

**FINAL DECISION OF
THE COMMUNICATIONS AUTHORITY**

**BREACH BY IDD1628 LIMITED OF
GENERAL CONDITION 5.1 OF
ITS SERVICES-BASED OPERATOR LICENCE**

Telecommunications Licensee Investigated:	IDD1628 Limited (“IDD1628”)
Issue:	IDD1628 was unreachable through its customer service channels and failed to properly handle customers’ requests for termination of subscriptions of its International Direct Dialling (“IDD”) services
Relevant Instruments:	General Condition (“GC”) 5.1 of IDD1628’s Services-based Operator (“SBO”) Licence (Licence No. 1321)
Decision:	Breach of GC 5.1 of IDD1628’s SBO Licence No. 1321
Sanction:	Financial Penalty
Case Reference:	OFCA/R/SBO/73 C

BACKGROUND

The Office of the Communications Authority (“OFCA”) received 11 consumer complaints between December 2020 and June 2021 alleging that IDD1628 could not be reached through its customer service channels and failed to handle customers’ requests for termination of their subscriptions of IDD1628’s IDD services. Specifically, the complainants alleged that calls to IDD1628’s customer service hotline resulted in either dropped calls or was in busy-tone at all times. When requests were made in writing to the company for service termination through the channels specified in the service invoices issued by the company, including (a) a PO Box with Hongkong Post, (b) a

WhatsApp account, (c) a WeChat message account, and (d) a fax number, the company did not acknowledge or reply to the requests, and instead continued to invoice them for the services. According to the complainants' service invoices, the IDD services involved a basic charge ranging from \$58 to \$79 for every three months.

RELEVANT LICENCE CONDITION

2. IDD1628 had been authorised for the provision of External Telecommunications Services (“ETS”) since 2006 under a Public Non-Exclusive Telecommunications Service (“PNETS”) Licence, before the PNETS Licence was replaced in 2009 by SBO Licence No. 1321. General Condition (“GC”) 5.1 of IDD1628’s SBO Licence provides that –

“5.1 The licensee shall, subject to Schedule 1 to this licence and any special conditions of this licence relating to the provision of the service, at all times during the validity period of this licence operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority.”

OFCA’S INVESTIGATION

3. In view of the complainants’ claims that they were unable to contact IDD1628 successfully, and in order to verify the difficulties encountered by the customers for contact with IDD1628, OFCA attempted to contact IDD1628 between May to September 2021 through the four customer service channels specified on its service invoices to the customers but to no avail –

- (a) OFCA attempted to make calls to IDD1628’s customer service hotline but same as what were reported by the complainants, such calls resulted in either dropped calls or connection to busy-tone at all times;
- (b) OFCA’s letter to IDD1628 dated 6 September 2021 sent to IDD1628’s PO Box by registered mail was unclaimed;

- (c) OFCA's messages to IDD1628's WhatsApps and WeChat accounts have neither been acknowledged nor replied; and
- (d) OFCA's letter sent to IDD1628's fax line on 6 September 2021 failed to be delivered. OFCA was subsequently advised by the facsimile service provider that the number, previously registered under IDD1628, had been terminated in April 2018.

4. According to OFCA's online research conducted in September 2021, unlike other ETS providers in the market, the company had not established any alternative customer service channels, such as company website or Facebook page, for setting out their terms and conditions for service subscription, service plans, service termination procedures, etc.

5. Further, in response to the 11 complaint cases received from December 2020 to June 2021, OFCA has taken the following actions to follow up with IDD1628 through the regulatory contacts provided by the licensee -

- (a) forwarding the complainants' complaint forms to IDD1628's registered address and/or email addresses of its director and administration department for its direct handling;
- (b) issuing letters of information requests about operation of the company's customer service / support hotlines and procedures for handling enquiries, complaints and/or requests for service termination as well as reminders to IDD1628's registered address and email addresses of its director and administration department; and
- (c) calling the company's regulatory contacts and customer service hotline.

Whilst all the 11 complainants confirmed to OFCA by July 2021 that no further invoice for the IDD services was received from IDD1628 after they had referred the cases to OFCA, OFCA on the other hand did not receive any satisfactory reply from the company. In particular, on those occasions where the company did respond to OFCA by email or answering calls, it only claimed that its telecommunications system and/or service hotline had been under repair, without providing the specific information requested by OFCA, including how

customers would be able to reach it and how it would handle individual customer enquiries, requests and complaints.

6. On 19 July 2021, OFCA issued a letter to IDD1628 informing it that an investigation had been commenced against it for suspected breach of GC 5.1 of the SBO Licence. IDD1628 was invited to make representations before 2 August 2021. In spite of OFCA's repeated follow-up with IDD1628 by email and telephone calls, no representations was received from the company. A further follow-up letter was sent by fax to the company on 6 September 2021 for its immediate attention, but the letter failed to be delivered. Having considered the findings of OFCA on the case, the CA issued a Provisional Decision to the licensee and invite its representations by 30 November 2021. No representations from the licensee was received in response to the Provisional Decision.

OFCA's Assessment

7. Timely handling of service termination requests from customers and provision of necessary customer support and information through customer service channels readily accessible to customers is a basic and essential element of a good and efficient telecommunications service. The 11 complainants reported that IDD1628 had not been reachable through its customer service channels and failed to handle their requests for terminating the subscriptions of IDD services; and OFCA also found that IDD1628 was indeed unreachable through the customer service channels. Although, according to the complainants, IDD1628 eventually ceased to issue further invoices to the complainants, it was only after the complainants had lodged complaints with OFCA which in turn referred the cases to IDD1628. Further, IDD1628 did not directly respond to the complainants (except one) or OFCA regarding the complaints. Therefore, there is sufficient evidence substantiating that the company has failed to provide a good and efficient telecommunications service for compliance with GC 5.1.

THE COMMUNICATION AUTHORITY'S CONSIDERATION AND DECISION

8. Having considered the findings of OFCA's investigation and the above assessment, the CA is of the view that IDD1628 has breached GC 5.1 of its SBO Licence No. 1321, which requires it to operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the CA.

9. In considering the sanction that it should impose, the CA considers that ample opportunities have been offered to IDD1628 to make rectifications to its customer services for complying with the requirement of GC 5.1 of the SBO Licence and yet no improvement has been made by the licensee in that IDD1628 continues to be unreachable through its customer service hotline and other communications channels specified. The CA therefore considers that it is appropriate to impose a financial penalty under section 36C(1)(a) of the TO on the company for contravention of GC 5.1.

10. Apart from the financial penalty, the CA will continue to monitor any complaint against IDD1628. If IDD1628 remains unresponsive in response to any such complaints, the CA will consider imposing more serious sanction(s) under the TO as appropriate to protect consumer interest.

FINANCIAL PENALTY

11. 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 (“Guidelines”)¹. Under the Guidelines, the CA has 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.

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

- (a) section 36C(3) stipulates that a financial penalty imposed by the CA shall not exceed \$200,000 for the first occasion on which a penalty is so imposed;
- (b) parties affected by the breach are the 11 complainants as well as other IDD1628’s customers (with no information on the number of these customers available to OFCA) who tried to contact the company through various customer service channels specified for customer support, including but not limited to termination of their

¹ http://tel-archives.ofca.hksarg/en/legislation/guideline_6d_1/guideline_6d_1_150402.pdf.

current subscriptions of IDD services, but are unable to reach IDD1628;

- (c) in view of the fact that the IDD traffic reported by IDD1628 in 2020 did not account for a substantial amount of the industry's reported total, it would seem that the breach would unlikely affect a substantial number of customers;
- (d) the breach would bring inconvenience to the customers concerned for the support they require, including delay in termination of their subscriptions of the IDD services, but no financial loss has been reported by the complainants;
- (e) whilst OFCA has not received new complaint cases on the same issues since July 2021, with IDD1628 remaining unreachable through its customer service hotline and other communications channels, the breach is deemed ongoing at the moment; and
- (f) the starting points of financial penalties imposed in the most recent cases of breach of GC 5.1 by SBO licensees (due to disruptions of telecommunications services) ranged between \$100,000 to \$130,000.

Taking into account the above factors and that there is no disruption of telecommunications services in the present case, the CA is of the view that the appropriate starting point for determining the level of financial penalty should be \$50,000.

13. There is no adjustment for repetition of infringement as this is the first occasion on which IDD1628 is found to commit a breach of this nature since licensed in 2006. In terms of aggravating factors, although the senior management and staff at the working level of IDD1628 have been repeatedly alerted of its customers' complaints, the company has failed to take any remedial measures and has been unresponsive to OFCA's requests for information throughout the course of the investigation. In view of such aggravating factors and that no mitigating factor is identified, it is considered that there should be an upward adjustment of \$20,000 to the starting point of financial penalty in paragraph 11.

14. Having considered all the facts and circumstances of the case and taken all relevant factors into account, the CA has decided to impose a financial

penalty on IDD1628 at the amount of **\$70,000**, which is considered proportionate and reasonable in the case.

The Communications Authority
February 2022