

## Enforceable Undertaking

This enforceable undertaking is given by Nokia Corporation to the ACMA pursuant to section 38 of the Spam Act.

### 1. Definitions and interpretation

1.1 In this Undertaking:

- (a) *ACMA* means the Australian Communications and Media Authority;
- (b) *Business Day* means a day that is not a Saturday, Sunday, public holiday or bank holiday in Sydney;
- (c) *CEM* means a commercial electronic message, as that phrase is defined in the Spam Act;
- (d) *CEM Campaign* means a CEM with distinct content sent by SMS to one or more recipients (whether or not sent at the same time), that has an Australian link within the meaning of section 7 of the Spam Act;
- (e) *Nokia* means Nokia Corporation (Business ID 0112038-9) of Keilalahdentie 2-4, FI-02150 Espoo, Finland.
- (f) *Spam Act* means *Spam Act 2003* (Cth);
- (g) *Subsidiary* has the meaning given in section 46 of the *Corporations Act 2001* (Cth); and
- (h) *Undertaking* means this enforceable undertaking.

1.2 Words and expressions defined in the Spam Act have the same meaning in this Undertaking, unless otherwise specified.

1.3 A reference to legislation includes any modification or re-enactment of it, and any regulations made under it.

### 2. Term of Undertaking

2.1 The Undertaking commences on the date the ACMA notifies Nokia in writing that it has accepted Nokia's executed Undertaking (*Commencement Date*).

2.2 This Undertaking continues for a period of 24 months from the Commencement Date or until it is withdrawn or varied by Nokia, with the consent of the ACMA, pursuant to section 38(2) of the Spam Act, whichever is earlier.

### 3. Background

3.1 Nokia

- (a) Nokia is incorporated in Finland.
- (b) Nokia has customers throughout the world, including in Australia. From time to time, Nokia undertakes CEM Campaigns that may be sent to Australian customers. This involves Nokia sending CEMs to its Australian customers from outside Australia.

3.2 The ACMA's investigation

- (a) Under section 8 of the *Australian Communications and Media Authority Act 2005* (Cth), the ACMA is, among other things, responsible for performing functions under the Spam Act including, but not limited to, conducting investigations and taking civil action for the recovery of pecuniary penalties.

- (b) On 24 January 2011, the ACMA commenced an investigation into allegations that Nokia may have breached the Spam Act.
- (c) The investigation concerned whether Nokia contravened:
  - (i) section 16 of the Spam Act by sending, or causing to be sent, CEMs that were unsolicited;
  - (ii) section 17 of the Spam Act by sending, or causing to be sent, CEMs that did not contain clear and accurate sender information;
  - (iii) section 18 of the Spam Act by sending, or causing to be sent, CEMs that did not have a functional unsubscribed facility; and
  - (iv) any other requirement of the Spam Act.
- (d) During the course of the investigation, Nokia provided information relating to the issues raised by ACMA and held discussions with the ACMA in order to understand its concerns.
- (e) On the basis of information provided to the ACMA during the course of the investigation, the ACMA formed a preliminary view that:
  - (i) Nokia sent or caused to be sent CEMs, which were not designated CEMs, with an Australian link, without the consent of the electronic account-holder, potentially in contravention of section 16 of the Spam Act;
  - (ii) Nokia sent or caused to be sent CEMs with an Australian link, and without accurate sender information, potentially in contravention of section 17 of the Spam Act; and
  - (iii) Nokia sent or caused to be sent CEMs with an Australian link, and without a functional unsubscribe facility, potentially in contravention of section 18 of the Spam Act.

### 3.3 Acknowledgement of the ACMA's concerns

- (a) Nokia acknowledges the ACMA's concerns and has taken action to address these concerns. In particular, during the course of the investigation, Nokia investigated its compliance with the Spam Act and took steps, including:
  - (i) ensuring all CEMs sent by Nokia contain a functional unsubscribe facility;
  - (ii) improving its internal processes relating to unsubscribe requests;
  - (iii) conducting training of call centre staff in relation to compliance with the Spam Act; and
  - (iv) auditing its systems and its training materials to ensure compliance with the Spam Act.
- (b) Nokia was cooperative throughout the course of the investigation and has been responsive to the ACMA's requests.

### 3.4 Undertaking

- (a) In response to the ACMA's concerns regarding Nokia's compliance with the Spam Act, but without any admission, Nokia offers this Undertaking to the ACMA pursuant to section 38 of the Spam Act.

- (b) In light of Nokia's cooperation and other matters the ACMA has taken into account, the ACMA has accepted this Undertaking as an appropriate outcome of its investigation.

#### 4. Undertakings

##### 4.1 Payment

- (a) Nokia undertakes to pay to the ACMA, acting on behalf of the Commonwealth, an amount of AUD\$55,000 in resolution of the issues relating to the CEMs that were the subject of the ACMA's investigation.
- (b) Nokia will pay the amount referred to in clause 4.1(a) to the ACMA no later than 20 Business Days after the receipt of a payment statement from the ACMA. Payment is to be made by electronic transfer into a bank account notified by the ACMA to Nokia in writing.

##### 4.2 Independent Consultant

- (a) Nokia undertakes to appoint an independent consultant (*Independent Consultant*) to review Nokia's current e-marketing activities with regard to its compliance with the requirements under the Spam Act that:
  - (i) all CEMs sent by Nokia or its Subsidiaries contain the information required by section 17 of the Spam Act;
  - (ii) all CEMs sent by Nokia or its Subsidiaries contain a functional unsubscribe feature as required by section 18 of the Spam Act; and
  - (iii) Nokia or its Subsidiaries handles all unsubscribe requests relating to CEMs in accordance with section 6 of Schedule 2 of the Spam Act(together, *Spam Act compliance*), and to produce a report identifying any deficiencies and recommending improvements to policies and procedures to ensure Spam Act compliance (*Report*). The Independent Consultant will also recommend the frequency and scope of audits (including how many CEM campaigns or percentage of campaigns should be audited and how often) for the purposes of clause 4.6(b).
- (b) Nokia may invite parties to tender for the role of Independent Consultant and will evaluate the tenders using its own criteria.
- (c) Nokia will notify the ACMA within 5 Business Days after the Commencement Date of the proposed Independent Consultant. The ACMA must notify Nokia whether it approves the Independent Consultant. If necessary, Nokia will repeat this process until it has the ACMA's approval.
- (d) Nokia will appoint the Independent Consultant within 10 Business Days after the ACMA has given its approval.
- (e) The Independent Consultant will provide the Report to Nokia, and at the same time to the ACMA, within 4 months of their appointment
- (f) Nokia may remove the Independent Consultant at any time and engage a new Independent Consultant approved by the ACMA in accordance with this clause, other than due to the recommendations or findings in their Report or for the purposes of clause 4.6 (b).
- (g) Nokia may require the Independent Consultant to keep confidential any information relating to Nokia that is commercially sensitive information or confidential



information of Nokia, but not such that this adversely affects the Independent Consultant's ability to carry out its activities in compliance with this Undertaking.

#### 4.3 Implementation Plan

- (a) Within 1 month after receiving the Report, Nokia will produce an implementation plan report (*Implementation Plan*) setting out:
  - (i) the steps Nokia has taken or will take to implement any proposed improvements identified in the Report, including timeframes for each of the steps to be taken;
  - (ii) the steps Nokia has taken or will take to rectify any deficiencies identified in the Report, including timeframes for each of the steps to be taken; and
  - (iii) any other matters Nokia sees fit.
- (b) The Implementation Plan should be:
  - (i) limited to the implementation of any proposed improvements, or to rectification of any deficiencies, identified in the Report;
  - (ii) limited to measures directly relating to compliance with the Spam Act by Nokia;
  - (iii) practicable and reasonable having regard to the legal status and responsibilities of Nokia; and
  - (iv) practicable and reasonable having regard to the nature and volume of CEMs handled and sent by Nokia, and the manner in which CEMs are handled by Nokia's systems.

#### 4.4 Approval and implementation

- (a) Upon completion of the Implementation Plan, Nokia will provide the ACMA with a copy of the Report and Implementation Plan. The ACMA will notify Nokia whether it approves the Implementation Plan. If necessary, Nokia will repeat this process until it has the ACMA's approval.
- (b) Once the Implementation Plan has been approved by the ACMA, Nokia will carry out each of the steps in the Implementation Plan in accordance with the timeframes specified in the plan. Nokia acknowledges that, from time-to-time, it may require certain steps to be undertaken by Nokia Subsidiaries.
- (c) Nokia will report to the ACMA on its implementation of the Implementation Plan in accordance with clause 4.7. If any items in the Implementation Plan have not been implemented at the expiry of this Undertaking, Nokia will continue to provide quarterly updates to the ACMA in respect of those items until they are implemented.

#### 4.5 Training

- (a) Within 40 Business Days after the Commencement Date, Nokia will submit to the ACMA for approval a written copy of its training program. This program will provide training on Spam Act compliance.
- (b) Within 40 Business Days after the ACMA informs Nokia that the training program is approved, Nokia will provide the approved training program to its employees and contractors who are responsible for sending CEMs or who deal with enquiries or complaints about CEMs. Nokia acknowledges that this may involve providing training to employees and contractors of Nokia Subsidiaries.

- (c) In addition, for the term of this Undertaking, Nokia undertakes to provide the approved training program on a quarterly basis to all new employees and contractors who are responsible for sending CEMs or who deal with enquiries or complaints about CEMs.
- (d) Nokia will report to the ACMA on the outcome of the training in accordance with clause 4.7. This report must include confirmation that all relevant employees and/or contractors have received training in accordance with clause 4.5 in the relevant reporting period.

#### 4.6 Audit

- (a) Nokia undertakes to audit 10% (rounded up to the next whole number) of CEM Campaigns sent by Nokia, on a quarterly basis, for the six months commencing 1 January 2012 to monitor its Spam Act compliance.
- (b) Nokia undertakes to audit CEM Campaigns, for the remaining period of this Undertaking, in accordance with the parameters stipulated by the Independent Consultant in the Report.
- (c) The audit will include, at a minimum, an audit of the selected CEM Campaigns sent in the relevant audit period to determine whether:
  - (i) the recipients of the selected CEM Campaigns had withdrawn their consent to receiving the relevant CEM in accordance with section 16 of the Spam Act;
  - (ii) the selected CEM Campaigns contained accurate sender identification and contact information in accordance with section 17 of the Spam Act; and
  - (iii) the selected CEM Campaigns contained a functional unsubscribe facility in accordance with section 18 of the Spam Act. (For the avoidance of doubt, a CEM will be deemed to comply with section 18 of the Spam Act if an omission of a functional unsubscribe facility is excused or exempted by section 18(3) of the Spam Act or other applicable provisions or laws.)
- (d) Nokia undertakes to conduct each audit no later than 20 Business Days after the end of the relevant audit period.
- (e) Nokia will report to the ACMA on the outcome of audits conducted in accordance with clause 4.7.

#### 4.7 Reports

- (a) Nokia will provide a report template to the ACMA. This template should set out the proposed format of the report and identify what issues will be addressed in each report. The ACMA will notify Nokia whether it approves the report template. If necessary, Nokia will repeat this process until it has the ACMA's approval.
- (b) Nokia will provide a report to the ACMA on a quarterly basis, setting out for the previous quarter, as applicable:
  - (i) the steps taken by Nokia to implement the Implementation Plan;
  - (ii) confirmation that Nokia has completed any training in accordance with this Undertaking; and
  - (iii) the results the audit conducted in accordance with this Undertaking.
- (c) Each report must be in the form of the report template approved by the ACMA.

- (d) Nokia acknowledges that, from time-to-time, it may require Nokia Subsidiaries to provide information to Nokia to be included in the reports.
- (e) The first quarterly report is due 30 Business Days after the end of the first quarter commencing 1 January 2012.

4.8 General

- (a) In addition to the specific obligations set out in this Undertaking, Nokia undertakes to do all things reasonably necessary to give effect to this Undertaking.

**5. Acknowledgements of Nokia**

Nokia acknowledges that:

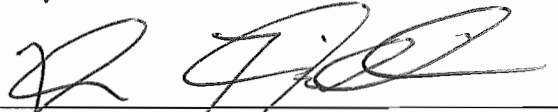
- (a) the ACMA may make this Undertaking available for public inspection; and
- (b) acceptance by the ACMA of this Undertaking does not derogate from any rights and remedies available to any other person arising from the conduct described in this Undertaking.

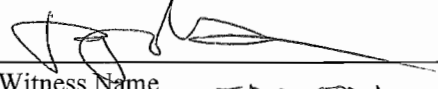
**Signed by Nokia Corporation**

On 12.12 2011

  
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 Signature

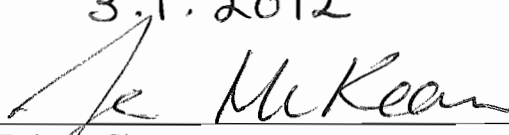
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 Witness Signature  
HANNU KOIKKALAINEN

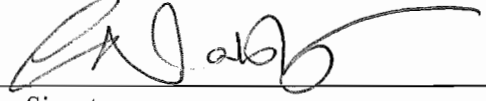
  
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 Witness Name  
JARMO NIEMINEN

**The Undertaking is accepted by the Australian Communications and Media Authority pursuant to section 38 of the Spam Act 2003 (Cth), by its delegate:**

On \_\_\_\_\_ 2011

3.1.2012  
  
 \_\_\_\_\_  
 Delegate Signature

Julia Cornwell McKeon  
 \_\_\_\_\_  
 Delegate Name  
Alg Executive Manager, UCB

  
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 Witness Signature

Tina Nabb  
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 Witness Name