

## *SALES AND MARKETING OF MOBILE CONTENT SERVICES*

**These guidelines incorporate the laws governing mobile content services and explain the sales and marketing requirements for these services set down in the regulations. In addition, they provide examples of how to implement an ordering process for services, and customer-oriented suggestions about good practice .**

**"Mobile content services" refers to content services supplied through mobile communication networks by distance selling . Examples of mobile content services include ringtones, logos, news services and mobile chat rooms. The services are often marketed and ordered through different channels simultaneously. A company engaged in such marketing must ensure that its ordering process for a service, through all channels, complies with legal requirements.**

### *Seven basic rules of mobile content service sales*

Comments from consumers indicate that special attention needs to be paid to the following basic principles that are critical from a consumer's point of view:

1. Always provide clear information on pricing when marketing a particular service.
2. You may use the words "free" or "at no charge" only if a service really is completely free and does not simultaneously obligate the consumer to place a paid order.
3. Always state clearly if a standing order is being placed.
4. Always state the name, address, phone number and e-mail address of the company offering the service.
5. Take into consideration the special position of minors as contracting parties.
6. Do not send direct marketing to a mobile phone or e-mail account without the consumer's prior consent.
7. Always deliver a personal confirmation of a standing order for the consumer to save and print that is in accordance with distance selling regulations. Company contact information, service pricing, and instructions for cancelling the order are especially important bits of information to include.

### *Legislation concerning mobile services*

The portions of the Consumer Protection Act that apply to mobile services are Chapters 2 and 3, which include general provisions on marketing and contract terms, and Chapter 6, which concerns distance selling. When mobile services are marketed and delivered electronically, the Act on Provision of Information Society Services also applies.

## *What information must be provided in marketing?*

The legislation applicable to mobile services requires marketing to provide at least the following information:

- Cost of service, delivery fees and payment terms
- Service content/main features
- Name of the service provider
- The service provider's address and location (if not indicated by the address), e-mail address, and any other
- contact information that can be used to quickly, directly and effectively reach the service provider
- Limitations and terms concerning the delivery or performance of the contract
- Age restrictions on the service
- Minimum contract duration, if the contract involves the continuous or recurring delivery of products
- Costs arising from use of a means of distance communication, if these exceed the basic charges
- Validity period of the offer
- Information about cancellation rights or a lack thereof
- The Trade Register or any comparable public register in which the service provider is mentioned, as well as
- the Business Identity Code or another equivalent identifier of the service provider in that register

In addition, the service provider must have clear and comprehensible information available, at least about the following:

- Technical stages of entering into the contract
- Whether or not the service provider saves the contract and makes it available to the other party
- Technical means by which input errors can be recognized and corrected before an order is placed
- Languages in which the contract can be drawn up
- The service provider's code of conduct in regard to the matter, and the location and way in which it can be obtained in electronic form

The service provider must also offer the customer appropriate, effective and straightforward technical means of identifying and correcting input errors prior to placing an order.

Also, the service provider must always deliver the contract terms to the customer in such a way that he or she can save and duplicate them. The contract terms must be fair from a consumer standpoint. The rights and responsibilities of the contracting parties must be balanced. The terms must also be comprehensible and clear.

In certain cases, the contract terms may be adjusted based on the provisions of Chapter 4 of the Consumer Protection Act. For example, if a contract term that is surprising and harsh from a consumer's perspective has not been expressly referred to, it may be considered non-binding. In some instances, the meaning of a particular contract term may become doubtful to a company or consumer. If the customer had no influence on the substance of the terms, it is interpreted in his or her favour in accordance with the Consumer Protection Act.

## *How should information be supplied?*

Under Chapter 6 of the Consumer Protection Act, advanced information must be supplied in a way that is appropriate for the type of distance communication being used and provided in a clear, comprehensible form so that the commercial purpose of the information is readily apparent. The customer must also be able to access the information easily whatever his/her situation.

These requirements are flexible under certain circumstances due to the type of marketing device used. For example, it may not be possible to provide all the information in a text message to a mobile phone due to the

limitations of the display. In that case the company must still indicate, at least where and how to access the further information. When considering how to provide additional information, a company should keep in mind that it is not necessarily enough, for example, to just state an internet address in an advertisement. The features of a device can never pass as a sufficient reason not to convey information that is critical from the consumer's standpoint. If a customer has not had an opportunity to become familiar with the contract terms before entering into a contract, then he or she is not bound by its terms. Even in a television advertisement, for instance, the consumer must always be informed in adequately large font type about:

- the price of the service, and what services, etc. are included for the price mentioned in the advertisement
- other mandatory contract terms
- whether the contract is a continuous one
- whether the service requires a phone with certain special features

*In Supreme Court decision 2006:6, a company was barred from continuing a television advertisement in which the terms and limitations of an offer and the costs to be paid by a consumer were not described in a clear enough and easily noticeable way. Detailed information about the terms and limitations of the offer was presented at the bottom edge of the screen. The text mentioning this information was presented in very small letters, however, thus, it was very difficult to read. Furthermore, the text appeared only for a time period of about seven seconds. The mention of additional information available via teletext was not sufficient.*

### **Providing contact information**

The consumer has the basic right to know, at the moment of purchase, with whom he or she is entering into the contract with and how to easily contact the service provider. Since mobile services are usually delivered to a customer immediately, it is natural to expect that the customer can also contact the company without delay. This is especially important when a customer wants to make a complaint, or if there are problems with the service.

In conclusion, the customer must be informed of the:

- name of the entrepreneur,
- street address,
- postal code and post office (city),
- phone number, and e-mail address.

In addition, internet marketing must mention what register the entrepreneur is recorded in (e.g. the Trade Register, Register of Package Travel Traders or a comparable public register) and its identifier in that register (e.g. Business Identity Code, registration number in the Register of Package Travel Traders).

The information must be presented in such a clear and comprehensible way so that the consumer can easily find it. Contact information must also be readily available on the internet. For example, a link that leads to the contact information, should be named in such a way that a customer looking for the information will be able to find it.

### **Stating the price**

The pricing information to be supplied in marketing must not be untruthful or misleading. Pursuant to the Decree on Price Marking, the sales price must be stated whenever a specific individualized good or service is marketed. The price must be indicated in a clear and easily noticeable way as the total price including all taxes and fees. The basics of stating the price:

- Marketing must clearly state the price of an individual order or, if that is not possible, it must at least mention the basis for determining the price.
- The total price must be given whenever possible.

- The price of a call for placing an order must be indicated in a type size that is clear and easily noticeable, not obscured by other text.
- If there is a monthly, periodic, club membership or other similar fee for the service, it must be stated clearly and in an easily noticeable way. In addition, the marketing must state what is included in the price (number of messages, etc.). A consumer should get an accurate picture of the service cost and content even from a single advertisement.
- If a fee is charged both for sending and receiving text messages, these prices, or the basis for determining them, must also be mentioned separately.
- Marketing must describe the billing method for the service and give a realistic impression of how costs accumulate. From the customer's point of view, this is especially important in situations where a large number of messages come in during a short period of time (e.g. chat services) and billing is based on the number of messages received.
- If a price is given as a certain cost in euro per message received, the consumer must then be billed according to how many messages he or she really has received, not according to the number of messages that have been sent to him or her.
- The terms of an offer must be clearly described to the consumer. These may include quantity discounts, for instance, in which a certain number of ringtones is sold for a certain price. A quantity discount cannot be used as an incentive without clearly describing the limitations of the offer to the consumer. If the discount applies only to services within the same category, for example, that must be clearly explained to the consumer before an order is placed. The same goes for minimum prices that a customer must always pay, irrespective of how many orders he or she places or how many messages he or she sends.
- If marketing uses free ringtones or logos as an incentive, they must actually be available to the consumer completely free of charge. Placing the order must not result in any obligations or fees to be paid by the consumer.
- For mobile games played with text messages, in addition to the cost of a single message, the marketing must state the precalculated cost of a typical game or a full round of competition.

If the operator charges a data transfer fee to the consumer for ordering or using the service, this also must be pointed out.

### *What must the customer be told about service content?*

The consumer must always be explicitly informed about what is included in the contract. The contents of an order must be clearly described to the customer already at the marketing stage, not only upon confirmation of an order. The following information about a service must be supplied in the marketing:

- Is it a one-off order or a standing order? A customer should have no doubt as to what he or she is committing to.
- If the order is a standing one, the frequency of incoming messages (time and number) must be stated, as well as how and on what terms the order can be cancelled.
- Is it possible that a large number of messages will come in during a short period of time (e.g. chat services)? If a customer will be billed based on the number of messages received, it must be pointed out to the customer that the bill may add up to a large amount.
- Does some type of membership result from ordering the mobile services or registering for the service?

- Is there a membership cost – does it involve a monthly fee, for instance?
- Are the services functional only with certain subscriptions or phone models?
- Do detailed installation instructions or other instructions for use have to be followed in order to use the service? If so, they must be presented clearly enough. For example, they must be available in their entirety on the internet.
- Information about processing of the order.
- How is the service discontinued?

### *Receipt notification and contract terms*

Under the **Act on Provision of Information Society Services**, when a customer has ordered a service, the company must immediately inform him or her that the order has been received. A notification of receipt need not be delivered, however, if the product ordered is delivered electronically right away.

Also, the service provider must always deliver the contract terms to the consumer in such a way that he or she can save and duplicate them.

### *How is a customer's service order confirmed?*

Under **Chapter 6 of the Consumer Protection Act**, a service provider must send a customer confirmation of the service and the right to cancel it. The confirmation must be personal and in a written or electronic form that can be saved and reproduced by the consumer without changes.

The following information must be included in the confirmation:

- Entrepreneur's name and address, and physical location (if not indicated by the address)
- Main features of the consumer product
- Cost of the consumer product, delivery fees and payment terms
- Other terms concerning the delivery or contract performance
- Minimum contract duration, if the contract involves the continuous or recurring delivery of products
- Instructions and information for exercising the right of cancellation as referred to in Section 15 of Chapter 6, and notification that, according to paragraph 1 of Section 16, the contract cannot be cancelled after the service has come into effect, with the consumer's consent
- The entrepreneur's geographical location and address for the office to which a consumer can submit complaints
- Information about the warranty and about maintenance and repair services available
- Terms of contract termination, if the contract is in force indefinitely or for a period of more than one year.

The confirmation must be delivered as soon as possible after the contract has come into effect.

### **When is it not necessary to send confirmation?**

It is not necessary to deliver a confirmation under the following circumstances:

- The service is delivered to a customer at a single occasion through a means of distance communication, and the company charging for it is the same one that supplies the means of communication. Even in this case, however, the street address of the entrepreneur supplying the service must always be provided to the consumer so that he or she can submit complaints there.

- The information required in the confirmation has already been provided to the consumer personally in a written or electronic form that can be saved and duplicated by the consumer without changes.

## *Ordering process for a service*

The ordering process for a service is affected by whether a one-off mobile service or standing order is involved.

The following describes how an order for each type of service is processed and what the legal requirements are.

### *One-off order process for a mobile service*

A one-off service is supplied at one time and charged to a phone bill. An example of a one-time service like this would be an individual ringtone ordered for a mobile phone.

#### **1. Marketing**

#### **2. Order message**

The consumer sends a text message or other message to the company about the order. The company must offer the consumer appropriate, effective and straightforward technical means of identifying and correcting input errors prior to placing an order (Act on Provision of Information Society Services, Section 10.2).

#### **3. Receipt notification and confirmation**

If the service is delivered to the consumer without delay, there is no need to send him or her a separate notification of order receipt. There is also no need to send an order confirmation if the service is provided at once and charged to the phone bill. However, the visiting address of the entrepreneur supplying the service must always be provided to the consumer so that he or she can submit complaints there.

#### **4. Delivery**

The company delivers the service in accordance with the marketing information.

#### **5. Billing**

The company charges the price agreed upon to the consumer's phone bill.

#### **6. Complaints**

The company must address a consumer's complaints about service or billing within a reasonable amount of time.

The response to a consumer complaint should be explained in as much detail as possible. If the complaint is justified, the consumer must be compensated for any expenses resulting from the process of making the complaint.

### *Standing order process for a mobile service*

In the case of standing orders, a service is available to a consumer or delivered to a consumer until he or she discontinues the service. In practice, it has been a challenge to implement standing orders placed by text messages in a way that meets the legal requirements regarding the sending of a confirmation of service delivery to the consumer. For orders placed over the internet, the requirements are considerably easier to fulfil. Confirmation can be sent to a consumer's e-mail account, for instance, or a consumer can be instructed to save and print confirmation information from a separate confirmation window that cannot be bypassed.

## **1. Marketing**

## **2. Order message**

The consumer sends a text message or other message about the order. The company is responsible for identifying the contracting party. Thus it is the company that must take into consideration the special position of children and adolescents, for example, and ensure that a guardian's consent is obtained for an order when needed. Minors can conduct a legal act independently only if it is under ordinary circumstances and of less significance. (See the "Children and adolescents as contracting parties" section of the guidelines below.)

## **3. Consent to service delivery, right of cancellation**

If a company does not want to offer a consumer the usual 14-day cancellation period for distance selling, it must proceed according to the special provision in paragraph 1 of Chapter 6, Section 16 of the Consumer Protection Act. For example, the company can send a message in which it requests the customer's consent to start delivering the service ordered and states that there will be no right of cancellation after delivery has begun.

The company must give the consumer an opportunity to identify and correct input errors related to the order easily and effectively (Act on Provision of Information Society Services, Section 10.2). One way to meet this requirement is to send the consumer a message that includes a copy of the order and requests the correction of any mistakes.

The consumer sends his or her consent for service delivery, or corrections to the order if it contained any errors.

If the consumer has not given his or her consent for service delivery to begin, and has not been informed of having no right of cancellation in these situations, then the consumer has the usual 14-day cancellation right. If the consumer exercises his or her cancellation right as provided by law, only fair compensation can be charged for any services already delivered that cannot be returned and from which the consumer is deemed to have benefited (Chapter 6, Section 23.3 of the Consumer Protection Act). For example, the entire amount of an order period cannot be charged to a consumer if he or she cancels the order at the very beginning of the order period.

## **4. Receipt notification**

The company immediately sends the consumer a message that states that the order has been received (Act on Provision of Information Society Services, Section 10). An example of receipt notification would be a service provider's requesting a consumer's consent to begin delivering the service ordered, if the order placed by the consumer is described therein. There is no need to send a separate notification of receipt in this case, or if a confirmation as prescribed in the Consumer Protection Act is sent to the consumer without delay.

## **5. Confirmation**

As soon as possible, the company sends confirmation to the consumer as required by the distance selling regulations. The confirmation must be delivered to the consumer personally for saving and printing, for example by e-mail.

There is no need to send a confirmation if the information that is required to have been included has already been provided to the consumer personally before the order was placed, in a format that can be saved and duplicated. (Contents of the confirmation are defined above in the section "How is a customer's service order confirmed?") Sending a confirmation ensures that the consumer receives and can retain information about the service, and can refer to it later if necessary.

If the confirmation is inadequate, the consumer has three months to cancel (Consumer Protection Act, Chapter 6, Section 15.2). If a confirmation is not supplied at all, the contract is not binding on

the consumer's side and he or she can claim the contract to be non-binding within a year (Consumer Protection Act, Chapter 6, Section 20). If the contract is cancelled or becomes void under these circumstances, only fair compensation can be charged to the consumer for any services already delivered that cannot be returned and from which the consumer is deemed to have benefited (Consumer Protection Act, Chapter 6, Section 23.3).

## **6. Essential information**

The Finnish Consumer Agency/Ombudsman recommends always sending essential information to a consumer's mobile phone in addition to the confirmation required by law. This includes, at a minimum, the company contact information, service pricing, and instructions for terminating the order. Contact information must be given such that a consumer can use it to easily and quickly to attend to his or her business. A phone number is good contact information to include.

It is a good idea to send the consumer the essential information about the order again at the beginning of a new order period or billing term.

The essential information might also be included along with each separate message sent to the consumer, if there is enough space to do so. If a service involves a large number of messages being received, the information can also be sent periodically after a certain number of messages, for example.

If the fixed price of a service includes the option for a consumer to order a certain amount of services during each separate order period, he or she must have an effective means of monitoring changes from one order period to the next by obtaining usage information as a text message, for instance. When planning service-related messages, a company should keep in mind that a consumer must be able to recognize them as part of the service immediately upon opening them. This is to ensure that a consumer does not accidentally delete service-related messages after mistaking them for free marketing messages, for instance.

## **7. Delivery**

The company delivers the service in accordance with the information supplied in the marketing and the confirmation.

## **8. Terminating or discontinuing the service**

The industry self-regulation norms stipulate that standing orders for mobile services can be discontinued using a STOP command (Mapel, 1/2/2006). The Consumer Agency/Ombudsman recommends allowing all standing orders for mobile services to be discontinued with a universal STOP command. A consumer should be able to send the command to the same number from which individual service messages have been sent to him or her.

The STOP command cannot be the only way to discontinue the service, however. The consumer must also have the option to end the service by contacting the service provider in some other way. This serves to ensure that a consumer can discontinue the service even when unable to send a STOP command due to a cancelled subscription or having exceeded a credit limit, for example.

## **9. Billing**

When a consumer terminates service in the middle of an order period, he or she must continue to receive all services included in the order period if required by the contract to make the full payment for the period.

## **10. Complaints**

A consumer's complaints about service or billing must be addressed within a reasonable amount of time. The response to a consumer complaint should be explained as extensively as possible. If the complaint is justified, the consumer must be compensated for any expenses resulting from making the complaint.

## Direct electronic marketing

Under the Act on the Protection of Privacy in Electronic Communications, direct marketing cannot be sent to a consumer's mobile phone or e-mail account without his or her prior consent. The service provider may, however, use contact information obtained during a prior customer relationship to market services of a similar nature. In this case, at the time that this information is collected, the customer must be informed that it could be used for direct marketing and be given the option not to permit such use. In addition, each message sent must provide an opportunity for the customer to opt out of direct marketing.

The Data Protection “Ombudsman, who monitors direct electronic marketing, has issued guidelines according to which services can be considered to be of a similar nature if, amongst other things, their content and intended uses are similar. The delivery of services using the same means, such as via text messages, is not a sufficient reason for the services to be deemed of a similar nature.

### *Children and adolescents as a target of marketing*

Marketing targets children not only when it is aimed at them directly, but also when it concerns any product that is of interest to children. Marketing that does not directly target children, but may reach them nevertheless, is evaluated in the same way as marketing that is directly aimed at children. Mobile services are of particular interest to minors, and the extent of marketing for these services must therefore be taken into account.

Minors are more susceptible than adults to marketing ploys and the effects of advertising. Therefore, marketing is evaluated more strictly if it is targeted at children or adolescents. Due to their lack of experience, they have a natural tendency to be trusting that must not be exploited in marketing. Parents have the right to raise their children and make decisions about financial expenditures in the family without their role being disregarded by appeals aimed directly at a child.

Since purchases made with a mobile phone are billed afterwards, it is difficult for children to comprehend the actual expenses involved. Advance information, pricing, and other essential terms of a contract must therefore be presented in a way that children can also understand. The information must also be easy to access.

Marketing targeted at children must not include

- violence;
- inappropriate models of behaviour;
- discrimination;
- direct incitement to buy. Products of interest to children, such as breakfast cereal boxes, bags of sweets, and children's magazines or entertainment websites, must not entice children to use various types of mobile services.
- Care must also be taken when nudity is involved. The showing of bare skin and an emphasis on sexuality in marketing are becoming increasingly common. However, children have the right not to be exposed to stimuli that are inappropriate for their age and developmental level. Various kinds of images and text messages typically feature nudity or other content that is only suitable for adults. In addition, language use can often reflect undesirable models of behaviour. Mobile services marketing must therefore clearly distinguish images and messages of interest to children from material suitable solely for adults.

When marketing various games and films, their suitability for minors and any applicable age restrictions must be considered. In these cases it is the service provider's responsibility to ensure that the contracting party is of age or has a guardian's consent.

In **direct marketing**, the Consumer Agency's/Ombudsman's position, which is that direct marketing cannot be sent to children under the age of 15, must also be taken into account. Direct marketing aimed at 15–17 year-olds must be viewed with restraint.

The Consumer Agency's/Ombudsman's "Minors, Marketing and Purchases" guidelines, published in June 2004, cover the rules, principles and corrective practices concerning the position of minors. The guidelines also discuss the marketing of mobile services.

- [Minors, Marketing and Purchases](#) (pdf)

## *Children and adolescents as contracting parties*

A company must take into account that a minor is not the same kind of contracting party as an adult. Under the Guardianship Services Act, minors can conduct a legal act independently only if it is under ordinary circumstances and of small significance. They can use pocket money to buy reasonably priced products that others in their age group generally buy, and decide how to spend their own earnings. Going into debt, however, cannot as a general rule be considered an ordinary legal act.

If a minor carry out a legal act that he or she does not have the right to carry out, it is non-binding unless his or her guardian has given consent. The need for a guardian's consent depends on factors such as the buyer's age and the cost and nature of the purchase.

The same rules must be observed for mobile payments, as well as for other forms of commerce where minors are involved. Identification of the contracting party is the basic point of reference for contract validity. The contract terms of a mobile phone subscription, however, state that the subscriber – in the case of a minor, his or her parent – is always responsible for any expenses incurred from the use of the subscription. The subscriber is thus obligated to pay for the service regardless of who made the purchase, the magnitude of the purchase, or the nature of the service purchased. In the view of the Consumer Agency/Ombudsman, this term cannot currently be considered a reasonable one in all situations.

The ability of minors to place orders for content can be restricted using various types of blocking services. These services or the terms of a subscription contract, however, cannot be used to defend or justify marketing that does not take into account the established principles of consumer law regarding misleading advertising or the position of children.

The position of children as contracting parties has also been addressed elsewhere, such as in recommendation 2940/39/05 issued by the Consumer Complaint Board on the 19/7/2006 concerning text messages that were sent by a minor to order a television game. The Board decided that the child was not entitled to enter into a contract for the service in question merely by having permission to use a guardian's subscription. The Board recommended that the service provider should refund the payments received by the consumer.

- [Recommended resolution](#)

Television games and contests are also discussed in the following guidelines:

- [TV Games and Other Fee-based Interactive Contests and Quizzes](#)