

March 2009

The Consumer Ombudsman's Guidelines

on

Mobile Content Services

1. Introduction

Out of consideration of the consumers, the duty of the Consumer Ombudsman is to supervise businesses¹ to ensure that their marketing and contract terms comply with the Marketing Control Act (MCA).

Mobile content services are services delivered to or used with mobile phones via public telecommunications networks. Payment for such services takes place either immediately by debiting a cash card or by post payment through the user's phone bill. Such services are for example ringtones, pictures, polls or chatting that are delivered to and used with mobile phones (or other mobile devices) via a public telecommunications network.

The market for mobile content services has seen major growth during the past few years, and is characterized by being a very nebulous market that is constantly developing, through the appearance of new services and suppliers. Services are marketed in a range of different media, including TV and the internet, and often in ways in which important information about services is not presented clearly enough in the marketing.

As major consumers of mobile content services, children and young people are a clear target group for the suppliers of these services. This makes it necessary for suppliers to take special consideration in relation to their marketing and sales when children and young people are the target group and contracting parties.

In the following, the Consumer Ombudsman will account for the requirements placed on the sale of mobile content services to both people over the age of 18 and children and young people, pursuant to the Marketing Control Act and the contracts between the content suppliers and operators.

The guidelines list requirements on two levels: "must rules" (mandatory) and "should rules". The words "must", "shall" etc. are used for requirements made by the CO, pursuant to the Marketing Control Act. "Should" indicates a recommendation. The Consumer Ombudsman has not made a decision as to whether not following such a recommendation will be against the law in all cases, but will consider this matter specifically.

The main purpose of the guidelines is to give businesses a simple list of the main requirements on the marketing and sale of mobile phone content services. The Consumer Ombudsman's position will therefore not be explained in detail. References to legal sources, examples etc. are included to some extent in footnotes.

Section 4, Requirements on content providers (CPA Guidelines) are prepared in cooperation between the Consumer Ombudsman and Tele2,

¹ The market Council and the Consumer Ombudsman have based their practise on a broad understanding of what is considered business activity. Different organisations, sports clubs and charitable organisations may also be considered businesses in cases where they sell goods or services, e.g. lottery tickets, cards etc. Pure fund raising events are not included.

Network Norway, NetCom and Telenor and are considered as established industry norms in this field.

The Consumer Ombudsman will easily be able to consider deviations from the established marketing and agreement regulation norms within an industry to be unreasonable and in violation of the Marketing Control Act². The Consumer Ombudsman wishes to stress that these guidelines are not regulations, and do not provide an exhaustive presentation of the issue.

2. Regulation and contracts

2.1 General

These guidelines are based on the requirements on the marketing and sale of mobile content services pursuant to the:

- Marketing Control Act
- Guardianship Act
- Act relating to a Cooling-Off-Period
- Ecommerce Act
- Lottery Act
- Personal Data Act
- Ecom regulation

In addition, as mentioned, reference will generally be made to the principles that have been expressed in the CPA Guidelines (see section 4).

2.2 The Marketing Control Act³

Businesses that operate in the fields of marketing and sale of mobile content services must comply with the requirements governing marketing, pursuant to the Marketing Control Act.

The Marketing Control Act § 1 prohibits businesses from conducting actions that are unfair on consumers or otherwise conflict with good marketing practice. Marketing that violates the provisions of other legislation enacted to protect consumers will be considered in violation of MCA § 1 first paragraph⁴.

The Marketing Control Act § 2 prohibits the use of “n incorrect or otherwise misleading representation” in marketing if the representation is suitable to influencing the demand for the business’ products.

The Marketing Control Act § 3 prohibits businesses from using representations that do not provide adequate or sufficient guidance to consumers. In addition the marketing cannot use inducements like premiums or lotteries/competitions to attempt to influence the consumer to purchase a service (sections 4 and 5 of the MCA).

² See MCA §§ 1 and 9a.

³ Act on the Control of Marketing and Contract Terms and Conditions (16 June 1972 No 47): <http://www.lovdato.no/all/nl-19720616-047.html>

⁴ This follows from the principle of unlawfulness. See for example Market Council case No 13/93, 17/93, 1/97, 2/00.

The Marketing Control Act § 9a gives the Consumer Ombudsman a legal basis for prohibiting terms and conditions that are unfair to the consumers. Terms and conditions that conflict with mandatory legislation will always be unreasonable, and thus subject to § 9a of the Act. If the terms and conditions conflict with non-mandatory law, the legislation will basically indicate the norm for what is reasonable⁵.

A new Marketing Control Act comes into force on 1 June 2009. The content of the provisions mentioned above will continue to apply in the new act.

The new act includes a specific section with special provisions regarding the protection of children, see section 4. The new provisions legally establish the previous administrative practise of more strict interpretation of the Marketing Control Act than usual when marketing is directed towards children.

Care must therefore be taken when marketing directed towards children and young people, so that their inexperience, gullibility and loyalty is not exploited. Information about products and services must be adapted to the age of the target group, so that children and young people are not misled. The younger the target group can be presumed to be, the stricter assessment.

2.3 The Guardianship Act⁶

The Guardianship Act contains rules regarding minors and other incapable persons' ability to enter into agreements with businesses.

According to the Guardianship Act § 2, minors cannot be in control of their own means or commit through a legal act. Minors cannot contract debt, and can therefore not in principle enter into an agreement to buy post-paid mobile content services billed through the user's phone bill. However, minors have the right to make financial decisions by controlling money made available to them by their guardian or others. Young people over the age of 15 also have the right to control money they have earned. The limitation on contractual competence means that stricter requirements need to be placed on terms that form the basis for agreements with minors than on agreements with people above the age of majority⁷.

⁵ Proposition to the Odelsting No 38 (1979-80) page 18.

⁶ Act on guardianship for persons who are legally incapable (22 April 1927 No 3): <http://www.lovdato.no/all/nl-19270422-003.html>

⁷ The Guardianship Act is under revision by the Ministry of Justice and Police.

2.4 The Cooling-off Period Act⁸

The Cooling-Off Period Act contains a number of rules governing the duty to provide information before and after entering into an agreement, and rules governing cancellation of contract.

The purpose of the Act is to ensure that consumers receive relevant and necessary information about certain special sale situations where the consumer cannot inspect the product or form an impression of the service, compared with shop sales. The purpose is also to give consumers time to consider the purchase by allowing consumers to void an agreement in certain cases (cancellation rights).

Cancellation rules vary, depending on the sale situation in question. For example, it will be of importance whether one is dealing with a service that cannot be returned to the seller as soon as the consumer has received it.

2.5 The Ecommerce Act⁹

The Ecommerce Act requires amongst other things, businesses that sell or market products and services via the Internet or other electronic communications networks, to disclose certain information about its company in accordance with § 8. The information must include name, trade registry number, address, e-mail address as well as any additional information that will allow the consumer to contact the service provider directly.

2.6 The Lottery Legislation¹⁰ - Competitions based on submissions of stakes

The Lottery Legislation sets limits on the type of lotteries or gambling activities that may be held in Norway, and is enforced by the Lottery Gambling Board¹¹. Norwegian law initially prohibits all forms of gambling, and any expectations to this ban must be explicitly permitted by legislation.

A lottery is defined as an activity in which participants may for a stake acquire a prize as a result of a draw, guesswork or other procedure which wholly or in part produces a random outcome. A stake is any amount that exceeds the normal price of a text message (NOK 1 max). Lotteries, draws, etc. that do not require a stake are regulated by § 5 of the MCA.

According to §§ 5 and 6 of the Lottery Act a lottery “may only be held for the benefit of a humanitarian or socially beneficial aim”. It is further “prohibited to hold a lottery without a permit”. According to § 11 of the

⁸ Act on the duty to provide information and the right to cancel a contract etc. in connection with remote sales and sales outside a permanent point of sale. (21 December 2000 No 105): <http://www.lovddata.no/all/nl-20001221-105.html>

⁹ Act on certain aspects of E-commerce and other information society services (23 May 2003 No 35): <http://www.lovddata.no/all/hl-20030523-035.html>

¹⁰ Act on lotteries etc (24 February 1995 No 11), Act on bets made with a totalisator machine (1 July 1927 No 3) and Act on gambling etc (28 August 1992 No 103): <http://www.lovddata.no/all/nl-19950224-011.html>

¹¹ See <http://www.lottstift.no/>

Lottery Act, "it is prohibited to engage in the marketing of or mediating lotteries for which no permit has been granted".

2.7 **The Personal Data Act**¹²

The Personal Data Act contains general rules regarding the processing of personal data. The Data Inspectorate monitors compliance with this Act. The Personal Data Act primarily states that all processing of personal data must be reported to the Data Inspectorate pursuant to the Personal Data Act. All processing of sensitive personal information is only permissible if authorized by the Data Inspectorate.

Businesses shall acquire the owner's consent prior to processing personal data. Minors above the age of 15 may as a rule, consent to the collecting and use of their own personal data. For children under the age of 15, a parent or a legal guardian shall generally always be contacted to give consent in the child's behalf¹³.

Both the Marketing Control Act and the Personal Data Act will apply when the processing of personal data becomes part of an agreement with or the marketing method of a business that has dealings with consumers.

2.8 **The Ecom Regulation**¹⁴

The Ecom regulation § 5a contains regulation regarding premium rate services, including mobile content services. The regulation came into force 1 July 2008. Premium rate services mean content services and telecom marketplace services billed along with an electronic communications service. Content services billed separately are not included.

The regulation gives the consumer the right, free of charge, to block wholly or partly the access to premium rate services¹⁵.

The operator is obliged to notify the consumer about the ability to block services and about the various limits for blocking¹⁶.

The consumer shall free of charge be able to block the supply of mobile content services by sending the message "STOPP"¹⁷.

The operator shall ensure that children and young people below the age of 18 are not offered mobile content services with gross violent depictions or pornographic content¹⁸.

¹² Act on the processing of personal data (14 April 2000 No 31):
<http://www.lovddata.no/all/nl-20000414-031.html>

¹³ Guidelines for retrieval and use of personal data of persons above the age of majority

¹⁴ Regulation on Electronic Communications Networks and Services (16 February 2004 No 401). § 5a was included by regulation 14 January 2008 No 40 (into force 1 July 2008)

¹⁵ See section 5.3.

¹⁶ See section 5.3

¹⁷ See section 5.3

¹⁸ See section 5.2

The Consumer Complaints Board for Electronic Communications shall from 1 July 2008 process disputes regarding mobile content services¹⁹.

2.9 CPA-agreements and CPA-guidelines²⁰

A CPA-agreement is an agreement between an operator and a content provider regarding the rights and obligations between them. Once these agreements are entered into, the content provider may, via one or more four or five digit access number, deliver content services to all users within the operator's mobile network. If the content provider breaches the agreement, the operator may use sanctions, for example to close down services.

The operators have in the CPA-guidelines, which form a part of the CPA-agreement, outlined a number of principles and rules that the content provider must follow. They apply to all delivery of content services to Norwegian consumers, regardless of the company the consumers are customers of.

The Consumer Ombudsman will easily consider deviations from these industry norms to be unreasonable and in violation of the Market Control Act²¹.

3 Definitions

Mobile Content Services are services that via the public telecommunications networks are supplied to or used by the mobile telephone. The services are either paid immediately by cash-cards or by post-payment on the phone bill. Such services are for example ringtones, pictures, polls, notifications, chat, or over charged information messages.

Content Suppliers are companies that market and deliver mobile content services to consumers and have a CPA-agreement with one or more operators.

Operators are mobile operators or Mobile Virtual Network Operators (MVNO) in Norway. In Section 5 operator also means mobile company. Children and young people are minors. Minors are people under the age of 18.

Access numbers are phone numbers that content providers use to deliver services. For a list of numbers that are used by the different companies, see Telenor's and NetCom's websites.

One-time-use services are services where the consumer orders and receives one single service, such as a ringtone or a wallpaper photo. The consumer receives no additional services thereafter.

¹⁹ See section 5.5

²⁰ Se <https://netcom.no/omnetcom/partnere/cpa-innholdsleverandorer/produkter/smsinnhold.html> og <http://cpa.telenor.no/cpa/>

²¹ See MCA §§ 1 og 9a.

Subscription services are continuous services where the consumer, after placing an order, gains access to the service in question against payment per day, week, month etc. until notice of termination of the service is given. Examples of subscription services are ringtone or logo subscriptions where the consumer is charged a standard rate, for example NOK 30 per week, to use the service. Subscription services are also called push services.

Fixed subscription services are services where the consumer receives messages within a fixed period of time, for example two messages per week or four messages per month.

Variable subscription services are services such as notification, competitions/quiz. After the consumer has sent an order he/she receives several messages at a fixed price per message. The amount of messages and the period of time between each message vary usually with kind of services.

Chat is a specific kind of variable subscription service where the consumer communicates with one or more persons and pays a fee per received message. Other variable subscription services are for example notifications, competitions/quiz.

The main difference between fixed and various subscription services is that fixed subscription services are supplied at fixed agreed points of time, for example twice a week every Monday, Wednesday and Friday. The various services are supplied at points of time and amount that are not fixed in advance.

4. Requirements on content providers (CPA Guidelines)²²

4.1 Marketing via SMS – requirements according to the Marketing Control Act § 2b²³

4.1.1 Active consent

Content suppliers can as a general rule only distribute marketing material via SMS, e-mail etc. to consumers that have actively consented to receive such marketing messages.

Consent can only be obtained by the consumer actively providing it after having been informed what such consent entails. This applies irrespective of whether an attempt is made to obtain consent from children or adults, cf. the guidelines on obtaining and using personal data²⁴.

If the consent to marketing is obtained through written registration (for instance on the internet), the consumer must be informed directly on the screen about what he is consenting to. It is not sufficient that the information is provided by a link for the consumer to access. Furthermore the consumer actively has to tick off in a box or similar to signal that he is consenting to receive marketing information.

When asking whether a consumer wishes to consent to receiving marketing, e.g. by SMS, it is important to be aware of the fact that children and young people themselves cannot consent to receiving direct marketing by e-mail, SMS, MMS etc. before the age of 15²⁵.

Content suppliers cannot transfer their right to send marketing information to consumers or to other tradesmen without the consumer having freely given an informed and explicit consent to the transfer.

The consumer must be able to withdraw his or hers consent at any time by sending the text message "STOPP REKLAME" to the access number that is distributing the marketing or product information material. All receipts sent to a consumer who has used the "STOPP REKLAME" command shall be free of charge.

The purchase of content services may not be conditional on the consumer consenting to receiving advertising by SMS, MMS, e-mail etc. Luring consumers with access to free content services in exchange for consenting to receiving advertising messages, can be illegal in certain cases. Each concept/marketing measure must be assessed specifically to determine whether such an approach can be allowed.

²² The requirements on content providers in this section are identical with the operators' CPA Guidelines.

²³ See the Consumer Ombudsman's guidelines for the Marketing Control Act § 2b (SPAM).

²⁴ See footnote no 12.

²⁵ See http://www.forbrukerombudet.no/asset/1211/1/1211_1.pdf

4.1.2 **Established customer relationship**

If a content supplier is to distribute marketing material via SMS or MMS without obtaining the consumer's active consent to receive such marketing messages, a customer relationship between the consumer and the content supplier must have been established.

The following applies for mobile content service marketing based on customer relationship:

Establishing customer relationship

A customer relationship can only be established when payable purchases/transactions are made from the same access number or mobile service portal in accordance with the following criteria:

One-time-use services: Three single purchases must be made within a period of 30 days for a customer relationship to be established.

Subscription services: A consumer must subscribe to a service for 30 consecutive days in order for a customer relationship to be established.

Chat services: The consumer must have made purchases on two separate, discontinuous days within a 30-day period before a customer relationship is established.

Notification of the establishment of a customer relationship

Before a customer relationship is established and before any marketing or product information can be distributed, the consumer must be notified via SMS that a customer relationship has been established, what such relationship entails and information on how to give notice if the marketing or product information is not wanted.

Duration of a customer relationship

A customer relationship must last no longer than 60 days after the final payable transaction. If the consumer has not been active for 60 days, the consumer must be automatically removed from any address lists and shall receive no further marketing or product information thereafter.

Discontinued marketing in an established customer relationship

A customer in an established customer relationship must be able to stop any marketing material received by sending a "STOPP REKLAME" message to the access number that is distributing the marketing or product information. All distribution of marketing messages shall then immediately cease, and before another customer relationship can be established, the consumer's telephone number shall be quarantined for a period of at least 6 months. All receipts sent to the consumer after using the "STOPP REKLAME" command shall be free of charge.

Marketing in connection with a customer relationship

When distributing marketing based on an established customer relationship, only marketing messages for products/services similar to those the consumer has previously purchased can be delivered. Content services with an age limit are never to be considered similar to content services without an age limit. If the marketing is of an erotic nature, the consumer

must meet the requirements for a customer relationship involving the purchase of erotic content services.

Price on text messages

All advertising messages, newsletters, information and receipts related to marketing shall be free of charge for the consumer.

4.2 Information required before a content services transaction is completed

4.2.1 General

All marketing directed towards consumers must be drawn up in a clear manner, so that it is not misleading or provides insufficient information. The marketing must give the consumer the information the consumer has a reason to expect to receive. This means that the consumer must be informed of all important terms and conditions that are linked to the purchase before the consumer decides to enter into the agreement.

Mobile content services are not to be marketed towards children and young people if the content makes the services unsuitable for this age group. This applies, for example, to services with frightening, violent, erotic/pornographic content etc.

4.2.2 Information to be provided in the marketing

In all marketing of mobile content services, including advertisement in magazines, e-mail, SMS, TV, internet and boards, the following information must at a minimum, be provided in a clear and precise manner:

1. The price of the service. The price of all content services on SMS and MMS must be listed "per message received" (or per ringtone, picture, etc. received).
2. The name of the supplier of the service (the content supplier).
3. If it is a subscription service (see the definition in section 3), the following information is to be provided in a clear and precise manner:
 - that the service is a subscription, either by using the word "subscription" or by other means made clear that the service is a subscription. The service must not be marketed as a one-time-use service if it in fact is a subscription service²⁶.
 - that delivery of the services will be on a consecutive basis
 - whether the agreement is for a limited period of time or for no determined period
 - whether the subscription is e.g. per day or per month, and whether the subscription is renewed automatically
 - whether the right to use content services that the consumer has paid for but not used will expire when the subscription is renewed

²⁶ The marketing must not focus on the consumers' choice to e.g. buy one single ringtone or one, when the service in fact is a subscription service.

- the number of messages the consumer can expect to receive. If this is not possible, the expected number of messages must be given. This applies for instance to chat services, alert services, quiz or similar.
 - the price of the content services that are delivered pursuant to subscription
4. If it is a subscription service, the consumer must be notified that the service can be stopped by sending the message STOPP to the same access number that the service was ordered from²⁷. The code word STOPP must be used in all marketing for information about how to stop a subscription service.
 5. Any age limit on use of the service.
 6. The contact details and phone number to the content supplier's customer service or of the company responsible for handling questions regarding the service.
 7. Which phone and, if relevant, which configuration are required for the consumer to receive the correct content.
 8. If tracking of the position of the consumer is part of the supplier's service, the consumer must be informed of this in the marketing material. In addition, the content supplier of the tracking service is required to obtain the consumer's consent for the use of positioning services and comply with the terms of the Personal Data Act, see section 2.7.

4.2.3 Requirements regarding the presentation of the information

4.2.3.1 General

In all marketing the information in section 4.2.2 must be horizontal, clear and easily easy to read when it comes to size, colour and location.

All major terms for the service, including price- and subscription terms must always be notified with equal or similar communicative effect as the access number. The same requirements to the major terms' communicative effect apply if the consumer has to fill in its mobile telephone number to order the service.

On TV, text-TV, internet and other similar marketing channels, the price information must be presented for at least as long as the access number or the area for the filling in of the mobile number, and in direct relation to it. The pricing details must be presented on the same screen as the access number or the area for filling in of the mobile number. Such information must not be hidden between other terms etc.

²⁷ See the Ecom Regulation § 5a-2 third paragraph <http://www.lovddata.no/for/sf/sd/xd-20040216-0401.html#5a-2>

On radio, on the phone and similar marketing channels, the information mentioned in section 4.2.2 must be given clearly when providing information about, or referring to, a content service.

TV and radio advertising may specifically target children, cf. § 3-1 of the Broadcasting Act.

4.2.3.2 *Information regarding purchases made by WAP*

When WAP is used, the information described in section 4.2.2, must be given directly in the WAP dialogue before the consumer approves the delivery of the services and authorizes payment.

As a minimum requirement, the price must be listed in parenthesis on the link, if the content supplier has posted detailed information on the same page or via a separate link.

If the data transfer rate is not included in the price, the consumer must be informed that any data transfer will imply additional charges. For instance: "Due to data transfer pricing, an additional charge for data transfer will be added to the price of the service. The service is expensive if used while abroad because of the data transfer rates imposed by the foreign carriers. In addition to the stated price there comes an addition due to the price of data traffic. If you are abroad, this will be relatively expensive due to roaming prices from international operators".

The content supplier must inform the consumer if the data transfer rate is included in the price. For instance: "The price includes data transfer and is the total price you will be charged in Norway. If using this service while abroad, an addition charge for the data transfer will be added to the total price, and as the charges are based on the foreign carriers' data transfer rates, this is quite expensive."

4.3 Entering into and completion of an agreement

4.3.1 General

For an agreement of delivery of mobile content services to valid, the consumer must have received the information listed in section 4.2 in a clear and precise manner prior to delivery of the service.

When a consumer orders a service from an access number, the service and all related messages must be delivered via the same access number. The content supplier can only transfer the consumer from one access number to another or use multiple access numbers if the consumer has been informed in advance, and as long as there will be no consequences to the consumer.

The amount limits mentioned in section 4.3.3 must not to be evaded by transferring the consumer from one access number to another.

4.3.2 Payment

A content supplier cannot charge for delivery of a service through several transactions. The supplier must therefore use defined rates, and only charge the consumer once. For example, content suppliers cannot use several transactions to exceed the defined tariff.

Content suppliers must not charge a consumer for a content services before the service has been delivered to the consumer's telephone. If the consumer downloads the same content service twice, no charge must be placed on the second download as long as it is completed within an hour of the original download.

If the mobile telephone account is empty or the mobile phone has been temporarily blocked, the content supplier must cancel the service and not attempt to conduct a payment transaction or redelivery until the consumer has ordered a new service. However, where subscription services are concerned, the content supplier may make several attempts while the subscription is active, but only one attempt per day per customer. If the content supplier has not yet been charged for a service when a subscription period expires, the content supplier cannot transfer any outstanding charges from the previous period. If the content supplier is unable to charge the consumer for a service within a period of two months after the initial attempt, the consumer must be removed from the service, see section 4.4.1. If the subscription is permanently blocked, the consumer must be removed from all services, see section 4.4.1.

The content supplier must notify the consumer of the price for help and error messages if they are not free of charge for the consumer. The maximum price for an SMS containing help or error messages or other general information, must be NOK 1.

4.3.3 Usage ceilings

Usage ceilings for people aged over 18

Content suppliers must set a ceiling so that the consumers cannot be charged more than NOK 5,000 incl. VAT, per month for purchasing services from an access number.

The consumer shall, free of charge, be notified via SMS that the NOK 5,000 limit has been exceeded, and that the supplier will be unable to offer the consumer in question content services for the rest of the month.

Amount limits for minors

The ceiling for services directed towards children and young people must be far lower than the one for adults. The Consumer Ombudsman may consider a violation of the Marketing Control Act to have occurred if content suppliers do not set a limit of about NOK 1,000, incl. VAT, per month for the purchase of services from an access number.

The determination on whether a service targets children and young people must take into account the channels through which the service is marketed,

the focus of the marketing and the content of the services. If these services are marketed in typical children's and youth magazines or on web sites for children and young people, the services will generally be considered as targeting children and young people. The same applies if the marketing or service contains characters from cartoons, TV-series, movies or games targeted at young people.

The amount limits may not be evaded by transferring the consumer to a new access number.

4.4 Specific about subscription services

4.4.1 Requirements for all subscription services

Information messages

Consumers ordering subscription services²⁸ shall immediately receive an information message beginning with the word "Subscription".

All necessary information linked to the service and all key terms must be included in the information message, hereunder the following information:

- The service can be stopped at any time by sending an SMS with the code word "STOPP".
- The duration of the subscription.
- The price of the service and each message received.
- The period the service will be running, per week, month etc, and whether it is renewed automatically or not.
- The phone number to the content supplier's customer service.

Other key terms and conditions must also be mentioned.

A link to another information source that is not automatically available from the mobile phone, e.g. Internet or text-TV, is not sufficient. The information message can consist of more than one SMS, but the price for the information to consumers must be maximum NOK 1.

Example:

Welcome to ABC. Send STOP to 19xx to stop this service. NOK 5 per message received. The subscription is renewed each month until termination notice is given. Customer service 2233 4455. This message costs NOK 1.

Stop command

The consumer must be able to stop any subscription service by sending the message "STOPP" to the access number the service has been delivered from. It is irrelevant whether the consumer uses upper or lowercase letters in the stop message.

The content supplier must immediately stop all services (SMS, WAP, MMS, etc). If several services are active, the supplier must send the consumer an SMS listing the active services and information about how the consumer

²⁸ See definition of these services in section 3

can stop each service by SMS. The maximum price of these SMS will be NOK 1. Consumers who terminate a subscription must receive confirmation of such termination.

If the content supplier receives the code word "STOPPALLE", "STOPALL", "STOPP ALLE" or "STOP ALL", the supplier must immediately stop all subscription services (SMS, WAP, MMS etc) for the consumer that sent the message, without further discussion with the customer.

Time for delivery

In order for a consumer to be able to read the content of the information message, the supplier must send the information message as the first message. It must then wait to deliver the subscription service until the consumer has been given an opportunity to read the information message.

Failure of delivery

If the content supplier has not had any successful delivery of message or payment transaction within the last 60 days, the content supplier must not send marketing- or subscription messages to the consumer. In such cases, the content supplier shall erase all customer information and stop all existing subscription services of the consumer.

4.4.2 Specific terms for fixed subscription services

Examples of fixed subscription services are subscriptions on ring tones or games where the consumer pays a fixed amount and receives a fixed amount of over charged messages per week or per month.

At each automatic subscription renewal point, the consumer shall be given information about:

- The service
- The supplier, customer service
- How to terminate the service
- Whether the service runs per day or per month and whether it is automatically renewed or not
- The price for the service

A fixed subscription service is renewed automatically every time the consumer receives a message from the supplier that the customer is charged for. The consumer may terminate the service after every message received.

4.4.3 Specific terms for chat and other variable subscription services

Examples of variable subscription services are for example chat, notifications or competition services where the number of messages the consumer receives can vary.

When the consumer has received 20 messages since the last information message was sent, the supplier must send a new message with the same information, see the requirements in section 4.4.1.

A chat service cannot cost more than NOK 30 per message.

Scope

Only a limited amount of messages can be sent to a consumer within a short interval (e.g. more than 4 messages received per minute). To prevent this, the content supplier must be able to offer services where the consumers receive a limited number of messages within a specific period of time.

Automatic stopping of the service

If a consumer has received more than 20 messages since the consumer last sent a message, the content supplier must stop the service immediately. The consumer must then enter into a new delivery agreement if he or she wants to continue using the service. If there is a variable subscription service with a limited number of messages, e.g. 0-10 messages per week, it is not necessary to terminate the service after 20 messages.

4.5 Consumers age²⁹

The content supplier shall classify the content according to minimum age and make investigations towards the operator to control the age of the consumer.

If the age control shows that the consumer is under aged, the transaction shall immediately be stopped and the content is not to be delivered to the consumer. The consumer shall receive an information message with reference to the consumer's age as a reason for rejected delivery. For example: "You are not old enough to use this service or your mobile operator does not have information about your age. Contact your mobile operator for registration of correct age." The price of this information message must be maximum NOK 1.

The content supplier must ensure that content unsuitable for the consumer's age is not sold. This applies to e.g. frightening, violent, erotic/pornographic content.

4.6 Re-use of mobile phone number

To prevent sending new customers messages targeted to previous owners of a phone number, the content supplier must terminate all subscription services and delete all customer information if feedback from the mobile operator indicates that the consumer has been permanently blocked, or if the content supplier has unsuccessfully attempted to deliver a service to the consumer over a period of 60 days.

Of this reason the content supplier cannot distribute subscription- or marketing messages to a consumer if the content supplier has not had a successful message delivery or payment transaction in the past 60 days.

²⁹ See section 5.2 Specific about the marketing and supply of services to children and young people under 18 years old.

4.7 Customer service

The content provider is obligated to provide customer service for all services offered via the access numbers the company has an agreement with the operators to use, including questions related to marketing, ordering, delivery and payment. Consumers must be able to reach customer services for all services delivered via the same access number at one shared phone number. The content supplier must handle customer service directly and cannot forward customer service calls.

Complaints must be processed within a reasonable period after the complaint is received. All complaints must be processed properly. If the complaint is rejected, a minimum requirement is that the grounds for the decision is explained, and that the complainant's arguments are answered as fully as possible.

Customer service must communicate in Norwegian. The opening hours must be at least from 0900-1500 on weekdays. Information about the opening hours must be given to consumers when consumers call the number outside service opening hours. For example: Customer service: 930 00 000, is open on weekdays from 0900 – 1500.

If the content supplier receives the code words "HJELP", "HELP", "KUNDESERVICE", "CUSTOMERSUPPORT", "CUSTOMER SUPPORT" or "SUPPORT", the consumer must receive an information message with information about the content supplier's customer service including e-mail address, phone number and opening hours. The price of the information message must be maximum NOK 1.

The consumers' costs associated with contacting customer service must not exceed the regulator mobile call rate.

5. Requirements on the mobile operators (mobile companies)³⁰

5.1 Generally about the requirements regarding the content

Content providers as mobile content services must be legal, including not containing unlawful pornographic content, defamatory utterances or contravening rules relating to marketing, lotteries, privacy, intellectual property rights etc.

5.2 Specific about the marketing and supply of services to children and young people below 18 years old

The operator shall especially ensure that children and young people under the age of 18 are not offered mobile content services with serious violent depictions and pornographic content.

³⁰ Section 5 follows entirely from the Ecom regulation §5a.

Content providers offering services to children and young people under the age of 18 shall have a contract with the content provider containing specific terms regarding such services.

The operator shall offer the subscriber to register the date of birth of the user of the mobile phone, so that the content provider may control the age at the time of the ordering of the service³¹.

5.3 Blocking of access to services

The consumer shall be able to stop the service by sending the message STOP to the access number the service was sent from.

The consumer shall free of charge and in a simple manner, be able to block access to mobile content services. The request to block services may be brought before the operator or directly before the content provider.

Blocking of all access:

The consumer shall free of charge and in a simple manner be able to block access to all mobile content services.

Blocking of use above a certain amount:

The consumer shall free of charge and in a simple manner be able to block the use of mobile content services above a certain amount per month. The subscriber may choose an amount limit within the limits offered by the operator. The operator's lowest limit may not be higher than NOK 250 per month. The operator shall inform the consumer that the specified amount has been reached.

The operator's duty to provide information:

The operator shall inform consumers free of charge of their right to block the use of mobile content services and of the various limits of blocking.

5.4 Complaints procedure

Both the operators and the content suppliers shall have a satisfactory complaints procedure for complaints regarding mobile content services. According to the Ecom Regulation § 5a the operators are responsible for the customer service in situations where the end user does not receive appropriate customer service from mobile content provider.

The operators and the content suppliers shall process complaints within a reasonable period of time after the complaint is received. All complaints must be processed properly. If a complaint is rejected, a minimum requirement is that the grounds for the decision are explained, and that the complainant's arguments are dealt with as fully as possible.

If the content supplier is unable to resolve a consumer's complaint regarding payment, the supplier must directly contact the operators to resolve the issue. The content supplier must then contact the consumer without undue delay.

5.5 **The User Complaints Board**

If a complaint is rejected or the operator has not handled the complaint in proper way, the consumer may bring the dispute before the User Complaints Board for Electronic Communications³². This complaints handling only applies to conflicts that has occurred after 1 July 2008.

The consumer may bring the dispute directly before the User Complaints Board if the provider did not notify the complainant in writing about expected time for handling the complaint within two weeks after the provider received the complaint or the operator did not provide a final reply to the complaint within a reasonable period of time.

The operator shall frequently publish information about the complaints procedure in an appropriate manner.

³² See the Ecom regulation § 5a-6, cf. § 10-1: <http://www.lovddata.no/for/sf/sd/xd-20040126-0401.html#5a-2>