

Unofficial Translation of Ordinance On The Consumer Rights In The Telecommunications Sector prepared by Telecommunications Authority.

Important Notice: In case of divergent interpretation, the original Turkish text shall prevail.

## **Ordinance On The Consumer Rights In The Telecommunications Sector**

### **PART ONE General Provisions**

#### **Purpose**

**Article 1** - The purpose of this Ordinance is to define the procedures and principles for the protection of rights and interests of consumers who use telecommunication services.

#### **Scope**

**Article 2** - This Ordinance covers procedures and basic principles regarding the rights of consumers who use telecommunication services and obligations of operators and subscription agreements signed between consumers and operators.

#### **Legal Basis**

**Article 3** – This ordinance is prepared on the basis of the changed 7<sup>th</sup> article of Radio Law No 2813 of 15/4/1983.

#### **Definitions**

**Article 4** – The definitions and abbreviations used in this Ordinance shall have the following meanings;

- a) **Board:** Telecommunications Board,
- b) **Authority:** Telecommunications Authority,
- c) **Subscriber:** The consumer who signs an agreement with an operator providing telecommunication services to benefit from a related service,
- d) **Subscription Agreement:** An agreement which is signed between operator and consumer regarding telecommunication services and which creates an obligation on operator to provide periodic or continuous services and/or goods in payment for a price,
- e) **Promotional Campaign:** A campaign in which the operator undertakes to transfer the ownership of promotional goods and/or provides promotional services in addition to the in payment for good and services while the consumer undertakes only to pay the price of agreement related goods and/or services,
- f) **Personal Information:** Any information related with real and/or legal persons which can be defined directly or indirectly by using one or more elements of identity card number or physical, psychological, intellectual, economic, cultural and social identities or health related, genetic, ethnic, religious, family related and political information,
- g) **Operator:** Capital company which provides telecommunication services using a authorization agreement, concession agreement and/or telecommunications license or general authorization,
- h) **Fully Authorized Vendor:** Vendor/branch office, agent or other representative which is vested with the authority to perform the operation of subscription termination,

- i) **Telecommunications:** Sending and receiving each kind of sign, symbol, voice and picture and each kind of data that can be transformed to electrical signal by means of cable, radio, optical, electric, magnetic, electro-magnetic, electro-chemical, electro-mechanic and other ways,
- j) **Telecommunication Service:** Providing the whole or partial activities as services which are contained in the definition of Telecommunications.
- k) **Consumer:** Real or legal person who buys, uses or benefits from a good or service without the aim of trading or profession,
- l) **Phone Message Service:** Selling, marketing or performing similar activities on every kind of goods and services which contains every kind of pre-recorded voice data, entertainment, live talk, teleconference, announcement, information gathering, survey, fortune games and other services which gives a legal interest, right or a merchandise to the caller.

## **PART TWO**

### **Primary Rights and Liabilities**

#### **Consumer Rights**

**Article 5**– Consumers who use telecommunication services shall have the rights explained below;

- a) Right to obtain same opportunities with similar consumers without discrimination by paying fair prices while using services,
- b) Right to make a subscription agreement with the operators providing telecommunication services,
- c) Right to demand being anonymous or not in the publicly open directories,
- d) Right to use directory services free of charge and/or by paying price and right to be enrolled in subscriber directories without discrimination,
- e) Right to obtain information about emergency numbers and right to access these numbers free of charge,
- f) Right to demand itemized billing where technically possible and right to demand limiting some kinds of the calls from his/her telephone.
- g) Right to obtain information about the scope of services provided by operators,
- h) Right to access clear, detailed and current information about tariffs and tariff packages and right to be informed before the tariff packages go into effect,
- i) Right to demand non-discriminatory practices in eliminating break downs except the cases related with health, fire, disaster, security and emergency and institutions related with security,
- j) Right to obtain adequate quality in services complying with international standards and standards defined by Authority.

#### **Transparency and Information**

**Article 6**– Related with the access to the telecommunication services provided and related with the usage of these services, operators shall provide at least below information to all consumers without demand and they are obligated to provide the means of easily accessing to these information.

- a) Name and address of operator,
- b) Services which will be provided,

- 1) Scope of service,
- 2) General decisions and conditions about access and usage of service,
- 3) Tariffs and tariff packages which will be applied on service,
- 4) If exists, compensation and pay-back conditions,
- 5) Kinds of support/repair types,
- 6) Standard agreement conditions containing the minimum agreement period,
- 7) Dispute resolution mechanisms.

### **Quality of Service**

**Article 7**– Operators shall publish the sufficient and up to date information about the quality levels of telecommunication services provided by them and they shall present these information when demanded by Authority.

Authority may impose regulations defining the quality of service parameters, content and form of the information and the other matters related with the subject which will be published by operators.

### **Operator Support and Directory Services**

**Article 8**– All subscribers who are assigned by a number shall have a right to be included in the publicly available directories. In the telephone services, the approval of consumer shall be taken for publishing or not publishing personal information while signing the subscription agreement.

All the operators who assign numbers to subscribers shall supply all the reasonable demands of consumers regarding the directory services in a cost oriented and non-discriminatory manner.

All the consumers connected to the telephone network shall have a right to access operator support services and directory services.

### **Phone Message Service**

**Article 9**– Operators which provide phone message call services shall inform the consumers about the prices. This information shall clearly contain the beginning of pricing period, type of pricing –either minute basis or call basis-, amount of pricing for minute or call basis, total service period and total service price.

Information about the service itself shall be free. After the information period, callers shall press a number or perform a similar activity and pricing shall then begin. This information service is valid for forwarded calls to the phone message services.

Authority may impose a regulation containing password protected access or similar activity in the phone message services where it is technically possible.

### **Providing Additional Opportunities to The Service**

**Article 10**– Fixed and mobile phone operators shall provide caller ID and pulse dialing services where it is technically possible and applicable.

Operator shall provide their subscribers calling line identity presentation restriction for each call with an easy and free way.

## **Campaigns**

**Article 11**– Operators shall provide the undertaken promises which they perform to increase their sales of goods or services in a full and expected manner.

Subscribers who want to participate into campaigns shall be informed in detail by operators before the agreement. Subscribers who accept campaign rules shall follow these rules.

## **Tariffs and Tariff Package Alteration**

**Article 12**– Operators shall inform consumers about tariff and price changes before these changes go into effect by using short message, internet, press, publication utilities or post.

If the provided telecommunication service includes different tariff packages and if the subscriber wants to change his/her tariff package before the predefined billing period, this change shall go into effect at most in the next billing period.

Second paragraph of this article shall not be applied for the special tariff packages and campaigns in which the subscriber accepts provisions in the beginning.

Billing shall start with actual provision of the service.

## **Obligation To Send Bill**

**Article 13**– Operators shall send bills which contain a predefined paying period to all of their consumers before the last payment date.

If demanded by subscribers, operators shall provide itemized billing either free of charge or by paying price where technically possible.

Informing consumers by e-mail or short message about the amount of payment shall not eliminate obligation to send bill.

## **Obligatory Components Of The Bills**

**Article 14**– The bills which will be sent to consumers shall at least contain the below information:

- a) Billing period and preparation date,
- b) Applied tariff,
- c) Last payment date,
- d) Interest rate if the bill is not paid in the last payment date,
- e) Interest rate and amount which had been applied to previous bill if exists.

## **Billing Agreements**

**Article 15**– Fixed or mobile operators which have billing information about subscribers may make an agreement with other operators performing business in the same network to prevent subscribers getting more than one bill. This practice shall not bring additional costs to subscribers.

In case the parties may not agree, Board may bring obligation to provide billing to the operator having significant market power. This obligation shall be done for a fee but it shall not bring additional costs to subscribers.

## **PART THREE**

### **Subscriber Agreements**

#### **Subscriber Agreements**

**Article 16**– Subscriber agreements shall be prepared in written form at least 12 font size and obligatory articles in subscriber agreements shall be prepared as bold and 12 font size. Operators shall provide at least the below information in the subscriber agreements and it shall be obligatory to give one signed copy to the subscriber.

- a) Content of agreement,
- b) Date and location where the agreement is made,
- c) Names, titles and open addresses of the agreement parties,
- d) Liabilities of parties,
- e) Agreement period, termination date of the agreement and conditions to renew the agreement,
- f) Definitions of services, quality of service level and supply time for initial connection,
- g) Kinds of support/repair types,
- h) Content of the tariffs and the ways to learn current information about the changes in the tariffs,
- i) Compensation and pay-back procedures if the service level stated in the agreement can not be obtained because of the faults of operator,
- j) Conditions for the late payment of subscribers,
- k) Tariff package chosen by subscriber in the date of agreement,
- l) Solution procedure if a dispute arises between subscriber and operator,
- m) Information about the needed technical equipment and accessories for the subscriber to get the service,
- n) Date of approval by Authority if the agreement requires approval,

Fixed and mobile phone operators shall get the approval of subscriber about the kinds of telephone numbers and message services which can be used from the subscriber's line. This shall be performed in the date of agreement or later. Subscriber can not be responsible for the services that he/she had not given approval. Operators shall be obligated to take measures for the services to be provided only by the approval of subscribers.

Operators shall be obligated to change the needed equipment or accessories free of charge if this change arises from the need of operator itself.

Operators shall take the approval of subscribers to send them voice or written messages which are used for the advertisement of operator itself or other third party legal or real persons.

#### **Pre-inspection and Approval of Authority**

**Article 17**– Authority may demand the subscription agreements of operators. This demand may originate from the Authority's self decision or a complaint. Telecommunications Authority inspects the subscriber agreements and informs the operators about the subjects that shall be changed. Operators shall apply these changes in 15 days.

It is obligatory to take the approval of Authority for the GSM operators while preparing or changing each kind of subscription agreement. Authority inspects the subscriber agreements and informs the operators about the subjects that shall be changed. Operators shall apply these changes in 15 days. After these steps Authority approves the subscriber agreements.

### **Unjust Conditions and Interpretation of Agreement**

**Article 18**– If entries, which had been put on agreement by operators as a single side without discussing with subscriber, contain dishonest rules and if these rules lead subscribers become injured party, these entries shall be invalid. If an entry written in the agreement is not clear and understandable, it may be decided that this entry creates this kind of an imprudent injured party.

If an entry in the subscription agreement is against the real thought arising from the legal regulation or limits the basic rights and liabilities in a way preventing the main aim of agreement, it is decided in the case of uncertainty that this entry creates an imprudent injured party opposed to subscriber because of the honesty rule.

With respect to the current situation and the appearance of agreement, unexpected conditions that can not be taken into consideration by the opposite side shall not be included in the agreement.

If an entry in an agreement is invalid according to the first paragraph of this article or is not included fully or partially in the agreement according to the third paragraph of this article, the remaining part of the agreement is considered valid. In these situations, the content of agreement shall be determined according to the legal regulations. If the content of agreement is determined in this way and if the change creates unexpected results for one of the parties, the whole agreement becomes invalid.

If it is not clear that the conditions in the agreement creates imprudent injured subscribers opposed to the honesty rule, the meaning that is in favor of subscriber is considered.

There is a list of unjust conditions in the appendix of this ordinance to use as a guideline and these conditions may not be limited with the ones stated in this guideline.

### **Procedure to Follow in the Termination of Subscription Agreement**

**Article 19**– In case subscribers want to terminate their subscription agreement, they convey their demand to related operator by sending a written application to contact address/fully authorized vendor or by calling customer relations department or by using internet. In the written form, subscription agreement is annulled by proving the identity of subscriber.

In case the subscribers call customer relations department or use internet, operators may demand a pre-defined password in addition to the identity information. The use of service by subscriber shall be stopped at the date of notification. After this, subscribers shall notify the operator in ten days by sending a written application to contact address/fully authorized vendor. Operators may continue to provide service without annulling the agreement if the subscriber does not notify the operator in ten days period.

Subscribers shall have the right to terminate the agreement without paying any compensation after the agreement conditions are changed by operator and the subscribers are informed about this situation. Operators shall be obligated to inform the subscribers one month before about the changes and their right to annul the agreement without paying any compensation if they do not accept those changes.

GSM operators shall be obligated to announce the new number of subscriber to the callers who called the previous number of them, if the subscription is annulled. This announce is performed sixty days after the termination of line. This period may be changed by Telecommunications Authority if required. Operators shall inform subscribers who want to terminate their subscription about the announcement system free of charge.

### **Ending Subscription Agreement**

**Article 20**– Subscribers may always end their subscription by sending a written application to the operator. Operators shall perform this request in seven days after the demand of subscribers arrive at their hands and they shall send the annulment information in written form without depending the request of subscriber in this period.

After this notification, if the operator sends bill to the subscriber to collect the remaining credits, this action shall not be considered as to stop the annulment process.

Operators shall deduct the pre-taken deposits or advances from the credit of subscriber when sending the last bill and pay back the remaining amount in fifteen days if exists.

## **PART FOUR Other Provisions**

### **Mandatory Measures and Penalties**

**Article 21**- In the case that the operators do not carry out the obligations defined in this ordinance, provisions of “Ordinance on Mandatory Measures and Penalties Applied to Operators by Telecommunications Authority” of Official Gazette 5/9/2004 No: 25574 is implemented.

### **Cancelled Ordinance**

**Article 22**- “Ordinance Regarding The Principles and Procedures For GSM Telephone Subscription” of Official Gazette 27/9/2002 No: 24889 is cancelled.

**Temporary Article**– Operators shall change their subscription agreements and send to Telecommunication Authority three months after the publication of this ordinance.

### **Entry into Force**

**Article 23**– This Ordinance shall enter into force on the date of its publication.

### **Execution**

**Article 24**– The provisions of this Ordinance are executed by the Chairman of the Board.

## APPENDIX

### List of Unjust Conditions Referred in the Last Paragraph of Article 18

- a) Making an agreement binding on the consumer whereas provision of services by the seller or supplier is subject to a condition whose realization depends on his own will alone,
- b) Requiring any consumer who fails to fulfil his obligation to pay a disproportionately high sum in compensation,
- c) Authorizing the operator to dissolve the contract on a discretionary basis where the same facility is not granted to the consumer,
- d) Exempting the operator from warning or giving additional time to consumer,
- e) Enabling the operator to terminate a contract of indeterminate duration without reasonable notice except where there are serious grounds for doing so;
- f) Giving more than 30 days to the subscriber to notify his/her wish about not extending the agreement, in a periodic agreement which foresees the continuity of agreement in the case of absence of notification,
- g) Irrevocably binding the consumer to terms with which he had no real opportunity of becoming acquainted before the conclusion of the contract;
- h) Giving operators the opportunity of changing the attributes and provision of services against the consumers' interest except the cases predefined in contract conditions.  
Giving operators the opportunity of changing or deviating from its liabilities unless, there is a possibility that the subscriber accepts the change,
- i) Giving the seller or supplier the right to determine whether the goods or services supplied are in conformity with the contract, or giving him the exclusive right to interpret any term of the contract;
- j) Obliging the consumer to fulfil all his obligations where the seller or supplier does not perform his;
- k) Excluding or hindering the consumer's right to take legal action or exercise any other legal remedy, particularly by requiring the consumer to take disputes exclusively to arbitration not covered by legal provisions, unduly restricting the evidence available to him or imposing on him a burden of proof which, according to the applicable law, should if with another party to the contract.
- l) Applying penalties on consumers because of the annulment of subscription agreement.