

III. OTHER PROVISIONS

MINISTRY OF INDUSTRY, TOURISM AND TRADE

11807 *Decision dated July 2nd 2010 by the Secretary of State for Telecommunications and the Information Society whereby a change to the code of conduct is published to the rendering of premium numbering services based on message sending.*

Approved by the Plenary Office of the Supervisory Commission of the Premium Number Services at its meeting dated June 17th 2010, the change to the code of conduct for the rendering of premium number services based on the sending of messages is stipulated in the «Official State Gazette» of said text which has been included as an annex.

Madrid: July 2nd 2010.—The Secretary of State for Telecommunications and for the Information Society, Francisco Ros Perán.

ANNEX

Change to the code of conduct regulating the premium number services based on sending messages dated June 29th 2009

The Supervisory Commission of the Premium Number Services at its meeting dated June 17th 2010 has approved the following change to the code of conduct regulating the premium number services based on sending messages dated June 29th 2009.

1. Correction to an error in the table of contents.— In the table of contents of the code of conduct section 5.4 « Client Care Service» has been approved.

2. Final informative messages.— Section 3.5 shall be drafted in the following way:

«3.5. «Final message»: information or messages which are free to the user, sent by the operator who was the holder of the number subsequent to the supply of the rendering requested and indicated for the rendering of the service scheme a) of the table included in annex I to the present code of conduct.»

3. Information which should feature in the advertising.

a) Section 5.1.2 shall be drafted in the manner set out below:

«5.1.2 The operator which holds the number shall always be easily identifiable by the users in such a way that he can get be contacted easily. Said operator shall be identified specifically stating in the advertising of, at least, the following data: holder (complete name and surnames or business name), client care phone number and a postal and e-mail address. The operator holding the number shall also include its postal address on its Internet home page.»

b) Section 5.1.6 shall also have the following wording:

«5.1.6 The advertising shall also contain information about the type of service provided in accordance with the classification of services contained in the annex to this code.»

4. Prohibition of unauthorised commercial communications.—Section 5.1.3 shall be drafted in the following way:

«5.1.3 For the purposes of this code, it shall be assumed that there is a breach by the operator holding the number when the sending occurs, by any electronic means, of advertising or promotional communications (spam) not specifically requested by the user, except in those cases foreseen in article 21 of Law 34/2002 regarding the Information Society and E-mail Services and in accordance with that set out in article 29 of Law 3 enacted on January 10th 1991 regarding Unfair Competition.»

5. Possible forwards between services.—A new paragraph has been added in accordance with section 5.1.5 in such a way that the current second paragraph becomes the third with the following wording:

«Notwithstanding that established in the previous paragraph above, when the user has accessed the service, the operator holding the number may advertise premium numbering services of other schemes if the following two conditions are complied with in any case:

- a) That the forwarding is carried out from a subscription service to another which does not have this nature or from a range from a higher price to a lesser one.
- b) That the forwarding is carried out between two numbers assigned to the same event or promotion.»

6. Information about subscription message prices.

a) Section 5.2.2 shall be drafted in the following way:

«5.2. As regards the subscription services, the final complete price shall be indicated, including taxes, for each message received, or where applicable, that of the periodic instalments to which said subscription gives rise. When invoicing is carried out for each message received, after the amount in Euros the expression "per SMS received" shall be included.»

b) Letter b) of section 6.3.4.3 shall be drafted in the following way:

«b) Total price of the service, including taxes, indicating the price of each message to be received by the user or, where applicable, the instalments which have to be paid periodically. In the former case, the expression "per SMS received" or the abbreviation "per SMS rcvd." shall feature after the amount in Euros

7. Adaptation to the working hours set out in the General Law on Audiovisual Communication. —A new section 6.1.1.12 has been added:

«6.1.1.12 The time restrictions on the broadcasting of audiovisual contents set out in Law 7 enacted on March 31st 2010, the General Law on Audiovisual Communication shall be applicable, in any case, with the SMS Premium services included in said broadcasts.»

8. Message about the result of the action and web syndication.—Two new paragraphs have been added, three and four, to section 6.3.5:

«The content of the message which this section refers to may be included in the final message of section 3.5 of this code. Should this unification occur, this shall take place without detriment to the information which the user should receive and fully respecting the standards about contents of the informative messages established on this code.

Those radio and television spaces which afford the participation of the public by way of SMS Premium and shall be sent or web syndicated in delay shall indicate this circumstance in prominent fashion by way of a label on the screen or phrase, whilst the number SMS Premium is announced, whenever, by dint of said circumstance, participation is not possible.»

9. Promotions in force.—A new section 6.3.8 has been added, with the following draft:

«6.3.8 The radio and television companies shall publish, at a site of its Internet page, accessed directly from its main page, the competitions, lottery and promotions in force at any time, as well as its bases, allowing both the printing of this information as well as its downloading and conservation.»

10. Subscription services with content for adults.—A new paragraph is added (five) in letter c) of annex 2 (Definitions) of the code:

«The subscription services with content for adults are regarded as including within the numbering range 995ABM–997ABM–999ABMC. In the event of subscription services, all the requirements shall be applicable which this code establishes for said scheme, in particular the price limit set for said services, in other words, that of a price which is the same or lower than 1.2 euros per message received.»

11. Definition of the «chat» services.—A new letter is added to section 2 of annex I:

«f. – Chat services. Chat services are understood to be those in which a user sends multiple messages to one or several destinees during a session, constituting a closed group of participants. Each session constitutes a chat service and the duration of a session may not exceed twelve hours. Although these services are billed by message sent, by dint of their modus operandi they are assumed to be included in the subscription services and they shall be subject to the standards which govern the latter. Should they be specifically aimed at adults, the standards relating to subscription services for adults shall apply.»

12. Coming into force.—This modification to the code of conduct regarding premium number services based on the sending of messages dated June 9th 2009 shall come into force on September 1st 2010.