

**For discussion
on 11 June 2012**

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

**Customer Complaint Settlement Scheme
For the Telecommunications Industry**

Purpose

In June 2010, we briefed Members on the outcome of an 18-month pilot programme for Customer Complaint Settlement Scheme (CCSS) and the consultation exercise we conducted to seek the views of the public and the industry on the salient issues of a long term implementation of a sustainable CCSS for the telecommunications industry. This paper briefs Members on the way forward for the CCSS having regard to the views collected in the consultation and our subsequent discussions with the industry.

The Pilot Programme and the Subsequent Consultation

2. The CCSS aims to resolve contractual disputes between telecommunications service providers and their customers outside the judicial system. The CCSS offers the parties concerned a quick and economical way of disputes resolution with less legal formality and without the need for expensive legal cost. The former Office of the Telecommunications Authority (OFTA) conducted a pilot programme under a two-staged approach comprising mediation and adjudication for 18 months from September 2008 to February 2010 to test the practicality and efficacy of the CCSS under local Hong Kong conditions. Given this objective, the pilot programme was conducted on a managed scale with voluntary participation by three telecommunications service providers¹

¹ They were CSL Limited, Hutchison Telecommunications (Hong Kong) Limited and PCCW.

and 18 cases which had come to a deadlock were referred by them for handling under the programme upon consent of their customers.

3. Drawing on the experience of the pilot programme, the former OFTA issued a consultation paper entitled “Consultation Paper on the Customer Complaint Settlement Scheme” on 8 June 2010 (Consultation Paper)² to solicit the views of the public and the industry on the salient issues in relation to the possible long term implementation of the CCSS in Hong Kong on a sustainable basis.

4. 13 submissions were received at the close of the consultation in December 2010³. The respondents have 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, we have 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.

The Outcome of Discussion with the Industry

5. The discussions with the industry have borne fruits. All the major telecommunications service providers are agreeable to implement a CCSS on a voluntary basis. In addition, the Communications Association of Hong Kong (CAHK), the industry association representing telecommunications service providers and other stakeholders of the telecommunications sector, has indicated its readiness to act as an independent agent (CCSS Agent) for operation of the voluntary industry scheme.

6. Unlike the pilot programme, which was conducted on a managed and restricted basis with the participation of three telecommunications service providers, the voluntary CCSS will be open for participation by all telecommunications service providers and for referrals for handling of disputes by all customers. Furthermore, unlike the pilot programme,

² The Consultation Paper is available at:

http://tel_archives.ofca.gov.hk/en/report-paper-guide/paper/consultation/cp20100608.pdf.

³ Including Consumer Council, ten telecommunications service providers, a trade association and a law firm. All the submissions are available at:

http://tel_archives.ofca.gov.hk/en/report-paper-guide/paper/consultation/20100909/table.html

which adopted a two-staged approach comprising mediation and adjudication, it will follow a one-stage mediation approach to make the scheme speedier, more cost-effective and efficient. As the voluntary CCSS will be operated on a much larger scale with a different approach as compared with the pilot programme, it is considered more appropriate to conduct the voluntary CCSS on a two-year trial basis initially so that all parties concerned may fully assess its effectiveness and public demand.

7. Against the above background, the former Telecommunications Authority (TA) issued a statement entitled “Customer Complaint Settlement Scheme” on 14 March 2012⁴ (the Statement) to conclude the consultation in 2010 and list out the key elements of the voluntary CCSS.

Key Elements of the Voluntary CCSS

8. The key elements of the voluntary CCSS are summarized below:

(a) Basic Features of an Effective CCSS

9. The CCSS should be (i) cost-effective, user friendly and flexible; (ii) able to resolve customer disputes in a timely manner; and (iii) fair to customers and service providers. These basic features have taken into account the outcome of the pilot programme and similar practices in overseas economies and other local sectors. The respondents to the Consultation Paper were unanimous in their support of the above features of the CCSS.

(b) An Independent CCSS Agent

10. The CCSS will be managed and operated by an independent CCSS Agent to maintain its impartiality and independence. The respondents to the Consultation Paper agreed that the CCSS Agent should have the maximum latitude in the day-to-day operation and handling of the complaints. Nevertheless, the Office of the Communications

⁴ The Statement is available at: http://tel_archives.ofca.gov.hk/en/tas/ftn/tas20120314_2.pdf.

Authority (OFCA)⁵ will play an active role in monitoring the effectiveness of the scheme, for example, by advising and approving the framework and relevant rules and procedures of the scheme and requiring the CCSS Agent to provide statistics on complaints received and handled. At the same time, we have made it clear to the industry and CAHK that the CCSS would not prejudice the power of the Communications Authority (CA)⁵ to conduct investigations under the Telecommunications Ordinance for any suspected regulatory breaches.

(c) *Cost of Running CCSS*

11. Since the CCSS is for the benefit of both the service providers and the customers in resolving disputes, it would be reasonable for both parties to share some of the cost of running the scheme. However, to alleviate the concern of the industry on the funding arrangement, and to kick off the CCSS trial, OFCA would provide the necessary funding as well as training and other kinds of administrative support to the CCSS Agent. To ensure the effective use of the funding, OFCA will impose certain acceptance criteria for admission of disputes to be handled under the CCSS.

(d) *The Scope of CCSS*

12. The scope of the CCSS will primarily cover deadlock cases of billing disputes between residential/personal customers and telecommunications service providers. Since the CCSS is intended as a consumer protection initiative, and given the resource implications for both the industry and OFCA for implementation of the scheme, the CCSS will focus on handling disputes of residential/personal customers only but not business customers, which are expected to have more resources and/or bargaining power in direct negotiations with the service providers in resolving disputes. On the other hand, billing disputes ranked top amongst all the complaint categories according to the consumer complaints on telecommunications services received by the former OFTA during the period 2009 to 2011⁶. To kick-start the CCSS trial, it is

⁵ Pursuant to the Communications Authority Ordinance (Cap 616), with effect from 1 April 2012, all duties and powers of the TA are conferred on the CA, and all duties and powers of the OFTA are conferred on the OFCA, the executive arm of the CA.

⁶ Billing disputes accounted for 21% - 30% of total consumer complaints received by former OFTA from year 2009 to 2011.

considered that CCSS should primarily deal with disputes related to this complaint category during the 2-year trial. In the formulation of the CCSS and its rules and procedures, the types of cases which would be excluded from handling under the CCSS would be clearly defined.

(e) *Mode of Operation*

13. Unlike the pilot programme, the voluntary CCSS will consist of a one-stage mediation (i.e. without adjudication). Mediation has the practical benefits of being relatively simple, flexible and quick according to the experience gained from the pilot programme. The cost of mediation is generally much less than that of adjudication, especially if the parties involved can agree to settle during the early stage of the process. Moreover, given most telecommunications services in Hong Kong involve relatively low amount of service charges⁷, a scheme which is simple, efficient, effective and low-cost would be more suitable for the local market environment. If the CCSS process can be conducted in a speedy, cost-effective and efficient manner, this would also allow the concerned parties to, should they so wish, resort to the formal legal system without undue delay for settling unresolved case post CCSS. The one-stage mediation is considered to be a more pragmatic and cost-effective mode of operation for the CCSS in the Hong Kong setting.

(f) *Settlement Agreement*

14. If settlement is reached after mediation, customers and service providers are required to sign a settlement agreement which will be binding on both parties. If no settlement agreement can be reached after mediation, it would not prejudice either one of the parties in bringing the case before the judiciary, including the Small Claims Tribunal, for final settlement.

⁷ According to the statistics of complaints received in 2011, over 85% of the dispute amounts in the billing disputes cases were under HK\$5,200.

Way Forward

15. On the basis of the foregoing key elements of CCSS, OFCA is working in earnest with CAHK and the industry to (a) map out the implementation details of the voluntary CCSS and (b) establish the CCSS Agent to operate the scheme for the two-year trial period. Subject to the progress of such discussion, OFCA targets to commence the trial operation of the CCSS in the second half of 2012.

Office of the Communications Authority
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