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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 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 - 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.

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[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.

Council Business Division 1
Legislative Council Secretariat
7 June 2012

Report of the Customer Complaint Settlement Scheme Pilot Programme

Introduction

1. This report summarises the outcome of the Customer Complaint Settlement Scheme (CCSS) Pilot Programme (the Pilot Programme) and the feedback of the participating parties.

Background

2. With a view to providing a more effective means of resolving contractual disputes between telecommunications service providers and their customers outside the judicial system, OFTA proposed in 2007 the setting up of a voluntary alternative dispute resolution (ADR) scheme for the telecommunications industry. An effective ADR scheme can offer the parties a quick and economical way to resolve disputes with less legal formality and obviate need for expensive legal cost. The idea was based on similar schemes in force in overseas economies for resolving contractual disputes in relation to telecommunications or communications services.

3. In September 2007, OFTA conducted an industry workshop to explain the proposed ADR scheme. After the workshop, some service providers expressed interest to participate in the scheme. With the assistance of the Hong Kong International Arbitration Centre (HKIAC), which provided the adjudication services free of charge, OFTA conducted the Pilot Programme for a period of 18 months from September 2008 to February 2010[1].

4. The objective of the Pilot Programme was to test the practicality of the procedures and the efficacy of the concept of a CCSS under the Hong Kong environment. Given such an objective, the Pilot Programme was conducted purposely on a limited scale and cases were referred to the programme by the participating operators with the consent of the customers concerned. Cases referred to the Pilot Programme were those that had come to a deadlock i.e. the service provider and the customer cannot resolve the matter by themselves through negotiation. OFTA contributed staff and other resources to administer

[1] From February 2010, the Pilot Programme did not accept any new case but continued to process uncompleted cases accepted before February 2010.

the Pilot Programme.

Modus Operandi of the Pilot Programme

5. The Pilot Programme follows a two-stage approach. The first stage is concerned with **mediation**. As soon as a customer complaint was referred to the programme, OFTA staff would collect information from the operator and the customer relating to the issues under dispute. With a view to assisting the parties to reach a mutually acceptable agreement to resolve their dispute, OFTA staff would attempt to conduct mediation between the parties. If mediation does not result in a settlement, the case would proceed to the second stage for **adjudication**.

6. When a case is referred for adjudication, the HKIAC would assign an adjudicator to handle the case. The panel of adjudicators comprise lawyers, engineers, surveyors and other professionals with dispute resolution training, skills and experience. Before an adjudicator formally takes up a case, he or she is required to sign a statement of independence and his or her curriculum vitae would be passed to the participating operator and the customer for consideration and acceptance.

7. Both parties may have one round of submission. The customer would set out his case by completing a standard claim form. The operator would then submit its response in a standard reply form. Relevant supporting documents would be attached to the forms submitted by the parties. If needed, the adjudicator might request further information and clarifications from either side. Save for exceptional matters, no in-person hearing would be conducted in any adjudication. The adjudication would be conducted in either Chinese or English, subject to the preference of language as indicated by the customers. No legal representation for the customer or operator is allowed. If the adjudicator requires expert advice or translation service, the consent of OFTA has to be sought. The adjudicators shall keep confidential the matters concerning the adjudication of individual cases.

8. The adjudicator would consider the claims and evidence based on the documents and materials submitted by the operator and the customer. As soon as practicable, the adjudicator would make a decision with one of the following outcomes: (a) a conclusion that the customer's case has no merit; or (b) a

requirement that the operator should waive charges, pay compensation, make refund payments, take certain practical action to resume or provide services to the customer, terminate the service contract without imposing early termination charges, or apologise to the customer. The limit of awarding compensation or refund, or waiving charges, was set at HK$10,000.

9. The adjudicator might review his own decision upon the request of the customer or the operator, on the grounds of unfairness of the decision, a failure to examine the evidence or an inaccurate interpretation of the law. On receipt of a request for review, the adjudicator would decide whether there is a need to review the decision. Where a review should be conducted, the adjudicator may either affirm the original decision, or replace the original decision with a new decision in full or in part. Other than the review, there is no other appeal mechanism. The operator has to comply with the adjudicator's decision after the customer has indicated acceptance of the decision. In case the customer does not accept the decision and after a review (if any), the case would be closed and the customer is free to seek separate legal redress. The Adjudication Rules of the Pilot Programme are at Appendix I. A flowchart depicting the operation of the Pilot Programme is given at Appendix II.

Statistics on Cases and Outcome

10. During the 18-month pilot run, the three participating companies referred a total of 18 cases to the Pilot Programme. A breakdown of the services that form the subject matters of the 18 cases is set out in the table below:

Service	**Number of Cases**
Value-added services	6
Mobile	5
IDD	3
Fixed line	1
Broadband	1
Broadband bundled with pay TV	1
Pay TV	1
Total	*18*

11. 16 out of the 18 cases 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. The type of the services dealt with by the Pilot Programme spans the full range of communications services that are currently available in the market.

12. The operational process of the Pilot Programme was designed to comprise four steps i.e.

Step 1 - on case referral and information collection
Step 2 – mediation
Step 3 – adjudication
Step 4 – review of the adjudicator's decision

13. However, not every case would have to go through all the steps for resolution. If a dispute could be successfully resolved through mediation (i.e. Step 2 of the Pilot Programme), the case would not proceed further to adjudication. At any stage, the customer might exit the Pilot Programme and the case would not be further pursued.

14. In the Pilot Programme, six out of the 18 cases were successfully mediated and resolved without the need to go to Step 3 for adjudication. The rest of the 12 cases were submitted to the adjudicators for decisions, with 11 cases being further handled in the final stage where requests for the review of the adjudicator's decision were made. The following table sets out the distribution of cases that were concluded at the three different stages following case referral:

Stage at which the case ended	**Number of cases**
Step 2 – mediation	6
Step 3 – adjudication	1
Step 4 – review of the adjudicator's decision	11[2]
Total	*18*

[2] As of 8 June 2010, there is still one uncompleted case at the review stage.

15. Among the 12 adjudicated cases, parties in only one case did not request for review of the Adjudicator's decision. As for the rest of the 11 cases which had proceeded to *step 4 (review of the adjudicator's decision)*, 1 case was requested by both parties, 6 by the customer and 4 by the company.

Request of review of adjudicator's decision made by	**Number of cases**
Customer	6 (3 requests were rejected by the adjudicator)
Company	4 (2 requests were rejected by the adjudicator[3])
Customer & Company	1 (The request was not rejected by the adjudicator)
Total	*11* *(5 requests were rejected by the adjudicator)*

16. According to the Adjudication Rules of the Pilot Programme, when the customer or the company requested for review of the adjudicator's decision, the adjudicator would consider whether there was a need to review the decision. In the 11 cases where requests were made for review, the adjudicators rejected the requests in five cases (two requested by company and three requested by customer) but accepted the requests in other five cases (one requested by company, three requested by customer and one requested by both).

17. According to paragraph 10 of the Adjudication Rules, the adjudicator might review the decision on three grounds, namely unfairness of the decision, failure to examine the evidence or inaccurate interpretation of the law. The

[3] As of 8 June 2010, there is still one uncompleted case where the review request made by the company has not been accepted or rejected.

adjudicators' reasons for rejecting the five requests were basically that the parties could not satisfy the criteria in the Adjudication Rules. In particular, the adjudicators provided the following comments:

(a) no new evidence or information was brought up in the submission for the request for review. There was also a comment from one adjudicator that new evidence submitted should not be considered without a satisfactory explanation on the late submission;

(b) the submitted grounds for request of review could not be substantiated; and

(c) the adjudicator could not make his decision based on a possible third party conduct which might involve a criminal offence[4].

18. For the five cases where requests for review of the adjudicator's decisions were accepted, four adjudicators affirmed their decisions after review while one adjudicator varied his decision as to the amount payable by the customer.

19. According to the Adjudication Rules, the adjudicator's decision may be a single outcome, or any combination of seven different outcomes. The following table sets out the distribution of the seven outcomes of the eleven cases which the adjudicators had made their decisions (six made at adjudication stage and five made/affirmed after review). In most of the cases (eight out of eleven), the adjudicators granted a combination of the seven possible remedies. Since a case may involve more than one fee items, there could be different outcomes for different items in a particular case.

	Outcome	**No. of cases[5]**
(a)	conclude that there are no merits in the customer's case	5
(b)	require the company to waive charges (up to $10,000) which have been imposed on the customer	5

[4] In one case, the customer requested for review of the adjudicator's decision based on alleged "theft" that the concerned roaming service was actually used by an unknown third party. The adjudicator considered that he has no jurisdiction over claims of criminal nature.

[5] The table does not include the uncompleted case, the outcome of which is uncertain.

(c)	require the company to pay compensation or make refund payment not exceeding $10,000 to the customer	4
(d)	require the company to take certain practical actions to resume or to provide new services to the customer within a reasonable period, and for the avoidance of doubt, the actions which may be required of the company in this respect shall not extend beyond the actions taken by the company in its normal provisioning of services to customers in the same category as the customer	1
(e)	require the company to terminate the service contract with the customer and to waive up to $10,000 of financial charges for early termination of the contract	4
(f)	require the company to apologise to the customer in a manner which is reasonable in the circumstances	2
(g)	require the company or customer to do any other things that are reasonable in the circumstances and are ancillary to (a) – (f)	6[6]

20. The outcomes of the adjudicated cases indicate that the Pilot Programme has achieved a fairly balanced result. There is more or less an even distribution of the outcomes, which suggests that it is not mainly the customer or the company who is culpable. Such results generally reflect the fact that both parties could be at fault in disputes arising from contractual relationship. A summary of the above figures is given in the table at Appendix III.

Statistics on duration and time spent

[6] Among the six cases, one adjudicator urged the company to consider charging the customer at cost because of the customer's financial situation (the case was about roaming charges dispute). As for the other five cases, the adjudicators ruled that customers shall pay a service fee (as decided by the adjudicators), while one adjudicator ruled that the customer shall return the telecommunications equipment to the company and the company shall not be held responsible for the customer's subscription fee of a similar service at another service provider after the customer has stopped using the company's service.

Duration of cases

21. During the Pilot Programme, the time taken for each step was recorded to establish the average timeline for completion of different stages in each case. The following periods are summarized according to the flow and operation of the CCSS Pilot Programme:

(a) Period 1 *(part of Step 1)* - customer completes consent and claim form;
(b) Period 2 *(part of Step 1)* – company completes reply form;
(c) Period 3 *(Step 2 & part of Step 1)* – information collection & mediation;
(d) Period 4 *(Step 3)* – adjudication;
(e) Period 5 *(Step 4)* – review of decision;

22. On average, a customer took 67 days to complete his consent form and claim form, while the average duration taken by a company to submit its reply was 40 days after the administration staff received the customer's submission. It was observed that customers were generally eager to lodge their claims with the Pilot Programme because they understood that if they did so, the operator would suspend the debt collection till the adjudicator's final decision was made. Once the claim was lodged, some customers were difficult to reach, some kept changing their minds about their demands (generally demanding more) while others needed more time to reconstruct their cases before they could put down their disputes in writing. In some cases, the administration staff had to help the customers to put down in writing details of their cases in the claim form.

23. OFTA's observation is that for the long term implementation of the CCSS, the parties should take the primary responsibility of completing the forms and submitting appropriate supporting documents. If the customer fails to state his case clearly, the claim may be rejected for further processing. Likewise, if the company fails to state its case clearly in its reply or submit the relevant documents, this will work to its disadvantage in the subsequent process. Furthermore, time limit may be set for the parties to submit the forms and documents and late submission will not be accepted without the permission of the adjudicator.

Time spent by OFTA staff on administering the pilot programme

24. OFTA has kept record of the actual time spent by its staff in administering the Pilot Programme. The work includes the day-to-day administration, information collection, completing questionnaire [7] and conducting mediation and analysis. On average, the time spent in each case was 50 hours if the case proceeded to adjudication/review stage. About 5% of the time spent by the staff was to complete the questionnaires with the parties. Without counting the time for completing questionnaires, the amount of time spent by the administration staff in the Pilot Programme was more than originally expected. This may be explained by the fact that, given the pilot nature of the Programme, parties were not familiar with its modus operandi and therefore more time would be needed in assisting the parties to prepare their cases. For certain cases, adjudicators also requested for clarification on the claims or evidence and for checking the original documents. The staff thus spent considerable time to liaise with the various parties on these matters.

25. Time could be substantially reduced if the case could be settled during the mediation stage. For two cases, settlement by mediation could be reached within 3 hours. This was probably due to the fact that mediation, unlike adjudication, is not a fact finding process. Strictly speaking, there is no evidentiary burden on the part of the parties in a mediation process. As opposed to an adjudicator, the mediator needs not apply any rule of law or rule of evidence. Therefore, much of the time that would otherwise be required to collate and clarify the evidence for analysis in an adjudication process can be saved in a mediation process.

Feedback of the Participating Parties

26. Throughout the Pilot Programme, OFTA solicited the views and comments of the participating parties, including the adjudicators, the customers, the companies and the staff who administered the scheme. Their feedback is set out below:

Adjudicators

[7] For the purpose of facilitating review of the Pilot Programme, OFTA had prepared four sets of questionnaires for the participating parties including the customer, the company, the adjudicator and also the OFTA administration staff. The participating parties were invited to respond to the questionnaires after completion of each case. On many occasions, OFTA administration staff would have to contact the participating parties to complete the questionnaire or clarify the answers provided by them.

27. Three adjudicators considered that the long-term CCSS scheme should impose a fee on the party who lodged the case. This could help screen out customers wishing to come forward simply to take advantage of or abuse a system which is free of charge.

28. One adjudicator was of the view that the long-term CCSS scheme should consider awarding interest of the disputed amount to the party whose payment was withheld as a result of the dispute. Another adjudicator considered that the customer should sign an affidavit when submitting his claim and responses to the adjudicator's questions raised during the adjudication process.

29. One adjudicator commented that where the decision comprised different aspects, customer should not be allowed to pick and choose and accept selectively some aspects of the decision. Instead, he had to decide whether or not to accept the decision as a whole.

30. Three adjudicators commented that the scheme should provide a standard form for the customer or the company to submit their request for review of decision, which should clearly indicate the grounds for making the request. This would save the adjudicator's time in understanding the customer's grounds for review. According to the Adjudication Rules, a party could only request for review of decision based on (a) unfairness of the decision, (b) a failure to examine the evidence, or (c) an inaccurate interpretation of the law. Some adjudicators considered that some customers were simply repeating information or evidence they have already submitted without providing any arguments in relation to any of the above mentioned grounds.

31. One adjudicator commented that the long-term scheme should strictly observe the submission deadline for request of review of the adjudicator's decision[8]. Comments were also made that time for submission of claims and documents should be specified in the Adjudication Rules, subject to request for extension for consideration by the adjudicator.

32. Most adjudicators considered that customers should be given a copy of the company's submission and they should be allowed one round of response to the company's submissions before all the submissions and responses were sent to

[8] According to the CCSS Adjudication Rules, the only submission deadline applicable to the customer and the company was that for request of review of the adjudicator's decision.

the adjudicator for adjudication. For information, in the Pilot Programme, the company was given customer's submission to provide response while the customer wasn't afforded the opportunity to comment on the company's submission.

33. One adjudicator suggested that the long-term scheme shall give more flexibility to the adjudicators to request more information from the customer or the company, if needed, by means of telephone or email. In the Pilot Programme, additional information was sought through primarily physical mails.

Customers

34. Other than the observation made in paragraph 22, it was found that customers agreed to refer their cases to the Pilot Programme because:

(a) they had no alternatives ;
(b) the scheme had a third party to adjudicate the case first instead of going to the Small Claims Tribunal right away;
(c) they wished to settle the dispute with a fair outcome;
(d) it saved them time and the adjudicator's decision was enforceable;
(e) the scheme costed them nothing, and the procedures were simple and convenient (filling in forms through fax or email only and did not require the customer to submit form in person); and
(f) the scheme could help the customers to follow up the case (the customers claimed that on their own they were often stonewalled by the companies).

35. Among the cases referred to the Pilot Programme, most had been handled by the operator for more than 2 months without success before being referred to the Pilot Programme. Three cases had even been dealt with for over one year. Almost all the customers were very dissatisfied about the operators' manner of handling their complaints, with the main reasons given below:

(a) the company refused to negotiate settlement;
(b) the company failed to comply with the demands in negotiating settlement; and
(c) the company refused to admit that it was wrong.

36. Most of the customers indicated that they would refer their future disputes against operators to the CCSS. When asked whether they would be willing to pay a case fee when lodging their cases, most of the customers replied positively while a few respondents considered that the operators should shoulder the case fee. Some found a fee of less than $100 reasonable while some considered that the case fee should depend on the disputed amount. One customer regarded that charging the customer at administration cost would be reasonable. One customer (whose case was decided not in his favour) considered that it was a waste of time to take part in the scheme because he doubted the quality of the adjudicator's work.

37. The customers preferred to have oral hearing because they could state their cases before the adjudicator, have more confidence in the adjudicator, listen to the company's submission and make immediate response. One customer claimed that he found it difficult to put down everything in writing and hence oral hearing would be more convenient to him.

38. Some customers considered the process (from the time they submitted their claim to the decision was made) lasted too long.

Company

39. Companies generally favoured paper hearing because their staff were too busy to attend oral hearing. There were also comments that before reaching a decision, the adjudicator should provide an opportunity (oral hearing or at least an opportunity to provide written submission) for the relevant party to comment on or explain important evidence that the adjudicator considered prejudicial to that party's case. The adjudicator should not wrongly apply important legal principles in making a decision.

Administration Staff

40. The staff found that it was generally easy to get in touch with the customers, but in a few cases customers were out of town, making it difficult to contact them. Companies were generally cooperative in providing information on the cases.

41. It was observed that some customers were unable to describe their cases

clearly, and that the administration staff needed to help them to fill in the forms and even reconstruct their cases. Some were too emotional and discontent such that they were not able to relay coherently or truthfully the facts of the cases.

Office of the Telecommunications Authority
8 June 2010

APPENDIX I

Adjudication Rules for Pilot Programme for Customer Complaint Settlement Scheme

1. References

Adjudication means the process of adjudication of a Customer Complaint that is referred to by OFTA for adjudication under the terms and conditions of the Engagement Letter;

Adjudicator means a person appointed to the Panel of Adjudicators;

Authority means the Telecommunications Authority;

CCSS Pilot Programme or **Programme** means the pilot programme for customer complaint settlement scheme that is administratively run and supported by OFTA and is launched to test the operation of a scheme aimed at resolving complaints that end customers have against their communications service providers;

Companies means the companies that participate in the CCSS Pilot Programme, and **Company** means any of the Companies;

Customer means any actual or prospective user of standard services offered by any of the Companies;

Customer Complaint means a complaint from a Customer of a Company against the Company that has been referred to the CCSS Pilot Programme for handling;

Engagement Letter means the letter issued by the Authority to HKIAC dated 19 August 2008 engaging HKIAC to provide the Adjudication Service to the CCSS Pilot Programme;

HKIAC means Hong Kong International Arbitration Centre;

OFTA means the Office of the Telecommunications Authority;

2. General Provisions

(a) These rules apply to the Adjudication of a Customer Complaint by an Adjudicator;

(b) In the Adjudication, the Adjudicator shall treat the parties fairly and equally, and shall act expeditiously;

(c) An Adjudicator shall be impartial and independent and shall have, before accepting appointment, disclosed to the parties any circumstances giving rise to justifiable doubt as to the Adjudicator's impartiality or independence.

3. Language Used in the Adjudication

An adjudication may be conducted in either the English or Chinese language at the choice of the Customer, who is required to indicate the preference of language in the claim form that the Customer is required to sign when the Complaint is referred to the CCSS Pilot Programme.

4. Representation

(a) Subject to Paragraph 4(c), the Customer may represent himself or herself in person, or may authorize a person to act for him or her;

(b) Subject to Paragraph 4(c), the Company may be represented by an authorized representative of the Company;

(c) No legal representation is allowed to act on behalf of either the Customer or the Company.

5. Procedure in General

(a) On commencement of an Adjudication, the Adjudicator shall have before him or her a copy set of documents containing:

(i) a consent form signed by the Customer indicating consent to the Customer Complaint being referred to the CCSS Pilot Programme;

(ii) a claim form signed by the Customer, setting out the claim against the Company, together with any documents provided by the Customer in support of the claim;

(iii) a reply form signed by the Company, setting out the reply to the Customer's claim, together with any documents provided by the Company in support of the reply; and

(iv) any other documents that OFTA considers are relevant for adjudication.

(b) The Adjudicator may request, in his or her sole discretion and via OFTA, further information, statements or documents from either of the parties;

(c) The Adjudicator shall, as far as practicable, make a decision in respect of the Customer Complaint within two months after the matter has been referred for adjudication.

6. In-Person Hearings

No in-person hearings (including hearings by teleconference, videoconference, and web conference) shall be conducted for any Adjudication unless the Adjudicator determines, in his or her sole discretion and as an exceptional matter, that such a hearing is necessary for deciding the Customer Complaint.

7. Expert Advice and Translation Service

Where an Adjudicator requires independent expert advice or translation service (in relation to a language other than English and Chinese) in adjudicating a Customer Complaint, the Adjudicator shall, via HKIAC, obtain the prior agreement from the Authority to incur those expenses.

8. Considerations to be Taken into Account in Adjudication

In adjudicating a Customer Complaint, the Adjudicator is required to take into account:

(a) the terms and conditions of the service contract;

(b) any relevant codes or industry practices;

(c) any applicable laws;

(d) the relevant principles adopted in any relevant decisions previously made by the Adjudicators; and

(e) what is otherwise fair and reasonable in the circumstances of the case.

9. The Decision

(a) The decision made by an Adjudicator on a Customer Complaint shall be in writing and shall state the reasons for the decision and explain the likely consequences of the decision;

(b) The decision may have one or more of the following effects:

(i) conclude that there are no merits in the Customer's case;

(ii) require the Company to waive charges (up to $10,000) which have been imposed on the Customer;

(iii) require the Company to pay compensation or make refund payment not exceeding $10,000 to the Customer;

(iv) require the Company to take certain practical actions to resume or newly provision services to the Customer within a reasonable period, and for the avoidance of doubt, the actions which may be required of the Company in this respect shall not extend beyond the actions taken by the Company in its normal provisioning of services to customers in the same category as the Customer;

(v) require the Company to terminate the service contract with the Customer and waiving up to $10,000 of financial charges for early termination of the contract;

(vi) require the Company to apologise to the Customer in a manner which is reasonable in the circumstances; and

(vii) require the Company to do any other things that are reasonable in the circumstances and are ancillary to (i) – (vi);

(c) The decision in writing made by the Adjudicator shall be sent to the Customer and the Company via OFTA;

(d) Subject to Paragraph 10, the Company has to comply with the Adjudicator's decision made within the scope of Paragraph 9(b), after the Customer has indicated acceptance of the decision.

10.Review of the Decision

(a) Within two weeks after the decision of the Adjudicator is sent to the Customer and the Company by OFTA, the Customer or the Company may request the Adjudicator to review his or her own decision on the grounds of unfairness of the decision, a failure to examine the evidence or an inaccurate interpretation of the law;

(b) On receipt of a request for review, the Adjudicator shall consider whether there is a need to review the decision and if so, the review should, as far as practicable, be completed within two weeks after the Customer or the Company has made the request;

(c) On completion of a review, the Adjudicator may, with reasons given in writing:

(i) affirm his or her original decision; or

(ii) replace the original decision with a new decision in full or in part;

(d) The decision made by the Adjudicator in the review is final, in that the Customer Complaint will not be re-opened for further consideration or review by the Adjudicator, other Adjudicators or HKIAC;

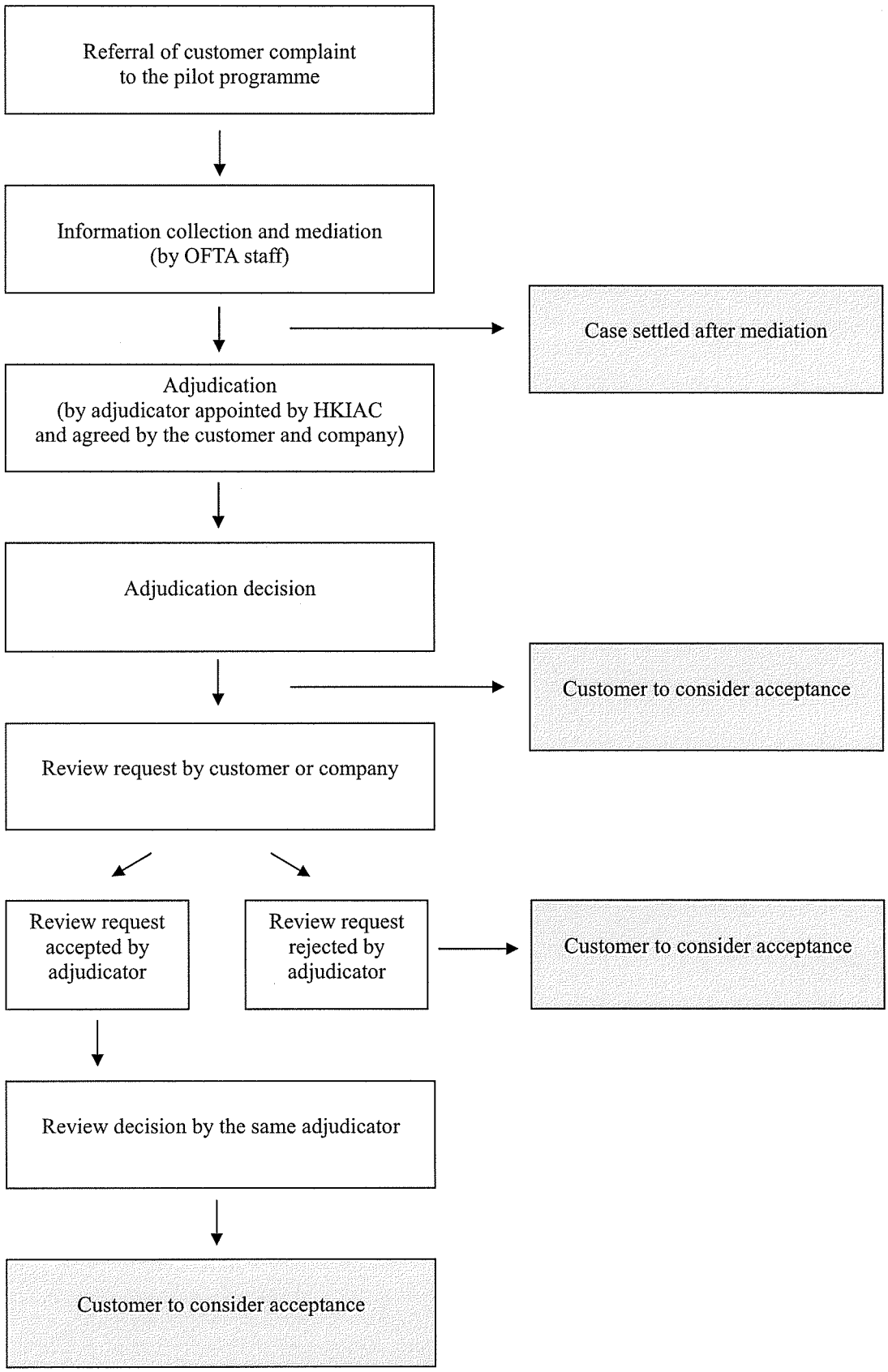
(e) Where a decision made by the Adjudicator has been subject to review under this Paragraph, the Company has to comply with the decision made by the Adjudicator in the review after the Customer has indicated acceptance of the decision.

11.Confidentiality of Customer Complaints

(a) The Adjudicator will not disclose to the public details concerning individual Customer Complaints that are referred to adjudication;

(b) For the avoidance of doubt, statistical information, comments or reports in relation to the Customer Complaints referred to adjudication on a collective or summary and no-name basis can be disclosed to the public.

APPENDIX II – Flowchart of the Pilot Programme



APPENDIX III

Summary of the 18 cases submitted to the CCSS pilot programme

	Case finished at stage of						Adjudicator's decision[9]			
Case No.	Mediation	Adjudication	Review of Decision	Review requested by Company	Review requested by Customer	Adjudicator rejected request to review decision	in favour of the company	in favour of the customer	both parties bear some responsibilities	Decision accepted by the customer
1			X		X				X	
2			X		X	X		X		X
3			X		X		X			
4			X	X		X		X		X
5			X		X	X			X	X
6			X	X	X		X			
7, 12 & 13	X									
8			X	X		X		X		X
9		X						X		X
10			X		X		X			
11			X		X	X	X			
14			X	X				X		X
15 - 17	X									
18	Case still in review									
Total	*6*	*1*	*10*	*4*	*7*	*5*	*4*	*5*	*2*	*6*

[9] Of the 5 cases where the adjudicators agreed to review the decision, 4 decisions were affirmed after review while 1 decision was varied (but not reversed) as to the amount payable. As of 8 June 2010, there is still one uncompleted case where the review request made by the company has not been accepted or rejected.

Annex II

CUSTOMER COMPLAINT SETTLEMENT SCHEME

Statement of the Telecommunications Authority

14 March 2012

Introduction

The Office of the Telecommunications Authority ("OFTA") conducted a pilot programme of alternative dispute resolution ("ADR") scheme in the telecommunications sector, known as the Customer Complaint Settlement Scheme ("CCSS") for 18 months from September 2008 to February 2010 ("Pilot Programme"). Such an ADR scheme seeks to resolve contractual disputes between telecommunications service providers and customers outside the judicial system. The objective was to offer the parties concerned a quick and economical way to resolve disputes with less legal formality and without the need for expensive legal cost. Similar schemes are in force in some overseas economies, such as Australia, New Zealand and the United Kingdom. The Pilot Programme was conducted with a view to testing the practicality and efficacy of the CCSS under local Hong Kong conditions. Three service providers[1] volunteered to join the Pilot Programme. A report summarizing the outcome of the Pilot Programme and the feedback of the participants was published in June 2010[2].

2. Drawing on the experience of the Pilot Programme, the Telecommunications Authority ("TA") issued a consultation paper on 8 June 2010 entitled "Consultation Paper on the Customer Complaint Settlement Scheme" (the "Consultation Paper")[3] to solicit the views of the public and the industry on the salient issues in relation to the implementation in Hong Kong of the CCSS on a long term and sustainable basis. The consultation closed in December 2010.

[1] They were CSL Limited, Hutchison Telecommunications (Hong Kong) Limited and PCCW.
[2] The report is available at http://www.ofta.gov.hk/en/report-paper-guide/report/rp20100608.pdf.
[3] The Consultation Paper can be viewed at http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/cp20100608.pdf.

Discussion with the Industry

3. At the close of the consultation, we received 13 submissions. The responses to the Consultation Paper were mixed. OFTA has studied the submissions carefully and has since continued to engage in dialogue with the industry with a view to formulating a CCSS that would both meet the objectives of the ADR, while receiving broad support of the industry. We are encouraged to see that these discussions 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.

4. Noting the positive progress of discussion with the industry and also the views and comments that he has received in response to the Consultation Paper, the TA sets out in this Statement his conclusion on the implementation of the CCSS. His responses to the submissions to the Consultation Paper are given in the Appendix to this Statement.

5. Unlike the Pilot Programme, which was conducted on a managed and restricted basis with the participation of but three operators, the voluntary CCSS that the TA has in mind now will be open for participation by all telecommunications service providers and for referrals for handling billing disputes by all customers. The CCSS will follow a one-stage mediation approach. As the voluntary CCSS is much larger and different in terms of scale and mode of operation as compared with the Pilot Programme, the TA and the industry agree that it is appropriate to conduct a two-year trial so that all parties concerned may fully assess the effectiveness of the CCSS and the public demand for it. The TA and the participating service providers will review the result of the voluntary CCSS during the two-year trial period in considering and deciding on the long-term implementation of CCSS.

Key Elements of the Voluntary CCSS

6. The TA considers that the voluntary CCSS should consist of the following key elements:

(a) The scheme 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;

(b) The scheme should be managed and operated by an independent CCSS Agent. The TA would however play an active role in monitoring the effectiveness of the scheme. The scheme will not prejudice the power of TA to conduct investigations under the Telecommunications Ordinance for any suspected regulatory breaches;

(c) Since the scheme 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. Having said that, to kick-start the CCSS trial and to ensure the smooth and continual operation of the scheme, the TA would provide in the inaugural stage the necessary funding to meet the operating cost. To ensure the effective use of the funding, the TA will impose certain acceptance criteria for admission of disputes to be handled under the CCSS;

(d) The scope of CCSS will primarily cover billing disputes between residential/personal customers and telecommunications service providers;

(e) The scheme will consist of a one-stage mediation (viz. without adjudication); and

(f) If the customer and the service provider reach a settlement after the mediation provided by the CCSS Agent, the two parties will sign a settlement agreement which will be binding on both parties.

Way Forward

7. Along the foregoing parameters, OFTA will continue its dialogue 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, the TA targets to commence the trial operation of the CCSS in the second half of 2012. There will be further announcement upon the launch of the CCSS.

8. After the two-year trial period, the TA will assess whether the voluntary CCSS has achieved the intended objective as stated in the first paragraph of this Statement. He will then make a decision on the way-forward.

Office of the Telecommunications Authority
14 March 2012

Appendix

Submissions to the Consultation Paper and the TA's Responses

In the Consultation Paper, the TA sought the views of the public and the industry on the salient issues in relation to the implementation of the CCSS on a long term and sustainable basis. At the close of the consultation on 8 December 2010, a total of 13 submissions[4] were received from the following parties (listed in alphabetical order).

(1) China Mobile Hong Kong Company Limited ("CMHK")
(2) Communications Association of Hong Kong ("CAHK")
(3) Consumer Council ("CC")
(4) CSL Limited ("CSL")
(5) Hong Kong Broadband Network Limited ("HKBN")
(6) Hong Kong Cable Television Limited ("HKCTV")
(7) Hutchison Telecommunications (Hong Kong) Limited ("HTHK")
(8) Maurice WM Lee Solicitors ("Maurice WM Lee Solicitors")
(9) New World Telecommunications Limited ("NWT")
(10) Pacnet Internet (Hong Kong) Limited ("Pacnet")
(11) PCCW ("PCCW")
(12) SmarTone Mobile Communications Limited ("SmarTone")
(13) Wharf T&T Limited ("WTT")

2. The TA asked a number of questions in the Consultation Paper to help focus respondents on issues that require deliberation. A summary of the views and comments of the respondents to each of the questions, and the responses of the TA to these views and comments, are set out in this Appendix.

(I) Basic features of an effective CCSS

3. Taking into account the outcome of the Pilot Programme and similar practices in overseas economies and other local sectors, the TA considered that an effective ADR scheme should possess the following basic features: (a) it

[4] All submissions are available at http://www.ofta.gov.hk/en/report-paper-guide/paper/consultation/20100909/table.html.

should be cost-effective, user friendly and flexible; (b) it should aim to resolve customer disputes in a timely manner; and (c) it must be fair at all times. The following question was raised in the Consultation Paper:

Question 1: Do you agree the above features and objectives are essential to an effective ADR scheme? Do you think there are any other features and objectives which are important for the future CCSS? If yes, please elaborate.

Respondents' Views and Comments

4. In general, the respondents giving comments on this question agreed to the proposed basic features of an effective ADR scheme. WTT supplemented that reference should be made to the established rules and underlying principles of the Hong Kong International Arbitration Centre ("HKIAC"). CC, CSL, HKBN and HTHK considered that the disputes should be handled by individuals with knowledge of telecommunications services and consumer protection.

TA's Considerations and Responses

5. The TA agrees that if the CCSS is to be implemented, there should be a set of clearly defined rules and principles, and those promulgated or adopted by reputable ADR organizations such as HKIAC can serve as good references when he draws up the details of the CCSS in the telecommunications sector. In addition, the TA considers that the development of local legislation[5] and authoritative guidelines related to ADR should be taken into account so that the formulation of the CCSS follows the commonly accepted standards in the society.

6. The TA expects that the day-to-day operation of the CCSS will be managed and performed by an independent CCSS Agent. Depending on the scope of the CCSS, the TA considers that some telecommunications disputes may involve technical and industry specific issues and hence he agrees that it will be desirable for the CCSS Agent to possess adequate industry knowledge in order to resolve the disputes in a timely and effective manner.

[5] For example, the Government has introduced a draft Mediation Bill in November 2011 which is now being scrutinized by the Legislative Council.

7. **Having considered the views and comments received, the TA affirms that the CCSS should possess the basic features as summarised in paragraph 3 of this Appendix.** In this connection, there is also a need to ensure that the CCSS Agent should possess adequate industry knowledge to deal with service disputes in the telecommunications sector in a timely and effective manner.

(II) Should the future CCSS be a voluntary scheme or should it be made mandatory?

8. The implementation of CCSS can be either based on voluntary participation of individual service providers or mandatory participation of all service providers if so required by the TA under their licence conditions. While special condition ("SC") 36 of the unified carrier licence ("UCL") and SC 15 of the service-based operator ("SBO") licence[6] provide a formal framework for handling contractual disputes between service providers and their customers including submission of such disputes to an independent dispute resolution scheme, the TA has made clear in his Statement on "Licensing Framework for Unified Carrier Licence" issued on 9 May 2008[7] that the industry would be encouraged to continue tackling these issues voluntarily. A self-regulatory regime driven and supported by the industry which is operating efficiently and effectively will obviate the need for the TA to issue any code of practice under the UCL or SBO to mandate an ADR scheme for the industry. The following question was raised in the Consultation Paper:

Question 2: Do you have any comments on whether the CCSS should be implemented on a voluntary or mandatory basis? Please elaborate. If you are a service provider, you are welcome to state whether you intend to join a voluntary scheme.

Respondents' Views and Comments

9. There were mixed responses on this issue. CC, HTHK and Pacnet supported mandatory implementation of CCSS whereas CMHK and PCCW

[6] Similar licence condition (Condition 17) was also added to the Class Licence for Offer of Telecommunications Services on 26 November 2010.

[7] The TA statement is available at http://www.ofta.gov.hk/en/tas/others/ta20080509.pdf.

preferred voluntary implementation. CAHK indicated that it will be willing to draw up an agreeable framework after collecting service providers' preferences. Other parties objected to CCSS or did not indicate preference. HTHK supplemented that service providers should have the sole right to refer disputes to CCSS with the customers having the right to decide whether to participate.

TA's Considerations and Responses

10. Consistent with his light-handed and market-driven approach in the regulation of the telecommunications sector, the TA prefers a voluntary solution agreed by the industry rather than a mandatory one imposed by the regulator. If the industry can on its own initiative set up a voluntary scheme, the TA trusts that such industry driven measure will better take into account the operational characteristics of the local telecommunications business and have more flexibility to deal with different issues in the fast changing telecommunications market in Hong Kong.

11. The TA notices that there are quite a number of successful examples of voluntary self-regulation schemes recently implemented by the industry to deal with customer disputes. In January 2010, in cooperation with OFTA, CAHK issued the "Code for the Provision of Chargeable Mobile Content Services" to address billing disputes in relation to chargeable mobile content services. In December 2010, having made reference to a code of practice issued by OFTA and taking into account the circumstances specific to the local telecommunications industry, CAHK issued a "Code of Practice for Telecommunications Service Contracts" which has been adopted and implemented by all the major fixed and mobile service providers since July 2011. The results are rather encouraging, with the drop in the number of consumer complaints concerning chargeable mobile content services from 146 cases in 2010 to 52 cases in 2011, those relating to service contracts from 1,466 cases in 2010 to 1,277 cases in 2011. And, there is not a single breach of either Code.

12. The TA has expressed in the Consultation Paper that his main concern with a voluntary scheme was that there might be a low participation of service providers which would not be conducive to the development of an effective scheme on industry-wide level to deal with telecommunications service disputes. Having considered the positive feedback of some respondents and

following subsequent discussion with the industry after the close of the consultation, the TA is optimistic that the industry would be ready and willing to support the implementation of a voluntary scheme. **Subject to a firm commitment from the industry to the TA for implementing a self-regulatory industry scheme, the mode of its operation and the scale of participation in the scheme, the TA will give his support to a voluntary CCSS.** The TA will continue to monitor the market situation and will not hesitate to mandate a CCSS scheme when necessary.

(III) Role of OFTA and the CCSS Agent

13. As the regulator of the telecommunications industry, the TA is empowered to conduct investigations and to sanction a licensee in breach of the statute and licence conditions in accordance with the Telecommunications Ordinance ("the Ordinance"). This power is distinguishable from the power of an adjudicator, who has to decide on a case or a claim on the basis of its merits, with the underlying causes not necessarily linked to any alleged breach of statute or licence conditions. Drawing references from the similar ADR schemes in overseas economies[8], the TA is of the view that the future CCSS should operate on a fully independent basis and OFTA's involvement in the day-to-day operation of the scheme should be kept to the minimum. The TA should retain some degree of control by incorporating appropriate terms in an agreement or undertaking to be entered into with the future CCSS Agent and by setting appropriate criteria or rules for compliance by the CCSS Agent. The following question was raised in the Consultation Paper:

Question 3: Do you have any comments on the roles of OFTA and the selected ADR organisation(s) in the implementation of the CCSS? In particular, do you agree that the appointed ADR organisation(s) has to be independent but subject to certain degree of monitoring control by the TA? Please elaborate.

[8] The ADR schemes in UK, the Ombudsman Services: Communication and Communications and Internet Services Adjudication Scheme (CISAS), are approved by OFCOM and run independently. In Australia, the Telecommunications Industry Ombudsman Ltd is independent from the industry, the government and the consumer organisations.

Respondents' Views and Comments

14. There were no adverse views on this question from the respondents. CC, CSL, Pacnet and PCCW agreed while CMHK and HTHK were neutral. HTHK opined that the powers of the TA and CCSS should not overlap.

TA's Considerations and Responses

15. To maintain the impartiality and independence of the CCSS, **the TA affirms his views that the CCSS should be managed and operated by a separate and independent CCSS Agent.** The CCSS Agent should have the maximum latitude in the day-to-day operation and handling of the complaints. Nevertheless, **in order to ensure the smooth and continual operation of the scheme, especially in the inaugural stage, the TA would play an active role in monitoring the effectiveness of the scheme,** for example, by considering 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. Furthermore, OFTA would be willing to sponsor the establishment and operation of CCSS through relevant training, funding and other kinds of administrative support. As mentioned in the Consultation Paper, **the CCSS will not prejudice the power of the TA to conduct investigations under the Ordinance for any suspected regulatory breaches**.

(IV) Scope of the scheme

16. To test the robustness of the voluntary scheme, the Pilot Programme did not clearly define the scope of services that might be subject to the ADR mechanism. Participating service providers might submit cases concerning content or TV services for adjudication. If the future CCSS were a voluntary one, the TA would not consider it necessary to confine the scope of complaints to licensable services. A wider scope could benefit more customers. However, if the future CCSS were mandated under the relevant licence condition, then the fact that the TA did not have jurisdiction over content and TV services would imply that the scheme might not be available to these services. To enable more customers to benefit from the CCSS, the TA proposed to permit service providers to declare voluntarily to subject all or certain types of their contracts relating to content and TV services to the

mandatory CCSS. Customers of such declared type of contracts might then submit their cases to the CCSS if they so wish. The following question was raised in the Consultation Paper:

Question 4: Do you have any comments on the scope of the CCSS and these proposed arrangements?

Respondents' Views and Comments

17. Most respondents expressed that the scope of the CCSS should be confined to licensable services, except for CC which submitted that the CCSS should cover non-licensable services. There were also other comments from the respondents on the types of telecommunications service disputes which should be handled under the CCSS. CC and HTHK submitted that the CCSS should apply to all types of telecommunications licensees, not just limited to holders of UCL and SBO licences. HTHK opined that the scope of the CCSS should be limited to individual consumers only. CSL suggested that the CCSS should exclude complaints concerning commercial decision on whether to offer a telecommunications service; level of charge; and cases already brought to court. CMHK, HTHK, and PCCW considered that the CCSS should only handle non-monetary claims/deadlock disputes.

TA's Considerations and Responses

18. The TA considers that the scope of the CCSS will depend on whether the scheme is mandatory or voluntary. A mandatory scheme established pursuant to SC 36 of UCL and SC 15 of SBO licences will be restricted to licensable services and holders of UCL and SBO licence only. A wider scope of CCSS can be achieved if it is run under a voluntary model. Having said that, if a voluntary CCSS should be implemented by the telecommunications industry, the participating service providers should have the discretion to decide whether non-licensable services would be covered. Similarly, while other service providers not holding UCL or SBO licence are encouraged to join a voluntary scheme, it would be their discretion as to whether to do so or otherwise.

19. Since the CCSS is intended as a consumer protection initiative, and given the resource implications for both the industry and OFTA for

implementation of the scheme, the TA opines that it should 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.

20. The TA would also like to clarify that it is not the aim of the CCSS to cover complaints on commercial matters such as the range of service offered by service providers and the related service charges unless the disputes relate to the terms of service contract between the customer and the service provider. As the CCSS is intended to be an ADR scheme outside the judicial system, cases already brought to be court should also be excluded from the scope of the CCSS

21. The TA cannot agree with some respondents to restrict the scope of CCSS to non-monetary claims only. Indeed, in view of the experience of the Pilot Programme, monetary disputes are considered more suitable for resolution under a CCSS. The TA also expects that the CCSS will handle less straight-forward cases since the service providers and their customers should strive to resolve the disputes by themselves first before they resort to the CCSS.

22. According to the consumer complaints on telecommunications services received by OFTA from the year 2009 to 2011[9], billing disputes ranked top amongst all the complaint categories. To kick start the CCSS, the TA considers that the CCSS should deal with disputes related to this complaint category as a priority.

23. Having considered the views and comments received, **the TA concludes that the scope of CCSS should primarily cover billing disputes between residential/personal customers and telecommunications service providers in the initial stage of operation.** 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.

[9] Bill disputes accounted for 21% - 30% of total consumer complaints received by OFTA from year 2009 to 2011.

(V) The mode of operation of the Long Term CCSS

24. Taking into account the experience gained from the Pilot Programme, the TA proposed two options which were considered to be more cost-effective and accessible by both the service providers and the customers for the future operation of the CCSS: (a) informal mediation plus adjudication, the approach adopted in the Pilot Programme; or (b) pure mediation without adjudication, which is likely to solicit the participation of the service providers and is encouraged by the court. The following question was raised in the Consultation Paper:

Question 5: Do you have any preference for or comments on the form of ADR to be adopted for the future CCSS? Please elaborate.

Respondents' Views and Comments

25. CC, CMHK, HTHK and Pacnet preferred informal mediation plus adjudication. PCCW favoured pure mediation without adjudication. In addition to the indicated preferences, however, HKBN, PCCW and WTT considered that both options fail to achieve the objective of expeditious settlement under the CCSS. They considered that Small Claims Tribunal ("SCT") is a quicker and more economical channel when compared to the Pilot Programme in resolving contractual disputes.

TA's Considerations and Responses

26. The TA considers that it would not be appropriate to compare the SCT directly with the approach adopted in the Pilot Programme. The SCT provides a judicial mechanism (though with less strict rules and procedures than in most other courts) to the public to deal with monetary disputes below HK$50,000. This is a formal and face-to-face adjudication process conducted by a court that produces binding result enforceable on both the claimant and the defendant. The SCT requires both parties to attend the court proceedings which comprise different stages, namely, call-over, mention hearing(s), and trial. At present, according to the understanding of the TA, the SCT is not a common means for customers to resolve. This is apparently due to the time and effort to file a claim to the SCT and to go through the court proceedings. In contrast, in the Pilot Programme, the CCSS adopted less formal and more

flexible proceedings through paper and phone hearing for which both the service providers and customers were not required to attend in person. The CCSS can also potentially address the disputes more effectively if the CCSS Agent is specialized with the industry knowledge and experience to deal with telecommunications service disputes. The TA therefore reaffirms his views on the need and role of the CCSS as a sector-specific ADR scheme to more effectively resolve the disputes in the telecommunications sector in Hong Kong.

27. Having said that, the cost of the CCSS is highly dependent on the mode of operation adopted. The experience gained in the Pilot Programme shows that mediation has the practical benefits of being relatively simple, flexible and quick. The cost of mediation is generally much less than that for adjudication, especially if the parties involved can reasonably agree to settle during the early stage of the process. Moreover, given most telecommunications services in Hong Kong involve relatively low amount of service charges[10], an ADR scheme which is simple, efficient and low-cost is more suitable for the local market environment. If the CCSS process could be conducted in a speedy and efficient manner, this would also allow the concerned party to resort to the formal legal system without undue delay for settling unresolved case after going through the CCSS.

28. Taking into consideration the above factors, **the TA has come to the view that mediation with one stage only will be a more pragmatic and cost effective mode of operation for the CCSS in the Hong Kong setting.** A pitfall of the mediation model is that it cannot accommodate situations where mediation fails to resolve a dispute between the service provider and customer. 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 SCT, for a final settlement.

(VI) Funding arrangement and fee levels

29. Having regard to overseas practices and similar schemes in the local insurance and financial sectors, the TA expected that the funding for the long

[10] According to the statistics of complaints received by OFTA in 2011, over 85% of the dispute amounts in the bill dispute category were under HK$5,200.

term CCSS would have to be borne by the industry primarily. If necessary, OFTA would consider making a one-off contribution for the initial setting up costs or parts thereof so as to kick start the initiative. The TA believed that ADR is for the benefit of both the industry and the customers and so it would be reasonable for customers to pay a reasonable amount of fee for taking part in the CCSS. Requiring a customer to pay a reasonable amount of fee would also minimise submission of wholly unmeritorious claim and possible abuse.

30. Having considered the operation of the Pilot Programme and the consultation with the organisations providing ADR services in the market, the TA proposed, for indicative purpose, the following level of fees under the CCSS.

Model: Informal Mediation plus Adjudication

	Customer	**Service provider**
Application Fee	$100	
First Stage Fee (covering informal mediation and incidental services)		$1,200 per case
Second Stage Fee (covering adjudication and incidental services	$100 or 5% of the disputed amount, whichever is higher	$4,000 - $8,000 per case
Review Fee (paid by party who made the request)	$200	$2,000

Informal Mediation plus Formal Mediation

	Customer	**Service provider**
Application Fee	$100	
First Stage Fee (covering informal mediation and incidental services)		$1,200 per case
Second Stage Fee (covering formal mediation and incidental services / costs)	$100 or 5% of the disputed amount, whichever is higher	$4,000 per case

31. The following questions were raised in the Consultation Paper:

Question 6: Do you agree that both the industry and customers shall bear the on-going cost for the future CCSS and that the industry should bear the substantial part of the fees?

Question 7: Do you have any view on the above fee proposals? Please give supporting reasons for your views.

Respondents' Views and Comments

32. CC suggested a fee waiver to customers under certain circumstances[11] while Pacnet proposed that customers should have access to the first stage of the CCSS at no charge. However, other parties (CMHK, Hutchison, CSL, PCCW, HKBN, NWT, Maurice) gave opposite views as summarised below:

(a) Both customers and service providers would benefit from the CCSS so it was unfair to have asymmetric fee structure in favour of customers;

(b) The CCSS was not cost effective as the fees levied on service providers were higher than the amount of most of the telecom disputes. From users' perspective, the CCSS was unattractive when comparing the fees charged by the SCT (HK$20 - HK$120 only);

(c) The CCSS would provoke more complaints as customers would abuse the scheme to bargain with service providers to settle the disputes for amount less than the proposed fees level;

(d) The losing party should bear the cost and the adjudicator should have the discretion on who bear the costs; or an option should be available for parties to mutually agree to share the mediation cost prior to mediation;

[11] For examples, if the amount in dispute falls under a certain amount, or if a complainant cannot afford to pay.

(e) The provision of a "Calderbank offer"[12] might be considered to help either party to secure his cost position in adjudication; and

(f) there must be a threshold for refusing mediation if the amount in dispute was less than the minimum cost of mediation.

33. Apart from the above comments, HTHK proposed that all participating service providers should bear the fixed costs of the CCSS in equal share. CSL, PCCW and WTT opined that OFTA should also bear the ongoing cost of the CCSS.

TA's Considerations and Responses

34. Regarding respondents' view given in paragraph 32(a) above, the TA considers that, as stated in paragraph 50 of the Consultation Paper, one of the basic requirements for a successful ADR is that it cannot be overly expensive for access by consumers. In the similar overseas ADR schemes, taking the United Kingdom as example, the cost of operating the ADR service is mainly borne by service providers. In general, service providers have more financial and operational resources to deal with a dispute compared with individual consumers. Considering the practices overseas and the purpose of the CCSS as a consumer protection initiative, the TA opines that it would not be unfair to have asymmetric fees levied on individual customers and service providers.

35. Regarding respondents' view given in paragraph 32(b), the TA has already pointed out that it is not appropriate to have a direct comparison between the CCSS and the SCT (see paragraph 26 of this Appendix). While the TA agrees that the CCSS should be simple and cost effective (see paragraph 27 of this Appendix), he is of the view that it is not appropriate to measure the cost effectiveness of the CCSS by comparing the fees levied on service providers against the amount of telecom disputes alone. From customers' perspective, the CCSS provides an alternative avenue for dissatisfied customers to seek redress and relieve their grievances through dispute resolution by an independent third party. From service providers' perspective, the CCSS will

[12] If a party has made a "Calderbank offer" at any stage of the negotiations which is no worse than the decision made by the adjudicator ultimately, the party unreasonably rejecting that offer should bear the full cost of the adjudication after the offer is made, including the cost of the opposite party (if any).

help them save internal resources in handling customer complaints. The deadlock cases, in particular, can be passed on to the CCSS for an independent mediation. The implementation of the CCSS will, among other things, identify recurring and systematic problems and trends so that the service providers can rectify and hence improve the quality of customer service. As a whole, the CCSS will enhance customer protection and satisfaction. It will help to build a credible reputation for the telecommunications sector and in turn strengthen the competitiveness of service providers participating in the CCSS.

36. Regarding respondents' view given in paragraph 32(c), the TA is of the view that a reasonable amount of case fee levied on the customers would prevent any possible abuse. In fact, drawing reference from similar schemes in overseas administrations where the costs are mainly borne by the service providers, there is no evidence to suggest that customers would abuse an ADR scheme and generate more complaints.

37. Regarding respondents' views given in paragraphs 32(d) and 32(e) , as stated in paragraph 28 of this Appendix, the TA is of the view that mediation with one stage only is a more pragmatic and cost effective mode for the CCSS. If mediation is adopted as the mode of operation for the CCSS, the suggestion on losing-party-pay and the Calderbank offer would not be applicable. On the other hand, prior to the mediation, it might be impractical to ask the parties who are still in dispute to mutually agree to share the mediation cost. It would only create another dispute among the parties on the mediation fee, and defeat the purpose of the CCSS as resolving the disputes on the telecommunications service in the first place.

38. Regarding respondents' view given in paragraph 32(f), the TA would like to reiterate that the CCSS is intended for consumer protection. In order to achieve this purpose, the TA will take the cost of conducting mediation as one of, but not the only, considerations into account in designing the scheme. Nevertheless, to weed out frivolous and vexatious cases, the TA agrees that a threshold of dispute amount might be set.

39. Lastly, regarding respondents' view given in paragraph 33, the TA considers that 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 the cost of the CCSS. Nonetheless, if service providers are to

conduct the CCSS on a voluntary basis, the TA will consider providing funding support, at least in the initial stage, so as to encourage a wide participation in the CCSS.

40. Having considered the views and comments received, **the TA concludes that it is reasonable for both the industry and customers to share the cost of running a practical and sustainable CCSS.** The exact level of fees that should be paid by service providers and customers would need to be specified after the details of the CCSS including its mode of operation, institutional structure and funding arrangement are finalised.

(VII) Quota of cases to be handled

41. In the Consultation Paper, the TA proposed to set an annual quota of cases that would be handled under the CCSS, at least for the first three years of its operation. By setting an annual quota, the CCSS could be kept to a manageable scale capable of being supported by the industry and handled by the CCSS Agent. To ensure that the cases would spread evenly throughout the year, the TA proposed a monthly quota of 85 cases for the first year. This translated into a total of 1,020 cases for the first year of operation. The following question was raised in the Consultation Paper:

Question 8: Do you agree that a quota should be set for the CCSS? If yes, what should be the appropriate quota?

Respondents' Views and Comments

42. There were diverse views on whether a quota should be set for the CCSS. CSL and WTT agreed that a quota should be set for the CCSS. CC, NWT, Pacnet and PCCW disagreed as they believed that it would defeat the purpose of CCSS. CMHK considered that there are pros and cons of having a quota, and there must be a "screening mechanism" to exclude certain complaints. On the other hand, HTHK considered that the proposal to allow unused quota in a month to be carried forward to the following month would create potential pressure on the resources of the CCSS.

TA's Considerations and Responses

43. The CCSS is a completely new initiative to service providers and customers in Hong Kong, and it is difficult to have an accurate estimate on the number of cases that will be admitted to the CCSS for handling on a yearly or monthly basis. The number of complaints may also fluctuate from time to time as a result of different marketing strategies of operators, the coming into operation of regulatory code of practice and guidelines, and the self-regulated measures adopted by the industry recently. If there is no quota system, the uncertain demand and workload on the CCSS would be a challenge in terms of providing adequate resources for the CCSS Agent to deal with the complaints received in a timely and effective manner. On the other hand, the TA agrees that if a rigid quota is set, it would undermine the value of the CCSS as an option to the customers to resolve disputes with service providers.

44. Having considered the above factors and the views given by the respondents, the TA inclines not to impose any rigid quota for the number of complaints which will be handled by the CCSS. Nevertheless, for practical consideration of the limited resources of the CCSS Agent, **the TA agrees that certain acceptance criteria for admission of disputes to be handled under the CCSS should be imposed to ensure the effective use of the resources in the initial stage of the CCSS.**

(VIII) Binding nature of decision

45. Under the Pilot Programme, decisions of the adjudicators were only binding on the service providers participating in the adjudication. Customers who were not satisfied with the adjudicator's decisions might still lodge a fresh claim in the court such as in the SCT. Thus, even if a service provider had a very strong case, the customer might choose not to accept the outcome. In such event, given that the service providers had devoted considerable time, effort and resources for participation in the process, this would not be just and fair to them who had participated in the process in good faith. The TA therefore considered a binding decision on both sides as a result of going through the CCSS process to be a more balanced and reasonable arrangement. The following question was raised in the Consultation Paper:

Question 9: Do you have any comments on whether the adjudicators' decision should be binding on the operators only or both parties?

Respondents' Views and Comments

46. The respondents to this question generally supported the TA's view that the adjudicators' decisions should be binding on both sides; otherwise it would be difficult for the service providers to enforce the adjudicators' decision if it was ruled in their favour.

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47. Given the unanimous view in the submissions, the TA considers that, if adjudication is pursued under the CCSS, the adjudicators' decisions should be binding on both the service providers and the customers. However, **as set out in paragraph 28 of this Appendix, the TA prefers a one-stage mediation scheme for the future CCSS. Along the same vein however, if the customer and the service provider reach a settlement after the mediation provided by the CCSS Agent, both parties should sign a settlement agreement which should be binding on them both.**

(IX) Interest on disputed amount

48. It is observed in the Pilot Programme that customers were generally eager to lodge their claims with the Pilot Programme because they understood that if they did so, the service providers would suspend the debt collection till the adjudicator's final decision was made. Some laxity was observed on the complainant's behaviour during the information-collection stage that followed. To exercise some discipline on the complainants, the TA proposed that, as a matter of principle, interest should be awarded to the party whose payment was withheld as a result of the dispute, if the outcome of the adjudication was in its favour. If this proposal were adopted, then whether interest would be awarded and the exact amount of interest to be awarded would be decided on a case by case basis by the adjudicator. In deciding the amount of the interest to be awarded, the adjudicator should also have regard to the delay caused by the

service providers in the adjudication process. The following question was raised in the Consultation Paper:

Question 10: Do you have any comments on the proposal to award interest to party whose payment was held as a result of the dispute?

Respondents' Views and Comments

49. CMHK and HTHK supported the proposal to award interest to party whose payment was held as a result of the dispute; while CSL, Pacnet and PCCW did not support or have reservations. CSL considered that the interest amount might not justify the extra cost due to the time spent by the adjudicator in deciding the amount of interest. As an alternative, HTHK opined that the interest rate should be based on certain percentage over the prevailing best lending rate.

TA's Considerations and Responses

50. Having considered the respondents' feedback and the fact that the dispute amount for the telecommunications services is relatively small in general, **the TA agrees that it may not worth the effort to determine whether an interest will be awarded and the amount of interest to be awarded to a party whose payment is withheld as a result of the dispute.**