



BROADCASTING

6.1 Extending the Coverage of DTT Broadcasting

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, bringing the overall DTT coverage to at least 99% of the Hong Kong population, which was on a par with that of analogue television services, by September 2013. More people can now enjoy better quality pictures and enhanced audio-visual features, including HDTV and surround sound, with more programming choices available from additional television channels and valued added services (e.g. closed captioning, electronic programme guide, interactive services). At the same time, OFCA has continued to examine, 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 2014, the three licensees and RTHK provided a total of 16 DAB channels (seven by DBC, two by both Metro and Phoenix U Radio and five by RTHK).





6.3 Renewal of Domestic Free and Domestic Pay Television Programme Service Licences

The domestic free television programme service licences of ATV and TVB are due to expire in November 2015. The two licensees submitted applications for licence renewal in November 2013. In accordance with the BO and established practice for processing the licence renewal applications, the Authority has conducted a comprehensive assessment of the performance of the two licensees in relation to their compliance with the statutory requirements, licence conditions and codes of practice promulgated by the Authority, and considered their operational, financial and technical capability, programming arrangements and future commitments. The Authority also conducted a public consultation exercise from February to April 2014 and will take the public views received into account when submitting its recommendations to the CE in C in the fourth quarter of 2014.

The domestic pay television programme service licence of PCCW Media is due to expire in September 2015. PCCW Media submitted an application for renewal of its licence in September 2013. The Authority has, according to the BO and established procedures, conducted a comprehensive assessment of PCCW Media's performance since September 2003 and conducted a public consultation exercise on the service of PCCW Media with a view to submitting recommendations to the CE in C in the third quarter of 2014.

6.4 Follow-up to Applications for Domestic Free Television Programme Service Licences

In October 2013, the CE in C approved in principle the applications for domestic free television programme service licences of Fantastic TV and HKTVE. The Authority has proceeded with the follow-up work immediately after the announcement of the decision, and has requested the two applicants to submit further information on a number of issues. Upon completion of the assessment of further information submitted by the two applicants, and conclusion of licence negotiations, the Authority will submit to the CE in C recommendations on whether free televisions programme service licence(s) should be formally granted to the two applicants and the associated licence conditions.



6.5 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 to Star China Media Limited, as well as one other licensable television programme service licence to Swisscom Hospitality Hong Kong Limited for the provision of television programme service in hotel rooms in Hong Kong.

The Authority also approved the applications for renewal of the following non-domestic television programme service licences and other licensable television programme service licences for the provision of television programme service in hotel rooms in Hong Kong:

Non-domestic television programme service licences

- China Entertainment Television Broadcast Limited
- GLOBECAST HONG KONG LIMITED (formerly known as GlobeCast Hong Kong Limited)
- Sun Television Cybernetworks Enterprise Limited
- Turner International Asia Pacific Limited

Other Licensable television programme service licences

- Goodnews Communication International Limited
- Greenroll Limited



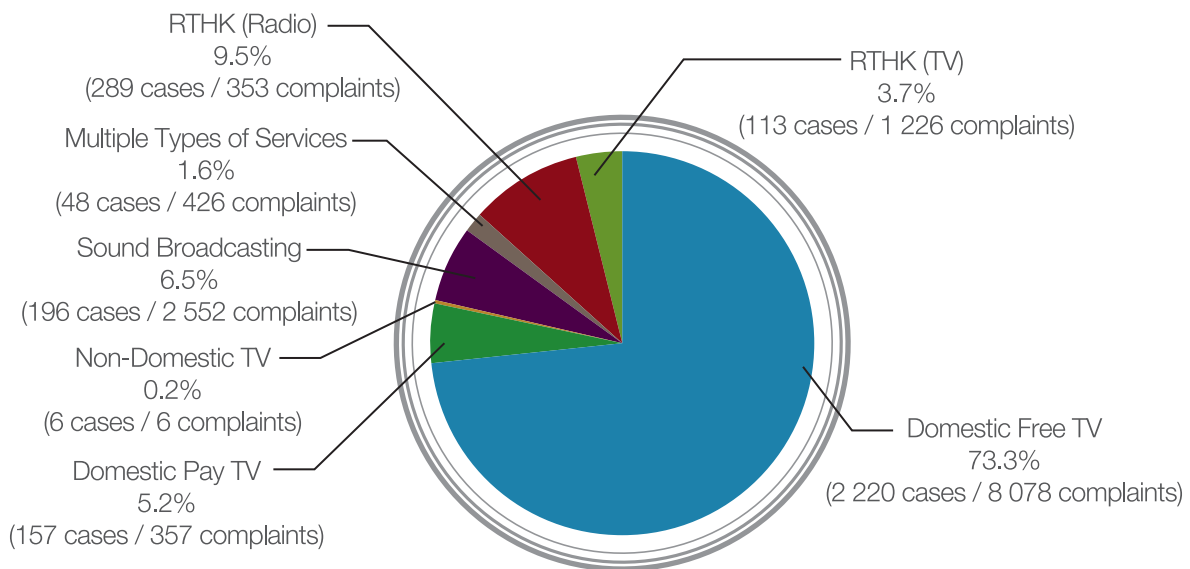


6.6 Processing Complaints relating to Broadcasting Services

Overview of the Complaints Processed

During the period from April 2013 to March 2014, the Authority processed a total of 3 029 cases (12 998 complaints²⁴) about the materials broadcast by broadcasters, which represented an increase of 86% in the number of cases and a decrease of 74% in the number of complaints as compared to the numbers recorded during the same period in the previous year (1 625 cases, 49 184 complaints²⁵). Breakdown of all the complaint cases by broadcasting service and broadcaster processed during the period is shown in [Figure 16](#) and [Figure 17](#) respectively.

FIGURE 16: DISTRIBUTION OF ALL COMPLAINT CASES BY BROADCASTING SERVICE PROCESSED IN 2013/2014



24 To ensure operational efficiency, complaints with similar or related allegations against the same broadcast material are handled together and counted as a single case.

25 The significant decrease in the number of complaints was attributed to a controversial case in 2012/13 against a personal view programme broadcast on ATV which attracted over 42 000 complaints.

**FIGURE 17: DISTRIBUTION OF ALL COMPLAINT CASES BY BROADCASTER PROCESSED IN 2013/2014**

Broadcasters	No. of Complaint Cases	No. of Complaints
ATV	512	831
TVB	1 688	7 216
HKCTV	76	112
PCCW Media	58	160
TVBNV	21	22
One TV Media Global ²⁶	5	5
Phoenix Satellite TV ²⁶	1	1
CRHK	137	2 481
Metro	48	53
DBC	9	16
Phoenix U	1	1
RTHK (TV)	113	1 226
RTHK (Radio)	289	353
Multiple Broadcasters	71	521
Total	3 029	12 998

Among all the complaint cases processed, the DG Com handled 2 986 cases (7 131 complaints) under delegated power of the Authority. These complaints were related to breaches of a minor nature, or allegations which did not constitute any breach or were outside the remit of 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 43 cases (5 867 complaints). Details of the outcomes of all the complaints processed during this period are at [Figure 18](#).

²⁶ A non-domestic television programme service licensee.



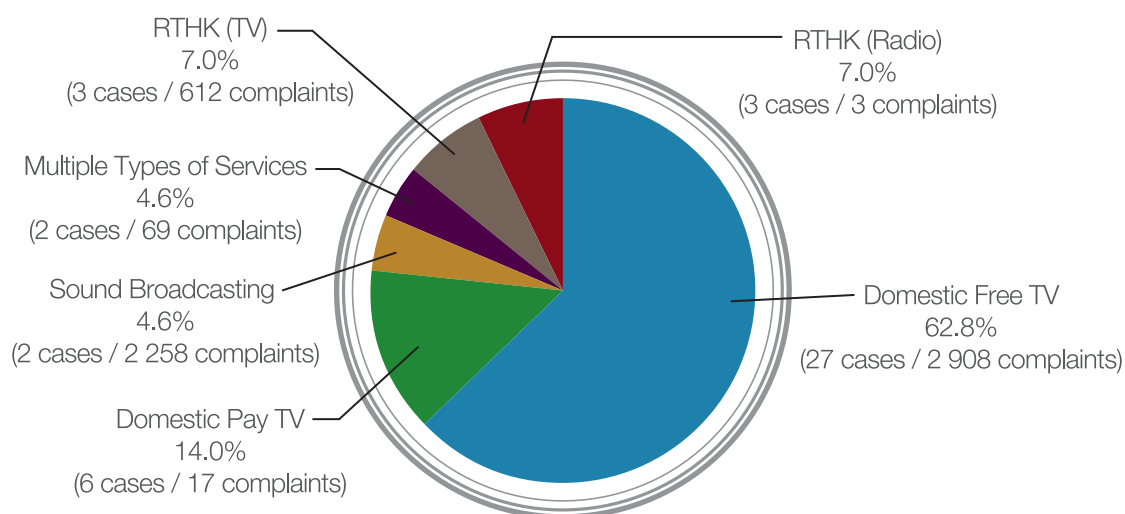
FIGURE 18: OUTCOMES OF ALL THE COMPLAINTS DEALT WITH BY THE AUTHORITY AND DG COM

	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	30	112	13	1 773	1 101	3 029
No. of Complaints	2 480	420	3 387	4 556	2 155	12 998

Complaints Dealt with by the Authority

Among the 43 complaint cases dealt with by the Authority, 63% were related to the domestic free television programme services. Breakdown of these complaint cases by broadcasting service is at [Figure 19](#).

FIGURE 19: BREAKDOWN OF COMPLAINT CASES DEALT WITH BY THE AUTHORITY BY BROADCASTING SERVICE





Regarding the nature of the broadcast materials under complaint, 39 out of the 43 complaint cases dealt with by the Authority were related to programmes and four about advertisements. 30 complaint cases were substantiated. Among the substantiated cases, the main substance of complaints of nine cases were related to the mingling of programme and advertising material or the embedding of advertising material within programme content. Seven cases were related to inaccurate factual content in news programmes, personal view programmes or children's programmes. Four were related to foul expressions or offensive language. Six were related to the concerned licensee's failure to provide subtitling for pre-recorded programmes or segments, depictions of violence not suitable for broadcast during the family viewing hours, inappropriate programme classification, duration of news programme falling short of the stipulated requirement, and broadcast of public appeals in programme without the Authority's approval. Four substantiated cases were related to advertisements, among which two were related to broadcast of liquor advertisements during the family viewing hours or in proximity to a children's programme, one was related to broadcast of an advertisement containing sensual portrayals on a domestic pay television programme service channel targeting children and the remaining one was related to misleading presentation in an advertisement.

The Authority imposed financial penalties of \$100,000 on two occasions, issued four serious warnings, six warnings, seven pieces of strong advice and nine pieces of advice, and classified three cases as minor breaches. A breakdown of the decisions of the Authority on complaints dealt with in 2013–2014 is at [Figure 20](#).

FIGURE 20: DECISION OF THE AUTHORITY ON COMPLAINT CASES DURING 2013/2014

Decision of the Authority	ATV	TVB	HKCTV	PCCW Media	TVBNV	CRHK	RTHK	Total
No Further Action	1	6	0	2	1	1	3	14 ^{note 1}
Minor Breach	1	2	0	0	0	0	0	3
Advice	3	3	0	0	1	1	1	9
Strong Advice	1	3	1	0	0	0	2	7
Warning	1	2	2	0	1	0	0	6 ^{note 2}
Serious Warning	1	3	0	0	0	0	0	4
Financial Penalty	0	2	0	0	0	0	0	2 ^{note 2}
Total	8	21	3	2	3	2	6	45 ^{notes 1 & 2}

Note 1: One unsubstantiated complaint case involved broadcasts by two licensees and hence no further action should be taken against the two concerned licensees.

Note 2: One substantiated complaint case involved broadcasts by two licensees and hence there were two sanctions on the same case.



6.7 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.

Editorial programmes and personal view programmes (PVPs)

The Authority completed a review of the regulation of editorial programmes and PVPs and approved the amendments to the Generic Code of Practice on Television Programme Standards, Radio Code of Practice on Programme Standards and Radio Code of Practice on Ancillary Visual Service Standards. The major amendments included that editorial programmes which included the views of the licensee and persons exercising control of it (Person Providing the Service) should be regarded as one type of PVPs and be subject to existing ground rules on PVPs; that a suitable announcement should be made at the start of the programme to identify clearly that the views expressed in an editorial programme were or included those of the Person Providing the Service; and that a suitable opportunity for response to a PVP should be provided either in the same programme, in the same series of programmes or in similar types of programmes targeting a like audience within an appropriate period. The new rules took effect on 1 July 2014.

In conducting the review, the Authority had taken into consideration views from the public and the licensees received in the public consultation conducted from December 2013 to February 2014. The Authority considered that the revisions had struck a proper balance between licensees' right to freedom of expression on one hand, and a more responsible use of their broadcast rights on the other.

TELECOMMUNICATIONS

6.8 Re-assignment of 3G Spectrum

The Authority announced in November 2013 its decision to adopt the hybrid administratively-assigned cum market-based approach to re-assign the 2 x 60 MHz of 3G Spectrum upon expiry of the existing assignments on 21 October 2016. Under the hybrid approach, the four incumbent 3G operators will be offered a right of first refusal for re-assignment of two-thirds of the 3G Spectrum. Should any of them decide not to exercise the right of first refusal, the spectrum thus becoming available will be pooled together with the remaining one-third of the 3G Spectrum for re-assignment through auction.



In arriving at the decision, the Authority had taken into account the submissions received in the two rounds of public consultation, the findings of a consultancy study commissioned by the Government, the policy views of the SCED, and had conducted its own independent assessment. The hybrid approach is considered to best meet the multiple objectives in spectrum re-assignment, viz. ensuring customer service continuity, efficient spectrum utilisation, promotion of effective competition, and encouragement of investment and promotion of innovative services.



The auction is planned to take place towards the end of 2014. The new 15-year term of frequency assignments will be from 22 October 2016 to 21 October 2031.

6.9 Handling the Application for Prior Consent to the Proposed Acquisition of CSL New World Mobility Limited by HKT Limited

Under section 7P of the TO, parties to a merger or acquisition involving “*a change in relation to a carrier licensee*” may seek the Authority’s prior consent to the proposed transaction.

On 4 October 2013, the Authority received an application by Hong Kong Telecommunications (HKT) Limited (HKT), a carrier licensee, seeking the Authority’s prior consent to its acquisition of CSL Limited (CSL), another carrier licensee. Subsequently in December 2013, HKT Limited, the parent company of HKT, submitted a revised application clarifying that the acquisition would be of CSL New World Mobility Limited (CSLNWM), the parent company of CSL, by HKT Limited. As the proposed transaction would involve the acquisition of CSL, a carrier licensee, it constituted “*a change in relation to a carrier licensee*” and as such, section 7P of the TO is applicable.

By way of background, where the Authority receives an application for consent under section 7P of the TO, it has to consider whether the proposed transaction would have, or be likely to have, the effect of substantially lessening competition (SLC) in a telecommunications market. If the Authority considers that there would be such an effect, it would need to take a view on whether the proposed transaction would have, or be likely to have, a benefit to the public that would outweigh any detriment to the public that would be, or would likely to be, constituted by any such effect of SLC (Public Benefit Test). Where the Authority forms an opinion that the proposed transaction would have, or be likely to have, the effect of SLC in a telecommunications market, and the Public Benefit Test is not satisfied, it may give consent subject to the direction that the carrier licensee concerned should take such action as the Authority considers necessary to eliminate or avoid the effect of SLC in connection with the proposed transaction. The Authority may refuse to give consent altogether if the Public Benefit Test is not satisfied and that it is unable to identify remedies which it considers necessary to eliminate or avoid the effect of SLC.

In regard to HKT Limited’s application, the Authority conducted a public consultation from 23 December 2013 to 4 February 2014 inviting representations from all carrier licensees and any interested parties on the proposed transaction pursuant to the requirements under section 7P. The Authority appointed an external economic consultant to perform detailed competition analysis on the proposed transaction.



Having considered the representations received and the competition analysis performed by the external consultant, the Authority formed the opinion that the proposed transaction would have, or likely to have the effect of SLC in two relevant telecommunications markets, namely the markets of retail mobile telecommunications services and wholesale access to mobile networks. Also, the Authority was of the view that HKT Limited had not made out a case that the proposed transaction would benefit the public. The Authority nevertheless identified a set of remedies which it considered necessary to eliminate or avoid the effect of SLC. In April 2014, the Authority decided to give consent to the proposed transaction pursuant to section 7P of the TO, subject to the condition that HKT and CSL, as carrier licensees concerned, should take the necessary actions to eliminate or avoid the effect of SLC that was identified. The Authority's decision was published on 2 May 2014.



6.10 Reduction of Telecommunications Licence Fees

In November 2012, the Authority and the SCED issued a joint statement to promulgate their decision 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. Following completion of the legislative procedure, the new licence fees took effect on 1 March 2013.

In February 2013, PCCW applied for leave to lodge a judicial review (JR) application against the Authority and SCED on their decisions on the licence fees reduction. The Court granted leave to PCCW's application for the JR in July 2013. On 14 August 2014, the Court fixed the dates of the substantive hearing on 17 to 23 June 2015. The Authority will handle the JR in accordance with legal procedures.



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

Regulatory guidance on the charging principles for narrowband interconnection between fixed carriers was first promulgated in 1995, when the local fixed telecommunications market was liberalised. Taking into account the significant changes and developments in the market and technologies over the past two decades, regulatory guidance which applies to narrowband interconnection between fixed carriers is no longer necessary noting that broadband interconnection is also not subject to similar regulatory guidance. After a public consultation, the Authority decided in April 2013 that the regulatory guidance would cease to be effective starting from 16 October 2014, after an 18-month transitional period. Fixed carriers are encouraged to make their best endeavours to conclude commercial agreements on interconnection. In the meantime, OFCA will continue to monitor the market developments during the transitional period and assist the industry in resolving problems, if any, arising from the withdrawal of the regulatory guidance.

6.12 Regulation of Broadcast-type Mobile TV Services

Since the launch of Mobile TV Service in February 2012, the China Mobile Multimedia Broadcasting (CMMB) standard has been used as the transmission standard. Hong Kong Television Network Limited (HKTV) announced on 20 December 2013 the completion of its acquisition of all shares of the original licensee holding the UCL which authorised it to provide Mobile TV Service (the Mobile TV Licence) and subsequently renamed the licensee as Hong Kong Mobile Television Network Limited (HKMTV). In January 2014, HKMTV indicated to OFCA its proposal to switch from the original CMMB standard to the Digital Terrestrial Multimedia Broadcast (DTMB) standard.

Given that the DTMB standard is the transmission standard adopted for the provision of DTT services by the incumbent free television programme service licensees in Hong Kong, HKMTV's switch to the DTMB standard without implementing effective technical measures to ensure its Mobile TV Service would not be available for reception by an audience of more than 5000 specified premises in Hong Kong would trigger the licensing requirement under the BO in relation to a domestic free television programme service licence and/or domestic pay television programme service licence. Also, the reception of Mobile TV Service by household television sets via fixed installations, such as in-building coaxial cable distribution systems and rooftop antennas, would constitute the provision of a fixed service, in breach of Schedule 1 to the Mobile TV Licence. Schedule 1 of HKMTV's Mobile TV Licence provides that nothing in the licence authorises the licensee to provide any fixed services using the frequencies specified in the Mobile TV Licence, and to provide any service subject to licensing under any other ordinance.

HKTV and HKMTV disagreed with the Authority's view that Mobile TV Service using the DTMB service should be subject to the regulation by the BO. On 11 April 2014, HKTV and HKMTV filed an application to the court for leave to apply for JR against the Authority's views. The Authority will handle the issues concerned in accordance with the legal procedures.



6.13 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. The Authority investigates consumer complaints against telecommunications licensees 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 the TO, relevant regulations or licence conditions, it is the responsibility of the telecommunications operators to resolve the matters under complaint with their customers. The Authority will take note of and monitor all consumer complaints received. Appropriate actions would be taken if any systemic issues are identified in the consumer complaints.

During the year under review, the Authority received a total of 4 216 consumer complaints relating to telecommunications services. Among them, 2 353 cases (55.8%) were related to mobile services, 1 068 cases (25.3%) were related to Internet services, 666 cases (15.8%) were related to fixed-line services and 100 cases (2.4%) were related to external communications and other services. On the complaint nature, the number of bill disputes complaints (1 051 cases or 24.9%) ranked the highest among all categories of complaints received, while complaints about customer service quality (707 cases or 16.8%) and service quality (672 cases or 15.9%) 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 21](#) and [Figure 22](#) respectively.

FIGURE 21: DISTRIBUTION OF COMPLAINT CASES BY TYPES OF TELECOMMUNICATIONS SERVICE RECEIVED BY THE AUTHORITY IN 2013/2014

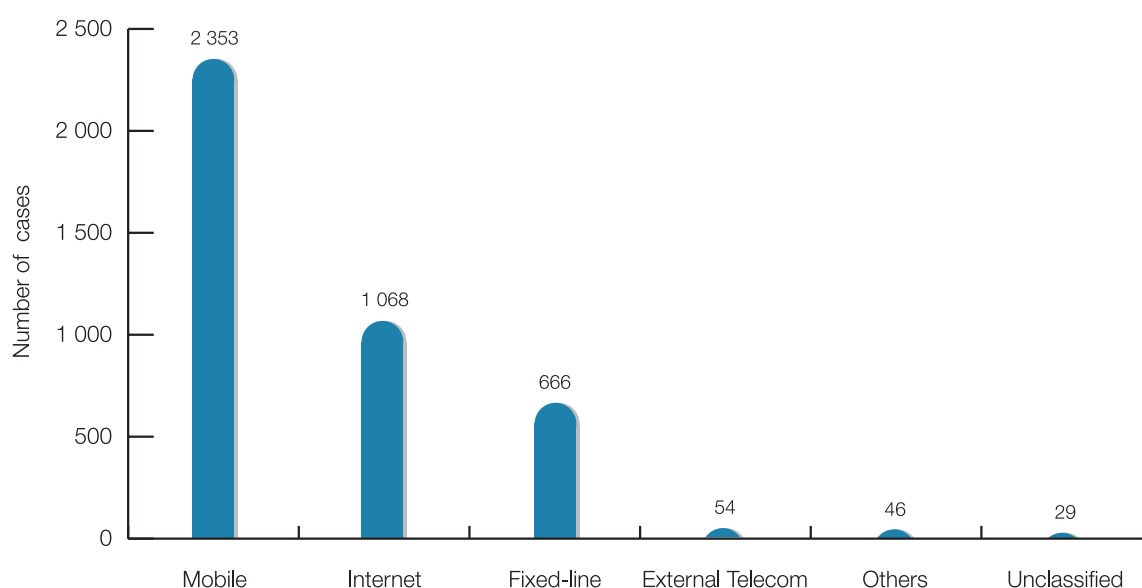
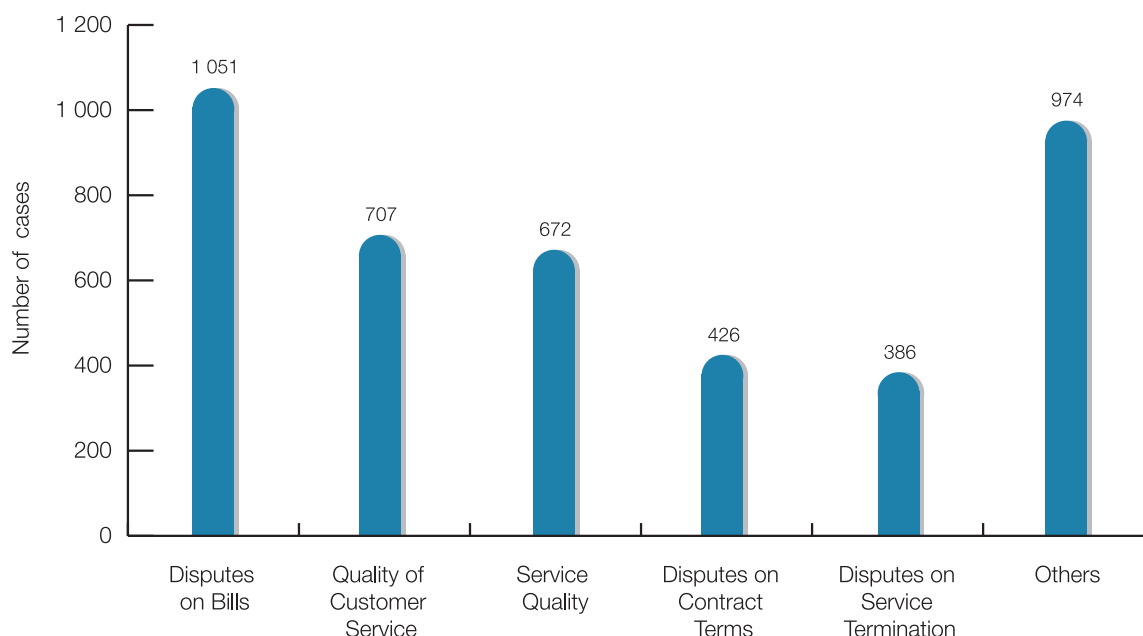




FIGURE 22: DISTRIBUTION OF COMPLAINT CASES BY COMPLAINT NATURE RECEIVED BY THE AUTHORITY IN 2013/2014



Among the 4 216 complaint cases received, 4 043 cases (95.9%) were found to be outside the Authority's jurisdiction. For the remaining 173 cases (4.1%), they might have breached the TO or licence conditions. The majority of these cases were related to sales conduct, suspected anti-competitive behaviour, abuse of market power, and difficulties 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 23](#) and [Figure 24](#) respectively.



FIGURE 23: DISTRIBUTION OF COMPLAINT CASES BY TYPES OF TELECOMMUNICATIONS SERVICE RECEIVED BY THE AUTHORITY IN 2013/2014

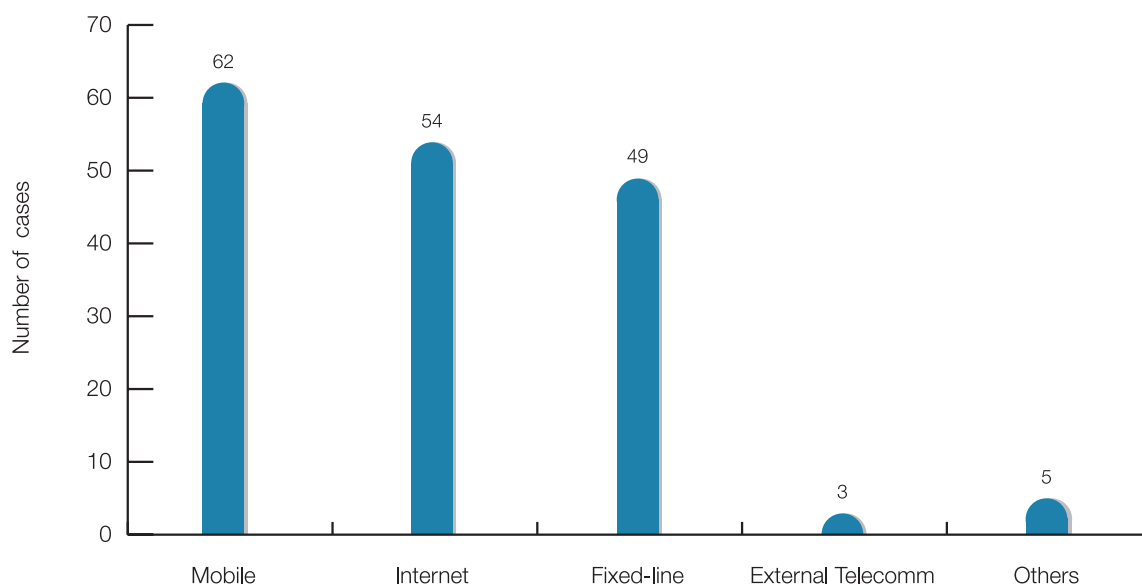
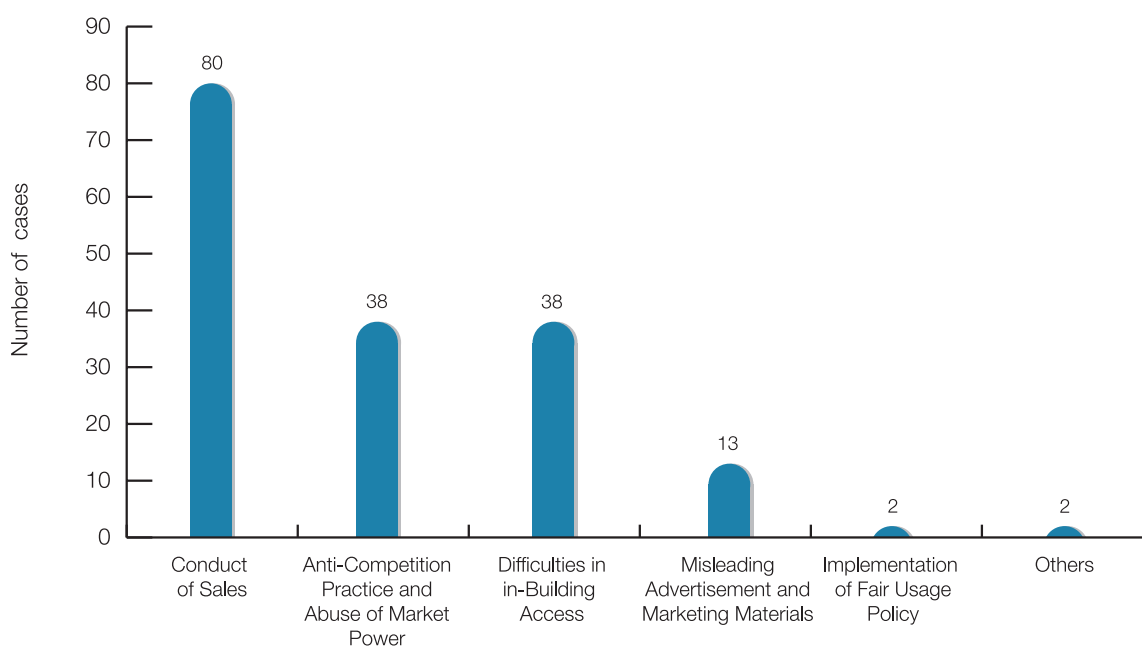


FIGURE 24: DISTRIBUTION OF COMPLAINT CASES BY COMPLAINT NATURE RECEIVED BY THE AUTHORITY IN 2013/2014





In the past few years, the Authority noted some significant trends in consumer complaints. They were mainly on telecommunications service contractual disputes, mobile bill shock, chargeable mobile content services and Fair Usage Policy implemented by telecommunications licensees. In collaboration with the telecommunications industry, various measures have already been implemented to address these complaints. These include the issue of an industry code of practice for voluntary compliance by telecommunications licensees on service contracts, implementation of mobile bill shock preventive measures, the set up of an Administrative Agency by the Communications Association of Hong Kong (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 by telecommunications licensees. The breakdown of complaint cases received on the complaint trends mentioned above during the year under review is at [Figure 25](#).

FIGURE 25: NUMBER OF COMPLAINT CASES ON SIGNIFICANT TRENDS IN CONSUMER COMPLAINT RECEIVED BY THE AUTHORITY IN 2013/2014

Significant Trends in Consumer Complaint	No. of Complaint Cases
Contractual disputes	812
Mobile bill shock	520
Fair Usage Policy	58
Chargeable mobile content services	27

6.14 Review of the operation of Customer Complaint Settlement Scheme (CCSS)

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 applications for mediation under the CCSS and referring accepted cases to the independent mediation service centre set up under the CAHK for follow-up actions.



In the first 17 months of trial operation from 1 November 2012 to 31 March 2014, OFCA received 190 billing disputes cases which met CCSS's acceptance criteria. Among them, 102 cases were satisfactorily settled before referral to the CCSS mediation service centre, and the remaining 88 cases were satisfactorily settled after following up by the CCSS mediation service centre. Following the end of the trial period, OFCA and the industry will assess the effectiveness of the CCSS and its usage by the public in considering the way forward.

6.15 Implementation of the Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012

The Trade Descriptions (Unfair Trade Practices) (Amendment) Ordinance 2012 came into full implementation on 19 July 2013. It extends the coverage of the Trade Descriptions Ordinance (TDO) from goods to services, prohibits specified unfair trade practices, and introduces an enhanced enforcement mechanism (collectively known as "fair trading sections"). The Authority is conferred jurisdiction concurrent with the Customs and Excise Department to enforce the fair trading sections of the TDO in relation to commercial practices of licensees under the TO and the BO directly connected with the provision of telecommunications and broadcasting services. The two enforcement agencies have issued the enforcement guidelines to provide guidance for traders and consumers as to the operation of the fair trading sections and have entered into a memorandum of understanding to co-ordinate the performance of their functions under the amended TDO.

During the period of 19 July 2013 to 31 March 2014, the Authority received and handled a total of 359 complaints under the TDO. Among these complaints, 160 were closed for there being insufficient evidence to suspect/establish a contravention or falling outside the scope of the TDO, five complaints were closed after advisory letters were issued to the licensees concerned to draw their attention to improvement of the relevant commercial practices in relation to the sale, supply or promotion of telecommunications or broadcasting services to consumers, and 194 complaints were under process at various stages.

Section 7M of the TO was repealed upon the implementation of the amended TDO. As a transitional arrangement, if misleading or deceptive conduct of the licensees was engaged prior to the implementation of the amended TDO, such conduct is still regulated and dealt with under section 7M of the TO.



6.16 Preparation for the Implementation of the Competition Ordinance

The Competition Ordinance (Cap 619) (CO) was passed by the Legislative Council on 14 June 2012. It provides for a cross-sectoral 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 CA is conferred jurisdiction concurrent with the Competition Commission 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.

The Authority worked closely with the Competition Commission on the preparatory work required before the commencement of the CO, including preparation of the guidelines on the enforcement of the CO for public consultation, and preparation of the memorandum of understanding to be signed between the Authority and the Competition Commission to coordinate the performance of their functions under the concurrent jurisdiction arrangement.

6.17 Enforcement of the Unsolicited Electronic Messages Ordinance

The Unsolicited Electronic Messages Ordinance (UEMO) came into full force on 22 December 2007. The UEMO sets out the rules about 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 to allow members of the public to register their numbers to indicate their choice of not receiving commercial facsimile messages, short messages and/or pre-recorded telephone messages unless they have given consent. By the end of March 2014, more than 2.6 million numbers had been registered under these DNC registers.

To facilitate compliance of the requirements under the UEMO by CEM senders, the Authority issued in August 2013 the revised Code of Practice under the UEMO which provides practical and updated guidance on the sending of CEMs.

The Authority will monitor the compliance with the UEMO by CEM senders and streamline the procedures for more effective enforcement.



MAJOR REGULATORY ACTIONS

6.18 Sanctions against Broadcasting Licensees

Investigation into the Control and Management of ATV

On 23 August 2013, the Authority announced its findings of the investigation into the role played by Mr Wong Ching (Mr Wong) in the control and management of ATV. The investigation was initiated by the Authority in July 2011 in view of public concerns over the alleged improper participation of Mr Wong in the day-to-day management and operations of ATV. Based on the evidence collected, the Authority found, amongst other matters, that Mr Wong had unduly interfered with the day-to-day management and operations of ATV, and in so doing exercised *de facto* control of ATV. Given the findings of the investigation, the Authority decided to, among others, impose a financial penalty of \$1,000,000 on ATV for breaching Condition 10.1 of ATV's domestic free television programme service licence, and issue a direction under section 24 of the BO requiring ATV to submit a proposal to the Authority setting out in detail the steps that ATV should take to improve its corporate governance standard to a level which is expected of a licensee and thereafter submit annual progress reports until the Authority is satisfied that the proposed improvement measures have been fully and effectively implemented. ATV lodged a statutory appeal against the Authority's decision on the investigation with the CE in C in September 2013. The Authority will respond to the statutory appeal according to the established procedures.

TVB's Violation of the Competition Provisions of the Broadcasting Ordinance

In September 2013, the Authority completed its investigation into the complaints against the violation of the competition provisions of the BO by TVB and published the Authority's investigation report. The Authority found TVB in breach of sections 13 and 14 of the BO by adopting anti-competitive practices during the period from 2007 to 2010, and imposed on TVB a financial penalty of \$900,000 and directed TVB to take a number of remedial actions. TVB lodged a statutory appeal against the Authority's decision on the investigation with the CE in C in October 2013 and filed an application for JR on the appeal mechanism under the BO as well as the Authority's decision on the investigation in December 2013. The Authority will respond to the statutory appeal and JR according to the established procedures.

6.19 Sanctions against Telecommunications Licensees

Misleading or Deceptive Conducts of Telecommunications Operators

During the period of 1 April 2013 to 31 March 2014, OFCA handled 92 complaint cases under section 7M of the TO. The Authority found six of these complaint cases (detailed below) as infringements of the TO and imposed financial penalties ranging from \$50,000 to \$90,000 on the licensees concerned.



In May 2013, the Authority considered a complaint case against China Mobile Hong Kong Company Limited (CMHK). The complainant alleged that the representations made by CMHK in the promotion of its mobile services sent by short message service were misleading or deceptive as there was no mentioning of the compulsory requirement for the complainant to purchase a connecting tone service at the same time in order for him to enjoy the special offer. Having considered the investigation findings, the Authority was of the view that CMHK had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of \$90,000 on CMHK in relation to the breach concerned.

In July 2013, the Authority considered a complaint case against Wharf T&T Limited (WTT). The complainant alleged that WTT's salespersons had made misleading or deceptive representations to him in relation to the transmission speed of the Dedicated Internet Access Service (DIA Service) and the complainant's right of early cancellation of the contracts on an unconditional basis if he was dissatisfied with the DIA Service. Having considered the investigation findings, the Authority was of the view that WTT had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of \$80,000 on WTT in relation to the breach concerned.

In September 2013, the Authority considered a complaint against CSL Limited (CSL). The complainant alleged that the various speed representations made by CSL in its newspaper and online advertisements, poster mounted on a wall inside a MTR station, glass walls at its retail outlets, as well as customer bills and promotional inserts targeting specific credit cardholders between April and July 2011 promoting its mobile broadband services were misleading and deceptive. Having considered the investigation findings, the Authority was of the view that CSL's conduct had contravened section 7M of the TO. The Authority imposed a financial penalty of \$90,000 on CSL in relation to the contravention concerned.

In November 2013, the Authority considered a complaint case against Hutchison Global Communications Limited (HGC). The complainant alleged that HGC's salesperson had made the representations that the only way the complainant could unbundle HGC's telecom service charge from the property management fee was to subscribe to a separate service contract with HGC, but this was in fact not the case. Having considered the investigation findings, the Authority was of the view that HGC had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of \$90,000 on HGC in relation to the breach concerned.

In December 2013, the Authority considered a complaint case against HGC. The complainant alleged that during the telesales call for renewal of his residential fixed line service contract, HGC's salesperson had incorrectly informed him that his existing monthly fee was \$48, as it was in fact \$38. Having considered the investigation findings, the Authority was of the view that HGC had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of \$50,000 on HGC in relation to the breach concerned.



In February 2014, the Authority considered a complaint case against HTCL. The complainant alleged that HTCL's salesperson had engaged in misleading or deceptive sales conduct by not disclosing to him the data speed restriction under the mobile service plan being promoted to him. Having considered the investigation findings, the Authority was of the view that HTCL had engaged in misleading or deceptive conduct in breach of section 7M of the TO. The Authority imposed a financial penalty of \$60,000 on HTCL in relation to the breach concerned.

Network Outage of China Motion Telecom (HK) Limited

On 30 March and 9 April 2013, there were two separate incidents of network outage of the mobile services of China Motion Telecom (HK) Limited (China Motion), causing disruption to its voice services, short message services and data services. After considering the assessment of OFCA, the Authority concluded that China Motion had failed to comply with General Condition 5.1 of its licence 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 \$80,000 on China Motion.

Contravention of Mobile Number Portability Code of Practice by CSL Limited

In September 2013, the Authority considered a complaint case in relation to the porting of a consumer's mobile number from HKT to CSL without his consent. OFCA had conducted an investigation into the complaint and CSL admitted that the concerned consumer's number had been ported into CSL's network without his consent due to staff error. After considering the assessment of OFCA, the Authority concluded that CSL had contravened the "Code of Practice related to the Implementation of Mobile Number Portability" (Code of Practice) and therefore breached Special Condition (SC) 4.4 of its licence. Having considered the circumstances of the case, the nature of the breach and the number of customers affected, the Authority concluded that CSL should be advised to observe more closely SC 4.4 of its licence and the Code of Practice.

Contravention of Fair Usage Policy Guidelines by China Motion

In September 2013, the Authority considered a consumer complaint alleging that China Motion had contravened the "Guidelines for the Implementation of Fair Usage Policy for the Provision of Mobile and Fixed Broadband Services" (FUP Guidelines). The complainant alleged that, in subscribing to China Motion's "unlimited" service plan, China Motion had not informed him that his service plan was in fact subject to the Fair Usage Policy (FUP) such that data speed restriction would be imposed after exceeding certain usage threshold as specified in the FUP.



After investigation, OFCA found that the service plan was promoted as “unlimited” without any qualifications in a copy of China Motion’s sales and marketing leaflet distributed to the consumer. After considering the assessment of OFCA, the Authority concluded that China Motion had contravened the FUP Guidelines and therefore breached SC 13.1 of its licence. Having considered the circumstances of the case and taken all factors into account, the Authority issued a warning to China Motion for it to strictly observe SC 13.1 of its licence in future.

Illegal Bypass of Local Access Charge by External Telecommunications Services Licensees

The Authority also completed the investigation into four cases regarding illegal bypass of local access charge. The relevant licensees for external telecommunications services were each imposed a financial penalty ranging from \$65,000 to \$130,000 for breaching the licence conditions of their licences.

Investigation into Contravention of Telecommunications Licence Requirements

General Condition (GC) 12.1 of the UCL prohibits the use of radio base stations by licensees without CA’s prior approval. During the period between 1 April 2013 and 31 March 2014, the Authority completed investigation into a complaint about the use of an unauthorised radio base station. The mobile network operator concerned was fined \$80,000 for breaching GC 12.1 of its UCL.

6.20 Sanctions against Senders of Commercial Electronic Messages (CEM)

From April 2013 to March 2014, the Authority received 1 998 reports on suspected contraventions of the UEMO, representing a drop of around 17% as compared with the figure of the previous year. In dealing with these reports, the Authority would, depending on the circumstances, issue advisory letters to first time offenders explaining the requirements of the UEMO or issue warning letters to other CEM senders of more serious cases. During the period under review, 238 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 \$100,000 on the first conviction. In 2013/14, six enforcement notices were issued. The Authority also instituted the first case of prosecution under the UEMO in January 2014 against a CEM sender of fax for contravention of an enforcement notice served on him.