

Broadcasting

6.1 Extending the Coverage of DTT Broadcasting with a View to Further Improving the Service Coverage

Since the commencement of DTT services in end 2007, the two domestic free television programme service licensees, namely ATV and TVB, have completed a total of 29 digital broadcasting stations by phases, enabling the overall DTT coverage to reach about 98% of the Hong Kong population.

In June 2012, the Authority approved the applications of ATV and TVB to extend the period for exemption from the territory-wide coverage of their DTT services up to 31 December 2013, subject to the conditions, among others, that their DTT services should extend to cover at least 98% of the population by 31 December 2012, and that the coverage of DTT services should be on a par with that of analogue television services, viz. at least 99% of the population, with effect from 30 September 2013. The Authority will continue to closely monitor the performance of ATV and TVB to ensure that, by diligently implementing their plans, they would be able to extend the DTT coverage to at least 99% of the population by September 2013. At the same time, OFCA is examining, together with the two licensees, how to address the problem of television reception in those areas currently suffering from unsatisfactory television reception.

6.2 Monitoring the Roll-out of DAB Services

The three DAB licensees, viz. DBC, Metro and Phoenix U Radio were required under their licences to formally commence DAB services by September 2012 and to launch by phases a total of 13 channels (three each for Metro and Phoenix U Radio and seven for DBC) with a wide variety of programmes. The three DAB licensees formally launched DAB services in 2012 in accordance with the licence requirements. As at end March 2013, the three licensees and RTHK provided a total of 15 DAB channels (seven by DBC, one by Metro, two by Phoenix U Radio and five by RTHK).

Between October 2012 and January 2013, DBC suspended its DAB service arising from a dispute among shareholders. The Authority took regulatory action against DBC and imposed on it financial penalties totalling \$280,000 for breaches of licence conditions. To resolve the dispute among shareholders, DBC proposed for the Authority's approval shareholding changes. Having taken into account DBC's submissions, the Authority was satisfied that with the changes in its shareholding structure, DBC would be able to comply with the applicable regulatory requirements. Accordingly, the Authority approved DBC's application for changes in its shareholding structures in January 2013. DBC resumed its full-fledged broadcasting service in January 2013.

6.3 Grant and Renewal of Non-domestic and Other Licensable Television Programme Service Licences

During the period under review, the Authority granted one non-domestic television programme service licence each to Health TV Company Limited and One TV Media Global Limited, and approved the application of Showers of Blessing Evangelistic Ministry (Hong Kong) Limited for the renewal of its other licensable television programme service licence for the provision of television programme service in hotel rooms in Hong Kong.

The Authority also accepted the surrender of a non-domestic television programme service licence by Real Global Broadcasting Hong Kong Limited and the surrender of two other licensable television programme service licences by Marriott Hong Kong Limited and Royal Park Hotel Management Limited due to the commercial decisions of the licensees.

6.4 Collection of Public Views on Domestic Free Television Services

In the context of the mid-term review of the domestic free television programme service licences in 2010, the CE in C approved, among other things, the recommendations of the then BA to engage the public, on a regular basis, to collect their views on the quality and variety of the television programmes provided by the licensees. The first public engagement exercise was conducted in 2011. During the period from February to May 2013, the Authority conducted the second public engagement exercise.

The 2013 public engagement exercise adopted a two-stage format. In stage one, members of the public were invited to submit written views on the variety and quality of free television programmes. About 7 600 written submissions were received. In stage two, members of the public, including academics, television production veterans and representatives from concern groups, etc. were invited to participate in two focus group discussions. Representatives of the two licensees attended both sessions to listen to the opinions of the participants.

The public engagement exercise was completed in May 2013. The views expressed were diverse. The more notable suggestions/comments received included –

- (a) a greater variety of programmes should be provided;
- (b) more programmes for the elderly should be provided;
- (c) ATV should provide more locally/station-produced programmes;
- (d) ATV should reduce the amount of re-run/repeat programmes and avoid making frequent changes to programme schedules;
- (e) programmes on current affairs on ATV should be impartial;
- (f) the quality of game shows on TVB should be improved;
- (g) TVB should produce more dramas of new and/or positive themes; and
- (h) there were too many cuisine and gourmet programmes on TVB which encouraged a luxurious lifestyle.

The Authority forwarded all the views collected in the two stages of the public engagement exercise to the two free television licensees. The major responses of the two licensees were as follows –

- (a) On programme variety, ATV responded that the variety of its programming has become more diversified during prime time as it gradually replaced the two lines of serial dramas by non-drama programmes. TVB responded that it has been providing a broad range of choice and diversity in programming;
- (b) On programmes for the elderly, ATV responded that it has scheduled Cantonese opera to cater for the needs of the elderly and would continue to provide more programmes for the elderly. TVB responded that it would consider the public's request for more programmes for the elderly in future reviews of programme scheduling;
- (c) On the public views on (c) to (e) above, ATV responded that –
 - (i) the percentage of the broadcast of local production during prime time had increased by about 30% from 2009 to 2012;
 - (ii) the re-runs of programmes were to cater for those who missed the first run due to long working hours and in view of criticisms from the public, ATV had adjusted the re-run schedule; and
 - (iii) programme hosts and guests should enjoy freedom of expression; and programmes on current affairs and hot topics, when classified as personal view programmes ("PVPs"), would be exempted from the provision governing due impartiality in the codes of practice issued by the Authority. Nonetheless, ATV had taken measures to ensure that a broad range of views was to be expressed in PVPs.

- (d) On the public views on (f) to (h) above, TVB responded that –

- (i) it would continue to source and produce top quality game shows and was totally prepared to listen to viewers' opinions;
- (ii) it would continue to explore and break new grounds in dramas and was and would remain vigilant about scenes in dramas which had a negative impact on young audience; and
- (iii) while it produced a wide variety of cuisine and gourmet programmes, it had not intended to advocate or encourage an undesirable lifestyle in such programmes.

The Authority had the following observations on the licensees' responses –

- (a) ATV had submitted that the percentage of the broadcast of local production during prime time had increased. However, the Authority noted that the programmes broadcast during non-prime time comprised much more repeat programmes and the percentage of first-run locally-produced programmes during non-prime time was still on the low side;
- (b) on repeat programmes, ATV had only offered to reduce the number of repeats from four to three times a day. As to its proposal to reshuffle the time slots of the re-runs, it was not apparent as to how that could help ATV meet the public demand for fewer repeat programmes. In sum, ATV's proposed improvement measures fell far short of addressing the public concern in this regard;
- (c) regarding the impartiality standards of PVPs, the Authority noted that all PVPs had to comply with some ground rules as set out in the codes of practice, viz. providing a suitable opportunity for response and the need for a sufficiently broad range of views; and

- (d) the quality of game shows on TVB had been a major concern in both the current and the last public engagement exercises. The Authority considered that TVB should more fully take into account the public views on its game shows in its future productions.

Regarding (a) and (b) above, there was currently no general requirement governing local productions and repeat programmes on domestic free television programme services. The Authority might revisit these issues in considering the applications from ATV and TVB for renewal of their domestic free television programme service licences. Regarding (c), the Authority was reviewing the provisions governing PVPs in the codes of practice in order to address the public concern.

A report on the results of the exercise was issued and is available at http://www.coms-auth.hk/filemanager/common/other/public_engagement_exercise_en.pdf.

6.5 Processing Complaints relating to Broadcasting Services

Overview of the Complaints Processed

During the period from April 2012 to March 2013, the Authority processed a total of 1 625 cases (49 184 complaints) about the materials broadcast by broadcasters, which represented a decrease of about 19% in the number of cases but a 13-fold increase (1 334%) in the number of complaints as compared to the numbers recorded during the same period in the previous year (2 002 cases, 3 429 complaints) handled by the former BA. The drastic increase in the number of complaints was attributed to a controversial case against a personal view programme broadcast on ATV which attracted over 42 000 complaints. Breakdown of all the complaint cases by broadcasting service and broadcaster processed during the period is shown in [Figure 17](#) and [Figure 18](#) respectively.

Figure 17: Distribution of All Complaint Cases by Broadcasting Service Processed in 2012-2013

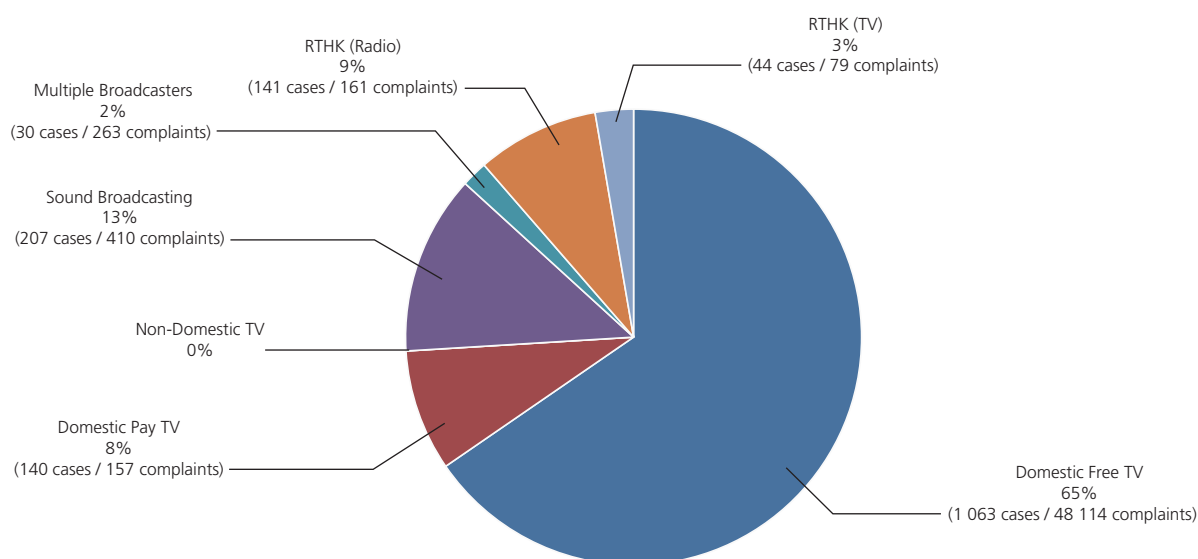


Figure 18: Distribution of All Complaint Cases by Broadcaster Processed in 2012-2013

Broadcasters	No. of Complaint Cases	No. of Complaints
ATV	217	44 719
TVB	820	3 355
HKCTV	68	81
PCCW Media	63	67
TVBNV	8	8
CRHK	166	365
Metro	32	36
DBC	9	9
RTHK (TV)	44	79
RTHK (Radio)	141	161
Multiple Broadcasters	57	304
Total	1 625	49 184

Among all the complaint cases processed, the DG Com handled 1 584 cases (3 432 complaints) under delegated power of the Authority. These complaints were related to breaches of minor nature, or allegations which did not constitute any breach or were outside section 11(1) of the B(MP)O, i.e. the substance of the complaint did not involve a contravention of the legislation, licence conditions or codes of practice. The Authority dealt with 41 cases (45 752 complaints). Details of the outcomes of all the complaints processed during this period are at [Figure 19](#).

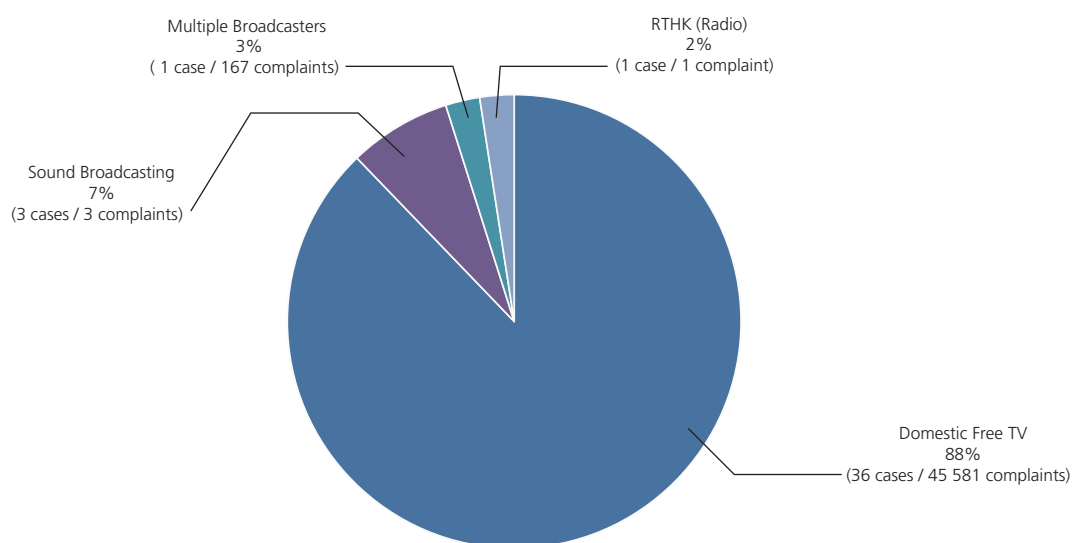
Figure 19: Outcomes of all the Complaints dealt with by the Authority and DG Com

	Within Section (11)1 of B(MP)O				Outside Section (11)1 of B(MP)O	Total
	Substantiated		Unsubstantiated		DG Com	
	The Authority	DG Com	The Authority	DG Com		
No. of Cases	35	74	6	916	594	1 625
No. of Complaints	44 587	89	1 165	1 853	1 490	49 184

Complaints Dealt with by the Authority

Among the 41 complaint cases dealt with by the Authority, 88% were related to the domestic free television programme services. Breakdown of these complaint cases by broadcasting service is at [Figure 20](#).

Figure 20: Breakdown of Complaint Cases Dealt With by the Authority by Broadcasting Service



Regarding the nature of the broadcast materials under complaint, 37 out of the 41 complaint cases dealt with by the Authority were related to programmes, three on advertisements and one on station promotional materials. 35 complaint cases were substantiated. Among the substantiated cases, the main substance of complaints of 17 cases were related to the mingling of programme and advertising material or the embedding of advertising material within programme content. Five cases were related to programmes dealing with controversial issues of public importance in Hong Kong which were identified as personal view programmes or segments dealing with such issues in factual programmes and were in breach of the relevant requirements of accuracy and impartiality applicable to the specific types of programmes or segments. Others included inaccurate or misleading factual contents in news programmes, misleading advertising claims, denigration, inclusion of promotional materials for the station within programme, failure to identify advertising material as such, violence and dangerous acts, inappropriate

broadcast time, unsuitable for children, failure to provide recordings to the Authority for investigation of complaints, broadcast of liquor advertising during the family viewing hours, etc.

The Authority imposed financial penalties ranging from \$50,000 to \$80,000 on seven occasions, issued four serious warnings, 10 warnings, six pieces of strong advice and six pieces of advice, and classified two cases as minor breaches. A breakdown of the decisions of the Authority on complaints dealt with in 2012-2013 is at [Figure 21](#).

Figure 21: Decision of the Authority on Complaint Cases during 2012-2013

Decision of the Authority	ATV	TVB	TVBNV	CRHK	Metro	RTHK	Total
No Further Action	0	6	1	0	0	0	7 ^{note}
Minor Breach	1	0	0	0	1	0	2
Advice	1	4	0	0	0	1	6
Strong Advice	3	1	0	2	0	0	6
Warning	7	3	0	0	0	0	10
Serious Warning	2	2	0	0	0	0	4
Financial Penalty	6	1	0	0	0	0	7
Total	20	17	1	2	1	1	42 ^{note}

Note: One complaint case involved broadcasts on two licensees and hence there were two decisions on the same case.

6.6 Review of Codes of Practice

The Authority conducts regular reviews of its Codes of Practice to provide guidance to broadcasters on programme, advertising and technical standards. During the period under review, the Authority approved amendments to the existing Codes as set out below.

Change of Video Coding for Digital Terrestrial Television

In response to a joint application from ATV and TVB, the Authority amended the Generic Code of Practice on Television Technical Standards to allow the licensees to switch from MPEG-2 to H.264 as the video coding for the four simulcast television programme channels. The use of H.264 coding enhances the picture quality of the four simulcast channels and opens up the possibility of providing more programme channels, introducing HDTV or three-dimensional television services.

Amendments to Codes of Practice Governing Programme and Advertising Standards

The Authority amended the Generic Codes of practice on Television Programme Standards and Advertising Standards (TV Programme and Advertising Codes) to extend the exemption for domestic pay and other licensable television programme services on the prohibition of commercial references within programmes on channels acquired for direct re-transmission to domestic free television programme service, subject to the specified conditions. The amendments provide more flexibility for domestic free television programme service licensees on a multi-channel DTT platform.

The Authority also amended the TV Advertising Code to require licensees to superimpose the caption "advertisement" or "advertising magazine" on screen throughout the broadcast of an advertisement adopting a programme style taking into consideration the new presentation style of advertisements and the need to better inform the public of the nature of materials they are watching.

To enhance clarity of the provisions governing advertising materials, the Authority also amended the TV and Radio Advertising Codes to make it clear that promos for advertisements are advertising materials and should be counted towards the aggregate time limits applicable to domestic free television programme service and sound broadcasting licensees.

Telecommunications

6.7 Consultation on Re-assignment of the 3G Spectrum in the 1.9-2.2 GHz Band

Frequency spectrum in the 1.9-2.2 GHz band (3G spectrum) was assigned through auction to four mobile network operators in 2001 for a term of 15 years until October 2016. The four incumbent 3G operators, namely CSL, Hong Kong Telecommunications (HKT) Limited, Hutchison Telephone Company Limited, and SmarTone, are using the 3G spectrum for the provision of 3G mobile services. According to the Radio Spectrum Policy Framework promulgated by the Government in April 2007, there is no legitimate expectation on the part of the spectrum assignees of any right of renewal or right of first refusal of any frequency assignment upon its expiry.

The Authority and the Government jointly conducted the first consultation on re-assignment of the 3G spectrum during April to mid-July 2012, where three options for re-assignment arrangement were proposed, viz. (1) an administratively-assigned approach to offer right of first refusal of all the relevant spectrum to the incumbent 3G operators; (2) a full-fledged market-based approach to re-auction all the relevant spectrum; and (3) a hybrid of Options 1 and 2.

Taking into account the views and comments received, as well as the multiple objectives in spectrum re-assignment, Option 3 was put forward for further consultation in the second consultation paper published on 28 December 2012, with the consultation period ending on 11 April 2013. It is the plan of the Authority to announce its decision on the re-assignment arrangements around October 2013.

6.8 Auction of Additional Radio Spectrum in the 2.5/2.6 GHz Band

Making use of auction for assignment of radio spectrum with competing demand for commercial use is a well-established spectrum management mechanism of the Authority in accordance with the Radio Spectrum Policy Framework. Auction ensures economically efficient assignment of radio spectrum as a scarce public resource to the operators which value it the most and are able to put it to the most efficient use.

With the increasing popularity of smart phones, notepads and other advanced communications devices, public demand in Hong Kong for quality mobile services have continued to grow rapidly in recent years. Adequate and timely supply of radio spectrum to support the deployment of new mobile technologies and applications and to meet the incessant demand for additional network capacity is not only necessary but also critical to the healthy development of the mobile industry. In March 2013, OFCA conducted an auction for the release of an additional 50 MHz of radio spectrum in the 2.5/2.6 GHz band capable for the deployment of 4G services.²³ The spectrum was successfully acquired by four incumbent mobile network operators,

²³ This was the eighth auction that had been conducted since 2001. For the provision of 4G mobile telecommunications services in Hong Kong, OFCA's predecessor, namely the Office of the Telecommunications Authority auctioned off 90 MHz of radio spectrum in the 2.5/2.6 GHz band in January 2009, and another 90 MHz in the 2.3 GHz band in February 2012.

namely CMHK, CSL, Genius Brand Limited²⁴ and SmarTone at a total spectrum utilisation fee of HK\$1.54 billion. The assignment of the additional radio spectrum through this auction would enable the incumbent operators to deploy state of the art mobile broadband technologies and provide the necessary network capacities to further develop 4G mobile telecommunications service in Hong Kong.

6.9 Spectrum swap between SmarTone and China Mobile

In November 2012, CMHK and SmarTone submitted a joint application seeking the Authority's permission to swap 2 x 1.6 MHz of frequency blocks of their assigned spectrum in the 1 800 MHz band.

As this was a swap of an equal amount of spectrum, it would not result in any change in the total amount of spectrum assigned to the two mobile network operators. The Authority considered that the proposed spectrum swap would result in more efficient use of spectrum and consumers would benefit from improved voice quality and network capacity. The Authority therefore approved the proposed spectrum swap, subject to the conditions that there was no monetary exchange and harmful interference caused to other mobile network operators and that any service impact on customers should be minimised.

6.10 Reduction of Telecommunications Licence Fees

In June 2012, the Authority and the SCED jointly issued a consultation paper to invite members of the public to make representations on a licence fees reduction proposal, viz. to reduce the customer connection fee level of UCLs from \$800 to \$700 for each 100 customer connections and to reduce the mobile station fee level of PRS Licences (Paging) and SBO Licences (Class 3) from \$800 to \$700 for each 100 mobile stations.

Having duly considered the views and comments received in context of the consultation exercise, the Authority and the SCED issued a joint statement in November 2012 to promulgate their decision to proceed with the proposal to reduce the licence fees for UCLs, PRS (Paging) and SBO (Class 3) Licences as proposed. Following completion of the legislative procedure, the new licence fees took effect on 1 March 2013.

6.11 Review of Regulatory Guidance on the Charging Principles of Interconnection between Fixed Carriers

Charges of narrowband interconnection between fixed carriers are the only type of carrier-to-carrier local interconnection charges which are still subject to regulatory guidance. For fixed-fixed broadband interconnection charges, mobile-mobile interconnection charges and fixed-mobile interconnection charges, they are not subject to any regulatory guidance at present and are solely determined through commercial negotiations between telecommunications operators.

²⁴ Genius Brand Limited is indirectly owned by Hong Kong Telecommunications (HKT) Limited and Hutchison Telephone Company Limited.

Taking into account the significant changes and developments in the market and technology over the past two decades, regulatory guidance which applies to narrowband interconnection between fixed carriers is increasingly out of place when broadband interconnection is not subject to similar regulatory guidance. To review whether the regulatory guidance should be maintained or withdrawn under the present day circumstances, a public consultation was conducted during November 2012 to January 2013. The Authority would decide on the way forward with the regulatory guidance in the second quarter of 2013.

6.12 Processing Complaints relating to Telecommunications Services

As the telecommunications market is fully liberalised and highly competitive, the Authority has adopted a light-handed regulatory approach. Though the Authority does not have any statutory responsibility for consumer protection, it investigates consumer complaints against telecommunications operators if there is sufficient evidence to establish a prima facie case on possible breaches of any provisions under the TO or licence conditions. For other consumer complaints not involving any breach of telecommunications laws or regulations, it is the responsibility of the telecommunications operators to settle matters with their customers. The Authority will take note of and monitor all consumer complaints received. Appropriate actions would be taken if any abnormal trends in consumer complaint are observed.

During the year under review, the Authority received a total of 5 129 consumer complaints with regard to telecommunications services. Among them, 2 691 cases (52.5%) were related to mobile services, 1 524 cases (29.7%) were related to Internet services, 722 cases (14.1%) were related to fixed-line services and 192 cases (3.7%) were related to external communications and other services. On the complaint nature, the number of bill disputes complaints ranked the highest among the total number of complaints received (1 052 cases or 20.5%), while complaints about service quality (1 036 cases or 20.2%) and customer service quality (771 cases or 15.0%) ranked second and third respectively.

Breakdown of complaint cases by types of telecommunications services and complaint natures received by the Authority during the period are shown in [Figure 22](#) and [Figure 23](#) respectively.

Figure 22: Distribution of Complaint Cases by types of Telecommunications Service received by the Authority (April 2012 to March 2013)

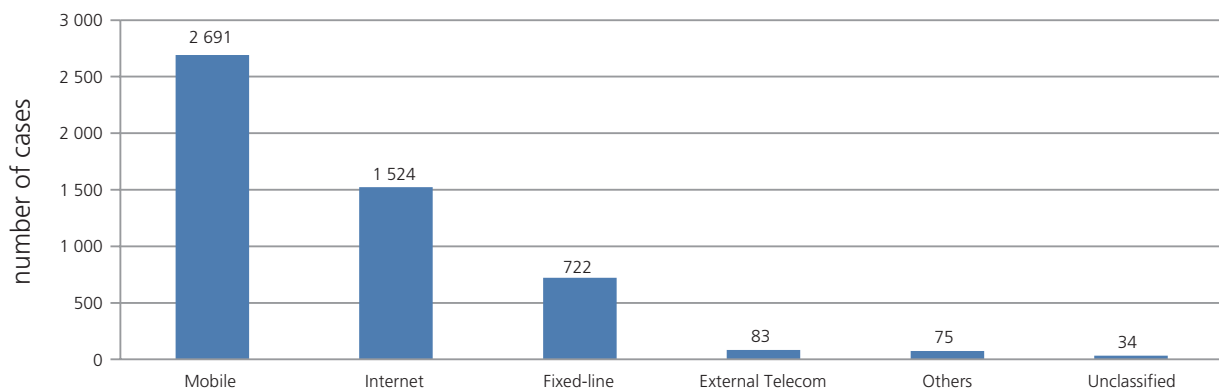
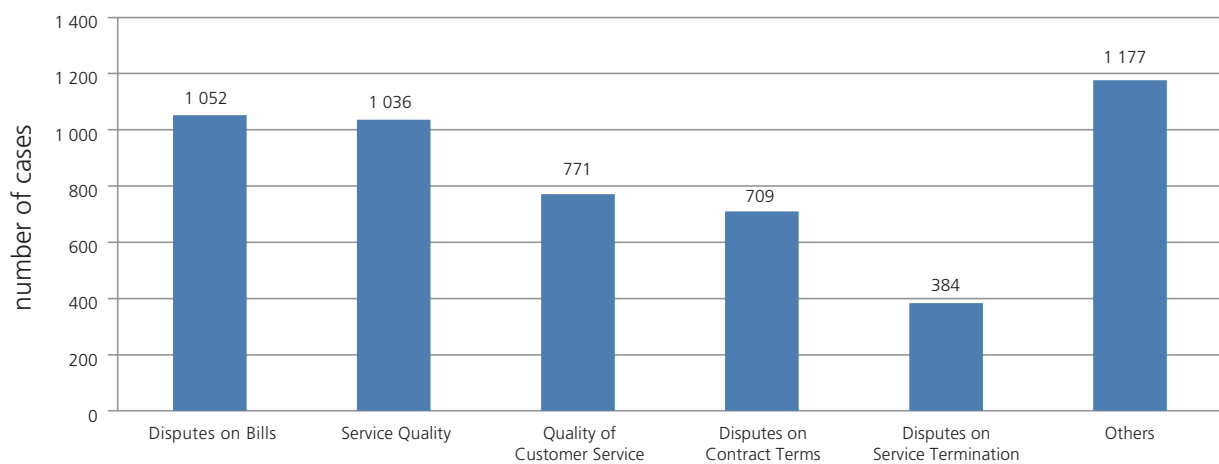


Figure 23: Distribution of Complaint Cases by Complaint Nature received by the Authority (April 2012 to March 2013)



Among the 5 129 complaint cases received, 5 011 cases (97.7%) were found to be outside the Authority's jurisdiction. For the remaining 118 cases (2.3%), they might have breached the TO or licence conditions. The majority of these cases were related to sales conduct, suspected anti-competitive behavior, abuse of market power, and the difficulty of telecommunications operators in accessing buildings to provide services. Regulatory actions

will be taken against the telecommunications operators concerned if the complaints are found to be substantiated after investigations.

Breakdown of complaint cases that might involve possible breach of the TO or licence conditions by types and natures received by the Authority during the year under review are at [Figure 24](#) and [Figure 25](#) respectively.

Figure 24: Distribution of Complaint Cases by types of Telecommunications Service received by the Authority (April 2012 to March 2013)

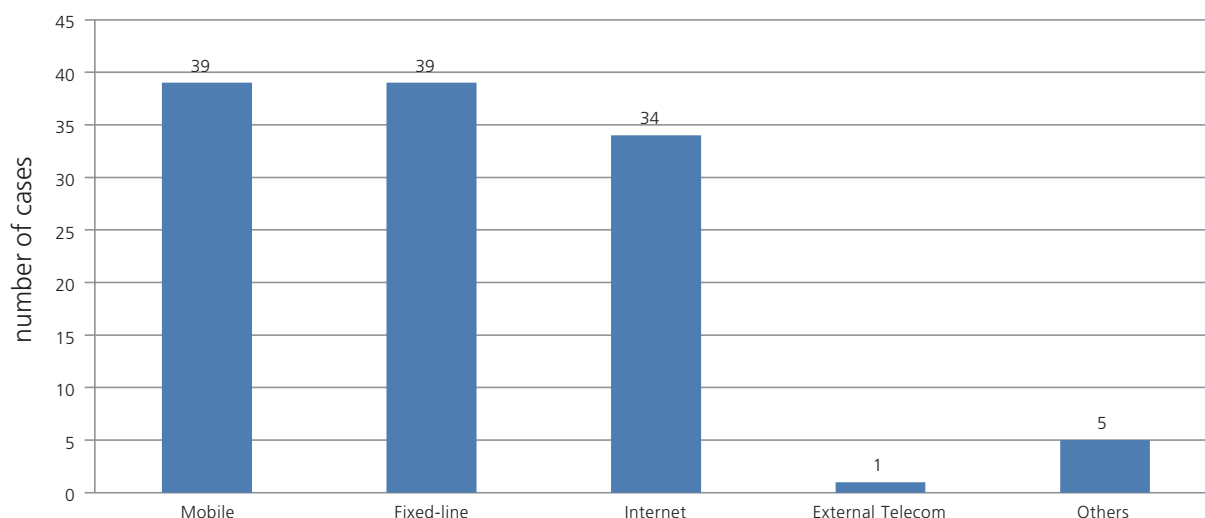
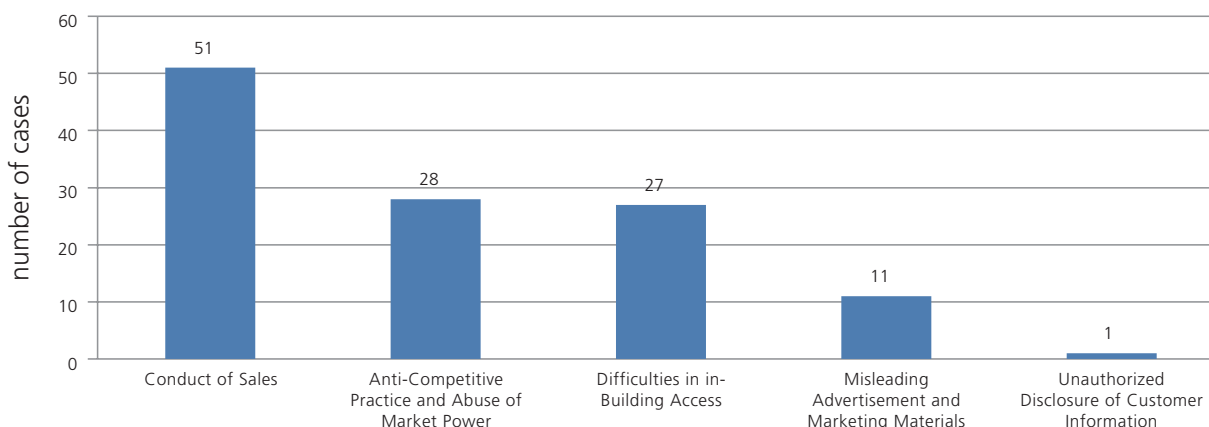


Figure 25: Distribution of Complaint Cases by Complaint Nature received by the Authority (April 2012 to March 2013)



In the past few years, the Authority noted some major trends of consumer complaint. They were mainly on telecommunications service contractual disputes, mobile bill shock, chargeable mobile content services and Fair Usage Policy. In collaboration with the telecommunications industry, various measures have already been implemented to address these complaints. These include the issue of voluntary code of practice for telecommunications service contracts, implementation of mobile bill shock preventive measures, the set up of an Administrative Agency by the CAHK to govern the service delivery by mobile content services providers, and the promulgation of a set of mandatory guidelines governing the implementation of Fair Usage Policy. The breakdown of complaint cases received on the complaint trends mentioned above during the year under review is at [Figure 26](#).

Figure 26: Number of Complaint Cases on Significant Trends in Consumer Complaint received by the Authority (April 2012 to March 2013)

Significant Trends in Consumer Complaint	No. of Complaint Cases
Contractual disputes	1 093
Mobile bill shock	467
Chargeable mobile content services	39
Fair Usage Policy	35

6.13 Sponsoring the Operation of Customer Complaint Settlement Scheme

In November 2012, OFCA worked with the CAHK to launch the CCSS for a trial period of two years. The CCSS is an alternate dispute resolution scheme which aims at resolving billing disputes in deadlock between telecommunications service providers and their residential/personal customers by means of mediation. All major telecommunications service providers participate in the scheme on a voluntary basis. OFCA sponsors the operation of the CCSS by contributing the necessary funding and has been playing an active role in monitoring the performance and the governance of the scheme, and providing other administrative support. OFCA is also responsible for assessing mediation applications and referring accepted cases to the independent mediation service centre set up under the CAHK for follow-up actions. As of March 2013, OFCA received 236 enquiries for application. Among them, 36 cases were within the scope of the CCSS, of which 27 were satisfactorily settled before submission to the service centre, six cases were satisfactorily settled after OFCA's referral, and the remaining three cases were being processed by the service centre.

6.14 Preparation for the Implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012

Enacted by the Legislative Council on 17 July 2012, the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 extends the coverage of the TDO to services, prohibits specified unfair trade practices, and provides for an enhanced enforcement mechanism (collectively known as "fair-trading sections"). The Authority is conferred jurisdiction concurrent with C&ED to enforce the fair-trading sections of the TDO in relation to commercial practices of licensees

under the TO and BO directly connected with the provision of telecommunications and broadcasting services. The Authority has worked closely with the Commerce and Economic Development Bureau (CEDB) and C&ED on the preparatory work for the implementation of the amended TDO, including the consultation and issue of enforcement guidelines and the signing of a memorandum of understanding with the Commissioner of Customs and Excise to co-ordinate the performance of their functions under the amended TDO.

6.15 Preparation for the Implementation of the Competition Ordinance

The CO was passed by the Legislative Council on 14 June 2012, providing for a cross-sector competition law prohibiting anti-competitive conduct in all sectors which has the object or effect of preventing, restricting or distorting competition. Under the CO, the Authority is conferred jurisdiction concurrent with the new CC to enforce the CO in respect of the conduct of telecommunications and broadcasting licensees, including merger-and-acquisition activities involving carrier licensees in the telecommunications sector. Upon commencement of the CO, the competition provisions in the BO and TO will be repealed, subject to transitional arrangements. OFCA will follow up with CEDB and the CC and assist the Authority in undertaking the preparatory work required before the commencement of the CO.

6.16 Enforcement of the Unsolicited Electronic Messages Ordinance

The UEMO came into full force on 22 December 2007. The UEMO sets out the rules of sending commercial electronic messages (CEMs), including the requirements to provide accurate sender information and honour unsubscribe requests. Under the UEMO, the Authority has established three Do-Not-Call (DNC) registers for free registration by members of the public in respect of their choice not to receive commercial facsimile messages, short messages and/or pre-recorded telephone messages. By the end of March 2013, more than 2.47 million numbers had been registered under these DNC registers.

To facilitate compliance of the law requirements by CEM senders, the Authority issued a consultation paper in March 2013 to consult the public and CEM senders on the proposed revisions of the Code of Practice (CoP) issued under the UEMO for providing practical and updated guidance on the sending of CEMs. The Authority will finalise the revised CoP taking into account all views and comments received and issue the revised CoP in the third quarter of 2013.

The Authority will monitor the compliance with the UEMO by CEM senders and streamline the procedures for more effective enforcement to cope with changes in situations.

Major Regulatory Actions

6.17 Sanctions against Broadcasting Licensees

Broadcast Content Complaints

During the period of 1 April 2012 to 31 March 2013, the Authority considered complaints against various broadcast contents and imposed financial penalties ranging from \$50,000 to \$80,000 on seven occasions on the two domestic free television programme service licensees, viz. ATV and TVB, for their respective non-compliance with the relevant provisions in the codes of practice on programme and advertising codes concerning –

- (a) indirect advertising and the exposure or use of the sponsor's product(s) or service(s) within a programme;
- (b) accuracy, impartiality and fairness in factual programmes;
- (c) the rules applying to personal view programmes (PVP) which include (i) facts must be respected and the opinion expressed should not rest upon false evidence; (ii) the provision of a suitable opportunity for response to the programme; & (iii) the need of a sufficiently broad range of views to be expressed in any series of PVPs; and
- (d) clear identification of advertising material and substantiation of the factual claim therein.

Among the seven cases, TVB was imposed a financial penalty of \$60,000 for a case of indirect advertising and contravention of the product/service sponsorship provisions, whereas the other six cases concerning various contraventions were all related to the materials broadcast by ATV.

Disruptions to/Cessation of DBC's DAB service

Between October 2012 and January 2013, DBC was unable to provide its service in accordance with the licence due to problems of financing. The Authority imposed financial penalties of \$280,000 in total on DBC for the disruptions to/cessation of DBC's service during the period concerned. DBC resumed a full-fledged broadcasting service from January 2013 onwards.

6.18 Sanctions against telecommunications licensees

Misleading or Deceptive Conducts of Telecommunications Operators

During the period of 1 April 2012 to 31 March 2013, five complaint cases under section 7M of the TO, which prohibits misleading or deceptive conduct by telecommunications licensees, were confirmed as infringements of the TO with financial penalties ranging from HK\$50,000 to HK\$300,000 imposed on three telecommunications licensees.

In August 2012, the Authority considered a complaint against SmarTone for breaching section 7M of the TO. The complainant alleged that the representations made in SmarTone's website about the charges for browsing SmarTone iN! WAP pages were misleading or deceptive. Having considered the investigation findings, the Authority was of the view that SmarTone had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of HK\$100,000 on SmarTone in relation to the breach concerned.

In August 2012, the Authority also considered a complaint against Intelligence Telecom Marketing Limited (ITM) for breaching section 7M of the TO. ITM is a class licensee under section 8(1)(aa) of the TO for the offer of IDD1560 service operated by its associated company, P&P Corporation Limited, a services-based operator licensee. CMHK made a complaint in June 2011 that a number of its customers had received phone calls from salespersons who identified themselves to be "PEOPLES' representatives", "PEOPLES' staff" or "PEOPLES' ex-staff"²⁵ and who then promoted to these customers the IDD1560 or other IDD services which were not provided by CMHK. CMHK alleged that neither its own staff nor any of its agents had made any such phone calls, and requested OFCA to look into these suspected cases of misleading or deceptive sales conduct. Having considered the investigation findings, the Authority was of the view that ITM had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of HK\$50,000 on ITM in relation to the breach concerned.

In November 2012, the Authority considered a complaint against Hong Kong Broadband Network Limited (HKBN) for breaching section 7M of the TO. The complainants alleged that the representations made in some of HKBN's advertisements and promotional materials in relation to the transmission speed of its "1000M" broadband service were misleading or deceptive. Having considered the investigation findings, the Authority was of the view that HKBN had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of HK\$300,000 on HKBN in relation to the breach concerned.

²⁵ "PEOPLES" used to be brand name used by CMHK to operate its mobile services in Hong Kong.

In November 2012, the Authority considered another complaint against ITM for breaching section 7M of the TO. The complainant alleged that the representations in relation to the call rates for making IDD calls made by the salespersons of ITM in promoting the IDD1560 service were misleading or deceptive. Having considered the investigation findings, the Authority was of the view that ITM had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of HK\$80,000 on ITM in relation to the breach concerned.

In January 2013, the Authority considered another complaint against HKBN for breaching section 7M of the TO. The complainant alleged that the representations made by HKBN in its advertising campaign on "Exclusive Switching Offer to PCCW Residential Fixed Line Customers at Only HK\$9.9/month" were misleading or deceptive. Having considered the investigation findings, the Authority was of the view that HKBN had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of HK\$120,000 on HKBN in relation to the breach concerned.

Network Outage of SmarTone

On 9 April 2012, there was an outage of the network of SmarTone Communications Limited and SmarTone Mobile Communications Limited (collectively "SmarTone Limited"), causing disruption to its mobile voice services, mobile internet services, short message services and some data services (including mobile content services, voice mail services and stock quotes services). After considering the assessment of OFCA, the Authority concluded that SmarTone Limited had contravened General Condition 5.1 of its licences which required it to operate, maintain and provide a good, efficient and continuous service in a manner satisfactory to the Authority. Having considered carefully the

circumstances of the case and taken all factors into account, the Authority imposed a financial penalty of \$130,000 on SmarTone Limited.

Billing Error of PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited

The Authority also handled a case regarding the billing error of a licensee during the period. In November 2012, PCCW-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited (collectively "HKT") made incorrect charge entries (through the bank) to the credit card accounts of a number of its customers for broadband service and Now TV service. After considering the assessment of OFCA, the Authority concluded that HKT had failed to comply with Special Condition (SC) 9.1 of its licence, requiring it to take all reasonable steps to ensure that the billing system used in connection with the service is accurate and reliable. In addition, HKT had failed to comply with the requirement of paragraph 10 of the Code of Practice in relation to Billing Information and Payment Collection for Telecommunications Services with which HKT had pledged to comply, to take all reasonable, necessary and practical steps to ensure that the information used for collection of payment from customers is authentic and error-free. Having considered the circumstances of the case and taken all factors into account, the Authority concluded that HKT should be strongly advised to observe more closely SC 9.1 of its licence. HKT was also reminded to observe more closely paragraph 10 of the above-mentioned Code of Practice.

Illegal Bypass of Local Access Charge by Alcom Hong Kong Limited

In addition to the above, the Authority also completed the investigation into a case regarding illegal bypass of local access charge. Alcom Hong Kong Limited, a licensee for ETS, was imposed a financial penalty of HK\$65,000 for having committed a breach of SC 7.1 and 8.1 of its licence.

6.19 Sanctions against Senders of Commercial Electronic Messages

From April 2012 to March 2013, the Authority received 2 410 reports on suspected contraventions of the UEMO, representing a drop of around 8% as compared with the figure of the previous year. In dealing with these reports, OFCA would, depending on the situation, issue advisory letters to the first time offenders explaining the law requirements or issue warning letters to the concerned senders. During the period under review, 401 advisory or warning letters were issued. In the event of repeated contraventions by a particular sender, the Authority would issue an enforcement notice pursuant to the UEMO directing the concerned sender to take steps to remedy the offences. Any person who fails to comply with the enforcement notice may be liable to a fine of up to HK\$100,000 on the first conviction. In 2012/13, eight enforcement notices were issued. As the concerned senders ceased their contravention of the UEMO after receiving the enforcement notices, no prosecution was needed.