

For Information  
On 10 January 2000

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

**Simultaneous Price Changes for Mobile Phone Services**

**Introduction**

On 3 January 2000, the Telecommunications Authority (TA) launched an investigation on whether the apparent simultaneous price adjustments of a similar amount made by the mobile phone licensees are part of an agreement or arrangement to fix prices in a way that prevents or substantially restricts competition in relation to the operation of the mobile phone services. Most of the adjustments made constitute price increases although some price reductions have also been made. The TA also noticed that the adjustments made are in most cases very similar or identical. These changes raise two concerns, namely:

- (a) whether these actions were in compliance with the competition conditions of the licenses; and
- (b) whether consumers' interest had been adequately protected in view of the manner by which the operators announced and implemented the price adjustments.

The TA issued a letter to all the six mobile phone licensees on 3 January 2000 and requested an explanation of their actions as well as specific questions concerning the changes to address the above concerns.

**Competition Issues**

2. The aim of the TA's investigation is to establish whether the simultaneous price adjustments made by mobile phone licensees were coincidental, as the licensees have claimed, or whether they were part of an agreement or arrangement between them. If the existence of such an agreement or arrangement

could be established, the TA would consider whether there is a breach of General Condition ("GC") 9 and Special Condition ("SC") 12 of the Public Radiocommunication Service ("PRS") Licences held by the mobile phone services operators. GC9 of the PRS Licence stipulates that

*“[t]he licensee shall not enter into any agreement or arrangement which shall in any way prevent or restrict competition in relation to the operation of the service”.*

SC12 stipulates that

*“[a] licensee shall not engage in any conduct which, in the opinion of the Authority, has the purpose or effect of preventing or substantially restricting competition in the operation of the service ... Conduct which the Authority may consider has the relevant purpose or effect ... includes, but is not limited to – (i) collusive agreements to fix the price for any apparatus or service;...”*

3. Experience in the past few years have shown that the mobile phone services market is quite competitive, prices for mobile phone services are therefore not subject to the approval of the TA and are market-determined. However, these prices should be decided independently by each operator and price adjustments must be done in a manner that is consistent with the licence obligations. It is in the long term interest of consumers for that the regulatory regime should deter collusion to fix prices. Therefore, the TA’s investigation is not examining whether the price changes were justified in economic terms but whether they have been made as part of an agreement or arrangement which has the purpose or effect of preventing or restricting competition.

### **Consumer Issues**

4. Concerns have also been expressed about the effect that these changes may have on existing customers. The two issues of concern are : whether existing customers that may be effected by the change have been notified, and with sufficient notice, and what they may do if they are dissatisfied with the new price.

5. As part of his investigations, the TA has asked licensees to provide details of the changes they have made or will be making and what, if anything, has been done to notify customers of these changes. As such action involves contracts between mobile companies and individuals, TA's investigation will focus on whether their actions on notification of existing customers taken are adequate, and whether there is any breach of licence conditions.

### **Powers of the TA**

6. If the TA was to determine in due course that a licence breach has taken place, he could issue a direction under section 36B of the Telecommunication Ordinance to each licensee involved asking it to take such steps as the TA may consider appropriate so as to bring the breach to an end, as well as such other steps as he may require them to take to ensure compliance with the relevant licence condition. Failure to comply with the direction may result in a financial penalty being imposed by the TA under section 36C of the Telecommunication Ordinance. It is also open to the TA to suspend or revoke the licence of any licenses found to be in breach of its obligations.

7. The current investigation demonstrates the need for the proposed amendments to the Telecommunication Ordinance ("the Ordinance") as introduced under the Telecommunication (Amendment) Bill 1999 ("the Bill") which is being scrutinised by the Bills Committee. The proposed sections 7K to 7N consolidate the powers for the promotion of fair competition and extend these across the whole telecommunications market. These proposed provisions also help set out clearly in the Ordinance the prohibitions of anti-competitive behaviour, including agreements to fix the price in a telecommunication market or agreements to share any telecommunications market between them on agreed geographic or customer lines.

8. The Bill also seeks to clarify the powers that the TA needs to enable him to investigate cases speedily and effectively, and ensure that there will be adequate deterrents for breaches of the Ordinance, licence conditions, and the TA's directions and determinations. For example, in investigating whether a licensee has engaged an anti-competitive act, the proposed section 7I provides the TA with the necessary powers to request for information from licensees. Moreover, licensees shall not refuse to supply information reasonably requested by the TA

even if the licensees claim that the information is confidential. Another tool that the TA needs is the power to inspect records and documents under the proposed section 35A of the Bill. This new section will empower the TA to inspect records and documents of a licensee for the purpose of enabling the TA to perform his statutory functions including whether the licensee is in compliance with its licence obligations as well as the Telecommunication Ordinance. Licensees who produce a document or give information under the new section 35A, which he/she knows to be false or misleading, will commit an offence liable to penalty on conviction.

9. In addition, the Bill seeks to amend section 36C of the Ordinance to strengthen the penalties for breaches (from \$20,000 to \$200,000 for the first occasion of a failure to comply; \$50,000 to \$500,000 for a second; and \$100,000 to \$1,000,000 for a third and subsequent occasions; and the TA is empowered to apply to the Court for a higher financial penalty). As reported in our consultation document “The 1998 Review of Fixed Telecommunications – A Considered View” published in September 1998, we received very clear support for our proposal in the public consultation.

10. Adequate powers by the TA to investigate together with suitable levels of financial penalties as proposed would act as an effective deterrent to anti-competitive practices. Early enactment of the Bill will, amongst other things, help promote competition in the telecommunications market and protect the rights of consumers.

**Office of Telecommunications Authority**  
**7 January 2000**