

**For discussion
on 11 January 2010**

**Legislative Council Panel on
Information Technology and Broadcasting**

**Chargeable Mobile Content Services Delivered
Via Short Messaging Services**

PURPOSE

There is public concern about billing disputes in connection with chargeable content services provided through Short Messaging Services (“SMS”). The purpose of this paper is to brief Members on the issue and the action taken by the Office of the Telecommunications Authority (“OFTA”) to address it.

BACKGROUND

2. In recent years, alongside with development in other economies with advanced communications services such as Japan and Korea, mobile phones in Hong Kong have been increasingly used to deliver content services to target customers. There is a wide variety of such mobile content services (hereafter referred to as MCS) currently available in the market, ranging from stock quotes, weather forecast and report, flight information, to more sophisticated ones like location-based services with recommendations on nearby restaurants, or even social networking. These services may be delivered through various means, the most common being SMS. Such content services enrich the user experience in using the mobile phone, and are useful value-added services on the mobile network.

3. The relevant content services are quite often provided by third party content providers (CPs) unaffiliated to Mobile Network Operators (MNOs) (who are licensees of OFTA) on whose networks the MCS is delivered. These third party CPs are not licensees of OFTA since they are not providing

a telecommunications service. Most of these third party CPs may not have a direct billing relationship with their target customers, instead, they rely on the readily available billing mechanism which the MNO has with the customer. This arrangement is put in place by the MNO and third party CP entering into a commercial contract. Each MNO typically contracts with a number of such third party CPs.

4. There are two main ways to obtain MCS from the CPs. First, the customer may have to register for such services through the Internet. During the registration process, the customer will be asked to provide his mobile phone number. When the registration process is completed, the customer will receive an SMS from the CP on his mobile phone requiring the customer to respond. Once he responds to this SMS, the customer will be taken to have confirmed his subscription. Secondly, the customer may receive promotional messages sent by the CP direct to his mobile phone, and he will have to respond proactively to these messages with his mobile phone if he wishes to subscribe to the service. In most cases, after the consumer has confirmed subscription, he will be billed by his MNO on behalf of the CP for the MCS provided by the CP. In the case of registration through the internet, the CP is supposed to provide clear charging information and relevant service terms and conditions to the customer during the registration process. In the case of subscribing by responding to promotional messages to the mobile phones which have limited space for displaying message, the CP should provide clear indication of the applicable charges so that the customer is well aware of the service subscription and applicable charges. However, there have been cases where some CPs have failed to do any of these.

BILLING DISPUTES

5. From January to October 2009, OFTA has received 78 complaints about billing disputes in connection with chargeable MCS (the figure increased to 96 up to mid-December 2009). OFTA has analysed the complaints and found that in some cases the CPs have either failed to provide in their messages or websites detailed and clear charging information, or indicate clearly to customers how they may unsubscribe from the services. Some complainants also indicated that they were not fully aware that they had registered with the services and the services were chargeable.

ACTION TAKEN BY OFTA

6. In the light of the number of MCS billing dispute complaints received, OFTA wrote to MNOs on 4 November 2009 to draw their attention to the problem and explore what measures could be taken to improve the system, in particular whether an alert or warning could be inserted in each SMS message containing chargeable content.

7. On 20 November 2009, OFTA issued a consumer alert to advise the consumers on necessary precautionary measures to avoid possible billing disputes and unnecessary financial loss due to subscription to and consumption of MCS. A copy of the consumer alert is attached at Annex. OFTA has also asked MNOs to follow up on the complaints received.

8. On 26 November 2009, OFTA met with MNOs to pursue the issue. MNOs' general response is -

- (a) since the MCS provided by third party CPs is conveyed on MNOs' platform, MNOs consider it important for the charging information for MCS to be transparent and easily comprehensible. Hence, included in the contract between MNOs and third party CPs is the need for the latter to set out clear charging information in chargeable MCS. MNOs would check compliance with such contract terms when the MCS is first launched. However, MNOs indicated that they do not monitor continued compliance on an on-going basis;
- (b) charging information of MCS provided by a third party CP is part of the service provided by that third party CP who should be held accountable for it. As such, MNOs can only negotiate with third party CPs on the proposed alert or warning about chargeable content (paragraph 6 above) to be inserted in each SMS message, but cannot dictate it be included. MNOs regard their role in the issue lies mainly in collecting usage fee on behalf of third party CPs; and
- (c) MNOs would help in resolving billing disputes between third party CPs and customers.

9. Notwithstanding the role of CPs in the issue, OFTA believes that MNOs have a distinct part to play to help ensure that the charging information of MCS provided by third party CPs is clear and transparent. Since these CPs rely on MNOs' platform to convey their MCS to target audience and to collect revenue from subscribers, strict enforcement of the terms in contracts between MNOs and CPs requiring the latter to provide clear and transparent charging information (e.g., by revoking contract with those CPs found in repeated breach) would go a long way to alleviate the problem. To be effective, the relevant contract terms must be unequivocal and comprehensive.

10. On 15 December 2009, the Consumer Council published a report on billing disputes arising from chargeable SMS. By then, more than half of the 96 complaints received by OFTA up to that date have already been resolved by MNOs. At a meeting between OFTA and senior level representatives of MNOs on 16 December 2009, a consensus was reached that a Code of Practice (CoP) should be formulated to set out clearly measures to improve transparency of charging information of chargeable MCS. In particular, these measures should include requirements that CPs -

- (a) indicate prominently the chargeable nature of the services and when such charges start to trigger;
- (b) provide clear charging information;
- (c) obtain clear consent from user before service is provided;
- (d) set out clearly arrangements for unsubscribing or deregistering from the services. Such arrangements should be easy to understand and carry out;
- (e) ensure that disputed content service charge will not affect the normal mobile phone services of the concerned subscribers; and
- (f) if there is non-compliance, the CPs have to make rectification within 24 hours. If there is failure in making rectification, the concerned service of the CP will be terminated. If further non-compliance is

identified, the MNO will terminate the contract with the concerned CP at all.

MNOs would help resolve charging disputes between CPs and customers.

11. The CoP will set out clearly the part to be played by MNOs and other relevant parties. It will be voluntary in nature. OFTA will take prompt action if any telecommunications licensee is found in breach of the licence conditions or provisions under the Telecommunications Ordinance.

WAY FORWARD

12. It is expected that the CoP will be implemented within January 2010 after finalisation. OFTA will monitor closely the implementation of the CoP and assess its effectiveness. If problems persist after the CoP has been implemented, the Administration will consider whether or not there is a case to pursue legislative amendments to enhance the protection for consumers.

13. Looking ahead, with increasingly varied services provided or conveyed through mobile phones, the public expect MNOs and other relevant parties to ensure that such services meet the satisfaction of the customers. It is therefore important that the industry should place consumer interest at the forefront to safeguard their business and reputation.

**Commerce and Economic Development Bureau
(Communications and Technology Branch)
Office of the Telecommunications Authority
4 January 2010**

**Beware of Chargeable Mobile Content Services Delivered via
Short Messages and Multi-media Messages**

With the increasing popularity of the mobile service, more and more service providers make use of the short messaging service (SMS) and multi-media messaging service (MMS) to deliver their content services to the mobile phones of their target consumers.

In some cases, the consumer may have to register for such services through the Internet. During the registration process, the consumer will be asked to key in his mobile phone number. When the registration process is completed, the consumer will receive a SMS from the service provider on his mobile phone. Once he responds to the SMS with his mobile phone, the consumer will be taken to have confirmed his subscription. In other cases, the consumer may receive promotional messages sent by the service provider direct to his mobile phone, and he will have to respond proactively to these messages with his mobile phone if he wishes to subscribe to the service. In all cases, after the consumer has confirmed subscription, he will be billed by his mobile network operator on behalf of the service provider for consuming the service.

In most cases, after the consumer confirms his subscription, he will receive such chargeable messages on a one-off basis only. However, sometimes he may have subscribed to the service on an on-going basis and will continue to receive chargeable content or messages until he has successfully terminated the service subscription with the service provider.

The Office of the Telecommunications Authority (OFTA) has recently received a number of complaints about billing disputes in connection with this kind of services. OFTA has analyzed the complaints and found that in many cases the service providers have either failed to provide in their messages or websites detailed and clear charging information, or indicate clearly to customers how they may unsubscribe the services. Some complainants also indicated that they were not fully aware that they had registered with the services and the services were chargeable.

To avoid any billing dispute and unnecessary financial loss, consumers are advised to take the following precautions in connection with this kind of services:

1. *Think twice before responding to these marketing messages*

- When you receive this kind of SMS and MMS on your mobile phones, read carefully the messages and think clearly before you respond to them.
- Before you make your procurement decision, please make sure that you really understand the charge plan and the service conditions. Once you have positively responded to such message, for example, by keying in certain numbers or letters, you will be taken to have subscribed to the services and you will be liable to the service charges. In certain cases, you may have given your agreement to subscribe to the services on an on-going basis and you will be liable to the service charges until you have successfully terminated your subscription with the service providers.
- Do think very carefully before you provide your mobile phone numbers or your other personal information to the service providers.

2. *Always read clearly the service terms and conditions before confirming a service subscription/registration*

- Always read carefully the service terms and conditions, the charging information and the charging mechanism, as well as service termination procedures before you subscribe to the service. Whenever you have any doubt, please seek clarification with the concerned service provider or your mobile network operator.

3. *Check your mobile phone bills regularly and carefully*

- Please check your mobile phone bill carefully to make sure that it is in order and that you have not been charged for services which you have not subscribed or consumed.
- Please make sure that your family members (especially the children, who may use your mobile phone or have got their own mobile phones) understand that the content services may be chargeable and the charges may be rather hefty if not properly handled.

4. Enquire your content service provider/mobile service provider whenever in doubt

- Please make an enquiry with your mobile network operator or the relevant content service provider if you receive any doubtful SMS or MMS.