

**Notice Pursuant to Section 36C
of the Telecommunications Ordinance
(Chapter 106)**

Interpretation

In this Notice, unless the context otherwise requires,

“Authority” means the Communications Authority;

“Licensee” means China Mobile Hong Kong Company Limited, holding a Unified Carrier Licence No. 002 issued under the Telecommunications Ordinance;

“OFCA” means the Office of the Communications Authority;
and

“TO” means the Telecommunications Ordinance (Cap. 106).

Background

On 3 August 2012, OFCA received a complaint from a mobile customer of the Licensee, alleging that the representations made by the Licensee in the promotion of its mobile services sent by short message service (“SMS”) were misleading or deceptive. OFCA has completed an investigation into the matter and submitted its findings to the Authority.

2. Having considered the findings of the investigation, the Authority is of the view that the Licensee had engaged in misleading or deceptive conduct in breach of section 7M of the TO, which provides that:

“A licensee shall not engage in conduct which, in the opinion of the Authority, is misleading, or deceptive in providing or acquiring telecommunications networks, systems, installations, customer equipment or services including (but not limited to) promoting, marketing or advertising the network, system, installation, customer equipment or service.”

Notification

3. The Authority, in exercise of the power under section 36C of the TO,

having been satisfied that the Licensee has failed to comply with section 7M of the TO;

having also been satisfied that the Licensee has been afforded reasonable opportunity in accordance with section 36C(7) of the TO to make representations; and

having considered all representations made before the Authority decides whether or not to impose the financial penalty,

hereby exercises the power under section 36C of the TO and gives notice to the Licensee requiring it to pay to the Government of the Hong Kong Special Administrative Region **by 20 May 2013** a financial penalty of HK\$90,000.

4. In imposing the financial penalty, the Authority has noted that, subject to section 36C(3B), the maximum penalty that the Authority is empowered under section 36C to impose on the second occasion of imposing such penalty is HK\$500,000. The Authority has also considered the following relevant factors:

- (a) the nature, gravity of the breach;
- (b) there was only one complaint received by OFCA concerning the promotional SMS message;
- (c) there was a similar breach committed by the Licensee in 2007; and
- (d) the Licensee has been cooperative with OFCA throughout the investigation.

The Authority is satisfied that a financial penalty of HK\$90,000 is, in all the circumstances of the case, proportionate and reasonable in relation to the breach concerned.

5. This Notice will be made public.

(Miss Eliza Lee)
for Communications Authority
6 May 2013