



GUIDELINE FOR TEXTING COMPETITIONS/PROMOTIONS FOR FIJI

A framework for Self-Regulation



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“To Create a Dynamic and Competitive Market in Fiji”

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1. Rationale:

The Fijian Competition and Consumer Commission (FCCC) guideline recognizes that promoters and media outlets are inclined to focus on the benefits of their products, while consumers, confronted with lack of relevant information, complexity and uncertainty, can be tempted to make decisions on the basis of the advertisements and text messages alone. The objective of the guideline is to engender a more confident and informed consumer.

Many entities including Mobile Companies, Traders, media outlets and publishers of advertising such competitions and promotions, that explore the use of Texting Competitions and Promotions become concerned or apprehensive when the depth and extent of the rules and regulations about its allowable uses are explained to them. In fact, these rules exist to help, not hinder, the quality of Texting Competitions and Promotions experiences for consumers. It eliminates spam and protects both the mobile user and the participants of the competition.

The *Guidelines provisions* deal with various issues related to responsible Texting Competitions and Promotions practices, including;

- 1.1. Accuracy and Clarity.
- 1.2. Disguised Advertising Techniques.
- 1.3. Price Claims.
- 1.4. Safety.
- 1.5. Unacceptable Depictions and Portrayals.

The Guideline have been developed to help Traders, mobile companies and other businesses who engage in texting competitions and promotions in Fiji. The guideline is further intended to assist the businesses better understand the requirements under Fijian Competition and Consumer Commission Act 2010 (FCCC Act 2010) and any other relevant laws in Fiji while engaging in such trade in Fiji.

2. Principle of Fairness:

All participants must be treated fairly and equally. For example, winners must be picked *after* the closing of the competition/promotion and not *before*. Unless location has been restricted in the competition/promotion rules, winners should not be selected based on where they live. Nor should the winner be selected on the basis of any other criteria apart from those specified in the competition /promotion rules as the basis for selection, or randomly if that is the basis for selection of the winner.

3. Principle of Transparency:

Competition/promotion copy must be clear. Participants need to be given as much information as possible to enable them to decide whether or not to enter a competition/promotion and to understand the basis upon which the winner of the competition/promotion will be decided. For

example, if the prize is a holiday abroad and travel insurance is not included but must be purchased by the winner, then this must be made clear in the competition/promotion rules.

4. Scope of the Principle and Guideline:

The guideline would apply primarily to promoters and organisers of texting competitions, promotions and advertising related to SMS competitions and promotions in Fiji, but also apply to third parties such as publishers of such advertisements, competitions and promotions. The guideline will also apply to virtually all text competition mediums and channels, from radio stations to broadcast television, to mobile companies, to organisers of various events which engage in mobile texting, to telemarketing, to micro-blogging. In respect of these various mediums, specific guidance has been proposed regarding best practice.

In fulfilling a key aspect of the self-regulatory mission of FCCC, this guideline sets out the acceptable principles and guideline to be adopted for the interactive texting competitions, promotions and advertisements. The following Texting Competitions and Promotions Guideline for Fiji apply to all “qualifying texting competitions and promotions” for competitions and promotions by the Mobile Companies, Traders, and media outlets, and all publishers advertising such competitions and promotions are to comply with the guideline and to ensure compliance by their co-publishers, licensee, agents and/or other third parties authorised in connection with the development, creation, distribution or placement of qualifying texting competitions and promotions. Failure to comply with Texting Competitions and Promotions Guideline for Fiji requirements, may lead to the possible contravention of the FCCC Act 2010 which may warrant corrective actions by FCCC.

The term “qualifying texting competitions and promotions” shall mean all forms of customer or consumer interactive texting competitions and promotions i.e., all commercial text messages and/or marketing materials related to the promotion, (including but not limited to advertising, promotional materials, cross-promotions, lotteries and competitions related to such qualifying texting competitions and promotions which are:- (a) directed at consumers within the Republic of Fiji and (b) distributed or disseminated through any medium currently known or hereafter developed.

5. Definitions:

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| 5.1 | Agreements | refers to the contract between the platform providers and the promoters relating to the texting competition or promotions. |
| 5.2 | Average consumer | refers to reasonably well-informed and reasonably observant and careful, taking into account social, cultural and linguistic factors. |
| 5.3 | Conduct | refers to the manner in which the texting competitions and promotions is carried out. |
| 5.4 | Easily accessible | means that majority of the consumers can access required information concerning the texting competitions and promotions. |

- 5.5 Minimum period** refers to the period in which written agreements between platform providers should be kept under FCCC Act 2010, which is generally 7 years.
- 5.6 National Awards** refers to competitions and promotions done that are of national interest or a national winner is to be declared such as Fiji Sportswoman of the Year Award and so forth.
- 5.7 Relevant authorities** to any public or statutory body created under the law of Fiji that has legal authority to request or gather information from organisations and businesses in Fiji.
- 5.8 Significant costs** refers to any cost incurred for entry to the texting competition or promotion by any participant including consumers.
- 5.9 Vulnerable consumer groups** refers to the elderly, the young, unemployed, those with a limiting longstanding illness, those in low income households, unsuspecting consumers and those with no formal educational qualifications.

6. Principles:

Whether any Texting Competition and promotional activities are misleading or deceptive may depend on the audience that receives the message. Businesses must remember that the consumers which Texting Competition and promotion targets may be very different to the audience that actually receives the message. Businesses should identify its potential audience as this will help businesses determine the impact of promotion.

- 6.1.** A Texting Competition, Promotion or advertisement should accurately reflect the nature and content of the competition, promotion or product it represents (i.e., a text message should not mislead the consumers).
- 6.2.** All texting competitions, promotions and advertisements should be created with a sense of responsibility toward the public and consumers.
- 6.3.** No texting competitions, promotions and advertisements should contain any content that is discriminatory, racial and demeaning or likely to cause serious or widespread offense to the consumers.
- 6.4.** This Guideline is not intended to restrict or impede creative and/or innovative texting competitions, promotions or advertisements. Rather, it highlights certain practice that mobile companies, traders, media organisations and other stakeholders should avoid when creating qualifying texting competitions and promotions, to ensure consumers are protected from unfair tactics of unscrupulous promoters.

6.5. This Guideline is also not intended to address or illustrate every type of extreme or offensive content that could lead to a violation; they merely provide illustrative examples.

7. Relevant Laws:

7.1. Fijian Competition and Consumer Commission Act 2010.

7.2. Gaming Decree 2009.

7.3. Any other relevant laws of Fiji.

8. Guidelines for Texting Competitions and Promotions in Fiji:

8.1. All texting promotions must be organised and conducted in a fair and transparent manner.

8.2. Parties involved in the texting competition must have a written agreement with the Platforms and Network Providers, which may be kept confidential by agreement of the parties and provided to lawful authorities as required under the laws of Fiji.

8.3. Promotional materials must clearly state any information which is likely to affect a decision to participate, including:

8.3.1. The commencement and closing date of competition and promotion.

8.3.2. The drawing date and time of competition and promotion.

8.3.3. Any significant terms and conditions, including any restriction on the number of entries or prizes which may be won.

8.3.4. An adequate description of prize(s) and other items offered to all or substantial majority of participants, including the number of major prizes.

8.3.5. Any significant age, geographic or other eligibility restrictions.

8.3.6. Cost of participation in the competition or promotion and whether consumers can use free money or purchased credit.

8.3.7. Any significant cost which a reasonable consumer might not expect to pay in connection with collection, delivery or use of the prize or item.

8.3.8. Information on specific retailer or locations for winners to redeem their prizes.

8.4. There must be no misleading or deceptive conduct attached to any texting competition or promotion. For example, Misleading and highly enticing phrases like “text and win” unless all those texting are guaranteed of prizes, “You are X number of texts away from winning the Prizes” must not be used in any texting competition or promotions.

8.5. All the terms and conditions should be easily accessible to the general public. The terms and conditions can be advertised in the same medium or on the websites. However, the customers must be notified about the source of the full terms and conditions and they should be able to access the terms and conditions at zero cost.

- 8.6.** The party who initiates or promotes a competition to consumers should bear liability (the responsibility to provide the prizes promised) until the third party who is to bear the liability is stated in the competition advertisements and promotions.
- 8.7.** All texting competitions and promotions should specify the opening/closing time and date. Promoters cannot extend the closing time and date if they have insufficient number of entries. An insufficient number of entries, or entries of inadequate quality, are not acceptable reasons for changing or extending the closing date of a competition or promotion or for withholding prizes. Once the closing date for a competition is reached, the advertised prizes must be awarded, notwithstanding the number of entries. Organisers and media outlets broadcasting the competition and promotion are required to also provide a closing time for texting competitions.
- 8.8.** Competition and promotion may only be extended in situation of unforeseeable disruptions or events beyond the control of promotor, such as natural disaster or technical problems encountered by platform providers or media outlets the duration of the extension should be the same as the duration of the unforeseeable disruptions or events and any extensions must be made known to the public.
- 8.9.** Draws must be done in a transparent manner with records kept properly for verifications by third party or relevant authority.
- 8.10.** Mobile Phone Operators, Promoters and media outlets of the respective texting competitions/promotions should provide avenues to consumers to raise complaints in regards to a competition or promotion in which they have participated. This does not restrict the consumer's right to lodge her/his complaints with any consumer protection agencies or enforcement body.
- 8.11.** All texting competitions and promotions should provide eligibility conditions. It is recommended that children under 18 years of age should seek their parents' consent before entering into the competition or promotion. If a child wins the competition or promotion then they should be accompanied by the parent or guardian when redeeming the prize or the parent can collect the prize on behalf of the child.
- 8.12.** Winners of texting competition and promotion must be disclosed by the business in a transparent manner. For privacy reasons it is not necessary to disclose the consumers full phone number, however, full name and partial phone number can be disclosed to inform the winning consumer. Prizes must be awarded within 28 days of the closing date of competition or promotion, unless a defined lesser period is clearly stated in the promotional material subject to draw.
- 9.** Texting Competition and promotional material must not:
- 9.1.** Use words such as 'win' or 'prize' to describe items intended to be offered to all or a substantial majority of the participants.

- 9.2. Exaggerate the chance of winning a prize in a competition or promotion.
 - 9.3. Suggest that winning a prize is certain.
 - 9.4. Suggest that the party has already won a prize and that by contacting the promoter, the participant will definitely secure that prize.
 - 9.5. Contain language that minimises the price of a product or service (such as “only” or “just”).
 - 9.6. Contain language that exhorts children to buy or obtain a product or service.
 - 9.7. Contain language that conveys a sense of urgency about an offer or service that does not expire.
10. The following additional information must be made readily available on request to consumers, if not contained in the original competition promotional material:
- 10.1. The detail of prize.
 - 10.2. How and when prize-winners will be informed.
 - 10.3. The manner in which the prizes will be awarded.
 - 10.4. When the prizes will be awarded.
 - 10.5. How prize-winner information may be obtained.
 - 10.6. Any criteria for judging entries.
 - 10.7. Any alternative prize that is available.
 - 10.8. The details of any intended post event publicity.
 - 10.9. Any supplementary rules which may apply.
 - 10.10. The identity of the party running the competition and responsible for the prizes.
 - 10.11. Full terms and conditions of the Competition, Promotion or Advertisement.
11. Non-cash prizes must not be redeemable for cash. A promoter reserves the right, in its sole discretion, to substitute any prize with one of equal or greater value. Winners may not request prize substitution. Prizes must not be transferable and may not be claimed or used by any person other than the winner unless prior authorization in writing from the winner is obtained. Unless otherwise stated in the specific contest rules, any major prize won (with the exception of recharge cards or talk-time) should not be mailed under any circumstances unless authorized by the winner and winners must claim their prizes in person at the venue as advertised, Monday through Friday between the hours of 8:00am to 5:00pm (excluding holidays and the day before or after a holiday) within 28 days after the end of the contest or draw.
12. Winners should be notified as soon as reasonably possible by telephone/email after the closing date by the promoter after the draw. If winners are notified by telephone then this must be followed up with written confirmation e.g. email or letter or text message.
13. If the Prizes are not claimed within the stated period of 28 days, the promoter shall advertise in new paper and allow time of 5 days to allow collection of prize. However, despite the following attempts, should the prize be not collected, it may be forfeited. In such circumstances, the promoter may choose the next best alternative winner, in accordance with the competition/promotion terms and conditions.

14. The Content providers should not redirect subscribers from one type of promotion to another type of promotion due to handset or account limitations. All the promotions are materially different and should be treated as such in all competition and promotion.
15. For voting competition in regards to National Awards, organisers should ensure that they have a system in place that screens the number of entry by individuals and limits it to one text per person. Subsequent entries from the same person for the same competition should be disqualified. Texting should be open to all platforms and not restricted to one.
16. Direct refund for complaint on false or misleading advertising, non-satisfaction content and cancellation of the competitions and promotions. All Competition Promoter's should introduce a simple direct refund process if/when consumers have proven following investigation on the same that the competition, promotion or prize was not as advertised or the promotion was false, misleading or deceptive. All refund process should be logged for further reference if the issue arises in the future.
17. Mobile companies should respect the right of the subscriber to control messages they receive. Permission should be asked and obtained for an explicit opt-in from the subscriber for all mobile messaging promotions or messages should only be sent upon general authorisation by the consumer at the time of service registration.

18. Termination and Opt-Out Options:

- 18.1. Mobile Companies must clearly outline its simple termination (opt-out) process so that subscribers can stop receiving messages, and subscribers must be able to exercise their opt-out choice from any message. The directions on how to unsubscribe from the program should be included in program messaging on a regular basis.
- 18.2. The Mobile Companies must record and store all opt-out transactions.
- 18.3. Contact details for the competition sponsor—Either a toll-free number or a Web site address for opt-out details must be provided to the consumers.
- 18.4. A free Alternative Method of Entry (AMOE) must be allowed in texting competition for deciding a national outcome or winner that involves prize(s) and a game of chance with no consideration (sweepstakes). Allowing participants to enter via mail, internet, fax or Interactive Voice Recognition (IVR) via a toll-free number are all forms of AMOE but are not the only forms of free AMOE.
- 18.5. Mobile Companies and competition Promoters should exercise social responsibility particularly when these competitions target a wide range of consumers that includes vulnerable consumer groups.

- 18.6. Parties to the texting promotion must refrain themselves and their family from entering into such competition and promotions.
- 18.7. Winners of the competition and promotion must be announced by but not limited to the same media of advertisement. That is if the competition is organised by a radio station, then winners must be announced at least by the same station for the information of the public. For Competitions organised by mobile companies directly, all the subscribers must be sent a message to announce who the winner was.
- 18.8. A Mobile Company or texting competition promoters may seek its own independent advice (including legal advice) regarding the competition or promotion it develops/has in place for conducting texting competitions and promotions in Fiji.
- 18.9. All industry participants are also expected to ensure that the products being marketed are appropriate for the intended audience.

19. Records:

Any Business or trader which engages in texting competition or promotion must keep the records of prizes and the terms and conditions at the satisfaction of FCCC and other relevant authority. Should information must be made available to FCCC or other relevant authority upon request.

20. The promoter must keep a record of:

- 20.1. The winning entry;
- 20.2. The method by which the winner was chosen;
- 20.3. Documents showing the number of votes received or consumers who participated in the competition or promotion;
- 20.4. A copy of the signed competition/promotion record form;
- 20.5. A copy of the signed agreement between promoter and mobile company;
- 20.6. A copy of the email or letter notifying each winner that they have won a prize;
- 20.7. The terms & conditions;
- 20.8. The justification for choosing the winner; and
- 20.9. Any other document or information in relation to a texting competition and promotion.

21. Mobile phone operators should full responsible and must bear all the cost 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 unknown to consumers.

22. Advise to Businesses and Consumer:

This guideline has been designed by FCCC for both businesses and consumers as a guiding tool towards awareness and compliance. While businesses must abide by the FCCC Act 2010 and

other relevant consumer protection laws, the guideline intends to act as a awareness material to educate the consumers on the aspects of competition and promotion in Fiji. It is suggested that if any business or consumer has any issue or clarification pertaining to FCCC's texting competition and promotion guideline, they may contact or visit FCCC immediately.

23. Contact Details of FCCC:

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