



**Order of the Regulator No. 2015/T03  
Customers' Complaints against Unsolicited Text Messages**

**Background**

In 2013 customer complaints against unsolicited text messages prompted the Regulator to hold discussions with Bluesky Samoa Ltd ("Bluesky") and Digicel Samoa Ltd ("Digicel") on unsolicited text messages; which resulted in the implementation of the requirement of an "opt out" system in service provider's sales and marketing texts.

By early 2015 the Regulator received new complaints on the same matter against Digicel particularly the:

- (i) "opt out" option is defective and on several accounts does not work;
- (ii) "opt out" option is operated at a cost to the customer.

On 16 February 2015 the Regulator dispatched a letter to Digicel to remedy the defects and to continue to notify its customers of the process for opting out; failure to comply will result in the issuance of an Order for compliance.

On 30 April 2015 the Regulator received a new complaint from a Digicel customer of comparable nature, in essence:

- (i) continuous receipt of unsolicited text is a nuisance; and
- (ii) the absence of the right afforded to Mobile Operators to allow 3<sup>rd</sup> Party Advertisers to send bulk messages to phones.

The Regulator had identified two main important parts to address:

- (i) Digicel's implementation of measures to address the receipt by customers of unsolicited text;
- (ii) Service Providers and Third Party Advertisers unsolicited sales, marketing or information text messages.

**Law**

The *Telecommunications Act 2005* ("the Act") at sub-section 8(1) (r) provides:

*"The Regulator shall carry out the following:*

- (r) make orders respecting any matter or thing within the jurisdiction of the Regulator under this Act, a regulation or rule, including orders to compel a person to comply with or implement the purposes of this Act, a regulation, rule or licence, and, upon publication by the Regulator such orders shall have the same legal force as a rule;"*

Sub-section 47(7) of the Act provides:

*“The Regulator may issue an order to regulate or prohibit the use by any person, whether or not that person is a service provider, of the telecommunications network of a service provider to provide unsolicited telecommunications, to the extent that the Regulator considers such order necessary to reduce or eliminate the nuisance caused by such telecommunications”*

Sub-section 75(1) is also quoted in relevance as follows:

*“A person who contravenes or attempt to contravene a provision of this Act ... or fails to comply with an order made by the Regulator... under this Act commits an offence and is liable ...”*

At sub-section 77(1) (d) of the Act it provides:

*“Despite any other law, in addition to any other powers contained in this Act, the regulations, rules, licences or orders or under any other law, the Regulator shall, for the purposes of exercising the Regulator’s responsibilities, functions and powers under this Act, have the power to make orders to:*

*(d) require persons to undertake specific actions or to cease specific actions in the event of a breach of this Act, the regulations, rules or orders or under any other law.”*

## **Discussion**

### ***Digicel implementation of measures to address the receipt by customers of unsolicited text***

The Regulator is inclined to focus on Digicel and not Bluesky in this part of the Order given that the complaints are made against Digicel’s services.

The Regulator is of the view that Digicel has been afforded ample time to put in place measures to protect its customers from receiving unsolicited text messages; however in light of the subsequent complaints and the Regulator’s letter of 16 February 2015 it is plausible to compel Digicel through an Order to efficiently and effectively implement the said measures free of charge.

### ***Service Providers and Third Party Advertisers unsolicited sales, marketing or information text messages.***

The Regulator acknowledges the argument by the complainant (of 30 April 2015) specifically the use of the Operators Database to send bulk messages, but also acknowledges that service providers (referred to as Mobile Operator) do not have complete control on the contents whether they are solicited or not sent through their networks by third parties.

The Regulator understands that:

- (i) most service providers are businesses that operate to generate revenue, to completely bar their service users from utilizing their services for whatever purpose may be detrimental to their businesses; on the other hand it is essential to note that the purposes in which the services are used must be within the scope of the law;
- (ii) the complaining parties are but a percentage of the country, the other percentage are either oblivious of unsolicited texts inconveniences, and the other percentage appreciates the information provided through unsolicited texts.

The Regulator has also considered that it is also possible that third parties may have acquired customer numbers through other means aside from Operators Databases for the purposes complaint of; and it is therefore unnecessary for the service providers to bear full fault. Furthermore it was also considered that there are circumstances that supersede the disinterest of customers in unsolicited texts, such as the need for service providers to utilize its customer's database specifically in the case of emergencies.

It is accepted that generally Service Providers are not to disclose customer mobile phone numbers to third party Organizations for illegal and unlawful purposes. The Regulator also recognizes that the only exception to unsolicited text is in the case of emergency purposes and prior consent of customers. The Regulator will not deviate to discuss in length the exception of voluntary permission to receive texts from companies or organization which may constitute an unsolicited text; this shall be reserved for further consultation in anticipation of a Consumer Protection Rule/Code or Guideline issued by the Office of the Regulator at a later date.

## **Decision**

In relation to the complaints against Digicel's "opt out" system deficiency and the charges levied on customers when opting out, the Regulator find Digicel accountable to its customers to:

- (i) remedy the defects of the systems put in place to address customers receiving unsolicited text messages and such system must work effective and efficiently;
- (ii) clearly inform customers of the process for opting out; and
- (iii) the option to opt out be available free of charge.

Given the subsequent and continuous complaints it is evident that Digicel has not effectively nor efficiently addressed the instructions provided under the Regulator's letter dated 16 February 2015.

In relation to the complaint about Service Providers and Third Party Advertising unsolicited sales, marketing or information through texts, the Regulator after considering all relevant factors find that such operations warrants the issuance of an Order as per the relevant sections of the Act.

## **ORDER**

In light of the above pursuant to sub- sections 8(1) (r), 47(7) and 77(1) (d) of the Act the Regulator hereby makes the following Orders:

**Order 1**

Digicel is directed to:

- (i) forthwith remedy the defects of the systems put in place to address customers receiving unsolicited text messages and such system must work efficiently and effectively;
- (ii) clearly and continuously inform customers of the process for opting out of unsolicited texts; and to
- (iii) cease charges on the “opt out” system which is levied on customers.

**Order 2**

No person shall use the telecommunications network of a service provider to provide unsolicited telecommunications

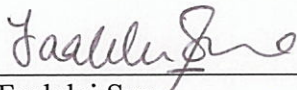
Except in the case of:

- (i) emergency; and
- (ii) customer’s prior written consent.

Any act or omission contrary to this Order shall be considered as an Offence as per section 75 of the Act which is subject to certain liabilities.

Save for Order 1 which is expected to be effected immediately; the effective date of this Order is **22<sup>nd</sup> May 2015**.

**Dated this 21 day of May 2015**



Faalelei Sua  
**Acting Regulator**