mobile number. Therefore, when the mobile number was reassigned to the first complainant, the first complainant was charged for the PRS.</p> <p>For the second case, it was established that Sybase 365 had relied on the relevant mobile operator to provide a regular list of terminated mobile numbers for it to remove from its database. However, a problem in the mobile operator's system resulted in the affected mobile number being left out from the lists. As such, the affected mobile number was not removed from Sybase 365's system. Therefore, even though it was placed in quarantine for 9 months and not assigned to any end user, Sybase 365 had continued to send PRS messages to the number. When the mobile number was reassigned to the second complainant, the second complainant was similarly charged for the PRS.</p>

<p>IDA's Determination</p>	<p>Based on IDA's investigations, IDA determined that for both the above cases, Sybase 365 had breached Section 2.12 of the PRS Code, which 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> and <i>"[f]or the avoidance of doubt, a person shall be regarded as having been charged for a service where he is presented with a bill for the service, regardless of whether or not payment is actually collected from him."</i></p> <p>For the first case, IDA finds that the facts and circumstances of the case clearly show that the wrongful billing of the complainant, which constitutes a breach of Section 2.12 of the PRS Code.</p> <p>For the second case, IDA is aware that Sybase 365 had relied on the mobile operator to provide information on terminated numbers in order to avoid the erroneous charging of recycled numbers. However, IDA takes the view that it is the duty of PRS providers to put in place systems to ensure that end users are not charged for unsolicited services and they should not rely solely on mobile network operators to provide such a system.</p> <p>Based on the above, IDA concluded that Sybase 365 had breached Section 2.12 of the PRS Code on two counts. IDA considered the following mitigating factors when determining the appropriate enforcement action to be imposed on Sybase 365 for the <u>first case</u>:</p> <ul style="list-style-type: none"> (a) a waiver was accorded to the first complainant on Sybase 365's own volition, without IDA's intervention; and (b) only one complaint under the circumstances was lodged against Sybase 365. <p>However, IDA also found the following aggravating factors with respect to the <u>first case</u>:</p> <ul style="list-style-type: none"> (a) Sybase 365 had knowledge that the mobile number was terminated based on the error codes transmitted by the mobile operator but did not take action to ensure that the complainant was not charged for unsolicited services; and (b) in the course of providing a statement to IDA, Sybase 365's Regional Director for Southeast Asia had provided inaccurate information to IDA. <p>IDA also acknowledged the following mitigating factors for the <u>second case</u>:</p> <ul style="list-style-type: none"> (a) Sybase 365 had made some effort to address the risk of charging recycled numbers for unsolicited services by having in place a system whereby it could obtain information on the terminated numbers from the mobile operator, albeit such a system was insufficient to prevent
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	<p>the breach of Section 2.12 of the PRS Code;</p> <p>(b) only one complaint under the circumstances was lodged against Sybase 365; and</p> <p>(c) Sybase 365 gave a full waiver to the complainant in this case.</p> <p>Taking these factors into consideration, IDA decided to impose a financial penalty of \$5,000 on Sybase 365 for its breach of Section 2.12 of the PRS Code in the first case and a warning to Sybase 365 for its contravention of Section 2.12 of the PRS Code in the second case.</p>
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