

## Chapter 6: Review of the Authority's Major Tasks

### Broadcasting

#### 6.1 Grant and Renewal of Free TV and Pay TV Licences

##### Non-renewal of the Free TV Licence of ATV

The CE in C, having regard to, inter alia, the recommendations of the Authority, decided on 1 April 2015 not to renew ATV's free TV licence and to extend the term of its licence to 1 April 2016 to comply with the requirement under the BO. This is the first time in Hong Kong's broadcasting history that an incumbent's broadcasting licence has not been renewed. As a licensee, ATV had the obligation to provide services in compliance with the relevant statutory and licence requirements in the run up to the expiry of its licence. The Authority had been monitoring ATV's compliance with the BO and licence conditions. Where there were contraventions, the Authority did not hesitate to impose on ATV sanctions which were commensurate with the nature and severity of its breaches. For details, please refer to paragraph 6.16 of this report. In parallel, the Authority had handled the issues arising from the non-renewal of ATV's licence, many of which were unprecedented in Hong Kong's broadcasting history, including the re-assignment of part of the broadcasting spectrum

withdrawn from ATV to HKTVE and facilitation of a smooth changeover of free TV services after the cessation of ATV's free TV service at 00 hours on 2 April 2016.

##### Grant of the Free TV Licence of HKTVE

Having regard to the Authority's recommendations on HKTVE's application, the CE in C decided on 1 April 2015 to formally grant HKTVE a free TV licence by using a fixed network as its transmission mode. In view of the agreement of HKTVE to comply with all the additional conditions the Authority imposed, the Authority approved in January 2016 HKTVE's application for using spectrum, on top of a fixed network, as an additional transmission means, and re-assigned to HKTVE half of the transmission capacity of a Multiple Frequency Network multiplex withdrawn from ATV for the provision of its licensed free TV service with effect from 2 April 2016. HKTVE started to provide its Chinese channel by using spectrum as an additional transmission means from 2 April 2016. HKTVE was required to broadcast an English channel within 24 months from licence grant, i.e. by 31 March 2017.

##### Renewal of the Pay TV Licence of HKCTV

The pay TV licence of HKCTV will expire in May



2017. In processing the licence renewal application of HKCTV received in May 2015, the Authority carried out a comprehensive assessment of its performance and conducted a public consultation exercise in 2015 to collect public views on the services provided by HKCTV. The Authority submitted its recommendations on the licence renewal application of HKCTV to the CE in C in April 2016.

## 6.2 Applications for Free TV Licences

### Licence Application of Fantastic TV

Since the CE in C approved in principle the application for a free TV licence by Fantastic TV in October 2013, the Authority had proceeded with the follow-up work and discussed with Fantastic TV on outstanding issues including its compliance with the statutory requirements under the BO, programming requirements and proposed licence conditions. Upon Fantastic TV's request, the CE in C gave it additional time to resolve all outstanding issues and satisfactorily address the concerns of the Authority in relation to its application, including, among others, the proposed corporate restructuring to ensure its compliance with the non-subsidiary requirement under the BO. On the basis of the supplementary information provided by Fantastic TV including that on its corporate status, the Authority made a further recommendation to the CE in C in April 2016.

Having regard to the Authority's recommendations on Fantastic TV's application, the CE in C formally granted a 12-year licence to Fantastic TV for the provision of free TV service in May 2016. Fantastic TV is required to provide a Chinese channel and an English channel within 12 months and 24 months from licence grant respectively, viz. by 30 May 2017 and 30 May 2018.

### Licence Application of HKTV

The Authority received an application for a free TV licence from HKTV in April 2014. The Authority assessed HKTV's application in accordance with the BO and established procedures, and submitted its assessment of and recommendations on the application to the CE in C in January 2016.

### Licence Application of Forever Top

The Authority was processing the application for a free TV licence submitted by Forever Top in April 2015 in accordance with the BO and established procedures, including examining the views received during the public consultation exercise on the application and seeking further information from Forever Top as required. Moreover, the Authority had commissioned an independent consultant to conduct a market analysis and prepare a consultancy report for assessing the possible impacts of the entry of Forever Top, if its application was approved by the CE in C, on the local television market and overall broadcasting landscape. The Authority will assess the application properly and prudently with a view to submitting 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 were due to expire after 25 August 2016. Having regard to the overall assessment of the performance of the two licensees and the public views received during the public consultation exercise, the Authority submitted its recommendations on the licence renewal applications to the CE in C in May 2015. The CE in C accepted the Authority's recommendations and decided on 22 March 2016 to renew the analogue sound broadcasting licences of CRHK and Metro for a term of 12 years with effect from 26 August 2016. As part of the licensees' proposals in the renewed licences, CRHK and Metro have committed to reviewing and revising their written guidelines to strengthen guidance to their staff on the impartiality

and personal view programme rules in the Radio Code of Practice on Programme Standards, and to providing specific guidelines to their staff on their no call screening policy for phone-in programmes.

### 6.4 Processing Complaints relating to Broadcasting Services

#### Overview of the Complaints Processed

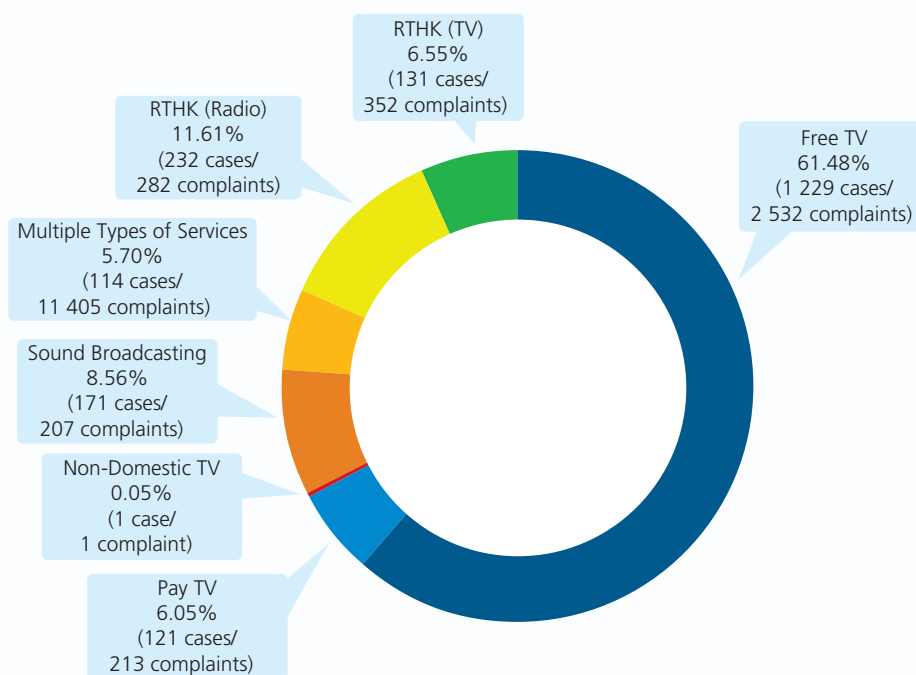
During the period from April 2015 to March 2016, the Authority processed a total of 1 999 cases (14 992 complaints)<sup>37</sup> about the materials broadcast by broadcasters, which represented a decline of 26% in the number of cases and a decline of 64% in the number of complaints processed,<sup>38</sup> as compared with the numbers recorded during the same period in the previous year (2 694 cases, 41 449 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.



<sup>37</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>38</sup> The significant decline in the number of complaints processed in 2015/16 was attributed to a complaint case against a television programme broadcast on TVB and TVBNV which gave rise to over 27 000 complaints in 2014/15.

**Figure 16: Distribution of All Complaint Cases by Broadcasting Service Processed in 2015-2016**



**Figure 17: Distribution of All Complaint Cases by Broadcaster Processed in 2015-2016**

Broadcasters Involved	No. of Complaint Cases	No. of Complaints Involved
ATV	218	312
TVB	1 010	2 215
HKCTV	64	84
PCCW Media	45	110
TVBNV	10	15
CRHK	127	157
Metro	39	45
DBC	5	5
RTHK (TV)	131	352
RTHK (Radio)	232	282
China Satellite TV Group Company Limited	1	1
Multiple Broadcasters	117	11 414
<b>Total</b>	<b>1 999</b>	<b>14 992</b>



Among all the complaint cases processed, the DG Com handled 1 984 cases (5 618 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 constitute a contravention of the legislation, licence conditions or codes of practice. The Authority dealt with 15 cases (9 374 complaints). Details of the outcomes of all the complaints processed during this period are at [Figure 18](#).

**Figure 18: Outcomes of all the Complaints Dealt With by the Authority and DG Com**

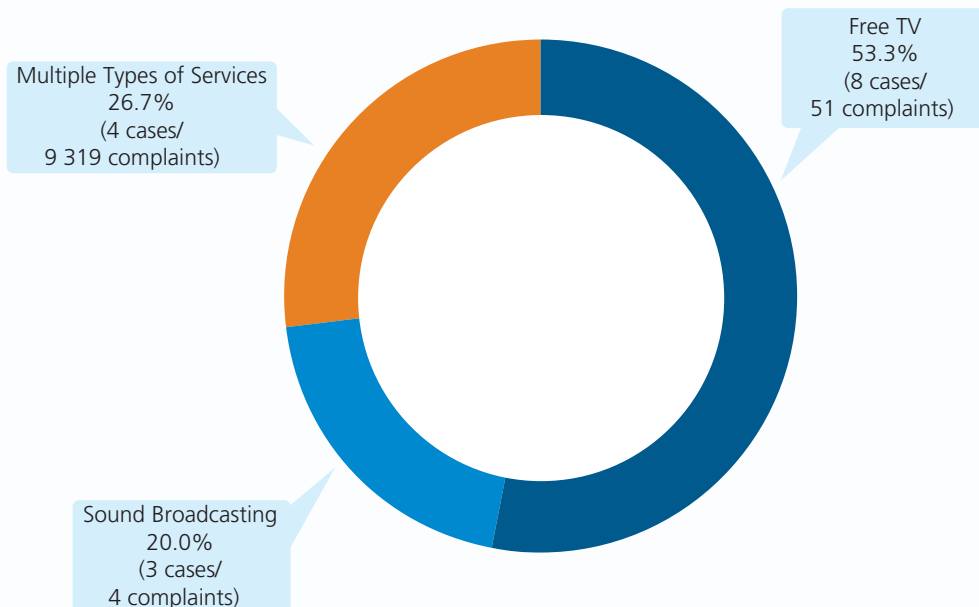
	Within Section (11)1 of B(MP)O				Outside Section (11)1 of B(MP)O	Total
	Substantiated		Unsubstantiated			
	The Authority	DG Com	The Authority	DG Com		
<b>No. of Cases</b>	13	121	2	1 433	430	<b>1 999</b>
<b>No. of Complaints</b>	1 084	139	8 290	4 685	794	<b>14 992</b>

**Complaints Dealt with by the Authority**

Among the 15 complaint cases dealt with by the Authority, 53% were related to free TV

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, 13 out of the 15 complaint cases dealt with by the Authority were related to programmes and two about advertisements. 13 complaint cases were substantiated. Among the substantiated cases, the main substance of complaints of six cases was related to inaccurate factual contents, and/or misleading and partial presentations in news programmes or documentaries. Three cases were related to the mingling of programme and advertising material or the embedding of advertising material within

programme contents. Two cases were related to unfairness to individuals or organisations featured in factual programmes. One case was related to use of foul language in a programme. The remaining one was related to misleading claim in an advertisement.

The Authority imposed a financial penalty of \$300,000 on, and issued three warnings, seven pieces of strong advice and four pieces of advice to the broadcasters concerned. A breakdown of the decisions of the Authority on the complaints dealt with in 2015-2016 is at [Figure 20](#).

**Figure 20: Decision of the Authority on Complaint Cases during 2015-2016**

Decision of the Authority	ATV	TVB	TVBNV	CRHK	Total
No Further Action	0	2	2	0	<b>4</b> note 1, 2
Advice	0	3	0	1	<b>4</b>
Strong Advice	1	4	1	1	<b>7</b> note 2, 3
Warning	0	1	1	1	<b>3</b> note 4
Financial Penalty	1	0	0	0	<b>1</b>
<b>Total</b>	<b>2</b>	<b>10</b>	<b>4</b>	<b>3</b>	<b>19</b> notes 1, 2, 3 & 4

Note 1: One unsubstantiated complaint case involved broadcasts by two licensees and no further action was taken against them.

Note 2: One substantiated complaint case involved broadcasts by two licensees. A strong advice was issued to one of the concerned licensees, while no further action was taken against the other licensee.

Note 3: One substantiated complaint case involved broadcasts by two licensees and a strong advice was issued to each of the concerned licensees.

Note 4: One substantiated complaint case involved broadcasts by two licensees and a warning was issued to each of the concerned licensees.

## Telecommunications

### 6.5 Re-assignment of Frequency Spectrum in the 1.9 – 2.2 GHz Band

In November 2013, the Authority announced its decision to adopt the hybrid administratively-assigned cum market-based approach to re-assign 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. Under the hybrid approach, the three incumbent 3G operators have been re-assigned 69.2 MHz of the 3G Spectrum through exercise of right of first refusal offered to them, 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. All the concerned 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. In order to facilitate a smooth handover of the above-mentioned spectrum among the mobile network operators, OFCA set up a technical working group in March 2015 comprising representatives of all the mobile network operators to coordinate the technical matters and to discuss the possible technical arrangements in relation



to the 3G Spectrum re-assignment exercise. The implementation of the technical arrangements has been progressing smoothly in a coordinated manner. OFCA will continue to work with the operators so as to minimise any impact on services to mobile customers during the handover of spectrum in October 2016.

### 6.6 Re-assignment of Frequency Spectrum in the 900 MHz and 1800 MHz 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 and the SCED kick-started the re-assignment exercise by launching a joint public consultation on the proposed arrangements for spectrum re-assignment and the related spectrum utilization fee on 3 February 2016. Three options had been proposed for the spectrum re-assignment, namely (a) a full-fledged administratively-assigned approach; (b) a full-fledged market-based approach; and (c) a hybrid administratively-assigned cum market-based approach. Upon the close of the consultation on 18 May 2016, 325 submissions were received from the industry, business organisations and members of the public. Separately, the Authority has engaged an external consultant to carry out a technical study regarding any impact on service quality arising from the spectrum re-assignment. After considering the views and comments received from the first round consultation as well as the results of the consultancy study, the Authority plans to conduct a further round of public consultation in early 2017 with a view to announcing its decision on the arrangements for spectrum re-assignment by end 2017.

## 6.7 Frequency Swap between Two Mobile Carrier Licensees in the 2600 MHz Band

In July 2014, CMHK and HKT submitted a joint application seeking the Authority's permission to swap 2 x 5 MHz of frequency blocks of their assigned spectrum in the 2600 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 carrier licensees. Considering that the proposed frequency swap would result in more efficient use of spectrum as a scarce public resource and that consumers would benefit from improved service quality and choice of another competitive 4G network operator, the Authority decided to approve the proposed frequency swap in January 2016 subject to a number of conditions imposed, including the confirmation and undertaking by the two mobile carrier licensees that there was no monetary exchange between them in effecting the frequency swap.

## 6.8 Measures to More Efficiently Utilise the 8-digit Numbering Plan

In Hong Kong, the 8-digit telecommunications numbering plan has been adopted since 1995. With the continuous development of the telecommunications industry and the popularity of mobile communications services over the last two decades, numbers available for allocation to mobile services will be exhausted as early as late 2018. The Authority proposed to make available more number blocks for mobile services through maximising utilisation of the existing 8-digit numbering plan. A public consultation was launched in October 2015 to solicit public views on five proposed measures to ensure better utilisation of the 8-digit numbering plan and to meet the increasing demand for mobile numbers. By the close of the consultation on 29 December 2015, 20 submissions were received. Taking into account the views and comments

received from the industry and interested parties, the Authority was set to decide on the measures to be adopted and the implementation plan for these measures some time in 2016.

## 6.9 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. In January 2014, Hong Kong Mobile Television Network Limited (HKMTV), the licensee holding the UCL which authorised it to provide Mobile TV Service (the Mobile TV Licence), 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 was the transmission standard adopted for the provision of free-to-air DTT services in Hong Kong, the Authority considered that if HKMTV switched to the DTMB standard without implementation of effective technical measures, its Mobile TV Service would be available for reception by an audience of more than 5 000 specified premises in Hong Kong and would thereby trigger the licensing requirement under the BO in relation to a free TV licence and/or pay TV licence. Furthermore, the provision by





HKMTV of Mobile TV Service for reception 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, rendering HKMTV in breach of Schedule 1 to the Mobile TV Licence, which stipulated that nothing in the licence authorised 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.

HKT and HKMTV disagreed that Mobile TV Service using the DTMB standard should be subject to the regulation by the BO and filed an application to the court for leave to apply for judicial review (JR) against the view expressed by OFCA. After the substantive hearing conducted on 26 and 27 November 2014, the Court handed down its judgment in September 2015 in favour of OFCA and dismissed the JR. Subsequently, HKT requested OFCA to process HKMTV's proposal of using the Digital Video Broadcasting – Terrestrial 2 standard for the provision of its Mobile TV Service (the DVB-T2 proposal). Since then, OFCA has been diligently following up with HKT in respect of the DVB-T2 proposal. The Authority will continue to facilitate HKMTV to provide its Mobile TV Service that complies with the requirements of the relevant legislation and its Mobile TV Licence.

## 6.10 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 HKT (PCCW and HKT) applied for leave to lodge a JR application against the Authority and SCED on their decisions on the licence fees reduction. The 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. The 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 and the Court fixed the dates of hearing on 19 to 20 April 2016.<sup>39</sup>



<sup>39</sup> The Court of Appeal dismissed the appeal application on 17 May 2016. PCCW and HKT lodged an application for leave to appeal to the Court of Final Appeal on 13 June 2016.

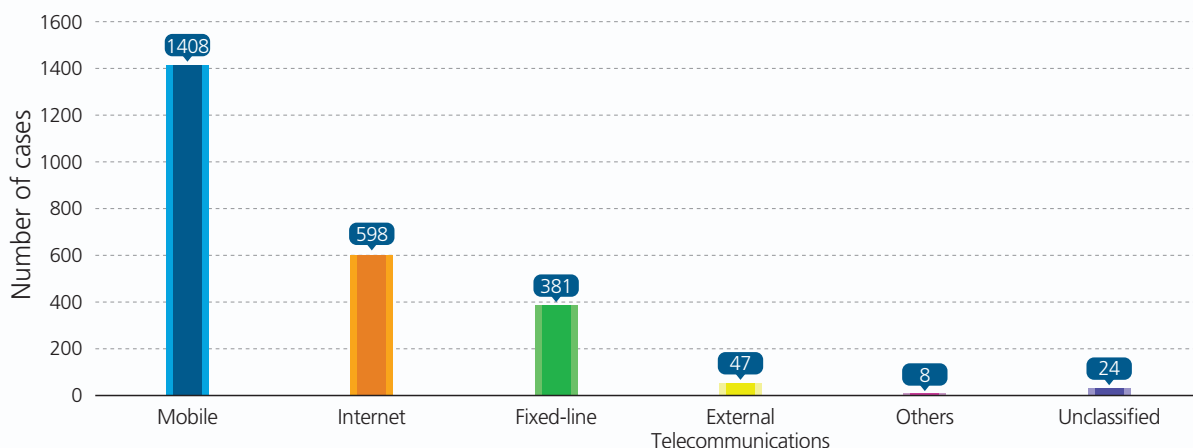
### 6.11 Processing Complaints relating to Telecommunications Services

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, licence conditions or other relevant legislation which the Authority has jurisdiction to enforce, namely, TDO and CO. For other consumer complaints not involving any breach of the TO, licence conditions or other relevant legislation, 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.

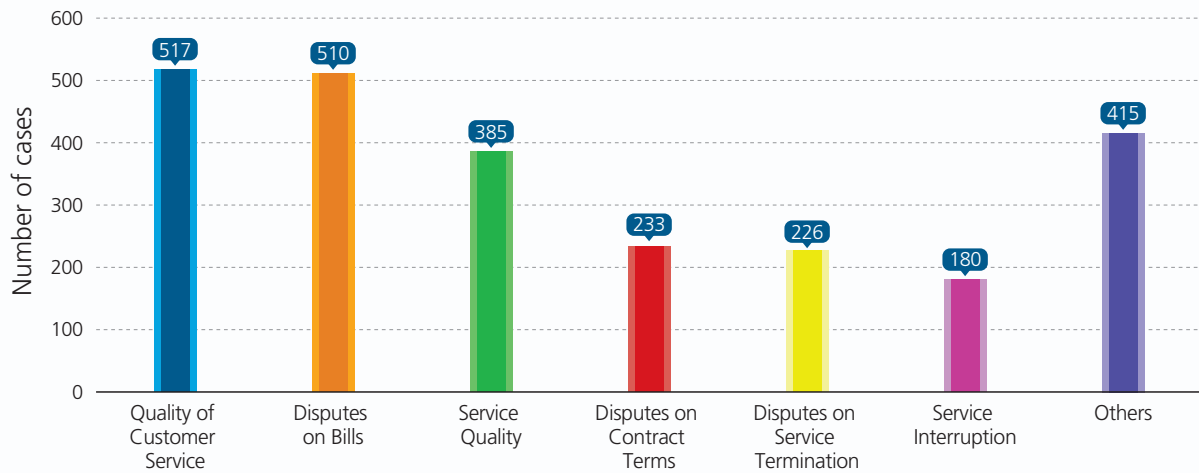
During the year under review, the Authority received a total of 2 466 consumer complaints relating to telecommunications services, representing a reduction of 18.7% compared to 3 034 complaints in the previous year. Among them, 1 408 cases (57.1%) were related to mobile services, 598 cases (24.2%) were related to Internet services, 381 cases (15.5%) were related to fixed-line services, 47 cases (1.9%) were related to external telecommunications and 32 cases (1.3%) were related to other services. On the nature of complaint, the Authority received the largest number of complaints relating to customer service quality (517 cases or 21%), while complaints about billing disputes (510 cases or 20.7%) and service quality (385 cases or 15.6%) ranked second and third respectively.

Breakdown of complaint cases by types of telecommunications services and nature of complaints 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 Services Received by the Authority in 2015 – 2016**



**Figure 22: Distribution of Complaint Cases by Nature of Complaints Received by the Authority in 2015-2016**

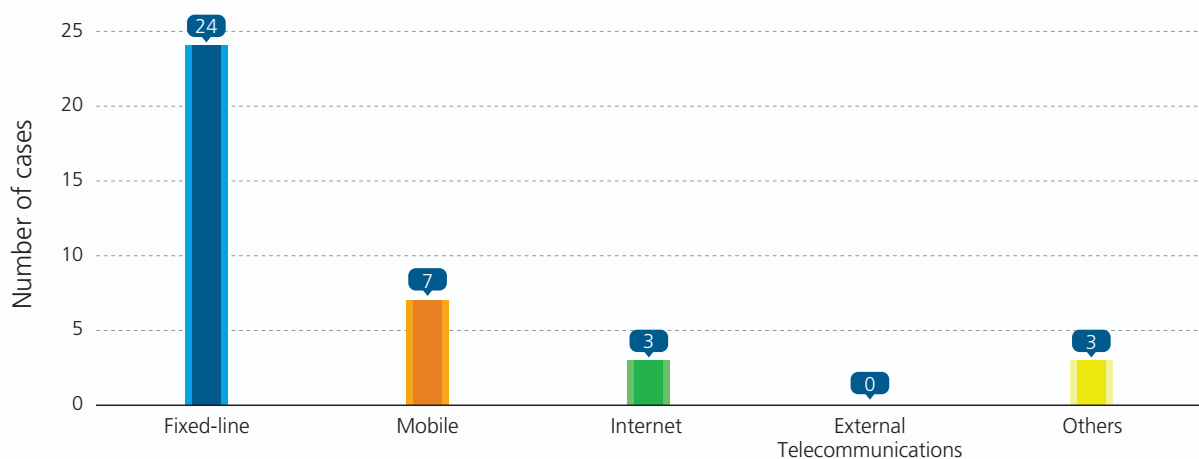


Among the 2 466 complaint cases received, 2 429 (98.5%) were found to be outside the Authority’s jurisdiction. For the remaining 37 cases (1.5%), they might involve possible breach of the TO or licence conditions. The majority of these cases were related to difficulties in accessing buildings to provide services, sales conduct, suspected anti-competitive behaviour and abuse of market power. Regulatory actions will be taken against the telecommunications operators concerned if

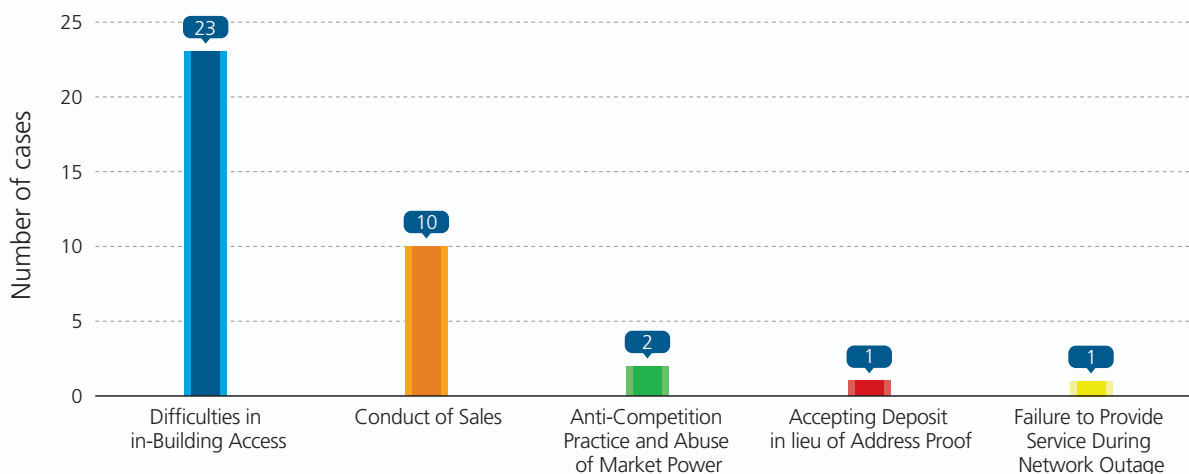
the complaints are found to be substantiated after investigations.

Breakdown of complaint cases that might involve possible breach of the TO or licence conditions by types of telecommunications services and nature of complaints 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 Services Received by the Authority in 2015-2016**



**Figure 24: Distribution of Complaint Cases by Nature of Complaints Received by the Authority in 2015 – 2016**



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 and the Communications Association of Hong Kong (CAHK), 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, promulgation of a set of mandatory guidelines governing the implementation of Fair Usage Policy by telecommunications services providers, and setting up of an Administrative Agency under the CAHK to govern the service delivery by mobile content 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 2015-2016**

Types of Consumer Complaint	No. of Complaint Cases
Contractual disputes	459
Mobile bill shock	275
Fair Usage Policy	6
Chargeable mobile content services	3



## 6.12 Long Term Implementation 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 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.

Following completion of the trial scheme on 31 October 2014, 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 implementation of the CCSS as administered by CAHK commenced on 1 May 2015.

Between 1 May 2015 and 31 March 2016, there were 145 eligible applications, 73 cases of which were satisfactorily settled before referral to the CCSS Centre, 64 cases were satisfactorily settled through mediation by the CCSS Centre, four cases were not settled and the remaining four cases were being processed by the CCSS Centre.

## 6.13 Enforcement of the Fair Trading Sections of the Trade Descriptions Ordinance

The fair trading sections of the TDO prohibit

certain specified unfair trade practices by traders in the provision of goods and services to consumers. The Authority is conferred concurrent jurisdiction with the C&ED to enforce the fair trading sections of the TDO in relation to the 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 entered into a memorandum of understanding (MoU) to coordinate the performance of their functions under the fair trading sections of the TDO and have issued a set of enforcement guidelines to provide guidance for traders and consumers as to the operation of the fair trading sections.

From 1 April 2015 to 31 March 2016, the Authority handled a total of 899 complaint cases under the TDO. Among these cases, 820 were closed for there being insufficient evidence to suspect/establish a contravention or falling outside the scope of the TDO, 19 cases 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, one case was successfully prosecuted with conviction by the court on 14 April 2016 and the remaining 59 cases were being handled at various stages.

## 6.14 Full Commencement of the Competition Ordinance

On 14 December 2015, the CO, a cross-sectoral competition law prohibiting anti-competitive conduct in all sectors, commenced full operation. Under the CO, the Authority is conferred concurrent jurisdiction with the Commission to enforce the CO in respect of the conduct of undertakings operating in the telecommunications and broadcasting sectors, including merger and acquisition activities involving carrier licensees in the telecommunications sector. The competition provisions in the TO and BO were repealed simultaneously subject to transitional

arrangements.

Upon full commencement of the CO, the Authority and the Commission signed a MoU to co-ordinate the performance of functions in which they have concurrent jurisdiction. In accordance with the principles agreed by the Authority and the Commission under the MoU, the Authority would ordinarily take the role of the lead authority for matters falling within the concurrent jurisdiction. For matters involving issues that are partly within and partly outside the concurrent jurisdiction, the Authority and the Commission would discuss and agree on how best to take forward the matter on a case-by-case basis.

To assist the businesses and the public to understand the CO, the Authority and the Commission jointly issued under the CO six sets of guidelines on 27 July 2015 setting out how they would interpret and give effect to the three competition rules, and explaining the procedures for handling complaints, conducting investigations and considering applications for exclusions and exemptions.

In relation to handling leniency applications in respect of the telecommunications and broadcasting sectors under the CO, the Authority, having considered the views received from the telecommunications and broadcasting sectors, and taking into account its experiences in enforcing the competition provisions under the TO and the BO since 2000, announced on 19 November 2015 that it would not adopt a leniency policy for its enforcement of the CO, either on its own or jointly with the Commission, for the time being. The Authority may, in accordance with the relevant provisions of the CO and the actual circumstances of the cases in which it has concurrent jurisdiction with the Commission, consider making leniency agreements with the telecommunications and broadcasting licensees on a case-by-case basis.

Since the full commencement of the CO on 14 December 2015 to 31 March 2016, a total of 45 complaints and/or enquiries were received, with 40 cases closed without the need for further actions and five cases being processed. During the period, the Authority also reviewed two transactions under the merger rule and considered that no follow-up action was required.

### 6.15 Enforcement of the Unsolicited Electronic Messages Ordinance

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. By the end of March 2016, more than 2.8 million numbers had been registered under these DNC registers.

In October 2015, the Authority served an enforcement notice on a commercial facsimile sender pursuant to section 38 of the UEMO, requiring him to stop sending further commercial facsimile messages in contravention of the UEMO. Despite the enforcement notice, OFCA continued



to receive reports on the sending of unsolicited facsimile messages by the sender, suggesting possible contravention against the enforcement notice. OFCA therefore conducted a raid operation on 22 January 2016 against the sender, during which three computers were seized for further analysis and investigation in connection with possible prosecution actions.<sup>40</sup> Under section 39 of the UEMO, any person who contravenes an enforcement notice served on him commits an offence.

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

### 6.16 Sanctions against Broadcasting Licensees

#### Breach of Statutory and Regulatory Requirements by ATV

During the period under review, the Authority had handled a number of breaches of the statutory and licence requirements by ATV. In particular, the Authority was satisfied that ATV's failure to –

- (a) comply with the relevant licence requirements to broadcast comprehensive news bulletins on its Home Channel from 6 February 2016 to 19 February 2016, and on its World Channel from 6 February 2016 to 1 April 2016;
- (b) comply with the residence requirement under the BO in respect of its directors;
- (c) comply with the direction issued by the Authority, requiring it to pay the first instalment of the outstanding licence fee of its free TV licence by the deadline stipulated by the Authority; and

- (d) pay two sets of financial penalties by the deadline stipulated by the Authority,

constituted grounds for licence suspension under section 31 of the BO. The Authority, having considered the full circumstances of the cases, the representations of ATV and the statutory requirements under the BO, decided on 22 February 2016 to invoke the procedures under the BO to suspend the free TV licence of ATV for a period of 30 days. The Authority further advised ATV in March 2016, that its failure to (a) pay the provisional variable fee of its free TV licence by the statutory deadline; and (b) comply with the direction issued by the Authority, requiring it to pay the outstanding provisional variable fee of its free TV licence by the deadline stipulated by the Authority, constituted additional grounds for licence suspension under section 31 of the BO, and served on ATV a notice and invited ATV to make representations. The Authority was conscious that the procedures for suspension of licence would take time and that the procedures could not be completed in time for any licence suspension to take effect before the expiry of ATV's licence on 1 April 2016. However, as a regulator, the Authority was duty-bound to perform its statutory functions, including imposing on licensees sanctions which were commensurate with the nature and severity of the breaches. In order to uphold the integrity of the regulatory regime and to send a correct message to the broadcasting industry, the Authority considered that invoking the licence suspension procedures against ATV was a proper sanction which was commensurate with the nature and severity of its breaches.

Subsequently, the Authority decided on 24 March 2016 not to proceed further with the procedures to suspend ATV's licence. In making this decision, the Authority had taken into account the procedural requirements under the BO pertaining to licence suspension and the overall timeline. Pragmatically speaking, there were real practical constraints for the Authority to complete all the licence suspension procedures before the expiry of ATV's free TV

<sup>40</sup> Charges were laid against the sender in May and July 2016.

licence. In addition, the Authority considered that as ATV would soon cease its service, even if the Authority did make a decision to suspend ATV's licence, ATV would no longer have any valid licence to be suspended post 1 April 2016. Notwithstanding the above, the Authority had put ATV on clear notice that the severity and repeated nature of the breaches of statutory and licence requirements by ATV would form part of the business record of ATV and the persons exercising control of it at the time the breaches occurred. The Authority would consider the aforesaid business record on future occasions when the need arises for assessing the fitness and properness of ATV and the persons exercising control of it.

#### **Revocation of Other Licensable TV Licence of NXTV Asia, Limited (NXTV)**

In July 2015, the Authority decided, pursuant to section 32(4)(a) of the BO, to revoke the other licensable TV licence of NXTV (the Licence) for its failure to pay a financial penalty and variable fee of the Licence for the licence year 2014-2015 by the stipulated deadline. Despite repeated demands and reminders, NXTV failed to pay the above financial penalty and the variable fee. The revocation of the Licence took effect on 31 July 2015.

### **6.17 Sanctions against Telecommunications Licensees**

#### **Network Outage of China Unicom (Hong Kong) Operations Limited (China Unicom)**

On 3 April and 5 April 2015, there were two incidents of network outage of the mobile services of China Unicom, causing disruption to its voice services, short message services and data services. After considering the assessment of OFCA, the Authority concluded that China Unicom had failed

to comply with General Condition 5.1 of its SBO 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 \$100,000 on China Unicom.

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

The Authority completed an investigation into a case regarding illegal bypass of local access charge, and imposed a financial penalty of \$65,000 on Red-Asterisk Technology Limited for breaching the conditions of its external telecommunications services licence.

### **6.18 Sanctions against Senders of Commercial Electronic Messages**

From April 2015 to March 2016, the Authority received 1 725 reports on suspected contraventions of the UEMO, representing a decrease of about 16% compared to the 2 068 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, 128 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 2015-2016, two enforcement notices were issued.