

Case Reference	R/E/I/081
Title	Sybase's Contravention of Section 2.12.1 of the Premium Rate Services Code ("PRS Code")
Case Opened	28 April 2010
Case Closed	26 July 2010
Complainant	IDA initiated enforcement proceeding
Respondent	Sybase (Singapore) Pte Ltd (" Sybase ")
Case Summary	<p>IDA had received a complaint from a member of the public regarding a premium rate service offered by Sybase. Arising from IDA's investigation into the complaint, IDA discovered that Sybase had contravened Section 2.12.1 of the PRS Code in relation to the MacBook Air and iPhone quiz services, as described in the sections below:</p> <p><u>MacBook Air and iPhone quiz services</u></p> <p>The MacBook Air and iPhone quiz services operate in the same way – upon subscription by the subscriber, Sybase sends the subscriber a pre-determined number of quiz questions every week via SMS, and the subscriber replies to each quiz question in a specified format (i.e., "Air A", "Air B", "iPhone A" or "iPhone B") for a chance to win a MacBook or an iPhone. Advertisements for both services state that a subscriber "<i>will receive 3 SMS questions per week, S\$4 per SMS question received.</i>"</p> <p>IDA discovered that between 1 August 2008 and 21 July 2009, due to a technical glitch, Sybase had sent repeated chargeable quiz questions to at least 47 MacBook Air and 61 iPhone quiz service subscribers when they replied to the quiz questions without spacing between the two words (i.e., "AirA", "AirB", "iPhoneA" or "iPhoneB").</p>

	<p>The terms and conditions of the advertisements for the MacBook Air and iPhone quiz services stated that subscribers would be sent three chargeable quiz questions per week, but did not inform the subscriber that, in the event that erroneous replies were received, the same chargeable quiz questions would be resent to the subscriber. In this regard, a subscriber should not be deemed to have consented to receiving additional chargeable quiz questions.</p> <p>In Sybase’s response, Sybase argued that of the total 108 affected subscribers who were sent repeated questions, only 34 subscribers received more than three chargeable messages per week (i.e., the maximum stated on the advertisements for the services). However, in determining the appropriate enforcement to take, it would be appropriate for IDA to consider all 108 subscribers instead of 34 subscribers only. This was because all 108 subscribers had received the additional chargeable and unsolicited quiz questions.</p>
<p>IDA’s Determination</p>	<p>Section 2.12.1 of the PRS Code provides 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>”.</p> <p>The terms and conditions of the MacBook Air and iPhone quiz services did not state that Sybase would send a chargeable repeated quiz question should the subscriber send an erroneous reply. In any case, even if Sybase had to resend the repeated quiz question due to the erroneous reply, Sybase should not have charged for it. Therefore, Sybase’s charging of subscribers for resending SMS questions in response to erroneous replies sent by subscribers, would constitute a breach of Section 2.12.1 of the PRS Code.</p> <p>IDA considered the following aggravating and mitigating factors when determining the appropriate enforcement</p>

action to be imposed on Sybase for this case:

Aggravating Factors

- (a) Sybase has repeatedly contravened IDA's regulatory requirements in relation to its provision of PRS. This was Sybase's third contravention of Section 2.12.1 of the PRS Code; and
- (b) Sybase's contravention occurred for almost nine months. Although Sybase was unaware of the technical glitch, as part of its internal ongoing control, it should have regularly checked the services to ensure that all related systems were working fine and that consumers were charged correctly in accordance to the terms and conditions stated in the advertisement for the services.

Mitigating Factors

- (a) Sybase had refunded all 108 subscribers for the additional SMS quiz questions that were sent and charged to subscribers; and
- (b) Sybase has created the role of a compliance manager to handle regulatory affairs and ensure compliance with the PRS Code. This might have resulted in a fall in the number of complaints against Sybase by 81% from February 2009 to February 2010.

Taking these factors into consideration, IDA decided to impose a financial penalty of \$10,000 on Sybase for its contravention of Section 2.12.1 of the PRS Code, in relation to the MacBook Air and iPhone quiz services.