

**For information
on 12 June 2006**

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

Regulation of Offer of Telecommunications Services

Purpose

This paper briefs Members on the second 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 the offer of telecommunications services.

Background

2. Persons who offer telecommunications services without operating any telecommunications equipment are currently outside the regulation of the Ordinance. These persons are generally resellers of the telecommunications services operated by licensed operators. They usually purchase wholesale services from licensed operators and resell the services in the retail market under their own brand names. Common examples of such resellers are providers of international telephone cards and resellers of mobile phone services. That these resellers are currently outside the regulation of the Ordinance means that they are not required by law to comply with the provisions of the Ordinance, particularly those provisions prohibiting anti-competitive or misleading/deceptive conduct. Section 8(1)(aa) of the Ordinance (yet to commence operation) was enacted to address this lacuna of regulation.

3. In the First Consultation Paper issued on 15 October 2004, the TA proposed to partially commence section 8(1)(aa) of the Ordinance to subject two specific kinds of services to licensing requirements, namely regulating the resale of telecommunications services on a prepaid basis by a class licence, and regulating the resale of telecommunications services by an associated corporation of a carrier or a telecommunications licensee in a dominant position by an individual licence.

Second Public Consultation

4. Taking note of the submissions to the First Consultation Paper, the TA has re-considered the matter and made a fresh proposal of adopting a more holistic approach in regulating offer of telecommunications services. In the Second Consultation Paper issued on 3 March 2006, the TA proposes to fully commence section 8(1)(aa) of the Ordinance and to create a class licence to regulate the offer of all kinds of telecommunications services¹.

5. The TA received a total of eight submissions to the consultation, which ended on 28 April 2006. The Second Consultation Paper and the submissions are published on the website of the Office of the Telecommunications Authority (OFTA) at <http://www.ofta.gov.hk>.

Scope of Regulation

6. Under the new proposal in the Second Consultation Paper, there is no restriction on the nature of services that may be offered under the proposed class licence. All kinds of telecommunications services that can be offered (such as voice or data services, local or external services, fixed or mobile services), in prepaid or post-paid format, would be subject to the same regulation.

7. Respondents to the Second Consultation Paper are generally supportive of the proposal to commence section 8(1)(aa) in full to regulate all resellers and to make use of a class licence for such regulation. However, one respondent, although supporting the regulation of resellers, considers that the regulation should be restricted to only two kinds of resellers, namely prepaid resellers and building management offices which bundle telecommunications services with other building management services, on the basis that there is no evidence of market failure in respect of other resale activities.

¹ The proposed class licence will exclude services that are provided by establishing or maintaining a means of telecommunications in Hong Kong as these services will be subject to other licensing regimes. Depending on the nature of the relevant services and operations, an operator may apply for a carrier licence (if network facilities are established), a services-based operator or public non-exclusive telecommunications services licence (if non-network facilities are established), or other appropriate licences.

8. Business operations of resale activities can come in very different forms offering different types of telecommunications services to different customers, and with new services emerging from time to time. Against this background, the TA considers that it would be more appropriate to put in place a regulatory regime whereby all resale activities will be subject to one single licence as well as the same statutory provisions in the Ordinance, in particular provisions against anti-competitive behaviour and misleading or deceptive conduct. Consumers in general are not concerned with or may not be able to tell whether they are obtaining services from telecommunications operators or resellers. To subject all telecommunications resellers covering all resale activities to one single unified licensing arrangement will help promote consumer interests and maintain a level playing field for all telecommunications services providers.

9. Regarding the argument of “no evidence of market failure” from the respondent, although no major complaints have so far arisen in the market against certain types of resellers, there are merits in extending the same regulation especially those relating to prohibition of anti-competitive behaviour and misleading or deceptive conduct.

10. Agents or contractors of licensed operators who sell or promote telecommunications services for or on behalf of the operators within the scope of the respective agency agreements will not fall within the proposed regulation. These agents or representatives, as employees, agents or contractors or otherwise of the operators, are only selling or promoting the services for or on behalf of the licensed operators. For example, retail outlets which sell telephone cards issued by licensed operators will generally be regarded as agents of the operators only. Under the general principle of agency law, the licensed operators will remain fully responsible for the provision of services under their own licences.

Light-handed Regulation

No Registration Requirement

11. Regulation under the proposed class licence will be a light-handed one, with licence conditions aimed at promoting consumer interests. As such, the TA does not propose to impose any registration

requirement. Persons offering telecommunications services will automatically become class licensees and will be subject to the conditions of the proposed class licence.

12. While all respondents to the Second Consultation Paper agree with the light-handed approach, a number of the respondents argue for a registration requirement so that the TA and the public can readily identify the resellers and the size of the market, and the resellers themselves can positively know that they fall within the class licensing regime and therefore have to observe the licence conditions of the proposed class licence.

13. The TA does not believe that registration will add significant value to the intended regulatory structure. Companies or business entities which are engaged in resale activities are believed to be generally small in size yet large in number. Any requirement of registration would place unnecessary administrative burden on the resellers, especially those resellers that are small in size. The regulatory intention is to bring resellers into the regulatory regime, albeit light-handed, and subject them to the statutory provisions and licence conditions that are principally aimed at protecting consumers. Imposing a registration requirement does not further such a cause. We however agree that there should be publicity to make consumers and the industry aware of the regime.

14. One respondent opines that the need for registration may be reviewed in the light of the experience gathered under the new regime. We consider this approach is consistent with the spirit of light-handed regulation. The TA therefore intends to maintain his original proposal and will consider if there is a need to review the situation after the new regime is put in place.

Licence Fee

15. In view of the low estimated administrative costs involved, the TA has explained in the Second Consultation Paper that he does not intend to levy any licence fee for the time being, but he would keep the matter in view. Some respondents have questioned this approach on the basis that the issues involving class licensees may be more complicated than anticipated at this stage and with registration, administration costs will be higher. The TA remains of the view that there will be no levy, and he will review the fee issue from time to time.

Licence Conditions of the Proposed Class Licence

16. The licence conditions proposed in the Second Consultation Paper are for the purposes of establishing the regulatory framework and protecting consumer interests. They are licence conditions that are commonly found in other telecommunications services licences. There are no major objections to this proposal from the respondents.

Provision of Information to Customers

17. In particular we would like to highlight the licence condition that requires 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 of the company, hotline number, access code, access instructions, tariffs and validity period of the services offered. The information provided would facilitate customers in making informed purchasing decisions and enable customers to identify the person who offers the services. The TA will conduct consumer education programmes to encourage the public to purchase services only from persons who are able to provide or make available the information to them when the services are offered. We receive general support from the respondents to this proposal.

Eligibility as a Class Licensee

18. In the Second Consultation paper, the TA proposes that only a person incorporated or registered under the Companies Ordinance (Cap 32) is eligible as a class licensee. One respondent has pointed out that maintaining an incorporated company involves not insignificant basic running cost that small services providers might not be able to afford. Taking into consideration the cost factor, and the regulatory intention to create a light-handed regime for service providers irrespective of their size, the TA intends to revise the eligibility criteria so that unincorporated persons, such as sole proprietors or partnerships, can also become class licensees. This revised arrangement will ensure that unincorporated persons who are currently offering telecommunications services will not face the difficult choices of either incurring cost to incorporate, or ceasing business when the new licensing regime comes into force.

Way Forward

19. Members' views on the TA's proposal are welcome. We intend to finalise the proposal in the third quarter of 2006, with a view to commencing section 8(1)(aa) and the new class licence in early 2007. This should provide an adequate transitional period for the would-be class licensees to adjust their service operations in compliance with the new regulatory scheme. In the meantime, the TA will continue to liaise with various stakeholders and conduct publicity to educate the consumers and the industry on the proposed regime.

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