

### Broadcasting

#### 6.1 Renewal of Domestic Free and Domestic Pay Television Programme Service Licences

##### Renewal of the Domestic Free Television Programme Service Licences of ATV and TVB

During the year, the Authority discharged its statutory duty in making recommendations to the CE in C on the applications for renewal of the domestic free television programme service licences of ATV and TVB, which would expire in November 2015. In accordance with the BO and established practice for processing the licence renewal applications, the Authority conducted a comprehensive assessment of the performance of the two licensees in relation to their compliance with the statutory requirements, licence conditions and the codes of practice. The Authority also conducted an extensive public consultation exercise in 2014, including a territory-wide household survey, three public hearings and four focus-group discussion sessions to collect public views on the services provided by the two licensees. In relation to the licence renewal application of ATV, there were strong adverse public opinions on the programming of ATV and on its poor performance

in various other aspects. In particular, about 45% of the respondents in the survey considered the service of ATV not satisfactory. As for the licence renewal application of TVB, the public was generally satisfied with the performance of TVB though there was room for improvement in its programming variety and quality. Having carefully considered the overall performance of the two licensees and the public views received, the Authority submitted its recommendations on the licence renewal applications to the CE in C on 4 November 2014.

In relation to the licence renewal application of ATV, having regard to inter alia the recommendations of the Authority, the CE in C decided on 1 April 2015 not to renew ATV's domestic free television programme service licence and to extend its existing licence to 1 April 2016.

As for the licence renewal application of TVB, the CE in C accepted the Authority's recommendations and decided on 12 May 2015 to renew TVB's domestic free television programme service licence for a new term of 12 years, with effect from 1 December 2015. Having regard to the public's views on the service of TVB, new licence conditions have been imposed on TVB's renewed licence to ensure that its domestic free television programme service would continue to meet the public's



expectation. These include new commitments on local productions and independent local productions; requirements for additional current affairs programmes, arts and culture programmes, documentaries and programmes for young persons on its digital channels; provision of first-run positive programmes; and the commitment to enhance provision of subtitling to its digital channels.

### Renewal of the Domestic Pay Television Programme Service Licence of PCCW Media

The domestic pay television programme service licence of PCCW Media would expire in September 2015. In processing the licence renewal application of PCCW Media, the Authority carried out a comprehensive assessment of its performance and conducted a public consultation exercise in 2013 to gauge public views on PCCW Media's service. The Authority submitted its recommendations on the licence renewal application of PCCW Media to the CE in C in September 2014. The recommendations were accepted by the CE in C in December 2014 and PCCW Media's domestic pay television programme service licence was renewed for a term of 12 years with effect from 26 September 2015.



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

### Licence Applications of Fantastic TV and HKTVE

Since the grant by the CE in C of approval-in-principle (AIP) to the applications of Fantastic TV and HKTVE for domestic free television programme service licences in October 2013, the Authority proceeded with the follow-up work, including further review of the applications, seeking further information and clarifications as necessary from the two AIP grantees and discussing with them the proposed licence conditions. The Authority submitted to the CE in C its recommendations on the two licence applications in January 2015.

Having regard to the Authority's recommendations on HKTVE's application, the CE in C decided in April 2015 to grant HKTVE a domestic free television programme service licence by using fixed network as its transmission mode. HKTVE is required to provide a 24-hour Chinese channel and a 16-hour English channel within 12 months and 24 months from licence grant respectively, viz, by 31 March 2016 and 31 March 2017.

As regard Fantastic TV's application, in May and October 2015, the CE in C, having taken into account the request of Fantastic TV, invited the Authority to further consider any relevant supplementary information and confirmation that Fantastic TV was required to provide and to submit further recommendations to the CE in C on Fantastic TV's domestic free television programme service licence application. The Authority will follow up with Fantastic TV and process the additional information to be provided by Fantastic TV with a view to submitting to the CE in C further recommendations on Fantastic TV's application.



### Licence Application of HKTV

The Authority was processing the application for a domestic free television programme service licence submitted by HKTV in April 2014 in accordance with the BO and established procedures, including examining the views received in the public consultation exercise on the application and seeking further information from HKTV as required. Moreover, the Authority has commissioned an independent consultant to conduct a market analysis and prepare a consultancy report for assessing the possible impacts of the application on the local television market and overall broadcasting landscape. The Authority will examine the application prudently and submit its recommendations to the CE in C as soon as practicable.

### 6.3 Renewal of Analogue Sound Broadcasting Licences

The analogue sound broadcasting licences of CRHK and Metro granted under the TO will expire after 25 August 2016. The two licensees submitted applications for renewal of their licences in July and August 2014 respectively. In accordance with the TO and established practice for processing the licence renewal applications, the Authority completed 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 their operational, financial and technical capability, programming arrangements and future commitments. The Authority also conducted a public consultation exercise from September to November 2014 to collect public views on the licence renewal applications. Having regard to the overall assessment of the performance of the two licensees and the public views received, the Authority submitted its recommendations on the licence renewal applications to the CE in C in May 2015.

### 6.4 Renewal of Other Licensable Television Programme Service Licences

During the period under review, the Authority approved the applications for renewal of the following other licensable television programme service licences for the provision of television programme service in hotel rooms in Hong Kong:

- DOCOMO InterTouch Company Limited
- Showers of Blessing Evangelistic Ministry (Hong Kong) Limited



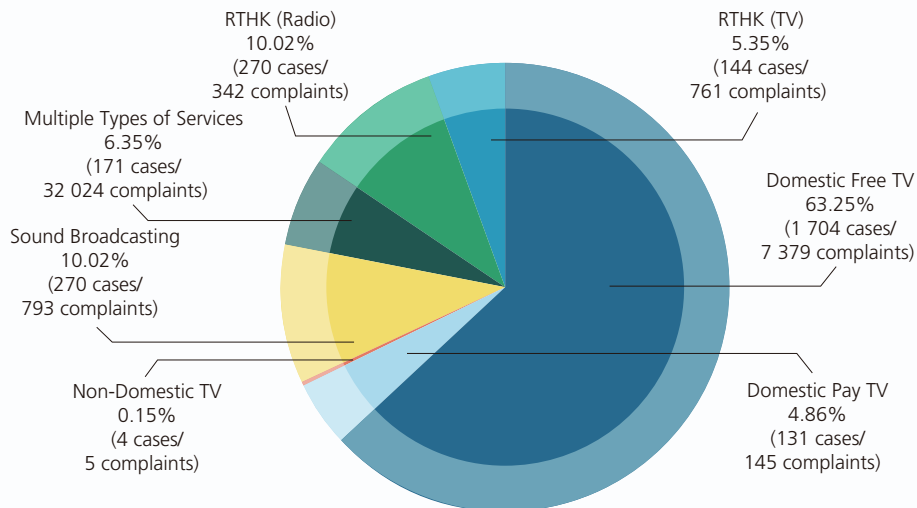
## 6.5 Processing Complaints relating to Broadcasting Services

### Overview of the Complaints Processed

During the period from April 2014 to March 2015, the Authority processed a total of 2 694 cases (41 449 complaints)<sup>28</sup> about the materials broadcast by broadcasters, which represented a decrease of 11% in the number of cases and an increase of 219% in the number of complaints processed<sup>29</sup>, as compared with the numbers recorded during the same period in the previous year (3 029 cases, 12 998 complaints). 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 2014-2015**



<sup>28</sup> To ensure operational efficiency, complaints with similar allegations against the same issue or broadcast material are handled together and counted as a single case.

<sup>29</sup> The significant increase in the number of complaints was attributed to a complaint case against a television programme broadcast on TVB and TVBNV which gave rise to over 27 000 complaints.

**Figure 17: Distribution of All Complaint Cases by Broadcaster Processed in 2014-2015**

Broadcasters Involved	No. of Complaint Cases	No. of Complaints Involved
ATV	437	872
TVB	1 260	6 499
HKCTV	56	61
PCCW Media	47	52
TVBNV	25	27
One TV Media Global <sup>30</sup>	1	1
Phoenix Satellite TV <sup>30</sup>	2	3
STAR <sup>30</sup>	1	1
CRHK	211	730
Metro	48	50
DBC	10	12
Phoenix U	1	1
RTHK (TV)	144	761
RTHK (Radio)	270	342
Multiple Broadcasters	181	32 037
<b>Total</b>	<b>2 694</b>	<b>41 449</b>

Among all the complaint cases processed, the DG Com handled 2 671 cases (12 010 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 23 cases (29 439 complaints). Details of the outcomes of all the complaints processed during this period are at [Figure 18](#).

<sup>30</sup> 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		
<b>No. of Cases</b>	17	172	6	1 816	683	<b>2 694</b>
<b>No. of Complaints</b>	27 278	228	2 161	10 587	1 195	<b>41 449</b>

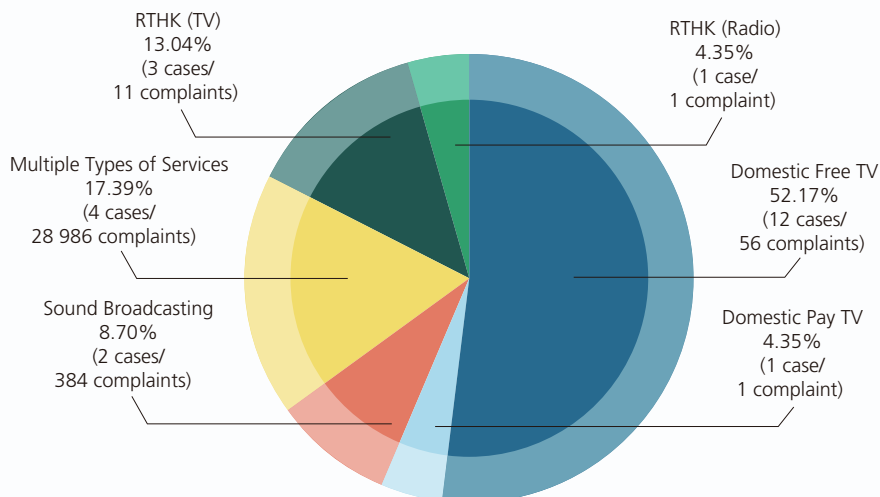
**Complaints Dealt with by the Authority**

Among the 23 complaint cases dealt with by the Authority, 52% were related to domestic free television programme services. Breakdown of these complaint cases by broadcasting service is at Figure 19.

Regarding the nature of the broadcast materials under complaint, 21 out of the 23 complaint cases dealt with by the Authority were related to programmes and two about advertisements. 17 complaint cases were substantiated. Among

the substantiated cases, the main substance of complaints of four cases was related to the mingling of programme and advertising material or the embedding of advertising material within programme contents. Seven cases were related to inaccurate factual contents, misleading and partial presentations, or unfairness in news programme, current affairs programme, documentary, personal view programme or financial programme. Two cases were related to programme materials sponsored by liquor product, or depictions of dangerous acts without warning broadcast within

**Figure 19: Breakdown of Complaint Cases Dealt With by the Authority by Broadcasting Service**



the family viewing hours. One case was related to overly realistic depictions of violence or perverted practices in a programme, while another was related to indecent and denigrating remarks about religion in a personal view programme. Two substantiated cases were related to advertisements, among which one was related to a liquor advertisement involving children in its presentation, and the other one was

related to a misleading claim in an advertisement.

The Authority imposed a financial penalty of \$50 000, issued one serious warning, two warnings, three pieces of strong advice and 12 pieces of advice. A breakdown of the decisions of the Authority on complaints dealt with in 2014-2015 is at [Figure 20](#).

**Figure 20: Decision of the Authority on Complaint Cases during 2014-2015**

Decision of the Authority	ATV	TVB	HKCTV	PCCW Media	TVBNV	CRHK	RTHK	Total
No Further Action	0	3	0	0	2	1	2	8 <sup>note 1</sup>
Advice	4	5	0	1	1	0	1	12 <sup>note 2</sup>
Strong Advice	1	1	0	0	0	0	1	3
Warning	0	0	0	0	1	1	0	2 <sup>note 3</sup>
Serious Warning	0	1	0	0	0	0	0	1
Financial Penalty	0	1	0	0	0	0	0	1 <sup>note 3</sup>
<b>Total</b>	<b>5</b>	<b>11</b>	<b>0</b>	<b>1</b>	<b>4</b>	<b>2</b>	<b>4</b>	<b>27</b> <sup>notes 1, 2 &amp; 3</sup>

Note 1: Two unsubstantiated complaint cases involved broadcasts by two licensees and no further action was taken against the two concerned licensees.

Note 2: One substantiated complaint case involved broadcasts by two licensees and an advice was issued to each of the concerned licensees.

Note 3: One substantiated complaint case involved broadcasts by two licensees and two sanctions were imposed on the two concerned licensees.

## Telecommunications

### 6.6 Re-assignment of Frequency Spectrum in the 1.9 – 2.2 GHz Frequency Bands

The Authority announced in November 2013 its decision to adopt the hybrid administratively-assigned cum market-based approach to re-assign the 118.4 MHz of spectrum in the 1.9 – 2.2 GHz band (3G Spectrum) upon expiry of the existing assignments on 21 October 2016.

The hybrid approach is considered to best meet the multiple objectives of spectrum re-assignment, viz. ensuring customer service continuity, efficient spectrum utilisation, promotion of effective competition, and encouragement of investment and promotion of innovative services.

Under the hybrid approach, the three incumbent 3G operators have been re-assigned through right of first refusal 69.2 MHz of the 3G Spectrum, and the remaining 49.2 MHz was put to auction in December 2014. Two incumbent 3G operators and the existing mobile network operator not assigned with any 3G Spectrum successfully bid for the spectrum. They are required to pay the spectrum utilisation fee for both the administratively-assigned and auction-acquired spectrum by August 2016. The spectrum will be assigned for a new term of 15 years, starting from 22 October 2016 to 21 October 2031.

In sum, 29.6 MHz out of the 118.4 MHz of the 3G Spectrum will change hands with effect from October 2016. The incumbent and the new spectrum assignees would have about two years from completion of the auction to prepare for the necessary network reconfiguration and the roll out of their networks respectively. OFCA will coordinate with the operators with a view to facilitating a smooth handover arrangement on the above-mentioned spectrum among the spectrum assignees so as to minimise the impact on service to mobile customers.

### 6.7 Preparation for Re-assignment of Frequency Spectrum in the 900 MHz and 1800 MHz Frequency Bands

Among the 572 MHz of spectrum currently assigned for the provision of mobile telecommunications services, the existing assignments for 49.8 MHz of spectrum in the 900 MHz band and 148.8 MHz of spectrum in the 1800 MHz band will expire within the period between November 2020 and September 2021. In order to allow sufficient time for the industry to prepare for the spectrum re-assignment, the Authority plans to announce its decision on the arrangements for spectrum re-assignment by end 2017. The related preparatory work began in 2015.

### 6.8 Reduction of Telecommunications Licence Fees

In November 2012, the Authority and 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-HKT Telephone Limited and Hong Kong Telecommunications (HKT) Limited (PCCW and HKT) applied for leave to lodge a judicial review (JR) application against the Authority and SCED on their decisions on the licence fees reduction. Court of First Instance granted leave to PCCW and HKT's application for the JR in July 2013. The substantive hearing was conducted from 17 to 19 June 2015. Court of First Instance handed down its judgment on 11 August 2015 dismissing the JR application. PCCW and HKT lodged an appeal to the Court of Appeal on 4 September 2015.





### 6.9 Update on the Withdrawal of Regulatory Guidance on the Charging Principles for Narrowband Interconnection between Fixed Carriers

After an 18-month transitional period, the regulatory guidance on the charging principles for narrowband interconnection between fixed carriers ceased to be effective starting from 16 October 2014. With the withdrawal of the regulatory guidance, fixed carriers are free to negotiate with each other commercially on the terms and conditions for narrowband interconnection, including whether interconnection charges are required for the exchange of traffic, and if so, the level of the interconnection charges. Most of the fixed carriers have concluded new interconnection agreements among themselves after the withdrawal of the regulatory guidance, without the need for the Authority to intervene.

### 6.10 Regulation of Broadcast-type Mobile Television Services (Mobile TV Service)

Since the launch of Mobile TV Service in February 2012, the China Mobile Multimedia Broadcasting (CMMB) standard has been used as the transmission standard. 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 for the transmission of its Mobile TV Service.

Given that DTMB standard is the transmission standard adopted for the provision of free-to-air DTT services in Hong Kong, the Authority considers that if HKMTV switches to the DTMB standard without implementation of effective technical measures, its Mobile TV Service will be available for reception by an audience of more than 5000 specified premises in Hong Kong and will thereby 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. Furthermore, the reception of Mobile TV Service by household television sets via fixed installations, such as in-building coaxial cable distribution systems and rooftop antennas, will constitute the provision of a fixed service, in breach of Schedule 1 to the Mobile TV Licence, which stipulates that nothing in the licence authorises the licensee to provide any fixed services using the frequencies specified in the Mobile TV Licence, or to provide any service subject to licensing under any other ordinance.

HKTV and HKMTV disagreed that Mobile TV Service using the DTMB standard 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 view expressed by the OFCA. Leave was granted and the substantive hearing was conducted on 26 and 27 November 2014. The Court handed down its judgment in September 2015 in favour of OFCA and dismissed the JR.

### 6.11 Review of Licence Conditions in the Carrier Licences

With a view to removing the anomaly of subjecting telecommunications licensees to both the sectoral and cross-sectoral regulatory controls when the two duplicate, the Authority and SCED reviewed all the licence conditions in carrier licences issued under the TO. Taking into account also the views and comments received from a joint public consultation on the matter, the Authority announced on 10 March 2015 the decision to remove five special conditions (SCs) governing road opening works from the new UCLs issued thereafter. It has also invited the existing carrier licensees to return their licences for effecting the removal of the corresponding SCs. Meanwhile, SCED decided to remove a general condition concerning restrictions on attachment to public buildings and trees from the carrier licences, and will introduce the necessary legislative amendments with a view to effecting the removal.

### 6.12 Processing Complaints relating to Telecommunications Services

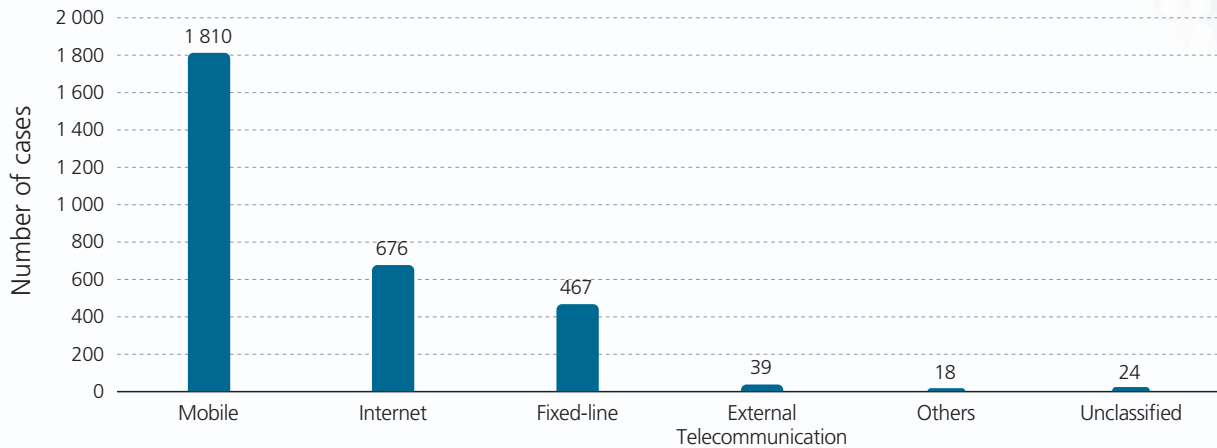
As the telecommunications market is fully liberalised and highly competitive, the Authority has adopted a light-handed regulatory approach. The Authority investigates consumer complaints against

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 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.

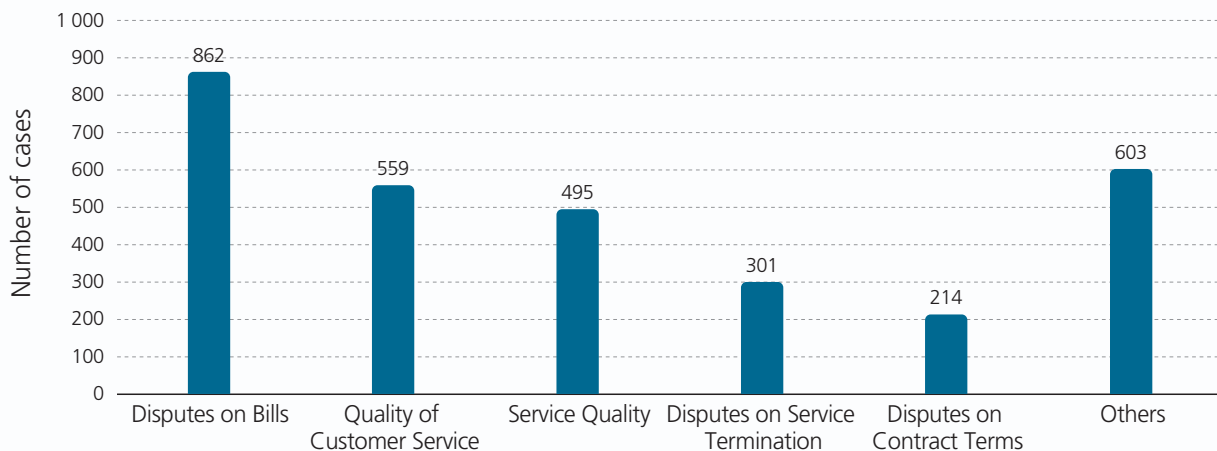
During the year under review, the Authority received a total of 3 034 consumer complaints relating to telecommunications services. Among them, 1 810 cases (59.7%) were related to mobile services, 676 cases (22.3%) were related to Internet services, 467 cases (15.4%) were related to fixed-line services and 57 cases (1.9%) were related to external telecommunications and other services. On the nature of complaint, the Authority received the highest number of complaints relating to bill disputes (862 cases or 28.4%), while complaints about customer service quality (559 cases or 18.4%) and service quality (495 cases or 16.3%) 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 2014-2015**



**Figure 22: Distribution of Complaint Cases by Complaint Nature Received by the Authority in 2014-2015**

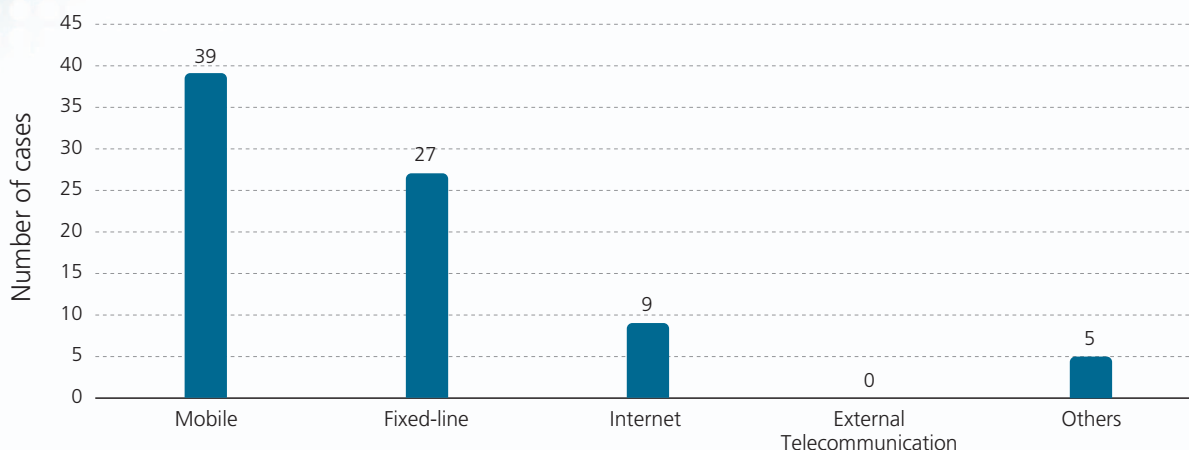


Among the 3 034 complaint cases received, 2 954 cases (97.4%) were found to be outside the Authority's jurisdiction. For the remaining 80 cases (2.6%), they might have breached the TO or licence conditions. The majority of these cases were related to sales conduct, difficulties in accessing buildings to provide services, suspected anti-competitive behavior and abuse of market power. Regulatory actions will be taken against

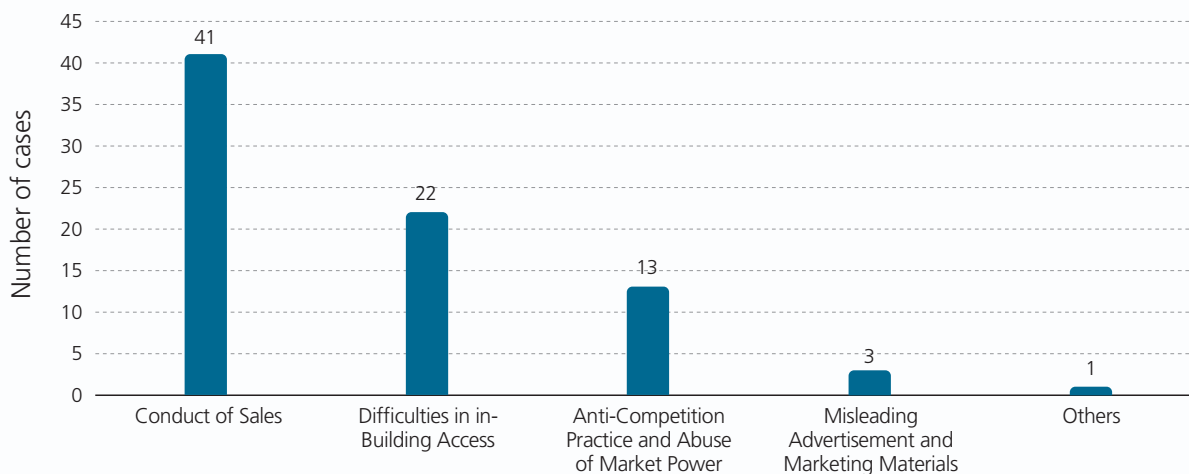
the telecommunications operators concerned if the complaints are found to be substantiated after investigations.

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 2014-2015**



**Figure 24: Distribution of Complaint Cases by Complaint Nature Received by the Authority in 2014-2015**



In the past few years, the Authority noted that consumer complaints 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 an industry code of practice for voluntary compliance by telecommunications licensees on service contracts, implementation of mobile bill

shock preventive measures, the setting up of an Administrative Agency by the Communications Association of Hong Kong (CAHK), an industry association, 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 services providers. The numbers of complaint cases of the types mentioned above received during the year under review is at [Figure 25](#).



**Figure 25: Number of Consumer Complaint Cases Received by the Authority in 2014-2015**

Types of Consumer Complaint	No. of Complaint Cases
Contractual disputes	515
Mobile bill shock	487
Fair Usage Policy	20
Chargeable mobile content services	18

### 6.13 Long Term Implementation 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 alternative dispute resolution scheme which aims at resolving billing disputes in deadlock between telecommunications service providers and their residential/personal customers by means of mediation. The mediation service is provided by an independent mediation service centre (CCSS Centre) set up under the CAHK with voluntary participation of all major telecommunications service providers in Hong Kong. OFCA supported the CCSS by contributing the necessary funding, screening the CCSS applications against the acceptance criteria, and monitoring the performance and the governance of the scheme.

During the two-year trial period from 1 November 2012 to 31 October 2014, OFCA received 357 applications (with 106 and 251 applications in the first and the second trial years respectively) that met CCSS's acceptance criteria. Among them, 159 cases were resolved before referral to the CCSS Centre, and 197 cases were satisfactorily settled after being followed up by the CCSS Centre. For the remaining one case, verbal agreement had been

reached between the parties to settle the case, but the customer failed to turn up to sign the written settlement agreement.

Following the end of the trial period, OFCA conducted a review of the effectiveness of the CCSS and its usage by the public. Having regard to the encouraging outcome of the CCSS trial, the proven demand from customers and the positive feedback from the industry, OFCA decided to support the long term implementation of the CCSS on the basis of the framework adopted in the trial scheme. The long term CCSS as administered by the CAHK commenced operation on 1 May 2015. OFCA will continue to provide funding, screen the CCSS applications, and monitor closely the operation and effectiveness of the scheme.

### 6.14 Measures to Ensure Better Utilisation of the 8-digit Numbering Plan

In Hong Kong, the 8-digit telecommunications numbering plan has been adopted since 1995. With the robust developments of the telecommunications industry and the popularity of mobile communications services over the last two decades, numbers available for allocation to mobile services would be exhausted in three years' time. The Authority proposed to make available more numbers for mobile services through maximizing utilization of the existing 8-digit numbering plan. A public consultation was launched in October 2015 to seek views about the various proposed measures.

### **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 TDO from goods to services, prohibits specified unfair trade practices, and introduces an enhanced enforcement mechanism (collectively "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 from 1 April 2014 to 31 March 2015, the Authority received and handled a total of 1 321 complaints under the TDO. Among these complaints, 995 were closed for there being insufficient evidence to suspect/establish a contravention or falling outside the scope of the TDO, 100 complaints were closed after advisory letters were issued to the licensees concerned to draw their attention to the need to improve the relevant commercial practices in relation to the sale, supply or promotion of telecommunications or broadcasting services to consumers, and 226 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 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 Authority is conferred jurisdiction concurrent with the 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 full commencement of the CO, the competition provisions in the BO and TO will be repealed, subject to transitional arrangements.

The Authority has been working closely with the CC on the preparatory work required before the full commencement of the CO. In October 2014, the Authority and the CC jointly issued a set of six draft guidelines on the enforcement and interpretation of the CO and solicited views and comments from the business sectors and the general public. Having considered the comments received from the consultation exercise, in March 2015, the Authority and the CC jointly issued revised draft guidelines for comments. The Legislative Council was also consulted on the revised draft guidelines on 27 April 2015. The Authority and CC will continue to work together to finalise the guidelines, and prepare and enter into a memorandum of understanding to co-ordinate the performance of their functions under the concurrent jurisdiction arrangement, in preparation for the full implementation of the CO.

## 6.17 Enforcement of the Unsolicited Electronic Messages Ordinance

The 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 2015, more than 2.7 million numbers had been registered under these DNC registers.

To provide more channels for serving specified notices under the UEMO, the Legislative Council passed amendments to section 44 of the UEMO to permit specified notices to be served by ordinary post or by hand, in addition to serving by registered post. The amendments came into effect on 5 December 2014.

The Authority will continue to 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

#### ATV's Failure to Pay Licence Fees

ATV failed to pay the fixed fee and provisional variable fee of its domestic free television programme service licence, as well as the annual fee of its FCL for the licence year 2014-2015, in accordance with the stipulated deadlines under the Broadcasting (Licence Fees) Regulation (Cap. 562A) and the Telecommunications (Carrier Licences) Regulation (Cap. 106V). The Authority imposed financial penalties of \$300,000 in total on ATV for its non-compliance with the relevant statutory and licence requirements, and directed ATV to settle the outstanding licence fees by specified deadlines. ATV settled the outstanding licence fees as directed.

#### Contravention of Disqualified Person Restriction by TVB

In January 2015, the Authority decided to impose a financial penalty of \$80,000 on TVB for contravening section 3(2)(b) of Schedule 1 to the BO and Condition 12 of its domestic free television programme service licence, by allowing three former or current directors of TVB, as disqualified persons (DPs) by virtue of their association with the holder of an other licensable television programme service licensee, viz. Swire Properties Hotel Management Limited, to exercise control of TVB without the requisite approval of the CE in C since October 2009 for periods ranging from two and a half years to five years. Apart from imposing financial penalty, the Authority also required TVB to enhance compliance with the statutory provision on DP restriction to prevent recurrence of similar incidents in the future.

## 6.19 Sanctions against Telecommunications Licensees

### Misleading or Deceptive Conducts of Telecommunications Operators

During the period of 1 April 2014 to 31 March 2015, OFCA handled 81 complaint cases under section 7M of the TO. The Authority found one of these complaint cases (detailed below) as infringements of the TO.

In April 2014, the Authority considered a complaint against SmarTone. The complainant alleged that various representations made by SmarTone on a dedicated webpage of its company website from July 2012 in relation to the network comparison tests between its 3G network and other 3G and 4G networks in Hong Kong were misleading or deceptive. Having considered the investigation findings of OFCA, 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 \$150,000 on SmarTone in relation to the breach concerned.

### Illegal Bypass of Local Access Charge by External Telecommunications Services Licensees

The Authority completed the investigation into a case regarding illegal bypass of local access charge, and imposed a financial penalty of \$130,000 on the licensee concerned for breaching the conditions of its external telecommunications services licence.

### Breach by Fixed Network Operators of the Conditions under Their Carrier Licences Concerning Minimum Depth Requirement

In March 2015, the Authority considered a referral from the Highways Department concerning 126 cases of the determination of the Director of

Highways on failure of six fixed network operators to comply with the minimum depth requirement stipulated under the Land (Miscellaneous Provisions) Ordinance. Having considered the investigation findings, the Authority concluded that in these 126 cases, the six operators had failed to comply with the relevant licence condition under their respective carrier licences in respect of the minimum depth requirement. The Authority decided to issue advice to all the operators for them to comply with the minimum depth requirement as determined by the Director of Highways.

## 6.20 Sanctions against Senders of Commercial Electronic Messages

From April 2014 to March 2015, the Authority received 2 068 reports on suspected contraventions of the UEMO, broadly comparable to the 1 998 reports of the previous year. In dealing with these reports, OFCA 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 in more serious cases. During the period under review, 319 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 2014-2015, one enforcement notice was issued.