

**FINAL DECISION OF THE
COMMUNICATIONS AUTHORITY**

**BREACH BY
HONG KONG TELECOMMUNICATIONS (HKT) LIMITED OF
GENERAL CONDITION 12.1 OF UNIFIED CARRIER LICENCE**

Licensee Concerned:	Hong Kong Telecommunications (HKT) Limited (“HKT”)
Issue:	Use of radiocommunications installation not specified in Schedule 3 to the Unified Carrier Licence (“UCL”) held by HKT
Relevant Instruments:	General Condition (“GC”) 12.1 of HKT’s UCL No. 003
Decision:	Breach of GC 12.1 of HKT’s UCL No. 003
Sanction:	Financial Penalty
Case Reference:	OFCA/O/F/37 C

BACKGROUND

In February 2014, the Office of the Communications Authority (“OFCA”) received a complaint from a member of the public about a suspected installation of an unauthorised radio base station at the rooftop of a building in Sai Kung (“the concerned premises”). Following investigation, OFCA found that HKT had operated radio base stations for provision of its telecommunications services at the concerned premises (“the Stations”). The Stations are not radiocommunications installations specified in Schedule 3 to its UCL.

2. GC 12.1 of the HKT's UCL provides that:

“12.1 Each radiocommunications installation operated by or on behalf of the licensee shall be used only at the location and with emissions and at the frequencies and of the classes and characteristics specified in Schedule 3 to this licence and with such power and aerial characteristics as are specified in that Schedule in relation to the class and characteristics of the emission in use”.

HKT's APPLICATIONS

3. HKT submitted an application to OFCA on 21 March 2013 and another two applications on 18 April 2013 for the prior approval of the Communications Authority (“CA”) for the use of the Stations at the concerned premises which receive frequencies in the bands 1770.1-1781.7 MHz/1920.3-1935.1 MHz and transmit frequencies in the bands 1865.1-1876.7 MHz/2110.3-2125.1MHz. These frequency bands were assigned to HKT for provision of public telecommunications network services. OFCA issued letters on 20 November 2013, 9 December 2013 and 17 December 2013 informing HKT that the three applications for the use of the Stations had been rejected due to incomplete documentation.

4. On 27 February 2014, HKT re-submitted three new applications for the use of the Stations together with the required documentation. While the applications were being processed by OFCA, the Lands Department (“LandsD”) advised OFCA on 9 April 2014 that the HKT's application for the temporary waiver would not be acceded to because of unauthorized building works found at the concerned premises¹. In view of the fact that the installation of the Stations would be in breach of the LandsD's requirements, OFCA had put on hold the applications of HKT, pending measures taken by the owner of the concerned premises to rectify the breach. On 10 April 2014

¹ Installation of radio base stations at the concerned premises is subject to a temporary waiver issued by LandsD. HKT submitted a temporary waiver application to LandsD on behalf of the owner of the concerned premises in January 2013.

and 9 May 2014, OFCA advised HKT that the applications for the use of the Stations could not be processed until the issue regarding the application for LandsD's approval of temporary waiver submitted by HKT on behalf of the owner of the concerned premises was resolved.

THE COMPLAINT AND OFCA'S INVESTIGATION AND ASSESSMENT

5. On 24 February 2014, OFCA received a complaint from a member of the public about a suspected installation of an unauthorised radio base station. In response to the complaint, OFCA conducted on-site measurements in April 2014 and detected radio transmissions at frequencies in the bands 1865.1-1876.7 MHz and 2110.3-2125.1 MHz from the Stations. As these frequency bands are assigned to HKT, OFCA suspected that the Stations were HKT's, the approvals for the use of which were still pending (see paragraph 4 above). On 13 May 2014, OFCA informed HKT of the measurement results and invited it to provide information.

6. In response to OFCA's enquiry, HKT provided information and representations on 27 May 2014 and 13 June 2014. HKT admitted that the Stations had transmitted at frequencies in the bands 1865.1-1876.7 MHz and 2110.3-2125.1 MHz between 17 October 2013 and 13 May 2014. While HKT alleged that the initial purpose of the transmissions was to test the equipment at the concerned premises, it also admitted that the Stations had been utilised to improve the service coverage in the area surrounding the concerned premises. In its representations, HKT attributed its use of the Stations (not specified in Schedule 3 to its UCL) to the allegedly long lead-time required for obtaining the LandsD's approval of a temporary waiver. According to HKT, the Stations had been in operation over a period of about seven months (viz. between 17 October 2013 and 13 May 2014) and had been deployed to provide 2G, 3G and 4G services to its customers during the period.

7. OFCA is of the view that the Stations had essentially been used as normal radio base stations for providing public telecommunications

network services. GC 12.1 of HKT's licence states that "*each radiocommunications installation operated by....the licensee shall be used only at the location... specified in Schedule 3 to this licence*". The wording of GC 12.1 makes it clear that the use by the licensee of radiocommunications installation (including the alleged testing purpose) outside the specification of Schedule 3 is prohibited. In its letters of 20 November 2013, 9 December 2013 and 17 December 2013 as mentioned in paragraph 3 above and letters of 10 April 2014 and 9 May 2014 as mentioned in paragraph 4 above, OFCA had repeatedly reminded HKT that it should not use any radio base stations not specified in Schedule 3 to its UCL.

8. OFCA does not consider that use of any radio base stations (including the Stations) prior to the CA's approval could be justified by the allegedly long lead-time for the owner of the premises to obtain the temporary waiver approval from LandsD. To address the lead-time issue, OFCA and LandsD are already adopting a parallel processing procedure² under which a mobile network operator can submit an application to OFCA for the CA's approval and another application on behalf of the owner of the premises to LandsD for temporary waiver approval in parallel. To shorten the overall processing time, the CA may even grant approval before the LandsD's decision on the temporary waiver application.

9. For this case in particular however, OFCA has advised HKT in November and December 2013 that its applications for the use of the Stations were rejected. As to its three new applications re-submitted at end February 2014, OFCA advised HKT on 10 April 2014 and 9 May 2014 that the applications for the use of the Stations could not be processed until the issue regarding the application for LandsD's approval of temporary waiver was resolved (see paragraph 4 above). Hence HKT has been put on clear notice that it is not authorized to operate the Stations until LandsD's approval of the temporary waiver is to hand. HKT has however chosen to ignore OFCA's advice and gone ahead to put the Stations into operation from mid October

² See paragraph 8 of the "Guidance Note for Submission of Applications by Public Telecommunications Operators for the Installation of Radio Base Stations for Public Telecommunications Services in Buildings and on Rooftops" issued by OFCA.

2013 onwards (despite the rejection of November and December 2013 of the applications from OFCA), and continued to put them into use till May 2014 (despite the advice of OFCA of April and May 2014 that the new applications were pending the resolution of the temporary waiver issue), without the prior approval of the CA.

10. In the light of the findings and having considered the explanation provided by HKT as mentioned in paragraphs 5 – 9 above, it is OFCA's assessments that HKT has breached GC 12.1 of its UCL for using the Stations, which are not specified in Schedule 3 to the licence, without the prior approval of the CA.

THE CA'S CONSIDERATION AND DECISION

11. OFCA completed its investigation and submitted its findings to the CA on 30 August 2014. Having considered the findings of OFCA, the CA issued its Provisional Decision to HKT on 12 September 2014. HKT submitted its representations on 26 September 2014.

12. In its representations, HKT submitted that the CA should consider this case together with another case³ of Genius Brand Limited ("GBL") regarding the same radio base station at the same location which OFCA was handling at the same time and impose one single financial penalty (and of a smaller amount, if at all). This was because both cases relate to the same radio base station(s). The CA considers that the request is totally groundless. HKT and GBL are two separate legal entities. Each is authorised to provide public telecommunications network services under its respective UCL, and as such each is responsible for meeting its respective licence obligations. While HKT and GBL are free to install their radio base stations at the same location and share the radio site facilities, they are held accountable separately for their own action or omission, and in this case their respective contraventions of GC 12.1 of their UCLs.

³ OFCA also found that GBL had operated a radio base station at the concerned premises without the CA's prior approval. Another CA's provisional decision was issued to GBL on 12 September to invite it to make representations.

13. Having considered HKT's further representations, the CA is of the final view that HKT has failed to comply with GC 12.1 of its UCL in respect of use of radiocommunications installations not specified in Schedule 3 to its UCL.

14. In considering the sanction that it should impose, the CA has had regard to all circumstances of the case and notes that:

- (a) OFCA advised HKT in November 2013 and December 2013 that its applications for the use of the Stations had been rejected (see paragraph 3 above). HKT had however chosen to put the Stations into use from 17 October 2013 onwards, had disregarded the letters of rejection of the applications from OFCA, and continued to operate the Stations till 13 May 2014 despite clear advice from OFCA that its applications re-submitted were pending the resolution of the temporary waiver issue, knowing full well all along that the CA's approval was not forthcoming;
- (b) during the seven-month period when the Stations were put into use, HKT had repeatedly ignored the advice of OFCA in its letters of 20 November 2013, 9 December 2013, 17 December 2013, 10 April 2014 and 9 May 2014, that HKT should not use any radio base stations not specified in Schedule 3 to its UCL; and
- (c) HKT had put more than one unauthorised radio base station into operation (altogether three stations).

Against this background and taking into account full circumstances of the case, the CA has decided that a financial penalty should be imposed on HKT.

15. This is the first occasion on which a financial penalty is imposed on HKT under GC 12.1 of its UCL and the maximum penalty stipulated by the Telecommunications Ordinance ("the TO") is \$200,000. In considering the appropriate level of financial penalty in this case, the CA has had regard to the Guidelines on the Imposition of Financial Penalty under Section 36C of the

TO (“the Guidelines”). Under the Guidelines, the CA is to consider the gravity of the breach (such as the nature and seriousness of the infringement, damage caused to third parties by the infringement, and the duration of the infringement), whether the licensee under concern has previous records of similar infringements, and whether there are any mitigating and aggravating factors.

16. In considering the gravity of the breach and therefore the starting point for the level of financial penalty, the CA notes that:

- (a) this is the first occasion where HKT is found to commit a breach of this nature;
- (b) the Stations fulfilled the telecommunications requirements in respect of electromagnetic compatibility and radiation safety. They did not pose any threat of radiation hazard to members of the public, or had any adverse impact on telecommunications services or telecommunications service users; and
- (c) HKT had operated the Stations at its own assigned frequencies to improve mobile coverage so as to better serve its customers.

17. In the light of the above considerations, the CA considers that the appropriate starting point for determining the level of financial penalty should be \$100,000. The CA has not been able to identify any aggravating factors.

18. In considering the mitigating factors, the CA notes that HKT has provided full cooperation to OFCA in the course of the investigation. It has ceased the use of the Stations eventually in May 2014.

19. Having considered all circumstances of the case and taken all relevant factors into account, the CA concludes that a financial penalty of \$90,000 is proportionate and reasonable in relation to the breach.

**The Communications Authority
December 2014**