

Consumer Council's submission to
Panel on Information Technology and Broadcasting of the
Legislative Council

Code for the Provision of Chargeable Mobile Content Services

1. The Consumer Council welcomes the opportunity to offer its comments on the Code for the Provision of Chargeable Mobile Content Services presented by OFTA on 11 January 2010.

Advertisement and Promotion of Products/Services

2. The Council advocates greater transparency in the sales practices of the content service provider (CSP).
3. The Council suggests that when advertising and promoting the mobile content service (MCS), the CSP should clearly disclose the whole charging system including the purchase price of the content and/or the price of the subscription-based service (para 2.3 refers) as well as the mode of operation in sending out chargeable messages.
4. Currently, some mechanisms demonstrate that the number and frequency of messages sent are in the hands of the CSP. According to the complaints lodged with the Council, a total of 80 chargeable short messages (HK\$5/message) were sent by a CSP to the Customer's access device within one hour which means, once the consumers confirmed the use of service, they are at the mercy of the CSP who decide on how many SMS to send to the users' mobile even the users do not open the SMS. As a result, simply displaying the charge per message may not be sufficient. It is necessary to draw the Customer's attention to the mechanism of sending/ receiving messages and the charges that may involve.

Customer Authorisation/Consent

5. The Council opines that if all purchases of MCS or subscription for MCS require active opted-in by Customers, it would help to eliminate a lot of the current charging disputes. The proposal of having the CSP obtained explicit consent and confirmation of subscription from the Customer is essential to

make the Customer aware of what services he has registered.

6. The Council further suggests that, upon confirmation of subscription, the Customer should be allowed to set up a maximum limit of usage/charges for the services subscribed. Once usage exceeds the preset amount, the CSP must notify the customer and obtain further consent on whether the services should be continued.

Un-subscription/Termination of Service

7. The Council supports the proposal that clear and accessible channels should be provided for customers to unsubscribe/ terminate services. However the effectiveness of the termination mechanism has yet to be proved.
8. In view of the large amount of customer complaints the mobile network operator (MNO) is currently dealing with, if the MNO is required to further handle termination request raised by the Customer and verify the Customer's billing information of the subscribed MCS, it is uncertain whether the MNO has the extra resources to perform the new task effectively. Timely and accurate transfer of termination requests between the CSP and MNO is important to prevent further billing problems

Monitoring of Accumulated Charges and Other Issues

9. Regarding the monitor of usage upsurge and the issue of customer alert, the Customer should be well-informed of what is defined as usage upsurge and his applicable account threshold. The Council suggests the CSP to align the account threshold with the maximum limit of usage set by the Customers as mentioned in point 6 above.
10. The CSP and the MNO must also ensure that the usage upsurge monitor and alert system is practicable and reliable.

Commercial Contract between the MNO and CSP

11. It must be noted that apart from the commercial contract between the MNO and CSP, there also exists a contract between the CSP and the Customer

for the consumption of the MCS. In the event that the MNO decides to disconnect the CSP's concerned service from its network platform, the parties should also work out how to handle the contract between the CSP and the customer.

12. The Council reiterates that consumer interest must be well protected when the MNO and the CSP decide to terminate their commercial contract.

Compliance checking and monitoring mechanism

13. As the Code is basically on voluntary basis, adequate effective measures or incentives to ensure compliance should be in place.
14. The Council has reservation over the proposal of setting up an Administrative Authority (AA) to monitor continuing compliance of the CSPs with the Code. The Code should further elaborate on the organization and the member composition of the AA as well as its vested authority to sanction against non-compliance. The Council hopes that the AA is truly capable of strictly enforcing punitive measures against non-compliance of CSPs.
15. As for the proposed warning system and revocation of the letter of positive assessment, it may not be sufficient to combat non-compliance. Despite AA may publish a revocation list of CSPs on its web site, the CSPs can change their business name and continue to engage in malpractices.
16. The Council also calls for the active involvement of the Office of the Telecommunications Authority (OFTA) in enforcing the Code and overseeing compliance. As a regulatory and licensing authority, the OFTA would be in a better position to discharge the monitoring function.