



### Broadcasting

#### 6.1 Monitoring the Roll-out of New Free TV Services

##### Service Roll-out of HKTVE

HKTVE started to provide its licensed free TV service by using both a fixed network and spectrum from 2 April 2016. As at the end of March 2017, HKTVE provided two digital channels, viz. one 24-hour Chinese channel and one 17-hour English channel.

##### Service Roll-out of Fantastic TV

On 31 May 2016, the CE in C decided to formally grant a 12-year licence to Fantastic TV. Since then, the Authority has monitored the roll-out of free TV service by Fantastic TV. Fantastic TV officially launched its 24-hour Chinese channel by using a fixed network on 14 May 2017. It is also required to launch its English channel by 30 May 2018.



In June 2016, Fantastic TV applied to the Authority to use spectrum, on top of a fixed network, to transmit its licensed free TV service. In line with the programme requirements imposed on and the investment commitments made by the other two spectrum-based free TV licensees, the Authority advised Fantastic TV of similar requirements with which it should comply in order to ensure that, Fantastic TV, if permitted by the Authority to use spectrum as an additional transmission means, would operate on a level playing field as the other spectrum-based free TV licensees. After rounds of exchanges, Fantastic TV indicated in January 2017 that its focus at that time was to launch the free TV service by using a fixed network. The Authority has put on hold the processing of Fantastic TV's application as per its request. The Authority stands ready to resume the processing of Fantastic TV's application as and when Fantastic TV is ready to resurrect the discussion with the Authority on the additional requirements pertinent to spectrum assignment.

## 6.2 Applications for Free TV Licences

### Licence Application of HKTV

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

In September 2016, the CE in C agreed with the Authority's recommendations and decided to give HKTV more time to submit the information required under the BO, and invited the Authority, on receipt of the required information from HKTV, to submit further recommendations to the CE in C on HKTV's application. Following the CE in C's decision, the Authority reminded HKTV to submit the required information to the Authority as soon as practicable. In response, HKTV submitted some supplementary information to the Authority in November 2016. Having examined the relevant information, the Authority requested HKTV in December 2016 to submit the remaining required information as soon as practicable for examination by the Authority. As at the end of March 2017, the Authority was awaiting the relevant information from HKTV.

### Licence Application of Forever Top

The Authority received the application for a free TV licence from Forever Top in April 2015. As at the end of March 2017, the application was still under process<sup>29</sup>.

### Licence Application of Phoenix HK

The Authority processed the application for a free TV licence submitted by Phoenix HK in May 2016 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 Phoenix HK as required. The Authority also commissioned an independent consultant to conduct a market analysis and prepare a consultancy report for assessing the possible impacts of the entry of Phoenix HK, if its application was approved by the CE in C, on the local television market and overall broadcasting landscape<sup>30</sup>.



<sup>29</sup> The application of Forever Top had been put on hold since April 2017 at the applicant's request. Upon approval of the Authority in September 2017, Forever Top became the major shareholder of i-CABLE, the major shareholder of Fantastic TV and HKCTV. Forever Top withdrew its free TV licence application thereafter.

<sup>30</sup> In August 2017, Phoenix HK withdrew its free TV licence application due to commercial considerations.



### 6.3 Renewal of Pay TV Licence

The pay TV licence of HKCTV was due to expire after 31 May 2017. Having regard to the overall assessment of HKCTV's past performance and the public views received during the public consultation exercise, the Authority submitted its recommendations on the licence renewal application of HKCTV to the CE in C in April 2016. The CE in C accepted the Authority's recommendations and decided on 13 December 2016 to renew HKCTV's pay TV licence for a term of 12 years with effect from 1 June 2017. As part of the licensee's proposal in the renewed licence, HKCTV has committed to a six-year investment plan of \$3,447 million for 2017 to 2023. It has also undertaken to further improve its customer services and sales practices, including service termination practices and complaints handling procedures.



### 6.4 Renewal of Non-domestic and Other Licensable TV Licences

During the period under review, the Authority approved the applications for renewal of the following non-domestic TV licence and other licensable TV licences for the provision of television programme services in hotel rooms in Hong Kong:

#### Non-domestic TV licence

- Auspicious Colour Limited

#### Other licensable TV licences

- Hotel Holdings Limited
- Cityability Limited
- Fame Capital Investment Limited<sup>31</sup>
- Cordis Hong Kong Limited
- Showers of Blessing Evangelistic Ministry (Hong Kong) Limited

The Authority also accepted the surrender of non-domestic TV licences by China Entertainment Television Broadcast Limited and Power Star Limited due to the commercial decisions of the licensees.

<sup>31</sup> Subsequent to the Authority's approval for the application of Fame Capital Investment Limited (Fame Capital) for renewal of its other licensable TV licence in July 2016, Fame Capital applied for the Authority's approval for termination of its licence in March 2017. Following the Authority's approval, the licence of Fame Capital was terminated with effect from 31 March 2017.



## 6.5 Research and Survey on the Regulation of Indirect Advertising and Sponsorship in Free TV Services

In view of the discussions about indirect advertising and product/service sponsorship in free TV programmes in the community, and having regard to the changing landscape of the local TV market with the entry of new licensees, the Authority decided in June 2016 to expedite research into the regulation of indirect advertising and sponsorship in free TV services in overseas jurisdictions and conduct a survey to gauge the public attitude and views towards the issues concerned. An independent survey firm was commissioned to carry out a territory-wide opinion survey with no fewer than 1 500 household interviews.

The research into the regulation of indirect advertising and sponsorship in free TV services in overseas jurisdictions was completed in March 2017, while the survey for gauging the public attitude and views on the issues concerned was held from mid-February 2017 to end-June 2017. Outcome of the research and the findings of the survey and post-survey focus group discussions would facilitate the Authority's consideration of the way forward with respect to the regulatory regime governing indirect advertising and sponsorship<sup>32</sup>.

<sup>32</sup> Having considered the outcome of the research and survey, the Authority announced in September 2017 that it would review relevant provisions in the codes of practice governing indirect advertising and product/service sponsorship, with a view to relaxing, wherever possible and appropriate, the relevant standards and restrictions.

## 6.6 Provision of Sign Language Interpretation for News Programmes on Free TV service

In the context of the licence renewal exercise of TVB, the Authority took note of the increasing demand from persons with hearing impairment for sign language interpretation for news programmes. Taking into account the representations made by TVB in response to such demand, the Authority considered it prudent to conduct a review, to be completed within two years from the commencement of TVB's renewed licence as from 1 December 2015, to explore measures to resolve the implementation and compliance issues in relation to the provision of sign language interpretation for news programmes before actual implementation.

Upon renewal of the free TV licence of TVB, the Authority set up a working group comprising representatives of groups for the hearing impaired and relevant government bureaux to examine the relevant issues, including the format, presentation, scheduling and duration of news programmes with sign language interpretation, supply of qualified sign language interpreters, and compliance with the accuracy requirement for news programmes, etc. The working group formulated a set of proposals and consulted TVB and other free TV licensees<sup>33</sup>.

<sup>33</sup> Having regard to the representations of free TV licensees including those of TVB and the recommendations of the working group, the Authority issued a direction to TVB on 3 October 2017 requiring it to provide sign language interpretation for Cantonese news programmes broadcast on its Pearl Channel each day with effect from 3 July 2018.



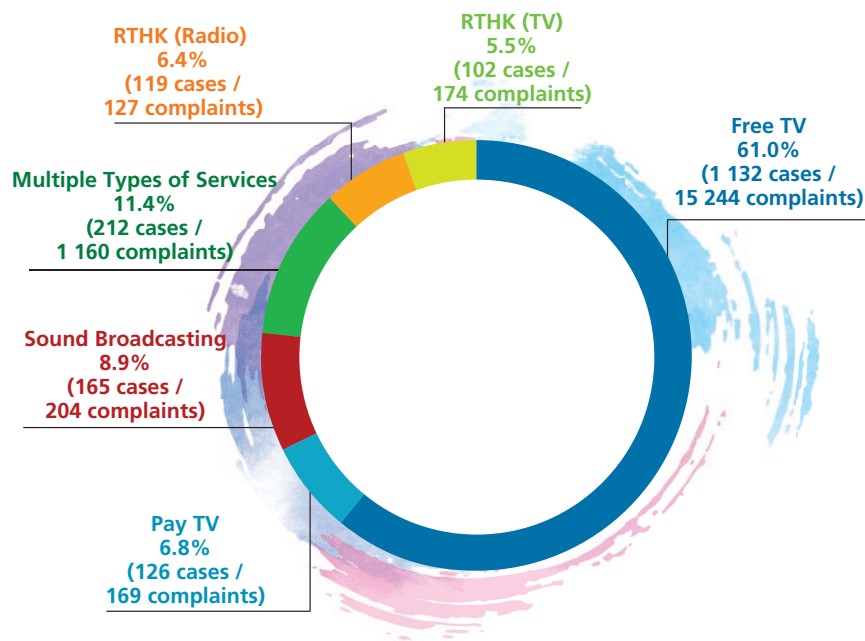
## 6.7 Processing Complaints relating to Broadcasting Services

### Overview of the Complaints Processed

During the period from April 2016 to March 2017, the Authority processed a total of 1 856 cases (17 078 complaints)<sup>34</sup> about the materials broadcast by broadcasters, which represented a decline of 7% in the number of

cases but an increase of 14% in the number of complaints processed<sup>35</sup>, as compared with the numbers recorded during the same period in the previous year (1 999 cases, 14 992 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 2016/17**



<sup>34</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>35</sup> The increase in the number of complaints processed in 2016/17 was mainly attributed to a complaint case against the provision of simplified Chinese subtitles only and/or the use of Putonghua in some news programmes broadcast on the then J5 Channel of TVB which gave rise to over 13 000 complaints in 2016/17.

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

Broadcasters Involved	No. of Complaint Cases	No. of Complaints Involved
ATV	26	41
TVB	957	14 939
HKTVE	143	257
HKCTV	31	32
PCCW Media	61	82
TVBNV	19	19
CRHK	152	187
Metro	9	12
DBC	4	5
RTHK (TV)	102	174
RTHK (Radio)	119	127
Multiple Broadcasters	233	1 203
<b>Total</b>	<b>1 856</b>	<b>17 078</b>

Among all the complaint cases processed by the Authority, the DG Com handled 1 826 cases (16 559 complaints) under delegated power of the Authority. These complaints involved breaches of a minor nature, or contained allegations which did not constitute any breach or were outside the remit of section 11(1) of the

B(MP)O (i.e. the allegations concerned matters not regulated under the relevant legislation, licence conditions or codes of practice). The Authority dealt with 30 cases (519 complaints). Details of the outcomes of all the complaints processed by the Authority during this period are at [Figure 18](#).



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

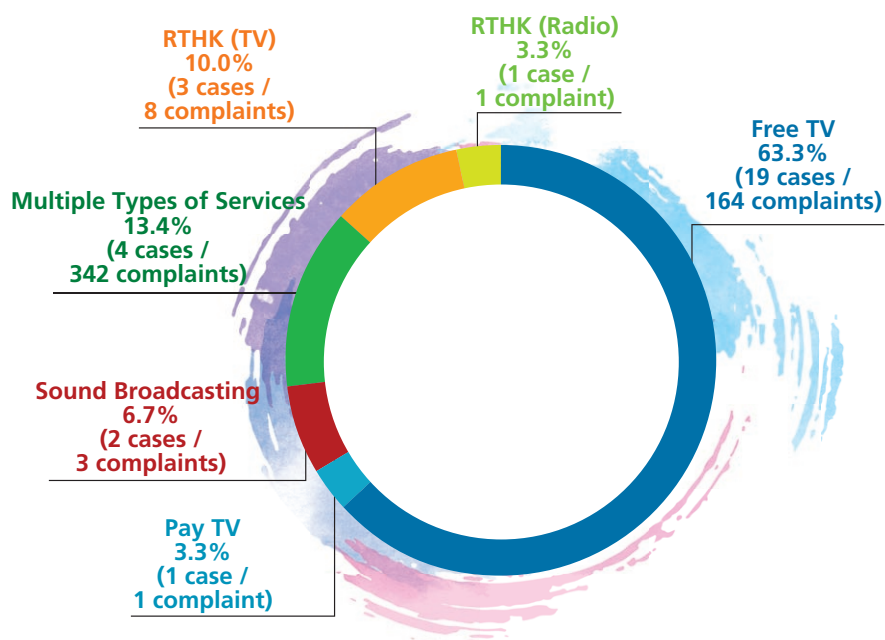
	Within Section (11)1 of B(MP)O				Outside Section (11)1 of B(MP)O	Total
	Substantiated		Unsubstantiated		DG Com	
	The Authority	DG Com	The Authority	DG Com		
<b>No. of Cases</b>	24	150	6	1 261	415	<b>1 856</b>
<b>No. of Complaints</b>	176	213	343	2 343	14 003	<b>17 078</b>

**Complaints Dealt with by the Authority**

Among the 30 complaint cases dealt with by the Authority, 63% concerned free TV services.

A 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 and handled by the Authority, 25 of them were about programmes while the remaining five related to licence conditions. 24 of them were substantiated. Among these substantiated cases, nine cases were about indirect advertising and/or product/service sponsorship; five cases involved licensees' non-compliance with certain requirements under their licences; three cases concerned accuracy in news programmes or the rules on personal view programmes; three cases involved use of language in programmes; two involved

indecent programme materials; and one concerned horror and the other was about denigrating remark.

The Authority imposed two financial penalties (in the respective amounts of \$200,000 and \$150,000) on; and issued two serious warnings, three warnings, four pieces of strong advice and nine pieces of advice to the broadcasters concerned. A breakdown of the decisions of the Authority on the complaints dealt with in 2016/17 is at [Figure 20](#).

**Figure 20: Decision of the Authority on Complaint Cases during 2016/17**

Decision of the Authority	ATV	TVB	HKTVE	PCCW Media	TVBNV	CRHK	Metro	RTHK	Total
No Further Action	2	5	3	0	3	0	1	0	14 <sup>note 1,2</sup>
Advice	0	1	4	1	0	1	0	2	9
Strong Advice	0	1	1	0	0	0	0	2	4
Warning	0	2	0	0	1	0	0	0	3 <sup>note 3</sup>
Serious Warning	0	2	0	0	0	0	0	0	2
Financial Penalty	0	2	0	0	0	0	0	0	2
<b>Total</b>	<b>2</b>	<b>13</b>	<b>8</b>	<b>1</b>	<b>4</b>	<b>1</b>	<b>1</b>	<b>4</b>	<b>34</b> <sup>notes 1, 2 &amp; 3</sup>

Note 1: There were three unsubstantiated complaint cases involving two licensees (viz. TVB and TVBNV) and no further action was taken against them.

Note 2: There were five substantiated complaint cases for which no further action was taken against the licensees concerned as relevant regulatory or follow-up actions had been taken in various circumstances.

Note 3: One substantiated complaint case involved two licensees (viz. TVB and TVBNV) and a warning was issued to each of them.





## Telecommunications

### 6.8 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 upon expiry of the previous assignments on 21 October 2016. Under the hybrid approach, the three incumbent assignees have been re-assigned 69.2 MHz of the 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 assignees and another mobile network operator previously not assigned with any of the spectrum successfully bid for the 49.2 MHz of spectrum. All the spectrum concerned has been 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 spectrum were to 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 spectrum re-assignment exercise. Through the efforts of the technical working group and collaboration of all the mobile network operators, the spectrum handover arising from the spectrum re-assignment was successfully and seamlessly completed at 00 hours on 22 October 2016,

and members of the public can continue to enjoy smooth and uninterrupted mobile services.

### 6.9 Re-assignment of Frequency Spectrum in the 900 MHz and 1800 MHz Bands

Among the 552 MHz of spectrum currently assigned for the provision of public 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 work out the arrangements for spectrum re-assignment and the related spectrum utilisation fee, the Authority and the SCED have jointly conducted two rounds of public consultation. Having carefully considered the views and comments received in the first consultation and the findings of a technical consultancy study undertaken by an external consultant, the Authority considered that there are justifications for adopting a hybrid administratively-assigned cum market-based approach for further consultation. The proposal, by re-assigning part of the spectrum to the incumbent spectrum assignees through the offer of a right of first refusal, aims to safeguard the provision of 4G services in the Mass Transit Railway premises and the provision of territory-wide 2G voice services. The second round of public consultation was conducted during February to May 2017. After reviewing in detail the views and comments in the submissions to the second consultation, the Authority plans to announce its decision on the arrangements for spectrum re-assignment by around the end of 2017.

## 6.10 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 would be exhausted as early as late 2018 if no mitigation measures were taken. Against this background, 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 to December 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. Taking into account the views and

comments received from the industry and interested parties as well as the need to ensure that adequate number resources should be made available to cope with the development of the 5G mobile technologies in the coming years, the Authority announced on 24 June 2016 its decision to adopt all the five proposed measures for implementation in three phases. Phase 1 (i.e. raising the threshold of utilisation rate for allocation of additional numbers to operators from 70% to 75%) was successfully implemented on 1 January 2017. Following full implementation of the five measures in three phases, a total of additional 15.72 million numbers will become available for allocation to mobile services. It is expected that these numbers in the 8-digit numbering plan will be able to cope with the demand from mobile services in the foreseeable future.





### 6.11 Review of the Number of Public Payphones under the Universal Service Obligation (USO)

There were around 3 100 public payphones covered by the USO as at 31 December 2016. Public payphones under the USO are funded by fixed and mobile service providers under the universal service contribution (USC) scheme set up in accordance with section 35B of the TO. The telecommunications industry contributed \$21.6 million for the cost of providing public payphones in 2014.

With the high level of mobile phone penetration in Hong Kong, the general public relies almost entirely mobile phones for making calls or sending messages, and the demand for public payphones has waned over recent years with almost all of them running at deficit under the USO. Based on the data of 2014 and 2015, about 56% of the public payphones had an extremely low usage rate with an average revenue of not more than \$1 per day.

Since the second half of 2016, OFCA had been conducting a review in consultation with the telecommunications industry, with a view to reducing the number of public payphones that should be eligible for USC to a reasonable level, thereby reducing the level of USC borne by the telecommunications service providers and accordingly the pressure for them to pass on the USC to their customers through raising service charges. It is expected that the entire review will be completed by end 2019<sup>36</sup>.

<sup>36</sup> On 29 June 2017, after finalising the guiding principles and other details, the Authority announced its decision to embark on the payphone review. OFCA will approach relevant stakeholders by groups to solicit their views on the exclusion of public payphones with an average revenue of not more than \$1 per day from the USO.

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

In January 2014, Hong Kong Mobile Television Network Limited (HKMTV), the licensee holding the UCL which authorised it to provide Mobile TV Service (Mobile TV Licence), indicated to OFCA its proposal to switch from the original China Mobile Multimedia Broadcasting (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.





HKTV and HKMTV filed an application to the court for leave to apply for judicial review (JR) against the above position as expressed by OFCA. The Court of First Instance handed down its judgment (Court Judgment) in September 2015 in favour of OFCA and dismissed the JR. Subsequently, HKTV 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 Application). As at the end of March 2017, HKTV's discussion with OFCA was continuing<sup>37</sup>.

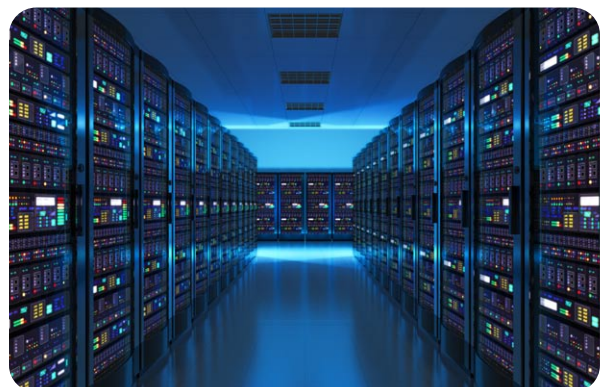
The Authority and OFCA will continue to facilitate HKMTV to provide its Mobile TV Service in strict compliance with the Court Judgment and the relevant statutory requirements under the BO and the TO.

### 6.13 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-HKT Telephone Limited and HKT (PCCW and HKT) applied for leave to lodge a JR application against the Authority's and the SCED's decisions on the licence fees reduction. While the Court of First Instance and the Court of Appeal have dismissed the JR application and the appeal application respectively, PCCW and HKT have been granted leave to appeal to the Court of Final Appeal and the substantive hearing will be held on 30 November 2017.

<sup>37</sup> After rounds of discussion with OFCA, HKTV submitted a finalised technical proposal in June 2017, committing to the detailed transmission arrangements, system parameters and the technical specifications set out therein in support of the Application, to ensure that the Mobile TV Service provided by HKMTV will be in strict compliance with the Court Judgment and the relevant statutory requirements under the BO and the TO.

Having carefully reviewed the technical proposal, the Authority approved the Application and issued on 13 July 2017 to HKMTV an amended Mobile TV Licence, authorising HKMTV to change its transmission standard to the T2 Lite profile under the Digital Video Broadcasting – Terrestrial 2 standard using the 8 MHz of spectrum assigned and in accordance with the specific technical parameters stipulated in its Mobile TV Licence. The amended Mobile TV Licence also incorporates the necessary new/amended licence conditions to ensure its compliance throughout the validity period of the licence.





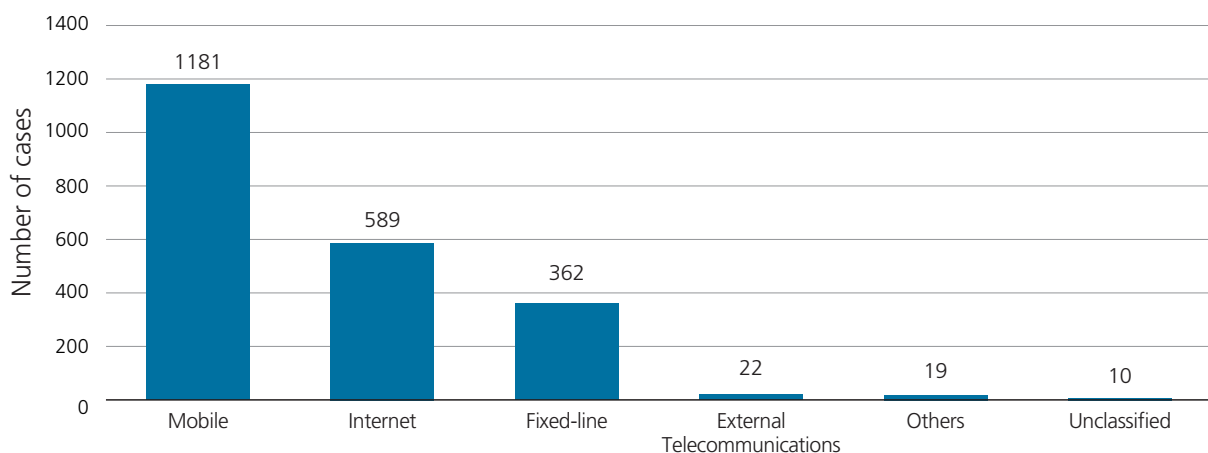
## 6.14 Processing Complaints relating to Telecommunications Services

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.

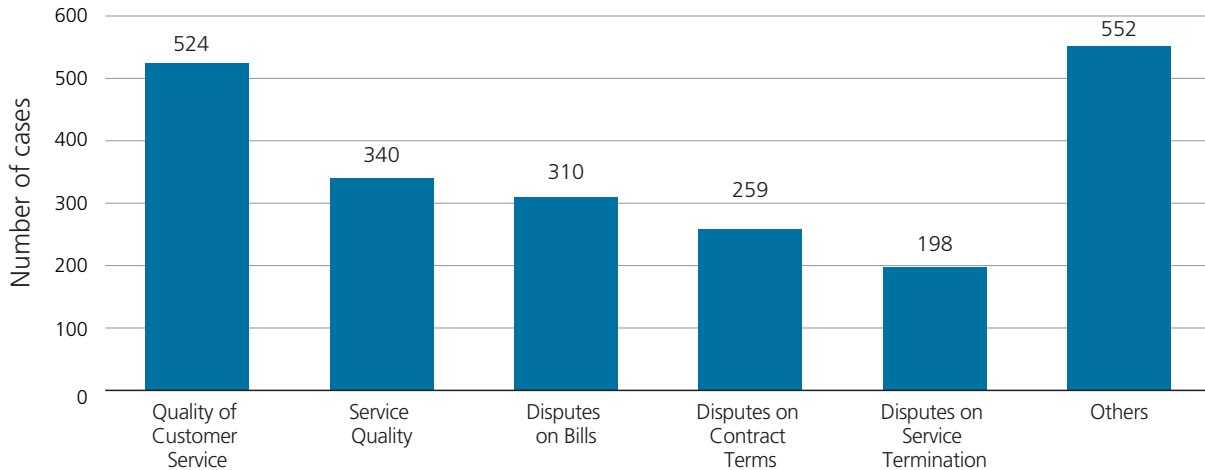
During the year under review, the Authority received a total of 2 183 consumer complaints relating to telecommunications services, representing a reduction of 11.5% compared to 2 466 complaints in the previous year. Among them, 1 181 cases (54.1%) were related to mobile services, 589 cases (27%) were related to Internet services, 362 cases (16.6%) were related to fixed-line services, 22 cases (1%) were related to external telecommunications and 19 cases (0.9%) were related to other services. On the nature of complaint, the Authority received the largest number of complaints relating to customer service quality (524 cases or 24%), while complaints about service quality (340 cases or 15.6%) and billing disputes (310 cases or 14.2%) 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 2016/17**



**Figure 22: Distribution of Complaint Cases by Nature of Complaints Received by the Authority in 2016/17**

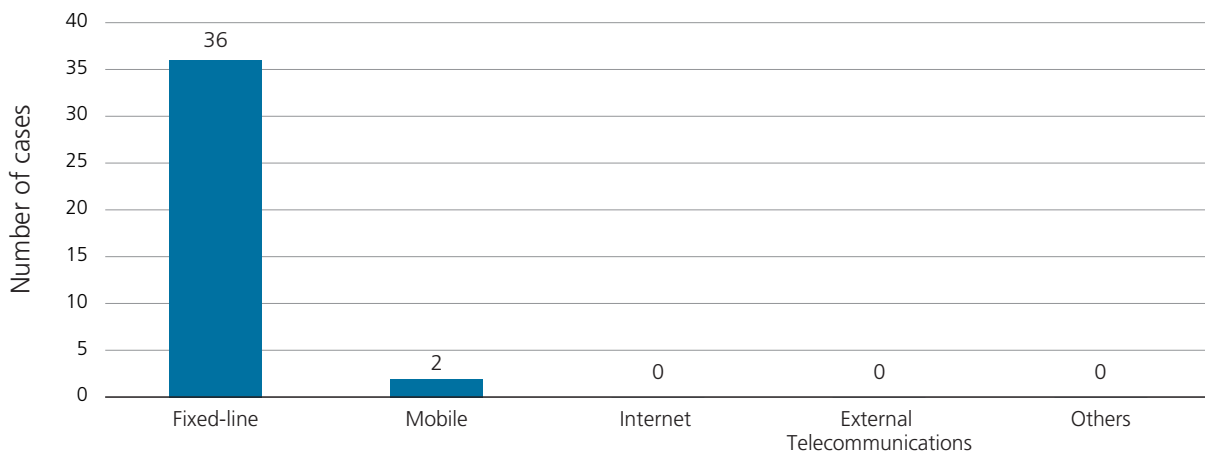


Among the 2 183 complaint cases received, 2 145 (98.3%) were outside the Authority's jurisdiction. For the remaining 38 cases (1.7%), they might involve possible breach of the TO or licence conditions. The majority of these cases were related to difficulties in accessing buildings to provide services and sales conduct. Regulatory actions will be taken against the telecommunications operators concerned if the

complaints are found to be substantiated after investigations.

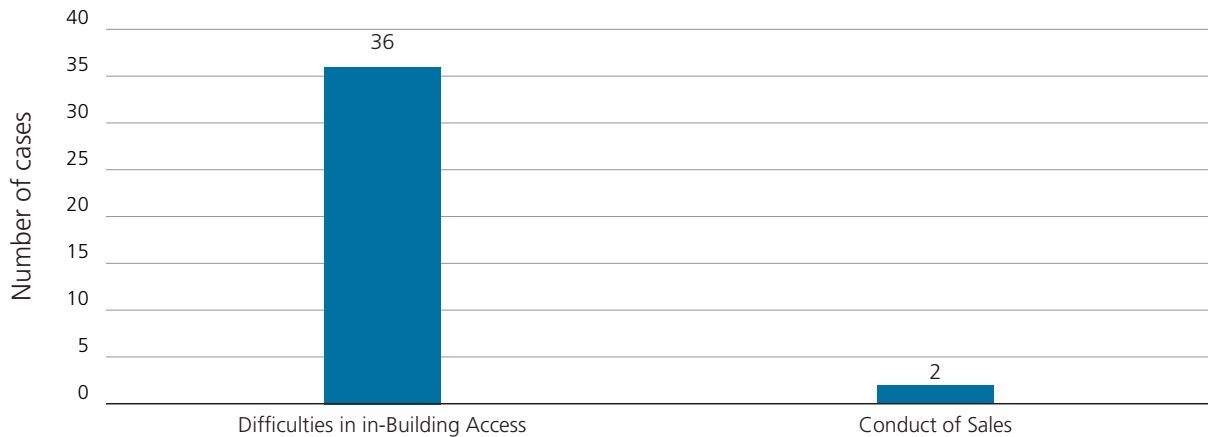
Breakdown of complaint cases that might involve possible breach of the TO or licence conditions by types of telecommunications services and nature of complaints received by the Authority during the year under review are at [Figure 23](#) and [Figure 24](#) respectively.

**Figure 23: Distribution of Complaint Cases by Types of Telecommunications Services Received by the Authority in 2016/17**





**Figure 24: Distribution of Complaint Cases by Nature of Complaints Received by the Authority in 2016/17**



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 service providers, and the issue of a voluntary industry code of practice to govern the service delivery by mobile content services providers. Further, OFCA has since November 2016 published on its website details of the arrangements adopted by major residential broadband service providers to handle service termination requests from consumers. The published information would

enable consumers to better understand different service providers' existing practices, which should help reduce contractual disputes over service termination matters. The number 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 2016/17**

Types of Consumer Complaint	No. of Complaint Cases
Contractual disputes	457
Mobile bill shock	138
Fair Usage Policy	6
Chargeable mobile content services	2

### 6.15 Long Term Implementation of Customer Complaint Settlement Scheme (CCSS)

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 supports 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.

Between 1 April 2016 and 31 March 2017, there were 71 eligible applications, 41 cases of which were satisfactorily settled before referral to the CCSS Centre, 26 cases were satisfactorily settled through mediation by the CCSS Centre, only one case was not settled and the remaining three cases are being processed by the CCSS Centre.



### 6.16 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 co-ordinate 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 2016 to 31 March 2017, the Authority handled a total of 457 complaint cases under the TDO. Among these cases, 373 were closed for there being insufficient evidence to suspect/establish a contravention or falling outside the scope of the TDO, 16 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, and the remaining 68 cases were being handled at various stages.





### **6.17 Full Commencement of the Competition Ordinance**

The CO provides for a cross-sectoral competition law prohibiting anti-competitive conduct in all sectors. 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.

Pursuant to the MoU signed by the Authority and the Commission, 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.

From 1 April 2016 to 31 March 2017, a total of 74 complaints and/or enquiries were received under the CO, with 72 cases closed without the need for further actions and two cases being processed. During the year, the Authority also reviewed one transaction under the merger rule of the CO and considered that no follow-up action was required in respect of the transaction.

### **6.18 Enforcement of the Unsolicited Electronic Messages Ordinance**

The UEMO sets out the rules about sending 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 2017, 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. Under section 39 of the UEMO, any person who contravenes an enforcement notice served on him commits an offence. In May and July 2016, charges were laid against the sender. In January 2017, the sender was convicted of three offences of contravention of the enforcement notice in Magistrates' Courts.

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

## 6.19 Making Available Additional Spectrum for Public Mobile Service

To meet the huge spectrum demand for the provision of public mobile services, and to better prepare Hong Kong for the launch of 5G mobile services in around 2020, the Authority actively explore ways to make available additional spectrum. In March 2017, the Authority promulgated its work plan for making available additional radio spectrum to meet the demand of public mobile services towards 2020 and beyond.

Subject to the interest expressed by the industry and the availability of internationally/regionally harmonised band plans, the Authority plans to make available spectrum in the 26 GHz and 28 GHz bands as the first batch of spectrum for the provision of 5G services in Hong Kong in 2019 at the earliest.

The Authority plans to launch a public consultation in the second half of 2017 on the proposed vacation of the 3.4 – 3.7 GHz band (currently assigned for fixed satellite service provision), with a view to re-allocating it to mobile services in 2020.



## Major Regulatory Actions

### 6.20 Sanctions against Broadcasting Licensees

#### Breach of Codes of Practice by TVB

In May and November 2016, the Authority decided to impose financial penalties of \$150,000 and \$200,000 on TVB for its non-compliance in two separate complaint cases with the relevant provisions governing product/service sponsorship and indirect advertising in the codes of practice on television programme and advertising standards. For both cases, the Authority found that the programme segment or the programme under complaint was intentionally designed to promote the product or service of the product/service sponsor of the respective programmes. There were prominent exposure of the sponsors, including displays of the brand name and logo and positive remarks about the product or service concerned. The exposure of the sponsors' product or service within the programmes concerned was editorially unjustified, gratuitous and/or obtrusive to viewing pleasure and amounted to blatant advertising materials for the concerned sponsors.

For the complaint case which involved the imposition of a financial penalty of \$150,000 on TVB as mentioned above and another complaint case of TVB's non-compliance with the relevant provisions governing product/service sponsorship and indirect advertising, TVB filed applications for JR on the appeal mechanism under the BO as well as the Authority's decisions on the two cases. The Authority will respond to the JR according to established procedures.



## 6.21 Sanctions against Telecommunications Licensees

### Unauthorised Use of the Access Code "1670" by P&R Consulting Company Limited (P&R) for the Provision of External Telecommunications Services (ETS)

P&R, the holder of SBO Licence No. 1670, was found to have used the access code "1670", without the prior approval of the Authority, for the provision of ETS. OFCA conducted an investigation to examine whether P&R and New World Telecommunications Limited (NWT) (subsequently renamed as HKBN Enterprise Solutions Limited), the holder of UCL No. 022 which provided hosting service and set up the network routing arrangements for P&R to use the access code "1670" for the provision of ETS, had contravened the conditions of their licences.

Having considered the result of OFCA's investigation and the representations of P&R and NWT, the Authority concluded that P&R and NWT had contravened respectively Special Condition (SC) 2.1 of the SBO Licence No. 1670 and SC 4.1 of the UCL No. 022 in regard to the requirement to conform to the Hong Kong Numbering Plan. The Authority decided that both P&R and NWT should be warned to observe more closely their licence conditions respectively.

### Prolonged Delay of HKT in Submitting its Regulatory Accounting Reports

Despite repeated reminders from OFCA, there were prolonged delays on the part of HKT, the holder of UCL No. 008, in its submission of the unaudited and audited regulatory accounting reports for the financial years 2014 and 2015,

ranging from over nine months to 20 months beyond the deadlines set out in the Accounting Manual issued by OFCA.

Having regard to the findings of OFCA's investigation and the representations of HKT, the Authority concluded that HKT was in breach of SC 5.6 of and the Direction issued by the Authority pursuant thereto its UCL No. 008 in regard to the timely submission of regulatory accounting reports. Taking into account all circumstances of the case, the Authority issued a warning to HKT cautioning it to strictly comply with SC 5.6 and the Direction in future.

## 6.22 Sanctions against Senders of CEMs

From April 2016 to March 2017, the Authority received 803 reports on suspected contraventions of the UEMO, representing a decrease of about 53% as compared to the 1 725 reports received in 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, 244 advisory letters and 37 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 2016/17, no enforcement notice was issued.