

**THE CODE COMPLIANCE PANEL OF PHONEPAYPLUS  
TRIBUNAL DECISION**

**Thursday 05 July 2012  
TRIBUNAL SITTING No. 103 / CASE 1  
CASE REFERENCE: 04842**

Level 2 provider: JJP Mobile BV

Type of service: Subscription and non-subscription based trivia competition services

Level 1 provider: TxtNation Limited

Network operator: All Mobile Network Operators

**THIS CASE WAS BROUGHT AGAINST THE LEVEL 2 PROVIDER  
UNDER PARAGRAPH 4.4 OF THE CODE**

**BACKGROUND**

From December 2011, the Executive received 13 complaints in relation to a number of subscription and non subscription competition services operating on shortcodes 65558 and 64888.

The complainants reported a number of issues including, the receipt of unsolicited marketing text or email messages, misleading promotional messages, being misled into entering a premium rate competition service, problems with the content of the competition service, the lack or frequency of spend reminders and the receipt of chargeable messages post sending a 'stop' command. Further investigation by the Executive revealed additional issues in relation to the frequency of prize draws and the availability of prizes.

As a result of communication with the Level 1 provider, TxtNation Limited, the Level 2 provider was identified as JJP Mobile BV.

**The Investigation**

The Executive conducted this matter as a Track 2 procedure investigation in accordance with paragraph 4.4 of the PhonepayPlus Code of Practice (12<sup>th</sup> Edition) (the "**Code**").

The Executive sent a breach letter to the JJP Mobile BV on 08 June 2012 and a response was provided on 25 June 2012. The breaches raised by the Executive and JJP Mobile BV's response were as follows:

1. Rule 2.4.2- Consent

The Executive submitted that the Level 2 provider had not provided sufficient evidence which established that the complainants had consented to be contacted.

JJP Mobile BV submitted that another company called 12SMS LTD were responsible for the service and that 12SMS LTD had always attempted to obtain consent.

2. Rule 2.2.1(a)- Provision of the Level 2 provider's name and a non-premium rate UK contact number

The Executive submitted that the Level 2 provider had not provided its name and a non-premium rate UK contact number on promotional material.

JJP Mobile BV maintained that it was not the Level 2 provider and therefore it was not required to provide its details.

3. Rule 2.3.1- Fair and equitable treatment

The Executive submitted that in some cases, consumers who answered questions correctly were told their answers were wrong. Further, some consumers were sent multiple questions in a very short time period, which resulted in them not knowing which question to answer.

JJP Mobile BV accepted that some consumers appeared to have been incorrectly told that their answers were wrong. The Level 2 provider attributed the sending of multiple messages in a short time period to technical problems on the part of the Level 1 provider.

4. Rule 2.3.2- Misleading

The Executive submitted that promotional material did not make it clear that the service was a competition service. Further, the Executive submitted that the description of some of the prizes was misleading and that the Level 2 provider had failed to provide evidence that any prizes existed or were distributed.

JJP Mobile BV denied that the service was misleading. It denied that promotional material told consumers that they "had won a prize". In relation to the existence of prizes, JJP Mobile BV stated that prizes did exist and had been distributed.

5. Paragraph 2.3.12(d)- Spend reminders

The Executive submitted that consumers participating in the subscription service did not receive a spend reminder after being charged £21.

JJP Mobile BV accepted that the spend reminder was not received by complainants.

6. Paragraph 4.2.4- Provision of information

The Executive submitted that the message logs provided by the Level 2 provider were incomplete. Further, it was submitted that the Level 2 provider had failed to provide relevant promotional material and the requested information in relation to prizes.

JJP Mobile BV denied presenting false or misleading information to PhonepayPlus.

On 05 July 2012, the Tribunal heard informal representations made on behalf of JJP Mobile BV. During informal representations, the representative of JJP Mobile BV maintained that JJP Mobile BV's part in the value chain was as an aggregator that merely provided the short codes and technical platform on which the services operated. It was further stated that JJP Mobile BV contracted with a company incorporated in Israel called JJP Mobile Limited, which was contracted to 12SMS LTD, and that it was 12SMS LTD that provided the services.

On 05 July 2012, the Tribunal considered as a preliminary issue, the question as to whether or not JJP Mobile BV was the Level 2 provider.

## **CONCLUSIONS**

Following informal representations made by JJP Mobile BV, the Tribunal adjourned the hearing whilst the Executive obtained further information from JJP Mobile BV to support its claim that it was not the Level 2 provider. The Executive subsequently informed the Tribunal that, having considered the further documents provided by JJP Mobile BV, it did not consider JJP Mobile BV to be the Level 2 provider. The Tribunal accepted the Executive's conclusions and, as a result of its findings on the preliminary issue, the Tribunal decided not to adjudicate on the breaches. The Tribunal recommended that the Executive considers pursuing breaches against the correct Level 2 provider in due course, and also whether there were any failures in respect of JJP Mobile BV's obligations as a Level 1 provider.