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Panel on Economic Development
Meeting on 22 July 2013

Background brief on
the protection of the interests of consumers
using telecommunications services

Purpose

This paper provides background information and summarizes Members' views on issues relating to the protection of interests of consumers using telecommunications services.

Background

Existing measures on regulating the provision of telecommunications services

2. The telecommunications market in Hong Kong has been developing rapidly and the Office of the Communications Authority ("OFCA")¹ and the Consumer Council ("CC") have from time to time received complaints in respect of the billing of telecommunications services. Normally, such complaints would be referred to the service operators concerned direct for follow-up. The Communications Authority ("CA") is empowered by the Telecommunications Ordinance (Cap. 106) ("TO") to regulate the telecommunications sector. When there is evidence indicating that an operator may have breached TO or the licence conditions, CA will conduct an investigation. A sanction or a fine will be imposed on the operator if there is sufficient evidence to substantiate the case².

1 OFCA is the executive arm of the Communications Authority. Pursuant to the Communications Authority Ordinance (Cap. 616), with effect from 1 April 2012, all duties and powers of the Telecommunications Authority as well as those of the Office of the Telecommunications Authority are conferred on OFCA.

2 Under section 36C of the Telecommunications Ordinance, in any case where a licensee fails to comply with any licence conditions or any provisions of the Ordinance, the Communications Authority may impose a financial penalty not exceeding \$200,000 on the first contravention, while the amount of financial penalty imposed for the second and subsequent occasions can be up to \$500,000 and \$1,000,000 respectively.

3. To safeguard consumers' interests and improve the transparency of the charging information of mobile content services, the then Office of the Telecommunications Authority ("OFTA") worked with the industry to draw up a Code for the Provision of Chargeable Mobile Content Services for voluntary compliance. Promulgated and put into effect in January 2010 by the Communications Association of Hong Kong ("CAHK"), an industry body, the Code governs the practices of third party content service providers in providing mobile content services and the setting up of an industry self-regulatory scheme.

4. In February 2010, OFTA published the Code of Practice for Communications Service Contracts for voluntary compliance by providers of communications services. It provides the industry with a guideline on drawing up service contracts. The Code stipulates that service contracts must provide for a cooling-off period which must not be less than seven days from the date the customer enters into a contract. Those who have pledged compliance are required to report on their compliance status and if their report is found to be inaccurate or misleading, OFTA may consider investigating into the case to enforce TO in respect of misleading or deceptive conduct.

5. In July 2011, the industry formally implemented the Industry Code of Practice for Telecommunications Service Contracts issued by CAHK in collaboration with major telecommunications service operators. The voluntary Industry Code provides guidelines on drawing up telecommunications service contracts for consumers, and introduces improvements in such aspects as contract details and arrangements for contract termination and renewal. The Industry Code states that a cooling-off period must not be less than seven days from the date the customer enters into an unsolicited contract.

6. To enhance the transparency of pricing in respect of chargeable items in telecommunications services, CA issued in October 2011 the Code of Practice in Relation to Billing Information and Payment Collection for Telecommunications Services. The Code of Practice provides guidelines on the information to be included in bills and on the arrangements for payment collection for compliance by operators on a voluntary basis. Effective from 1 July 2012, seven local fixed and five mobile network operators have pledged compliance with the Code of Practice.

7. As regards the billing disputes between customers and telecommunications service providers, a two-year pilot run of the Customer Complaint Settlement Scheme ("CCSS") was officially launched in November 2012 to resolve billing disputes in deadlock between the telecommunications service providers and their customers through mediation.

Legislative amendments targeting unscrupulous trade practices

8. At present, certain undesirable trade practices are prohibited under the Trade Descriptions Ordinance (Cap. 362) ("TDO"). These include false trade descriptions, false trademarks and misstatements in respect of goods provided in the course of trade. In the light of the lack of provisions in TDO dealing with other types of unfair trade practices such as false trade descriptions of services, misleading omissions, aggressive commercial practices or bait advertising, the Government introduced the Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 ("the Bill") into the Legislative Council ("LegCo") on 29 February 2012 to respond to the call for a review of the regulatory regime.

9. The Bill sought to amend TDO to extend its coverage to prohibit specified unfair trade practices in the market, including false trade descriptions of services, misleading omissions, aggressive commercial practices, bait advertising, bait-and-switch and wrongly accepting payment. It also sought to establish a compliance-based mechanism³ with the main objectives of encouraging compliance and facilitating quicker settlement.

10. In order to capitalize on the respective enforcement experience and expertise of the Customs and Excise Department ("C&ED"), the Bill proposed that C&ED be tasked to enforce the proposed offences, with concurrent enforcement powers to be conferred on CA in respect of the telecommunications and broadcasting services.

11. The Bill was passed by LegCo on 17 July 2012 and the enacted Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 ("TD(A)O") was published in the Gazette on 27 July 2012. Since the enactment of TD(A)O, the Administration has proceeded with the necessary preparatory work for commencing the new legislation. The Trade Descriptions (Powers Not Exercisable by Communications Authority) Notice and the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 (Commencement) Notice ("Commencement Notice") were gazetted on 24 May 2013. Under TD(A)O, the Secretary for Commerce and Economic Development has made the Commencement Notice to appoint 19 July 2013 as the day on which TD(A)O comes into operation.

³ Under the mechanism, the enforcement agencies would be empowered to accept undertakings from traders suspected of deploying any unfair trade practices to stop and not to repeat an offending act, and where necessary, to seek injunctions from the court for the purpose.

Concerns expressed by Members in previous discussions

Council meetings

12. Members have expressed concern at different forums about the escalating number of complaints about telecommunications services and contractual disputes between service providers and customers. 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.

13. On 9 May and 4 July 2007, the Council passed the motions on "Combat unscrupulous shops" and "Strengthening the regulation of unscrupulous business practices in pay television, telecommunications and internet services" respectively. A motion on "Establishing a comprehensive consumer protection regime" was passed at the Council meeting on 6 January 2010, urging the Government to, inter alia, monitor effectively the services provided by telecommunications service operators and those services provided by a third party through such operators, such as mobile messages and content services, etc. so as to ensure that the marketing practices, terms and conditions of services and charges are transparent, fair and just.

Panel on Information Technology and Broadcasting

14. At the meeting on 8 November 2010, the Panel on Information Technology and Broadcasting ("ITB Panel") was briefed on the Code for the Provision of Chargeable Mobile Content Services. While the ITB Panel in general welcomed the industry self-regulatory scheme, some members expressed concern about the rising problem of the alarmingly high charges for mobile data services and cases of debt collectors harassing the elderly for default payment. They suggested that apart from regulating content service providers and consumer education, the Administration should draw up a timetable to also regulate the mobile network operators and mobile data service charges. The Administration advised that to address the growing problem of unexpectedly high mobile data charges, OFTA, in conjunction with the industry, had put in place measures to protect consumers from "bill shocks". These included placing a cap on mobile data charges and mobile data usage, providing option for users to unsubscribe the service, and issuing short messaging services alerts to users.

15. When the Administration briefed the ITB Panel on CCSS at the meeting on 11 June 2012, some members suggested that the scope of CCSS should be extended to cover complaints about unsolicited person-to-person marketing calls

from telecommunications service providers to residential/personal customers. The Administration advised that CCSS would mainly depend on the use of mediation which was considered most effective in resolving billing disputes. Other types of disputes would be more effectively addressed by the issuance of guidelines and codes of practice to the telecommunications service providers. To encourage more customers to use CCSS service, some Panel members suggested that the proposed fee of \$100 should be lowered and customers should be allowed to make verbal representations to CCSS. The Administration advised that as the operation of CCSS incurred public resource, requiring the customer to pay a reasonable amount of fee would minimize submission of wholly unmeritorious claims and possible abuse. Written representations would be required for cases that had come to a deadlock.

Panel on Economic Development

16. On 24 January 2011, the Administration briefed the Panel on Economic Development ("EDEV Panel") on the outcome of the public consultation for the paper entitled "Legislation to Enhance Protection for Consumers Against Unfair Trade Practices". The Administration advised that it would modify its original proposal by expanding the scope of mandatory cooling-off arrangements to cover consumer transactions involving goods and/or services with a duration of not less than six months. The cooling-off period could be waived or curtailed by mutual agreement of the consumer and the supplier, and contract performance could not commence within the cooling-off period. Some members considered that the implementation of cooling-off arrangement would have adverse impact on the trade, especially the small and medium enterprises which might encounter cash flow problems. Some other members expressed concerns that traders might adopt contracts with duration of less than six months to circumvent the imposition of the cooling-off periods. They opined that traders should be prohibited from incorporating in standard contracts default clauses for waiving the cooling-off rights.

17. The EDEV Panel received a briefing by the Administration on 11 December 2012 on the progress of the preparatory work for the commencement of TD(A)O. Some members were concerned that TD(A)O did not cover the provision of cooling-off period. The Administration advised that given the divergent views on the matter, further study was needed before addressing it by legislation. As regards members' concern about the co-ordination of work among enforcement agencies in enforcing TDO, particularly the arrangements on referral of cases among the various enforcement agencies, the Administration advised that C&ED and OFCA would enter into a memorandum of understanding regarding the arrangements for enforcing TDO after the enactment of TD(A)O. C&ED, OFCA, the Police and CC had maintained close liaison in enforcing TDO, and the existing co-operation arrangements had proved to be effective.

Bills Committee on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012

18. During the Bills Committee's deliberation on regulatory and enforcement-related matters, the Chairman of the Bills Committee expressed concern that officers of the enforcement agencies might be given too much discretion under the compliance-based mechanism. The Administration advised that under the Bill, the Commissioner of C&ED and CA were empowered to issue guidelines on matters related to enforcement of TDO by authorized officers. The Bill also provided that the Commissioner and CA must consult any persons that they considered appropriate before issuing any guidelines or amendments of the guidelines. Furthermore, the enforcement agencies' decision to prosecute or to resort to the compliance-based mechanism would be subject to the consent of the Secretary for Justice.

19. Some members of the Bills Committee opined that the enforcement guidelines to be issued under the Bill should provide useful reference, with more concrete examples, for the trades and the frontline staff. They urged the Administration to consult the trades on the formulation of the guidelines. They also urged the Administration to stipulate clearly in the guidelines what would constitute an offence under TDO. This would enhance traders' understanding on how the law would be enforced to avoid inadvertent contravention. The Administration advised that it would launch a widespread education campaign for both traders and consumers after the passage of the Bill. The enforcement agencies would exercise due diligence and examine all the circumstances of each complaint, including meeting with the complainant to ascertain the facts of the case, before taking any enforcement decisions.

Latest development

20. As requested by Hon TANG Ka-piu, the Administration will brief the Panel on Economic Development on the latest developments in respect of the protection of the interest of consumers using telecommunications services at the meeting on 22 July 2013.

References

21. A list of relevant papers is in the **Appendix**.

**Background brief on
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List of relevant papers

Panel/ Committee	Date	Paper
Council meeting	9 May 2007	Hon LAU Kong-wah moved a motion on "Combating Unscrupulous Shops" (Hansard p. 100 to 167) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0509-translate-e.pdf
Council meeting	4 July 2007	Dr Hon YEUNG Sum moved a motion on "Strengthening the regulation of unscrupulous business practices in pay television, telecommunications and Internet services" (Hansard p. 137 to 211) http://www.legco.gov.hk/yr06-07/english/counmtg/hansard/cm0704-translate-e.pdf
Council meeting	6 January 2010	Hon Starry LEE moved a motion on "Establishing a comprehensive consumer protection regime" (Hansard p. 190 to 264) http://www.legco.gov.hk/yr09-10/english/counmtg/hansard/cm0106-translate-e.pdf
Panel on Information Technology and Broadcasting	8 November 2010	Administration's paper on chargeable mobile content services (LC Paper No. CB(1)297/10-11(05)) http://www.legco.gov.hk/yr10-11/english/panels/itb/papers/itb1108cb1-297-5-e.pdf Minutes of meeting (LC Paper No. CB(1)860/10-11) http://www.legco.gov.hk/yr10-11/english/panels/itb/minutes/itb20101108.pdf

Panel/ Committee	Date	Paper
Panel on Economic Development	24 January 2011	<p>Administration's paper on outcome of public consultation on legislation to enhance protection for consumers against unfair trade practices (LC Paper No. CB(1)1090/10-11(03)) http://www.legco.gov.hk/yr10-11/english/panels/edev/papers/edev0124cb1-1090-3-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)1650 /10-11) http://www.legco.gov.hk/yr10-11/english/panels/edev/minutes/edev20110124.pdf</p>
Panel on Information Technology and Broadcasting	11 June 2012	<p>Administration's paper on Customer Complaint Settlement Scheme for the telecommunications industry (LC Paper No. CB(1)2064/11-12(03)) http://www.legco.gov.hk/yr11-12/english/panels/itb/papers/itb0611cb1-2064-3-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)2465/11-12) http://www.legco.gov.hk/yr11-12/english/panels/itb/minutes/itb20120611.pdf</p>
Bills Committee on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012		<p>Report of the Bills Committee on Trade Descriptions (Unfair Trade Practices) (Amendment) Bill 2012 (LC Paper No. CB(1)2204/11-12) http://www.legco.gov.hk/yr11-12/english/bc/bc02/reports/bc020627cb1-2204-e.pdf</p>
Panel on Economic Development	11 December 2012	<p>Administration's paper on Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 - Draft enforcement guidelines and other enforcement-related matters (LC Paper No. CB(1)260/12-13(04)) http://www.legco.gov.hk/yr12-13/english/panels/edev/papers/edev1211cb1-260-4-e.pdf</p> <p>Minutes of meeting (LC Paper No. CB(1)540/12-13) http://www.legco.gov.hk/yr12-13/english/panels/edev/minutes/edev20121211.pdf</p>