



CONSUMER COUNCIL OF FIJI

**A Submission to the**

**Fiji Commerce Commission on**

***Guidelines for Texting Competitions and***

***Promotions in Fiji***

February 2012

## **1.0 Introduction**

The Consumer Council of Fiji welcomes the Fiji Commerce Commissions initiative to establish a guideline for the conduct of texting competitions and promotions (or related transactions via mobile phone). The Council believes that bringing some order into this high growth market is overdue. The absence of some form of control on mobile text promotions is leaving consumers vulnerable where many risk losing their money in the system. In recent years mobile phone operators, media outlets and many traders have rightly utilised mobile phone technology to promote and market their products. Advertisement via text messages and the use of SMS for competitions have quickly become popular as these businesses take advantage of the high uptake of mobile services by consumers. Unfortunately the frenzy of mobile-based transactions has revealed a gap in consumer protection and promoter responsibility. A guideline for texting competitions and promotions is a first step towards protecting consumers against unscrupulous operators and traders who aim to derive benefits from these schemes.

### **1.1 Role of Consumer Council of Fiji**

The Council has statutory obligations under the Consumer Council of Fiji Act (Cap 235) to “to do all such acts and things which it may consider necessary or expedient to ensure that the interests of consumers of goods and services are promoted and protected.” The Council is also obliged to advise and make recommendations to the Minister responsible for consumer affairs in Fiji or any other Minister on issues affecting the interests of consumers. This work extends to providing advice and making submissions to policymaking bodies, government ministries, private sector or industry groups and international agencies. The Council is a key stakeholder in the formulation of policies, legislations and standards in the country.

## **2.0 Complaints on text competitions and promotions**

The Council has received complaints from consumers principally against mobile phone service providers on text competitions, promotions and other services/products. The actual number of complaints lodged at the Council’s offices is low although the nature of the complaints is such that they affect a very large group of consumers. As mobile phone promotions and competitions are done *en masse* and are actually dumped into the hands of thousands of mobile phone users instantaneously, a couple of complaints means thousands consumers are being affected. Furthermore, due to the personal nature of mobile phone use, costs incurred, and the association of texting competitions with gambling, many consumers are reluctant to report or formally lodge a complaint.

2.1 The following are some of the issues/problems taken from the Council's complaints register in regards to mobile phone texting promotions and competitions:

- *Lack of disclosure of terms and conditions* – as most of these texting competitions and promotions are publicised via the SMS platform, mobile service providers or business conducting a competition/promotion often point to the lack of character space in the texting platform to send more text detailing terms and conditions (TCs) This is a lame excuse as they have other means to inform consumers. i.e. use of media.
- *No transparency and independent verification of draws.* The drawing of texting competitions are often done in the seclusion of the mobile phone company's system with no system in place to allow scrutiny by independent parties or the police as in the case of lottery draws. As texting competitions are akin to lotteries they should come under the same rules where draws are done under police supervision or under the observation/presence of an independent party. Most texting completion draws are done automatically via computer of the mobile phone operator or a third party service provider who provides the system that generates the draw.
- *Customers win a guessing (money) competition only to find that someone else has also won.* This is a common competition amongst radio stations. A complaint lodged at the Council involved two winners where the radio station decided to split the prizemoney although technically having two winners is impossible. Customers are vulnerable to being cheated as there is very little transparency. Winners names are not disclosed at the end of the competition, nor terms and conditions clearly outlined before the competitions begin. Radio announcers or employees of radio stations can easily manipulate results for themselves or their friends/relatives' benefit.
- *Details of the winners, e.g. full name are not disclosed.* One company indicated that it was a privacy issue. However, as with non-electronic competitions/promotions, winners' details should be advertised in the papers! Consumers who participate in texting competitions are often not aware if there were winners or not. Promoters can provide the details of the winners' names via text and there is no need to divulge their mobile phone numbers. This should be the basis for anyone to participate in text competition. If they don't want their name or mobile number to be disclosed then they should not participate. This is crucial for accountability and transparency.
- *End of competition/promotion not disclosed.* This is a common complaint not only with texting competitions/promotions but with most other mobile phone promotions like free credit, etc. Many consumers often lose money by texting after the promotion period because the promoter did not disclose the validity period or the period is not disclosed in a manner that consumers are able to read it.
- *Use of "Text and Win" phrase.* Many promotions use the term "text and win" which is misleading because it literally means one can win by simply texting. While most learned

consumers will not take its literal meaning, the phrase creates a false perception that the chance of winning is very real. This phrase should not be used by mobile phone service providers or promoters. Alternative phrases like “text and be in the draw” is more accurate and truly reflects the nature of the promotion.

- *No numbers or easy system for unsubscribing from a promotion.* This is common in instances where customers subscribe to a promotion such as “\$1 per day” internet access. Mobile phone operators do not readily provide or clearly disclose an exit or unsubscribe number which customers opting out of a promotion can use.
- *Wrong recharge voucher numbers given to winners.* The Council had received complaints where customers have won free recharge but when entering the voucher number they received a message saying the number has already been used.
- *SPAM and lotteries.* Consumers have complained of receiving unsolicited text messages saying they have won a lottery and asked to claim their prize. Such scams are common around the world and Fiji is not immune to it as mobile networks are connected to the global communications network. Mobile phone operators have the responsibility to apply filters to their system and also advise consumers about disregarding such unsolicited texts.
- *Consumers do not want promotional texts or text advertisements sent to their phone.* This is becoming a menace to consumers as their phones get flooded with text messages from mobile phone operators and third parties regarding sales and promotions.

### **3.0 Text Competitions are lotteries**

The Consumer Council has maintained its stance that texting competitions that involve considerable chance and thus should be deemed to be lotteries under the *Gaming Decree 2009*. The Council had publically raised the issue in September 2008 following controversies over Vodafone’s Car-Razy texting competition which charged customers \$1.98 per text. Many customers were easily duped into entering the competition unaware of the exorbitant \$1.98 charge. The Council received more complaints from employers and consumers for accumulating higher bills since Vodafone did not disclose the cost of SMS on SMS advertisements sent to their mobile phones to entice consumers to participate. The \$1.98 charge was about 19 times more than the cost of a normal on-net text. While the cost of a text in competitions and promotions have dropped to 99cents for all three mobile phone operators, the charge is still higher than normal texting charges. This is indicative of the fact that mobile phone operators and promoters of texting competitions are hell bent on profiteering from such competitions. In fact mobile phone operators are virtually running lotteries through texting competitions as there can only be a few winners amongst thousands of customers. The operators and promoters make thousands of dollars in revenue instantaneously when thousands of consumers are enticed to text in the hope of winning the meagre prizes on offer. **The Council proposes that texting competitions involving chance and winning of money**

**or money's worth be deemed lotteries and thus be subject to the *Gaming Decree 2009* and other relevant laws and regulations covering lotteries.**

#### **4.0 Consumers and texting competitions.**

Mobile phone use have become pervasive in Fiji with almost everyone from office executives to farmers owing a handset and subscribed (post and prepaid) to a service. As a modern and widely used communication tool mobile phones have provided opportunities to business to generate income. Promotions and advertisements via mobile text have become a cheap alternative to conventional media and businesses benefit by having commercial messages delivered *en masse* directly to the consumer rather than via the media. For consumers texting competitions can be both positive and negative.

Some of the positive benefits of text competition for consumers are:

- Easy and quick access to opportunity to win a prize monetary or otherwise. Unlike conventional lotteries where a more time-consuming process is involved. Consumers can simply text in to enter a draw as compared to say posting in three empty packets of milk with your name and address to enter the competition.
- Costs of texts are now cheaper than conventional competitions/lotteries. Most mobile phone operators now charge 99cents for a text entry. In conventional competitions/lotteries costs to the consumer are higher.
- Results are more immediate rather than having to wait for weeks.

Disadvantages/negative impacts:

- Consumers spending their money on texting competitions/promotions rather than for texts and calls on more important matters. The whole purpose of having and subscribing to a mobile phone service is defeated if consumers are enticed into constantly spending a significant portion of their mobile phone bill or credit on texting competitions/promotions.
- Consumers are often unaware that they are actually gambling when entering these texting competitions.
- Children and young adults are amongst groups of people who are more accepting of, and more likely to engage in texting competitions and mobile promotions. They are most likely to be taken advantage of by unscrupulous promoters. By engaging in texting competitions at an early age people develop the habit over time.
- Texting competitions can create addictiveness similar to gambling.

- Terms and conditions are often not fully disclosed and also not fully understood by consumers.

## 5.0 Recommended points to be considered in the guidelines.

- The guidelines should expressly state that mobile phone operators and other third parties should abide by the *Commerce Commission Decree 2010* and other relevant consumer protection laws. In fact they should treat texting competitions and promotion in the same way as other non-mobile competitions and promotions.
- The guidelines to consider the provisions of the *Gaming Decree 2009* for texting competitions. Texting competitions that involves the playing of a game of chance for money or money's worth fits the interpretation of “gaming” under this decree. This is noted under the decree as “remote interactive gaming”. Text competitions involving chance should be deemed lotteries.
- All terms and conditions of a texting competition must be disclosed to consumers. For instant or short-term texting competitions the mobile service providers or promoters should have the full terms and conditions on their websites. Mobile service providers/promoters should make available the web page address of the terms and conditions to mobile phone users in the initial text promoting the competition. For text competitions or promotions that take longer periods, e.g. Hibiscus Txt Promotion where prizes are much larger in quantity and value, the terms and conditions must be fully disclosed in print media – newspapers, brochures and posters.
- Draws to be done in a transparent manner with records kept properly for verification by third party.
- Friend and Relatives of the radio announcers involved in declaring the recharge card win should not participate unless and until the draw was done by a third party.
- Mobile phone operators should not send text on competitions and promotions to customers who have not consented to receiving these texts. Mobile phone operators should not use this as a condition for new customers wishing to purchase or subscribe to a service. The operators often have an option box when customers sign up to a service or purchase a SIM card. Customers are asked if they agree to receive promotional texts or messages from the mobile phone operator. In some promotions texts are sent to customers that involve a third party, e.g. a supermarket running a promotion or competition. Normally customers had not signed up to the supermarket or trader, but only to the mobile phone operator. Thus mobile phone operators need to clarify from whom such texts are sent from i.e. the principal promoter.
- Texting competitions and promotions must have a specific opening/closing time and date. Promoters cannot extend the closing time and date if they have insufficient number of entries. Radio stations need to also provide a closing time for texting competitions. More often than not they do not say when a particular competition ends.

- Mobile phone operators and promoters of texting competitions/promotions should provide an avenue to consumers to raise a complaint in regards to a competition in which they have participated in.
- All texting competitions and promotions should provide eligibility conditions. It is recommended that children under 16 years of age should seek their parents' consent before entering into a competition.
- Winners of texting competitions must be disclosed – full name and address (if applicable). The winners of major one-off texting competitions should be disclosed via the media – newspaper and through text messages to customers who have participated in the competition. The winners of texting competitions that are being conducted on a regular basis and having instant winners must be disclosed (via text) to all customers who have participated in that competition.
- Mobile service providers should allow consumers to use “free money” or free credit for texting competitions and promotions. This is particularly the case where pre-paid customers have purchased ‘double-up’ or ‘triple-up’ credit. When operators do not allow free credit to be used in texting competitions/promotions, this means that ‘double-up’ and ‘triple-up’ are not adding value to customers’ purchase which the operators often claim in these top-up promotions.
- Mobile phone operators should bear direct and full responsibility for any overcharging, charging errors or problems associated with a texting competition and promotion. In case of radio stations or other media who use the texting platform, they should bear full responsibility. It is the party who initiates or promotes a competition to consumers who should bear liability and not third parties unbeknown to consumers.
- Misleading and highly enticing phrases like “text and win” should be disallowed.
- Mobile phone operators and text competitions promoters should exercise social responsibility particularly when these competitions target a wide range of customers that includes children. Also participating in texting competitions can result in people developing an addiction that is common to conventional gambling.
- Mobile phone operators should exercise due responsibility and not send unsolicited text promotions or SPAM to customers. It should be the responsibility of the mobile phone operator not to allow unsolicited texts going to customers who do not want these text advertisements.