

**For discussion
On 30 June 2009**

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

**Progress Report on the Pilot Run of
Customer Complaint Settlement Scheme**

Purpose

This paper is to brief Members on the progress of a pilot programme for the Customer Complaint Settlement Scheme (CCSS Pilot Programme) administered by the Office of the Telecommunications Authority (OFTA).

Background

2. Telecommunications services are highly pervasive in Hong Kong. The penetration for mobile and household broadband services has reached 165.2% and 78.6% respectively¹. There are currently 11,580,149 mobile customers and 4,099,912 fixed lines². Use of telecommunications services for business and private purpose is set to increase as more innovative services are introduced and as consumers increasingly adopt mobile data services. Indeed, the take up of such services has increased by some 14 times in the last two years alone.

3. Partly as a result of the pervasiveness of telecommunications services, and the competitive market landscape, the number of consumer complaints has been substantial. Complaints in relation to telecommunications services topped the complaint statistics of the Consumer Council in the last three years³. A large proportion of these complaints are disputes about contractual matters. OFTA as the regulator of the telecommunications industry has adopted a range of measures to address this issue, such as those reported to Members in March 2008 in relation to enhancing consumers' information and

¹ As of March 2009.

² As of March 2009. The fixed line figure includes exchange lines and IP telephony connections assigned with telephone numbers in accordance with the Hong Kong Numbering Plan.

³ 11,801 complaints in 2006, 10,382 complaints in 2007 and 9,759 complaints in 2008.

understanding of broadband services (vide LC Paper No. CB(1)975/07-08(04)), and those reported to Members in May 2008 in relation to the introduction of a licence condition on “Service Contracts and Dispute Resolution” (Special Condition 36) to the Unified Carrier Licence⁴ (vide LC Paper No. CB(1)1456/07-08(06)).

4. On the consumer education front, in late 2005 and early 2006, OFTA launched a large scale “Your Choice is on the Line” programme through TV, radio and other media channels to remind the public of the importance of knowing the terms and conditions of service contracts before signing up for services. The TV announcement of public interest is still running. Late last year, we also launched the “Blue Tone’s Tips for Broadband Service Users” programme, providing quick tips on solving common Internet access problems, through a thematic website, public talks, print advertisements and distribution of booklets and DVDs. The second phase of the broadband consumer education programme will be launched later this year. Apart from these large scale programmes, we conduct other public education activities from time to time, and providing smart tips for consumers on various telecommunications services such as IDD, mobile, fixed line, broadband services etc.

5. The Industry has also taken steps to reduce the number of customer complaints over the past few years. With the industry’s effort and the measures taken by the Government, the number of customer complaints on telecommunications services has actually been decreasing in an environment where the number of customers has been increasing⁵.

6. In addition to the measures already taken, and making reference to models in overseas economies such as the UK and Australia, OFTA proposed to the industry the setting up of a voluntary alternative dispute resolution scheme to be operated by the industry to address contractual dispute issues between service providers and their customers. In a progress report submitted by the Administration to the Legislative

⁴ See the paper submitted for the meeting of Legislative Council Panel on Information Technology and Broadcasting on 13 May 2008 “*Outcome of the Public Consultations on the Proposed Creation of a Unified Carrier Licence under the Telecommunications Ordinance*”. The licence condition provides a formal framework to improve the handling of service contracts and contractual disputes. Nevertheless, the preference of the Telecommunications Authority is always to encourage the industry to take voluntary and self-regulatory measures to meet customer needs and will assist the industry in such efforts.

⁵ As indicated in footnote 3, the telecommunications services related complaints received by the Consumer Council dropped in the past three years. On the other hand, the total number of customers of fixed line, mobile and broadband services increased from 15 million in 2006, to 16.5 million in 2007, and to 17.4 million in 2008.

Council in September 2007⁶, OFTA indicated that it was in discussion with the communications industry⁷ over the setting up of a Consumer Dispute Adjudication Scheme (CDAS) for the purpose.

7. An industry workshop was subsequently organised by OFTA, and attended by senior officers of major operators, to discuss the viability of implementing a voluntary CDAS (now called CCSS to reflect more accurately its nature⁸) on a pilot basis. Two of the major operators, the PCCW group and the Hutchison group, showed interest in participating in the pilot programme. OFTA also received support from the Hong Kong International Arbitration Centre (HKIAC), a non-profit making company tasked to promote Hong Kong as an alternative dispute resolution centre, to provide adjudication services to the pilot programme on a pro-bono basis.

8. The pilot programme commenced operation in September 2008. OFTA fully briefed the Consumer Council of the pilot programme before its launch. The Consumer Council was supportive of the initiative.

Operation of the CCSS Pilot Programme

9. The purpose of the pilot programme is to test the practicality of the procedures and the efficacy of the concept of a CCSS under local Hong Kong conditions. Given this objective, the pilot programme is conducted on a managed scale, handling cases referred to the programme by the participating companies with the consent of the customers concerned. Cases referred to the pilot programme are those that have reached deadlock situation, that is to say, the company and the customer cannot resolve the matter by themselves through negotiation. Moreover, the companies will try to refer cases of different nature, so that the scheme can get to handle a wide variety of issues arising from the provision of communications services. OFTA contributes its staff and other resources to administer the pilot programme.

⁶ The Legislative Council passed a motion on “Strengthening the regulation of unscrupulous business practices in pay television, telecommunications and Internet services” at its meeting on 4 July 2007. The progress report briefed Members on the follow-up action taken by the Administration in tackling the problem.

⁷ OFTA proposed that the scheme should cover the communications industry instead of the telecommunications service only since, increasingly, operators offer telecommunications and content (such as pay TV) services by way of a bundle. Moreover, as the scheme is independent from the Telecommunications Authority and its statutory powers, there is no need to restrict the scheme to handling telecommunications-related complaints only.

⁸ The CCSS is a user-friendly scheme offering mediation assistance and adjudication service to the operators and their customers. The term CCSS reflects the settlement-based nature of the scheme.

10. As soon as a customer complaint is referred to the programme, OFTA staff, as the administrators of the programme, will collect information from the company and the customer relating to the issues under dispute. OFTA staff will also attempt to conduct mediation between the parties, in the hope that the dispute can be settled at that point. Experienced OFTA staff will act as the mediator during mediation, with a view to assisting the parties to reach a mutually acceptable agreement to resolve their dispute. If the mediation effort does not result in a settlement, the case will be referred to the HKIAC for adjudication.

11. When a case is referred for adjudication, the HKIAC will assign an adjudicator to handle the case. The adjudicators are generally lawyers, engineers, surveyors or other professionals with dispute resolution training and experience. Before an adjudicator formally takes up a case, he or she is required to sign a statement of independence, and his or her curriculum vitae will be passed to the participating company and the customer for consideration. After the participating company and the customer have confirmed acceptance of the adjudicator's appointment, the adjudicator will review the claims and evidence based on the documents submitted by the company and the customer. If needed, the adjudicator may request further information and clarifications from either party.

12. After reviewing the case, the adjudicator will make an independent decision with one or other of the following effects:

- a conclusion that the customer's case has no merit; or
- a requirement that the company waive charges, pay compensation, make refund payments, take certain practical action to resume or provide services to the customer, terminate the service contract without imposing early termination charges, or apologise to the customer.

The jurisdiction limit of awarding compensation or refund, or waiving charges, is HK\$10,000⁹.

13. The adjudicator may review his or her own decision upon the

⁹ The HK\$10,000 limit is set by reference to the fact that the monthly fees for most communications services range from less than \$100 to under \$500, with contractual period between 12 and 24 months, and that an early termination of the service contract will usually attract financial charges calculated based on the monthly fees for the remaining contractual period.

request of the customer or the company, on the ground of unfairness of the decision, a failure to examine the evidence or an inaccurate interpretation of the law. On receipt of a request for review, the adjudicator will decide whether there is a need to review the decision. Where a review is conducted, the adjudicator may either affirm the original decision, or replace the original decision with a new decision in full or in part. There is no other review or appeal mechanism. The company has to comply with the adjudicator's decision after the customer has indicated acceptance of the decision. In case the customer does not accept the decision, the case would be closed. A flowchart summarising the operation process of the pilot programme of the CCSS is at **Annex**.

14. At various stages throughout the pilot programme, OFTA staff will survey the participating company, customer, and adjudicator, to solicit their opinion on matters such as their expectation from the scheme, the way the case is being handled, the usefulness of the scheme, and aspects that can be improved upon. OFTA will also keep records of the resources expended in running the pilot programme. The information will enable OFTA and the industry to review the effectiveness of the scheme, and project the cost of running a formal scheme in the long run.

15. As of 15 June 2009, 13 cases have been handled under the pilot programme, eight of them are being processed, one has been resolved through mediation, and four have been completed after adjudication. So far, decisions have ruled in favour of the company or the customer, or reached findings that both parties have to bear some responsibilities. The communications services that form the subject matters of these cases include fixed line, mobile (including roaming and data services), broadband, IDD, pay TV and other value-added services. The matters in dispute are generally over the billing of these services.

16. The feedback from the participating companies is supportive. They have gained first hand experience of taking part in an alternative dispute resolution system which is new to the Hong Kong communications industry. Their participation also provides them with a chance to review and enhance their handling of those customer issues that have been the subject matter of the disputes submitted. The customers also appreciate the opportunity offered by the pilot programme, which enables them to put forward their case before a professional and independent adjudicator.

Way Forward

17. The pilot programme will run for a further 8 months, after which OFTA will conduct a comprehensive review, and engage the industry in the discussion of the viability of setting up a CCSS in the long run. We will report to the Members the results of the review in due course.

Office of the Telecommunications Authority

June 2009

Operation process of the pilot programme of the CCSS

