
INFORMATION NOTE

Preventive measures of mobile bill shock implemented in the European Union

1. Background

1.1 At its meeting held on 14 October 2010, the Panel on Information Technology and Broadcasting (Panel) referred to the cap on data roaming charges¹ imposed in the European Union (EU) to protect consumers from mobile bill shock when it discussed the increasing public concern about the problem of exorbitant data roaming charges in Hong Kong. Accordingly, the Panel requested the Research Division to prepare an information note on the preventive measures of mobile bill shock implemented in the European Union to facilitate further deliberation. For the Panel's easy reference, the current situation of mobile bill shock and preventive measures recently imposed in Hong Kong are also covered in this information note.

2. Development of preventive measures of mobile bill shock

2.1 In the early 2000s, the European Commission, being a governing body of the EU, had repeatedly urged mobile operators in the EU to lower the charges for using mobile phones abroad. Nonetheless, the charges remained on average four times more expensive than those on domestic mobile phone calls. The European Commission launched a consumer website on roaming tariffs in October 2005 to expose this continuing problem, such as roaming charges of up to €12² (HK\$129.6) for a four-minute call. As the pricing behaviour of mobile operators did not budge, the European Commission proposed to cap roaming tariffs within the EU by enacting a regulation³ in July 2006.

¹ The roaming charges of the EU discussed in this information note exclude the value added tax imposed by individual member states.

² The average exchange rate in 2009 was €1 = HK\$10.8.

³ As roaming is a cross-border service and national telecommunications regulators may only exercise their powers at the member state level, the European Commission has to intervene the market by regulation.

2.2 There was a public consultation on the regulation of roaming charges proposal in 2006. A detailed impact assessment⁴ was published focusing on the issues of roaming voice services, with roaming services related to text messages and data being left aside. The consultation exercise revealed widespread support among national telecommunications regulators and consumer associations for the European Commission's proposal of regulating roaming charges. However, most mobile operators opposed any form of regulation as they argued that the market was competitive and prices were falling.

2.3 After considering the feedback and debating the issues, the European Parliament decided to regulate the market by enacting the *Roaming Regulation*⁵ 717/2007 to address voice roaming only, being effective from June 2007. It capped both wholesale and retail roaming charges imposed in the EU to ensure the proper functioning of the European single market and a high level of consumer protection. The retail price limits were set at €0.49 (HK\$5.3) per minute for calls made abroad and at €0.24 (HK\$2.6) per minute for calls received abroad across the EU.

2.4 Under Article 11 of the *Roaming Regulation* 717/2007, the European Commission was tasked to review the legislation in 2008 and decide whether or not to extend it in time and scope, especially whether roamed text messages and data services⁶ should be covered. At the time, the European Commission hoped that competition would play its role in the roaming market and that mobile operators would demonstrate their willingness to voluntarily reduce the high roaming charges for text messages and data.

2.5 In February 2008, the European Commissioner for Information Society and Media asked mobile operators to voluntarily bring down the prices for text messages by July 2008; otherwise, the European Commission would have to impose the necessary regulation.

⁴ The findings of the impact assessment were submitted to an Impact Assessment Board, which made up of high-level European Commission officials, for consideration of formulating the policies.

⁵ EU Regulations are legal acts that are directly applicable in all member states after their publication in the Official Journal of the European Union. As such, EU Regulations are instruments to achieve uniform solutions at the EU level.

⁶ The use of data services includes sending multimedia message service (MMS), browsing Internet and accessing e-mails through a number of devices such as mobile phones, Blackberry devices, personal digital assistants (PDA) and laptop computers.

2.6 Despite political pressure, the ensuing figures collected by the European Commission showed that prices for text messages remained high, with an average of €0.29 (HK\$3.1) per short message service (SMS), which was down only modestly over the past years. In addition, the charges for roamed text messages were high compared to actual costs incurred by operators, and remained substantially higher than data services domestically. The European Commission hence determined to resolve the roaming charges problem on text messages.

2.7 Between May and July 2008, the European Commission launched a public consultation to gather responses from mobile operators, businesses and consumer associations on whether to extend the *Roaming Regulation 717/2007* in time and scope. The European Commission also published a detailed impact assessment examining the impact on consumers and the industry of various options that the European Commission could take after its review of the *Roaming Regulation 717/2007*. The *Roaming Regulation 717/2007* was subsequently amended as the *Roaming Regulation 544/2009*, which came into force in July 2009.

3. Preventive measures of mobile bill shock currently implemented

Capping of data roaming limit

3.1 Under the *Roaming Regulation 544/2009*, mobile operators were required to offer their customers, as of March 2010, the option of setting their own monthly cut-off price limit for data roaming via mobile phone or a computer. Starting July 2010, operators have been obliged to impose a monthly default cut-off for data roaming of €50 (HK\$540), if customers have not chosen a different cut-off level. These measures are intended to ensure that users will no longer receive massive bills because they have downloaded music or watched videos on their phones or computers while in another member state without being aware of the cost.⁷

⁷ The European Commission has provided two examples illustrating the problem. In 2009, a German traveller downloading a TV programme while roaming in France was charged a bill of €16,000 (HK\$496,800). In another example, a UK student received a bill of almost €9,000 (HK\$97,200) for data roaming during a single month while studying abroad.

3.2 The *Roaming Regulation 544/2009* stipulates that mobile operators are obliged to send an automatic message⁸ to their customers when they enter another EU country with their mobile phones or laptops. The message must inform consumers that they are roaming and give them basic information about the charges that apply for using their phones or computers to surf the web. A free phone number for customers to get more detailed pricing information should also be provided.

3.3 Further, if the customers have reached 80% of their specified limit,⁹ operators must send them a warning message. Customers are also informed of how they can continue data roaming beyond their agreed price limit if they want to. The operator must disconnect the data service if the customers do not indicate that they want to carry on surfing the web beyond the capped safeguard limit.

3.4 If a customer considers the operator concerned does not respect the rights under the *Roaming Regulation 544/2009*¹⁰, he or she may complain to the respective national telecommunications regulators, who are responsible for ensuring compliance with the EU roaming rules in their own member state and for imposing appropriate penalties on any operators that fail to fulfil their obligations.

Reducing roaming calls charges

3.5 As from July 2010, the roaming calls charges have been reduced, with limits setting at €0.39 (HK\$4.2) per minute for calls made abroad and at €0.15 (HK\$1.6) per minute for calls received abroad across the EU. Starting July 2011, the roaming charges for calls made abroad and calls received aboard will be further lowered to €0.35 (HK\$3.8) and €0.11 (HK\$1.2) per minute respectively.

⁸ The message may be sent as a text message, an e-mail or a pop-up window on the computer.

⁹ Customers may opt out and instruct their operators that they do not want to use the data roaming safeguard facility.

¹⁰ For example, the operator does not alert the customer concerned when reaching 80% of the monthly data roaming limit.

3.6 Since July 2009, a per-second billing after the first 30 seconds for roamed calls made and from the very first second for calls received while abroad has also been introduced. The European Commission has found that under per-minute billing, customers were paying 24% more than the minutes they actually used to make calls, and 19% more for calls they received. The European Commission considers this the hidden charge for roamed calls, and acts against this unfair practice.

3.7 In addition, starting July 2010, operators have not been allowed to charge their customers for receiving voice mails while roaming. The European Commission has regarded that users should not pay for these messages since they cannot control their duration or their receipt. However, customers may be charged for listening to the voice mail messages, in line with their tariff plan. As with the case of data roaming limit, customers may contact the national regulator in the member state where their mobile operator is based if they have any problems or questions about the roaming calls charges.

Lowering wholesale charge for data roaming

3.8 Since July 2010, the maximum wholesale charge for data roaming¹¹ allowed has been reduced from €1 (HK\$10.8) to €0.80 (HK\$8.6) per megabyte¹² of information uploaded or downloaded. The charge will continue to fall further to €0.50 (HK\$5.4) per megabyte from July 2011. The European Commission has considered that savings at the wholesale level should be passed on by operators to roaming customers, and has not planned to regulate the retail charges of data services at this stage because the market is competitive since consumers may access data services abroad by alternative means such as public wireless access to Internet.

¹¹ For providing roaming service, the foreign network operator will charge the customer's home operator. This charge, known as the wholesale charge, is passed on to the customer concerned.

¹² It is a multiple of the unit byte for digital information storage or transmission. In practice, a megabyte for data services allows approximately 200 e-mails without attachments or less than an hour of browsing time, but only one minute of MP3 compressed music.

Setting short message services charge limit

3.9 The charge of sending an SMS from abroad costs no more than €0.11 (HK\$1.2) while receiving an SMS in another EU country is free of charge.

Alerting customers of auto switching of networks

3.10 Auto switching of networks may happen without the users' knowledge. If their mobile phones are set to automatically connect to the strongest signals available, the phones may end up roaming even the users do not cross a border. Voluntary commitments and regulatory measures have been taken to tackle this problem. The *Roaming Regulation 544/2009* provides a transparency obligation for the operators to inform their customers the risk of automatic and uncontrolled data roaming connection and download, and to advise their customers in a clear and easily understandable manner how to switch off automatic data roaming connections to avoid inadvertent roaming in border regions.

3.11 National telecommunications regulators and mobile operators are tasked to educate the public about the risk of inadvertent roaming. In practice, leaflets are published to remind users to avoid bill shock by disabling the automatic network feature on their phones so that the devices will only connect to a different network with the users' prior consent. Mobile operators have also carried out different measures dealing with the inadvertent roaming problem, which include: investigating complaints of inadvertent roaming and refunding the roaming charges to the customers as a gesture of goodwill, if appropriate; and enhancing network coverage in border areas.

Reviewing the *Roaming Regulation 544/2009*

3.12 The European Commission intends to achieve a competitive single market for telecommunications services, and will present a review of the impact of the *Roaming Regulation 544/2009* by end-June 2011 at the latest, as required by the legislation. The review aims to assess the degree of success in reaching its objective, as outlined in the Digital Agenda for Europe¹³, that the difference in tariffs between roaming and home-country mobile phone calls should approach zero by 2015.

3.13 In the meantime, the European Commission will continue to monitor developments in roaming services and the implementation of the rules, in co-operation with the Body of European Regulators for Electronic Communications.¹⁴

4. Current situation of mobile bill shock and preventive measures recently imposed in Hong Kong

4.1 The Office of the Telecommunications Authority (OFTA) received 1 174 complaints related to mobile data services in 2010, compared with 337 cases received in 2009. Of the 2010 complaint cases, 67% were about billing disputes, which were caused by unintentional or inadvertent use of mobile data services. As regards complaints related to bill shock, OFTA received 789 cases in 2010, higher than 186 cases received in 2009. OFTA added that it had handled one complaint where a user was charged HK\$80,000 for using mobile data while travelling overseas.

4.2 The figures provided by the Consumer Council also show that the bill shock problem has been escalating, with complaints soaring from 473 in 2009 to 1 491 in the first 11 months of 2010. The total value involved in these complaints rose from about HK\$1 million to HK\$3.1 million in the corresponding period.

¹³ This action plan aims at contributing significantly to the EU's economic growth and spreading the benefits of the digital era to all sectors of the economy. The plan outlines a number of priority areas, which include: (a) creating a single digital market; (b) boosting Internet trust and security; (c) enhancing faster Internet access; (d) devoting more resources investment in research and development; and (e) enhancing digital literacy skills.

¹⁴ The Body serves as a platform for national regulatory authorities of the member states to exchange expertise and best practice on the functioning of the telecommunications market.

4.3 Unlike the EU, Hong Kong does not have any mandatory preventive measures of mobile bill shock. Nonetheless, in April 2010, OFTA introduced a set of voluntarily preventive measures, which are similar to the mandatory requirements imposed in the EU, and urged mobile operators to implement them in May 2010. Some of the major preventive measures proposed by OFTA include: operators allowing customers to opt out of individual services; setting a charge ceiling; setting a usage cap for all kinds of usage-based mobile services; and alerting customers through short messages as their pre-determined usage threshold is reached, or when their roaming data usage is triggered. Mobile network operators have already implemented the above measures to differing degrees.

4.4 OFTA has started publishing on its website from August 2010 measures implemented by individual mobile operators to address mobile bill shock to enhance consumer knowledge and increase the transparency of mobile market information.

4.5 In parallel, with a view to enhancing consumer awareness and knowledge of different aspects of the mobile services, OFTA has launched a series of publicity programmes such as television and radio announcements of public interest, newspaper columns, and publications of consumer alerts to educate the public on how to be a smart user of mobile data services.

4.6 In particular, to prevent bill shock, OFTA has advised mobile service users, particularly those using smart phones, to consider adopting the following measures:

- (a) choosing a data usage plan with a charge ceiling or unlimited usage (or unlimited data usage day plan for mobile data roaming services);
- (b) switching off the mobile data service function on the mobile phone whenever they do not need to use the service;
- (c) ensuring that their mobile data service function on the mobile phone is in the switch-off mode whenever they re-start their mobile phones;
- (d) monitoring the data usage regularly;

- (e) ensuring that their handsets have not been switched to mobile data services while they are using the Wi-Fi system to access Internet; and
- (f) asking the mobile operators concerned to deactivate the mobile data services, when appropriate.

4.7 Separately, to enhance consumer protection, OFTA issued a new voluntary code of practice in February 2010 to provide the industry with guidelines on drawing up fair and reasonable service contracts with consumers. Subsequently, in December 2010, the Communications Association of Hong Kong¹⁵ promulgated a voluntary *Industry Code of Practice for Telecommunications Service Contracts (Industry Code)* for adoption by the telecommunications industry. The *Industry Code* addresses certain key aspects such as the style, format and structure of written contracts, sales practices, and subsequent arrangements ranging from renewals to terminations.

4.8 All major fixed and mobile network operators and one major external telecommunications services operator have agreed to follow the *Industry Code* and will implement the necessary measures before mid-2011, complying with the provisions of the *Industry Code* for all new contracts. OFTA will monitor the implementation of the *Industry Code* and maintain dialogue with the industry on need for any further enhancement.

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¹⁵ The Communications Association of Hong Kong represents the interests of the communications industries, with responsibilities across broadcasting, wireline and wireless communications, and other relevant business sectors in the domain of information communications technology.

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