

# **Code for the Provision of Chargeable Mobile Content Services**

## **1. Preamble**

- 1.1 The Office of the Telecommunications Authority (OFTA) and the Consumer Council received a number of complaints in 2009 regarding billing by some content service providers (CSPs) of chargeable mobile content services (MCS) delivered through short messaging services (SMS)/ multimedia messaging services (MMS). More than half of these complaints have already been settled by the CSPs. Nevertheless, to address the public concern aroused by the complaints, this voluntary Code (Code) sets out the guiding principles for the various relevant parties to ensure that appropriate and proportionate procedures and processes are put in place to protect consumers. The Code seeks to ensure that the consumers are better informed of the service charges and the genuine consent of the consumers is obtained before service activation.
- 1.2 Some MCS may be provided by CSPs to customers pursuant to a CSP/Customer contract which makes use of Mobile Network Operators' (MNO) or Mobile Virtual Network Operators' (MVNO) platform to convey their content to customers. In such cases the CSPs may contract with the MNOs or MVNOs for the MNOs or MVNOs to provide a collection service for the CSPs. The Customers of the CSP are then billed by the relevant MNO or MVNO for consuming the MCS. In such cases, there exists two contracts, the first between the CSP and the customer for the consumption of the MCS and the second between the CSP and the MNO or MVNO for delivery of MCS and payment service.
- 1.3 The payment service contracts between MNOs and CSPs also include provisions which generally set out the obligations of the CSPs to inform customers of relevant service charges and obtain their proper consent to subscribe to the MCS. However such provisions, as well as the methods for ensuring compliance and the related procedures for dealing with non-compliance on the part of

the CSPs, are individual to each MNO. Accordingly there exists an opportunity for the establishment of the Administrative Agency (AA) as an independent body to align the contract provisions and various compliance procedures.

1.4 This Code relates to and complements the existing Industry Code of Practice on the Assignment of Access Codes for Value-Added SMS/MMS Services.

1.5 In this Code, the following definitions will apply:

1.5.1 Content Service Provider (CSP) means a person other than the MNO or MVNO or an affiliate of an MNO or MVNO that has a contractual relationship with a MNO or MVNO under which the latter agrees to (i) deliver the MCS originated by the CSP to the Customer; and (ii) bill and collect from the Customer direct on behalf of the CSP for consuming the MCS.

1.5.2 Mobile Network Operators (MNOs) are operators (either holding a Unified Carrier Licence or a Mobile Carrier Licence) that are licensed to provide a public mobile radiocommunications service.

1.5.3 Mobile Virtual Network Operators (MVNOs) are operators (either holding a Public Non-exclusive Telecommunications Licence or a Class 3 Service-Based Operator Licence) that are licensed to operate a mobile virtual network service.

1.5.4 Mobile virtual network service is a public mobile service making use of and by having access to, and interconnection with, the radiocommunications infrastructure of a MNO.

1.5.5 Mobile Content Service (MCS) means the content service provided by a CSP and delivered via SMS/MMS via the network of a MNO or a MVNO to the access device of a Customer who subscribes to the public mobile radiocommunications service of that MNO or the mobile virtual network service of that MVNO, as the case may be.

1.5.6 Administrative Agency (AA) means an entity set up or selected to (i) assess CSPs' capability of and securing their pledges in

complying with the relevant requirements stipulated in this Code and (ii) monitor the CSP's continual compliance with this Code.

1.5.7 Public mobile radiocommunications service is a public telecommunications service using cellular radiocommunications technology operating at frequencies specified in the relevant licence to enable two-way communications between moving locations or between a moving location and a fixed location.

1.5.8 Customer means the customer of MNO or MVNO who has subscribed to either the post-paid or pre-paid subscription of the public mobile radiocommunications service or the mobile virtual network service, as the case may be.

1.6 For those cases where MVNO does not have direct contractual relationship with the CSP, the MVNO shall make the necessary commercial arrangement with its hosting MNO so that the MVNO may fully comply with this Code. For this document, the term "MNO" will include both the MNO and the MVNO unless otherwise specified.

1.7 This Code does not apply to the mobile content services where the MNO or an affiliate of the MNO is the content service provider or where the customer subscribes for the mobile content services via the MNO's sales channels (e.g. portal, website, IVRS platform and other sales channels). In such mobile content services, the MNO will assume responsibility under its licence.

1.8 From time to time, Communications Association of Hong Kong (CAHK) and the industry may, in consultation with other stakeholders including OFTA amend or update this Code in order to meet industry's purposes or to reflect changes in telecommunications market.

## **2. Advertisement and Promotion of Products/Services**

2.1 Before entering into a commercial contract with a MNO to procure delivery and billing services in respect of its MCS, a CSP should

obtain from the AA a letter of positive assessment that the CSP is capable of complying and has pledged to comply with and complies with the relevant requirements stipulated in this Code.

- 2.2 After obtaining a letter of positive assessment from the AA, the CSP shall thereafter conduct its business in compliance with this Code.
- 2.3 When advertising and promoting the MCS using the printed media, the Internet, SMS or any other media, the CSP shall provide clear, prominent and legible information using plain language about the purchase price of the content and/or the price of the subscription-based service, indicating whether there is any sign-up cost and how the charge is calculated, including any mobile device originating charge, mobile device terminating charge or the charge per billing period. Any MCS marketing short message sent to a Customer's access device shall be sent at no charge to the Customer.
- 2.4 A detailed charging scheme shall be clearly indicated in a prominent position in any sales/marketing material in Chinese and English versions, including any printed media, publication on the website or other electronic media. For printed media, the font size of the charging information and any footnote shall not be less than 9. For information given on the web, clear information on the charging methods and fees should be given in the official web site of the CSP. A CSP cannot impose charges on any services if the charging information is not listed in the web site. There should be sufficient contrast between the body text and the background upon which the words are printed or displayed.

### **3. Customer Authorisation/Consent**

- 3.1 All purchases of MCS or subscriptions for MCS shall be opted-in by the Customer. A CSP shall not automatically register a Customer onto a subscription based MCS service upon purchase of a single MCS. Subscription based services shall in all cases provide confirmation to the Customers bringing their attention to

the fact that they have entered into a subscription based service with the applicable charges. This confirmation must be the first message sent to the Customer before the commencement and activation of chargeable messages.

- 3.2 The CSP shall obtain the Customer's explicit consent of subscribing to the MCS, i.e. once the Customer has completed the registration process or provided his/her mobile number or other personal information through the CSP's website to purchase the MCS or subscribe to the MCS, the CSP shall send the Customer a free SMS requesting him/her to confirm by replying to the CSP by entering a specified word, e.g. "YES", indicating whether he/she accepts or not. The CSP shall also obtain in the same message the Customer's explicit consent authorizing the MNO to act as a provider of fee collection service for the MCS. The message shall also include (i) the name of the subscription service; (ii) subscription service charge and the price that will be charged for the content; (iii) the expiry date of the subscription service; and (iv) the mechanism by which the Customer may use to cancel or terminate the service, with details of the customer hotline or helpline. This is essential in order to ensure the person requesting the purchase or subscription based service is also the registered Customer. An example of such SMS is given below:

"You apply for the Chargeable Content Service 'ABC' of 'XYZ Co.' Charges: \$30/week, \$5/msg sent, \$6/msg received, charges collected through this mobile phone account; service expiry date: 31/12/2010; Please send a message to 501111 with 'YES' to confirm; or a 'NO' to decline. To unsubscribe: send a 'UN' message to 501111. Customer Hotline: 23333333."

- 3.3 If the Customer replies by entering the specified word e.g. "YES", he/she has actively opted into this subscribed MCS, the subscription of the MCS may then commence with the issuing of the confirmation of subscription for the Customer's reference.
- 3.4 If the Customer does not reply, the CSP may not send the Customer any other messages (so far as the current transaction is concerned) until he/she actively opt-in to the MCS. The CSP may send, consistent with other requirements, offers to the Customer

but cannot treat the Customer in such a way as if a contract has been entered into. If the Customer replies with 'NO', the CSP shall confirm by return message at no charge to the Customer to the effect that the Customer's instruction NOT to subscribe to the MCS has been acted upon.

- 3.5 If the Customer does reply to the message but does not enter the specified word, e.g. "YES", the CSP shall not treat such a reply as confirmation or consent given by the Customer for subscription. The CSP may send another (but only one) SMS at no charge to this Customer to follow up the previous one to solicit his/her subscription decision.

#### **4. Un-subscription/Termination of Service**

- 4.1 The CSP shall provide information in a clear manner to Customers at no charge about how to unsubscribe and de-register from the subscription of MCS prior to the provision of the subscription based service or in the contract and on an on-going basis by various means, including the website, telephone and SMS and such information must be provided to the MNOs. The arrangements should be transparent and easy to use. For example, an automated SMS-based mechanism to unsubscribe shall be available for Customers of an automated SMS-based content service; or a web-based unsubscribing mechanism shall be made available such that Customers can unsubscribe in the same simple manner as he/she has subscribed to the same service earlier.
- 4.2 In respect of MCS where the charge is based on per message rate, the CSP shall make it clear to the Customers that they may unsubscribe or terminate the MCS at any time they want, via the mechanism as detailed in paragraph 4.1. Upon receiving an unsubscribe or termination request from a Customer, the CSP shall send a SMS to the Customer's device to confirm termination of the subscription service and advise the MNO immediately. Upon notification from the CSP, the MNO shall stop billing the Customer for the relevant MCS promptly.

- 4.3 For all other MCS where the service is provided at a fixed fee for a specified fixed period (such as a flat-rate monthly package), the un-subscription or termination should become effective on the date when the current billing cycle ends or follow the relevant contract term between the CSP and Customer, whichever is the earlier. Upon receiving an unsubscribe or termination request from a Customer, the CSP shall send a SMS to the Customer's device to confirm termination of the subscription service and advise the MNO immediately. Upon notification by the CSP, the MNO shall only bill the Customer for the relevant MCS for the remainder of the current billing cycle or in accordance with the relevant contract term between the CSP and Customer, whichever ends earlier.
- 4.4 In respect of termination or unsubscribe request raised by the Customer direct to the MNO for MCS where the charge is based on per message rate, the MNO shall provide promptly the Customer with information on how to contact the relevant CSP and shall (but not as the agent of the Customer) pass the record of the Customer's request as soon as practicable to the relevant CSP who will follow the procedures as detailed in the penultimate sentence of paragraph 4.2. The MNO may stop collecting charges from the Customer for the relevant MCS immediately. In respect of similar request for all other MCS where the service is provided at a fixed fee for a specified fixed period (such as a flat-rate monthly package), the MNO shall provide promptly the Customer with information on how to contact the relevant CSP and shall (but not as the agent of the Customer) pass the record of the Customer's request as soon as practicable to the relevant CSP who will follow the procedures as detailed in the penultimate sentence of paragraph 4.3. The MNO may only charge the Customer for the relevant MCS for the remainder of the current billing cycle or in accordance with the relevant contract term between the CSP and Customer, whichever ends earlier.
- 4.5 In respect of all MCS, the unsubscribe mechanism shall be transparent and easily accessible. The subscription confirmation messages and unsubscribe requests of Customers relating to MCS shall be duly recorded and the record should be kept for at least 12 months.

## **5. Monitoring of Accumulated Charges and Other Issues**

- 5.1 The Customer should monitor his/her usage of the MCS under his/her account. The CSP should monitor the usage of its MCS by its customers. The CSP and the MNO, pursuant to their payment services contract, shall in accordance with their usual customer alert policy regarding usage upsurge monitor from time to time the charges that a Customer has accumulated, and shall alert the Customer as soon as practicable if the accumulated amount has reached the threshold of the Customer based on his/her usage profile.
- 5.2 For any renewal of the subscription of MCS of a Customer, the MNO and CSP should follow all the principles listed in this Code.

## **6. Commercial Contract between the MNO and CSP**

- 6.1 Before entering into a commercial contract with a CSP to provide delivery and billing services, a MNO should ensure that a CSP has been issued a letter of positive assessment by the AA as set out in paragraph 7.2 below.
- 6.2 The terms of the commercial contract between the MNO and CSP governing the provision, delivery and billing arrangement for MCS shall require the CSP to strictly comply with this Code (as amended from time to time).
- 6.3 The MNO shall disconnect the CSP's concerned service from its network platform as soon as practicable and in any case within one business day if it receives a written notice in respect of that CSP from the AA in accordance with paragraphs 7.5 or 7.6 below.

## **7. Compliance Checking, Complaint Investigation and Disconnection of CSP from MNO Platform**

- 7.1 The AA shall devise

- (a) a set of procedures/criteria which it will use to assess an applicant CSP's capability of and securing their pledges to comply with this Code;
  - (b) a set of procedures for the AA to conduct checks on compliance or otherwise with this Code (as set out in paragraphs 7.3 and 7.4) of CSPs issued with a letter of positive assessment; and
  - (c) a set of procedures setting out the roles of the respective parties (MNOs, AA, CSPs and Customers) in handling complaints against CSP's non-compliance with this Code.
- 7.2 The AA's positive assessment in respect of (i) the CSP's ability to comply with the requirements stipulated in this Code and (ii) the CSP's pledge to comply with the relevant requirements stipulated in this Code will be given in the form of a letter (which has not been revoked under paragraph 7.5 or 7.6) to the relevant CSP.
- 7.3 The AA shall check compliance with this Code by CSPs issued with a letter of positive assessment on a random basis.
- 7.4 Whether through its own random monitoring or complaint handling by parties involved, if a case of non-compliance by a CSP with any requirement under this Code is substantiated after following due process, the AA may issue a warning to the CSP and ask the CSP to suspend the relevant MCS. In parallel, the AA shall notify the MNOs which host the CSP of such a warning. After the CSP has satisfied the AA that it has rectified the non-compliance, the relevant MCS can be resumed.
- 7.5 If the CSP fails to suspend the service at the AA's request, the AA will notify in writing all the MNOs so that all MCS of the CSP will be disconnected from all MNOs' platform. The AA will also revoke the letter of positive assessment issued earlier to this CSP. The AA will then publish the revocation on its web site. All MNOs with whom this CSP has a contract with will disconnect the CSP from their platform.

- 7.6 The AA shall keep a record of all warnings issued to individual CSPs. If within a period of 2 months, a CSP receives a total of 3 warnings under paragraph 7.4 from the AA, notwithstanding that the CSP has fully rectified the non-compliance required by the first 2 warnings that it has received, the AA may revoke the letter of positive assessment issued earlier to this CSP. The AA will then notify all MNOs in writing of this revocation and publish the revocation on its web site. All MNOs with whom this CSP has a contract will disconnect the CSP from their platform
- 7.7 The AA will maintain and update periodically (i) a list of CSPs with valid letters of positive assessment issued by the AA; and (ii) a revocation list of CSPs whose letters of positive assessment have been revoked by the AA.

## **8. Verification of Billing Information**

- 8.1 To assist and facilitate the Customer and the CSP in resolving any billing dispute, the MNO shall, consistent with privacy requirements, help verify the Customer's billing information of the subscribed MCS, the billing records and call logs.

## **9. Non Interruption of Telecommunications Services**

- 9.1 Any MCS related billing dispute between a Customer and a CSP shall not affect the availability of the rest of the telecommunications services subscribed by the concerned Customer with the MNO.

Communications Association of Hong Kong

8 January 2010