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## Regulatory Policy

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# Unsolicited Electronic Communications

**Version: 1.0**

**Issue Date: 30 December 2009**



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## TABLE OF CONTENTS

1. Definitions .....	4
2. Legal References .....	6
3. Scope .....	6
4. Purpose.....	7
5. The Policy .....	7
6. Consent Principles.....	8
7. Government Exemption.....	9
8. Effective Date .....	9
9. Modification of Obligations.....	9
10. Publication.....	9

## 1. Definitions

The terms, words, and phrases used in this Policy shall have the same meaning as are ascribed to them in the Telecommunications Law unless this Policy expressly provides for otherwise, or the context in which those terms, words and phrases are used in this Policy requires otherwise. For the purposes of this Policy, the following terms and words shall have the meanings ascribed to them below:

- 1.1. **Address-Harvesting** means the collecting, capturing, and compiling of an Electronic Address by means of software, tools, technologies or other methods of generating an Electronic Address;
- 1.2. **Annex** has the meaning ascribed to it in Article 3.2;
- 1.3. **Consent** means the consent or approval by a Recipient to receive Electronic Communications, as required by this Regulatory Policy or the Annexes issued under it;
- 1.4. **Customer** means the Recipient of an Electronic Communication sent by a Licensee under its general terms and conditions for the provision of Telecommunications Services provided to customers;
- 1.5. **Electronic Address** means a number or alphanumeric string by which a Recipient of an Electronic Communication can be identified and contacted on a particular type of Telecommunications Network, such as an electronic mail address, URL, SIP or a telephone number;
- 1.6. **Electronic Communications** means the communications conveyed by means of a Telecommunications Network to an Electronic Address;
- 1.7. **Marketing Electronic Communications** means a form of Electronic Communications sent:
  - 1.7.1. with the purpose of offering to supply goods, services or business opportunity;
  - 1.7.2. with the purpose of advertising or promoting; goods, services or business opportunities; or
  - 1.7.3. for any other purpose designated by the TRA.
- 1.8. **Opt-in Procedure** means the process under which Consent must be specifically obtained from a Recipient, and if the Recipient does not give that Consent, then the Recipient shall be deemed to have not to have

given permission for that Recipient to be sent communications from the relevant sender;

- 1.9. **Opt-out Procedure** means the process under which Consent does not need to be specifically obtained from a Recipient, and each Recipient is deemed to have given permission to receive communications from the relevant sender unless that Recipient has expressly specified otherwise;
- 1.10. **Recipient** means a person who receives Electronic Communications via or at an Electronic Address;
- 1.11. **Spam** means Marketing Electronic Communications sent to a Recipient without obtaining that Recipient's Consent;
- 1.12. **Subscribe** means the option for a Recipient who has previously indicated that the Recipient does not want receive communications, to indicate instead that the Recipient does want to receive communications;
- 1.13. **Telecommunications Law** means the Federal Law by Decree No 3 of 2003 Regarding the Organisation of the Telecommunications Sector, as amended;
- 1.14. **Unsubscribe** means the option for a Recipient who has previously indicated that the Recipient does want to receive communications, to indicate instead that the Recipient does not want to receive communications;
- 1.15. **UAE Link** means, with respect to an Electronic Communication, where:
  - 1.15.1. the Electronic Communication originates in the UAE;
  - 1.15.2. the Electronic Communication originates from an individual or company physically located in the UAE;
  - 1.15.3. the device used to access the Electronic Communication is located in the UAE; or
  - 1.15.4. the Recipient of the Electronic Communication is physically present in the UAE; and
- 1.16. **Unsolicited Electronic Communications** means Electronic Communications sent to a Recipient without obtaining that Recipient's Consent.

## 2. Legal References

- 2.1. Article 13(1) of the Telecommunications Law grants the TRA the Authority to exercise its functions and powers to “ensure that the Telecommunication Services provided throughout the State, are sufficient to satisfy the public demands of those who wish to make use of such services”.
- 2.2. Article 14(3) of the Telecommunications Law grants the TRA the authority to issue policies with respect to “the terms and level of services provided by the Licensees to users, including the standards and quality of service provided, the terms and conditions of supply of such services, the handling and resolution of user complaints and disputes, the provision of information to users, the use of user information and the rendering of bills to users”.

## 3. Scope

- 3.1. This Regulatory Policy applies to all Electronic Communications with a UAE Link.
- 3.2. This Regulatory Policy sets out in general terms the rules which will apply to Unsolicited Electronic Communications having a UAE Link. The TRA may from time to time, publish rules on the implementation of this Policy in specific circumstances, each of which shall be referred to in this Policy as an “**Annex**”.
- 3.3. Subject to Article 3.4, the Licensees shall be in full compliance with this Regulatory Policy by no later than the 30 June 2010.
- 3.4. The Licensees shall be in full compliance with the provisions of each of the Annexes, by or at the time indicated in each of those Annexes.
- 3.5. For the avoidance of doubt, Licensees are obliged to comply with this Regulatory Policy and the Annexes in relation to Unsolicited Electronic Communications having a UAE Link whether or not those Unsolicited Electronic Communications originates from within or from outside the UAE.

#### **4. Purpose**

The purpose of this Regulatory Policy and the Annexes is to minimise the transmission of Unsolicited Electronic Communications having a UAE Link in order to:

- 4.1. promote secure and trusted Information and Communication Technologies in the UAE;
- 4.2. promote effective use of information and communication technologies to bring about a good and healthy business environment in the UAE;
- 4.3. reduce cost and time spent on unwanted Electronic Communications from both public and business entities; and
- 4.4. create a safer communications environment.

#### **5. The Policy**

- 5.1. The Licensees shall be under a general obligation to put all practical measures in place to minimise the transmission of Spam having a UAE Link across their Telecommunications Networks.
- 5.2. The Licensees will fail to comply with their obligations contained in this Regulatory Policy and the Annexes if they are aware of Spam having an UAE Link is being sent to or from a particular Electronic Address and they do not take all practical means to end the transmission of that Spam.
- 5.3. The Licensees will fail to comply with their obligations contained in this Regulatory Policy and the Annexes if they are aware of Spam having an UAE Link sent to or from a particular Electronic Address and do not take all practical means to prevent the future transmission of such Spam.
- 5.4. The Licensees shall take appropriate measures to educate and raise awareness of their Customers in relation to this Regulatory Policy and the Annexes.
- 5.5. The Licensees shall ensure that Consent is obtained from an intended Recipient before sending their own Marketing Electronic Communications to that intended Recipient, unless specified otherwise in the Annexes.
- 5.6. The Licensees' own Marketing Electronic Communications shall include accurate and specific identification of the sender.

- 5.7. Licensees shall not sell, supply, use, share, or knowingly allow access or right of use to any tools, software, hardware or mechanisms that facilitate Address Harvesting and the generation of Electronic Addresses.
- 5.8. The TRA may, at its discretion, request additional information from the Licensees in relation to Spam having a UAE Link, which may include among other matters, statistics, and periodical reports on practical measures taken to minimise or prevent the transmission of Spam.

## 6. Consent Principles

- 6.1. Licensees shall comply with the Consent principles set out in this section as applicable.
- 6.2. Licensees shall ensure that the following Consent principles are reflected in any agreement connected with the provision of Electronic Communications which they conclude with their customers.
- 6.3. All forms of Consents are acceptable as so long as the Consent can be stored and presented in tangible form when required by the TRA.
- 6.4. Licensees shall not withhold or otherwise refuse to provide a service based on a Customer's failure to give Consent as required under this Policy or any of the Annexes issued under it.
- 6.5. The process of obtaining Consent shall be clear and transparent.
- 6.6. The record of a Consent which is required to be retained by a Licensee shall include the date, time, the words or other content by which the Customer indicates that Customer's consent, and the Customer's identity. The record of a Consent shall also include IP addresses where the Consent was received through or via communications carried over the Internet. The record of a Consent shall include fixed line or mobile telephone numbers in case the Consent was received through a fixed line or mobile telephone. Where the Consent is in writing, the record of that Consent shall include the Customer's signature.
- 6.7. Unless otherwise stated in an Annex, records of Consents shall be retained for the entire period during which Marketing Electronic Communications are sent to the Recipient.



- 6.8. The process by which Consent is obtained will always follow an Opt-in Procedure unless otherwise specifically provided for in the relevant Annex.
- 6.9. The processes by which Consent is obtained may differ according to the services and circumstances and are set out in the Annexes.
- 6.10. A means by which a Recipient may Unsubscribe shall be provided for in all Marketing Electronic Communications.
- 6.11. Electronic Communications shall not be used for the purpose of persuading a Customer not to use an Opt-out Procedure or to Unsubscribe or Subscribe.
- 6.12. Where offered, the option for a Recipient to Subscribe or Unsubscribe shall be offered without charge.
- 6.13. Licensees shall be permitted to implement measures that prevent misuse of Subscribe and Unsubscribe options provided those measures are approved by the TRA prior to implementation.

## **7. Government Exemption**

This Policy and its Annexes shall not apply to any Electronic Communications sent by any Government Entities. Further, this Policy and its Annexes will not apply to any Licensee with respect to the carriage or transmission of those Electronic Communications.

## **8. Effective Date**

This Regulatory Policy shall be effective upon the date of its issuance.

## **9. Modification of Obligations**

The TRA may, at its sole discretion, modify the obligations contained in this Regulatory Policy or any Annexes issued under it.

## **10. Publication**

The TRA reserves the right to publish this Regulatory Policy and the Annexes at its sole discretion and without notice to the Licensees.



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# Annex (1) to Unsolicited Electronic Communications Regulatory Policy

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## Mobile Spam

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## TABLE OF CONTENTS

1. Definitions.....	4
2. Scope.....	5
3. New Mobile Customers .....	5
4. Existing Mobile Customers.....	7
5. Records.....	7
6. Other Obligations.....	7
7. Messaging Services Customers.....	8
8. Monitoring and Protection Obligations .....	10
9. Implementation and Review.....	10
10. Effective Date .....	10

## 1. Definitions

Unless the context requires or this Annex expressly provides for otherwise, terms, words and phrases used in this Annex shall have the same meaning as are ascribed to them in the *Unsolicited Electronic Communications Regulatory Policy*, V. 1.0, as amended from time to time, and failing that, the Telecommunications Law, and failing that, any other instrument in the Regulatory Framework. For the purposes of this Annex, the following terms and words shall have the meanings ascribed to them below:

- 1.1. **Address List** means a list comprising one or more Electronic Addresses;
- 1.2. **Existing Messaging Services Contract** means a contract entered into by a Licensee with a Messaging Service Customer to provide Licensee Messaging Services, which contract was entered into before the effective date of this Annex;
- 1.3. **Existing Mobile Customer** means a Mobile Customer to whom mobile telecommunications service are provided by a Licensee before the effective date of this Annex;
- 1.4. **Licensee Messaging Services** means services pursuant to which a Licensee, on behalf of a Messaging Service Customer, sends Mobile Text Messages simultaneously to more than one Recipient;
- 1.5. **Licensee's Messaging Services Contracts** means all of the Existing and New Messaging Services Contracts;
- 1.6. **Licensee's Own Marketing Electronic Communications** means Marketing Electronic Communications sent by a Licensee to a Mobile Customer using Mobile Text Messages for the purpose of marketing services offered by that Licensee or an associated company;
- 1.7. **Messaging Service Customer** means a customer who enters in to a contract with a Licensee for the provision of Licensee Messaging Services;
- 1.8. **Mobile Customer Consent Request** means any form of communication from a Licensee requesting the permission of a Mobile Customer to receive Marketing Electronic Communications;
- 1.9. **Mobile Customer** means a customer to whom a Licensee provides mobile telecommunication services;
- 1.10. **Mobile Spam** means Spam sent as a Mobile Text Message;

- 1.11. **Mobile Text Message** means a message transmitted between mobile telephone devices over a Public Telecommunications Network, including but not limited to messages sent using a Short Message Service (SMS) or a Multimedia Messaging Service (MMS);
- 1.12. **New Messaging Services Contract** means a contract entered into by a Licensee with a Messaging Service Customer to provide Licensee Message Services to that customer, which contract is entered into after the effective date of this Annex;
- 1.13. **New Mobile Customer** means a Mobile Customer to whom mobile telecommunications services are provided by a Licensee after the effective date of this Annex;
- 1.14. **Opt-out Notification** has the meaning ascribed to it in Article 4.2;
- 1.15. **Opt-out Request** has the meaning ascribed to it in Article 4.3;
- 1.16. **Subscribe Notification** means a notification by a Mobile Customer to a Licensee that the Mobile Customer wishes to Subscribe; and
- 1.17. **Unsubscribe Notification** means a notification by a Mobile Customer to a Licensee that the Mobile Customer wishes to Unsubscribe.

## 2. Scope

- 2.1. The purpose of this Annex is to set out the particular obligations required of Licensees in relation to Mobile Spam.
- 2.2. Unless stated otherwise, the provisions set out in the Unsolicited Electronic Communications Regulatory Policy apply to the subject matter of this Annex, unless it is expressly stated otherwise.
- 2.3. The Licensees shall be in full compliance with this Annex by no later than the 30th June 2010, other than for the provisions of Article 9.1, with which the Licensees shall be in full compliance by no later than the 31st January 2010.

## 3. New Mobile Customers

- 3.1. All of the following Opt-in Procedures shall apply to all New Mobile Customers.
- 3.2. The Licensees shall not send Licensee's Own Marketing Electronic Communications to a New Mobile Customer unless a Consent has been received which fulfils all the requirements of this Annex and those set

out in the Unsolicited Electronic Communications Regulatory Policy, as applicable.

- 3.3. The following shall apply to any Licensee wishing to send Licensee's Own Marketing Electronic Communications to a New Mobile Customer:
  - 3.3.1. A Licensee shall send a Mobile Customer Consent Request to New Mobile Customers.
  - 3.3.2. The Mobile Customer Consent Request shall clearly state that the Licensee is requesting Consent from the Mobile Customer in order to send Licensee's Own Marketing Electronic Communications.
  - 3.3.3. The Mobile Customer Consent Request may use such terms as "promotions", "offers" and "discounts", provided that they do not mislead the New Mobile Customer.
  - 3.3.4. The Mobile Customer Consent Request may be made by Mobile Text Message or by any other means other than by way of voice calls, whether fixed or mobile.
- 3.4. When, pursuant to Article 3.3.1 the Mobile Customer Consent Request is made by Mobile Text Message, the following applies:
  - 3.4.1. The Mobile Customer Consent Request may only be sent to the Mobile Customer once.
  - 3.4.2. If no response to the Mobile Customer Consent Request has been received from the Mobile Customer within one month of the date on which the Mobile Customer Consent Request was sent, the Licensee is permitted to send a second Mobile Customer Consent Request.
  - 3.4.3. If, following the sending of a second Mobile Customer Consent Request, no response is received from the Mobile Customer within one month of the date on which the second Mobile Customer Consent Request was sent, the Mobile Customer shall be deemed to have decided that it does not want the Licensee to send it the Licensee's Own Marketing Electronic Communications.
  - 3.4.4. The Licensees shall not be permitted to send any further Mobile Customer Consent Requests after the second Mobile Customer Consent Request.

#### 4. Existing Mobile Customers

- 4.1. All of the following Opt-out Procedures shall apply to all Existing Mobile Customers.
- 4.2. The Licensees shall notify all Existing Mobile Customers (the “**Opt-out Notification**”) that they are currently deemed to have agreed to receive Licensee’s Own Marketing Electronic Communications and that they have the option of deciding that they do not want to receive Licensee’s Own Marketing Electronic Communications.
- 4.3. Following the sending of the Opt-out Notification, a Licensee shall be permitted to continue send Licensee’s Own Marketing Electronic Communications to an Existing Mobile Customer unless that Existing Mobile Customer notifies the Licenses that it does not want to receive the Licensee’s Own Marketing Electronic Communications (the “**Opt-out Request**”).

#### 5. Records

- 5.1. For the entire period of time during which Licensee’s Own Marketing Electronic Communications are being sent to Mobile Customers, and for two years after the last of the Licensee’s Own Marketing Electronic Communications was sent to the Mobile Customer, the Licensees shall keep records of:
  - 5.1.1. Consents received in response to Mobile Customer Consent Requests; and
  - 5.1.2. Subscribe Notifications.
- 5.2. For a period of two years after their receipt from a Mobile Customer, the Licensees shall keep records of:
  - 5.2.1. Opt-out Requests; and
  - 5.2.2. Unsubscribe Notifications.

#### 6. Other Obligations

- 6.1. The Licensees shall not send Licensee’s Own Marketing Electronic Communications to Mobile Customers between the hours of 9:00 p.m. and 7:00 a.m.
- 6.2. The Licensees shall not use Mobile Text Messages to send Marketing Electronic Communications to Mobile Customers encouraging them



directly or indirectly, to call or send a short message or other Electronic Communication to a Premium Rate Number.

- 6.3. The Licensees shall provide Mobile Customers with information and resources to help them minimize the level and impact of Mobile Spam. These shall include:
  - 6.3.1. the provision of information on the Licensee's Mobile Spam policies and programs;
  - 6.3.2. advice on how to handle incidents of suspected Mobile Spam through their respective customer services contacts, set out in print or on their respective websites; and
  - 6.3.3. the provision of Mobile Spam reporting facilities, including for example, through their respective customer services contacts, websites or by forwarding suspected Mobile Spam to the Licensees via a "short code".
- 6.4. Whenever it is technically possible, the Licensees shall provide message handling and message classifications features for Mobile Text Messages being sent.
- 6.5. The Licensees shall, where possible, allow their Mobile Customers to accept or reject certain type of Mobile Text Messages (including for example Electronic Marketing Communications and anonymous messages) through functions accessed on their mobile handsets' features.

## **7. Messaging Services Customers**

- 7.1. The Licensees shall ensure that all the requirements set out in the Unsolicited Electronic Communications Regulatory Policy and in this Annex are reflected in the terms and conditions of their Existing Messaging Services Contracts and New Messaging Services Contracts, as well as in any acceptable use policies.
- 7.2. Without prejudice to Article 7.1 above, and subject to Article 2.3, Licensees shall, within 6 months of the date on which this Annex will come into force, review and where appropriate, amend the terms and conditions of their Existing Messaging Services Contracts, and any acceptable use policies, to ensure that they are compatible with and reflect the requirements of the Unsolicited Electronic Communications Policy and this Annex.

- 7.3. Without prejudice to Articles 7.1 and 7.2 above, the Licensees shall include the following provisions in all Existing Messaging Services Contracts and New Messaging Services Contracts:
- 7.3.1. The Messaging Services Customer shall not initiate, send, or facilitate sending Mobile Spam.
  - 7.3.2. Consent shall be sought from Recipients in accordance with the provisions of the Unsolicited Electronic Communications Regulatory Policy and this Annex before any Marketing Electronic Communications are sent by the Messaging Services Customer.
  - 7.3.3. Effective Unsubscribe facilities shall be made available to Recipients in accordance with the provisions of the Unsolicited Electronic Communications Regulatory Policy and this Annex.
  - 7.3.4. Mobile Text Messages containing Marketing Electronic Communication shall not be sent between the hours of 9:00 p.m. and 7:00 a.m.
  - 7.3.5. The Messaging Services Customer shall not send a request to a Recipient for Consent using Mobile Text Messages or voice calls.
  - 7.3.6. Marketing Electronic Communications using Mobile Text Messages shall not be sent to Recipients encouraging them directly or indirectly to call or send a short message or other electronic communication to a premium rate number.
  - 7.3.7. All of the Licensee's Messaging Services Contracts shall provide that the provisions of the Unsolicited Electronic Communications Regulatory Policy and this Annex (including the provisions of this Article) are incorporated by reference as terms into those contracts, as applicable, and that it shall be a breach of those contracts if the customer breaches any applicable provision of the Unsolicited Electronic Communications Regulatory Policy or of this Annex (including the provisions of this Article). Those contracts will be provide that such breaches may give rise to appropriate penalties or liquidated damages as appropriate, and contract suspension and termination.

## **8. Monitoring and Protection Obligations**

- 8.1. Licensees shall monitor their networks for signs of Mobile Spam and take immediate practical actions to eliminate Mobile Spam.
- 8.2. Licensees shall provide practical protections for their Mobile Customers from Mobile Spam and shall provide measures and mechanisms to ensure this.

## **9. Implementation and Review**

- 9.1. Subject to Article 2.3, all existing Opt-in Procedures, Opt-out Procedures, Subscribe and Unsubscribe facilities offered by Licensees should be submitted to the TRA for verification and approval within one month of the date of issue this Annex.
- 9.2. All future Opt-in Procedures, Opt-out Procedures, Subscribe and Unsubscribe facilities which Licensees propose to offer should be submitted to the TRA for verification and approval not less than one month before they are due to be offered to Mobile Customers.
- 9.3. The TRA will continuously monitor the implementation and compliance of this Annex and may require information and reports which shall be submitted by the Licensee when required.

## **10. Effective Date**

This Regulatory Policy shall be effective on the date of its issue.