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Panel on Information Technology and Broadcasting

Meeting on 11 June 2012

**Updated background brief on
the introduction of Customer Complaint Settlement Scheme**

Purpose

This paper provides background information on the Customer Complaint Settlement Scheme (CCSS) administered by the former Office of the Telecommunications Authority (OFTA) (now known as "Office of the Communications Authority¹" (OFCA)) and also a summary of views and concerns expressed by Members in previous discussions.

Background

2. With all sectors of the telecommunications industry in Hong Kong liberalized and open to competition, consumers and businesses are able to enjoy the fruits of market liberalization - more choices of service providers, a wide range of innovative services and competitive prices. However, there is an upsurge in the number of disputes between the service providers and consumers. The number of complaints received by the former OFTA against telecommunications services has risen sharply over the recent years. With a view to providing a more effective means of resolving contractual disputes between operators and their customers outside the judicial system, the former OFTA proposed in 2007 the setting up of a voluntary alternative dispute resolution scheme for the telecommunications industry.

¹ Pursuant to the Communications Authority Ordinance (Cap 616), with effect from 1 April 2012, all duties and powers of the Telecommunications Authority (TA) are conferred on the Communications Authority (CA), and all duties and powers of the OFTA are conferred on the OFCA, the executive arm of the CA.

CCSS Pilot Programme

3. With the assistance of the Hong Kong International Arbitration Centre, which provided the adjudication services free of charge, the former OFTA conducted the Pilot Programme on CCSS for a period of 18 months from September 2008 to February 2010. The purpose of the Pilot Programme was to test the practicality and efficacy of a CCSS under local Hong Kong conditions. The Pilot Programme followed a two-stage approach. The first stage was mediation. If mediation could not result in settlement, the case would proceed to the second stage for adjudication.

4. On 8 June 2010, the former OFTA published a report (**Annex I**) summarizing the outcome of the Pilot Programme and the feedback of the participants, including the participating operators and customers. During the 18-month pilot run, the three participating companies referred a total of 18 cases to the Pilot Programme. Sixteen out of the 18 cases handled were consumer complaints while the remaining two related to commercial customers. All six value-added cases related to content services subscribed by customers of broadband services. As for the five mobile cases, three related to mobile data charges, one was concerned with roaming voice dispute and one with provision of mobile equipment. Cases adjudicated under the Pilot Programme achieved a fairly balanced outcome. Of the three participating operators, two indicated that they would refer cases to the CCSS in future. Participating customers also indicated their intention to refer future disputes to the CCSS.

5. Encouraged by the outcome and feedback of the Pilot Programme, TA issued on 8 June 2010 a consultation paper to seek the views and comments of the public and the industry on some salient issues relating to the possible long term implementation of CCSS. The issues are as follows:

- (a) basic features of an effective CCSS;
- (b) whether CCSS should be voluntary or mandatory;
- (c) role of the former OFTA and the CCSS organization;
- (d) scope of the scheme;
- (e) mode of operation of the long term CCSS;
- (f) funding arrangement;
- (g) quota of cases to be handled;
- (h) fees level;
- (i) binding nature of decision; and
- (j) interest in disputed amount.

Previous discussions

6. At the meeting of the Panel on Information Technology and Broadcasting (the Panel) on 14 June 2010, the Administration briefed members on the outcome of the Pilot Programme on CCSS and the consultation exercise on the salient issues of a long term implementation of a sustainable CCSS for the telecommunications industry. The concerns expressed by Panel members on the effectiveness and fees level of the CCSS as well as quota of cases to be handled are summarized in the following paragraphs.

Effectiveness of the CCSS

7. Some Panel members opined that the Pilot Programme was a failure as only 18 cases were handled during the 18-month pilot run. These members doubted whether the future CCSS could successfully resolve consumer complaints and contractual disputes. They also criticized the former OFTA for neglecting its responsibility in regulating the telecommunications industry, and expressed concern that consumer complaints and cases involving misleading and unscrupulous sale practices would be passed onto the CCSS instead of being taken up by OFTA in accordance with section 7M of the Telecommunications Ordinance (Cap. 106).

8. The Administration stressed that the CCSS was to provide an alternative dispute resolution scheme to resolve contractual disputes between operators and their customers, offering the parties concerned a quick and economical way to resolve disputes outside the judicial system without having to resort to the court and obviate the need for expensive legal costs. Consumers were free to seek separate legal redress if they were dissatisfied with the result of the adjudication.

Quota of cases to be handled

9. In view of the upsurge in the number of disputes between telecommunications service providers and consumers, and the substantial number of complaints received by OFTA against telecommunications services (i.e. 4 629 in 2007, 4 317 in 2008 and 4 016 in 2009), some Panel members expressed concern whether the CCSS, being limited by a proposed annual quota (i.e. 1 020 cases per year), could effectively and efficiently address the need for resolution.

10. As regards the small number of cases handled under the Pilot Programme, the Administration advised that the purpose of the Pilot Programme was to test the practicality and efficacy of a CCSS under local

Hong Kong conditions. The Pilot Programme was therefore purposely operated on a limited scale. Cases involving different communications services that had come to a deadlock and could not be resolved between the customers and the operators through negotiations were referred to the Pilot Programme for mediation and adjudication by participating operators with the consent of the customers concerned. Feedback from the participating operators and customers was generally positive. Of the three operators participating in the Pilot Programme, two had indicated that they would join the future CCSS. Customers participating in the Pilot Programme also welcomed the mediation and adjudication services offered.

11. The Administration advised that about 20% to 25% of the complaints received in 2009 were billing disputes and about 25% were related to quality of services. The former OFTA had already referred these complaints to the concerned operators with a view to ensuring that they might reach a settlement with the complainants. About half of the complaints referred in such a manner could be resolved by the parties themselves. By proposing an annual quota, the future CCSS could be kept to a manageable scale capable of being supported by the industry and handled by the CCSS Agent.

Fees level

12. Some Panel members referred to the proposed level of fees payable by the customer (ranged from \$100 to \$200) for taking part in the CCSS, and enquired about the average amount involved in billing disputes concerning telecommunications services. These members questioned whether it was fair that consumers, especially victims of undesirable sale practices, had to pay for mediation and adjudication services.

13. The Administration advised that the average disputed amount involved in the complaints was in the region of a few thousands. The jurisdiction limit of awarding compensation or refund, or waiving charges, was \$10,000. The limit was set by reference to the average monthly fees for most communications services on a two-year contract. On the proposed fee payable by customers, the Administration advised that the fee was a token sum proposed on the basis of cost recovery with reference to overseas practices and similar schemes in the local insurance and financial sectors. While the funding for the long term CCSS would be primarily borne by the industry, it was considered reasonable for customers to pay a reasonable amount of fee for the mediation and adjudication services as the CCSS was for the benefit of both the industry and customers. Moreover, fee payment by the customer would also help minimize possible abuse of the CCSS. According to a follow-up survey, most customers participating in the pilot programme responded positively to the payment of a fee for the services while a few respondents considered that the operators should shoulder the

fee.

Deliberations by the Council

14. Members have expressed much concern at different forums about the escalating number of complaints about telecommunications services and contractual disputes between service providers and consumers. Members have raised Council questions in connection with mobile phone data plan, excessive fees charged by telecommunications service providers and regulation of charges by telecommunications service providers. Members have urged the Government to consider, inter alia, incorporating into the licences upon renewal mandatory provisions to require full compliance by the operators. They have also urged the Administration to take measures to enhance consumer protection.

Recent developments

15. On 14 March 2012, the former OFTA published a statement on CCSS entitled "Customer Complaint Settlement Scheme" to conclude the consultation in 2010 (**Annex II**). According to OFCA, it would continue the dialogue with the industry to map out the implementation details of the voluntary CCSS and establish the CCSS Agent to operate the scheme for a two-year trial period. Subject to the progress of such discussion, the target commencement date of the trial operation of the CCSS would be in the second half of 2012.

Latest position

16. The Administration will update the Panel on the progress and the way forward of the CCSS at the meeting on 11 June 2012.

Relevant papers

17. A list of the relevant papers with their hyperlinks is at http://www.legco.gov.hk/yr11-12/english/panels/itb/papers/itb_fg.htm.