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Panel on Information Technology and Broadcasting

Meeting on 11 May 2015

**Updated background brief on
Customer Complaint Settlement Scheme**

Purpose

This paper provides background information on the Customer Complaint Settlement Scheme ("CCSS") introduced by the former Office of the Telecommunications Authority ("OFTA") (now known as "Office of the Communications Authority"¹ ("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 with more choices of service providers and 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") were conferred on the Communications Authority ("CA"), and all duties and powers of the OFTA were conferred on the OFCA, the executive arm of the CA.

The 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 the 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 the 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 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, the former 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 the CCSS. The issues are as follows:

- (a) basic features of an effective CCSS;
- (b) whether the 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.

6. According to the Administration, 13 submissions were received at the close of the consultation in December 2010. The respondents had mixed views on the introduction of the CCSS. Funding arrangement and the cost effectiveness of the CCSS were the major concerns of the industry. Since then, the Administration continued to engage the industry with a view to formulating a scheme that would meet the objectives of the CCSS while receiving broad support of the industry. Eventually, all the major telecommunications service providers were agreeable to implement a CCSS on a voluntary basis. The Communications Association of Hong Kong, the industry association representing telecommunications service providers and other stakeholders of the telecommunications sector, had indicated its readiness to act as an independent agent ("CCSS Agent") for operation of the CCSS for a trial period of two years. Against this background, the former TA issued a statement entitled "Customer Complaint Settlement Scheme" on 14 March 2012 to conclude the consultation in 2010 and list out the key elements of the voluntary CCSS. The key elements included the basic features of an effective CCSS managed and operated by an independent CCSS Agent, cost of running the CCSS, the scope of the CCSS and its mode of operation with a one-stage mediation approach as well as a settlement agreement.

Previous discussions

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7. 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. On 11 June 2012, the Administration briefed members on the way forward for the CCSS for the telecommunications industry. The concerns expressed by Panel members on the effectiveness, quota of cases to be handled, scope and fees level of the CCSS are summarized in the following paragraphs.

Effectiveness of the CCSS

8. At the Panel meeting on 14 June 2010, some 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).

9. 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.

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 the 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.

Quota of cases to be handled

11. At the Panel meeting on 14 June 2010, some members noted the upsurge in number of disputes between telecommunications service providers and consumers, and the substantial number of complaints received by the former OFTA against telecommunications services (i.e. 4 629 in 2007, 4 317 in 2008 and 4 016 in 2009). These 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.

12. 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.

13. At the Panel meeting on 11 June 2012, members noted that unlike the pilot programme, which was conducted on a managed and restricted basis with the participation of three operators, the voluntary CCSS would be operated on a much larger scale with participation of all the major telecommunications service providers and for referrals for handling billing disputes by residential/personal customers. In addition, unlike the pilot programme which adopted a two-stage approach comprising mediation and adjudication, the CCSS would follow a one-stage mediation approach which would be more cost-effective and flexible. To promote public awareness of the CCSS, OFCA would collaborate with the Consumer Council, and provide information about the CCSS in the websites of the OFCA and the telecommunications service providers.

Scope and fees level of the CCSS

14. At the Panel meeting on 11 June 2012, some members suggested that the scope of the CCSS should be extended to cover complaints about unsolicited person-to-person telemarketing calls ("P2P calls") from telecommunications service providers to residential/personal customers. The Administration advised that the CCSS would mainly depend on the use of mediation which was considered most effective in resolving billing disputes. Other types of disputes, including those relating to service quality and contract terms as well as P2P calls, would be more effectively addressed by the issuance of guidelines and codes of practice to the telecommunications service providers.

15. Some Panel members suggested that in order to encourage more customers to use the CCSS service, the proposed fee of \$100 should be lowered, and customers should be allowed to make verbal instead of written representations to the CCSS. The Administration advised that as public resource was incurred in operating the CCSS, it would minimize submission of wholly unmeritorious claim and possible abuse by requiring the customer to pay a reasonable amount of fee. Written representations would be required for cases that had come to a deadlock.

Finance Committee

16. At the special Finance Committee meeting to examine the Estimates of Expenditure 2015-2016 on 30 March 2015, Hon Charles Peter MOK, Hon TAM Yiu-chung and Hon WONG Yuk-man raised questions on the implementation of the CCSS. The Administration advised that the two-year trial period of the CCSS ended on 31 October 2014. During the period, a total of 357 applications which fell within the scope of the CCSS were received. Among them, 159 cases were satisfactorily settled before

submission to the service centre and 197 were successfully settled after referral by OFCA to the service centre for processing. The remaining one did not lead to agreement in the end because the consumer concerned had not signed the written agreement and the service centre and the operator concerned was unable to contact him since then, despite the fact that the concerned parties had earlier reached verbal agreement after mediation. OFCA and the industry had completed the review and assessment of the CCSS.

Latest position

17. The Administration will consult the Panel on 11 May 2015 on the assessment report and the way forward of the CCSS.

Relevant papers

18. 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

http://www.legco.gov.hk/yr14-15/english/fc/fc/w_q/cedb-ct-e.pdf

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