

**For Information
On 9 May 2005**

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

Regulation of Resale of Telecommunications Services

Purpose

This paper briefs Members on the public consultation on the proposal of the Telecommunications Authority (TA) to commence section 8(1)(aa) of the Telecommunications Ordinance (Cap. 106) (the Ordinance) to regulate certain resale of telecommunications services.

Background

2. Section 8(1) of the Ordinance provides that certain activities, including the establishment or maintenance of a means of telecommunications, or possession or use of radiocommunications apparatus, are subject to telecommunications licensing. With a view to extending the regulatory regime to persons who offer telecommunications services in the course of business without operating the means of telecommunications themselves, section 8(1)(aa) was introduced in 2000. Section 8(1)(aa) provides that a person who “offer[s] in the course of business a telecommunications service” is subject to licensing requirement. Section 8(1)(aa) is enacted in wide terms encompassing the offer of any telecommunications services in the course of business. It does not stipulate any specific requirements on the mode of business operation by which telecommunications services are offered. Section 8(1)(aa) (as well as its definition provision section 8(1A)) however has not yet been brought into operation as we have been monitoring the development of the industry with a view to deciding which types of operations should be brought into the regulatory framework.

3. After review, we consider that some business operations falling within section 8(1)(aa) have indeed generated regulatory concerns, but we also

consider that other types of business operations involving the offer of telecommunications services do not give rise to regulatory concerns. To bring the latter types of business operations into the regulatory framework would create compliance burden, and hence compliance costs, for those business operations without creating significant regulatory benefits. The TA is inclined not to subject them to regulation for the time being, but will continue to monitor those types of business operations and bring them into the regulatory framework as necessary.

Public Consultation

4. On 15 October 2004, the TA issued a consultation paper (the Consultation Paper) proposing to regulate the following operations involving the offer of telecommunications services in the course of business:

- (a) the resale of telecommunications services on a pre-paid basis; and
- (b) the resale of telecommunications services by an associated corporation of a fixed or mobile carrier, or a telecommunications licensee in a dominant position, when the services being resold are operated by the carrier or the dominant licensee.

5. The TA received a total of eight submissions to the consultation ending on 14 December 2004. The Consultation Paper and all of the submissions have been published on the website of the Office of the Telecommunications Authority (OFTA) at <http://www.ofa.gov.hk>.

Resale of Telecommunications Services on a Pre-paid Basis

6. The most common form of prepaid telecommunications services offered by resellers is the offer of prepaid telephone cards, such as prepaid international direct dialling (IDD) calling cards or prepaid SIM cards for mobile services. Different from existing telecommunications licensees who offer prepaid services operated by themselves, resellers simply purchase the services from licensed operators, and then “resell” the services using their own brand names.

7. The need to regulate resellers of prepaid telecommunications services

mainly stems from the risk that some resellers can abscond after receiving customer prepayment, leaving the customers with no recourse to trace the resellers for refund. The TA therefore proposed to subject this kind of resellers to licensing control so as to protect consumer interest, as well as safeguard against anti-competitive conduct and misleading or deceptive conduct under the Ordinance.

8. In the Consultation Paper, the TA proposed to create a Class Licence for Resale of Telecommunications Services on a Prepaid Basis (the Class Licence) as a simple and low-cost approach to regulate such resellers. Persons who are currently reselling telecommunications services on a prepaid basis will be required to register with the TA as class licensees before their business operations can continue.

9. By requiring the resellers to register as class licensees, the TA can effectively monitor the operations of the resellers, conduct investigations, impose regulatory sanctions and issue directions for remedial action as appropriate.

10. Respondents to the consultation are generally supportive to the proposal to regulate resellers of prepaid telecommunications services and to make use of a class licence for such regulation.

Scope of the class licence

11. The TA proposed in the Consultation Paper that all kinds of telecommunications services that could be resold (such as voice or data services, local or external services, fixed or mobile services) would be subject to regulation. The respondents to the Consultation Paper generally support that the scope of the Class Licence should cover all telecommunications services.

Criteria of a Prepaid Reseller

12. “Reseller” is a loose concept that can entail different degree of involvement in the operation of the services being resold. To provide certainty to the industry and the public, the TA proposed that a reseller of prepaid telecommunications services should meet the following four criteria before he/she falls within the proposed regulatory regime:

- (a) offers a telecommunications service in the manner as described in section 8(1A) of the Ordinance (the definition provision for section 8(1)(aa));
- (b) resells, with or without repackaging, the telecommunications services operated by other persons for the purposes of offering the telecommunications services under a brand name different from that of or designated by the person with whom he makes an arrangement for the provision of the telecommunications services;
- (c) controls the tariffs for the telecommunications services offered (i.e. the tariffs are set by the person who offers the services rather than by the service operators); and
- (d) receives prepayment for the telecommunications services offered.

Given these four criteria, agents or sales representatives engaged by licensed operators (fixed carriers, mobile carriers, external telecommunications services (ETS) operators or mobile virtual network services operators (MVNO) etc.) to market their prepaid services or distribute their prepaid calling cards will not be regarded as “resellers of prepaid telecommunications services”. They will only be regarded as employees, agents or contractors of the relevant licensees, and their acts should be taken care of by the respective licensees. The respondents generally have no objection to the proposal but would appreciate more elaboration and clarification on what these criteria entail.

Licence conditions of the class licence

13. The main licence conditions proposed in the Consultation Paper are highlighted in the following paragraphs.

(a) Registration

14. The respondents generally support the TA’s proposal to require resellers of prepaid services to register under the Class Licence. Some respondents further submit that the information of the resellers should be updated for enquiry and tracking purposes. The TA will take this comment into consideration. In view of the low estimated administrative costs involved, the TA explained in the Consultation Paper that he did not intend to levy any licence or registration fee for the time being but would keep the matter in view. This is not met with any objection from the respondents.

(b) Provision of Information to Customers

15. In the Consultation Paper, the TA proposed to impose a condition to require the class licensees to provide specific information to the consumers when the telecommunications services are offered. Such specific information includes the name of licensee, the registration number under the Class Licence, hotline number, access code, access instructions, tariffs and expiry date of the prepaid services. The information provided would facilitate customers in making informed purchasing decisions as well as make it possible for customers to trace the resellers for refund in case of default. We receive general support from the respondents to this proposal.

16. The TA also mentioned in the Consultation Paper that if the licence condition is adopted for the Class Licence, a similar condition will be imposed on the existing telecommunications services licensees who are also engaged in providing prepaid telecommunications services. This proposal is not met with any objection from the respondents.

(c) Financial obligations

17. In the Consultation Paper, the TA also explored the feasibility of either requiring the resellers to maintain a net asset value relative or equivalent to the amount of prepaid proceeds collected at all times, or to procure a bank guarantee in favour of the TA before they are allowed to register under the Class Licence to offer prepaid services. The TA invited comments on whether these requirements might serve to further reduce the risks of resellers absconding with the prepaid money collected.

18. All operators and industry organisations responding to the Consultation Paper express reservation on these requirements, whilst the Consumer Council supports the requirements. On the “net asset value” requirement, the concern raised by the respondents is that while the licensee would be required to submit to the TA upon request an audited report to show compliance with the requirement, the report submitted would only show the historical figures and unlikely reflect the licensee’s financial position as at the date of reporting. As for the bank guarantee, a query is raised as to whether the money forfeited by the TA (if the licensee defaults and triggers forfeiture) is available to satisfy the customers suffering loss and if so, how it can be done to verify their loss. The respondents also raise concerns on the high compliance

costs required on the licensees.

19. We will take the respondents' comments into consideration in finalising the regulatory regime, but some respondents seemed to have mistaken that the proposed bank guarantee would function as a "compensation fund" for claims by consumers affected by resellers of telecommunications services absconding with the prepaid money collected. The purpose of the bank guarantee, as explained in the Consultation Paper, is to ensure that resellers without a minimum level of financial resources to support the provision of services will be barred from offering prepaid services. If the bank guarantee is forfeited by the TA, the money will be paid to the Government. At this stage, we do not consider setting up such a "compensation fund" desirable, as such a fund would require contributions from the resellers and could potentially lead to law-abiding resellers subsidising the malicious resellers with an intent to abscond with the prepaid money.

(d) Other licence conditions

20. In the Consultation Paper, the TA also proposed to introduce into the Class Licence conditions that are commonly found in other telecommunications services licences (e.g. conditions relating to general compliance requirement, offer of satisfactory services, inspection, requirement to furnish information, confidentiality of customer information, billing accuracy, tariffs, unsolicited advertisements and numbering plan). There are no objections to this proposal from the respondents.

Reseller which is the Associated Corporation of a Carrier or a Dominant Licensee

21. In the Consultation Paper, the TA also proposed to commence section 8(1)(aa) to regulate a company which is an associated corporation of a carrier or a licensee dominant in a telecommunications market (Resale Associate Corporation), and resells the services of the associated carrier or dominant licensee. These Resale Associate Corporations are proposed to be regulated by individual licences so that appropriate licence conditions can be incorporated having regard to the nature of the resale business concerned.

22. There is an emerging trend that some fixed or mobile carriers would diversify their operations and set up associated corporations to run the non-network related aspects of the telecommunications services, including the resale of services to end customers. A licensee in a dominant position in a telecommunications market, who may be a network or service operator, may also choose to spin off some of its operations to an associated corporation. As these associated corporations do not operate any means of telecommunications, they are currently not subject to licensing requirement. The TA considers it undesirable that the carriers, who generally have a greater presence in the market and thus are subject to more elaborate licence conditions to ensure their proper operations, are able to spin off their retail business to associated companies which are not subject to any regulatory control at all. The TA therefore proposed in the Consultation Paper to commence section 8(1)(aa) so that operations which are spun off by these carriers or dominant licensees would not fall outside the regulatory framework.

23. The TA's proposal is to regulate the resale of telecommunications services of associated carriers by individual licences. A new type of licence for resale of services will be created with appropriate licensing conditions applied to the individual Resale Associate Corporations depending on the nature of their service and operations and those of their associated carriers.

24. While the Consumer Council supports our proposal, the operators express reservation, particularly on the need to regulate Resale Associate Corporations differently and the scope of the individual licences as they might be subject to a more stringent set of licensing conditions as compared to other resellers.

25. Members are invited to note the progress of the consultation. The TA is considering the submissions before finalising the way forward.

Communications and Technology Branch
Commerce, Industry and Technology Bureau
May 2005