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Contactperson	Our reference	Your reference	Direct dial number
	OPTA/ACNB/2009/201597		
Date	Subject		Enclosure(s)
	Maximum tariff obligation		

Dear Sir/Madam,

OPTA seeks to do the following by means of this letter:

1. to provide additional information about the maximum tariff obligation to number users and telephone service providers, which applies to both groups. This obligation entails not only that number users and telephone service providers are required to set a maximum tariff and disclose it, but that both groups are also responsible for ensuring that no more than the disclosed maximum tariff is charged;
2. to help number users to comply with their maximum tariff obligation in full. OPTA would like to draw the attention of number users to the opportunities that they have to assume their responsibility to comply with their maximum tariff obligation through their partners within the information service chain (platform and telephone service providers) and existing structure, such as COIN;
3. to point out to number holders that OPTA may also call them to account, if their number users fail to comply with this maximum tariff obligation.

Grounds

Since October last year new regulations have applied to afford consumers greater protection when calling paid information numbers.

OPTA has concluded from the questions and indications which it has received, that telephone service providers are not always aware of the maximum tariff that a number user charges for a specific information number. However, a telephone service provider has a duty to set a tariff *together with* the relevant number user.

Based on the same indications OPTA has established that it is difficult for number users and telephone service providers to set a maximum tariff together with each other.

In 2008 OPTA's communications made mention of the duty to set and disclose a maximum tariff. In

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response to the above-mentioned questions OPTA would now like to provide information simultaneously to all of the parties that are responsible for ensuring compliance with the maximum tariff obligation. OPTA is also sending this letter to platform service providers, because they are closely involved in the information service chain.

In what follows OPTA considers the nature of this obligation and what it means to all of the parties concerned. It also deals with the options which these parties have to comply with the duty that they have.

The legally stipulated maximum tariff obligation

The maximum tariff obligation is set out in Section 3.2c of the Universal Service and End User Regulations [*Regeling Universele Dienstverlening en Eindgebruikersbelangen*].¹ This obligation came into effect on 1 October 2008.

This obligation entails that a maximum tariff must be disclosed before a call is made to an 0900 number, if the tariff cited before the call:

- a. is a fixed rate per unit of time; and
- b. exceeds €0.15 per minute calculated on the basis of a situation in which only a fixed network in the Netherlands is used for the purposes of that call.

As such, the maximum tariff obligation entails that the maximum tariff must be disclosed. It is clear that nothing may then be charged in excess of this maximum tariff. The latter is clear from the explanation of this obligation, amongst other things.²

What does the maximum tariff obligation mean to number users and telephone service providers?

At any rate the maximum tariff obligation means the following to telephone service providers and number users:

- a duty to set the amount of this maximum tariff together;
- a duty to disclose the maximum tariff;
- a prohibition against charging consumers more than the disclosed maximum tariff;
- a prohibition against charging consumers for the disclosure of the maximum tariff;
- a duty to disclose the maximum tariff before a call as well, if the services provided do not allow for a verbal statement of the maximum tariff. In this case the maximum tariff must be disclosed by means of a separate text message (for example, on a display);
- a duty to ensure that the disclosure of the maximum tariff is always clearly and unambiguously legible and comprehensible.

In addition, OPTA would like to note the following:

¹ *Start* [Government Gazette] 2008, No. 110, p. 8.

² *Ibid.*

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- OPTA does not have the power to provide an exemption from the maximum tariff obligation;
- OPTA does not determine the value of the maximum tariff. It is up to the telephone service providers and number users themselves to determine it together;
- it is emphatically not intended that a telephone or platform service provider should break the connection, once a call gets under way between a caller and a number user.

What does the maximum tariff obligation mean to number holders?

Under the terms of Section 4.9(2) of the Telecommunications Act a number holder is required to ensure that any numbers assigned to him are used in accordance with or pursuant to the provisions of this legislation. Based on this legally stipulated duty OPTA may call number holders to account in relation to their number users' compliance with the maximum tariff obligation.

Consequently, if a number user fails to comply with the maximum tariff obligation, OPTA may also take action against the relevant number holder for the purposes of enforcement.

Observations in relation to determining a maximum tariff

OPTA wishes to note the following when it comes to number users and telephone service providers determining a maximum tariff together. Information sourced from the market reveals that telephone and platform service providers and number users have made arrangements in the case of some 0900 numbers which support the Vereniging Communications Infrastructuur [Communications Infrastructure Association] (referred to throughout as COIN³). In this respect a choice can be made from three maximum figures, namely, 10, 20 and 50 times the rate per minute. Furthermore, OPTA has concluded that information sourced from the market also reveals that, if a number user would like to disclose and charge a maximum tariff other than the three that have been mentioned, he is required to submit this in the form of a proposal to COIN through his platform service providers.

The implementation of what is described above for the purposes of the maximum tariff obligation has not been decided on by OPTA but is something which the market itself has opted for. COIN falls well short of listing a maximum tariff for all 0900 numbers (in respect of which there is a duty to charge a maximum tariff). This means that in many cases a telephone service provider is not aware of the maximum tariff charged by a number user. OPTA is of the opinion that, if there is to be proper compliance with the maximum tariff obligation, it is at the very least necessary for the chain partners to inform each other of the maximum tariffs that they charge.

Assistance

OPTA would like to suggest by way of assistance, that number users should be able to enter into consultations with the relevant telephone service provider, for example, through a chain partner such as a platform service provider, about ways in which it would be possible to guarantee that no more will be charged than the maximum tariff. It is also possible for platform service providers to help inform telephone service providers of the amount charged by way of a maximum tariff, for example, by

³ COIN is a collaborative association involving a number of telephone service providers.



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registering such a maximum tariff with COIN. Whatever the case OPTA expects all chain partners (telephone and platform service providers, and number holders and users) to adopt an active approach to ensure compliance with the maximum tariff obligation. Evidence of such an active approach could be revealed, for example, by an inspection of the duration of calls and efforts to encourage chain partners to comply with the maximum tariff obligation.

OPTA's regulation of compliance

OPTA has been actively monitoring and enforcing the disclosure of a maximum tariff since 1 October 2008. This has revealed a clearly discernible positive trend and that there is compliance with the duty to disclose a maximum tariff in a large number of cases. In addition, at present OPTA is actively involved in regulating proper compliance with the duty not to charge more than the disclosed maximum tariff. In this connection OPTA has requested information from a large number of the telephone service providers that are subject to the maximum tariff obligation. At present OPTA is analysing this information. Based on this information OPTA will determine the manner in which it will continue to enforce compliance with the maximum tariff obligation. OPTA will provide you with additional information about such enforcement in due course.

Questions

You may find general information about the regulations governing consumer protection in relation to calls to paid information numbers at www.opta.nl. If you have any further questions about the maximum tariff obligation, you may submit them to an e-mail address specially set up for this purpose (maximumtarief@opta.nl) or you may contact the contact persons mentioned at the beginning of this letter.

Yours faithfully

THE COMMISSION OF THE INDEPENDENT POST AND TELECOMMUNICATIONS AUTHORITY
on behalf of the Commission
Acting Head of the Consumers, Numbers and Administration Department

Ms I.M.A. van der Hart