

Code of Conduct mobile premium services

Version 4
23.06.2010

The present document is a translation of the signed German version of the Code of Conduct.

1 Starting point and objectives

SMS und MMS premium services based on a short code or short ID enjoy great popularity in Switzerland. In contrast with other telecommunication services (e.g. premium voice services via 090x numbers), these SMS and MMS premium services are also, for a number of reasons, less open to misuse. In particular, the agreements reached between the mobile telecommunications operators and Mobile Service Providers contain comprehensive provisions aimed at protecting the consumer and preventing misuse.

SMS and MMS premium services were also affected by the 2004 revision of the Ordinance on Price Disclosure ((Preisbekanntgabeverordnung (PBV)). As of 1.10.05, the Ordinance on "Addressing Resources in the Telecommunications Sector (Verordnung über Adressierungselemente im Fernmeldebereich (AEFV))" was amended so that the award and management of short codes used for SMS and MMS premium services are henceforth subject to the Federal Office for Communication (Bundesamt für Kommunikation, BAKOM). BAKOM has delegated these powers in the form of authorization to the Telecommunication Service Providers (TSPs), under the terms of which the latter will be required to fulfil certain coordination and consumer protection obligations. In other words, adherence to the AEFV revision and to the authorization granted by BAKOM requires collaboration among the TSPs.

Furthermore, on 1.4.2007 the revised telecommunications law came into force. Art. 35ff of the Decree on Telecommunications Services of 9 March 2007 (Verordnung über Fernmeldedienste FDV) regulates premium services in detail. At the same time, a modification of the corresponding provisions of the PBV and a prohibition of spam also came into force. The revised provisions have resulted not only in specific additional stipulations but also in an expansion of the Code of Conduct to mobile premium services that are not provided via SMS and MMS.

With partial revisions from November 4, 2009, the Ordinances FDV, PBV and AEFV have been adapted. The revision of the FDV affects the Mobile Service Providers only indirectly, as with the new Art. 47 para. 3 FDV the TSP's are obligated to inform their customer in each bill (Postpaid-Numbers) resp. with each refill (Prepaid-Numbers) that the arbitration board (Schlichtungsstelle Ombudscom) is competent as well for disputes concerning value added services. The adapted PBV contains new clauses for consumer protection which shall avoid misusages as well as misunderstandings in ordering the services or with regard to price (Art. 11a para. 1, 11b and 13a PBV). Part of these mentioned changes came into effect on January 1, 2010, and others per July 1, 2010.

Links to the relevant laws are as follows:

- FMG: http://www.admin.ch/ch/d/sr/c784_10.html
- FDV: http://www.admin.ch/ch/d/sr/c784_101_1.html
- AEFV: http://www.admin.ch/ch/d/sr/c784_104.html
- UWG: <http://www.admin.ch/ch/d/sr/c241.html>
- PBV: http://www.admin.ch/ch/d/sr/c942_211.html
- SPC: http://www.admin.ch/ch/d/sr/c311_0.html

The aims of this document are as follows:

- At a minimum, the regulation amongst TSPs of those obligations that are required for the exercise of their coordination and consumer protection responsibilities. This particularly includes the transparent and non-discriminatory management and allocation of short codes.
- A shared understanding and universal application of the FDV and PBV provisions (as at July 1, 2010)
- Adapting to the new legal situation concerning SPAM
- A basis for the relevant contractual relationships with the Mobile Service Providers

In this context, the TSPs have, to a certain extent, assumed contractual obligations that go beyond the legal requirements.

The TSPs are convinced that the successful implementation of this Code of Conduct will increase the confidence of customers with respect to the use of mobile premium services.

2 Definitions

Chat service

“Chat” is a service that allows end customers, animators and computers to exchange text messages via a central user list, for which the sharing of telephone numbers (MSISDN) is not necessary. End customer can use a pseudonym and remain anonymous to other end customers. Incoming SMS (SMS MT) are generally billed to the end customer.

Club Service

A club service is an access permission that allows end customers to receive certain services at special terms, or to use certain services that are only available to club members.

CoC-TSP

TSPs that have signed the present Code of Conduct.

End customer

Each end customer of a TSP as defined below.

TSP or Telecommunication Service Provider

In connection with this Code of Conduct, Telecommunication Service Providers are those in possession of an authorisation from the Federal Office for Communication (BAKOM) for the management and allocation of short codes for SMS and MMS services (Art. 15c AEFV).

Keyword

A “Keyword” is a sequence of characters that, together with the SMS/MMS short code, identifies a specific service. With the exception of standard keywords, keywords are determined – within the legally and contractually stipulated framework – by those Mobile Service Providers to whom the corresponding short code has been allocated.

Short code or short ID

A short code is a number with 3-5 digits that is allocated by a TSP to a Mobile Service Provider so that the Mobile Service Provider can then market one or more premium services on the basis of SMS or MMS.

Premium Service

Payable services provided or offered via telecommunications services (particularly SMS/MMS/WAP/Web). If these services are provided by telecommunications services and also are charged by the CoC-TSP in addition to telecommunications services, both the PVB and the provisions of the FDV are applicable. An SMS/MMS premium service is a service based on SMS/MMS for which a higher price is typically charged than for normal SMS/MMS messages between end customers. Typical examples of premium services are ringtones and games. This Code of Conduct does not extend to voice premium services (090x etc.)

MMS

“MMS” stands for Multimedia Messaging Service. MMS is a message that may contain pictures and sound in addition to text.

Mobile Service Provider

The Mobile Service Provider is the direct contractual partner of a TSP and may perform the function of a content provider and/or of an application provider. The Mobile Service Provider may impose certain rights and obligations from a contract with a TSP upon other parties, though it will remain fully responsible to the TSP for the fulfilment of the terms of the contract. The Mobile Service Provider offers premium services in accordance Art. 37 FDV.

Pull Service

A “Pull Service” is one whereby the end customer orders a single delivery of content via SMS/MMS or WAP from the Mobile Service Provider. The customer is generally billed for each SMS/MMS received or WAP use.

Push Service

A “Push Service” involves an order from the end customer and can trigger many discrete units of information subject to charge.

SMS

“SMS” stands for Short Messaging Service. An SMS is an alphanumeric short message with a maximum of 160 characters.

Standard keyword

Standard keywords are control commands that are defined uniformly by the CoC-TSPs and that must be implemented in the interests of customers by Mobile Service Providers.

3 Management of short codes (SMS/MMS)

3.1 Administrative provisions/Information

- Each CoC-TSP maintains a contact point for the management of short codes (including e-mail address, telephone number). This is the contact person (SPOC) for both the Mobile Service Provider and for the other CoC-TSPs and is published on the website of the respective CoC-TSP.

- All CoC-TSPs will provide identical descriptions on their website of the process for the award and management of short codes – in particular the general rules (3.2) and the reservation process (3.3).
- The status of a short code is accessible via the website of the respective CoC-TSP.

3.2 General rules

- **Retroactive force**

The concept below does not apply to those short codes already allocated by the TSPs at the time of the entry into force of this Code of Conduct. The migrations necessary due to regulatory guidelines (services with erotic or pornographic content, services beginning with the number “1”) were completed prior to Version 3 of this Code of Conduct entering into force.

- **Basic principle of “First come, first served”**

Short codes will be allocated in the order in which the corresponding requests are received. Where there is evidence that a Mobile Service Provider is the first to reserve or be allocated a specific short code from a CoC-TSP, that provider has preference over other interested parties who make later requests.

- **Any one specific short code can only be used by one Mobile Service Provider**

Short codes at different CoC-TSPs cannot be used by different Mobile Service Providers. Once a short code has been allocated, it is blocked at the other CoC-TSPs unless it has active status with other CoC-TSPs for the same Mobile Service Provider.

- **Possible status of a short code**

- “free”
- “reserved”
- “name of Mobile Service Provider” (= in use/active)
- “blocked” (without mention of the Mobile Service Provider)
- “temporarily blocked” (in the case of a “Quarantine” as per point 3.4)

- **Available short codes**

3-5 digit short codes within the number ranges 2xx, 3xx, 4xx, 5xx, 7xx, 8xx and 9xx can be allocated. Short codes for European-wide harmonized services can consist of more than 5 digits (Art. 15b para. 2 AEFV).

Upon request, the Mobile Service Provider may be awarded any (available) short code from within these number ranges. If the Mobile Service Provider does not express any particular wish for a specific short code, it will be given a short code beginning with the number 9.

- **Special short code ranges**

Short codes beginning with the number 6 are reserved for services with erotic or pornographic content. Short codes beginning with the number 1 are never awarded. An exception will be considered for requests that fulfil the conditions of the BAKOM authorization “for the management and allocation of short codes for SMS and MMS services“.

3.3 Reservation of short codes

- The Mobile Service Provider contacts one of the CoC-TSPs with its allocation request. Ideally, it should first check whether the short code is available by consulting the CoC-TSP's website.
- Whenever a CoC-TSP receives an allocation request, it will:
 - Check whether the requested short code is available (free) (i.e., is neither in use through itself or through another CoC-TSP nor reserved, blocked, or temporarily blocked)
 - Determine the exact time when the request was submitted (in the unlikely case that two Mobile Service Providers request the same short code at different CoC-TSPs within a short period of time)
 - Change the short code status on its system from "free" to "reserved" within 3 days (status to be at least visible to other CoC-TSPs even if they are not actively informed of it).
- The Mobile Service Provider will itself approach the other TSPs with whom it wishes either to reserve or to later use the short code.
 - The reservation period expires after two months.
 - Where a reservation is followed up by the signing of a contract, the CoC-TSPs will notify each other by email within two working days of the allocated short codes.
 - If a CoC-TSP's reservation period expires without a contract, the CoC-TSP will reset the status of the short code from "reserved" to "free". (Except where it has received notification from another CoC-TSP that the short code has been activated there; the status is then changed from "free" to "blocked").
- If a Mobile Service Provider only wishes to activate a short code at one CoC-TSP, it is blocked for the remaining CoC-TSPs, and a "blocked" notice placed in the weblink of the other CoC-TSPs. The same applies if the Mobile Service Provider requested a short code at all the CoC-TSPs but could not reach agreement with all of them and therefore only activated it with one or more but not all CoC-TSPs.
- The CoC-TSP the Mobile Service Provider shall own the short code for the duration of the contract in accordance with Art. 37 para. 1 FDV. Its rights and obligations as owner are subject to the contract with the CoC-TSP and the FDV.

3.4 Reuse of short codes once inactive or no longer active

- Issued or "reserved" short numbers which are not put in use at any of the CoC-TSPs within two months will revert to the CoC-TSP and can then be reissued immediately. Once the number reverts to the CoC-TSP, it immediately receives a status of "free".
- If contracts with all CoC-TSPs are cancelled for a certain short number, the short number is then deactivated. The short number reverts to the CoC-TSP and can be reissued after a period of three months. During the blocking period ("quarantine"), the status is referred to as "temporarily blocked". A "change in owners" (another Mobile Service Provider, but the same short number and same service) can be carried out without a blocking period.

- The CoC-TSPs will notify each other by e-mail within two working days of a number reverting back to the CoC-TSP or a change in owners.

4 General Regulations for mobile premium services under the FDV

4.1 Recognizability of premium services with erotic or pornographic content

- Premium services must be recognizable as such.
- SMS/MMS services with erotic or pornographic content may only be provided using short codes of the type 6xx. Only services with erotic or pornographic content may be offered under 6xx. In the case of other premium services (e.g. via WAP or Web), those services with erotic or pornographic content must likewise be assigned to a separate category that is clearly recognizable as such by the end customer. Category designations such as "pink pages" do not meet this requirement.
- The Mobile Service Provider may not offer pornography in the sense of article 197 point 3 ("hard pornography") of the Criminal Penal Code (Strafgesetzbuch).
- For so-called soft pornography, the provider is responsible for ensuring that article 197 points 1 and 2 of the Criminal Penal Code are not violated. In particular, the provider may not provide services with erotic or pornographic content to end customers under 16 years of age. The provider has to ensure that access control is in place which satisfies the legal requirements, especially that an age check is conducted before services are provided (including prior to so-called "previews" already containing erotic content or soft pornography). Only if the age check proves that the end customer is older than 16 years of age can the erotic content or soft pornography service be offered, or the preview with soft pornography be made available.
- The CoC-TSP is responsible for meeting its obligations in accordance with Art. 41 FDV.

4.2 Blocking sets

End customers are given the option, at no cost, to have access blocked to chargeable SMS and MMS services or only for SMS and MMS with erotic or pornographic content. This option also includes blocking the reception of those services selected. Corresponding blocking sets are available for other premium services (e.g. via WAP) provided via telecommunications services and charged by the CoC-TSP in addition to telecommunications services.

4.3 Domicile obligation: information on Mobile Service Providers

The Mobile service Provider is obligated to operate its services from a domicile or branch in a country that has ratified the Lugano Agreement of 16 September 1988, which concerns the legal jurisdiction and enforcement of court decisions in civil and commercial cases. If the Mobile Service

Provider's residential/business address is in a signatory state other than Switzerland, it will need to have a correspondence address in Switzerland.

The following information must be available for each Mobile Service Provider on the individual CoC-TSPs' websites:

- Allocated active short codes
- Full name, residential and business address
- Correspondence address in CH, where residential or business address is not located in Switzerland (but rather in another Lugano Agreement country)
- Hotline number and hotline e-mail address
- In addition, for push, club, and chat services, Standard Keywords for deactivation

The CoC-TSPs are responsible for the collection and updating of this data.

5 Keywords for SMS and MMS premium services

5.1 Standard definition of important commands (Standard Keywords)

The following commands are administered in a uniform way by all CoC-TSPs and Mobile Service Providers:

START <i>keyword</i>	a subscription for starting the relevant push or club service
STOP <i>keyword</i> and STOPP <i>keyword</i>	to cancel the relevant push, chat, or club service
STOP and STOPP	to cancel all the end customer's push, club, or chat services to a specific short code
VIEW	overview of all active subscriptions to a particular short code
INFO	contact information of the Mobile Service Provider (as a minimum the name and Swiss hotline number (either geographical number or 0800/0840))
HELP	support for service users (e.g. hotline number, website address)
INDEX	the end customer receives information from the Mobile Service Provider in the form of a description of how to use the service and instructions for where or how a detailed service description and price list may be obtained (e.g. on the Internet, by fax, on request, etc.)

- General
The keywords are accepted irrespective of whether they are written in lower case or capital letters.
- Start
The SMS/MMS with "START *keyword*" and the SMS confirmation sent by the Mobile Service Provider must be free of charge for the end customer. If the SMS/MMS does not contain any keyword, there can be no activation of the service.

- Stop or Stopp
The SMS/MMS with “STOP *keyword*”/“STOP” (or “STOPP *keyword*”/“STOPP”) and the SMS confirmation sent by the Mobile Service Provider must be free of charge for the end customer.
- Info / Help
The name given must be only that of the Mobile Service Provider. With regard to the hotline, it must also be that of the Mobile Service Provider. In cases where the Mobile Service Provider only has a single contractual partner or subcontractor for a specific short code, the latter’s hotline number can also be given.
In both cases, only one hotline number can be published, and this should be the same as that specified on the CoC-TSPs’ website.
- Push, club, and chat services
Standard keywords for the deactivation of push, club, and chat services must be made public (e.g. on the Internet), both by the CoC-TSP and by Mobile Service Providers.

5.2 Error messages in response to incorrect keywords

If the end customer sends an incorrect keyword by SMS or MMS, the Mobile Service Provider should reply with the following information:

- Incorrect keyword used
- Referral to standard keyword “INDEX” or to the website of the Mobile Service Provider

Where a request is made by SMS, the end customer will be sent the answer by SMS and thereby will be billed no more than the price for a normal private customer SMS (“peer-to-peer”). This rule also applies analogously to a request by MMS.

6 Maximum prices (FDV) and the Ordinance on the Indication of Prices (PBV)

6.1 General

The Mobile Service Provider is obliged to comply with the maximum limits on prices in accordance with Art. 39 of the FDV. It is further obliged to comply with the relevant provisions of the Ordinance on the Indication of Prices, in particular those which apply to premium services. Attention is drawn to the following two information sheets from SECO (State Secretariat for Economic Affairs) dated 4 June 2004 and the guidelines from April 2007 (<http://www.seco.admin.ch>):

- (Disclosure publication notice) of prices and advertising for telecommunication services
- Publication of prices and advertising for telephone-based premium services
- Publication of process and guidelines for use

In particular, advertising or other information about the service offered must not be confusing for the end customer and must conform with Art. 11a, 11b, 13 and 13a PBV.. The effective prices to be paid must be published in Swiss Francs (Art. 10 para. 1 lit. p and q PBV).

In the case of WAP services, Art. 11a para. 5 PBV must be complied with, and additional provisions must be met depending on the type of service (cf. for example push services).

6.2 Ordering a service

6.2.1 Pull services

With regard to a pull service, only those end customers who ordered the service in accordance with the legally and contractually correct procedure as described in the advertising for that service can be supplied.

Should the price exceed ten francs, the service may only be charged to the customer if they have expressly confirmed that they accept the offer (Art. 11a para. 4 PBV).

6.2.2 Push services

- The Mobile Service Provider may only activate a push service for those end customers who activated the service in accordance with the legally and contractually correct procedure as described in the advertising for that service (Art. 11b PBV). The registration of a push service must be limited solely and exclusively to the service ordered.
- If the TSP requests evidence of the placing of an order, the Mobile Service Provider must be able to provide such evidence within two working days.
- Before a push service is ordered, the Mobile Service Provider must provide the following details to the end customer on its mobile phone by SMS/MMS or via WAP using the corresponding WAP interface at no charge
 - Basic charge, if any
 - Price per unit of information
 - Download charge, if any, according to the price plan of the end customer
 - Clear instructions on how the service may be cancelled
 - Maximum number of separate units of information per minute (FDV upper price limit must be observed for SMS/MMS)
 - Hotline number of the Mobile Service Provider: this must be the same number as that given on the CoC-TSP website and in response to INFO and HELP. The number must either be free of charge (0800), a shared cost number (084x) or a geographical number. Under no circumstances should the number be a 090x or 18xy number.
 - Ideally, an e-mail address should also be given.

After receiving this information, the end customer must expressly confirm that he is ordering the service, and shall do so by SMS, MMS or pressing a link (depended on the service subscribed to) with the respective mobile service number. Only after this may charges be levied (Art. 11b para. 2 PBV).

The procedure on how to deactivate the service has to be explained to the customer free of charge in each single information after activation of the push service. The customer must be given the possibility to decline free of charge on that advice note. Such renouncement by the customer has to happen explicitly resp. by an SMS or a call to the Mobile Service Provider (Art, 11b para. 3 PBV).

6.2.3 Club Services

All responsibilities listed under point 6.2.2 also apply to Club Services. In addition, Club Services are subject to the following rules:

Once the end customer has sent the "START" command to the appropriate short number to become a Club member, the Mobile Service Provider is obliged to send a free of charge SMS/MMS message to the customer with the following information:

- One-time or monthly fixed price for Club access
- The end customer must be requested to confirm Club membership by sending a toll-free SMS message. Essential information or example of wording: "By ordering this service, you agree to join the Club for CHF xx.xx/month. To confirm your membership, please send an SMS to 'START Keyword' to the short ID xy."

The end customer must be able to cancel club membership by sending an SMS with the text "STOP *keyword*" or "STOPP *keyword*" at any time.

The maximum term of a Club Service is six months. If the Mobile Service Provider wishes to extend this membership (for a maximum of six additional months), the provider is required to ask the end customer to confirm Club membership by sending a toll-free SMS before the end of the initial six-month term. The SMS message sent by the Mobile Service Provider should have the same basic content or wording as the first SMS message sent.

6.2.4 Chat Services

All responsibilities listed under point 6.2.2 apply to Chat Services as well. The following specific features also apply to Chat Services.

A Chat Service is activated when the end customer sends a keyword to the appropriate short number. The Mobile Service Provider is then required to send a toll-free SMS to the customer with the same content as in point 6.2.2, plus a clear notification that charges apply per SMS received.

The Mobile Service Provider will treat end customer complaints regarding prohibited content seriously and in accordance with the relevant regulations.

A maximum of one hour after the end customer sends the final SMS, no other SMS message for which the end customer is required to pay may be sent. The Mobile Service Provider is required to inform the end customer about the deactivation of the Chat Service by sending a toll-free SMS. If the end customer wishes to continue the chat, he is required to activate the service by sending a keyword to the appropriate short number.

These regulations apply analogously to chats using MMS or WAP.

7 Spamming and Advertising

The provisions of Art. 3 lit. of the law on unfair competition (Gesetz über den unlauteren Wettbewerb UWG) and Art. 82 and Art. 83 FDV and art. 13a PBV apply. The CoC-TSP is free to incorporate more detailed and stricter regulations in its contract with the Mobile Service Providers.

The CoC-TSPs inform their Mobile Service Providers immediately of every blocking of a mobile service number to further receipt of value added services. After receipt of this information the Mobile Service Providers make sure not to send any advertising on the respective mobile service numbers nor to establish any contact for advertising approaches.

The ban on advertising is also applied for all mobile service numbers through which value added services can indeed be requested or received, but through which during more than six months no end customer activity for the purpose of receiving value added services has been undertaken.

Regarding all the mobile service numbers for which advertising is admissible according to the above mentioned rules, a limitation of a maximum of three SMS per month and per mobile service number (MSISDN) is applicable. Furthermore to send advertising SMS is only allowed to be sent from the short code from which the end customer has already ordered services.

8 Final provisions

8.1 Contact addresses

Contact addresses for requests from Mobile Service Providers and among CoC-TSPs:

Orange: 3rdparty@orange.ch
Sunrise: vas.partner@sunrise.net
Swisscom Mobile: provider.support@swisscom.com

8.2 Implementation of measures

Each party must implement the obligations incumbent upon it in accordance to this Code of Conduct by no later than July 1, 2010. In particular this includes imposing the relevant obligations upon Mobile Service Providers: the CoC-TSPs are responsible for ensuring that, in each case, the relevant provisions of the Code of Conduct in its current form, are binding upon their Mobile Service Providers to the extent that those obligations do not automatically and directly derive from the relevant legal provisions. This can be done in several ways (esp. by incorporating the integrality of the current Code of Conduct as an element of the contract with the Mobile Service Provider or by adding the relevant provisions from the current Code of Conduct to each TSP's contractual framework). Logically, this should apply equally to any changes in the Code of Conduct.

8.3 Liability

To the extent permitted under law, the parties mutually exclude any liability. Liability is specifically excluded for any indirect damages, consequential damages and unrealized profit caused by negligence.

8.4 Duration, Withdrawal/Admission

The Code of Conduct is entered into for an indefinite period. Subject to a notice period of six months, any CoC-TSP may give notice of its withdrawal as per 30 June or 31 December. Signed copies of the withdrawal notice must be sent to all current CoC-TSPs. The Code of Conduct remains in force between the remaining CoC-TSPs, and the latter will review the extent to which any adjustment of the Code of Conduct is necessary.

Anyone wishing to become a new party to the Code of Conduct must present the existing CoC-TSPs with:

- A copy of its valid OFCOM-authorization as per Art. 15c AEFV
- Details of the requested date of joining
- Contact address as per 8.1
- A signed copy of the current version of the Code of Conduct

Each CoC-TSP will publish the current version of the Code of Conduct on its website together with a current list of all the parties.

8.5 Review

The CoC-TSPs will, at least once a year, undertake a review of and make any additions required to the Code of Conduct. CoC-TSPs that are unwilling to sign a modified and/or extended version will remain bound by the last version signed by them.

In all cases a review will be carried out in the light of any relevant legislative changes or of any withdrawals from or admissions to the Code of Conduct.

8.6 Settlement of disputes / Place of Jurisdiction / Applicable law

In the case of disputes, the parties will attempt to reach an amicable agreement. If this is not possible, the following will apply: For disputes arising out of or in connection with this "Code of Conduct", any claims will be made at the place of jurisdiction corresponding to the registered office of the defendant. Swiss law will apply exclusively to the Code of Conduct.

The original version of this Code of Conduct is in German. In case of discrepancies the German version prevails.