

Consumer Council
Submission to Panel on Information Technology and Broadcasting
Increase in service fees by mobile telephone operators

1. The Council welcomes this opportunity to present its views to the Panel on the matter of recent increases in service fees by mobile telephone operators.
2. The Council supports the Telecommunications Authority (TA) in his endeavors to investigate whether the simultaneous increase in service fees by the operators is in breach of the general license conditions prohibiting licensees from entering into agreements or arrangements preventing or restricting competition in relation to the operation of the licensed service. While the Council accepts that there may be justifiable reasons for service fees to be increased, this should not be undertaken in a way that compromises competitive choices for consumers.
3. Moreover, the Council also has a general concern that if anti-competitive conduct has taken place, the current levels of penalty that can be imposed on licensees for engaging in this conduct is not adequate. The Council trusts that LegCo members will endorse the proposal to increase the penalties for anti-competitive behavior in the proposed amendments to the Telecommunications Ordinance.
4. The Council has received a number of inquiries and complaints from consumers regarding this matter. The prime concern relates to an uncertainty as to whether consumers will be given adequate notice by their contracted service providers of any increase, and an opportunity to shop around for competing services, before the increase takes effect.
5. The Council is concerned that if consumers are not given adequate notice they will not have the opportunity to consider what, if any, competitive choices there may be. The Council considers that in general terms it would be unsatisfactory for service providers not to allow sufficient time for consumers to decide whether to switch to other operators whenever terms and conditions will be altered against the customer's interest. The Council has written to the mobile phone operators and urged them to provide adequate notice to consumers of proposed increases, and that as a general rule, at least one-month's advance notice should be required in contracts before any fee increases are activated.
6. In relation to this point, consumers who have signed fixed term contracts have inquired whether it is reasonable for service providers to unilaterally

increase the service charges when the initial contract has specified a set amount to be paid for a specific period of time. The Council understands that all fixed term contracts for mobile phone services give the service provider a unilateral power to increase monthly service charges during the period of fixed service contracts.

7. The Council does not consider this unilateral power is fair to consumers. We believe that the unilateral power of variation of the monthly fee in fixed term service contracts, which appears to be uniform throughout the industry, might well be considered by some consumers as unconscionable. It might therefore be subject to challenge under the Unconscionable Contracts Ordinance due to the relative strengths of the bargaining positions of mobile telephone operators and consumers.
8. Apart from the question of unconscionable conduct, the unilateral power of variation of the monthly fee also raises the question of whether consumers have been adequately informed of the true nature of the contract. For example, whether in the course of promoting fixed term contracts, service providers have adequately explained that only the term is fixed, but the monthly service charge can be varied. If, in the process of marketing their services mobile phone operators have either given a general impression that the monthly service charges are fixed, or directly misrepresented the true situation, then consumers should not be expected to pay any increase in charges. The 'fine print' written terms of mobile phone contracts might state that the monthly service charges can be varied. However, if promotional material for the fixed term service, or the conduct of service providers' sales staff has given consumers the initial impression that the charges were also fixed, consumers should not be expected to search subsequent documentation (such as the small print in 'terms and conditions') to disprove that impression.
9. The Council understands that the TA has a power under Special Condition (2) attached to service providers' licenses that allows him to consider whether misleading and deceptive conduct has taken place in the marketing of telecommunications services. The Council has also written to the TA urging him to explore the use of this provision in assessing whether consumers might have a legitimate grievance against service providers.