

**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 SmarTone Mobile Communications Limited, holding a Unified Carrier Licence No. 018 issued under the Telecommunications Ordinance;

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

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

Background

On 26 November 2012, OFCA received a complaint from an industry member, supplemented with a further letter dated 11 September 2013, alleging that various representations made by the Licensee on a dedicated webpage of its company website from July 2012 in relation to the network comparison tests between its 3G network and other 3G and 4G networks in Hong Kong 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 15 April 2014** a financial penalty of HK\$150,000.

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 fifth occasion of imposing such penalty is HK\$1,000,000. The Authority has also considered the following relevant factors:

- (a) the nature and gravity of the breach;
- (b) there is no previous record of similar infringement committed by the Licensee in relation to speed comparison;
- (c) there was only one industry complaint received in relation to the breach and there was no consumer complaint received; and
- (d) the Licensee has been cooperative with OFCA throughout the investigation.

The Authority is satisfied that a financial penalty of HK\$150,000 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
1 April 2014