

## **Code of Conduct for Premium SMS/Wireless Services and Web-Based Services**

### **Preamble**

Consumer and youth protection are issues of importance to the wireless industry. Wireless carriers and content providers initiated a large number of measures to improve cost and provider transparency as early as 2004. However, the disadvantage of insular operator solutions is that they are incapable of creating consumer protection standards that are applicable throughout the industry. Only if one takes a sector-wide approach can one guarantee consumer trust in business models—a prerequisite for ensuring that emerging, flourishing market segments can continue to develop positively.

With a view to improving the acceptance of these services, the signatories decided to include in this Code of Conduct binding provisions governing premium SMS/MMS and web-based service offerings as well as the transmission of unsolicited SMS messages (spam) representing a nationwide, uniform minimum standard for the provision of these services. The Code of Conduct's provisions that are of relevance concerning the current version of the 2007 German Telecommunications Act (TKG) were brought in line with the TKG effective September 1, 2007.

The signatories to this Code of Conduct reserve the right to extend the scope of this Code of Conduct to include additional services at a later point in time. This Code of Conduct is thus open to new technologies.

#### **I. General Provisions**

##### **1. Definitions**

###### **1.1 Wireless Carrier**

For the purposes of this Code of Conduct, a wireless carrier shall include wireless network operators headquartered in the Federal Republic of Germany which own GSM and/or UMTS infrastructure as well as service providers headquartered in the Federal Republic of Germany which resell wireless services originating from the wireless network operators on their own behalf and of their own account, without, however, owning network infrastructure.

## 1.2 Mediator

Company domiciled in the Federal Republic of Germany that supports content providers in the field of technical connectivity. Operates as a technical, commercial or marketing partner to a content provider.

## 1.3 Content Provider

For a fee, content providers supply end customers with on-demand content, information, services and applications such as short and multimedia messages as well as on-demand web-based services via download on their own behalf.

## 1.4 Premium SMS/MMS Services

Premium SMS/MMS services are characterized by the fact that the content transmitted by them is supplied by content providers, with whom the end customer enters into an agreement on the services provided by the content providers. However, billing is performed via the end customer's wireless carrier.

Wireless subscribers can pay for the services offered in a number of manners:

- Mobile origination (MO): The payment obligation is triggered by the transmission of a premium-priced SMS/MMS message. This SMS/MMS message generally doubles as the service request/order. The provision of the service is effected technically, independent of payment (via the SMS MO/MMS MO), e.g. by sending the content or publishing the message on a chat board.
- Mobile termination (MT): The end customer orders wireless content via an order channel (e.g. web and request SMS/MMS). Payment is effected by the content provider or mediator sending a premium-priced SMS/MMS (MT) message to the end customer. This SMS/MMS message generally equates to the provision of the requested service. The payment obligation is triggered by the successful transmission of the content (e.g. a ring tone SMS or the download of the ordered game).

## 1.5 Web-Based Services

Web-based services are services that make it possible for end customers to receive digital content and information (access to web pages for a fee, sending of e-mails with premium content, document downloads, software, etc.). This does not include the wireless network operators' portal services.

## 1.6 One-Time Service (“One-Time Payment Service”)

The retrieval of a service by the end customer results in a one-time delivery or retrieval possibility for the ordered content and/or in the delivery or retrieval possibility for a variable number of content deliveries, as their number may be predetermined or event-related. Payment for the service is made by the end customer on a one-time basis. The end customer pays either for the retrieval SMS/MMS [in this case, the individual content delivery(ies) is (are) free of charge for the end customer (transmission costs, if applicable)] or the end customer pays for the service delivered on a one-time basis. In the latter case, the retrieval SMS/MMS is priced in line with the standard SMS payment plans. Another characteristic of a one-time service is that it does not include an automatic renewal.

## 1.7 Subscription Service (“Multiple Payments Service”)

An end customer purchasing a subscription has the right to several individual services once the service has been requested per SMS/MMS. The payment obligation may be structured in various manners: a regular, recurring payment for a service contingent

- (e.g. monthly for all goals or a fixed rate for a certain number of ring tones, which are invoiced monthly) (e.g. budget subscriptions) or an
- ongoing payment obligation for a certain or undetermined number of individual services that are invoiced for each scheduled individual service (event-based subscriptions).

Budget subscriptions are a special type of subscription. These subscriptions give the end customer the opportunity to retrieve a certain amount of content at a budget price within a certain time period.

## 1.8 Chat Services

The end customer posts messages to a chat forum via SMS/MMS. In return, the customer does not receive a certain request service. Instead, the customer receives SMS messages from other chat participants. The end customer is charged the price set and communicated by the chat service provider for each SMS/MMS message sent by the end customer.

## 2. Contracting a Fiduciary, Tasks

### 2.1 Tasks of the Fiduciary

Signatory companies have entrusted the management of this Code of Conduct to a fiduciary. The Fiduciary shall perform the following tasks:

1. Acceptance of the subscription declaration pursuant to Item I.2.2
2. Monitoring of compliance with the Code of Conduct (spot checks)
3. Management and authentication of the list of subscribing companies in accordance with Item I.6; if necessary, deletion of companies that fail to comply with the Code of Conduct despite having received a warning

### 2.2 Declaration vis-à-vis the Fiduciary

Companies intending to ratify the Code of Conduct undertake to comply with the provisions of this Code of Conduct by issuing the declaration enclosed as Annex 1. The Fiduciary shall accept this declaration under the condition that the company belong to the group of qualified parties pursuant to Items I.1.1 to 1.3. (Subscription). By issuing the declaration in accordance with Sentence 1, the party contracts the Fiduciary to perform the tasks entrusted to it in accordance with the Code of Conduct.

### 2.3 Distribution of Fiduciary Costs

Fiduciary costs shall be distributed among the parties according to the following key:

- 4/10 among the wireless network operators
- 2/10 among the service providers
- 4/10 among the content providers/mediators

In turn, the costs shall be distributed evenly within each of these groups (wireless network operators, service providers, content providers/mediators).

### 2.4. Payment of Fees and Contracting of the Fiduciary

The condition for subscribing to the Code of Conduct is that the party in question has contracted the Fiduciary via a separate agreement and that said party has paid the annual fee that is determined every year on July 1.

Parties subscribing during the course of the year shall pay the full fee in line with the fee key set forth in Item I.2.3 on July 1.

### **3. Parties**

#### 3.1 Qualified Parties

This Code of Conduct can be subscribed to by wireless carriers, mediators and content providers as defined in Items 1.1.1, 1.2 and 1.3. By signing this Code of Conduct, the parties declare that they agree to subscriptions by additional companies meeting the aforementioned criteria.

#### 3.2 List of Parties

Annex 2 contains a list of parties to the Code of Conduct. Annex 2 shall be updated whenever a party is included.

Parties that fail to comply with the Code of Conduct despite having received a warning shall be deleted from the list by the Fiduciary.

#### 3.3 No Obligation to Contract

The subscription of a party to the Code of Conduct does not result in the right or obligation of a mediator or content provider to enter into a contractual relationship with any of the wireless carriers that have subscribed to the Code of Conduct.

### **4. Binding Force and Duties**

#### 4.1 Voluntary Commitment

The parties agree to comply with the provisions set forth in the Code of Conduct within the scope of their business activity.

#### 4.2 Subscription as a Covenant

Wireless carriers subscribing to the Code of Conduct resolve to include the provisions of this section of the Code of Conduct in their agreements with providers of services that are subject to this Code of Conduct to the extent applicable. To the extent legally possible, they resolve to adapt legacy contracts within a reasonable period of time. It is at the discretion of each and every wireless carrier to agree on additional consumer-protection provisions that exceed the minimum standards set forth in the Code of Conduct with their contractual partners.

Content providers and mediators that are parties to this Code of Conduct resolve to make corresponding contractual amendments for the benefit of the subscribing wireless carriers.

## **5. Non-Compliance Clause**

- 5.1 Violations of this Code of Conduct shall be punished bilaterally in line with the stakeholders' mutual agreements.
- 5.2 In addition, in line with this Code of Conduct, the company in question will be requested to put an end to the violation within a reasonable period of time (warning). The warning shall be issued by the Fiduciary in accordance with Item I.2.1. If the violation does not end within the set time period, the company in question shall be deleted from the list of subscribing parties pursuant to Item I.3.2 by the Fiduciary.

## **6. Publication of the List of Subscribing Parties**

The parties shall publish the list of companies that have signed this Code of Conduct as evidenced by Annex 2 on their websites as well as in other publications and regularly update Annex 2.

## **7. Amendments to the Code of Conduct**

### **7.1 Regular Review**

The provisions of this Code of Conduct shall be subjected to a review once every year, starting from the date on which the Code enters into force, by four wireless carrier representatives, two service provider representatives, two mediator representatives and two content provider representatives, to ensure that it is up to date. The representatives performing the review shall make consensus amendments to this Code of Conduct, which shall become part of this Code of Conduct. Any party that disagrees with an amendment is entitled to end its subscription to this Code of Conduct with immediate effect. If the party does not terminate its subscription within 4 weeks from receipt of the change resolution, the amendment shall be considered binding upon said party.

### **7.2 Non-Review Amendments**

Amendments not covered by the procedure described in Item I.7.1 may be made in cases where the Code of Conduct must be brought in line with statutory regulations. The provisions of Item I.7.1 shall apply to the procedure accordingly.

## **8. Compliance with Applicable Law**

### **8.1 Permissibility, Compatibility with Antitrust Regulations**

The parties resolve not to include provisions in the Code of Conduct that fail to comply with the laws applicable in the Federal Republic of Germany. The passage and enactment of the Code of Conduct are subject to its legal permissibility with due regard to antitrust law. If compatibility with applicable laws cannot be achieved by making an amendment in accordance with Items I.7.1 and 7.2, the parties shall terminate the Code of Conduct immediately.

The parties to this Code of Conduct reserve the right to terminate their cooperation at any time if doubts concerning its permissibility under antitrust regulations arise. This shall apply especially to cases in which a court or a public authority were to decide that the cooperation is not in line with antitrust regulations.

### **8.2 Adaptation to Applicable Law**

In the event that individual provisions of this Code of Conduct prove to violate the laws applicable in the Federal Republic of Germany in part or in full, the provisions in Items I.7.1 and 7.2 shall apply accordingly when adapting the Code of Conduct.

## **9. Cancellation of Subscription**

If a party decides to end its subscription to the Code of Conduct, it can declare this vis-à-vis the Fiduciary at any time, without prior notice. In such an event, the Fiduciary shall immediately delete the company from the list of subscribing parties.

## **10. Entry into Force**

10.1 This Code of Conduct shall enter into force on July 1, 2006. The signatories resolve to implement the measures contained in this Code of Conduct no later than 3 months from its entry into force.

10.2 The relevant rules of this Code of Conduct shall be adapted to the current version of the 2007 TKG as of September 1, 2007.

## **11. Applicable Law, Legal Recourse, Place of Jurisdiction**

The legal relationships in connection with this Code of Conduct shall be governed by German laws applicable to domestic parties. Any litigation arising from this Code of Conduct—especially in connection with subscriptions—shall be handled by a court of law. The defendant's domicile shall be the place of jurisdiction.

## II. Special Provisions Governing Premium SMS/MMS Offerings

### 1. Customer and Consumer Protection Measures Related to Premium SMS/MMS Services

#### 1.1 Subscription Service (“Multiple Payment Service”)

To improve customer protection, the providers of content for subscription services undertake to take the following measures:

Once the end customer has sent the content provider a request for content via SMS/MMS (request SMS/MMS), the content provider or wireless carrier shall send the end customer a reply SMS asking the end customer to confirm the subscription to the requested service via a standard keyword. Most importantly, the reply SMS includes information on the price including taxes and fees as well as on the provider in question. Only once the confirmation SMS has been received by the content provider is the contractual relationship established (known as the handshake method). A notification of cancellation options may be included in the reply SMS; if it is not included, it must be sent to the end customer in an additional SMS no later than once the confirmation SMS has been received by the content provider.

The price charged for the request and confirmation SMS shall be the respective provider’s standard SMS price according to the payment plan. A premium SMS rate shall not be charged for the request and confirmation SMS.

The following keywords shall be used for all SMS/MMS-based subscriptions:

“START”, “GO”, “JA”, “OK”	- start a subscription service.
“STOP <Name of Service>”	- stops a subscription service.
“STATUS”	- provides a list of active subscription services ordered via this speed-dial option.
“STOP ALL”	- ends all subscriptions ordered via this speed-dial option.
“INFO”	- Domestic address (name, address, hot-line number) of the content provider or mediator.

## 1.2 Chat Services

Providers of chat services undertake to send the customer a “welcome SMS” or “welcome MMS” containing at least the following (minimum) content no later than after having received the first SMS/MMS from the customer:

- Name of the content provider
- Description of the service
- Price per MO SMS/MMS of the wireless subscriber

Furthermore, the “welcome SMS/MMS” shall inform the customer that a price must be paid for SMS/MMS messages sent to a chat forum.

The provision of the service to the wireless subscriber may only start once the “welcome SMS/MMS” has been successfully received by the wireless subscriber. The content provider is obligated to send the wireless subscriber another “welcome SMS/MMS” if the chat remains inactive for more than 7 days if the wireless subscriber make use of the chat service again.

## 2. Standards of Service and Billing

A request for a service in accordance with I.1.4 can generally be made via various order channels (e.g. SMS, MMS or the web).

The content provider undertakes to provide the end customer with one-time services or subscription services and bill the end customer for said services only once the end customer has requested and/or authorized the provision of the content.

The content provider shall provide the end customer with clear information on the scope of the service and on the price of the service in accordance with statutory regulations before the order takes legal effect.

## 3. Communication of the Service and Prices

When the content provider presents his range of services to the end customer, he shall communicate to the end customer in clear terms that the contract for the provision of the service shall only be concluded with the content provider.

When offering premium SMS and MMS services, the parties to the Code of Conduct undertake to adhere to the following rules:

- The price for the service shall be stated to the second decimal place.
- Information on applicable transmission costs shall be included if necessary (e.g. plus SMS/WAP/GPRS costs).

- The currency unit shall be the euro.
- It shall be clearly stated whether the service shall be a subscription service.
- The font size shall be proportionate to the size of the advertisement or the font size of the speed-dial number; in any case, it must be at least 8 point.
- The color of the font shall be clearly offset from the background to ensure that the information is legible. Price-related information may not be rendered unclear by underlining or the selection of font types that are difficult to read.
- The price shall be stated in the immediate vicinity of the speed-dial number.
- Prices shall always be written in horizontal font.
- The price of each service shall be clearly visible behind the product description (possibly behind the speed-dial number) (e.g. no blank lines in the SMS before the price). The display of the price may not take up less time than the notice containing information on order options.
- Prices stated in print media and on poster advertisements shall be clearly legible and presented in direct connection with the service to which they relate.
- Prices quoted on television must be clearly legible and visible throughout the duration of the display of the service offering.
- Videotext price statements must be made in direct connection with the service to which they relate and on the same videotext page as the service.
- Price statements made on radio programs must be clearly audible.
- Price quotations in audio advertisements must be presented either directly before or after the advertised service.
- Price quotations presented on the internet and other online services shall be clearly legible and placed in direct connection with the advertised service.

#### **4. Cancellation of Service**

The wireless subscriber may cancel the subscription at any time. Cancellations of event-based subscriptions shall become effective immediately, and cancellations of budget subscriptions shall become effective at the end of the billing period agreed with the content provider.

Cancellation of a subscription service by the end customer may be effected through one of the keywords stated in Item II.1.1. The name of the service used to initiate the service must be identical to the name of the service that is to be entered together with the keyword STOP. Cancellation may be effected via an SMS or MMS sent by the end customer to the speed-dial number through which the service was requested or to the speed-dial number previously provided to the end customer. Alternative cancellation procedures (e.g. via the content provider/mediator hotline) are also possible. End customers purchasing subscription services receive the speed-dial number and the cancellation keyword when they are sent a confirmation SMS (handshake) on conclusion of the agreement.

## **5. Cost Control**

The content provider shall inform the wireless subscriber of the cost of premium SMS/MMS services used to date via several "bill warning SMS" messages if any of the following occur within the same calendar month:

- (1) The end customer is charged at least 50 euros for an individual or chat service per content provider and phone number. The same shall apply for every subsequent multiple of this sum.
- (2) The end customer is charged at least 20 euros for a subscription service per content provider and phone number. The same shall apply for every subsequent multiple of this sum.

## **III. Special Provisions Governing Unsolicited SMS/MMS Messages Received**

### **Unreasonable Disturbances**

The content providers and mediators undertake not to send end customers any unsolicited SMMS/MMS messages (e.g. SMS spam).

Advertisements sent via electronic mail (e.g. SMS or MMS messages) without obtaining the addressee's prior consent constitute an unreasonable disturbance and are thus generally forbidden [cf. Sec. 7, Para, 2, Item 3 of the German Fair Competition Act (UWG)]. An exception to this rule are advertisements sent via electronic mail that comply with the requirements of Sec. 7, Para. 3 of the German Fair Competition Act ("opt-out" solutions). If the businessperson receives the mobile phone number through an order and the customer has not objected to its use, the customer may be sent an advertising SMS/MMS message for similar products or services. However, the precondition in such cases is that the customer be informed when his/her data are collected and in every advertising SMS message that the recipient may object to this type of advertising without incurring any charges that go above and beyond the transmission costs in accordance with basic rates.

#### **IV. Special Provisions Governing Web-Based Services**

##### **1. Web-Based Individual Transactions and Subscriptions**

###### **1.1 Obligation to Provide Information Concerning Web-Based Subscriptions**

The following additional data shall be clearly communicated to the wireless subscriber within the scope of MSISDN entries:

- Content of the subscription
- Price directly related to the triggering of the payment process (payment button)
- Term and billing intervals/number of transactions per unit of time
- Cancellation options
- Content provider's customer care contact

###### **1.2 Obligation to Provide Information Concerning Web-Based Individual Transactions**

The following additional data shall be clearly communicated to the wireless subscriber within the scope of MSISDN entries:

- Content of the subscription
- Price directly related to the triggering of the payment process (payment button)
- Content provider's customer care contact

###### **1.3 Sending the Payment Code**

When sending the payment code (payment authorization), the content provider or wireless carrier shall send the wireless subscriber a notification that reads "*By entering the following payment code, you will trigger a payment transaction*" (or a similar wording) once the order has been placed. A notice referring to the payment transaction and—for web-based subscriptions—the nature of the subscription, price, term, billing intervals/number of transactions per unit of time and—for

web-based individual transactions—the price must also be clearly communicated on the website in direct connection with the entry of the payment code.

Example:



The content provider is obligated to send an additional notification to the customer via SMS once a subscription has been set up.

Example:



#### 1.4 Communication via SMS of Payment Due

For web-based services, the content provider shall send the wireless subscriber an SMS MT message as soon as the wireless subscriber has spent €50 (gross) per calendar month per content provider per subscriber phone number and for every additional multiple thereof for web-based subscriptions and €50 (gross) per calendar month per content provider per subscriber phone number and for every additional multiple thereof for web-based individual transactions.

A compulsory component of this communication is information concerning the charge to date as well as the URL under which the service can be cancelled. The URL at which the subscription may be cancelled must be pronounceable and may be located no more than 2 levels below the domain. Furthermore, the URL must include an overview of all of the subscriptions running through the website.

#### 1.5 Canceling a Web-Based Subscription

It must be clear that the wireless subscriber may cancel the subscription and stop delivery of the content at any time.

The content providers shall ensure that a web-based subscription is automatically cancelled once the wireless telephony contract has been terminated. The wireless carrier's receipt of indicative error codes shall serve as a clear indication of the cancellation of the wireless telephony contract.

### V. **Complaint Management**

The wireless carrier, the mediators and the content providers operate customer hotlines. End customers who have questions regarding the services of mediators and content providers may call the appropriate mediator and content provider customer hotlines. The wireless carrier's hotlines may inform the customer of the content provider and mediator hotline numbers.

The wireless carriers shall publish on their internet homepages a list of all mediators and content providers along with their hotlines which provide content over the wireless carrier's network. The wireless carriers established the German Federal Network Agency and the vzbv in order to process complaints as rapidly as possible.